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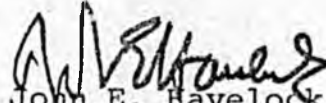
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Representative  
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I hope that you will find the enclosed reports both informative and helpful to you at the time that this issue comes before the legislature. If the Center can be of further assistance to you on this issue, please feel free to contact Peter S. Ring.

Sincerely,

  
John E. Havelock  
Director

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Enclosures

SENTENCING ISSUES:

A SUMMARY



PREPARED BY THE  
CRIMINAL JUSTICE CENTER  
UNIVERSITY OF ALASKA, ANCHORAGE

February, 1977

Peter Smith Ring  
Director of Research

## REPORT ON PRESUMPTIVE SENTENCING

Several members of the Criminal Code Revision Commission, at its January meeting in Juneau, asked for more information on the concept of presumptive sentencing. Staff has reviewed Fair and Certain Punishment\*, the study which, in 1976, introduced the concept of presumptive sentencing to a wider audience.

In very brief terms, Fair and Certain Punishment is a significant contribution to the literature on sentencing. It is worthy of the most serious consideration by all Commission members, legislators, criminal justice practitioners and concerned members of the public. It presents an excellent picture of current sentencing practices across the country and of the serious problems associated with those practices.

The Task Force deals quite fairly with these problems and presents a brief but extremely thorough discussion of a number of proposed alternatives to current sentencing practices - including mandatory minimums - all of which it found to be less than satisfactory.

Because of the special concern of the Commission on the matter of mandatory minimums, the comments of the Task Force on that subject are quoted here in full:

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\*Report of the Twentieth Century Fund, Task Force on Criminal Sentencing. McGraw Hill, (1976). Because of an embargo on substantial quotation from the report prior to its April 13, 1976 release date, staff was unable to provide this report in a more timely fashion.

"Flat-time sentencing goes too far in eliminating all flexibility. By requiring every single defendant convicted under the same statute to serve the identical sentence, it threatens to create a system so automatic that it may operate in practice like a poorly programmed robot. This is especially true if statutory definitions of crime remain as broad and inclusive as they are today.

These same objections apply substantially to mandatory minimum sentences for most crimes. We agree that there are certain extremely serious crimes for which imprisonment should be required without regard to the circumstances. (Our own recommendations make provision for such imprisonment.) But we reject the concept of the mandatory minimum as a general approach to sentencing. Moreover, we have concluded that a mandatory minimum sentencing structure, even if it were desirable, only addresses a small part of the critical problem of disparity and extremes in sentencing. It deals only with minimum sentences - not with the major injustices at the high end of the range.

It is our considered view that some degree of flexibility must be maintained both at the sentencing and the parole stage in order for the system to be just and effective. We have also concluded that discretion cannot be significantly reduced or controlled without thoroughgoing legislative (or legislatively authorized) redefinition and subcategorization of current crimes."\*

The Task Force went on to recommend its own solution to the problem - presumptive sentencing. This system would require substantial code revision (at least for sentencing purposes) which would allow criminal conduct to be divided into a large number of categories depending upon the circumstances of the crime. This significantly greater particularization of criminal conduct would make it unnecessary to give a judge as much latitude in

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\* Id., pp. 17, 18. (Emphasis in the original.)

sentencing since the legislature would have anticipated many of the variations which go into leniency or severity in sentencing through its codification efforts.

The present discretion of judges and parole boards would be guided by a presumptive sentence for each established criminal circumstance, the type of crime having been refined by the introduction of a large number of degrees within each crime. The court would justify departure from that presumptive sentence through a calculus of certain designated mitigating or aggravating circumstances. A similar calculus would be used for second or subsequent offenders.

To implement the system the Task Force recommended:

"For each subcategory of crime, we propose that the legislature, or a body it designates, adopt a presumptive sentence that should generally be imposed on typical first offenders who have committed the crime in the typical fashion."\*

\* \* \*

"The Task Force recommends that the legislature, or a body it designates, also define specific aggravating or mitigating factors again based on frequently recurring characteristics of the crime and the criminal."\*\*

\* \* \*

"The Task Force believes that sentencing hearings should be mandatory to establish any aggravating or mitigating circumstances and to have the sentence pronounced."\*\*\*

\* \* \*

"We recommend that the legislature establish a commission composed of representatives of the judiciary

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\*Id., p. 20.  
\*\*Id., p. 20.  
\*\*\*Id., p. 21.

and other interested groups to undertake the drafting, establishment, and periodic review of a presumptive sentencing system."\*

\* \* \*

"We recommend that there should be periodic review of crime categories; of minimum, maximum, and presumptive sentences; and of mitigating and aggravating factors."\*\*

\* \* \*

"We recommend that more imaginative approaches be taken to sentencing by imposing punishment that mitigates the crime breeding effects of today's prisons."\*\*\*

\* \* \*

"We recommend the elimination of most current barriers to employment of ex-convicts."\*\*\*\*

\* \* \*

"We urge that, in general, presumptive sentences be accompanied by a considerable reduction in the lengths of sentences authorized by legislatures, imposed by courts, and served by prisoners. It is also our recommendation that a larger number of criminal defendants - principally those convicted of serious crimes - should serve some time in prison."\*\*\*\*\*

Each of these recommendations was accompanied by detailed commentary which outlined the Task Force's rationales and what they believed would be accomplished in a positive fashion by implementation. Their commentary touched on substantially all of the issues which the Criminal Code Revision Commission has considered in its discussions relating to substantive code revision of terms of sentence and factors related to sentencing.

The Task Force then presented an illustrative presumptive

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\*Id., pp. 25, 26.

\*\*Id., p. 28.

\*\*\*Id., p. 28.

\*\*\*\*Id., p. 29.

\*\*\*\*\*Id., p. 32

sentencing statute for armed robbery, and a further list of illustrative crimes and presumptive sentences. They took great pain to point out that these were illustrations of the system and not recommendations supported by the entire Task Force.

The report concluded with an excellent background paper by Professor Alan M. Dershowitz of the Harvard Law School. This paper deals with a variety of issues related to sentencing and treats all of them in a comprehensive yet easily read and understood fashion.

As is made clear by the recommendations of the Task Force, legislative enactment of a presumptive sentencing system for Alaska would require a great deal more research and analytical work beyond that provided by the Task Force's recommendations. It is of considerable significance to the Alaska Commission that such a system does not require a legislative basis. It could be implemented through the judicial power without specific legislative sanction, a course deserving careful consideration by its avoidance of adding further complexity to the work of code revision.

The Study justified non-legislative implementation as follows:

"Except for the proposed curtailment of the power of parole boards and prison administrators, federal, state, and local court systems need not wait for legislative action to establish a system of presumptive sentences. Courts are administrative agencies in fact if not design; as Professor

Kenneth Culp Davis notes, 'Earlier and more diligent use of agencies' rule-making power is a far more promising means of confining excessive discretionary power than urging legislative bodies to enact more meaningful standards.' Since 'power to make rules always accompanies discretionary power and need not be separately conferred,' presumptive sentences for each crime, as well as the weights to be attached to prior convictions and to mitigating and aggravating circumstances, can be promulgated by courts in the form of administrative rules and guidelines. (See Kenneth Culp Davis, Discretionary Justice [Baton Rouge, La.: Louisiana State University Press, 1969], ch. 3, esp. pp. 56, 68.)"\*

Thus, at least two avenues are open to arriving at implementation of a presumptive sentencing system. Of the two, the latter - court promulgated administrative rules and guidelines - presents a number of advantages over legislative enactment.

It provides the ability to experiment on the utility of presumptive sentencing in connection with a limited number of crimes without encountering the difficulties inherent in drafting, introducing and gaining passage of new legislation. Moreover, if the system develops unforeseen problems it can be revised or abandoned altogether in a much easier fashion than is required for statutory enactments.

Taking the Task Force's recommendations as a guide for legislative action, the following work would be required before a presumptive sentencing system could be enacted.

- 1) Substantive crimes would have to be broken down

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\*Id., p. 20. (The language is contained in a comment to the text by Mr. Charles Silberman, a New York author and member of the Task Force.)

into subcategories which reflected degrees of severity. In part, we are engaged in this process already in our Code revision work. It should be noted, however, that the Commission has been resistant to a large number of subcategorizations and that, though a high degree of subdivisions may be useful to sentencing, it may well pose problems for the prosecution.

2) Terms of sentence for each subcategory of crime would have to be established for the presumptive sentence and a formula developed for dealing with repeaters and aggravating and mitigating circumstances.

These terms and their accompanying formulae could be developed through the process of group discussion and legislative compromise. Or, they could be arrived at by the process of research. Given the significance of the end product to the administration of justice, the latter seems to be the preferred course of action.

An a priori sentencing model could be constructed by random sampling of all cases involving the crime in question over a period of time to determine what Alaska's judges have given the average first time offender convicted for that crime. A similar process would be used for second, third, etc. offenders. The results of this research would provide "real" sentencing parameters within which questions related to presumptive sentences could be addressed. This research would

tend to indicate why the Task Force calls for a continuing process of review. Changes in community attitude and social conditions have a good deal to do with actual sentencing practices.

3) The same research is required on issues of mitigation and aggravation. Exhaustive "laundry" lists could be developed based on the experience of practitioner recollections, or case files could be surveyed to develop real lists of typical aggravating and mitigating circumstances which recur with some frequency in Alaska's environment.

The research involved in items (2) and (3), above, would require considerable time and effort, but it may be essential in a system where fairness is to be first subject to mechanical screening.

## SENTENCING STANDARDS IN ALASKA

(NOTE: The material which follows has been excerpted from an article written by Supreme Court Justice Robert C. Erwin [entitled: "Five Years of Sentence Review in Alaska"], which appeared in 5 U.C.L.A.-Alaska L. Rev. 1 (1975).)

The Supreme Court has defined four overreaching goals of sentence review:

"(i) to correct the sentence which is excessive in length, having regard to the nature of the offense, the character of the offender, and the protection of the public interest;

(ii) to facilitate the rehabilitation of the offender by affording him an opportunity to assert grievances he may have regarding his sentence;

(iii) to promote respect for law by correcting abuses of the sentencing power and by increasing the fairness of the sentencing process; and

(iv) to promote the development and application of criteria for sentencing which are both rational and just.

