ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 8672

1680 SJ SB 100- SB 102

Furthermore, such an interpretation would be inconsistent with the principles of the act. AS 47.80.110 provides:

> Program Principles. The system of services and facilities required . . . shall accord with the principle that treatment, services, and habilitation shall be designed to maximize individual potential, minimize institutionalization, and shall be provided in the least restrictive setting, enabling a person to live as normally as possible within the limitations of the handicap.

Thus, it would seem clear that a fundamental goal of AS 47.80 is to minimize institutionalization in the habilitation of handicapped individuals. "Habilitation" is defined as "education or training for the handicapped to enable them to function better in society." AS 47.80.900(4).

Based upon this reading of AS 47.80 and its available legislative history, we do not believe that this

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14. (Cont'd)

While a non-profit corporation has been organized to serve as a vehicle for this joint federal and state support of the protection and advocacy of rights, state and federal regulations more fully delineating the implementation of the acts are still in the process of being promulgated.

statutory scheme gives the courts authority to involuntarily commit the handicapped.[15]

---

15. We believe that a holding to the contrary would suffer from vagueness permitting excessive subjectivity on the part of the courts. Papachristou v. City of Jacksonville, 405 U.S. 156, 31 L. Ed. 2d 110 (1972). Potential abuse would be great if the courts possessed the authority to place handicapped persons in mental institutions without strictly defined standards. One court could commit a deaf person whom he believed is incapable of caring for himself. Another may permit deaf individuals to remain at large but believe that limbless veterans are in need of commitment. Furthermore, chapter 80 does not provide adequate procedural safeguards found in chapter 30 of title 47 which specifically provides for the involuntary commitment of the mentally ill.

We also note that the United States Supreme Court has held that "a State cannot constitutionally confine without more a nondangerous individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family members or friends." O'Connor v. Donaldson, 422 U.S. 563, 576, 45 L.Ed.2d 396, 407 (1975). In other words, an individual cannot constitutionally be confined involuntarily simply because he has a handicap and "treatment" may be beneficial.

In addition, the Court has held that, as a constitutional minimum, the criteria justifying an individual's involuntary civil commitment must be proved by "clear and convincing" evidence. Addington v. Texas, 441 U.S. 418, 431-33, 60 L.Ed.2d 323, 334-35 (1979).

The statutory scheme granting courts the power to involuntarily commit the mentally ill is found in AS 47.30.010-.340. We agree with Judge Carlson's conclusion that the legislature, by amending AS 47.30.340(10), effectively withdrew the court's authority to involuntarily commit the mentally retarded. This amendment became effective on July 1, 1978. This was the same date that AS 47.80.010-.900 was implemented establishing new safeguards for the protection of the rights of the handicapped. The fact that the legislature withdrew the mentally retarded from the scope of chapter 30 and included these individuals within the purview of chapter 80 of title 47, clearly indicates the legislature's intent that the mentally retarded be regarded as handicapped individuals, who, through habilitative efforts, can be taught to live complete and normal lives to the fullest extent possible.

In reversing the lower court's commitment order, we are not unmindful of the plight of K.M.L. and his parents. By holding that the courts have no authority to involuntarily commit K.M.L., we in no way suggest that K.M.L. should not avail himself of existing educational programs. We urge the state to fulfill its obligations under AS 47.80.010-.900 to render the necessary assistance to individuals such as K.M.L. We also call to the attention of the parties the protections available under AS 13.26.

The lower court's order of commitment is hereby REVERSED.

TO TESTIFY IN ANCHORAGE ON SB 100

JIM PARSONS,

ALASKA MENTAL HEALTH

(TIME CONSTRAINT 11:45 AST)

DANA FABE,

ALASKA PUBLIC DEFENDER

(TIME CONSTRAINT 12:00 AST)

1:30 PST

4/22

FROM TERMINAL LJ28 ON PRINTER LJH8; DATE=81112, TIME=134550

MSG 84=0004352A PRTY 4 04/22/81 13:32:09 ORIG: LA00 IN: 0005 OUT= 0004
FROM: MICKI IN ANCHORAGE TO: JELLO/JUNEAU TELECONFERENCE
TARGET: LJ28 SUBJ: SEN. JUD. T/C ON SB 100 PAGE 0001

FOLLOWING IS A LIST OF PARTICIPANTS IN THE ORDER THEY WISH TO TESTIFY

1. JIM PARSONS, AK. MENTAL HEALTH ASSN. 421 W. FIREWEED LN. #225, ANCH.

2. DANA FABE, AK. PUBLIC DEFENDERS AGENCY, 716 W. 4TH #500, ANCH.

3. JAY VERKOZEN PH.D., CLINICAL PSYCHOLOGIST, 308 G STREET, #309, ANCH.

4. BETTY HELSEY, REACH, 2146 BELAIR DR, ANCH. 99503

5. NATALIE GOTTSTEIN, AK. MENTAL HEALTH ASSN., 1030 W. 26TH AVE. #1 ANCH.

6. GERI HARRINGTON, SELF, 1820 CHEROKEE WAY, ANCH. 99504

7. CHARLIE [illegible], SELF, NASW,

PLEASE NOTE WITNESS'S 1,2, AND 4 HAVE TIME CONSTRAINTS

NXT MSG U/R/S PREV MSG U/R/S RESEND CANCEL

FROM TERMINAL LJ2= ON PRINTER LJH8; DATE=81112, TIME=133603

MSG 81-09013513 PRTY 1 04/22/81 13:04:45 ORIG: LA02 IN= 0004 OUT= 0003
FROM: KATHI, ANCH TO: JELLO, JUNEAU T/C
TAKE-1 -- LJ2= SUBJ: PARTICIPANTS, SEN. JUD 4/22 PAGE 0001

PLEASE ARE THOSE PEOPLE WHOM WE EXPECT. IT DOES NOT INCLUDE THOSE PEOPLE WHO HAVE NOT ANNOUNCED THEIR INTENT TO ATTEND.

JOAN FABE, ACTING DIRECTOR, PUBLIC DEFENDER'S OFFICE
*** HAS SCHEDULE CONFLICT - MUST LEAVE BY 12:00 P.M. AST ***

NATALIE GOTTSTEIN, DIRECTOR, ALASKA MENTAL HEALTH ASSOCIATION
JAMES FAHRENKOPF, PSYCHOLOGIST
PUDGE KLEINKAUF, SOCIAL WORKER
GRANT CALLOW, ALASKA COURT SYSTEM
JERRY SCHROEDER (SP?)
BETTY HOLLIS (SP?)

Bob Bower Govt.
Dr. Jerry Schrader

AS THEY ARRIVE, WE WILL JELLO THE NAMES.

NXT MSG U/R/S _ PREV MSG U/R/S _ RESEND _ CANCEL _

Alaska State Legislature

Senate

JUNEAU, ALASKA

Persons to notify for SB 100 hearings:

Natalie Gottstein, Director of the Alaska Mental Health Association 276-1705

Verner Stillner, M.D., Director of the State Division of Mental Health and Developmental Disabilities, 465-3370

Elizabeth Shaw, Assistant Attorney General, 465-3603

Barry Stern, Criminal Division of the Dept. Law, 465-3460

James Parsons, psychologist, 276-2230

Pudge Kleinkauf, 279-4824 or 253-1714

Grant Callow, Alaska Court System, 264-0550

Dana Fabe, Acting Direct, Public Defender, 279-7541

Dennis DeWitt, Alaska Hospital Association, 586-1790

✓ calls made Mon, 4/20/81

✓ will testify

Alaska State Legislature

Senate

JUNEAU, ALASKA

Teleconference 4/22, Wed. 1:30

Persons to notify for SB 100 hearings:

✓ Natalie Gottstein, Director of the Alaska Mental Health Association 276-1705

✓ Verner Stillner, M.D., Director of the State Division of Mental Health and Developmental Disabilities, 465-3370

W/BE THERE Elizabeth Shaw, Assistant Attorney General, 465-3603

NOT THIS TIME Barry Stern, Criminal Division of the Dept. Law, 465-3460

✓ James Parsons, psychologist, 276-2230

CALLED — MAYBE MESSAGE REPI Pudge Kleinkauf, 279-4824 or 263-1714

MESSAGE LEFT Grant Callow, Alaska Court System, 264-0550

Dana Fabe, Acting Direct, Pubiic Defender, 279-7541

WILL NOT BE THERE Dennis DeWitt, Alaska Hospital Association, 586-1790

✓ will testify

✓ JERRY SCHNAER

✓ NANCY HALSEY

✓ BOB BOWERS - GOV MENTAL HEALTH ADVISORY COMM

243-5411

✓ WON'T BE THERE A.P.I. - 277-6551 ~~DIRECTOR~~ ADMINISTRATOR MRS. ~~PAT~~ POWERS

S 10

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

POUCH KC – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3428

April 22, 1981

The Honorable Patrick M. Rodey
Chairman
Senate Judiciary Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: Proposed Amendment to CSSB 100

Dear Senator Rodey:

The criminal division of the Department of Law has proposed the enclosed amendment to CSSB 100 that has the effect of placing the burden of proof on the defendant in a criminal proceeding to establish his insanity by a preponderance of the evidence if he raises the defense of not guilty by reason of insanity. While the existing statute, AS 12.45.083, refers to insanity as an "affirmative defense", it defines that term in a manner which requires the state to disprove the defense of insanity beyond a reasonable doubt once the issue is raised. This definition differs from the definition of affirmative defense appearing in the revised criminal code which requires the defendant to establish an affirmative defense by a preponderance of the evidence.

The proposed amendment places the insanity defense statute in Title 11, thereby applying the revised criminal code's definition of the term affirmative defense to that statute. AS 11.81.900(b)(1) defines affirmative defense in the following manner:

(1) "affirmative defense" means that

(A) some evidence must be admitted which places in issue the defense; and

(B) the defendant has the burden of establishing the defense by a preponderance of the evidence.

The constitutionality of requiring a criminal defendant to establish his insanity by a preponderance of

the evidence was specifically recognized by the Alaska Supreme Court in State v. Alto, 589 P.2d 402 (Alaska, 1979). Approximately 25 states place this burden on the defendant.

Requiring a criminal defendant to establish his insanity in a criminal trial by a preponderance of the evidence is good public policy. Under existing law, as illustrated in the following example, a defendant who has committed a violent crime but is found not guilty by reason of insanity may completely escape confinement.

1. A defendant charged with murder is found not guilty by reason of insanity. The verdict does not mean that the jury has found him to be insane, but rather that a reasonable doubt exists as to his sanity.

2. At the subsequent commitment proceeding the defendant, who had previously contended that he was insane in order to be found not guilty by reason of insanity, now argues that he is sane in order to gain immediate release.

3. The state, which had previously argued that the defendant was sane beyond a reasonable doubt in order to obtain a guilty verdict must now argue that he is insane in order to insure the protection of the public.

4. The defendant goes free even though the trier of fact finds that there is a reasonable doubt that the defendant is sane.

The proposed amendment attempts to minimize such an unacceptable result. Because the defendant would be required to establish his insanity by a preponderance of the evidence at the criminal trial, the court at the commitment proceeding could rely on the prior determination of insanity in deciding whether commitment was appropriate.

In 1978 a similar amendment was considered by the legislature during its hearings on the revised criminal code. Though recognizing the need for revision of AS 12.25.083, the legislature decided not to address the issue since it was viewed as primarily a procedural question requiring

further consideration which could delay passage of the criminal code. Now that the legislature is considering a comprehensive revision of Alaska's mental health laws, it appears appropriate to address this important issue which affects entry into the mental health system by criminal defendants who are found not guilty by reason of insanity.

Very truly yours,

WILSON L. CONDON
ATTORNEY GENERAL

DANIEL W. HICKEY
CHIEF PROSECUTOR

By: Barry Jeffrey Stern
Assistant Attorney General

BJS:dm

cc: Art Peterson
Assistant Attorney General

Keith Specking
Legislative Assistant
Office of the Governor

POSITION PAPER

COMMITTEE SUBSTITUTE
FOR SENATE BILL NO. 100

"An Act relating to mentally ill persons; and providing for an effective date."

The Division of Mental Health and Developmental Disabilities fully endorses the principles of mental health care in the least restrictive setting and the protection for individual civil rights that are addressed in Committee Substitute for Senate Bill 100. The civil commitment process calls for a sensitive balance between the individual's right to the best possible psychiatric treatment, and society's right to be protected from those persons who are dangerous as a result of mental illness. Committee Substitute for Senate Bill 100 emphasizes treatment in least restrictive alternatives close to home and provides for outpatient involuntary commitments. Periodic hearings are to be conducted in all involuntary hospitalizations.

The Department of Health and Social Services supports the passage of Committee Substitute for Senate Bill 100.

Recommended by: Verner Stillner, MD

Verner Stillner, M.D., M.P.H.
Director, Division of Mental Health and Developmental Disabilities

Date: 4/8/81

Approved by: Helen D. Beirne

Helen D. Beirne, Commissioner
Department of Health and Social Services

Date: 4/15/81

TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. Senate Bill 100
Title An act relating to mentally ill persons
Requested by Senator Parr Date January 28, 1981

II. FISCAL DETAIL
Agency Affected Administration
Program Category Affected Justice
BRU, Program, or Subprogram(s) Affected Public Defender - Third District
(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		53.0	58.3	64.1	70.5	77.6
200	TRAVEL						
300	CONTRACTUAL		4.0	4.4	4.8	5.3	5.9
400	COMMODITIES		.5	.6	.6	.7	.7
500	EQUIPMENT		1.0	1.1	1.2	1.3	1.5
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL		58.5	64.4	70.7	77.8	85.7

FUNDING (Thousands of Dollars)

GENERAL FUND		58.5	64.4	70.7	77.8	85.7
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME		1.0	1.0	1.0	1.0	1.0
PART TIME						
TEMPORARY						

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

This bill would increase the workload of the Public Defender as it relates to the caseload at Alaska Psychiatric Institute by three times the present caseload. There are currently 4 to 6 hearings per week at API. The work involved in these hearings occupies the time of one attorney one-half time. It is estimated that there would be a total of 18 hearings per week and that the additional hearings would require the addition of an Attorney III full time. Other costs are associated with the addition of the new position. Costs for FY 83 and beyond are based on 10% inflation.

