

ALASKA LEGISLATURE COMPLETES 1901-1902

1730 SJ HB' 575 - HB 637

COMMITTEE REPORT

SENATE

5/4/82

FURTHER: None

Date: May 10, 1982

Mr. President:

The Committee on JUDICIARY has had CSHB 575 (Jud)
culpable mental states prescribed as elements of criminal assaults

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

[Signature]

W. A. Anderson, Jr.

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature]
CHAIRMAN



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

MAY 10, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

- HB 678 - "An Act relating to membership in electric and telephone cooperatives."
- HB 668 - "An Act relating to the release of records by the Department of Fish and Game to the Department of Public Safety; and providing for an effective date."
- HJR 77 - Proposing an amendment to the Constitution of the State of Alaska relating to annulment of regulations by the legislature.
- HB 210 - "An Act relating to child custody."
- HB 577 - "An Act repealing provisions relating to justification of the use of force in resisting or interfering with arrest."
- HB 575 - "An Act relating to culpable mental states prescribed as elements of criminal assaults."
- HB 2 - "An Act relating to land; and providing for an effective date."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:10 P.M. Committee members present were: Senators Rodey, Parr, and Anderson. Senators Bennett and Ray were absent.

010 - Call to order.

023 - Chairman Rodey brought HB 678 before the committee.

043 - ^{Anderson} moved to pass from committee with individual recommendations. There was no objection.

057 - HB 668 was brought before the committee.

077 - Senator Anderson moved to adopt the Senate committee substitute. There was no objection.

088 - Senator Parr moved to pass out of committee with individual recommendations. There was no objection.

109 - HJR 77 was brought before the committee.

131 - Senator Parr moved to adopt the committee substitute. There was no objection.

138 - Senator Anderson moved to pass out of committee with individual recommendations. There was no objection.

208 - Chairman Rodey announced that the committee will be hearing HB 2 in specific sections, dividing the bill up between University lands, homesteading, and seismographic material.

212 - Teresa Hebert, Exxon attorney, testified giving a language suggestion. She asked that the committee not adopt Sec. 11 & 12 of HB 2 which deal with seismographic material.

445 - Chairman Rodey returned HB 2 to the file.

453 - Chairman Rodey brought HB 210 before the committee.

465 - Representative Rogers testified, stating he would rather have mandatory mediation, but he also wished to avoid a fiscal note on the bill.

679 - Senator Parr moved to adopt the committee substitute. There was no objection.

685 - Senator Anderson moved to pass the bill from committee with individual recommendations. There was no objection.

689 - The next item of business was HB 577.

691 - Representative Anderson testified in favor of this bill.

786 - For the record, Senator Ray entered the meeting.

097 - Senator Parr asked the committee to hold the bill over until the next meeting. There was no objection and the bill was laid on the table.

140 - The last item of business was HB 575.

277 - After discussion, Senator Ray moved to pass HB 575 with individual recommendations.

285 - After a brief discussion, Senator Ray withdrew his motion.

298 - Senator Ray moved to add the provisions in SB 535 on to HB 575 as a committee substitute. There was no objection, and the committee substitute was adopted.

306 - Senator Ray moved to pass the committee substitute with individual recommendations. There was no objection.

314 - The meeting was adjourned at 2:20 P.M.

→ (I) Replace Sec. 5 with following language:

* Sec. 5. AS 11.46.200 is amended by adding a new subsection to read:

(c) Unlawful use of the entertainment services listed in AS 11.81.900(b)(50) is a class A misdemeanor.

→ (II) In Sec. 6 add the word "commercial" before "telecommunications":

* Sec. 6. AS 11.46.482(a) is amended by adding a new paragraph to read:

(5) that person sells, leases, trades, or offers for sale, lease, or trade, any device designed to intercept cable, microwave, subscription, or pay television, or any other commercial telecommunications service, with intent to defraud another of the lawful charges for the service.

→ (III) In Sec. 7 substitute the words "electromagnetic signals" for the words "satellite telecommunications":

* Sec. 7. AS 11.46.482 is amended by adding a new paragraph to read:

(c) Notwithstanding the provisions of (a) of this section, it is lawful for a person to sell a device for the interception of electromagnetic signals if the interception is not for commercial advantage or is not intended to defraud a commercial provider of a service listed in AS 11.81.900(b)(50).

→ (IV) In Sec. 10 add the word "commercial" to the proposed new language:

* Sec. 10. AS 11.81.900(b)(50) is amended to read:

(50) "services" includes labor, professional services, transportation, telephone or other communications service, entertainment including cable, microwave, subscription or pay television or any other commercial telecommunications service, the supplying of food, lodging, or other accommodations in hotels, restaurants, or elsewhere, admissions to exhibitions, and the supplying of equipment for use;

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COMMITTEE REPORT

SENATE

1728182

FURTHER: None

Date: May 15, 1982

Mr. President:

The Committee on JUDICIARY has had HB 577

~~appealing provisions relating to justification of the use of force in~~
~~custody or interfering with arrest~~

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

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

Alaska
Black
Caucus

P.O. Box 3342
Anchorage, Alaska 99510

(907) 272-5951
Senate Judiciary Committee
Pouch V
Juneau, AK 99811

February 23, 1982

RE: HB 557

Dear Senators

The Alaska Black Caucus wishes to express the concern and apprehension which the black community in Anchorage feels about HB 577. As we understand the bill, it will repeal that section of the criminal code which provides that a person may not be prosecuted for resisting arrest if the person arrested has not committed a crime or used deadly force in resisting the arrest. Once repealed, a person could be prosecuted for resisting arrest even though no other criminal charges are filed or otherwise prosecuted.

Because blacks are all too often the victims of crime, we as much as anyone want a safer Anchorage in which to live and raise our children. We join with the entire Alaskan community in supporting the attempts of our legislature and law enforcement officers to achieve this goal.


We cannot ignore, however, nationwide statistics which show that although blacks make up 11% of the national population, we account for 27% of the arrests and 45% of the suspicion arrests. While we do not expect the Anchorage police to duplicate these national statistics if HB 577 becomes law, we recognize the potential for abuse.

We are alarmed because an arrest record has far reaching implications beyond the initial deprivation of one's liberty. It has, in the past, been used to the detriment of minorities for employment, licensing and related purposes. We are sensitive to the fact that we have been traditionally arrested in numbers disproportionate to our representation in the general population. You can understand the alarm which black Alaskans feel when we learn of legislation which poses a new threat such as the potential of prosecution for resisting arrest in the absence of any wrongdoing.

The Alaska Black Caucus and the black community at large want what this bill is intended to assure which is a safer community for all Alaskans. We ask, however, that you find a different solution to eradicating crime and promoting law enforcement. Pass a bill that will not have either the potential for increasing the percentage of arrests of innocent black Alaskans nor contributing to dismal nationwide statistics of black arrests.

Sincerely,


Sterling Taylor, Chairman


Louis Overstreet, President

cc: Alaska Legislature

SENATOR
PATRICK M. RODEY
3271 MONTCLAIRE COURT
ANCHORAGE, AK 99503



SENATE MAJORITY LEADER
CHAIRMAN
SENATE JUDICIARY COMMITTEE
CHAIRMAN
SENATE SPECIAL COMMITTEE
ON BANKING

ALASKA STATE LEGISLATURE

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3717

March 2, 1982

Mr. Louis Overstreet
President
Alaska Black Caucus
P.O. Box 3342
Anchorage, AK 99510

Dear Mr. Overstreet:

I appreciate your expressing your concerns with HB 577. The Committee has already expressed some hesitance to adopt any changes in the law in this area.

As a legislative courtesy, we will hold a hearing on the bill, but I am confident the Committee will not alter its stance.

I will place a copy of your letter in each members file for their information.

Thank you again for your input.

