

1045 HUNTERIM FIELDS, LAW ENFORC. - INDIGENTS

LAW

ENFORCEMENT



Alaska State Legislature

House of Representatives

Committee on Judiciary

Official Business

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

From: Margaret W. Berck, Staff *MWB*

Date: November 26, 1979

Subject: The Use of Force and Use of Deadly Force
by a Peace Officer

I. STATUTORY PROVISIONS IN EXISTING LAW AND THE REVISED CRIMINAL CODE

Currently there are three statutory provisions pertaining to the use of force and use of deadly force by a peace officer. AS 12.25.080 states a peace officer may "...use all the necessary and proper means to effect the arrest." AS 11.15.090 indicates homicide is justified "...when necessarily committed in arresting a person fleeing from justice who has committed a felony." AS 11.15.100 indicates that "homicide is justifiable when committed by any person "...in the attempt by lawful means, to arrest a person who has committed a felony, or in the lawful attempt to suppress a riot or preserve the peace."

The constitutionality of these provisions is being challenged in State of Alaska v. Russel Sundberg, Alaska Supreme Court No. 4397. The lower court in Sundberg held that the statutory provisions were unconstitutional to the extent that they authorize the use of deadly force to apprehend a fleeing felon who was not a threat to life. Under this holding, the peace officer must have a reasonable belief that the

fleeing suspect is threatening the life of the officer, bystanders or victims of the crime before the use of deadly force is justifiable.

The ultimate decision in the Sundberg case may impact the revised criminal code's provisions on the use of deadly force by a peace officer.

The chief provision in the new criminal code on the use of force and use of deadly force by a peace officer is contained in AS 11.81.370. Pursuant to that provision, a peace officer may use nondeadly force and may threaten to use deadly force whenever he reasonably believes it necessary to make an arrest, to terminate an escape or attempted escape from custody, or to make a lawful stop.

With respect to when deadly force may be used by a peace officer in making an arrest or in terminating an escape or attempted escape from custody, the revised criminal code makes several changes in existing law. The new code authorizes the use of deadly force in three circumstances.

First, a peace officer may use deadly force when and to the extent he reasonably believes it necessary to make an arrest or terminate an escape or attempted escape of a person he reasonably believes "has committed or attempted to commit a felony which involved the use of force against a person." Thus, the peace officer's use of deadly force is justifiable if it is based on a reasonable, though mistaken, belief that such circumstances exist. Under existing law, the peace officer claiming the defense of justification must have been correct in that a felony in fact occurred.

Under the new criminal code, for example, the use of deadly force would be justified in arresting a fleeing burglar who the officer reasonably believes has used force against an occupant of a building, a robber or a person who has committed a felony assault. Deadly force would not

be justified to arrest a person who the officer believes has merely committed a nonviolent felony such as a forgery or theft.

Second, a peace officer may use deadly force to retake a person who has escaped or is attempting to escape from custody while in the possession of a firearm. Thus, under the revised criminal code, a peace officer is justified in using deadly force against a misdemeanor who is not necessarily using his firearm. This provision expands the justification defense as embodied in existing law.

Third, the peace officer may use deadly force to effect an arrest or terminate an escape or attempted escape of a person who the officer reasonably believes "may otherwise endanger life or inflict serious physical injury unless arrested without delay. This provision gives the peace officer the leeway to apprehend a person who has not committed a violent felony and is not an escapee in possession of a firearm but is nevertheless highly dangerous.

II. LAW ENFORCEMENT DEPARTMENTAL POLICIES ON THE USE OF FORCE AND USE OF DEADLY FORCE

The Department of Public Safety as well as individual municipal law enforcement agencies have policies regarding the use of force and use of deadly force by peace officers. A copy of the current policy of the Department of Public Safety is attached hereto. Additionally, the policies of certain municipal law enforcement agencies, that is, Anchorage, Fairbanks, Juneau and Nome, are attached hereto.

In examining these policies of Alaska police agencies on the use of force by officers, a number of common factors emerge:

1. All departmental policies track the statutory provisions pertaining to this issue.

2. With a few exceptions, local law enforcement agencies have adopted the policy established by the Alaska Department of Public Safety to govern the conduct of the State Troopers.
3. As of this writing, all policies, but for the Fairbanks Police Department, are currently under internal review to incorporate alterations mandated by the new Alaska criminal code. The policy of the Fairbanks Police Department was recently revised to include the modifications required by the new criminal code.
4. Existing policies are vague and open to wide interpretation, allowing peace officers practical discretion in the use of their weapons.

III. THE SHOOTING DEATH OF PHILLIP J. MOORE

On January 27, 1979, shortly after midnight, Phillip J. Moore was shot and killed by Alaska State Trooper, Feichtinger. Moore was unarmed at the time of the shooting which occurred during a brief struggle between Moore and Feichtinger following a chase of Moore by Feichtinger and other police officers. The facts leading to this incident are as follows.

Feichtinger, driving a patrol vehicle, noticed Moore standing at the clerk's station to Renner's Service Station. Moore was "leaning towards the clerk" which, according to Feichtinger, "looked suspicious." Feichtinger radioed to another patrol car driven by Trooper Cole which coincidentally happened to be behind him. Both patrol vehicles pulled into the service station and everything appeared to be alright. Shortly

thereafter the troopers in the second patrol car observed the same orange Blazer that had been at Renner's pull out onto Tudor and drive up onto the snow berm. Believing that the driver of the Blazer might be under the influence of alcohol, Trooper Cole decided to follow it but did not put his red light on as he had not yet decided to make a stop. After following it a short way, the Blazer began to speed up. After the Blazer made several turns, Cole activated his red light. The Blazer turned into an apartment complex and came to a quick stop in the parking area. As Cole pulled into the parking area, the driver jumped out and ran towards one of the apartment buildings leaving the lights of the Blazer on and the driver's door open. Cole jumped out of his patrol car and shouted for Moore to stop. Moore shouted, "what for, man", and then ran into the apartment building.

Feichtinger, overhearing Cole's radio transmissions, proceeded to the apartment complex. After a brief search in the area, Feichtinger and Cole took a closer look at the Blazer. Between the front seats Feichtinger found a long barreled revolver.

Either Feichtinger or Cole or both commented that this may have been the reason the driver was running and surmized that they may have interrupted an imminent robbery attempt at Renner's.

Feichtinger and another trooper resumed the search for Moore. A number of other police units began to arrive in the area. After Moore was sighted in the parking lot to the New Pines, he ran through the front entrance and Feichtinger followed. Moore ran out the back door and Feichtinger, in pursuit, shouted for him to halt. Moore momentarily broke his running motion with his hands and Feichtinger drew his revolver.

Feichtinger shouted for Moore to stop. Moore continued running and ran over the snow bank out of sight. With his weapon out and still running, Feichtinger reached the top of the bank. Moore had fallen in the snow and Feichtinger stumbled himself. At the bottom of the bank a struggle ensued between the two. Moore repeatedly kept attempting to reach for his left ankle whenever a momentary opportunity arose. At one point Feichtinger struck Moore in the head with his revolver. It did not appear to slow Moore down. Moore again bent and reached towards his left ankle. At this point Feichtinger was off balance. Feichtinger then shot Moore at point blank range as Moore was coming back up from a crouching position having again reached in the vicinity of his left ankle. Although he did not see a weapon, it was Feichtinger's belief that Moore had been repeatedly reaching for a weapon in his ankle area and was coming up with it at the time he (Feichtinger) fired.

An investigation of the incident was conducted by investigators assigned to the Criminal Investigation Bureau (CIB) of the Division of Alaska State Troopers in Anchorage.

On February 14-15, 1979, a coroner's inquest was held in order to determine the cause and manner of Phillip Moore's death, and the circumstances leading to the shooting. The verdict of the coroner's jury was that no crime had been committed in the killing of Phillip Moore and that the manner of death constituted justifiable homicide. The verdict was accompanied by a critical comment regarding that aspect of the Department of Public Safety shooting policy which prohibits the firing of warning shots, a policy which the jury believed was "partly responsible for Phillip Moore's death."

At the request of the Governor's Office, the criminal division of the Department of Law in conjunction with the office of the Commissioner of the Department of Public Safety conducted a review of the facts surrounding the incident and examined the manner in which both the CIB investigation and coroner's inquest were conducted. This report was released on June 18, 1979. The significant findings of this report include the following:

1. There is no evidence to suggest that the shooting of Phillip Moore by Trooper Feichtinger occurred in any manner other than that demonstrated by the evidence presented to the coroner's jury, that is, in an honest but mistaken belief that it was necessary to shoot Mr. Moore in order to avoid death or serious bodily injury to himself. The mistake was not unreasonable under all the circumstances present in the incident and would, in our judgment, constitute a legitimate claim of self-defense under the law.
2. There is no evidence to support a conclusion that the race of the decedent was a conscious factor in influencing the actions of Trooper Feichtinger or any other police officers involved in the incident or its investigation. Whether or not it was a subconscious factor in the sequence of events which first drew law enforcement attention to Mr. Moore is a matter of speculation.
3. A pervasive concern of great significance does need to be addressed more openly and directly by the Department of Public Safety, and all other state law enforcement officers,

and that is the extent of the suspicion and lack of confidence in the minority community with regard to law enforcement generally.

4. In conducting this review, a variance has been identified between basic officer training in the use of firearms presently offered at the Department of Public Safety Training Academy for all new officers and more advanced, in-service training that had previously been given to experienced officers including Trooper Feichtinger. The Department of Public Safety is presently conducting, with the assistance of the Department of Law, a more complete review of its shooting policies and training procedures and revisions to both are in the process of being implemented.

In considering the Phillip Moore incident in the context of the Department's shooting policies, certain points are worthy of discussion. First, the policies provide little more than the outer limits of legal liability as guidelines for the officer. Second, the shooting of Phillip Moore by Trooper Feichtinger fits within subsection A of the department's firearms policy, that is, shooting in self-defense. Feichtinger did not claim to have shot in order to prevent escape or to apprehend, and, indeed, the grounds were not sufficient to support the use of firearms under either of these circumstances.

Will change Jan 1
to conform with
State Statute.

REGULATIONS AND PROCEDURE MANUAL

NOME POLICE DEPARTMENT

CHAPTER VIII

USE OF FIREARMS

Use of Firearms (8.005 to 8.030)

Sec. 8.005 Self Defense

When necessary to protect himself from felonious assault or to save his own life, a police officer may use firearms in self defense. That which he is authorized to do in his own defense, he is authorized and required to do in defense of any prisoner whom he may have in custody. The same is true in the defense of a brother officer or citizen upon whom a dangerous and felonious assault is made in his presence. Although authorized to use firearms under the above circumstances, police officers do not have the right to resort to the use of firearms to protect themselves or other persons from assaults not likely to have serious results.

Sec. 8.010 Fleeing Felon

An officer has the right to use firearms against a person who is running away to escape arrest only when he has the lawful authority to arrest such a person for the commission of a felony, and when it can be shown that it was necessary to resort to firearms. He should not fire upon a person who is fleeing from him on the mere suspicion that such a person may have committed a felony, or solely because a person fails to stop at his command, or runs a blockade. When an officer sees a person commit a felony, or when he is endeavoring to make a lawful arrest, he may use firearms for the purpose of preventing the escape of such a person if it is necessary.

Sec. 8.015 Fleeing Misdemeanant

Under no circumstances shall an officer fire upon any person who is fleeing to avoid arrest for a misdemeanor.

Sec. 8.020 Warning Shots

Warning shots will not be fired within the municipal boundaries of the City of Nome.

Sec. 8.025 Shooting at Persons

- A. Police officers will not unholster their weapons unless there is a possibility and intent to shoot someone if necessary.
- B. Police officers will not fire at persons on suspicion, or probability. There must be more than probable grounds that a person need be shot. There must be reasonable and justifiable grounds. As per AS 11.15.090 and AS 11.15.100.

AS 11.15.090 Justifiable Homicide by a Public Officer or Agent:

The killing of a human being is justifiable when committed by a public officer or a person acting in the aid and assistance and by the command of a public officer

- 1. In obedience to the judgement of a competent court;
- 2. When necessarily committed in overcoming resistance to the execution of legal process or to the discharge of a legal duty;
- 3. When necessarily committed in retaking persons charged with or convicted of a crime who have escaped or have been rescued; or
- 4. When necessarily committed in arresting a person fleeing from justice who has committed a felony.

AS 11.15.100 Justifiable Homicide

The killing of a human being is justifiable when committed by any person

- 1. To prevent the commission of a felony upon him, or upon his husband, wife, parent, child, master, mistress, or servant;
- 2. To prevent the commission of a felony upon his property, or upon property in his possession, or upon or in a dwelling house where he may be;

3. In an attempt, by unlawful means, to arrest a person who has committed a felony, or in the lawful attempt to suppress a riot or preserve the peace.

Sec. 8.030. Conclusion

The wording of the referred statute, AS 11.15.090 states, "necessarily". Webster defines necessary as something which is essential or unavoidable, an act which is compulsive rather than voluntary.

