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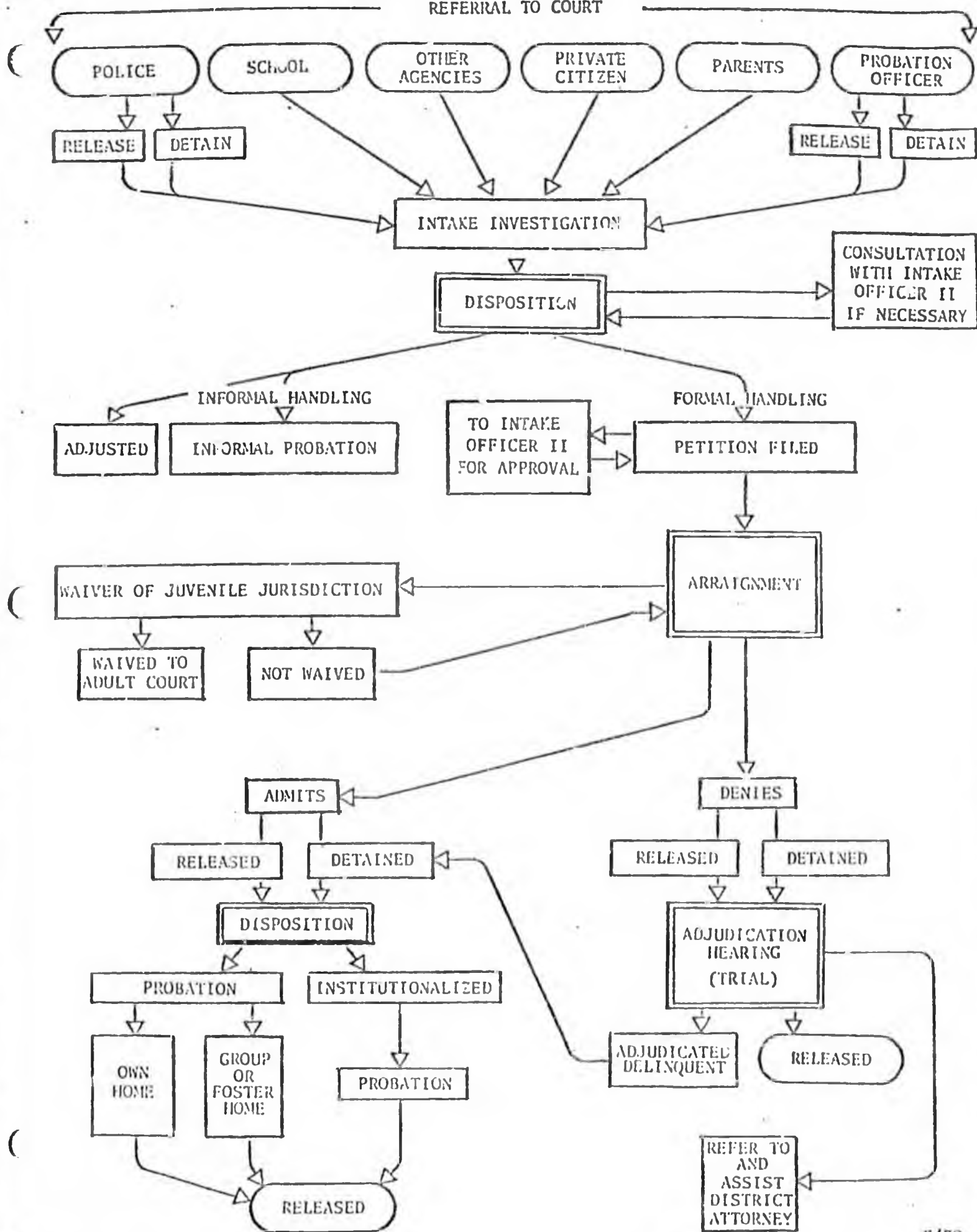
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JUVENILE PRACTICES - BAR ASSOCIATION

Juvenile
Justice

DELINQUENCY CASES

REFERRAL TO COURT





Alaska State Legislature

House of Representatives

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

To: Charlie Parr, Chairman, and Members of the House
Judiciary Committee

From: Margaret W. Berck, Staff

Date: September 13, 1979

Subject: Juvenile Justice

I. INTRODUCTION

The House Judiciary Committee has been assigned the 1980 sunset review of programs provided by the Department of Health and Social Services relating to the confinement of juveniles. In order to properly assess these juvenile programs and facilities, it seems that the committee must first become acquainted with the entire juvenile justice system. This memo is the first in a series on this issue and is intended to provide a preliminary background on juvenile law in Alaska as well as detailed statistics on juvenile placements and costs.

II. BACKGROUND

Alaska law defines a juvenile as a person under 18 years of age. In Alaska two classes of juveniles, alleged delinquents and children in need of aid, are subject to juvenile court jurisdiction. A delinquent juvenile is one who was found to have committed an act that would be considered a crime if committed by an adult. A child in need of aid is one who was found to have committed an offense that would not be

criminal if committed by an adult or is found to be an abused or neglected child. These noncriminal offenses are frequently designated as status offenses and under Alaska law include running away from home or refusing to accept available care. It should be noted that if an Alaskan juvenile is charged with traffic, fish and game, or parks and recreation violations, that would constitute a misdemeanor if committed by an adult, the juvenile is prosecuted in district court as if he or she were an adult.

The statutory distinction between the delinquent and the child in need of aid is significant to determining the remedies the state may impose for such juveniles. The intent of the statute is clear: children in need of aid require protection and delinquent children require correction. In theory the circumstances under which, and the facilities in which, the two groups may be detained prior to court disposition - or after commitment - differ. Children in need of aid are not subject to detention, delinquent children are.¹ Children in need of aid may not be committed to closed correctional facilities but delinquent children may be.²

Furthermore, this distinction is evident at the operational level. Services for delinquent children are provided by the Division of Correction, whereas services for children in need of aid are provided by the Division of Social Service. Both divisions are administered by the Department of Health and Social Services but under separate philosophies, separate regulations, and differing procedures.

¹In practice, a status offender may be subject to detention if no other facilities exist in which to provide temporary care for the child.

²It should be noted, however, that children in need of aid who violate their probation conditions may be incarcerated with delinquents in closed facilities. The result is that a two-time status offender may ultimately be treated in the same fashion as a delinquent. IAM v. State, 547 P2d. 827(1976).

Finally, this distinction is further preserved at the court level. Intake services for delinquent children are furnished by court intake staff in Fairbanks and Anchorage and by the Division of Corrections in the remainder of the state. Intake for children in need of aid is provided by the Division of Social Services in all four court districts.

This distinction is in accord with national trends evidenced in the Juvenile Justice and Delinquency Prevention Act of 1974. This federal act mandates that states participating in the act no longer hold status offenders in detention and correctional facilities.

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH H 01 - JUNEAU 99811

AUG 24 1979

Social Services

Ms. Margaret W. Berck
Counsel to House Judiciary
Committee
Alaska State Legislature
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Ms. Berck:

This is in response to your request for statistical information on juvenile placements made by the Division of Social Services. Information regarding juvenile placements made by the Division of Corrections is being sent to you under separate cover.

The current client information system for the Division of Social Services was introduced in February, 1977. The system was fully operational in July, 1977. Prior to that date the only data which were maintained in a retrievable format were financial data. As a result, prior to July, 1977, the only data available are the total dollars spent on a Budget Request Unit basis. It is not possible to identify the number of children served during Fiscal Years 1976 and 1977.

The information provided below follows the format of your information request as it applies to the Division of Social Services.

1. Total DSS juvenile placements (foster homes, emergency shelters, group homes and institutions, both in-state and out-of-state):

FY 78 - 1904
FY 79 - 2100 (full year estimate)

2. Total costs of DSS juvenile placements:

FY 76* - \$3,635,529.74
FY 77* - \$4,553,004.19
FY 78* - \$6,173,790.46
FY 79** - \$6,385,350.90

*From prior year authorization balances.

**From current year authorization balances as of 06/30/79.

5. The Division of Social Services' authority and responsibility for the placement of children is based on AS 47.10. The Division of Social Services serves abused, neglected, abandoned children or runaways who fall under the statutory category of a "child in need of aid" whereas the Division of Corrections serves delinquent minors (AS 47.10.010).
6. As of August 10, 1979 there are 495 licensed foster homes. The number of beds available totals 1,030.

The differences in foster home data attached to the October 26, 1978 memorandum to which you referred are a result of the way in which the data were presented. On Attachment #5, the data are presented for July, August, and September, 1978. In order to obtain the total unduplicated number of foster homes, it is necessary to add the totals for each month:

July total = 33 homes
August total = 33 homes
September total = 29 homes

The data presented in Attachment #4 represent the number of foster homes licensed and certified by the Department of Health and Social Services. The responsibility for the licensure and certification of foster homes has been delegated to the Division of Social Services. The data provided in Attachment #4 was compiled from the computerized facilities management system. This system, which was implemented in January, 1978, was designed for the collection of licensing data and for the monitoring of the licensing function. Attachment #4 reflects that 17 homes have been licensed for Division of Corrections' use. Some of the homes licensed for use by the Division of Social Services are shared by the Division of Corrections. This may account for some of the difference in the two totals.

7. Total DSS foster care placements (in-state and out-of-state):

FY 78 - 1047
FY 79 - 1180 (full year estimate)

8. Total costs of DSS foster care placements:

FY 76 - \$1,419,513.10
FY 77 - \$1,656,392.55
FY 78 - \$2,094,579.32
FY 79 - \$2,089,642.22

11. The daily costs for Division of Social Services' placements are provided in Attachment #1.

12. The names and locations of all public and private institutions are provided in Attachment #2.

This information is a standard report sent to all Division of Social Services' officers from the facilities management system. It includes the rates (FY 79) and addresses. In discussion with the Quality Control section of this Department, they stated that the rates attached to your request were reasonably accurate.

Under full cost of care, an audit must be performed at the end of each year and the rates adjusted accordingly but always after the year's payments have been made. Not all audits for FY 78 have been finalized; and audits for FY 79 have not begun.

13. Included in Attachment #2 are all out-of-state institutions. Prior to FY 79, all outof-state institutions were required to formulate an agreement with the Division of Social Services as to services provided and monthly costs. Again, this was just financial data. Due to the agreements signed and the constancy of these agreements, it has taken almost the entire FY 79 year to completely encode these in our current payment information system. Thus, individual institutional rates for FY 76, FY 77, and FY 78 are not available. The cost figure in Attachment #2 would be for FY 79 and the first part of FY 80.

14. & 17.

The non-encoding of the individual institutions into the current payment system also resulted in the Division of Social Services not having an accurate recording system for data retained. Consequently, the number of children placed outside of Alaska in FY 76, FY 77, and FY 78 is not available. For current FY 79 estimates see Attachment #3.

Total Dollars: FY 76 - \$1,429,513.10
 FY 77 - \$1,656,392.55
 FY 78*- \$429,329.04
 FY79**- \$738,856.42

*Due to transition to billing system and differences in State accounting system.

**Through May, 1979.

We hope that this information is of assistance to you. If you have any further questions, please feel free to contact me again.

Sincerely,



Allen K. Korhonen
Deputy Commissioner

Enclosures

Attachment #1

STATE OF ALASKA
IN-STATE FOSTER HOMES
RATE SCHEDULE
(EFFECTIVE JULY 1, 1975)

	JUNEAU AREA (SE)		KETCHIKAN AREA (SE) ³		SOUTHCENTRAL AREA		NORTHERN AREA ⁴	
	Old Rates	New Rates	Old Rates	New Rates	Old Rates	New Rates	Old Rates	New Rates
5 & (Month) Under (Day)	\$180.00 5.92	\$198.00 6.51	\$176.00 5.79	\$194.00 6.38	\$176.00 5.79	\$194.00 6.38	\$187.00 6.15	\$206.00 6.77
6 Thru (Month) 12 (Day)		240.00 7.89		233.00 7.66		233.00 7.66		248.00 8.15
13 & (Month) Over (Day)	\$255.00 8.33	\$281.00 9.24	\$247.00 8.12	\$272.00 8.94	\$247.00 8.12	\$272.00 8.94	\$263.00 8.65	\$289.00 9.50

NOTES:

1. New rates represent a 10% C.O.L.A. over FY 1975 rates.
2. Monthly rates x (12/365) = Daily Rates.
3. Includes Petersburg, Kake and Wrangell.
4. Includes Bethel.
5. The rate schedule includes a new age grouping, 6 through 12, to more accurately reflect costs for this age group.
6. The above schedule is applicable only to foster parents residing in Alaska. The rates to be paid foster parents residing in the contiguous United States will be the same paid by the city, state, or county Welfare Department in which the foster parent resides.
7. The new rates apply to the geographic location (city or regional area) of the foster parent -- not to the District or Region to which the case is assigned. The mailing address of the foster parent is the determining factor in all questionable cases.
8. Crippled and handicapped children placed in foster homes by the MCH program of division of Public Health are exempt from provisions of above schedule. Foster parents caring for these special category short-term placements will be authorized \$12.00 per day per child without regard to age in the Southeastern and Southcentral regions. The rate of \$15.00 will be paid in the Northern Region.

