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UNIFORM PARENTAGE ACT

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS EIGHTY-SECOND YEAR
AT HYANNIS, MASSACHUSETTS
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WITH PREFATORY NOTE AND COMMENTS

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UNIFORM PARENTAGE ACT

PREFATORY NOTE

On a variety of occasions, the National Conference of Commissioners on Uniform State Laws has concerned itself with the law relating to the child born out of wedlock. Significant efforts of the Conference were the development of the "Uniform Illegitimacy Act" in 1922, the "Blood Tests To Determine Paternity Act" of 1952, the "Uniform Paternity Act" of 1960 and certain provisions in the "Uniform Probate Code" of 1969. For a variety of reasons, the "Uniform Illegitimacy Act" was withdrawn by the Conference and none of the other Acts was adopted widely. As of June 1973, the Blood Tests to Determine Paternity Act had been enacted in 9, the "Uniform Paternity Act" in 4 and the "Uniform Probate Code" in 5 states.

The present Act had its genesis in an article entitled "A Proposed Uniform Act on Legitimacy" published in the April 1966 issue of the Texas Law Review and written by Professor Harry D. Krause, College of Law, University of Illinois. The Conference appointed a committee to study this subject in 1969, Lewis C. Green of St. Louis, Missouri, became chairman and Professor Krause agreed to serve as reporter to the committee. The present draft is the result of extensive research and redrafting. It has profited from consultation with appropriate American Bar Association authorities as well as with professionals in other fields, notably the field of social work. As a member of the Council of the Section on Family Law of the American Bar Association, Professor Krause also served as liaison between the Family Law Section and the Conference's committee on this Act. Special thanks are due to Judge Eugene A. Burdick, of Williston, North Dakota, the President of the Conference, and to Professor William J. Pierce, its Executive Director, for their interest and counsel.

When work on this Act began, the notion of substantive legal equality of children regardless of the marital status of their parents seemed revolutionary if one considered existing state law on this subject. See Krause, Equal Protection for the Illegitimate, 65 Mich. L.Rev. 477 (1967). Even though the Conference had put itself on

record in favor of equal rights of support and inheritance in the Paternity Act and the Probate Code, the law of many states continued to differentiate very significantly in the legal treatment of legitimate and illegitimate children.

This Act is promulgated at a time when the states need new legislation on this subject because the bulk of current law on the subject of children born out of wedlock is either unconstitutional or subject to grave constitutional doubt.

Since 1968, a series of decisions rendered by the United States Supreme Court under the Equal Protection Clause of the 14th Amendment of the U.S. Constitution has mandated equal legal treatment of legitimate and illegitimate children in a broad range of substantive areas, one exception being the right of intestate succession. Quotations from two recent decisions illustrate the Supreme Court's views on this subject:

> "The status of illegitimacy has expressed through the ages society's condemnation of irresponsible liaisons beyond the bonds of marriage. But visiting this condemnation on the head of an infant is illogical and unjust. Moreover, imposing disabilities on the illegitimate child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing. Obviously, no child is responsible for his birth and penalizing the illegitimate child is an ineffectual — as well as an unjust — way of deterring the parent. Courts are powerless to prevent the social opprobrium suffered by these luckless children, but the Equal Protection Clause does enable us to strike down discriminatory laws relating to status of birth where — as in this case — the classification is justified by no legitimate state interest, compelling or otherwise." *Weber v. Aetna Casualty & Surety Company*, 92 S.Ct. 1400, 1406-07 (1972).
>
> "We have held that under the Equal Protection Clause of the Fourteenth Amendment a State may not create a right of action in favor of children for the wrongful death of a parent and exclude illegitimate children from the benefit of such a right. Similarly, we have held that illegitimate children may not be excluded from sharing equally with other children in the recovery of workmen's compensation benefits for the death of their parent. Under these decisions, a State may not invidiously discriminate against illegitimate children by denying them substantial benefits accorded children generally. We therefore hold that once a State posits a judicially enforceable right on behalf of children to receive support from their natural fathers there is no constitutionally sufficient justification for denying such an essential right to a child simply because her natural father has not married her mother. For a State to do so is 'illogical and unjust.' We recognize the linking problems with respect to proof of paternity. These problems are not to be lightly brushed aside, but neither can they be made into an impenetrable barrier that works to shield otherwise invidious discrimination." (Citations omitted.) *Gomez v. Perez*, 93 S.Ct. 872, 874-75 (1973).

Accordingly, in providing substantive legal equality for all children regardless of the marital status of their parents, the present Act merely fulfills the mandate of the Constitution. With the exception of the child's right to inherit from his intestate father, which a growing number of states has provided without constitutional compulsion, the equal treatment provided by the Act is not the Conference's "wishful thinking." It is the law of the land.

Although earlier drafts of this Act contained detailed substantive provisions, the Supreme Court cases equalizing the substantive legal position of the illegitimate child with that of the legitimate child have obviated the need for those provisions. For that reason the substance of the Act now is expressed in the first two sections. The remainder of the Act is largely concerned with the *sine qua non* of equal legal rights—the identification of the person against whom these rights may be asserted. In the context of the child born out of wedlock that person is the father. (To cover the rare case in which there may be uncertainty as to the mother, the present Act permits a declaratory action on the question of maternal descent.)

In order to identify the father, the Act first sets up a network of presumptions which cover cases in which proof of external circumstances (in the simplest case, marriage between the mother and a man) indicate a particular man to be the probable father. While perhaps no one state now includes all these presumptions in its law, the presumptions *are* based on existing presumptions of "legitimacy" in state laws and do not represent a serious departure. Novel is that they have been collected under one roof. All presumptions of paternity are rebuttable in appropriate circumstances.

The ascertainment of paternity when no external circumstances presumptively point to a particular man as the father are the next major function of the Act. Noteworthy is the pre-trial procedure envisaged by the Act which, the Committee expects, will greatly reduce the current high cost and inefficiency of paternity litigation.

The Act also contains appropriate provisions for setting the level of support, the enforcement of judgments, and deals with related issues such as custody. The custody problem has been complicated by the U.S. Supreme Court's decision in *Stanley v. Illinois*, 92 S.Ct. 1208 (1972). In that case, the unmarried father was given substantial, but not carefully delineated rights to the custody of his child. Many state courts have interpreted the *Stanley* case very broadly, probably overly broadly, and the adoption process has become cumbersome and insecure. The Act provides an efficient procedure by which the rights of the disinterested unmarried father may be ter-

minated. Delay and interference with the adoption process is kept to the minimum the Committee believed to be consistent with a reasonable interpretation of the *Stanley* case.

A review of the Act will indicate that it is one interlocking and interdependent piece of legislation that does not lend itself to being enacted in part.

Aside from the need for new state law to replace those rendered unconstitutional by the U.S. Supreme Court decisions referred to above, it is expected that this Act will fulfill an important social need in terms of improving the states' systems of support enforcement. Federal legislation encouraging the states to develop effective support enforcement procedures in connection with the Aid to Families with Dependent Children Program under the Social Security Act currently is pending and may be enacted soon. See S.2081, 93rd Cong., 1st. Sess., June 27, 1973.

UNIFORM PARENTAGE ACT

SECTION 1. [*Parent and Child Relationship Defined.*]

As used in this Act, "parent and child relationship" means the legal relationship existing between a child and his natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.

SECTION 2. [*Relationship Not Dependent on Marriage.*]

The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.

COMMENT

Sections 1 and 2, the major substantive sections of the Act, establish the principle that regardless of the marital status of the parents, all children and all parents have equal rights with respect to each other. As indicated in the Prefatory Note, recent U.S. Supreme Court decisions and lower federal and state court decisions require equality of treatment in most areas of substantive law. See, generally, H. Krause, Illegitimacy: Law and Social Policy 59-104 (1971).

The first two cases to reach the U.S. Supreme Court concerned Louisiana's wrongful death statute and held that statute unconstitutional insofar as it (1) discriminated against illegitimate children, holding them ineligible to recover for the wrongful death of their *mother* (*Levy v. Louisiana*, 391 U.S. 68 (1968)) and (2) denied a mother recovery for the wrongful death of her child (*Glona v. American Guarantee & Liability Insurance Co.*, 391 U.S. 73 (1968)).

It was a surprise when, within three years of deciding *Levy* and *Glona*, the U.S. Supreme Court reached a conclusion seemingly at odds with *Levy* and *Glona*. The Court had occasion to reconsider the question of the illegitimate child's legal position in a case involving inheritance, and refused to extend *Levy* or *Glona* to permit an acknowledged illegitimate child to inherit from his intestate father under Louisiana law. (*Labine v. Vincent*, 401 U.S. 532, 91 S.Ct. 1017 (1971).)

The surprise engendered by the *Labine* decision was surpassed when the Supreme Court again reversed its position on this subject in 1972. In a dramatic departure from *Labine*, the U.S. Supreme Court held that workmen's compensation benefits related to the death of their father are due dependent, unacknowledged, illegitimate children. (*Weber v. Aetna Casualty & Surety Co.*, 92 S.Ct. 1400, 406 U.S. 164 (1972).) In January, 1973, the U.S. Supreme Court, finally substituting consistency for vacillation on this

subject, decided that the illegitimate child is guaranteed a right of support from his father. (*Gomez v. Perez*, 93 S.Ct.872 (1973).)

These decisions engendered a large number of decisions by lower federal courts and state courts at all levels which have broadly extended the legal relationship between the father and his child born out of wedlock. It should be noted, however, that several states had previously provided full (or nearly full) legal equality to illegitimates. To illustrate, Ore. Rev. Stat. § 109.060 (1969) provides:

> "[t]he legal status and legal relationships and the rights and obligations between a person and his descendants, and between a person and his parents, their descendants and kindred, are the same for all persons, whether or not the parents have been married."

See also N.D. Cent. Code § 56-01-05 (Supp. 1969); Ariz. Rev. Stat. Ann. § 14-206 (1956); Alaska Stat. 25.20.050(a) (1962).

SECTION 3. [*How Parent and Child Relationship Established.*] The parent and child relationship between a child and

(1) the natural mother may be established by proof of her having given birth to the child, or under this Act;

(2) the natural father may be established under this Act;

(3) an adoptive parent may be established by proof of adoption or under the [Revised Uniform Adoption Act].

COMMENT

This section introduces the portion of the Act which deals with the ascertainment of parentage.

SECTION 4. [*Presumption of Paternity.*]

(a) A man is presumed to be the natural father of a child if:

(1) he and the child's natural mother are or have been married to each other and the child is born during the marriage, or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation is entered by a court;

(2) before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and,

(i) if the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce; or

(ii) if the attempted marriage is invalid without a court order, the child is born within 300 days after the termination of cohabitation;

(3) after the child's birth, he and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and

(i) he has acknowledged his paternity of the child in writing filed with the [appropriate court or Vital Statistics Bureau],

(ii) with his consent, he is named as the child's father on the child's birth certificate, or

(iii) he is obligated to support the child under a written voluntary promise or by court order;

(4) while the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child; or

(5) he acknowledges his paternity of the child in a writing filed with the [appropriate court or Vital Statistics Bureau], which shall promptly inform the mother of the filing of the acknowledgment, and she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the [appropriate court or Vital Statistics Bureau]. If another man is presumed under this section to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted.

(b) A presumption under this section may be rebutted in an appropriate action only by clear and convincing evidence. If two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court decree establishing paternity of the child by another man.

COMMENT

In the situations described in subsection (a), substantial evidence points to a particular man as being the father of the child and formal proceedings to establish paternity are not necessary. A presumption of paternity arises in the described circumstances. Most of the situations correspond to instances in which current state law imposes a presumption of legitimacy.

Subsection (b) contemplates that a presumption raised under subsection (a) may be rebutted in appropriate circumstances. In accordance with current law in most states relating to the rebuttal of a presumption of "legitimacy", the presumption is difficult to rebut in that proof must be made by "clear and convincing evidence." Other details are covered in Sections 6(a) and (b).

SECTION 5. [*Artificial Insemination.*]

(a) If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated in law as if he were the natural father of a child thereby conceived. The husband's consent must be in writing and signed by him and his wife. The physician shall certify their signatures and the date of the insemination, and file the husband's consent with the [State Department of Health], where it shall be kept confidential and in a sealed file. However, the physician's failure to do so does not affect the father and child relationship. All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only upon an order of the court for good cause shown.

(b) The donor of semen provided to a licensed physician for use in artificial insemination of a married woman other than the donor's wife is treated in law as if he were not the natural father of a child thereby conceived.

COMMENT

This Act does not deal with many complex and serious legal problems raised by the practice of artificial insemination. It was thought useful, however, to single out and cover in this Act at least one fact situation that occurs frequently. Further consideration of other legal aspects of artificial insemination has been urged on the National Conference of Commissioners on Uniform State Laws and is recommended to state legislators. A useful reference is Wadlington, *Artificial Insemination: The Dangers of a Poorly Kept Secret*, 64 NW.U.L. REV. 777 (1970).

SECTION 6. [*Determination of Father and Child Relationship; Who May Bring Action; When Action May Be Brought.*]

(a) A child, his natural mother, or a man presumed to be his father under Paragraph (1), (2), or (3) of Section 4(a), may bring an action

(1) at any time for the purpose of declaring the existence of the father and child relationship presumed under Paragraph (1), (2), or (3) of Section 4(a); or

(2) for the purpose of declaring the non-existence of the father and child relationship presumed under Paragraph (1), (2), or (3) of Section 4(a) only if the action is brought within a reasonable time after obtaining knowledge of relevant facts, but in no event later than [5] years after the child's birth. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party.

(b) Any interested party may bring an action at any time for the purpose of determining the existence or non-existence of the father and child relationship presumed under Paragraph (4) or (5) of Section 4(a).

(c) An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under Section 4 may be brought by the child, the mother or personal representative of the child, the [appropriate state agency], the personal representative or a parent of the mother if the mother has died, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor.

(d) Regardless of its terms, an agreement, other than an agreement approved by the court in accordance with Section 13(b), between an alleged or presumed father and the mother or child, does not bar an action under this section.

(e) If an action under this section is brought before the birth of the child, all proceedings shall be stayed until after the birth, except service of process and the taking of depositions to perpetuate testimony.

COMMENT

This section consists of two major parts. Subsections (a) and (b) deal with the action to declare or dispute the existence of the father and child relationship presumed under Section 4(e). Attack on the presumptions based on marriage or on a relationship between the parents that resembles marriage is restricted to a limited circle of potential contestants and in point of time. Presumptions created in other circumstances may be attacked more freely.

Subsection (c) defines who may bring the action to ascertain paternity when no presumption applies. It is made clear that the child may bring the action. Moreover, since the Act contemplates that the principal interest involved in the action is that of the child, Subsection (d) does not permit an agreement between the mother and an alleged or presumed father to bar an action to ascertain paternity. *Cf.* Comment on Section 9.

SECTION 7. [*Statute of Limitations.*] An action to determine the existence of the father and child relationship as to a child who has no presumed father under Section 4 may not be brought later than [3] years after the birth of the child or later than [3] years after the effective date of this Act, whichever is later. However, an action brought by or on behalf of a child whose paternity has not been determined is not barred until [3] years after the child reaches the age o

majority. Sections 6 and 7 do not extend the time within which a right of inheritance or a right to a succession may be asserted beyond the time provided by law relating to distribution and closing of decedents' estates or to the determination of heirship, or otherwise.

COMMENT

The three year provision stated in the first sentence of this Section will serve as an admonition that paternity actions should be brought promptly. In effect, however, this Section provides for a twenty-one-year statute of limitations, except that a late paternity action does not affect laws relating to distribution and closing of decedents' estates or to the determination of heirship. Since the U.S. Supreme Court decisions speak in terms of the *child's* substantive right to a legal relationship with his father, it was considered unreasonable to bar the child's action by reason of another person's failure to bring a paternity action at an earlier time. On the other hand, it is fully understood that such an extended statute of limitations will cause problems of proof in many cases. In part for that reason and also to provide every infant with the means to exercise his rights, rather than leave his fortunes to the whim of his mother or the views of the social worker, an earlier draft of the Act contained a provision in Section 6(c) which read as follows:

> "If a child has no presumed father under Section 4 and the action to determine the existence of the father and child relationship has not been brought and proceedings to adopt the child have not been instituted within [1] year after the child's birth, an action to determine the existence of the relationship shall be brought promptly on behalf of the child by the [appropriate state agency]."

While this provision was stricken from the final draft, state legislators may wish to consider such a procedure, especially if S.2081, 93d Cong., 1st Sess., or a similar bill should be enacted. (See summary of S.2081 in Prefatory Note.)

SECTION 8. [*Jurisdiction; Venue.*]

(a) [Without limiting the jurisdiction of any other court,] [The] [appropriate] court has jurisdiction of an action brought under this Act. [The action may be joined with an action for divorce, annulment, separate maintenance, or support.]

(b) A person who has sexual intercourse in this State thereby submits to the jurisdiction of the courts of this State as to an action brought under this Act with respect to a child who may have been conceived by that act of intercourse. In addition to any other method provided by [rule or] statute, including [cross reference to "long arm statute"], personal jurisdiction may be acquired by [personal service of summons outside this State or by registered mail with proof of actual receipt] [service in accordance with (citation to "long arm statute")].

(c) The action may be brought in the county in which the child or the alleged father resides or is found or, if the father is deceased, in which proceedings for probate of his estate have been or could be commenced.

COMMENT

The court having jurisdiction over actions under this Act should be identified here. To avoid multiplicity of actions, the bracketed clause would allow joinder of the action to ascertain paternity with an action for divorce, annulment, separate maintenance, or support. This might be considered in choosing the court which is given jurisdiction over actions under this Act.

Subsection (b) provides a novel, but not unheard of, extension of the "long arm" concept. *Cf. Poindexter v. Willis*, 87 Ill. App.2d 213, 23 N.E.2d 1 (5th Dist. 1967). The venue provision in Subsection (c) provides choices considered reasonable and convenient.

