

ALASKA LEGISLATURE

1284

HOUSE and SENATE FINANCE COMMITTEE FILES, 1995-1996

Alaska Court System  
Fiscal Analysis  
CSHB 38 (JUD)

CSHB 38 (Jud) amends Alaska's presumptive sentencing laws to provide that a defendant convicted of a third felony offense is subject to a mandatory term of imprisonment of at least 40 years but not more than 99 years. The first two convictions must be for a "most serious" felony, and the third conviction must be for a class A or unclassified felony. The prosecutor has the discretion to pursue or not pursue the 40-year to 99-year mandatory sentence.

A most serious felony is any unclassified or class A felony prescribed under AS 11 or an attempt or conspiracy to commit, or criminal solicitation under AS 11.31.110 of, an unclassified or class A felony prescribed under AS 11.

The Department of Law has estimated that prosecutors will seek the mandatory 40-year to 99-year sentence 15 times per year. Because of the potential sentence, these cases can be expected to approach first-degree murder cases in the amount of court time spent on the actual trial, as well as on evidentiary hearings, collateral attacks on previous convictions, and other pre- and post-trial motion work. This is estimated to average three weeks of trial time per case, plus one-half week of additional hearings. If the defendants were not subject to a 40-year to 99-year sentence, only three of these 15 cases would statistically be expected to go to trial.

In addition to the costs of the third felony case, the existence of the mandatory 40-year to 99-year sentence will encourage offenders charged with their first or second most serious felony to fight the charge more strenuously, because conviction would greatly increase the chance that the offender would be vulnerable to the mandatory sentence at a later time. In the years 1984 through 1990, an average of about 100 defendants each year were charged with a first or second most serious felony. Trial rates for defendants charged with those felonies currently range from eight to 20 percent, depending on the classification of the offense (class B, class A, or unclassified). If the trial rate increases by 50 percent, over 50 additional felony trials will be held each year. Such changes in the trial rate are not unprecedented. When the plea bargaining ban was imposed in 1975, the felony trial rate doubled during the first year and tripled during the second year. Because it is impossible to predict what increase will occur in the trial rate as a result of CSHB 38 (Jud), this note does not reflect those costs. Should CSHB 38 (Jud) result in a significantly higher trial rate the court system will need to return to the legislature for additional funding.

For similar reasons, it can be expected that the appeal rate and rate of applications for post-conviction relief will increase among the 900 defendants charged each year with a first or second most serious felony. Again, this note does not attempt to quantify those costs.

Alaska Court System

Fiscal Analysis

CSHB 38 (JUD)

Personal Services

	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Pro Tem Superior Court Judge, PPT, 50% vested, Anchorage, 10 months	\$40,250	\$26,593	\$66,843
In-Court Clerk, range 12A, PPT, Anchorage, 10 months	22,590	10,921	<u>33,511</u>
Total Personal Services			100,354

Contractual Services

Jury fees for 12 jurors and 3 alternates for 15 days for 12 new trials at \$25 a day for each juror	67,500
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Equipment

Desk and chair for in-court clerk	<u>300</u>
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Estimated Total Cost	<u><u>\$168,554</u></u>
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# FISCAL NOTE

No. 6

Bill Version: CSHB 38 (JUD)

(H) Publish Date: 4/21/95

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

Revision Date: 3/24/95 Dept. Affected: Department of Law  
 Title: ...relating to criminal sentencing...definite term BRU: Prosecution  
sentences, parole, good time credit, pardon, commutation... Component: Third District  
 Sponsor: Representative Bunde Criminal Appeals & Social Prosecution  
 Requester: Representative Bunde COMPONENT SERIAL NO. 0087.0090

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

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	162.5	162.6	162.5	162.6	162.6	162.6
TRAVEL	7.5	7.5	7.5	7.5	7.5	7.5
CONTRACTUAL	22.2	22.2	22.2	22.2	22.2	22.2
SUPPLIES	6.5	6.5	6.5	6.5	6.5	6.5
EQUIPMENT	13.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>211.9</b>	<b>198.9</b>	<b>198.9</b>	<b>198.9</b>	<b>198.9</b>	<b>198.9</b>

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	211.9	198.9	198.9	198.9	198.9	198.9
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>211.9</b>	<b>198.9</b>	<b>198.9</b>	<b>198.9</b>	<b>198.9</b>	<b>198.9</b>

Estimate of any current year (FY95) cost: \$ 0.0

**POSITIONS**

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

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

The Judiciary Committee Substitute for HB 38 changes the proposed 99-year mandatory term of imprisonment for third-time "most serious felony" offenders to allow courts to sentence these offenders to a definite term of imprisonment of at least 40 years and not less than 99 years. Thus a court could sentence an offender to a set term anywhere within the range of 40 years and 99 years. As provided in both the original bill and the Judiciary Committee CS, a third-time most serious felony offenders could apply for a modification or reduction of sentence after serving one-half of the definite term, except that the CS provides that an offender could not apply for modification or reduction until after serving the greater of one-half of the term, or 30 years. An offender would not be eligible for a good time deduction. Consequently, in determining the greater of one-half of the definite term served or 30 years, good time credit could not be considered. As a result, and under even the best of circumstances, the minimum time served by a third-time most felony offender would be 30 years.

Prepared by: Richard I. Pedues, Director  
 Division: Administrative Services Division  
 Approved by Commissioner: Bruce M. Botelho, Attorney General  
 Agency: Department of Law

Phone: 465-3672  
 Date: 3/24/95  
 Date: 3/24/95

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FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

BILL NO. CSHB 38 (JUD)

ANALYSIS CONTINUATION:

Most offenders would obviously serve terms of substantially greater length. Although the CS, by establishing a 40-to-99 year sentencing range, in lieu of a mandatory 99-year sentence, will result in some pleas, the majority of offenders will still present a toughened defense. We have therefore reduced our fiscal note costs by one of three positions to reflect this change, but we are continuing two positions to reflect the need to fully prosecute the majority of offenders who are expected to vigorously resist a definite term sentence.

FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

BILL NO. CSHB 38 (JUD)

ANALYSIS CONTINUATION:

Component Analysis

	<u>0087</u> <u>Third District</u>	<u>0090</u> <u>Crim. Appeals</u>	<u>Total</u>
Personal Services	81.3	31.3	162.6
Travel	7.5	0.0	7.5
Contractual	13.6	8.6	22.2
Supplies	3.3	3.3	6.6
Equipment	6.5	6.5	13.0
	-----	-----	-----
Total	112.2	99.7	211.9

PCN	UNAUTH PCN	JOB CLASS TITLE	Y S	LOCATION NAME	R U G U	S	REG NOS NU00	SALARY	PREN PAY	DERES	PER SERV. COSTS	G. F. AMOUNT
03#030		ATTORNEY III		F ANCHORAGE	A	XE	AA 22A 12	53304	0	18305	71609.90	

\*\*\*\* JUSTIFICATION:

This position will be needed to handle an increased felony caseload when the penalty for driving while intoxicated (or refusing to take a chemical test) for the fourth or more times is raised from a class A misdemeanor to a class C felony.

TRAVEL COSTS	3000.00
CONTRACTUAL COSTS	8600.00
SUPPLIES COSTS	3300.00
EQUIPMENT COSTS	6500.00
OTHER COSTS	0.00

TOTAL COSTS 93009.90 71609.90

\*\*\* FUNDING DETAIL:

100% GENERAL FUND RECEIPTS 71609.90

TOTAL FUNDING 71609.90

03#031		LEGAL SECRETARY I		F ANCHORAGE	A	GG	2A 10A 12	24756	0	11367	36123.02	
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\*\*\*\* JUSTIFICATION:

This position will be needed to handle an increased felony caseload when the penalty for driving while intoxicated (or refusing to take a chemical test) for the fourth or more times is raised from a class A misdemeanor to a class C felony.

TRAVEL COSTS	0.00
CONTRACTUAL COSTS	6000.00
SUPPLIES COSTS	2400.00
EQUIPMENT COSTS	8500.00
OTHER COSTS	0.00

TOTAL COSTS 53023.02 36123.02

\*\*\* FUNDING DETAIL:

100% GENERAL FUND RECEIPTS 36123.02

TOTAL FUNDING 36123.02

03#033		ATTORNEY IV		F ANCHORAGE	A	XE	AA 24A 12	61008	0	20305	81313.02	
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\*\*\*\* JUSTIFICATION:

This position will be required to handle prosecutions and appeals of third-time offenders of "most serious" felonies, where the penalty will be mandatory term of imprisonment of 99 years. In many cases, the penalty will be more severe than the sentence for first degree murder. Consequently, a much tougher defense can be expected, including attacks on the underlying prior convictions.

TRAVEL COSTS	7500.00
CONTRACTUAL COSTS	13600.00
SUPPLIES COSTS	3300.00
EQUIPMENT COSTS	6500.00
OTHER COSTS	0.00

TOTAL COSTS 112213.02 81313.02

\*\*\* FUNDING DETAIL:

100% GENERAL FUND RECEIPTS 81313.02

TOTAL FUNDING 81313.02

01/24/95

15:31:51.9

PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

PAGE: 4

DEPARTMENT OF LAW

SCENARIO: 3

COMPONENT #: 6501020600 NAME: CRIMINAL APPEALS & SPECIAL PROSECUTIONS BRU NAME: PROSECUTION

PCN	UNAUTH PCN	JOB CLASS TITLE	I S	LOCATION NAME	R C	D U	S R&S HOS BUDG	SALARY	PREM PAY	DCRES	PER.SERV. COSTS	G. F. AMOUNT
03/035		ATTORNEY IV	F	ANCHORAGE	A	XE	AA 24A 12	61000	0	20305	81313.82	

\*\*\*\* JUSTIFICATION:

This position will be required to handle prosecutions and appeals of third-time offenders of "most serious" felonies, where the penalty will be mandatory term of imprisonment of 99 years. In many cases, the penalty will be more severe than the sentence for first degree murder. Consequently, a much tougher defense can be expected, including attacks on the underlying prior convictions.

TRAVEL COSTS	0.00	
CONTRACTUAL COSTS	8600.00	
SUPPLIES COSTS	3300.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
TOTAL COSTS	99713.82	81313.82

\*\*\* FUNDING DETAIL:

100% GENERAL FUND RECEIPTS	81313.82
TOTAL FUNDING	81313.82

\*\*\*\* COMPONENT TOTALS:

FULL TIME NEW POSITIONS	1	TOTAL PERSONAL SERVICES	81313.82
PART TIME/SEASONAL NEW POSITIONS	0		
NON PERMANENT NEW POSITIONS	0	TOTAL COSTS INC. ASSOC COSTS	99713.82
OTHER.....	0		

NUMBER OF NEW POSITIONS IN COMPONENT: 1

FUNDING DATA: G.F. & G.F. MATCH:	81313.82
OTHER FUNDS:	0.00
TOTAL FUNDING:	81313.82

FISCAL NOTE

No. 5

Bill Version: CSHB 38 (JUD)

(H) Publish Date: 3/22/95

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_

Title: "An Act relating to criminal sentencing."

Department Affected: Administration

BRU: Public Defender Agency

Component: Public Defender Agency

Sponsor: Representative Bunde

Requestor: Representative Bunde

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	317.9	322.8	322.8	322.8	322.8	322.8
TRAVEL	5.0	5.0	5.0	5.0	5.0	5.0
CONTRACTUAL	50.0	50.0	50.0	50.0	50.0	50.0
SUPPLIES	2.5	5	2.5	2.5	2.5	2.5
EQUIPMENT	7.5	-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>382.9</b>	<b>380.3</b>	<b>380.3</b>	<b>380.3</b>	<b>380.3</b>	<b>380.3</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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FUND SOURCE:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	382.9	380.3	380.3	380.3	380.3	380.3
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
<b>TOTAL</b>	<b>382.9</b>	<b>380.3</b>	<b>380.3</b>	<b>380.3</b>	<b>380.3</b>	<b>380.3</b>

Estimate of any current year (FY 95) cost: \$ 0

POSITIONS:

FULL-TIME	3.0	3.0	3.0	3.0	3.0	3.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached

Prepared by: John B. Salemi, Director  
Division: Public Defender Agency

Phone: (907) 264-4412  
Date: \_\_\_\_\_

Approved by Commissioner: Mark Gover  
Agency: Department of Administration

Date: 1/25/95

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Rev: 01/95

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## ANALYSIS:

INTRODUCTION

This proposal requires that certain repeat felony offenders receive prison terms that are the equivalent of life without parole. This is similar to proposals that have either been enacted or are being considered in other states. It is noteworthy that this punishment is harsher than that for first degree murder.

The actual expense is somewhat speculative, in that it is difficult to get a statistical "handle" on how many cases will be subject to "three strikes" punishment. For purposes of this fiscal analysis, the Public Defender Agency will rely on what are believed to be rather conservative estimates generated by the Alaska Judicial Council, which in turn were used by the Department of Law for its fiscal note.

Using those estimates, the Public Defender (PD) expects it will handle between 10 to 15 cases per year where the client will be facing a 99-year term, without parole release potential. Just as homicide cases are currently the most expensive, challenging and labor-intensive prosecutions to defend, these "three strikes" cases will be similarly treated because of the grave consequences attached to a conviction. Trials will be the rule, not the exception. Only the most experienced staff attorneys will be involved in these cases, adding to personal services costs. It is likely the litigation of these matters will involve significant investigation, extensive pre-trial motion work, and long and difficult trials. As a result, the court system and prosecutor's office will be affected.

Research has shown that states with three strikes laws have found fewer cases are "plea bargained." (Plea bargaining was recently reinstated in Alaska.) In those states where three strikes laws have been passed, defendants are less likely to plead to any "strike" felony because of the potential impact the strike could have on them if they reoffend. This translates into more trials, which means more prosecutors, Public Defenders, judges and court personnel to handle those cases. In Los Angeles, the district attorney eliminated entire sections of his office, including Environmental Crimes, Consumer Protection and the Major Fraud Unit, in order to free up enough attorneys to handle impact of the three strikes legislation. See "The Law that Brought the Criminal Justice System to its Knees," *Los Angeles Times* (March 27, 1994).

As part of its investigation and pre-trial workup, the defense will have to consider mounting what are called in the law "collateral attacks" of the prior convictions which trigger the "three strikes" penalty. Put another way, attorneys will necessarily explore the possibility of invalidating one or more of the prior convictions to avoid the 99-year penalty. This effort will involve considerable effort on the part of support staff, hence the request for paralegal assistants in this fiscal note. It will also necessitate contracting with attorneys in other states to collaterally attack out-of-state felony convictions which serve to trigger the 99-year penalty. For example, if a client has a felony conviction in Idaho or California, a determination will have to be made as to whether 1) the conviction qualifies as felony level conduct in Alaska, 2) the conviction was based on a knowing and voluntary plea, 3) the defendant was represented by competent counsel, 4) the conviction was susceptible to some set-aside or expungement procedure which was not exercised but could have been. This is only a partial list of issues which will arise in the context of out-of-state convictions, and which may require the assistance of lower 48 lawyers paid on contract. These lawyers will have to go into courts in their state and file post-conviction petitions moving to set aside convictions if a legal basis is found to support such a filing.

These collateral attacks, which the Department of Law acknowledges in its fiscal analysis will be part of the "three strikes" litigation landscape, is expensive and time consuming. It will also potentially involve some out-of-state travel on the part of investigators, paralegals and lawyers. It is for these reasons that additional contractual and travel funds are required.

FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

BILL NO. HB 38

FISCAL IMPACT

In order to absorb the impact of these cases, the Public Defender will require additional resources. Like the Department of Law, this will mean more staff lawyers. Because the lawyers will need support for the collateral attacks aforementioned along with investigation and pre-trial preparation, paralegal assistants and a secretarial position are also required.

One attorney IV position will be placed in the Anchorage office and one in Fairbanks. Anchorage will also receive one paralegal assistant and a secretary. Fairbanks will add one paralegal position. These lawyers and support staff will also be responsible for responding to "three strikes" prosecutions arising in rural locations, either by handling the case, or by providing support for the rural PD offices where the cases are sited. (It should be noted that the attorney positions will also absorb any additional appellate work which will generate post-conviction as concerns these cases.)

CONCLUSION

It is the opinion of the Public Defender that this proposal will result in protracted, expensive litigation, which will have a reverberating impact on the entire justice system. It is suggested that, given the strict presumptive sentencing structure already in place in Alaska, this proposal be given very close scrutiny.

BUDGET ANALYSIS

100: Anchorage -	Attorney IV	82.6
	Paralegal Asst. II	51.5
	Legal Secretary I	36.7
Fairbanks -	Attorney IV	93.7
	Paralegal Asst. II	<u>53.4</u>
		317.9
200: Travel		5.0
300: Contractual		50.0
400: Supplies		2.5
500: Equipment (one time)		<u>7.5</u>
	TOTAL	<u>382.9</u>







FISCAL NOTE

No. 2

STATE OF ALASKA  
1995 LEGISLATIVE SESS

Bill Version: CSHB 38 (JUD)

(H) Publish Date: 3/22/95

Revision Date: \_\_\_\_\_  
Title: An Act relating to criminal sentencing;  
relating to the availability of good time credit . . .  
Sponsor: Representative Bunde  
Requestor: Representative Bunde

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	82.6	82.6	82.6	82.6	82.6	82.6
TRAVEL	10.0	10.0	10.0	10.0	10.0	10.0
CONTRACTUAL	63.4	63.4	63.4	63.4	63.4	63.4
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	3.6	3.6	3.6	3.6	3.6	3.6
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	160.6	160.6	160.6	160.6	160.6	160.6

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	160.6	160.6	160.6	160.6	160.6	160.6
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	160.6	160.6	160.6	160.6	160.6	160.6

Estimate of any current year (FY 95) cost: \$ None

POSITIONS:

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

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

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

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

Approved by Commissioner: Mark Boyer  
Agency: Department of Administration

Date: 1/25/95

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FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

BILL NO. HB 38

ANALYSIS: (continued)

HB 38 substantially revises the original "Three Strikes" proposals made last year and should significantly reduce the number of criminal defendants susceptible to the 99 year prison term. The changes allow prosecutorial discretion, modify the way prior felony convictions are viewed by the court, and require that the final charge be an A or Unclassified felony.