STATE OF ALASKA
IN-STATE FOSTER HOMES
RATE SCHEDULE
(EFFECTIVE JULY 1, 1976)

	JUNEAU AREA (SE)		KETCHIKAN AREA (SE) ³		SOUTHCENTRAL AREA		NORTHERN AREA ⁴	
	Old Rates	New Rates	Old Rates	New Rates	Old Rates	New Rates	Old Rates	New Rates
5 & (Month) Under (Day)	\$198.00 6.51	\$218.00 7.17	\$194.00 6.38	\$213.00 7.00	\$194.00 6.38	\$213.00 7.00	\$206.00 6.77	\$227.00 7.46
6 Thru (Month) 12 (Day)	\$240.00 7.89	\$264.00 8.70	\$233.00 7.66	\$256.00 8.42	\$233.00 7.66	\$256.00 8.42	\$248.00 8.15	\$273.00 8.98
13 & (Month) Over (Day)	\$281.00 9.24	\$309.00 10.16	\$272.00 8.94	\$299.00 9.83	\$272.00 8.94	\$299.00 9.83	\$289.00 9.50	\$318.00 10.45

- Notes:
1. New rates represent a 10% C.O.L.A. over FY 1976 rates.
 2. Monthly rates x (12/365) = Daily Rates.
 3. Includes Petersburg, Kake and Wrangell.
 4. Includes Bethel.
 5. The above schedule is applicable only to foster parents residing in Alaska. The rates to be paid foster parents residing in the contiguous United States will be the same paid by the city, state, or county Welfare Department in which the foster parent resides.
 6. The new rates apply to the geographic location (city or regional area) of the foster parent -- not to the District or Region to which the case is assigned. The mailing address of the foster parent is the determining factor in all questionable cases.
 7. Crippled and handicapped children placed in foster homes by the MCH program of the Division of Public Health are exempt from provisions of the above schedule. Foster parents caring for these special category shortterm placements will be authorized \$13.20 per day per child without regard to age in the Southeastern and Southcentral regions. The rate of \$16.50 will be paid in the Northern Region.

STATE OF ALASKA
IN-STATE FOSTER HOMES
RATE SCHEDULE
(EFFECTIVE JULY 1, 1977)

		JUNEAU AREA (SE)		KETCHIKAN AREA (SE)		SOUTHCENTRAL AREA		NORTHERN AREA ⁵	
		Old Rates	New Rates	Old Rates	New Rates	Old Rates	New Rates	Old Rates	New Rates
5 & Under	(Month) (Day)	\$218.00 7.17	\$228.00 7.50	\$213.00 7.00	\$238.00 7.50	\$213.00 7.00	\$228.00 7.50	\$227.00 7.46	\$250.00 8.22
6 thru 12	(Month) (Day)	\$264.00 8.70	\$274.00 9.00	\$256.00 8.42	\$274.00 9.00	\$256.00 8.42	\$274.00 9.00	\$273.00 8.98	\$300.00 9.86
13 & Over	(Month) (Day)	\$309.00 10.16	\$320.00 10.52	\$299.00 9.83	\$320.00 10.52	\$299.00 9.83	\$320.00 10.52	\$318.00 10.45	\$350.00 11.51

- Notes:
1. New rates represent a 10% C.O.L.A. for Fairbanks and a 7% C.O.L.A. for the remainder of the State over the FY 1977 rate and adjusting Juneau rate to equal Southcentral rate.
 2. Monthly rates x (12/365) = Daily Rates
 3. Includes Bethel.
 4. The above schedule is applicable only to foster parents residing in Alaska. The rates to be paid foster parents residing in the contiguous United States will be the same paid by the city, state, or county Welfare Department in which the foster parent resides.
 5. The new rates apply to the geographic location (city or regional area) of the foster parent -- not to the District or Region to which the case is assigned. The mailing address of the foster parent is the determining factor in all questionable cases.
 6. Crippled and handicapped children placed in foster homes by the MCH program of the Division of Public Health are exempt from provisions of the above schedule. Foster parents caring for this special category short term placements will be authorized \$14.12 per day per child without regard to age in the Southeastern and Southcentral regions. The rate of \$18.15 will be paid in the Northern region.

STATE OF ALASKA
IN-STATE FOSTER HOMES RATE SCHEDULE
EFFECTIVE JULY 1, 1979 - JUNE 30, 1980

	Southeastern Region (Juneau) <u>Old Rates/New Rates</u>		Southern Region (Ketchikan) <u>Old Rates/New Rates</u>		Southcentral Region (Anchorage) <u>Old Rates/New Rates</u>		Northern Region (Fairbanks) <u>Old Rates/New Rates</u>		Northwestern Region (Kotzebue - Barrow) <u>Old Rates/New Rates</u>		Western Region (Sitka) <u>Old Rates/New Rates</u>		
4 & Under	(Month)	\$265.00	\$291.00	\$265.00	\$291.00	\$265.00	\$291.00	\$305.00	\$334.00	\$345.00	\$387.00	\$345.00	\$378.00
	(Day)	8.71	9.56	8.71	9.56	8.71	9.56	10.03	10.99	11.34	12.71	11.34	12.42
5 thru 11	(Month)	\$293.00	\$321.00	\$293.00	\$321.00	\$293.00	\$321.00	\$337.00	\$370.00	\$331.00	\$430.00	\$301.00	\$413.00
	(Day)	9.63	10.57	9.63	10.57	9.63	10.57	11.03	12.15	12.53	14.13	12.53	13.74
12 & Over	(Month)	\$350.00	\$384.00	\$350.00	\$384.00	\$350.00	\$384.00	\$403.00	\$442.00	\$455.00	\$514.00	\$455.00	\$499.00
	(Day)	11.51	12.63	11.51	12.63	11.51	12.63	13.25	14.52	14.96	16.00	14.25	15.42

1. New rates represent implementation of 7 AAC 50.720 (c). Area differentials used as established in the State salary schedule.
2. $\text{Month rates} \times (12/365) = \text{Daily Rates}$.
3. The above schedule is applicable only to foster parents residing in Alaska. The rates to be paid foster parents residing in the contiguous United States will be the same paid by the city, state, or county Welfare Department in which the foster parent resides.
4. The rates apply to the geographic location (city or regional area) of the foster parent -- not to the District or Region to which the case is assigned. The mailing address of the foster parent is the determining factor in all questionable cases.
5. Crippled and handicapped children placed in homes by the MCH program of the Division of Public Health are exempt from provisions of the above schedule. Foster parents caring for this special category short term placements will be authorized \$16.00 per day per child without regard to age in the Southeastern, Southern, and Southcentral regions. The rate of \$21.13 will be paid in the Northern Region.
6. The policy of the Division of Social Services is to use the daily rate only.
7. Emergency Foster Care rates are as follows:

Southeastern	\$15.79	Northern	\$18.15
Southern	\$15.79	Northwestern	\$21.11 (Barrow)
Southcentral	\$15.79	Western	\$20.53

OLD RATES = FY 79
NEW RATES = FY 80

THE FOLLOWING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

ATTACHMENT # 3

Frederick McGinnis
Deputy Commissioner
Department of Health and
Social Services

April 13, 1979

John R. Pugh *J.R.P.*
Field Director
Division of Social Services

Out-of-State Placements for
Division of Social Services
and Division of Corrections

	<u>Corrections</u>	<u>Social Services</u>	
	<u>Institutional Placements</u>	<u>Institutional Placements</u>	<u>Foster Care</u>
SE-5 NW SE Fbx/Bir	19	16	13
First Judicial			2
Second Judicial			25
Third Judicial	9	4	20
Fourth Judicial	7	26	
TOTAL	35	46	60

JRP/gj

THE PRECEDING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

	<u># Homes</u>		<u>Capacity</u>		<u>TOTAL</u>
<u>Division of Corrections</u>					
Nome	1	X	2	=	2
Fairbanks	1		2		2
"	1		3		3
Anchorage	4		1		4
	7		2		14
	2		3		6
	1		5		5
	<u>17</u>				<u>36</u>
<u>Division of Social Services</u>					
Ketchikan	27	X	1	=	27
	16		2		32
	5		3		15
	2		4		8
	1		5		5
	<u>51</u>				<u>87</u>
Juneau	24	X	1	=	24
	15		2		30
	6		3		18
	4		4		16
	1		5		5
	2		6		12
	<u>52</u>				<u>105</u>
Nome	23	X	1	=	23
	28		2		56
	9		3		27
	5		4		20
	1		5		5
	<u>66</u>				<u>131</u>
Fairbanks	27	X	1	=	27
	22		2		44
	9		3		27
	8		4		32
	2		5		10
	<u>68</u>				<u>140</u>
Anchorage	74	X	1	=	74
	80		2		160
	48		3		144
	18		4		72
	5		5		25
	1		20		20
	<u>326</u>				<u>495</u>
Bethel	14	X	1	=	14
	20		2		40
	7		3		21
	2		4		8
	<u>43</u>				<u>83</u>

TOTAL STATEWIDE

	<u>Homes</u>	<u>Total Capacity</u>
Division of Corrections	17	36
Division of Social Services	<u>606</u>	<u>1,041</u>
	623	1,077

These figures represent the total Foster Homes licensed and certified by the Department of Health and Social Services.

In response to your questions concerning the number of foster homes and beds currently available to the Division of Corrections, the following information is furnished which reflects average number of spaces available by category or by region for the first quarter of FY-79.

<u>NFO (Fairbanks)</u>	<u>Homes</u>	<u>Beds</u>	<u>Total in Placement</u>
July 1978	5	<u>7</u>	5
August 1978	5	<u>7</u>	5
September 1978	5	<u>7</u>	4
<u>SERO (Southeastern)</u>			
July 1978	4	<u>6</u>	4
August 1978	3	<u>5</u>	3
September 1978	3	<u>5</u>	4
<u>SCRD (Anchorage)</u>			
July 1978	21	<u>38</u>	25
August 1978	25	<u>44</u>	21
September 1978	21	<u>40</u>	19

From July total = 33
 August total = 33
 September total = 29

Beds: July total = 51
 August total = 56
 September total = 52

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH H 01 - JUNEAU 99811

AUG 28 1979

Margaret W. Berck
Counsel to House Judiciary Committee
Alaska State Legislature
House of Representatives
Pouch "V", State Capitol Building
Juneau, Alaska 99811

Corrections

Dear Ms. Berck:

In response to your request for information on juvenile placements, I am enclosing statistical reports provided by the Division of Corrections. In addition, the following are narrative responses to your questions not included in the statistical reports.

1. (Referring to Question #5 of your request)

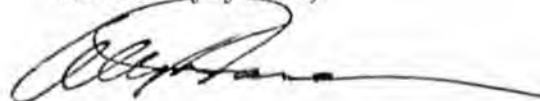
Juveniles who have been adjudicated delinquent are placed with the Division of Corrections. These youngsters have committed offenses that would be considered criminal if committed by an adult. Those youngsters placed with the Division of Social Services have not committed criminal offenses and/or may be in need of aid because of family problems, i.e. parents unable to provide adequate care, neglectful parents, or serious adjustment problems.

2. (Referring to Question #6 of your request)

The Division of Corrections had 40 foster home spaces as of July 1, 1979. This number refers to the number of spaces, not to the number of foster homes. If only foster homes are considered alone on that date, then 25 foster homes were available in which there was a total licensed space for 40 juveniles.

The other questions relating to juvenile placements in the Division of Corrections are included in the enclosed material. However, if you find you need additional information, we will be happy to provide it for you.