In addition, the court specified objectives which inhere in the Alaska Constitution's mandate that "[p]enal administration shall be based on the principle of reformation and upon the need for protecting the public":

Within the ambit of this constitutional phraseology are found the objectives of rehabilitation of the offender into a non-criminal member of society, isolation of the offender from society to prevent criminal conduct during the period of confinement, deterrence of the offender himself after his release from confinement or other penological treatment, as well as deterrence to other members of the community who might possess tendencies toward criminal conduct similar to that of the offender, and community condemnation of the individual offender, or in other words, reaffirmation of societal norms for the purpose of maintaining respect for the norms themselves."<sup>1</sup>

After reviewing a number of sentence appeal cases involving homicides and other crimes against people, Justice Erwin notes:

"These cases suggest that in the court's view the violent criminal conduct which causes injury to an innocent victim

<sup>1</sup> Erwin, "Five Years of Sentence Review," 5 U.C.L.A.-Alaska L. Rev. 1, 2 (1975); citing State v. Chaney, 477 P2d 441 (Alaska 1970). (Footnotes omitted.)

should be dealt with firmly, and that the protection of society and the affirmation of societal norms should be primary criteria for sentencing in this area. Such a view was confirmed in the case of Ames v. State in which the Alaska Supreme Court specifically stated:

This court has previously expressed the view that violent crimes involving physical injury to innocent people are to be regarded as our most serious offenses and are not to be treated lightly. . . ."2

Justice Erwin then addressed sentencing of drug offenders. He noted that in Waters v. State<sup>3</sup> the Supreme Court, for purposes of analysis, divided drug offenses into four degrees of culpability.

1. Smuggling or sale of large quantities of narcotics or possession of large quantities for sale.
2. Smuggling or sale of small quantities of narcotics or possession of small quantities for sale.
3. Possession of narcotics without intent to sell.
4. Marijuana offenses.

The court reminded the trial courts that these categories are important factors in the determination of the sentence:

We think these categories are relevant in sentencing of drug offenders. From the record it seems that appellant is neither a titan of the narcotics business nor a mere user; he seems to be an occasional retailer. In sentencing it should be remembered that the maximum sentence for a particular offense expresses a legislative judgment about how the worst offender within a class designated by the legislature should be treated. Here there is an absence of foundation for characterization of the appellant as the worst type of drug offender."<sup>4</sup>

Continuing his review of sentencing drug offenders, Justice Erwin observed that:

"The Waters case may be read as standing for three basic propositions. First, in a drug case, it is appropriate for the court on review to undertake a somewhat thorough canvass of the background, age, and particular circumstances of the defendant;

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<sup>2</sup> Erwin, supra. at 7, (footnotes omitted).

<sup>3</sup> 483 P2d 199 (Alaska 1971).

<sup>4</sup> Erwin, supra. at 89, (footnote omitted).

these considerations loom larger than in the areas of violent crime discussed above. Secondly, incarceration for a substantial period for a single violation will generally be inappropriate, unless the offender falls squarely within the worst category, e.g., a large-scale wholesaler. Finally, a course of drug related criminal conduct, as evidenced by other convictions, may aggravate the seriousness of the drug charge itself."<sup>5</sup>

Crimes involving property were also considered by Justice Erwin. With respect to this group he made the following observations:

"A substantial number of sentence appeal cases have arisen in the area of crimes involving property. These are roughly divisible for purposes of analysis into crimes of stealth, such as burglary, larceny or forgery, and crimes in which weapons are employed, such as robbery and perhaps arson.

A review of these cases indicates that age, background, and previous criminal history play a more significant part in determining the proper sentence than in those cases in which physical injury to the victim is involved. In this area the court has referred to the standards of the American Bar Association, in stating the sentences in excess of five years should be restricted to those cases clearly appropriate by virtue of background."<sup>6</sup>

\* \* \*

"Robbery involves somewhat different considerations, given its higher potential for injury. The court has affirmed substantial sentences where violence has actually occurred or where life has been endangered, or where prior convictions indicate that "less stern measures have proven unsuccessful." Nonetheless, the opinions evidence a willingness to take a hard look at the age, background and psychiatric profile of the individual offender, and it cannot be said that the court considers the possibility of sentence relief to be automatically foreclosed in the robbery area. However, it would appear appropriate to take into consideration the potential injury to the victim in arriving at a proper sentence. Certainly, the use of weapons aggravates the nature of the crime."<sup>7</sup>

Before concluding his review of sentence appeals Justice Erwin dealt with one other class of offenders worthy of some attention: repeat offenders. As to their sentencing he observed:

"One further special sentencing problem, which has been mentioned in other sections but which may deserve scrutiny in

<sup>5</sup> Id., pp. 9, 10.

<sup>6</sup> Id., p. 12 (footnote omitted).

<sup>7</sup> Id., p. 13 (footnote omitted).

isolation, is that of the repeated offender. In a number of per curiam opinions the court summarily approved long-term sentences for recidivists, evidencing a recognition that the incidence of repeated offenses greatly enhances the likelihood of continued antisocial behavior and the concomitant need to protect society therefrom."<sup>8</sup>

Justice Erwin's concluding remarks merit serious consideration and are presented hereafter in toto:

"Given the small number of sentences reversed as excessive over the past five years, can it be said that sentence appeals in Alaska have been a waste of time for the court or an exercise in futility for defendants? The answer must surely be no. A brief review of the expectations enunciated in Chaney provides a standard by which to judge success or failure.

"At the heart of sentence appeal is a developed commitment to justice for the offender, and thus the correction of an excessive sentence in a particular case. A re-reading of those cases in which relief has been granted leaves one with a sense that the Alaska Supreme Court was on solid ground, and confirms that a dispassionate appellate perspective is required. Perhaps some cases have been presented without sufficiently thoughtful examination of the defendant's background, his value to our society or the presence of mitigating circumstances (or at least without sufficient articulation of those factors); the supreme court, like all courts, must take care that classifications devised to stimulate thought do not curtail it. On the other hand, it must be remembered that, as a practical matter, the trial court is the principal repository of justice in a criminal case. The "clearly mistaken" standard assures that if the supreme court errs, it will err in favor of the trial court's discretion. Given the inherent limitations of appellate review, no other course is feasible.

"The other side of the coin of justice to the offender is justice to the community. Three times the court has disapproved lenient sentences, expressing a sense of outrage toward the gratuitous violence shown by the record. Many times it has affirmed lengthy sentences which reflect the trial judge's willingness to be severe if necessary. Early criticisms that judicial initiative would be stifled and that judges leery of reversal would seek the apparent safety of middle range sentences, have not come true. Thus it does not appear that the community has been ill-served by sentence appeal due to half-hearted vindications of societal norms.

"Finally, has sentence appeal promoted development of rational, just and humane sentencing criteria? The supreme court seems to have made progress in this area. Arguably some standards such as the rule against consideration of police "contacts" or unverified allegations, or the need for psychiatric data, could have been promulgated absent the sentence

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<sup>8</sup> Id., p. 18.

appeal legislation. Other doctrines - the notion that only hardcore defendants should be visited with maximum sentences, the adoption of the ABA's five year sentence guideline, the expression of the need for firmness to counter violence - clearly derive from the sentence review authority vested in the court by the legislature, and might not otherwise have been promulgated.

"Whether the rules developed in the cases are wise is a matter for individual judgment. In any event, the job of devising rational standards is far from complete, and will never be finished as long as community standards and perceptions continue to evolve. But the need for a central arbiter of those values in criminal cases, within the sentencing parameters set by the legislature, has been convincingly demonstrated. The cases show that manifest unfairness has led to reversal in a few cases; the appearance of unfairness has been alleviated in others; and, hopefully, unfairness has been prevented in numerous cases due to the guidance afforded by the Alaska Supreme Court's sentence appeal decisions."<sup>9</sup>

A cursory review of cases involving sentence appeals heard by the Supreme Court since Justice Erwin's article appeared revealed no significant departures from the standards enunciated in the article.

A comparison of the sentencing standards and guidelines established by the Alaska Supreme Court in the course of its sentence reviews with factors considered to be either aggravating or mitigating in nature under a presumptive sentencing scheme suggests a considerable amount of similarity. Thus, the legislature may wish to consider sentencing criteria set forth in Alaska case law should it decide to pursue a presumptive sentencing bill.

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<sup>9</sup> Id., pp. 20, 21.

NOTE: This is a heavily edited version of a memorandum written by Professor Jerold Israel of the University of Michigan Law School. Professor Israel has given permission to reproduce the memorandum. The editing was done by the Staff of the Criminal Justice Center and was designed to reduce the number of references to the various studies which were included in the original. In addition, appendices contained in the original have been omitted.

### AN INTRODUCTION TO BASIC SENTENCING ISSUES

This memorandum discusses a series of proposals, advanced by generally acknowledged "experts," concerning the reform of the laws governing sentencing. Among the proposals considered are those advanced by the following groups, whose titles are too long to bear repeating in full throughout the text: American Bar Association (A.B.A. Standards), the National Counsel on Crime and Delinquency (Model Sentencing Act), the American Law Institute (Model Penal Code), the 1967 President's Commission on Law Enforcement and Administration of Justice (President's Commission), the 1973 National Advisory Commission on Criminal Justice Standards and Goals (N.A.C.), the National Commission on Reform of Federal Criminal Laws, Working Paper Report by Peter Low (Low Study), and the Twentieth Century Fund: Task Force Report on Criminal Sentencing (20th Century). The memorandum is devoted to proposals relating to the use and allocation of sentencing authority rather than to procedure utilized in exercising that authority.

## LIMITED GRADES OF CRIMES

First, it is recommended that the range of available sentences be reduced to several set categories, typically classified by letter (e.g., class A felony, class B felony, class C felony, etc.). The advantages of this approach, adopted in all of the recent codes modeled after the Model Penal Code, are noted in the Low study:

"There is a consensus among recent Code Reform efforts that the best way to avoid inconsistencies of penalty structure . . . is to systematize the sentencing provisions in a separate part of the Code by the use of sentencing categories which are intended to represent the entire spectrum of punishment that is to be available for crime. Such an approach has the effect of creating an internally consistent, carefully thought-out penalty structure which not only will assist the rationalization of penalties provided for presently existing offenses, but which also will help to assure that new offenses can be integrated into the existing structure in a manner consistent with what is already on the books. . . .

## EMPHASIS UPON ALTERNATIVES TO IMPRISONMENT

Another generally accepted recommendation is that the emphasis in sentencing should be upon alternatives to imprisonment. That is, fines and community based treatments, like probation, where reasonably applicable, should be preferred to imprisonment. In support of restricting the

use of imprisonments, Professor Norval Morris, in The Future of Imprisonment, stresses that "parsimony in the use of imprisonment" follows from the basic moral and utilitarian functions of imprisonment:

"The least restrictive--least punitive--sanction necessary to achieve defined social purposes should be chosen. . . . [Accordingly,] a presumption in favor of punishment less severe than imprisonment pervades all recent scholarship and most legislative reforms. This principle is utilitarian and humanitarian; its justification is somewhat obvious since any punitive suffering beyond societal need is, in this context, what defines cruelty. . . . The draftsmen of the American Law Institute's Model Penal Code sought to capture this principle of parsimony in imprisonment in the phraseology of that code's main article on sentencing. Section 7.01 is entitled 'Criteria for Withholding Sentence of Imprisonment . . . ' and the section directs the court to order other punishments unless 'imprisonment is necessary for protection of the public.'"