JUNEAU POLICE DEPARTMENT

CHAPTER 110

FIREARMS, GAS AND PERSONAL WEAPONS

Sec. 110.010 USE OF FIREARMS

- A. When necessary to save his own life or to protect himself from a felonious assault, a member of the department may use his revolver or other firearms in self defense. That which he is authorized to do in his own defense, he is authorized and required to do in defense of any prisoner whom he may have in custody. The same is true in the defense of a brother officer or citizen upon whom a dangerous and felonious assault is made in his presence. Although authorized to use firearms under the above circumstances, members do not have the right to resort to the use of firearms to protect themselves or other persons from assaults which are not likely to have serious results.
- B. An officer has the right to use firearms against a person who is running away to escape arrest only when he has the lawful authority to arrest such person for the commission of a felony, and when it can be shown that it was necessary to resort to firearms. He should not fire upon a person who is fleeing from him on the mere suspicion that such person may have committed a felony, or solely because a person fails to stop at his command, or runs a blockade. When an officer sees a person commit a felony, or when he is endeavoring to make a lawful felony arrest, he may use his revolver or other firearms for the purpose of preventing the escape of such person if it is necessary.

As a general policy, firearms will only be used as authorized in A above or to prevent a violent felony or the escape of a person who has committed a violent felony.

The mere commission of a felony does not in and of itself justify or make necessary the use of a firearm.

- C. Under no circumstances shall a member fire upon any person who is running away to avoid arrest on a misdemeanor charge. The state recognizes that it is better for an officer to allow a misdemeanant to escape than to take his life and has given no authority to resort to the use of firearms in such cases.
- D. Warning shots.
1. Warning shots, if justified, will be aimed into the air.
 2. Warning shots will not be fired in a populated area; i.e., within a city's limits or within a dense residential area.

3. The firing of warning shots may require justification before an administrative inquiry, therefore, officers must be able to convince other persons who were not at the scene that they were justified in firing.
4. Warning shots will not be justified unless there was also justification for shooting at a person, and the person must be a fleeing felon.

E. Shooting at Persons.

1. Officers will not unholster their weapon unless there is the possibility, and intent to shoot someone if necessary.
2. Officers will not fire at persons on suspicion, or probability. There must be more than probable grounds to believe that a person need be shot. There must be reasonable and justifiable grounds. (Re: AS 11.15.090 and AS 11.15.100 and the footnotes following.)

F. Officers shall not fire from a moving vehicle.

G. Conclusion.

1. The wording of the referred statute, AS 11.15.090 states, "...necessarily..." Webster defines necessary as something which is essential or unavoidable, an act which is compulsive rather than voluntary.

Sec. 110.020 CARRYING FIREARMS

- A. While on duty, in uniform, unless in court, members are required to be armed with the regular issue revolver, and while on duty other than in uniform, they are required to be armed either with the revolver issued to them, or with a personal revolver or pistol which is in safe and dependable operating condition and which has been inspected and approved by the division commander, and approved as to size and caliber by the Chief.
- B. Members shall be deemed to be on duty at all times for the purpose of apprehending criminals and preserving law and order. Accordingly, every officer is authorized to carry his badge and regular issue revolver or other approved personal revolver or pistol while off duty and within the City and Borough.
- C. Members assigned to office or desk duty, or to other duties on department grounds, are considered to be armed when their revolvers are in their desks or in other safe places where they are readily available in case of need.

Sec. 110.050 CHEMICAL WEAPONRY

- A. Gas grenades and projectiles may be used only after supervisory permission is obtained.
 - 1. Projectiles may be used where a person or persons have barricaded themselves against apprehension.
 - 2. Grenades may be used in crowd control situations or where a person or persons have barricaded themselves against apprehension.
- B. No liquid tear gas devices are approved for carrying and no percussion type tear gas weapons except the tear gas rifle is approved. No member is to use or carry gas cartridge pens, billies or gas cartridges for use in the shotgun or pistol.

Sec. 110.060 OTHER PERSONAL WEAPONS

- A. Batons, saps and weighted gloves will be used judiciously.
- B. Personnel will not visibly carry saps on their person. A sap may be carried in the patrol car.
- C. Weighted gloves may be worn or carried at the discretion of the individual.

Sec. 110.070 REPORTING USE OF WEAPONS

Anytime an officer discharges his firearm, except during firearms practice, it shall be fully reported in memo form to the division commander and be routed to the Chief.

The report shall give the circumstances which in the officer's opinion justified the firing of the weapon, and all of the pertinent facts surrounding the incident.

Sec. 110.080 DRINKING INTOXICANTS WHILE ARMED (Re: Chapter 104, Sec. 190 also)

- A. No member shall drink an intoxicating beverage while armed, unless the member is on a specific assignment in plain clothes and the assignment has been previously approved by the Chief as requiring being armed.
- B. No member, even on an approved special assignment, shall be noticeably intoxicated while armed.

Anchorage Police Department

CHAPTER SIX

ARREST AND CUSTODY

6.01 NECESSARY FORCE. Officers shall use only that force necessary and lawful in making an arrest.

6.02 USE OF FORCE

6.02.01 Purpose. To explain limitations of the law and department regulations upon use of force so the officer may perform his duties confidently and wisely and not subject himself to criminal or civil liability or departmental disciplinary action.

6.02.02 Discussion. The law of the State of Alaska specifically limits the use of force by Police Officers. When a Police Officer goes beyond the limits set by law he no longer is protected by his office and badge; he is no longer immune to legal recourse. A Police Officer who uses force in excess of that allowed or who uses force in a situation where it is not permitted is liable for damages to the person against whom force is used and is subject to criminal prosecution.

6.02.03 Deadly and Non-Deadly Force. The law distinguishes between deadly and non-deadly force. Deadly force is any force likely to cause serious physical injury or death. Firing a weapon is always deadly force. It makes no difference if the intent of the officer was merely to frighten or wound. Once a weapon is discharged, an officer had used deadly force. Non-deadly force is any physical force, including the use of the baton; however, the baton can be used in such a way as to constitute deadly force.

6.02.04 When Deadly Force May Be Used. A peace officer need not retreat or desist from efforts to make an arrest because of resistance or threatened resistance to the arrest.

Section 11.15.090 of the Alaskan Statutes provides:
Justifiable homicide by a public officer or agent

The killing of a human being is justifiable when committed by a public officer or a person acting in his aid and assistance and by the command of a public officer

1. in obedience to the judgment of a competent

court:

2. when necessarily committed in overcoming resistance to the execution of legal process or to the discharge of a legal duty;
3. when necessarily committed in retaking persons charged with or convicted of crime who have escaped or been rescued; or
4. when necessarily committed in arresting a person fleeing from justice who has committed a felony.

Section 11.15.100 adds, Justifiable homicide.

The killing of a human being is justifiable when committed by any person

1. to prevent the commission of a felony upon him, or upon his husband, wife, parent, child (et al);
2. to prevent the commission of a felony upon his property, or upon property in his possession, or upon or in a dwelling house where he may be;
3. in the attempt, by unlawful means, to arrest a person who has committed a felony, or in the lawful attempt to suppress a riot or preserve the peace.

6.02.05 Use of the Baton. The baton is intended to be used as a secondary weapon. While not intended as such, it can be a deadly weapon when used improperly. The baton may be used by a Police Officer only when he reasonably believes its use is necessary to:

- A. Protect himself or another from injury.
- B. Overcome resistance or to prevent the escape of a person who has committed a felony.

6.02.06 Summary. In making an arrest for any misdemeanor, an officer is justified in using that force which he reasonably believes necessary to effect the arrest or to protect himself or another from harm while making the arrest, except force likely to cause death or great bodily harm.

Deadly force may only be used when dealing with felonies or when defending oneself or another against great bodily harm or death, and then only when reasonable and necessary. Discharging a firearm in any other situation is prohibited.

6.02.07 Procedure Following Use of Force

- A. If the officer encountered a sufficient degree of resistance to justify a charge of resisting arrest or assault, these charges should be placed immediately.
- B. If the officer's force injures the prisoner:
 - 1. The officer will take the prisoner directly to a hospital if medical attention is required. If he is in doubt as to the necessity of medical attention, he shall immediately contact the shift commander for a decision.
 - 2. The officer will explain, in detail, in his written report the circumstances surrounding the injury. In addition, he will file any other reports as required by department regulations.

6.03 USE OF FIREARMS

6.03.01 When Discharge of Firearms is Permitted Officers shall not discharge firearms in connection with Police duty, except under the following listed circumstances:

- A. At an approved range.
- B. To kill a dangerous animal or an animal so badly injured that humanity requires its relief from further suffering.
- C. In defense of their own lives.
- D. In defense of another's life.
- E. In compliance with State Law.

6.03.02 When Discharge of Firearms is Not Permitted

- A. For warning shots.
- B. When shooting at moving vehicles, regardless of the crime involved, except when being fired upon or returning fire is necessary to protect the officer's life or the life of another.
- C. In any misdemeanor case or incident.
- D. Indiscriminately, not in the line of duty.

DEPARTMENT of Public Safety

noncriminal, and no corroborating information has been discovered, officers shall not be required to submit to polygraph examinations unless the citizen also submits to a polygraph examination which is specifically directed and narrowly related to the complaint.

B. Upon the order of the Commissioner, or the Commissioner's designee, employees shall submit to ballistics, medical or chemical tests, photographing or lineups. All weapons carried by employees are subject to examination upon request. All procedures carried out under this subsection specifically directed and narrowly related to a particular internal investigation being conducted by the Department.

Sec. 104.470 TREATMENT OF PRISONERS

A. Employees shall not mistreat or use unnecessary force toward any prisoner. He shall not use force upon a prisoner except to overcome resistance, or in defense of his own person or other persons.

Sec. 104.480 USE OF FORCE

A. Employees shall not use more force in any situation than is reasonably necessary under the circumstance. Employees shall use force in accordance with law and Departmental procedures.

Sec. 104.490 USE OF WEAPONS

Commissioned officers shall not use or handle weapons in a careless or imprudent manner. Officers shall use weapons in accordance with law and departmental procedures.

Sec. 104.500 ARREST, SEARCH AND SEIZURE

A. Commissioned officers shall not make any arrest, search or seizure which they know or should know is not in accordance with law and Departmental procedures.

Sec. 229.040 USE OF FORCE IN MAKING ARREST

- A. Generally stated the duty and authority of an officer to make an arrest carries with it the right to take such reasonable force as may be necessary to take the offender into custody.
- B. Generally only that force necessary to overcome the resisting offender, no more.
- C. Deadly force is never justified for a misdemeanor arrest unless your life is actually in danger. (refer to chapter 111.010)
- D. Deadly force in making an arrest for a felony may be used to overcome the resistance of the felon if there is no other way.
- E. Officers may use force in all cases for self-defence if resistance is so violent as to effect the officers safety. But care must be exercised not to use excessive force.

Sec. 229.050 DUTIES OF ARRESTING OFFICER UPON ARREST

- A. It is the responsibility of the arresting officer to protect all property in the possession of the arrested person.
- B. The officer has the right to search the body, clothing and any item carried by the arrested person, for any weapons which may harm the officer or effect escape.
- C. The arresting officer must give the Miranda Warning to the arrested person prior to any interviewing or at the earliest convenience after the arrest. This warning is as follows:

MIRANDA WARNING:

- 1. You have the right to remain silent.
 - 2. Anything you say can and will be used against you in a court of law.
 - 3. You have the right to talk to a lawyer and have him present with you while you are being questioned.
 - 4. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish.
 - 5. You can decide at any time to exercise these rights and not answer any questions or make any statements.
- D. The arresting officer must see that the accused is brought before a judge or magistrate as soon as possible and in no case more than 24 hours from the time of the arrest.
- 1. Generally the arresting officer will prepare a complaint, setting forth the charges, and a statement or affidavit supporting those charges. This will be signed before the magistrate prior to the arraignment.

CHAPTER 111

FIREARMS, GAS AND PERSONAL WEAPONS

Sec. 111.01 USE OF FIREARMS

- A. When necessary to save his own life or to protect himself from a felonious assault, an officer of the department may use his revolver or other firearms in self defense. That which he is authorized to do in his own defense, he is authorized and required to do in defense of any prisoner whom he may have in custody. The same is true in the defense of a brother officer or citizen upon whom a dangerous and felonious assault is made in his presence. Although authorized to use firearms under the above circumstances, members do not have the right to resort to the use of firearms to protect themselves or other persons from assaults which are not likely to have serious results.
- B. An officer has the right to use firearms against a person who is running away to escape arrest only when he has the lawful authority to arrest such a person for the commission of a felony, and when it can be shown that it was necessary to resort to firearms. He should not fire upon a person who is fleeing from him on the mere suspicion that such a person may have committed a felony, or solely because a person fails to stop at his command, or runs a blockade. When an officer sees a person commit a felony, or when he is endeavoring to make a lawful felony arrest, he may use his revolver or other firearms for the purpose of preventing the escape of such a person if it is necessary.
- C. Under no circumstances shall an officer fire upon any person who is running away to avoid arrest on a misdemeanor charge. The State recognizes that it is better for an officer to allow a misdemeanant to escape than to take his life and has given the Department of Public Safety's commissioned personnel no authority to resort to the use of firearms in such cases.
- D. Warning shots will not be fired.
- E. Shooting at persons
 - 1. Officers will not unholster their weapon unless there is a possibility and intent to shoot someone if necessary.
 - a. Examples: Entering an open building to check it out. Approaching a 10-36 vehicle where the driver or passenger made a suspicious movement. Approaching alarm ringing, bank, residential, etc. or if the situation dictates.