Sincerely yours,



Allen Korhonen
Deputy Commissioner

STATE OF ALASKA
IN-STATE FOSTER HOMES RATE SCHEDULE
EFFECTIVE JULY 1, 1979 - JUNE 30, 1980

		Southeastern Region (Juneau)		Southern Region (Ketchikan)		Southcentral Region (Anchorage)		Northern Region (Fairbanks)		Northwestern Region (Kotzebue - Barrow)		Western Region (Bethel)	
		Old Rates/New Rates		Old Rates/New Rates		Old Rates/New Rates		Old Rates/New Rates		Old Rates/New Rates		Old Rates/New Rates	
4 & Under	(Month) (Day)	\$265.00 8.71	\$291.00 9.56	\$265.00 8.71	\$291.00 9.56	\$265.00 8.71	\$291.00 9.56	\$305.00 10.03	\$334.00 10.99	\$345.00 11.34	\$387.00 12.71	\$345.00 11.34	\$378.00 12.42
5 thru 11	(Month) (Day)	\$293.00 9.63	\$321.00 10.57	\$293.00 9.63	\$321.00 10.57	\$293.00 9.63	\$321.00 10.57	\$337.00 11.08	\$370.00 12.15	\$381.00 12.53	\$430.00 14.13	\$381.00 12.53	\$418.00 13.74
12 & Over	(Month) (Day)	\$350.00 11.51	\$384.00 12.63	\$350.00 11.51	\$384.00 12.63	\$350.00 11.51	\$384.00 12.63	\$403.00 13.25	\$442.00 14.52	\$455.00 14.96	\$514.00 16.89	\$455.00 14.96	\$499.00 16.42

1. New rates represent implementation of 7 AAC 50.720 (c). Area differentials used as established in the State salary schedule.
2. Month rates x (12/365) = Daily Rates.
3. The above schedule is applicable only to foster parents residing in Alaska. The rates to be paid foster parents residing in the contiguous United States will be the same paid by the city, state, or county Welfare Department in which the foster parent resides.
4. The rates apply to the geographic location (city or regional area) of the foster parent -- not to the District or Region to which the case is assigned. The mailing address of the foster parent is the determining factor in all questionable cases.
5. Crippled and handicapped children placed in homes by the MCH program of the Division of Public Health are exempt from provisions of the above schedule. Foster parents caring for this special category short term placements will be authorized \$16.50 per day per child without regard to age in the Southeastern, Southern, and Southcentral regions. The rate of \$21.18 will be paid in the Northern Region.
6. The policy of the Division of Social Services is to use the daily rate only.

Department of Health and Social Services
Full Cost of Care

	<u>Audited Rate</u>	<u>FY 1980</u>
Alaska Children's Services		
Aquarius House	_____	\$ 79.04
Anchorage Receiving Home	_____	91.91
Colletti Group Home	_____	51.77
Jesse Lee Home	_____	92.93
Mary Johnson Home	_____	113.40
North Star Group Home	_____	53.23
Alaska Baptist Family Service	_____	47.59
Alaska Youth Village	_____	64.01
Bethel Group Home	_____	27.50
Booth Memorial Home	_____	101.05
Covenant High School	_____	17.96
Hilltop Home	_____	55.05
Juneau Receiving Home	_____	66.37
Kenai Peninsula Community Care	_____	59.78
Ketchikan's Children's Home	_____	47.87
Kodiak Baptist Mission	_____	22.06
Nome Group Home	_____	79.55
Nome Receiving Home	_____	77.03
North Slope Borough Children's Home	_____	98.14
North Star Children's Home	_____	47.04
Presbyterian Hospitality House	_____	79.62
Sitka Receiving Home	_____	41.75
Turning Point Boy's Ranch	_____	67.48

SENTENCING PRACTICES



Alaska State Legislature

House of Representatives

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

To: Charlie Parr, Chairman, and Members of the House
Judiciary Committee

From: Margaret W. Berck, Staff

Date: September 13, 1979

Subject: Sentencing Practice

The 1979 legislature established an Advisory Committee on Minority Judicial Sentencing Practices. This committee is responsible for receiving and reviewing reports concerning sentencing, correction, probation and parole practices and procedures regarding the treatment of minorities. In addition, the committee is required to hold public hearings and meetings on this issue and report its findings and recommendations to the legislature not later than February 1, 1980.

Mr. Burt Campbell has been elected the Chairman of this committee. According to Mr. Campbell, the committee is reviewing the master plan on corrections and several older reports on corrections. Furthermore, Mr. Campbell stated that additional studies in this area are being conducted by various agencies. A study on misdemeanor sentencing between 1976 and 1979 is being done through the Judicial Council. Almost all the raw data necessary for this study has been collected. Preliminary findings indicate that disparities in these sentences are at least as great as those found for felonies in the plea bargaining study. Additional ongoing studies include: expanding the felony review contained



Alaska State Legislature

House of Representatives

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

To: Charlie Parr, Chairman, and Members of the House
Judiciary Committee

From: Margaret W. Berck, Staff

Date: September 13, 1979

Subject: Sentencing Practice

The 1979 legislature established an Advisory Committee on Minority Judicial Sentencing Practices. This committee is responsible for receiving and reviewing reports concerning sentencing, correction, probation and parole practices and procedures regarding the treatment of minorities. In addition, the committee is required to hold public hearings and meetings on this issue and report its findings and recommendations to the legislature not later than February 1, 1980.

Mr. Burt Campbell has been elected the Chairman of this committee. According to Mr. Campbell, the committee is reviewing the master plan on corrections and several older reports on corrections. Furthermore, Mr. Campbell stated that additional studies in this area are being conducted by various agencies. A study on misdemeanor sentencing between 1976 and 1979 is being done through the Judicial Council. Almost all the raw data necessary for this study has been collected. Preliminary findings indicate that disparities in these sentences are at least as great as those found for felonies in the plea bargaining study. Additional ongoing studies include: expanding the felony review contained

CORRECTION

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CORRECTION

SENTENCING PRACTICES



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in the plea bargaining study to include additional years and geographical locales and a review of presentencing practices and procedures. Furthermore, the Criminal Justice Planning Agency is conducting a study regarding minority treatment in the entire criminal justice system as opposed to merely the sentencing area.

Recently the committee met with prisoners at Eagle River and Ridgeview. The committee intends to tour the Bethel jail facility within the next several weeks. The committee's next meeting in Anchorage is scheduled for September 29, 1979. At that time the committee intends to meet with representatives of the Alaska Bar Association, District Attorney's Office, and Public Defender Agency. Thereafter, the committee intends to meet every two weeks.

DRUG

LAWS



Official Business

Alaska State Legislature

House of Representatives

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

To: Charlie Parr, Chairman, and Members of the House Judiciary Committee

From: Margaret W. Berck, Staff

Date: September 27, 1979

Subject: Drug Laws

At the Committee's request HB 101 has been added to the Drug Report. HB 101 was introduced by Rep. Terry Martin during the 1979 legislative session and currently is in the House Health, Education and Social Services Committee. HB 101 is identical to SB 65 as initially introduced in the 1979 legislative session. However SB 65 was later amended by the Senate Health, Education and Social Services Committee. The CS for SB 65 no longer contains a "no knock" provision whereas HB 101 currently has such a provision. But for this deviation, HB 101 is identical to the CS for SB 65.

Furthermore the governor's proposed drug bill has been added to the Drug Report. The governor's bill was released in "work draft" form as revision resulting from public comment is contemplated prior to its introduction in the 1980 legislative session.

WORKING DRAFT

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For an Act entitled: "An Act consolidating and revising the laws relating to drug abuse and prohibitions; and providing for an effective date."

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

* Section 1. DECLARATION OF LEGISLATIVE PURPOSE. (a) It is the purpose of this Act to consolidate and revise the state's various drug laws patterned after the Uniform Controlled Substances Act and the Federal Controlled Substances Act of 1970 and, through the enactment of uniform penalty provisions in conformity with the 1978 revision of Alaska's criminal code, to more effectively combat illicit trafficking in controlled substances.

(b) Two distinct, but interrelated, concerns are addressed in this Act. The first concern is the detrimental effect on public safety created through the illicit trafficking in and use of drugs. A second, but equally important, concern is the effect on public health created by the use and abuse of drugs. It is the intent of the legislature that in addressing public safety concerns, uniform classification and penalty provisions be enacted which reflect an approach reflecting law enforcement problems unique to Alaska. It is also the intent of the legislature that in addressing public health concerns, a statutory scheme be enacted patterned after federal law and that the legitimate manufacture, distribution, prescription and dispensing of controlled substances be subject to a regulatory scheme regarding registration, record keeping, order forms and prescription

1 requirements that is identical to that provided for under federal law.

2 * Sec. 2. AS 11 is amended by adding a new chapter to read:

3 CHAPTER 71. OFFENSES RELATING TO CONTROLLED SUBSTANCES

4 Sec. 11.71.010. PROMOTING A CONTROLLED SUBSTANCE IN THE FIRST
5 DEGREE. (a) Except as authorized in AS 17.30, a person commits the
6 crime of promoting a controlled substance in the first degree if he

7 (1) delivers a schedule I controlled substance to a person
8 under 18 years of age who is at least three years younger than him; or

9 (2) engages in a continuing criminal enterprise.

10 (b) For purposes of this section, a person is engaged in a
11 "continuing criminal enterprise" if

12 (1) he commits a violation of this chapter which is punish-
13 able as a felony; and

14 (2) that violation is a part of a continuing series of
15 violations of this chapter

16 (A) which he undertakes in concert with five or more
17 other persons with respect to whom he occupies a position of
18 organizer, supervisory position, or any other position of manage-
19 ment; and

20 (B) from which he obtains substantial income or
21 resources.

22 (c) Promoting a controlled substance in the first degree is an
23 unclassified felony and is punishable as provided in AS 12.55.

24 Sec. 11.71.020. PROMOTING A CONTROLLED SUBSTANCE IN THE SECOND
25 DEGREE. (a) Except as authorized in AS 17.30, a person commits the
26 crime of promoting a controlled substance in the second degree if he

27 (1) manufactures or delivers a schedule I controlled
28 substance or possesses a schedule I controlled substance with intent
29 to manufacture or deliver; or

1 (2) delivers a schedule II or III controlled substance to a
2 person under 18 years of age who is at least three years under than
3 him.

4 (b) Promoting a controlled substance in the second degree is a
5 class A felony.

6 Sec. 11.71.030. PROMOTING A CONTROLLED SUBSTANCE IN THE THIRD
7 DEGREE. (a) Except as authorized in AS 17.30, a person commits the
8 crime of promoting a controlled substance in the third degree if he

9 (1) manufactures or delivers a schedule II or III controlled
10 substance or possesses a schedule II or III controlled substance with
11 intent to manufacture or deliver;

12 (2) delivers a schedule IV or V controlled substance or
13 marijuana to a person under 18 years of age who is at least three
14 years younger than him; or

15 (3) being 18 years of age or older, knowingly possesses a
16 schedule I or II controlled substance within the grounds of a public
17 or private, elementary, junior high or secondary school.

18 (b) It is an affirmative defense to a prosecution under (a)(3)
19 of this section that at the time of the possession the school was
20 closed to any organized activity involving persons under 18 years of
21 age. Nothing in this subsection precludes a prosecution under AS
22 11.71.040(a)(2).

23 (c) Promoting a controlled substance in the third degree is a
24 class B felony.

25 Sec. 11.71.040. PROMOTING A CONTROLLED SUBSTANCE IN THE FOURTH
26 DEGREE. (a) Except as authorized in AS 17.30, a person commits the
27 crime of promoting a controlled substance in the fourth degree if he

28 (1) manufactures or delivers a schedule IV or V controlled
29 substance or marijuana or possesses a schedule IV or V controlled

1 substance or marijuana with intent to manufacture or deliver;

2 (2) knowingly possesses a schedule I or II controlled
3 substance;

4 (3) being 18 years of age or older, knowingly possesses a
5 schedule III, IV or V controlled substance or marijuana within the
6 grounds of a public or private, elementary, junior high or secondary
7 school;

8 (4) knowingly possesses one pound or more of marijuana under
9 any circumstances;

10 (5) sells or offers for sale an intoxicating liquor in an
11 area where a local option election has made these activities illegal,
12 and

13 (A) has previously been convicted under
14 AS 11.71.050(a)(3);

15 (B) has engaged in conduct demonstrating an intent to
16 sell or offer for sale intoxicating liquor to more than one
17 person; or

18 (C) the sale or offer for sale was made to a person
19 under 19 years of age or to an intoxicated person;

20 (6) knowingly keeps or maintains any store, shop, warehouse,
21 dwelling, building, vehicle, boat, aircraft, or other structure or
22 place which is used for keeping or selling controlled substances in
23 violation of this chapter or AS 17.30;

24 (7) makes, delivers or possesses any punch, die, plate, stone
25 or other thing designed to print, imprint, or reproduce the trademark,
26 trade name, or other identifying mark, imprint or device of another
27 or any likeness of any of the foregoing upon any drug container or
28 labeling so as to render the drug a counterfeit substance; or

29 (8) obtains possession of a controlled substance by deception

1 (b) Is an affirmative defense to a prosecution under (a)(3) of
2 this section that at the time of the possession the school was closed
3 to any organized activity involving persons under 18 years of age.
4 Nothing in this subsection precludes a prosecution under (a)(4) of this
5 section or under AS 11.71.050(a)(1) or AS 11.71.060(a)(1) or (3).

6 (c) Promoting a controlled substance in the fourth degree is
7 a class C felony.