Kindest regards,

Patrick M. Rodey
Senator

PMP/ds

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COMMITTEE REPORT

SENATE

4/21/82

FURTHER: Finance

Date:

May 7, 1982

Mr. President:

The Committee on JUDICIARY has had CSHB 591 (Jud) am

making corective amendments in the Alask Statutes as recommended by the revisor of statutes

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

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

CORRECTION

CORRECTION

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B

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STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 14, 1982

SUBJECT: Section 36 of Revisors Bill (CSHB 591
(Judiciary) am)

TO: Kevin Bruce, Professional assistant
Senate Judiciary Committee

FROM: David T. Walker *DTW for DTW*
Co-revisor of Statutes

AS 15.15.210 was extensively amended by sec. 53, ch. 100 SLA 1980 and mistakenly repealed by sec. 231 of that same chapter.

The mistake would be corrected by section 36 of the revisors bill (CSHB 591).

The same correction is made by sec. 2 of SB 299 which passed the Senate but was defeated in the House and is being held over there for reconsideration. At least one member of the House objected to Section 2 in the floor debate on that bill.

So it can be seen that the Senate has approved this language of AS 15.15.210 in ch 100, SLA 1980 and in SB 299. The House has approved this language in ch. 100, SLA 1980 and in the revisors bill (CSHB 591 (Judiciary) am).

DTW:esh



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

May 7, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

- HB 210 - "An Act relating to child custody."
- HB 47 - "An Act relating to the prohibition against waste of the meat of wild food animals."
- HB 74 - "An Act relating to the rights of debtors and creditors."
- HB 339 - "An Act relating to the judicial review of administrative regulations."
- HB 591 - "An Act making corrective amendments in the Alaska Statutes as recommended by the revisor of statutes; 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. Committee members present were: Senators Rodey, Anderson, Parr, and Ray. Senator Bennett was absent.

- 001 - Call to order.
- 005 - HB 210 was brought before the committee.
- 008 - Mr. Bruce goes over the changes in the committee substitute.
- 531 - After discussion, Chairman Rodey laid HB 210 on the table.
- 535 - Chairman Rodey next brought HB 47 before the committee.
- 537 - Mr. Bruce goes over the committee substitute.
- 556 - Ed Hein, Legal Services, testified, explaining the committee substitute.

705 - Senator Anderson moved the following: On Page 3, Line 25, delete [WALRUS] and delete [EXCEPTED]. Also on Page 3, Line 25, invert EXEMPTION and ANIMALS, so that it would read ANIMAL EXEMPTION. On Line 26, Page 3, delete [walrus if] and insert animals which. On Line 27, Page 3, delete [them]. There was no objection.

721 - Senator Ray moved to adopt the Senate committee substitute. There was no objection.

724 - Senator Rodey moved to pass SCSHB 47 from committee. There was no objection and the bill was passed.

733 - The next item on the agenda was HB 339.

740 - Diane Colvin, Department of Law, testified explaining the new draft.

870 - Senator Parr stated that his intent was not being met by this bill. He wanted statutes listed by specific sections, not titles and chapters which was not being set out by this legislation.

149 - Senator Parr moved to pass HB 339 with language in Diane Colvin's memo + sec. 2 of the draft committee substitute with individual recommendations. See attached.

221 - Next, Chairman Rodey brought HB 74 before the committee.

223 - Dickerson Regan, Code Revision Commission, testified, suggesting that the committee pass the bill as is because changes can be made by the revisor of statutes next year.

327 - Senator Anderson moved to pass the bill with individual recommendations.

336 - The last item on the agenda was HB 591.

340 - Mr. Walker testified in favor of this bill.

440 - Senator Anderson moved to pass HB 591 with individual recommendations. There was no objection.

444 - The meeting adjourned at 3:00 P.M.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

FOUCH - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM

April 30, 1982

SUBJECT: Statutory authority for regulations
(SCS HB 339)

TO: Senator Patrick M. Rodey
Chairman, Senate Judiciary Committee

FROM: Diane T. Colvin *DC*
Legislative Counsel

In connection with committee work on HB 339, you asked me to prepare a proposal in response to Senator Parr's suggestion on the need for specific, rather than general, statutory authority for administrative regulations. I had previously proposed an amendment to AS 44.62.020; suggested language for that amendment is contained in my memorandum to Senator Nels Anderson of April 28th.

Another possibility would be to amend AS 24.30, relating to the enactment of statutes, to require that all bills contain express language on the adoption of regulations. I believe this may be closer to meeting Senator Parr's intent. A new section could be added to this chapter to read:

Sec. 24.30.032. REGULATIONS STATEMENT ON BILLS. Each bill shall contain a statement regarding the adoption of regulations by the agency affected by the bill. The statement shall grant the express authority to adopt regulations to implement the provisions of the bill. If a bill does not contain this statement of authority an agency may not adopt regulations to implement the statutes affected by the bill.

It is the opinion of this office that this proposal, if enacted, would have a detrimental effect on the operations of all state departments and agencies. There would be a great deal of confusion resulting from any bills enacted which did not contain this statement but which affected

Senator Rodey
Page 2
April 30, 1982

statutes which are part of a broad statutory scheme or part of an integrated title.

In our opinion, there is no single approach which would cure this problem. The only solution would be to go through the statutes and remove, title by title or chapter by chapter, the general authority of departments and agencies to adopt regulations.

If we can be of further assistance, please do not hesitate to contact us.

DTC:ljb



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

APRIL 30, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

- HB 849 - "An Act relating to electric and telephone cooperatives."
- HB 621 - "An Act providing for the issuance of certificates of birth for persons born outside the United States and adopted by Alaska residents."
- SJR 61 - Proposing amendments to the Constitution of the State of Alaska relating to appropriations and the retention, investment and expenditure of certain state revenues; and superseding the amendments proposed by Legislative Resolve No. 1, First Special Session of the Twelfth Legislature (FSS FCCS SJR 4).
- HB 591 - "An Act making corrective amendments in the Alaska Statutes as recommended by the revisor of statutes; 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. Committee members present were: Senators Rodey, Parr, Anderson. Senators Bennett and Ray were absent.

001 - Call to order.

003 - Chairman Rodey brought HB 849 before the committee.

010 - Mr. Hutchins testified in favor of HB 849.

098 - Senator Rodey made the following amendments: On Page 1, Line 25, insert a "." after the word "mail". On Page 1, Line 25, delete [except that] and insert "However". On Page 1, Line 26, delete [may] and insert "shall", delete [if] insert "unless otherwise", insert "for" between "provided" and "by", delete [by] and insert "in". Also on Page 2, after Subparagraph (2), add a new subparagraph (3) to include attorney client privilege. There was no objection.

117 - For the record Senator Ray entered the meeting.

595 - Senator Parr moved on Page 2, subsection (d) delete [Reasonable]. On Page 2, Line 19, insert "of the board of directors" after "meetings". Insert "as provided for in each cooperatives bylaws" after "directors". Delete [required to be open under this section.] There was no objection. Senator Parr also moved that a new section 1 be added to the bill which would read, Sec. 10.15.005. Purposes for which cooperatives may be organized. A cooperative may be organized under this chapter for any lawful purpose, except for the purpose of [BANKING OR INSURANCE OR] the furnishing of electric or telephone service. (3 ch 107 SLA 1959).

604 - Senator Anderson moved to adopt the committee substitute. There was no objection.

609 - Senator Anderson moved to pass HB 849 with individual recommendations. There was no objection.

628 - Chairman Rodey next brought SB 621 before the committee.

630 - After brief discussion, Senator Parr asked to work as a sub-committee on SB 621. There was no objection.

635 - Next Chairman Rodey brought SJR 61 before the committee.

645 - Senator Ray moved on Page 2, Line 14, "investments in" be deleted. There was no objection. Senator Ray also moved that on line 8, page 2, the word "in" be inserted between the words "and" and "programs".

721 - Senator Rodey moved to pass SJR 61 with individual recommendations. There was no objection.

744 - The last item on the agenda was HB 591.

748 - Mr. Walker, Revisor of Statutes, testified in favor of HB 591.

