STATE
of ALASKA

MEMORANDUM

000046

TO: Mike Clemens, Finance Officer
Div. of Administrative Services
Department of Public Safety

DATE: September 21, 1979

FILE NO: H310

TELEPHONE NO:

FROM: A.W. Longacre, Associate Cost Analyst
Facility Procurement Policy
Department of Transportation
and Public Facilities

SUBJECT:

As requested by you on 9/17/79, a LCC review and analysis was performed on your proposed capital budget.

Unfortunately, most projects could not be properly analyzed either because of a lack of data in the data base, or because the project type did not lend itself to LCC analysis. An LCC waiver for these projects is granted by this office.

The following projects were able to be analyzed by this office. The results, by project, are:

Note: All results are in escalated dollars.

Warehouses Sand Point, Sitka

Sand Point:

Site & Design - $13,000
Construction - $80,000

Sitka

Site & Design - $11,000
Construction - $68,000

Housing

Fort Yukon

Site & Design - $ 40,000
Construction - $253,000

5 Mile: (each house)

Site & Design - $ 33,000
Construction - $209,000

No alternatives were evaluated in these analyses.

AWL/lkl

ACES ASSUMPTIONS USED IN LIFE CYCLE COST ANALYSES
RUN ON 08/18/79 AT 11.908 FAIRBANKS TIME

SAFETY

NOTE THAT YOUR INPUTS ARE ALREADY INCLUDED IN THE ASSUMPTIONS.

ASSUMPTION NUMBER	ASSUMPTION AND ITS VALUE
	PHYSICAL ASSUMPTIONS
1	BUILDING TYPE 16.03
2	BUILDING GROSS SQUARE FOOTAGE 1664
3	LOCATION-- FORT YUKON
	TIME ASSUMPTIONS
4	SITE AND DESIGN BEGINS IN YEAR 1980
5	SITE AND DESIGN, YEARS DURATION 2
6	CONSTRUCTION BEGINS IN YEAR 1981
7	CONSTRUCTION, YEARS DURATION 1
8	MAINT. & OPER. BEGINS IN 1981
9	BUILDING LIFETIME IN YEARS 25
	COST AND ECONOMIC ASSUMPTIONS
10	SITE AND DESIGN COSTS AS A PERCENTAGE OF THE CONSTRUCTION COSTS 18 %
11	CONSTRUCTION COST PER GSF ON-SITE, TODAYS $: $ 122.71
12	MAINT. & OPER. COST FOR TYPE 16.03 IS UNAVAILABLE
13	FORECAST CONSTRUCTION INFLATION RATE 7.5 %
14	FORECAST MAINT. & OPER. INFLATION RATE 15 %
15	DISCOUNT RATE 10.5 %
16	G.O. BOND INTEREST RATE -- N.A.
17	NUMBER OF G.O. BOND PAYMENT PERIODS -- N.A.
18	FUNDING SOURCE IS: STATE GENERAL FUND OR OTHER FUNDS

NORMALLY THE COST SUMMARY WILL BE IN TODAY'S DOLLARS.
WOULD YOU LIKE THE COST SUMMARY IN ESCALATED DOLLARS?
(YES OR NO)

?Y

LIFE CYCLE COST ANALYSIS SUMMARY

COST SUMMARY IN ESCALATED DOLLARS:
(ALL AMOUNTS IN THOUSANDS OF DOLLARS)

SITE AND DESIGN COST $ 40
CONSTRUCTION COST $ 253
MAINT. AND OPERATION COST $ (UNAVAILABLE)

FUTURE CASH FLOW TOT $ 293
MAINT. & OPER. COST NOT INCLUDED

REAL PRESENT VALUE $ 182
UNIFORM ANNUAL COST $ 14

ING ASSUMPTIONS USED IN LIFE CYCLE COST ANALYSIS
IONS) ON 09/18/79 AT 11.962 FAIRBANKS TIME.

SAFETY

E THAT YOUR INPUTS ARE ALREADY INCLUDED IN THE ASSUMPTIONS.

ASSUMPTION NUMBER	ASSUMPTION AND ITS VALUE
	PHYSICAL ASSUMPTIONS
1	BUILDING TYPE 16.03
2	BUILDING GROSS SQUARE FOOTAGE 1664
3	LOCATION--LIVENGOOD
	TIME ASSUMPTIONS
4	SITE AND DESIGN BEGINS IN YEAR 1980
5	SITE AND DESIGN, YEARS DURATION 2
6	CONSTRUCTION BEGINS IN YEAR 1981
7	CONSTRUCTION, YEARS DURATION 1
8	MAINT. & OPER. BEGINS IN 1981
9	BUILDING LIFETIME IN YEARS 25
	COST AND ECONOMIC ASSUMPTIONS
10	SITE AND DESIGN COSTS AS A PERCENTAGE OF THE CONSTRUCTION COSTS --18 %
11	CONSTRUCTION COST PER GSF, ON-SITE, TODAYS $, $ 100.9
12	MAINT. & OPER. COST FOR TYPE 16.03 IS UNAVAILABLE
13	FORECAST CONSTRUCTION INFLATION RATE 7.5 %
14	FORECAST MAINT. & OPER. INFLATION RATE 15 %
15	DISCOUNT RATE 10.5 %
16	G.O. BOND INTEREST RATE -- N.A.
17	NUMBER OF G.O. BOND PAYMENT PERIODS -- N.A.
18	FUNDING SOURCE IS: STATE GENERAL FUND OR OTHER FUNDS

NORMALLY THE COST SUMMARY WILL BE IN TODAY'S DOLLARS.
WOULD YOU LIKE THE COST SUMMARY IN ESCALATED DOLLARS?
(YES OR NO)

?Y

LIFE CYCLE COST ANALYSIS SUMMARY

COST SUMMARY IN ESCALATED DOLLARS:
(ALL AMOUNTS IN THOUSANDS OF DOLLARS)

SITE AND DESIGN COST $ 33
CONSTRUCTION COST $ 209
MAINT. AND OPERATION COST $ (UNAVAILABLE)

FUTURE CASH FLOW TOT $ 242
MAINT. & OPER. COST NOT INCLUDED

REAL PRESENT VALUE $ 150
UNIFORM ANNUAL COST $ 12

DIVISION 3 - PHYSICAL CRITERIA

A. FOUNDATION

Foundation system shall be an engineered mudsill system consisting of timber posts, crossbracing and laminated or solid continuous treated wood sills. All connections to be thru bolted. Contractor to provide drawings stamped by a registered structural engineer before constructing mudsill foundation. Foundation to provide a distance of appoximately 3'0" from grade to finished floor.

B. SKIRTING

Building(s) shall be completely skirted with a perimeter skirting system extending from grade to the bottom of the floor structure. Skirting shall be constructed of 2 x 4 framing members on a maximum of 24 inch centers with both a top and bottom plate, and covered with a minimum of 1/2 inch thick C-D exterior plywood. A hinged and latched 24 inch wide access door shall be provided in a convenient location on each end of the unit. The skirting system shall be constructed in modules with a maximum length of 12 feet. Individual modules shall be connected to each other with bolts or duplex nails. Skirting shall be fastened to the underside of the unit with duplex nails. Brace or secure skirting to maintain neat and plumb condition.

C. STRUCTURE

1. Building(s) shall be constructed utilizing factory built panels, factory built modular units or conventional wood frame components; however in any case building(s) shall be designed and constructed so that they can be disassembled into two 12 foot wide structural sections for future removal and reassembly. All exterior walls or wall panels to be framed utilizing 2" x 6" members 16" o.c. Ceiling heights to be minimum of 7'-6".

2. Bidders shall assume that the structure(s) and associated equipment will be placed and operate under arctic conditions. Designers shall account for extreme cold temperatures, wind, snow, rain and blowing snow.

3. Interior and exterior finishes shall be easily maintained; shall resist damage by impact, shall resist corrosion, shall prevent air leakage and shall provide thermal protection at the design temperatures designated.

4. Roof shall be guaranteed for five years.

5. Interior partitions to be framed with nominal 2" x 4" members 16" o.c.

5. 6 mil polyethene vapor barrior or equal to be installed at all exterior walls, floor and ceiling.

D. WINDOWS

1. All windows shall be factory assembled primed wood casement units complete with double pane welded, insulating glass, triple glazing storm panel, and removable insect screens. Approved manufacturers are: Caradco, Pella and Anderson.

2. Insulate space between back side of window frame and rough framing.

3. Minimum unit size shall be 24" x 36" with minimum 50% operable.

E. EXTERIOR DOORS

1. All doors shall be 3'-0" x 6'-8" x 1 3/4" steel clad insulated core door with magnetic weatherstriping.

2. Hardware: Schlage or equal. Provide 5" backset.

3. Provide combination wood storm and insect door.

F. INTERIOR DOORS

1. Prefinished 1 3/8" hollow core mahogany door. (Solid core at utility room.)
2. Doors shall be accurately and precisely fitted and hung. Clearance at jambs and head shall be 1/16" to 1/8" and 1/2" over floors. Bevel all closing edges. Cut doors for latch sets so that the center of the latch set will be 38" above the finished floor.
3. Hardware: Schlage or equal.

G. FINISHES

1. Floors:
   a. Carpet: Nylon "plush" type with 5/8" thick waffle type pad complete with metal edging strips, door threshold strips and all fasteners required. Submit carpet color samples for selection and approval.

   b. Vinyl: Armstrong "Quiet Zone", or equal, vinyl corlon, cushioned back, or equal. Submit sample and colors for approval.
   Installation: Lay over cleaned and properly prepared floors in strict accordance with the manufacturer's directions using waterproof adhesive recommended by the flooring manufacturer. Lay in full 6' wide strips where practicable, lengths as long as possible to minimize joints. Provide all necessary material trim for a complete and workmanlike job.

   c. Base: Install 2 1/2" wood base all exposed areas.

2. Stud Walls and Partitions:
1/2" gypsum wallboard with tapered edges, 4 feet wide. Finish by reinforcing wall and ceiling angles and inside corners with Perf-A-Tape and joint compound. Joints, screw heads and other depressions shall then be treated and finished using Perf-A-Tape joint system according to best trade practices. All work in accordance with methods recommended in U.S. Gypsum Company's "Gypsum Construction Handbook, 1978 edition" for smooth or textured finish.

3. Ceilings:
5/8" gypsum wallboard finish as per #2 Walls.

4. Painting Schedule - Interior Surfaces:
   a. Gypsum wall board - Two coats Glidden Spred latex Semi-Gloss Enamel, roller applied.
   b. Wood - One coat Glidden 5005 undercoat, two coats Spred-Latex Semi-Gloss Enamel.
   c. Interior Wood Doors - Two coats polyurethane varnish. Roller or spray apply to all faces including tops and bottoms before doors are hung.
   d. Metal - If not primed apply one coat primer No. 4570, two coats Spred-Latex Enamel.

5. Painting Schedule - Exterior Surfaces:
   a. Exterior Plywood Siding - One coat heavy bodied oil stain Olympic, or equal.
   b. Exterior Wood Fascias, Trim, Porches, Etc. - One coat heavy bodied oil stain, Olympic or equal.
   c. Exterior Primed Metal Surfaces - Touch-up primer and two coats Glidden Alkyd Industrial Enamel or equal.
   d. Exterior Galvanized Flashings - One coat No. 5229 primer, two coats Glidden Alkyd Industrial Enamel, or equal.
   e. Exterior Ferrous or Aluminum Flashings, etc. - One coat alkyd metal primer No. 4570, two coats Alkyd Industrial Enamel.

H. KITCHEN CABINETS AND BATHROOM ASSESSORIES

1. Cabinets: "Sungrain Oak" by Longbell (Base and Wall Cabinets) or equal. See drawings for requirements.

2. Countertops: High pressure plastic laminate with molded back splash and edge.

3. Bathroom assessories:
   a. Medicine cabinet with mirror, chrome trim.
   b. Towel rack, chrome trim.
   c. Toilet paper dispensor (roll type) chrome trim.
   d. Tub soap tray/grab bar (may be integral with tub/shower enclosure).
   e. Shower curtain rod, chrome trim.

I. EQUIPMENT

Electric diswasher 120v (N.I.C.) provide space and plumbing connections under kitchen counter.
Electric range 240v/1Ø (N.I.C.)
Electric range hood 120v (N.I.C.)
Electric refrigerator 120v (N.I.C.)
Electric clothes dryer 240v/1Ø (N.I.C.)
Electric clothes washer 120v/1Ø (N.I.C.)
Wood stove: "Blaze Princess" by Woodcutters Mfg. Inc., or equal, top vent, jet-air, complete with painted black stove pipe, Class A fuel rated U.L. listed chimney, and masonry floor covering under unit.
10 lbs. ABC dry chemical, arctic type, fire extinguishers.
Smoke detectors - AC/DC photoelectric with alarm.
Heat detector - AC rate of rise with alarm.
Sprinkler head - on/off type connected to domectic water system.

J. EXTERIOR PORCHES AND STEPS

All framing minimum 2" x 4" members
3'-0" x 3'-0" platform
6" riser 12" run
treated wood

K. HEATING AND PLUMBING SYSTEMS

1. Heating system: Provide three zone, (two zones in the house, 1 zone for garage) perimeter base board type, forced hot water heating system complete with boiler, piping, pumps, controls, heating elements and enclosures and fuel supply system. The system shall maintain interior temperatures specified in Division 2 - Performance Criteria. Pitch all piping uniformly to drains at low points, provide hose bib drain valve for each low point, provide suitable access to drains. Provide gate valves and unions adjacent to all tanks and equipment. Provide clearances and anchors to accommodate and control pipe expansion where necessary. Provide pipe sleeves at all points where piping penetrates exposed surfaces. Test all piping before concealment and repair all leaks. No water pipe shall be run in outside walls.

   Boiler shall be wet base cast iron, hot water type, ASME stamped, complete with high limit switch and low water cutoff. Install per the ASME Code. Oil burner shall be forced draft, high pressure gun type of arctic grade fuel oil, with delayed oil valve and fuel filter. Provide integral type tankless water heater piped to preheat cold water entering hot water heater. Provide 200 gallon above ground fuel oil day tank with float valve. Heating system shall be filled with a 50% solution of glycol.

2. Water system: Provide hot and cold domestic water supply system and waste system complete with hookup to existing utilities. Hot water heater shall be 50 gallon electric with cold water supply piped for preheat through tankless hot water heater on the boiler.

   Minimum pipe size for fixture connection shall be 1/2".

   Minimum pipe size for distribution shall be 3/4".

   Waste piping shall be cast iron, copper, or ABS installed and sized per applicable codes. Fixtures shall be residental type vitreous china or reinforced fiberglass. All trim to be brass/ bronze chrome plated single handle mixer valve. Kitchen sink to be 18 ga. stainless steel 21" x 32" x 7 1/2" double compartment. Provide one piece tub/shower enclosure complete with tub and shower trim and curtain rod.

3. Ventilation system: Provide ventilation system for bathrooms and toilets complete with hookup to exhaust fans and weather proof vents at exterior of building.

L. ELECTRICAL

Provide lighting and power systems including, but not limited to the main distribution, including the service, branch panelboards, branch circuits, junction boxes, outlet boxes, switches, receptacles, device covers, fixtures, lamps and all devices necessary to complete the lighting and power system ready for use. Main service shall be minimum 100 AMP, single phase 240/120 volt. Circuiting shall be per N.E.C. Provide service for equipment not in contract. Branch panelboards shall be equiped with a main disconnect. Weather proof exterior duplex outlet to be provided with separate circuit for headbolt heater. Provide meter at distribution center.

Provide telephone outlet with wires in each bedroom, living room, kitchen and office. Extend telephone wires to outside of building in a junction box.

M. UTILIDOR SYSTEM

Contractor shall provide complete above grade utilidor system from building fixture locations under building to manhole as required. Utilidor system to consist of 8" x 15" round insulated metal arctic pipe from manhole to underside of building and insulated wood frame structure under building to accommodate fixture locations and waste line drainage.

Provide access to utilidor system at all bend and riser locations. Where located under the building, utilidor system to be supported from above by building structure, arctic pipe to be supported by manhole and grade as required. Utility system to be complete with looped 1 1/2" water supply and return piping and 4" waste piping. Waste piping to be located below the water supply and return piping. All utilidors to be heat traced with thermostatically controlled electric heat tape.

DIVISION 4 - STRESSED SKIN PLYWOOD SANDWICH PANELS

A. GENERAL

To conform to the "U" factors required for Basic Bid Option A the contractor may utilize stressed skin, urethane core, plywood sandwich panels for exterior walls, floor and ceiling construction. Panels shall be constructed in the factory under controlled conditions. Panels may be errected in the factory as transportable modular (12' wide) units or in the field.

B. QUALITY ASSURANCE:

1. Stressed skin plywood panels shall be manufactured in accordance with APA Publication Plywood Design Specifications, Supplement No. 3, "Stressed Skin Panels," and Supplement No. 4, "Design of Flat Plywood Sandwich Panels."

2. The Contractor shall coordinate panel layout with foundation framing.

3. Manufacturer: Provide prefabricated panels as manufactured by Alchem, Inc., Pacific Panels, or approved equal.

C. SUBMITTALS

1. The Contractor shall submit complete shop drawings delineating panel types and sizes, showing typical joint details and installation instructions and internal construction of panels.

2. The Contractor shall submit materials list delineating type and brand of sealants and adhesive to be used on joints.

D. PRODUCT DELIVERY, STORAGE AND HANDLING

1. Immediately upon delivery to jobsite, place materials in an area protected from the weather, a minimum of 8" above the ground or above water ponding, on framework or blocking, and cover with protective waterproof covering, providing for adequate air circulation.

E. PRODUCTS

1. All panels shall be filled with a poured in-place polyurethane foam of not less than two and one half pounds per cubic foot density. Urethane must meet UBC Class I, flame spread 25 criteria.

2. All panels shall be manufactured with a spline-type connection and exposed joints shall be made weathertight by the use of appropriate sealants or adhesives. The sealant or adhesive used on the exterior side of joints shall be flexible and able to bond to cold damp wood, Wallboard, or approved equal. That used on the interior side of joints shall be a 0 perm type.

3. Construction grade 2 x 6 studs and stringers shall be continuous length throughout the panels.

4. Roof and floor panels shall span from support to support and shall have full-length joists embedded in the foam. Plywood-faced panels may be spliced to achieve the required length. Roof and floor panels shall be designed to withstand loading as called for under Division 2 with a deflection not to exceed 1/240 of the span.

5. Panel attachment details shall be as per approved fabricator's shop drawings.

6. Cure panels in such a manner to limit shrinkage of foam. Maximum deflection of plywood skin shall not exceed 1/16" between studs.

7. Provide solid blocking within panels as required for mounted items.

8. All panels shall be fabricated using as APA approved waterproof adhesive. Panels shall be nailed with 10d nails at 6" o.c. or with comparable sized staples at 3" o.c.