8 Sec. 11.71.050. PROMOTING A CONTROLLED SUBSTANCE IN THE FIFTH
9 DEGREE. (a) Except as authorized in AS 17.30, a person commits the
10 crime of promoting a controlled substance in the fifth degree if he

11 (1) knowingly possesses a schedule III, IV, or V control-
12 led substance under any circumstances except as otherwise provided
13 in this chapter;

14 (2) delivers an intoxicating liquor to a person under 19
15 years of age who is at least three years younger than him;

16 (3) sells or offers to sell an intoxicating liquor in an
17 area where a local option election has made these activities illegal;

18 (4) uses in the course of the manufacture or distribution
19 of a controlled substance a registration number which is fictitious,
20 revoked, suspended, or issued to another person; or

21 (5) furnishes false or fraudulent information in or omits
22 material information from, any application, report, record, or other
23 document required to be kept or filed under AS 17.30.

24 (b) It is defense to a prosecution under (a)(2) of this section
25 that the defendant was the parent or guardian of the person under 19
26 years of age.

27 (c) Promoting a controlled substance in the fifth degree is a
28 class A misdemeanor.

29 Sec. 11.71.060. PROMOTING A CONTROLLED SUBSTANCE IN THE SIXTH

1 DEGREE. (a) Except as authorized in AS 17.30, a person commits the
2 crime of promoting a controlled substance in the sixth degree if he

3 (1) uses, displays or possesses marijuana on a public street
4 or sidewalk or on the premises of a public carrier or business
5 establishment or in any other public place;

6 (2) knowingly possesses marijuana within his immediate
7 control while operating a propelled vehicle;

8 (3) being under 19 years of age, knowingly possesses mari-
9 juana or an intoxicating liquor;

10 (4) fails to make, keep or furnish any record, notification,
11 order form, statement, invoice or information required under AS 17.30;
12 or

13 (5) refuses entry into any premises for an inspection
14 authorized under AS 17.30.

15 (b) Promoting a controlled substance in the sixth degree is a
16 class B misdemeanor.

17 Sec. 11.71.080. PENALTIES UNDER OTHER LAWS. A penalty imposed
18 for violation of this chapter is in addition to, and not in place of,
19 any other civil or administrative penalty or sanction otherwise
20 authorized by law.

21 Sec. 11.71.090 BAR TO PROSECUTION. If a violation of this
22 chapter is a violation of a federal law or the law of another state, a
23 conviction or acquittal under federal law or the law of another state
24 for the same act is a bar to prosecution in this state.

25 Sec. 11.71.100 BURDEN OF PROOF; LIABILITIES. (a) It is not
26 necessary for the state to negate an exemption or exception in this
27 chapter in a complaint, information, indictment or other pleading or
28 in a trial, hearing, or other proceeding under this chapter. The
29 defendant shall have the burden of proving by a preponderance of the

1 evidence any exemption or exception claimed by him.

2 (b) In a prosecution for the knowing possession of a controlled
3 substance under this chapter, it is not a defense that the substance
4 was possessed in less than a usable quantity. It is sufficient
5 to support a conviction that there is a sufficient quantity of the
6 substance to permit proper identification and the proof of a knowing
7 possession.

8 (c) No liability is imposed by this chapter upon a public servant
9 acting within the scope and authority of his employment.

10 Sec. 11.71.200. DEFINITIONS. AS used in this chapter

11 (1) "controlled substance" means a drug, substance, or
12 immediate precursor included in the schedules in AS 17.30.040-17.30.090;

13 (2) "counterfeit substance" means a controlled substance on
14 the container or labeling of a controlled substance which, without
15 authorization, bears the trademark, trade name, or other identifying
16 mark, imprint, number, or device of a manufacturer, distributor, or
17 dispenser other than the person or persons who manufactured, distribu-
18 ted, or dispensed the substance and which falsely purports or is
19 represented to be the product of, or to have been distributed by, the
20 other manufacturer, distributor, or dispenser;

21 (3) "cocaine" has the meaning ascribed to it in AS 17.30.050

22 (c);

23 (4) "deliver" or "delivery" means the actual, constructive,
24 or attempted transfer from one person to another of a controlled
25 substance whether or not there is an agency relationship;

26 (5) "drug" has the meaning ascribed to it in AS 17.30.500

27 (10);

28 (6) "hashish" means the resin produced by the plant
29 (genus) Cannabis;

1 (7) "hashish oil" means the viscous liquid concentrate of
2 tetrahydrocannabinols extracted from hashish;

3 (8) "immediate precursor" means a substance which the
4 Controlled Substances Committee provided for under AS 17.30.020 has
5 found to be and is by regulation designated as the principal compound
6 commonly used or produced primarily for use, and which is an immediate
7 chemical intermediary used or likely to be used in the manufacture of
8 a controlled substance, the control of which is necessary to prevent,
9 curtail, or limit manufacture;

10 (9) "intoxicating liquor" includes whiskey, brandy, rum,
11 gin, wine, ale, porter, beer and all other spiritous, vinous, malt and
12 other fermented or distilled liquors intended for human consumption
13 and containing more than one percent alcohol by volume;

14 (10) "manufacture" has the meaning ascribed to it in AS
15 17.30.500(16);

16 (11) "marijuana" means the leaves, stems, flowers, and seeds
17 of the plant (genus) Cannabis, whether growing or not; but does not
18 include the resin or oil extracted from any part of the plant, or any
19 compound, manufacture, salt, derivative, mixture, or preparation from
20 the resin or oil, including hashish, hashish oil, and natural or
21 synthetic tetrahydrocannabinol; it does not include the mature stalks
22 of the plant, fiber produced from the stalks, oil or cake made from
23 the seeds of the plant, any other compound, manufacture salt,
24 derivative, mixture, or preparation of the mature stalks, fiber, oil or
25 cake, or the sterilized seed of the plant which is incapable of germi-
26 nation;

27 (12) "schedule I controlled substance" means a controlled
28 substance included in the schedule in AS 17.30.040;

29 (13) "schedule II controlled substance" means a controlled

1 substance included in the schedule in AS 17.30.050;

2 (14) "schedule III controlled substance" means a controlled
3 substance included in the schedule in AS 17.30.060;

4 (15) "schedule IV controlled substance" means a controlled
5 substance included in the schedule in AS 17.30.070;

6 (16) "schedule V controlled substance" means a controlled
7 substance included in the schedule in AS 17.30.080;

8 * Sec. 3. AS 12.30.040(b) is amended to read:

9 (b) Notwithstanding the provisions of (a) of this section, if
10 the offense a person has been convicted of is murder in the first
11 or second degree (as defined in AS 11.41.100 and 11.41.110), kidnapping
12 (as defined in AS 11.41.300), sexual assault in the first degree (as
13 defined in AS 11.41.410(a)(1) and (2)), robbery in the first degree
14 (as defined in AS 11.41.500), or promoting a controlled substance in
15 the first degree (as defined in AS 11.71.010) or involves the
16 manufacture, delivery or possession with intent to manufacture or
17 deliver a schedule I or II controlled substance in violation of
18 AS 11.71.020 or 11.71.030 under circumstances manifesting an intent
19 to distribute the substance as part of an ongoing commercial enterprise
20 [FIRST DEGREE MURDER, ARMED ROBBERY, KIDNAPPING, OR RAPE (AS DEFINED
21 IN AS 11.15.130)], he may not be released on bail either before
22 sentencing or pending appeal.

23 * Sec. 4. AS 12.55.035(b)(1) is amended to read:

24 (1) \$75,000 for murder in the first or second degree, [OR]
25 kidnapping, or promoting a controlled substance in the first degree;

26 * Sec. 5. AS 12.55.125(b) is amended to read:

27 (b) A defendant convicted of murder in the second degree, [OR]
28 kidnapping, or promoting a controlled substance in the first degree
29 shall be sentenced to a definite term of imprisonment of at least five

1 years but not more than 99 years.

2 ▶ Sec. 6. AS 12.55.155(c) is amended by adding new paragraphs to
3 read:

4 (15) the defendant is convicted of an offense specified in AS
5 11.71 and the offense involved the delivery of a controlled substance
6 under circumstances manifesting an intent to distribute the substance
7 as part of an ongoing commercial enterprise;

8 (16) the defendant is convicted of an offense specified in
9 AS 11.71 and the offense involved the smuggling of controlled substances
10 into the state;

11 (17) the defendant is convicted of an offense specified in AS
12 11.71 and the offense involved large quantities of a controlled sub-
13 stance;

14 (18) the defendant is convicted of an offense specified in AS
15 11.71 and the offense involved the distribution of a controlled sub-
16 stance that had been adulterated with a toxic substance.

17 ▶ Sec. 7. AS 12.55.155(d) is amended by adding new paragraphs to
18 read:

19 (13) the defendant is convicted of an offense specified in
20 AS 11.71 and the offense involved small quantities of a controlled
21 substance;

22 (14) the defendant is convicted of an offense specified in
23 AS 11.71 and the offense involved the distribution of a controlled
24 substance to a personal acquaintance who is 19 years of age or
25 older for no profit;

26 (15) the defendant is convicted of an offense specified in
27 AS 11.71 and the offense involved the possession of a small amount of a
28 controlled substance for personal use in the defendant's home.

29 ▶ Sec. 7. AS 17 is amended by adding a new chapter to read:

1 CHAPTER 30. CONTROLLED SUBSTANCES ACT.

2 ARTICLE 1. STANDARDS AND SCHEDULES

3 Sec. 17.30.010. AUTHORITY TO SCHEDULE CONTROLLED SUBSTANCES.

4 (a) The commissioner shall administer this Act and may by regulation
5 adopted under the Administrative Procedure Act (AS 44.62), add, delete,
6 or reschedule substances in the schedules in AS 17.30.040-17.30.090.
7 Each addition, deletion, or rescheduling shall be in accordance with
8 the advice and determination of the Controlled Substances Committee
9 established in AS 17.30.020. In making a determination regarding a
10 substance, the committee shall assess the danger or probable danger of
11 the substance by considering the following:

12 (1) the actual or probable abuse of the substance including:

13 (A) its history and current pattern of abuse;

14 (B) the scope, duration, and significance of abuse;

15 (C) the degree of actual or probable detriment which
16 may result from the abuse of the substance;

17 (D) the probable physical and social impact of wide-
18 spread abuse of the substance;

19 (2) the biomedical hazard of the substance including:

20 (A) its pharmacology: the effect and modifiers of
21 effects of the substance;

22 (B) its toxicology: the acute and chronic toxicity,
23 interaction with other substances, whether controlled or not, and
24 liability to psychological or physiological dependence;

25 (C) risk to public health and particular susceptibility
26 of segments of the population;

27 (3) whether the substance is an immediate precursor of a
28 substance already controlled under this chapter;

29 (4) the current state of scientific knowledge regarding

1 the substance;

2 (5) the relationship between the use of the substance and
3 other criminal activity including:

4 (A) whether persons engaged in illicit trafficking of
5 the substance are also engaged in other criminal activity;

6 (B) whether the nature and relative profitability of
7 the substance encourages illicit trafficking in the substance;

8 (C) whether the commission of other crimes is one of
9 the effects of the use of the substance;

10 (D) whether addiction to the substance relates to the
11 commission of crimes to support the continued use of the sub-
12 stance.

13 (b) If after considering the factors enumerated in (a) of this
14 section the committee finds that a substance should be added, deleted
15 or rescheduled, the commissioner shall adopt a regulation in accordance
16 with the committee's findings.

17 (c) If the committee designates a substance as an immediate
18 precursor of a controlled substance, it is not subject to control
19 solely because it is a precursor of the controlled substance.

20 (d) A regulation adopted by the commissioner under (b) of this
21 section which is filed by the lieutenant governor after a regular
22 legislative session convenes but on or before the 30th day of that
23 session becomes effective on the 60th day of that session. A regula-
24 tion adopted by the commissioner and filed by the lieutenant governor
25 after the 30th day of a regular legislative session, or during the
26 interim between regular sessions, becomes effective on the 60th day of
27 the next legislative session. A regulation remains in effect until
28 modified or repealed by a regulation adopted under this section or by
29 statute.

1 (e) By the 30th day of each legislative session the commissioner
2 shall prepare and present to the governor and the legislature a report
3 discussing the actions of the committee during the preceding year. If
4 the commissioner has adopted a regulation adding, deleting, or re-
5 scheduling a controlled substance, the report shall include the com-
6 mittee's findings of fact and other supporting information it con-
7 siders appropriate.

8 Sec. 17.30.020 CONTROLLED SUBSTANCES COMMITTEE. (a) There is
9 created within the department the Controlled Substances Committee,
10 consisting of

- 11 (1) the director of the division of public health;
- 12 (2) the director of the office of drug abuse;
- 13 (3) the commissioner of public safety or his designee;
- 14 (4) the attorney general or his designee;
- 15 (5) one psychiatrist appointed by the governor;
- 16 (6) one physician appointed by the governor;
- 17 (7) one pharmacist appointed by the governor; and
- 18 (8) one police officer appointed by the governor from a list
19 of three or more persons submitted by the Alaska Association of Chiefs
20 of Police;

21 (9) one public member appointed by the governor.