823 - After brief discussion, Chairman Rodey adjourned the meeting at 2:30 P.M.

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 21, 1982

SUBJECT: "An Act making corrective amendments in the Alaska Statutes as recommended by the revisor of statutes" (CSHB 591 (Judiciary) am)

TO: Senator Patrick M. Rodey
Chairman, Senate Judiciary Committee

FROM: Donna Spragg Pegues
David T. Walker *David T. Walker*
Co-Revisors of Statutes

This bill was prepared by the revisor of statutes under AS 01.05.036 which provides in part that the revisor of statutes shall

"prepare for submission to the legislature legislation for the correction or removal of . . . deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of . . . the statute law of this state."

This explanatory memorandum analyzes the bill as amended in the House of Representatives.

SECTIONAL ANALYSIS

Section 1 corrects an error which dates back to the bulk formal revision of the Alaska Statutes in 1963. The original act (Chapter 123, SLA 1949) contemplated that municipalities could act jointly and jointly accept airport aid under this section. That provision was changed in the bulk formal revision so as to create an anomaly.

Section 2. See note concerning Sec. 20.

Section 3 clarifies an exemption to the requirement that a snow machine have an exhaust muffler in good working order.

Section 4 repeals a definition in the chapter regulating accountants. The repealed section defines "attest function". That phrase is not used in the chapter for which it is defined. It was used in a companion bill that did not pass in 1980.

Section 5 eliminates a special exemption that allowed certain persons to serve on the legislative legal staff without taking and passing the Alaska bar examination. Under the exemption certain persons serving the legislature as legal counsel to the legislature in September 1976 were allowed to continue in that capacity without admission to the Alaska bar association. The persons who benefited from this exemption are no longer employed on the legislative legal staff and this exemption serves no purpose. The amendment makes it clear that all legislative lawyers must be licensed to practice law after the results of the third Alaska bar examination following employment.

Section 6 corrects a mistaken AS reference in the chapter that regulates the practice of dentistry.

Sections 7 and 8 eliminate technical errors in amendments to the law regulating architects, engineers and land surveyors.

Sections 9 and 10 reinstate sections of the law regulating pharmacists that were amended and then apparently repealed by mistake in Chapter 166, SLA 1980.

Section 11 makes a correction to AS 08.88.475(b). In 1980 the administration of the real estate surety fund was made a responsibility of the real estate commission. Amendment of this section to eliminate responsibility of the court for surety fund administration was apparently an aspect overlooked at that time.

Section 12 corrects AS 08.98.040 to make it clear that the board of veterinarians is to hold three meetings each year.

Section 13 corrects a technical error in AS 09.16.010(f) (Alaska Uniform Contribution Among Tortfeasors Act) that was made when the statute was enacted in 1970. The correction brings this subsection into conformity with the uniform act.

Section 14 makes it clear that the definitions in the law relating to the privilege of public officials and reporters

apply only to that law and not to all of AS 09.25 (which is a general chapter on evidence).

Section 15 repeals two subsections in the code of civil procedure which expired by their own terms on July 1, 1975.

Sections 16 and 17 clarify a 1981 amendment to child support statutes so as to make it clear who is responsible for the filing and mailing of income assignment orders and related documents.

Section 18 corrects a mistake in a 1980 amendment to AS 10.-05.711(a)(2) (fees for changing capital stock) that resulted in the opposite effect from that intended.

Section 19 corrects an outdated reference to the statute relating to the certification of documents.

Section 20 and Section 2 correct a discrepancy between AS 11.61.140(a)(3) and AS 03.60.005. Under a 1980 enactment, AS 11.61.140(a)(3) provides that it is a class A misdemeanor to kill an animal using a decompression chamber unless the killing conforms to accepted veterinary practice and AS 03.60.005 makes it unlawful for a veterinarian to use a decompression chamber to kill an animal under any circumstances. Under this statute it would never be acceptable veterinary practice to kill an animal by use of a decompression chamber. To resolve this inconsistency the revisor's bill would repeal AS 03.50.005 (in Sec. 2) and amend AS 11.61.140(b) (in Sec. 11) so that the exceptions to the prohibition of using a decompression chamber to kill an animal are eliminated as a defense to the crime of cruelty to animals.

Section 21 repeals AS 12.25.080. That section relating to the use of force by a police officer was superseded by AS 11.81.370. This was the conclusion of the Alaska Supreme Court in the case of State v. Sunberg, 611 P.2d 44 (1980).

Section 22 corrects AS 12.55.135(c) relating to sentencing in domestic violence cases so that the subsection refers to in the fourth degree rather than assault in the third degree. Assault in the third degree was changed to assault in the fourth degree by Chapter 102, SLA 1980.

Section 23 repeals AS 12.55.150 that established a fine for violations under a heading of "Sentences for Violations". The fine for violation may also be found at AS 12.55.035(b)(5). The additional material at AS 12.55.140 is not needed and causes some confusion because of its placement and title.

Section 24 corrects a minor error in the list of duties of the Department of Education.

Section 25 amends AS 14.07.050 to eliminate obsolete references to state schools and state operated schools.

Sections 26, 27 and 28 correct technical errors made in Chapter 119, SLA 1981 relating to education. (See also SB 649 to same effect)

Section 29 corrects outdated AS references in a section of the Teachers Retirement System.

Section 30 amends AS 14.40.160(b) to make it clear that references to the "board" in that section are to the Board of Regents of the University of Alaska and not to the Board of Education (see AS 14.60.010(2) which defines "board" for purposes of AS 14).

Section 31 repeals certain statutes which refer to the tuition grant program which was held unconstitutional by the Alaska State Supreme Court in the case of Sheldon Jackson College v. State, 599 P.2d 127 (1979).

Sections 32 and 35 change references in the election code from "lieutenant governor" to "director" (of elections). This change was made throughout the code in 1980. These sections were missed.

Section 33 changes an incorrect AS reference in the election code.

Sections 34 and 38 eliminate election code references to "canvassing" in state elections. "Canvassing" was eliminated throughout the election code by Chapter 100, SLA 1980. These sections were overlooked. The former canvassing work is now done by a state ballot counting review board. See also HCSCSSB 299.

Sections 36 and 37 reinstate sections in the election code which were extensively amended in 1980 and then repealed by the same act that amended them. The repeals were apparently made in error. See same corrections in HCSCSSB 299.

Sections 39 and 40 amend AS 16.05.407 to make it clear that guides are licensed under the Guide Licensing and Control Board rather than the Department of Fish and Game. In 1973 this responsibility was transferred to the board but amendment to AS 16.05.407 was apparently overlooked.

Section 41 amends the law establishing the Alaska Seafood Institute so as to define "value" in terms of "seafood" rather than in terms of "fisheries resource". "Seafood" is the term used throughout the law relating to the Institute. Value predicated on "fisheries resource" makes no sense in light of the rest of the enabling legislation.

Section 42 makes it clear that AS 18.07.071(c) covers only a temporary but not an emergency certificate of need for a health care facility.

Section 43 supplies a needed definition of a certificate of need to the chapter dealing with issuance of these certificates.

Section 44 clarifies the allowable investments of the Alaska Medical Facility Authority. The present law on the subject is garbled.

Section 45 repeals an obsolete requirement of the Health and Safety Code that expired by its own terms in 1976.

Section 46 deletes an obsolete portion of the Health and Safety Code that expired by its own terms in 1976.

Section 47 removes an obsolete provision relating to terms of members of the Alaska State Housing Authority.

Section 48 amends AS 18.65.310(a) to correct a reference to a repealed section which formerly governed issuance of drivers' licenses.

Section 49 repeals and reenacts AS 18.80.060 relating to the Human Rights Commission to create a subsection out of a

responsibility of the commission that had been improperly codified as a numbered paragraph.

Section 50 repeals and reenacts for clarity a badly garbled section of the law relating to construction standards for access roads.