F. INSTALLATION

1. Assemble panels according to fabricator's approved layout. Insure that panels are started square and true to structural frame. Make allowance for standard creep of overall dimensions.

2. Clean off all dirt, frost and other foreign matter prior to placing adhesive on panel edges and prior to final assembly.

3. Nail or staple panel edges in final position before dirt, sawdust, etc., can prevent a tight joint. All joints must have sealant or adhesive applied as per contract drawings.

4. Temporary construction loads which exceed design limits are not to be permitted. All panels must be fastened as shown on the drawings or recommended by the manufacturer before construction loads equal to the design loads are allowed.

DIVISION 5 - FACTORY BUILT MODULAR CONSTRUCTION

A. GENERAL

The contractor may, at his option, utilize factory built modular (12' wide) construction. All construction is to be in accordance with Washington State Factory Built Housing Code and the Uniform Building Code.

B. MATERIALS

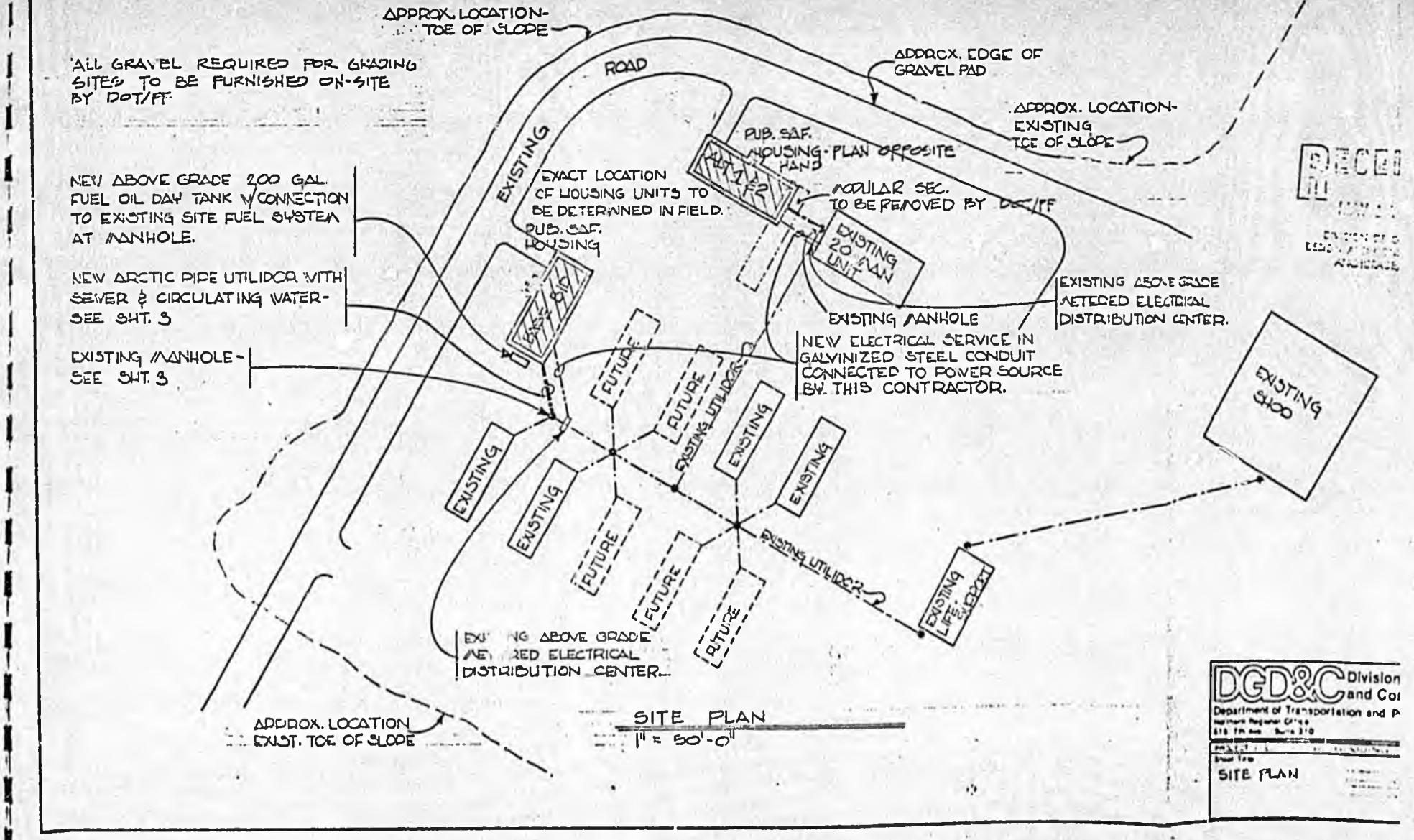
1. Floor Framing
Kiln-dried #2 and better hem/fir lumber, double 2 x 12 rim joists glued and nailed. 2x8 floor joists, 16" o.c.

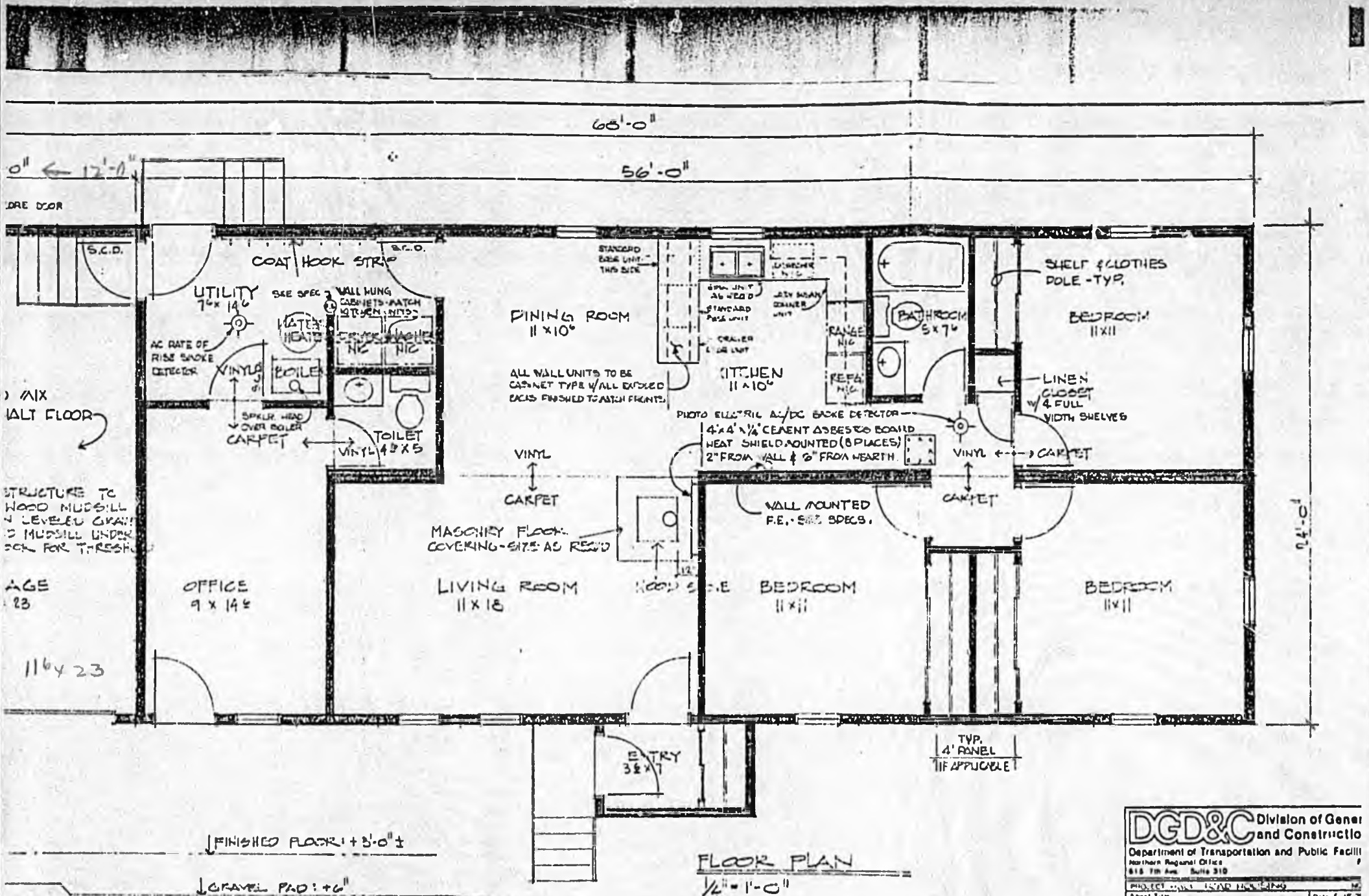
2. Subflooring
3/4" T&G plywood, "C" cross bank underlayments, glued and nailed to floor joist.

3. Exterior Walls
2x6 studs, kiln-dried stud grade, 16" o.c. Continious double 2x8 headers on side walls, glued and nailed, kiln-dried #2 and better hem/fir. Select siding, 5/8" rough sawn T 1-11 fir plywood, grooves 4" or 8" o.c., glued and nailed. Exterior heavy-bodied stain.

4. Partition Framing
2x4 studs, kiln-dried stud grade, 16" o.c. (no-bearing walls - 24" o.c.) minimum 7'6" nominal ceiling' 3/8" plywood shear walls on marriage wall.

5. Roofing
Sheathing - 1/2" group, #1 CDX plywood with 1/2" CCX plywood plugged and touch sanded on exposed areas. Engineered roof trusses 24" o.c.; 40 lb. live load. Gable roof with 4/12 pitch' #235 class "C" 3-tab seal down asphalt shingles and icing sheet. Roof mounted attic ventilator w/temperature and humidity controls. Spot cement all shingles which are installed in field. Icing sheet to consist of two layers of black 15# asphalt belt with black asphalt cement troweled on between layers for a distance of 24" above exterior wall line.


APPROX. LOCATION-
TOE OF SLOPE
ALL GRAVEL REQUIRED FOR GRADING SITES TO BE FURNISHED ON-SITE BY DOT/PF
ROAD
EXISTING
APPROX. EDGE OF GRAVEL PAD
APPROX. LOCATION-
EXISTING
TOE OF SLOPE
PUB. SAF.
HOUSING - PLAN OPPOSITE HAND
EXACT LOCATION OF HOUSING UNITS TO BE DETERMINED IN FIELD.
MODULAR SEC. TO BE REMOVED BY DOT/PF
PUB. SAF. HOUSING
EXISTING 20 MAN UNIT
NEW ABOVE GRADE 200 GAL. FUEL OIL DAY TANK W/CONNECTION TO EXISTING SITE FUEL SYSTEM AT MANHOLE.
NEW ARCTIC PIPE UTILIDOR WITH SEWER & CIRCULATING WATER- SEE SHT. 3
EXISTING MANHOLE- SEE SHT. 3
EXISTING MANHOLE
EXISTING ABOVE GRADE METERED ELECTRICAL DISTRIBUTION CENTER.
NEW ELECTRICAL SERVICE IN GALVINIZED STEEL CONDUIT CONNECTED TO POWER SOURCE BY THIS CONTRACTOR.
FUTURE
EXISTING UTILIDOR
EXISTING
EXISTING SHOP
EXISTING UTILIDOR
EXISTING LIFE STATION
EXISTING ABOVE GRADE METERED ELECTRICAL DISTRIBUTION CENTER.
APPROX. LOCATION EXIST. TOE OF SLOPE
SITE PLAN
1" = 50'-0"
DGD&C Division and Co
Department of Transportation and P
SITE PLAN



DGD&C Division of General and Construction
Department of Transportation and Public Facilities
Northern Regional Office
818 7th Ave. Suite 310

Sheet Title: FLOOR PLAN
Date: 5/15/7
Drawn: MRJ
Appr: KRV

7C Analysis of Governor's Decisions

ITEM	AMOUNT	FUNDING SOURCE	EXPLANATION
Central Communications Emergency Generators 81-2			
Agency request	563.3	GF	
Governor's Recommendation	563.3	G.O. Bonds	It is the Governor's intent that the UPS (uninterruptable power supply) for the computer center at the Tudor Road facility in Anchorage be of first priority within this total project. It was agreed that there are sufficient funds to meet both Public Safety and Data Processing needs.

CATEGORY Administration of Justice AGENCY Public Safety PROGRAM Crime Identification & Apprehension

7C ANALYSIS OF GOVERNOR'S DECISIONS

000047

01-1007C(Rev. 7/77)

PROJECT TITLE	LOCATION(S)	AREA SERVED	ELECTION DISTRICT(S)
Emergency Generator	Anchorage	Anchorage & Vicinity	7-12

OBJ. NO(S)	OPERATING BUDGET BRU(S) NAME(S)	BUDGET COMPONENT NUMBERS	START DATE	COMPLETION DATE
4,5,6	Central Communications	06-62-02-03	8-80	10-80

PROJECT NARRATIVE

I. Project Need

1. General: The Anchorage dispatch center is the central AST communications link, but has no emergency power. The present back-up communications system is a car battery with trickle charger. After two or three hours, the remaining option is to relocate to the Division of Communications which has a small emergency generator which powers their dispatch console.

When the next catastrophe occurs in Anchorage, AST will have: No immediate capability to dispatch police services, no access to AJIS or NCIC files, no access to driver license or vehicle registration files, no ability to send administrative messages throughout the state via CRT terminal, and the Division of Data Processing will lose other capabilities of their Anchorage IBM 145 and 148 computers.

2. Assumptions

During natural disaster emergencies, communications will be needed to dispatch and coordinate police and other public services. Since life and property may be in serious jeopardy, immediate response is frequently necessary and is normally not possible without a working communications system. Several other state and local agencies will depend on AST for aid in an emergency.

Alaska is frequently subject to natural disaster emergencies (earthquakes, fires, floods, tsunamis, and weather extremes) which can reduce or

PROJECT TYPE

- ☐ Building Construction (C)
- ☒ Other Improvement (I)
- ☐ Equipment (E)
- ☐ Land (L)
- ☐ Professional Services (P)
- ☐ Other (O)

PROJECT CHARACTERISTICS

- ☐ Totally New Facility
- ☒ Addition to Existing Facility
- ☐ Renovation of Existing Facility
- ☐ Major Maintenance or Repair
- ☐ Supplement Previously Authorized Funds to Enable Completion
- ☐ One of Several Phases
- ☐ Major External Funding Source
- ☐ Other

SITE FEATURES

NO	YES	
☐	☒	Site Currently Owned?
☐	☒	All Utilities Available?
☐	☒	Access Already Available?

APPROPRIATION REQUEST

1002	FED. RCPTS.	
1003	G/F MATCH	
1004	GEN. FUND	563.3
1005	I/A RCPTS.	
	G.O. BONDS	
	TOTAL	

GOVERNOR'S RECOMMENDATION

APPROVED ☒ DEFERRED ☐ DISAPPROVED ☐

1002	FED. RCPTS.	
1003	G/F MATCH	
1004	GEN. FUND	
1005	I/A RCPTS.	
	G.O. BONDS	563.3
	TOTAL	563.3

see form 7C for Governor's intent

01-1035a (12/79)

OPERATIONAL COST & NO. PERSONNEL INCREASE (DECREASE)		FIRST OPERATING YEAR 81	ULTIMATE ANNUAL YEAR 82
FUNDING SOURCE	FED. RCPTS.		
	GEN. FUND	.2	.5
TOTAL ANNUAL OPERATIONAL COST		.2	.5
POSITION (FTE)			

PREVIOUS YR-PRIORITY: N/A

AGENCY PRIORITY: 81-2

GOVERNOR'S PRIORITY: 81-2

CATEGORY Admin. of Justice AGENCY Public Safety PROGRAM Crime Identification & Apprehension

01-1035a (7/79)

35a PROPOSED CAPITAL PROJECT

REVISED DATE 12/31/79

000048

CAPITAL PROJECT EXPENDITURES (CASH FLOW)	TOTAL	BUDGET YEAR	BUDGET YEAR Plus 1	BUDGET YEAR Plus 2	BUDGET YEAR Plus 3	BUDGET YEAR Plus 4	REMAINING COST
Planning and Engineering							
Land							
Construction							
Equipment							
Administration and Other							
Total Annual Expenditure (Capital Cost)							

CONTINUATION OF NARRATIVE

eliminate the electrical power needed for police dispatching and other emergency communications. Disaster recovery depends upon communications for coordination and cooperation.

3. Further explanations. It is generally accepted that police communications in a disaster emergency are important to public well-being. AST has emergency power in its Juneau HQ and Public Safety Academy. As new police facilities are built, emergency communications are a recognized need. The new Fairbanks and Soldotna buildings will have emergency power capabilities.

The Anchorage computers and AST dispatch center are not planned for relocation, therefore, the long-term investment in emergency power is appropriate for the present facility.

The Fairbanks flood and Good Friday earthquake experiences emphasized the need for advanced disaster planning.

II. Project Description

The diesel emergency generator would have a fuel supply for 30 days and be capable of supplying power to the main Tudor Road building including Anchorage computer operations. Incremental cost of the excess capability for future computer needs and general building needs is marginally inexpensive. Providing power to the entire building is not unreasonable given the unorthodox demands placed upon makeshift emergency facilities. Existing power to the building is 750 KVA.

III. Estimated Capital Costs (by Waukesha Alaska Corporation 10/30/79)

Building set on concrete pad, labor to install the generator and all panels, switch gear, battery charger, heaters and miscellaneous equipment.	$125,000

CATEGORY Admin. of Justice AGENCY Public Safety PROGRAM Crime Identification and Apprehension

PROJECT TITLE Anchorage Emergency Generator

35b PROPOSED PROJECT ANALYSIS

REVISED DATE 10/31/79

000049

01-1035b (7/79)

750 KW generator (prime power quality)		220,000
Automatic start and switch over panel		25,000
1000 W main distribution panel		25,000
20,000 gallon fuel tank buried on site with 30 days of fuel oil		30,000
All electrical connections to the panels in the generator building from the transformers		30,000
Freight on generator and equipment		10,000
Design contingency and change-order reserve		30,000
	subtotal	$495,000
Inflation (10%)		49,500
DOTPF Administration and Engineering		18,750
		$563,250

IV. Estimated Operating Costs

Monthly tests of the generator and periodic preventive maintenance would cost about $500 each year after initial fuel tank fill-up.

V. Alternatives Considered

1. The Anchorage Police Department has emergency power for its dispatch center which would be swamped with service requests during a catastrophic emergency, and cannot support AST emergency needs.

2. The power company has not expressed interest in building such a generator for long-term lease.

3. Smaller capability for the generator is not cost-effective given the large cost of later upgrades and costly rewiring of the building for partial power (i.e. dispatch center, computer room and emergency lighting only).