#### MANDATORY IMPRISONMENT

Some experts argue that guidelines, such as those suggested by the Model Penal Code or Professor Morris, are inadequate because they still permit too much judicial leeway. What is needed, they argue, is greater certainty of imprisonment for serious crimes. The best approach here, they argue, is requiring imprisonment for certain crimes. In some instances,

the proposals do not require that the imprisonment be for any specified term beyond the minimum sentence that is administratively feasible in a particular jurisdiction (ordinarily one year). In other proposals, it is suggested that there should be a mandatory minimum of a specified period (e.g., 2, 3, or 4 years). This approach was recently supported by President Ford in his crime message:

"Imprisonment too seldom follows conviction for a felony. In the 1960's crime rates went higher, but the number of criminals in prison, state and federal, actually went down. \* \* \* There should be no doubt in the minds of those who commit violent crimes -- especially crimes involving harm to others -- that they will be sent to prison if convicted under legal processes that are fair, prompt and certain."

Consider also the following comments of Professor James Q. Wilson in Thinking About Crime:

"[O]ne way of defining a good sentence is to say it is that disposition that minimizes the chance of a given offender's repeating his crime. Under that definition, we would not only expect but want disparities in sentences -- one armed robber getting five years in prison and another getting probation -- provided only that we had good reason to believe that each sentence was appropriate to each criminal's prospects for rehabilitation. On the other hand, if we believe that a good sentence is one which deters others from committing a crime, then we might wish to impose the same penalty on persons with very different prospects for rehabilitation, and to make that penalty sufficiently severe to discourage potential criminals, especially those who believe they might be regarded as good bets for rehabilitative -- which is to say, lenient -- treatment."

Compare, however, the following comments in mandatory minimums in the Low study:

"Two related arguments are typically advanced in support of legislatively mandated sentences. The first is that a mandatory sentence is necessary in some instances to assure that the courts will not deal too leniently with a particular offender. The second is that the certainty of substantial punishment for the violation of a particular statute will act as a significant deterrent to the commission of that offense.

"Neither argument, however, is persuasive. In the first place, there is clear evidence as a practical matter that the system does not function as the arguments would envisage. As is explored in part I of this memorandum, there is no certainty of punishment for Federal narcotics offenders [notice the standing mandatory sentences], nor are the courts prevented from dealing leniently with an offender if that is their desire.

"There are affirmative disadvantages to such sentences as well. In some instances, a mandatory sentence results, as a practical matter, in a vesting of sentencing authority in the invisible and uncontrollable discretion of the prosecutor, perhaps the least desirable place for such authority to repose. There are always alternative offenses which could be charged. . . .

Opponents of mandatory sentencing provisions have raised, in addition to the arguments noted in the Low study, the question as to whether the "taxpayers [r]eally are willing to bear the momentary costs of a mandatory sentencing program"? It is noted that the prisons currently are almost at capacity, and considerable costs would be entailed in building new prisons. It has been suggested that the public must be

willing to commit "substantial additional resources for prisons, courts and prosecutors -- in many states perhaps even doubling or tripling the capacity of the criminal-justice system -- [or such] sentencing reforms (mandatory minimums) will be a disaster, if not a joke. (Wall Street Journal, 624, 1976).

DETERMINING THE LENGTH OF SENTENCE:  
INDETERMINATE SENTENCE

The nature of indeterminate sentencing

Prison sentences for felony offenses typically are of the "indeterminate" variety. That is, there is a significant gap between the maximum sentence that may be served and the minimum that must be served. Thus, a person will be sentenced to imprisonment for a term of from one-to-five or three-to-ten years. Even life sentences often are indeterminate because state law will provide that a "lifer" may be paroled after serving a specified sentence (e.g., 10 years). (This does not apply to "mandatory life sentences," usually reserved for homicide).

The maximum sentence that may be imposed always is established by statute. In some jurisdictions, the judge may set a outer-limit for the indeterminate sentence that is less than that allowed by statute. In others, the maximum set by statute applies as the outer-limit in all cases. Those favoring automatic application for the statutory maximum in all cases argue that there is no way a judge can be certain in advance that the progress of the prisoner will justify his release at an earlier point than the maximum authorized by law. Those favoring granting the judge discretion to reduce the maximum argue that the judge may find that the crime committed, under the facts of the case, does not justify the full range of the sentence considered by the legislature, which must set the maximum with the most serious variety of the particular crime in mind.

Ordinarily, minimum sentences are not prescribed by law but left to the judge's discretion -- except that the minimum cannot be so close to the maximum as to eliminate the concept of indeterminacy. Thus, typically the minimum is limited by law to no more than 1/3 or 1/2 of the maximum. Some judges frown upon imposing minimums

## OBJECTIONS TO INDETERMINATE SENTENCING

Disparity

A major objection to current indeterminate sentencing is that it grants the court far too much discretion, even if one accepts the value of a certain degree of indeterminacy. Consider, for example, a situation where the statute sets a maximum of 10 years and the court has the authority to reduce the maximum by half in the individual case and to set a minimum up to  $1/2$  of the maximum given in the case. One defendant convicted of the offense may be sentenced to 5-10 years, while the other may receive 1-5 years. Moreover, even where the maximum imposed must be that set by statute, and the discretionary minimum is limited to  $1/3$  of the maximum, there is a substantial difference, it is argued, between a sentence of 1 to 10 years and  $3-1/3$  to 10 years. While parole releases ordinarily coming in the range of two years where the board is not restricted by a lengthier minimum, the 2nd defendant may serve almost twice as long as the first.

## LENGTH OF SENTENCE

Some persons, though accepting the concept of indeterminate sentences generally argued that the quest for indeterminacy does not justify the high maximum sentences authorized under typical American statutes. They argue that maximum terms should be limited to a shorter period, perhaps five years, with longer terms provided only for especially dangerous offenders through extended term sentencing provisions. The rationale supporting this proposal is noted in the N.A.C. report, which recommends that "state penal code revisions should include a provision that the maximum sentence for any offender not specifically found to represent a substantial danger to others should not exceed five years for felonies other than murder." The study report notes:

"It is well-documented and almost universally recognized that the sentences imposed in the United States are the highest in the western world. This results from a number of factors including the high maximum sentences authorized by statutory provisions. To be assured that the very dangerous offender is incapacitated, legislatures in effect have increased the possible maximum sentence for all offenders. This dragnet approach often results in imposition of a high maximum sentence on persons for whom it is patently excessive. The wide flexibility exacerbates the disparities in sentencing that seriously handicap correctional programs.

"The President's Commission . . . reported in 1967 that more than one-half of all persons confined in state prisons in 1960 had been sentenced to maximum terms of at least ten years. But of those released in that year the average length of time actually served in confinement was less than two years, and only 8.7% had actually served five years or more.<sup>11</sup> Lowering the authorized maximum term will not unduly restrict the court's discretion as it affects the length of time actually served in prisons. It will, however, reduce the excessively long sentences served by some offenders for whom such sentences are inappropriate. It also will diminish disparate treatment of similarly situated offenders."

[Professor Israel concluded his discussion of basic sentencing issues with a discussion of presumptive sentencing. Because a separate memorandum from the Center has addressed that issue, it has been omitted herein.]

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<sup>11</sup> A subsequent study, showing sentence and actual time served by first releases from state correctional institutions in 1970, was consistent. Thus, in most of the jurisdictions examined, more than 50% of the persons sentenced received terms in excess of 5 years, with over 90% actually serving less than 5 years. In Tennessee, for example, 62% were sentenced to terms of 5 years or less, 20% to terms of 10 years or less and 18% to terms in excess of 10 years. Actual time spent was less than 5 years for 90%, less than 10 years for an additional 8-1/2%, and more than ten years for only 1-1/2%. Only one of the jurisdictions cited in the study had more than 5% serving in excess of 10 years.



UNIVERSITY OF ALASKA  
CRIMINAL JUSTICE CENTER  
3211 PROVIDENCE AVENUE  
ANCHORAGE, ALASKA 99504

February 18, 1977

Dear Representative:

As you are undoubtedly aware, one of the more significant issues facing this session of the legislature relates to sentencing reform proposals. One of those proposals, known as presumptive sentencing, has already been introduced in the House.

Enclosed you will find a copy of a report dealing with presumptive sentencing which was prepared last year for the Criminal Law Revision Subcommittee. The report digests Fair and Certain Punishment, a study conducted by the Twentieth Century Fund which developed the concept of presumptive sentencing and is considered the definitive word on the subject. Particular attention should be paid to pages 3-5 of the enclosed report which provide a summary of legislative responsibilities related to presumptive sentencing which were recommended by the Twentieth Century Fund.

The enclosed report also suggested a number of areas for further research which would be required prior to active legislative consideration of presumptive sentencing (pp. 6-8). Research conducted by the Judicial Council during the past six months should provide some answers to the issues raised in the report.

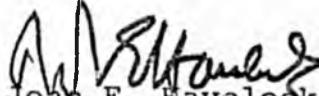
Also enclosed is a report which summarizes sentencing standards established by the Alaska Supreme Court as a result of sentence appeals heard by it under AS 12.55.120.

A third enclosure contains excerpts from an unpublished memorandum written by Professor Jerry Israel of the University of Michigan Law School entitled: "An Introduction to Basic Sentencing Issues".

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February 18, 1977  
Page 2

I hope that you will find the enclosed reports both informative and helpful to you at the time that this issue comes before the legislature. If the Center can be of further assistance to you on this issue, please feel free to contact Peter S. Ring.

Sincerely,



John E. Havelock  
Director

sl

Enclosures

3/31/77

~~CS 677~~

~~HB~~

HB 297

Bud Carpenter.

Testimony  
against HB 297

do not do in a piece real concept

compatibility w/ Criminal Code

homicide definition.

in Criminal Code.

2<sup>nd</sup> degree murder

HB 297  
~~homicide~~

mayhem presently. HB 297

4 levels of assault in Criminal Code.

forcible rape.

HB 297

4 levels of sexual assault. Crim Code

Abolition of plea bargaining.

adjusted under HB 297

effect is not fully known at this  
time

3/30/77

Professor Clark referred to  
study on plea bargaining still  
in progress

thirdly - likely increase litigation  
speculation

meas of bill in

constitutionality -  
would be raised in courts

Class A

Class B

raised by aggravated violence  
& questions

12.55.035(d) - Escape clause

assault - not defined in bill

Clark →

study ~~\_\_\_\_\_~~

Question input to Presumptive Sentences  
from narrow representatives Judicial Committee  
& AG -  
preferable to use Criminal Code - broader base

3/30/77

~~\_\_\_\_\_~~

HB 297 =

will it dovetail w/ Criminal Code?

dispute:

==

3 judge sentence appeal board

==

Commissioner Burton

in favor of HB 297

all law enforcement people  
he knows support bill & concept

== Fiscal Note:

67

222  
85  

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1110  
1776  

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1887 6

Fiscal Notes:

project 41% increase in days  
saved for ~~ADW~~ ADW.