IV. DATE 1-29-81 PREPARED BY Judy Crondahl
AGENCY Administration
PHONE 465-2277

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

83-001 (Rev. 12/80
Keith Specking

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SB 100
Title "An Act relating to mentally ill persons; and providing for an effecti
Requested by _____ Date 2/18/81
date"

II. FISCAL DETAIL
Agency Affected Department of Law
Program Category Affected General Government
BRU, Program, or Subprogram(s) Affected Legal Services
(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		52.3	56.5	61.0	65.9	71.2
200	TRAVEL		3.0	3.2	3.5	3.8	4.1
300	CONTRACTUAL		3.0	3.2	3.5	3.8	4.1
400	COMMODITIES		2.5	1.1	1.2	1.3	1.4
500	EQUIPMENT		1.0				
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL		61.8	64.0	69.2	74.8	80.8

FUNDING (Thousands of Dollars)

GENERAL FUND		61.8	64.0	69.2	74.8	80.8
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME		1.0	1.0	1.0	1.0	1.0
PART TIME						
TEMPORARY						

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

Enactment of SB 100, which will provide a greatly increased mental commitment process, will require an equivalent increase in attorney time to represent the state during the hearing process. It has been estimated that there will be an increase of seven hearing hours per week which will also require 14+ hours of additionel attorney preparation time. Increased Public Defender representation anticipates additional appeals from commitment rulings which, in turn, will require further attorney time. We therefore believe that the full-time service of an Attorney III (Range 22) will be needed at Anchorage, to implement the state's statutory responsibilities under this Act.

An inflation factor of 8 percent has been used for succeeding years' projected expenses.

IV. DATE February 18, 1981 PREPARED BY Richard I. Pegues, Mgr., Admin. Svcs.
AGENCY Department of Law
PHONE 465-3695

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

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. Senate Bill No. 100
Title An Act Relating to Mentally Ill Persons
Requested by Senate HESS Committee Date 2/15/81

II. FISCAL DETAIL
Agency Affected Alaska Court System
Program Category Affected Administration of Justice
BRU. Program. or Subprogram(s) Affected Alaska Court System
(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		30.4	43.8	47.3	51.1	55.2
200	TRAVEL						
300	CONTRACTUAL		28.1	40.5	43.7	47.2	51.0
400	COMMODITIES						
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL		58.5	84.3	91.0	98.3	106.2

FUNDING (Thousands of Dollars)

GENERAL FUND	58.5	84.3	91.0	98.3	106.2	
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME	.9	.9	.9	.9	.9	
TEMPORARY						

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

The fiscal impact of SB 100 on the Alaska Court System will come in two areas: 1) increased number of hearings will require additional professional and clerical staff time; 2) the Court System, when requested, must appoint and pay for independent physicians to examine patients prior to the hearing held within 14 days of their commitment.

The Court System, in conjunction with the staff of API, has developed rough estimates of the number of additional hearings required under SB 100. These estimates are:

72 hour hearing - 100-150/year
14 day hearing - 100/year
90 day hearing - 10-20/year

IV. DATE 2/25/81 PREPARED BY
AGENCY Alaska Court System - Administration
PHONE 264-0545

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

At the present time, the court is conducting 150-200 hearings per year, which require an average of two afternoons per week for three hours. Hearings are conducted at API, and the Probate Master and In-Court Clerk for the Court System travel to API for the hearings. It is projected that the increase of approximately 250 hearings/year will require a 30 percent increase in available time for the Probate Master and In-Court Clerk.

In addition to in-court time, the calendaring, noticing, and clerical follow-up of the additional hearings will require approximately 30 percent of a full-time clerical position.

The personnel cost associated with this bill is therefore:

Probate Master	(Range 24)	$59,952 x 30% =	17,986
In-Court Clerk	(Range 12)	24,756 x 30% =	7,427
Court Clerk	(Range 10)	19,356 x 30% =	5,807
			31,220
		Benefits at 30%	9,366
			$40,586

The cost to the Court System for psychiatric examination by independent physicians is projected as follows:

150 evaluations at $250 = $37,500

The projected fiscal impact for FY 82 reflects 75 percent of a total year's cost, due to the October 1, 1981 effective date. The following years are projected at 8 percent inflation increases.

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. Senate Bill No. 100
Title An Act Relating to Mentally Ill Persons.
Requested by _____ Date February 17, 1981

II. FISCAL DETAIL
Agency Affected Department of Health and Social Services
Program Category Affected Health
BRU, Program, or Subprogram(s) Affected Alaska Psychiatric Institute, Admin. & Support Comm., Mental Health Center
(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		99.6	108.6	118.4	129.0	146.6
200	TRAVEL		19.8	21.6	23.6	25.7	28.0
300	CONTRACTUAL		339.0	923.8	1,812.6	3,073.3	5,264.1
400	COMMODITIES		9.1	9.9	10.8	11.8	12.8
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL		467.5	1,063.9	1,965.4	3,239.8	5,451.5

FUNDING (Thousands of Dollars)

GENERAL FUND		467.5	1,063.9	1,965.4	3,239.8	5,451.5
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME		1	1	1	1	1
PART TIME		2	2	2	2	2
TEMPORARY						

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

The intent language in SB 100 emphasizes treatment close to home, least restrictive alternatives and protection of client rights. So far as is determined by the Division of Mental Health and Developmental Disabilities those persons who require involuntary commitment for treatment of mental illness are currently being served, therefore, no increase in the population to be served will result from SB 100. What is required is resources to support the increase of hearings and for the scope of implementation of the intent.

Costs to implement SB 100 are the costs of the increased number of court hearings, the field and medical staff training for the court related activity and an array of costs associated with the establishment of designated facilities. Each of these costs are individually described under their separate heading. In addition spectrum of designated facilities are presented as alternate levels of implementation. Each level provides for

IV. DATE February 17, 1981 PREPARED BY: Thomas R. Brandt
AGENCY Department of Health and Social Services
PHONE 465-3370

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named) M&B Approval _____ Date 2/18/81

33-001 (Rev. 12/80

an increase in local capacity for treatment and evaluation.

I. Hearings (BRU API)

Base data will be the actual API hospital records of 1023 admissions for FY 80. About 44% of these are involuntary civil admissions equal to 450 patients. Under the current system civil commitment progress hearings may take place 14 to 21 days following admission. Therefore, many of these 450 involuntary patients have become voluntary prior to a hearing date. About 120 hearings are actually scheduled each year. A number of the involuntary admissions to API are Evaluated (screened) and released as not being mentally ill. We therefore conclude that SB 100 will, because of the required 72 hour hearing, the 90 day and the 120 day hearing, result in a minimum of 300 of the 72 hour hearings and an undetermined number of 90 and 120 day hearings. The evaluation and the preparation of reports to be available to the court at the more than 300 additional hearings will represent a major workload increase at API.

One half time psychiatrist	43.9	(Two mental health professionals must sign petition)
One half time psychologist	25.3	
One Clerk III	22.2	
Total Hearing Staff Cost	91.4	

II. Training (BRU Administrative and Support Central Office)

SB 100 presents the function at a local level of a accomplishing the preliminary screening and a possible evaluation for all cases taken into custody i.e., involuntary patients. It also will involve many physicians and mental health professionals in court processes and professional demands that are unfamiliar.

Local physicians will need training in recent advances in psychopharmacology and the assessment of medical basis of mental disorders. As these will frequently be general physicians who now do little psychiatric work this update should occur on a yearly basis to insure the best assessment and treatment.

Mental health professionals must be trained in their legal responsibilities to committed and evaluated patients under the act. They must know the legal definition of committable patients and how to assess patients for the commitment hearing. They must be offered a review of appropriate treatment approaches for patients likely to be committed under the act. This must be done on a yearly basis.

Costs:

22 physicians X $451 each of travel and 3 day per diem	9,922.00
Facility, trainer and material costs.	2,500.00
Individual materials as hand-out etc.	550.00
Total training cost for M.D.	12,972.00
22 Mental health professional (same as above)	12,972.00
Forensic material development and distribution for 22 centers	3,000.00
Total training and development cost	28,944.00

III. Designation Costs (BRU Community Mental Health)

All material will require annual update presentations. Additional costs for center-specific training and unique medical update can be funded through Federal Mental Health Manpower Development Grant sources when these 28.9 base matching funds are available.

Patient receipts recover 26.6% of the actual operating costs at API. It is assumed cost recovery for any designated facility would be similar. The State comprehensive health plan reports the combined cost (cost of a bed and all support services, such as medication, X-ray etc.) per patient day totals $397 per patient day for Alaska non-federal acute care hospitals. We calculate that involuntary patient care at a designated facility has a potential to create a deficit of $303 per day per patient, that being the cost incurred but not paid for by the patient. This must be reimbursed to the designated facility.

The health plan reports the cost of a hospital bed without support services to average $175 per day. A bed must be in reserve at all times at a designated facility. Cost of a reserved bed is $63,875 per year (175 X 365). When a prepaid and reserved bed is occupied the additional daily cost is $128 (303 less 175). This is reimburseable to the facility as a non-recoverable patient care cost. We estimate that each designated facility will deliver 200 bed days of treatment and inpatient evaluation service at a cost to the State of $25,600 (200 X 128). We further assume that two beds will be occupied for 30 days per year at a cost of $9,090. (303 X 30).

Summary of designated costs:

"head of facility"		56,950.00
reserved bed		63,875.00
200 days patient care @ 128 per day	25,600	
30 days patient care @ 303 per day	9,090	
	34,690	
		34,690.00
Annual cost per facility		$155,515.00

Levels of Implementation

Level I

A level 1 implementation for SB 100 would assume no additional designated facility beyond API. Cost at this level is limited to the costs for the additional hearings and field staff training.

Training	28.9
API staff	91.4
Level 1 total	120.3

Level II

A level 2 implementation would provide a designated facility in each of four judicial areas of Alaska. Nome, Juneau, Fairbanks in addition to the existing Anchorage API.

API hearing staff costs	91.4
Training and development cost	28.9
3 additional designated facilities @ 155,515	466.5
Level 2 cost	586.8

Level III

A level 3 implementation would provide a designated facility in each of the 10 superior court services districts and would locate a designated facility in Sitka, Ketchikan, Juneau, Kenai, Kodiak, Bethel, Nome, Kotzebue, and Fairbanks, in addition to API Anchorage;

API hearing staff costs	91.4
Training and development cost	28.9
9 designated facilities @ 155,515	1,399.6
Level 2 cost	1,519.9

Level IV

Level 4 implementation will provide a saturation of designated facilities. Evaluation with inpatient treatment capacity would be available in each of the existing 22 community mental health service districts.

API hearing staff costs	91.4
Training and development cost	28.9
21 designated facilities @ 155,515	3,265.8
Level 4 Cost	3,386.1

HB 100 Implementation Schedule

All costs are adjusted for 9% C.O.L.A. annually.

Year FY 82

a. Hearing
b. Training
c. Partial level II designation (Fairbanks, Juneau)

Year FY 83

a. Hearing
b. Training
c. Level II designation
d. Partial level III designation (2 location)

Year FY 84

a. Hearing
b. Training
c. Level II designation
d. Level III designation (4 additional locations)

Year FY 85

a. Hearing
b. Training
c. Level II designation
d. Level III designation
e. Partial level IV designation (5 locations)

Year FY 86

Total implementation 22 designated facilities

NOTE:

The cost of designation of a single facility adjusted by C.O.L.A. of 9% annually is:

FY 82	$ 169,511
FY 83	184,767
FY 84	201,396
FY 85	219,522
FY 86	239,279

SUMMARY FOR SENATE BILL 100

An Act Relating to Mentally Ill Persons

This bill is a major revision of Alaska civil commitment statutes. Its purpose is to protect the legal rights of persons suffering from mental illness, protect society from persons who are dangerous to others, and protect persons who are dangerous to themselves. Six principles of modern mental health care are specified on pages 1 and 2 of the bill.

The Department of Health and Social Services' powers and duties are explained on pages 2 and 3 of the bill.

Article 7, which begins on page 3, includes standards for voluntary admission for persons 14 or older, notification of patient rights, and voluntary admission of minors under 14.

Beginning on page 5, Article 8 explains the process for involuntary commitment. It establishes a 72-hour evaluation period, a 30-day, 90-day, and 120-day commitment period. A court hearing is mandatory for each commitment period.

Article 9, which begins on page 20, lists specific patient rights. They include: patient participation in a treatment plan, the right to examine records, the right to know the name of medication, the use of the quiet room, the right to refuse unnecessary medication, the right to accept or refuse shock therapy, the use of psychosurgery or lobotomy, the right to have surgery, and the right to a discharge plan.