4. The Division of Communications facility is an adequate back-up for damage or sabatoge of AST facilities, but lacks full capabilities which would be needed during a catastrophic emergency.

CONTINUATION FORM

CATEGORY Admin. of Justice AGENCY Public Safety PROGRAM Crime Identification and Apprehension

PROJECT TITLE Anchorage Emergency Generator

01-1033 (7/79)

REVISED DATE 10/31/79

000050

5. The potential military response to a major disaster emergency would not be immediate and may involve several days if compatible emergency generators were available (wiring, etc. would still be needed).

6. The Department of Military Affairs, Office of Emergency Services has a self-contained communications van, but it does not have dispatch or 911 transfer capability, and would likely be used elsewhere compatible with its capabilities.

7. Inadequate emergency capabilities will result from doing nothing.

CONTINUATION FORM

CATEGORY Admin. of Justice AGENCY Public Safety PROGRAM Crime Identification & Apprehension

PROJECT TITLE Anchorage Emergency Generator

REVISED DATE

000051

01-1033 (7/70)

323,052

Glenallen
Delta
Nome
Kodiak
Palmer
Tok
Bethel

Galena 1 ST

2700

400 — Troopers —
1500 — fire truck —
2200 — dispatch —
2400 — prisoners —
600 — ambulance —
rescue veh.

3600

4050

Introduced: 1/18/80
Referred: Judiciary and Finance

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

HOUSE BILL NO. 562

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act providing for the issuance of general obligation bonds in the amount of $22,901,200 for the purpose of paying the cost of capital improvements for correctional, public safety, and military affairs facilities; and providing for an effective date."

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

* Section 1. For the purpose of paying the cost of capital improvements for correctional, public safety, and military affairs facilities, general obligation bonds of the state in the principal amount of not more than $22,901,200 shall be issued and sold. The full faith, credit, and resources of the state are pledged to the payment of the principal of and interest and redemption premium, if any, on these bonds. These bonds shall be issued under the provision of AS 37.15 as those provisions read at the time of issuance.

* Sec. 2. (a) If the issuance of these bonds is authorized by the qualified voters of the state, a special fund of the state to be known as the "1980 Correctional, Public Safety, and Military Affairs Facilities Construction Fund" shall be established, to which shall be credited the proceeds of the sale of bonds described in sec. 1 of this Act except for accrued interest and premiums.

(b) There is appropriated from the "1980 Correctional, Public Safety, and Military Affairs Facilities Construction Fund" to the Department of Military Affairs the amount of $687,500, for construction of an armory at Sitka.

(c) There is appropriated from the "1980 Correctional, Public Safety, and Military Affairs Facilities Construction Fund" to the Department of Health and Social Services the amount of $21,110,800, allocated in accordance with the following projects and estimates:

	Project	Location	Amount
(1)	Expansion of correctional center	Eagle River	$3,547,800
(2)	Upgrade and construct addition to correctional center	Juneau	3,098,600
(3)	Expansion of correctional center	Fairbanks	3,602,300
(4)	Construct regional jail facility	Nome	6,989,100
(5)	Construct pre-trial addition to correctional center	Anchorage	3,873,000

(d) There is appropriated from the "1980 Correctional, Public Safety, and Military Affairs Facilities Construction Fund" to the Department of Public Safety the amount of $1,102,900, allocated in accordance with the following projects and estimates:

	Project	Location	Amount
(1)	Construct trooper housing	Fort Yukon and 5- mile	$ 539,600
(2)	Emergency generator for dispatch center	Anchorage	563,300

* Se . 3. If the issuance of these bonds is authorized by the qualified voters of the state, the amount of $80,200 or as much of that amount as is found necessary is appropriated from the general fund of the state to the state bond committee to carry out the provisions of this Act and to pay expenses incident to the sale and issuance of the bonds authorized in this

Act. The amounts expended from the appropriation authorized by this section shall be reimbursed to the general fund from the proceeds of the sale of the bonds authorized by this Act.

* Sec. 4. The amount withdrawn from the public facility planning fund for the purpose of advance planning for the improvements financed under this Act shall be reimbursed from the proceeds of the sale of bonds authorized by this Act.

* Sec. 5. The question whether the bonds authorized in this Act are to be issue shall be submitted to the qualified voters of the state at the next general election and shall read substantially as follows:

Proposition

State General Obligation Correctional, Public Safety, and Military Affairs Facilities Construction Bonds $22,901,200

Shall the State of Alaska issue its general obligation bonds in the principal amount of not more than $22,901,200 for the purpose of paying the cost of capital improvements for correctional, public safety, and military affairs facilities?

Bonds Yes [ ]

Bonds No [ ]

* Sec. 6. This Act takes effect immediately in accordance with AS 01.-10.070(c).

HB 562

Alaska State Legislature

REPRESENTATIVE
ALVIN OSTERBACK
BOX 71
SAND POINT, ALASKA 99661
(907) 383-2363

CO-CHAIRMAN
HOUSE RESOURCES COMMITTEE

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA
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465-3781

House of Representatives

DISTRICT 15

ADAK
AKHIOK
AKUTAN
ALITAK
ATKA
BELKOFSKI
CHIGNIK
CHIGNIK LAGOON
CHIGNIK LAKE
COLD BAY
FALSE PASS
IVANOF BAY
KARLUK
KING COVE
LARSEN BAY
NELSON LAGOON
NIKOLSKI
OLD HARBOR
FERRYVILLE
PORT LIONS
SAND POINT
SQUAW HARBOR
ST. GEORGE
ST. PAUL
UGANIK BAY
UNALASKA

February 20, 1980

TO: ALL LEGISLATORS

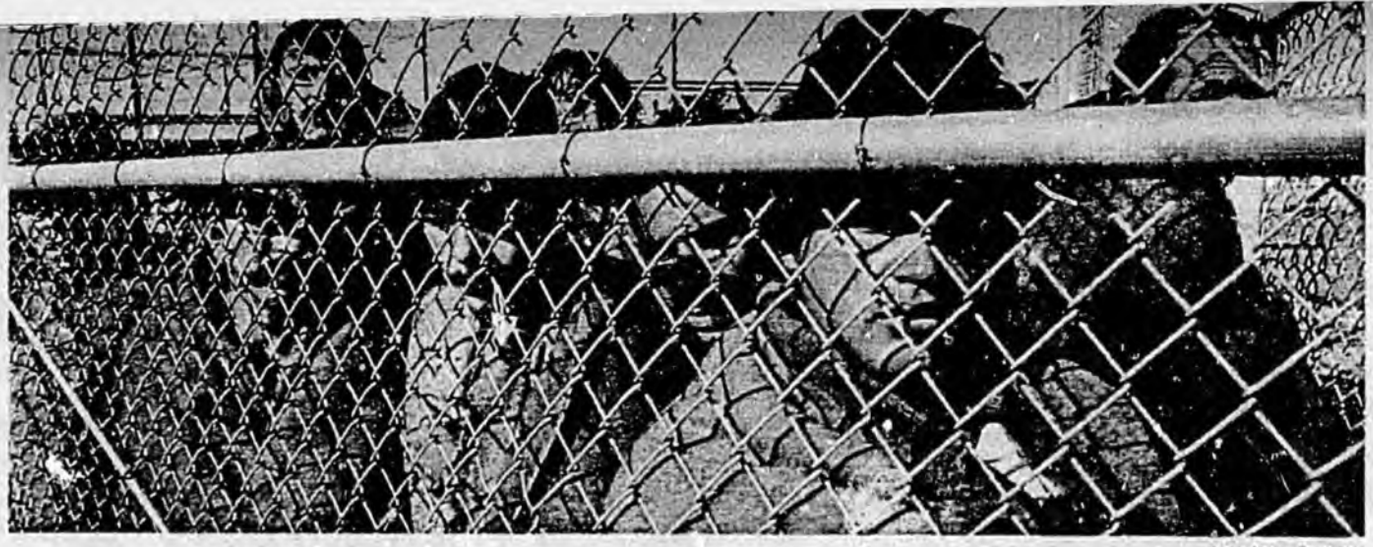
SUBJECT: Criminal Justice System

FROM: Alvin Osterback, Chairman
House Resources Committee

I am attaching a copy of an article that appeared in Newsweek/February 18, 1980 "The Killing Ground" - Justice.

Referral is made to the fact that Alaska export 21% of it's prisioners to other states. This article brings to light the problem we face regarding our very own criminal justice system.

I have introduced HB 812 "Commission to Secure Equality of Justice." My bill deals directly with some of the problems addressed in this article. A 1976 study by the Judical Council showed that Natives/Blacks are sentenced to state prison at a rate five times higher than that of whites.



Buddy Mays—Black Star

Chill aftermath: Blanket-clad inmates huddle in the prison yard after escaping from the carnage inside

JUSTICE

The Killing Ground

No shots were fired, no prison guards were killed, and state authorities from Gov. Bruce King to warden Jerry Griffin showed remarkable restraint. And yet, through 36 hours of rage last week, the New Mexico State Penitentiary near Santa Fe was the site of one of the most brutal prison riots in U.S. history—a sadistic display of convict-against-convict violence that included beheading, hanging, torching and rape. In the end, 33 inmates were dead—four burned so badly that their race could not be determined. The prison itself was almost destroyed: water from broken pipes flowed through the corridors; walls were blackened from fire; offices were sacked; the kitchen, educational wing, psychological unit and Protestant chapel were trashed beyond repair, and the gymnasium was gutted to its girders. "Man's inhumanity to man," said warden Griffin, "is mind-boggling."

The New Mexico riot is certain to revive concern about how U.S. society warehouses its felons (following story). The New Mexico pen, praised at its 1954 dedication as "among the most advanced correctional institutions in the world," turned into one of the worst. There were 1,136 prisoners packed into space designed for 800. Young inmates serving time for relatively minor crimes were housed, sometimes five to a cell, alongside case-hardened long-termers. The prisoners complained often about rats in their cells, roaches in their food and rough treatment by guards. One diabetic inmate told his father that when he went into insulin shock late at night and pleaded for help, he was ignored.

'Russian Roulette': Despite protests from the inmates and their families, the state government was reluctant to spend money on the facility, which was run by five wardens in five years. The guard staff was undermanned, underpaid and poorly trained. Some progress was made after the American Civil Liberties Union filed a Federal lawsuit two years ago to end the overcrowding, but the improvements—a new housing wing, more pay for the guards—were slow in com-

Gory destruction in Cellblock 4 (left), National Guardsmen removing a prisoner's corpse: 'Stop killing each other,' an inmate said, 'there's blood up to your ankles'

Photos by Jim Nachtwey—Black Star

ing. Last month, two California corrections experts were hired to analyze the situation after eleven prisoners escaped. The consultants reported that the official attitude toward the prison "results in playing Russian roulette with the lives of the inmates, the staff and the public." During last week's chaos, inmate Vincent Candelaria put it more bluntly: "If you pull the pin to a grenade, sooner or later it's going to go off."

It went off just after midnight on a Friday night. Some of the 50 inmates in dorm E-2 were watching a late movie on television; two were in their bunks drinking raisinjack, a homemade hooch. One of only 22 guards on duty, Capt. Greg Roybal, attempted to confiscate the booze, but the two prisoners, in a drunken rage, jumped him and grabbed his keys. Seizing the moment, the cons raced down the 1,000-foot central corridor to the control center of the administration building, where they quickly broke through newly installed, 1½-inch-thick "shatterproof" glass. At the push of a button, electrically controlled gates swung open throughout the prison.

Other guards were quickly overpowered. Two barricaded themselves in an unused gas chamber, and a medical technician locked himself in a pharmacy vault as seven prisoners grabbed the guard in the infirmary ward. One guard walking outside patrol spotted the trouble and shouted to watchmen in one of four guard towers; he was tackled and dragged inside a cellblock. Still, the watchmen were unable to call for help because phone lines had been cut.

Berserk: When Captain Roybal failed to come home on time, his wife called the state police, who called the prison and got no response. At 2 a.m., a patrol car arrived at the prison and reported smoke and flames coming from the complex. At 2:30, state police chief Martin Vigil was awakened at home; he called Governor King, who called out the National Guard. Finally, at 10 a.m. Saturday, 60 policemen and 50 guardsmen surrounded the prison.

By that time, many of the prisoners had simply gone berserk. Unable to reach the prison armory, they fashioned makeshift weapons and went on a destructive rampage. They set fire to nearly every mattress in the prison and destroyed much of three cellblocks and four dorms. They broke into the infirmary and stuffed themselves with mixtures of every drug they could find. Some even made their way to the shoemaking shops and sniffed the glue in a frantic attempt to get high.

Carnage: The most brutal cons went after the "snitches," a group of prison informers held in protective isolation in Cellblock 4. The marauders opened cell doors with acetylene torches—then turned the torches on the informers. Margaret Babcock, a prison secretary, was able to see some of the carnage. "Four or five men were holding one man down and burning his head and face with a torch," she said. "He was screaming. I couldn't believe it." The torchers grabbed another man, pulled down his pants and burned their way up his legs until they melted his genitals; then they seared his face.

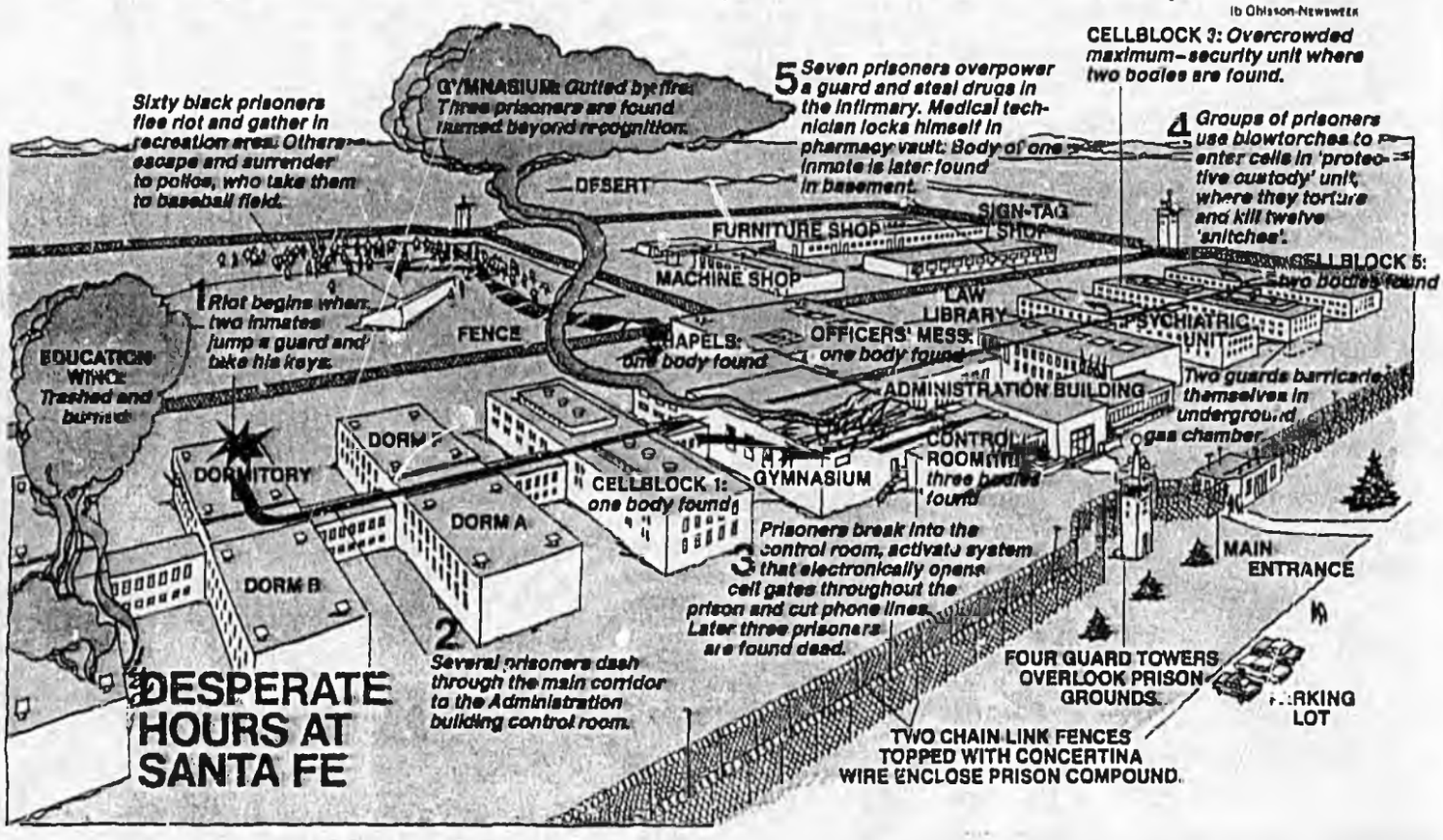
Another snitch had a steel rod driven through one ear and out the other. One was stomped to death. One had the word "rat" carved into his abdomen. Seven were slashed to death in their cells, their bodies then thrown off a second-tier catwalk. One man had a rope tied around his neck and looped around a second-tier railing. He was thrown off the tier and jerked at the end of the rope so violently that his head was nearly severed. Another con, his face beaten and right eye nearly gouged out, was beheaded with several whacks of a shovel. Much of the killing was done in Cellblock 4, but bodies were found throughout the prison, some the victims of fire. The savagery sickened the most hardened observers. "I was in World War II in the Marine Corps and I saw a lot of bodies," said National Guard Lt. Col. Bill Fields. "I don't remember anything as bad as this."

The uncontrolled fury frightened many inmates. "Everybody turned into animals once this whole thing started," said Robert Mosley, 21, a handsome blond who said he was locked naked in a room, tied, gagged, hooded and raped at least ten times. Some inmates tried to escape to the police lines outside. One group of 84 cut their way out of a cellblock and rushed to surrender.

By the end, 700 had given themselves up. They were handcuffed, questioned and kept in areas within the outer prison fence or in the baseball field, where they huddled through freezing nights with blankets and scant food and water. Sixty frightened blacks were moved to a separate area after militant chicanos inside threatened to come out and kill them. (The prison population is 58 per cent chicano, 30 per cent white and 12 per cent black; most of the dead were chicanos, apparently killed by other chicanos.)