Rev. 11/18/77

2. Officers will not fire at persons on suspicion, or probability. There must be more than probable grounds to believe that a person need be shot. There must be reasonable and justifiable grounds. RE AS 11.15.090 and AS 11.15.100 and the footnotes following.
3. Officers firing at persons will make the necessary reports as to the circumstances of the shooting, as part of the case report.
 - a. When a shooting incident occurs the Director of the Division of State Troopers will be notified.
 - b. The Director will immediately select an investigation team of 2 CIB Investigators and a member of 1 internal affairs who will investigate the circumstances surrounding the shooting.
 - c. This Investigation will be a combination of whatever Investigation may have already been conducted by on scene personnel and does not relieve them of any investigative responsibility or crime scene security prior to the arrival of the team.
 - d. The ranking team officer will be in charge of the Investigators.
 - e. All Investigators will be conducted as a criminal investigation and if at any time during the investigation information is obtained which would lead Investigators to believe a criminal violation may have been committed by the Trooper(s) or Officer(s) he/she/they shall be advised of their constitutional rights prior to questioning.
4. a. The Commissioner or appropriate director may appoint a 3 member review board to review the circumstances of the shooting.

F. Shooting Board If Shooting Board is convened it will be for the fact findings wherein an officer deliberately discharges a firearm with the capability or intent to kill, wound or warn a human.

1. Selection of board members.
 - a. One (1) board Member to be chosen by Director (If possible, from opposite Zones).
 - b. That member chairs board and selects second member (If possible, from separate Detachments).
 - c. The officer who fired shot(s) selects third board member.
 - d. An Association representative may be present at request of the officer, when the officer is also present, but cannot ask questions. No more than two (2) Association representatives, including Association Counsel.
2. Due dates.
 - a. Within 24 hours of being advised of the shooting incident, the Department shall most expeditiously notify the officer and the Association of the investigation and shall follow up by written notification. Both notices shall name the complainant and the officer in charge of the investigation.
 - b. Board should be convened within two (2) weeks but not later than four weeks from date of occurrence.

- c. Officers, the Association and witness will receive as much notice as possible, and not less than 24 hours.

3. Notification of possible violation.

- a. The officer shall be advised specifically on possible violations of OPM and/or State Statute.

- 1. If statute is violated, the officer must be advised of rights and has the right to be represented by an attorney.

- b. The officer shall be informed of the rank, name and command of the officer in charge of the investigation as well as the rank, name and command of the board chairman and the identity of all persons present during the interview.

4. Protocol

- a. Chairman shall call board to order.
- b. Proceedings shall be recorded mechanically or stenographically.
- c. Chairman will read appropriate section of OPM and/or Statutes which apply to circumstances.
- d. Chairman will verify his authority to convene board. (Read memo of appointment)
- e. Names of those present will be placed on record.
- f. The officer who fired weapon will explain what occurred.
- g. Board members will ask questions specifically relating to the incident.
- h. There will be no off - the - record questions asked of the officer.
- i. Witnesses may be called, but will be excluded until they testify. They will remain available in the event further testimony is needed.
- j. Questioning of the officer will not be in sessions of more than 30 minutes without 30 minutes break and will be limited to no more than 4 hours per day.
- k. Any witness can be questioned by the officer who fired shot(s).

5. Decision

- a. After discussing the testimony and evidence the three board members will arrive at independent conclusions.
- b. Their decision will be in writing with justification.
- c. Decisions will be sent to chairman.
- d. Director will be notified of board's decision, resolve dissents and take such disciplinary action, if warranted.

Sec. 111.040 Con't

- C. Shotguns and rifles shall be stored in gun cabinets at the Post or Detachment to which they are issued, except when being carried on patrol or in actual use. When being carried in patrol cars, shotguns and rifles shall be fully loaded, except that no shell shall be placed in the chamber, and they shall not be left in unattended motor vehicles unless properly locked in position.
- D. Disclosure of a dirty, defective or inoperative weapon may be grounds for disciplinary action.
- E. Shotguns carried in patrol cars shall be cleaned and inspected every two weeks by the officer assigned to that vehicle.
- F. No member of the department is to undertake repairs or mechanical alteration of issue weapons. They are, however, required to see that needed repairs to their weapon(s) are accomplished through their supervisor.
- G. If spray type gun lubes are used, remove all cartridges before spray is applied. The weapons will be dried off thoroughly with particular attention to drying the cylinder, extractor, surrounding recoil plate and firing pin opening.
- H. Firearms will be cleaned periodically, but in no case less than every 2 weeks, and will be subject to inspection.

Sec. 111.050 CHEMICAL WEAPONRY

- A. Gas grenades and projectiles will be used only after supervisor permission is obtained.
 - 1. Projectiles will only be used where a person or persons have barricaded themselves against apprehension.
 - 2. Grenades will be used in crowd control situations or where a person or persons have barricaded themselves against apprehension.
- B. Liquid tear gas devices will replace all percussion type tear gas weapons except the tear gas rifle. No officer is to use or carry gas cartridge pens, billies or gas cartridges for use in the shotgun or pistol.
- C. Authorized liquid tear gas weapons are as follows:
 - 1. Pens
 - 2. Cannisters
 - 3. Billies
- D. The Pens and Cannisters may be carried on the person as follows:
 - 1. The pen if carried must be carried in an inconspicuous location on the person.
 - 2. Cannisters may be carried by personnel in uniform.
- E. The use of chemical weapons must be discriminatory. Such uses may be as follows:
 - 1. To prevent escape.
 - 2. To assist in arrests where the use of a firearm is not warranted, but where the use of physical force is required.
 - 3. To quell minor disturbances involving several people fighting.

4. To quiet down physically aggressive individuals, when if allowed to continue they will harm property, themselves or others.
 5. Other situations when, in the officer's opinion, application of such means is necessary and justifiable.
- F. After subject maced is brought under control and ceases to be an immediate problem of the arresting officer (generally when placed in jail) the following will be done.
1. Jail personnel notified of the use of mace and instructed to:
 - a. Have individual wash with soap and water the affected area (to remove dirt and oils) and then bathe the affected area in a cool solution of baking soda and water.
 - b. Keep affected area exposed to fresh air and allow CN to escape.
 - c. Do not apply oil or grease medications or bandages to the exposed areas as they would further entrap the CN irritant.
 2. A written report giving the circumstances of the use of mace will be made by the officer using same. The report will include the time that the mace was used and when the person maced was treated as in (1) above. This report prepared on 12-202 will accompany the other normal reports to the supervisor.

Sec. 111.060 OTHER PERSONAL WEAPONS

- A. Billies, saps and weighted gloves will be used discretely.
- B. Officers will not carry saps or billies on their person unless they are entering a situation where there is obviously a need for same. Both may be carried in the patrol vehicle.
- C. Weighted gloves may be worn or carried at the discretion of the individual officer.

Sec. 111.070 TACTICAL RIFLE COURSE

- A. The following course of fire will be fired semi-annually by all commissioned personnel, who carry a rifle while on patrol duty.
- B. Requisites
 1. Rifle
 - a. Semi-auto/automatic M-16, MINI-14, AR-15
 - b. Bolt action rifle (as issued)
 2. Three targets, Silhouette (B-27) 50 feet apart on firing line
 3. Ammunition
 - a. 15 rounds, 223 for Semi-auto fire
 - b. 9 rounds of ammo for issue Bolt-action
 4. Equip. 6' barricade at 50 yard line

STATE
of ALASKA


MEMORANDUM

TO: All Commissioned Personnel

DATE: November 6, 1978

FILE NO:

TELEPHONE NO:

FROM:  Richard L. Burton, Commissioner
Department of Public SafetySUBJECT: Commissioners Directive
78-2

Due to recent problems in the initiation of investigations into officers involved shootings, the following policy in all Trooper or Officer involved shootings will be followed. The Director of the Division of State Troopers shall be immediately notified of the shooting and circumstances surrounding it.

Upon his notification, he shall immediately select a shooting team consisting of CIB investigators and at least one member of the Internal Affairs Unit to investigate the circumstances surrounding the shooting.

This investigation will be a continuation of whatever investigation may have already been conducted by onscene personnel and in no way relieves them of any investigative responsibility or crime scene security prior to the arrival of the investigative team.

All further investigation, once the shooting team has arrived, will fall under the command of the ranking officer of the team.

All investigations shall be conducted as a criminal investigation and if at anytime during the investigation information is obtained which would tend to lead investigators to believe that a criminal violation of law may have been committed by the Trooper(s) or Officer(s), he/she/they shall be advised of their constitutional rights, prior to questioning.

The purpose of this team shall be as follows:

1. In all shootings in which Department of Public Safety personnel are involved, close scrutiny is given as to it's justification by both the public and the press. This makes it imperative for the protection of the Trooper or Officer involved that the most experienced investigative team available to the Department be utilized to insure that all available information and evidence is uncovered and made part of the investigation.
2. To develop information from the investigation that may be helpful in protecting the Trooper or Officer from injury or improper shooting procedures through training and directives, in possible future instances.
3. To insure the public that every possible precaution is being taken to investigate shootings, to insure their justification and through investigation, make a determination as to training needs which would help to insure public safety in future similar instances.

RLB/LMC/lbb

Fairbanks Police Department

CHAPTER ONE

POLICY ON USE OF FIREARMS

- 1.1 PREAMBLE TO THE POLICY ON THE USE OF FIREARMS. The use of a firearm is in all probability the most serious act in which a law enforcement officer will engage. It has the most far-reaching consequences for all of the parties involved. It is, therefore, imperative not only that the officer act within the boundaries of legal guidelines, ethics, good judgment, and accepted practices, but also that the officer be prepared by training, leadership, and direction to act wisely whenever using a firearm in the course of duty.
 - 1.1.1 A reverence for the value of human life shall guide officers in considering the use of deadly force. While officers have an affirmative duty to use that degree of force necessary to protect human life, the use of deadly force is not justified merely to protect property interests.
 - 1.1.2 It is in the public interest that a police officer of this Department be guided by a policy which the people believe to be fair and appropriate and which creates public confidence in the Department and its individual officers.
 - 1.1.3 This policy is not intended to create doubt in the mind of an officer at a moment when action is critical and there is little time for meditation or reflection. It provides basic guidelines governing the use of firearms so that officers can be confident in exercising judgement as to the use of deadly force. Such a policy must be viewed as an administrative guide for decision making before the fact and as a standard for administrative judgement of the propriety of the action taken. It is not considered a standard for external judgement (civil or criminal litigation) of the propriety of an action taken. This is a matter of established law and also a process for courts and juries reviewing specific facts of a given incident.
- 1.2 NECESSITY THAT OFFICERS BE ARMED. As long as members of the public are victims of violent crimes and officers in the performance of their duties are confronted with deadly force, it will remain necessary for police officers to be properly armed for the protection of society and themselves.

- 1.3 REASON FOR THE USE OF DEADLY FORCE. An officer is equipped with a firearm to protect himself or others against the immediate threat of death or serious bodily injury or to apprehend a fleeing felon who has committed a violent crime and whose escape presents a substantial risk of death or serious bodily injury to others.
- 1.4 PROTECTION OF THE GENERAL PUBLIC. Regardless of the nature of the crime or the justification for firing at a suspect, officers must remember that their basic responsibility is to protect the public. Officers shall not fire under conditions that would subject bystanders or hostages to death or possible injury, except to preserve life or prevent serious bodily injury. Firing under such conditions is not justified unless the failure to do so at the time would create a substantial immediate threat of death or serious bodily injury.
- 1.5 MINIMIZING THE RISK OF DEATH. An officer does not shoot with the intent to kill; he shoots when it is necessary to prevent the individual from completing what he is attempting. In the extreme stress of a shooting situation, an officer may not have the opportunity or ability to direct his shot to a non-fatal area. To require him to do so, in every instance, could increase the risk of harm to himself or to others. However, in keeping with the philosophy that the minimum force that is necessary should be used, officers should be aware that, even in the rare cases where the use of firearms reasonably appears necessary, the risk of death to any person should be minimized.
- 1.6 THE USE OF DEADLY FORCE. An officer is authorized the use of deadly force when it reasonably appears necessary:
- 1.6.1 A. To protect himself or others from an immediate threat of death or serious bodily injury, or
- 1.6.2 B. To prevent a crime where the suspect's actions place persons in jeopardy of death or serious bodily injury, or
- 1.6.3 C. To apprehend a fleeing felon for a crime involving serious bodily injury or the use of deadly force where there is a substantial risk that the person whose arrest is sought will cause death or serious bodily injury to others if the apprehension is delayed.