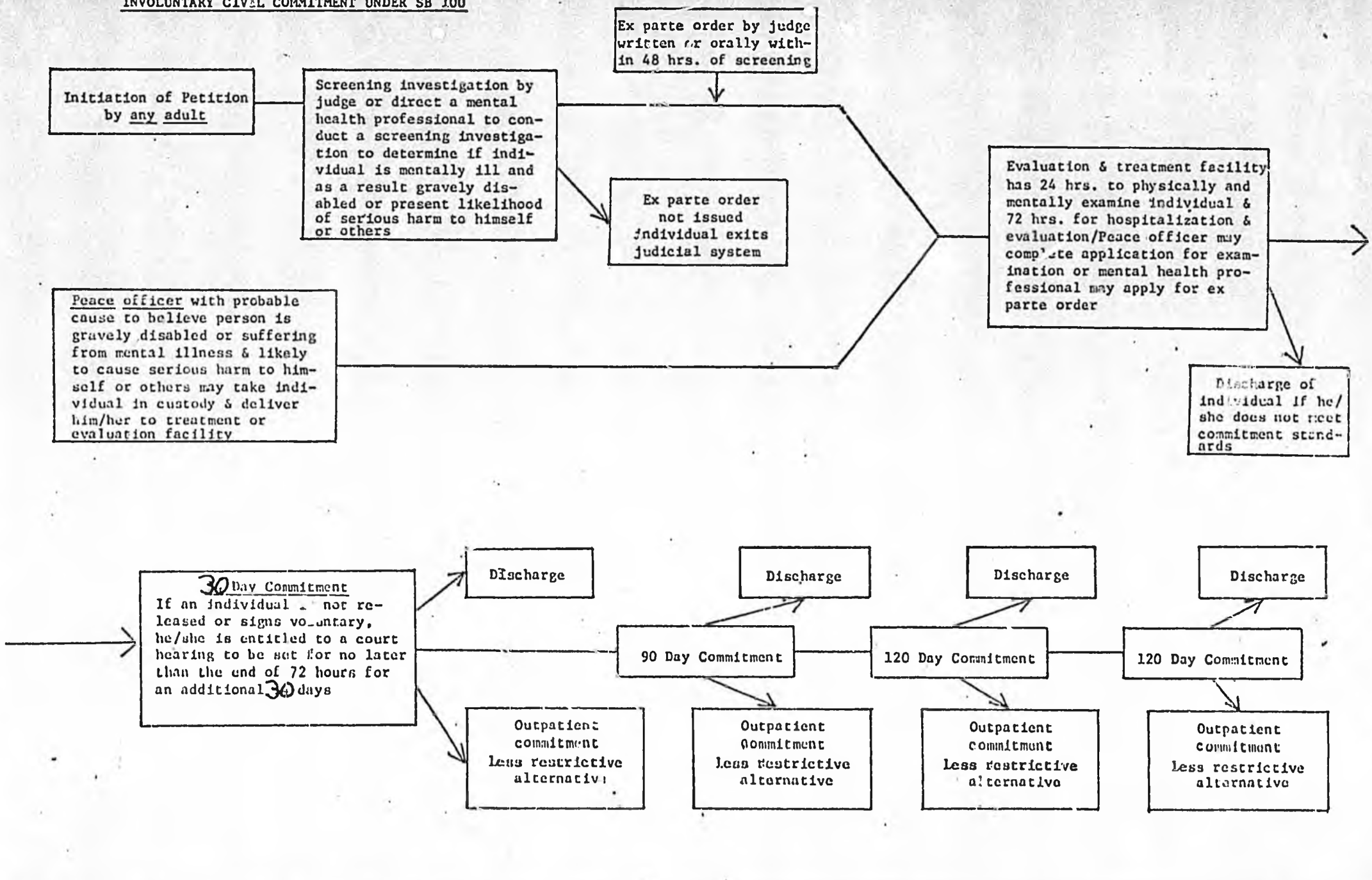
Additionally, Article 9 prohibits experimental treatments, establishes patient rights to privacy and personal possessions, and states that patient records remain confidential.

All patient rights must be accessible to patients in a language understood by the patient.

Article 10, which begins on page 27, explains miscellaneous provisions. They include: transportation, nonresident patients, rights outside the state, the disposition of personal effects and unclaimed funds, definitions, and commitment after a judgment of not guilty or incompetency.

SB 100 would repeal AS 47.30.010 through 47.30.170, and AS 47.30.190 through 47.30.340. These are the current mental health statutes and their constitutionality has been questioned.

INVOLUNTARY CIVIL COMMITMENT UNDER SB 100



30-DAY PERIOD REVERTED TO 14-DAY PERIOD
Psge 4, Line 20

Sec. 47.30.690. VOLUNTARY ADMISSION OF MINORS UNDER 14 YEARS OF AGE. (a) A minor under the age of 14 may be admitted for ((30)) 14 days evaluation, diagnosis and treatment at a designated treatment facility if his parent or guardian signs the admission papers and if, in the opinion of the professional person in charge: ...

Would amend this and all other mentions of 30 days to read 14 days.

Throughout its lengthy legislative history, this re-write of the involuntary commitment statute has specified 14 days as the length of time allowed for the 2nd period of commitment and treatment. This was amended only this session.

As I understand it, the Department of Health and Social Services suggested changing the original 14-day period to a 30-day period primarily because certain medications were in use in Alaska facilities that required 21 or 22 days to take effect or to stabilize the patient. In Washington state the legislature dealt with the same issue except that the proposed change was from 14-days to 21-days. The same argument was raised.

There are several different reasons for returning to the original period of 14-days. Among these are the following:

1) The number of patients receiving drugs that take more than 2 weeks to take substantial effect was found to be very small in Washington state. Estimates on the order of 2½ to 5% were cited in testimony. A question that needs to be asked is whether a 30-day commitment period is justified by the number of persons that require this long solely because of the medication they are taking. The length of time will have a definite effect on all persons committed under the proposed statute.

2) Unfortunately, there is such a thing as bureaucratic inertia. If the facility has 14 days to either get the person into a releasable condition or file for a 90-day commitment, there will be a tendency to take the entire 2 weeks. If the facility has 30 days to fulfill the same obligation, there will be the same tendency to take the entire month, regardless of a statement that they should release the person as soon as possible.

3) The 90-day commitment period is available to mental health professionals at any point during the 2nd commitment period, whether it is 14 days or 30 days. If the facility finds that medication with drug that takes longer than 14 days to take effect is advisable, they do have the option to file for the 90-day period. Since the minimum effective period

of any drug is variable on a case by case basis, they would then have the length of time necessary to stabilize the patient prior to release.

3) While the patient has the right to be as free as possible from the effects of medication at a hearing on involuntary commitment, it can take months to be totally free from the effects of some psychotropic medications. The brief interruption necessary to hold a hearing after 14 days (or at some other point earlier in the 14-day commitment) should have little effect on the final stabilization point of the patient. In the few cases where the nature of the medication requires it, the balance of 90 days is available for the medication to take full effect.

4) A period of 14 days was found to be sufficient in Washington state which has a much bulkier mental health system, more prone to bureaucratic snarls and fumblings. There should be no problem in implementing a similar period in Alaska where the problems of the individual patient should not be significantly different, and the quality of mental health care should be at least as good.

5) Commitment statutes must be a balance of 3 factors. The need of society to protect itself from the acts of troubled persons, the responsibility of society to help those in need, and the constitutional requirement that those in danger of loss of liberty be accorded the maximum right to be free from undue intervention. A period of 30 days of involuntary treatment overbalances the second at the expense of the third. The same ends can be met through a transition from 3 days to 14 days to 90 days.

RELEASE OF MINORS
Page 5, Line 10

Sec. 47.30.695. NOTICE OF REQUEST FOR RELEASE OF MINORS UNDER 14 YEARS OF AGE FROM VOLUNTARY DETENTION AND COMMITMENT. The parent or guardian of any minor who is less than 14 years of age may request and obtain immediate release of the minor at any time, unless as the result of mental illness, ıe minor is likely to cause serious harm to himself or othe~. The minor may request his own release and shall be immediately released unless the professional person in charge of the facility feels that the minor is gravely disabled or is suffering from mental illness and as a result he is likely to cause serious harm to himself or others and there is reason to believe that the patient's mental condition could be improved by the further course of treatment sought. If such be the case the professional person in charge of the facility must initiate involuntary commitment proceedings to further hospitalize the pat~.

Without the above amendment there is no specific provision for a minor to request his or her release. While the sections dealing with a request for release by an adult may cover such a situation, it would be appropriate to accord minors the same rights specifically.

This amendment would retain the right of parents to file for involuntary commitment of minors, the right of the person in charge of a facility to file for commitment, and the right of a minor to request his or her own release.

ORAL ORDERS FOR COMMITMENT
Page 5, Line 25

... Within 48 hours after the completion of the screening investigation, a judge may issue an ex parte order orally or in writing, stating that there is probable cause to believe the respondent is mentally ill and that condition causes the respondent to be gravely disabled or to present a likelihood of serious harm to himself or others. In cases of oral orders a written order shall be issued by the court no later than 24 hours following the issuance of the oral order.

Without this amendment there is a question as to when an oral order for commitment must be put in writing. In a state as large as Alaska, there is no doubt that provisions for an oral order must be made; however, specific time limits for the production of a written order must be made.

DELETING BASIS FOR 90-DAY COMMITMENT
Page 12, Line 3

(1) allege that the respondent has attempted to inflict or has inflicted serious bodily harm upon himself or another since his acceptance for evaluation, or that he was committed initially as a result of conduct in which he attempted or inflicted serious bodily harm upon himself or another, or that he continues to be gravely disabled, ((~~or that he demonstrates a current intent to carry out plans of serious harm to himself or another~~));

This phrase is extremely vague when the question of proof in the courtroom is raised. What would constitute "demonstrates" in an objective framework? How can current intent be shown in court? Essentially, the phrase lends itself to a strict prediction of future violent behavior.

The American Psychiatric Association has, in writing at their last convention, stated that they have no special expertise in predicting future behavior of a violent nature and that they, as a profession, would prefer not to have the burdensome responsibility of making such predictions.

Actual acts of violence are covered in earlier portions of the same section and the possibility of future violence is dealt with in AS 47.30.730(a), Paragraph (1). (See Page 9, Line 19 of CSSB 100)

The inclusion of the phrase vastly expands the basis for involuntary detention and forcible treatment and the reliance on what would be predictions of possible future actions. Since potential harm to self or others is adequately covered in other sections of the bill it would seem to be redundant to repeat such provisions and inappropriate to throw the door open wide when the intention of the legislation is clearly to close the door to unnecessary involuntary commitment.

RETURNING UNWILLING PATIENTS TO THE HOSPITAL
Page 17, Line 13 and Page 18, Line 10

Sec. 47.30.790. RETURN FROM UNAUTHORIZED ABSENCE. When a respondent undergoing involuntary treatment on an inpatient basis is absent from the treatment facility without, or in excess of, authorization under AS 47.30.785, the professional person in charge of the facility or his professional designee may contact the appropriate law enforcement agency which shall cause the respondent to be taken into custody and returned to the treatment facility. When considered by the professional person in charge to be appropriate, hospital staff may accompany the peace officer or officers in their effort to return the patient to the facility.

AND

... If the respondent fails to arrive at the treatment facility within 24 hours after receiving the notice, the professional person in charge ((~~shall cause him to be taken into custody~~)) may contact the appropriate law enforcement agency which shall cause the respondent to be taken into custody and transported to the facility. ((~~If requested, a peace officer shall assist the provider of outpatient care or the facility.~~)) When considered by the professional person in charge to be appropriate, facility staff may accompany the peace officer or officers in their effort to return the patient to the facility.

These two proposed amendments should be considered together as they deal with the same possible problem in the implementation of the law.

Without these changes the bill would give hospital or other treatment facility staff the power of arrest with all the attendant responsibilities and problems. It would expose them to potentially deadly risk in cases where patients were extremely unwilling to return to the facility. It would unnecessarily increase the risk to bystanders as facility staff would not normally be trained or experienced in dealing with an armed and dangerous person. In addition, the possibility of misidentification must be taken into account in which case the state could face massive civil suit for wrongful arrest.

Dammasch State Hospital, outside Portland, Oregon had a system for the return of patients to the hospital which was markedly similar to this one. Called a "Code 44", it involved dispatching hospital staff in an unmarked hospital car to take alleged patients back to the hospital. While involved in such operations hospital staff were attacked by persons with axes, lengths of 2 X 4, bottles, and a variety of other impromptu

weapons. Things progressed to the point where any suspicious person was reported to the hospital and staff sent to investigate. There were incidents where citizens of surrounding towns were accosted by hospital staff and forced to produce identification or be faced with a trip to the state hospital.

The provision for facility staff to accompany peace officers would help to lessen the trauma of being "arrested" by the police and assist the officers in persuading the person to return peacefully.

The combination of the two provisions would enhance the effectiveness of both facility staff and peace officers while minimizing the potential of harm to staff, police, and bystanders.

RELEASE OF PHOTOGRAPHS
Page 24, Line 14

Sec. 47.30.840. RIGHT TO PRIVACY AND PERSONAL POSSESSIONS. A person undergoing evaluation or treatment under AS 47.30.655 - 47.30.915 shall

(1) not be photographed without his consent and that of his guardian if a minor, except he may be photographed upon admission to a facility for identification and for administrative purposes of the facility; all photographs shall be confidential and may not be released by the facility to anyone other than the patient or a person he has designated in writing except under court order.

Photographs which would become part of a patient's medical record should be as available as the record itself to the patient or to the person(s) of his choice. Without this amendment, a patient would have to resort to the courts to obtain a picture of himself made by a facility. This would seem to be an unnecessary precaution.

AVAILABILITY OF RECORDS
Page 25, Line 11

Sec. 47.30.845. CONFIDENTIAL RECORDS. Information and records obtained in the course of a screening investigation, evaluation, examination or treatment are confidential and are not public records, except as the requirements of a hearing under AS 47.30.655 - 47.30.915 may necessitate a different procedure. Information and records may be copied and disclosed under regulations established by the department only to

(1) the person who is the subject of the information or records or to individuals to whom the ((~~patient~~)) person has given written consent to have information disclosed;

(2) physicians and providers of health, mental health or social and welfare services involved in caring for, treating or rehabilitating the patient;

As it is written, the bill would allow a patient to authorize a third party to obtain copies of his records without having access himself! It would seem appropriate to give the person at least the same degree of access. It would also be appropriate, philosophically, to list the person or his designee first in line as persons with access; hence the juxtaposition of paragraphs (1) and (2) in the above amendment.

The fruits of a "screening investigation" should be added to the classes of records available for a number of reasons. First, since the records would become non-public records by their exclusion in this paragraph, even the passage of Senate Bill 90 (a state-level Freedom of Information Act) would not guarantee access for the person investigated whether he was committed or not. Second, since information of an extremely derogatory nature may be collected, proven false, and then maintained in a file on the person, the subject should be able to discover the nature of the material in the records and respond accordingly.

In Seattle, which already has the equivalent of SB 90 in effect, we were forced to sue King County to force the disclosure of information maintained on a woman investigated for possible involuntary commitment. After nearly a year of effort we were finally able to force the disclosure of the file which included charges of no less than 3 criminal assaults allegedly committed by the woman. The charges were found to be unsubstantiated by the investigation and the woman was not committed. However, the only mention of the result of the investigation was a check mark in a square on one of the forms and a brief sentence handwritten on the back of one of the forms.

"GRAVELY DISABLED" AMENDED
Page 33, Line 11

(7) "gravely disabled" means a condition in which a person, as a result of mental illness, is in imminent danger of physical harm arising from such complete neglect of basic needs for food, clothing, shelter, or personal safety as to render serious accident, illness or death highly probable if care by another is not taken;

The concept of parens patrie, or the necessity for the state to intervene in the life of a person to protect himself from himself, is still in a state of growth, development, and change. This concept is the basis of the definition of gravely disabled. The addition of the word "imminent" would more clearly define the point at which the state's parens patrie would trigger in the form of involuntary commitment.