22 (b) Members of the committee specified in paragraphs (a) (5) - (9)
23 of this section serve terms of four years; except that of the members
24 first appointed, two shall be appointed for terms of two years, two
25 for terms of three years, and two for terms of four years. Committee
26 members receive no salary but are entitled to per diem for travel and
27 expenses authorized by law for boards and commissions.

28 (c) The committee meets at the call of the commissioner, but in
29 no event less than twice a year. Five members constitute a quorum.

1 The committee may adopt bylaws for its proceedings. Before making a
2 determination regarding the addition, deletion, or rescheduling of a
3 substance under AS 17.30.010, the committee, together with the com-
4 missioner, shall hold public hearings as provided for under AS 44.62.
5 210.

6 (d) If a substance is added, deleted, or rescheduled as a
7 controlled substance under federal law and notice of the designation is
8 given to the department, the committee shall meet and consider making a
9 corresponding change in the schedules specified in AS 17.30.040-17.30.
10 090. If the committee decides not to include the change, it shall
11 publish the reasons for that decision and afford all interested parties
12 an opportunity to be heard. Following the hearing, the committee
13 shall announce its final decision.

14 Sec. 17.30.030. NOMENCLATURE. The controlled substances listed
15 in the schedules in AS 17.30.040-17.30.090 are included by whatever
16 official, common, chemical or brand name designated.

17 Sec. 17.30.040. SCHEDULE I. (a) A substance shall be placed in
18 Schedule I if it is found under AS 17.30.010(a) to have the highest
19 degree of danger or probable danger.

20 (b) Schedule I includes, unless specifically excepted or listed
21 in another schedule, any of the following substances whether produced
22 directly or indirectly by extraction from substances of vegetable
23 origin, or independently by means of chemical synthesis, or by a
24 combination of extraction and chemical synthesis:

25 (1) opium and opiata, and any salt, compound, derivative,
26 or preparation of opium or opiata, excluding apomorphine, dextrorphan,
27 nalbuphine, naloxone, and naltrexone, and their respective salts, but
28 including the following:

29 (A) raw opium

- 1 (B) opium extracts;
- 2 (C) opium fluid extracts;
- 3 (D) powdered opium;
- 4 (E) granulated opium;
- 5 (F) tincture of opium;
- 6 (G) codeine;
- 7 (H) ethylmorphine;
- 8 (I) ethorphine hydrochloride;
- 9 (J) hydrocodone;
- 10 (K) hydromorphone;
- 11 (L) metopon;
- 12 (M) morphine;
- 13 (N) oxycodone;
- 14 (O) oxymorphone;
- 15 (P) thebaine;

16 (2) any salt, compound, derivative, or preparation of
17 these which is chemically equivalent or identical with any of the
18 substances referred to in paragraphs (1) (A)-(P) of this section,
19 except that these substances do not include the isoquinoline alkaloids
20 of opium;

21 (3) opium poppy and poppy straw;

22 (c) Schedule I includes, unless specifically excepted or unless
23 listed in another schedule, any of the following opiates, including its
24 isomers, esters, ethers, salts, and salts of isomers, esters, and
25 ethers, whenever the existence of such isomers, esters, ethers, salts
26 is possible within the specific chemical designation, dextrorphan
27 excepted:

- 28 (1) acetylmethadol;
- 29 (2) allylprodine;

- 1 (3) alphacetylmethadol;
- 2 (4) alphamuprodine;
- 3 (5) alphamethadol;
- 4 (6) alphaprodine;
- 5 (7) anileridine;
- 6 (8) benzethidine;
- 7 (9) betacetylmethadol;
- 8 (10) betameprodine;
- 9 (11) betamethadol;
- 10 (12) betaprodine;
- 11 (13) bezitramide;
- 12 (14) clonitazene;
- 13 (15) dextromoramide;
- 14 (16) dampromide;
- 15 (17) diethylthiambutene;
- 16 (18) difenoxin;
- 17 (19) dihydrocodeine;
- 18 (20) dimenoxadol;
- 19 (21) dimpheptanol;
- 20 (22) dimethylthiambutene;
- 21 (23) dioxaphetyl butyrate;
- 22 (24) diphenoxylate;
- 23 (25) dipipanone;
- 24 (26) ethylmethylthiambutene;
- 25 (27) etonitazene;
- 26 (28) etoxeridine;
- 27 (29) fentanyl;
- 28 (30) furethidine;
- 29 (31) hydroxypethidine;

- 1 (32) isomethadone;
- 2 (33) ketobemidone;
- 3 (34) levomethorphan;
- 4 (35) levomoramide;
- 5 (36) levorphanol;
- 6 (37) levophenacymorphan;
- 7 (38) metazocine;
- 8 (39) methadone;
- 9 (40) methadone-intermediate, 4-cyano-2-dimethylamino-4, 4-
- 10 diphenyl butane;
- 11 (41) moramide-intermediate, 2-methyl-3-morpholinol,
- 12 1-diphenylpropane-carboxylic acid;
- 13 (42) morpheridine;
- 14 (43) noracymethadol;
- 15 (44) norleyorphanol;
- 16 (45) normethadone;
- 17 (46) norpipanone;
- 18 (47) pethidine (meperidine);
- 19 (48) pethidine-intermediate-A, 4-cyano-1-methyl-4-
- 20 phenylpiperidine;
- 21 (49) pethidine-intermediate-B, ethyl-4-phenylpiperidine-
- 22 4-carboxylate;
- 23 (50) pethidine-intermediate-C, 1-methyl-4-phenyl-piperidine-
- 24 4-carboxylic acid;
- 25 (51) phenadoxone;
- 26 (52) phenampromide;
- 27 (53) phenazocine;
- 28 (54) phenomorphan;
- 29 (55) phenoperidine;

- 1 (56) piminodine;
- 2 (57) piritramide;
- 3 (58) proheptazine;
- 4 (59) properidine;
- 5 (60) propiram;
- 6 (61) racamethorphan;
- 7 (62) racamoramide;
- 8 (63) racamorphane;
- 9 (64) trimeperidine.

10 (d) Schedule I includes, unless specifically excepted or unless
11 listed in another schedule, any of the following opium derivatives,
12 its salts, isomers, and salts of isomers whenever the existence of
13 such salts, isomers, and salts of isomers is possible within the
14 specific chemical designation:

- 15 (1) acetorphine;
- 16 (2) acetyldihydrocodeine;
- 17 (3) benzylmorphine;
- 18 (4) codeine methylbromide;
- 19 (5) codeine-n-oxide;
- 20 (6) cyprenorphine;
- 21 (7) desomorphine;
- 22 (8) dihydromorphine;
- 23 (9) drotebanol;
- 24 (10) etorphine, except hydrochloride salt;
- 25 (11) heroin;
- 26 (12) hydromorphanol;
- 27 (13) methyl-desorphine;
- 28 (14) methyldihydromorphine;
- 29 (15) morphine methylbromide;

- 1 (16) morphine methylsulfonate;
- 2 (17) morphine-n-oxide;
- 3 (18) myrcophine;
- 4 (19) nicocodeine;
- 5 (20) nicomorphine;
- 6 (21) normorphine;
- 7 (22) pholcodine;
- 8 (23) thebacon

9 Sec. 17.30.050. SCHEDULE II. (a) A substance shall be placed in
10 schedule II if it is found under AS 17.30.010(a) to have a degree of
11 danger or probable danger less than substances listed in Schedule I,
12 but higher than substances in Schedule III.

13 (b) Schedule II includes, unless specifically excepted or unless
14 listed in another schedule, any material, compound, mixture, or prepara-
15 tion, which contains any quantity of the following hallucinogenic
16 substances, or which contains any of its salts, isomers, and salts of
17 isomers whenever the existence of such salts, isomers, and salts of
18 isomers is possible within the specific chemical designation. For
19 purposes of this section only, the term "isomer" includes the optical,
20 position and geometric isomers:

21 (1) 4-bromo-2, 5-dimethoxy-amphetamine, also known as
22 bromo-2,5-dimethoxy-a-methylphenethylamine and 4-bromo-2, 5-DMA;

23 (2) 2,5-dimethoxyamphetamine, also known as 2, 5-dimethoxy-
24 a-methylphenethylamine and 2, 5-DMA;

25 (3) 4-methoxyamphetamine, also known as 4-methoxy-a-methy-
26 lphenethylamine and paramethoxyamphetamine, PMA;

27 (4) 5-methoxy-1, 4-methylenedioxy-amphetamine;

28 (5) 4-methyl-2, 5-dimethoxy-amphetamine, also known as 4-
29 methyl-2, 5-dimethoxy-a-methylphenethylamine and "DCM" and "STP";

- 1 (6) 3, 4-methylenedioxy amphetamine;
- 2 (7) 3,4, 5-trimethoxy amphetamine;
- 3 (8) bufotenine, also known as 3-(5-dimethylaminoethyl)-5-
- 4 hydroxyindole and 3-(2-dimethylaminoethyl)-5-indolol and N, N-dime-
- 5 thylserotonin and 5-hydroxy-N, N-dimethyltryptamine and mappine;
- 6 (9) diethyltryptamine, also known as N, N-diethyltryptamine
- 7 and DET;
- 8 (10) dimethyltryptamine, also known as DMT;
- 9 (11) ibogaine, also known as 7-ethyl-6, 6B, 7,8,9,10,12, 13-
- 10 octahydro-2-methoxy-6, 9-methano-5H-pyrido [1',2': 1,2] azepino [5,4-
- 11 b] indole and tabernanthe iboga;
- 12 (12) lysergic acid diethylamide;
- 13 (13) mescaline;
- 14 (14) peyote, meaning all parts of the plant presently
- 15 classified botanically as *Lophophora Williamsii* Lemaire, whether
- 16 growing or not, the seeds of the plant, any extract from any part of
- 17 the plant, and every compound, manufacture, salts derivative, mixture,
- 18 or preparation of the plant, its seeds, or extracts:
- 19 (15) n-ethyl-3-piperdyl benzilate;
- 20 (16) n-methyl-3-piperdyl benzilate;
- 21 (17) psilocybin;
- 22 (18) psilocyn;
- 23 (19) thiophene analog of phencyclidine, also known as 1-[1-
- 24 (2-thienyl) cyclohexyl] piperidine and 2-thienyl analog of phency-
- 25 clidine and TPCP.
- 26 (c) Schedule II includes cocaine, meaning coca leaves and any salt,
- 27 compound, derivative, or preparation of coca leaves, and any salt,
- 28 compound, derivative, or preparation which is chemically equivalent or
- 29 identical with any of these substances, except that the substances do not

1 include decocainized coca leaves or extraction of coca leaves, which
2 extractions do not contain cocaine or ecgonine.

3 (d) Schedule II includes, unless specifically excepted or unless
4 listed in another schedule, any material, compound, mixture, or pre-
5 paration which contains any quantity of the following substances
6 having a depressant effect on the central nervous system, including
7 its salts, isomers, and salts of isomers whenever the existence of
8 such salts, isomers, and salts of isomers is possible within the
9 specific chemical designation:

- 10 (1) amobarbital;
- 11 (2) mecloqualone;
- 12 (3) methaqualone;
- 13 (4) pentobarbital;
- 14 (5) phencyclidine, also known as PCP;
- 15 (6) secobarbital.

16 (e) Schedule II includes, unless specifically excepted or unless
17 listed in another schedule, any material, compound, mixture, or
18 preparation which contains any quantity of the following substances
19 having a stimulant effect on the central nervous system:

- 20 (1) amphetamine, its salts, optical isomers, and salts of
21 its optical isomers;
- 22 (2) methamphetamine, its salts, isomers, and salts of its
23 isomers;
- 24 (3) phenmetrazine and its salts;
- 25 (4) methylphenidate.

26 Sec. 17.30.060. SCHEDULE III. (a) A substance shall be placed
27 in Schedule III if it is found under AS 17.30.010(a) to have a degree
28 of danger or probable danger less than the substances in Schedule II
29 but higher than substances in Schedule IV.

1 (b) Schedule III includes, unless specifically excepted or
2 unless listed in another schedule, any materials, compound, mixture,
3 or preparation which contains any quantity of the following substances
4 having a stimulant effect on the central nervous system, including its
5 salts, isomers whether optical, position, or geometric, and salts of
6 such isomers whenever the existence of such salts, isomers, and salts
7 of isomers is possible within the specific chemical designation:

- 8 (1) benzphetamine;
- 9 (2) chlorphentermine;
- 10 (3) clortermine;
- 11 (4) mazindol;
- 12 (5) phendimetrazine.