'Stop Killing': Throughout the day-and-a-half ordeal, inmate leaders communicated with officials by phone and on the walkie-talkies. The first message was delivered to Governor King Saturday morning: "We want to be treated like men, not children." Later, state correction officials met at the prison gate with masked inmate negotiators, who demanded media presence, an end to

Ib Ohlsson-Newsweek



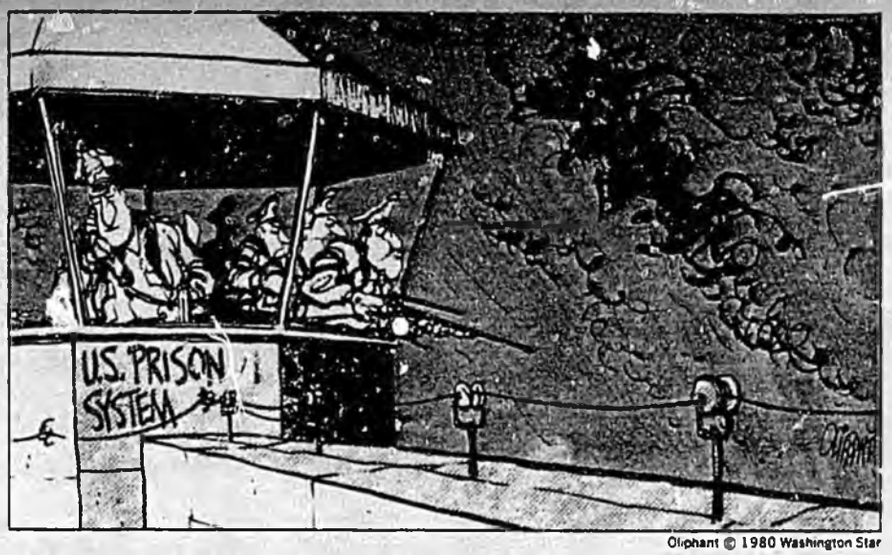
overcrowding and better food. As the siege wore on, the negotiators made repeated threats against the eleven guards held hostage: "We've got a whole bunch of people we're going to start killing." But by Saturday night, the mood had changed. "Attention all units," one inmate radioed. "Stop killing each other. There's blood all over the corridor, blood up to your ankles."

At that point, the riot seemed to be running out of steam, confirming the strategy of state officials to wait out the inmates. "As long as there was no confirmation any guards were killed, we were going to let it go the way it was," said Chief Vigil, who felt that an assault on the prison would have jeopardized the hostages and probably not saved the murdered inmates. As it turned out, the inmate negotiators traded their hostages for interviews with reporters until they were all released. The guards received mixed treatment. Two were released before the first dawn, suffering from smoke inhalation. One, who had hidden under a bed, was befriended by prisoners who gave him an inmate's uniform and a steel bar to protect himself and smuggled him out with surrendering prisoners. But another guard, Mike Schmitt, was bludgeoned and sodomized with an ax handle.

'It's Over': On Sunday afternoon, nineteen minutes after the last two hostages walked out, 24 members of police SWAT teams with shotguns, pistols, automatic rifles and gas grenades marched double-file into the administration building, followed by 60 National Guardsmen with M-16s. The soldiers were under strict orders to keep silent and avoid shooting unless a guardsman's life was in danger. But what the cops and soldiers found inside was a group of glassy-eyed prisoners sitting peacefully drugged or reeling around. In ten minutes, the word was passed outside: "It's over with." There was no resistance as the cops flushed the prisoners out one by one. "I think we did it perfect this time," said guard commander Bill Fields, remembering the bloody retaking of Attica prison in 1971.

In the aftermath of the riot, the state government soon came in for its share of blame. "Obviously, it didn't happen overnight," said King. This spring, he will call a special session of the legislature to consider emergency prison expenditures that may well wipe out his planned $60 million tax rebate. Quick repairs at the prison along with temporary housing costs will come to an estimated $28.5 million. In addition, King is also pushing for a new maximum-security facility that would relieve overcrowding and separate hard-core cons—at a cost of $45 million. "They wouldn't spend the money before," sniffed one inmate's mother last week outside the prison gates. "Now they'll have to spend a goddam lot of money."

DENNIS A. WILLIAMS with MARTIN KASINDORF and PETER KATEL in Santa Fe



Oliphant © 1980 Washington Star

'Tell the governor not to sweat it—we'll have all murder, mutilation, brutality, rape and mayhem back to the normal acceptable levels in no time!'

When Will It Happen Again?

America's prisons are a riot waiting to happen. Throughout the vast U.S. penal system, violence has become just another routine commodity in the catalog of wretched conditions. Every day, somewhere, an inmate beats or is beaten, rapes or is raped, stabs or is stabbed. And, at least once a decade, the level of this *mano a mano* abuse slides far enough up the brutality scale that it simply can't be ignored any longer. Indeed, experts agreed last week that the truly gnastly question about the New Mexico slaughter was not how men could behave like that, but rather when it would happen again.

Prisons fail in almost every way, and more riots like Santa Fe's seem certain.

By any standard, America's prisons do not accomplish their mission. They do not seem to rehabilitate—at least not in any systematic fashion. They don't deter—crime rates seem to be unaffected by incarceration. They don't satisfy the victim's need for vengeance—the erroneous perception continues that many criminals are coddled. Prisons do punish, but often in a way that repels civilized society. "Would we tolerate a penal law that said guilty men must be sent away, gang raped, and returned home?" asks Daniel Steinbock, a veteran prison-rights lawyer. "No, but we allow it to exist in fact."

No one should be surprised that prisons fail. They are overcrowded: authorities estimate that 45 per cent of all inmates live in unreasonably cramped conditions. They offer little to fill the time of prisoners, breaking the spirit of some and giving others the opportunity to complain and plot. They debilitate prisoners with petty rules and endanger their health with inferior medical care. They allow tough convicts and gangs to control cellblocks and entire prisons. "There are too many institutions that are overcrowded, underfunded and run by an undertrained and underpaid staff," says former California prisons chief Ray Procunier. "With these conditions, you have the certainty of other Santa Fe's."

There is some hope for improvement. In the past decade, a dedicated cadre of lawyers and judges has forced states to begin putting their big houses in order. Prisons in fifteen states have actually been declared unconstitutional. Legal challenges to another fifteen—including New Mexico's—are in progress. Conjugal visits relieve tension, and some states have stepped up alternate punishment programs.

While the Federal prison system still runs large, dangerous, archaic penitentiaries, forces outside its control have recently relieved some problems. Since the Department of Justice has stopped pursuing small-time hoods, the Federal prison population has dropped sharply. This year, it's down more than 6,000. But state systems haven't had such good fortune. Still, with crime continuing to frighten people, many states see the answer as more of the same. About $10 billion in new prison construction is under way or under consideration. The only certainty about these $75,000-a-cell plans, says Milton G. Rector, president of the National Council on Crime and Delinquency, is that "if cells are built, the states will fill them."

Only fifteen years ago, prison reform

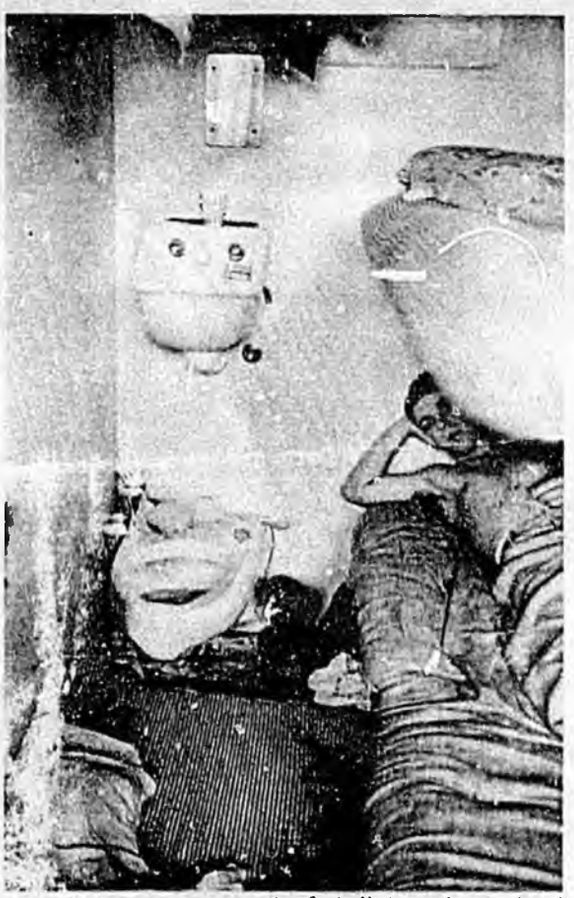
seemed to be distinctly possible. Inmate populations were dropping and some states began experimenting with work-release programs and other alternatives. But once the baby-boom generation entered its crime-prone adolescence, urban crime rates increased and "law and order" returned as a *lingua franca* for many politicians.

New Rights: Almost immediately, the prisons felt the impact. In the ten years ending in 1978, inmate population jumped by almost two-thirds to more than 300,000, a record. The inmates themselves appeared different. They were younger, more aggressive, openly rebellious and insistent upon their rights even if it meant creating new ones. They were also, in distressingly disproportionate numbers, black and Hispanic. While these significant changes were occurring, neither legislators nor the public paid much attention to the unpleasant subject of prisons. Now, Santa Fe has forced them to notice—and at a time when important decisions about the future of U.S. prisons must soon be made.

In the long list of problems facing U.S. prisons now, overcrowding is the most obvious. The Federal system is operating at 97.2 per cent of capacity, and many state institutions are filled to overflowing. In Texas, 2,000 inmates—one of every ten—sleep on the floor. Alaska exports 21 per cent of its prisoners to other states. At Boston's Deer Island House of Correction, an old cow barn has been converted into a dormitory. Last month, Boston penal commissioner William R. Celester himself filed suit against state officials, demanding that 200 inmates be moved so he could begin making $1.8 million of badly needed repairs.

Braying: The jammed cells are more than inconvenient. "Under normal circumstances, a prison is a volatile place," says Anthony Travisono, executive director of the American Correctional Association. "When it's crowded, it becomes more volatile. All the elements are there for a disturbance." No one knows that better than the inmates. In California's Folsom Prison, Richard Davis spends seventeen hours a day in his cell—131 inches long, 52 inches wide and 86 inches high. A convicted murderer doing 25 years to life, Davis now must share his space with another killer. "They are forcing men doing a long, long time to double-cell," Davis says with an air of resignation. "Then they sit back and bray about prison violence."

As state prisons reach and pass capacity, they spill over into local jails. Corrections Magazine reported last year that more than 8,000 inmates wait, sometimes for months, in municipal and county pens for cell assignments to prisons. Since local jails are supposed to hold inmates for only short periods of time, they offer almost no activities and few amenities. The problem is particularly acute in the South. Twenty Louisiana parish jails have been attacked in court for their inhumane conditions. In Alabama, 1,700 state inmates are stuck in local jails, and a Birmingham Federal judge has ordered the counties to relieve overcrowding. In Mississippi, 1,000 felons are waiting for room in Parchman Penitentiary. A 1978 study found that two-thirds of these jails are firetraps and half of them have no heat in the cells.



Jerry Smith—Montgomery Advertiser-Journal

Crowding in Alabama: Cruel and unusual punishment

Overstuffed cells only exacerbate a host of other problems. For example, an American Medical Association official said last fall that a majority of prisons "are so lacking in appropriate resources that they actually may contribute to the health problems of inmates." Examples are almost endless. In a 1978 lawsuit, an Alabama female inmate testified that after prison doctors set her broken leg in a cast, her leg itched excessively. When doctors reluctantly agreed to remove the cast, they found roaches inside eating her leg. In Colorado, a depressed prisoner requested an appointment with the prison psychologist. The doctor sent back a note, asking, "What the hell do you want me to do about it?" Within a week the prisoner committed suicide.

Guards tend to be just as unsympathetic and inadequate as doctors. All over the nation, guards are poorly paid, casually trained and psychologically overwrought. In a Tennessee test, guards at the state's maximum-security prison had no idea how to evacuate prisoners in case of fire. In Rhode Island, it took a guard more than twenty minutes to open a door during a fire drill. Since guards can't possibly watch everything in a prison, they often cede control of areas to inmates, who badly outnumber them anyway. And because guards find themselves locked behind the same walls as their charges, they suffer from similar anxieties. "You're always under pressure," says Ernest Benevento, 33, a New York state corrections officer. "It turns your insides upside down."

Game of Wits: The task of corrections officers is made more difficult by enforced idleness within prisons. Wardens simply cannot find enough jobs and recreational or educational programs to keep prisoners busy. "Life in prison becomes a game of wits, a game in which prisoners spend their time trying to outwit the guards and do the things guards try to keep them from doing," says Dr. Robert E. Gould, a psychiatrist who advised the commission investigating the 1971 riot at New York's Attica prison. "When the game gets out of bounds, it becomes dangerous." Last December, U.S. Judge John L. Kane Jr. found that lack of activity damaged the minds of prisoners in Colorado's Old Max prison, one reason that he held the penitentiary unconstitutional.

Most insidious of all prison conditions is the unceasing violence. Behind bars, the inmates' safety depends entirely upon the state, but prison officials can offer them only minimal security. Nearly 100 inmates and guards have been killed in California since 1970. At the Michigan state prison in Jackson, the world's largest walled pen, there have been seven murders in eighteen months. In the last ten years, 30 inmates have been killed at Walpole Prison in Massachusetts—the latest last week.

Most of this violence is inmate against inmate. This was a relatively minor phenomenon until recent years, according to Columbia University historian David Rothman. In the past, prisoners had more to fear from brutal guards and wardens. Now, the law of the prison jungle permits tough cons to extort all manner of favors and requires comparatively weaker men to fight, lest they become prey for an entire tier. Homosexual rapes are commonplace. For example, one Colorado inmate last month wrote a friend the following note: "I was threatened to get beat up and possibly killed if I didn't go to this man's cell to

visit. I did and it ended up in a horrifying experience. I was beaten and raped with a razor blade to my throat and also getting burnt in the face with a cigarette. I am really hurt emotionally, as I have never encountered an act like this before. I'm scared. I couldn't tell the authorities because I hate to be a rat. I need help!!"

Poor Males: The caldron of prison life also boils with racial tension. While blacks and Hispanics account for only 17 per cent of the U.S. population, they make up about 55 per cent of the state prison count. Many explanations have been offered for this disquieting fact. One is that crimes of violence, which are more likely to be punished by imprisonment, tend to be committed by young, badly educated, poor males in urban settings. Blacks and Hispanics fall heavily into those categories. A 1979 national study showed that blacks are sentenced to state prison at a rate eight times higher than that of whites, and a Minnesota survey disclosed that a black or American Indian who committed a felony had twice as great a chance of going to jail as a white person. Whatever the reason for the disproportionate number of minority-group convicts, race relations in prisons are terrible. Prisoners of different races usually segregate themselves voluntarily in dining halls, for example, and violence is traced to racial conflict. Ironically, blacks, who form the majority in many prisons, often have power that is denied them outside. It is small comfort, as Cornell sociologist James B. Jacobs observes, that "prison may be the one institution in American society that blacks 'control'."

This catalog of problems will not be solved for years, if ever. For the moment, the most promising avenue for reformers is the Federal court system. In the most famous case, U.S. Judge Frank Johnson upheld the American Civil Liberties Union's prison project and declared the Alabama state prison system unconstitutional. Johnson held in 1976 that conditions were so inhuman that they violated the Eighth Amendment prohibition against cruel and unusual punishment. Among other things, the judge found, "as many as six inmates were packed in 4-foot by 8-foot cells with no beds, no lights, no running water and a hole in the floor for a toilet."

Winning cases in court is one thing, but causing real change in the prisons is another. Alabama officials refused to obey Johnson's order for three years until Fob James replaced George Wallace as governor. James has fired some corrupt prison workers and has cracked down on guards who helped inmates deal in drugs.

In another major case two years ago, U.S. Judge Anthony Alaimo ordered reforms at the Reidsville, Ga., state penitentiary—perhaps the South's most violent prison. Acting on suits by Reidsville inmates, Alaimo ordered Georgia officials to reduce the prisoner population by 300, and improve safety and living conditions. In late 1979, however, the judge's special monitor reported that state officials still had not obeyed Alaimo's orders. The judge then gave the state until the end of February to improve conditions in about one-third of the prison's 600 cells. Only then did the state partially comply and improve its isolation cells.

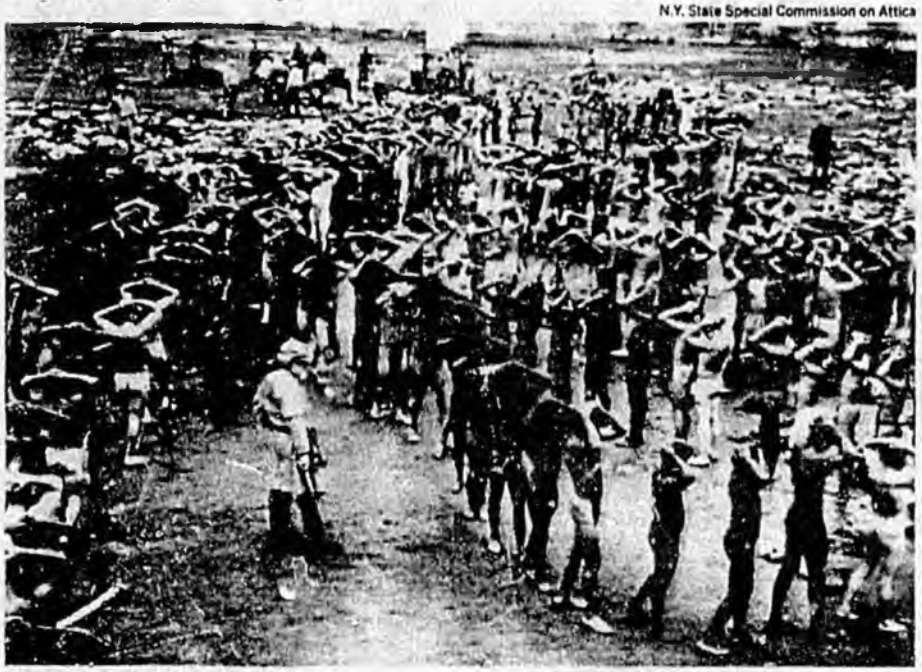
Promise: For decades, U.S. penologists operated on the philosophical premise that they could rehabilitate most criminals. According to this widely accepted theory, prison officials could diagnose a criminal's problems, counsel him, teach him a trade and release him when he was fit to return to society. To make this possible, judges gave "indeterminate" sentences, such as ten to twenty years, designed to allow for adjustments in the convict's behavior and response to treatment. For a variety of reasons—lack of funds, qualified staff and inadequate facilities—prisons did not deliver on their promise. "The rumors of the existence of rehabilitation were always greatly exaggerated," University of Chicago law Prof. Franklin Zimring says. The failure was evident when many convicts were released and returned to a life of crime.

James D. Wilson—Newsweek

Reforms: A conjugal visit at San Quentin

Strip-searching prisoners after Attica riot: 'Most criminals get out in a short time'

N.Y. State Special Commission on Attica



Today, liberals and conservatives agree that rehabilitation as conceived and practiced did not work. Still, the nation's leading criminologist, Marvin E. Wolfgang of the University of Pennsylvania, urges that work-and-treatment programs continue on a voluntary basis for prisoners interested enough to use them. Many corrections officials contend that if inmates cannot gain early release by trying to rehabilitate themselves, prison unrest will grow even greater. "The inmates have got to have hope of getting out early," says the director of Michigan's corrections department, Perry Johnson. "Otherwise, they're just a time bomb ticking."