- 1.6.4 Officers shall not use deadly force to protect themselves from assaults which are not likely to have serious results.
- 1.6.5 Deadly force shall only be exercised when all reasonable alternatives have been exhausted or appear impracticable.
- 1.7 JUSTIFICATION LIMITED TO FACTS KNOWN TO OFFICER. Justification for the use of deadly force must be limited to what reasonably appear to be the facts known or perceived by an officer at the time he decides to shoot. Facts unknown to an officer, no matter how compelling, cannot be considered at a later date to justify a shooting.
- 1.8 SUSPECTED FELONY OFFENDERS. An officer shall not fire at a person who is called upon to halt on mere suspicion and who simply runs away to avoid arrest. Nor should an officer fire at a "fleeing felon" if the officer has any doubt whether the person is in fact the person against whom the use of deadly force is permitted under this policy.
- 1.9 YOUTHFUL FELONY SUSPECTS. This Department has always and will continue to utilize extreme caution with respect to the use of deadly force against youthful offenders. Nothing in this policy is intended to reduce the degree of care required in such cases.
- 1.10 SHOOTING AT FLEEING MISDEMEANANTS. Officers shall not use deadly force to effect the arrest or prevent the escape of a person whose only offense is classified solely as a misdemeanor.
- 1.11 FIRING WARNING SHOTS. Generally, warning shots should not be fired.
- 1.12 FIRING FROM VEHICLES. Firing from moving vehicles is generally prohibited. Experience shows such action is rarely effective and is extremely hazardous to innocent persons.
- 1.13 DRAWING OR EXHIBITING FIREARMS. Unnecessarily or prematurely drawing or exhibiting a firearm limits an officer's alternatives in controlling a situation, creates unnecessary anxiety on the part of citizens, and may result in an unwarranted or accidental discharge of the firearm. An officer's decision to draw or exhibit a firearm should be based on the tactical situation and the officer's

1.13 reasonable belief there is a substantial risk that
Cont. the situation may escalate to the point where deadly
force may be justified. When an officer has determined
that the use of deadly force is not necessary, the
officer shall, as soon as practicable, secure or
holster the firearm.

1.14 THIS POLICY SUPERCEDES DIRECTIVE 2, SECTION A401,
EFFECTIVE DATE OF 1-10-75.

CHAPTER TWO
DISCHARGE OF FIREARMS

2.1 POLICY

2.1.1 REPORTING REQUIREMENTS. In the event that a firearm is discharged in the line of duty by any commissioned or auxiliary officer of this department, that officer will immediately submit a written report to the Chief of Police through the chain of command detailing the complete circumstances surrounding such discharge. If the officer is incapacitated, the immediate supervisor will prepare the report.

2.1.2 REASSIGNMENT AFTER FATAL SHOOTING INCIDENT. In the event that a shooting results in an immediate fatality, the officer/s affected will be reassigned from patrol-related duties by the Commander of Field Services for not less than three working days. Thereafter, the officer/s will return to patrol-related duties at the discretion of the Commander of Field Services.

2.1.3 REASSIGNMENT AFTER CRITICALLY INJURED OR SENSITIVE SHOOTING INCIDENT. In the event that a shooting results in a critical injury or creates a sensitive issue, the officer/s affected may be reassigned from patrol-related duties by the Commander of Field Services at his discretion.

CHAPTER EIGHT

USE OF CHEMICAL AGENTS

8.1 GENERAL.

8.1.1 PURPOSE. Chemical agents provide the Fairbanks Police Department with a humane and effective means of handling a limited number of law enforcement problems.

8.2 POLICY.

8.2.1 AUTHORIZATION. Chemical agents, are to be used as follows:

A. The use of chemical agents, with the exception of aerosol tear gas projectors, by officers of this department will be a matter for decision by the Watch Commander.

B. The aerosol tear gas projector is a defensive weapon carried by individual officers to be used for control of assailants and violently resisting persons. Aerosol projectors should be used after other reasonable efforts to control a person have failed.

8.2.2 USAGE. Riot control agents and masks assigned to officers are for use at the scene of civil disturbances or barricaded suspects. Officers shall use these supplies for their own protection and for the protection of members of the public and/or their property.

8.2.3 OFFICERS ACTIONS. The actions of each officer are subject to critical review by the public and the news media. All officers shall make every effort to reduce cause for criticism.

8.3 PROCEDURE.

8.3.1 SUPERVISORS RESPONSIBILITIES. Before authorizing use at any location, the supervisor shall give consideration to all known or predictable factors.

A. Physical factors:

(1) Geography of the land and the surrounding buildings. Not to be used in the close proximity of schools, hospitals, or convalescent homes, except in extreme cases.

(2) Wind and weather conditions.

B. Exposure potential. Persons who may unintentionally be exposed to the effects of chemical agents:

- (1) Children in proximity.
- (2) Elderly or invalid persons.

C. Types of disturbance:

- (1) Large masses.
- (2) Small mobile groups.

8.4 REPORTING USE OF CHEMICAL AGENTS.

8.4.1 MEMORANDUM. In instances where chemical agents are used, a memorandum will be forwarded to the Commander of Field Services by the Watch Commander. In instances where aerosol tear gas projectors are used, a memorandum will be forwarded to the Commander of Field Services through the Watch Commander.

8.5 USE OF AEROSOL TEAR GAS PROJECTORS.

8.5.1 AUTHORIZATION. The aerosol tear gas projectors furnished by the department are to be used by officers as an additional enforcement tool. Only aerosol tear gas furnished by the department may be carried.

A. Officers, at their discretion, may carry departmental issued or approved aerosol tear gas projectors while on-duty.

B. If an officer uses aerosol tear gas while off-duty, department policy and procedures will apply.

8.5.2 OPERATION. To use aerosol tear gas:

A. Hold the projector in an upright position. The projector will not function properly if it is tilted or upside down.

B. Aim the nozzle at the subjects chest and depress the valve at the top of the projector. Normally, the valve should not be depressed for more than one second. Make every attempt to not aim at the subjects face.

C. The use of the aerosol tear gas shall normally be within two to fifteen feet of the subject. Only the minimum necessary application to effectively control the subject should be used. Additional gas does not increase its effectiveness.

(1) This reduces the chance of further struggle.

(2) Also prevents subject from irritating the eyes by rubbing the face.

8.5.3 EFFECTS. Aerosol tear gas can be used safely and effectively to temporarily incapacitate a subject. A subject who has received a discharge of aerosol tear gas will suffer considerable discomfort for a short period of time, but will normally recover with no aftereffects provided:

A. The recipient is capable of normal reflexes such as eye closure and blinking.

B. The total duration of the spray is limited to the amount necessary to effectively control the subject.

8.5.4 FIRST AID. The accepted method of decontaminating a subject is to flush the affected area with cool water. This should be done as soon as reasonably possible. Long term skin contact should be avoided. Contaminated clothing should be removed as soon as possible.

8.6 INSPECTION AND REPLACEMENT. All aerosol gas projectors will be inspected semi-annually. Defective or near empty projectors will be replaced.

8.7 RECORDS. A record of available riot control agents and related equipment will be maintained by the Tactical Team Leader and available to the Watch Commander.

8.8 TRAINING REQUIREMENTS.

A. All patrol officers and supervisors will receive one-half hour of chemical agent training every six months. This may be accomplished at roll call briefings.

B. The training curriculum shall include theory as well as technique.

C. A record of chemical agent training will be recorded and maintained in the officers training file.

CHAPTER NINE

POLICE BATON

9.1 POLICY

9.1.1 USE OF THE POLICE BATON. Officers will use the police baton.

- A. To prevent serious bodily injury to the public or themselves.
- B. During a civil disturbance or natural disaster when necessary to restore and maintain order under the law and the conditions in 9.1.1 A apply.

9.2 MINIMIZING THE RISK OF INJURY. An officer does not use a baton with the intent to injure. He strikes to prevent an individual from completing what he is attempting. In the extreme stress of a physical confrontation an officer may not have the opportunity to direct his baton blow in such a manner as to prevent injury. To require him to do so, in every instance, could increase the risk of harm to himself or to others. However, in keeping with the philosophy that the minimum force that is necessary should be used, officers shall be aware that the risk of injury to any person shall be minimized.

9.3 TRAINING REQUIREMENTS.

- A. All patrol officers and supervisors will receive one hour of baton training every six months.
- B. The baton training curriculum shall include theory as well as technique.
- C. Each officer shall review the basic baton techniques and choose one or two techniques which best suits individual needs. During baton training sessions, individuals shall practice the chosen techniques until they are confident with them.
- D. A record of baton training instruction will be recorded and maintained in the officers training file.



Official Business

Alaska State Legislature

House of Representatives

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

AGENDA FOR SEPTEMBER 13th WORK SESSION

9:00 a.m. 1016 West 6th Ave.
Suite 201, Anchorage

Introduction - Charlie Parr

Crimes - Peggy Berck

Law Enforcement - Peggy

Domestic Violence - Rocky Plotnick

Citizen Dispute Centers - Rocky

Integrated vs. Non-integrated Bar - Peggy

Drugs - Peggy

Sentencing - Peggy

LUNCH BREAK

Corrections - Rocky

Parole Board - Rocky

Legal Representation of Indigents - Peggy

Juvenile Justice - Peggy

Judges - Rocky

Court of Appeals - Peggy

Exemption Act - Peggy

Questionnaires - Rocky

Time for each topic will depend on the wishes of committee members.



Alaska State Legislature

House of Representatives

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

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

From: Margaret W. Berck, Staff

Date: September 13, 1979

Subject: The Department of Public Safety

I. INTRODUCTION

The Department of Public Safety (DPS) is comprised of two law enforcement divisions, the Division of Alaska State Troopers and the Division of Fish and Wildlife Protection.¹ Currently, DPS has 447 commissioned officer positions. The Division of Alaska State Troopers has 287 such positions, with 14 vacancies; the Division of Fish and Wildlife Protection has 101 such positions, with 11 vacancies. In addition, 40 positions (30 vacancies²) are assigned to the Alaska State Trooper Academy; 8 positions (2 vacancies) are assigned to the office of the Commissioner; and 11 positions (4 vacancies) are assigned to Fire Prevention. Because of a maintenance budget, DPS is unable to increase these positions during fiscal year 1980. Officers assigned to either of the main two law enforcement divisions must meet the same qualifications requirements and pass the same entrance examination. Both law enforcement Divisions have the same

¹Other divisions include the Division of Motor Vehicles and the Division of Fire Prevention, but for purposes of this report, remarks are limited to the two main law enforcement divisions.

²The positions attached to the State Trooper Academy are filled to capacity only during periods of instruction.

ranking structures and rates of pay. An officer enters DPS at range 74 and, after the satisfactory completion of his or her one-year probationary period, receives a range 76 salary.³ Officer positions with both such Divisions are located throughout the State.⁴

II. RECRUITMENT AND TRAINING

Presently, DPS is seeking to recruit more minorities and women to the force. This recruitment effort is the result of protracted negotiations with the Human Rights Commission. Since the Human Rights Commission had found that the written examination,⁵ used by DPS in its selection process, was culturally biased, a new examination was developed.⁶ This examination will be administered to applicants in October, 1979.

In order to attract large numbers of minorities and women for the October entrance examination, DPS is currently in the midst of notifying Native corporations, the Bureau of Indian Affairs, and various minorities' and women's organizations of employment opportunities with DPS. In addition, the examination will be given in the eight major cities of Alaska, as well as, any other location where there are at least three applicants desiring to take the examination. Furthermore, DPS is negotiating with the Bureau of Indian Affairs so that the Bureau

³In the Anchorage area, range 74 pays \$1829 per month; range 76, \$2119.

⁴See Appendix to this report for exact locations of officers, as well as, detachment organization.

⁵Although DPS utilizes separate written examinations for various promotional positions, apparently the Human Rights Commission negotiations only pertained to the entrance examination.

⁶This new entrance examination is also used by the Anchorage Police Department

might provide travel funds to any Native applicant who might have to travel to another location in order to take the examination.

DPS's goal is to obtain 13 percent minority representation on the force. The basis for this percentage is that that is the current percentage of minorities in the Alaska available work force. In other words, minorities comprise 13 percent of all of those in Alaska who are presently looking for work. DPS did not know the percentage of minorities presently employed in their department. At the time of writing this report, DPS was making a computer run to determine this fact. DPS did state that there are 9 percent women on the force excluding the Anchorage area and 11 percent women on the force taking into account solely the Anchorage area.

To insure the attainment of this goal, DPS has obtained a waiver of their normal selection process. Normally, DPS hires on a one to five ratio. For example, if DPS had one position available, it would normally select that individual from a group of five interested in the position. Those five would be drawn from those achieving the highest scores on the written examination. However, under their affirmative action plan, DPS intends to cull all the minority and female applicants who have passed the written examination. Those individuals will be offered positions ahead of white males even should the white males score better on the examination. (Under this process it is possible that the next group of troopers employed will be all minorities and women.)

In addition to the written examination, applicants for trooper positions must undergo a medical examination and a polygraph examination. Currently, psychological examinations are not required. In

the past, applicants were required to submit to a psychological screening. This was conducted by a psychiatrist in Anchorage and costs \$500 per evaluation. This procedure was subsequently abandoned by DPS primarily because it found the evaluations to be useless. Applicants who failed the psychological evaluation would seek an opinion from another psychiatrist and frequently obtain a completely different opinion. One such applicant was ultimately hired by DPS and has made a fine trooper. Despite difficulties in the past, DPS is seeking to incorporate some type of psychological evaluation in their selection process. DPS has contracted with a police psychiatrist who subjects trainees at the State Trooper Academy to simulated stress situations. Trainees are then assigned grades upon the basis of their responses. The behavior of these trainees is being traced, once they have been placed on the force, to determine if there is any correlation between the test results and on-the-job behavior. Should this test ultimately be validated, it will be incorporated in the DPS selection process.

Applicants must also take an agility test. Currently, however, the results of this test alone, would not eliminate an applicant from the selection pool. The test is not a pass/fail examination. DPS is attempting to validate this test in order that it might be established as one of their selection criteria.