The reasons for this are many and varied. First, the word imminent appears as the trigger level in the definition of likelihood of serious harm provisions in other sections of the bill. It would be appropriate to require the same degree of seriousness in the much less clear area of indirect danger to self through failures to provide. Second, the imposition of state protection of the individual should occur only at the point where a clear and present danger can be shown.

On a philosophical level, the state should keep in mind that life is basically a long learning experience and everyone goes through periods when their life is not seemingly under their control. In the vast majority of cases people regain control of their lives and pick up where they left off. It is in the state's and the person's best interests to intervene only when the regaining of this control is not in sight and the person is clearly in danger. Intervention prior to this point places the person at risk of loosing the chance to do it himself as well as making him dependent on the state whenever problems arise. We should all have the chance to learn to take care of ourselves, and the assurance that if we fail we have the option of outside help.

EXPANSION OF "SCREENING INVESTIGATION"
Page 35, Line 6

(15) "screening investigation" means the investigation and review of facts which have been alleged to warrant emergency examination or treatment, including interviews with the persons making such allegations, any other significant witnesses who can readily be contacted for interviews, ((~~and, if possible,~~)) the respondent, if possible, and an investigation and evaluation of the reliability and credibility of the person or persons providing information or making allegations;

Since the bill makes attmpting to commit someone with false information a felony, one would assume that wrongful commitments are considered to be very undesireable. It would be appropriate to attempt to head off such commitments as early in the process as possible since a felony conviction after the fact is not nearly as desireable as the absence of the wrongful commitment in the first place.

This amendment would specify a pre-detention consideration of the quality of information used as a basis for commitment. It would ensure that the information on credibility would be easily available to both "prosecution" and "defense" at the first judicial opportunity.

A clear and explicit statement of state policy on heading off wrongful and/or malicious involuntary commitment would go a long way in assuring fair application of the statute.

HB 472 Tp 12

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To Interested Persons:

Attached please find a copy of proposed mental health legislation in working draft form. Your comments on the underlying policies, or on any specific provisions of the draft, would be appreciated.

Background Information

The history of this proposed legislation dates back to April of this year when, at the request of Joyce Munson, Executive Director of the Alaska Mental Health Association, I undertook a review of the existing mental health statutes in Title 47, Chapter 30 of the Alaska Code. Numerous deficiencies in the present legislative framework were discovered, the most glaring of which is that under these statutes, a person against whom commitment proceedings are initiated could conceivably be held for 66 days prior to receiving a judicial hearing, at which time the court might determine that the person was not in fact subject to commitment under the Alaska statutes.

As a result of this survey of the existing law, a memorandum, dated July 7, 1975, was prepared; its primary purpose was to identify the problems in the Alaska mental health provisions. The hope was that enough concern could be aroused through this vehicle so that citizens of the community with a particular interest in mental health could come together to formulate a more humane, lawful, and constructive approach to commitment and other aspects of mental health legislation. The Mental Health Association circulated the memorandum among approximately 50 people. An initial meeting was set for August 13, 1975.

At that first meeting it was suggested that we attempt to get formal sanction from the Legislature for our work. With the support of Clark Gruening and Cenie Chance, limited funding was obtained from the Legislative Affairs Agency to prepare a draft of new mental health laws for the State. Meetings of the group, which subsequently became known as the Mental Health Task Force, were held regularly on a bi-monthly schedule from mid-August through the end of November. A list of persons who

attended one or more of these meetings is attached to this letter. Virtually all of these people put considerable effort into the meetings and made valuable contributions. Special mention should be made, however, of the great amounts of time and energy invested by certain members of the Task Force. The contingent from API, including Dr. Robison, Veronica Heideman, and Elizabeth Shaw was particularly conscientious. Dr. Bill Moore, Regional Supervisor in Anchorage for the Division of Mental Health was also a regular participant in the meetings and a strong advocate for his various viewpoints on how to best advance the patients' health and well-being. Joyce Munson was a continuous supporter, and also helpful in providing backup services on the telephone and otherwise. The Attorney General's Office, finally, consistently provided us with sound legal insight.

As major areas of the legislation were taken up, guidance would first be obtained from Task Force members to determine the group's basic policy on a specific issue. I would then prepare a draft of the provisions involved, and the specific language would eventually be the subject of further discussion and much revision. The language used, as well as some of the ideas themselves, were generally a composite of group thoughts, provisions from the laws of other states such as Washington, Arizona and California, provisions from the model code prepared by the Washington D.C.-based Mental Health Law Project, and my own ideas.

Before beginning a more detailed commentary on specific provisions of the proposed legislation, it should be noted that while over 100 hours have been spent in drafting thus far, no one on the Task Force conceives of the bill in its present form as a finished piece of legislation. In the interest of obtaining much more widespread review by persons throughout the State who have an interest in this field, it was determined to release the draft at this time, knowing full well that even amongst themselves, the Task Force members had not yet ironed out all of the questions and difficulties which they might see in the legislation. It should be noted further, that specific attention was given only to four areas: involuntary commitment, voluntary admissions, patients' rights and definitions. Thus, there are many provisions taken from the existing legislation with only minor revisions, if any, which provisions would conceivably benefit from far more extensive changes. It was felt that the interest in expeditious development of legislation that would reform the most blatant

injustices in the existing system was of top priority; other, less eggregious problems, could be handled in subsequent legislation.

Commentary

Article 1. Mental Health Program. The first section of this article is taken almost directly from the existing Chapter 30. The second section, "Office of Mental Health Advocate", at the top of page 3, is entirely new. The proposed legislation would make much more extensive use of legal counsel than is presently the case. A system that can insure prompt state-wide delivery of services to mental health respondents is thus essential.

Initially, it was assumed that the Public Defender Agency would handle the bulk of this work. Upon consultation with Brian Shortell, head of that agency in Anchorage, it was determined that this idea was not practical. With its orientation towards the criminal side of the law and its heavy caseload, the Public Defender Agency would probably not function as an effective mental health advocate. It was thus decided to form a new office whose staff would come from the private Bar as well as from established organizations such as the Public Defender Agency and Legal Services, providing maximum flexibility to insure prompt service in rural areas as well as the urban centers. It was recognized that the location of this office within the Department poses certain conflicts. Suggestions for alternative placements would be welcome.

Article 2. Voluntary Admission for Treatment. The standard for voluntary admission (page 5 of the draft) is not materially different from that now contained in AS 47.30.020. A person may choose to enter a treatment facility simply because he is suffering from mental illness and recognizes the desirability of in-patient treatment. He need not be dangerous to either himself or others. There are, however, two critical changes in this article from the present law. First, there is no longer a 30-day waiting period before a person voluntarily admitted to a hospital may seek discharge. Such time lapse is required by AS 47.30.050. Second, under the proposed legislation (page 7 of draft), minors could be admitted voluntarily against the wishes of their parents or guardians. They would have to submit themselves to a procedure analogous to the adult commitment process. The order entered by a court in such case would be one for voluntary admission against parental wishes, and would enable the minor to leave the facility under the same

circumstances that an adult voluntary admission might obtain his discharge. The problem of minors desiring to obtain in-patient treatment against their parents' wishes has been serious and persistent enough to warrant the inclusion of such a provision in the legislation.

Article 3. Involuntary Admission for Treatment. Discussion of this article consummed the vast majority of the Task Force meeting time. Fundamental issues thought to be laid to rest would be resurrected as new members joined the Task Force, so that the basic policy positions found in the involuntary commitment sections were given extensive thought and consideration.

By way of general comment, it should be noted that the Task Force was greatly concerned by the number of steps to be followed, time limits to be adhered to and documents to be filed under the involuntary commitment sections. Simplification was continually attempted. The questions of how the courts would function in outlying areas, and in which courts documents would be filed when respondents were transported to different places for investigation, evaluation and treatment, were also troublesome. Some of these difficulties would probably be ironed out in practice. Ideally, however, the legislation itself will still be improved in this regard.

The first section of Article 3, the "Commitment Standard", on page 11 of the draft, was the first subject taken up by the Task Force. Under the present statute, AS 47.30.020, an individual can be involuntarily hospitalized merely because he or she is "in need of care or treatment in a hospital". There was unanimous agreement that neither the police power nor the parens patrie aspects of statehood justify this degree of control over human liberty from a legal or moral standpoint. The more difficult decisions were seen to be whether commitment should be allowed in cases where the person was dangerous either to himself or to others. There was discussion to the effect that since the criminal defendant could not be incarcerated until such time as he had allegedly committed a crime, neither should an allegedly homicidal mental patient be subject to commitment prior to having acted out his homicidal tendencies. An even stronger argument was waged in connection with the suicidal person, where it was the philosophy of some that the

person was entitled to take his own life without the State's interference to prevent such occurence. As the draft reflects, however, the decision was ultimately made to allow commitment of persons who are mentally ill and present a danger to either themselves or others. The term used was "likelihood of serious harm", and this term is spelled out in the definitions in a highly restrictive manner, limiting the danger to a substantial risk of imminent bodily harm to either the person himself or others. The commitment standard also contains the requirement that there be "reason to believe that immediate inpatient care and treatment could improve [the individual's] condition." This insures against the use of treatment facilities for those persons who, for example through brain damage, are not in a position to be helped by such confinement. Clearly, other provision must be made for such persons, perhaps in guardianship legislation, if the State is to fulfill its responsibilities toward all citizens.

The evaluation provisions (beginning on page 11) were perhaps the most intensely studied. The Task Force recognized that a period of brief but intensive evaluation was essential to a fair and informed commitment process. The most difficult decision in this context was determining what means should be used to bring the person involuntarily into the evaluation phase. It was concluded that physicians' certificates could seldom be obtained. It was also felt that the courts were not particularly well equipped to determine when an evaluation was needed. Therefore, the burden was placed on the mental health community to conduct investigations upon receipt of appropriate requests, or "petitions". In order to insure that the mental health professionals conducting these examinations were properly trained and familiar with the procedures, it was decided that the districts established under the Mental Health Community Services Act would be charged with the responsibility for these investigations. To be effective, this procedure will obviously require funding of specific district facilities currently existing on paper only.

The Task Force was aware that in some circumstances the danger to a respondent or the community would be of such an immediate nature that the 24-hour summons required by the proposed legislation would not provide sufficient protection. Thus, detailed provisions for emergency detention by either District officials or peace officers were included in the draft (beginning bottom of page 13 of the draft). In all cases, however, emphasis was placed on affording the respondent prompt

notice of his rights in regard to the involuntary evaluation and potential for commitment. Perhaps of central importance, it is emphasized that the respondent is to be notified promptly of his right to contact an attorney immediately, his right to actually see such attorney within 24 hours of his arrival at an evaluation facility, and his right to free legal representation in the event he is indigent.

While it is hoped that within a reasonable time, evaluation facilities will be widespread in this State, one of the problems grappled with by the Task Force was the existing scarcity of such facilities outside of the urban centers. In an effort to alter the present practice of bringing virtually all respondents into API for evaluation and, ultimately, commitment, provision was made for evaluation of respondents in their local communities whenever possible. An attempt was also made to allow reasonable extensions of time for transporting either respondents or medical or legal personnel in and out of the Bush.

Another area of considerable controversy was that of medication prior to the commitment hearing (page 18). Certain members of the Task Force vigorously insisted on their right to medicate in order to alleviate an individual's suffering. Ultimately, however, it was the prevailing view that medication against a respondent's wishes could be allowed only where "necessary to prevent bodily harm to the respondent or others or deterioration of the respondent's mental condition such that subsequent treatment might not enable him to recover."

The length of commitment periods was another crucial factor to be decided by the Task Force. Unlimited commitment periods were seen as too great a restriction on a person's right to liberty. Further, such extensive periods were not seen as conducive to prompt treatment and rehabilitation of the mentally ill person. On the basis of experience in other states, it was determined to have an initial 14-day commitment period (after which it appears that the majority of patients may be released as no longer presenting a danger to themselves or others). Subsequent commitment periods for patients who require longer-term treatment were set at 90 days each. A limit on three such consecutive 90-day periods was set (page 30) on the basis of a general consensus among the medical representatives on the Task Force that if substantial improvement in a person's mental condition could not be made over such a period of time, the person was probably not receiving adequate treatment or was not susceptible to the form of treatment administered in the facility involved.

Throughout the commitment sections, the concept of "least restrictive alternatives" is in evidence. Facilities or persons petitioning for commitment of a respondent, and courts ruling on such proposed commitments, are thus obliged to take into account whether some means short of in-patient treatment would suffice to improve the person's mental condition and protect him and society adequately. This is an emerging concept in the field of mental health law. The proposed language probably only anticipates what the courts will soon require.

In keeping with the references to "least restrictive alternatives", sections were added (beginning page 31 of the draft) pertaining to involuntary out-patient care and treatment. They provide, first, for the release of a person committed to in-patient care, prior to the expiration of his commitment period, on condition that he obtain out-patient treatment. And, second, there is provision for placement of a person in a treatment facility when it becomes apparent that court-ordered out-patient treatment is not providing adequate protection against an individual's dangerous tendencies.

The draft provides that such out-patients could be (in emergencies) taken into custody and placed on in-patient status in a treatment facility, with a hearing to be held subsequent to such placement. It may be the view of some that such commitment hearings should take place before an out-patient is transferred to in-patient status. The reasoning behind the draft's present formulation was that persons ordered to undergo involuntary out-patient treatment had already, in the recent past, been afforded the right to a full court hearing where they had in fact been found to present likelihood of serious harm. Some discretion in the hands of the person providing the out-patient care was thus seen as reasonable, so long as the placement in an in-patient facility was followed quickly by a full due process hearing.

Although the concepts for the out-patient sections were discussed by the Task Force, it should be noted that unfortunately, the Task Force never had an actual draft of these provisions before them. Thus, this part of the proposed legislation, in particular, could undoubtedly benefit from comments by interested persons.

Article 4. Patient's Rights. The first patients' right covered, the "right to treatment" (page 37), is derived from another emerging concept in the field of mental health law. While the Supreme Court has thus far only held such right applicable to non-dangerous committed persons, it is probable that in the future the right to treatment will be extended to the allegedly dangerous as well. Thus, again, the proposed legislation only anticipates what it is expected the case law will ultimately require. The right to treatment, moreover, is seen as a moral imperative as well as a legal necessity.