SECTION 9. [*Parties.*] The child shall be made a party to the action. If he is a minor he shall be represented by his general guardian or a guardian ad litem appointed by the court. The child's mother or father may not represent the child as guardian or otherwise. The court may appoint the [appropriate state agency] as guardian ad litem for the child. The natural mother, each man presumed to be the father under Section 4, and each man alleged to be the natural father, shall be made parties or, if not subject to the jurisdiction of the court, shall be given notice of the action in a manner prescribed by the court and an opportunity to be heard. The court may align the parties.

COMMENT

This Section emphasizes that the child is a party to the action. While this is a departure from the law of a number of states which have viewed the mother as the sole party in interest, this provision is considered a necessary consequence of the U.S. Supreme Court decisions establishing the child's substantive rights vis à vis his father. The mother or father may not represent the child in the action, since their interests may conflict with those of the child.

SECTION 10. [*Pre-Trial Proceedings.*]

(a) As soon as practicable after an action to declare the existence or non-existence of the father and child relationship has been brought, an informal hearing shall be held. [The court may order that the hearing be held before a referee.] The public shall be barred from the hearing. A record of the pro-

ceeding or any portion thereof shall be kept if any party requests, or the court orders. Rules of evidence need not be observed.

(b) Upon refusal of any witness, including a party, to testify under oath or produce evidence, the court may order him to testify under oath and produce evidence concerning all relevant facts. If the refusal is upon the ground this his testimony or evidence might tend to incriminate him, the court may grant him immunity from all criminal liability on account of the testimony or evidence he is required to produce. An order granting immunity bars prosecution of the witness for any offense shown in whole or in part by testimony or evidence he is required to produce, except for perjury committed in his testimony. The refusal of a witness, who has been granted immunity, to obey an order to testify or produce evidence is a civil contempt of the court.

(c) Testimony of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged.

COMMENT

Sections 10 through 13 provide details concerning the pre-trial hearing. The purpose of the pre-trial hearing is to minimize inconvenience and embarrassment in the many cases which the Committee expects will be resolved on the basis of the voluntary compromise contemplated by Section 13.

SECTION 11. [*Blood Tests.*]

(a) The court may, and upon request of a party shall, require the child, mother, or alleged father to submit to blood tests. The tests shall be performed by an expert qualified as an examiner of blood types, appointed by the court.

(b) The court, upon reasonable request by a party, shall order that independent tests be performed by other experts qualified as examiners of blood types.

(c) In all cases, the court shall determine the number and qualifications of the experts.

SECTION 12. [*Evidence Relating to Paternity.*] Evidence relating to paternity may include:

(1) evidence of sexual intercourse between the mother and alleged father at any possible time of conception;

(2) an expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;

(3) blood test results, weighted in accordance with evidence, if available, of the statistical probability of the alleged father's paternity;

(4) medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the court may, and upon request of a party shall, require the child, the mother, and the man to submit to appropriate tests; and

(5) all other evidence relevant to the issue of paternity of the child.

COMMENT

It is expected that blood test evidence will go far toward stimulating voluntary settlements of actions to determine paternity. In this connection, proposed legislation currently pending in the U.S. Senate should be considered. Senate Bill 2081, 93d Congress, 1st Sess. (June 27, 1973), looks toward the establishment of a national system of federally assisted child support enforcement and provides for an efficient system of blood typing:

"REGIONAL LABORATORIES TO ESTABLISH PATERNITY THROUGH ANALYSIS AND CLASSIFICATION OF BLOOD

"Sec. 458. (a) The Secretary shall, after appropriate consultation and study of the use of blood typing as evidence in judicial proceedings to determine paternity, establish, or arrange for the establishment or designation of, in each region of the United States, a laboratory which he determines to be qualified to provide services in analyzing and classifying blood for the purpose of determining paternity, and which is prepared to provide such services to courts and public agencies in the region to be served by it.

"(b) Whenever a laboratory is established or designated for any region by the Secretary under this section, he shall take such measures as may be appropriate to notify appropriate courts and public agencies (including agencies administering any public welfare program within such region) that such laboratory has been so established or designated to provide services, in analyzing and classifying blood for the purpose of determining paternity, for courts and public agencies in such region.

"(c) The facilities of any such laboratory shall be made available without cost to courts and public agencies in the region to be served by it.

"(d) There is hereby authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the provisions of this section.

"SUPPORT COLLECTION SERVICES FOR OTHER INDIVIDUALS

"Sec. 459. The child support collection or paternity determination services established under this part shall be made available to any individual not otherwise eligible for such services under the preceding sections of this part upon application filed by such individual with the Attorney General or, if a State or political subdivision has a program approved under section 454 with such State or political subdivision as may be appropriate. The Attorney General (or a State or political subdivision) shall impose an application fee for furnishing such services. Any costs in excess of the fee so imposed shall be paid by such individual by deducting such costs from the amount of any recovery made.

Centralized blood typing facilities already exist in Oslo, Copenhagen and Stockholm and serve the whole of their respective countries. Over several decades, great expertise has been developed. (See generally, Henningsen, *Some Aspects of Blood Grouping in Cases of Disputed Paternity in Denmark*, 2 Methods of Forensic Science 209 (1963); Henningsen, *On the Application of Bloodtests to Legal Cases of Disputed Paternity*, 12 Revue de Transfusion 137 (1969); P. Andresen, The Human Blood Groups 73 (1952).) The Scandinavian laboratories are distinguished not only in terms of their use of complex and advanced blood typing systems, but also in terms of highly developed safety procedures which assure accuracy of the results they report. This latter point may be the most important element of blood typing. There can be little doubt that it would be better not to admit blood tests into evidence at all than to admit unreliable evidence under the halo of scientific truth — as has too often been done in the United States where a re-check of even relatively simple tests revealed about one-third of them to have been in error! (See Wiener, *Foreword*, L. Sussman, Blood Grouping Tests — Medicolegal Uses, ix (1968); See also Wiener, *Problems and Pitfalls in Blood Grouping Tests for Non-Parentage*, 15 Journal of Forensic Medicine 106, 126 (1968).) The Copenhagen laboratory (and the practice in Stockholm and Oslo is similar) employs two sets of systems in "yers", the routine blood group determination resulting in exclusion of paternity for about 70 per cent of non-fathers and an extended blood group determination which increases paternity exclusions to about 90 per cent of non-fathers. While an exclusion figure approximating 90 per cent of men falsely named as fathers is impressive, cases which do not produce an exclusion are pursued further on the basis of a "blood group paternity index" by means of which the "probability" of the named man's paternity is estimated. See Gürtler, *Principles of Blood Group Statistical Evaluation of Paternity Cases at the University Institute of Forensic Medicine, Copenhagen*, 9 Acta Medicinae et Socialis 83 (1956).) That index compares the frequency of a given father-mother-child blood constellation in a sample of actual fathers with the blood constellation in a sample of non-fathers and is related to the constellation obtained in the case in question. If the resemblance exceeds 95 percent or falls below 5 percent, the result is reported to the court. At the outer limits, this approach produces *de facto* inclusions or exclusions. In less extreme cases, it produces interesting circumstantial evidence. It is of particular value, of course, when the relative likelihood of paternity of several possible fathers is to be compared. See generally, Krause, Illegitimacy: Law and Social Policy, 121-44 (1971).

Section 13. [*Pre-Trial Recommendations.*]

(a) On the basis of the information produced at the pre-trial hearing, the judge [or referee] conducting the hearing shall evaluate the probability of determining the existence or non-existence of the father and child relationship in a trial and whether a judicial declaration of the relationship would be in the best interest of the child. On the basis of the evaluation, an appropriate recommendation for settlement shall be made to the parties, which may include any of the following:

(1) that the action be dismissed with or without prejudice;

(2) that the matter be compromised by an agreement among the alleged father, the mother, and the child, in which the father and child relationship is not determined but in which a defined economic obligation is undertaken by the alleged father in favor of the child and, if appropriate, in favor of the mother, subject to approval by the judge [or referee] conducting the hearing. In reviewing the obligation undertaken by the alleged father in a compromise agreement, the judge [or referee] conducting the hearing shall consider the best interest of the child, in the light of the factors enumerated in Section 15(e), discounted by the improbability, as it appears to him, of establishing the alleged father's paternity or non-paternity of the child in a trial of the action. In the best interest of the child, the court may order that the alleged father's identity be kept confidential. In that case, the court may designate a person or agency to receive from the alleged father and disburse on behalf of the child all amounts paid by the alleged father in fulfillment of obligations imposed on him; and

(3) that the alleged father voluntarily acknowledge his paternity of the child.

(b) If the parties accept a recommendation made in accordance with Subsection (a), judgment shall be entered accordingly.

(c) If a party refuses to accept a recommendation made under Subsection (a) and blood tests have not been taken, the court shall require the parties to submit to blood tests, if practicable. Thereafter the judge [or referee] shall make an appropriate final recommendation. If a party refuses to accept the final recommendation, the action shall be set for trial.

(d) The guardian ad litem may accept or refuse to accept a recommendation under this Section.

(e) The informal hearing may be terminated and the action set for trial if the judge [or referee] conducting the hearing finds it unlikely that all parties would accept a recommendation he might make under Subsection (a) or (c).

Comment

The settlement procedures contemplated by this Section are voluntary. If any party refuses to accept a settlement recommendation, the action will be set for trial. It is expected, however, that, as soon as reliable blood test evidence becomes available on a large scale, the great majority of cases will be settled consensually in the light of such evidence.

tests, to be paid by the parties in proportions and at times determined by the court. The court may order the proportion of any indigent party to be paid by [appropriate public authority].

COMMENT

This allows the court to apportion the cost of litigation among the parties or, if a party is indigent, charge it to the appropriate public authority.

SECTION 17. [*Enforcement of Judgment or Order.*]

(a) If existence of the father and child relationship is declared, or paternity or a duty of support has been acknowledged or adjudicated under this Act or under prior law, the obligation of the father may be enforced in the same or other proceedings by the mother, the child, the public authority that has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, support, or funeral, or by any other person, including a private agency, to the extent he has furnished or is furnishing these expenses.

(b) The court may order support payments to be made to the mother, the clerk of the court, or a person, corporation, or agency designated to administer them for the benefit of the child under the supervision of the court.

(c) Willful failure to obey the judgment or order of the court is a civil contempt of the court. All remedies for the enforcement of judgments apply.

COMMENT

This Section provides suitable enforcement remedies.

SECTION 18. [*Modification of Judgment or Order.*] The court has continuing jurisdiction to modify or revoke a judgment or order

(1) for future education and support, and

(2) with respect to matters listed in Subsections (c) and (d) of Section 15 and Section 17(b), except that a court entering a judgment or order for the payment of a lump sum or the purchase of an annuity under Section 15(d) may specify that the judgment or order may not be modified or revoked.

COMMENT

In accordance with current state law on this subject, the court is given continuing jurisdiction to modify or revoke judgments relating to support, custody and related matters.

SECTION 19. [*Right to Counsel; Free Transcript on Appeal.*]

(a) At the pre-trial hearing and in further proceedings, any party may be represented by counsel. The court shall appoint counsel for a party who is financially unable to obtain counsel.

(b) If a party is financially unable to pay the cost of a transcript, the court shall furnish on request a transcript for purposes of appeal.

COMMENT

This permits each party to be represented by counsel regardless of financial circumstances.

SECTION 20. [*Hearings and Records; Confidentiality.*] Notwithstanding any other law concerning public hearings and records, any hearing or trial held under this Act shall be held in closed court without admittance of any person other than those necessary to the action or proceeding. All papers and records, other than the final judgment, pertaining to the action or proceeding, whether part of the permanent record of the court or of a file in the [appropriate state agency] or elsewhere, are subject to inspection only upon consent of the court and all interested persons, or in exceptional cases only upon an order of the court for good cause shown.

COMMENT

In view of the sensitive nature of paternity proceedings, the Committee considered it essential that such proceedings be kept in confidence.

SECTION 21. [*Action to Declare Mother and Child Relationship.*] Any interested party may bring an action to determine the existence or non-existence of a mother and child relationship. Insofar as practicable, the provisions of this Act applicable to the father and child relationship apply.

COMMENT

This Section permits the declaration of the mother and child relationship where that is in dispute. Since it is not believed that cases of this nature will arise frequently, Sections 4 to 20 are written principally in terms of the ascertainment of *paternity*. While it is obvious that certain provisions in these Sections would not apply in an action to establish the mother and child relationship, the Committee decided not to burden these — already complex — provisions with references to the ascertainment of *maternity*. In any given case, a judge facing a claim for the determination of the mother and child relationship should have little difficulty deciding which portions of Sections 4 to 20 should be applied.

SECTION 22. [*Promise to Render Support.*]

(a) Any promise in writing to furnish support for a child, growing out of a supposed or alleged father and child relationship, does not require consideration and is enforceable according to its terms, subject to Section 6(d).

(b) In the best interest of the child or the mother, the court may, and upon the promisor's request shall, order the promise to be kept in confidence and designate a person or agency to receive and disburse on behalf of the child all amounts paid in performance of the promise.

COMMENT

This permits any written promise to furnish support for a child based on a supposed or alleged father and child relationship to be enforced in accordance with its terms, with the exception of stipulations that seek to bar a paternity action. Since existing law adequately covers this area, it was considered unnecessary to spell out that the agreement may be avoided if it is shown that the agreement was based on a mutual mistake or fraud relating to the existence of the father and the child relationship. In view of the possibly sensitive nature of such a promise, the provision relating to confidentiality is considered useful.

SECTION 23. [*Birth Records.*]

(a) Upon order of a court of this State or upon request of a court of another state, the [registrar of births] shall prepare [an amended birth registration] [a new certificate of birth] consistent with the findings of the court [and shall substitute the new certificate for the original certificate of birth].

(b) The fact that the father and child relationship was declared after the child's birth shall not be ascertainable from the [amended birth registration] [new certificate] but the actual place and date of birth shall be shown.

(c) The evidence upon which the [amended birth registration] [new certificate] was made and the original birth certificate shall be kept in a sealed and confidential file and be subject to inspection only upon consent of the court and all interested persons, or in exceptional cases only upon an order of the court for good cause shown.

COMMENT

This provision permits the issuance of an amended or new birth certificate to assure confidentiality. It resembles provisions in many adoption acts which permit the issuance of a new or amended birth certificate after an adoption has been completed.

SECTION 24. [*When Notice of Adoption Proceeding Required.*]

If a mother relinquishes or proposes to relinquish for adoption a child who has (1) a presumed father under Section 4(a), (2) a father whose relationship to the child has been determined by a court, or (3) a father as to whom the child is a legitimate child under prior law of this State or under the law of another jurisdiction, the father shall be given notice of the adoption proceeding and have the rights provided under [the appropriate State statute] [the Revised Uniform Adoption Act], unless the father's relationship to the child has been previously terminated or determined by a court not to exist.

COMMENT

This section provides that a father whose identity is presumed under Section 4 or whose paternity has been formally ascertained, must be given notice of an adoption proceeding relating to his child.

SECTION 25. [*Proceeding to Terminate Parental Rights.*]

(a) If a mother relinquishes or proposes to relinquish for adoption a child who does not have (1) a presumed father under Section 4(a), (2) a father whose relationship to the child has been determined by a court, or (3) a father as to whom the child is a legitimate child under prior law of this State or under the law of another jurisdiction, or if a child otherwise becomes the subject of an adoption proceeding, the agency or person to whom the child has been or is to be relinquished, or the mother or the person having custody of the child, shall file a petition in the [ ] court to terminate the parental rights of the father, unless the father's relationship to the child has been previously terminated or determined by a court not to exist.

(b) In an effort to identify the natural father, the court shall cause inquiry to be made of the mother and any other appropriate person. The inquiry shall include the following: whether the mother was married at the time of conception of the child or at any time thereafter; whether the mother was cohabiting with a man at the time of conception or birth of the child; whether the mother has received support payments or promises of support with respect to the child or in connection with her pregnancy; or whether any man has formally or informally acknowledged or declared his possible paternity of the child.

(c) If, after the inquiry, the natural father is identified to the satisfaction of the court, or if more than one man is ide

fied as a possible father, each shall be given notice of the proceeding in accordance with Subsection (e). If any of them fails to appear or, if appearing, fails to claim custodial rights, his parental rights with reference to the child shall be terminated. If the natural father or a man representing himself to be the natural father, claims custodial rights, the court shall proceed to determine custodial rights.

(d) If, after the inquiry, the court is unable to identify the natural father or any possible natural father and no person has appeared claiming to be the natural father and claiming custodial rights, the court shall enter an order terminating the unknown natural father's parental rights with reference to the child. Subject to the disposition of an appeal upon the expiration of [6 months] after an order terminating parental rights is issued under this subsection, the order cannot be questioned by any person, in any manner, or upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter.

(e) Notice of the proceeding shall be given to every person identified as the natural father or a possible natural father [in the manner appropriate under rules of civil procedure for the service of process in a civil action in this state, or] in any manner the court directs. Proof of giving the notice shall be filed with the court before the petition is heard. [If no person has been identified as the natural father or a possible father, the court, on the basis of all information available, shall determine whether publication or public posting of notice of the proceeding is likely to lead to identification and, if so, shall order publication or public posting at times and in places and manner it deems appropriate.]

COMMENT

Subsection (a) deals with the case in which the father has not been formally ascertained and the mother seeks to surrender the child for adoption. In the light of the U.S. Supreme Court's decisions in *Stanley v. Illinois*, 92 S.Ct. 1208 (1972); *Rothstein v. Lutheran Social Services of Wisconsin and Upper Michigan*, 92 S.Ct. 1488 (1972) and *Vanderlaan v. Vanderlaan*, 92 S.Ct. 1488 (1972) and related state court decisions, it is considered essential that the unknown or unascertained father's potential rights be terminated formally in order to safeguard the subsequent adoption.