13 (c) Schedule III, includes unless specifically excepted or
14 unless listed in another schedule, any material, compound, mixture, or
15 preparation which contains any quantity of the following substances
16 having a depressant effect on the central nervous system:

17 (1) any compound, mixture, or preparation containing amobarbital,
18 secobarbital, or pentobarbital or any salt of any of these
19 substances combined with one or more other active medicinal ingredients
20 which are not listed in AS 17.30.040-17.30.090;

21 (2) any suppository dosage form containing amobarbital,
22 secobarbital, or pentobarbital or any salt of any of these substances
23 approved by the Federal Food and Drug Administration for marketing
24 only as a suppository;

25 (3) any substance which contains any quantity of a deri-
26 vative of barbituric acid or any salt of these;

- 27 (4) chlorhexadol;
- 28 (5) glutethimide;
- 29 (6) lysergic acid;

1 (7) lysergic acid amide;

2 (8) methyprylon;

3 (9) sulfondiethylmethane;

4 (10) sulfonethylmethane;

5 (11) sulfonmethane.

6 (d) Schedule III includes nalorphine.

7 (e) Schedule III includes, unless specifically excepted or
8 unless listed in another schedule, any material, compound, mixture, or
9 preparation containing limited quantities of any of the following
10 narcotic drugs, or any of its salts:

11 (1) not more than 1.8 grams of codeine per 100 milliliters
12 or not more than 90 milligrams per dosage unit, with an equal or
13 greater quantity of an isoquinoline alkaloid of opium;

14 (2) not more than 1.8 grams of codeine per 100 milliliters
15 or not more than 90 milligrams per dosage unit, with one or more
16 active, nonnarcotic ingredients in recognized therapeutic amounts;

17 (3) not more than 300 milligrams of dihydrocodeinone per
18 100 milliliters or not more than 15 milligrams per dosage unit, with a
19 fourfold or greater quantity of an isoquinoline alkaloid of opium;

20 (4) not more than 300 milligrams of dihydrocodeinone per
21 100 milliliters or not more than 15 milligrams per dosage unit, with
22 one or more active nonnarcotic ingredients in recognized therapeutic
23 amounts;

24 (5) not more than 1.8 grams of dihydrocodeine per 100
25 milliliters or not more than 90 milligrams per dosage unit, with one
26 or more active nonnarcotic ingredients in recognized therapeutic
27 amounts;

28 (6) not more than 300 milligrams of ethylmorphine per 100
29 milliliters or not more than 15 milligrams per dosage unit, with one

1 or more active, nonnarcotic ingredients in recognized therapeutic
2 amounts;

3 (7) not more than 500 milligrams of opium per 100 millil-
4 liters or per 100 grams or not more than 25 milligrams per dosage -
5 unit, with one or more active, nonnarcotic ingredients in recognized
6 therapeutic amounts;

7 (8) not more than 50 milligrams of morphine per 100 milli-
8 liters or per 100 grams, with one or more active, nonnarcotic ingredi-
9 ents in recognized therapeutic amounts.

10 (f) Schedule III includes hashish, hashish oil, and tetrahy-
11 drocannabinols.

12 Sec. 17.30.070. SCHEDULE IV. (a) A substance shall be placed in
13 Schedule IV if it is found under AS 17.30.010(a) to have a degree of
14 danger or probable danger less than the substances listed in Schedule
15 III but higher than the substances listed in Schedule V.

16 (b) Schedule IV includes, unless specifically excepted or unless
17 listed in another schedule, any material, compound, mixture, or
18 preparation which contains any quantity of the following substances,
19 including its salts, isomers and salts of isomers whenever the ex-
20 istence of such salts, isomers, and salts of isomers is possible
21 within the specific chemical designation:

- 22 (1) barbital;
23 (2) chloral betaine;
24 (3) chloral hydrate;
25 (4) chlordiazepoxide;
26 (5) clonazepam;
27 (6) clorazepate;
28 (7) diazepam;
29 (8) ethchlorvynol;

- 1 (9) ethinamate;
- 2 (10) flurazepan;
- 3 (11) lorazepan;
- 4 (12) mebutamate;
- 5 (13) meprobamate;
- 6 (14) methohexital;
- 7 (15) methylphenobarbital (mephobarbital);
- 8 (16) oxazepam;
- 9 (17) paraldehyde;
- 10 (18) petrichloral;
- 11 (19) pentobarbital;
- 12 (20) prazepam;

13 (c) Schedule IV includes any material, compound, mixture, or
14 preparation which contains any quantity of the following substances,
15 including its salts, isomers whether optical, position, or geometric,
16 and salts of such isomers, whenever the existence of such salts,
17 isomers, and salts of isomers is possible:

- 18 (1) fenfluramine;

19 (d) Schedule IV includes, unless specifically excepted or unless
20 listed in another schedule, any material, compound, mixture, or
21 preparation which contains any quantity of the following substances
22 having a stimulant effect on the central nervous system, including its
23 salts, isomers whether optical, position, or geometric, and salts of
24 such isomers whenever the existence of such salts, isomers and salts
25 of isomers is possible within the specific chemical designation:

- 26 (1) diethylpropion;
- 27 (2) pentermine;
- 28 (3) pemoline, including organometallic complexes and
29 chelates of these;

1 (a) Schedule IV includes, unless specifically excepted or unless
2 listed in another schedule, any material, compound, mixture or prepara-
3 tion which contains any quantity of the following substances, in-
4 cluding its salts:

5 (1) dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2-
6 diphenyl-3-methyl-2-propionoxybutane).

7 Sec. 17.70.080. SCHEDULE V. (a) A substance shall be placed in
8 Schedule V if it is found under AS 17.70.010(a) to have a degree of
9 danger or probable danger less than substances listed in Schedule VI.

10 (b) Schedule V includes any compound, mixture, or preparation
11 containing any of the following limited quantities of narcotic drugs
12 or its salts which includes one or more nonnarcotic active medicinal
13 ingredients in sufficient proportion to confer upon the compound,
14 mixture, or preparation valuable medicinal qualities other than those
15 possessed by Schedule I substances alone:

16 (1) not more than 200 milligrams of codeine per 100 milli-
17 liters or per 100 grams;

18 (2) not more than 100 milligrams of dihydrocodeine per 100
19 milliliters or per 100 grams;

20 (3) not more than 100 milligrams of ethylmorphine per 100
21 milliliters or per 100 grams;

22 (4) not more than 2.5 milligrams of diphenoxylate and not
23 less than 25 micrograms of atropine sulfate per dosage unit;

24 (5) not more than 100 milligrams of opium per 100 milli-
25 liters or per 100 grams.

26 (c) Schedule V includes loperamide.

27 Sec. 17.30.090. SCHEDULE VI. (a) A substance shall be placed
28 in Schedule VI if it is found under AS 17.30.010(a) to have the lowest
29 degree of danger or probable danger.

1 (b) Schedule VI includes:

- 2 (1) marijuana;
- 3 (2) intoxicating liquors.

4 Sec. 17.30.095. EXEMPTED DRUGS. A controlled substance the-
5 manufacture, distribution, dispensing, or possession of which is
6 exempt from criminal penalty under federal law is exempt from the
7 application of this chapter and AS 11.71. This exemption includes any
8 substances which may, under the Federal Food, Drug, and Cosmetic Act
9 (21 U.S.C. sec. 301 et seq.) be lawfully sold over the counter without
10 a prescription.

11 ARTICLE 2. REGULATION OF MANUFACTURE, DISTRIBUTION,
12 PRESCRIPTION AND DISPENSING OF CONTROLLED SUBSTANCES.

13 Sec. 17.30.150. REGULATIONS. The commissioner shall adopt regu-
14 lations under the Administrative Procedure Act (AS 44.62) which are
15 necessary for the administration of this chapter, and may charge
16 reasonable fees relating to the registration and control of the manu-
17 facture, distribution, and dispensing of controlled substances within
18 the state.

19 Sec. 17.30.160. REGISTRATION REQUIREMENTS. (a) A person who
20 manufactures, distributes, dispenses, or conducts research with a
21 controlled substance within the state or who proposes to engage in the
22 manufacture, distribution, or dispensing of a controlled substance
23 within the state, shall annually register with the commissioner in
24 accordance with regulations adopted under AS 17.30.150.

25 (b) Persons registered under this chapter to manufacture,
26 distribute, dispense, or conduct research with controlled substances
27 may possess, manufacture, distribute, dispense, or conduct research
28 with those substances to the extent authorized by their registration
29 and in conformity with the other provisions of this chapter.

1 (c) The following persons need not register under this chapter:

2 (1) an agent or employee of a registered manufacturer,
3 distributor, dispenser, or researcher of a controlled substance if the
4 possession is incidental to the agent's or employee's acting in the
5 usual course of business or employment;

6 (2) a common or contract carrier or warehouseman, or his
7 employee, whose possession of a controlled substance is in the usual
8 course of business or employment;

9 (3) a person in possession of a controlled substance under
10 a lawful order of a registered practitioner or in lawful possession of
11 a schedule V substance.

12 (d) The commissioner may, by regulation, waive the requirement
13 for registration of certain manufacturers, distributors, or dispensers
14 if he finds it consistent with the public health and safety.

15 (e) A separate registration is required for each principal place
16 of business or professional practice where the applicant manufactures,
17 distributes, or dispenses controlled substances.

18 (f) The commissioner may inspect the establishment of a regis-
19 trant or applicant for registration in accordance with regulations
20 adopted by the commissioner.

21 Sec. 17.30.170. REGISTRATION. (a) The commissioner shall
22 register an applicant to manufacture, distribute, or dispense control-
23 led substances included in AS 17.30.040-17.30.090 unless he finds that
24 the registration would be inconsistent with the public interest. In
25 determining the public interest, the commissioner shall consider the
26 following factors:

27 (1) maintenance of effective controls against diversion of
28 controlled substances into other than legitimate medical, scientific,
29 or industrial channels;

- 1 (2) compliance with applicable state and local law;
- 2 (3) any conviction of the applicant under federal or state
- 3 laws relating to controlled substances;
- 4 (4) past experience in the manufacture or distribution of
- 5 controlled substances, and the existence in the applicant's establish-
- 6 ment of effective controls against diversion;
- 7 (5) furnishing by the applicant of false information in an
- 8 application filed under this chapter;
- 9 (6) suspension or revocation of the applicant's federal
- 10 registration to manufacture, distribute, or dispense controlled sub-
- 11 stances as authorized by federal law; and
- 12 (7) any other factors relevant to and consistent with the
- 13 public health and safety.

14 (b) Practitioners registered under federal law to conduct re-

15 search with controlled substances shall be issued a registration to

16 conduct research with these substances within the state upon furnish-

17 ing the commissioner with evidence of the federal registration.

18 (c) Compliance by manufacturers and distributors with the pro-

19 visions of federal law pertaining to registration requirements (exclud-

20 ing fees) entitles them to be registered under this chapter.

21 Sec. 17.30.130. REVOCATION AND SUSPENSION OF REGISTRATION. (a)

22 A registration under AS 17.30.170 to manufacture, distribute, dis-

23 pense, or conduct research with a controlled substance may be suspended

24 or revoked by the commissioner upon a finding that the registrant:

- 25 (1) has furnished false or fraudulent material information
- 26 in an application filed under this chapter;
- 27 (2) has been convicted of a felony under state or federal
- 28 law relating to a controlled substance; or
- 29 (3) has had his federal registration to manufacture, dis-

1 tribute, dispense, or conduct research with controlled substances
2 suspended or revoked.

3 (b) The commissioner may limit the revocation or suspension of a
4 registration to the particular controlled substance with respect to
5 which grounds for revocation or suspension exist.

6 (c) If the commissioner suspends or revokes a registration, all
7 controlled substances owned or possessed by the registrant at the time
8 of suspension or the effective date of the revocation order may be
9 placed under seal. No disposition may be made of substances under
10 seal until the time for taking an appeal has elapsed or until all
11 appeals have been concluded unless a court, upon application, orders
12 the sale of perishable substances and the deposit of the proceeds of
13 the sale with the court. Upon a revocation order becoming final, all
14 controlled substances are forfeited to the state.

15 (d) The commissioner shall promptly notify the Drug Enforcement
16 Administration of all orders suspending or revoking registrations and
17 of all forfeitures of controlled substances.

18 Sec. 17.30.190. ORDER TO SHOW CAUSE. (a) Before denying, sus-
19 pending or revoking a registration, or refusing a renewal of registra-
20 tion, the commissioner shall serve upon the applicant or registrant an
21 order to show cause why registration should not be denied, revoked, or
22 suspended, or why the renewal should not be refused. The order to
23 show cause shall contain a statement of the basis for it and shall
24 require the applicant or registrant to appear before the commissioner
25 at a time and place not less than 30 days after the date of service
26 of the order. In the case of a refusal of renewal of registration
27 the show cause order shall be served not later than 30 days before the
28 expiration of the registration. These proceedings shall be conducted
29 in accordance with procedures for administrative adjudication under AS

1 44.62.330-44.62.630 without regard to criminal prosecution or other
2 proceeding. Proceedings to refuse renewal of registration do not
3 abate the existing registration which remains in effect pending the
4 outcome of the administrative hearing.