Once the applicant has successfully completed the battery of examinations described above and is selected by DPS for hire, he or she must then complete the Alaska State Trooper training requirements. These training requirements must be completed prior to the end of the officer's one-year probationary period. The first portion of

training is conducted at the State Trooper Academy⁷ located in Sitka. The State Trooper Academy consists of 13 weeks of instruction on various law enforcement subjects, including a course on emergency medical procedures and a brief session on cultural sensitivity. The second portion of training consists of three months of field training. Field training is basically on-the-job training.

Presently, DPS is in the midst of completely revising its "shoot and no shoot" instruction at the academy. In the past, DPS brought instructors up from Los Angeles to provide this training. However, DPS has found that there was no coordination between what was taught at the academy and what was later taught in the field. As a result of this finding, DPS intends to bring every state trooper back to the academy to be retrained on this specific issue. This training will provide the officer with instruction on when he or she may grab, unstrap, draw, and aim his or her weapon. Before the officer is permitted to shoot an assailant, the assailant must present the ability and opportunity to endanger the officer. Furthermore, the officer must be in actual jeopardy. It is contemplated that this training will be completed by the end of 1979.

111. COOPERATION AMONG LAW ENFORCEMENT AGENCIES

Alaska law⁸ requires DPS to assist other departments of the state, municipal, and federal governments in the enforcement of criminal laws and regulations pertaining to those departments. In

⁷Although normally the State Trooper Academy has two sessions each year to accommodate the average yearly turn-over rate of 24 officers, because of a maintenance budget for fiscal year 1980, DPS intends to hold only one Academy session in 1980.

⁸See AS 18.65.090; see also AS 18.65.060 and AS 18.65.080.

practice, agreements between DPS and other law enforcement agencies may be either written or verbal. With municipalities, where there is concurrent law enforcement jurisdiction between the Alaska State Troopers and local law enforcement officers, most of the agreements are verbal. An example of coordination between the Alaska State Troopers and a municipal police department is the Metro Unit in Anchorage. This is a combined city-state drug enforcement unit. Furthermore, combined state-federal law enforcement efforts are also usually of an informal nature. Alaska State Troopers will frequently coordinate investigation efforts with federal agencies in the drug enforcement area, as well as, violent crimes, such as bank robberies.

The Fish and Wildlife Protection Division of DPS contracts with NOAA in order to enforce fish and game laws in the crab fishery beyond the three mile limit. This contractual relationship permits officers from both agencies to deputize each other to facilitate this joint law enforcement effort.

DPS enforces state criminal laws both inside and outside the National Monuments. The Division of Fish and Wildlife Protection does not enforce federal fish and wildlife regulations inside the monuments, but it is responsible for enforcing state fish and game laws inside the (Admiralty Island and Misty Fiords monuments.) A copy of DPS policy on this issue is attached at the conclusion of this report.

Although these cooperative arrangements exist with respect to other law enforcement agencies, Commissioner Nix contends that there is not enough cooperation between police, prosecutors, courts, and

corrections to develop a cohesive strategy for curbing Alaska's increasing crime situation.

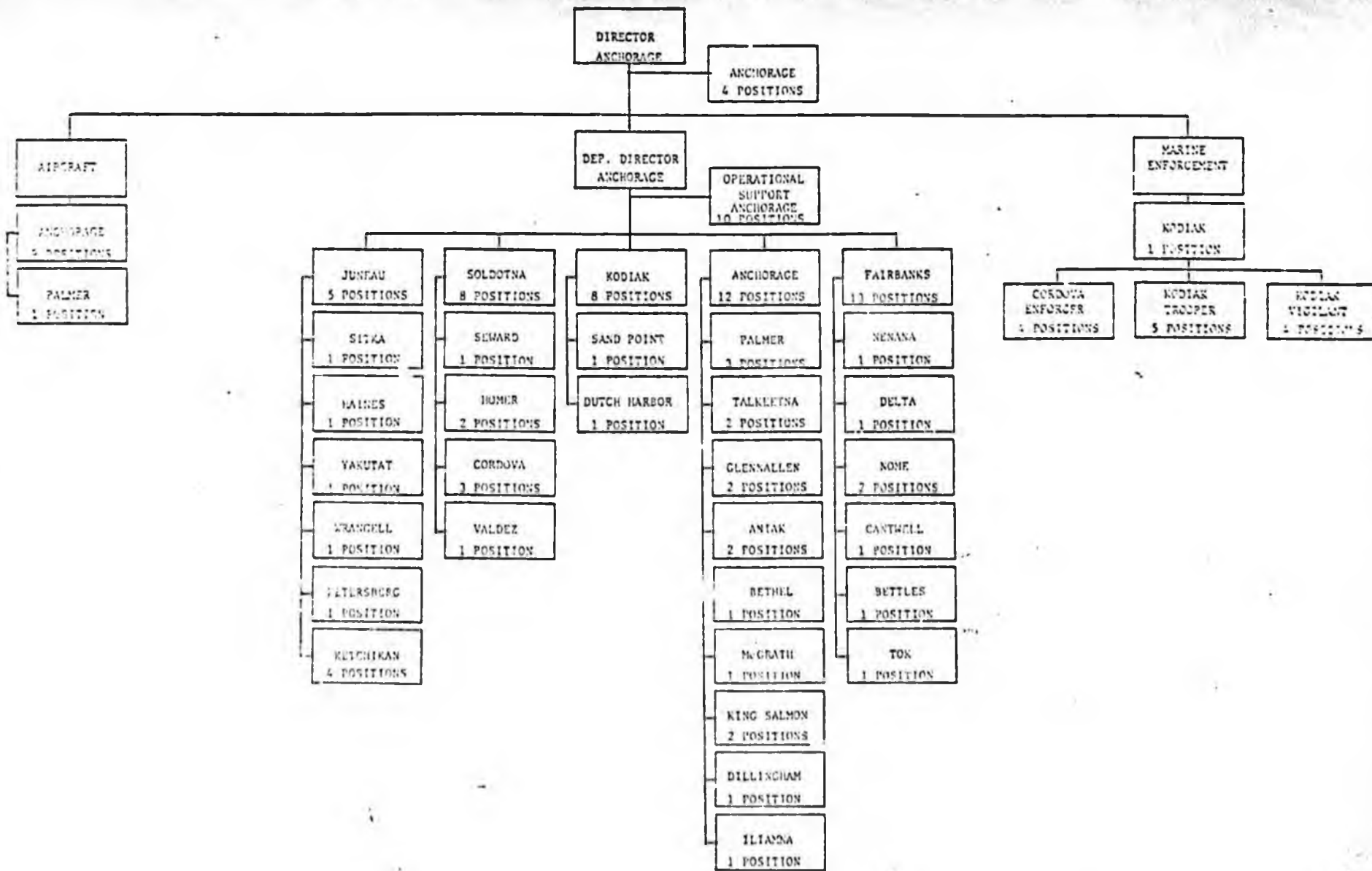
DPS is moving gradually in the direction of becoming a state police force. DPS desires not to duplicate services in the urban areas. Recently, in line with this philosophy, law enforcement in the Anchorage bowl area was made primarily the responsibility of the Anchorage Police Department. Although DPS believes that combined state-local law enforcement efforts are necessary, it would like to reduce the level of its involvement in, for example, the Metro Unit in order that better services might be had in the bush. Response time for major crimes in rural Alaska is presently five days. The DPS hopes to reduce this response time to three days in the coming year.

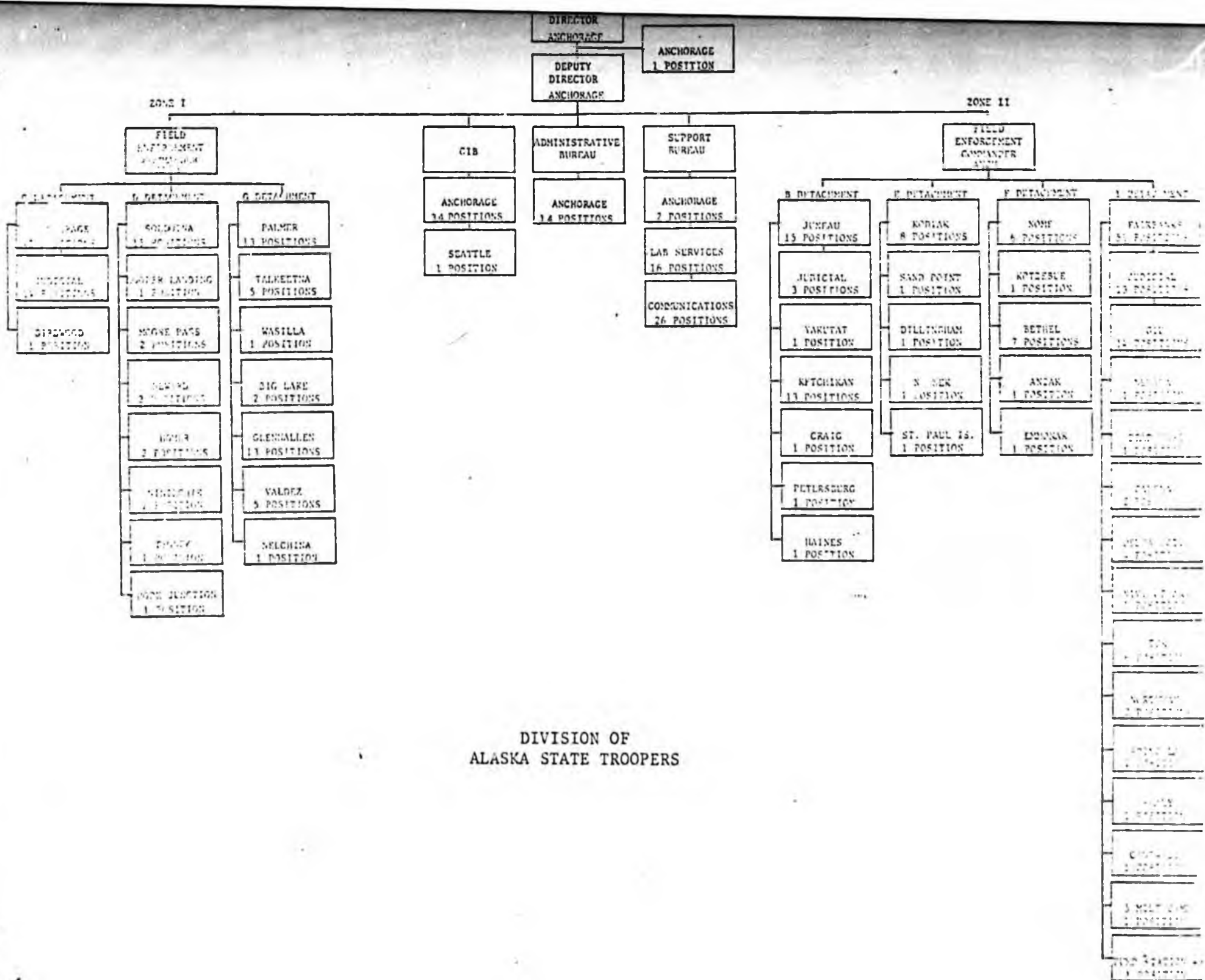
IV. DPS PRIORITIES

DPS law enforcement priorities are first, protecting life; second, protecting property; and third, protecting resources. Aside from these basics, the DPS does not make selective enforcement decisions, nor does the DPS believe that such decisions would be good public policy.

Although specialized units, such as fraud, drug, traffic, and criminal investigation exist within the Division of Alaska State Troopers, should the DPS budget require a reduction of officer positions, a generalist would be kept over a specialist. This management position is a result of the DPS philosophy not to engage in selective law enforcement.

FISH AND WILDLIFE PROTECTION





JP04 0245 16.48 JP04 0298 16.49 08/02/79

SPO4 COL. ANDERSON
SPO8 COL. WOLDSTAD

REFERENCE NEW PARKS AND MONUMENTS

STATE CRIMINAL LAW: WE WILL CONTINUE TO RESPOND TO, INVESTIGATE AND ASSIST IN THE PROSECUTION OF REPORTED VIOLATIONS OF THE STATE CRIMINAL LAWS BOTH INSIDE AND OUTSIDE OF THE NEW FEDERAL MONUMENTS. THE EXCEPTION TO THIS WILL BE "OLD MT. MCKINLEY PARK" WHEREIN THE NATIONAL PARK SERVICE RETAINS EXCLUSIVE JURISDICTION. PERSONS REPORTING VIOLATIONS OF FEDERAL MONUMENT REGULATIONS, AND ANY SUCH VIOLATIONS OBSERVED BY OUR OFFICES WILL BE DIRECTED OR RELAYED TO THE APPROPRIATE FEDERAL ENFORCEMENT AGENCY.

NATIONAL FOREST SYSTEM MONUMENTS OF ADMIRALTY ISLAND AND MISTY FORDS: FISHING, HUNTING, TRAPPING AND SUBSISTANCE WILL CONTINUE (AT LEAST UNTIL DECEMBER 1981) UNDER ALASKA STATE LAW AND THE JURISDICTION OF A D F & G. WE WILL CONTINUE TO ENFORCE STATE WILDLIFE AND FISHERIES RESOURCE REGULATIONS WITHIN THE TWO MONUMENTS AS ON OTHER NATIONAL FOREST AREAS.