# TELEGRAM

15203 KETCHIKAN ALASKA 154 03-22 144P PST

PMS HONORABLE TERRY GARDNER

JUN

AKA ALASKA COMMUNICATIONS, INC.

PHONE: 886-6440

KETCHIKAN ALASKA 99701

1977 MAR 22 PM 2 13

DEAR TERRY; AS SECRETARY OF THE KETCHIKAN BAR ASSOCIATION,  
I'VE BEEN AUTHORIZED TO GIVE YOU OUR GROUPS FEELINGS WITH  
REGARD TO THE PRESUMPTIVE SENTENCING BILL. WE FEEL THAT THE  
BILL IS PREMATURE IN THAT NO ONE HAS REALLY HAD THE OPPORTUNITY  
TO PROPERLY ANALYZE ITS VARIOUS RAMIFICATIONS AND THE LENGTH  
OF SENTENCES INVOLVED. IN OTHER WORDS, IT SHOULD NOT BE BROUGHT  
OUT THIS SESSION - IT SHOULD WAIT UNTIL NEXT YEAR. THIS OPINION  
HAS NOTHING TO DO WITH THE MERITS OF THE PROPOSAL BUT MERELY  
ITS TIMELINESS. SECONDLY, IF IN FACT SOME BILL MUST COME OUT,  
WE WOULD SUGGEST THAT A MINIMUM PERIOD OF ONE YEAR BE ALLOWED  
BEFORE ITS EFFECTIVE DATE. THIS WOULD GIVE THE COURTS AND BAR  
TIME TO PREPARE AND PUT FORTH ANY AMENDMENTS THAT MIGHT BE  
NECESSARY. IF THE KETCHIKAN BAR CAN FURNISH YOU ANY INFORMATION  
OR BE OF ANY HELP WITH REGARD TO THIS, PLEASE LET US KNOW.

CLIFFORD H SMITH, SECRETARY, KETCHIKAN BAR ASSOCIATION

CLASS A

	<u>Second Degree Murder</u>	<u>Manslaughter</u>	<u>Rape</u>	<u>Robbery</u>	<u>Kidnapping</u>	<u>Shooting with intent to kill, wound or maim</u>	<u>Assault with intent to kill, rape, or rob</u>	<u>Assault with a Dangerous weapon</u>	<u>Burqlary in a Dwelling (occupied)</u>	<u>Total</u>
Number of convictions 1974-1976	8	18	23	60	3	6	10	78	16	(222) <del>185</del> = 188
% of total Class A Felony Convictions	3.6%	8.1%	10.4%	27%	1.4%	2.7%	4.5%	35.1%	7.2%	100%
Mean Sentence imposed overall (months)	A	66.8	95.4	57.6	A	53.1	48.3	15.4	18	43.3
Mean Active sentences imposed <sup>2</sup> (months)	A	75.1	95.4	68.1	A	74.4	53.7	29.5	26.2	57
Number and percentage of cases receiving probation	0	2 (11%)	0	9 (15%)	0	2 (29%)	1 (10%)	26 (33%)	5 (31%)	45 (20%)
<u>ACTIVE TIME</u>										
1-6 months	0	1 (6%)	1 (4%)	4 (7%)	0	0	4 (40%)	24 (31%)	1 (6%)	35 (20%) B
7-12 months	0	3 (17%)	4 (17%)	4 (7%)	0	0	1 (10%)	6 (8%)	3 (19%)	21 (12%) B
13-24 months	0	1 (6%)	1 (4%)	7 (12%)	0	0	0	7 (9%)	4 (25%)	20 (11.3%) B
25-60 months	0	3 (17%)	3 (13%)	18 (30%)	0	2 (29%)	2 (20%)	12 (15%)	3 (19%)	43 (24.3%) B
Over 100 months	8 (100%)	8 (44%)	14 (61%)	18 (30%)	3 (100%)	3 (43%)	2 (20%)	3 (4%)	0	59 (33%) B
Highest Sentence (Months)	Life	180	360	180	Life	120	180	120	60	

1. Including probation averaged in as 0 Time
2. Not including sentences of 0 time

A. mean not computed because some sentences were life imprisonment  
 B. of sentences imposing active time.

PROPOSED AMENDMENTS TO SB 206 AND HB 297

- p. 1, line 23: after "sentence" delete all material and insert the following "which the offender deserves, considering the following:"
- p. 1, line 24: delete all material
- p. 1, line 27: delete "nature" and insert "circumstances"
- p. 1, line 29: between "the" and "isolation" insert "need for"
- p. 2, line 9 and 10: delete all material
- p. 2, line 11: delete "(c)" and insert "(b)"
- p. 2, line 11: delete "further"
- p. 2, line 17: between "(a)" and "In" insert:  
"Except as provided in sec. 35 of this chapter,"
- p. 3, line 9: delete all material and insert "(1) the offender deserves to be imprisoned considering the"
- p. 3, line 12: *line 11: after and "imprisonment" (after) equitable considering sentence*  
after "offenders" insert ",,"
- p. 3, line 12: delete "due"
- p. 3, line 13: after ";" insert "or"
- p. 3, line 14: delete "the term of"
- p. 3, line 15: delete ";" and insert "."
- p. 3, lines 16-18: delete all material
- p. 4, line 5: delete all material and insert "aggravated violence against a person."
- p. 5, line 20: delete "will" and insert "may"
- p. 6, line 18: delete "any other felony," and insert "more than one felony"
- p. 7, line 3: delete "must" and insert "shall"
- p. 7, line 18: delete "must" and insert "shall"
- p. 7, line 21: delete "must" and insert "shall"
- p. 7, line 27: delete "must" and insert "shall"

- p. 8, line 10: delete "must and insert "shall"
- p. 8, line 11: delete "due"
- p. 8, line 14: delete "must" and insert "shall"
- p. 9, line 2: delete "or"
- p. 9, between lines 5 and 6: insert the following:
- "(8) the defendant was on release for another felony charge under AS 12.30.020 or 040; or
- (9) the defendant was on probation, parole or community supervision for a prior felony conviction."
- p. 9, line 6: delete "must" and insert "shall"
- p. 9, line 23: delete "or"
- p. 9, lines 24-25: delete all material and insert the following:
- "(7) the defendant does not have a criminal history of prior convictions other than for minor traffic offenses; or  
*Civil Citation...*
- (8) imposition of the presumptive term would cause great hardship to persons dependant on the defendant for support, which may result in the responsibility for the support passing to the state."
- p. 10, line 3: delete "must" and insert "shall"
- p. 10, line 6: delete "must" and insert "shall"
- p. 10, line 7: delete "must" and insert "shall"
- p. 10, line 14: delete "will" and insert "may"
- p. 11, line 15: delete "members" and insert "of the judges"
- p. 11, line 16: delete "." and insert ";
- p. 11, line 17: delete "superior court"
- p. 12, line 16: delete "parole" and insert "community supervision"
- p. 12, line 17: after "deduction" insert ", but in no event for more than 18 months,"
- p. 12, line 17: delete "rules and"
- p. 12, line 18: delete "his parole officer" and insert "the probation/parole officer."

p. 12, line 22: after ",", insert "or imprisoned for a violation of probation, parole or community supervision,"

p. 12, line 27: delete "any one subsequent" and insert "an"

p. 12, line 28: after "time" insert "not to exceed 30 days"

p. 13, lines 16-19: delete all material and insert the following:

\* Sec. 7. EXISTING REHABILITATIVE PROGRAMS. The Alaska Division of Corrections shall examine existing and alternative rehabilitation programs to determine how the constitutional principle of reformation may best be carried out within the context of the presumptive sentencing provisions of this Act, and annually report their findings and recommendations under this section to the legislature."

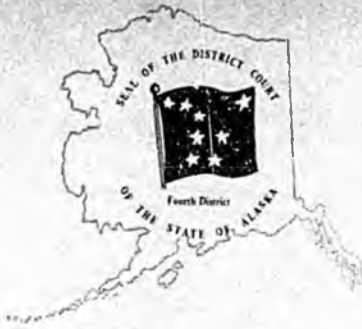
p. 14, lines 2-4: delete all material and insert the following:

"(b) The Alaska Judicial Council shall collect and analyze data relating to existing sentencing practices in the state, the impact of legislative enactments affecting sentencing, and trends in sentencing practices in other jurisdictions. The council shall periodically distribute the data and analyses to the legislature, the court system, and other affected or interested agencies.

HB

302

*Members files*



District Court

State of Alaska

FOURTH JUDICIAL DISTRICT

604 BARNETTE STREET

FAIRBANKS, ALASKA

99701

CHAMBERS OF  
MARY ALICE MILLER, JUDGE

April 12, 1977

Honorable Steve Cowper, Representative  
House of Representatives  
Pouch V  
Juneau, Alaska 99811

Re: HB 302 - prohibiting attorneys in small claims

Dear Steve:

Please do what you can to defeat this bill.

As the law now stands, the quasi-experts in the collection field are restrained somewhat by the requirement that they be represented by counsel. This bill would permit them to conduct their litigation without the ethical considerations which are binding on attorneys.

When the small claims rules were adopted, there was serious consideration given to forbidding collections agencies and corporations from using small claims procedures at all, because of the potential for abuse of the individual litigant who is unskilled in courtroom maneuvering. There were howls of outrage by the collection industry (all of whom, however, used attorneys except O'Neill) and Rule 15 is the compromise resulting from their howls.

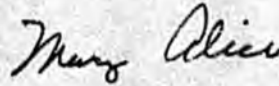
Please do not let Alaska law move backward towards

Honorable Steve Cowper  
April 12, 1977  
Page 2

abuse of the people for whom small claims procedures were  
designed.

Thanks.

Sincerely yours,



Mary Alice Miller  
District Court Judge

MAM/ek

HB

313

*Copies for committee*

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 26, 1977

SUBJECT: HB 313 and CS for HB 313 -- relating to the manager plan of municipal government

TO: Representative Terry Gardiner, Chairman House Judiciary Committee

FROM: Jack Chenoweth, Legislative Counsel

As you consider the bill and the committee substitute offered by the House Community and Regional Affairs Committee, please consider adding the following as an additional section:

Sec. . AS 29.23.170(b) is amended to read:

(b) The borough mayor may not veto [ACTIONS OF THE ASSEMBLY TAKEN UNDER SEC. 130(d) OF THIS CHAPTER OR] actions of the board of equalization and the board of adjustment.

The additional section is desirable insofar as both versions of the bill repeal AS 29.23.130(d), referred to in the bracketed language above, and the prohibition on veto by the mayor of a question involving adoption of the manager plan is re-emphasized in the amendment to AS 29.23.430, section 1 of both versions of the bill. I think we should try to delete references to repealed sections in bills within the same legislation whenever possible.