Subsections (b) through (c) provide a procedure by which the court may ascertain the identity of the father and permit speedy termination of his potential rights *if he shows no interest in the child*. If, on the other hand, the natural father or a man representing himself to be the natural father claims custodial rights, the court is given authority to determine custodial

rights. It is contemplated that there may be cases in which the man alleging himself to be the father is so clearly unfit to take custody of the child that the court would proceed to terminate his potential parental rights without deciding whether the man actually is the father of the child. If, on the other hand, the man alleging himself to be the father and claiming custody is *prima facie* fit to have custody of the child, an action to ascertain paternity is indicated, unless a voluntary acknowledgment can be obtained in accordance with Section 4(a)(5) of this Act.

Subsection (d) raises serious constitutional questions in that it attempts to cut off after a given period *any* claim seeking to reopen a judgment terminating parental rights. While of questionable constitutionality, such a provision is not without precedent. A similar provision is contained in Section 16(b) of the revised Uniform Adoption Act, approved by the Commissioners on Uniform State Laws in 1969, and other similar provisions are contained in the adoption acts of a number of states. Moreover, it must be considered that the case of adoption differs from other situations. The parent's claim to his child can hardly be compared to a person's claim to property. The Supreme Court itself recognized that the interest of the child is heavily involved in those cases when remanding the *Rothstein* case to the Wisconsin Supreme Court, requiring that the court give "due consideration [to] the completion of the adoption proceedings and the fact that the child has apparently lived with the adoptive family for the intervening period of time." *Cf. Armstrong v. Manzo*, 380 U.S. 545 (1965).

Subsection (e) seeks to conform to the following footnote in *Stanley v. Illinois*:

> "We note in passing that the incremental cost of offering unwed fathers an opportunity for individualized hearings on fitness appears to be minimal. If unwed fathers, in the main, do not care about the disposition of their children, they will not appear to demand hearings. If they do care, under the scheme here held invalid, Illinois would admittedly at some later time have to afford them a properly focused hearing in a custody or adoption proceeding.
>
> Extending opportunity for hearing to unwed fathers who desire and claim competence to care for their children creates no constitutional or procedural obstacle to foreclosing those unwed fathers who are not so inclined. The Illinois law governing procedure in juvenile cases . . . provides for personal service, notice by certified mail or for notice by publication when personal or certified mail service cannot be had or when notice is directed to unknown respondents under the style of 'all whom it may concern.' Unwed fathers who do not promptly respond cannot complain if their children are declared wards of the State. Those who do respond retain the burden of proving their fatherhood."

This footnote *might* be interpreted to require publication in all cases in which a child with unascertained paternity is surrendered for adoption. The Committee considered, however, that there will be many such cases in which it will be highly probable that publication will not lead to the identification of the father. In view of that and the fact that in nearly all cases publication will lead to substantial embarrassment for the mother, the Committee thought it appropriate to allow the court to determine whether, in the particular circumstances of each case, publication would be likely to lead to the identification of the father. One serious consequence that might result from an indiscriminate publication requirement is that some mothers may be caused to withhold their children from adoption even where adoption would

be in the child's best interest.

SECTION 26. [*Uniformity of Application and Construction.*] This Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it.

SECTION 27. [*Short Title.*] This Act may be cited as the Uniform Parentage Act.

SECTION 28. [*Severability.*] If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 29. [*Repeal.*] The following acts and parts of acts are repealed:

(1) [Paternity Act]

(2)

(3)

SECTION 30. [*Time of Taking Effect.*] This Act shall take effect on [ ].

COMMENT

Sections 26-30 are the customary clauses which may be placed in such order in the bill for enactment as the legislative practice of the state prescribes. A specific listing of statutes which are repealed by the enactment of this Act should be listed in section 29.

UNIFORM PARENTAGE ACT

ERRATA SHEET

SECTION 24, page 23, should be divided into 2 sections as follows:

SECTION 24. [*When Notice of Adoption Proceeding Required.*]

If a mother relinquishes or proposes to relinquish for adoption a child who has (1) a presumed father under Section 4(a), (2) a father whose relationship to the child has been determined by a court, or (3) a father as to whom the child is a legitimate child under prior law of this State or under the law of another jurisdiction, the father shall be given notice of the adoption proceeding and have the rights provided under [the appropriate State statute] [the Revised Uniform Adoption Act], unless the father's relationship to the child has been previously terminated or determined by a court not to exist.

COMMENT

This section provides that a father whose identity is presumed under Section 4 or whose paternity has been formally ascertained, must be given notice of an adoption proceeding relating to his child.

SECTION 25. [*Proceeding to Terminate Parental Rights.*]

(a) If a mother relinquishes or proposes to relinquish for adoption a child who does not have (1) a presumed father under Section 4(a), (2) a father whose relationship to the child has been determined by a court, or (3) a father as to whom the child is a legitimate child under prior law of this State or under the law of another jurisdiction, or if a child otherwise becomes the subject of an adoption proceeding, the agency or person to whom the child has been or is to be relinquished, or the mother or the person having custody of the child, shall file a petition in the [ ] court to terminate the parental rights of the father, unless the father's relationship to the child has been previously terminated or determined by a court not to exist.

(b) In an effort to identify the natural father, the court shall cause inquiry to be made of the mother and any other appropriate person. The inquiry shall include the following: whether the mother was married at the time of conception o the child or at any time thereafter; whether the mother was cohabiting with a man at the time of conception or birth of the child; whether the mother has received support payments or promises of support with respect to the child or in connection with her pregnancy; or whether any man has formally or informally acknowledged or declared his possible paternity of the child.

(c) If, after the inquiry, the natural father is identified to the satisfaction of the court, or if more than one man is identified as a possible father, each shall be given notice of the proceeding in accordance with Subsection (e). If any of them fails to appear or, if appearing, fails to claim custodial rights, his parental right, with reference to the child shall be terminated. If the natural father or a man representing himself to be the natural father, claims custodial rights, the court shall proceed to determine custodial rights.

(d) If, after the inquiry, the court is unable to identify the natural father or any possible natural father and no person has appeared claiming to be the natural father and claiming custodial rights, the court shall enter an order terminating the unknown natural father's parental rights with reference to the child. Subject to the disposition of an appeal upon the expiration of [6 months] after an order terminating parental rights is issued under this subsection, the order cannot be questioned by any person, in any manner, or upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter.

(e) Notice of the proceeding shall be given to every person identified as the natural father or a possible natural father [in the manner appropriate under rules of civil procedure for the service of process in a civil action in this state, or] in any manner the court directs. Proof of giving the notice shall be filed with the court before the petition is heard. [If no person has been identified as the natural father or a possible father, the court, on the basis of all information available, shall determine whether publication or public posting of notice of the proceeding is likely to lead to identification and, if so, shall order publication or public posting at times and in places and manner it deems appropriate.]

COMMENT

Subsection (a) deals with the case in which the father has not been formally ascertained and the mother seeks to surrender the child for adoption. In the light of the U.S. Supreme Court's decisions in *Stanley v. Illinois*,

92 S.Ct. 1208 (1972); *Rothstein v. Lutheran Social Services of Wisconsin and Upper Michigan*, 92 S.Ct. 1488 (1972) and *Vanderlaan v. Vanderlaan*, 92 S.Ct. 1488 (1972) and related state court decisions, it is considered essential that the unknown or unascertained father's potential rights be terminated formally in order to safeguard the subsequent adoption.

Subsections (b) through (e) provide a procedure by which the court may ascertain the identity of the father and permit speedy termination of his potential rights *if he shows no interest in the child*. If, on the other hand, the natural father or a man representing himself to be the natural father claims custodial rights, the court is given authority to determine custodial rights. It is contemplated that there may be cases in which the man alleging himself to be the father is so clearly unfit to take custody of the child that the court would proceed to terminate his potential parental rights without deciding whether the man actually is the father of the child. If, on the other hand, the man alleging himself to be the father and claiming custody is *prima facie* fit to have custody of the child, an action to ascertain paternity is indicated, unless a voluntary acknowledgment can be obtained in accordance with Section 4(a)(5) of this Act.

Subsection (d) raises serious constitutional questions in that it attempts to cut off after a given period *any* claim seeking to reopen a judgment terminating parental rights. While of questionable constitutionality, such a provision is not without precedent. A similar provision is contained in Section 15(b) of the revised Uniform Adoption Act, approved by the Commissioners on Uniform State Laws in 1969, and other similar provisions are contained in the adoption acts of a number of states. Moreover, it must be considered that the case of adoption differs from other situations. The parent's claim to his child can hardly be compared to a person's claim to property. The Supreme Court itself recognized that the interest of the child is heavily involved in these cases when remanding the *Rothstein* case to the Wisconsin Supreme Court, requiring that the court give "due consideration [to] the completion of the adoption proceedings and the fact that the child has apparently lived with the adoptive family for the intervening period of time." *Cf. Armstrong v. Manzo*, 380 U.S. 545 (1965).

Subsection (e) seeks to conform to the following footnote in *Stanley v. Illinois*:

> "We note in passing that the incremental cost of offering unwed fathers an opportunity for individualized hearings on fitness appears to be minimal. If unwed fathers, in the main, do not care about the disposition of their children, they will not appear to demand hearings. If they do care, under the scheme here held invalid, Illinois would admittedly at some later time have to afford them a properly focused hearing in a custody or adoption proceeding.
>
> Extending opportunity for hearing to unwed fathers who desire and claim competence to care for their children creates no constitutional or procedural obstacle to foreclosing those unwed fathers who are not so inclined. The Illinois law governing procedure in juvenile cases . . . provides for personal service, notice by certified mail or for notice by publication when personal or certified mail service cannot be had or when notice is directed to unknown respondents under the style of 'all whom it may concern.' Unwed fathers who do not promptly respond cannot complain if their children are declared wards of the State. Those who do respond retain the burden of proving their fatherhood."

This footnote *might* be interpreted to require publication in all cases in which a child with unascertained paternity is surrendered for adoption. The Committee considered, however, that there will be many such cases in which it will be highly probable that publication will not lead to the identification of the father. In view of that and the fact that in nearly all cases publication will lead to substantial embarrassment for the mother, the Committee thought it appropriate to allow the court to determine whether, in the particular circumstances of each case, publication would be likely to lead to the identification of the father. One serious consequence that might result from an indiscriminate publication requirement is that some mothers may be caused to withhold their children from adoption even where adoption would be in the child's best interest.

Sections 26 through 29 *should be* renumbered as follows:

SECTION 25 *should be* SECTION 26
SECTION 26 *should be* SECTION 27
SECTION 27 *should be* SECTION 28
SECTION 28 *should be* SECTION 29
SECTION 29 *should be* SECTION 30

The COMMENT on page 26 *should read* as follows:

Sections 26-30 are the customary clauses which may be placed in such order in the bill for enactment as the legislative practice of the state prescribes. A specific listing of statutes which are repealed by the enactment of this Act should be listed in section 29.

Legislative Seminars

The Institute, in cooperation with the National Conference of State Legislatures, will sponsor seminars for state legislators on the development and implementation of child support enforcement programs. Two seminars are planned for the first year.

Institute courses and technical assistance services are available to individuals from the many organizations and agencies that work together to protect a child's rights in cases of paternity and nonsupport.

The Institute is operated by University Research Corporation (URC) under contract to the Office of Child Support Enforcement, U.S. Department of Health, Education, and Welfare. Representatives of the child support enforcement field participate in the Institute through a National Advisory Group. Representation includes persons from state and local child support enforcement programs, the National Council of IV-D Directors, the National District Attorneys Association, the National Council of Public Administrators, the National Reciprocal and Family Support Enforcement Association, the judicial branch of government, and the academic community. Other organizations assisting URC are

- The National Governors' Association
- The National Conference of State Legislatures
- The Western Federation for Human Services

For information about Institute courses, seminars, or technical assistance, write or call

National Institute for
Child Support Enforcement
1601 North Kent Street
Suite 1101
Arlington, Virginia 22209
(703) 525-3011

The National Institute for Child Support Enforcement is dedicated to improving the administration of programs that protect the right of children to receive support from both parents.

The Institute is a new center for high-quality educational, training, and technical assistance services aimed at improving program operations and professional development in the child support enforcement field.

The Institute serves a variety of professionals involved in child support enforcement:

- *State and local agency administrators and staff*
- *District attorneys*
- *Clerks of the court*
- *Law enforcement officers*
- *The judiciary*
- *Case workers*
- *Program specialists*
- *State and local officials*
- *Support enforcement staff*

Technical Assistance

The Institute is developing a consultant bank of peer experts — people in child support enforcement programs who have demonstrated knowledge and skills in specific program areas. At the request of a IV-D child support enforcement program (Title IV-D of the Social Security Act), the Institute will match expressed needs with technical assistance expertise in its bank of peer consultants. In addition, the Institute will underwrite travel and per diem costs and arrange logistics for the technical assistance exchange. Up to 20 states will be served during the Institute's first year.

Technical assistance expertise will be provided in such areas as

- *Setting up an effective management system for your IV-D program*
- *Planning for and implementing an effective enforcement program*
- *Planning for and implementing an effective collection program*
- *Organizing for functional case management using the team approach*
- *Self-evaluation of your IV-D program*
- *Managing case files for compliance with federal audit procedures and safeguarding confidentiality*
- *And other problem areas as identified by IV-D agencies.*

Training

The Institute will provide high-quality training in subject areas directly related to on-the-job problems and skill needs in child support enforcement programs. Curricula will be based on state and local perceptions of training needs and will be tailored to the unique requirements of the IV-D work setting. NICSE courses will cover such topics as

- *Effective models and techniques for IV-D program management*
- *Supervision of front-line IV-D work and workers*
- *Communication and technical skills for front-line workers*
- *What every IV-D worker should know about the law*
- *Prioritization models for case processing*
- *Public information concepts and techniques in child support enforcement*
- *State-of-the-art techniques for paternity establishment*
- *How to develop and deliver training for IV-D workers*
- *Effective techniques for enforcement of child support obligations.*

STAMP

National Institute for Child Support Enforcement
Attn: Technology Coordinator
1601 North Kent Street
Arlington, Virginia 22209

The Institute is operated by University Research Corporation (URC) under contract to the Office of Child Support Enforcement, U.S. Department of Health, Education, and Welfare. Representatives of the child support enforcement field participate in the Institute through a National Advisory Group. Representation includes persons from state and local child support enforcement programs, the National Council of IV-D Directors, the National District Attorneys Association, the National Council of Public Administrators, the National Reciprocal and Family Support Enforcement Association, the judicial branch of government, and the academic community. Other organizations assisting URC are:

- The National Governors' Association
- The National Conference of State Legislatures
- The Western Federation for Human Services.

For information about Institute courses, seminars, or technical assistance, write or call:

National Institute for
Child Support Enforcement
1601 North Kent Street
Suite 1101
Arlington, Virginia 22209
(703) 522-3010

The Technology Transfer Program: A Cornerstone of the Institute

Usually, technical assistance means instruction from *outsiders* in their areas of specialty. The Institute's Technology Transfer Program (TTP) is different. Our technical assistance involves a cooperative effort among *peers* — information sharing among the best in the business.

The Institute's consultant bank of peer experts has people who are currently working in child support enforcement programs and who have demonstrated knowledge and skills in specific program areas.

Through TTP, the Institute responds to requests for assistance by matching expressed needs with the known expertise of its consultant bank. Then, a technology transfer is made.

Who Qualifies for TTP?

Technology transfer services are available to state and local child support enforcement agencies. Priority will be given to requests for transfers which are likely to increase collections, establishments of paternity, or program efficiency.

What Must the Applicant Do?

The interested agency need only provide a statement of need and then work with the Institute to coordinate the technology transfer and, subsequently, to evaluate the assistance delivered. The Institute generally pays for travel and per diem expenses of consultants.

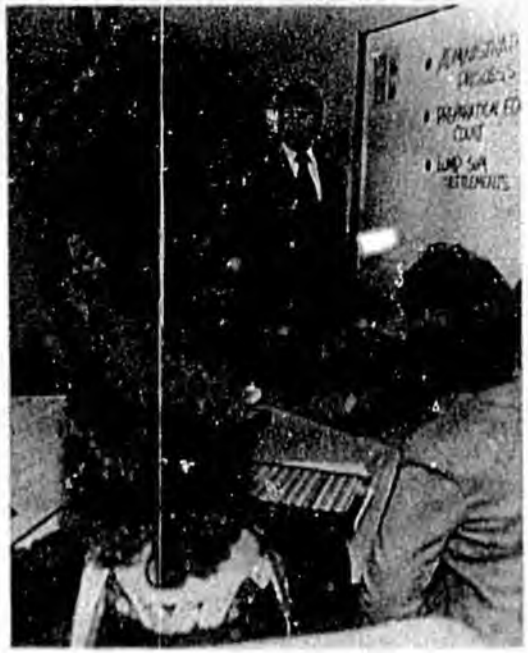
How Can the Technology Transfer Program Help You?

Technical assistance can be provided to your program in a variety of areas including:

- Program evaluation
- Functional case management
- Information systems
- Compliance with Federal audit procedures and requirements of confidentiality
- Establishment of paternity
- Garnishment and wage assignment
- IRS services
- Administrative hearing procedures
- Enforcement techniques
- Public relations
- Legislation
- Other identified problem areas.

How To Apply

Applications may be made by telephone (Call (703) 522-3010), letter, or by mailing the reply card portion of this pamphlet.



The Institute is a new center for high-quality educational, training and technical assistance services aimed at improving program operations and professional development in the child support enforcement field.