Section 51 corrects a definition in the law passed in 1980 concerning the north slope haul road. AS 19.40.100 states that the department shall maintain the highway and keep it open to "industrial or commercial traffic" throughout the year. However, rather than defining "industrial or commercial traffic" the bill defined "industrial or commercial travel".

Section 52 repeals AS 19.65.010 which required that Marine Highway System employees be relieved at duty stations inside the state. This statute was declared unconstitutional by the United States District Court in January, 1981 (District No. 1 v. Ward, 505 F. Supp. 98 (W.D. W 1981)). The case was not appealed.

Sections 53 and 54 eliminate reference to "associate justice" of the Supreme Court. Throughout the statutes the term "justice" is used without the added term "associate".

Section 55 adds to the jurisdiction of the district court in AS 22.15 those actions for taking utility service and for damages to or interference with a utility line. AS 42.-20.030 establishes this jurisdiction. Section 55 adds an appropriate cross reference to the AS section on the jurisdiction of the district court.

Section 56 removes a temporary provision from the statute relating to the commission on judicial qualifications.

Section 57 repeals and reenacts AS 23.10.130 so as to eliminate that portion of AS 23.10.130(b) that was struck down by the Alaska Supreme Court in Nolan v. Sea Airmotive Inc., 627 P.2d 1035 (1981). In that case the court held that most of AS 23.10.130(b) relating to class actions was properly a matter of court rule of procedure.

Section 58 removes obsolete references to the alcoholic beverages title from AS 23.10.355.

Section 59 repeals an obsolete pre-statehood provision that sets a definite term for the director of employment security.

Sections 60 and 61 attempt to straighten out a mistake of the publisher when AS 23.20.195(d) was somehow simply dropped from the statutes although its form and substance was presumed in AS 23.20.195(c). These amendments formalize what is actually the law.

Section 62 amends the veterans loan act to substitute the official date of the end of the hostilities in Viet Nam for a reference to "the present national emergency".

Section 63 corrects an obsolete reference to AS 04.

Section 64 deletes an obsolete reference to repealed (but not replaced) lien foreclosure procedures.

Section 65 supplies the correct year for the "January" found in AS 29.90.010 as amended in 1981.

Section 66 deletes an obsolete reference to the magistrate court.

Section 67 repeals the Alaska Paperwork Reduction and Simplification Act which expired by its own terms on July 1, 1979. Section 2 of Chapter 147, SLA 1977 repealed the act effective on that date.

Section 68 corrects an apparent error in the State Land Act that dates back to the original codification. The bill in which AS 38.05.351 was enacted referred to "this act" rather than "this section". In the context of the section, "this Act" or "this chapter" has meaning where "this section" does not.

Sections 69, 70, 90, 91, and 92 carry out the directive of Chapter 110, SLA 1981 that all references to the Alaska Pipeline Commission be changed to the Alaska Public Utilities Commission.

Section 71 corrects a mistaken AS reference in AS 38.-50.130(a).

Section 72 repeals a reference to the defunct North Commission. See also Sec. 96.

Sections 73 and 74 revise pre-statehood law concerning the confirmation of board members and state officials. The sections delete provisions that allow either house to confirm an appointment. The Alaska Constitution provides for only joint confirmation action. The sections also clarify that the governor is the appointing authority in the executive branch.

Section 75 repeals an obsolete pre-statehood law which had the attorney general of the United States establishing schedules of mileage and other fees for state officials.

Section 76 repeals an obsolete reference to the state operated schools.

Sections 77 and 79 delete references to the "director of the division of personnel and labor relations". The proper term is "director of the division of personnel". See AS 39.25.030. Section 81 also removes an obsolete reference to July 9, 1978.

Section 78 repeals a section in the 1960 personnel act that related only to the classification, etc. of employees employed on April 19, 1960. Everything that was supposed to happen under this section has happened and the section is obsolete.

Sections 80, 81, 82 and 83 amend the law under which the state originally entered into a contract for federal social security for its employees and for the employees of political subdivisions. Effective in 1980 state employees are no longer part of the social security system. These amendments make that clear.

Section 84 makes a clarifying amendment to the public employees retirement act to make the law consistent as to references to credited service in the amended section.

Section 85 repeals an obsolete provision in the public employee retirement act which sets out what will happen if a retired person receives a pension of less than \$25 a month. Under AS 39.35.485 as of January 1, 1981, the minimum

retirement benefit is \$25 a month so 39.35.470 no longer has any purpose.

Section 86 repeals defunct boards from the list of board members subject to financial disclosure.

Sections 87 and 88 substitute references to "Division of Forestry" which replaced "Division of Forest, Land, and Water Management".

Section 89 clarifies an amendment to the public utilities law made in 1980. This amendment makes it clear that the exemption in AS 42.05.711(i) applies to all utilities which have gross annual revenues of \$200,000 or less on and after June 30, 1980. As the law presently reads it could possibly be interpreted to mean that only those utilities which met the qualifications on the precise date of June 30, 1980 qualify for the exemption.

Section 93 eliminates an inconsistency in the fisheries business license tax. Under the 1979 enactment of AS 43.75.011 a processor must obtain a license under AS 43.75.020 before engaging in a fisheries business. However, under AS 43.75.020(b) (enacted in 1949) an applicant may carry on the business from the date the application is filed.

Section 94 substitutes the word "summons" for the word "subpoenas" in AS 43.80.035(b)(1) to make that paragraph consistent with AS 43.05.040. Under AS 43.05.040 summons rather than subpoenas are sought and issued for the administrative purposes of the Department of Revenue.

Section 95 corrects an error made in the bulk formal revision in 1963. In its original form (sec. 20, Chapter 64, SLA 1959), AS 44.19.028 provided that the governor could establish interim boards, councils, etc. until the adjournment of the next regular or reconvened session of the legislature. In the first revision process this was changed so that the board or commission could exist only until the beginning of the next regular or reconvened session of the legislature. This amendment takes the law back to its original form.

Section 96 repeals the defunct North Commission.

Section 97 clarifies the exempt public facilities for which a contribution for "art in public places" must be made.

Section 98 corrects a reference to "Aid to Dependent Children" to "Aid to Families with Dependent Children". This is the correct designation for the program.

Section 99 repeals the defunct Northwestern Alaska Development Committee which dissolved by its own terms on April 1, 1968.

Section 100 deletes an obsolete reference to the "four major senatorial election districts" in the law governing local boundary commission appointments. A reference to the current four judicial districts described in AS 22.10.010 is substituted.

Section 101 substitutes the Department of Law for the Legislative Council as the agency responsible for the indexing, numbering, and etc. of the Alaska Administrative Code. The basic responsibility for the style and general preparation of regulations to be published in the Administrative Code was given to the Department of Law in 1978 but this particular section was overlooked at that time (See AS 44.62.050 and AS 44.62.060).

Sections 102, 103 and 104 correct obsolete references to the commissioner of public works. The amended sections required the commissioner of public works and the commissioner of highways to cooperate in various ventures. With the creation of the new Department of Transportation and Public Facilities this commissioner is one and the same person.

Section 105 corrects a mistake made in the Uniform Commercial Code when it was adopted in 1962. This change from "instrument" to "indorsement" brings this paragraph into conformity with the official text of the Uniform Commercial Code.

Section 106 substitutes the commissioner of commerce and economic development for the "secretary of state" as the person who may accept proof of the use of a trademark. Trademark regulation is currently the responsibility of the Department of Commerce and Economic Development.

Section 107 straightens out confusion introduced by a 1981 floor amendment to the Alaska Securities Act.

Section 108 repeals AS 45.95.020(c). This subsection was tied to the existence of AS 45.95.020(b) which was repealed by sec. 4, Chapter 122, SLA 1980.

Section 109 substitutes "low level radioactive materials" for "radionuclides" in AS 46.03.290(a) relating to radiation and hazardous waste protection. This change was made throughout the law by Chapter 93, SLA 1981 but this section was apparently missed.