IN NATIONAL PARKS 13 MONUMENTS AND U S F W L 2 MONUMENTS I ASK THAT F W L P CONTINUE, FOR THE PRESENT, UNDER INSTRUCTIONS FROM COL. WOLDSTAD'S MEMO DATED JULY 20, 1979. WHEN WE HAVE WORKED OUT A FULL POSITION IN THIS QUESTIONABLE AREA WE WILL LET YOU KNOW. SPORT TAKE AND SUBSISTANCE ARE STILL PROBLEMS.

JP03 DEP. COMM. SYDNAM

SA



Alaska State Legislature

House of Representatives

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

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

From: Margaret W. Berck, Staff

Date: September 13, 1979

Subject: The Alaska Police Standards Council

I. INTRODUCTION

The Alaska Police Standards Council (APSC) was created by the Alaska Legislature in 1972.¹ Some 47 states have similar agencies. The ultimate goal of the APSC is to assure high quality police protection for the people of Alaska. By statute, the APSC is empowered to adopt, pursuant to the Administrative Procedure Act, regulations which establish minimum employment, training and education standards for Alaska's police officers. It is also charged with coordination and development of police training schools and programs of instruction.

The APSC is composed of 9 members: the Commissioner of Public Safety or his designee, 4 chief administrative officers or chiefs of police of participating local governments, and 4 members of the public at large with at least 2 from communities of 2500 population or less. Members are appointed to 4-year terms by the governor.

Administration of council policies, programs, and day-to-day business is accomplished by full-time staff consisting of the

¹AS 18.65.130-290.

executive director, Mr. James Mayer, the training coordinator,² Mr. John Marshall, and 1 secretary.

The minimum standards adopted by the APSC, both in terms of qualifications, as well as, training requirements, closely parallel national standards established by the International Associations of Police and the American Bar Association.

II. JURISDICTION OF THE APSC

The jurisdiction of the APSC is not without limitation. First, pursuant to Alaska law,³ any municipality with an established police training program may exclude itself from the minimum requirements for police officers as established by the APSC. Although the municipality of Anchorage had at one time opted out of APSC jurisdiction, it, together with the remaining some 138 local police departments in Alaska, is currently under APSC jurisdiction.

Second, in accordance with statute⁴ the commissioner and deputy commissioner of public safety and the chief administrative officer of local police departments are exempt from APSC requirements. The APSC contends that the blanket exemption provided to chiefs of police is contrary to good public policy. This contention is based on the fact that certain chiefs of police, primarily in the villages, have operational duties without having had any police training whatsoever. H.B.213 currently in Senate Judiciary would correct this deficit. A copy of H.B.213 is attached at the end of this report.

²This position was established in March 1978 when funding was granted for one year through the Law Enforcement Assistance Administration.

³See AS 18.65.280(b).

⁴See AS 18.65.280(a).

Presently the APSC exercises no jurisdiction over temporary police officers. Although the APSC had no idea how many temporary police officers were utilized in Alaska, they did state that it was a lot. Furthermore, the APSC does not have any mechanism to insure that probationary officers meet the minimum qualifications requirements at the time of their initial employment. This initial hiring decision is completely left up to local police departments. It is only after the officer has served his or her probationary time, which is 12 months, that the APSC confirms that qualifications and training requirements are met. If such requirements are met, the APSC then certifies the officer as Basic. This essential process would be continued under the "proposed" revised regulations for the APSC.

Pursuant to Alaska law,⁵ it seems that the APSC is empowered to establish minimum educational and training standards for police employment in permanent, temporary or probationary positions. Despite this legal authority, the APSC has apparently determined not to exercise its jurisdiction over temporary positions.

Finally, it should be noted that the APSC has no jurisdiction over airport security or private security guards.

III. MINIMUM QUALIFICATIONS FOR POLICE OFFICERS

The minimum qualifications for police officers are set forth in the regulations adopted by the APSC.⁶ In essence these qualifications require: (1) that he or she is a citizen of the United States or a resident alien who intends to become a citizen of the United States; (2) that he or she is 19 years of age or older; (3) that he or she

⁵See AS 18.65.220(2), but see also AS 18.65.240(a).

⁶See 6 AAC 70.010

has not been convicted of a felony or other crime that would prevent him or her from legal possession or ownership of a firearm; (4) that he or she is of good moral character; (5) that he or she holds a high school diploma or the equivalent; (6) that he or she satisfies the particular police department's hiring representative that he or she has the proper motivation, appearance, demeanor, attitude and ability to communicate to become a successful police officer; and (7) that a licensed physician certify that he or she is physically sound and free from any physical defects that might adversely affect his or her performance of the duties of a police officer. It is specifically required that the person possess normal hearing, normal color discrimination, normal binocular coordination, normal peripheral vision, and and corrected visual acuity of 20/30 or better in each eye. Verification of these facts, including a background investigation, must be conducted by the particular law enforcement agency seeking to hire the individual prior to the individual's employment.

Presently, the APSC is in the midst of revising all of its regulations. In accordance with a preliminary draft of these revised regulations, the most significant change to the qualifications section relates to psychological standards. Should the revised regulations be adopted in their current form, local police departments would have the discretion to require psychological evaluations in all cases. Furthermore, the revised regulations would mandate local police departments to require such if any indication of past or present emotional or mental disorder is disclosed as a result of the background investigation or completion of the medical or personal history forms by the applicant. All psychological evaluations must be conducted by a licensed psychologist or psychiatrist.

IV. MINIMUM TRAINING REQUIREMENTS FOR POLICE OFFICERS

The APSC issues Basic, Intermediate, and Advanced Certificates to police officers meeting the specified requirements of qualifications, training, education, and experience. In accordance with APSC regulations, all police officers must eventually obtain Basic certification. The issuance of Intermediate and Advanced certificates are not necessary to secure various promotional positions within local police departments. However, the Department of Public Safety (DPS) does require Intermediate and Advanced certifications to be eligible for various promotional positions beginning with sergeant.

To be eligible for Basic certification, the individual must meet the qualifications described in the preceding section, attest to the Law Enforcement Code of Ethics (see Appendix to this report for a copy of that code of ethics), have completed a probationary period of not less than 12 months with his or her department, and have successfully completed the required Basic training program or its equivalent.

The Basic training program consists of 40 hours of supervised field training and 230 hours of classroom instruction. The "field training" is essentially on-the-job training conducted by the department that has hired the individual, and this portion may occur either before or after the classroom instruction program. Although some individuals attend equivalent "classroom training" programs, such as the Anchorage Police Department's program, most obtain their "classroom training" at the Municipal Police Academy. The Municipal Police Academy is organized by the APSC and takes place in Sitka, Alaska.

The Municipal Police Academy instruction consists of 10 hours of first aid instruction, sufficient to qualify students for Standard

Red Cross First Aid Certification, and 220 hours of instruction in criminal law, administration of justice, criminal investigation, offensive and defensive tactics, field techniques, traffic operations, firearms, and other subjects. Basic training programs conducted by other entities, such as the Anchorage Police Department and DPS, must consist of similar instructional content, at a minimum, in order to be certified as "equivalent" Basic training programs by APSC.

According to the APSC Procedures Manual, the Municipal Police Academy devotes a total of 8 hours to firearms instruction. Mr. Mayer, executive director of the APSC, stated that this instruction is extremely basic, consisting primarily of familiarization with firearms, and does not include officer survival training which specifically deals with "shoot and no shoot" situations. Although the course descriptions for the Municipal Police Academy indicate that this matter is briefly discussed both in the firearms, as well as, Laws of Arrests courses, no one course is devoted to this matter. It should be noted that the joint Department of Law and DPS investigation of the Phillip Moore incident criticized the Alaska State Trooper training on this subject. As the Alaska State Trooper training is considerably more extensive than that offered by the Municipal Police Academy, it seems that similar criticism might be appropriately lodged against the Municipal Police Academy on this point.

Reciprocity is available for a police officer certified in another state provided that such officer has undergone a Basic training program equivalent to that required by the APSC. However, in all cases, such

officer must complete 40 hours of field training in Alaska before the APSC will certify the officer.

It should be noted that many agencies are involved in police training in Alaska. The Anchorage Police Department and the DPS provide Basic training for their own officers. The FBI conducts 25-45% of all police training in Alaska. Furthermore, the Criminal Justice Center offers courses primarily dealing with the legal aspects of law enforcement, as well as, police management. The courses offered by the latter two agencies may eventually qualify an officer, together with experience, for Intermediate and Advanced certification. Finally, the Department of Law is in the midst of training all Alaska State Troopers and local law enforcement officers on the new criminal code. This training program is being conducted throughout the state and will last a total of three days.

The APSC may revoke the certification of any police officer pursuant to the due process requirements of the Administrative Procedures Act. Revocation is authorized only upon a finding of the following: the holder falsified information required for eligibility or the holder was discharged for cause from employment. The APSC has never revoked certification for a violation of the Ethics Code, per se.

V. ALASKA LAW ENFORCEMENT OFFICERS: CERTIFICATION STATUS AND OTHER CHARACTERISTICS

Currently there are approximately 1000-1050 law enforcement officers in Alaska. This figure includes both probationary, as well as, permanent positions, but does not include temporary positions. The Alaska State Troopers comprise approximately 450 of these officers; while, village police officers, 75-100. Of the total 1000-1050

officers, 700-725 are certified as Basic by the APSC. With the exception of the village police officers, most of those uncertified officers will be certified as Basic once their 12-month probationary period is completed.

The APSC had no idea how many of these 1000-1050 police officers are minorities or women. Although this information would require a hand tally, the APSC is willing to furnish the House Judiciary Committee such information should the Committee specifically request it.

The turnover rate each year for law enforcement officers is 20-30%. Although the APSC has attempted to discover the reasons for the high turnover, they have not been able to determine any statistically valid answers. Individual responses include: peer pressure, salaries, problems with department, and desire to return to home state.

VI. VILLAGE POLICE OFFICERS

Generally, village police officers are never able to comply with the requirements of the APSC. In the past, this failure was simply ignored by the APSC. Presently, however, the APSC is considering the promulgation of regulations specifically pertaining to the village police officer. Should those proposed regulations be adopted in their current form, they would essentially establish separate requirements for Basic certification of village police officers. A Basic village police certificate would not entitle the officer to employment with a urban police department, unless such officer met the additional APSC requirements needed for urban areas.

Pursuant to the preliminary draft of these proposed regulations, certain qualifications and training requirements have been relaxed

for the village⁷ police officer seeking Basic certification. A village police officer is not required to possess a high school diploma or its equivalent. Although the village police department must be satisfied that the applicant does not suffer from physical or mental defects which would adversely affect the applicant's performance, medical or psychological examinations are not required. No probationary period is necessitated. The Basic village police officer training program consists of a minimum of 40 hours of instruction in basic law enforcement subjects. Subjects include, for example, first aid, firearms, and firefighting instruction.

Village police departments would not be able to employ a police officer on either a temporary or permanent basis unless such person meets the Basic qualifications standards. However, confirmation⁸ that the individual meets those qualifications is not required of the village police department until permanent appointment is sought. As permanent employment is defined as a period exceeding 12 consecutive months, this confirmation process may not occur until after the individual has been employed as a police officer for a considerable amount of time. The Basic training requirements must be met any time prior to permanent employment.

It should be noted that no provision is made for the issuance of Intermediate or Advanced certificates to village police officers.

⁷A village would be defined as a political subdivision with a population of less than 1000 based on the most recent federal census, which is incorporated as provided in AS 29.18, and, which employs one or more full-time paid village police officers.

⁸The confirmation process would not include the intensive background investigation required of urban police departments.

The intent of these proposed regulations pertaining to village police officers is to facilitate the certification of such officers in line with existing training programs accessible to them. Although village police officers have access to the Municipal Training Academy, frequently the limited financial resources of the villages prohibit taking advantage of this program. To meet this gap in training, the Alaska State Troopers have for a number of years conducted a Basic 40-hour village police training program, as well as, an Advanced 154-hour program. This Basic 40-hour village police training program would satisfy the training program requirements contemplated in the proposed APSC regulations.

The village police training programs, conducted by the Alaska State Troopers, were recently evaluated in a report⁹ written by John E. Angell, Ph.D. The Angell report indicates that since 1971 nearly three-quarters of a million dollars have been expended for village police training. This includes \$542,000 in funds from the Law Enforcement Assistance Administration (LEAA). These funds provided training for a total of 292 persons. However, it is estimated that only about 70 village officers who received such training are still serving in that capacity in their villages. The majority of Alaskan villages are served by officers who have received no training under this program.¹⁰

⁹Alaska Village Police Training: An Assessment and Recommendations, John E. Angell, Ph.D., December 1978. This report was the result of a study commissioned by the Criminal Justice Planning Agency and was conducted under a contract with the Criminal Justice Center and with the cooperation of DPS.

¹⁰73% of all Alaskan villages have full-time police officers. 42% of these villages are served by officers trained under this program.