I am interested in:

- ☐ More information concerning the Technology Transfer Program
- ☐ More information concerning Training Programs
- ☐ Receiving Technology Transfer

I represent: (Organization) _____

(Name & Title) _____

(Address) _____

(Telephone) _____

Area of need (please describe): _____

Signature and Date: _____

Oct, Nov & Dec. 1979
AK Women's Resource Center

av. 5 abandonments per wk thru this
3 mo period

of these, 12 (over 3 months) were dealt with by AWRC - others ref. to other agencies, or went outside

of the 12 - 9 white, 2 Native, 1 black*

* had 9 children, 2 (twins) 2 yr olds left at home. - sent via "agency bounce" - didn't fit into any category

only 9 on ADC get help in tracking down disappeared man - * this is an area that should be looked into

gen. characteristics of the 12
husbands had retired family recently; sometimes alcohol involved; & usually spent life raising family & keeping home

SB

183

SB 181 (cont'd)

Sections 16 & 18 add to AS 47.23.150 (Required Notice in Administrative Enforcement of Support Orders) and 47.23.160 (Admin. Establishment of Support Obligations; Notice & Finding of Financial Responsibility): "Refusal by the obligor to accept notice . . . is considered service as of the time of refusal."

Sec. 21 adds new section to AS 47.23 relating to the ratification by the court of administrative orders. States that an administrative support order issued under chapter may be forwarded to the Superior Court. Unless a notice of appeal is filed within 30 days, the court may enter an order confirming the support order.

Secs. 22 & 23 make technical amendments to 47.23.190 by deleting from "obligee or his custodian" the words "or his custodian" since obligee was redefined as being the custodian rather than the child.

Sec. 24 repeals and re-enacts AS 47.23.250 (Order to Withhold and Deliver). Section allows agency to issue to "any person, political subdivision, or department of the state an order to withhold and deliver property" if after 30 days from the date of service of notice under 47.23.150, or from the date of service of a notice and finding of financial responsibility, an obligor has failed to make child support payments. The section as repealed and re-enacted is identical to the existing section with the addition of two new subsections (subsecs. (f) & (g) in the bill) which state: "(f) A person, political subdivision, or department of the state which regularly incurs additional indebtedness to the obligor shall continue to withhold and deliver money as it comes due and owing until the liability of the obligor under AS 47.23.150 is satisfied. (g) An order to withhold and deliver issued to the Department of Revenue is effective upon receipt by the Department and remains effective for that calendar year. The order shall be sufficient to subject any tax refund or other disbursements due to be issued to the obligor in that year to the provisions of this section even though the tax refund or disbursement may be issued more than 30 days after the order."

Does not provide for effective date.

Introduced February 16 and referred to Health, Education and Social Services and Judiciary.

Motor Fuel Tax (watercraft) (repeal of)

SENATE BILL NO. 182, by Senators Mulcahy, Eliason, Ziegler, Ray, Hohman and Ferguson. Identical to HB 101, page 179.

Introduced February 16 and referred to Transportation & Finance.

Financial Disclosure (exempting physicians)

SENATE BILL NO. 183, by Senator Mulcahy by request. Exempts physicians from the financial disclosure requirements of AS 39.50 (Conflict of Interest for public officers & candidates for elective office). Adds new subsection to AS 39.50.030 (contents of financial disclosure statement) to read: "A public official, a candidate for state elective office, or a candidate for elective municipal office who is a physician licensed under AS 08.64 is not required to report the name of a person who is his patient or a patient of an entity which is a source of income to him." Pro-

SB 183 (cont'd)

vides Act effective April 14, 1981.

Introduced February 16 and referred to State Affairs and Judiciary.

Appropriations (special) (medical evacuations)

SENATE BILL NO. 184, by Senator Ferguson. Appropriates $100,000 from the general fund to the Dept. of Health & Social Services for payment as a grants to the Kotzebue Public Health Service Hospital ($50,000) and to the Norton Sound Hospital ($50,000) for medical evacuations. Appropriations shall be disbursed in accordance with AS 37.05.315 (State Grants). Provides Act effective immediately.

Introduced February 16 and referred to Health, Education & Social Services and Finance.

Appropriation (supplemental) (AHFC Mortgage Loans)

SENATE BILL NO. 185, by Senator Bennett. Appropriates $150 million from the general fund to the Alaska Housing Finance Corporation, Dept of Revenue, for the Special Mortgage Loan Purchase Program (AS 18.56.098) for the fiscal year ending June 30, 1981. Provides Act effective immediately.

Introduced February 16 and referred to Finance.

Note: this bill was reported out of committee this week. See page 274.

Interstate Corrections Compact (adopting)

SENATE BILL NO. 186, by the Rules Committee by request of the Governor. Adopts the Interstate Corrections Compact. Art. 1, "Purpose and Policy" of the Act states: "The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide those facilities and programs on a basis of cooperation with one another, thereby serving the best interest of the offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of programs of cooperation for the confinement, treatment and rehabilitation of offenders with the most economical use of human and material resources." Provisions of compact are added to AS 33 under new Chapter 27, "Interstate Corrections Compact." Effective immediately.

In his message transmitting the bill to the Senate for consideration, Governor Hammond stated:

> Under the authority of art. II, sec. 18 of the Alaska Constitution, I am transmitting a bill which would make Alaska a party to the Interstate Corrections Compact.
>
> Under current law, Alaska is a party to the Western Interstate Corrections Compact, along with eleven other states. This measure is similar to that compact; however, it allows the state a broader choice of correctional facilities nationwide in which prisoners may be incarcerated than is presently available. By joining the Interstate Corrections Compact, Alaska will be able to place offenders in an additional eleven states. It is not necessary to withdraw from the Western Interstate Corrections Compact in order to become a party to this compact.

LAW OFFICES OF
MARY A. NORDALE
1919 LATHROP STREET, DRAWER 33
FAIRBANKS, ALASKA 99701

MARY A. NORDALE

(907)456-6903
(907)452-2930

J. John Franich, Jr.

February 2, 1982

Arthur S. Hansen, D.D.S.
3487 Airport Way
Fairbanks, Alaska 99701

Re: APOC disclosure requirements
Our File No. 62-3154

Dear Art:

You have asked for a memorandum on the legal questions posed for you by the provisions of AS39.50.010 et seq. and the regulations issued pursuant thereto.

Statement of Facts

Arthur S. Hansen, D.D.S., is a duly licensed dentist practicing denistry as an employee of Arthur S. Hansen, D.D.S., a Professional Corporation. In 1981 he declared himself a candidate for membership on the Fairbanks North Star Borough School Board and in conjunction with the filing of his declaration of candidacy, filed a conflict of interest disclosure from and request for exemption with the Alaska Public Officers Commission pursuant to AS 39.50.020-030 and 2 AAC 50.100. Arthur S. Hansen was not elected to the School Board in the election held in October, 1981. After the election the APOC ruled against Hansen's claim of privilege and demanded submission of the names of all patients of Arthur S. Hansen, DDS, a Professional Corporation, receiving services for which they paid in excess of $100.00. Hansen has refused to submit the information and the APOC has declared its intention of submitting the matter to the Attorney General for further action.

Applicable Law

1. AS 39.50.010 et seq. This Chapter requires financial disclosure of public officials and candidates, including disclosure of the finanacial interests of members of this family.

2. 2 AAC 50.090-320. These regulations set forth in modest detail the information required and the methods by which the APOC will enforce the statutory requirements.

3. AS 10.45.090-250. This Chapter is the Alaska Professional Corporations Act which permits a person or persons licensed to perform professional services to incorporate their business. This statute permits the provision of professional services through a corporate business entity subject to restrictions on the shareholders, the disposition of shares, and qualifications of directors. Additionally the statute preserves the traditional relationship between the person providing the service and the recipient insofar as the rights, duties and liabilities between them are concerned. The statute also made the corporation jointly and severally liable with the professional employee to the service recipient. In all other respects, a professional corporation must operate pursuant to the Alaska Business Corporation Act, AS 10.05.010.594.

4. Article I, Sec. 22, Alaska Constitution. This section guarantees a right of the people to privacy and is applicable under the present circumstances to Arthur S. Hansen, D.D.S., the professional corporation and to the recipients of services of the corporation.

Memorandum

In Falcon v. APOC, 570 P.2d 469 (Alaska 1977) the Court was confronted with the question of whether or not a physican should be required to disclose the names of his patients paying more than $100.00 for services in order to comply with AS 39.50.200. Dr. Falcon was an employee of a professional corporation known as Kodiak Island Medical Center. AS 39.50.200(a)(8) defines source of income as a client or patient of a professional corporation.

In Falcon the court held that the provisions of AS 39.50.200 were not an impermissible infringement of the patient's constitutional right of privacy. In his argument Falcon apparently pointed out that the Alaska State Medical Association Council had declared that publication of the names of patients of Alaska Medical Board members to be a violation of professional ethics, but the Court held that such a declaration could not be construed as amending or modifying the provisions of AS 39.50.200 and further buttressed that by citing cases that had held that disclosure only of the name of a patient was not an invasion of the evidentiary doctor-patient privilege.

However, the Court did find that in certain instances, some of which it described, mere disclosure of a patient's name would constitute an impermissible invasion of a patient's right of privacy. The APOC merely lifted from Falcon the instances in which the Court thought an impermissible invasion might occur insofar as a physican's patient's right

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of privacy is concerned and did not address similar questions which might arise in the delivery of other professional services.

One aspect of the statute which has received only cursory consideration is whether or not the requirement of disclosure constitutes such a burden on the office holder or candidate as to have a chilling effect upon all professions delivering services to individuals so as to prevent their members from seeking and holding public office.

2 AAC 5.050 excludes retail charge accounts, revolving charge accounts and credit card sales. Likewise, all cash customers are excluded. These exclusions would seem not to fall within any zone of privacy of a customer or a retail business, but to be the result of a practical determination that compliance would be unduly burdensome. It probably also stems from a belief that retail business transactions do not give rise to a relationship from which influence would flow. Nothing in the statute forms a basis for such a belief and it can only be assumed that the excluded retail transactions would constitute too great a burden.

The Falcon case did not address the benefit-burden problem, only the scope of the physician - client privilege. Thus, we have neither a statutory nor a judicial determination of the extent of influence a retail customer might be able to exert.

Another practical aspect of the regulations and the statute which has escaped legislators and the APOC is that the area of greatest conflict in which a professional might be found is in professional considerations or matters of particular concern to the profession, i.e., medical malpractice.

To return to the chilling effect, a professional desiring to offer himself for public office would have to plan approximately 18 months ahead of the last filing date so as to be prepared with the names of his patients or clients.

Neither the statute nor the regulations imposes a duty upon the APOC to act in a timely fashion upon the application for exemption filed by a declared candidate. Thus, as in this case, the Commission may fail or refuse to act on an application for an exemption until either the election has been held or it is too late to withdraw a candidacy. In such event, the purpose of the statute are defeated and candidates who believe themselves entitled to claim a privilege in behalf of others are subjected to the possible imposition of penalties they are entitled by law to avoid.

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In summary and to return to the state of the law applicable, all professions whether sole proprietors, partners or employees of professional corporations must disclose the names of all persons receiving services for which those persons paid $100.00 or more in the preceding year, unless those recipients fall within the classes of persons who are protected by 2 AAC 50.100.

Penalties

AS 39.50.060(a) provides that a person who refuses or knowingly fails to disclose information is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $100.00 and not more than $1,000.00 or by imprisonment for not more than 6 months or both.

Additionally, one who is elected or appointed shall forfeit his office. See APOC v. Marshall, Op. No. 2406 (1981).

AS 39.50.135 permits the imposition of a civil penalty of not more than $10.00 per day. 2 AAC 50.110 sets the schedule of civil penalties but the regulation is applicable only to public officials. The definition of public official contained in AS 39.50.200 does not include candidates. 2 AAC 50.135 sets a similar schedule for municipal officers.

Sincerely yours,

LAW OFFICES OF MARY A. NORDALE

Mary A. Nordale

MAN/jm

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SB
186

COMMITTEE REPORT

SENATE

FURTHER: None

1/19/82

Date: 2/2/82

Mr. President:

The Committee on HEALTH, EDUCATION AND SOCIAL SERVICES has had SB 136 adopting the Interstate Corrections Compace

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

[X] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

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

and recommends _____

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

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

CHAIRMAN

S 60 (Rev. 12/78)

JAY S. HAMMOND
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 17, 1981

The Honorable Jalmar Kerttula
President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. III, sec. 18 of the Alaska Constitution, I am transmitting a bill which would make Alaska a party to the Interstate Corrections Compact.

Under current law, Alaska is a party to the Western Interstate Corrections Compact, along with eleven other states. This measure is similar to that compact; however, it allows the state a broader choice of correctional facilities nationwide in which prisoners may be incarcerated than is presently available. By joining the Interstate Corrections Compact, Alaska will be able to place offenders in an additional eleven states. It is not necessary to withdraw from the Western Interstate Corrections Compact in order to become a party to this compact.

Enactment would enable the Division of Corrections to enter into contracts with party states for incarceration of our prisoners. Thus a wider range of rehabilitative programs would be available without the increased costs attendant in establishing such programs within our own correctional facilities.

Jurisdiction over persons confined out-of-state is retained by Alaska although such persons would still be subject to the rules of the institution where confined. The state also retains the power to inspect the facilities utilized and to visit the inmates.

Sincerely,

Jay S. Hammond
Governor

ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. _____
Title Interstate Corrections Compact
Requested by Governor Date _____

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

EXPENDITURES (Thousands of Dollars)

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

FUNDING (Thousands of Dollars)

GENERAL FUND			-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

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

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

It is estimated that enactment of this legislation would not result in any increase of expenditures. It will provide for an increased number of out-of-state facilities for placement of convicted offenders. Since the census of Alaskan State Correctional Centers are at maximum levels now, the Federal Bureau of Prison System must be relied upon to provide bed space. Entering into the compact would also open several other state resources, when appropriate, to Alaska.

Roger C. Lange

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

Prepared by: Roger C. Lange Date: December 30, 19
Division/Office: Adult Corrections PH: 465-3376
Department of Health & Social Services

Approval DHSS Mgt. & Bdgt: _____ Date: _____

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

POSITION PAPER

SENATE BILL NO. 186

"An Act adopting the Interstate Corrections Compact; and providing for an effective date."

Basically, this law would enable the State of Alaska to engage in contracts with the 16 other party states for the placement and/or exchange of prisoners for the purpose of treatment, long-range release planning and, in some cases, for protection purposes.

Alaska is presently signatory to the Western Corrections Compact (AS 33.25.010) along with 11 other states. The two compacts are very similar; in fact, the Interstate Corrections Compact was developed in order to encompass eastern states that were interested in expanding their placement resources. By adding the Interstate Corrections Compact, Alaska would increase placement resources by 100% or 11 additional states.

Although it is true that we are expanding our correctional facilities in order to return prisoners to the state, we must realize that for two to three years more, we will have no choice but to house many of our prisoners out of state. Recent developments indicate that the Federal Bureau of Prisons is having problems in accommodating so many state prisoners and may not be able to help us indefinitely to the extent they have in the past. We think it essential for us to develop other options.

Membership in the Interstate Corrections Compact would enable us to return some prisoners to home states, rather than placing them in the Federal Bureau of Prisons and, in some cases, accept Alaska residents who have been convicted and sentenced in other states. Alaska would not be under obligation to accept prisoners from other party states as mandatory reciprocation is not required in the Compact, nor would other party states be obligated to accept Alaska inmates. In each case of interstate placement, a contract must be negotiated between the party states.

Even though we are expanding our correctional facilities, there will always be a few prisoners with special needs who would benefit from being placed in specialized facilities outside of Alaska. By being party to the Interstate Corrections Compact, we would be in a better position to place those few offenders in appropriate settings. It should be noted some prisoners request to be returned to their home states and the Compact would provide an expedient means for us to do do.

POSITION PAPER/Department of Health & Social Services

Recommended by: C Flan Campbell

Charles F. Campbell, Director
Division of Adult Corrections

Date: 2/27/81

Approved by: Helen O. Beker

Commissioner
Department of Health and
Social Services

Date: 2-28-81

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. Senate Bill No. 186
Title Interstate Corrections Compact
Requested by Rules Committee Date 02/17/81

II. FISCAL DETAIL
Agency Affected Department of Health and Social Services - Division of Adult Corrections
Program Category Affected Offender Confinement, Reformation & Supervision
BRU, Program, or Subprogram(s) Affected Adult Confinement
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		-0-	-0-	-0-	-0-	

FUNDING (Thousands of Dollars)

GENERAL FUND		-0-	-0-	-0-	-0-	
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

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

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

It is estimated that enactment of this legislation would not result in any increase of expenditures. It will provide for an increased number of out-of-state facilities for placement of convicted offenders. Since the census of Alaska state correctional centers are at maximum levels now, the Federal Bureau of Prisons system must be relied upon to provide bed space. Entering into the compact would also open several other state resources, when appropriate, to Alaska.

IV. DATE 02/25/81 PREPARED BY Roger C. Lange
AGENCY Division of Adult Corrections
PHONE 465-3376

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named) M&B Approval _____ Date _____

33-001 (Rev. 12/80)

MEMBER STATES IN INTERSTATE CORRECTIONS COMPACTS

Western Corrections Compact States	Interstate Corrections Compact States
Alaska	* Arizona
* Arizona	* California
* California	* Colorado
* Colorado	Connecticut
Hawaii	Florida
Idaho	Georgia
Montana	Indiana
Nevada	Iowa
Oregon	Kansas
* Utah	Kentucky
Washington	Maine
* Wyoming	Nebraska
(Guam)	New Hampshire
	Tennessee
	* Utah
	* Wyoming
	(Guam)

* The asterisks indicate states which are signatory to both compacts.