Sections 110, 111, 112, 113, 114 and 119 substitute references to AS 43.04 (Oil Pollution Control) for obsolete references to repealed AS 30.25. AS 30.25 was substantially replaced by AS 46.04. However in Section 110 a reference to an AS 30.25 section is completely eliminated since there is no comparable section in AS 43.04.

Section 115 deletes an obsolete reference to the definition of a "motor vehicle" and supplies the current correct definition.

Section 116 repeals a definition of "radionuclides" from AS 46.03. As noted in reference to Section 109, this term is no longer used in AS 46.03.

Sections 117 and 118 correct references to the Federal Clean Water Act enacted in 1980.

Sections 120, 121 and 122 correct references to "Aid to Dependent Children" to read "Aid to Families with Dependent Children". This is the correct designation for the program.

Sections 123 and 124 correct references to the former Advisory Board on Alcoholism.

DSP:ljb

HB

621

COMMITTEE REPORT

SENATE

4/22/82

FURTHER: None

Date: May 12, 1982

Mr. President:

The Committee on JUDICIARY has had SSHB 621 am

issuance of certificates of birth for persons born outside the United States and adopted by Alaska residents

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 SSHB 621 same title
 new title
- and recommends DO PASS
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Walter Anderson
Blaine

CHAIRMAN

DO PASS

Minutes of Senate Judiciary Committee
for April 12, 1982:

See Sen. Jud. '82 file folder on HB 2



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

APRIL 30, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

- HB 849 - "An Act relating to electric and telephone cooperatives."
- HB 621 - "An Act providing for the issuance of certificates of birth for persons born outside the United States and adopted by Alaska residents."
- SJR 61 - Proposing amendments to the Constitution of the State of Alaska relating to appropriations and the retention, investment and expenditure of certain state revenues; and superseding the amendments proposed by Legislative Resolve No. 1, First Special Session of the Twelfth Legislature (FSS FCCS SJR 4).
- HB 591 - "An Act making corrective amendments in the Alaska Statutes as recommended by the revisor of statutes; 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. Committee members present were: Senators Rodey, Parr, Anderson. Senators Bennett and Ray were absent.

001 - Call to order.

003 - Chairman Rodey brought HB 849 before the committee.

010 - Mr. Hutchins testified in favor of HB 849.

098 - Senator Rodey made the following amendments: On Page 1, Line 25, insert a "." after the word "mail". On Page 1, Line 25, delete [except that] and insert "However". On Page 1, Line 26, delete [may] and insert "shall", delete [if] insert "unless otherwise", insert "for" between "provided" and "by", delete [by] and insert "in". Also on Page 2, after Subparagraph (2), add a new subparagraph (3) to include attorney client privilege. There was no objection.

117 - For the record Senator Ray entered the meeting.

595 - Senator Parr moved on Page 2, subsection (d) delete [Reasonable]. On Page 2, Line 19, insert "of the board of directors" after "meetings". Insert "as provided for in each cooperatives bylaws" after "directors". Delete [required to be open under this section.] There was no objection. Senator Parr also moved that a new section 1 be added to the bill which would read, Sec. 10.15.00E. Purposes for which cooperatives may be organized. A cooperative may be organized under this chapter for any lawful purpose, except for the purpose of [BANKING OR INSURANCE OR] the furnishing of electric or telephone service. (3 ch 107 SLA 1959).

604 - Senator Anderson moved to adopt the committee substitute. There was no objection.

609 - Senator Anderson moved to pass HB 849 with individual recommendations. There was no objection.

628 - Chairman Rodey next brought SB 621 before the committee.

630 - After brief discussion, Senator Parr asked to work as a sub-committee on SB 621. There was no objection.

635 - Next Chairman Rodey brought SJR 61 before the committee.

645 - Senator Ray moved on Page 2, Line 14, "investments in" be deleted. There was no objection. Senator Ray also moved that on line 8, page 2, the word "in" be inserted between the words "and" and "programs".

721 - Senator Rodey moved to pass SJR 61 with individual recommendations. There was no objection.

744 - The last item on the agenda was HB 591.

748 - Mr. Walker, Revisor of Statutes, testified in favor of HB 591.

823 - After brief discussion, Chairman Rodey adjourned the meeting at 2:30 P.M.



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99911

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

APRIL 29, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

- HB 184 - "An Act authorizing convening special sessions of the legislature at any location in the state."
- HB 621 - "An Act providing for the issuance of certificates of birth for persons born outside the United States and adopted by Alaska residents."
- HB 678 - "An Act relating to membership in electric and telephone cooperatives."
- HB 339 - "An Act relating to the judicial review of administrative regulations."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 5:10 P.M. Committee members present were: Senators Anderson, Parr, and Rodey. Senators Bennett and Ray were absent.

003 - Call to order.

010 - Mr. Bruce distributed HB 184, Rep. Martin's bill.

019 - Senator Anderson moved to pass HB 184. There was no objection.

053 - Chairman Rodey brought HB 621 before the committee.

060 - Joan Brooks, Vital Statistics, testified in favor of HB 621.

192 - Jan Ivey, Juneau Adoptive Parents Group, testified in favor of this legislation also.

267 - Chairman Rodey laid HB 621 on the table.

276 - The next item on the agenda was HB 678.

290 - After brief discussion, Chairman Rodey laid HB 678 on the table.

293 - The last item of business was HB 339.

297 - Mr. Art Peterson, Department of Law, testified, stating that if the burden of proof agreement were taken out of , then the Department of Law would be in agreement with this bill.

348 - Diane Colvin, Department of Law, testified, explaining the committee substitute.

709 - After brief discussion, Chairman Rodey laid HB 339 on the table.

712 - Chairman Rodey adjourned the meeting at 5:50 P.M.

POSITION PAPER / Department of Health & Social Services

POSITION PAPER

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 621am

"An Act providing for the issuance of certificates of birth for persons born outside the United States and adopted by Alaska residents."

The Department recognizes that this is an emotional issue to those new parents of adopted aliens, who feel it is very important for their child to have a birth certification document from the State of Alaska. More than 30 states now have similar legislation. However, we would like to bring to the Committee's attention that, of the 650 to 700 adoptions granted each year in Alaska, only 3 to 4 percent are adoptions of foreign-born aliens, amounting to about 25, and of these, less than half are adoptions of Asian children.

The Registration Methods Branch of the National Center for Health Statistics has opposed the establishment of a birth certificate by any state for a foreign-born alien. This position is based on the firm belief, of more than 40 years standing, that the basic principle of registration is to record vital events where they occur. The Model Vital Statistics Act, endorsed by the Council of State Governments, makes no provision for such a birth certificate because of the ease by which abuses might result. A person could enter the United States using his original birth certificate, become adopted, and establish an entirely new identity without becoming a citizen. Even if the new certificate bears the statement that it is not evidence of United States citizenship it could be misleading because, in most cases, both adoptive parents are native to this country.

Passage of this bill would give a selected few people two birth certificates, one in the country of birth and one in Alaska. Children born to American citizens in a foreign country get only one birth certificate, and it is from that foreign jurisdiction. When a person, born in Alaska, is adopted, the original record is sealed away and replaced by a substitute birth certificate. Hence, an alien would always have two birth certificates, but the Alaska-born adoptee does not.

It is the opinion of the Department of Health & Social Services that the need addressed in this bill is already satisfied. In 1960 the U.S. State Department recognized that aliens in this country needed an acceptable document as proof of date and place of birth. Since that time the birth record issued by the U.S. Immigration and Naturalization Service has been totally accepted by all jurisdictions. Should the alien become naturalized, further documentation is provided. A birth record prepared by the State of Alaska for an adopted alien is a duplication of effort and does not maintain the integrity of vital records by registering only births which occur in Alaska.

Sponsor Substitute for House Bill No. 621 am limits the provisions of this act to adoptees under the age of 18 years. The certificate prepared will be on a form designed to suit the need, similar to the forms used by other states.

The certificate will bear the statement that it is not evidence of United States citizenship. However, upon proof of naturalization, a new certificate will be prepared deleting the statement that the certificate is not evidence of United State citizenship.