JC:lmk

cc: Representative Lisa Rudd

HB

354

delete section 4  
of HB 354



Senate did this  
3743 Ret Kucera (after 10)

Track down  
Senate version of this bill  
Find out what they did -

EXPLANATION OF HB 354 AND SB 249  
RELATING TO SUITS AGAINST LOCAL GOVERNMENTS

The Bill revises AS 09.65.070 in its entirety with nominal amendment of subsections (a) and (b), clarification of subsection (c), and primarily adding subsection (d) to amend the present statute which makes municipalities liable for all of their acts without regard to whether the act was discretionary or ministerial or was related to a governmental as opposed to a proprietary function. Definitional subsection (e) is added to clarify its application to municipalities and villages.

Subsection (d) prescribes limited exceptions to municipal liability. The municipality will not be subject to suit for acts falling within the exceptions. Employees and officers, while acting as such, will not be subject to suit for acts which are expected.

The first exception, which is in subparagraph (d) (a) (A)-(C) is similar, in part, to the language in SB 151 which would create an additional exception to the liability of the state pertaining to inspections. This exception is needed by the state's political subdivisions as well as the state itself. It would remove the threat of suit against the municipality

and its officers and employees for their failure to inspect property, their failure to discover violations or hazards and their failure to adequately abate violations and hazards discovered.

This exception is needed to limit the liability of municipalities which

1. adopt various safety and health codes (fire, building, health, sanitation, vehicle, etc.) which they are unable to vigorously enforce 100% of the time, or
2. conduct inspections for the purpose of enforcing safety and health codes, or
3. do not enforce safety and health codes

The alternative to having such statutory reassurance is the withdrawal of municipalities from the safety and health enforcement fields. The State of Alaska has already partially withdrawn from the fire inspection field as a result of the Adams and Jennings cases which imposed liability for failure to discover hazards and failure to abate discovered hazards. More injury will be done to the public by such a withdrawal than by granting the exception and allowing municipalities to proceed on a best efforts basis. The property owner, contractor, or other person responsible for an injury will be and remains liable to the injured person in either situation so the injured person is not without remedy under this exception.

The second exception, which appears in subparagraph (d)(2), confers to municipalities the same exception which the state already has under AS 09.50.250(1). Discretionary acts cover those acts which are essentially policy or planning in nature. They include such things as decisions to initiate or terminate a program, to stop maintenance of a road during the winter, to fund a program at a certain level, to concentrate on the enforcement of certain codes, etc. Municipalities do not now have the statutory protection the state has in this area and could be held liable for the exercise of their discretion in a situation where the state could not under identical circumstances. Municipalities, like the state, must be able to perform discretionary acts without fear of suit. This is not to say, however, that once the municipality has exercised its discretion to, say, build or maintain a road, it may build or maintain it in a negligent manner. It may not. Municipalities will, subject to the limitations of this section, remain liable for their ministerial torts.

The third exception, which appears in subparagraph (d)(3), covers an area in which municipalities are occasionally sued for damages. The threat of suit for damages should not play any part in the decision of a municipal official or body to issue, deny or suspend a permit or privilege of any nature. Also, this section would remove the possibility of liability

which is based on the theory that the issuance of a permit is a warranty that the plans, proposal, etc., upon which the permit was based met all applicable codes, ordinances, laws and constituted a reasonable method or proposal. The person responsible for the plans, etc., upon which the permit, etc is issued will still be liable for his work. This section would not limit the applicant's or permittee's right to go to court to force the issuance, grant, etc., if it is one to which the person is entitled.

The fourth exception, which appears in subparagraph (d)(4), is copied from the exception for the state which appears in AS 09.50.250(3) with the change here that the misrepresentation exception would be for only negligent misrepresentation, not all misrepresentation as in the case for the state. The municipality would be excepted from liability for the causes of action listed in the subparagraph. Officers and employees would be protected when the act complained of was done in the exercise of one of the actor's duties and was an act which was within his authority as an officer or employee. Thus, the zoning administrator could be held liable for falsely arresting someone while a policeman usually could not. The zoning administrator does not have the authority to arrest in the discharge of his duties so such an act would constitute an act outside his employment status, often known

in law as a frolic, and he would be personally liable. On the other hand, the policeman is not hired to administer the zoning code and could not, as a municipal official, make any statement to a citizen regarding the zoning of a particular parcel of land. The policeman would be personally liable for any misrepresentation in the course of making such a statement. The zoning administrator, and through him, the municipality would be liable for a misrepresentation if the misrepresentation was intentional. Again, this subparagraph extends to municipalities and its employees and officers most of what the state already has.

The fifth exception, which appears in subparagraph (d)(5), represents an application of the Good Samaritan principle to insulate the municipality from liability where it gratuitously responds to a need outside its limits. For example, a municipality could not be held liable for its acts in fighting a fire outside its limits. A municipality having no contractual duty to respond beyond its jurisdictional limits fears the consequences of liability and adverse insurance costs and is induced to abstain. It simply is not worth the added liability exposure. Yet, as with the inspection problem discussed above, even an occasional negligent response is more than likely far more beneficial than an across the board policy of non-response.

The sixth exception, which appears in subparagraph (d)(6), is needed for reasons which are basically the same as those relating to extra-territorial service exception

discussed immediately above. Commonly occurring examples are local police called to respond in the temporary absence of the Trooper, and mutual agreements respecting assistance at state airports.

In conclusion, municipal non-immunity will remain the rule. Judicially-recognized municipal liability respecting certain functions coupled with increasing difficulty in obtaining insurance to cover the risk compel local governments to re-examine and diminish the scope of their activities rather than suffer liability exposure and inability to respond in damages. This legislation is intended to afford limited liability with a view toward non-curtailement of certain traditional functions predicated on public policy favoring the municipalities to proceed on a best efforts basis.

Prepared and submitted by:

L.B. Jacobson, attorney for Petersburg, Kake, Hoonah, Skagway  
and Craig

Lee Sharp, attorney for Juneau

Ted Berns, assistant attorney for Anchorage

SB 249 am

4/5/97 Passed S

Probably just easier to deal with  
this bill rather than paddling HB 351  
too.

Introduced: 3/14/77  
Referred: Community & Regional  
and Judiciary

BY RAY, BUTROVICH, COLLETTA,  
FERGUSON, HOHMAN, KERTULA,  
MFLAND, SUMNER, ZIEGLER

1 IN THE SENATE

2 SENATE BILL NO. 249

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to suits against local governments;  
7 and providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA .

9 \* Section 1. AS 09.65.070(a) and (b) are amended to read:

10 (a) Except as provided in this section, an [AN] action may be  
11 maintained against a municipality [AN INCORPORATED BOROUGH, CITY, OR  
12 OTHER PUBLIC CORPORATION OF LIKE CHARACTER] in its corporate character  
13 and within the scope of its authority [, OR FOR AN INJURY TO THE RIGHTS  
14 OF THE PLAINTIFF ARISING FROM SOME ACT OR OMISSION OF THE UNIT OF LOCAL  
15 GOVERNMENT].

16 (b) A municipality [AN INCORPORATED BOROUGH, CITY OR OTHER POLITI-  
17 CAL SUBDIVISION] may not require a person to post bond as a condition to  
18 bringing a cause of action against it [THE INCORPORATED BOROUGH, CITY OR  
19 OTHER POLITICAL SUBDIVISION].

20 \* Sec. 2. AS 09.65.070(c) is repealed and re-enacted to read:

21 (c) No action may be maintained against an employee or member of a  
22 fire department operated and maintained by a municipality or village if  
23 the claim is an action for tort or breach of a contractual duty and is  
24 based upon the act or omission of the employee or member of the fire  
25 department in the execution of a function for which the department is  
26 established.

27 \* Sec. 3. AS 09.65.070 is amended by adding new subsections to read:

28 (d) No action for damages may be brought against a municipality or  
29 any of its agents, officers or employees if the claim

1 general law borough or city of any class, a unified municipality estab-  
2 lished under AS 29.68.240 - 29.68.440, or a municipality established by  
3 merger or consolidation under AS 29.68.030 - 29.68.110; the term in-  
4 cludes a public corporation established by a municipality;

5 (2) "village" means an unincorporated community where at  
6 least 25 people reside as a social unit.

7 \* Sec. 4. This Act applies to all legal actions filed after the effective  
8 date of this Act.

9 \*Sec. 5. This Act takes effect immediately in accordance with AS 01.10.-  
10 070(c).

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#

Municipality  
of  
Anchorage



POUCH 6-650  
ANCHORAGE, ALASKA 99502  
(907) 274-2525

GEORGE M. SULLIVAN,  
MAYOR

OFFICE OF THE MUNICIPAL ATTORNEY

A CASE FOR LIMITED  
MUNICIPAL TORT IMMUNITY IN ALASKA

Municipal tort immunity refers to the legal doctrine by which a state legislature, as a matter of public policy, has defined specific types of municipal activities for which municipalities may not be held liable for damages. At the outset, it is important to state that no one would argue for total immunity from suit for local governments in Alaska. If a municipal vehicle injures a pedestrian or if a city fails to correct a dangerous condition on publicly owned property the local government should be held liable to pay damages to injured parties. However, for many other activities undertaken by municipalities, it is less clear whether government should be under the threat of multi-million dollar damage judgments which could devastate the operation of both large and small municipalities in Alaska.

The case for limited municipal tort immunity in Alaska is perhaps best illustrated by the so-called "Good Samaritan" doctrine. As an example of this principle, consider a physician who, returning home from his office, comes upon a man lying severely injured at the side of the road. At early common law, the physician had no legal duty to stop and attempt to aid the injured man. Moreover, if the doctor did attempt to aid the victim and, because he did not have the necessary medicines, equipment, etc., accidentally caused some additional injury, the physician could find himself the defendant in a lawsuit brought by the very person he had attempted to aid.

To avoid the undesirable consequences described above, states began to offer statutory protection from lawsuits to physicians and other health care providers who voluntarily rendered aid to persons in need of medical attention. In Alaska, the Legislature has adopted AS 09.65.090 which provides that persons attempting to administer aid in certain emergency circumstances need not fear the threat of a lawsuit if, in the course of their efforts, an accident



occurs. The public policy supporting limited tort immunity for persons rendering emergency aid is the belief that it is important to encourage such voluntary actions as essentially a public service. This is to say that we, the people, want the assurance that physicians and other persons will voluntarily attempt to render aid to those in need and that we are willing to provide a limited measure of tort immunity to encourage such actions.

Municipal governments, in undertaking many of their activities, are often acting essentially as "good samaritans". No rule of law states that a community must provide, for example, a fire inspection program designed to reduce threats to the health and safety of its citizens. Municipalities do not conduct such programs for pecuniary gain or other financial benefit. Rather, the people have in many cases decided to voluntarily provide this service to individual property owners for the common good.