B. Other Out-of-State Confinement Arrangements

INTRODUCTION

Through the years, groups of states have made attempts to set up legal machinery to allow officials to send individuals out of state to serve their prison sentences or, in the case of juvenile delinquents, to receive care and treatment in institutions of other states. Such arrangements are valuable for several reasons. First, an individual's prospects for rehabilitation sometimes can be improved if he can be confined in his home state instead of in a distant prison in a state where he has no relatives or friends and in which he will probably not remain after his confinement is over. Another reason for out-of-state confinement is the fact that some states lack facilities for persons who need special kinds of care such as individuals who are psychotic or mentally defective. The need for suitable places to confine women prisoners is another important factor. Some states do not have enough women prisoners to warrant construction and maintenance of an adequate state prison for women. When this is the case, states may prefer to use the facilities of nearby states so that their women prisoners will receive suitable care and receive other advantages such as job training and other special rehabilitative measures.

From the standpoint of numbers of states participating, the regional incarceration agreements, which are described below, are the most important examples of arrangements for out-of-state confinement. However, several other interstate arrangements dealing specifically with women or children also bear mentioning.

For a number of years New Hampshire and Vermont, acting under legislative authorization, participated in a cooperative agreement whereby New Hampshire's women prisoners sentenced to hard labor served their time at the Vermont Women's Reformatory. The transfers were made under an administrative agreement signed by the Vermont commissioner of institutions and the trustees of the New Hampshire State Prison. The agreement calls for payment of a per diem rate, plus certain other expenses, by New Hampshire; establishes New Hampshire's right to demand return of a prisoner or to visit the institution at any time; states that New Hampshire's prisoners will receive the same treatment and rehabilitative advantages as Vermont's prisoners; and sets forth other provisions regarding such matters as inmates' privileges.

Arrangements for women prisoners prisoners similar to the New Hampshire-Vermont agreement also ha[illegible]ed in the western states for a number of years. States which have pa[illegible] such arrangements at one time or another are Colorado, Nebra[illegible]lexico, South Dakota, Utah, and Wyoming.

Article X of the Interstate Compact on Juve[illegible] permits member states to enter into supplementary agreements for out-of-state institutionalization of delinquent juveniles when such institutionalization will make better programs or facilities available to the juvenile. A model agreement has been

developed for use by states which wish to enter into such arrangements.

The Out-of-State Confinement Amendment to the Interstate Compact on Juveniles permits juvenile escapees, absconders, and parole and probation violators to be confined in the institutions of the state in which they are found or in which they are being supervised under the compact. The main purpose of the amendment is to allow juveniles to be institutionalized in the state where their family lives instead of being returned for institutionalization in a state in which they have been adjudicated delinquent but in which they have no family ties. This amendment was promulgated in 1964. See Chapter 3 for further details on the Juvenile Compact and amendment.

The Western Interstate Corrections Compact, which is described below, contains langauge broad enough to cover out-of-state confinement of juvenile delinquents.

THE WESTERN INTERSTATE CORRECTIONS COMPACT

In February 1958, the Western Governors' Conference established a committee to draft a compact which would permit the western states to pool their resources in order to develop certain needed institutional programs at reasonable cost. A final draft of that compact was approved by the western governors at their November 1958 meeting. It has been adopted by Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming, and Guam.

The provisions of the compact are similar to the New England Compact (described below). There is one major difference. The New England Compact is limited to the New England states; the western compact permits joinder by any state which is contiguous to a member state.

Despite the ratifications of this compact, it has not been used extensively. The primary reason appears to lie in the fact that the main purpose for which it was drafted—development of special regional institutional programs—is not easy to accomplish. Under such a plan, one state would have to bear most of the burden of initiative and responsibility with respect to a special program. Although the western compact is also designed to permit transfers of prisoners for purposes other than utilization of special programs, little use has been made of this aspect of the compact. This is in contrast with experience under the New England Corrections Compact. The difference possibly stems from shorter distances in New England; and the New England states felt a real need for machinery permitting transfers for reasons not particularly connected with cooperative establishment of specialized institutional facilities.

THE NEW ENGLAND CORRECTIONS COMPACT

On April 13, 1959, local law enforcement agents and corrections officials from each of the New England states met in Boston to discuss cooperative programs for the confinement, treatment, and rehabilitation of offenders. An informal organization, known as the New England

Governors' Conference of State Correctional Administrators, was established to draft a compact designed to permit cooperative incarceration and make the most economical use of the New England states' human and material resources. That compact was drafted, and between 1960 and 1962 all of the New England states ratified it (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont).

Much of the New England Corrections Compact is similar to the Western Interstate Corrections Compact. The latter compact was already in existence at the time the New England Compact was drafted and was used as a model.

The New England Compact permits any member state to enter into a contract with any other member state to confine male or female offenders in each other's institutions. Contracts can have provisions for payment of costs by the sending state, but in most instances to date the New England states have arranged to "trade" prisoners and thus avoid the necessity for any financial payments. The compact does not cover Massachusetts' jail or house of corrections inmates. Acceptance of prisoners is discretionary, so any state, for its own reasons, may decline to undertake responsibility for incarcerating a prisoner of another state. When a transfer is made, the state of incarceration becomes the agent of the sending state, which retains jurisdiction over the offender.

The compact provides that persons transferred to another state must be treated in a humane manner and must be treated in the same manner as inmates of the state of incarceration. They also retain any legal rights they would have had if they had remained within the state which sentenced them. The compact also contains a provision which would permit a member state to pay a share of the cost of enlarging or constructing an institution in another party state. A percentage of the capacity could be reserved for use by the contributing state.

The compact has a number of advantages. It permits prisoners to be transferred to prisons close to home to facilitate adjustment when they are ready for parole. It makes family visits more feasible. It can be used to solve emergency problems such as sudden overcrowding, the need to break up hostile groups, or the destruction of a state's cell facilities by fire or other causes.

The six compact administrators have now created the New England Corrections Coordinating Council to serve as the administrative agency for operating under the compact.

THE (NATIONAL) INTERSTATE CORRECTIONS COMPACT

This compact was drafted in the late 1960s under the aegis of the Association of State Correctional Administrators. The compact is available for joinder by all states, the federal government, territories and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. First ratifications came in 1969, and as of 1977 the following states had become members: Arizona, Arkansas, California, Colorado,

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s, California, Colorado,

Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Minnesota, Missouri, Nebraska, Nevada, New Jersey, Ohio, Pennsylvania, South Carolina, South Dakota, Tennessee, Vermont, and Virginia.

The Interstate Corrections Compact is an enabling device providing the necessary legal framework for the cooperative care, treatment, and rehabilitation of offenders sentenced to or confined in prisons or other corrections institutions. However, the extent of operations under the compact will be determined by each party state: by the acts of its officials in making contracts, and by the acts of its judges and administrators in deciding whether to place offenders in institutions in other party states or confine them in facilities which may be available within their own state. The use to be made of the compact will vary from state to state and from time to time depending on need. With the compact available and ratified, each party state is able to secure the use of additional or improved corrections facilities by appropriate cooperative action to the extent desired. In fact, enactment of the compact does not bind a state to any action until it adopts a contract with another state. Nor does the compact prevent any state from making interstate arrangements pursuant to other statutes it may have for this purpose.

This compact contains virtually all of the provisions set forth in the New England and Western Corrections Compacts. The only missing item in the national version—and it is a major one—appears in Article III, Section (b) of the two regional compacts, as follows:

> Prior to the construction or completion of any institution or addition thereto by a party state, any other party state or states may contract therewith for the enlargement of the planned capacity of the institution or addition thereto, or for the inclusion therein of particular equipment or structures, and for the reservation of a specific percentum of the capacity of the institution to be kept available for use by inmates of the sending state or states so contracting. Any sending state so contracting may, to the extent that moneys are legally available therefor, pay to the receiving state a reasonable sum as consideration for such enlargement of capacity, or provision of equipment or structures, and reservation of capacity. Such payment may be in a lump sum or in installments as provided in the contract.

For further information, see the Council of State Governments *1972 Suggested State Legislation*, volume 31, which contains the text of the compact and extensive explanatory notes.

THE INTERSTATE COMPACT ON THE MENTALLY DISORDERED OFFENDER

This compact was developed in 1965 at the direction of the Midwestern Governors' Conference. The term "mentally disordered offender" includes two subgroups: (1) persons who have committed or are charged with having committed criminal acts but who are not subject to conviction because of their mental condition, and (2) persons under sentence who become mentally ill while in prison. The other out-of-state confinement agreements described in this chapter would not cover persons in the first category, and for various

SB

193

AMERICAN ASSOCIATION OF UNIVERSITY WOMEN

ALASKA DIVISION

April 1981

To: Members of the Senate State Affairs
From: Susan R. Clark, Legislative Chair, Alaska Division of the American Association of University Women
1109 C Street, Juneau, Alaska 99801 (586-6952)

Re: Veterans' Preference for State Employment (SB 103, SB 104)

I would like to begin first with an acknowledgement to Sen. Bradley, because I know that his hard work in this area has been done in good faith and out of a sincere concern for the welfare of those men and women who made personal sacrifices for the sake of our country's safety.

I also want to point out that I personally grew up in the military. My father, godfather, and father-in-law were all career officers in the armed services, and my husband and brother were both active in the military during the Vietnam war. I had planned at one time to make the Navy a career. I also wnat to point out that the new Alaska division president of A.A.U.W. is herself a vetran.

A.A.U.W. feels that we must bring to the attention of the legislature that while the goals of preference are legitimate, and while the current state statute may not have been enacted for the purpose of discriminating against women, the exclusionary impact upon women is so severe as to require the state to further its goals through a more limited form of preference.

Looking at the current law as too broad, please consider who is covered: a person with a minimum of 90 (181 is a change currently being proposed) days active service serving during World War I, World War II, and Vietnam or Korea who has been honorably discharged. According to the Veterans' Preference Act of 1944, such preference was designed to reward veterans for the sacrifice of military service, to ease the transition from military to civilian life, to encourage patriotic service, and to attract loyal and well disciplined people to civil service occupations. In terms of the last reason, it should be pointed out that preference itself has little if any relevance to actual job performance. The first two reasons for preference seem the most pertinent to Alaska - reward for sacrifice and ease of transition into civilian life. Both reasons are valid, but as lifetime preferences, they are subject to the objection that they give the veteran more than a square deal. Certainly, upon returning to civilian status, a veteran should have access to his or her job, and perhaps for 5 years or so after returning, preference could be given as reward and help for veterans, but there should be some sort of limit on the length of time one can reap rewards for what can be a brief and unhazardous term of service

Because the extent to which the status of veteran is one that few women have been permitted to achieve, every hiring preference for veterans, however modest or extreme, must admit inherent gender-bias, and therefore legislated preference must be considered with due caution and careful consideration. The 5 points for veterans and 10 points for disabled veterans comes directly from the 1944 Federal Veterans' Preference Act. These points are added to a veteran's score after other writen tests are administered. In Alaska where mere hundreths of a single point can separate job applicants, the system is overly weighted, especially when compared with other handicapped, disadvantaged or suspect classes of people.

Conceding that the goal here is to benefit the veteran, there is no reason to absolve the legislature from awareness that the means chosen to achieve this goal reserves a major sector of public employment to an already established class, which, as a matter of historical fact, is already 80% male in catagories other than the clerical and para-professional jobs. The current point system and lifetime preference, only compounds and contributes to sex bias in all levels of state employment.

Women have been overtly excluded from the military, and not just by tradition and culture. During WW I for example "a variety of proposals were made to enlist women for work in the Army as doctors, telephone operators, and clerks, but all were rejected by the War Dept." Navy women did achieve military rank and status during this time, and were the first women to do so. While the Army Nurse Corps was the first official military unit for women, they were not granted full military rank until 1944 - forty-three years later. During the Second World War several temporary women's units were formed including WAAC (Women's Army Auxiliary Corps), WAVES (Women Accepted for Voluntary Emergency Service), and WASP (Women Airforce Pilots). These women, however, were in fact civilians and had no regular military status, and thus no veteran status. In fact, although the WASP personnel were filling some of the most hazardous of flying jobs, that of towing targets for air gunnery practice, and testing planes fresh out of repair depots, they were denied commissions based on the fact that "the authority of the act of September 1941, to make temporary appointments as officers in the U.S. Army 'from among qualified persons' refers to and contemplates men exclusively, and may not be regarded as authority for commissioning women as officers...." These women finally won their hard earned veterans' status in September 1976, but other women who had been active in the war have not.

Women's services were finally established on a permanent basis in 1948, however quotas were placed on the numbers that could enlist. Women were not to exceed 2% of the total enlisted strength, their eligibility requirements were more stringent than were those for men, and career opportunities were also limited. In addition women were involuntarily removed from service for pregnancy, parenthood, and even marriage. These strictures have carried on into the '60's and '70's. Not until 1967 was the 2% quota lifted, and the many restrictive policies concerning women's participation in the military were not modified or eliminated until the 1970's. Amazingly, or perhaps not so, once the barriers were down women joined in large numbers.

In just three years from 1973-1975 the percentage of enlisted women in the military had doubled.

There are two ways to ameliorate the effects of the veterans' preference on women and minorities. One is to modify the point system and to place a time limit on prefential access to jobs. The other solution is to look to expanding what is considered by the word veteran, and thereby include in this law others who have served their country every bit as well and as patriotically as have those on "military active duty". Other states include language that recognizes nurses and other women who were discharged and so served in any "corps or unit of the United States established for the purpose of enabling women to serve with, or as auxiliary to, the armed forces of the United States..." Language should also recognize those who underwent severe hardship because of the war. In WW II both the Aleut Americans and the Japanese Americans were uprooted and forced into relocation camps. We have never rewarded their sacrifices with jobs or appeasements of any sort. In expanding the concept of who is a veteran, we need also to look at the men and women who served in civil defense jobs, with the American Red Cross, the Civil air patrol, as war correspondants, and in the merchant marine (who incidentally were in the same waters as navy destroyers and also under attack, but receive no reward in terms of their patriotism, personal sacrifice and danger).

Looking again at the contributions of women to the war effort, we are but slightly aware of the sacrifices and contributions of over 2 million World War II women who took the places of the absent men working in the American war industries: in shipyards, aircraft plants, ammunition plants. The call to "inlist" in the factories was every bit as organized and strong as for men in the armed forces. Concern about dangerous working conditions and long hours took a back seat to America's call to keep up the production to supply the war with weapons, and ammunition. For the short-handed women in the farm communities, the call was to get out the crops to feed the troops. If personal sacrifice, patriotism and danger is a standard for preference, then these women deserve veterans' status every bit as much as the service veterans. One amazing statistic of which you may be unaware is that during the war period "more deaths occurred from industrial accidents than from combat." Where was and is their reward? For their commitment and patriotism, they received not preferred lifetime access to civil service jobs, but firings. No one helped them with their transition back into "civilian" jobs. For many minority women who were even then the major financial support for their families, this transition meant leaving highly skilled, well paying jobs to go back to the dead end drudgery and poverty wages of domestic work.

It is interesting to note that the Federal Veterans' Preference Act of 1944 included in its preference the wives of disabled service personnel and the unmarried widows of deceased ex-service personnel. We tend to look at patriotic service and personal sacrifice as being a military male perogative, but I feel we need to look hard at the patriotism and sacrifice of the service personnel spouses who held the country and family together as essentially single parents, frequently having to hold down another job to

support their families because the salary range for enlisted personnel in the military is so low that those families qualify for government assistance. Vietnam vets, in addition, currently have the highest divorce rate of any class of Americans. a rate that is generally high among all military personnel. This means, for example, that those women who held families together during the father's service, and who now must have full time employment to support themselves and their children (of whom women still usually have custody), who traditionally are not educated for well paying jobs, and who have traditionally been denied many levels of employment advancement, now in addition find that the men to whom they gave support are receiving preferential treatment in the jobs the women need to support their families.

As you can see, equitable expansion of the term veteran would be a formitable legislative task, but should be attempted so that families of veterans and those who served alongside veterans can be recognized. As it now stands, the Alaska statute exacts a substantial price from a group of individuals who have long been subject to employment discrimination, and who, because of circumstances totally beyond their control, have had little if any chance of becoming members of the preferred class. Admitting that any hiring preference for veterans does at this time have a severe impact on the public employment opportunities of women, we nevertheless recognize the sacrifice and hardship of military veterans must not be ignored. Through workable modifications in the law, we can strive together to discover solutions that recognize the needs, sacrifices, and contributions of both the military veteran groups and the groups of minorities and women which are so impacted by historical discrimination.

NATIONAL ORGANIZATION FOR WOMEN
Anchorage Chapter
P.O. Box 1722
Anchorage, Alaska 99510

March 24, 1981

Senator Vic Fisher
Senate Staff
Pouch V, State Capitol
Juneau, Alaska 99811

Dear Senator Fisher:

On behalf of the Anchorage Chapter of the National Organization for Women, I wish to comment on Senate Bill No. 193, Senate Bill No.104, and Senate Bill No. 248.

Senate Bill No. 193 entitled: "An Act amending the State Personnel Act (A. 39.25); and providing for an effective date."

A proposed amendment, change in language page 14, line 22,

...after the word age,... strike "or",

...insert "marital status, changes in marital status,"

...continue with "handicap,"

...insert "or any other non-merit reason."

Proposed language would be (line 21) "...discrimination due to race, sex, color, religion, national origin, age, marital status, change in marital status, handicap, or any other non-merit reason." These changes would strengthen this non-discrimination statement. Employment status should not be inhibited by a persons marital situation or other reasons not effecting their work performance.

Senate Bill No. 248 is a good bill and will strengthen equal employment opportunities for both women and minorities within the executive branch. This bill has our support.

Senate Bill No. 104 is unacceptable. Historically veteran's preference legislation has proven to have a negative impact on women in the job market. The variation in numbers of women who qualify for veteran's benefits as compared to the numbers of men is an inhibiting factor to equal employment opportunities for women.

Your consideration of these comments is appreciated.