The Alaska Judicial Council, which provided the statistical analysis related to the original HB 334, has not provided additional statistics regarding the potential impact of the new bill on criminal justice agencies. However, the assumptions regarding the 1994 fiscal notes remain valid. While the numbers of cases will undoubtedly be reduced by the modifications contained in HB 38, there is no question that litigation surrounding "Three Strikes" cases will be lengthy and costly. Costs will be dictated by the high stakes of each case, the necessity for collateral attacks on prior convictions both in State and Federal courts, and the certainty that each of these cases will go to trial.

Because of the necessity of attacking underlying convictions and the treatment of each case as most serious because of the severity of the sanction, litigation will require the filing of numerous motions, not only on the current charge, but in each prior case which resulted in convictions. This will require the review of voluminous records associated with each of the prior felony cases and the initiation of new litigation in each case. If that prior conviction occurred in a different state, it would be necessary to retain out-of-state counsel to launch the collateral attacks upon these convictions. Further, expert testimony regarding the adequacy of prior counsel would probably need to be prepared in many of the cases.

While it is not possible to estimate the indirect impact of such legislation on client decision-making in first and second felony cases, there is little question that some clients will be influenced to go to trial rather than plead guilty when they know that this conviction will make them eligible for life in prison if they commit another felony. More trials mean higher costs for each criminal justice agency.

It should also be noted that these cases will give rise to many conflicts of interest which will necessitate withdrawal of the Public Defender Agency and the assignment of OPA to provide representation. These conflicts of interest will arise because the Public Defender will have provided representation in the earlier cases which resulted in convictions, and which would be subject to collateral attack during the litigation of each "Three Strikes" case.

Because OPA criminal lawyers are currently at maximum caseload capacity, and because of the loss of one such attorney in FY 93, it will be necessary to add an additional experienced attorney to provide representation in these cases throughout the state.

Further, because at least one of these cases each year will require the appointment of conflict counsel at an estimated cost of \$60,000 per case, contractual costs will also be high.

Position Title Attorney IV		No. of Positions 1	Range / Step 24/A	Barg. Unit PX
Time Status PFT	Staff Months 12	Location Anchorage		Election District 8
TYPE OF EXPENDITURE		AMOUNT		
Salary		61.0		
Benefits		21.6		
Premium Pay				
Other				
Total Personal Services	0.0	82.6		
Travel				
Contractual		3.4		
Commodities		1.0		
Equipment		3.6		
Other				
Total Cost		90.6		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts1002				
G.F. Match1003				
General Fund1004		90.6		
I-A Receipts1007				
CIP Receipts1061				
Other				
Justification The Anchorage Office of Public Advocacy presently has four attorney positions devoted to criminal defense. These attorneys are also handling several major cases outside of the Anchorage area as staff coverage and travel is more cost effective than contracting major cases to private attorneys in rural areas. Current caseloads indicate that these four attorneys cannot absorb the additional cases which would result from this legislation. It is necessary that an additional attorney be added to the Anchorage staff to cover the resultant increased caseload.				

8/LEG95/13/FN-OPA38.KP5

Page 3 of 3

# Request For New Position

AGENCY ADMINISTRATION  
 BRU OFFICE OF PUBLIC ADVOCACY  
 COMPONENT OFFICE OF PUBLIC ADVOCACY

FY 96

Page 3 of 3  
Revised Date: \_\_\_\_\_

SENATE FINANCE  
COMMITTEE  
Amendment Number: 2  
Bill Number: CSHB 38(Jud)am  
Sponsor: \_\_\_\_\_ Date: 2-13-96  
Logged In By: AL

*withdrawn*  
*2/14/96*  
9-LS0187F.5  
Luckhaupt  
2/12/96

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR DONLEY

TO: CSHB 38(JUD) am

1 Page 1, line 9, following "INTENT":

2 Insert "FOR BILL SECTIONS 1 - 2, AND 7 - 24"

3 Page 2, following line 18:

4 Insert new bill sections to read:

5 \*\* Sec. 3. AS 12.55.035(b) is amended to read:

6 (b) Except as provided in AS 12.55.036, upon conviction of an offense, a  
7 defendant who is not an organization may be sentenced to pay, unless otherwise  
8 specified in the provision of law defining the offense, a fine of no more than

9 (1) \$500,000 [\$75,000] for murder in the first or second degree,  
10 attempted murder in the first degree, sexual assault in the first degree, sexual abuse  
11 of a minor in the first degree, kidnapping, or misconduct involving a controlled  
12 substance in the first degree;

13 (2) \$250,000 [\$50,000] for a class A felony, \$100,000 for a class [.]  
14 B felony, or \$50,000 for a class C felony;

15 (3) \$5,000 for a class A misdemeanor;

16 (4) \$1,000 for a class B misdemeanor;

17 (5) \$300 for a violation.

18 \* Sec. 4. AS 12.55.035(c) is amended to read:

19 (c) Except as provided in AS 12.55.036, upon conviction of an offense, a  
20 defendant that is an organization may be sentenced to pay a fine not exceeding the  
21 greater of

22 (1) an amount that is

23 (A) \$1,000,000 [\$500,000] for a felony offense or for a  
24 misdemeanor offense that results in death;

1 (B) \$200,000 for a class A misdemeanor offense that does not  
2 result in death;

3 (C) \$25,000 for a class B misdemeanor offense that does not  
4 result in death;

5 (D) \$10,000 for a violation;

6 (2) three [TWO] times the pecuniary gain realized by the defendant  
7 as a result of the offense; or

8 (3) three [TWO] times the pecuniary damage or loss caused by the  
9 defendant to another, or to the property of another, as a result of the offense.

10 \* Sec. 5. AS 12.55.039(a) is amended to read:

11 (a) In addition to any fine or other penalty or surcharge or other cost  
12 prescribed by law, a defendant who pleads guilty or nolo contendere to, forfeits bail  
13 for, or is convicted of a violation of a vehicle or traffic offense under AS 28, a  
14 regulation adopted under AS 28, or a municipal ordinance under AS 28.01.010 shall  
15 be assessed a law enforcement training surcharge of

16 (1) \$10 if the violation is for other than a violation of AS 28.15.291,  
17 AS 28.33.030, 28.33.031, AS 28.35.030, 28.35.032, 28.35.040, 28.35.060, or a  
18 comparable municipal ordinance; or

19 (2) \$25 if the violation is a violation of AS 28.15.291, AS 28.33.030,  
20 28.33.031, AS 28.35.030, 28.35.032, 28.35.040, 28.35.060, or a comparable municipal  
21 ordinance.

22 \* Sec. 6. AS 12.55 is amended by adding a new section to read:

23 Sec. 12.55.041. CRIME VICTIMS' SURCHARGE FOR FELONY AND  
24 MISDEMEANOR CONVICTIONS. (a) In addition to a fine or other penalty or a  
25 surcharge or other cost prescribed by law, a defendant who pleads guilty or nolo  
26 contendere to, forfeits bail for, or is convicted of a felony or misdemeanor under the  
27 laws of this state shall be assessed a crime victims' surcharge of

28 (1) \$50 if the matter is a misdemeanor;

29 (2) \$100 if the matter is a felony other than a felony listed in (3) of  
30 this subsection; and

31 (3) \$200 if the matter is a felony under AS 11.41 or is arson in the  
32 first degree under AS 11.46.400.

1 (b) A court may not fail to impose the surcharge required under this section.  
2 The surcharge may not be waived, deferred, or suspended. A court may allow a  
3 defendant, who is unable to pay the surcharge required to be imposed under this  
4 section, to perform community work under AS 12.55.055(c) in lieu of the surcharge.

5 (c) The surcharge shall be paid within 10 days of imposition or such shorter  
6 period of time as ordered by the court. Failure to pay the surcharge is punishable as  
7 contempt of court. Proceedings to collect the surcharge may be instituted by the state  
8 or by the court on its own motion.

9 (d) Money collected under this section shall be deposited into the general fund  
10 and accounted for under AS 37.05.142. The legislature may appropriate the annual  
11 estimated balance in the account maintained under this section to the crime victim  
12 compensation fund under AS 18.67.162, for the operation of the Violent Crimes  
13 Compensation Board, or for another public purpose. Nothing in this subsection  
14 creates a dedicated fund."

15 Renumber the following bill sections accordingly.

16 Page 8, line 21:

17 Delete "sec. 6"

18 Insert "sec. 10"

SENATE FINANCE  
COMMITTEE

Amendment Number: 3  
Bill Number: CSHB 38 (Jud) am  
Sponsor: \_\_\_\_\_ Date: 2-13-96  
Logged In By: HL

final adoption  
2/14/96

S-LS0187F.6  
Luckhaupt  
2/12/96

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR DONLEY

TO: CSHB 38(JUD) am

1 Page 2, following line 18:

2 Insert new bill sections to read:

3 \*\* Sec. 3. AS 12.55.080 is amended to read:

4 Sec. 12.55.080. SUSPENSION OF SENTENCE AND PROBATION. Upon  
5 entering a judgment of conviction of a crime, or at any time within 60 days from the  
6 date of entry of that judgment of conviction, a court, when satisfied that the ends of  
7 justice and the best interest of the public as well as the defendant will be served  
8 thereby, may suspend the imposition or execution or balance of the sentence or a  
9 portion thereof, and place the defendant on probation for a period and upon the terms  
10 and conditions as the court considers best. When a court has placed a defendant  
11 on probation and the court revokes the probation due to the defendant's  
12 commission of a felony offense of this jurisdiction or a similar offense of another  
13 jurisdiction, the court may not give the defendant credit against the sentence for  
14 any time served on probation except as provided under AS 12.55.086(c).

15 \* Sec. 4. AS 12.55.085(c) is amended to read:

16 (c) Upon the revocation and termination of the probation, the court

17 (1) may pronounce sentence at any time within the maximum  
18 probation period authorized by this section, subject to the limitation specified in  
19 AS 12.55.086(c);

20 (2) may not, if the probation was revoked or terminated due to the  
21 person's commission of a felony offense of this jurisdiction or a similar offense  
22 of another jurisdiction, give the person credit for any time served on probation  
23 except as specified in AS 12.55.086(c)."

24 Renumber the following bill sections accordingly.

1 Page 7, following line 15:

2 Insert a new bill section to read:

3 **\*\* Sec. 17.** AS 33.16.220 is amended by adding a new subsection to read:

4 (j) When revoking parole under this section due to the parolee's commission  
5 of a felony offense of this jurisdiction, or a similar offense of another jurisdiction, the  
6 board may not give the parolee credit for any time served on parole."

7 Renumber the following bill sections accordingly.

8 Page 8, line 21:

9 Delete "sec. 6"

10 Insert "sec. 8"

SENATE FINANCE  
COMMITTEE

Amendment Number: 4

Bill Number: CSHB 38(Jud) am

Sponsor: \_\_\_\_\_ Date: 2-13-96

Logged In By: KL

*adopted*  
2/14/96

9-LS0187F.4

Luckhaupt

2/12/96

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR DONLEY

TO: CSHB 38(JUD) am

- 1 Page 7, line 30, following "sentenced to a":
- 2       Insert "mandatory 99-year term of imprisonment under AS 12.55.125(a) or a"
  
- 3 Page 8, line 16, following "to a":
- 4       Insert new material to read:
- 5                               "(A) mandatory 99-year term of imprisonment under
- 6                               AS 12.55.125(a); or
- 7                               (B)"

# STATE OF ALASKA

## DEPARTMENT OF LAW

CRIMINAL DIVISION  
February 6, 1996

TONY KNOWLES, GOVERNOR  
FEB 06 1996  
PLEASE REPLY TO:

- CRIMINAL DIVISION CENTRAL OFFICE  
P.O. BOX 110300  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3428  
FAX: (907) 465-4043
- OFFICE OF SPECIAL PROSECUTIONS AND APPEALS  
310 K STREET, SUITE 308  
ANCHORAGE, ALASKA 99501-2064  
PHONE: (907) 269-6250  
FAX: (907) 269-6270

The Hon. Rick Halford, Co-Chairman  
The Hon. Steve Frank, Co-Chairman  
Senate Finance Committee  
State Capitol  
Juneau, Alaska 99801

Re: CSHB 38am (Three Strikes)

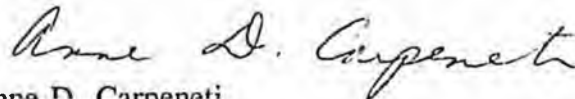
Dear Senators Halford and Frank:

I am writing concerning the testimony before the Senate Finance Committee regarding the three strikes legislation this morning. I stated that the Department of Law supported the bill but had reservations about the cost of implementing it. This is incorrect. The department neither supports nor opposes the bill. The department doesn't disagree that persons qualifying under the bill deserve the sentences authorized by the bill, and in fact, regularly argues for the imposition of lengthy sentences for those offenders. However, given the shrinking resources that our state is experiencing, we believe that the benefits of a mandatory "three strikes" legislation do not outweigh its significant fiscal costs.

Thank you for allowing me to correct this error.

Very truly yours,

BRUCE M. BOTELHO  
ATTORNEY GENERAL

By:   
Anne D. Carpeneti  
Assistant Attorney General

ADC:rew

cc: Members of the Senate Finance Committee  
Representative Con Bunde

NOTE

TO: Patti Beene *Swenson*  
c/o Representative Con Bunde

FROM: Kathy  
Senate Finance Committee (2618)

DATE: February 6, 1996

RE: HB 38

During the Senate Finance hearing this morning on HB 38, a message regarding the bill was left on my voice mail. The name the gentleman gave sounds like "Beaver Bently." He said he was calling from Homer (235-7389) to advise that he has a problem with the legislation in that it appears to conflict with Article I, Section 9, Paragraph 3 of the U.S. Constitution which says that no bill of attainder or ex post facto law will be passed. He suggested that accumulation of past felonies per HB 38 would violate that provision. The caller asked that someone respond to his call to discuss the issue. When I inquired of Senator Halford's office regarding who would be the best individual to speak to the concern, I was directed to forward the foregoing comment and request to the sponsor of the bill. We thus leave this matter in your capable hands.



REPRESENTATIVE CON BUNDE  
CO-CHAIR HEALTH, EDUCATION  
& SOCIAL SERVICES  
VICE-CHAIR RULES

Alaska State Legislature  
House of Representatives

*DURING SESSION:*  
STATE CAPITOL, ROOM 108  
JUNEAU, ALASKA 99801-1182  
1 (907) 465-4843

*DURING INTERIM:*  
716 WEST 4th AVENUE  
ANCHORAGE, ALASKA 99501-2133  
1 (907) 258-8168

MEMORANDUM

DATE: April 4, 1995

TO: Senator Rick Halford  
Senator Steve Frank  
Co-Chairs Senate Finance Committee

FROM: Rep. Con Bunde  
Co-Chair House HESS

RE: HB 38

House bill 38 is in the Senate Finance Committee. This memo is a request to hear HB 38 as soon as you are able to schedule the bill.

The attached packet contains the required supporting documentation. If you need further information please call Patti at ext. 6824.

Thank you for your cooperation.



REPRESENTATIVE CON BUNDE  
CO-CHAIR HEALTH, EDUCATION  
& SOCIAL SERVICES  
VICE-CHAIR RULES

Alaska State Legislature  
House of Representatives

*DURING SESSION:*  
STATE CAPITOL, ROOM 108  
JUNEAU, ALASKA 99801-1182  
1 (907) 465-4843

*DURING INTERIM:*  
716 WEST 4th AVENUE  
ANCHORAGE, ALASKA 99501-2133  
1 (907) 258-8168

SPONSOR STATEMENT  
CSHB 38 (JUD)

HB 38 provides a definite term of imprisonment of 40-99 years for a specific group of offenders who have two separate prior class A or unclassified felony convictions.

Under this proposed legislation, discretionary parole and good time sentence reduction are not available to offenders who are sentenced to a definite term of 40 to 99 yrs. However, HB 38 allows those sentenced to a definite term of 40 to 99 yrs to ask the court for a reduction in sentence after they have served the greater of one half of the definite term or; 30 years.

This proposed legislation gives prosecutors some discretion in the decision to pursue third strike sentencing. This will avoid unjust results in certain cases where the evidence may be weak. This provision will also allow the prosecutor some flexibility to proceed with the normal presumptive sentencing provisions when necessary.

There are a costs involved in keeping a person incarcerated for an extended period of time. However, this legislation is crafted to keep cost to a minimum. The threat of strong punishments can shape behavior and deter crime. Some persistent offenders may find they want to move to a state without a three strikes statute or they may decide the third strike is not worth the rest of their life, and change their behavior. Persistent offenders are taking up costly time in our judicial system by committing similar crimes again and again.

It is time to close the revolving door too many repeat offenders depend upon. This proposed legislation will help make our state a safer place. I urge your positive consideration of this legislation.