Hope: The theory of rehabilitation is being widely replaced by another old concept: prison as sheer punishment or "just deserts." According to this view, a convict should be judged according to the severity of his crime, rather than his individuality. Punishment must be swift and certain; a

JUSTICE

criminal would know that if caught he would go to prison for a definite period. Since few prisoners served the maximum time under the flexible sentencing, advocates of determinate sentences contended that short, but specific, prison terms were sufficient punishment for all but the most heinous crimes. But that sounded too soft to anxious legislators. When they wrote determinate sentences into the law, they wrote them long. The new bills stripped convicts of any hope of early release, and helped boost prison populations even further.

The seemingly easy way to solve those problems is to build more prisons, but reformers resist that idea. Groups have organized across the country to oppose the estimated $10 billion of current and proposed cell construction. A campaign of ads, letters and demonstrations, for example, is being mounted against the U.S. Bureau of Prisons' plan to convert the Winter Olympics village at Lake Placid, N.Y., into a Federal prison.

Victims: Reformers contend that not every felon needs to be imprisoned. As many as half the nation's inmates are serving time for non-violent crimes. It is more humane and far cheaper to punish these unarmed criminals without locking them up, many criminologists argue. This approach, a variation on traditional court probation programs, appears to be catching on. In the last decade, Minnesota, Kansas and Oregon, among others, have passed laws that provide extra funds and other blandishments for communities that keep criminals at home. Mississippi and Oklahoma operate restitution programs so that crime victims can reap some benefits from the criminals' punishment. For instance, not long ago a teen-age Pascagoula, Miss., burglar repaid a victim $160, which he had earned working as a kitchen helper as part of the local restitution program. The cause has been endorsed by prominent law-enforcement officers as well. "We're locking up too many people," says sheriff John Buckley of Middlesex County, Massachusetts. "We have to move toward other penalties."

Americans have preferred to ignore the conditions in the country's prisons, or to support superficial reforms at best. "Each generation discovers anew the scandals of incarceration, each sets out to correct them and each passes on a legacy of failure," writes historian Rothman. The American attitude overlooks the fact that the current penal system simply breeds more crime and a desire for revenge—inside and outside prison walls. Unless the U.S. begins to rehabilitate its prisons by running better, more humane facilities, and adopts new ways of punishing nonviolent criminals, it will be only a matter of time before another Attica or Santa Fe bursts on the nation.

ARIC PRESS with MICHAEL REESE in San Francisco, VERN SMITH and VINCENT COPPOLA in Atlanta, DIANE CAMPER in Washington, EMILY F. NEWHALL in New York and bureau reports

Sketch by Steven Kimbrough

Male Aegyptopithecus: He feasted on fruits and showed glimmerings of intelligence

SCIENCE

A Catty Ancestor Of Man and Ape

The Faiyum Depression, southwest of Cairo, is one of the most inhospitable places on earth, its temperatures soaring above 135 degrees, its annual rainfall less than an inch. It wasn't always so. Thirty million years ago, the region bloomed with grasslands and forests, in which creatures the size of house cats roamed. These animals, a team of U.S. paleontologists concluded last week, are the oldest common ancestors of man and apes yet discovered.

The rich trove of fossils, preserved under volcanic lava, tells a story about a whole animal society. *Aegyptopithecus zeuxis* ("connecting ape of Egypt") gathered in complex groups headed by dominant males. The creatures lived in trees, feasted on fruits and showed glimmerings of intelligence. "The animal is 30 million years old, yet we know as much about its daily life as we do about any other fossil primate," says anthropologist John Fleagle of the State University of New York at Stony Brook, a member of the team that has been unearthing fragments of Aegyptopithecus since 1965.

The key to this knowledge was provided by the creature's teeth. According to team leader Elwyn Simons of Duke University, they foreshadow the teeth of *Dryopithecus*, another common ancestor of man and the apes that lived in East Africa more recently, between 22 million and 12 million years ago.

Eyeteeth: Anthropologists confirmed the social structure of Aegyptopithecus in two ways. First, they did dental studies of the ancient creature; then they made comparisons with modern apes and monkeys. For example, the Aegyptopithecus males possessed larger eyeteeth than females. Since such variations occur today only among primates in male-dominated bands, the researchers inferred that Aegyptopithecus inhabited a similar environment. Their eye sockets were small enough to indicate that the creatures roamed during the day rather than the night—another clue consistent with a complex social organization. The animals also displayed enlargement of the brain's visual cortex, which processes messages from the eye. This suggests that man's 30-million-year-old ancestors were already developing the intelligence necessary to deal with complex social surroundings.

Is There a Ring Around the Sun?

The moon will hide the sun for about four minutes this week in an eclipse that will sweep a narrow swath over Africa and Asia. Theologians and scientists plan to greet the event in very different ways. Pilgrims in India will take holy baths during the darkness. Hindus have been warned to fast before and during the eclipse. Brahman priests will recite Vedic hymns to ward off any likely disaster. Astronomers will focus on more concrete matters. They will measure energy levels in the corona (the solar atmosphere) and seek evidence of a brand new possibility—a faint ring around the sun.

Energy: By studying the corona—which can be seen from Earth only when the sun's bright light is obscured by the moon—scientists hope to learn why it is millions of degrees hotter than the solar surface. They will test a theory that energy moves in waves like sonic booms, which shake the corona. Astronomers will also try to discover how the sun ejects charged subatomic particles into its atmosphere which ultimately disrupt radio communications on Earth.

The ring-around-the-sun theory is even newer. Since planets such as Jupiter, Saturn and Uranus are now known to have rings, astronomers speculate that other giant cosmological bodies may have them as well. Unlike Saturn's rings, which are probably formed mainly of ice, a solar ring would have to be made of a material like carbon that does not melt except at extremely high temperatures. If the astronomers find evidence of rings, they will again have to modify their conclusions about how bodies in the solar system formed eons ago.

JAY S. HAMMOND, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

DIVISION OF CORRECTIONS
CENTRAL OFFICE ANCHORAGE

338 DENALI, ROOM 209
ANCHORAGE, ALASKA 99501
PHONE: (907) 274-7573

November 15, 1979

Lynn Cochrane
9911 31st Avenue S.E.
Everett, WA 98204

Dear Ms. Cochrane:

Reference is made to your letter of October 18, 1979 regarding your husband, Robert Cochrane. I appologize for the delay in responding. I simply had a period when I fell a bit behind in transacting the business at hand.

The selection of a specific federal facility for an Alaska prisoner rests entirely with federal officials. Mr. Cochrane's very best channel of communication to effect a transfer would be through his federal caseworker. That is not to say that he will get the results that he desires, but only that such a request would have to be submitted in that fashion.

There is no possibility at all of your husband's being moved to Idaho. Our contract there is only for an extremely small number of individuals who absolutely cannot be placed in the federal system.

With regard to the possibility of his being returned to Alaska, the outlook for the next few years is that we shall be sending more and more people to the federal system. I see no real prospect of a change in this pattern until such time as our capacity to house prisoners within Alaska is greatly expanded.

I regret that I am unable to give you a more favorable response at this time.

Very truly yours,

Robert P. Spinde
Chief Classification Officer

RPS/ljr

Alaska Prisoners Will Be Returned

About 50 Alaska prisoners now held in federal prisons Outside are being returned to Alaska because the state has no money to keep them Outside.

Bob Spinde, chief classification officer for the division of corrections, said this morning the Legislative finance committees told the division that the state's fiscal 1980 budget does not allow for more than 122 prisoners to be held in the federal prison system.

Until recently there were 170 Alaska convicts in federal prisons.

"It turns out we were budgeted for 122 but had 170 out there," Spinde said, "so that's the reason right there."

Orders were handed down to bring a dozen prisoners home immediately, he said.

Two women have been returned to the Ridgeview Correctional Center for Women, five men to the state jail in Juneau, one to Fairbanks and four to the Third Avenue state jail in Anchorage. The prisoners returned to the Third Avenue jail will be reclassified and sent to other state prisons.

Spinde said prisoners are being brought back a few at a time because state prisons "just cannot absorb the almost 50 that it would take" to bring the level Outside down to the 122-prisoner limit.

"Those that we have out there are the worst to start with," Spinde said. "And we're bring back the best of what we have out there."

Corrections guidelines provide that prisoners sentenced to more than 10 years or those with psychological or medical problems are incarcerated Outside.

But the cost of maintaining prisoners in the federal system is much less than keeping them in Alaska, Spinde said. "What we pay is really a bargain. It's less, far less, than our own cost of care, which is right around $50 per day."

He said the prison at McNeil Island, Wash., is the cheapest. It costs about $25 a day. Other prisons, such as Leavenworth in Kansas, average between $25 and $30 a day, he said.

Even considering the cost of transportation for prisoners and their Alaska State Trooper escorts, Spinde said, if a prisoner's stay is long, the state saves money by placing them in the federal system.

Additionally, Alaska would be hard-pressed to keep all state prisoners here. "We simply do not have any place to put them," Spinde said, referring to the 122 kept in the federal system. "It would take two new institutions the size of Juneau or Fairbanks to put them in." The Juneau and Fairbanks jails have capacities of about 95 inmates each.

Spinde said corrections officials don't have the option of keeping certain prisoners in Alaska because of the lenght-of-sentence criteria for classification. "If somebody gets a 25- to 30-year sentence we really don't have a choice but to send him out there."

The pressure to return prisoners to Alaska has not come from federal officials but from the Legislature's finance committees, Spinde said. Federal prison officials "have treated us very well," he said.

A shuffling of prisoners within the state to make room for the returned convicts has created few problems, Spinde said.

But the Eagle River jail is overcrowded, with 91 prisoners, about a dozen more than its usual capacity of 80. "It's kind of a domino effect," Spinde said.

Robert F. Cochrane
71316-011
P.O. Box 1000
Oxford, Wisconsin 53952

The Honorable Jay S. Hammond
Governor of the State of Alaska
Pouch A
Juneau, Alaska 99811
and all the
Legislature

Sir;-

Iam an Alaskan State prisoner incarcerated in the federal system, unlawfully and againest my will.

This writting is to show Alaska Corrections, is perforating a fraud on the People of Alaska. Alaska Corrections is not following the Legislative Intent as shown in the Administrative Justice Budget of 1980. "The number of Alaskan prisoners confined out of state shall not exceed 161. That number shall be reduced to 125 by the end of the fiscal year 1980."

On June 7th,1979, a story appeared on the Anchorage Times, as well as, Mr. Bob Spindie, (of the corrections department) appearing on T.V. News. The story and news cast stated Alaska Corrections was reducing the number of prisoners in out of state institutions. Alaska Corrections had no intentions of reducing these numbers. Infact Corrections did transfer a number of short time prisoners back to Alaska, but for everyone transferred back one prisoner from the Alaska system took his place. End result, just as many or more Alaskans in the federal system.

My wife has written Mr. Spindie, in an atempt to have me transferred back to the west coast. At that writting, we were informed, "the outlook for the next few years is that we shall be sending more and more people to the federal system. I see no real prospect of a change in this pattern until such time as our capacity to house prisoners within Alaska is greatly expanded." This is not the Legislative intent at all.

Alaska Corrections, criteria for prisoners with a sentence of 10 years or more, without any consideration are automadicly transferred out of state. No consideration is given to his loved ones or family. The unwanted one can be incarcerated any where in the United States. Granted, some prisoners have to be transferred. But not all that fit thes criteria.

When I wasfirst seen by the counselor at 3rd ave jail, Anchorage, I was told that due to the lenght of sentence. Corrections was not able to house me. I was also told that the federal system was the only place I could be incarcerated. Sence I became one of Alaska's unwanted ones, I asked to be placed at McNiel Island, Washington, or Lompoc, Calif. Close to my family in the lower 48.

I was accepted in to the federal system on March 21, 1979, after vacating a court order holding me in Alaska, I was transferred to McNiel on July 6th,1979. In late July, I was classified and told I would stay at McNiel. I moved my wife to the Seattle area,only to be transferred away from her once more. On Sept. 10th,1979, I was transferred via,"see America in chains", to Oxford F.C.I., Wisconsin. Sence my sentencing, this unwanted one has travel over 12,000miles in chains, all at the expense of the People of Alaska. As a Rent-A-Prisoner, no consideration has been given this unwanted one; only the available Bed Space in the federal system.

The people of Alaska have voted a $31 million bond package for new jails and prisons. These moneies have been allocted for sometime. Where are these new prisons, the people of Alaska have voted for?

It would seem that last year someone was putting pressure on the Legislature to bring it's unwanted ones home. So, Corrections put on a BIG SHOW to make the people of Alaska think they were complying with the intent of the Legislature. But infact, they had no intentions of doing any such thing. The bottem line; this is another fraud to the people of Alaska to cover up mismanagament in the Alaska Corrections System.

I have filed a petition for writ of Habeas Corpur, challenging 18 U.S.C. § 5003, per; Lono vs. Fenton, No. 77-1141, (581 F2 645) (7th Cir.,1978). Other Alaska prisoners have also challenge 18 U.S.C. § 5003. some of these cases are before the 7th Cir. Court of Appeals, to be answered some time in April, 1980. If these petitions are granted, Alaska will have to take her unwanted ones home. Due to the Department of Corrections useing this law unwisely, Alaska may lose this some time need facilities to house it's unrulely prisoners.

The Government provides the State of Alaska with a Rent-A-Prison, so why build a prison in Alaska to house it's long term prisoners, when the Government so willingly excepts it's unwanted ones.

The Courts of Alaska do not consider where a long term prisoner is housed or his rehabilitative purposes. Granted the federal system is more set up to provide custody, care and treatment for long term prisoners. But, no consideration is given by Alaska Corrections Classification Committee to there rehabilitation; per; Keeping the person close to his loved ones or family;: what programs or trades may be offered, so when he does reture to society he will beable to find work and become useful to society.

As it stands now, the only consideration in the federal system is available bed space. This is not rehabilitation, this is cruel and unsual punishment on the unwanted ones. These unwanted ones begain to hate and withdrew form society, for they are the out cast of Alaska. Surely, this is not the intent of rehabilitation, Alaska wishs for it's longterm prisoners.

At this time I have a long running paper battle going on with the Bureau of Prisons. I am asking proper Security/ Designation, as well as programing, as stated in the Alaska, Bureau of Prisons Contract Jlc-20,759. The only thing I am receiveng at this time is bed space. Clearly a violation of this contract, as well as 18 U.S.C.§ 5003.

Short term prisoners are placed in institions, where they receive proper rehabilitation. Contact visits, freedom to move and reacess there values in life. Long term prisoners are locked away and forgoten about till they are released. Consequently, society recieves a more hardened person, then when he was incarcerated. Rebellious of all societies rules.

Inclosing, I beleave Alaska should take a long hard look at the Department of Corrections. These prisoners are Alaskan citizens too, and someday will return to Alaska's society. Alaska does not wait this type of person in there society. But, Alaska Corrections have made them the person they are when they return, As the Governing Body in Alaska, is this what you want for Alaska's longterm UNWANTED ONES?

Very truly yours,

R.F.Cochrane

RFC/rfc
cc; file

(9)

COMMITTEE REPORT

HOUSE

1/18/80

FURTHER:

Date: _____

Mr. Speaker:

The Committee on JUDICIARY has had HB 567

"An Act relating to public drunkenness and emergency treatment of intoxicated persons."

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

_____

_____

_____

_____

_____

_____

_____

_____

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

_____

_____

_____

_____

_____

_____

Edward A Pann
CHAIRMAN

H 60 (Rev. 12/78)

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 567 - "An Act relating to public drunkenness and emergency treatment of intoxicated persons".

Title

Requested by _____ Date 4/7/80

II. FISCAL DETAIL

Agency Affected Public Safety

Program Category Affected _____

BRU, Program, or Subprogram(s) Affected _____

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

IV. DATE April 7, 1980 PREPARED BY Michael J. Clemens

AGENCY Public Safety

PHONE 465-4336

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

recommended

public or private, may be
approved health facility,
if available,
24 hrs, instead of 12
3x in 30 days ?

CAP

Fbx 198 - Title 47 intake 146 & jail
major problem
hosp, jail - turn up time
CAP was only able to take 13 people
in 1979
Sec 8. Hosp
problem - must they remain in
facility to dry out, or ov last sober.
wants (12 hr
Alcohol is #1 health problem.
Welfare folks.
None - Trtmt facility lacking

335 - title 47

Bethel
private
24 in total of 12
3rd time / 30 days //
3600

Buttcane —
Problems with 1547

HB J61
4/7/80

Anch - Bryan Porter -
- 12-hour hold not helpful -
- jail space might not be problem
- 2 public drunks last year, 1 this year killed traffic
- incapacitated definition causes problem
- Moen says 40-60 night in public drunk category
- sometimes "beat officers back to streets"
- thinks would reduce some street crime
- if convicted court can sentence to treatment program

Fbks Sgt Carnahan -
- 1979 - 198 people, 146 to correctional facility
- first to hospital, then to " "
- (Alcohol program could take only 13. (CAP)
- ↓ if no medical problem won't take
- if take to CAP, leave, officer picks up again and takes to jail
- 12-hour hold in conjunction with jail is adequate
- street problem is "keep alive for another day", treatment is somebody else's problem
- police deal mainly with street drunks
- sometimes want to get warm
- welfare plus larceny

Nome - Lt Finney -
- no treatment facility, only jail
- 1ally from village 3 days, 3 12-hour holds
- drunk to point commit crimes
- 1st 6 mos - 335 12-hour holds, usually more in summer
- bill would help separate drunks from alcoholics

Bethel - Loren Campbell, Chief
- jail 24 people capacity, last weekend had 39 in jail, 20-25 in sleep-off center
- 3600 to sleep-off center last year, plus those by facility
- need more tools in Title 47 - from private home, continuum to 24-hours, 3d time in 30 days held for treatment in facility

Bethel - Campbell (cont)
- 10-12 calls on Fri night to private home, pick up person doesn't live there.
- large % of 3600 are repeaters (1200 people)
-

Robert Buttcane -
- "incapacitated" definition problem, but doesn't favor re-criminalizing
- like 24-hour hold (sober up time, testing, begin treatment, coord treatment w/ family, etc.)
- Sec 180 - problem w/ physician exam, need take into custody first, then exam.
- 3900 admissions to non-emergency medical treatment (sleep-off)
- sometimes want to escape, have good time

Juneau - Capt Joe Giraldo -
- amend to include intox by drugs
- a(1) - medical exam may be needed
- brings to alcohol agency -
-

BILL ANALYSIS

ASSIGNMENT DATE_____

UNASSIGNED_____

DEPARTMENT	SPONSOR (PRINCIPAL)	BILL NO.
Public Safety		HB 567

DEPARTMENT POSITION

Support

DIVISION DIRECTOR	DATE	COMMISSIONER	DATE
Col. Anderson	3/21/80	by for William R. Nix	3/21/80

GOVERNOR'S OFFICE USE

☐ POSITION NOTED ☐ POSITION APPROVED ☐ POSITION DISAPPROVED

BY: DATE:

SUMMARY

(1) RELATED BILLS (SIMILAR OR CONFLICTING)
(2) OTHER AGENCIES AFFECTED BY BILL

(2) a. ORGANIZATIONAL SUPPORT FOR BILL		(2) b. ORGANIZATIONAL OPPOSITION TO BILL

(3) PROGRAM EFFECTS OF BILL

(4) FISCAL IMPACT: ☒ NONE ☐ FISCAL ANALYSIS ATTACHED

(5) AMENDMENTS PROPOSED:

(6) COMMENTS:

LA21 3335 15.45 JA01 0074 15.45 04/08/80

##

TO: REP. CHARLES PARR

FM: KAREN L. MENEFEE, EXECUTIVE DIRECTOR OF THE FBX DOWNTOWN ASSN
     551 1/2 SECOND AVE, FBX AK 99701 PHONE - 452-8671

RE: HB 567

THE FBX DOWNTOWN ASSN WOULD LIKE TO LEND ITS SUPPORT TO HB 567. IT IS OUR UNDERSTANDING THAT THIS BILL IS FOR AN ACT RELATING TO DRUNKNESS AND EMERGENCY TREATMENT OF INTOXICATED PERSONS. HOWEVER, WE FEEL THERE IS A NEED FOR A TYPE OF DEFINITIVE LAW FOR AUTHORITY TO HANDLE INTOXICATED PEOPLE. IF THE MEDICAL AUTHORITIES WILL NOT TAKE THESE PEOPLE, IT WOULD BE OF GREAT BENEFIT IF THE LAW CLARIFIED WHAT IS TO BE DONE WITH THEM.