The specific recommendations of the Angell report include:

1. The first step in improving village police training should be the accumulation of detailed information on the actual conditions found in the villages which would better define the desirable role responsibilities of the village police officer. This could then be used to provide direction for specific curriculum content and structure.
2. Methods be developed and implemented to stabilize the village police employment situation and reduce the turnover rate to a reasonable level. The average pay for village police officers is about \$837 a month and is as low as \$65 per month. In 40% of the villages officers are paid from CETA funds which are currently in danger of being terminated. As a consequence, the attraction of commercial fishing and other job opportunities draw many trained officers from their villages. Solutions to this problem are: increased direct support from the state; arrangement with the Native Corporations; arrangements developed under Borough governments; or reorganization within DPS.
3. Develop a more economical village police training program which, after LEAA funding, is capable of continuance without further LEAA support. The largest portion of program costs in the past was not for training, but for transportation and per diem. This need to reduce costs was the basis for recommending a cooperative effort between police agencies and other agencies, such as the Alaska Skill Center, in establishing a permanent training program.

4. The Alaska State Troopers should increase their support of the village police and should actively participate in whatever reorganization of village police training occurs.

VII. BUDGETARY INFORMATION

The Municipal Police Academy, which is offered twice each year, is currently funded at the rate of \$96,000 per year through a LEAA grant. The APSC has been advised by LEAA that those funds will be cut by at least 50% during fiscal year 1980, October 1, 1979 through September 30, 1980. Furthermore, at this time, it is anticipated that no federal funds will be available in fiscal year 1981.

This LEAA funding constitutes only a portion of the total costs of training a police officer at the Municipal Police Academy. APSC estimates that it costs \$11,365 to train one urban police officer. This cost figure breaks out as follows: \$1602 for training costs which is derived from the current LEAA grant; \$1100 for instructors and clerical staff, as well as, maintenance expenses, this amount is derived from DPS; and the balance, some \$8663 for salaries, and possible overtime, for both the trainee and the trainee's replacement, while the trainee is absent from his or her police force, this amount is derived from the municipalities.

The costs of training a village police officer at the Municipal Police Academy is substantially less than \$11,365 due to the lower salaries involved and also the fact that replacements frequently are not obtained.



Alaska State Legislature

House of Representatives

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

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

From: Margaret W. Berck, Staff

Date: September 13, 1979

Subject: 1978 Budgets for Certain Law Enforcement Agencies
in Alaska

I. ALASKA STATE TROOPERS

Personnel	\$13,434,800.00
Equipment	390,800.00
Community Relations	98,600.00
State Funds	18,374,400.00
Federal Funds	100,000.00
Total Budget	\$18,504,400.00

II. ANCHORAGE POLICE DEPARTMENT

Personnel	\$11,851,805.00
Equipment	170,880.00
Community Relations	222,040.00
Training	302,430.00
State Funds	3,155,190.00
Federal Funds	1,258,810.00
Local Funds	12,096,700.00
Total Budget	\$16,510,700.00

(Note: The above amounts do not include funds for
Animal Control.)

III. FAIRBANKS POLICE DEPARTMENT

Personnel	\$2,926,657.00
Equipment	51,237.00
State Funds	395,000.00
Federal Funds	1,500,000.00
Local Funds	1,431,863.00

(Note: In addition to the above funds, Fairbanks received a grant of combined federal and state monies totalling \$36,359 for traffic regulation and planning.)

Total Budget	\$3,363,222.00
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IV. JUNEAU POLICE DEPARTMENT

Personnel	\$799,705.00
Equipment	79,150.00
State Funds	114,030.00
Federal Funds	2,885.00
Local funds	846,371.00
Total Budget	\$963,286.00

V. NOME POLICE DEPARTMENT

Personnel	\$158,895.00
Equipment	-0-
State Funds	176,945.20
Federal Funds	-0-
Local Funds	-0-
Total Budget	\$176,945.20

The state funds enumerated in the above budgets are primarily derived from the state revenue sharing program. Generally, the revenue sharing formula is based upon \$12.00 per capita for residents and \$6.00 per capita for military personnel residents. This formula is applicable to all municipalities with 25 persons or more. It should be noted that the simple formula is subject to modification resulting from cost of living adjustments. For example, Fairbanks, in 1978, received \$0.88 on the dollar, as a result of such modification.

LEGAL
REPRESENTATION
FOR
INDIGENTS



Official Business

Alaska State Legislature

House of Representatives

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

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

From: Margaret W. Berck, Staff

Date: September 13, 1979

Subject: Alaska Public Defender Agency

I. INTRODUCTION

The Alaska Public Defender Agency (PD) was established by the Alaska Legislature in 1969¹ to serve the needs of indigent defendants. The agency is administered by the public defender who is appointed by the governor from two or more persons nominated by the judicial council. This appointment is subject to confirmation by majority of the members of the legislature in joint session. The PD serves a term of four years and may be retained for another term; however the retention must be confirmed by the legislature. Currently the PD position is filled by Mr. Brian Shortell.

The PD operates six offices in the state and additionally, contracts² with one private law firm and one local Alaska Legal Services Corporation office to provide legal representation to indigent defendants.

¹See AS 18.85.010 - AS 18.85.170.

²The PD is empowered to contract for legal services pursuant to AS 18.85.130(b).

Although generally the court appoints the PD to represent indigent defendants, under certain circumstances the court may appoint a private attorney to serve as a substitute defender.³ The bulk of these appointments arise when the PD has a conflict of interest and such legal representation would constitute a professional ethical violation. Consideration of this issue is addressed in a separate report. However it should be noted that the financial eligibility requirements are essentially the same regardless of whether a private attorney or the PD is appointed to represent the defendant.

II. SERVICES PROVIDED BY PD

The scope of legal services provided by the PD is generally defined in Alaska statutes. Pursuant to AS 18.85.100, an indigent is entitled to legal representation in the following circumstances: if he or she is being detained by a law enforcement officer in connection with a serious crime; if he or she is formally charged with, or being detained under a conviction of, a serious crime; if he or she is on probation or parole; if he or she is a juvenile charged with a delinquent act or a status offense; or if he or she is the subject of an involuntary mental health commitment. "Serious crime" is defined as a criminal matter in which a person is entitled to legal representation under the U.S. constitution or the Alaska constitution.⁴ This right to counsel has been interpreted by the U.S. Supreme Court and the Alaska Supreme Court as including any offense for which the defendant may be incarcerated, lose a valuable license, or suffer a heavy fine. As a result of this broad constitutional right to

³See AS 18.85.130(a).

⁴See AS 18.85.170(5)(A).

counsel, the PD is responsible for providing legal representation to defendants charged with both state felonies and state and city misdemeanors.

In addition to those types of cases immediately evident on the face of the statutory provisions, it should be noted that the PD is responsible for providing legal representation in the following matters: contempt proceedings in which the defendant may be subject to a criminal penalty, for example, a parent taking illegal custody of a child; post-conviction relief proceedings including, for example habeas corpus petitions, petitions to modify sentences, appeals, prisoner complaints, parole board proceedings, classification hearings, expungement proceedings, and probation revocation hearings.

The average caseload handled by an assistant PD is 246 cases. The average caseload of an assistant PD by judicial district is as follows: first judicial district, 202; second judicial district, 222; third judicial district, 255; fourth judicial district, 304.

These averages, if anything, are low. Since they are based on new cases filed in fiscal year 1979, they do not reflect cases carried over from the preceding year. Furthermore, although I did not include Mr. Shortell as a service delivery attorney, I did count both Kodiak and Nome, the contract offices, as having two attorneys when, in fact, those offices have one to two attorneys available for PD services.

Additional caseload characteristics for the PD are attached at the conclusion of this report.

III. PD FINANCIAL ELIGIBILITY REQUIREMENTS

The financial eligibility requirements for PD legal representation is embodied generally in Alaska statutes. In accordance with AS 18.85.100(b) attorney services and court costs are to be provided at public expense "...to the extent that the person, at the time the court determines indigency, is unable to provide for payment without undue hardship." To the extent that a person is able to provide for legal representation or other costs, the court may order him or her to pay for such items. Such payments shall be paid into the state general fund.⁵ As a condition of receiving PD services, a person must affirm his indigency under oath to the court and execute a waiver authorizing release to the court of income information pertaining to any income source the person has had during the immediately preceding three years.⁶

Any person who has received PD assistance shall pay the state for the assistance if he or she was not entitled to it at the time indigency was determined. The attorney general may bring an action on behalf of the state to recover payment from such person.⁷

Thus, the courts are responsible for making determinations of indigency. Such determinations must be made in light of the statutory definition of indigency. An indigent is defined as a person who,

"...at the time his need is determined, does not have sufficient assets, credit, or other means to provide for payment of an attorney and all other necessary expenses of representation without depriving the party or his dependents of food, clothing or shelter and who has not disposed of any assets since the commission of the

⁵See AS 18.85.100(c).

⁶See AS 18.85.100(d).

⁷See AS 18.85.150.

offense with the intent or for the purpose of making himself eligible for assistance..."⁸

In practice, for most parts of Alaska, indigency determinations are made by the district court judges. When a defendant requests counsel at public expense, he or she is first provided with a form "affidavit of indigency"⁹ to complete and return to the court. Subsequently, a hearing is held before the district court judge at which time the defendant is examined more particularly as to his or her alleged indigency status. At the conclusion of the hearing the judge will appoint the PD if he believes that representation at public expense is proper. Furthermore, the district court judge may appoint the PD, but order the defendant to pay a portion of the costs of legal representation. It should be noted that the judges apparently reach these decisions without the assistance of any "in-house" guidelines or criteria.

In Anchorage, the mechanism for determining indigency status differs in several regards from the above general practice. First, the magistrates are responsible for making recommendations to the court on all indigency determinations of those defendants who are in state custody. Such recommendations are made on a specified court system form¹⁰ and filed in the defendant's case file. Second, when the court is faced with a borderline indigency situation, it may request the pre-trial services caseworker to recommend appropriate action to the court. The pre-trial services caseworker makes such recommendations without any

⁸See AS 18.85.170(4).

⁹This form, entitled Affidavit of Financial Inability to Employ Counsel, is attached at the conclusion of this report.

¹⁰A copy of this form, entitled Request for Appointed Counsel, is attached at the conclusion of this report. It should be noted that this is the only form used by the magistrates.

"in-house" guidelines or criteria. The caseworker utilizes two court system forms to make these recommendations.¹¹ Factors considered by the caseworker include: spouse's income, number of dependent children, outstanding debts and the nature of those debts, assets, and ability to obtain a loan. For example, enlisted military personnel may present a sufficiently low enough income to qualify, but would be rejected since they have a regular income and are generally good credit risks. Although the caseworker never requests tax returns to confirm wages, the caseworker does validate the income and debt allegations by phoning the Wages and Hours Division and creditors. If the individual or spouse is unemployed, the caseworker requires the individual to present his or her, or the spouse's, unemployment records.

If the caseworker finds that the individual has sufficient income or assets to bear a portion of the expenses of legal representation, the caseworker recommends to the court that the individual pay a certain amount, up to \$750 for a misdemeanor, or up to \$1850 for a felony. The rationale for these maximum amounts is that that is what a private attorney would charge.¹² At the conclusion of a case in which the defendant was ordered to pay a portion of the legal representation expenses, the PD is required to submit a time sheet. The individual is then billed at the rate of \$30.00 per hour of PD services.

¹¹Copies of these forms, entitled Request for Appointed Counsel and Financial Statement, are attached at the conclusion of this report.

¹²Undoubtedly, private attorneys would dispute those estimations.

According to the PD, defendants are required to pay a portion of the expenses in approximately 50 percent of all PD cases. The court system estimates that in nine months, from October 1978 through June 1979, approximately \$51,417.59 was recovered from such defendants. The bulk of this recovery, some \$45,399.39, was obtained in the Third Judicial District.

Currently the court system has no idea what the rate of recoupment is for these billings. The court system does not maintain accounts of totals owed or totals recovered. This discovery prompted the court system into considering the establishment of such accounts.

IV. CLIENT GRIEVANCE PROCEDURE

A PD client basically has two recourses for lodging complaints against the agency. One, the client may initiate with the Alaska Bar Association a grievance action against a particular attorney employed by the PD.¹³ Upon receipt of a complaint, the Alaska Bar Association usually writes the PD for an explanation. Ultimately the Alaska Bar Association is empowered to reprimand or dis-bar the attorney involved. Two, the client may file a complaint with the Office of the Ombudsman. Generally the ombudsman is empowered to investigate complaints, report his findings to the agency involved, and publish his opinion and recommendations.¹⁴ It should be noted that one public defender indicated that complaints lodged with the ombudsman were ineffectual.

¹³The grievance procedure of the Alaska Bar Association will be addressed in a separate report in conjunction with the Committee's sunset review of that association.

¹⁴See AS 24.55.010, et seq.

V. PD BUDGET

The primary source of funding for the PD is derived from a legislative appropriation out of the general funds each year. Total expenditures by the PD in fiscal year 1978 were \$2,107,400; authorized expenditures for fiscal year 1979 were \$2,101,700. The fiscal 1978 PD budget by judicial districts, together with individual offices and professional staff positions was:

<u>DISTRICT</u>	<u>PROFESSIONAL STAFF</u>	<u>BUDGET</u>
<u>First Judicial District</u>		\$ 297,200.00
Ketchikan Office	2 Attorneys	
Juneau Office	2 Attorneys	
<u>Second Judicial District</u>		108,100.00
Nome - Larsen, Timbers & VanWinkle (on contract)	1 to 2 Attorneys 1 to 2 Attorneys	
<u>Third Judicial District</u>		1,024,200.00
Anchorage Office	13 Attorneys	
Kenai Office	1 Attorney 1 Paralegal	
Kodiak - Alaska Legal Services Corporation, Kodiak Office (on contract)	1 to 2 Attorneys	61,607.95
<u>Fourth Judicial District</u>		591,200.00
Bethel Office	1 Attorney 1 Paralegal	
Fairbanks Office	5 Attorneys	

(Each PD office has village responsibilities, as well as those arising out of the community in which the office is located.)