5 (b) The commissioner may, without an order to show cause, suspend
6 a registration simultaneously with the institution of proceedings
7 under AS 17.30.180 if he finds that there is an imminent danger to the
8 public health or safety which warrants this action. The suspension
9 shall continue in effect until the conclusion of the proceedings,
10 including judicial review of the proceedings, unless sooner withdrawn
11 by the commissioner or dissolved by a court of competent jurisdiction.

12 Sec. 17.30.200. RECORDS OF REGISTRANTS. Persons registered to
13 manufacture, distribute, dispense, or conduct research with controlled
14 substances under this chapter shall keep records and maintain inventories
15 in conformance with the record-keeping and inventory requirements of
16 federal law.

17 Sec. 17.30.210. ORDER FORMS: PRESCRIPTIONS. (a) Controlled
18 substances may be distributed by one registrant to another registrant
19 only if the distribution is in accordance with federal requirements
20 for order forms.

21 (b) No controlled substance may be dispensed by a practitioner
22 except in accordance with federal requirements regarding prescriptions
23 for controlled substances.

24 (c) If a controlled substance is classified in a schedule set
25 out in AS 17.30.040-17.30.090, or through regulation adopted in accor-
26 dance with this chapter, that is different from its corresponding
27 classification under federal law, the requirements of (a) and (b) of
28 this section are determined by the classification of the substance
29 under federal law.

1 Sec. 17.30.220. DEFINITION. As used in AS 17.30.150-17.30.220
2 of this chapter "controlled substance" does not include intoxicating
3 liquors.

4 ARTICLE 3. ENFORCEMENT AND ADMINISTRATIVE PROVISIONS

5 Sec. 17.30.300. COOPERATIVE ARRANGEMENTS AND CONFIDENTIALITY.

6 The commissioner of public safety shall cooperate with other state and
7 federal agencies in the discharge of their responsibilities pertaining
8 to illicit traffic in controlled substances and in suppressing the
9 abuse of controlled substances. Under this section, the commissioner
10 of public safety's powers include but are not limited to the following

11 (1) arranging for the exchange of information among govern-
12 mental officials concerning the abuse of controlled substances;

13 (2) coordinating and cooperating in training programs
14 pertaining to controlled substances at both local and state levels;
15 and

16 (3) cooperating with the Drug Enforcement Administration
17 through the establishment of a centralized unit to accept, catalogue,
18 file, and collect statistics, including records of persons who have
19 violated the provisions of this chapter or AS 11.71 within the state,
20 and make the information available for federal, state and local law
21 enforcement purposes; the commissioner may not furnish the name or
22 identity of a patient or research subject whose identity could not be
23 obtained under (c) of this section.

24 Sec. 17.30.310. FORFEITURES. (a) The following are subject to
25 forfeiture to the state:

26 (1) any controlled substance which has been manufactured,
27 distributed, dispensed, or possessed in violation of this chapter or
28 AS 11.71;

29 (2) raw materials, products, and equipment which are used,

1 or intended for use in manufacturing, distributing, compounding,
2 processing, delivering, importing, or exporting a controlled substance
3 in violation of this chapter or AS 11.71;

4 (3) any property which is used or intended for use as
5 a container for property described in (1) or (2) of this subsection;

6 (4) any conveyance, including but not limited to aircraft,
7 vehicles or vessels which have been used to transport or in any manner
8 to facilitate transportation for purpose of sale or receipt of
9 property described in (1) or (2) of this subsection; however,

10 (A) no conveyance is subject to forfeiture under this
11 section if the owner of the conveyance establishes, by a prepon-
12 derance of the evidence, at a hearing before the court as a trier
13 of fact that its use in violation of this chapter or AS 11.71
14 was committed by another person and that the owner was not a
15 consenting party nor privy to the violation and took all reason-
16 able means to insure that the conveyance would not be used, and
17 that no person who operated it would use it violation of this
18 chapter or AS 11.71;

19 (B) a forfeiture of a conveyance encumbered by a bona
20 fide security interest at the time of seizure is subject to the
21 interest of the secured party if the secured party establishes,
22 by a preponderance of the evidence, at a hearing before the court
23 as a trier of fact that its use in violation of this chapter
24 or AS 11.71 was committed by another person and that the secured
25 party was not a consenting party nor privy to the violation and
26 took all reasonable means to insure that the conveyance would not
27 be used and that no person who operated it would use it in
28 violation of this chapter or AS 11.71;

29 (5) any books, records, and research products and materials,

1 including formulas, microfilm, tapes, and data which are used in vio-
2 lation of this chapter or AS 11.71.

3 (6) any money or negotiable instrument derived from activity
4 prohibited by this chapter or AS 11.71;

5 (7) any firearm used during or in furtherance of a violation
6 of this chapter or AS 11.71.

7 (b) Property listed in (a) of this section may be forfeited to
8 the state either upon conviction of the defendant of a violation of
9 this chapter or AS 11.71, or upon judgment of a court of compet
10 jurisdiction in a separate civil proceeding in rem that an item
11 specified in (a) of this section was used in or in aid of a violation
12 of this chapter or AS 11.71.

13 (c) It is not a defense in an in rem proceeding brought under
14 this section that a criminal proceeding is pending or has resulted in
15 a conviction or acquittal for a violation of this chapter or AS 11.71,
16 or that a criminal proceeding has been dismissed, or that the item
17 has not been forfeited in any criminal proceeding, or that multiple
18 actions are pending.

19 (d) Property subject to forfeiture under this section may be
20 seized by a peace officer upon an order issued by a court having
21 jurisdiction over the property upon a showing of probable cause that
22 the property is subject to forfeiture under (a) of this section.
23 Seizure without a court order may be made if

24 (1) the seizure is incident to a valid arrest or a search
25 under a valid search warrant;

26 (2) the property subject to seizure has been the subject of
27 a prior judgment in favor of the state in a criminal proceeding or
28 civil proceeding in rem based upon this chapter or AS 11.71; or

29 (3) there is probable cause that the property was or is

1 being used in violation of this chapter or AS 11.71 and the property is
2 easily movable; property seized under this paragraph may not be held
3 for more than 48 hours or until an order continuing the seizure may be
4 applied for and issued by a court, whichever is earlier.

5 (e) Property taken or detained under (b) of this section is in
6 the custody of the Department of Public Safety subject only to the
7 orders and decrees of the court having jurisdiction over the forfeiture
8 proceedings. If property is seized under this chapter, the Department
9 of Public Safety may:

10 (1) place the property under seal;

11 (2) remove the property to a place designated by the court;

12 or

13 (3) take custody of the property and remove it to an appropri-
14 ate location for disposition in accordance with law.

15 (f) Within 10 days of any seizure under this section, the state
16 shall inventory the property seized and its contents and appraise the
17 value of the items seized.

18 (g) Within 20 days of any seizure under this section, the state
19 shall, by certified mail, notify any person known to have an interest
20 in an item with an appraised value of \$500.00 or more, or who is
21 ascertainable from official registration numbers, licenses or other
22 state, federal or municipal numbers on the item. Additionally, the
23 state shall publish notice of forfeiture action of an item valued at
24 \$500.00 or more in a newspaper of general circulation in the judicial
25 district in which the seizure was made, or if no newspaper is published
26 in that district, in a newspaper published in the state and distributed
27 in that district, four times during four consecutive calendar weeks,
28 once in each week. The requirements of this subsection do not apply
29 to the forfeiture of controlled substances which have been manufactured,

1 distributed, dispensed, or possessed in violation of this chapter or
2 AS 11.71, regardless of their value.

3 (h) Upon service or publication of notice of commencement of an
4 action under this section, a person claiming interest in the property
5 shall file within 20 days from the service or publication, a notice of
6 claim setting out the nature of his interest, the date it was acquired,
7 the consideration paid, and an answer to the state's allegations. If
8 no claim and answer is filed within the time specified, the property
9 described in the state's allegation shall be ordered forfeited to the
10 state without further proceedings or showings.

11 (i) Questions of fact or law raised by a notice of claim and
12 answer of any claimant in an action commenced under this section shall
13 be determined by the court sitting without a jury. Such a proceeding
14 may, in the court's discretion, be held in abeyance until conclusion
15 of any pending criminal charges against the claimant under this chapter
16 or AS 11.71.

17 (j) A claimant under (h) of this section may at any time petition
18 for release of a seized item as follows:

19 (A) to a court in which a seizure warrant has been
20 issued; or

21 (B) to a court in which a criminal or civil action
22 alleging forfeiture of the item has been filed; or

23 (C) prior to an action being filed, or in the event
24 no seizure warrant was issued, in the district in which the
25 violation took place.

26 (k) An item shall not be released by the court under (j) of this
27 section except upon:

28 (A) an adequate assurance from the claimant that the
29 item will remain subject to the court's jurisdiction and within
30

1 the constructive custody of the state; and

2 (B) a finding that the release is in the best interests
3 of the state; or

4 (C) the posting of a bond equal to twice the assessed
5 value of the item or the posting of other valid and equivalent
6 security.

7 (l) A claimant may petition the court for sale of an item prior
8 to final disposition. The court shall grant a petition for sale upon
9 a finding that the sale is in the best interests of the state and the
10 preservation and maintenance of the item seized. Proceeds from the
11 sale plus interest to the date of final disposition shall thereafter
12 be treated as the subject of the forfeiture action.

13 (m) Property forfeited under this section shall be disposed of
14 according to court order. The court may order the Department of Public
15 Safety to

16 (1) destroy property harmful to the public;

17 (2) sell the property and use the proceeds for payment of
18 all proper expenses of the proceedings for forfeiture and sale, in-
19 cluding expenses of seizure, custody and court costs;

20 (3) take custody of the property and use it in the enforce-
21 ment of this chapter or AS 11.71, or transfer it to another agency of
22 the state for a use designated by the court in furtherance of the
23 administration of justice;

24 (4) take custody of the property and remove it for dis-
25 position in accordance with law; or

26 (5) forward it to the Drug Enforcement Administration for
27 disposition.

28 (n) Upon a showing that a claimant is entitled to remittance in
29 accordance with the provisions of this section, the court shall order

1 that:

2 (1) if the item may be used for a valid state function, it
3 shall be delivered to the Department of Administration, and that depart-
4 ment shall remit to the claimant the value of the claimant's interest
5 at the time of seizure; or

6 (2) the item may be sold at public auction to the highest
7 bidder, the claimant having a right of first refusal, with proceeds
8 used to satisfy the claimant's interest at the time of seizure and the
9 balance deposited in the general fund.

10 (o) An offender who used an item subject to remission in violation
11 of this chapter or AS 11.71 shall be assessed a fine at least equal to
12 the cost of any lien payment or remittance made by the state plus the
13 reasonable costs of the seizure.

14 (p) Any controlled substance manufactured, possessed, transferred,
15 sold, or offered for sale in violation of this chapter or AS 11.71 is
16 contraband and shall be seized and summarily forfeited to the state.

17 (q) Plants from which controlled substances may be derived and
18 which have been planted or cultivated in violation of this chapter or
19 AS 11.71, or which are wild growths, may be seized and summarily for-
20 feited to the state.

21 Sec. 17.30.320. BURDEN OF PROOF: LIABILITIES. (a) It is not
22 necessary for the state to negate an exemption or exception in this
23 chapter in a complaint, information, indictment or other pleading or
24 in a trial, hearing, or other proceeding under this chapter. The
25 defendant shall have the burden of proving by a preponderance of the
26 evidence any exemption or exception claimed by him.

27 (b) No liability is imposed by this chapter upon a public servant
28 acting within the scope and authority of his employment.

29 Sec. 17.30.330. JUDICIAL REVIEW. All final determinations, find-

1 ings, and conclusions of the commissioner under this chapter or regu-
2 lations promulgated under it are final decisions of the matters,
3 involved. A person aggrieved by the decision may obtain review of
4 the decision in the superior court in accordance with AS 44.62.560-
5 44.62.570.

6 Sec. 17.30.340. EDUCATION AND RESEARCH. (a) The commissioner
7 shall carry out educational programs designed to prevent and deter
8 abuse of controlled substances. In connection with these programs,
9 the commissioner may:

10 (1) promote better recognition of the problems surrounding
11 abuse of controlled substances within the regulated industry and
12 among interested groups and organizations;

13 (2) assist the regulated industry and interested groups and
14 organizations in contributing to the reduction of abuse of controlled
15 substances;

16 (3) consult with interested groups and organizations to aid
17 them in solving administrative and organizational problems;

18 (4) evaluate procedures, projects and techniques conducted
19 or proposed as part of educational programs on abuse of controlled
20 substances;

21 (5) disseminate the results of research on abuse of control-
22 led substances to promote a better public understanding of the problems
23 which exist and their solutions; and

24 (6) assist in the education and training of state and local
25 law enforcement officials in their efforts to prevent abuse of control-
26 led substances.