The cornerstone of this right to treatment is the individualized treatment plan, the requirements of which are spelled out in the definitional section of the proposed legislation. Formulation and adherence to such a plan should serve to insure that no patient is merely warehoused for the duration of his or her commitment period, and that treatment is in fact geared to each patient's particular needs.

Because abuses of the use of medication are of such a potentially destructive nature, extensive safeguards on the use of medication were deemed appropriate (page 38 of the draft). Since the patient is also the only one who knows what it feels like for him to be under the influence of any given medication, the draft provides for maximum feasible participation by the patient himself in the decision by the physician to prescribe psychotrophic drugs.

An attempt was also made to enable the patient to choose whether he would prefer some form of physical restraint to the use of medication in certain circumstances. At least one member of the Task Force vigorously objected to the mention of any physical restraint, excluding use of the quiet room, in the draft. But although great strides have been made in reducing and in Alaska, perhaps eliminating use of the straight jacket, sheet packs and restraints of a similar ilk, it must be recognized that from the patient's standpoint the indignity, distress and suffering occasioned by medication administered in good faith, can sometimes be as great or greater than that occasioned by the use of the physical restraints.

On the delicate subject of electroconvulsive therapy (page 41), it was concluded that only brief mention of this form of treatment should be made. Thus, ETC is to be allowed only with informed consent and court order. It is understood that detailed regulations on the subject of such therapy could be adopted by the Department or hospitals or other facilities involved.

Among the non-medical patients' rights, the section prohibiting discrimination in obtaining or retaining licenses (page 46) was stressed by the Task Force as highly important. This provision would have the effect of repealing the inconsistent sections of the Motor Vehicle Code which now allow application for motor vehicle licenses to include questions as to the person's past hospitalization for mental illness. Under existing procedures, an individual who has in fact been hospitalized in the last five years and answers the application form accordingly, will be required to get a note from a treating physician indicating that such person may safely drive a motor vehicle. Such provision is clearly discriminatory, inasmuch as a person discharged from a mental hospital or other such treatment facility is no more likely to be a dangerous driver than the average citizen who may or may not, at any given time, be preoccupied with a particular problem. An individual who has received treatment may, in fact, be better able to cope with his difficulties than someone facing a similar dilemina who has received no outside help.

Article 5. Miscellaneous Provisions. Virtually all of the provisions of this section (page 47) are taken from the existing statute without major modification. These were provisons that the Task Force simply did not have time to address. They were included in the draft so that it would constitute an essentially complete mental health statute.

The definitional section (beginning on page 55), on the other hand, received considerable attention and contains the heart of many of the provisions of the proposed legislation. Reference has previously been made to the critical terms of "individualized treatment plan", "least restrictive alternatives" and "likelihood of serious harm". The definition of "mental illness" was also discussed at some length. There was great concern that certain conditions such as mental retardation not be mistaken for mental illness, and yet the Task Force wanted to insure that a retarded person, for example, could receive mental health services if he happened to be afflicted with mental illness in addition to his state of retardation. The definition was designed to meet these ends.

The definition of a "minor" was arrived at in consultation with a representative from Alaska Youth Advocates. While it was recognized that the "below 16" age limit would not necessarily coincide with that found in other statutes pertaining to minors, it was determined that for purposes of commitment or voluntary admission to a treatment facility, a person 16 years or older should be entitled to make his own decisions.

Effective date. It was difficult to arrive at a time frame within which such a sweeping revision of the mental health statutes could realistically be expected to take effect. While the necessity for more time could always be argued, it was concluded that the basic provisions of the statute could be implemented within six months; any extensions would only serve to encourage delay on the part of the officials involved in appropriating funds for or implementing the new law.

Conclusion.

This commentary was intended to highlight the areas which were of particular importance and/or very controversial to members of the Task Force. It is hoped, that this information provides some basis for understanding the proposed legislation.

In conclusion, it should be reiterated that the authors of this draft by no means consider it a finished product. The Task Force recognizes that much refinement--and quite possibly fundamental changes--may be in order. It is hoped that your comments will assist in this work. Thank you for your consideration.

Sincerely,

Joan M. Katz,
Consultant to the
Mental Health Task Force
Legislative Affairs Agency

JMK/am

Enclosure

JOAN M. KATZ
ATTORNEY AT LAW
645 G. STREET, SUITE 401
ANCHORAGE, ALASKA 99501
(907) 272-1731

MEMORANDUM

TO: The Alaska Mental Health Association

FROM: Joan M. Katz

RE: Comparison of HB 733 and HB 472

DATE: July 11, 1977

HB 733 and HB 472 contain numerous differences. Perhaps the most obvious is the absence of any provision for a mental health advocate in 472. Other areas of major impact are more subtle; sections on involuntary admissions; treatment of minors; and patients rights will be discussed in some detail. Less significant differences will be noted in the order in which they appear (or are omitted) in HB 472.

Involuntary admissions. One of the most glaring deficiencies of HB 472 is the provision authorizing a judge to issue an ex parte order directing peace officers to take an individual into custody for evaluation and treatment simply on the basis of a petition of "any adult person" stating that the respondent is mentally ill and gravely disabled or presenting a likelihood of serious harm to himself or others. The ex parte procedure is one in which the opposing side -- in this case the would-be patient and/or his representative -- is not present to state his version of the case to the judge; in fact, he is not even notified of theproceedings until they have been concluded. Such a procedure for commitment initiation would be worse than the present requirements which at least insist on a physician's certificate as contrasted with the word of "any adult person". Judges have little choice but to issue the orders requested when faced with allegations from one side only. HB 733, in contrast, would allow mental health professionals to make the initial determination of mental illness and potential forharm, and would provide the individual involved with an opportunity to speak for himself in most instances. Except in emergencies, moreover, a summons procedure, rather than police custody, would be utilized.

Some other facets of commitment: under hb 472, a patient may have to wait a whole day to be examined by a doctor (24 hours); HB 733 allowed only 12 hours. Again, under 472, the petition for a 14-day commitment need not allege that the respondent's condition could be improved by treatment unless he is labeled "gravely disabled". HB 733 requires such an allegation and finding before anyone can be committed. HB 472 allows exclusion of the respondent from his own probable cause hearing on the grounds that his presence would be

"seriously disruptive to the hearing"; HB 733 contains no such provision. It would seem that unless counsel for the respondent were willing to stipulate to such an exclusion, it should be granted if at all only after an attempt has been made to have the respondant at the hearing.

The standard of proof required for commitment is higher in HB 472 than in 733; the former requires "clear and convincing evidence" while the latter asks only for a "preponderance of the evidence". In this connection, thus, HB 472 affords the respondent greater protection. The provisions for 90-day commitments do not differ substantially between the two bills. What does differ, however, is the fact that after the first 90-day commitment, HB 472 would allow additional 180-day commitments ad infinitum, while HB 733 would only allow a total of three 90-day commitments. It was the medical members of the task force which authored HB 733 who argued for the finite limit on commitment periods, contending that if substantial progress could not be made in 9 and 1/2 months, the psychiatric establishment had no right to impose further "treatment" upon the unwilling patient.

Treatment of Minors. The provisions of HB 472 for inpatient treatment of minors are contradictory. Section 47.30.041 states clearly that a minor may be admitted "voluntarily" if his parent or guardian signs the admission papers and the facility agrees that he is suffering from a mental illness. The next section, however, (AS 47.30.116) says that any minor may request release with the result that involuntary commitment proceedings must be initiated to keep the minor institutionalized. And several pages later, Section 47.30.116 indicates for the first time that the minor has the right to refuse voluntary admission and be treated as an adult for commitment purposes. Under HB 733, by contrast, it is clear that the only way a minor can be "voluntarily" admitted is if he or she voluntarily agrees to such admission. In addition, HB 733 allows the minor to be admitted voluntarily and receive treatment against his or her parents' wishes pursuant to evaluation and court order. It should be noted that HB 472 does not define the term "minor" although distinctions are made between minors over and under the age of 14.

Patients' Rights. The patients' rights provided in HB 472 are generally far weaker than in 733. Notably missing in 472 are the protections against non-essential and undesired medication and the requirement that individual treatment plans be formulated. In HB 733, for example, there are statements regarding patients' rights to refuse medication; a philosophical statement that "all persons have the right to be free from unnecessary or excessive medication" (Section 47.30.221(6)); requirements for detailed explanation for the use of any medication ; consultation with the treatment team, etc. These protections were seen as vital by most members of the 733 task force.

Similarly, HB 733 contains a requirement that patients receive adequate physical and mental care (AS 47.30.221(1)) and further specifies that an individualized treatment plan must be

developed to insure that each patient receives personalized attention and treatment appropriate to his or her particular condition. In the same vein, the requirement of a discharge plan, included in HB 733, is not present in HB 472.

Outside of the strictly medical realm, HB 472 also eliminates any reference to physical exercise for patients; does not delineate the circumstances under which work may be appropriate for a patient; does not require the establishment of grievance procedures within each facility; and does not mention the use of Native language notices where practicable and necessary. Further, HB 472 requires the committed patient to pay his/her way the same as the voluntary admission; HB 733 required payment only from the voluntarily admitted individual.

Beyond the areas of patients' rights, minors' rights and involuntary admission, there are numerous other, usually less far-reaching, differences between the two pieces of proposed legislation. These differences are noted in the order in which the appear in the bills:

Transportation. Transportation is not excplicitly included as a Departmental power and responsibility. Since transportation is so essential in this State, it should be mentioned at the outset.

Prayer Treatment. HB 472 contains a section (AS 47.30.016) providing that an individual is entitled to treatment by spiritual means through prayer "in accordance with the tenets and practices of a recognized church or denomination" and further suggests that such treatment may be imposed on a minor if his parent so desires. This smacks of infringing on liberties, rather than protecting them; provisions for visits by clergy whether "recognized" or not should adequately protect freedom of religion; this section should be deleted.

Standards for Voluntary Admission. HB 472 has a much simpler standard for voluntary admission than does 733; under 472, a person need only be mentally ill and voluntarily sign the admission papers. Under 733, it is required that the person actually need inpatient care and treatment or be likely to cause harm to himself or others, and the bill further requires, in effect, that the individual understand what it is that he or she is signing. The intention in HB 733 was to protect the person who might not comprehend the full implications (E.G. on his future search for jobs, quest for adoption, etc.) of institutionalization from agreeing too readily to this voluntary procedure if it were not, in fact, necessary to his or her well-being. It is debatable how significant this difference really is.

Notice of Rights/Description of Facility. The notice of rights required in HB 472 Section 47.30.026 does not include

a description of the particular facility in which a patient finds himself, as required in HB 733. While a nice touch, this provision is not essential.

Notice of Intent to Leave Facility. HB 472 allows 48 hours to "initiate" commitment proceedings against a voluntary patient who desires to leave. It is unclear whether this means that the facility has 48 hours to decide whether a 72-hour period shall begin to run, or whether some other meaning is intended. HB 733 makes it clear that commitment proceedings must be commenced immediately, with the 72-hour period starting from the time notice was given. In addition, HB 733 addresses the question of whether the initial commitment shall be for 14 or 90 days when a decision is made to commit a previously voluntary patient. HB 472 does not make this distinction, leaving an ambiguity as to the length of the commitment; the presumption would be for the 14-day duration.

Gravely Disabled. HB 472 contains a distinct category of mentally ill termed "gravely disabled". This person would also be covered under HB 733's definition of "likely to cause serious harm". The terminology is not, therefore, material.

Appointment of independent mental health professional. At the 14-day commitment hearing, there is no provision in HB 472 for appointment of an independent mental health professional as there is in HB 733.

Right to waive 72-hour period for hearing. The waiver of the 72-hour limit, contained in HB 733, was eliminated in HB 472. While not of great importance, this provision could conceivably allow the patient to save face by obtaining treatment during an extended evaluation period without ever actually being admitted to a facility. Similarly, it could insure that the mental health professionals were certain that commitment was essential in close cases. Whether in practice a patient would be pressured to consent to the extension to give the facility more time is open to speculation.

Location of probable cause hearing. HB 733 provides that the hearing need not necessarily be at the courthouse, but can also take place at the evaluation facility or some other setting "least likely to have a harmful effect on the mental or physical health of the respondent". AS 47.30.116. HB 472 has no such provision. While the present practice of holding such hearings at API, etc., might continue in any event, it seems appropriate to include this section in the legislation.

90-day commitment. The provisions contained in HB 472 are streamlined somewhat from those in HB 733, but no major substantive changes (other than those previously noted) have been wrought.

Placement Close to Home. The provisions of HB 733, Section 47.30.151 regarding placement close to home are not included in HB 472. Given the impact of transfer to API for someone in the Bush, this section should be included in the legislation.

Outpatient Treatment. HB 733 requires that a patient released early from inpatient treatment on condition that he or she receive specified outpatient treatment should be given a copy of the conditions for his or her early release. No such document is required by HB 472. Similarly, HB 472 ignores the possibility that the outpatient care might be in a different community than the inpatient treatment, and makes no provision for time and transportation from one to the other.

Visitors. Vistors are handled in one general provision in HB 472; HB 733 makes specific reference to clergy and attorneys and recognizes that there may be times when other visitors may be inappropriate. HB 472 is thus both more "liberal" in not specifically allowing for the cut-off of visitors and more "conservative" in not insuring access to attorneys and clergy.

Discrimination Against Mental Patients. This section in HB 733 (AS 47.30.246) is of great significance since Alaska's human rights laws contain no reference to mental illness; mental patients -- present and former -- are still subject to substantial discrimination. HB 472 has eliminated this vital section.

In conclusion, it should be noted that no attempt was made to touch on every difference between the two bills in this memorandum. It is hoped, simply, that this highlighting of the more significant ways in which the two bills diverge will be useful to the Mental Health Association.

HOUSE BILL 2
INTRODUCTORY STATEMENT
By Verner Stillner, M.D., M.P.H.

From 1904 to 1962 Alaska's mentally ill residents requiring hospital treatment were sent to Morningside Hospital in Portland, Oregon. Thus, they had to leave their spouses, families, and home communities in Alaska. In 1962 the Alaska Psychiatric Institute (API) was constructed and opened its doors thereby enabling mentally ill Alaskans to obtain hospital treatment in-state. The Community Mental Health Services Act of 1975 laid the groundwork for community operated mental health centers to become available in every district which would make mental health care available to many in their home communities. In 1975 only five such outpatient mental health centers existed; today 21 centers exist. 20 of these 21 centers are operated by communities via G.F. grants and local matching monies. These local community centers currently allow for outpatient services to be delivered close to the family and community of many patients.