WE FEEL THIS BILL CERTAINLY ADDRESSES SOME OF OUR CONCERNS AND WE APPRECIATE THE OPPORTUNITY TO BE ABLE TO WORK WITH YOU ON THIS MATTER.

CAN BE CONTACTED ANYTIME.

FBX LIO/LJ

HOUSE JUDICIARY
CHAIR: REP PARR

PROTECTIVE CUSTODY UNDER 47.37.170

In 1979 198 persons were taken into custody under Title 47 by the Fairbanks Police Department with the following statistical breakdown:

SEX

FEMALE: 64
MALE: 134

AGE

36 AVERAGE

DISPOSITION

25 - to Hospital
146 - to Fairbanks Correctional Facility
13 - to Alcohol Treatment Facility
10 - Taken home
3 - Released to a responsible person

TIME OF OCCURANCE

12 to 8 AM - 95
8 AM to 4 PM - 37
4 PM to 12 PM - 66

Of 198 taken into custody 130 were from Core Area of the City.

Rate of recidivism: 23 Persons more than 1 time
15 Persons more than 2 times
9 Persons more than 3 times
7 Persons more than 4 times
4 Persons more than 5 times

FROM: CHIEF R. WOLFE

FAX/LIO/MW

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 567 - "An Act relating to public drunkenness and
Title emergency treatment of intoxicated persons".
Requested by _____ Date 4/7/80

II. FISCAL DETAIL
Agency Affected Public Safety
Program Category Affected _____
BRU, Program, or Subprogram(s) Affected _____
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

IV. DATE April 7, 1980 PREPARED BY Michael J. Clemens
AGENCY Public Safety
PHONE 465-4336

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

SS-901 (R 12/79)

Charlie -

Joe Ciraulo (Juneau Police) called -
He said he was way off yesterday on his figures.

The number of persons assisted or picked up for '79 was 367.

26 were picked up or assisted in Jan.

If you need more info, his no. is 586-2177

POSITION PAPER
HOUSE BILL NO. 567

"An Act relating to public drunkenness and emergency treatment of intoxicated persons."

Background

1. AS 47.37, which HB 567 seeks to amend, was based on the Federal Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, PL 91-616. This law had its roots in earlier federal legislation:

   a) The Supreme Court decisions in the 1966 cases of Easter vs. District of Columbia and Driver vs. Minnant which held that, because alcoholism was an illness rather than a self-induced behavioral disorder, an alcoholic could not be punished for public intoxication.

   b) The 1968 District of Columbia Alcoholism Rehabilitation Act (PL 90-452) which also held alcoholism to be an illness and stated that public intoxication could no longer be handled as criminal offense.

   c) The Alcoholic Rehabilitation Act of 1968, PL 90-574, which dealt specifically with alcoholism on a national basis. Congress declared in that Act that prosecution of alcoholics within the system of criminal justice perpetuates the broad problem of alcoholism, whereas treating it as a health problem permits early detection, prevention and effective treatment.

   These decisions were based on the primary symptomatic evidence of alcoholism, i.e., public drunkenness.

Effects

1. Sec. 11.66.282 sets forth the definition of public drunkenness which includes 11.66.282 (a)(1) "a person who is in immediate danger of loss of life or limb." Certainly those persons who endanger themselves as a result of being intoxicated should be protected; however, they are also in need of treatment. Incarcerating those persons incapacitated by alcohol does not provide alcohol abuse treatment. Providing short-term incarceration is a very expensive, ineffective method of dealing with the problem of severe alcohol abuse that does not involve a criminal act.

   Under current statute 47.37.170, peace officers have the authority to take persons "incapacitated by alcohol" into protective custody and to escort them to an appropriate health facility or to their homes. If no treatment facility or emergency medical service is available, then a person who is incapacitated by alcohol may be placed in a detention setting for his/her protection for a period not to exceed 12 hours. Basically, the law has kept this particular group of people out of the correctional system.

POSITION PAPER/Department of Health and Social Service

By keeping those people who do not victimize others and who need treatment out of the correctional system, three constructive things occur: (1) Persons suffering from alcohol abuse will not be exposed to a prison environment and will receive appropriate treatment. (2) More bed space becomes available for persons charged and convicted of serious criminal acts. (3) Fewer detention beds will have to be built at the approximate construction cost of $100,000 per bed and a maintenance cost of $55.00 a day.

2. By the inclusion of the words "drunk in a private place," House Bill 567 goes even beyond the national tradition of "drunk-in-public" laws. Depending upon the point of view of the offended person, this bill places any drinking person in the position of being subject to investigation and/or prosecution by any other person according to the latter's personal opinion of what constitutes drunken behavior.

3. House Bill 567 would repeal AS 47.37.170 in its entirety. Sub-section (a) of Section 170 deals, in effect, with the alcoholic or intoxicated person's right to come voluntarily to a public treatment facility, or to remove himself from danger by calling for the assistance of a peace officer or an alcoholism agency's emergency patrol. Sub-sections of 47.37.170 deal with the question of medical management of alcoholics, and would violate the rights of persons who are legally ill.

4. Furthermore, repealing Section 47.37.170 in its entirety by the passage of House Bill No. 567 would jeopardize the receipt of $390,000 of federal alcoholism funds. These funds, which do not require a State General Fund match, are provided to the State of Alaska each year to assist in the implementation of the Uniform Alcoholism Treatment and Intoxication Act.

5. That portion of the definition of public drunkenness in the proposed legislation is included in other sections of the revised criminal code: Sec. 11.66.282(a)(2) corresponds with Sec. 11.61.120(a)(1); Sec. 11.66.282(a)(3) corresponds with 11.61.120(a)(5). Individuals who display disruptive behavior as described in those statutes can presently be arrested and charged with a misdemeanor offense.

The Department would respectfully recommend that the current law relating to public drunkenness 47.37.170 be modified, i.e. simplification of the "involuntary commitment" procedure, rather than being repealed.

Recommended by: _____ March 24, 1980

Helen D. Beirne, Commissioner
Dept. of Health & Social Services

Date

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. House Bill 567
Title "An Act relating to public drunkenness and emergency treatment of intoxicated persons.
Requested by Judiciary Committee Date 01/18/80

II. FISCAL DETAIL
Agency Affected Department of Health and Social Sevices
Program Category Affected Administration of Justice/Mental Health
BRU, Program, or Subprogram(s) Affected Adult Confinement/Alcoholism Administration
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		*				

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

* The Division of Corrections cannot predict the fiscal impact of HB 567, other than to expect an increase in the prison population. This increase will occur because "public drunkenness" will become a Class B Misdemeanor which carries a maximum penalty of a $1000 fine and/or a 90-day prison sentence.

Theoretically, the following maximum increase could occur: The Office of Alcoholism & Drug Abuse reported 1,931 admissions to sleep-off and detoxification centers in 1979. Had those 1,931 people been arrested, convicted of public drunkenness and sentenced to serve 90 days, then Corrections would have had to provide 342 additional full-time beds to accommodate that specific group of offenders. It is, of course, unrealistic to assume that the above would occur.

On the other hand, if only 20 of those 1,931 people admitted to sleep-off centers were convicted and sentenced to serve 90 days, the Division would have to provide 5 full-time beds.

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

Prepared by: Roger C. Lange Date: 02/28/80
Division/Office: Corrections PH: 465-3376
Department of Health & Social Services

Approval DHSS Mgt. & Bdgt: [illegible] Date: 3-19-80

33-001 (Rev. 12/79)
Modify by DHSS (11-28-79)

Alaska correctional centers are presently filled to capacity; therefore, regardless of the number of additional beds required to accommodate this group of offenders, Corrections would have to either build additional beds at an approximate cost of $100,000 each and $55.00 a day to maintain or place more long-term offenders in the Federal Bureau of Prisons system. It should be noted that the Corrections Master Plan predicts an increase of up to 40% in prison population due to the revision of the Alaska Criminal Code.

Potential loss of federal funds to the Office of Alcoholism:

NIAAA - Formula Grant	$ 200,000
NIAAA - AIS Grant	190,000
	390,000

For the above reasons, the Department cannot estimate the fiscal impact which would occur as a result of enactment of HB 567.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

M E M O R A N D U M April 23, 1980

SUBJECT: Constitutionality of HB 567 and CSHB 567 (Work Order No. 8449)

TO: Representative Charles H. Parr
Chairman, House Judiciary Committee

FROM: Joseph A. Guthrie
Legislative Counsel JAG

Does HB 567 violate the Eighth Amendment of the U.S. Constitution?

You have asked me to respond to an assertion that HB 567, which makes public drunkenness a criminal offense, is unconstitutional in light of Driver v. Hinnant, 356 F.2d 761 and Easter v. District of Columbia, 124 App. D.C. 33, 361 F2d 50. The Department of Health and Social Services incorrectly states that these cases are U.S. Supreme Court cases; instead they were rendered by the Court of Appeals in the 4th District and the District of Columbia, respectively. The courts in those cases found that criminal punishment of chronic alcoholics for public drunkenness is a violation of the Eighth Amendment's prohibition of cruel and unusual punishment because imposing such punishment would constitute punishment of a disease or status, which punishment was earlier barred by Robinson v. California, (1962) 370 U.S. 660, 8 L. Ed. 2d 758, 82 S. Ct. 1417, re den 371 U.S. 905, 9 L. Ed. 2d 166, 83 S. Ct. 202.

However, in Powell v. Texas, (1968) 392 U.S. 514, 20 L. Ed. 2d 1254, 88 S. Ct. 2154, the U. S. Supreme Court failed to hold that chronic alcoholism is a disease and that punishment of drunkenness on the part of a chronic alcoholic is a violation of the Eighth Amendment; however, the court's decision was without a majority opinion, with eight justices split evenly on the issue of whether chronic alcoholism is a disease of which drunkenness is a symptom, the punishment of which would be cruel and unusual within the meaning of the

U.S. Constitution. The decisive concurring opinion skirted the constitutional issue by taking the position that there was a lack of evidence which would bring into play that constitutional issue. Therefore, in view of the fact that there were four dissenting justices, this opinion, without more, would cast substantial doubt on the constitutionality of any intoxication statute which could be interpreted to apply to chronic alcoholics.

However, the Alaska Supreme Court, in Vick v. State, 453 P.2d 342 (1969), upheld the punishment of a chronic alcoholic for public drunkenness. In finding such punishment not to violate the constitutional ban against cruel and unusual punishment, the court adopted the position that on the basis of the current state of medical knowledge, the court could not conclude that chronic alcoholics suffer from such an irresistible compulsion to drink and to get drunk in public that they are utterly unable to control their acts and that the accused was subject to punishment, even though his condition might, for medical purposes, be described as a disease.

Constitutionality of lengthening the maximum period a person may be held in protective custody under AS 47.37.170(i) from 12 to 24 hours.

You have requested a committee substitute for HB 567 which would lengthen the period a person could be held in a detention facility under AS 47.37.170(i) from 12 to 24 hours. Such a change raises two constitutional considerations.

First, would a 24 hour time period be justified by permissible state objectives. The ostensible purpose of the existing twelve hour time period specified in AS 47.37.170(i) is to allow the person sufficient time to sober up. However, authorizing detention for a longer period of time raises the question of whether the detention is designed to further state interests which may only be pursued through the criminal process, particularly since the grounds for detention specified in AS 47.37.170(a) include action harmful to others and not to just the person intoxicated, i.e. subsection (a) provides that a person who appears to be intoxicated in or upon a licensed premises where intoxicating liquors are sold or consumed who refuses to leave upon being requested to leave by the owner, an employee, or peace officer may be taken

into protective custody. In this regard, the court in Opinion of the Justices, Me., 339 A.2d 510 stated:

> Absent (1) full impairment of a person's ability to control or regulate his behavior (as would be signified by the concept "incapacitated by alcohol") or (2) such impairment to a substantial degree (as would be connotated by "intoxicated"), the fundamental premise of our legal system is that government may validly assert and maintain custodial control of an adult person's body (however temporarily), as a method of protecting the public safety only within the framework of the State's penological interests -- as concretely expressed in the criminal law's delineation of the offenses against the state and as embodying constitutional safeguards for those subjected to criminal processes.

Unless some persons do in fact require 24 hours to sober up, increasing the period of time which a person in protective custody can spend in a detention facility to 24 hours would seem questionable on its face, even though the detaining officer is required to release the person when he is no longer incapacitated or intoxicated by alcohol. In Jackson v. Indiana, 406 U.S. 715, 92 S. Ct. 1845, 32 L. Ed. 2d 435 (1972) the court said:

> At least, due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed.

406 U.S. at 738, 92 S. Ct. at 1858.

While non-penological reasons might justify holding a person taken to a public or private treatment facility for longer than the time required to sober up (AS 47.37.170(d) authorizes detention at a treatment facility of an incapacitated person for up to 48 hours), the treatment services which might justify holding a person for longer than needed to sober up are commonly not available in detention facilities. Therefore, it would seem that the necessity of extending the period within which a person could be held in a detention facility needs to be examined in terms of whether 24 hours would ever be required for a person to recover from being intoxicated or incapacitated.

The second constitutional issue which would be raised by increasing the period of time a person could be held in protective custody in a detention facility from 12 to 24 hours is the question of whether a person could be held that long without affording him a hearing before a judicial officer.

No case authority exists on the question of how long a person incapacitated or intoxicated by alcohol may be held without a hearing, but numerous courts have considered the same factors which would be involved in the pre-hearing detention of intoxicated or incapacitated persons in the context of challenges to the pre-hearing detention of persons alleged to be mentally ill. In Lessard v. Schmidt, 399 F. Supp. 1078 the court said:

> It can be argued that no deprivation of liberty is permissible under the due process clause without a prior hearing. We think, however, that the state may sometimes have a compelling interest in persons who threaten violence to themselves or others for the purpose of protecting society and the individual . . . Such an emergency measure can be justified only for the length of time necessary to arrange for a hearing before a neutral judge at which probable cause for the detention must be established . . . we believe that the maximum period which a person may be detained without a preliminary hearing is 48 hours.

The court in Lynch v. Baxley, 386 F. Supp. 378 (M.D. Ala. 1974) joined the court in Lessard, supra, in holding that detention is only justified for that period of time necessary to arrange a probable cause hearing, but found that seven days was the maximum period of time within which a hearing must be held. Even longer periods, 15 days and 45 days, respectively, were approved in Fhagen v. Miller, 29 N.Y.S.2d 348, 278 N.E.2d 615, 328 N.Y.S.2d 393, cert denied, 409 U.S. 845 (1972) and in Logan v. Arafeh, 346 F. Supp. 1265 (D. Conn 1972), aff'd mem. sub nom. Briggs v. Arafeh, 411 U.S. 911 (1973).

Therefore, it seems likely that increasing the period of time an intoxicated or incapacitated person may be held from 12 to 24 hours would not violate due process in respect to no hearing provided within the 24 hour period.

Is the need for treatment sufficient grounds for commitment?

Committee substitute for HB 567 adds to the grounds for long term commitment of an alcoholic who habitually lacks self control in using alcoholic beverages the fact that the person has been taken into protective custody under AS 47.37.170(b) three times in the preceding 12 months and is in need of a more sustained treatment program. This presents the question of whether a need for treatment alone presents adequate justification for treatment.

Until recently, courts and legislatures have assumed that the parens patriae power justified the involuntary commitment of the mentally ill solely for care and treatment. The use of the parens patriae power to detain the mentally ill in order to facilitate their rehabilitation is commonly traced to an 1845 decision of the Massachusetts Supreme Judicial Court. In re Oakes, 8 Law Rep. 122 (Mass. 1945), Chief Justice Shaw held that "the great law of humanity" justified depriving an insane person of his liberty whenever "restraint (was) necessary for his restoration, or (would) be conducive thereto."

The benevolent intention of the state does not, however, shield its use of the parens patriae authority from the constitutional requirements of substantive due process. Substantive due process demands that all state actions be reasonably related to a valid state goal. Moreover, actions affecting fundamental interests -- such as the deprivation of physical freedom and the concomitant infringement of other fundamental liberties which would be produced by the involuntary commitment on the ground of need for treatment of a person who has been repeatedly detained for being incapacitated by alcohol -- must be necessary to promote a compelling state interest.

Several recent cases have adopted this reasoning in holding that only persons who are dangerous to themselves or others may be committed.