Sincerely,

Madeline G. Holdorf

Madeline G. Holdorf
President

cc: Labor Committee
Anchorage Chapter, National
Organization for Women

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 193 Page 1 of 4

Title An Act amending the State Personnel Act (AS 39.25)

Requested by Rules Committee (for the Blue Ribbon Commission) Date 02-20-81

II. FISCAL DETAIL

Agency Affected Administration

Program Category Affected General Government

BRU, Program, or Subprogram(s) Affected Personnel

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

EXPENDITURES (Thousands of Dollars)

		FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100	PERSONAL SERVICES		56.4	62.1	68.3	75.1	82.6
200	TRAVEL		.7	.8	.9	1.0	1.1
300	CONTRACTUAL		6.4	7.0	7.7	8.5	9.4
400	COMMODITIES		6.0	.9	1.0	1.1	1.2
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL		69.5	70.8	77.9	85.9	94.3

FUNDING (Thousands of Dollars)

GENERAL FUND		69.5	70.8	77.9	85.9	94.3
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME		2	2	2	2	2
PART TIME						
TEMPORARY						

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

Personal Services: A Regulations Specialist II and a Clerk II will be needed to fulfill the requirements of the Administrative Procedures Act.

Travel was inflated at a rate of 12 per cent. All other factors were inflated at a rate of 10 per cent. FY 82 contains one time furnishing costs in commodities.

The cost of the Hearing Officer and Legal Notices will be sustained by the Personnel Board Budget.

IV. DATE March 12, 1981 PREPARED BY Bruce Cummings

AGENCY Division of Personnel

PHONE 465-4430

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named) Senator Pay

cc: Keith Specking (Office of the Governor)

SB-001 (Rev. 12/80)

1.	POSITION TITLE: Regulations Specialist II			RANGE/STEP: 16 A	BARG. UNIT: K	LOCATION: Juneau	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 12	RP No.	PCN No.	PRIORITY	FORM 12 PAGE/LINE	LEG.		

3	TYPE OF EXPENDITURE	1	2	AMOUNT 3
4	PERSONAL SERVICES: SALARY	2,291 per mo.	27,492	
5	BENEFITS	15.79 %	4,341	
6	FICA	6.13 %	1,685	
7	HEALTH INS.	150 per mo.	1,800	
8	TOTAL PERSONAL SERVICES			35,318
9	TRAVEL			700
10	CONTRACTUAL			3,200
11	COMMODITIES			3,000
12	EQUIPMENT			
13	OTHER			
14	TOTAL COST	complete		42,218

	CODE	FUNDING SOURCE	
15		FED RCPTS	
16		GF MATCH	
17		GEN. FUND	42,218
18		I-A RCPTS	
19		PGM RCPTS	
20		OTHER	
21	CONTINUATION		
22	ADDITION		

FOR B&M USE ONLY

4A KEY NUMBER ... COLUMN NO.

JUSTIFICATION:

To properly implement Senate Bill 193, as it has been presented, will require the services of a Regulation Specialist II.

The Regulation Specialist II will assist the Director of Personnel in the proper preparation and drafting of new or revised regulations under the Admin. Proc. Act.

AGENCY Administration PROGRAM Centralized Administrative Services

BRU Personnel

COMPONENT Personnel

13 REQUEST FOR NEW POSITION.

REVISED DATE

FY 82

	POSITION TITLE			RANGE/STEP	BARG. UNIT.	LOCATION		APPROV.	DISAPP.
1	Clerk II			7 A	K	Juneau	GOV.		
2	TYPE OF POSITION: PFT	STAFF MONTHS: 12	RP No.	PCN No.	PRIORITY	FORM 12 PAGE/LINE	LEG.		

	TYPE OF EXPENDITURE	1	2	AMOUNT 3
4	PERSONAL SERVICES: SALARY 1,319 per mo.		15,828	
5	BENEFITS 15.79 %		2,500	
6	FICA 6.13 %		970	
7	HEALTH INS. 150 per mo.		1,800	
8	TOTAL PERSONAL SERVICES	11		21,098
9	TRAVEL	22		
10	CONTRACTUAL	23		3,200
11	COMMODITIES	24		3,000
12	EQUIPMENT	25		
13	OTHER			
14	TOTAL COST			27,298

	CODE	FUNDING SOURCE	
15		FED RCPTS. 1002	
16		GF MATCH 1003	
17		GEN. FUND 1004	27,298
18		I-A RCPTS. 1007	
19		PGM RCPTS 1008	
20		OTHER	
21	CONTINUATION		
22	ADDITION		

FOR BGM USE ONLY

4A Key NUMBER _____ COLUMN NO. _____

JUSTIFICATION:

To properly implement Senate Bill 193, as it has been presented, will require the services of a Clerk I. The Clerk I will assist the Regulation Specialist II in the proper distribution of the proposals and in the technical requirements.

AGENCY Administration PROGRAM Centralized Administrative Services

BRU Personnel

COMPONENT Personnel

13 REQUEST FOR NEW POSITION.

REVISED DATE _____

FY 82

TWELFTH LEGISLATURE

FISCAL NC

I. REQUEST

Bill/Resolution No. SB 193 Page 4 of 4

Title An Act amending the State Personnel Act

Requested by _____ Date _____

II. FISCAL DETAIL

Agency Affected Administration

Program Category Affected General Government

BRU, Program, or Subprogram(s) Affected Labor Relations Agency (Personnel Board)

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

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		17.0	18.7	20.6	22.6	24.9
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		17.0	18.7	20.6	22.6	24.9

FUNDING (Thousands of Dollars)

GENERAL FUND		17.0	18.7	20.6	22.6	24.9
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

Above costs assume costs of $75/hour for a hearing Officer and a total of 120 hours; $500/month for contracted secretarial services and 2.0 publications costs. Inflation beyond FY 82 is calculated at 10%.

IV. DATE 03-06-81 PREPARED BY Judy Crandall

AGENCY Administration

PHONE 465-2277

cc: Original: Legislative Finance
Budget and Management
Prime Sponsor: First Legislator Named)
Senator Ray
83-00: Reiser Speckley

April 6, 1981

Senator Jalmar Kertulla
Pouch V
Juneau, Ak 99811

Dear Senator:

We recently found that Senate Bill 193 includes a section 8 that repeals and re-enacts A.S. 39.25.110, but deleted "teachers employed by the state to teach in schools operated by the state." This may have been due to an oversight that the teachers of the Alaska Skill Center and the Correspondence Study Teachers are still included in this category. Several individuals (Terry Cameran, Bruce Cummings, Bob Manners and Jerry Hiley) have testified that the exemption from the classified service remain in effect, and we agree. Would you please keep an eye on this and inform us of any action or further hearings on this bill?

Thank you.

Sincerely yours,
Al Lamboran, Sec-Treas.

for Ben Ikerd, President
Alaska Skill Center Teachers Association

c.c. Boohe:
Hiley
Bill Ray, Chairman
Blue Ribbon Commission on the State
Personnel Act
Ikerd
Sen. V: Fisher, Chairman
Senate State Affairs Committee

Alaska State Legislature

JUNEAU, ALASKA

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT
Pouch AG/Mail Stop 0123
Juneau, Alaska 99811
(907) 465-4442

Senator Bill Ray
Chairman

MEMORANDUM

March 31, 1981

TO: Members of the Senate State Affairs Committee

FROM: Teresa B. Cramer
Administrative Assistant

SUBJECT: SB 193 - Amending the State Personnel Act

Senate Bill 193 makes a comprehensive revision of the State Personnel Act, to change personnel practices, to expand the protections granted employees in the exempt and partially exempt services, and to make the Act consistent with the Public Employment Relations Act. The major changes made in the bill are noted below:

Section 6. Amending AS 39.25.080. PUBLIC RECORDS.

This section amends the current law to provide that only those personnel records listed are available for public inspection. In fact, the materials listed are those which are presently made available under existing law for public inspection. The law now states that except for those materials made confidential by the Personnel Rules, state personnel records are public.

Section 8. Amending AS 39.25.110. EXEMPT SERVICE.

The bill deletes the material in the existing paragraph (8) which states that "certificated teachers employed by the state to teach in schools operated by the state" are in the exempt service. After being advised by the Personnel Office of the Department of Education that there were no employees of schools operated by the state, the commission deleted the paragraph. In fact, there are employees considered to fall within this group. They are employed as correspondence study teachers in Juneau and in the Alaska Skills Center in Seward. The commission has not had an opportunity to consider whether it wishes to change its initial action of deleting paragraph (8).

Section 9. Amending AS 39.25.120. PARTIALLY EXEMPT SERVICE.

Paragraph (19) of this section of the bill adds a group of employees to the partially exempt service who are presently members of the classified service but do not participate in collective bargaining. These are the employees of the Division of Labor Relations within the Department of Administration who are responsible for representing the state in collective bargaining. The majority of the commission recommends that these employees be placed in the partially exempt service in order to insure that they are directly responsive to the policies of the administration.

Section 12. Amending AS 39.25.140. AMENDMENT OF PERSONNEL RULES.

The bill proposes that those Personnel Rules which fall within areas of concern to the public be required to be adopted in accordance with the Administrative Procedures Act to insure an opportunity for public comment. All of the Personnel Rules are presently exempt from the requirements of the APA.

Section 13. Amending AS 39.25.150. SCOPE OF THE RULES.

Paragraph (16) of the bill no longer sets a limit of 30 days for disciplinary suspension.

Paragraph (17) of the bill provides that the Personnel Rules shall include procedures for resolving disputes from the general public.

Paragraph (23) of the bill is added to permit the adoption of Rules relating to special employment programs for the disadvantaged.

Section 14. Amending AS 39.25.153. PERSONNEL OFFICERS.

Subsection (a) provides [illegible] all personnel officers shall be employees of the department in wh[illegible]y serve.

Subsection (b) amends the powers granted to the personnel officers listed in the statute.

Section 15. Amending AS 39.25.160. GENERALLY.

Subsection (c) extends protection from being required to make contributions to a political party to all employees. The existing

subsection applies only to those employed in the classified service.

Subsection (e) adds a requirement that members of the partially exempt service resign from state employment when seeking political office.

Subsection (f) extends protection from unlawful discrimination to all state employees, not merely to members of the classified service.

Section 17. Amending AS 39.25.170. HEARINGS AND APPEALS UPON DISMISSAL, DEMOTION, OR SUSPENSION.

Subsections (c) and (i) repeat the expanded coverage from unlawful discrimination which was granted in AS 39.25.160(f).

TBC:lmk

NEA - ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

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Robert C. Manners
Executive Secretary
Juneau Office

Robert C. Cooksey
Deputy Executive Secretary
Juneau Office

James D. Alter
Field Staff
Juneau Office

Charles L. O'Connell
Deputy Executive Secretary
Anchorage Office

Dianne Anderson
Field Staff
Anchorage Office

Steve Pulkkinen
Field Staff
Anchorage Office

Mary Ann Eininger
Deputy Executive Secretary
Fairbanks Office

March 27, 1981

TO: Senator Vic Fischer, Chair
Senate State Affairs Committee

FROM: NEA-Alaska

MEMORANDUM: SB 193

Regards Section 39.25.110, EXEMPT SERVICE, the changes therein no longer provide that "(8) certificated teachers employed by the State to teach in schools operated by the State" be included in this section.

We respectfully request that the State Affairs Committee amend SB 193 to include in Section 39.25.110 the group referred to in #8 above, or more specifically, the teachers of the Centralized Correspondence Study Program of the Department of Education.

Exclusion at this time from exempt service status may have the effect of disenfranchising this group of employees of the State of Alaska from their statutory rights under 23.40, the Public Employees Relations Act, to organize and negotiate their terms and conditions of employment.

For nearly two years the Correspondence Teachers have been trying to establish their rights to collective bargaining through the State Labor Relations Agency. This effort has been expensive, time-consuming, and, at many times, extremely frustrating.

On 19 December 1980 the Agency , in Order and Decision 56B determined that the Correspondence Teachers did in fact have the right to organize and negotiate their terms and conditions of employment under 23.40. Since part of the rationale for this Decision and Order centered on the fact that Correspondence Teachers enjoyed exempt status, our concern is that exclusion at this time may serve to confuse the issue and possibly deprive them of rights under the Act.

Thank you for your attention and consideration to this matter.

Respectfully submitted:

Robert Manners
Executive Secretary

RM:jw

ALASKA PUBLIC EMPLOYEES ASSOCIATION
State Headquarters: 340 North Franklin Street, Juneau, Alaska 99801 • Tel: (907) 586-2334

MEMORANDUM

To: Nancy Groszek, A.A.
State Affairs Committee

From: Cherie Shelley
Executive Director

Subject: SB 193, Section 12

Date: April 3, 1981

The above-referenced provision requires that proposed changes in the personnel rules be submitted by the director of personnel to the Commissioner of Administration, who then forwards the approved changes to the personnel board for further action. If a proposed amendment concerns "matters of public policy," it is then subject to the review procedures of the Administrative Procedure Act.

As an initial matter it is worth noting that very few state employees are still subject to the personnel rules, as they have in large part been superseded by collective bargaining agreements. It seems a waste of time and expense to require the personnel board to comply with the detailed and time-consuming demands of the Administrative Procedure Act for changing rules that affect only the handful of employees not represented by a labor organization.

Of more serious concern is the potential for disruption contained in paragraph (f) of section 12, listing some examples of "matters of public policy." A quick review of the items listed reveals that many of them are already addressed through collective bargaining. However, by labeling them "matters of public policy," a very real possibility of conflict between this provision and the law giving public employees the right to bargain collectively is created.

The legislature extended the right to organize for purposes of bargaining collectively to public employees at AS 23.40. et seq. Public employers are also given the corresponding obligation to negotiate with and enter into agreements with those organizations representing employees "on matters of wages, hours, and other terms and conditions of employment." AS 23.40.070(2).

ANCHORAGE FIELD OFFICE
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TELEPHONE (907) 456-6412

JUNEAU FIELD OFFICE
227 4TH STREET
JUNEAU, ALASKA 99801
TELEPHONE (907) 586-6305

The phrase "terms and conditions of employment" is defined at AS 23.40.250(7) as meaning "the hours of employment, the compensation and fringe benefits, and the employer's personnel policies affecting the working conditions of the employees; but does not mean the general policies describing the function and purposes of a public employer."

There is a substantial danger that the above quoted language barring negotiations over general policies relating to the function and purposes of the employer will be read to mean those things designated in the proposed legislation as "matters of public policy." This follows from the tendency to equate "public policy" matters with those things for which collective [illegible]raining is prohibited as not properly the subject of negotiatic[illegible]uch an interpretation would immediately remove eligibili[illegible]urs of work and merit increases from the arena of collect[illegible]bargaining, with the possibility that other terms and conditi[illegible]s of employment would also be held to be "matters of public policy" and therefore not subject to negotiation.

This result is obviously contrary to the intent of the Public Employment Relations Act, but the fact remains that an ambiguity is created by the reference to "public policy." So long as the application of this phrase in the proposed legislation is limited to the context in which it appears, i.e., the personnel rules, nothing beyond the apparent intent of the bill will follow.

It seems that an additional subparagraph or change in wording to the effect that the application of the "public policy" test is limited only to this provision would be in order. This would guarantee that no unexpected and unintended amendment of PERA occurs through an improper application of this legislation should it pass.

Ombudsman

Frank Flavin

State of Alaska

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MEMO

DATE: May 14, 1981

TO: Senate State Affairs Committee

FROM: Frank Flavin, Ombudsman

RE: Proposed CS for Senate Bill 193

Proposed Amendment:

In section 39.25.140 at page 8, line 3 of the proposed CS insert subsection (d) of Sec. 39.25.140 of the original SB 193 found at page 8 lines 6 through 8. This subsection to become subsection (c) in the proposed CS to read:

> (c) If the proposed amendments concern matters of public policy, the personnel board shall adopt them in accordance with the Administrative Procedure Act (AS 44.62).

The present subsection (c) at page 8 line 3 of proposed CS should become subsection (d) and read:

> (d) If the proposed amendments relate only to internal management of the state agencies [when the proposed amendments are submitted to the personnel board,] the commissioner of administration shall post notice in public buildings throughout the state that the personnel board has the proposed amendments under consideration. The notice required by this subsection shall be posted at least 30 days before any decision is made to amend the personnel rules and shall include an address for the receipt of written comments.

Subsections (d), (e), (f) and (g) should be respectively relettered as subsections (e), (f), (g) and (h).

BASIS

As drafted, Sec. 34.25.140 of the proposed CS presumes that amendment of personnel rules is a matter of concern only to state employees and management. In fact, many procedures, such as recruitment, examination, selection methods and eligible lists directly impact members of the general public. It is safe to say there are as many people who would like to be state employees as those who are. We receive many complaints concerning state hiring practices. The Administrative Procedures Act is the established vehicle for insuring participation by members of the general public.

OVERVIEW OF THE EFFECT OF COLLECTIVE BARGAINING ON THE STATE PERSONNEL ACT AND THE PERSONNEL RULES

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Senator Bill Ray, Chairman

Blue Ribbon Commission on the

State Personnel Act

August 1979

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I. INTRODUCTION

The purpose of this overview is to summarize the effect of collective bargaining on the Personnel Act (AS 39.25) and the Personnel Rules and, as space permits, to identify the different systems for handling personnel procedures established by the contracts considered. This is a topical presentation of the Personnel Act, the Rules and five of the eight collective bargaining contracts covering Alaska's public employees during 1979. No attempt is made to investigate the application of the contracts: The study is limited to summarization of actual contract terminology.

The five contracts studied represent a variety of union memberships and interests: APEA's General Government Unit (GGU) represents non-supervisory members; APEA's Supervisory Unit represents supervisory and managerial members; Confidential Employees Association (CEA) represents members employed in personnel departments; Local 71 represents members belonging to the labor, trades and crafts professions; and Public Safety Employees Association (PSEA) represents regularly commissioned public safety officers.