No one contends that municipal officers or employees are perfectly efficient or that mistakes and accidents in the operation of, for example, fire inspection programs will not occur. If the operation of local fire inspection programs is threatened by the possibility of huge damage judgments, the people, and in turn their elected legislators, are faced with circumstances similar to the "good samaritan" situation discussed above. The uncomfortable choice for many local governments in Alaska is between maintaining, for example, the best possible fire inspection program at the risk of devastating lawsuits should a mistake be made, and simply eliminating any inspection program at the risk of allowing serious health and safety hazards to exist in the community. Faced with this untenable situation, Alaskan municipalities are asking the Tenth Legislature to provide a limited measure of tort immunity to cover situations in which local governments voluntarily undertake programs designed to protect the health and safety of their citizens.

The danger that Alaska's local governments will be forced to discontinue or severely limit programs such as building code inspections, enforcement of housing codes, fire inspections, planning and zoning functions, and various public health programs is imminent. In all of the activities listed above, municipalities are, in essence, acting as volunteers or "good samaritans" by extending services to their citizens for the protection of the public health, safety and general welfare. In the case of fire inspection activities, recent decisions by the Alaska Supreme Court indicate that if a municipality undertakes an inspection program it may be held liable for (possibly) millions of dollars in damages in the event that a mistake is made. See,

for example, Adams v. State, 555 P.2d 235 (Alas. 1976), and City of Fairbanks v. Nordale Hotel, Inc., 555 P.2d 248 (Alas. 1976).

In response to these cases, some local governments in Alaska have already considered the possibility of discontinuing fire inspection activities. In addition, it appears that the reasoning advanced by the Supreme Court in the Adams and Nordale cases could be expanded to cover building, housing, and public health inspection programs and, perhaps, damages allegedly caused by the issuance of various permits which are later discovered to contain error. For example, the Supreme Court of Washington has upheld a \$2.8 million dollar judgment against the City of Seattle based on the allegedly negligent issuance of a building permit. See, Haslund v. City of Seattle, 547 P.2d 1221.

In conclusion, it is important to stress that the goal of local governments is not to leave injured parties without a remedy in the event of an accident. As noted above, the proposed legislation does not relieve municipalities from liability based on actions that are proprietary in nature such as the operation of municipal vehicles or the maintenance and operation of municipal property. In most other situations, a municipality will be only one of several possible defendants. For example, if a building in a municipality is destroyed by fire, the injured party may have an action against (1) the person or persons directly responsible for the blaze, (2) the person's employer (and his insurance company), and (3) possibly against the manufacturer of any materials and equipment which are discovered to have been negligently constructed or improperly installed. However, given the absence of any municipal immunity, any plaintiff's attorney will also join the municipality as a defendant if it can be alleged that there has been any failure to properly inspect or certify the building or equipment as part of a municipal fire inspection program.

By extending a limited degree of tort immunity to municipalities to cover activities such as fire inspection programs, the injured party in a situation such as the one described above is not left without a remedy. Rather, the burden of liability is merely shifted from municipalities to others who, in most cases, are more directly responsible for the accident. Viewed in another light, the choice for the individual property owner is to (1) look to his private insurance carrier or to other responsible parties, not including a municipality, in the event of, for example, a fire and be assured that he will have the benefit of a local fire inspection program or (2) risk the loss of local fire prevention/inspection services due to the threat of tort

liability. Faced with such a choice, municipalities in Alaska have turned to their state legislators to ask for limited tort immunity to ensure the continuation of essential local services, such as fire, building and health programs, at a cost which is within the reach of local government taxpayers.

TDB:kh

*Members files*



CITY OF VALDEZ

P. O. BOX 506  
PHONE: (907) 835-4313

ZIP CODE: 99686

March 25, 1977

Representative Terry Gardiner  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Subject: HB 354 and SB 249

Dear Representative Gardiner:

The subject bills provide tort liability protection for municipalities. We urge you to support these bills.

Because of two recent court decisions, i.e. the Gold Rush fire and Nordale Hotel fire, municipalities are now confronted with liability they never had before. As a result, the municipalities are confronted with two major problems. One, the cities are finding they can no longer obtain insurance; or, if they are fortunate enough to get insurance, the premium costs are prohibitive.

With the constant increase in the cost of providing even minimal services, the addition of this type of liability and its attendant costs is rapidly forcing many communities to the brink of bankruptcy.

When government becomes so expensive that no one can afford it, our whole system will break down. It is vital that municipalities be held responsible for only those acts which are willful, negligent or malicious.

Very truly yours,

Herbert W. Lehfeldt  
City Manager

HWL:ss

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

POUCH D - JUNEAU 99811

April 11, 1977

The Honorable Terry Gardiner  
Chairman, Judicial Committee  
State House Of Representatives  
Pouch V  
Juneau, Alaska 99811

Dear Mr. Gardiner:

In response to your letter of April 4, I am pleased to give you some observations concerning HB 354.

Unfortunately, I cannot predict what the cost saving impact would be to municipalities by reason of adoption of the bill. As you know, rates are predicated upon anticipated experience and it is quite fair to assume that a substantial reduction in liability exposure will result from the adoption of the bill and that it will have a substantially favorable impact on the rates charged municipalities for their liability coverage. However, I am not able to predict with precision the dollar value of the impact.

I think perhaps the more important effect of the adoption of the bill will be the availability of the coverage.

Currently, insurance carriers have expressed extreme reluctance in writing liability coverage for municipalities because of the varied kinds of exposures which this bill will exclude. By excluding these exposures, the carriers will then be able to provide general liability coverage that is not now being provided.

I believe that the bill is a very necessary adjunct to the proper functioning of our municipalities in this State and ought to be favorably considered by your committee.

Yours cordially,



Richard L. Block  
Director

RLB/wj/1/3

Members file



# Alaska Society of Professional Engineers

DONALD R. DENT JR. P.E.  
National Director  
4135 Hood Court  
Anchorage, Alaska 99503

Tel. (907) 277-8027  
(907) 272-5451

March 23, 1977

Representative Gardiner  
Chairman  
House Judiciary Committee  
Pouch V  
Juneau, Alaska 99811

Ref: HB 354, Act Relating to Suits Against Local Governments.

Dear Representative Gardiner:

Upon reading HB 354 Section 1, the intent appears to clean up the language of the existing statute.

Section 2 appears reasonable because of the emergency nature of action by Fire Departments.

Section 3 seems to be the crux of the whole act. It removes all courses of action which would be a cause of action granted under Section 1. Specific paragraphs, AS 9.65.070(d),(2),(3) and (4), are presently the basis for actions against a government entity. I'm not an attorney, but as I remember there is, under common law, a doctrine called Respondeat Superior, in which a "master" is liable for the torts of his "servants", if the servant is acting within the scope of his employment. Also under common law every person who commits a tort is personally liable to the individual whose person or property is injured or damaged by the wrongful act, and is not relieved of tort liability by establishment that the act was committed under the direction of someone else or in the course of employment by another. It appears that the paragraphs (d),(2),(3) and (4) are removing the Municipality and its employees from liability for any wrongful acts, literally, putting them above the law. Societies which have an extra - legal elite group of people or entities who can act wrongfully, with impunity, are usually termed Fascist. I can't believe that this is really what was intended when the Bill was introduced.

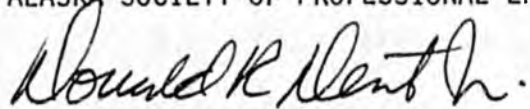
Representative Gardiner  
Juneau, Alaska  
March 23, 1977

Page 2

Everyone is bemoaning the fact that the bureaucracy at all levels of government is growing with seemingly no abatement. I believe that this Bill in its present form removes the last vestiges of containment and control at the local level. The rights of the citizenry of access to the courts for redress would be terminated. In Anchorage only one in ten municipal employees I know really thinks of themselves as public servants, certainly a minority in the massive municipal machine.

Very truly yours,

ALASKA SOCIETY OF PROFESSIONAL ENGINEERS



Donald R. Dent, Jr., P.E.  
National Director  
Legislative Chairman

DRD/ssm

3/31/77

Introduced: 3/15/77  
Referred: Judiciary

BY NAKAK, HAUGEN, DUNCAN,  
ELIASON, FREEMAN AND SNIDER

1 IN THE HOUSE

2 HOUSE BILL NO. 354

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to suits against local governments;  
7 and providing for an effective date."

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

9 \* Section 1. AS 09.65.070(a) and (b) are amended to read:

10 (a) Except as provided in this section, an [AN] action may be  
11 maintained against a municipality [AN INCORPORATED BOROUGH, CITY, OR  
12 OTHER PUBLIC CORPORATION OF LIKE CHARACTER] in its corporate character  
13 and within the scope of its authority [, OR FOR AN INJURY TO THE RIGHTS  
14 OF THE PLAINTIFF ARISING FROM SOME ACT OR OMISSION OF THE UNIT OF LOCAL  
15 GOVERNMENT].

16 (b) A municipality [AN INCORPORATED BOROUGH, CITY OR OTHER POLITI-  
17 CAL SUBDIVISION] may not require a person to post bond as a condition to  
18 bringing a cause of action against it [THE INCORPORATED BOROUGH, CITY OR  
19 OTHER POLITICAL SUBDIVISION].

20 \* Sec. 2. AS 09.65.070(c) is repealed and re-enacted to read:

21 (c) No action may be maintained against an employee or member of a  
22 fire department operated and maintained by a municipality or village if  
23 the claim is an action for tort or breach of a contractual duty and is  
24 based upon the act or omission of the employee or member of the fire  
25 department in the execution of a function for which the department is  
26 established.

27 \* Sec. 3. AS 09.65.070 is amended by adding new subsections to read:

28 (d) No action for damages may be brought against a municipality or  
29 any of its agents, officers or employees if the claim

*have knowledge or host-1-ability*  
*To acquire " and did not abate problem then liable.*  
HB 354

*Gunn*

1 (1) is based on a failure of the municipality, or its agents,  
2 officers, or employees, when the state is neither owner nor lessee of  
3 the property involved,

4 (A) to inspect property for a violation of any statute,  
5 regulation or ordinance, or a hazard to health or safety;

6 (B) to discover a violation of any statute, regulation,  
7 or ordinance, or a hazard to health or safety if an inspection of  
8 property is made; or

9 (C) to abate a violation of any statute, regulation or  
10 ordinance, or a hazard to health or safety discovered on property  
11 inspected;

12 (2) is based upon the exercise or performance or the failure  
13 to exercise or perform a discretionary function or duty by a munici-  
14 pality or its agents, officers, or employees, whether or not the dis-  
15 cretion involved is abused;

16 (3) is based upon the grant, issuance, refusal, suspension,  
17 delay or denial of a license, permit, appeal, approval, exception,  
18 variance, or other entitlement, or a rezoning;

19 (4) arises out of assault, battery, false imprisonment, false  
20 arrest, malicious prosecution, abuse of process, libel, slander, negli-  
21 gent misrepresentation, deceit or interference with contract rights;

22 (5) is based on the exercise or performance during the course  
23 of gratuitous extension of municipal services on an extraterritorial  
24 basis; or

25 (6) is based upon the exercise or performance of a duty or  
26 function upon the request of, or by the terms of an agreement or con-  
27 tract with, the state to meet emergency public safety requirements.