The Department of Health and Social Services supports passage of SSHB 621 am.

RECOMMENDED BY: Joan P. Brooks
JOAN P. BROOKS
STATE REGISTRAR
BUREAU OF VITAL
STATISTICS

DATE: February 11, 1982

APPROVED BY: Helen D. Beirne
HELEN D. BEIRNE
COMMISSIONER
DEPARTMENT OF HEALTH &
SOCIAL SERVICES

DATE: 2-14-82

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. Sponsor Substitute for House Bill 621 am
Title "An Act providing for the issuance of certificates of birth"
Requested by _____ Date _____

II. FISCAL DETAIL

Agency Affected Department of Health & Social Services
Program Category Affected Administrative Services
BRU, Program, Or Subprogram(s) Affected 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 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES	0	0	0	0	0	0
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

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

POSITIONS

FULL TIME	0	0	0	0	0	0
PART TIME						
TEMPORARY						

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

No fiscal impact

IV. DATE

Feb. 11, 1982

PREPARED BY

Jean P. Eranks

AGENCY D.H.S.S.

PHONE 465-3391

Original: Legislative Finance
cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

House Bill 621, relating to birth certificates

Passage of this bill would allow foreign born children who are adopted by residents of the state to obtain an Alaskan birth certificate. Although this birth certificate would not be a proof of citizenship and the child would still have to be naturalized, it would remove the stigma associated with certificates provided by the U.S. Department of Immigration and Naturalization.

Sectional Analysis of SSHB621

Sec. 1. (a) This section deals with the report of adoption. The added language of lines 15--20 adds flexibility to the existing statute by deleting the necessity for an original birth certificate. Findings may be requested by parents which could be used to establish a birth certificate for foreign born adopted children.

Sec. 2. Limits the location for forwarding a copy of an adoption report, vacation or amendment of an adoption document to the United States.

Sec. 3. Allows the state registrar to issue birth certificates for foreign born children if the parents were residents of Alaska at the time of adoption. The child or his parent or guardian must request this and there must be an adoption report together with information necessary to identify the original birth certificate or court findings. The findings may be replaced by an affidavit of the adoptive parent if the adoption took place prior to the effective date of this bill. The adopted person may not be 18 years or older at the time application is made. The registrar shall prescribe the form and it is not proof of citizenship.

Sec. 4. Provides for changing the name on the birth certificate and adds foreign born adopted children whose parents were residents of the state at the time of adoption.

Sec. 5. Divides this section into subsections. Requires that parents request a birth certificate within 30 days of adoption decree from the clerk of court and expands the location that the application be forwarded to include the registrar of state vital statistics in cases of foreign birth. If parents request, findings shall be provided in addition to an adoption report. These findings shall specify the date, place of birth and parentage of the adopted person based on evidence from the petitioner and/or reliable state or federal sources. These findings shall be certified and included with the report of adoption.

HOUSE BILL NO. 621

PROBLEM OVERVIEW

1. Many adopted foreign-born children have no legal birth certificates from their country of birth. In most of the heavily-populated nations, especially in Asia, vital events are not routinely recorded. Parents of foreign-born adopted children have no recourse to these foreign governments to obtain birth documents.
2. The legislatures of 28 states have responded to the concerns of adoptive parents, and are issuing birth certificates to adopted foreign-born children.

INTENT OF LEGISLATION

1. A birth certificate is a legal document reflecting the facts of birth. These certificates, if issued by the State of Alaska, will record the foreign country in which the child was born, the birth date, the child's legal name, and the names of the child's legal parents. A birth certificate is the right of every citizen.
2. The small, paper card issued by Immigration, called the "Certification of Birth Data," is unknown to the average person and to many persons in government. Non-acceptance of this card as an alternative to a birth certificate could cause serious difficulties in the future for these adopted individuals. A birth certificate issued by the State of Alaska would help to ensure that these adopted persons will have the latitude to move freely within the framework of our society on an equal par with their American-born brothers and sisters.
3. That Alaska would issue birth certificates to only those adopted foreign-born children whose parents were residents of Alaska at the time the adoption decree was granted. No foreign-born child is granted a preferential visa by Immigration and Naturalization unless the Social Service Board of Alaska has given permission for the child to enter the state. This applies to both adoptions which occur in Alaskan courts and those which occur in foreign courts.
4. The birth certificate will state that it is not evidence of citizenship. This statement will in no way interfere with other proofs of citizenship (naturalization documents or birth reports issued by the U.S. Dept. of State) which all of these children will eventually have

5. If a legal foreign birth document exists, then the Alaskan birth certificate would be prepared from the facts reported on the foreign one. Although both documents may be considered prima facie evidence of birth, this should create no problems since the facts reported in each case would be identical. For the majority of children who have no foreign birth certificates, possible duplication of prima facie evidence would not occur.
6. That the State of Alaska would issue retroactive birth certificates to include persons adopted prior to passage of the bill.
7. The birth certificate shall be in the same form as others issued by the state.

REVISED
POSITION PAPER

HOUSE BILL NO. 621

"An Act providing for the issuance of certificates of birth for persons born outside the United States and adopted by Alaska residents."

The Department recognizes that this is an emotional issue to those new parents of adopted aliens, who feel it is very important for their child to have a birth certification document from the State of Alaska. More than 30 states now have similar legislation. However, we would like to bring to the Committee's attention that, of the 650 to 700 adoptions granted each year in Alaska, only 3 to 4 percent are adoptions of foreign-born aliens, amounting to about 25, and of these, less than half are adoptions of Asian children.

The Registration Methods Branch of the National Center for Health Statistics has opposed the establishment of a birth certificate by any state for a foreign-born alien. This position is based on the firm belief, of more than 40 years standing, that the basic principle of registration is to record vital events where they occur. The Model Vital Statistics Act, endorsed by the Council of State Governments, makes no provision for such a birth certificate because of the ease by which abuses might result. A person could enter the United States using his original birth certificate, become adopted, and establish an entirely new identity without becoming a citizen. Even if the new certificate bears the statement that it is not evidence of United States citizenship, it could be misleading because, in most cases, both adoptive parents are native to this country.

Passage of this bill would give a selected few people two birth certificates, one in the country of birth and one in Alaska. Children born to American citizens in a foreign country get only one birth certificate, and it is from that foreign jurisdiction. When a person, born in Alaska, is adopted, the original record is sealed away and replaced by a substitute birth certificate. Hence, an alien would always have two birth certificates, but the Alaska-born adoptee does not.

It is the opinion of the Department of Health & Social Services that the need addressed in this bill is already satisfied. In 1960 the U.S. State Department recognized that aliens in this country needed an acceptable document as proof of date and place of birth. Since that time the birth record issued by the U.S. Immigration and Naturalization Service has been totally accepted by all jurisdictions. Should the alien become naturalized, further documentation is provided. A birth record prepared by the State of Alaska for an adopted alien is a duplication of effort and does not maintain the integrity of vital records by registering only births which occur in Alaska.

It is recommended that the provisions of this bill be limited to minor foreign-born aliens adopted in Alaska, and that the certificate provided be on a form designed to suit the need, but not in the identical style of the standard certificate of birth for Alaska.

With these amendments, the Department of Health & Social Services would support passage of HB No. 621.

RECOMMENDED BY:

Joan P. Brooks
JOAN P. BROOKS
STATE REGISTRAR
BUREAU OF VITAL
STATISTICS

DATE:

January 25, 1982

APPROVED BY:

Helen D. Beirne
HELEN D. BEIRNE
COMMISSIONER
DEPARTMENT OF HEALTH &
SOCIAL SERVICES

DATE:

1-26-82

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HOUSE BILL NO. 621
Title "An Act providing for the issuance of certificates of birth"
Requested by _____ Date _____

II. FISCAL DETAIL

Agency Affected Department of Health & Social Services
Program Category Affected Administrative Services
ERU, Program, Or Subprogram(s) Affected 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 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES	0	0	0	0	0	0
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME	0	0	0	0	0	0
PART TIME						
TEMPORARY						

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

No fiscal impact

IV. DATE

January 25, 1982

PREPARED BY

Paul P. Brooks

AGENCY D.H. & S.S.