Because marine employees are classified as exempt and are therefore excluded from the provisions set forth in the Personnel Act (AS 39.25.110(12)) and the Personnel Rules, they have not been considered here. The Inlandboatmen's Union of the Pacific (IBU), the International Order of Masters, Mates and Pilots (MMP) and the Marine Engineers Beneficial Association (MEBA) negotiate with the state on wages, hours, working conditions and other employee benefits covering marine transportation employees engaged in the operation of the state ferry system. AS 23.40.040.

Each of the collective bargaining contracts reviewed here contains a clause committing the union and the state to strengthening merit principles in the bargaining unit and to use all due diligence in maintaining merit principles among public employees. Each contract also contains a statement that the terms of the contract take precedence over personnel rules and departmental operating procedures. One of the contracts provides that if the terms of the contract conflict with the law, the contract supersedes the provision of the law. Additionally, the contracts provide that the parties will renegotiate if any portion of the contract is declared invalid and that the remaining parts of the contract should be considered valid.

There are two Local 71 contract versions, one printed by the state and one by the union. There are no substantive differences between the two, although articles and sections are numbered differently. All citations noted herein are from the union version.

II. CLASSIFICATION

A. Statute:

> Sec. 39.25.150. Scope of rules. The personnel rules shall provide for (1) the preparation, maintenance, and revision by the director of personnel...of a position classification plan for all positions in the classified and partially exempt services;

B. Personnel Rules

Actual allocations of positions to job classifications are handled by the Director of the Division of Personnel with assistance from the appointing authorities. This necessitates budgeting prior to the completion of classification actions and certification of the availability of funds by the Director of the Division of Budget and Management. PR 2 04.5. Periodically, classification allocations in both the classified and partially exempt service are to be systematically reviewed by the Director, and appropriate adjustments are to be made in accordance with findings. PR 2.

C. Collective Bargaining Contracts

All collective bargaining contracts representing employees in the state service recognize the classification, development, modification and assignment of positions to various classifications as a management prerogative. The contract terms on this topic are limited, in most instances, to requirements that job descriptions be updated periodically, and to the enumeration of the classifications within each union.

General Government Unit

The GGU contract provides that the union may require the employing department to prepare an updated position description when it believes the duties and responsibilities of an employee's position description are inconsistent with the employee's assigned duties. The union may then request the department to order a job audit by the Chief of the Classification and Pay Section of the Division of Personnel. If the union believes inequities exist in a class series, between classes or in salary ranges assigned classes, it may notify the Chief of Classification and Pay, who must then respond. In either case, the union may appeal any findings of the Chief of Classification and Pay to the Director of Personnel and then to the Commissioner of Administration. Art. 19.

Supervisory Unit

In the SU contract, disputes or grievances relating to classification are apparently subject to grievance procedures outlined in Article 10, which state that any dispute arising between the unit or an employee and the state is to be settled by the methods outlined in that article. The contract does not otherwise address the topic of classification.

Local 71

Local 71's contract states that the state and the union agree to review all existing classification specifications and descriptions within the union's purview and to take any classification or reclassification action necessary to correct errors. A procedure is set forth for handling disputes on such matters. The Commissioner of Administration is responsible for initiating investigations on classification actions disputed by the union. If the Commissioner of Administration and the union cannot resolve an issue regarding classification, then an arbitrator may be called in for a final binding decision. The arbitrator has authority to establish a new wage rate or classification only for positions in which new types of equipment or operations for which rates of pay have not been previously established are the subject of the dispute.

Confidential Unit

The CEA contract has no provisions addressing the classification process. Any disagreement or dispute regarding classification could conceivably be filed in accordance with grievance procedures set out in the contract. Art. 13.

Public Safety Unit

The PSEA contract enumerates classifications within the union by title and salary range (Art. 15), and grievances regarding classification resulting from violations of the personnel rules or the operating procedures manual can be brought before the Commissioner of Administration. Grievances involving contract terms may be brought to binding arbitration. Art. 10(1).

D. Summary

Of all the contracts studied, Local 71's appears to establish the most involvement in the state's classification system. Only Local 71's contract requires a classification study of positions within the union and provides a separate procedure for resolving classification disputes.

The membership of CEA and SU have the most knowledge of, and in the normal scope of their responsibilities, the most control over classification procedures. Confidential employees in the normal course of their functions handle all classification actions for their departments and are therefore less likely to encounter problems on their own behalf. Similarly, supervisors work closely with the classification plan and are more familiar with its implementation. Conversely, GCU, Local 71 and PSEA members are isolated from the actual classification processes and consequently have less ability to influence classification decisions.

III. RECRUITMENT, EXAMINATION AND ELIGIBLE LISTS

A. Statutes

The Personnel Act states that, in accordance with the merit principle of employing the best qualified persons for state service, the personnel rules shall provide for "the use of sound selection methods, including open competitive examinations...for positions in state service". AS 39.25.150(3). The rules shall also provide for:

> the establishment and maintenance of eligible lists for appointment and promotion; the names of eligible candidates shall be placed on eligible lists in order of their relative performance in the examinations. AS 39.25.150(5).

The statutes provide for a veteran's preference system (AS 39.25.150(23)), employment preference for the severely handicapped (AS 39.25.150(25)), and a vocational substitution program for Alaskan residents who live in underemployed or remote areas of the state where opportunities to gain hiring qualifications do not exist (AS 39.25.155).

B. Personnel Rules

The Director of the Division of Personnel is responsible for recruitment of qualified applicants for the classified and partially exempt service. PR 3 01.0.

There are three types of examinations used by the state: continuous examinations, with no closing date for receipt of applications; specific examinations, which do have a time limit on receipt of applications; and promotional examinations, which are only open to permanent employees. PR 3 01.0. The final examination grade may be based on all factors of the examination, including test results, educational requirments, experience and other data from the applicant or other verified information. PR 3 05.1. The performance record and seniority of a permanent employee in the classified service applying for promotion is also evaluated. PR 3 05.2.

Applicants may review tests, except those used for a continuous recruitment class and other information used in the applicant's final rating except information gained as a result of confidential inquiries. PR 3 06.0.

All eligible lists must be by class title, with eligibles ranked following competitive tests and performance ratings. All lists are applicable statewide, unless otherwise designated by the Director, and all vacancies are filled by certification from competitive eligible lists except as otherwise provided in the rules. PR 4 01.0.

The Director is responsible for the certification of such lists for filling vacancies within the classified and partially exempt services. Emergency appointments are an exception to this rule. Eligibles for permanent positions are first to be certified from layoff lists, and if none exist, the Director certifies from competitive eligible lists. Appointments are made on the basis of merit from the selection of the highest on the list in accordance with the duties of the position. Selection is made from the top five available eligibles on competitive lists, and can include eligibles on rehire lists. In unique and unusual circumstances, the appointing authority can choose an applicant below the top five. PR 5.

C. Collective Bargaining Contracts

The contracts examined in this study, with the exception of Local 71's, recognize recruitment, examination, selection, promotions, transfers and the determination of methods for such action as a management prerogative.

General Government Unit

When a member applies for a position within the GGU contract's jurisdiction, the applicant is required to receive notification of her or his eligibility for a competitive examination. If the Division of Personnel finds that an applicant fails to meet the test and examination standards for the position, the unit can receive an explanation of the criteria used in the computation of the final rating on training and experience. Art. 18(9). If a written examination is found to have discriminatory impact on members, the unit and the Deputy Director of the Division of Personnel agree to appoint an advisor to review the examination(s) in question and to made recommendations for corrective action. If the GGU and the Deputy Director cannot reach an agreement on the advisor's recommendations, the matter is referred to the Director for final disposition. Art. 18(10).

The GGU contract also requires that explanation be provided to the union from the Division of Personnel when a member is refused certification on an eligible list. Employees are not required to seek the approval of their supervisors when requesting placement on tranfer lists. Art. 18(1).

Supervisory Unit

The SU contract also requires explanation from the Division of Personnel when a member is refused certification on an eligible list. Supervisors cannot remove names of employees from eligible or transfer lists, and placement on transfer lists does not necessitate the approval of a supervisor. Art. 16(1).

The contract does not contain any direct reference to the recruitment and examination processes, but does agree to uphold the merit principle of encouraging the hire of the most qualified. Art. 4.

Public Safety Unit

PSEA's contract stipulates that the merit principle of selecting the most qualified will be upheld. Art. 5. There is no specific mention of the topic of eligible lists in PSEA's contract.

Confidential Unit

CEA's contract requires that employees receive written explanation in instances where they are refused certification on eligible lists or are removed from lists. Placement of an employee's name on a transfer list does not necessitate a supervisor's approval. Art. 12(1). CEA's contract requires that vacancies be filled first from layoff lists, and if none exist, from promotional lists. This serves to give applicants who are current members of the union or previous members preference over applicants from outside the union's jurisdiction. Art. 12(4).

Local 71

Preferential hiring facilities are provided for within the Local 71 contract for the purpose of operating a job referral system, which the state uses in acquiring employees for classifications within the union's purview. A joint hiring committee of two state representatives and two union representatives is established contractually to oversee and control the job referral system, to establish rules and regulations for maintaining the system and to hear grievances, or in the case of a deadlock, to employ an impartial umpire to make a final binding decision. Local 71's contract stipulates that selection of applicants for certification to the state is not discriminatory and that preference is given to residents of Alaska and residents within the immediate vicinity of available positions. The state maintains the right to reject applicants referred by Local 71, but must supply reason(s) for rejection of applicants. In the event that Local 71 cannot supply a qualified applicant upon the state's request within 48 hours, the state may hire from any other source, provided Local 71 is notified of the action. Art. 5.

Because of federal regulations and merit system standards, Occupational Safety Compliance Officers have been exempted from the job referral system and are subject to the testing and examination process used by the state. Art. 43(1).

D. Summary

Collective bargaining appears to have no significant impact on the state's recruitment and examination processes. However, Local 71's job referral system does replace the state's system with an alternative

practice. Federal and statutory mandates of hiring the best qualified are upheld by all of the unions considered in this study.

IV. TEMPORARY, EMERGENCY, PROVISIONAL & PART TIME APPOINTMENTS

A. Statutes

The Personnel Act provides for the existence of emergency, temporary, provisional and permanent part-time appointments in the personnel rules. Temporary appointments are defined by statute as those of a seasonal or temporary nature, and provisional appointments as those occuring without competitive examination when appropriate eligible lists are not available. AS 39.25.150(8),(9) and (10). Permanent part time appointments are defined as employment on the basis of 15 hours or more a week, including employment of two persons to fill one permanent full-time position. AS 39.25.150(24).

B. Personnel Rules

The personnel rules define more clearly the extent of the appointments and their limitations. Temporary appointments are not to exceed six months in duration and are to be made from eligible lists when practicable. The Director of the Division of Personnel may grant extensions to this time limit, and temporary employees may seek employment in other departments immediately following the expiration of this term, but not with the same employing department. PR 5 06.0. The rules also create short term appointments, which are not to exceed 90 days in any one calendar year and may be made for positions in remote areas only. PR 5 06.1.

Emergency appointments are limited to 30 days in duration with no more than three appointments per person in any one calendar year. An emergency is defined as a condition necessitating immediate action to provide work in the public interest, and as filling a need that could not be anticipated. Exception to the limit of three appointments per person in one year is made for guards or attendants for prisoners. PR 5 07.0.

Provisional appointments may be authorized by the Director in the absence of appropriate eligible lists. A provisional employee must be terminated upon the expiration of the probationary period of a regular permanent appointment or the subsequent appointment from an appropriate eligible list. A provisional employee may be converted to probationary status, provided the employee meets the qualifications specified by the Director and is placed on an eligible list in a position that is reachable for appointment. PR 5 08.0.

C. New Legislation

Effective as of January 1, 1980, reference to temporary appointments will be eliminated from the statutes in accordance with new legislation on nonpermanent hire. The following is a summary of Chapter 67, SLA 1979:

State Employees

Categorizes all classified state employees as permanent, nonpermanent or emergency employees and provides that a nonpermanent employee may not be appointed and placed on the payroll without the prior written approval of the director of the division of personnel and labor relations. Sets out conditions under which nonpermanent employees may be appointed and limits their service to 120 days in a 12-month period unless they are "program or project employees." Makes a person who falsely certifies a need for a nonpermanent employee personally liable in a civil action to the nonpermanent employee if the employee was terminated as a result. (HCS CSSB 198).

D. Collective Bargaining Contracts

General Government Unit

GGU is recognized as the exclusive representative of temporaries in the unit, and conditions on temporary employment are set out. Temporaries do not come under the definition of "member". The contract limits the temporary employment period to nine months, with no extensions possible. However, by amending the contract, that term has been shortened to six months. Temporaries must meet minimum qualifications of the classifications they are hired for. Following the six month term, a person may be employed as a temporary within a different employing department. Temporaries receive holiday pay, credit for time in service should they become probationary employees and compensation that is at least equivalent to the entry level of the assigned class. Art. 2(2).

Emergency appointments to positions within GGU are limited to a total of no more than 60 days in any calendar year. The contract states that emergency employees are not members of the unit and are therefore not covered by the terms of the contract. They are subject to the personnel rules on emergency appointments. Art. 22.

Supervisory Unit

The SU contract contains a clause similar to that of GGU regarding the representation of temporaries, but does not include provision for retroactive credit for time in service towards the probationary period. Art. 2(2). Emergency appointments are not addressed in the SU contract. By definition, the term "employee" as used in the contract includes permanent, probationary and provisional employees. Art. 1(2)(c).

Public Safety Unit

Temporaries are also recognized as bargaining unit members of PSEA. Temporaries must meet minimum qualificaitons, be paid at wage levels equivalent to those paid to permanent employees within the same classification and receive evaluations on performance after 30 days in service to be included in their personnel records. Temporaries are also eligible for holiday pay. Art. 2. The duration of temporary employment is not limited by PSEA's contract, and emergency employees are not specifically addressed. Provisional employees are included in the definition of "member" and are therefore subject to the same terms and conditions of the contract as are permanent employees. Art 1(2)(g).

Confidential Unit

Temporary employment is limited to nine months within any calendar year by CEA's contract, and temporaries are eligible to receive holiday pay. Provisional employees are recognized as "members" and are therefore subject to the terms and conditions of the contract as are permanent employees. Art. 2. Emergency appointments are not addressed.

Local 71

Local 71's contract limits the temporary term to not more than 120 calendar days, althought the time may be extended by mutual agreement between the union and the state. Temporaries, in lieu of benefits, receive $1.32 per hour over regular class wages. Seniority is retroactive if a temporary is appointed to permanent status. CETA and PEP temporary appointments are not restricted to the 120 day limit, but are placed at step B of the salary scale following the 120 day period. Art. 25(2) and (3).

Local 71 does not recognize emergency employees within their contract. As an alternative to emergency appointments, Local 71's contract provides for "casual" employees who can be appointed by the Director of Personnel for not more than 15 calendar days. These appointments are not subject to other terms and conditions of the contract, with the exception of overtime compensation. Art. 25(5). Provisional employees are not recognized in Local 71's contract

E. Summary

Of the contracts examined, Local 71's alters the effect of appointments to the greatest extent. Besides restricting the time in which its members may be employed as temporaries (120 days), Local 71 has created an alternative category for emergency appointments, which the union labels "casual" employment (15 days).

In regard to time limitations on emergency appointments, GGU's contract is the only one that restricts the initial employment period to one shorter than established in the personnel rules. On temporary appointments, both GGU and SU contract amendments restrict extensions beyond the six month period specified by the personnel rules, thus denying the possibility of extensions with the Director's approval.

CEA's contract, rather than limiting the employment period for temporaries, extends the time to nine months and makes no reference to possible extensions. PSEA's contract is the only one that does not address time limitations on temporary appointments.

Temporaries are entitled to holiday and compensation that is equivalent to that of permanent employees within the same classifications. Local 71 is the only union that provides additional compensation ($1.32 per hour) in lieu of medical and insurance benefits. Three unions address credit for a temporary's time in service: GGU, SU and Local 71.

Provisional employees are generally recognized as being subject to the same provisions as permanent employees, with the exception of Local 71.

V. PROBATIONARY PERIODS

A. Statutes

The objective of the probationary term is to give an appointing authority opportunity to examine and evaluate the performance of the hired employee. The Personnel Act states that the personnel rules shall provide for:

> a period of probation not to exceed one year...except that a permanent employee receiving a promotional appointment retains permanent status in the service and job class from which appointed for the duration of the probationary period, and may be demoted to his former class without right of appeal, §170 of this chapter notwithstanding, but if dismissed from the service he has appeal rights under §170 of this chapter. AS 39.25.150(7).

B. Personnel Rules

The probationary period set out in the personnel rules is one year for employees above range 13 and six months for those range 13 and below, which can be extended at the Director's discretion. Employees rehired, promoted or transferred must complete a probationary period for the position they are appointed to, which counts towards the completion of any probationary period uncompleted in a lower classification.

Temporary and emergency employees do not receive credit towards the probationary period for time in service. PR 6 01.0 and PR 6 02.0. During this probationary period, the Director can request employee evaluations at any time. PR 6 03.0.

A probationary employee, unless holding permanent status at the time of probationary appointment, may be dismissed without the right of appeal or hearing, unless dismissal is a result of discrimination. The employee dismissed for reasons other than discrimination may petition the Director for review of such action. The Director may restore an individual's name to an appropriate eligible list, but may not certify the individual to the same appointing authority. PR 6 05.0.

The Director is notified 15 days prior to the expiration of the probationary period, and if performance evaluations are satisfactory, the employee is placed in permanent status. PR 6 05.0. If dismissed from service, a probationary employee has the right to appeal through the Director to the Personnel Board under Rule 12 01.2, but does not have the right to appeal a demotion to a former classification. PR 6 06.0.