Post-it® Fax Note	7871	Date	# of pages 7
To Va)		From R. King	
Co./Dept.		Co. ACLU	
Phone #		Phone # 258-0044	
Fax # 465-4928		Fax #	

# ALASKA

## CIVIL LIBERTIES UNION

An Affiliate of the American Civil Liberties Union  
P. O. Box 201844 Anchorage, AK 99520-1844  
Phone: 1-907-258-0044 Fax: 1-907-258-0288

### ALASKA CIVIL LIBERTIES UNION'S POSITION PAPER OPPOSING HB 38

The most important impetus for the national movement towards three strikes legislation is the public's present preoccupation with crime. Despite the perception that serious crime is on the rise, the facts are that the murder rate in the United States 60 years ago is just about what it is today. In addition, according to figures released by the FBI, there has been little or no growth in the overall crime rate during the last two decades. In short, violent crime is no more a problem today than it was ten, twenty, or even sixty years ago.

The likely root of the public's fear is increasing media attention to individual cases of violent crime, combined with the fact that certain segments of the population -- such as young, non-white males -- have a greater chance of becoming a homicide victim now than ever before and the fact that the homicide rate for children under 14 is at or near record highs for the post-World War II era and rates for preschoolers 4 and younger have risen to their highest levels in 40 years.

Finally, while the rate of violent crime among younger people has risen, the rate among offenders aged 35 and older has decreased dramatically. Ironically, it is such older felons -- not the younger and more violent first-timers -- that HB 38 is designed to target directly.

#### Three-Strikes is Too Costly for the State

There appears to be a national consensus of opinion that three-strikes laws will cost a tremendous amount of money to implement and maintain. There are at least three significant ways in which a three-strikes law would be expected to impact Alaska's pocketbook: 1) costs associated with increased prison populations; 2) increasing health care costs for prisoners as they reach old age or who contract a terminal or physically debilitating disease while serving life sentences; and 3) costs incurred by the judiciary, the district attorney's offices, the Public Defender Agency, and the Office of Public Advocacy as a result of increased numbers of cases going to trial and a greater reluctance of defendants to plea bargain to any felony charge.

#### Costs of Maintaining Geriatric or Medically Incapacitated Prison Populations

One inevitable effect of three-strikes laws will be to turn prisons into nursing homes. Longer sentences will mean that Alaska will have to be prepared to spend to match the rising annual cost for each prisoner as he or she gets older and requires more medical attention. Nationally, estimates are that costs of incarceration rise 3 to 5 times as prisoners reach ages of 55 to 65 years.

In addition, "three-strikers" may also contract serious, debilitating or even terminal diseases which would eliminate them as a danger to society. Yet it appears, under present HB 38, that the earliest date that either the state or a person incarcerated under this legislation could even approach the courts for consideration of release would be 49 1/2 years after final sentencing. This will compel the state to care for these persons, often at great expense, through their death. The AkCLU would hope that humanity, alone, would dictate that the Legislature would consider amending this bill to provide for the release of "three-strikers" for medical reasons adjudged serious enough to remove them from consideration as a danger to society.

### **Three-Strikes Will Be Dangerous to the Public**

There are several respects in which a three-strikes law is likely to prove counter-productive to its very purpose of protecting the public from violent crime. First, conservative and liberal commentators alike have expressed concern that criminals, faced with a third felony life sentence, will be more inclined to kill any victims or witnesses during commission of felony offenses. In fact, prosecutors and police officers in Washington State have observed, since the passage of the three-strikes law there, that criminals have been "showing a tendency to be more violent or desperate when officers try to arrest them."

Second, crowding of prisons with three-strikers may well lead to the forced early release of first and second offenders, who tend to be younger and statistically more likely to commit violent crimes again. This effect has already been documented in states where three-strikes laws have been implemented.

Finally, there will be fewer pleas to felony charges by defendants with nothing to gain and everything to lose. This could have two possible consequences. First, more defendants will go to trial and, because the state's evidence is usually weaker when it is willing to plea bargain, more defendants may well go free. Whereas a plea bargain might have put a defendant in prison on a reduced felony or misdemeanor charge when the state was unsure of its ability to prevail at trial, the defendant may end up walking free as a result of the three-strikes law. Second, prosecutors may go ahead and reduce serious felonies to misdemeanors in order to maintain manageable case loads, with obvious results. Neither of these possibilities is what the proponents of three-strikes laws, nor the sponsor of HB 38, had in mind.

### **Three-Strikes Will Be Ineffective**

First, as you may already be aware, most third-offense defendants convicted of a murder in the first or second degrees or of kidnapping will be unaffected by a three-strikes law because they already are normally sentenced to life in prison under Alaska's presumptive sentencing statutes. Thus, under these circumstances the law is unnecessary.

Second, it is well-documented that most violent crimes are not premeditated, but are instead committed in the heat of passion or anger, or while the defendant is under the influence of alcohol or drugs. A three-strikes law will not act as a deterrent to any of these people. Finally, most criminals who commit premeditated violent crimes have no intention of being caught. They also have good reason to believe they won't be caught: there were 6.6 million violent crimes committed during 1992 in the United States, and only 742,130 violent crime arrests. This is further evidence that a three-strikes law will, as professed by many, have no effect on crime rates.

### Discretion Will Be Taken From Judges, Given to Prosecutors

Three-strikes laws are mandatory minimums carried to an extreme. Under HB 38, Alaska judges would apparently have *no discretion whatsoever* to take into account anything about the three-strikes offender. The practical effect will be to place the discretionary decisions into the hands of prosecutors, who will decide with what to charge potential three-strikers. Instead of leaving to dispassionate judges the important decision about whether to imprison a person for life, that decision is handed completely over to the prosecution. The judge and the prosecutor become one and the same.

### Three-Strikes Will Be Unjust and May Be Unconstitutional

Even more troubling are the potential racist effects of a three-strikes law that puts too much discretion in the hands of prosecutors. A habitual offender law in Florida, allowing severe sentences for criminals guilty of three previous felonies, was found to have had this problem during its first three years after enactment. In each of twenty statewide circuits, African-Americans were prosecuted under the law in greater proportion than whites who were similarly eligible. Statewide, prosecutors charged black defendants with three-strikes violations at three times the rate charged against white defendants also eligible for the charge. Faced with these facts, the criminal court judges in Palm Beach County voted unanimously to close down the habitual offender court altogether.

Given the present over-representation of the Alaska Native and African-American populations in Alaska's correctional institutions, the shift of discretion away from judges to prosecutors raises genuine concerns about the potential racist application of such a law.

Finally, serious constitutional questions exist about any law that imposes a mandatory life sentence. The Alaska Constitution contains a "cruel and unusual

punishment" prohibition (Article I, section 12), which has been interpreted to make unconstitutional any "punishment so disproportionate to the offense committed as to be completely arbitrary and shocking to the sense of justice." Any three-strikes legislation is bound to be attacked on these grounds as it begins to be applied to specific cases.

### Conclusion

LB 38 is not an effective, sound approach to the punishment of repeat offenders. As catchy as "Three-Strikes, You're Out," may sound to the ear, such a law is destined to be costly, ineffective, and unjust. As the American Civil Liberties Union's "briefing" on "10 Reasons to Oppose '3 Strikes, You're Out,'" states (copy attached):

Today, the United States has the dubious distinction of leading the industrialized world in per capita prison population, with more than one million men and women behind bars. The typical inmate in our prisons is minority, male, young, unemployed, and uneducated. This profile should tell us something important about the link between crime and lack of opportunity, between crime and lack of hope.

Only when we begin to deal with the conditions that cause so many of our young people to turn to crime and violence will we begin to realize a less crime ridden society.

For the above reasons, the Alaska Civil Liberties Union urges the House Judiciary Committee to defeat passage of House Bill 38.

HB 38

FAX TRANSMITTAL MEMO

TO: RANDALL MILLERS

DEPT: TELU FAX #: 258-0258

FROM: PTK PHONE:

CC: FAX #:

Post-it brand for transmittal memo 7071

NO. OF PAGES

3

Inside this month:

Bar court presiding judge criticized for inaction • Page 4

# CALIFORNIA BAR JOURNAL

OFFICIAL PUBLICATION OF THE STATE BAR OF CALIFORNIA • MARCH 1995

## A year later, '3 strikes' clogs jails, slows trials

By NANCY MCCARTHY Staff Writer

One year after passage of California's "three strikes and you're out" law, many county jails are bulging, a trial backlog is growing, and 70 percent of the second or third strikes charged have been for nonviolent and nonserious offenses.

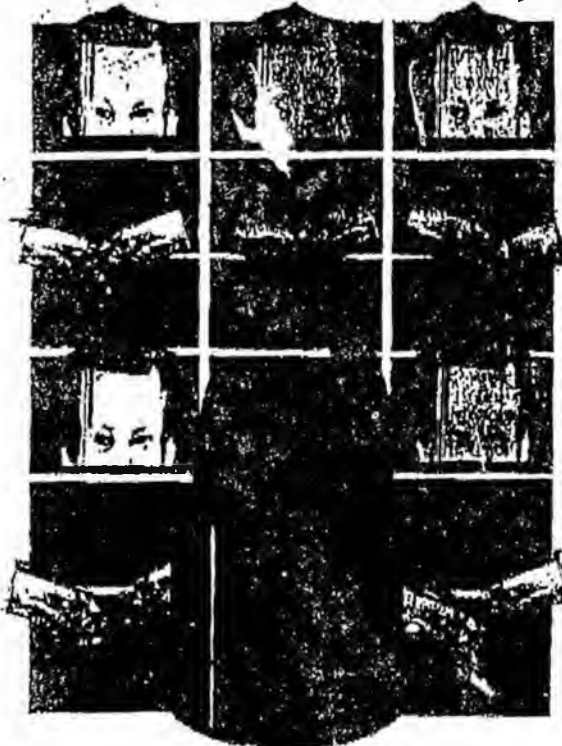
Although the effects of the tough law, designed to put the most hardened criminals behind bars for life, are just beginning to be felt, distinct trends have emerged:

• Thousands of offenders have been charged with either a second or a third strike.

• The number of plea bargains, which formerly accounted for resolution of 94 percent of felony cases nationwide, has plummeted.

• Most defendants are demanding jury trials, thus creating a backlog in

### THREE STRIKES,



### YOU'RE FULL.

COUNTY JAILS ARE BULGING, A TRIAL BACKLOG IS GROWING AND MOST SECOND AND THIRD STRIKES INVOLVE NONVIOLENT AND NONSERIOUS OFFENSES

the criminal courts and overcrowding county jails. Some offenders sentenced to county jail, therefore, are being released early.

• Because of the backlog, some district attorneys are prosecuting fewer misdemeanor cases. In addition, more courts are diverting resources from civil cases to criminal cases.

• Several counties have requested immediate budget increases for both prosecutor and public defender staffs to handle the increased workload.

• The intended effect of three strikes has been diluted in some cases when judges, juries and victims do not follow the letter of the law.

• Predictions of an explosion in the number of state prison inmates have not come true — yet.

• More than 100 appeals relating to three strikes are pending in California's appellate courts.

The three strikes law, says San Diego criminal defense attorney Elizabeth Semel, "is like using a sledgehammer on a fly."

Says Sandy Hatilla, chief deputy district attorney of Los Angeles, "it's like a dam building and it will burst at some point."

Fueled by voter rage over violent crime, the legislature approved three strikes legislation early last year and Gov. Wilson signed it into law March 7, 1994. In November, voters overwhelmingly approved Proposition 184, an essentially identical initiative.

#### Severe penalties

Both measures significantly increase prison sentences for felons with one or two prior violent or serious felony convictions. The mandatory

prison sentence for third strike felons is 25 years to life in prison.

Secretary of State Bill Jones, who as an assemblyman last year authored AB 971, says he believes three strikes is working. "The goal of three strikes was to send the message that repeat offenders either headed to straighten out their lives and not commit any additional crimes or leave the state," he says. "That's precisely the message we're sending."

Mike Reynolds, the Fresno photographer who authored Prop 184 after his daughter was murdered during a

See 3 STRIKES on Page 6



### UPDATE

#### SPEAKER BROWN INTRODUCES MEASURE TO FREEZE BAR DUES AT \$478

State Bar membership dues will remain frozen at \$478 for the next two years under a fee bill introduced last month by Assembly Speaker Willie L. Brown Jr.

The two-year measure, if approved, means bar dues will not have increased since 1991 and will remain at the present level through 1997. It "will ensure that the State Bar continues to regulate attorneys and protect consumers in an effective and efficient manner," Brown said.

#### THE TWO-YEAR BILL KEEPS DUES AT THE SAME LEVEL THEY'VE BEEN SINCE THE LEGISLATURE INCREASED FEES IN 1991

A competing measure, which would slash dues by \$100, has been introduced in the Senate by Quentin L. Kopp, D-San Francisco.

Brown's bill (AB 1435) would mean continuing austerity for the bar, which spends more than 70 percent of its budget on regulating and disciplining attorneys accused of misconduct. The bar has more than 145,000 members.

President Don Fischbach said the proposed law will permit the bar to continue the same level

See DUES on Page 6

Earn one hour of MCLE credit

Call study materials in this issue

SEE PAGE 25

# 3 STRIKES CLOGS COURTS

### WHILE THE NUMBER OF PLEA BARGAINS RISES, REQUESTS FOR JURY TRIALS GO UP

CONTINUED FROM  
PAGE 1

pute splicing, says the new law is working even better than he anticipated and the predictions of prison overcrowding and fiscal disaster have not proven true.

In addition, he attributes a 12 percent drop in the California murder rate over the last nine months, as well as a decline in the number of rapes and armed robberies, to three strikes.

#### Absorbing the brunt

The homicide drop, he says, means that "650 people are alive this year whose families don't have to grieve. That is significant. It's directly a result of three strikes because that's the only thing that changed this year."

Reynolds gets an argument from many law enforcement professionals as well as the state's nonpartisan legislative analyst, Lis Hill.

A report issued by Hill early this

### SUPPORTERS SAY VIOLENT CRIMES HAVE DECLINED IN THE PAST YEAR AND ATTRIBUTE THE DROP DIRECTLY TO 3 STRIKES

year found that California's counties have so far absorbed the brunt of three strikes' requirements and several of them, particularly large metropolitan counties, are reeling under the impact.

Because of the reduction in the number of plea bargains, the number of jury trials is expected to increase in some counties by well over 100 percent, her report found. Hill reported that Los Angeles prosecutors estimate the number of jury trials will increase 144 percent — from 2,410 in 1994 to 5,873 in 1995. Third strike cases will account for more than half of that increase.

#### Dramatic impact

San Diego County anticipates the number of jury trials will jump by almost 200 percent — from 200 to 385. And San Diego County expected a threefold increase — from 390 jury trials in 1992 to 1,300 last year.

The impact on both prosecutors and defense attorneys has been dramatic, but nowhere more so than in Los Angeles.

According to Battista, by the end of 1994, her office charged 1,524 third strike cases, 4,136 second strikes, and 7,379 first strikes.

Already short-staffed, the office was given an additional \$4.1 million by the Board of Supervisors to handle the added work. "But even a slight increase in our workload is devastating," says Battista.

The Los Angeles public defender's office, which is representing the bulk of the defendants, received an additional \$3 million from the supervisors and has hired 36 new attorneys, six investigators, seven paralegals and six secretaries.

More than three-fourths of his office's third strike cases are still pending, says Public Defender Michael Judge, and nearly as many second strike cases are pending — a total of 3,700 at the end of December.

In addition to a higher number of trials, Judge says the trials take longer. A first trial is held on the issue of guilt on the current offense. If a conviction results, a second trial is held on the issue of prior. In third strike cases, each side has 20 peremptory challenges available instead of the usual 10.

#### Fifty theft trials

"And cases are going to trial that in the past never would have gone."

## Dues

Continued from Page 1

of public protection and other services. "This is a year of transition," Flashbach said. "We are evaluating various programs and looking for ways to be more cost-effective. But we will continue to provide our full range of services without any increase in fees."

Flashbach noted that the bar is attempting to implement recommended changes in its discipline system this year and also is awaiting the final report of the "future" commission, which is expected to offer numerous suggestions for change as well.

Last year, the bar undertook a comprehensive review of its operations which resulted in a 3 percent reduction, amounting to about \$2.5 million, in the general fund. Attorneys who have one to three years of experience pay \$410 annually, and new attorneys pay \$379 in dues. Those with more than three years of practice pay the full \$575.

In another dues-related development, the California Supreme Court agreed last month to review



Armenibly Speaker Willie L. Brown Jr.

a suit challenging the bar's authority to force members to submit to binding arbitration complaints about how their dues money is used.

In October, the 3rd District Court of Appeal held that the arbitration hearing did not preclude subsequent lawsuits by fee objectors.

The case (*Brotherhood v. State Bar of California*) was originally brought to challenge the way the bar implemented the *Keller* decision with the Hudson deduction, which permits members to deduct a portion of their dues for so-called "non-chargeable" bar activities. (See story on Page 18 for an update on the *Brotherhood* suit.)

In other legislative action, Sen. Nicholas Petrini, D-Oakland, introduced SB 596, a bill to restrict State Bar activities.

The measure would delete the bar's authority to accredit law schools in California and would limit its activities to admission and discipline only.

Existing law requires candidates for admission to the bar to have graduated from a law school accredited by the bar's accrediting committee or to have otherwise studied law.