A major concern today in the case of the mentally ill is deinstitutionalization. This concern and policy should be considered not only at the time of discharge of patients, but also before their admission. House Bill 2 provides an excellent means for providing regional services of outpatient evaluation to all children and adults prior to hospitalization. In the provision of evaluations and treatment nearest to families and communities of origin, a greater local involvement is fostered. This enables better community planning for pre and post hospitalization services.

House Bill 2 correctly addresses our present unconstitutional mental health statute and provides for treatment to be in the least restrictive environment, close to family and community. In addition, the bill safeguards the individual's legal rights while protecting society from persons who are mentally ill and dangerous to self or others.

House Bill 2 does not allow discrimination against the mentally ill in issues of housing and work. This act relating to mentally ill persons is a humane progression from the pre statehood treatment in Portland, Oregon to Anchorage to local communities close to the homes of the mentally ill.

Rule 35. Physical and Mental Examination of Persons.

(a) **Order for Examination.** When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by a physician or to produce for examination the person in his custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(b) **Report of Examining Physician.**

(1) If requested by the party against whom an order is made under Rule 35(a) or the person examined, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the examining physician setting out his findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that he is unable to obtain it. The court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if a physician fails or refuses to make a report the court may exclude his testimony if offered at the trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege he may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical condition.

(3) This subdivision applies to examinations made by

agreement of the parties, unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of a report of an examining physician or the taking of a deposition of the physician in accordance with the provisions of any other rule. (Amended by Supreme Court Order 158 effective February 15, 1973)

(a) CROSS REFERENCES: Civ. Forms 64, 65

4600 Shelikof St.
Anchorage, Alaska 99507
April 28, 1981

Senator William Ray
Pouch V
Juneau, Alaska 99811

Dear Senator Ray,

I appreciate your questions regarding my testimony by teleconference on CS for SB 100. As I indicated in my testimony, there are physical medical conditions that manifest their symptoms through mental disturbances. Some of them are serious infections such as encephalitis. I have attached a list for your information of some of the diseases that concern me.

I wanted to let you know that I support the passage of the bill but I believe Section 47.30.700 needs to require the involvement of a physician and the examination of the patient. Otherwise, I believe physically ill people will be transported hundreds of miles needlessly. These persons will be at risk of dieing themselves and of exposing other people to serious illnesses. As you know, emergency commitment in Alaska currently requires a physician involvement before a patient is tranported. I know of no state where this action is taken without a physicians being involved.

The reason I believe this will be a problem is that the Alaska Psychiatric Institute is the only facility capable of providing involuntary evaluation and treatment in the entire state. No other hospital in the state is willing or able to accept this type of responsibility. Although the law permits hospitals in cities such as Juneau or Bethel to be designated as evaluation and treatment facilities, it does not require them to accept the designation. In the past these hospitals have refused to accept this responsibility. No other facilities (except jails) exist in these communities capable of providing 24 hour residential care and treatment. As a consequence patients will have to travel to Anchorage without being evaluated locally by a physician.

In my opinion, this section is simply too permissive to provide the public with the protection it deserves. If it is not amended then I beleive you should not vote for SB 100 unless you are satisfied that this defect has been overcome by some other mechanism.

Sincerely,

Jerry L. Schrader, MD

cc: Sen. Charles Parr
Sen. Pat Rodey

Psychiatric Presentations in Medical Illness

1. Metabolic - toxic disorders

   A. Endocrinopathies

      hypoparathyroidism
      hyperparathyroidism
      hypoadrenalism
      hyperadrenalism
      hypothyroidism
      hyperthyroidism
      acromegaly
      hypopituitarism
      insulinoma - hypoglycemia
      inappropriate ADH

   B. Encephalopathies

      uremic
      dialysis dementia
      dysequilibrium syndrome
      hepatic - Reye's
      CO_2 intoxication
      hypomagnesemia

   C. Nutritional disorders

      pellagra
      Wernicke's
      pernicious anemia
      hypervitaminosis A

   D. Miscellaneous

      sarcoidosis
      acute intermittent porphyria

2. Infectious Disorders - intracranial and systemic

      encephalitis
      syphilis - general paresis
      malaria
      pancreatitis
      acute chorea

3. Hereditary - Degenerative Disorders

multiple sclerosis
Freidreich's ataxia
Wilson's disease
tuberous sclerosis

4. Collagen - Vascular

systemic lupus erythematosus
polyarteritis nodosa
(cerebral ischemia, ASCVD, TIA)

5. Neoplastic Disorders

intracranial tumors
extra-cranial malignancies
specific tumors:
  pancreatic carcinoma
  carcinoid
  pheochromocytoma

6. Miscellaneous

Munchausen's syndrome
psychiatric side effects of non-psychiatric drugs
pseudotumor cerebri

SB

101

COMMITTEE REPORT

SENATE

FURTHER: None

4/14/81

Date: April 27, 1981

Mr. President:

The Committee on JUDICIARY has had SB 101

Teachers' Retirement System

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

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

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

and recommends _____

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

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Chairman

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Atkinson - No Rec.

Conway No Rec

CHAIRMAN

CARTA

Via Fisher

Central Alaska Retired Teachers Association

Advocate for Retired and Pre-Retired Educators

March 11, 1981

Senator Patrick M. Rodey
Pouch V Mail Stop 3100
Juneau, AK 99811

Fisher

RECEIVED
MAR 17 1981

Dear Senator Rodey:

On March 7, 1981 the Alaska State Retired Teacher's Association pledged their support of Senate Bill 101 which provides regulatory powers for the Alaska Teacher's Retirement Board. Members of the Central Alaska Retired Teacher's Association wish to add their voices to that support.

The expertise and knowledge of individuals serving on the existing advisory board, will equip those persons to serve as decision makers. Full utilization of this resource will assure more efficient governing. This concept is not untried. The Public Employment Retirement System Board has already gained those powers.

196

Thank you for your consideration of this point.

Sincerely,

Vera A. Gazaway

Vera A. Gazaway

Check

The committee now expects to pass out shortly.

Chapter 25. Teachers' Retirement.

Article
1. Teachers' Retirement System (§§ 14.25.010 — 14.25.220)

Article 1. Teachers' Retirement System.

Sec. 14.25.010. Retirement system established. A joint-contributory retirement system for teachers of the state is created. (§ 1 ch 145 SLA 1955; am § 1 ch 89 SLA 1960)

Am. Jur., ALR and C.J.S. references. — 40 Am. Jur., Pensions, § 1 et seq.; 47 Am. Jur., Schools, § 27 et seq.; 48 Am. Jur., Social Security, Unemployment Insurance and Retirement Funds, § 1 et seq.

Validity of statute providing for pensions for teachers, 37 A.L.R. 1162.

Validity of repeal or modification of pension statute provisions, 52 ALR2d 437.

81 C.J.S. State § 94.

Sec. 14.25.020. Powers of the administrator. (a) The administrator may

(1) promulgate and issue appropriate regulations having the force of law to implement this chapter and to cover matters not expressly touched upon or anticipated but implied by this chapter;

(2) make expenditures from the retirement fund necessary to administer this chapter.

(b) The administrative expenditures permitted by (a) (2) of this section shall be included in the governor's budget for each fiscal year and are subject to appropriation by the legislature. (§ 4 ch 145 SLA 1955; am § 2 ch 142 SLA 1957; am § 3 ch 89 SLA 1960)

Sec. 14.25.022. **Regulations.** Regulations promulgated by the administrator under §§ 10 — 220 of this chapter relate to the internal management of a state agency and their adoption is not subject to the Administrative Procedure Act (AS 44.62). (§ 1 ch 13 SLA 1963)

Sec. 14.25.030. **Duties of the administrator.** The administrator shall

(1) establish and maintain an adequate system of accounts for the retirement fund;

(2) approve or disapprove claims for retirement salary;

(3) keep an official record of all proceedings;

(4) publish annually a report showing the financial condition of the retirement fund; and

(5) do whatever else may be necessary to carry out the purposes of this chapter. (§ 4 ch 145 SLA 1955; am § 2 ch 142 SLA 1957; am § 3 ch 89 SLA 1960)

Sec. 14.25.035. **Teachers' Retirement Board.** (a) There is established the Alaska Teachers' Retirement Board consisting of five members appointed by the governor for overlapping three-year terms. One member shall be a resident who is receiving retirement benefits under this chapter. Statewide teacher organizations may submit to the governor a list of recommended nominees to serve on the board.

(b) Members of the board serve without compensation except that each member may be reimbursed for actual and necessary expenses at the rate established in AS 39.20.180.

(c) The board shall confer with the commissioners of administration and revenue regarding the administration and the investment policies of the Teachers' Retirement Fund and may make such recommendations to them as they consider necessary.

(d) The board shall be furnished reports relating to the condition and administration of the retirement fund which shall be distributed for the information of the members of the system.

(e) The board shall serve as an appeal board and shall hold hearings at the request of an employer, employee, or any beneficiary in regard to rulings or decisions made by the administrator of the teachers' retirement system. The board shall submit its findings to the administrator. The board shall hold annually one or more public hearings to discuss proposed changes in the teachers' retirement system and to consider and adopt resolutions which might apply to this system.

(f) The board shall meet at the call of the chairman, any three members, or at the request of the commissioner of administration.

(g) Expenses for the board and its operation shall be paid from the teachers' retirement fund.

(Executive Order No. 26, SLA 1964; am §§ 1 — 3 ch 85 SLA 1969; am § 1 ch 61 SLA 1972)

Revisor's note. — Under § 23, art. III of the state constitution, the governor can issue executive orders which have the force of law if they are not disapproved by the

Alaska State Legislature

Senate

Judiciary Committee

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

TO: Judiciary Committee Members

FROM: Kevin Bruce, Committee Aide

DATE: April 21, 1981

SUBJECT: SB 101, "An Act relating to the Teachers' Retirement System and authorizing adoption of regulations by the Alaska Teachers' Retirement Board."

I have spoken to two departments concerning this legislation and their comments are as follows:

Department of Administration (Judy Crondahl): supports the legislation as is.

Department of Education (Mary Lou Madden): No position on this bill.

KKB/ods

SB
102

08-5319 8/74-2M

SEARCHES
Name
DOB
POB
FC
DCI
Census
Newspaper

Bureau of Vital Statistics
ALASKA DEPARTMENT OF HEALTH AND WELFARE
Pouch H 02G, Juneau, Alaska 99811

APPLICATION FOR A DELAYED CERTIFICATE OF BIRTH

(This form should be completed as accurately as possible. The information will enable the Bureau of Vital Statistics to thoroughly check its files for a registration of the birth, and advise as to the filing of a Delayed Certificate of Birth in the event the birth is not registered.)

IF ANY DATE IS UNKNOWN, PLEASE GIVE *APPROXIMATE* DATE

1. FULL NAME AT BIRTH: *First* *Middle* *Last*

2. DATE OF BIRTH

3. PLACE OF BIRTH: A. City or Town B. Hospital

4. ATTENDANT AT BIRTH: A. Name B. Title / /Doctor / /Nurse / /Midwife

(Do NOT give stepparent or adoptive foster parent)

5. NATURAL FATHER:
   A. Full Name
   B. Race
   C. Birthplace
   D. *If now deceased:* Date of Death
   Place of Death

6. NATURAL MOTHER:
   A. Full Maiden Name
   B. Race
   C. Birthplace
   D. *If now deceased:* Date of Death
   Place of Death
   Name at Time of Death

7. MARRIAGE OF PARENTS: A. Date of Marriage B. Place of Marriage

8. BROTHERS AND/OR SISTERS—LIVING AND/OR DECEASED: *(Please indicate those deceased)*

		Given Name	Date of Birth	Place of Birth
2 next older	1.			
	2.			
2 next younger	1.			
	2.			

9. MAILING ADDRESS OF APPLICANT:
   Name _____ Street or Box No. _____
   City or Town _____ State _____ Zip Code _____

10. SIGNATURE OF APPLICANT

11. DATE SIGNED

PLEASE COMPLETE REVERSE SIDE

IF ANY DATE IS UNKNOWN, PLEASE GIVE *APPROXIMATE* DATE

12. HAVE YOU BEEN BAPTIZED? / /Yes / /No
If yes: Date _____ Name of Church _____
City or Town
Baptismal Name _____ and State _____

13. HAVE YOU ATTENDED SCHOOL? / /Yes / /No
If yes: Date of Entrance Name of School _____
City or Town
Grade _____ and State _____

Name of School _____
City or Town
High _____ and State _____

14. HAVE YOU EVER BEEN MARRIED? / /Yes / /No *If yes, list below:*

	Name of Spouse	Date of Marriage	Place of Marriage
1st			
2nd			

15. DO YOU HAVE ANY CHILDREN? / /Yes / /No *If yes, list below:*

	Name of Child	Date of Birth	Place of Birth
1st born			
2nd born			

16. DO YOU HAVE A SOCIAL SECURITY ACCOUNT NUMBER? / /Yes / /No
If yes: Number Date Issued

Please complete attached form letter, and return it with this application.

17. HAVE YOU REGISTERED WITH SELECTIVE SERVICE? / /Yes / /No
If yes: Date of Registration Place of Registration

18. HAVE YOU SERVED IN THE U.S. ARMED FORCES? / /Yes / /No
If yes: Date of Enlistment/Induction Place of Enlistment or Induction

19. HAVE YOU EVER BEEN INSURED? / /Yes / /No
If yes: Date Policy Issued Name of Insurance Company

20. HAVE YOU EVER BEEN HOSPITALIZED? / /Yes / /No
If yes: Date Admitted Name of Hospital _____
City or Town
and State _____

21. IN WHAT VILLAGES OR TOWNS IN ALASKA HAVE YOU RESIDED, AND DURING WHAT YEARS?

22. HAVE YOU EVER USED ANY NAME OTHER THAN THE ONE GIVEN TO YOU AT BIRTH *(ITEM 1)*?
/ /Yes / /No *If yes, list below: (Excluding married name)*

Eskimo, Indian, or Aleut Name: _____

Adoptive Foster Name: _____

Other: _____

Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

TO: File

FROM: Oleta Simmons

DATE: February 23, 1981

SUBJECT: SB 102 "An Act relating to delayed registration of birth and annulling regulations relating to delayed birth certificates; and providing for an effective date."