C. Collective Bargaining Contracts

General Government Unit

The GGU contract provides for a probationary term of six months for ranges 13 and below. The Director of Personnel may limit, by written agreement with the employee, the probationary period for ranges 5 through 13 to three months. The probationary terms for positions in range 14 and above are one year, but may be shortened to six months at the Director's discretion. Art. 18(7). All probationary employees are required to receive a written performance evaluation mid-way through the probationary term. Art. 18(8). A probationary holding permanent status in another classification is entitled to process disputes up to step four of the grievance procedures. Art. 10(1). In all other aspects, probationary employees are recognized as members and are subject to the terms and conditions of the GGU contract. Art. 2(1).

Supervisory Unit

The SU contract contains no mention of time limitations on probationary periods, so it is assumed that there is no alteration of the personnel rules in this regard. The contract does state, however, that probationary employees receive semi-annual evaluations (Art. 16(4)) and that appeals in response to dismissal of a probationary in permanent status may be submitted to arbitration (step five) for settlement. Because the definition of "employee" includes probationaries (Art.1 (2)(h)), they have access to the grievance procedures up to step four on all other matters. Art. 10.

Public Safety Unit

The PSEA contract provides for a probationary period of one year in duration, which may be extended an additional 90 days for completion of a Public Safety Academy course. The probationary period for promoted employees is limited to six months. Art. 18(1).

Probationary employees are precluded from filing grievances during their initial appointment. However, during the final six months of a probationary term, a grievance pertaining to disciplinary action (except dismissal) may be brought before the Commissioner of Administration. Art. 10(1). Probationaries within PSEA must receive semi-annual performance evaluations. Art. 18(2)(B).

Confidential Unit

Probationary employees within CEA are recognized under the definition of "employee" and are subject to the terms and conditions of CEA's contract. Art. 2. Because the probationary employee is not differentiated from the permanent employee, probationaries presumably have access to grievance procedures to the same extent as do permanent employees. Art. 13.

Local 71

Local 71's contract reduces the probationary period as set out in the personnel rules. Upon completion of a 60-day probationary period, an employee is considered to be in permanent status, and seniority is then retroactive to the date of hire. Art. 25(1). Probationary employees who are discharged or terminated have appeal rights through step three of the grievance procedures. Art. 12. Probationary employees holding permanent status have access to arbitration proceedings (step four) in cases of dismissal. All other grievances received from probationaries can be brought to step three. Art. 13.

D. Summary

Probationary time frames set out in the personnel rules are altered either by limiting or extending the periods by the GGU, PSEA and Local 71 contracts.

The Personnel Act states that an employee in the classified service may appeal a dismissal, a demotion or a suspension of more than 30 days in a hearing before the Personnel Board. AS 39.25.170(a). The phrase "employee in the classified service" has been interpreted by the Supreme Court of Alaska to include permanent employees and to exclude probationary or provisional employees. Whaley vs. State, 438 P.2d 718 (1968). (By extension of this reasoning, temporary employees would also be excluded.)

The statute setting out probationary periods does make clear, however, that promoted employees retain their permanent status in the classes from which they were promoted and therefore do have the right to appeal dismissals from state service under AS 39.25.170, although they may not appeal demotions to their former classes. AS 39.25.150(7).

Under the personnel rules, however, all probationary employees may appeal dismissals which are alleged to result from discrimination based on race, color, sex, religion, national origin or political beliefs to the Director of the Division of Personnel and Labor Relations. PR 6 04.0.

Grievance rights on demotions and dismissal issues for probationary members not holding permanent status vary within each collective bargaining contract. With the exception of CEA, probationary members are precluded from arbitration proceedings.

VI. TRAINING

A. Personnel Rules and Statutes

The Director of Personnel is responsible for the development, in cooperation with appointing authorities, of programs for the improvement of employee effectiveness and morale. AS 39.25.050(3). The personnel rules implementing the statute provide for pre-service and in-service training to raise the quality of employee performance Appointing authorities, with the Director's approval, can establish intern and apprenticeship training programs. Regulations on reimbursement of educational fees are issued by the Commissioner of Administration and are contingent upon the employee's agreement to remain in state service. PR 8 02.0.

B. Collective Bargaining Contracts

General Government Unit

In the GGU contract, the Division of Personnel agrees to recognize its responsibility to reimburse employees for expenses incurred in job-related training courses. Employees who attend training courses do not lose leave or pay unless the course is for an extended time. The Division of Personnel is also responsible for developing, when practicable, employee training procedures. On-the-job and cross-training are encouraged. The GGU contract requires that the Division of Personnel designate a person within each department to explain training and educational opportunities available to employees. Art. 20.

Supervisory Unit

As stated in the SU contract, the Division of Personnel agrees to recognize the need for educational advancement and shall reimburse, if funds are available, employees' tuition and text fees for job-related training. The unit's contract also provides for compensation during the training sessions. Art. 23(9).

Local 71

Both the state and Local 71 are to consider individual programs for employee training and reach agreement on provisions regarding wages and conditions in accordance with the union's contract. The state agrees to establish a policy committee of four members from each party to the contract to create training policies and procedures in each department. Art. 25(6).

Public Safety Unit

The PSEA contract has more specific provisions regarding employee training than do other union contracts. The Director of Personnel is to select and assign members to particular fields for safety training. Employees submit memos annually requesting training with comments from supervisors regarding the requests, and if a request is denied, a reason must be supplied to the employee. Whenever possible, the state is to attempt to obtain college accreditation for training courses. PSEA members must qualify on pistol and shotgun courses semiannually and must receive periodic retraining as required to maintain certification for job performance in their unique professions. The Division is also obligated to continue its policy of encouraging members to seek further advanced education. A standing advisory committee is established to make recommendations to the Commissioner of Public Safety on academy training, minimum training needs for Police Standards certification and in-service training needs. Art. 9.

Confidential Unit

The CEA contract states that the Division of Personnel will provide 15 hours of training each year to all members and will develop the contents of such training. Art. 14.

C. Summary

With the exception of Local 71 and PSEA, the scope of collective bargaining in relation to training is limited to requiring the Division of Personnel to create training policies and procedures. The topic of reimbursement for such expenses is addressed by GGU and SU. Local 71 and PSEA provide for the establishment of committees to oversee the implementation of training practices. The CEA contract requires that the state provide 15 hours of training annually to all members.

VII. TRANSFERS

A. Statutes

The Personnel Act states that the Personnel Rules shall provide for:

transfers from one department to another and from another merit system jurisdiction to the state service (and) transfers from one area of the state to another. AS 39.25.150(11) and (12).

B. Personnel Rules

The personnel rules define transfers as lateral moves to the same or parallel job classifications. There are two types of transfers: intra-agency and inter-agency. The status of employees is not affected by transfer. PR 5 10.3. The Director retains the right to examine an employee to establish that minimum qualifications are met before approving parallel transfer. PR 5 10.4. Fringe benefits awarded employees are also not affected by transfer. PR 5 10.6. Transfers without employee consent must be approved by the Director. PR 5 10.7.

C. Collective Bargaining Contracts

All of the collective bargaining contracts recognize the transfer of employees and the methods for determining such action as a management right. The contracts contain some provisions regarding transfers.

General Government Unit

GGU's contract states that an employee can request a transfer from the Division of Personnel and prohibits an immediate supervisor from refusing such a request or from removing an employee's name from a register. Art. 18(1).

Supervisory Unit

Provisions in the SU contract state that employees may request placement on transfer lists through the Division of Personnel and that such requests do not require a supervisor's approval. Art. 16(1).

Local 71

According to Local 71's contract, employees may not be compelled to accept transfers to new duty stations. Art. 25(16)(e).

Public Safety Unit

The provisions set forth in PSEA's contract differ significantly from those in other union contracts. Transfers are to be in the best interest of the Department, and length of service is considered in the determination of preference for transfer where other factors are relatively equal. The state is responsible for posting notices of duty posts available on a monthly basis and for maintaining files of transfer requests. When the most senior member's transfer is not honored in filling a vacancy, that member is advised of the reason in writing.

Members who have served in the unit in excess of five years are not subject to involuntary transfer except under extenuating circumstances. Members normally receive 60 days notice prior to transfer, and are granted five days of adminsitrative leave with an additional five days available at the discretion of the Department Commander to effectuate such a move. The state agrees to continue to effect transfers arising out of special need and extenuating circumstance of a personal nature consistent with transfer policy. Transfer is not considered a method for disciplinary action. Grievances concerning involuntary transfers are to be filed with the Commissioner of Public Safety and may only be appealed to the Commissioner of Administration. Art. 12.

Confidential Unit

CEA's contract states that an employee may have her or his name placed on a transfer list by submitting the proper forms to the Division of Personnel and that this does not necessitate the approval of the employee's supervisor. Art. 12(1).

D. Summary

Collective bargianing contracts, with the exception of Local 71's, limit the ability of supervisors to prohibit employees from applying for transfers and being placed on transfer lists. Transfers may be involuntary for GGU, SU, CEA and PSEA members. Local 71's contract prohibits the state from transferring an employee involuntarily to a new duty station. The PSEA contract is the only one which includes procedures for grievance submissions relating to involuntary transfer.

VIII. PROMOTIONS

A. Statutes

The Personnel Act specifies that the personnel rules shall provide for:

> promotions from within the state service when there are qualified candidates in the state service; vacancies shall be filled by promotion whenever practicable and in the best interest of the state service, and promotion shall be by competitive examination whenever possible; in considering promotions, applicants' qualifications, performance record seniority and conduct shall be evaluated. AS 39.25.150(4).

B. Personnel Rules

The personnel rules implement the statute and provide that appointments be made from the top five eligibles on inter-departmental and

departmental promotional lists. Promoted employees retain permanent status within their former classifications and may be demoted to former former classifications at any time during the probationary period without the right to appeal.

C. Collective Bargaining Contracts

The promotion of employees and the determination of methods for such action is recognized as a managment prerogative by GGU, SU, PSEA and CEA contracts.

General Government Unit

Vacant positions within the GGU are to be open to employees in the unit who are certified as promotionally eligible prior to consideration of outside applicants. The GGU contract also states that employees may refuse promotions and not have their names removed from promotional lists should they decide not to accept a promotional opportunity. Art. 18(6). Promotional evaluations and ratings must be placed in personnel files and be made available to GGU members. Art. 18(8).

Supervisory Unit

SU's contract also stipulates that unit members are to be given consideration over outside applicants and that employees may refuse promotions without being removed from such lists. Art. 16(3). The contract states that an employee who is not satisfied with a score received in the rating of training and experience for a promotional opportunity may apply for reexamination. Art. 16(4). Should an employee be unsatisfied with results after a final review by the Director of Personnel of examination results, she or he may appeal the finding to a final review panel.

The review panel consists of three members: one from SU, one from the Division of Personnel and a third party recognized for expertise in the job functions being examined, who is chosen by the other panel members from a list provided by the U.S. Civil Service Commission. The decisions of the panel are final and binding. Art. 16(5).

Local 71

Local 71's contract provides for promotion of its members by seniority as long as the employee is equally qualified with other employees in the classification and the action is mutually agreed upon by both the state and the union. The contract does not state that employees have the right to appeal final ratings of promotability. Promoted employees remain in permanent status in their new positions and therefore have access to grievance procedures. Promotional listings must be posted for four days before being filled. Art. 25 (9) and (13). Promoted employees retain seniority in their former classifications for a period of three years. Art. 25(12).

Confidential Unit

CEA's contract addresses the salary increase received when promoted, which is to be a two-step minimum. Art. 12(2). Promotional lists are to be used when no appropriate layoff lists exist for appointment to positions. Art. 12(4).

Public Safety Unit

PSEA's contract does not address the topic of promotion.

D. Summary

The collective bargaining contracts now in force leave promotions within management's discretion, with the exception of Local 71's. Contained in Local 71's contract is specific language on the methods by which management may promote members, with greater emphasis on seniority than established in the personnel rules.

IX. MERIT INCREASES

A. Personnel Rules and Statutes

The personnel rules state that merit increases are based on an appointing authority's evaluations of employee performance. A one-step increase is awarded for "acceptable" performance of progressively greater value to the state. At the appointing authority's discretion, an increase of two steps may be granted for "outstanding" performance. Merit increases are limited in that they cannot exceed the top step of an assigned salary range. PR 9 02.0.

Performance that is less than acceptable may result in a one-step withdrawal, following employee notification and a 30 day period in which the employee is given an opportunity to improve performance and thus alter an appointing authority's evaluation. Grievance procedures outlined in PR 12 01.1 are available to employees who have received a merit "decrease". PR 9 02.24 and 9 02.25.

B. Collective Bargaining Contracts

General Government Unit

GGU's contract terms on merit increases are consistent with the personnel rules, with an additional clause stating that the state agrees to modify the evaluation and merit system to make it more meaningful. The contract also states that the administration will not establish a quota or percentage system to determine the number of increases to be

granted, but will discuss the establishment of objective performance evaluation criteria with union representatives. Various provisions regarding merit decreases" are addressed in GGU's contract, such as: A decrease may not be withdrawn below the entry step of a job classification, and no more than one step may be withdrawn in one year. Art. 4.

Local 71

Local 71's contract does not provide merit increases for members. As an alternative, a service bonus program was negotiated with the state. Members of the union are hired at wage step A and remain in that step for 120 days, at which time they are placed at wage step B. An employee is eligible for another increase after seven years in service. At that time, an employee with seven years of continuous service receives an additional twenty cents per hour. After nine years, the employee is entitled to an increase of forty cents per hour, and after eleven years an increase of fifty cents. These rates are cumulative and an alternative to the longevity bonus program (AS 39.27.022) and merit increases. Art. 20.

Supervisory. Confidential and Public Safety Units

SU and PSEA contracts do not address the topic of merit increases. CEA's contract states that when an employee is promoted, the increase in salary will be at least an advance of two steps if one-half of the merit increase evaluation period has been served, or step A, whichever is greater. Art. 12(2).

C. Summary

With the exception of Local 71, negotiations on merit increases have been limited to agreements to "modify the evaluation and merit system to be more meaningful" and to "establish objective performance evaluation criteria" (GGU) and provisions regarding promotional compensation in conjunction with merit increases (CEA).

Local 71 is the only collective bargaining union that has opted out of receiving merit increases for its membership by substituting the increases with its own service bonus plan.

X. LAYOFFS

A. Statutes

The Personnel Act states that the personnel rules shall provide for:

> layoffs for reason of lack of funds or work, abolition of positions, or material changes in duties or organization; both performance

and seniority records shall be considered in the development of layoff orders. AS 39.25.150(15).

B. Personnel Rules

The personnel rules provide that employee layoffs may occur in the classified service when a position is seasonal, a substitute appointment or when positons are abolished due to shortage of work or funds or other reasons that are beyond employee control. An employee may remain on a layoff list for a period of two years and does not lose earned leave or other benefits during that time. PR 11 04.1.

During an emergency, no permanent or probationary employee may be laid off while provisional or temporary employees in the same classification are assigned to positions that could reasonably be assumed by a permanent or probationary employee. PR 11 04.2.

The order of layoff due to reduction of work force is based on performance reports and seniority. PR 11 04.4. Permanent or probationary employees must receive written notice of the reasons for their being laid off. PR 11 04.5 and 11 04.6. The names of permanent or probationary employees who are demoted in lieu of layoff may be placed on layoff lists for the positons from which they were demoted. PR 11 04.8.

C. Collective Bargaining Contracts

The reduction of the state work force due to lack of work, funding or other cause consistent with efficient management is recognized as a management prerogative in CEA, GGU, PSEA and SU contracts.

General Government Unit

Layoff, as defined in GGU's contract, means involuntary separation from service due to abolition of a position, insufficient funds, or lack of work. Art. 1(2)(1). Layoffs of employees are to be performed in accordance with the personnel rules. Art. 3(3). All employees must receive written notification of the reasons for layoff. Art. 31(1).

Supervisory Unit

The only reference to layoff in the SU contract pertains to wages becoming due immediately following separation from service. Art. 12(4).

Local 71

Local 71's contract states that all permanent employees are to be given two weeks notice or two weeks pay prior to discharge, and that a termination or layoff slip must be supplied indicating the actual reason for the action. Art. 12.

Local 71's contract also states that layoffs are to be made in reverse order of duty station seniority. If a member is laid off and holds seniority in a lower classification, the individual may be returned to the lower class and wage level. Art. 25(12).

Public Safety Unit

PSEA's contract states that all employees are to receive two weeks notice or two weeks pay prior to discharge. Art. 18(3).

Confidential Unit

CEA's contract addresses the topic of layoffs only by providing that layoff lists are used in selection for vacancies in the bargaining unit. Art. 12(4).

D. Summary

Provisions set out in the GGU, SU and CEA contracts are in accordance with those in the personnel rules. PSEA and Local 71 contracts affect the rules by providing that employees receive either two weeks notice or pay when layoffs occur. Local 71 also provides that layoffs be made in reverse order on the basis of seniority.

XI. SUSPENSION, DEMOTION AND DISMISSAL

A. Statutes

The Personnel Act states that the personnel rules shall provide for:

> the imposition of disciplinary suspension without pay for not longer than 30 days in any 12 month period. AS 39.25.150(17).

B. Personnel Rules

Suspension

The personnel rules state that the appointing authority may suspend an employee for delinquency or misconduct and must inform the employee in writing of the reason for the suspension. An employee in the classified or partially exempt service may be suspended without pay and cannot receive seniority credit for the duration of a suspension. PR 11 03.0.

Dismissal

Employees not holding permanent status may be dismissed at any time at the appointing authority's discretion upon written notification. Dismissal based on improper discrimination is forbidden. A permanent employee may be dismissed by an appointing authority for just cause only, normally preceded by suspension of not less than three nor more