PHONE 465-3391

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

Boirne

January 18, 1982

TO: Legislative Affairs Agency

TO: Reps. Bettisworth, Brown, Farming, Randolph, Rogers and Smith, Boirne, & Abood
Sens. Fahrenkamp, Bennett, and Parr

Please send the following message to the Fairbanks Legislative delegation members, to Representative Michael F. Boirne, Chairman of the House Health, Education & Social Services Committee, and to Representative Mitchell E. Abood, Jr.:

We the undersigned support House Bill 621 allowing the issuance of Alaska substitute birth certificates to foreign born children adopted in Alaska.

<u>Print Name:</u>	<u>Signature:</u>	<u>Address:</u>	<u>Phone:</u>
<u>Dennis E. Cook</u>	<u><i>Dennis E. Cook</i></u>	<u>512-50118 Fairbanks</u>	<u>452-1851</u>
<u>REYLY L. EVERTS</u>	<u><i>Reyly L. Everts</i></u>	<u>P.O. BOX 1421 FAIRBANKS</u>	<u>452-3803</u>
<u>GRACE BURG SCHWALS</u>	<u><i>Grace Burg Schwals</i></u>	<u>PO Box 3712 FAIRBANKS</u>	<u>479-6434</u>
<u>Norma J. Long</u>	<u><i>Norma J. Long</i></u>	<u>263 Sprucewood</u>	<u>479-4583</u>
<u>Lisa R. Belder</u>	<u><i>Lisa R. Belder</i></u>	<u>16.5 mile Pl. Lake Sp.</u>	<u>458-6269</u>
<u>Ellen A. Craig</u>	<u><i>Ellen A. Craig</i></u>	<u>1050 Gilmore</u>	<u>452-1855</u>
<u>Sharon K. Brossin</u>	<u><i>Sharon K. Brossin</i></u>	<u>430 Bentley Dr</u>	<u>456-5676</u>
<u>Miriam R Tuttle</u>	<u><i>Miriam R Tuttle</i></u>	<u>5209 R Kadunk St</u>	<u>377-3454</u>
<u>Pat L. Sumner</u>	<u><i>Pat L. Sumner</i></u>	<u>S.R # 70236</u>	<u>488-6003</u>
<u>Elizabeth L. Johnson</u>	<u><i>Elizabeth L. Johnson</i></u>	<u>SP 40465</u>	<u>452-1855</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

1/19/82

Telephone contact with Joan Brooks of Vital Records

<u>Year</u>	<u>Total Adoptions</u>	<u>Foreign</u>	<u>%</u>
1978	672	18	2.6
1979	634	32	5
1980	650	29	4
1981 (incom.)	653	23	4

She reports that the National Center for Health Certificates is against HB 621 because it could create abuses and be misleading. The big fear is that adults could be adopted and obtain what easily looks like and could be mistaken for a American birth certificate. Also, military personnel are not afforded the same courtesy when their children are born outside the borders of the U.S.

- 1) Burden on officials to scrutinize
- 2) Parents of foreign born children often think that this is equivalent to naturalization.
- 3) Double certification--valid certificate in both countries.
- 4) Placation of parents is major feature--they have an emotional investment in making their children Americans.
- 5) U.S. military children have to naturalize.
- 6) Original alien card issued by U.S. Imm.-- has original place of birth, no parents names.
The Alaskan one under HB 621 would have American parents' names. Can obtain Immigration card to name change by court very easily.
- 7) Department of Justice will not give out statistics.

Called for contact for naturalization information:

Anchorage District Office is 265-4387
766-2880

living and leisure

Adopting couples seek children in other nations

By GWEN BARCUS
Daily News reporter

With more and more unwed mothers opting to keep their babies and abortion the chosen route for some who don't want to bear a child, the number of infants available for adoption in the United States is dwindling — and is far outstripped by families that want to adopt.

Because of this imbalance, some prospective parents are turning to other countries for children.

At best, adopting a child is complicated. But when the adoption involves a foreign nation, the problems are compounded. Prospective parents must:

- Find an American agency that will handle the adoption.
- Arrange for actual physical possession of the child.
- Research and comply with regulations governing adoptions in both the U.S. and the child's native land.
- Cope with federal and state regulations involving tax matters and birth certificates.

Anchorage's Jean and Walt Bhagatram have three adopted children: Alexander, 7, Kattia, 5, and little Nicholas, who just celebrated his first birthday. All are beautiful children, and obviously not blood relatives of their parents. The older son and daughter are Korean and the baby is from Taiwan. Each child came to the Bhagatrams at the age of 4 months.

Jean laughs as she says, "The family teases me about being the 'different' one. Besides the children coming from two different countries, my husband is Russian, born in China with an Indian background."

"We always wanted to adopt children," she says. "We chose that route to build our family."

For the Bhagatrams, the shortage of American babies and the complexity of the U.S. adoption system prompted them to look across the border.

Most American adoption agencies have an "incredible number of rules," according to Carol Dickinson of the Anchorage Adoptive Parents Association. Age of parents, square feet of space for the child's room, income and other matters are considered. She says foreign agencies, on the other

hand, are more concerned with finding someone who can feed and care for a child.

When Anchorage's Tom and Joan Wilkinson decided they wanted a baby, they also agreed they didn't want to add to the world population.

"We set out to adopt an Oriental child," Tom says. "But it wasn't easy. We were living in Texas at the time and tried the local agencies with no success."

Then Joan read a magazine article about an agency in Oklahoma that specialized in adoption of the foreign-born.

"Still, it was a long and arduous task," Tom says. "We waited 26 months."

By December 1979, when 3-year-old Karyn arrived from Korea, the couple was living in Anchorage.

"It was fortunate we were transferred here," Tom says. "Many people who adopt a foreign child must go to the child's native land and bring them home. Others must travel to some central pickup point in the U.S."

But because the Wilkinsons lived here, they only had to drive to Anchorage International Airport.

Walt Bhagatram played a role in the adoption of another Asian child by an Anchorage couple. Reid and Sandy Bond had decided to adopt a Korean baby when it became apparent they would not have a child themselves. They, too, were frustrated by the lack of interest shown by adoption agencies in Arizona, where they lived at that time.

After the Bonds moved to Anchorage, however, they heard of a Chinese infant in Taiwan, and when Bhagatram went to that country last May to pick up his son, Nicholas, he took photographs of the baby the Bonds had learned about.

"We decided immediately that we wanted him," Sandy says, and they began adoption proceedings. In November, the Bonds traveled to Taiwan to get their son, Christopher Reid, who was then 8 months old.

All three families have gone to great expense to adopt their children: The adoption proceedings cost \$3,500 to \$5,000, Sandy Bond says, with perhaps an additional \$1,000 in travel expenses. Adoptive parents are not allowed to deduct any of



Their T-shirts leave no doubt about who stands where in the Bhagatram family's age line. From left are 'Little Brother' Nicholas, 1; 'Big Sister' Kattia, 5; and 'Big Brother' Alexander, 7.

Sandy and Reid Bond found their son, Christopher, in Taiwan.

these expenses from their income tax. Parents who have children in the U.S., on the other hand, can deduct some childbirth expenses. This adoptive parents contend, is unfair.

Ann and Fern Chandonnet, an Eagle River couple who adopted a Costa Rican child nine years ago, are part of a growing movement to change this law.

When the difficulties of finding a baby in the United States became apparent, the Chandonnets went the route of other frustrated adoptive parents and sought a child from outside the country.

They went to Costa Rica from their home, then Oakland, Calif., to pick up Yves. Their lawyer in Costa Rica anticipated they would have difficulty obtaining a birth certificate for the child in the U.S., so she suggested that they baptize Yves as soon as they returned home and send her the baptismal record.