## PRELIMINARY IMPACTS OF THE RESPONSES TO THE "THREE STRIKES" LAW



### IMPACTS

- Thousands of cases being prosecuted
- Lower guilty pleas by defendants
- Significant increase in jury trials
- Increase in persons awaiting trial in county jails
- Low immediate impact on state prison population than expected



### RESPONSES

- Backlogs push less serious cases out of courts
- Early release of sentenced offenders from county jails
- Increase in jail security
- Arguments for expansion of some correctional/justice agencies
- Behavioral responses from some judges, juries and victims

Source: California Legislative Analyst's Office

he adds. "Now we have a petty thief getting a full-fledged jury trial." More than 10 percent of the second and third strike cases in his office are petty theft, he noted.

Indeed, critics of three strikes emphasize that the vast majority of felons sent to prison under the new law are not convicted of serious or violent crimes.

### THIS IS . . . FINANCIALLY ASININE. IF YOU REALLY WANT TO TARGET VIOLENT REPEAT OFFENDERS, THERE'S A MUCH MORE RESPONSIBLE WAY TO DO IT.

The legislative analyst found that during the first eight months following implementation of three strikes, 70 percent of those charged with a second or third strike involved nonviolent or nonserious offenses.

Of those convicted of a second strike, only 17 percent were for a violent or serious crime, and of the 63 convicted of a third strike, about 20 committed a third strike, about 20 committed a third strike offense. Eleven third strike convictions were for drug possession.

"This is irresponsible and financially asinine," says Elizabeth Bonal. "If you really want to target violent repeat offenders, there's a much more responsible way to do it."

#### County jails

One of the most immediate impacts of the new law affects the county jails. Orange and Santa Clara counties estimate that they will need an additional 300 and 137 beds respectively to accommodate three strike defendants during pre-trial detention.

Defendants awaiting trial in Los Angeles represent two-thirds of the inmates in the county jail, says public defender Judge, and the overcrowding is forcing the early release of convicted inmates. Before three strikes, inmates doing time in the county jail served an average of two-thirds of their sentences, Judge says. They now serve 40 percent of their sentences.

Because of the slow pace of trials, the impact of three strikes on the state prison system has yet to be felt. Nonetheless, said analyst Hill, three strikes "will have a major impact on the state's prison population. In order to just maintain existing levels of overcrowding, they (the California Department of Corrections) will need at least 18 new prisons by 1999" at an estimated cost of about \$4.5 billion.

CDC has established a goal of sufficient prison capacity to house inmates at an average overcrowding level of 120 to 130 percent of design capacity. That means that by mid-1999, the state would have to build 18 prisons at a cost of about \$9.3 billion. Hill said that goal is impossible to achieve.

Mike Reynolds believes the federal crime bill designed specifically to help pay the cost of prison construction will effectively solve the prison construction problem. California would receive as much as \$7 billion in federal funds to build new prisons, he says.

The longterm impact of three strikes, Reynolds believes, will be a real reduction in crime for two reasons. Criminals incarcerated for long periods on a second strike will be released from prison at an age when recidivism declines, he says.

"We've looked them up for the lesser amount of time at the least cost to the state of California during their most criminally productive years," he says. "Thus we have saved the state tremendous costs in the long term."

Second, Reynolds said the possibility of a third strike serves as a real deterrent. "A good number will either leave the state or get their life together," he says. "The last option they'll choose is to return to prison. That will make for a dramatically safer state."

Some say Reynolds' arguments amount to "a myth that the supply of defendants is finite."

Certainly, budgetary concerns are very real. A RAND Corporation study which estimated that full implementation of three strikes will reduce serious felonies committed by adults by between 22 and 34 percent said that reduction will cost an extra \$4.5 billion to \$6.3 billion per year in current dollars. Full implementation would cost every taxpayer an additional \$300 a year, the study said, or will require deep cuts in other programs.

No money for trial court judges has been added to the state budget since 1987.

And there are questions of fairness and legal discretion. Defense attorneys believe their clients are receiving unduly harsh sentences. Some judges believe their judicial discretion is impeded by three strikes. Some district attorneys believe their prosecutorial discretion is seriously limited.

"What we struggle with daily is how to appropriately use our discretion," says Sandy Battista. "We're trying to give some discretion to our head agencies to look at cases and ask if it is the furtherance of justice to strike a prior" in some cases it is."



Mike Reynolds

# 3 strikes: How one county does it

### San Mateo district attorney worries about fiscal impact but has not seen gridlock experienced by other counties

By JAMES P. FOX

In February 1994, I wrote an article for the California Bar Journal setting forth concerns I had about the then proposed "Three Strikes and You're Out" legislation and pending initiatives. Since one year has elapsed, a review of implementation and policies is appropriate.

Although I expressed concerns regarding the necessity and wisdom of the law as drafted, my obligation as a district attorney is to prosecute violations of the law. I am still very concerned regarding the ultimate fiscal impact of the law. I have not let that concern inhibit my adherence to the law.



#### No plea bargains

We have not engaged in any form of plea bargain and three of the defendants who had the benefit of our discretion have exercised their right to trial. The other 17 defendants pleaded guilty and have been sentenced to prison.

In four cases we charged and then struck all of the priors. All four defendants entered guilty pleas and received local time with drug treatment. We have dismissed four cases based on insufficient evidence.

The courts in San Mateo County have not experienced the gridlock which I read about in other counties as a result of the new law. I accepted as true the statements made during the legislative process by the author of the bill and the proponent of the initiative that prosecutors retained discretion to resolve cases in which we believe an injustice would occur with full implementation of the law.

#### Level of consistency

In order to guarantee some level of consistency, the decision regarding all two strike cases is made by the assistant district attorney in charge of municipal court and general felony prosecution in consultation with the deputy in charge of the municipal court branch. All three strike cases are evaluated by the same assistant in consultation with the chief deputy. It is my opinion that the system leads to a fair and uniform approach to these cases.

We consider a number of factors in evaluating three strike cases. If the new offense is neither a serious nor violent charge, we look at the

## Scores of appeals winding their way through courts

Scores of appeals of the "three strikes" law are winding their way through California's appellate courts, which have so far decided two challenges.

Deputy attorney general David Rose says between one and two dozen cases are pending in northern California, and Sandy Pittillo, chief assistant district attorney of Los Angeles, says her office had 10 cases pending in its appellate division as of Feb. 4.

The Court of Appeal has issued two rulings. On Jan. 13, the 4th District reversed a San Diego Superior Court judge who struck two prior felony convictions of a convicted drug dealer and sentenced him to six years in prison instead of 25 years to life.

(A proposal in the legislature, authored by Assemblyman Richard Ralney, R-Vallejo, would qualify the appellate ruling.)

In February, the 1st District rejected an equal protection challenge to a part of the law that reduces the number of credits repeat offenders receive for good behavior in prison.

The court ruled that the law does not improperly give fewer credits to convicted thieves than to nonviolent murderers.

Rose said about a dozen appeals are based on the issue of whether a prior strike for a serious felony can result in both a five-year enhancement and a doubling or tripling of a sentence.

Another challenge argues that strikes incurred before the statute was enacted should not count, and a third concerns a dispute over whether "websters," offenses which can be charged as either a felony or a misdemeanor, can be reduced by the trial court after they have been charged.

**SOME CASES RESULTED IN MUCH LONGER PRISON SENTENCES FOR VERY DANGEROUS INDIVIDUALS. I AM NOT SURE SOCIETY FEELS ANY SAFER.**

offense is a robber (punishable either as a misdemeanor or felony), two defendants with identical records for three strike purposes could be punished very differently. Misdemeanor punishment is a maximum of eight months in the county jail while felony punishment is a minimum of 20 years in prison.

#### Shifting resources

I also remain concerned about the shifting of state resources to the prison system at the expense of other valuable services, such as higher education. In view of proposed tax decreases at the state level there are massive increases in prison expenses, the only alternative is an equal reduction in resources currently devoted to other services.

While implementation of the three strikes law has not been devastating to the justice system in San Mateo County as it has in other counties, we have seen some impact. There have been some cases which resulted in much longer prison sentences for very dangerous individuals. I am not sure society feels any safer.

James P. Fox is the district attorney of San Mateo County.

## The experts interpret the effect of the tough law

By RANDY McARTHUR  
Staff Writer

A study by the RAND Corporation last fall undertook to answer key questions raised by passage of the three strikes law: How much will crime be reduced? How much will it cost and where will the money come from? What are the alternatives? The findings, in a nutshell:

Both the benefits and the costs of the new law will be substantial.

Alternatives can be devised that would achieve most or all of the benefits at less cost.

California's budget is so constrained that it is unlikely that the new law will be fully implemented.

The study found that if implemented as written, three strikes will reduce serious felonies committed by adults in California between 32 and 34 percent. (Juveniles, who account for about one-sixth of all arrests for violent crimes, are not affected by the law.) About one-third of the felonies eliminated will be violent crimes such as murder, rape and assault causing great body injury. The others will be less violent or nonviolent, but still serious.

RAND estimated the cost of this crime reduction at between \$4.8 billion and \$6.8 billion per year and concluded that prison costs will overwhelm any savings to police and courts.

It suggested alternatives such as extended sentences for a violent felony only, elimination of the third strike provision and a guaranteed full-term sentence. For each alternative, the cost would drop more than the effectiveness. For example, applying the law's penalties only to violent felons would save half its strike cost but reduce two-thirds of its effectiveness. The guaranteed full-term alternative would be just as effective as the new law, but at a substantially lower cost, the study found. It would increase sentences for all serious offenders, even first timers, and pay for it by not imprisoning many minor felons.

Funding three strikes as it now stands will not be easy, RAND concluded. Minimum spending on education is locked in to the state constitution and is expected to increase from 36 percent of the general fund now to 47 percent in 2003. Health and welfare costs will continue to escalate. Three strikes will double the Department of Corrections' state of the general fund. These factors place tremendous pressure on other state programs, ranging from higher education to fighting forest fires.

"Clearly, something's got to give," the study concluded. "It may be the three strikes law itself. Criminal justice officials may simply not have the money to fully implement it. If that turns out to be the case, the new law will have lost effect on various crimes then eliminated here. How much less is impossible to predict."

A legislative analyst's report about California's prison population offered a similarly grim prediction about the cost of three strikes. A projected increase in the number of inmates over the next five years of 84,000 — from 123,000 to 211,000 — the report noted, "equals the increase that the state prison system incurred over the past 10 years."

This means that unless more prisons are built, overcrowding will increase in the next five years, reaching 226 percent in mid-1999 — nearly three inmates for each space designed to house one. To hold overcrowding at 120 to 130 percent of design capacity, a CDC goal, the state would have to build 38 prisons at a cost of about \$9.6 billion, a goal that "cannot be achieved," the analyst said.

Just to maintain the current 132 percent overcrowding level, the state needs to build about 15 prisons, costing some \$4.4 billion.

Currently, less than \$10 million is available from past prison bond measures for appropriation by the legislature. However, the report estimated that the federal crime bill should provide about \$1.2 billion in prison construction grants.

"With the enactment of the three strikes legislation, the state is expected to incur unprecedented growth in its prison population," the analyst concludes. "... The state's costs for expanding and operating its prison system will require an increasing share of the state's budget."

**DIVISION OF LEGAL SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

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

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

**MEMORANDUM**

March 22, 1995

**SUBJECT:** Sectional Summary CSHB 38(JUD) (Work Order No. 9-LS0187C)

**TO:** Representative Con Bunde  
Attn: Pattie Swenson

**FROM:** Jerry Luckhaupt *JEL*  
Legislative Counsel

You have requested a sectional summary of the above-described bill, please be advised that a sectional summary is not an authoritative statement of a bill and what it does - the bill is the best statement of its contents.

Section 1 of the bill provides findings and intent.

Section 2 of the bill amends AS 12.55.025(e) by clarifying that definite terms for certain three time felony offenders, added by sec. 7 of the bill, do not affect the court's ability to impose consecutive sentences.

Section 3 of the bill amends AS 12.55.125(c) by providing a conforming change to make it clear that the presumptive sentences provided in that subsection only apply if the defendant is not subject to sentencing as a third most serious felony offender under Sec. 7 of the bill.

Section 4 of the bill amends AS 12.55.125(f) to provide consistency with language being added in sec. 7 of the bill.

Section 5 of the bill amends AS 12.55.125(i) by providing a conforming change to make it clear that the presumptive sentences provided in that subsection only apply if the defendant is not subject to sentencing as a third most serious felony offender under Sec. 7 of the bill.

Section 6 of the bill amends AS 12.55.125(j) to provide that a person sentenced to a definite term under sec. 7 of the bill may apply to the court for a sentence reduction after serving one half of the sentence or 30 years, whichever is greater.

Section 7 of the bill amends AS 12.55.125 by providing a new subsection (l) that requires a court to sentence a defendant convicted of an unclassified or class A felony to a definite term of imprisonment, of not less than 40 years and not more than 99 years, when the defendant

has been previously convicted of at least two most serious felonies and the prosecutor has filed notice to seek the definite sentence. This section also provides that the definite term may not be suspended or reduced.

Section 8 of the bill amends AS 12.55.145(a) to explain how a conviction can qualify as a prior most serious felony conviction for purposes of sentencing under sec. 7 of the bill.

Section 9 of the bill amends AS 12.55.145(c) to provide the procedure by which a defendant may challenge the use of a conviction as a prior most serious felony conviction at sentencing under sec. 7 of the bill.

Section 10 of the bill amends AS 12.55.145(d) relating to the burden of proof of showing that a conviction is a prior most serious felony conviction for purposes of sentencing under sec. 7 of the bill.

Section 11 of the bill amends AS 12.55.145 by adding a new subsection (f) that explains when a prior conviction has occurred for use at sentencing under AS 12.55.145.

Section 12 of the bill amends AS 12.55.155(c)(20) by providing a conforming change to the change made in sec. 8 of the bill.

Section 13 of the bill amends AS 12.55.185 by adding a new paragraph (14) that provides a definition of what is a "most serious felony."

Section 14 of the bill amends AS 33.16.090(b) to provide that a person receiving a definite term under AS 12.55.125(l) is not eligible for discretionary parole during the entire term.

Section 15 of the bill amends AS 33.20.010(a) to provide that a person receiving a mandatory term under AS 12.55.125(a)(after the effective date of this bill) or a definite term under AS 12.55.125(l) may not earn good time deductions from the term.

Section 16 of the bill amends AS 33.30.101 by adding a new subsection (c) that provides that furlough regulations may not allow for the granting of a furlough to any inmate serving a definite term under AS 12.55.125(l) except in certain limited instances.

Section 17 of the bill amends AS 33.30.161(b) by adding a new paragraph (5) that provides that an inmate serving a definite term under AS 12.55.125(l) may not serve the inmate's sentence in a correctional restitution center.

Section 18 of the bill provides an applicability section.

Section 19 of the bill provides notice that the change made in sec. 6 of the bill has the effect of modifying Alaska Rule of Criminal Procedure 35 which thereby necessitates a two-thirds vote.

## UNCLASSIFIED AND CLASS A FELONY OFFENSES

### Unclassified Felonies

AS 11.41.100	Murder in the First Degree
AS 11.41.110	Murder in the Second Degree
AS 11.41.300	Kidnapping
AS 11.41.410	Sexual Assault in the First Degree
AS 11.41.434	Sexual Abuse of a Minor in the First Degree
AS 11.71.010	MICS in the First Degree

### Class A Felony Offenses

AS 11.41.120	Manslaughter
AS 11.41.200	Assault in the First Degree
AS 11.41.500	Robbery in the First Degree
AS 11.46.400	Arson in the First Degree
AS 11.56.300	Escape in the First Degree
AS 11.61.190	Misconduct Involving Weapons in the First Degree
AS 11.61.240	Criminal Possession of Explosives (for murder/kidnapping)
AS 11.66.110	Promoting Prostitution in the First Degree
AS 11.71.020	MICS in the Second Degree

*(sale of firearms)*

Crimes against the person, as defined in AS 33.30.901, include only offenses under AS 11.41.

### Prior Criminal History of Alaska Felony Offenders<sup>1</sup>

Prior Adult Felony Record of Felony Offenders			
Current Offense (and # of offenders)	Number of Prior Felonies		
	0	1	2+
Murder I (14)	86%	14%	
Manslaughter (10)	90%	10%	
Assault I (10)	80%	10%	10%
Assault II (30)	70%	23%	7%
Assault III (64)	84%	11%	5%
Sex Assault I (10)	90%	10%	
Sex Assault II (24)	83%	13%	4%
Sex Abuse Minor I (28)	89%	4%	7%
Sex Abuse Minor II (61)	92%	7%	2%
Robbery I (10)	80%	10%	10%
Theft II (67)	79%	15%	6%
Burglary I (39)	76%	11%	13%
Burglary II (37)	84%	11%	5%
Crim Mischief II (11)	82%		18%
Forgery II (21)	67%	10%	24%
Drugs III (63)	78%	21%	2%
Drugs IV (42)	86%	12%	2%
Total (549)	82%	12%	6%

Prior Adult Misdemeanor Record of Felony Offenders				
Current Offense	Number of Prior Misdemeanors			
	0	1	2	3+
Murder I	36%	7%	7%	50%
Manslaughter	20%	20%	30%	30%
Assault I	30%		30%	40%
Assault II	23%		10%	67%
Assault III	22%	9%	11%	58%
Sex Assault I	10%	40%	20%	30%
Sex Assault II	38%	13%		50%
Sex Abuse Minor I	61%	18%	11%	11%
Sex Abuse Minor II	62%	5%	11%	21%
Robbery I	30%	30%		40%
Theft II	23%	17%	13%	34%
Burglary I	37%	11%	13%	39%
Burglary II	30%	14%	14%	43%
Crim Mischief II	27%	9%	9%	55%
Forgery II	48%	5%	14%	33%
Drugs III	43%	22%	10%	25%
Drugs IV	29%	21%	17%	33%
Total (549)	36%	14%	12%	38%

<sup>1</sup> Where the number of cases in a particular crime category is small (n<25), percentages are not necessarily representative of the population and should not be used to make statements about murderers or rapists in general. The information should be used only as a rough estimate of what characteristics the actual population might have.