In Lessard v. Schmidt, 349 F. Supp. 1078 (E.D. Wis. 1972) vacated and remanded on other grounds, 94 S. Ct. 713 (1974), a three judge federal district court held that the Wisconsin civil commitment statute could withstand a constitutional challenge only if construed to require a showing of an

"extreme likelihood that if the person is not confined he will do immediate harm to himself or others." The Lessard court also ruled that proof of dangerousness must include "a finding of a recent overt act, attempt, or threat to do substantial harm to oneself or another." Standards similar to those mandated in Lessard, supra, were adopted as part of an earlier consent decree entered by another three judge federal district court in Dixon v. Attorney General, 325 F. Supp. 966 (M.D. Pa. 1971). In that case, Pennsylvania agreed to prove "manifest indications that the subject poses a present threat of serious physical harm to other persons or himself" as a precondition to commitment of the mentally disabled. In Lynch v. Baxley, 386 F. Supp. 378, 389 - 392 (M.D. Ala. 1974), a three judge court discussed the matter of dangerousness as follows:

> A finding of dangerousness indicates the likelihood that the person to be committed will inflict serious harm on himself or on others. In the case of dangerousness to others, this threat of harm comprehends the positive infliction of injury -- ordinarily physical injury, but possibly emotional injury as well. In the case of dangerousness to self, both the threat of physical injury and discernable neglect may warrant a finding of dangerousness. Although he does not threaten actual violence to himself, a person may be properly committable under the dangerousness standard if it can be shown that he is mentally ill, that his mental illness manifests itself in neglect or refusal to care for himself, that such neglect or refusal poses a real and present threat of substantial harm to his well being, and that he is incompetent to determine for himself whether treatment for his mental illness is desirable.

In the following cases the courts presented reasons why no compelling interest could be found for involuntarily committing mentally ill individuals who are neither dangerous to themselves or to others.

In State ex rel Hawks v. Lazaro, 202 S.E.2d 109 (W.Va. 1974), subsequently cited with approval in Kendall v. True, 391 F. Supp. 413 (1975), the court pointed out, in holding that the state could show no compelling state interest for committing for treatment a person who is neither dangerous to himself or others, that the society abounds with persons who should

be hospitalized for physical causes and yet society would not contemplate involuntary hospitalization for treatment.

In Doremus v. Farrell, 407 F. Supp. 509, 513, subsequently quoted with approval in Stamus v. Leonhardt, 414 F. Supp. 439, the court said:

> To permit involuntary commitment upon a finding of "mental illness" and the need for treatment alone would be tantamount to condoning the State's commitment of persons deemed socially undesirable for the purpose of indoctrination or conforming the individuals beliefs to the beliefs of the state. Due process and equal protection require that the standards for commitment must be (a) that person is mentally ill and poses a serious threat of substantial harm to himself or to others, and (b) that this threat of harm has been evidenced by a recent overt act or threat. The threat of harm to oneself may be through neglect or inability to care for oneself.

Other cases finding that only individuals who are dangerous to themselves or to others may be committed are Bell v. Wayne County General Hospital at Eloise, 384 F. Supp. 1085 (1974), Anderson v. Soloman, 315 F. Supp. 1192, and Suzuki v. Quisenberry, 411 F. Supp. 1113.

I could find only one recent case in which the court rejected a contention that commitment of the nondangerous mentally ill violates due process, Fhagen v. Miller, 29 N.Y.2d 348, 278 N.E.2d 615, 328 N.Y.S.2d 393, cert. denied, 409 U.S. 845 (1972). Even in that case the court did not validate the commitment of persons solely for treatment purposes, but expanded the state's authority to commit under the police power to encompass not only commitment of persons behaving in ways harmful to others, but also commitment of persons for the purpose of the "preservation of the public order and public health." The court said at p. 618:

> The public is entitled to prompt protection against the acts of such a person which, though not dangerous, might, if committed by a sane person, constitute a punishable offense or which, by reason of his urgent need for immediate care and treatment, might harm others, albeit in a nonviolent manner. The "protection of society" --

> which we declared in Coates (Matter of Coates, (9 N.Y.S.2d 242, 249, 213 N.Y.S.2d 74, 79 173 N.E.2d 797, 801)) authorizes "immediate action" in the case of one allegedly mentally ill (9 N.Y.2d at p. 249, 213 N.Y.S.2d at p. 79 173 N.E.2d at p. 801) -- requires more than the mere prevention of serious violence; it reasonably, and necessarily, includes the preservation of public order and public health. As Justice Bloustein stated at special term -- "if the allegedly mentally ill person is engaging in conduct which, if committed by a same person, would constitute disorderly conduct, criminal nuisance, public lewdness, or sexual abuse of a minor, the State's legitimate interest in protecting society would warrant temporary confinement as surely as if the individual was engaging in conduct amounting to felonious assault or homicide."

(65 Misc.2d 163, 170, 317 N.Y.S.2d 128, 136)

While the foregoing would seem to include behavior which one might otherwise not consider to be dangerous among that behavior justifying commitment, it does not make need for treatment alone adequate justification for commitment.

The trend in judicial reasoning indicated in the foregoing cases runs counter to the provision in CSHB 567 which would authorize long term commitment of persons who have both been (1) detained three times in the past year for being "incapacitated by alcohol (defined in AS 47.37.270(8) as "a person who . . . is rendered unconscious or has his judgment or physical mobility so impaired that he cannot recognize or extricate himself from conditions of apparent or imminent danger to his health or safety) and (2) is in need of a more sustained treatment program". If CS for HB 567 were enacted, persons could be committed solely on the basis of their need for treatment, even though they are not incapacitated at the time of commitment. The requirement that a person have been detained for being incapacitated three times in the last year cannot substitute for a finding that the person is dangerous to himself, particularly in view of the fact that a judicial officer never gets an opportunity to review the factual basis for these detentions when they occur.

Therefore, it would seem that providing that a ground for long term commitment is presented if a person has been

detained for being incapacitated three times in the last year and has been found to be in need of a more sustained treatment program is unconstitutional as a violation of due process.

Must the term "incapacitated by alcohol" be defined in terms of a persons incapacity to make a decision in respect to his need for treatment?

CSHB 567 would delete from the definition of "incapacitated by alcohol" a requirement that the person be incapable of making a decision in regard to his need for treatment.

Although courts tend to discuss the state's power to protect and care for the mentally ill without considering the question of incapacity, language in several recent opinions indicates an awareness of the impropriety of expanding parens patriae commitments applicable to people who are capable of making their own treatment decisions. In Lessard v. Smith, supra, the court argued that a mentally ill person should be permitted to determine whether to seek hospitalization "unless the state can prove that the person is unable to make a decision about hospitalization because of the nature of his illness." With regard to dangerousness to self, the court implied that the commitment power should not be invoked even to prevent rational individuals from attempting suicide. Despite these views, the Lessard, supra, court did not include a requirement of incapacity as part of its constitutionally based interpretation of Wisconsin's involuntary commitment standards. The distinction between incapacity and mental illness suggested in Lessard, supra, had been more sharply drawn by the Second Circuit in Winters v. Miller, 446 F.2d 65 (2d Cir. cert. denied 404 U.S. 985 (1971)). Reviewing a civil rights action brought by an involuntarily committed Christian Scientist protesting forced medication, the court noted that, absent a determination of incompetence, the mentally ill individual remains free to refuse treatment. The court stated that forced treatment might be acceptable if the state were acting as parens patriae, but it found that parens patriae power only extended to mentally incompetent persons.

The limitation on parens patriae commitments suggested by Lessard, supra, and Winters, supra, appears to be required by the due process clause. Since the state interest in

acting as parens patriae is premised on the need for the state to act to protect the well being of its citizens when they cannot care for themselves, the imposition of involuntary detention and commitment of incapacitated persons would seem necessary to vindicate that interest only when and individual in incapable of making his own evaluation of his need for psychiatric treatment.

Therefore, the repeal and re-enactment of AS 47.37.270(8) defining incapacitated person in a way which does not provide that the incapacitated person be unable to determine his need for treatment would seem to offend due process.

JAG:jdn

Charlie - this was just given to me by the gentleman from Alcohol & Drug Abuse

shall, if possible, refer the person to another approved public treatment facility.

(c) When a patient receiving inpatient care leaves an approved public treatment facility, he shall be encouraged to consent to appropriate outpatient or intermediate treatment. If it appears to the administrator in charge of the treatment facility that the patient is an alcoholic who requires help, the office shall arrange for assistance in obtaining supportive services and residential facilities. (§ 1 ch 207 SLA 1972)

Sec. 47.37.170. Treatment and services for intoxicated persons and persons incapacitated by alcohol. (a) An intoxicated person may come voluntarily to an approved public treatment facility for emergency treatment. A person who appears to be intoxicated in a public place and to be in need of help or a person who appears to be intoxicated in or upon a licensed premise where intoxicating liquors are sold or consumed who refuses to leave upon being requested to leave by the owner, an employee or a peace officer may be taken into protective custody and assisted by a peace officer or a member of the emergency service patrol to his home, an approved public treatment facility, an approved private treatment facility, or another appropriate health facility. If all of the preceding facilities, including the person's home, are determined to be unavailable, a person taken into protective custody and assisted under this subsection may be taken to a state or municipal detention facility in the area.

(b) A person who appears to be ~~incapacitated~~ intoxicated by alcohol in a public place shall be taken into protective custody by a peace officer or a member of the emergency service patrol and immediately brought to an approved public treatment facility, an approved private treatment facility, or another appropriate health facility or service for emergency medical treatment. If no treatment facility or emergency medical service is available, a person who appears to be ~~incapacitated~~ intoxicated by alcohol in a public place shall be taken to a state or municipal detention facility in the area, if that appears necessary for the protection of the person's health or safety.

(c) A person who voluntarily appears or is brought to an approved public treatment facility shall be examined by a licensed physician as soon as possible. After the examination, he may be admitted as a patient or referred to another health facility. The approved public treatment facility which refers him shall arrange for his transportation.

(d) No person who, after medical examination, is found to be ~~incapacitated~~ intoxicated by alcohol at the time of his admission or to have become ~~incapacitated~~ intoxicated at any time after his admission, may be detained at a facility after he is no longer ~~incapacitated~~ intoxicated by alcohol. No person may be detained at a facility if he remains ~~incapacitated~~ intoxicated by alcohol for more than 48 hours after admission as a patient, unless he is committed under AS 47.37.180. A person may consent to remain in the facility as long as the physician in charge considers it appropriate.

(e) A person who is not admitted to an approved public treatment facility, is not referred to another health facility, and has no funds, may be taken to his home, if any. If he has no home, the approved public treatment facility shall assist him in obtaining shelter.

(f) If a patient is admitted to an approved public treatment facility, his family or next of kin shall be promptly notified. If an adult patient who is not ~~incapacitated~~ intoxicated requests that there be no notification of next of kin, his request shall be granted.

(g) Peace officers or members of the emergency service patrol who comply with this section are acting in the course of their official duty and are not criminally or civilly liable for it.

(h) If the physician in charge of the approved public treatment facility determines it is for the patient's benefit, an attempt shall be made to encourage the patient to submit to further diagnosis and appropriate voluntary treatment.

(i) A person taken to a detention facility under (a) or (b) of this section may be detained only (1) until a treatment facility or emergency medical service is made available, or (2) until he is no longer intoxicated ~~or incapacitated~~ by alcohol, or (3) for a maximum period of 12 hours, whichever occurs first. A detaining officer or a detention facility official may release a person who is detained under (a) or (b) of this section at any time to the custody of a responsible adult. A peace officer or a member of the emergency service patrol, in detaining a person under (a) or (b) of this section and in taking him to a treatment facility, an emergency medical service or a detention facility, is taking him into protective custody and he shall make reasonable efforts to provide for and protect the health and safety of the detainee. In taking a person into protective custody under (a) and (b) of this section, a detaining officer, a member of the emergency service patrol or a detention facility official may take reasonable steps to protect himself, including a full protective search of the person of a detainee. Protective custody under (a) and (b) of this section does not constitute an arrest and no entry or other record may be made to indicate that the person detained has been arrested or charged with a crime, except that a confidential record may be made which is necessary for the administrative purposes of the facility to which the person has been taken or which is necessary for statistical purposes where the person's name may not be disclosed.

(j) For purposes of (b) of this section, "incapacitated by alcohol" means a person who, as the result of consumption of alcohol, is rendered unconscious or has his judgment or physical mobility so impaired that he cannot readily recognize or extricate himself from conditions of apparent or imminent danger to his health or safety. The definition in AS 47.37.270(8) applies to other portions of this chapter. (§ 1 ch 207 SLA 1972; am §§ 1—4 ch 101 SLA 1976)

Possible substitute

(j) For the purposes of this section "intoxicated person" means a person who exhibits any symtom or symtoms that indicate substantial loss of control of physical or mental faculties, including but not limited to slurred speech, bloodshot eyes, clumsiness, drowsiness, heavy odor of alcoholic beverages, or undue or abnormal excitation or suppression of the passions or feelings.

Effect of amendment. — The 1976 amendment substituted the language beginning "or a person who appears to be intoxicated" and ending "taken into protective custody and assisted" for "if he consents, may be assisted" and inserted "a member of" preceding "the emergency service patrol" in the second sentence of subsection (a), added the third sentence of that subsection, rewrote subsection (b), and added subsections (i) and (j).

Legislative history report. — For report on ch. 101, SLA 1976 (CSSSSB 336 am H), see 1976 House Journal, p. 555.

Constitutionality. — For case holding that this section as it existed prior to the 1977 amendment, which among other things rewrote subsection (b), did not countenance an unreasonable search in violation of the 4th amendment to the United States Constitution, see Peter v. State, Sup. Ct. Op. No. 1112 (File No. 2185), 531 P.2d 1263 (1975).

Sec. 47.37.180. Emergency commitment. (a) An intoxicated person who (1) has threatened, attempted to inflict, or inflicted physical harm on another or is likely to inflict physical harm on another unless committed, or (2) is incapacitated by alcohol, may be committed to an approved public treatment facility for emergency treatment. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment.

(b) The certifying physician, spouse, guardian, or relative of the person to be committed, or any other responsible person, may make a written application for commitment under this section, directed to the administrator of the approved public treatment facility. The application shall state facts to support the need for emergency treatment and be accompanied by a physician's certificate supporting the need for emergency treatment and stating that the physician has examined the person sought to be committed within two days before the certificate's date.

(c) Upon approval of the application by the administrator in charge of the facility, the person may be brought to the facility by a peace officer, a health officer, a member of the emergency service patrol, the applicant for commitment, the patient's spouse, the patient's guardian, or any other interested person. The person shall be retained at the facility to which he was admitted, or transferred to another appropriate public or private treatment facility, until discharged under (e) of this section. However, no person may be detained under this section for more than 48 hours unless a district or superior court judge has reviewed and approved the commitment application.

(d) The administrator in charge of an approved public treatment facility may refuse an application if in his opinion the application and certificate fail to sustain the grounds for commitment.

(e) When on the advice of his medical staff the administrator determines that the grounds for commitment no longer exist, he shall discharge a person committed under this section. No person committed under this section may be detained in a treatment facility for more than five days. If a petition for involuntary commitment under AS 47.37.190 has been filed within the five days and the administrator in charge of an

shall, if possible, refer the person to another approved public treatment facility.

(c) When a patient receiving inpatient care leaves an approved public treatment facility, he shall be encouraged to consent to appropriate outpatient or intermediate treatment. If it appears to the administrator in charge of the treatment facility that the patient is an alcoholic who requires help, the office shall arrange for assistance in obtaining supportive services and residential facilities. (§ 1 ch 207 SLA 1972)

Sec. 47.37.170. Treatment and services for intoxicated persons and persons incapacitated by alcohol. (a) An intoxicated person may come voluntarily to an approved public treatment facility for emergency treatment. A person who appears to be intoxicated in a public place and to be in need of help or a person who appears to be intoxicated in or upon a licensed premise where intoxicating liquors are sold or consumed who refuses to leave upon being requested to leave by the owner, an employee or a peace officer may be taken into protective custody and assisted by a peace officer or a member of the emergency service patrol to his home, an approved public treatment facility, an approved private treatment facility, or another appropriate health facility. If all of the preceding facilities, including the person's home, are determined to be unavailable, a person taken into protective custody and assisted under this subsection may be taken to a state or municipal detention facility in the area.

(b) A person who appears to be incapacitated by alcohol in a public place shall be taken into protective custody by a peace officer or a member of the emergency service patrol and immediately brought to an approved public treatment facility, an approved private treatment facility, or another appropriate health facility or service for emergency medical treatment. If no treatment facility or emergency medical service is available, a person who appears to be incapacitated by alcohol in a public place shall be taken to a state or municipal detention facility in the area, if that appears necessary for the protection of the person's health or safety.

(c) A person who voluntarily appears or is brought to an approved public treatment facility shall be examined by a licensed physician as soon as possible. After the examination, he may be admitted as a patient or referred to another health facility. The approved public treatment facility which refers him shall arrange for his transportation.

(d) No person who, after medical examination, is found to be incapacitated by alcohol at the time of his admission or to have become incapacitated at any time after his admission, may be detained at a facility after he is no longer incapacitated by alcohol. No person may be detained at a facility if he remains incapacitated by alcohol for more than 48 hours after admission as a patient, unless he is committed under AS 47.37.180. A person may consent to remain in the facility as long as the physician in charge considers it appropriate.

(e) A person who is not admitted to an approved public treatment facility, is not referred to another health facility, and has no funds, may be taken to his home, if any. If he has no home, the approved public treatment facility shall assist him in obtaining shelter.

(f) If a patient is admitted to an approved public treatment facility, his family or next of kin shall be promptly notified. If an adult patient who is not incapacitated requests that there be no notification of next of kin, his request shall be granted.

(g) Peace officers or members of the emergency service patrol who comply with this section are acting in the course of their official duty and are not criminally or civilly liable for it.

(h) If the physician in charge of the approved public treatment facility determines it is for the patient's benefit, an attempt shall be made to encourage the patient to submit to further diagnosis and appropriate voluntary treatment.

(i) A person taken to a detention facility under (a) or (b) of this section may be detained only (1) until a treatment facility or emergency medical service is made available, or (2) until he is no longer intoxicated or incapacitated by alcohol, or (3) for a maximum period of 12 hours, whichever occurs first. A detaining officer or a detention facility official may release a person who is detained under (a) or (b) of this section at any time to the custody of a responsible adult. A peace officer or a member of the emergency service patrol, in detaining a person under (a) or (b) of this section and in taking him to a treatment facility, an emergency medical service or a detention facility, is taking him into protective custody and he shall make reasonable efforts to provide for and protect the health and safety of the detainee. In taking a person into protective custody under (a) and (b) of this section, a detaining officer, a member of the emergency service patrol or a detention facility official may take reasonable steps to protect himself, including a full protective search of the person of a detainee. Protective custody under (a) and (b) of this section does not constitute an arrest and no entry or other record may be made to indicate that the person detained has been arrested or charged with a crime, except that a confidential record may be made which is necessary for the administrative purposes of the facility to which the person has been taken or which is necessary for statistical purposes where the person's name may not be disclosed.