Robert Clem, Acting Director, State Division of Public Assistance, has indicated that Debbie Behr is writing to Region 10 offices in Seattle to request information on federal requirements on delayed registration of birth, and will forward a copy to this office when received.

/ods

United States Department of the Interior
OFFICE OF THE SOLICITOR
ANCHORAGE REGION
510 L Street, Suite 408
Anchorage, Alaska 99501

IN REPLY REFER TO:

February 19, 1981

Ms. Joan P. Brooks
State Registrar of Vital Statistics
State of Alaska
Dept. of Health & Social Services
Pouch H 02G
Juneau, Alaska 99811

Dear Ms. Brooks:

Thank you for your letter of January 22, 1981, in which you requested our views of the impact which the passage of Senate Bill 102 relating to delayed registration of birth would have on our agency.

The bill would amend present Alaska State law by removing a number of safeguards against fraudulent delayed registration of birth. The bill would prohibit the State Registrar from requiring any evidence of birth other than a sworn statement by the registrant.

A number of agencies within the Department of Interior have occasion to refer to State birth records in making a variety of decisions. For example, the date, and in some instances, the place of birth may be relevant to the eligibility of an individual to share in a judgment fund awarded by the Court of Claims to a Native tribe or community. Determinations of eligibility for a number of other Native programs may hinge on the date and place of birth, or parentage of an individual. By removing the safeguards provided for in present Alaska State law, the bill may impair the accuracy of State birth records, thereby making it more difficult for our agencies to make accurate determinations. Our experience with present State law in this matter has not led us to the conclusion that the safeguards are unduly burdensome to registrants. We therefore believe that the bill would have a generally negative impact on our agencies.

To the extent that our agencies can no longer rely upon the accuracy of State delayed registrations of birth, individuals may also be harmed. The burden of proving the fact of their birth may be a considerable burden on individuals. Individuals often lack the expertise and resources available to the State to corroborate their claims. Thus some individuals could conceivably be denied benefits.

If we may be of further assistance in this matter, please don't hesitate to contact us.

Yours very truly,

John M. Allen
Regional Solicitor

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

OFFICE OF INFORMATION SYSTEMS

BUREAU OF VITAL RECORDS
POUCH H 02G – JUNEAU 99811
TEL: 465-3391

February 26, 1981

MAR 02 1981
RECEIVED

Honorable Patrick Rodey
Alaska State Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Rodey:

While testifying before the Senate Judiciary Committee you asked that this Department request written statements from federal agencies which would be affected by the passage of Senate Bill No. 102.

Enclosed is a copy of a letter from John M. Allen, Regional Solicitor, United States Department of the Interior. In addition, a request for a statement is being directed to Mr. Bernard Kelly of Region X.

Sincerely,

Joan P. Brooks
State Registrar
Bureau of Vital Records

JPB:go

Enclosure

06-F37LH

United States Department of the Interior
OFFICE OF THE SOLICITOR
ANCHORAGE REGION
510 L Street, Suite 408
Anchorage, Alaska 99501

IN REPLY REFER TO:

February 19, 1981

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State Registrar of Vital Statistics
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Dept. of Health & Social Services
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A number of agencies within the Department of Interior have occasion to refer to State birth records in making a variety of decisions. For example, the date, and in some instances, the place of birth may be relevant to the eligibility of an individual to share in a judgment fund awarded by the Court of Claims to a Native tribe or community. Determinations of eligibility for a number of other Native programs may hinge on the date and place of birth, or parentage of an individual. By removing the safeguards provided for in present Alaska State law, the bill may impair the accuracy of State birth records, thereby making it more difficult for our agencies to make accurate determinations. Our experience with present State law in this matter has not led us to the conclusion that the safeguards are unduly burdensome to registrants. We therefore believe that the bill would have a generally negative impact on our agencies.

To the extent that our agencies can no longer rely upon the accuracy of State delayed registrations of birth, individuals may also be harmed. The burden of proving the fact of their birth may be a considerable burden on individuals. Individuals often lack the expertise and resources available to the State to corroborate their claims. Thus some individuals could conceivably be denied benefits.

If we may be of further assistance in this matter, please don't hesitate to contact us.

Yours very truly,

John M. Allen
Regional Solicitor

Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

SUMMARY OF SENATE JUDICIARY COMMITTEE HEARING
OF
FEBRUARY 18, 1981

Butrovich Committee Room, State Capitol - Juneau, Alaska

Legislation before Committee:

SB 102 "An Act relating to delayed registration of birth and annulling regulations relating to delayed birth certificate; and providing for an effective date."

SB 6 "An Act establishing the Alaska Administrative Journal; and providing for an effective date."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:30 p.m. All Committee members were present (Senators Rodey, Ray, Parr, Hohman, and Bennett).

An overview and history was presented by S.B. 102's sponsor, Senator Ferguson. The Committee then heard public testimony from the following:

Joan Brooks
State Registrar
Bureau of Vital Statistics

Mildred Richards, Supervisor
Delayed Birth Registration
Bureau of Vital Statistics

Robert Clem, Acting Director
State Division of Public Assistance.

Representatives of the Bureau of Vital Statistics voiced opposition to passage of S.B. 102 for the following reasons: (1) certificates prepared as a result of S.B. 102 probably would be rejected as sufficient proof by other agencies, and (2) it may encourage new applications for illegitimate reasons, thereby increasing the potential of fraud.

Following discussion and questions, Chairman Rodey deferred action on S.B. 102 until a future hearing date.

The Committee then heard testimony relating to S.B. 6, with a summary by the Bill's sponsor, Senator Fahrenkamp. Public presentations were made by the following:

Don Smith
Anchorage Businessman

Arthur Peterson
Assistant Attorney General
State Department of Law

The Committee heard specific suggestions from The Attorney General's office, such as the need for consistency in referring to the Journal, consideration of deleting section 2 and changing the phrase "during the week of September 15, 1981," (line 12, page 3) to read, "no later than four calendar months after the date on which this bill becomes effective."

Chairman Rodey deferred action on S.B. 6 until a future hearing date.

Hearing no objections, Chairman Rodey adjourned the meeting at 2:25 p.m.

either with the proper local registrar or directly with the bureau, and shall be marked "Delayed." To be acceptable the form must be completed in accordance with the instructions of the State Registrar, and signed the same as a belated certificate. When so required by the State Registrar, the date and place of birth must be supported by an affidavit of a competent person acquainted with the facts, or by an acceptable piece of documentary evidence. When filed with the local registrar, such certificate shall be forwarded to the bureau in accordance with instructions of the State Registrar. If acceptable, the certificate shall be registered in the bureau upon the payment of any prescribed fee therefor. After registration it may be recorded by the proper recording magistrate. (In effect before 7/28/59; am 7/25/60, Reg. 2)

Authority: AS 18.50.180

7 AAC 05.815. FORM AND PROCEDURE. A delayed birth certificate for a person 12 years of age or more at the time of application for registration, as defined herein, shall be a form entitled, "Delayed Certificate of Birth," prescribed and furnished by the bureau; and shall be filed directly with the bureau. To be acceptable the form must be completed in accordance with the instructions of the State Registrar; and signed by the person whose birth is to be registered, except in cases where the State Registrar finds that such signature is impossible to obtain. It must be subscribed and sworn to before a person authorized to administer oaths, by the person whose birth is to be registered; provided that when such person is not competent to swear to this information, it shall be subscribed and sworn to by a parent, legal guardian, or other representative of the person. In addition to any other items prescribed by the State Registrar, the form shall provide for the name, sex, birthdate, and birthplace of the person whose birth is to be registered. Along with the properly completed form, the applicant shall submit to the bureau the documentary evidence required to support the facts stated in the delayed certificate, as well as any related information requested by the State Registrar. For each such delayed certificate, the date of birth must be supported by at least three pieces of documentary evidence; the place of birth by at least three; the parentage, if appearing on the certificate, by at least one; provided that the State Registrar may make exceptions when necessary by reducing the number of documents required for delayed birth certificates for natives of Alaska—Indians, Eskimos, and Aleuts—if he is otherwise satisfied with the validity of the application. Such application for registration shall be considered pending until it is found acceptable by the State Registrar, and completed and registered with the bureau after the payment of any prescribed fees and service charges by the applicant. (In effect before 7/28/59; am 7/25/60, Reg. 2)

Authority: AS 18.15.180

7 AAC 05.820. ACCEPTABLE EVIDENCE. Acceptable documentary evidence shall be prescribed by the State Registrar, following generally the national standards recommended by the agencies responsible for national vital statistics, and for the use of records in the interest of national security. In general such documents must be records established in the past, preferably near the time of birth, but at least five years before such application; they must contain specific reference to at least one of the facts to be proved: date of birth, place of birth, parentage; they must be identified as pertaining to the person in question. Such documents usually are records made by various agencies, institutions, or persons for some other purpose but showing incidentally as identifying items one or more of the facts to be proved; or they may be an actual recording of the facts of birth. One affidavit of personal knowledge by a competent person with adequate knowledge of the facts, if found acceptable by the State Registrar, may be used in lieu of one of the three required documents; such affidavit need not be five years old. (In effect before 7/28/59; am 7/25/60, Reg. 2)

Authority: AS 18.50.180

7 AAC 05.825. REQUIREMENT OF INDEPENDENCE. The acceptability of any document submitted as supporting evidence to the filing of a delayed birth certificate shall be determined by the State Registrar. The original of such documents may be submitted, or a copy or abstract may be submitted properly certified, in such manner and containing such information as required by the State Registrar. Age of the document, the conditions under which it was made and preserved, and any evidence of alteration shall be considered. When more than

one piece of documentary evidence is required to support a particular fact, each must be of independent origin; however, each piece of documentary evidence may be used to support more than one of the required facts, if it does so satisfactorily. Such evidence submitted shall be abstracted on the certificate, including the title or description of the document; the name and address of the affiant if the piece of evidence is an affidavit of personal knowledge, or of the custodian if a record or copy thereof; the date of the original document; and the date of the certified copy. (In effect before 7/28/59; am 7/25/60, Reg. 2)

Authority: AS 18.50.180

7 AAC 05.830. FILING. When the delayed certificate and supporting evidence are satisfactory, the State Registrar or his designated representative shall enter the filing date and sign the certificate, certifying that no prior birth certificate can be found on file for such person, that he has reviewed the evidence submitted, and that the abstract thereof appearing on the certificate accurately reflects the condition and contents of such evidence. When all requirements have been met, such certificate shall be registered with the bureau, and thereafter shall be the established certificate of birth for such individual; provided that should the State Registrar at any time in the future find sufficient evidence of fraud in the certificate or in the supporting evidence submitted, he shall suspend the issuance of copies from such record and from recorded copies thereof, and give due notice to the individual concerned, addressed to his last known address. Such individual shall be given 30 days within which to explain such discrepancies or answer such charges. Lacking a satisfactory explanation, the State Registrar shall then remove such certificate from the regular files of the bureau, and take such further action as may be appropriate. (In effect before 7/28/59; am 7/25/60, Reg. 2)

Authority: AS 18.50.180

7 AAC 05.835. NOTIFICATION OF APPLICANT. When a request or application for delayed registration of any birth is not being actively prosecuted by the applicant, the State Registrar may remove the case from the active pending file and so notify the applicant. When sufficient documentary evidence cannot be submitted, or when the State Registrar finds reason to question the validity or adequacy of the certificate or the supporting evidence, he shall not accept the delayed certificate for registration. In such case the State Registrar shall so notify the applicant, giving his reason for such action, and advise him of his right of appeal to a superior court. He shall also return to the applicant all documentary evidence submitted by him, but shall keep in the files of the bureau an adequate record of such evidence and other transactions supporting his action in refusing to register the certificate. (In effect before 7/28/59; am 7/25/60, Reg. 2)

Authority: AS 18.50.180

7 AAC 05.840. DELAYED DEATH CERTIFICATE. When a death, fetal death, or marriage occurring in Alaska has not been registered, a certificate thereof may be filed with the bureau; and if found acceptable by the State Registrar shall be registered. The State Registrar shall determine what documents or other evidence shall be necessary to substantiate the facts of such death, fetal death, or marriage, which requirements shall follow any national standards, and in general be similar to those herein established for delayed birth registration. He shall notify the proper authorities in any case where such a death might require investigation. In any case where such event occurred one or more years prior to such registration, the certificate thereof shall be marked "Delayed." This procedure shall not apply in a case of presumption of death where no body has been established. (In effect before 7/28/59; am 7/25/60, Reg. 2)

Authority: AS 18.50.180

7 AAC 05.845. FURNISHING OF COPY. In any case where a delayed certificate for any vital event has been established by the bureau, the State Registrar may furnish a copy thereof for recording to the recording magistrate of the recording district wherein such event occurred. (In effect before 7/28/59; am 7/25/60, Reg. 2)

Authority: AS 18.50.180

7 AAC 05.850. EFFECT OF COURT ORDER. When a record of birth of a person born in Alaska has been established by court order in accordance with the provisions of the Vital Statistics Act, the original of such order, a form prescribed and furnished by the bureau, shall be filed with and registered by the bureau. Such

bureau, and shall be submitted to the bureau for registration. The state registrar may accept the certificate for registration when the evidence required by regulation is submitted to substantiate the facts of birth. A certificate registered under this subsection shall be marked "delayed."

(d) When the birth occurred 12 years or more before the application for registration, the certificate of birth shall be prepared on a form entitled "delayed certificate of birth." The information provided on this form shall be subscribed and sworn to by the person whose birth is to be registered before an official authorized to administer oaths. When a person is not competent to swear to this information it shall be subscribed and sworn to by a parent, legal guardian, or his representative. The form shall provide for the name and sex of the person whose birth is to be registered; the place and date of birth; and other information required by the bureau. When the certificate is submitted, the state registrar shall add a description and an abstract of each document submitted in support of the delayed registration. The original delayed certificate of birth shall be filed with the bureau.

(e) The state registrar shall accept the registration if the applicant was born in the state and if the applicant's sworn statements are established to the satisfaction of the state registrar by the necessary evidence established by regulation. The items necessary to be substantiated, the type of documents acceptable as evidence, the number of necessary documents, and the form and content of the description and abstract of each document to be added to the certificate shall be prescribed by regulation. In general they shall follow the national standards recommended by the agencies responsible for national vital statistics and for the use of records in the interest of national security. The state registrar may make exceptions when necessary by reducing the number of documents required for delayed filings by Indians, Eskimos and Aleuts, natives of the state, if he is otherwise satisfied with the validity of the application.