Western District of Washington<sup>1</sup>, called on the LECC Advisory Board<sup>2</sup> to form a Triggerlock Task Force. This Task Force will meet on a regular basis to develop and implement strategies to "lock the triggers" of violent criminals - permanently. These criminals, especially repeat offenders, have demonstrated that only incarceration keeps them from committing new crimes. Recent FBI statistics reflect that violent crime was up 10 percent in 1991. Further studies show that 6 percent of the criminal population is committing 70 percent of the crime. One of the most effective ways to combat the armed criminal is to target these individuals and vigorously investigate, prosecute and imprison them. The Triggerlock Task Force will actively pursue drug traffickers and violent offenders, such as murderers, rapists, gang leaders -- virtually anyone who uses a gun in the commission of a crime is a potential target.

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<sup>1</sup>The Western District of Washington is comprised of the 19 counties West of the crest of the Cascades - Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Mason, Pacific, Pierce, San Juan, Skagit, Skamania, Snohomish, Thurston, Wahkiakum and Whatcom Counties.

<sup>2</sup>The LECC Advisory Board is comprised of representatives from throughout Western Washington. City Agencies: Patrick Fitzsimons, Chief, Seattle Police Department; Rod Frederiksen, Chief, Vancouver Police Department; Don Pierce, Chief, Bellingham Police Department. County Agencies: C. Dan Clem, Kitsap County Prosecutor; Norm Maleng, King County Prosecutor, H. Steward Menefee, Grays Harbor County Prosecutor; Jim Scharf, Snohomish County Sheriff. State Agencies: Ken Eikenberry, Washington State Attorney General; George Tellevik, Chief, Washington State Patrol. Federal Agencies: William D. Gore, Special Agent-in-Charge, Federal Bureau of Investigation; Dixon McClary, Special Agent-in-Charge, Environmental Protection Agency; Ray McKinnon, Special Agent-in-Charge, Drug Enforcement Administration; Chris Nelson, Special Agent-in-Charge, Bureau of Alcohol, Tobacco and Firearms; Noreen Skagen, United States Marshal; Steve Carlisle, LECC Manager. Canadian Agency: John Sebastian, Chief Superintendent, Royal Canadian Mounted Police.

There are times when state laws do not provide appropriate sanctions against gun-using offenders. Federal prosecutions emanating from state violations can be of enormous help. Project Triggerlock has a simple, effective design - federal firearms laws carry tough penalties. They will now be fully employed against gun-using violators not only of federal laws, but of certain state and local laws as well. Absent evidentiary problems, there will be no plea bargains.

Since career criminals and violent offenders are normally encountered while committing street crime, their cases are usually investigated and prosecuted at the state and county levels. Project Triggerlock is not intended to compete with or supplant the traditional local response to violent criminals and career criminals. Rather, it is intended to assist state and local authorities in this area of enforcement by providing a method to refer those violent offenders who use or possess a firearm and are such a menace to their communities that a lengthy, mandatory prison term is the only appropriate response.

## STRATEGY

The Triggerlock Task Force for the Western District of Washington will focus on three goals:

# Memorandum

State of Alaska  
Department of Corrections  
Division of Administrative Services  
(907) 276-8122 Fax (907) 258-7512  
800 A Street, Suite 102, Anchorage, Alaska

To: Diane Schenker  
Special Assistant

Date: November 4, 1993

From: Steve Schwartz *S. Schwartz*  
Research Analyst IV  
Department of Corrections

File: A-1-8A  
Subject: Rep. Bunde request

The information requested from Rep. Bunde offices is as follows:

Inmate population on November 4, 1993 is 2,692 (In-state, out-of-state - excludes CRCs).

- Inmates with two felony cases is 560 or 20.8%
- Inmates with three felony cases is 253 or 9.4%
- Inmates with four felony cases is 123 or 4.6%
- Inmates with five or more felony cases is 133 or 4.9%

Rep. Bunde's original question was; "What percentage of prisoners in our present population have returned to jail after three felony convictions?" This percentage is 9.5% .

Thank you.

*253  
123  
133  
309*

Post-It™ brand fax transmittal memo 7671		# of pages	1
To	Patti Swenson		
From	D. Schenker		
Co.	Rep. Bunde		
Co.	DOD		
Dept.	Phone #		
Fax #	Fax #		

❖ In California, the Federal Court has dictated the number of changes of clothes which must be provided inmates each week.

It is unlikely that this understanding of the Eighth Amendment (which forbids "cruel and unusual punishment") is within the intent of the U.S. Constitution. The extraordinary burdens placed by Federal Courts on state corrections authorities have contributed to an escalation in prison costs. From 1960 to 1990, per-inmate operating costs (current expenditures) nearly doubled (inflation adjusted.)

Immense savings in direct costs to the public, as well as a significant reduction in crime with its consequent savings in both financial cost and human suffering, could be realized simply by putting and keeping more convicted offenders in prison. This is not an impossible task.

If the cost per inmate had remained within the inflation rate since 1960, nearly an additional \$5.5 billion would have been available in 1990 alone for additional corrections capacity, tax reductions, or other public services. Some states achieved this level of cost control and better; the operating cost per inmate actually decreased in New Hampshire, Delaware and Oregon.

When prisoners are provided better institutional living conditions than they have available outside of prison, one of the primary purposes of punishment is undercut. "The infliction of disutility...is one of the objectives of criminal punishment; only if the only objective of punishment were incapacitation could it be argued that living conditions should be as comfortable in prison as outside."<sup>3</sup>



TABLE 2.1: AVERAGE ESTIMATED TIME SERVED BY TYPE OF OFFENSE

Offense	Percent of Sentence Served	Mean Prison Sentence	Estimated Time Served
All Offenses	33.0%	6 yrs., 3 mos.	2 yrs., 1 month
Violent Offenses	38.0%	9 yrs., 11 mos.	3 yrs., 9 mos.
Murder	43.0%	20 yrs., 3 mos.	8 yrs., 8 mos.
Rape	39.0%	13 yrs., 4 mos.	5 yrs., 2 mos.
Robbery	39.0%	9 yrs., 7 mos.	3 yrs., 9 mos.
Aggravated Assault	34.0%	6 yrs., 6 mos.	2 yrs., 2 mos.
Other	34.0%	7 yrs., 1 month	2 yrs., 5 mos.
Property Offenses	29.0%	5 yrs., 5 mos.	1 year, 7 mos.
Burglary	32.0%	6 yrs., 8 mos.	2 yrs., 2 mos.
Larceny	27.0%	4 yrs., 1 month	1 year, 1 month
Fraud	28.0%	4 yrs., 10 mos.	1 year, 4 mos.
Drug Offenses	29.0%	5 yrs., 6 mos.	1 year, 7 mos.
Possession	27.0%	4 yrs., 1 month	1 year, 1 month
Trafficking	31.0%	6 yrs., 2 mos.	1 year, 11 mos.
Weapons Offenses	40.0%	4 yrs., 2 mos.	1 year, 8 mos.

Source: Bureau of Justice Statistics, "Felony Sentences in State Courts, 1990"

<sup>3</sup> Davenport v. DeRobenis, 844 F.2d 1310, 1313 (7th Cir. 1988) (Posner, J.).

## HIGHLIGHTS

### In 1960:

- ❖ There was a total of 3,384,200 million crimes reported to law enforcement authorities.
- ❖ The chance of being a victim of a crime was 1 in 53.
- ❖ There was a total of 288,460 million violent crimes reported to law enforcement authorities.
- ❖ The chance of being a victim of a violent crime was 1 in 622.
- ❖ While crimes were escalating throughout the 1960s, the actual prison population was on the decline; the aggregate national prison population fell from 190,000 in 1960 to 174,000 in 1972.

### By 1980:

- ❖ There were 13,408,300 million crimes reported to law enforcement authorities.
- ❖ The crime rate had risen over 215 percent above its 1960 level.
- ❖ The chance of being a victim of crime was 1 in 17.
- ❖ There were 1,344,520 million violent crimes reported to law enforcement authorities.
- ❖ The violent crime rate had risen over 270 percent. The chance of being a victim of a violent crime was 1 in 168.
- ❖ From 1960 to 1980, the states that had the largest increases in imprisonment rates had the smallest increases in crime rates; while the states that had the sharpest decline in their incarceration rates had the largest increases in crime rates. The trend continued from 1980 to 1992.
- ❖ While the trends in each state are consistent, great differences exist among the states as to the degree of change. Between 1960 and 1980 the crime rate in California increased more than 125 percent, while in New Hampshire the crime rate increased over 579 percent.

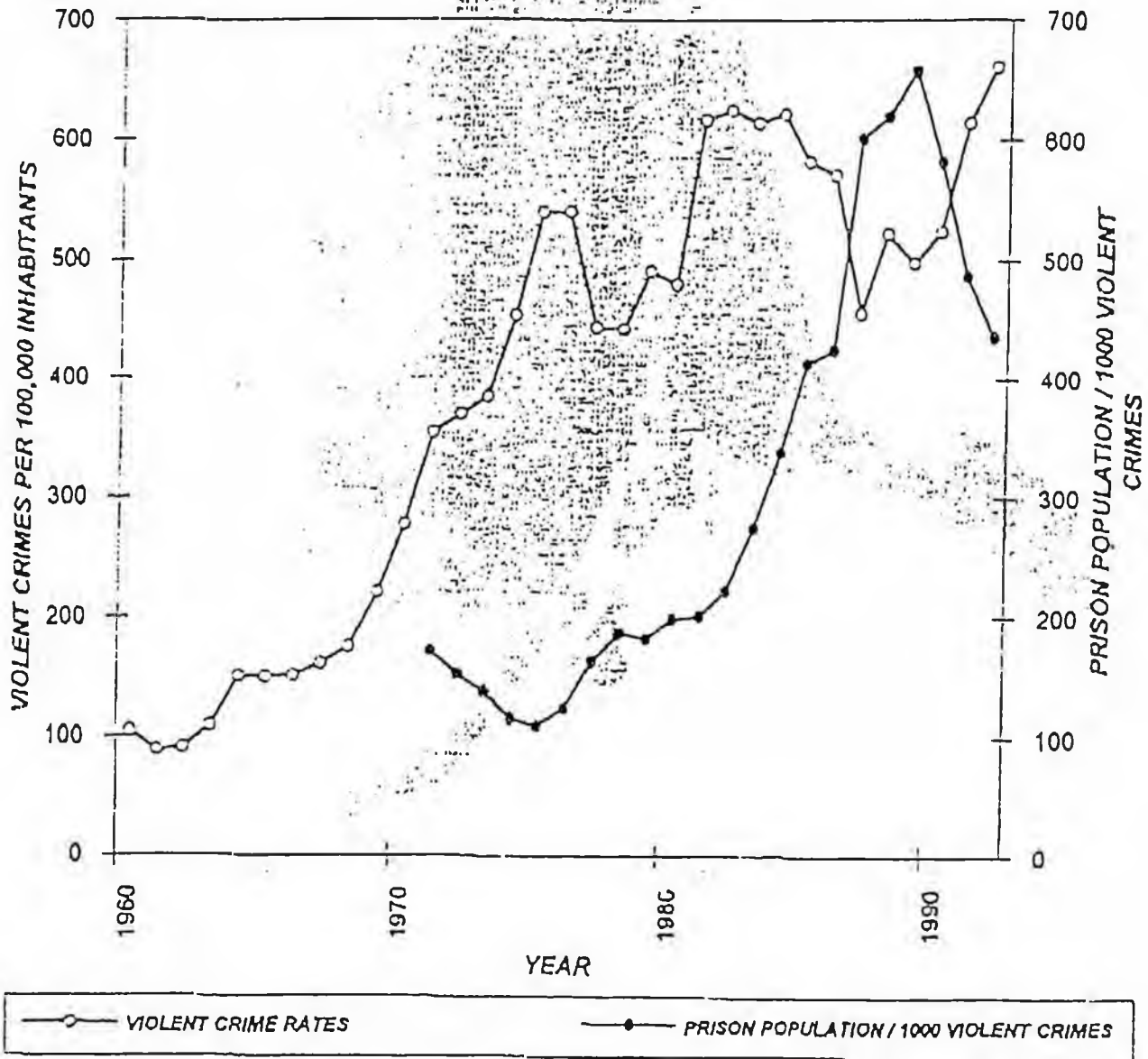
### By 1992:

- ❖ Crime rates had increased but had been curbed. There was a total of 14,438,200 million crimes reported to law enforcement authorities.
- ❖ The crime rate was 200 percent above its 1960 level.
- ❖ The chance of being a victim of a crime was 1 in 18.
- ❖ Violent crime had soared to 371 percent above its 1960 level.
- ❖ There were 1,932,246 million violent crimes reported to law enforcement authorities.
- ❖ The chance of being a victim of a violent crime was 1 in 132.
- ❖ Since 1987, the percentage of juvenile arrests for violent crimes has increased more than 50 percent.
- ❖ In 1991, people under the age of 21 were responsible for more than one-third of all murders in the country.
- ❖ Today, a woman faces four times the chance of being raped than in 1960. In 1960 a woman's chance of being raped was 1 in 10,400; in 1980 it was 1 in 2,717.
- ❖ In the ten states with the highest increases in incarceration rates between 1980 and 1992, crime rates were substantially reduced. Even so, in all ten states their crime rates are more than double their 1960 levels. The states are: New Hampshire, New Jersey, California, Connecticut, Massachusetts, Arizona, Rhode Island, Idaho, Alaska, and Delaware.
- ❖ Approximately, one-third of all violent crimes are committed by an offender who is on probation, parole or pretrial release. This year more than 1,200 violent crimes will be committed every day by convicted felons on probation or parole; almost 700 more will be committed by a defendant on pretrial release.
- ❖ In 1990, the average prison sentence for all felony offenses which resulted in a prison sentence was 6 years, months. However, the actual time served in prison for that sentence was 2 years, 1 month, only one-third of the sentence imposed.
- ❖ In 1990, the average prison sentence for violent offenses which resulted in a prison sentence was 9 years, 11 months; the time served was 3 years, 9 months, or 38 percent of the sentence imposed.
- ❖ From 1960 to 1991 the correctional expenditure per adult inmate increased by nearly double.

# CRIMESTRIKE

A Division of the National Rifle Association

## VIOLENT CRIME RATES VS. PRISON POPULATION PER 1000 VIOLENT CRIMES (1960 - 1992): ALASKA



Violent Crimes include murder, rape, robbery, and assault.

Compiled from Department of Justice Data by CrimeStrike.

# 'Revolving door' syndrome feeds cycle of violence

By Sam Vincent Meddis  
USA TODAY

In Washington, D.C., a teenager facing charges of deadly assault goes joy-riding while free on \$1,000 bond. He fatally shoots a woman in another car because he feels like "bustin' somebody."

In Hugo, Okla., a 39-year-old with a record of assault and property crimes buys an assault weapon and kills two people, wounds three others, then kills himself.

Many blame the easy access to guns for such carnage. But similarly under fire is a justice system that, to critics, seems to do little more than recycle criminals to the streets.

That outrage has sparked calls for a crackdown on repeat criminals nationwide: Washington state voters approved stiffer sentencing last year, and California voters consider an initiative this fall.

About 30 states are weighing similar measures, most of which provide long sentences without early parole for many repeat offenders.

"People have just had it — they don't want to live with the fear anymore," says Paul McNulty of the First Freedom Coalition, a group that advocates stiff crime penalties.

Looking at the numbers, repeat crime seems to be becoming the nationwide norm:

► About 60% of prison inmates have been behind bars before, according to a U.S. Bureau of Justice Statistics study; 44% were on probation or pa-

## '3 strikes, you're out' likely in California

If what could spark a new wave of citizen action nationwide, California voters are expected to approve a crackdown on career criminals in a November 1994 ballot measure.

The measure, known as "Three Strikes and You're Out," would double sentences for criminals convicted of second serious felonies — and require a minimum of 25 years to life for a third offense.

Thirty other states are considering similar measures to toughen sentences for repeat offenders.

Gov. Pete Wilson supports the concept, and supporters appear to have easily topped the 385,000 signatures needed to place it on the 1994 ballot.

The initiative has been pushed by Fresno photographer Mike Reynolds, whose 18-year-old daughter was killed by a parolee in June.

role when re-arrested.

► A mere 108,000 criminals in one federal study had a staggering 1.9 million arrests between them.

Recent U.S. and Pennsylvania studies found about 6% of criminals commit nearly 70% of violent crimes.

Targeting those criminals sounds simple. The reality is tougher.

COMPLIMENTS OF THE  
ALASKA STATE LIBRARY

# Violent crime up fivefold from '60s, legislators report

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Cox News Service

WASHINGTON — Americans are almost five times more likely to be the victim of a violent crime in the 1990s than in 1960, the nation's state legislators reported Wednesday.

But "getting tough works," they said. States that increased their incarceration rates the most tended to reduce their violent crime rates the most, the lawmakers'

"Report Card on Crime and Punishment" showed.

"The message here is unequivocal. Leniency is associated with higher crime rates; getting tough brings crime rates down," said Samuel Brunelli, executive director of the American Legislative Exchange Council, the nation's largest bipartisan association of state legislators.