(j) For purposes of (b) of this section, "incapacitated by alcohol" means a person who, as the result of consumption of alcohol, is rendered unconscious or has his judgment or physical mobility so impaired that he cannot readily recognize or extricate himself from conditions of apparent or imminent danger to his health or safety. The definition in AS 47.37.270(8) applies to other portions of this chapter. (§ 1 ch 207 SLA 1972; am §§ 1—4 ch 101 SLA 1976)

(b) Nothing in this chapter affects AS 11.70.030, relating to the defense of voluntary intoxication. (§ 1 ch 207 SLA 1972; am § 1 ch 186 SLA 1976)

Effect of amendment. — The 1976 amendment deleted "or" from the end of clause (1), added "including prohibitions against drinking intoxicating beverages in specified public places, or" to the end of clause (2), and added clause (3).

This section refers only to the sale, purchase, dispensation or use of alcoholic beverages. Peter v. State, Sup. Ct. Op. No. 1112 (File No. 2185), 531 P.2d 1263 (1975).

And not to being intoxicated at "specific times and places". — See Peter v. State, Sup. Ct. Op. No. 1112 (File No. 2185), 531 P.2d 1263 (1975).

A construction to expand the nonapplicability section to include anyone intoxicated on a highway would have the effect of emasculating the statute. Peter v. State, Sup. Ct. Op. No. 1112 (File No. 2185), 531 P.2d 1263 (1975).

Sec. 47.37.260. Application of Administrative Procedure Act. Except as otherwise provided in this chapter, the Administrative Procedure Act (AS 44.62) applies to and governs all administrative action taken by the coordinator under this chapter. (§ 1 ch 207 SLA 1972)

Sec. 47.37.270. Definitions. In this chapter

(1) "alcoholic" means a person who habitually lacks self-control in using alcoholic beverages, or uses alcoholic beverages to the extent that his health is substantially impaired or endangered, or his social or economic function is substantially disrupted;

(2) "approved private treatment facility" means a private agency meeting the standards prescribed in AS 47.37.140(a) and approved under AS 47.37.140(c);

(3) "approved public treatment facility" means a treatment agency operating under the direction and control of the office or providing treatment under this chapter through a contract with the office under AS 47.37.130(g) or through a grant awarded under AS 47.30.475, and meeting the standards prescribed in AS 47.37.140(a) and approved under AS 47.37.140(c);

(4) "commissioner" means the commissioner of health and social services;

(5) "coordinator" means the coordinator of the office of alcoholism;

(6) "department" means the Department of Health and Social Services;

(7) "emergency service patrol" means a patrol established under AS 47.37.230;

(8) "incapacitated by alcohol" means a person who is unconscious or has his judgment otherwise so impaired that he is incapable of realizing and making a rational decision with respect to his need for treatment, as evidenced objectively by extreme physical debilitation, physical harm or threats of harm to others or chronic inability to hold regular employment;

(9) "incompetent person" means a person who has been adjudged incompetent by the appropriate court;

Sandra -
This showed
up in Bill
file 567. I
can't find
it.
Peggy

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

M E M O R A N D U M April 23, 1980

SUBJECT: Constitutionality of HB 567 and CSHB 567 (Work Order No. 8449)

TO: Representative Charles H. Parr
Chairman, House Judiciary Committee

FROM: Joseph A. Guthrie
Legislative Counsel

Does HB 567 violate the Eighth Amendment of the U.S. Constitution?

You have asked me to respond to an assertion that HB 567, which makes public drunkenness a criminal offense, is unconstitutional in light of Driver v. Hinnant, 356 F.2d 761 and Easter v. District of Columbia, 124 App. D.C. 33, 361 F2d 50. The Department of Health and Social Services incorrectly states that these cases are U.S. Supreme Court cases; instead they were rendered by the Court of Appeals in the 4th District and the District of Columbia, respectively. The courts in those cases found that criminal punishment of chronic alcoholics for public drunkenness is a violation of the Eighth Amendment's prohibition of cruel and unusual punishment because imposing such punishment would constitute punishment of a disease or status, which punishment was earlier barred by Robinson v. California, (1962) 370 U.S. 660, 8 L. Ed. 2d 758, 82 S. Ct. 1417, re den 371 U.S. 905, 9 L. Ed. 2d 166, 83 S. Ct. 202.

However, in Powell v. Texas, (1968) 392 U.S. 514, 20 L. Ed. 2d 1254, 88 S. Ct. 2154, the U. S. Supreme Court failed to hold that chronic alcoholism is a disease and that punishment of drunkenness on the part of a chronic alcoholic is a violation of the Eighth Amendment; however, the court's decision was without a majority opinion, with eight justices split evenly on the issue of whether chronic alcoholism is a disease of which drunkenness is a symptom, the punishment of which would be cruel and unusual within the meaning of the

U.S. Constitution. The decisive concurring opinion skirted the constitutional issue by taking the position that there was a lack of evidence which would bring into play that constitutional issue. Therefore, in view of the fact that there were four dissenting justices, this opinion, without more, would cast substantial doubt on the constitutionality of any intoxication statute which could be interpreted to apply to chronic alcoholics.

However, the Alaska Supreme Court, in Vick v. State, 453 P.2d 342 (1969), upheld the punishment of a chronic alcoholic for public drunkenness. In finding such punishment not to violate the constitutional ban against cruel and unusual punishment, the court adopted the position that on the basis of the current state of medical knowledge, the court could not conclude that chronic alcoholics suffer from such an irresistible compulsion to drink and to get drunk in public that they are utterly unable to control their acts and that the accused was subject to punishment, even though his condition might, for medical purposes, be described as a disease.

Constitutionality of lengthening the maximum period a person may be held in protective custody under AS 47.37.170(i) from 12 to 24 hours.

You have requested a committee substitute for HB 567 which would lengthen the period a person could be held in a detention facility under AS 47.37.170(i) from 12 to 24 hours. Such a change raises two constitutional considerations.

First, would a 24 hour time period be justified by permissible state objectives. The ostensible purpose of the existing twelve hour time period specified in AS 47.37.170(i) is to allow the person sufficient time to sober up. However, authorizing detention for a longer period of time raises the question of whether the detention is designed to further state interests which may only be pursued through the criminal process, particularly since the grounds for detention specified in AS 47.37.170(a) include action harmful to others and not to just the person intoxicated, i.e. subsection (a) provides that a person who appears to be intoxicated in or upon a licensed premises where intoxicating liquors are sold or consumed who refuses to leave upon being requested to leave by the owner, an employee, or peace officer may be taken

into protective custody. In this regard, the court in Opinion of the Justices, Me., 339 A.2d 510 stated:

> Absent (1) full impairment of a person's ability to control or regulate his behavior (as would be signified by the concept "incapacitated by alcohol") or (2) such impairment to a substantial degree (as would be connotated by "intoxicated"), the fundamental premise of our legal system is that government may validly assert and maintain custodial control of an adult person's body (however temporarily), as a method of protecting the public safety only within the framework of the State's penological interests -- as concretely expressed in the criminal law's delineation of the offenses against the state and as embodying constitutional safeguards for those subjected to criminal processes.

Unless some persons do in fact require 24 hours to sober up, increasing the period of time which a person in protective custody can spend in a detention facility to 24 hours would seem questionable on its face, even though the detaining officer is required to release the person when he is no longer incapacitated or intoxicated by alcohol. In Jackson v. Indiana, 406 U.S. 715, 92 S. Ct. 1845, 32 L. Ed. 2d 435 (1972) the court said:

> At least, due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed.

406 U.S. at 738, 92 S. Ct. at 1858.

While non-penological reasons might justify holding a person taken to a public or private treatment facility for longer than the time required to sober up (AS 47.37.170(d) authorizes detention at a treatment facility of an incapacitated person for up to 48 hours), the treatment services which might justify holding a person for longer than needed to sober up are commonly not available in detention facilities. Therefore, it would seem that the necessity of extending the period within which a person could be held in a detention facility needs to be examined in terms of whether 24 hours would ever be required for a person to recover from being intoxicated or incapacitated.

The second constitutional issue which would be raised by increasing the period of time a person could be held in protective custody in a detention facility from 12 to 24 hours is the question of whether a person could be held that long without affording him a hearing before a judicial officer.

No case authority exists on the question of how long a person incapacitated or intoxicated by alcohol may be held without a hearing, but numerous courts have considered the same factors which would be involved in the pre-hearing detention of intoxicated or incapacitated persons in the context of challenges to the pre-hearing detention of persons alleged to be mentally ill. In Lessard v. Schmidt, 399 F. Supp. 1078 the court said:

> It can be argued that no deprivation of liberty is permissible under the due process clause without a prior hearing. We think, however, that the state may sometimes have a compelling interest in persons who threaten violence to themselves or others for the purpose of protecting society and the individual . . . Such an emergency measure can be justified only for the length of time necessary to arrange for a hearing before a neutral judge at which probable cause for the detention must be established . . . we believe that the maximum period which a person may be detained without a preliminary hearing is 48 hours.

The court in Lynch v. Baxley, 386 F. Supp. 378 (M.D. Ala. 1974) joined the court in Lessard, supra, in holding that detention is only justified for that period of time necessary to arrange a probable cause hearing, but found that seven days was the maximum period of time within which a hearing must be held. Even longer periods, 15 days and 45 days, respectively, were approved in Fhagen v. Miller, 29 N.Y.S.2d 348, 278 N.E.2d 615, 328 N.Y.S.2d 393, cert denied, 409 U.S. 845 (1972) and in Logan v. Arafeh, 346 F. Supp. 1265 (D. Conn 1972), aff'd mem. sub nom. Briggs v. Arafeh, 411 U.S. 911 (1973).

Therefore, it seems likely that increasing the period of time an intoxicated or incapacitated person may be held from 12 to 24 hours would not violate due process in respect to no hearing provided within the 24 hour period.

Is the need for treatment sufficient grounds for commitment?

Committee substitute for HB 567 adds to the grounds for long term commitment of an alcoholic who habitually lacks self control in using alcoholic beverages the fact that the person has been taken into protective custody under AS 47.37.170(b) three times in the preceding 12 months and is in need of a more sustained treatment program. This presents the question of whether a need for treatment alone presents adequate justification for treatment.

Until recently, courts and legislatures have assumed that the parens patriae power justified the involuntary commitment of the mentally ill solely for care and treatment. The use of the parens patriae power to detain the mentally ill in order to facilitate their rehabilitation is commonly traced to an 1845 decision of the Massachusetts Supreme Judicial Court. In re Oakes, 8 Law Rep. 122 (Mass. 1945), Chief Justice Shaw held that "the great law of humanity" justified depriving an insane person of his liberty whenever "restraint (was) necessary for his restoration, or (would) be conducive thereto."

The benevolent intention of the state does not, however, shield its use of the parens patriae authority from the constitutional requirements of substantive due process. Substantive due process demands that all state actions be reasonably related to a valid state goal. Moreover, actions affecting fundamental interests -- such as the deprivation of physical freedom and the concomitant infringement of other fundamental liberties which would be produced by the involuntary commitment on the ground of need for treatment of a person who has been repeatedly detained for being incapacitated by alcohol -- must be necessary to promote a compelling state interest.

Several recent cases have adopted this reasoning in holding that only persons who are dangerous to themselves or others may be committed.

In Lessard v. Schmidt, 349 F. Supp. 1078 (E.D. Wis. 1972) vacated and remanded on other grounds, 94 S. Ct. 713 (1974), a three judge federal district court held that the Wisconsin civil commitment statute could withstand a constitutional challenge only if construed to require a showing of an

"extreme likelihood that if the person is not confined he will do immediate harm to himself or others." The Lessard court also ruled that proof of dangerousness must include "a finding of a recent overt act, attempt, or threat to do substantial harm to oneself or another." Standards similar to those mandated in Lessard, supra, were adopted as part of an earlier consent decree entered by another three judge federal district court in Dixon v. Attorney General, 325 F. Supp. 966 (M.D. Pa. 1971). In that case, Pennsylvania agreed to prove "manifest indications that the subject poses a present threat of serious physical harm to other persons or himself" as a precondition to commitment of the mentally disabled. In Lynch v. Baxley, 386 F. Supp. 378, 389 - 392 (M.D. Ala. 1974), a three judge court discussed the matter of dangerousness as follows:

> A finding of dangerousness indicates the likelihood that the person to be committed will inflict serious harm on himself or on others. In the case of dangerousness to others, this threat of harm comprehends the positive infliction of injury -- ordinarily physical injury, but possibly emotional injury as well. In the case of dangerousness to self, both the threat of physical injury and discernable neglect may warrant a finding of dangerousness. Although he does not threaten actual violence to himself, a person may be properly committable under the dangerousness standard if it can be shown that he is mentally ill, that his mental illness manifests itself in neglect or refusal to care for himself, that such neglect or refusal poses a real and present threat of substantial harm to his well being, and that he is incompetent to determine for himself whether treatment for his mental illness is desirable.

In the following cases the courts presented reasons why no compelling interest could be found for involuntarily committing mentally ill individuals who are neither dangerous to themselves or to others.

In State ex rel Hawks v. Lazaro, 202 S.E.2d 109 (W.Va. 1974), subsequently cited with approval in Kendall v. True, 391 F. Supp. 413 (1975), the court pointed out, in holding that the state could show no compelling state interest for committing for treatment a person who is neither dangerous to himself or others, that the society abounds with persons who should

be hospitalized for physical causes and yet society would not contemplate involuntary hospitalization for treatment.

In Doremus v. Farrell, 407 F. Supp. 509, 513, subsequently quoted with approval in Stamus v. Leonhardt, 414 F. Supp. 439, the court said:

> To permit involuntary commitment upon a finding of "mental illness" and the need for treatment alone would be tantamount to condoning the State's commitment of persons deemed socially undesirable for the purpose of indoctrination or conforming the individuals beliefs to the beliefs of the state. Due process and equal protection require that the standards for commitment must be (a) that person is mentally ill and poses a serious threat of substantial harm to himself or to others, and (b) that this threat of harm has been evidenced by a recent overt act or threat. The threat of harm to oneself may be through neglect or inability to care for oneself.

Other cases finding that only individuals who are dangerous to themselves or to others may be committed are Bell v. Wayne County General Hospital at Eloise, 384 F. Supp. 1085 (1974), Anderson v. Soloman, 315 F. Supp. 1192, and Suzuki v. Quisenberry, 411 F. Supp. 1113.

I could find only one recent case in which the court rejected a contention that commitment of the nondangerous mentally ill violates due process, Fhagen v. Miller, 29 N.Y.2d 348, 278 N.E.2d 615, 328 N.Y.S.2d 393, cert. denied, 409 U.S. 845 (1972). Even in that case the court did not validate the commitment of persons solely for treatment purposes, but expanded the state's authority to commit under the police power to encompass not only commitment of persons behaving in ways harmful to others, but also commitment of persons for the purpose of the "preservation of the public order and public health." The court said at p. 618:

> The public is entitled to prompt protection against the acts of such a person which, though not dangerous, might, if committed by a sane person, constitute a punishable offense or which, by reason of his urgent need for immediate care and treatment, might harm others, albeit in a nonviolent manner. The "protection of society" --

> which we declared in Coates (Matter of Coates, (9 N.Y.S.2d 242, 249, 213 N.Y.S.2d 74, 79 173 N.E.2d 797, 801)) authorizes "immediate action" in the case of one allegedly mentally ill (9 N.Y.2d at p. 249, 213 N.Y.S.2d at p. 79 173 N.E.2d at p. 801) -- requires more than the mere prevention of serious violence; it reasonably, and necessarily, includes the preservation of public order and public health. As Justice Bloustein stated at special term -- "if the allegedly mentally ill person is engaging in conduct which, if committed by a same person, would constitute disorderly conduct, criminal nuisance, public lewdness, or sexual abuse of a minor, the State's legitimate interest in protecting society would warrant temporary confinement as surely as if the individual was engaging in conduct amounting to felonious assault or homicide."
>
> (65 Misc.2d 163, 170, 317 N.Y.S.2d 128, 136)

While the foregoing would seem to include behavior which one might otherwise not consider to be dangerous among that behavior justifying commitment, it does not make need for treatment alone adequate justification for commitment.

The trend in judicial reasoning indicated in the foregoing cases runs counter to the provision in CSHB 567 which would authorize long term commitment of persons who have both been (1) detained three times in the past year for being "incapacitated by alcohol (defined in AS 47.37.270(8) as "a person who . . . is rendered unconscious or has his judgment or physical mobility so impaired that he cannot recognize or extricate himself from conditions of apparent or imminent danger to his health or safety) and (2) is in need of a more sustained treatment program". If CS for HB 567 were enacted, persons could be committed solely on the basis of their need for treatment, even though they are not incapacitated at the time of commitment. The requirement that a person have been detained for being incapacitated three times in the last year cannot substitute for a finding that the person is dangerous to himself, particularly in view of the fact that a judicial officer never gets an opportunity to review the factual basis for these detentions when they occur.

Therefore, it would seem that providing that a ground for long term commitment is presented if a person has been

detained for being incapacitated three times in the last year and has been found to be in need of a more sustained treatment program is unconstitutional as a violation of due process.

Must the term "incapacitated by alcohol" be defined in terms of a persons incapacity to make a decision in respect to his need for treatment?

CSHB 567 would delete from the definition of "incapacitated by alcohol" a requirement that the person be incapable of making a decision in regard to his need for treatment.

Although courts tend to discuss the state's power to protect and care for the mentally ill without considering the question of incapacity, language in several recent opinions indicates an awareness of the impropriety of expanding parens patriae commitments applicable to people who are capable of making their own treatment decisions. In Lessard v. Smith, supra, the court argued that a mentally ill person should be permitted to determine whether to seek hospitalization "unless the state can prove that the person is unable to make a decision about hospitalization because of the nature of his illness." With regard to dangerousness to self, the court implied that the commitment power should not be invoked even to prevent rational individuals from attempting suicide. Despite these views, the Lessard, supra, court did not include a requirement of incapacity as part of its constitutionally based interpretation of Wisconsin's involuntary commitment standards. The distinction between incapacity and mental illness suggested in Lessard, supra, had been more sharply drawn by the Second Circuit in Winters v. Miller, 446 F.2d 65 (2d Cir. cert. denied 404 U.S. 985 (1971)). Reviewing a civil rights action brought by an involuntarily committed Christian Scientist protesting forced medication, the court noted that, absent a determination of incompetence, the mentally ill individual remains free to refuse treatment. The court stated that forced treatment might be acceptable if the state were acting as parens patriae, but it found that parens patriae power only extended to mentally incompetent persons.

The limitation on parens patriae commitments suggested by Lessard, supra, and Winters, supra, appears to be required by the due process clause. Since the state interest in

acting as parens patriae is premised on the need for the state to act to protect the well being of its citizens when they cannot care for themselves, the imposition of involuntary detention and commitment of incapacitated persons would seem necessary to vindicate that interest only when and individual in incapable of making his own evaluation of his need for psychiatric treatment.

Therefore, the repeal and re-enactment of AS 47.37.270(8) defining incapacitated person in a way which does not provide that the incapacitated person be unable to determine his need for treatment would seem to offend due process.

JAG:jdn