Currently the PD contends that it is under-budgeted by some four attorney positions. National guidelines defining appropriate caseloads for public defenders have been established by the National Conference on Criminal Justice under the Law Enforcement Assistance Administration. Every assistant public defender in Alaska carries a caseload in excess of those guidelines. Between fiscal years 1978 and 1979, the PD's caseload increased by some 646 cases. Due to particularly heavy individual attorney caseloads in the Fourth Judicial District, the PD sought additional funds from the legislature last regular session so that another attorney might be added to the Fairbanks office. The PD was unsuccessful in this effort. As a result of this funding deficiency, PD services in the bush are adversely impacted to a greater extent than urban service.

FY 78

ALASKA PUBLIC DEFENDER AGENCY
 FY 78 NEW CASE FILES
 JULY 1, 1977 - JUNE 30, 1978

	Parole Board	Misdemeanor City	Misdemeanor State	Felony	Juvenile	Sanity	Appeal	Total
Ketchikan	22	--	145	60	72	21	6	326
Juneau	<u>13</u>	<u>--</u>	<u>239</u>	<u>95</u>	<u>38</u>	<u>3</u>	<u>12</u>	<u>400</u>
Total 1st District	35	--	384	155	110	24	18	726
Nome	<u>2</u>	<u>--</u>	<u>199</u>	<u>73</u>	<u>38</u>	<u>--</u>	<u>8</u>	<u>320</u>
Total 2nd District	2	--	199	73	38	--	8	320
Anchorage	--	943	700	532	138	160	72	2545
Kenai	--	--	252	82	25	--	7	366
Kodiak	<u>11</u>	<u>74</u>	<u>294</u>	<u>101</u>	<u>31</u>	<u>--</u>	<u>5</u>	<u>516</u>
Total 3rd District	11	1017	1246	715	194	160	84	3427
Fairbanks	29	--	746	235	210	36	17	1273
Bethel	<u>55</u>	<u>--</u>	<u>337</u>	<u>81</u>	<u>30</u>	<u>--</u>	<u>--</u>	<u>503</u>
Total 4th District	84	--	1083	316	240	36	17	1776
Total Cases for FY 78	132	1017	2912	1259	582	220	127	6249

FY 79

ALASKA PUBLIC DEFENDER AGENCY
NEW CASES FILED

7/1/78 through 6/30/79

	Felony	Misdemeanor City State	Juvenile	Sanity	Appeal/ Other	TOTAL
Ketchikan	101	-- 171	100	7	4	383
Juneau	54	-- 324	32	1	13	424
Total 1st. Dist.	155	-- 495	132	8	17	807
Nome	64	-- 309	66	--	4	443
Total 2nd Dist.	64	-- 309	66	--	4	443
Kenai	91	-- 292	19	--	12	414
Kodiak	146	123 228	14	1	31	543
Anchorage	550	1283 692	120	157	82	2864
Total 3rd Dist.	767	1406 1212	153	158	125	3821
Bethel	66	-- 274	43	--	36	419
Fairbanks	201	-- 914	181	29	80	1405
Total 4th Dist.	267	-- 1188	224	29	116	1824
TOTAL NEW CASES	1253	1406 3204	575	195	262	6895

IN THE DISTRICT COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

STATE OF ALASKA,

Plaintiff,

vs.

Defendant.

Case No. _____

AFFIDAVIT OF FINANCIAL INABILITY TO
EMPLOY COUNSEL

I am the defendant. I would like an attorney to help me, but do not feel I can afford to hire one. I, therefore, ask the Court to appoint an attorney to represent me. To help in determining my eligibility, I give this information.

I. INCOME

AMOUNT

- | | |
|---|---------------------------------------|
| 1. My present income from work | _____ / <input type="checkbox"/> None |
| 2. Spouse's Present income from work | _____ / <input type="checkbox"/> None |
| 3. Welfare grants to family | _____ / <input type="checkbox"/> None |
| 4. Unemployment benefits to family | _____ / <input type="checkbox"/> None |
| 5. Pensions or social security | _____ / <input type="checkbox"/> None |
| 6. Other regular income, e.g. dividends, rentals, interest | _____ / <input type="checkbox"/> None |
| 7. Expectations of income, e.g. tax refunds, claims, lawsuits | _____ / <input type="checkbox"/> None |

II. ASSETS

NET VALUE

- | | |
|--|---------------------------------------|
| 1. Cash on hand, in bank on account, or being held for you | _____ / <input type="checkbox"/> None |
| 2. Family interest in real property (land or buildings) | _____ / <input type="checkbox"/> None |
| 3. Family interest in cars or other vehicles | _____ / <input type="checkbox"/> None |
| 4. Family interest in trailer | _____ / <input type="checkbox"/> None |
| 5. Securities, e.g., stocks, bonds, notes | _____ / <input type="checkbox"/> None |
| 6. Family interest in business | _____ / <input type="checkbox"/> None |
| 7. Property other than clothing and household furniture | _____ / <input type="checkbox"/> None |

(Continued from page 1)

III. SUPPORT OBLIGATIONS

1. Your age _____ 2. Marital status _____

3. Who do you support? _____

NAME	RELATIONSHIP	AGE
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

IV. PRESENT FINANCIAL OBLIGATIONS

IF BEHIND, HOW MUCH

1. Food	_____ / <input type="checkbox"/> None	_____
2. Rent	_____ / <input type="checkbox"/> None	_____
3. Utilities	_____ / <input type="checkbox"/> None	_____
4. Car payments	_____ / <input type="checkbox"/> None	_____
5. Furniture & TV payments	_____ / <input type="checkbox"/> None	_____
6. Child support or alimony	_____ / <input type="checkbox"/> None	_____
7. Past court fines	_____ / <input type="checkbox"/> None	_____
8. Other loans or time payments	_____ / <input type="checkbox"/> None	_____

V. ADDITIONAL INFORMATION

1. What is your present bail status? _____

2. What efforts have you made to hire a lawyer? _____

3. Have you tried to borrow money to hire a lawyer? _____

4. What help do you expect from relatives or friends? _____

5. Where do you get the money to support yourself and family? _____

(Continued from page 2)

STATEMENT OF FINANCIAL RESPONSIBILITY

I understand that to the extent I am able to pay for an attorney, the other necessary services and facilities of representation, and court costs, the court may order me to pay for these items. Further, I understand that I must pay the State of Alaska for any assistance given to me by the Alaska Public Defender Agency if it is determined I was not entitled to the assistance.

GENERAL WAIVER

I hereby authorize anyone, including my past employers, to release to the Alaska Court System, all information concerning any income source I have had for a period of three years immediately preceding my first court appearance in the case which the Public Defender Agency is representing me. I understand that this information may be made available to the Attorney General upon request after the conclusion of my case, except as it may tend to incriminate me.

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

I declare, under oath, that (this affidavit has been read to me)
(I have read this affidavit)

and that the statements contained therein are true. I further certify that I have read or have had read to me the Statement of Financial Responsibility and the General Waiver authorizing release of income information.

Executed this _____ day of _____, 19 ____, in Juneau
Alaska.

Signature

Mailing Address

Residence Address

City/State/Zip Code

Telephone Number

SUBSCRIBED AND SWORN TO before me this _____ day of _____,
19 ____.

Clerk of Court/Deputy Clerk/
Notary Public
My Commission Expires _____

IV. FINANCIAL STATEMENT

A. Income information (after taxes, but before other deductions):

Your total net income during the past 12 months _____

Your spouse's total net income during the past 12 months _____

Your total NET monthly income from: Spouse's NET monthly income from:

Wages _____ Wages _____

Welfare _____ Welfare _____

Unemployment _____ Unemployment _____

Other (specify) _____ Other (specify) _____

Other (specify) _____ Other (specify) _____

Indicate Specific details here _____

B. Assets (All property, paid for or not, including such things as land cars, campers, airplanes, snowmobiles, tools, guns, valuable collections jewelry, furs, etc. Also include cash on hand, savings or checking accounts, life insurance policies, annuities, stocks, bonds, or other liquid securities. Indicate where cash, cash accounts, and securities are located and worth of each.

	Description and locations of asset(s)	Equity
(1)	_____	_____
(2)	_____	_____
(3)	_____	_____
(4)	_____	_____
(5)	_____	_____
(6)	_____	_____
	None _____	

Are you dependent upon any of the above to guarantee your survival or employment? (Yes No) If yes, indicate which assets (besides cash) and the reason. _____

C. Debts (Indicate the names of all persons and establishments you are indebted to, what you are indebted for, i.e. land, rent, personal loan, food, car, etc. The total amount you now owe, and the amount and terms of payment. List ALL monthly expenses.)

	Creditor	Reason	Present Balance	Monthly Expense
(1)	_____	_____	_____	_____
(2)	_____	_____	_____	_____
(3)	_____	_____	_____	_____
(4)	_____	_____	_____	_____
(5)	_____	_____	_____	_____
(6)	_____	_____	_____	_____
(7)	_____	_____	_____	_____
	None _____			

Are you behind in any of your payments? (Yes No) If yes, indicate which ones and how much behind. (1) \$ _____ ()\$ _____ ()\$ _____, ()\$ _____ ()\$ _____

D. Summary of financial statement:

(1)	Total family income for the past 12 months	_____
(2)	Total assets (equity)	_____
	Cash	_____
(3)	Total debts	_____
(4)	Total family income each month	_____
(5)	Total family expenses each month	_____
	Amount behind	_____
(6)	Total discretionary income each month	_____



Official Business

Alaska State Legislature

House of Representatives

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

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

From: Margaret W. Berck, Staff

Date: September 13, 1979

Subject: Court Appointed Attorneys for Indigents in the Alaska
Court System.

I. INTRODUCTION

Under certain circumstances, legal representation is provided for indigents by court appointed counsel. State courts are required to furnish such representation for indigent defendants in criminal proceedings when for good cause the public defender cannot represent the defendant.¹ In addition, the courts are authorized to appoint counsel to represent a child's interests in a divorce proceeding when custody, visitation or support are at issue.² Finally, pursuant to a recent supreme court case, an indigent party in a divorce action is entitled to court appointed counsel if child custody is at issue and his or her spouse is represented by Alaska Legal Services Corporation³

¹See AS 18.95.130.

²See AS 09.65.130.

³See Flores v. Flores, Alaska Supreme Court, opinion number 1875, July 13, 1979.

II. COURT APPOINTED COUNSEL IN CRIMINAL ACTIONS

An indigent defendant is entitled to a court appointed attorney when the public defender for good cause cannot provide legal representation. The bulk of these appointments arise when the public defender has a conflict of interest precluding such representation. The majority of the public defender conflicts occur in multiple defendant cases. In a criminal proceeding against two or more indigent defendants, the public defender for conflict of interest reasons may represent only one of the defendants. Another frequently occurring public defender conflict involves the representation of informers. If the public defender is representing a client against whom an informer has provided state's evidence, the public defender is precluded from representing the informer should he or she be subsequently charged with a criminal offense.

Pursuant to statute, court appointed counsel are entitled to reasonable compensation according to a schedule of fees promulgated by the supreme court and reimbursement for expenses necessarily incurred.⁴ Since 1974 the responsibility of providing payments for these services has lodged with the Alaska court system.

In fiscal year 1979 the court system was faced with a \$566,000 deficit due to unanticipated bills submitted by court appointed attorneys. Two factors contributed to this deficit. First, the court system did not maintain an account of the appointments as they were made. Second, insufficient monitoring mechanisms led to incurring one billing for over \$100,000 and another at \$60,000. To cover this deficit, the court system sought a supplemental appropriation, but was

⁴See AS 18.85.130.

able to obtain only 75% of the deficit or \$406,000 from the 1979 legislature.

This funding situation has triggered a number of responses. First, the Alaska Supreme Court amended Administrative Rule 15 which provides for the compensation of court appointed attorneys. Although the new rule does not alter the rate of compensation, \$40.00 per hour, it does establish maximum limitations. For example, the maximum attorney fee award for cases disposed of by trial is \$500 for misdemeanors and \$2500 for felonies. Additionally, extraordinary expenses will be reimbursed only with the prior approval of the trial judge, presiding judge, or administrative director of the court system.⁵

Although it is estimated that the level of compensation established by the new rule will meet 80% of the awards sought under the prior rule, the private bar has objected strongly to the new fee schedule. The Alaska Bar Association contends that the legal profession should not be singled out to bear the financial burden of implementing the constitutional right to counsel. To overcome the resistance by private attorneys to accept such appointments, two judicial districts have had to establish mandatory lists of all attorneys in the district from which appointment selections are now made. Previously selections were made from volunteer lists. The use of these mandatory lists raises competency of counsel problems for those attorneys who have never handled a criminal case. The case law in this area indicates that the courts have the authority to establish mandatory appointment systems since those attorneys who believe that they would be incompetent have the option to hire another attorney to stand in their place.

⁵A copy of this amended Administrative Rule is attached at the conclusion of this report.