The group released a study analyzing FBI crime statistics be-

tween 1960 and 1992 that shows how America has become a dramatically more dangerous place to live during the past three decades. In 1960, an American's chances of being a victim of a violent crime were 1 in 322. By 1992, the odds were 1 in 132.





"When the odds of being a victim of a violent crime increase five times over 32 years, there is an obvious problem with Ameri-

ca's criminal justice system," said Brunelli.

"Today, criminals' rights are protected over victims," he said. "The result is our schools, streets, neighborhoods and homes are unsafe, and crime is clearly the leading cause of America's decaying social fabric."

The report indicated that violent crime could be reduced by keeping known criminals off the streets.

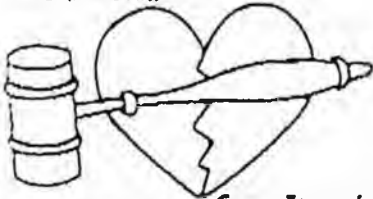
# ZERO DOWN!

<b>\$19</b>	<b>\$9,261</b>	<b>\$7,086</b>	<b>\$7,834</b>
<b>Cost*</b>	<b>Total Cost*</b>	<b>Total Cost*</b>	<b>Total Cost*</b>
			

All Used Cars  
Come With A  
Free 60-Day  
Power Train  
Warranty And  
A Free 30-Day  
Trial Exchange  
Policy!

- #85 Nissan Pulsar \$49/Mo.  
#1120D • Sale Price \$1,695 • \$517 Down  
24 mos @ 8.25% • Deferred Pymt. \$1,693
- #92 Chevy Corsica \$129/Mo.  
#R649A • Sale Price \$6,995 • \$1,753 Down  
48 mos @ 8.25% • Deferred Pymt. \$6,192
- #87 Olds. Cutlass \$59/Mo.  
#1107CP • Sale Price \$1,995 • \$698 Down  
24 mos @ 8.25% • Deferred Pymt. \$2,114
- #84 Chevy Pick-up \$89/Mo.

## VICTIMS



Representative Con Bunde  
State Capital, Room 108  
Juneau, Alaska 99801-1182  
Fax 1 (907) 465-3871

HB 38

Dear Representative Bunde,

Victims for Justice strongly supports "3 Strikes, You're Out". The "revolving door" system costs the state an enormous amount of money in law enforcement and legal fees each year, with no count of cost to the victims. It is time to stop this nonsense!

According to a study done by the Justice Department; of all crimes committed in this nation, only 15-20% of the criminals are apprehended and only 2-3% go to prison. Furthermore, 75-80% of all criminals who are released from prison reoffend within 36 months for the same offense!

Justice Charles L. Weltner sums it up well saying: "Right now a person who has been through the system and is contemplating a crime probably vies things as follows: 1. If I do it I won't get caught 2. If I get caught I won't get prosecuted, 3. If I get prosecuted I won't get convicted, 4. If I get convicted I won't go to prison, 5. If I go to prison I won't be there for very long". Given the statistics above, this assessment is real.

Criminals today are more violent than even a decade ago, and the cost to society is greater than the cost of keeping an offender incarcerated. Court costs are easily calculated but the cost to the victim is impossible to calculate. Victims never receive proper compensation or even proper justice through the system. With Alaska's modified matrix system DOC is releasing more serious offenders earlier, which will lead to more victimization. It is time to stop this madness! Please pass this important legislation! Build the necessary prisons, not resorts, but prisons and keep the repeat offenders in!

The prison system is told not heed the victims' pleas and public safety has been disregarded when releasing criminals. DOC claims to save money with early release into halfway houses, however the prior tracking system fails in this maze. Strikes Legislation will eliminate the errors of early release of repeat and dangerous offenders, which will ultimately save us millions in law enforcement, judicial, insurance, and victim costs.

Thank you for sponsoring this important bill!  
Sincerely,

Sharon Nahofney  
Janice Lienhart

A handwritten signature in cursive script, likely belonging to Sharon Nahofney.

# SENATE COMMITTEE REPORT

DATE: 4/29/95

FURTHER: Finance

DATE TURNED INTO OFFICE: 5-3-95

Judiciary Committee considered CS FOR HOUSE BILL NO. 38(JUD) am

Criminal sentencing; relating to good time credit; amending Alaska Rule of Criminal Procedure 35.

P of 1506

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

**Senate Bill:**

same title  
new title

**House Bill:**

same title  
technical change  
new: SCR# \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Mike Miller</i>	✓				
<i>Lynn Green</i>	✓				
CHAIR: <i>Abigail Taylor</i>					

Previous

**NEW FISCAL NOTE(S):**

Department                      Date      Zero      Fiscal

Department	Date	Zero	Fiscal

**PREVIOUS FISCAL NOTE(S):\***

Department                      Date      Zero      Fiscal

Department	Date	Zero	Fiscal
<i>Corrections - STATEWIDE</i>	<i>3/29/95</i>	✓	
<i>Public Safety - COMM.</i>	<i>2/3/95</i>	✓	
<i>COURTS</i>	<i>9/20/95</i>		<i>168.7 FY96</i>
<i>Law - Prosecutions</i>	<i>7/24/95</i>		<i>211.9 FY96</i>
<i>Administration - PUB</i>	<i>1/25/95</i>		<i>382.9 FY96</i>
<i>Administration - AGENCY</i>	<i>1/25/95</i>		<i>160.6</i>

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

BASIS JOURNAL TEXT

04/28/95

HOUSE JOURNAL

PAGE 1648

THE QUESTION TO BE RECONSIDERED: "SHALL CSHB38(JUD)AM PASS THE HOUSE?" THE ROLL WAS TAKEN WITH THE FOLLOWING RESULT:

CSHB 38(JUD) AM--RECONSIDERATION  
THIRD READING  
FINAL PASSAGE

YEAS: 29 NAYS: 8 EXCUSED: 2 ABSENT: 1

04/28/95

HOUSE JOURNAL

PAGE 1649

HB 38

YEAS: AUSTERMAN, BUNDE, B.DAVIS, G.DAVIS, FOSTER, GREEN,  
GRUSSENDORF, HANLEY, IVAN, KELLY, KOHRING, KOTT, KUBINA, MACKIE,  
MARTIN, MASEK, MOSES, MULDER, OGAN, PARNELL, PHILLIPS, PORTER,  
ROKEBERG, SANDERS, THERRIAULT, TOOHEY, VEZEY, WILLIAMS, WILLIS

NAYS: BRICE, BROWN, DAVIES, ELTON, FINKELSTEIN, NAVARRE, NICHOLIA,  
ROBINSON

EXCUSED: BARNES, MACLEAN

ABSENT: JAMES

AND SO, CSHB 38(JUD) AM PASSED THE HOUSE ON RECONSIDERATION.

REPRESENTATIVE VEZEY MOVED AND ASKED UNANIMOUS CONSENT THAT THE  
ROLL CALL ON PASSAGE OF THE BILL BE CONSIDERED THE ROLL CALL ON THE COURT  
RULE CHANGE. THERE BEING NO OBJECTION, IT WAS SO ORDERED.

CSHB 38(JUD) AM WAS REFERRED TO THE CHIEF CLERK FOR ENGROSSMENT.

SELECTION=>

PF1 PF2  
HELP

PF3 PF4  
EXIT MENU

PF5

PF6 PF7  
PRINT BWD

B005-LAST PAGE

PF8 PF9  
FWD

PF10  
FIRST

PF11  
LAST

PF12  
QUIT

# FISCAL NOTE

VAL 4/27  
2-1-95  
= (3-1-95)  
F 100

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

BILL NO. CSHB 38 (JUD)

Revision Date: 04/20/95 Dept. Affected: Alaska Court System  
 Title: An Act relating to criminal sentencing... BRU: Trial Courts  
 Components: \_\_\_\_\_  
 Sponsor: Rep. Bunde  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 768

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

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	100.4	100.4	100.4	100.4	100.4	100.4
TRAVEL						
CONTRACTUAL	67.5	67.5	67.5	67.5	67.5	67.5
SUPPLIES						
EQUIPMENT	0.8					
LAND & STRUCTURES						
GRANTS & CLAIMS						
<b>TOTAL OPERATING</b>	<b>168.7</b>	<b>167.9</b>	<b>167.9</b>	<b>167.9</b>	<b>167.9</b>	<b>167.9</b>

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

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

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	168.7	167.9	167.9	167.9	167.9	167.9
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>168.7</b>	<b>167.9</b>	<b>167.9</b>	<b>167.9</b>	<b>167.9</b>	<b>167.9</b>

**POSITIONS**

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

Estimate of current year (FY 95) cost: \$ None

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

Prepared by: C. S. Christensen III, Staff Counsel Phone: 264-8228  
 Agency: Alaska Court System Date: 04/20/95  
 Approved by: Arthur H. Snowden, II, Administrative Director  
 Agency: Alaska Court System Date: 04/20/95

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

Alaska Court System  
Fiscal Analysis  
CSHB 38 (Jud)

CSHB 38 (Jud) amends Alaska's presumptive sentencing laws to provide that a defendant convicted of a third felony offense is subject to a mandatory term of imprisonment of at least 40 years but not more than 99 years. The first two convictions must be for a "most serious" felony, and the third conviction must be for a class A or unclassified felony. The prosecutor has the discretion to pursue or not pursue the 40-year to 99-year mandatory sentence.

A most serious felony is any unclassified or class A felony prescribed under AS 11 or an attempt or conspiracy to commit, or criminal solicitation under AS 11.31.110 of, an unclassified or class A felony prescribed under AS 11.

The Department of Law has estimated that prosecutors will seek the mandatory 40-year to 99-year sentence 15 times per year. Because of the potential sentence, these cases can be expected to approach first-degree murder cases in the amount of court time spent on the actual trial, as well as on evidentiary hearings, collateral attacks on previous convictions, and other pre- and post-trial motion work. This is estimated to average three weeks of trial time per case, plus one-half week of additional hearings. If the defendants were not subject to a 40-year to 99-year sentence, only three of these 15 cases would statistically be expected to go to trial.

In addition to the costs of the third felony case, the existence of the mandatory 40-year to 99-year sentence will encourage offenders charged with their first or second most serious felony to fight the charge more strenuously, because conviction would greatly increase the chance that the offender would be vulnerable to the mandatory sentence at a later time. In the years 1984 through 1990, an average of about 900 defendants each year were charged with a first or second most serious felony. Trial rates for defendants charged with those felonies currently range from eight to 20 percent, depending on the classification of the offense (class B, class A, or unclassified). If the trial rate increases by 50 percent, over 50 additional felony trials will be held each year. Such changes in the trial rate are not unprecedented. When the plea bargaining ban was imposed in 1975, the felony trial rate doubled during the first year and tripled during the second year. Because it is impossible to predict what increase will occur in the trial rate as a result of CSHB 38 (Jud), this note does not reflect those costs. Should CSHB 38 (Jud) result in a significantly higher trial rate, the court system will need to return to the legislature for additional funding.

For similar reasons, it can be expected that the appeal rate and rate of applications for post-conviction relief will increase among the 900 defendants charged each year with a first or second most serious felony. Again, this note does not attempt to quantify those costs.

Alaska Court SystemFiscal AnalysisCSHB 38 (JUD)Personal Services

	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Pro Tem Superior Court Judge, PPT, 50% vested, Anchorage, 10 months	\$40,250	\$26,593	\$66,843
In-Court Clerk, range 12A, PPT, Anchorage, 10 months	22,590	10,921	<u>33,511</u>
Total Personal Services			100,354

Contractual Services

Jury fees for 12 jurors and 3 alternates for 15 days for 12 new trials at \$25 a day for each juror 67,500

Equipment

Desk and chair for in-court clerk 800

Estimated Total Cost \$168,654

B-2

B-3

B-4

# LOCAL

Section  
B

61 (Ext. 275)

Tuesday, February 13, 1996

## Man guilty of attempt to kidnap, molest girls

By LIN GALE  
Staff Writer

A Superior Court jury on Monday convicted 42-year-old Larry Clark of trying to kidnap and molest two young girls near Denali Elementary School in September.

Clark had been arrested five times previously on rape, attempted rape, and other sex crime charges in Washington and Alaska, according to court records, but each time the counts were either dismissed or reduced to misdemeanors.

In the trial last week, the prosecution brought in several of Clark's alleged past

rape victims to show the jury that Clark is a sexual predator who intended to lure the sisters, ages 11 and 12, into his truck to molest them.

One of the women testified that Clark raped her in the cab of his truck and tortured her by jamming money up her vagina so far it had to be removed with forceps.

In the most recent case, Clark came upon the girls about 8 p.m. Sept. 14 as they were walking along Lathrop Street. The children ran to their nearby home, and Clark chased after them, according to police. The girls told their father, Bob Gal-

loway, what had happened, and he grabbed a rifle and sped after Clark in a vehicle.

At one point, Galloway confronted Clark by an apartment building on Stewart Street, pointed the gun at him, and ordered him to freeze until police arrived. Instead, Clark sped off again and collided with a taxicab at the intersection of Sixth Avenue and Cowles Street.

"I think we got somebody who don't need to be on the streets of Fairbanks off the streets of Fairbanks," Galloway said after the guilty verdicts were announced.

Clark contended that one of the girls

had flagged him down, then ran, so he followed them to see what they wanted.

The jury convicted Clark of two counts of attempted kidnapping, two counts of attempted sexual abuse of a minor, first-degree assault, failure to remain and render assistance, and drunken driving. The assault charge was for injuries to the cab driver. The jury acquitted Clark of third degree and fourth-degree assault.

Clark faces up to 81 years in jail. Sentencing was set for May 24 before Superior Court Judge Ralph Beistline. He is being held at Fairbanks Correctional Center or \$100,000 bail.

# ce of The Times

## Screwy Alaska justice coddles killers

By PAUL JENKINS

What if you killed a cab driver during an armed robbery planned by you and members of your gang? What if the sentencing judge acknowledged in open court that you're a worst-case offender, a liar, a drug and booze addict and a "clear threat to the public"? How many years would you be in the joint before you were eligible for a parole hearing? Thirty? Fifty? Sixty-five?

Would you believe 10? That's how many years Darrell S. Whitaker will have waited before he gets his first chance to talk his way out of prison.

Whitaker was a 17-year-old kid in August 1993 — and only 22 days out of the McLaughlin Youth Center — when he murdered 46-year-old Richard Sandsness, an Alaska Cab driver. The kid shot him in the head.

The case points to some troubling aspects of our justice system. Whitaker pleaded guilty to second-degree murder under our felony murder statutes — statutes badly in need of refinement and fine tuning, by the way. Superior Court Judge Karen Hunt rightly handed him 99 years, the maximum.



Jenkins

In doing so, she relied heavily on psychiatric reports about Whitaker that were written when he was even younger. The Court of Appeals had allowed consideration of such reports, but the Alaska Supreme Court — in a case it decided just after Whitaker got the max — reversed the appellate court. A resentencing was scheduled.

Whitaker's defense lawyer argued for a 20- to 30-year prison term, saying there was no plan to kill during the robbery; that the kid fired the .357-Magnum revolver — stolen from his father — only after Sandsness sprayed him in the face with pepper gas. And, golly, yer honor, he didn't mean to do it; the victim kinda caused the whole thing, the defense seemed to say. Besides, the kid has taken responsibility for the crime. And, hey, he still has unresolved issues from his mother's death in a car crash when he was 9.

During the resentencing, Hunt noted Whitaker's troubled past, his increasingly bizarre, violent and manipulative behavior. She also noted that officials at



McLaughlin in August 1992 reported he would be a danger to the community if released — but that he was turned loose 11 months later.

And the most chilling part? Our state appeals court, Hunt said, repeatedly has held that intentional murders in the second-degree warrant 20- to 30-years prison terms; unintentional murders rate even fewer years. Mind you, murderers are eligible for a parole hearing after serving only a third of their sentence.

Hunt said during the resentencing hearing that she could not give Whitaker 99 years. Instead, she gave him 50 — with 20 suspended. Without consideration of the juvenile reports, Sandsness's murder was sadly not extraordinary; not glitzy enough for a maximum sentence. And ordinary, run of the mill, second-degree murders call for a 20- to 30-year term in Alaska. Period.

Hunt did what she could, but she had few choices. She gave him the max the higher court would allow, and tacked on the 20-year suspended sentence as a hammer to smack the kid with if he gets out and screws up.

The fact that she had to be creative to protect society from Whitaker shows something's a little out of whack. If the justice system is aiming to deter criminals, it ain't working. If the idea is to rehabilitate or reform, it ain't working. If the idea is to curtail violence on our streets, it clearly ain't working.

Instead of curbing violence, our courts seem content to categorize crimes and criminals based on minutiae. Murder? What kind? Was alcohol involved?

Drugs? Did the murderer use a gun or knife or 2X4? Did he or she think about it or just lash out? How many times was the victim shot, or stabbed, or run over? What about extenuating circumstances? Mitigation? And on and on and on.

Along the way we've lost track of the notion that murder necessarily means a human life has ended. A human life; a person with family and friends and hopes and dreams and all the rest.

Whitaker ended such a life. But — in a system where court-ordered sentences have little, if any, relation to actual time served in prison — he could be among us again in about eight years because our higher courts are busily counting angels on the heads of pins. Some judges seem to believe there are good murders, average murders and bad murders, each with a different sentencing value. They apparently believe that people do not get equally dead when killed.