(f) When the applicant does not submit documentation required in support of his statements or when the state registrar finds reason to question the validity or adequacy of the certificate or the supporting evidence, the state registrar shall not accept the delayed certificate of birth and shall advise the applicant of the reasons for this action, and of his right of appeal to the superior court. The bureau may provide for the dismissal of an application which is not actively prosecuted. (§ 15 a-f ch 118 SLA 1960)

Sec. 18.50.190. Delayed registration of death or marriage. When a death or marriage occurring in the state has not been registered a certificate may be filed in accordance with regulations issued under this chapter. The certificate shall be registered subject to evidentiary requirements prescribed by the department by regulation to substantiate the alleged facts of death or marriage. Certificates of death and marriage registered one year or more after the date of occurrence shall be marked "delayed." (§ 15 g ch 118 SLA 1960)

DELAYED CERTIFICATE OF BIRTH

RECORDING DISTRICT

ALASKA DEPARTMENT OF HEALTH AND SOCIAL SERVICES
BUREAU OF VITAL STATISTICS— JUNEAU, ALASKA 99811

150-

REGISTRANT (PERSON WHOSE BIRTH IS BEING REGISTERED)

SEP 2 5 1980

1. NAME AT BIRTH	First	Middle	Last	2. SEX
	JOHN		DOE	Male

3. DATE OF BIRTH	Month	Day	Year	4. PLACE OF BIRTH	City, Town, or Location
	July	20,	1926		Umnak Is, ALASK

5. FATHER: A. FULL NAME	B. RACE	C. BIRTHPLACE
Andrew Doe	Aleut	Nikolski, Alaska

6. MOTHER: A. FULL MAIDEN NAME	B. RACE	C. BIRTHPLACE
Margaret Doe	Aleut	Nikolski, Alaska

I do solemnly swear that the above statements are true to the best of my knowledge and belief.	SIGNATURE OF REGISTRANT	PRESENT ADDRESS
	X	VANCOUVER WA 98661

OFFICIAL ADMINISTERING OATH

Subscribed and sworn to before me	SIGNATURE AND SEAL	TITLE	*My Commission Expires*
		Notary Public	2-25-83
	DATE: Sept 23, 1980	ADDRESS: P.O Box [illegible] VANCOUVER, WA 98661	

PLEASE DO NOT WRITE BELOW RED LINE

DO NOT WRITE IN THIS SECTION—BUREAU WILL COMPLETE

ABSTRACT OF SUPPORTING EVIDENCE

	TYPE OF DOCUMENT, BY WHOM ISSUED AND SIGNED, AND DATE ISSUED	DATE ORIGINAL ENTRY
1	Notarized certified copy of birth record, Holy Ascension Orthodox Church, Unalaska, 1926 record book, Page 51; sgd. Rev. Ishmal Gromoff, Custodian of Records	Baptized 7/21/26
2	Original application of Admission to a Boarding School for John Doe ; admitted to Wrangell Boarding School; on file with the Bureau	Admitted 12/13/44
3	Photocopy Census record for Nikolski Village family of : Andrew Doe , includ. John Doe , son; on file with the Bureau of Indian Affairs, Juneau	8/2/42
4	Affidavit of Deacon Daniel J. Krukoff, Nikolski, re birth of Nephew, John Doe	6/10/80

INFORMATION CONCERNING REGISTRANT AS STATED IN DOCUMENT OF CORRESPONDING NUMBER ABOVE

	BIRTHDATE OR AGE	BIRTHPLACE	NAME OF MOTHER	NAME OF FATHER
1	Julian Calendar: 7/7/26 Gregorian: 7/20/26	Unimak	Margaret	Andrew Doe
2	July 29, 1927	Unimak, Alaska	Margaret Doe	Andrew Doe
3	7/20/26	Nikolski	—	Andrew Doe
4	July 26, 1926	Nikolski Village, Umnak Island	Margaret Doe	Andrew Doe

ADDITIONAL INFORMATION

REGISTRAR'S CERTIFICATION

I certify that no prior birth certificate has been found in the Bureau of Vital Statistics for this person, and that documentary evidence substantiating the facts set forth in the foregoing abstract has been received.

STATE REGISTRAR	EVIDENCE REVIEWED BY	DATE REGISTERED
Joan P. Broaks	Mildred Q. Richards Mildred Richards	October 1, 1980

RECORDER	RECORDER	ADDRESS	DATE RECORDED

(This form is to be used in registering the birth of a person 12 years of age or over)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. S.B. 102

Title An act relating to delayed registration of birth

Requested by _____ Date _____

II. FISCAL DETAIL

Agency Affected Administration

Program Category Affected Social Services

BRU, Program, or Subprogram(s) Affected Longevity Bonus

(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.		72.0	24.0	24.0	24.0	24.0
TOTAL		72.0	24.0	24.0	24.0	24.0

FUNDING (Thousands of Dollars)

GENERAL FUND		72.0	24.0	24.0	24.0	24.0
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

This bill would cause delayed certificates of birth to be issued based upon sworn affidavits, without further corroborating evidence.

The Bureau of Vital Statistics, Department of Health and Social Services, processes approximately 400 delayed birth certificates per year. Because people have problems in corroborating their birth statistics on a delayed basis, the Bureau has on file approximately 1,000 applications for which delayed birth certificates cannot be issued under the present laws.

S.B. 102 would result in essentially all of these applications being processed and delayed certificates of birth issued.

IV. DATE 2/10/81 PREPARED BY ~~George T. Michael~~, Administrative Officer

AGENCY Administration

PHONE 465-4401

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

The Longevity Bonus Program has approximately 30 applications which cannot be approved because the applicants have not been able to prove their age. Issuance of a delayed certificate of birth would substantiate their age and they would be placed on the Longevity Bonus Program.

Therefore, FY 82 Longevity Bonus grants cost would be increased by 30 applicants x 12 months x $200 per month, or $72,000.

Approximately 10 applicants for the Longevity Bonus each year have problems proving their age. Therefore, S.B. 102 would allow these persons to be added to the program each future year which would not otherwise be possible. For FY's 83-86 the additional cost would be 10 persons x 12 months x $200 per month, or $24,000 each year, assuming that the Longevity Bonus will remain at $200 per month.

There is some discussion of increasing the amount of the Longevity Bonus again. The program began in 1973 at $100 per month; was increased in 1976 to $125 per month; increased in 1978 to $150 per month; and in 1980 was increased to $200 per month. Therefore, it seems likely that increases will occur in future years, raising the cost of S.B. 102 even further.

8/C2/0

POSITION PAPER/Department of Health & Social Services

POSITION PAPER

SENATE BILL NO. 102

"An Act relating to delayed registration of birth."

AS 18.50.180(a) provides for the filing of a certificate for a person born in this state whose birth had not been registered. The certificate shall be registered subject to the evidentiary requirements the department prescribes by regulation to substantiate the alleged facts of birth.

Senate Bill 102 amends AS 18.50.180(d), and repeals AS 18.50.180(e) and (f), 7 AAC 05.815, 7 AAC 05.820 and 7 AAC 05.825. Therefore, the evidentiary requirements prescribed by regulation would be eliminated even though authority for the requirement remains under AS 18.50.180(a).

By eliminating the three pieces of documentary evidence, a delayed birth certificate for a person over 12 years of age would be prepared based only upon the sworn statement of the registrant, a parent, legal guardian or his representative. The bill adds a provision that no other evidence of birth may be required.

While passage of this bill would eliminate the need of the services of one support position doing the document research, it could encourage many new applications for illegitimate reasons.

World War II made it apparent that many people in the United States could not prove citizenship because their birth had never been registered. In 1941 procedures were established and accepted by all the states and territories to promote uniform practices for delayed registration. Since that time the procedures have been periodically reviewed and readopted with only minor revisions. There are 32 states which, like Alaska, require three supporting documents, one of which may be an affidavit. Ten states require at least two documents. The remaining states require sufficient documentation or a court order.

About 400 delayed cases are initiated each year by the Bureau of Vital Statistics. The large majority of these are for clients who are reaching eligibility for Longevity Bonus and Social Security. Other states require the applicant to provide the documentation within a specified time frame. The Bureau provides all of this service because most of our clients live in very remote areas, have difficulty in communicating and understanding the requirements. During a recent training session with the magistrates in the Bethel service area an elderly couple came to the court building for assistance. The couple spoke no English but with the help of an interpreter we were able to get enough information to begin our research on two new cases. As our research and documentation continues we will contact the couple through the interpreter.

POSITION PAPER/Department of Health & Social Services

A delayed birth certificate is subject to the acceptance by the agency requiring it. AS 18.50.180(e) calls for following national standards recommended by the agencies responsible for national statistics and for the use of records in the interest of national security. Alaska is now in complete compliance with those standards by requiring three documents, one of which may be an affidavit.

Most of the clients we have now were born around 1915. Registration in those days was very poor. The attitude for a long time was "who needs a birth certificate?" Those citizens are now eligible to collect benefits such as Social Security and Longevity Bonus. They also may want tax deferments or a passport. From this bureau they want the document that will help them get those benefits or services. Any delayed birth certificate prepared as a result of passage of Senate Bill 102 almost assuredly would be rejected by another agency because it would not meet the long-standing requirements of sufficient proof. No state produces a delayed birth certificate under the provisions called for in Senate Bill 102.

In 1976 the Report of the Federal Advisory Committee on False Identification by the United States Justice Department clearly identified the serious problem of the criminal use of false identification which is a multibillion dollar national problem. A growing army of criminals and fugitives is using a screen of false credentials in welfare fraud, illegal immigration, drug trafficing, passing bad checks and phony credit cards, and in hundreds of other crimes. These crimes have one thing in common: the taxpayer picks up the tab. The report was intended to unmask false identification crimes and to provide a comprehensive, common-sense plan which federal, state and local agencies, the commercial sector and the public could use to prevent such crimes. Standards must be preserved to eliminate the potential of fraud which would be encouraged in those citizens who want to beat the system.

The citizens of Alaska can be best served by continuing those established standards in preparing a delayed birth certificate so that they will not meet with delay, rejection and additional expense in seeking services and benefits. The taxpayers will best be served by preserving existing standards so that only valid case research will produce documented and acceptable delayed birth certificates.

The Department of Health and Social Services recommends that Senate Bill 102 not pass.

Recommended by: Joan P. Brooks

Joan P. Brooks, State Registrar
Bureau of Vital Statistics

Date: Jan. 28, 1981

Approved by: Helen D. Beirne

Helen D. Beirne
Commissioner

Date: 2/2/81

THE LEGISLATURE OF THE STATE OF ALASKA
~~ELEVENTH~~ LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. Senate Bill No. 102
Title "An Act relating to delayed registration of birth".
Requested by _____ Date _____

II. FISCAL DETAIL
Agency Affected Department of Health and Social Sevices
Program Category Affected Administrative Services
BRU, Program, or Subprogram(s) Affected Bureau of Vital Statistics
(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			(25.1)			
200	TRAVEL			-0-			
300	CONTRACTUAL			(.5)			
400	COMMODITIES			(.5)			
500	EQUIPMENT			-0-			
600	LAND & STRUCTURES			-0-			
700	GRANTS, CLAIMS, ETC.			-0-			
	TOTAL			(26.1)			

FUNDING (Thousands of Dollars)

GENERAL FUND				(26.1)			
FEDERAL FUNDS							
OTHER (Specify Fund Source)							

POSITIONS

FULL TIME				(1)			
PART TIME							
TEMPORARY							

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

Decrease in staff support of one position in the Delayed Registration Unit:

Document Processing Clerk III, Range 10

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

Prepared by: Dan P. Graham Date: 1/28/81
Division/Office: _____ PH: _____
Department of Health & Social Services

Approval DHSS Mgt. & Bdgt: _____ Date: 1/30/81

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

Alaska State Legislature

Senate

JUNEAU, ALASKA

TO: Senator Rodey, Chairman
Senate Judiciary Committee

FROM: Senator Frank Ferguson FRF

DATE: February 5, 1981

SUBJECT: Senate Bill 102 - Delayed Birth Certificate

I have attached a memo from Bill Berrier on the present legal requirements for issuance of a delayed birth certificate. As you can see, the statues allow the Department a great deal of latitude in issuing regulations.

I introduced SB 102 as a result of what appeared to be excessive requirements for the issuance of delayed birth certificates - particularly in the case of Alaskan Natives. Many Natives - especially the elderly - have no record of their birth. Other records which may be used to verify their existence may have been destroyed by fire or flood, or may never have existed at all. The State Statutes allow the State Registrar to make exceptions in the number of supportive documents required for Natives. However, I am personally aware of two recent incidents when she didn't.

We trust the signature of three people attesting to the validity of our longevity bonus recipients. It seems to me that a similar system could be safely used in the issuance of delayed birth certificates.

I believe the present regulations for the issuance of delayed birth certificates impose an unnecessary hardship on many of Alaska's residents. Regulations such as these should not be in existence merely to make the job of state employees easier.

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

January 19, 1981

SUBJECT: Issuance of delayed certificate of birth

TO: Senator Frank R. Ferguson

FROM: Billy G. Berrier
Director
Division of Legal Services

You have asked what is the legal requirement for issuance of a delayed certificate of birth for an adult in Alaska.

The issuance of such a certificate is authorized by AS 18.50.180 which provides:

> Sec. 18.50.180. DELAYED REGISTRATION OF BIRTH. (a) When the birth of a person born in the state has not been registered a certificate may be filed in accordance with regulations issued under this chapter. The certificate shall be registered subject to the evidentiary requirements the department prescribes by regulation to substantiate the alleged facts of birth.
>
> (b) When the birth occurred more than seven days but less than one year before the application for registration, the birth may be filed with the proper local registrar in accordance with regulations issued under this chapter.
>
> (c) When the birth occurred one year or more before the application for registration, the birth shall be filed on a form prescribed by the bureau, and shall be submitted to the bureau for registration. The state registrar may accept the certificate for registration when the evidence required by regulation is submitted to substantiate the facts of birth. A certificate registered under this subsection shall be marked "delayed."