28 (e) In this section

29 (1) "municipality" means a home rule borough or city, a

*has been  
taken out of  
state  
version*

*state  
exemption  
language*

1 general law borough or city of any class, a unified municipality estab-  
2 lished under AS 29.68.240 - 29.68.440, or a municipality established by  
3 merger or consolidation under AS 29.68.030 - 29.68.110; the term in-  
4 cludes a public corporation established by a municipality;

5 (2) "village" means an unincorporated community where at  
6 least 25 people reside as a social unit.

7 \* Sec. 4. This Act applies to all legal actions filed after the effective  
8 date of this Act.

9 \* Sec. 5. This Act takes effect immediately in accordance with AS 01.10.-  
10 070(c).

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*Members files*



CITY OF VALDEZ

P. O. BOX 506  
PHONE: (907) 835-4313

ZIP CODE: 99686

March 25, 1977

Representative Terry Gardiner  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Subject: HB 354 and SB 249

Dear Representative Gardiner:

The subject bills provide tort liability protection for municipalities. We urge you to support these bills.

Because of two recent court decisions, i.e. the Gold Rush fire and Nordale Hotel fire, municipalities are now confronted with liability they never had before. As a result, the municipalities are confronted with two major problems. One, the cities are finding they can no longer obtain insurance; or, if they are fortunate enough to get insurance, the premium costs are prohibitive.

With the constant increase in the cost of providing even minimal services, the addition of this type of liability and its attendant costs is rapidly forcing many communities to the brink of bankruptcy.

When government becomes so expensive that no one can afford it, our whole system will break down. It is vital that municipalities be held responsible for only those acts which are willful, negligent or malicious.

Very truly yours,

*Herbert W. Lehfeldt*  
Herbert W. Lehfeldt  
City Manager

HWE:ss

M E M O R A N D U M

TO: File: Petersburg - attn: City Mgr.  
FROM: L.B. Jacobson LEBT  
DATE: March 4, 1977  
RE: City of Petersburg/Limited Liability Legislation

RELEVANT LITIGATION - during the last five years the City of Petersburg was actively involved in three judicial matters designated as a party defendant which would have been eliminated altogether by the legislative adoption of the proposed bill conferring limited liability to local governments. The first one was Bell vs. Petersburg and 3 arresting police officers and involved a suit for \$3,000, plus \$25,000 in punitive damages predicated on an allegedly false arrest and assault and battery of Mr. Bell who was picking up marijuana at the post office. Petersburg prevailed on summary judgment, but only after the expenditure of approximately \$2,500 in attorney's fees in defending the action. The next one was Rosi v. Petersburg General Hospital and involved an allegation of slander to the professional reputation of Dr. Peter Rosi by reason of the hospital board's failure to admit to practice at the local hospital. The case was settled out at \$5,500 plus attorney's fees in the approximate amount of \$2,000 incurred in defending the action. The last one was Musewski vs. Cornelius and the City of Petersburg, involving the City of Petersburg's alleged negligence in failing to enforce its local building inspection code when a building on tidelands' pilings collapsed. The case is currently in litigation and Petersburg has liability exposure in the amount of approximately \$10,000 and has expended approximately \$2,500 in its own attorney's fees defense costs to-date.

In the wake of the Adams and Jennings cases, the City of Petersburg will probably opt for repeal of its Uniform Building Code, plumbing code, and National Electrical Code rather than go to the expense of hiring at least one additional person to cover the inspection duties. The cost of such person would be in the magnitude of \$22,000 per year minimum with an estimated additional cost of approximately \$6,000 per year attributable to office space, inspection equipment, and clerical support.

What the City of Petersburg will do with respect to National Fire Prevention Code adopted by local ordinance remains to be seen. Since the City has a volunteer fire department with only one paid employee, a viable possibility

would be the discharge of the fire chief, donation of the fire equipment to the volunteer fire department and a simple annual contribution to the fire department scheduled as a matter of budget appropriation.

Because of the implications of the Adams and Jennings cases, the Petersburg City Council has resolved to discontinue its rendition of gratuitous fire protection service outside the City limits.

For the same reasons, the City of Petersburg has refused to sign a "Mutual Aid Agreement" proposed by the Alaska Division of Aviation which would, in part, require the City of Petersburg's personnel and equipment to respond to fires and other emergencies at the State-owned airport outside of the City limits.

LBJ:ss

M E M O R A N D U M

TO: File/Limited Liability for Municipalities

FROM: L.B. Jacobson

DATE: March 31, 1977

RE: Action in Other Communities

KAKE - instructed by legal counsel not to adopt fire prevention code, Uniform Building Code, National Plumbing Code, and National Electrical Code.

CRAIG - instructed by legal counsel to terminate enforcement of local fire prevention ordinance. Also instructed not to undertake courtesy Public Health Service fire inspection program under the auspices of the City, but the matter was partially resolved and the program revived on a basis limited to private residential dwellings by use of a waiver.

YAKUTAT-has no police department and doubtful if personnel will be hired for same under present circumstances. Repealed the local ordinance adopting the National Fire Prevention Code.

WRANGELL-began to implement a widespread condemnation program to abate dangerous structures in 1975 which program enjoyed only a limited degree of success and was rescinded altogether by reason of enforcement difficulties and uncertainties associated with the legal consequences for damages.

HOONAH- has fire prevention codes and building codes adopted by local ordinances, but they are not enforced.

SKAGWAY-has adopted housing, plumbing and electrical codes as well as fire prevention code by local ordinance but has spasmodic enforcement and, like other towns, cannot afford to staff with full-time qualified building inspector. Is presently in litigation over the issuance and revocation of a building permit where the damages are nominal and the relief sought is removal of a portion of a garage encroaching in the set-back, but attorney's fees are estimated at \$2,000. In Davis v. Skagway, the City suffered liability exposure in the amount of \$85,000 for slander and damage to the professional reputation of a superintendent fired during the second year of a three-year contract. City ended up paying for the third-year's salary, but primary issue was damage to reputation and it took an appeal to the Alaska Supreme Court to reverse the decision and well in excess of \$20,000 in attorney's fees were expended during the lengthy trial and protracted course of appeal.



# CITY OF CRAIG

P.O. Box 23

CRAIG, ALASKA 99921

Phone: 826-3232



## RESOLUTION NO. 77-8

WHEREAS, In light of recent Alaska Supreme Court decisions, municipalities will be liable for negligence respecting building code and fire safety standards if inspections are conducted, and

WHEREAS, The only realistic local alternative is for city government to not conduct inspections at all, and

WHEREAS, This would serve to perpetuate the growth of unsafe buildings in Alaskan communities, and

WHEREAS, Legislation has been proposed which would amend the Alaska statutes to grant cities a measure of immunity from liability in these areas,

THEREFORE, BE IT RESOLVED by the Council of the City of Craig that we hereby go on record as fully supporting said proposed legislation, and that we urge the Alaska State Legislature to take affirmative action towards its passage during this legislative session.

Adopted this 17th day of March, 1977.

Certified by: \_\_\_\_\_

Attested by: \_\_\_\_\_

Merrin L. Yode  
Mayor

Roy Thomas  
City Clerk

Kirk M. Thomas  
Councilperson

Elizabeth Dennis  
Councilperson

Walter H. Paul  
Councilperson

James H. Sprague  
Councilperson

~~Don~~  
~~the map~~

Teel Burns - Anchorage, AT  
Lee Sharp - JNU Attorney  
Jake Todobsen - local Attorney - Craig  
Sam Coxin  
Tom Koester

A. I. Nakak  
Teel Burns - AT Anchorage

Munc remain liable for prop. activities

Permissive - Build. codes  
Zoning

Munc. are peripherally responsible

Jacobsen

Target's Schauble case 1960

No insurance for liabilities available

Oct, 1976 Adams } Gold Rush  
Jennings } Nordale

If you undertake inspection A, ascertain all discor. beyond  
B Take all approp. actions  
to abate

Conno. - Minority Opinion

House Judiciary  
March 31, 1977

The meeting was called to order at 3:25 p.m. by Chairman, Gardiner. Members present were Gardiner, Miles, Eliason, Specking and Brown. Mr. Dankworth and Mrs. Rudd were absent..

HB 354 Suits against local governments

HB  
354

Rep. Al Nakak, sponsor for the bill, was here to speak briefly about the bill.

Ted Burns, Assistant Attorney for the Municipality of Anchorage, was here to testify and speak in support of the bill (except for Section 4). They feel that law suits should be filed against the parties most directly responsible for injuries, not against municipalities just because they neglected to make a fire-safety inspection, etc.

L.B. Jacobson, an attorney from the firm of Robertson, Managle, Eastaugh and Bradley was here. His firm helps represent such communities as Klawock, Craig and Petersburg. He came today because he feels strongly about this legislation and because Petersburg had asked that he come to speak in support of the bill.

Lee Sharp, Attorney for the City and Borough of Juneau was here to give general support to the bill (except for section 4).

Tom Koester, from the Dept. of Law, was here. He indicated that the question is "How much government is going to insure for private wrongs?" The legislature needs to decide what government can be liable for. The Dept. of Law would be in the position of feeling that the wrong-doer should pay... not the government that is in some way distantly related to whatever accident.

The meeting was adjourned at 4:55 p.m.

House Judiciary  
April 12, 1977

The meeting was called to order at 3:10 p.m. by Chairman, Gardiner. Members present were Gardiner, Miles, Eliason, and Dankworth. Mr. Speckingame late. Mr. Brown and Mrs. Rudd were absent.

HB 354 Suits against local governments  
SB 249am

HB  
354

SB  
249am

Jack Chenowith from LAA was here to explain what the Senate did to SB 249. Basically, they removed subsection 4. There was a general discussion about HB 354 and SB 249am, which are companion bills.

Mr. Eliason moved that SB 249am be moved out of committee. Since there was no objection, this was done.

HB 204 Children's Laws and Related Judicial Proceedings

HB  
204

Andy Brown from LAA was here to explain the changes made to HB 204 at the request of the committee. There were general questions and other suggestions and amendments were discussed and made.

Mr. Eliason moved that CSHB 204 as amended be moved out of committee. The motion carried and this was done.

HB 347 Liability for the destruction of property by minors

HB  
347

The committee took time to read and think over the committee substitute that had been drafted for HB 347.

Mr. Eliason moved that CSHB 347 be moved out of committee. There was no objection, so this was done.

The meeting was adjourned at 4:25 p.m.