It's clear that some jurists at the highest levels of our liberal courts — political appointees barely answerable to the people they offer up as victims — have abandoned common sense to establish and maintain sentencing parity. If there were anything resembling true justice, Whitaker, and others like him who have murdered a human being — no matter the circumstances — would die of old age in prison.

But that's not the way it is. We have a system out of touch with the changing reality on our streets, a reality that last year propelled Anchorage toward another record year for killings.

More and more people don't care a whit about rehabilitation or reformation or second chances. They don't care what the assailant used as a weapon or whether it was a spur of the moment thing or planned. They don't care whether a murderer takes responsibility, attends counseling or finds Jesus. And they don't care about unresolved issues. They want simple justice for victims and their families. They believe that if you end a life, you should end yours in prison. The message our justice system should be sending is: Don't kill under any circumstance.

But some of our judges here are sending a different message: Human life in Alaska is not nearly as important as sentencing parity and picking legal nits.

Too bad so many killers, including kids, have caught on. Too bad for Richard Sandsness and the ever-growing list of victims.

Paul Jenkins is an editor of The Anchorage Times.



**HB**

**42**

**HFIN**

**FILE**

# HOUSE COMMITTEE REPORT

(11)

Date Referred: February 10, 1995

FURTHER REFERRALS:

Date of Committee Action: 2/23/95

The FINANCE Committee considered:

HB 42

HOUSE BILL NO. 42

ABSENTEE VOTING & USE OF FAX

"An Act relating to absentee voting, to electronic transmission of absentee ballot applications, and to delivery of ballots to absentee ballot applicants by electronic transmission, and enacting a definition of the term 'state election' for purposes of absentee voting."

recommends it be replaced with the following committee substitute CS HB 42 (STA)  the same title  a new title

additional referral to \_\_\_\_\_ Committee  
 attached amendment(s)

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

ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_ APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_  
 fiscal note(s) office of governor  fiscal note(s) \_\_\_\_\_

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

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Mark Hanley</i>	Hanley	X			
<i>Laura Martin</i>	martin	X			
<i>Sean Pannell</i>	Pannell	X			
<i>Vic Kohring</i>	Kohring	X			
<i>Barry Gussendorf</i>	Gussendorf	X			
<i>Pete Kelly</i>	Kelly			X	
<i>Gene Thernault</i>	Thernault	X			
<i>Richard Foster</i>	FOSTER	X			
<i>Ed Mulder</i>	MULDER	X			
<i>Ray Brown</i>	BROWN	X			

CO-CHAIR'S SIGNATURE *Mark Hanley* *Richard Foster*  
 Hanley Foster

REVISED FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

BILL NO. CSHB 42 (STA)

Revision Date: \_\_\_\_\_  
Title: Absentee Balloting by FAX

Department Affected: Office of the Governor  
BRU: Division of Elections  
Component: Primary and General

Sponsor: Representative Martin  
Requestor: \_\_\_\_\_

COMPONENT SERIAL NO. 22

EXPENDITURES/REVENUES:

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL	0	13.0	0	13.0	0	13.0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	18.8	0	18.8	0	18.8
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	8.0	0	0	0	0
LAND &	0	0	0	0	0	0
GRANTS,	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL	0	37.8	0	28.8	0	28.8

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

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

FUNDING:

1002 Federal	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	37.8	0	28.8	0	28.8
1005 GF/Program	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	37.8	0	28.8	0	28.8

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	1	0	1	0	1

Estimate of current year (FY95) impact: 0

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: David Kolvanemi, Acting Director Phone: 485-4811  
Division: Division of Elections Date: January 20, 1995 2-23-95

Approved by Commissioner: Fran Ulmer, Lieutenant Governor Date: \_\_\_\_\_  
Agency: Office of the Governor  
January 20, 1995

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CS FOR HOUSE BILL NO. 42 (STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered: 1/25/95  
Referred: Judiciary, Finance

Sponsor(s): REPRESENTATIVE MARTIN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to absentee voting, to electronic transmission of absentee ballot  
2 applications, and to delivery of ballots to absentee ballot applicants by electronic  
3 transmission, and enacting a definition of the term 'state election' for purposes  
4 of absentee voting."

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

6 \* Section 1. AS 15.20 is amended by adding a new section to read:

7 Sec. 15.20.066. VOTING BY ELECTRONIC TRANSMISSION. (a) The  
8 director shall adopt regulations applicable to the delivery of absentee ballots by  
9 electronic transmission in a state election and to the use of electronic transmission  
10 absentee voting in a state election by qualified voters. The regulations must

11 (1) require the voter to comply with the same time deadlines as for  
12 voting in person on or before the closing hour of the polls;

13 (2) ensure the accuracy and, to the greatest degree possible, the

1 integrity and secrecy of the ballot process.

2 (b) An absentee ballot that is completed and returned by the voter by  
3 electronic transmission must

4 (1) contain the following statement: "I understand that by using  
5 electronic transmission to return my marked ballot, I am voluntarily waiving my right  
6 to a secret ballot.", followed by the voter's signature and date of signature; and

7 (2) be accompanied by a statement executed under oath as to the  
8 voter's identity; the statement under oath must be witnessed by

9 (A) a commissioned or noncommissioned officer of the armed  
10 forces of the United States;

11 (B) an official authorized by federal law or the law of the state  
12 in which the absentee ballot is cast to administer an oath; or

13 (C) two United States citizens who are 18 years of age or older.

14 \* Sec. 2. AS 15.20.081(a) is amended to read:

15 (a) A qualified voter may apply by mail or by electronic transmission to the  
16 director for an absentee ballot. The application must [SHALL] include the address or,  
17 if the application requests delivery of an absentee ballot by electronic  
18 transmission, the telephone electronic transmission number, <sup>or address</sup> to which the absentee  
19 ballot is to be returned, the applicant's full Alaska residence address, and the  
20 applicant's signature. However, a person [PERSONS] residing outside the United  
21 States and applying to vote absentee in federal elections in accordance with  
22 AS 15.05.011 need not include an Alaska residence address in the application.

23 \* Sec. 3. AS 15.20.081(b) is amended to read:

24 (b) An application requesting delivery of [FOR] an absentee ballot to the  
25 applicant by mail must be received by the division of elections not less than seven  
26 [FOUR] days before the election for which the absentee ballot is sought. An  
27 application for an absentee ballot for a state election from a qualified voter  
28 requesting delivery of an absentee ballot to the applicant by electronic  
29 transmission must be received by the division of elections not less than four days  
30 before the election for which the absentee ballot is sought. [An] [THE] absentee  
31 ballot application [submitted by mail under this section] must permit the person to

*austin low*

1 register to vote under AS 15.07.070 and to request an absentee ballot for each state  
2 election held within that calendar year for which the voter is eligible to vote. [An  
3 absentee ballot application submitted by electronic transmission under this section  
4 may not include a provision that permits a person to register to vote under  
5 AS 15.07.070.]

6 \* Sec. 4. AS 15.20.081(c) is amended to read:

7 (c) After receipt of an application [BY MAIL], the director shall send the  
8 absentee ballot and other absentee voting material to the applicant by the most  
9 expeditious mail service. However, if the application requests that an absentee  
10 ballot for a state election be sent by electronic transmission, the director shall  
11 send the absentee ballot and other absentee voting material to the applicant by  
12 electronic transmission. The absentee ballot and other absentee voting [THE]  
13 material shall be sent as soon as they are ready for distribution. If the absentee ballot  
14 and other absentee voting material are mailed to the applicant, the [THE] return  
15 envelope sent with the ballot and other materials shall be addressed to the election  
16 supervisor in the district in which the voter is a resident.

17 \* Sec. 5. AS 15.20.081(e) is amended to read:

18 (e) An absentee ballot must be marked on or before the date of the election.  
19 Except as provided in (h) of this section, a voter who returns the absentee ballot by  
20 mail, whether provided to the voter by mail or by electronic transmission, shall use  
21 a mail service at least equal to first class and mail the ballot not later than the day of  
22 the election to the election supervisor for the election district in which the voter seeks  
23 to vote. Except as provided in AS 15.20.480, the ballot may not be counted unless it  
24 is received by the close of business on the 10th day after the election. If the ballot is  
25 postmarked, it must be postmarked on or before election day. After the day of the  
26 election, [NO] ballots may not [SHALL] be accepted unless received by mail.

27 \* Sec. 6. AS 15.20.081(g) is amended to read:

28 (g) The director shall maintain a record of the name of each voter to whom  
29 an absentee ballot is sent under this section [BY MAIL]. The record must list the  
30 date on which the ballot is mailed or provided by electronic transmission and the  
31 date on which the ballot is received by the election supervisor and the dates on which

1 the ballot was executed and postmarked.

2 \* Sec. 7. AS 15.20.082 is amended by adding a new subsection to read:

3 (e) The provisions of AS 15.20.066 and 15.20.081 relating to electronic  
4 transmission absentee voting do not apply to the procedures established in this section.

5 \* Sec. 8. AS 15.20.211(b) is amended to read:

6 (b) If a voter requested an absentee ballot [BY MAIL] and the proper absentee  
7 ballot was not sent to the voter, the votes cast by the voter on the ballot received  
8 which are for write-in candidates the voter could have voted for if the voter had  
9 received and voted the proper absentee ballot shall be counted.

10 \* Sec. 9. AS 15.20 is amended by adding a new section to read:

11 Sec. 15.20.225. DEFINITION OF "STATE ELECTION." In AS 15.20.010 -  
12 15.20.225, "state election" means a primary, general, or special election a purpose of  
13 which is to

14 (1) select, nominate, or elect a governor, a lieutenant governor, an  
15 acting governor, a state senator, or a state representative;

16 (2) select, nominate, or elect delegates to a constitutional convention;

17 (3) approve or reject an initiative submitted under art. XI of the state  
18 constitution and AS 15.45.190 - 15.45.200 or a referendum submitted under art. XI of  
19 the state constitution and AS 15.45.420 - 15.45.440;

20 (4) recall an official identified in (1) of this section when authorized  
21 by art. XI of the state constitution and AS 15.45.650 - 15.45.690;

22 (5) approve or reject a proposed constitutional amendment submitted  
23 under AS 15.50; or

24 (6) ratify or reject a state general obligation bond when authorized by  
25 AS 37.15.

**REVISED FISCAL NOTE**

STATE OF ALASKA

BILL NO. CSHD 42 (STA)

1995 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_

Department Affected: Office of the Governor

Title: Absentee Balloting by FAX

BRU: Division of Elections

Component: Primary and General

Sponsor: Representative Martin

COMPONENT SERIAL NO. 22

Requestor: \_\_\_\_\_

**EXPENDITURES/REVENUES:**

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL	0	13.0	0	13.0	0	13.0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	16.8	0	16.8	0	16.6
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	8.0	0	0	0	0
LAND &	0	0	0	0	0	0
GRANTS,	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>37.8</b>	<b>0</b>	<b>28.8</b>	<b>0</b>	<b>28.6</b>

<b>CAPITAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
----------------	----------	----------	----------	----------	----------	----------

<b>REVENUE</b>						
----------------	--	--	--	--	--	--

**FUNDING:**

1002 Federal	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	37.8	0	28.8	0	28.6
1005 GF/Program	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>37.8</b>	<b>0</b>	<b>28.8</b>	<b>0</b>	<b>28.6</b>

**POSITIONS:**

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	1	0	1	0	1

Estimate of current year (FY95) impact: 0

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: David Kolvanemi, Acting Director Phone: 485-4611  
 Division: Division of Elections Date: January 22, 1995 2-23-95

Approved by Commissioner: Fran Ulmer, Lieutenant Governor  
 Agency: Office of the Governor Date: \_\_\_\_\_  
 January 20, 1995

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JAN-24-95 TUE 17:44

REG. DIV OF ELECTIONS

FAX NO. 5

1

Bill Version: CS HB 42 (STA)

(H) Publish Date: 1/25/95

FISCAL NOTE

STATE OF ALASKA

1995 LEGISLATIVE SESSION

Revision Date:

Title: Absentee Balloting by FAX

Sponsor: Representative Martin

Requestor:

Department Affected: Office of the Governor

BRU: Division of Elections

Component: Primary and General

COMPONENT SERIAL NO. 22

EXPENDITURES/REVENUES:

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	0	13.0	0	13.0	0	13.0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	16.8	0	16.8	0	16.8
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	8.0	0	8.0	0	8.0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	37.8	0	37.8	0	37.8

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

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

FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	37.8	0	37.8	0	37.8
1005 GF/Program Receipts	0	0	0	0	0	0
1008 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	37.8	0	37.8	0	37.8

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	1	0	1	0	1

Estimate of current year (FY95) impact: 0

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: David Kolvundemi, Acting Director  
Division: Division of Elections

Phone: 485-4811  
Date: January 20, 1995

Approved by Commissioner: Fran Ulmer, Lieutenant Governor  
Agency: Office of the Governor

Date: January 20, 1995

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page 2 of 2

**FISCAL NOTE**

**STATE OF ALASKA  
1985 LEGISLATIVE SESSION**

**BILL NO. HB 42**

Personal Services

1 Clerk III at range 8A (June-November)	\$10888.00
Overtime	\$ 2300.00

Contractual

5 cases 4024 DP 8.5 x 11 paper	\$ 52.50 x 5 = \$ 262.50
Installation of 3 lines	\$ 332.00
Monthly Charges(June-November) (FCC, Toll)	\$ 198.50
Hunt Feature	\$ 840.00
Telephone Charges (June-November)	\$2500.00 x 6 = \$15000.00

Equipment

3 plain paper faxes	\$2898.00 x 3 = \$ 8088.00
---------------------	----------------------------

**Total \$37,887.50**

**COMMITTEE COPY**

REPRESENTATIVE  
TERRY MARTIN  
CHAIRMAN  
BUDGET & AUDIT COMMITTEE  
MEMBER  
HOUSE FINANCE COMMITTEE

# Alaska State Legislature



MAY 15 - JAN 15 258-8169  
716 W. 4TH, SUITE 650  
ANCHORAGE, AK 99504

JAN 15 - MAY 15 465-3733  
STATE CAPITOL  
JUNEAU, AK 99801-1182

HOME 333-6990  
355 DONNA DRIVE, #11  
ANCHORAGE, AK 99504

## SPONSOR SUMMARY CSHB 42 (STA)

### An Act relating to absentee voting by electronic transmission.

The intent of CSHB42 (STA) is to allow residents of Alaska voting absentee to utilize electronic transmission (fax), whether in-state, out-of-state in the United States, or outside of the United States.

#### Need for Legislation

Alaska's voter population is diverse and geographically dispersed. Many individuals require assistance in voting, specifically the physically challenged, elderly, and non-English speaking voters. In addition, our Armed Service members stationed outside of Alaska have encountered difficulties in absentee voting. Military members outside the U.S. have reported an escalation in absentee problems through failures in our postal system, changes in electoral regulations, and simple misinstruction. With regard to the military, 1994 reports reveal that there are approximately 15,600 Alaskan residents serving in the Armed Forces alone, in addition to over 12,000 spouses and dependents of voting age, and almost 6,000 Alaskan citizens not affiliated with the federal government but who claim legal residence in Alaska.

These figures do not include the other Alaskan residents who vote out-of-state by absentee such as college students, state employees, private business people who must leave state for work, and even vacationers. Nor do the statistics reference in-state travelers who may not be in their election district during a state election but could utilize electronic transmission to cast their absentee ballot. This is especially helpful when one considers the potential delays and difficulties in traveling throughout Alaska.

The national trend is to expand voting practices and allow those individuals voting absentee the most expeditious means by which to cast their ballot. In terms of Alaska's requirements, there is a 36-45 day ballot transmission time. Ballots are mailed 21-30 days before the election. Marked ballots mailed by voters within the United States will be counted if postmarked by the day of the election



and if received by the Division of Elections by the tenth day following the election. Ballots returned by voters outside the United States must be received by the Division of Elections by the fifteenth day following the election. Alaska also provides a Special Write-in Absentee Ballot, which is available 60 days before the election.

Over the last two decades, absentee ballot procedures and postal service problems have resulted in the loss and delay of numerous absentee voters' ballots. In the 1988 presidential election, 200,000 U.S. military personnel alone tried to vote absentee but were unable to do so because they didn't receive their ballot on time or at all. Presently, the following ten (10) states and territories accept a voted ballot by fax: Hawaii, Indiana, Kansas, Louisiana, Montana, North Dakota, Utah, Washington, District of Columbia, and Virgin Islands. In the 1992 presidential election 699 election offices in 49 states operated fax machines to distribute information and material to voters.

The purpose of CSHB42 (STA) is not to substitute the use of electronic transmission over mail service, but to decrease lost, delayed, or denied absentee ballots due to time constraints. The use of electronic transmission maintains confidentiality while furthering speed and efficiency. In essence, it expands the use of alternative voting procedures which, if not utilized, might otherwise disenfranchise an Alaskan resident voting absentee when time is of the essence.

REPRESENTATIVE  
TERKY MARTIN  
CHAIRMAN  
BUDGET & AUDIT COMMITTEE  
MEMBER  
HOUSE FINANCE COMMITTEE

# Alaska State Legislature



MAY 15 - JAN 15 258-8169  
716 W. 4TH, SUITE 650  
ANCHORAGE, AK 99504

JAN 15 - MAY 15 465-3783  
STATE CAPITOL  
JUNEAU, AK 99801-1182

HOMIE 333-6990  
355 DONNA DRIVE, #11  
ANCHORAGE, AK 99504

## SECTIONAL ANALYSIS CSHB 42 (STA)

An Act relating to absentee voting by electronic transmission.