27 (b) The commissioner shall encourage research on controlled
28 substances and may:

29 (1) establish methods to assess the effects of controlled

1 substances and identify and characterize those with potential for
2 abuse;

3 (2) make studies and undertake research to:

4 (A) develop new or improved approaches, techniques,
5 systems, equipment and devices to strengthen the enforcement of
6 this chapter;

7 (B) determine patterns of abuse of controlled substances
8 and their social effects;

9 (C) improve methods for preventing, predicting and
10 understanding the abuse of controlled substances;

11 (3) enter into contracts with public agencies, institutions
12 of higher education, and private organizations or individuals for
13 conducting research, demonstrations, or special projects which bear
14 directly on abuse of controlled substances and for related research and
15 educational activities.

16 Sec. 17.30.350. COOPERATIVE ARRANGEMENTS AND CONFIDENTIALITY. (a)
17 Results, information, and evidence received from the Drug Enforcement
18 Administration of the United States Department of Justice relating to
19 the regulatory functions of this chapter, including results of inspec-
20 tions conducted by it may be relied and acted upon by the commissioner
21 in the exercise of his regulatory functions under this chapter.

22 (b) A practitioner engaged in medical practice or research may
23 not furnish the name or identity of a patient or research subject to
24 the commissioner, and the practitioner may not be compelled in a state
25 or local civil, criminal, administrative, legislative, or other pro-
26 ceeding to furnish the name or identity of an individual that the
27 practitioner is obliged to keep confidential.

28 ARTICLE 4. DEFINITIONS

29 Sec. 17.30.300. DEFINITIONS. As used in this chapter

1 (1) "administer" means the direct application of a control-
2 led substance, whether by injection, inhalation, ingestion, or any
3 other means, into the body of a patient or research subject by:

4 (A) a practitioner, or, in his presence, by his
5 authorized agent, or

6 (B) the patient or research subject at the direction
7 and in the presence of the practitioner;

8 (2) "agent" means an authorized person who acts on behalf of
9 or at the direction of a manufacturer, distributor, or dispenser; it
10 does not include a common or contract carrier, public warehouseman, or
11 employee of the carrier or warehouseman;

12 (3) "commissioner" means the commissioner of health and
13 social services;

14 (4) "committee" means the Controlled Substances Committee
15 established in sec. 20 of this chapter;

16 (5) "controlled substance" means a drug, substance, or
17 immediate precursor included in the schedules in AS 17.30.040-17.30.090;

18 (6) "deliver" or "delivery" means the actual, constructive,
19 or attempted transfer from one person to another of a controlled sub-
20 stance whether or not there is an agency relationship;

21 (7) "department" means the Department of Health and Social
22 Services;

23 (8) "dispense" means to deliver a controlled substance to an
24 ultimate user or research subject by or under the lawful order of a
25 practitioner, including the prescribing, administering, packaging,
26 labeling, or compounding necessary to prepare the substance for that
27 delivery; "dispenser" means a practitioner who dispenses;

28 (9) "distribute" means to deliver other than by administer-
29 ing or dispensing controlled substance; "distributor" means a person

1 who distributes;

2 (10) "drug"

3 (A) means

4 (i) substances recognized as drugs in the official
5 United States Pharmacopoeia, official Homeopathic Pharma-
6 copoeia of the United States, or official National Formulary,
7 or any supplement to any of these publication;

8 (ii) substances intended for use in the diagnosis,
9 cure, mitigation, treatment, or prevention of disease in
10 humans or animals;

11 (iii) substances, other than food, intended to affect
12 the structure or any function of the body of humans or animals;
13 and

14 (iv) substances intended for use as a component of
15 any article specified in (i), (ii), or (iii) of this subpara-
16 graph;

17 (B) does not include devices or their components, parts,
18 or accessories;

19 (11) "hashish" means the resin produced by the plant (genus)
20 Cannabis;

21 (12) "hashish oil" means the viscous liquid concentrate of
22 tetrahydrocannabinols extracted from hashish;

23 (13) "immediate precursor" means a substance which the con-
24 trolled substances committee has found to be and is by regulation desig-
25 nated as the principal compound commonly used or produced primarily for
26 use, and which is an immediate chemical intermediary used or likely
27 to be used in the manufacture of a controlled substance, the control
28 of which is necessary to prevent, curtail, or limit manufacture of that
29 controlled substance;

1 (14) "judicial officer" means a judge of the superior court,
2 a district judge and a magistrate;

3 (15) "intoxicating liquor" has the meaning ascribed to it in
4 AS 11.71.200(9);

5 (16) "manufacture" means the production, preparation, propa-
6 gation, compounding, conversion or processing of a controlled substance,
7 either directly or indirectly by extraction from substances of natural
8 origin, or independently by means of chemical synthesis, or by a com-
9 bination of extraction and chemical synthesis, and includes any
10 packaging or labeling of a controlled substance:

11 (A) by a practitioner as an incident to his administer-
12 ing or dispensing of a controlled substance in the course of his
13 professional practice, or

14 (B) by a practitioner, or by his authorized agent under
15 his supervision, for the purpose of, or as an incident to, research,
16 teaching, or chemical analysis and not for sale;

17 (17) "marijuana" has the meaning ascribed to in AS 11.71.20
18 (11);

19 (.8) "opiate" means a substance having an addiction-forming
20 or addiction-sustaining liability similar to morphine or being capable
21 of conversion into a drug having addiction-forming or addiction-sustain-
22 ing liability; it does not include, unless specifically designated as
23 controlled under sec. 10 of this chapter, the dextrorotatory isomer of
24 3-methoxy-n-methylmorphinan and its salts (dextromethorphan); it does
25 include its racemic and levorotatory forms;

26 (19) "opium poppy" means the plant of the species *Papaver*
27 *sanniferum* L., except its seeds;

28 (20) "poppy straw" means all parts, except the seeds, of the
29 opium poppy, after mowing;

1 (21) "practitioner" means:

2 (A) a physician, dentist, veterinarian, scientific
3 investigator, or other person licensed, registered or otherwise
4 permitted to distribute, dispense, conduct research with respect
5 to or to administer a controlled substance in the course of pro-
6 fessional practice or research in the state;

7 (B) a pharmacy, hospital or other institution licensed,
8 registered, or otherwise permitted to distribute, dispense,
9 conduct research with respect to or to administer a controlled
10 substance in the course of professional practice or research in
11 the state;

12 (22) "production" includes the manufacture, planting, culti-
13 vation, growing, or harvesting of a controlled substance;

14 (23) "ultimate user" means a person who lawfully possesses a
15 controlled substance for his own use or for the use of a member of his
16 household or for administering to an animal owned by him or by a
17 member of the household.

18 Sec. 17.30.600. SHORT TITLE. This chapter may be cited as the
19 Alaska Controlled Substances Act.

20 * Sec. 9. AS 08.64.330(3)(B) is amended to read:

21 (B) habitual overuse of alcoholic beverages or
22 controlled substances [DEPRESSANT, HALLUCINOGENIC OR STIMULANT
23 DRUGS,] as defined in AS 17.12 [AS 17.12.150(3), OR ADDICTION TO
24 THE USE OF NARCOTIC DRUGS AS DEFINED IN AS 17.10.230(13)];

25 * Sec. 10. AS 08.80.260(2) is amended to read:

26 (2) selling, bartering, or making available a controlled
27 substance as defined in AS 17.30 [MORPHINE, COCAINE OR OTHER, NAR-
28 COTIC] to a person addicted to the use of a controlled substance [DRUGS];
29 except upon prescription issued by a licensed physician;

1 * Sec. 11. AS 08.80.260(9) is amended to read:

2 " (9) violation of regulations pertaining to the provision of
3 adequate security for controlled substances [DANGEROUS DRUGS].

4 * Sec. 12. AS 08.80.470 is amended to read:

5 Sec. 08.80.470. CONSTRUCTION. Nothing in this chapter amends,
6 modifies, repeals or otherwise changes any provisions of the Alaska
7 Controlled Substances Act (AS 17.30) [NARCOTIC DRUG ACT (AS 17.10)] or
8 the Alaska Food, Drug and Cosmetic Act (AS 17.20).

9 * Sec. 13. AS 44.29.020 is amended to read:

10 Sec. 44.29.020. DUTIES OF DEPARTMENT. The Department of Health
11 and Social Services shall administer the state programs for public
12 health and welfare, including: (1) maternal and child health services;
13 (2) preventive medical services; (3) public health nursing services;
14 (4) sanitation and engineering services; (5) nutrition services; (6)
15 health education; (7) laboratories; (8) mental health treatment and
16 diagnosis; (9) management of state institutions; (10) medical facil-
17 ities; (11) old age assistance; (12) aid to dependent children (13) aid
18 to the blind; (14) child welfare services; (15) general relief; (16)
19 licensing and supervision of child care facilities; [AND] (17) probation
20 and parole supervision; and (18) control of drug abuse in accordance
21 with the provisions of AS 17.30

22 * Sec. 14. (a) Prosecution for a violation of law occurring before the
23 effective date of this Act is not affected or abated by this Act.

24 Violation of any law repealed by this Act may still be prosecuted and
25 brought to a final determination in accordance with the laws and regu-
26 lations in effect at the time of the violation.

27 (b) Civil seizures or forfeitures and injunctive proceedings
28 commenced before the effective date of this Act are not affected by
29 this Act.

1 (c) All administrative proceedings pending under prior laws which
2 are superseded by this Act shall be continued and brought to a final
3 determination in accord with the laws and rules in effect before the
4 effective date of this Act.

5 (d) The commissioner shall initially permit persons to register
6 who own or operate an establishment engaged in the manufacture, distri-
7 bution, or dispensing of a controlled substance before the effective
8 date of this Act and who are registered or licensed by the state.

9 (e) This Act applies to violations of law, seizures and for-
10 feitures, injunctive proceedings, administrative proceedings and investi-
11 gations which occur following its effective date.

12 * Sec. 15. Orders issued and regulations adopted under a law affected by
13 this Act and in effect on the effective date of this Act and not in
14 conflict with this Act continue until modified, superseded or repealed.

15 * Sec. 16. AS 04.15.080, 04.15.110, 17.10, 17.12, and 17.15
16 are repealed.

17 * Sec. 17. This Act takes effect on July 1, 1980.
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INTEGRATED
AND NON-
INTEGRATED
BAR ASSOC.



Alaska State Legislature

House of Representatives

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

To: Charlie Parr, Chairman, and Members of the House
Judiciary Committee

From: Margaret W. Berck, Staff

Date: September 13, 1979

Subject: Integrated and Nonintegrated Bar Associations

I. INTRODUCTION

Mechanisms for regulating the legal profession vary from state to state. Thirty states, including the State of Alaska, and the District of Columbia have established integrated bar associations to fulfill certain of these regulatory responsibilities. In order to practice law in an integrated bar state, one must be a member of the bar association. This mandatory membership requirement vests an integrated bar association with certain ^①admission, ^②licensing, and ^③disciplinary functions. The 20 remaining states have nonintegrated bar associations. In these states membership in the state bar association is voluntary and such associations serve primarily as social clubs. In nonintegrated states, the regulation of the legal profession is generally the responsibility of the supreme court. The court typically establishes a board or commission for this purpose. In a few nonintegrated states, the attorney general's office is responsible for the disciplinary function.

II. THE ALASKA BAR ASSOCIATION

The integrated status of the Alaska Bar Association was established in 1955 through the legislative enactment of the Alaska Integrated Bar Act.¹ Prior to the integration of the Alaska Bar Association, the judiciary was vested with the disciplinary function, while the attorney general was responsible for the admissions function. The Alaska Integrated Bar Act was introduced by Representative Kalamarides as a result of numerous complaints arising out of the then-existing disciplinary and admission practices. In 1955 the territorial legislature, concluding that such matters could be better handled by the lawyers themselves, established the integrated bar in Alaska.

Pursuant to Alaska statute, the Alaska Bar Association is governed by a nine-member Board of Governors. The Board of Governors serve without salary and are elected by the membership at large. As statute requires the Board of Governors to be elected from the membership, there are no lay persons on the board. Rules concerning admission, discipline, and definition of the practice of law must be embodied in the Alaska Bar Rules.² Although the Board of Governors is empowered to approve and recommend Alaska Bar Rules, the Alaska Supreme Court is vested with the authority to promulgate those rules. The Board of Governors may adopt bylaws and regulations consistent with the Alaska Bar Rules; however, such bylaws and regulations are specifically exempt from the requirements of the Administrative Procedure Act.

¹See AS 08.08.010, et seq.

²To date no rule has been developed which would define the practice of law.