BISS AND HOLMES

ATTORNEYS AT LAW  
AN ASSOCIATION OF PROFESSIONAL CORPORATIONS

BURTON C. BISS  
ROGER F. HOLMES

FIRST NATIONAL BUILDING  
425 G STREET  
ANCHORAGE, ALASKA 99501  
TELEPHONE (907) 277-8564

WASILLA OFFICE  
SR BOX 5111  
WASILLA, ALASKA 99687  
TELEPHONE (907) 376-5318

February 25, 1977

Mr. Don M. Berry  
Executive Director  
Alaska Municipal League  
204 North Franklin  
Juneau, AK 99811

Dear Don:

We have your letter and enclosures regarding proposed legislation relating to suits against local government. At the same time, we received a certified mail - return receipt requested letter from the State Fire Marshal "deferring" responsibilities for fire prevention inspections and enforcement of State Fire Safety regulations to the City of Palmer. For your more ready reference I am enclosing herewith a copy of Mr. Hendrie's letter and our reply.

The size of jury verdicts, and the ever-expanding areas of governmental liability which are being found by the Courts throughout the nation have created a situation where municipal government has become a target defendant. Palmer cannot afford all of the necessary insurance, even if it were available. Some type of curb on this raid on the taxpayers is absolutely essential. My only feeling is that the proposed legislation may not go far enough.

Our city administration feels that tax monies should be expended to effectuate the general public good and that programs, such as fire inspections, should not have to be abolished because we are unable to give sufficient budget for a 100% program.

Very truly yours,

BISS AND HOLMES  
Wasilla Office

Burton C. Biss

Encs.

BCB:esp



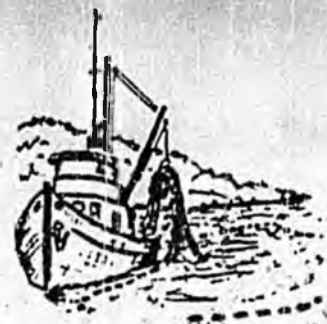
# CITY OF CRAIG

P.O. Box 23

CRAIG, ALASKA 99921

Phone: 826-3232

March 10, 1977



L.B. Jacobson, Attorney at Law  
Robertson, Monagle, Eastaugh & Bradley  
Box 1211  
Juneau, Alaska 99801

Dear Mr. Jacobson:

Thank you for your letters regarding Senate Bill No. 89 and your proposed bill regarding suits against local government. These were read and discussed by the City Council, and we felt both were valuable pieces of legislation.

We did pass Resolution No. 77-7 in support of SB 89, sent it to our legislative delegation, and received favorable responses from all of them. I will enclose a copy of that resolution.

Another resolution has been prepared for action at our March 17 city council meeting dealing with the proposed bill limiting liability for municipalities. I will forward that to you and to the Alaska Municipal League as soon as possible.

In answer to your questions regarding Craig's problems with code enforcement, we have not yet been sued or threatened with suit because of a lack of enforcement following safety inspections. To be realistic, if inspections were conducted and violations enforced to the letter of the law in all health and safety areas, we would probably be without any businesses in Craig, which would involve the loss of all sales tax revenue. This amounted to \$47,224 in fiscal year 75/76. Furthermore, we have nobody in Craig qualified to conduct inspections of the thoroughness that would have to be involved in order to protect the city from liability; someone would have to be imported for this. It would surely involve at least one full-time position in Craig to regularly inspect all businesses and enforce compliance with all applicable codes. I would estimate paying a person with these

qualifications at least \$20,000 a year. Considering all the related administrative and legal expenses, I doubt if an increase of two mills in our property tax levy would cover the complete cost to Craig of enforcing the codes with the standards prescribed by the Alaska Supreme Court.

Again, thank you for keeping us informed about these pieces of legislation. Please let us know if there is anything further we can do.

Sincerely,

*Marvin L. Yoder*  
Marvin L. Yoder  
Mayor

Enclosure

↓ cc: Alaska Municipal League

MLY/kt



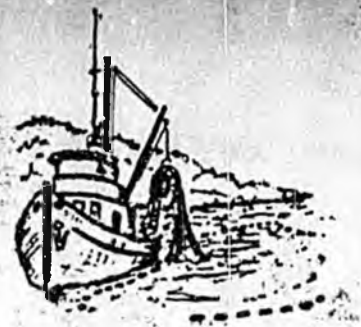
CITY OF CRAIG

P.O. Box 23

CRAIG, ALASKA 99921

Phone: 826-3232

March 18, 1977

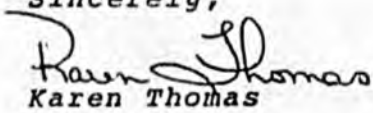


L.B. Jacobson, Attorney at Law  
Robertson, Monagle, Eastaugh & Bradley  
Box 1211  
Juneau, Alaska 99801

Dear Mr. Jacobson:

Enclosed is a copy of Resolution No. 77-8 concerning municipal liability. This was passed at the City Council meeting last night, and copies have been forwarded to our area legislators. Wishing you luck with this one!

Sincerely,

  
Karen Thomas  
City Clerk

✓cc: Alaska Municipal League

*Terry Gardiner*

Box 6092, Ketchikan, Alaska 99901 Pouch V, Juneau, Alaska 99811

March 23, 1977

Marvin Yoder, Mayor  
City of Craig  
P.O. Box 23  
Craig, Alaska 99921

Dear Mayor Yoder:

Thank you for the copy of Resolution No. 77-8 in regard to the liability of municipalities. Legislation concerning this topic has been introduced in the Legislature. Rep. Al Nakak of Nome has introduced this legislation in the House and is presently in the House Judiciary Committee.

This is a very complicated area both effecting municipalities liabilities and the rights of individuals recover for damages. I have not decided what I will do in voting on this legislation at this time. I consider it a very complicated area and will give it great scrutiny before making a decision.

As Chairman of the House Judiciary Committee, I have scheduled a meeting on the bill in order that everyone concerned can present testimony and information on the legislation. Regardless of my personal feelings on the bill one way or the other, it is incumbent on the Legislature to address problem areas of legislation.

I will give a copy of your Resolution to the Committee Members. I hope you will forward more specific information about how this legislation will benefit the community of Craig and what present problem the City is experiencing that this legislation will resolve. I think that information will go along ways towards gaining support for the legislation.

Sincerely,

*Saka Jacobsen*

*Terry Gardiner*

Terry Gardiner  
State Representative  
Alaska Legislature

Municipality  
of  
Anchorage



POUCH 6-650  
ANCHORAGE, ALASKA 99502  
(907) 274-2525

GEORGE M. SULLIVAN,  
MAYOR

OFFICE OF THE MUNICIPAL MANAGER

March 16, 1977

Ronald A. Hendrie  
State Fire Marshal  
State of Alaska  
Department of Public Safety  
Division of Fire Prevention  
Pouch N  
Juneau, Alaska 99811

Re: Enforcement of State Fire Regulations; your letter of  
February 14, 1977.

Dear Sir:

As Fire Chief Bennett has informed you by telephone, we cannot accept responsibility for enforcing the State fire safety regulations within the Municipality of Anchorage, or even within those portions of it where tax-supported fire suppression services are provided.

Under the former City of Anchorage Code, State fire safety regulations were incorporated into Municipal law, and were enforced by the City Fire Marshal. The Municipal Assembly, however, deleted that provision from the new Municipal Code. This amounts to a legislative policy decision to enforce only our own building and fire prevention codes in the areas in which such codes are effective.

At present, these codes are effective only within the Anchorage Bowl area. In locations such as Chugiak, Eagle River and Girdwood, although they have fire suppression services, the codes are not in effect, and our Fire Marshal is not authorized by Municipal law to engage in inspection and enforcement there, nor is he budgeted to do so.

At the next regular election, in the fall of 1977, the citizens of the Municipality will have an opportunity to vote on the question of expanding our building and fire



March 16, 1977

prevention codes areawide. If the voters approve, we will thereafter enforce the Municipal codes throughout Anchorage, but not the State regulations, since the Assembly did not incorporate them into our law.

We have no objection to your inspecting and enforcing State regulations upon State-owned and leased property within Anchorage, as you have said that you will do. For the reasons stated above, however, we must defer not only in those matters, but in all enforcement of State fire safety regulations, to your office.

Sincerely yours,

Douglas G. Weiford  
Municipal Manager

DGW:SGD:kw

# STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

JAY S. HAMMOND, GOVERNOR

Richard L. Burton  
Commissioner

DIVISION OF FIRE PREVENTION

POUCH N - JUNEAU 99811

February 14, 1977

CERTIFIED - RRR

M.B. Winegar, Manager  
City and Borough of Juneau  
155 South Seward Street  
Juneau, Alaska 99801

Subject: City and Borough of Juneau  
Fire Protection Districts  
Fire Prevention Inspections  
and Enforcement of Fire  
Safety Regulations

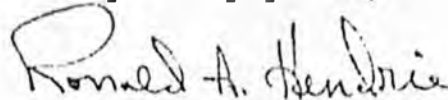
Dear Mr. Winegar:

This is to advise you that responsibilities for fire prevention inspections and enforcement of state fire safety regulations as provided by AS 18.70.090 and regulations promulgated under AS 18.70.080 i.e. specifically Alaska Administrative Code, Title 13 Public Safety Part 2 Fire Prevention, Chapter 50 - Codes and Standards including further revisions thereto, within the City and Borough of Juneau Fire Protection Districts, is deferred to your local jurisdiction. Copies of applicable statutes and regulations attached.

In keeping with our current policy, the Department of Public Safety will continue to inspect within the City and Borough of Juneau Fire Protection Districts (1) state-owned and state leased facilities and (2) state licensed facilities upon request of the licensing agency or the local entity. All inspections under (1) and (2) will be conducted jointly with local authorities whenever possible.

Should you desire clarification on any of the above please contact me at 465-4331 or write Pouch N, Juneau 99811.

Very truly yours,



RONALD A. HENDRIE  
State Fire Marshal

RAH:GRC:smb

c: Doug Boddy, Fire Coordinator (Certified - RRR)  
City and Borough of Juneau  
& Chief, Juneau Volunteer Fire Department

February 14, 1977

Subject: City and Borough of Juneau Fire Protection Districts  
Fire Prevention Inspections and Enforcement of Fire  
Safety Regulations

c: Jack Mason, Chief (Certified - RRR)  
Glacier Volunteer Fire Department

John Ferro, Chief (Certified - RRR)  
Douglas Volunteer Fire Department

Dick Keithahn, Chief (Certified - RRR)  
Auke Bay Volunteer Fire Department

Allan R. Parce, Chief (Certified - RRR)  
Lynn Canal Volunteer Fire Department

enclosures: AS 18.70.080  
AS 18.70.090  
13 AAC Chapter 50

c: Deputy Fire Marshal  
Gordon E. Brunton  
Southeastern Region