### Section 1.

Directs Division of Elections to adopt regulations establishing absentee voting by fax. Requires compliance with current deadlines while ensuring accuracy, integrity and secrecy. Requires signature by absentee voter of a secrecy waiver and an oath to be taken before commissioned/non-commissioned Armed Services member, federal or state official authorized to administer oath (in state where fax will emanate), or by two U.S. citizens 18 or older.

### Section 2.

Allows a qualified voter to apply for an absentee ballot by fax and to provide a corresponding fax number for confirmation.

### Section 3.

Requires a mailed application to be received by Division of Elections not less than seven days (changed from four days) before the election and a faxed application to be received not less than four days. Prohibits registering to vote by fax.

### Section 4.

Allows an absentee voter to request an absentee ballot by fax and to receive an absentee ballot by fax.

### Section 5.

Allows a completed ballot to be faxed by voter, but requires that any faxed ballot be received by Division of Elections by the day of the election.



Section 6.

Requires the Division of Elections to record any faxed ballot.

Section 7.

Removes applicability of faxing from AS15.20.082 which clarifies absentee voting by mail.

Section 8.

Allows absentee voter to write in eligible candidates if the wrong ballot was sent or faxed.

Section 9.

Defines "State Election" and lists potential candidates and issues that could be voted on by fax.

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

☐ 1031 WEST 4TH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501-1994  
PHONE: (907)269-5100  
FAX: (907)276-3697

☐ KEY BANK BUILDING  
100 CUSHMAN ST., SUITE 400  
FAIRBANKS, ALASKA 99701-4679  
PHONE: (907)451-2811  
FAX: (907)451-2846

☐ P.O. BOX 110300-DIMOND COURT HOUSE  
JUNEAU, ALASKA 99811-0300  
PHONE: (907)465-3600  
FAX: (907)465-6735

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 13, 1995

Representative Terry Martin  
Alaska State Legislature  
State Capitol, Room 502  
Juneau, Alaska

Re: House Bill 42 and Ballot Secrecy

Dear Representative Martin:

As the sponsor of HB 42, you have asked for our opinion as to whether CSHB 42 (STA), which would allow voting by electronic transmission in certain circumstances, violates the portion of article V, section 3 of the Alaska Constitution that provides that "[s]ecrecy of voting shall be preserved." In our opinion the bill, if enacted, would not violate that provision. We believe that a court, if confronted with a constitutional challenge, would likely employ a balancing test, and would find that the minor infringement on ballot secrecy would be outweighed by the bill's effect of enfranchising voters.

There are no reported decisions of the Alaska Supreme Court construing the ballot secrecy language of article V, section 3. However, the minutes of the constitutional convention show that the language was not intended to be absolute. See 2 Minutes of the Alaska Constitutional Convention 812-14. The secrecy provision was offered as a floor amendment to the elections section of the constitution. During the brief debate on it, Delegate Kilcher asked, "How can secrecy be guaranteed if, as in the case of a blind person, in the case of a person who can't read, the election judges might have to assist?" President Egan referred the question to Delegate Hellenenthal (not the amendment's sponsor), who responded that "the right to secrecy is not an absolutely unqualified right. It is like the right to freedom of speech. The classic example is that the right of freedom of speech does not give one the right to yell 'fire' in a crowded theatre." *Id.* at 814. Immediately following this exchange the amendment was adopted by voice vote.

Recognizing that constitutional rights are virtually never absolute, the Alaska Supreme Court has employed balancing of interests to determine whether governmental enactments are consistent with personal rights guaranteed by the Alaska Constitution. See, e.g., Messerli v. State, 626 P.2d 81 (Alaska 1980) (society's interest in knowing identity of person publishing newspaper advertisements seeking to influence outcome of vote on municipal bond proposition generally outweighs person's right, under free speech and privacy provisions of Alaska Constitution, to remain anonymous); Frank v. State, 604 P.2d 1068 (Alaska 1979) (Athabaskan's religious right, under article I, section 4, to have fresh game at potlatch outweighs state's interest in enforcing hunting season laws in these limited circumstances). We believe, therefore, that the court would use a balancing test here, as well.

The overriding purpose of provisions for ballot secrecy is to ensure that voters can vote as they wish, without intimidation or coercion. See, e.g., Kiehne v. Atwood, 604 P.2d 123, 127 (N.M. 1979) (quoting Carabajal v. Lucero, 158 P. 1088, 1092-93 (N.M. 1916)). CSHB 42 (STA) does not significantly interfere with this purpose.

We note first of all that CSHB 42 (STA) does not impinge on anyone's direct personal rights. Because no one is forced to submit a ballot by electronic transmission, anyone who chooses to vote in his manner is waiving whatever personal rights he or she has to ballot secrecy. And the bill contains a provision to guarantee that such a waiver will be a knowing and voluntary waiver: proposed AS 15.20.066(b)(1) requires that an absentee ballot returned by electronic transmission must contain a statement that the voter understands that, by using electronic transmission, he or she is voluntarily waiving the right to a secret ballot.

Moreover, CSHB 42 (STA)'s interference with society's general interest in ballot secrecy is minimal. Insofar as secrecy is compromised at the receiving end - the Division of Elections - the division can adopt regulations to ensure that its employees will not reveal how a ballot was voted. Insofar as secrecy is compromised at the sending end, a voter can decline to use electronic transmission if he or she fears coercion, or can request to send the ballot himself or herself. Moreover, it is likely that most people using electronic transmission will be out of state, and frequently out of the country, so that, when the ballot is transmitted, there will be no one present with any interest in how the voter votes.<sup>1</sup>

---

<sup>1</sup> Because CSHB 42 (STA) requires the division to adopt regulations, it can address specific problems that persons concerned with absentee voting by electronic transmission may have.

On the other side of the scale, CSHB 42 (STA) will apparently allow people to vote who now cannot. This includes people living overseas in places where the mail service is not reliable. In addition, it seems likely that the bill will encourage more people away from their normal voting places to vote absentee, by potentially making it easier to cast an absentee ballot.

In light of this minimal intrusion on ballot secrecy, and the beneficial effects of the bill, we believe that, if CSHB 42 (STA) is enacted into law and is challenged as unconstitutional, the courts would find that the balancing test clearly supports the bill's constitutionality.<sup>2</sup>

We note that there is already a section of the elections code which impairs ballot secrecy to at least as great a degree as CSHB 42 (STA) would. AS 15.15.240, enacted by the 1960 legislature, addresses the concerns expressed by Delegate Kilcher (set out above). It provides, in relevant part, "A qualified voter who cannot read, mark the ballot, or sign the voter's name may request an election judge, a person, or not more than two persons of the voter's choice to assist." In our opinion, it cannot be seriously argued that this provision is unconstitutional, in light of the constitutional minutes. We have the same opinion with regard to CSHB 42 (STA).

---

<sup>2</sup> As discussed above, CSHB 42 (STA) does not force anyone to send a ballot by electronic transmission, and therefore does not directly infringe on personal rights. Because of this, it seems possible that the courts would not insist on as strong a showing of governmental interest as is required in some other cases. Compare Frank v. State (requiring the government to show "compelling state interests").

Representative Terry Martin

February 13, 1995

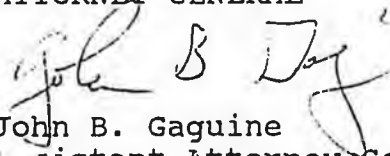
Page 4

Please feel free to contact us if you have any questions about this letter.

Sincerely,

BRUCE M. BOTELHO  
ATTORNEY GENERAL

By:

  
John B. Gaguine  
Assistant Attorney General

JBG:kg

cc: Pat Pourchot  
Legislative Liaison  
Office of the Governor

Deborah Behr  
Assistant Attorney General  
Department of Law

DIVISION OF LEGAL SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

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Juneau, Alaska 99801-2105

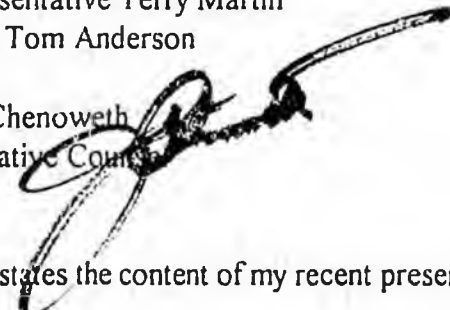
MEMORANDUM

February 10, 1995

**SUBJECT:** Effect of "secrecy of voting" guarantee of state constitution on CSHB 42(STA)

**TO:** Representative Terry Martin  
Attn: Tom Anderson

**FROM:** Jack Chenoweth  
Legislative Council



This memo summarizes and restates the content of my recent presentation to the House State Affairs Committee.

The second sentence of article V, section 3 of the Alaska constitution directs that, in matters relating to voting, "[s]ecrecy of voting shall be preserved." You have asked whether the provision would limit the use of those portions of CSHB 42 (STA) allowing the receipt and counting of votes cast by electronic transmission (facsimile transmission) in state elections. Under the bill draft, a voter casting a faxed vote acknowledges by signature that the casting of the vote using electronic transmission "voluntarily [waives the] right to a secret ballot."

While my conclusion is not free from doubt, I believe that, because a voter may voluntarily waive the secret ballot guarantee, the constitutional provision would not be read so as to cut off the state's efforts to authorize faxed voting.

As a general matter, the rule with respect to treatment of a constitutional guarantee of ballot or voting secrecy appears to be that, while compromise of the secrecy right will not be ordered, an individual may waive the personal right of voter secrecy. Hamilton v. Marshall, 282 P. 1058, 1059 (Wyo. 1929), State ex rel. Hutchens v. Tucker, 143 So. 745, 755-756 (Fla. 1932), and cases summarized at 97 A.L.R.2d 218, at 236 - 237. Thus, though identified and often referred to as a "right," other jurisdictions have, in effect, treated a state constitutional guarantee of secrecy in voting as a personal privilege of the voter.

The opportunity for the voter to waive the privilege may have influenced earlier electronic or faxed voting efforts in other states. From information you provided to me, it appears that the following jurisdictions have state constitutional provisions guaranteeing "secrecy of voting" or "purity of voting," and all have recently enacted a faxed voting arrangement for use in state or county election contests: Hawaii, Louisiana, Montana, North Dakota, Utah, Washington.

Representative Terry Martin

February 10, 1995

Page 2

Presumably, as legislation was under development, each considered the matter of the interrelationship between the respective state constitutional guarantee and the possible compromise of ballot secrecy that occurs when a faxed ballot is completed, transmitted, and received, and determined that the opportunity to cast a meaningful vote outweighed any assertion of violation of the constitutional right.

JBC:klb

95-065.klb

# PIONEERS' HOMES ADVISORY BOARD



Amos "Joe" Alter, Chair

P O Box 20304  
Juneau, AK 99802-0304

January 23, 1995

Mr. Tom Anderson  
Alaska State Legislature  
State Capitol MS 3100  
Juneau, AK 99801-1182

Dear Tom:

I have reviewed HB42, "An Act relating to absentee voting, to electronic transmission of absentee ballot applications, and to delivery of ballots to absentee ballot applications by electronic transmission, and enacting a definition of the term 'state election' for purposes of absentee voting." This review has been from the viewpoint of potential effect upon Pioneers' Homes residents. The following comments are a summary of my findings in talking with Pioneers' Homes Advisory Board members and others.

The objective is excellent and changes proposed by the bill should facilitate voting as well as encourage greater individual voter participation in the election process.

Some further clarification may be necessary as the bill is advanced. A specific point raised in our discussions involves potential abuse which might arise when cognitively impaired persons are represented by others. Although there are very few persons who may be declared legally incompetent many persons may be suffering from Alzheimer's or related dementias, and they must rely on others for help in voting.

Sincerely,

Amos J. "Joe" Alter Chair  
Pioneers' Homes Advisory Board

Robert Gore, Vice Chair  
Donald M. Hoover, Member  
Dan Pistoresi, Member

Vallie Byrdson, Member  
Robert Kallenberg, Member

Rocky Gutierrez, Member  
Estella Odsather, Member



DEPARTMENT OF THE AIR FORCE  
PACIFIC AIR FORCES

11 AF/CC  
5800 G St Ste 101  
Elmendorf AFB AK 99506-2130

21 DEC 1994

Representative Terry Martin  
355 Donna Dr, #11  
Anchorage AK 99504

Dear Representative Martin

I received your letter of November 30 requesting my support and assistance for your efforts to modify absentee voting requirements in Alaska to authorize use of telefax to request, receive, and return absentee ballots.

Federal laws and Department of Defense directives limit my ability to engage in activity in support of, or opposition to, particular issues. Specifically, I cannot use my official authority or influence in support of your bill.

I personally support your effort because it affects Alaska residents who are in the armed forces and stationed outside Alaska. Your proposal would make absentee voting easier and, therefore, should increase participation in the democratic process.

In my personal capacity, I support your efforts and could so indicate by signing a petition in support of your bill. Beyond that, my support is constrained by current guidelines.

Sincerely

A handwritten signature in cursive script, reading "Lawrence E. Boese", is written over the typed name.

LAWRENCE E. BOESE  
Lieutenant General, USAF  
Commander



FEDERAL VOTING ASSISTANCE PROGRAM  
OFFICE OF THE SECRETARY OF DEFENSE  
WASHINGTON, DC 20301-1155

February 6, 1995

The Honorable Brian Porter  
Chair, House Judiciary Committee  
State Capitol  
Juneau, Alaska 99801

Dear Mr. Porter:

The *Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)*, which this office administers, concerns the absentee voting rights of over 15,600 Alaskan citizens currently serving in the Armed Forces. In addition, there are approximately 12,000 voting age spouses and dependents, and nearly 6,000 Alaskan citizens overseas not affiliated with the federal government that claim Alaska as their legal residence.

It is our understanding that CS HB 42 (SA) relating to the electronic transmission of election materials is again being considered this legislative session. We feel passage of this legislation as amended would greatly facilitate the enfranchisement of citizens voting under the Act.

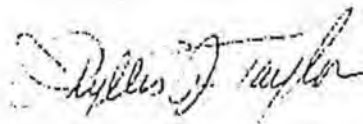
The primary problem citizens covered by *UOCAVA* experience is insufficient mail transit time for the entire process of requesting registration and ballot, receiving it and returning it in time to be counted. When this situation occurs, the alternative method of electronically transmitting election materials, may be the only option to help ensure these citizens are not disenfranchised. In fact, allowing for this alternative procedure will cut the transit time at least in half, thereby reducing the major obstacle to voting absentee by these citizens.

We also bring to your attention that this alternative procedure is at no cost to local election offices since all materials are faxed, toll free, on the secure fax line provided by the Federal Voting Assistance Program (FVAP), (800-368-8683). Once sent to the FVAP-operated processing center, the materials are routed to the fax number specified by the voter.

In 1992, voting materials were electronically routed to 699 local election offices in 49 states, the Virgin Islands, Puerto Rico and the District of Columbia. Voters served were located in 38 foreign countries as well as throughout the U.S. Currently, 36 states have successfully implemented electronic transmission of election materials.

On behalf of citizens covered by the UOCAVA, we urge Alaska legislators to adopt this alternative procedure which helps ensure voters are not disenfranchised.

Sincerely,



Phyllis J. Taylor  
Director

cc: Rep. Terry Martin



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January 23, 1995

Members of the House of Representatives  
State Capitol  
Juneau, Alaska 99811

Dear House Members:

I am writing to express Access Alaska's strong support of HB 42, the Voting by Electronic Transmission bill, submitted by Representative Terry Martin.

For many Alaskans with disabilities finding accessible transportation to and from polling places is very difficult and causes them to forego voting due to the hassle. The Voting by Electronic Transmission bill provides an easy and effective way to remedy many of the voting problems experienced by voters with disabilities.

In passing the Voting by Electronic Transmission bill you are increasing opportunities for all Alaskans, including people with disabilities, to take part in the democratic process.

Again, Access Alaska strongly encourages you to pass HB 42 the Voting by Electronic Transmission bill!

If you have any questions regarding Access Alaska's support of HB 42, please give me a call.

Thank you!

Sincerely,

Duane M. French  
Executive Director

1/18/95

Status of Electronic Transmission in the States & Territories*		
Allow FPCA by fax (37)	Accept blank ballot by fax (18)	Accept voted ballot by fax (10)
Arkansas	Arizona	Hawaii (under certain cond.)
Arizona	California	Indiana (declared emerg. only)
California	Hawaii (under certain conditions)	Kansas
Colorado	Idaho (in emergency only)	Louisiana
Connecticut	Indiana (declared emerg. only)	Montana (some counties)
Delaware	Kansas	North Dakota
Georgia	Louisiana	Utah
Hawaii (under certain conditions)	Montana (some counties)	Washington (some counties)
Idaho	Nevada (if reg. & OCONUS)	
Illinois (Armed Forces only)	New Jersey	District of Columbia
Indiana (declared emerg. only)	North Dakota	Virgin Islands
Iowa	Oregon	
Kansas	Utah	
Louisiana	Vermont	
Massachusetts	Washington	
Michigan	Wisconsin	
Minnesota		
Mississippi	District of Columbia	
Montana	Virgin Islands	
Nebraska		
Nevada (if reg. & OCONUS)		
New Jersey		
North Dakota		
Ohio (for ballot request only)		
Oklahoma		
Oregon		
Tennessee		
Texas		
Utah		
Vermont		
Virginia		
Washington		
Wisconsin		
American Samoa		
District of Columbia		
Guam		
Virgin Islands		

\* The above states have enacted either legislation or administrative instructions to allow for electronic transmission of voting materials.