They followed the lawyer's

coming attractions



Anchorage Daily News/Tom Alvariz



advice and she obtained a birth certificate for Yves — in Spanish.

Then, four years ago, "when I couldn't be accused of trying to seek special privilege for myself," Ann says she proposed legislation in Alaska that would allow a deduction on the state income tax for expenses incurred in adopting a child.

A bill was introduced, passed by the House but defeated in the Senate. Now that Alaska has abolished the state income tax, the Chandonnets are seek-

ing legislation that would allow a deduction on federal income tax returns.

Alaska, however, remains one of 16 states that do not issue birth certificates to foreign-born adoptees. The document is required on many occasions: entering school, joining the Little League, getting into military service and marrying, for example.

Rep. Mitch Abood, R-Anchorage, is seeking to remedy that situation with a bill he has introduced allowing the issu-

ance of birth certificates to foreign-born children under age 18 who have been adopted by Alaskans.

If passed, the law would be retroactive and apply to children adopted before its passage.

A local support group for parents of foreign-born children, the Anchorage Adoptive Parents Association, may be helpful in supplying information on child adoption. Interested persons may call Becky Wel at 514-5660.

H B

627

Memorandum

Alaska Court System

TO:

Arthur H. Snowden, II
Administrative Director

DATE : February 22, 1982

FROM: Karla L. Forsythe *KF*
General Counsel

SUBJECT: HB 627: Crime Victims
and Witnesses

Status: Hearing before House Judiciary on Wednesday,
February 24

Impact on Court System

1. The right to be provided, whenever practical, a secure waiting area during court proceedings that does not require the victim or witness to be in close proximity to a defendant and the family or friends of a defendant (AS 12.61.010(a)(5) - page 2, line 9).

Comment: Literal implementation of this "right" is impractical because of spatial and financial considerations.

2. Duty of court relating to victims of domestic violence (AS 12.61.020 - page 3-4).

The court "may" not dismiss criminal charges because of a pending divorce or because the victim has failed to file for divorce.

The court "may" identify by any reasonable means in the public records of the court those criminal actions arising from acts of domestic violence.

Comment:

- Violates separation of powers by telling the court how to handle cases.
- Prosecutors and not the courts dismiss charges; statute incorrectly attributes this problem to the court.
- The section is drafted with the permissive word "may" rather than the mandatory "shall", so the court is not required to undertake these "duties".

3. At time of arraignment court shall determine as a condition of pre-trial release whether it is necessary to order defendant not to contact the victim.

The decision must be in writing. Wilful violation of the order is a Class A misdemeanor, and orders must so state.

Comment:

- No additional paperwork because order could be entered on current forms.
 - Some support within the court for the provision which makes violation of these orders a misdemeanor.
4. Requires in camera review of crisis intervention service records which defense attorney seeks to discover.

Comment: Nothing in current law prohibits in camera review. Placing this requirement in the statute will bring it to the attention of defense attorneys, who will use it more often.

5. Requires court to disclose to victims of juvenile crimes the manner in which the court disposed of the matter.

Comment: No problems should arise in implementing this requirement.

KLF/jb

H

B

6

3

3

COMMITTEE REPORT

SENATE

5/18/82

FURTHER: None

Date:

June 1, 1982

Mr. President:

The Committee on JUDICIARY has had HE 633

prohibiting personal recognizance release when the offense charged is a violent crime

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 HE 633 same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Robert Anderson No Rec

CHAIRMAN

CLASSIFICATION OF OFFENSES IN REVISED CRIMINAL CODE

UNCLASSIFIED FELONIES

Murder in the First Degree

AS 11.41.100

20-99 years

Murder in the Second Degree

AS 11.41.110

5-99 years

Kidnapping

AS 11.41.300

5-99 years

CLASSIFIED FELONIES

2-2

A	B	C
Attempted Murder or Kidnapping AS 11.31.100(d) (1)	Attempted A felony AS 11.31.100(d) (2)	Attempted B felony AS 11.31.100(d) (3)
Solicitation of Murder or Kidnapping AS 11.31.110(c) (1)	Solicitation of A felony AS 11.31.110(c) (2)	Solicitation of B felony AS 11.31.110(c) (3)
Manslaughter AS 11.41.120	Assault II AS 11.41.210	Criminally Negligent Homicide AS 11.41.130
Assault I AS 11.41.200	Sexual Assault II AS 11.41.420	Custodial Interference I AS 11.41.320
Sexual Assault I AS 11.41.410	Unlawful Exploitation of a Minor AS 11.41.455	Sexual Assault III AS 11.41.430

CLASSIFIED FELONIES

A	B	C
Robbery I AS 11.41.500	Robbery II AS 11.41.510	Sexual Abuse of a Minor AS 11.41.440
Arson I AS 11.46.400	Extortion AS 11.41.520	Incest AS 11.41.450
Escape I AS 11.56.300	Theft I AS 11.46.120	Coercion AS 11.41.530
Criminal Possession of Explosives with Intent to Commit Murder or Kidnapping AS 11.61.240(b) (1)	Issuing a Bad Check, \$25,000 or more AS 11.46.280(d) (1)	Theft II AS 11.46.130
	Burglary I AS 11.46.300	Concealment of Merchandise, \$500 or more AS 11.46.220(c) (1)
	Arson II AS 11.46.410	Removal of Identification Marks, \$500 or more AS 11.46.260(b) (1)
	Criminal Mischief I AS 11.46.480	Unlawful Possession (of Altered Property), \$500 or more AS 11.46.270(b) (1)
	Forgery I AS 11.46.500	Issuing a Bad Check, \$500 or more AS 11.46.280(d) (2)
	Scheme to Defraud AS 11.46.600	Fraudulent Use of a Credit Card, \$500 or more AS 11.46.285(b) (1)
	Defrauding Creditors, \$25,000 or more AS 11.46.730(c) (1)	

2-3

COATS, Judge, concurring.

I agree with the majority that the equal protection clause requires that legislation which restricts bail pending appeal must treat people who are similarly situated similarly. I also agree that the proper test for this court to apply in evaluating such legislation is the rational basis test. I would emphasize, however, that in my view, the equal protection clause does allow the legislature a considerable amount of discretion in determining which offenses should give rise to the right to bail. However, having said that, I have a great deal of difficulty justifying the legislature's decision to restrict bail pending appeal after a conviction for robbery in the first degree while allowing bail pending appeal after a conviction for murder in the second degree. Therefore, I concur in the decision.

distinguishes between violent and dangerous offenders similarly situated, violates the Alaska Constitution as well as the United States Constitution. The legislature may certainly deny post-conviction bail to dangerous offenders, but if it does so, it must act in an evenhanded manner.

This case is reversed and remanded for the limited purpose of providing a bail hearing to Mr. Griffith. We express no opinion regarding how AS 12.30.040(a) should be applied to this case, nor do we express any opinion regarding an appropriate bail or the appropriate conditions of any possible release. The limited remand shall not be deemed a postponement of any obligation of any party in connection with the appeal now pending on the merits.

REVERSED and REMANDED.

Alternative methods which standardize the burden are available and have been upheld elsewhere.⁹

To complete this analysis, the importance of the state's interest in denying persons convicted of first degree robbery, first degree murder, kidnapping, or rape the chance for post-conviction bail must be weighed against the rights allegedly infringed by such state action. The considerations are substantial in both directions. On the one hand, there is no right to bail pending appeal under the Alaska Constitution. State v. Wassillie, 606 P.2d 1279 (Alaska 1980). On the other hand, the significance of bail prior to conviction is well-recognized, and many of the same factors in that situation are pertinent to the person who has been convicted. These include the possibility of wrongful detention, the loss of income, the diminution of investigation opportunities, and the impairment of the family relationship. See Carman v. State, 664 P.2d 361, 364 n.10 (Alaska 1977). Consequently, we conclude that AS 12.30.040(b), to the extent that it

9. In other jurisdictions which have upheld bail pending appeal statutes, all crimes of a class, which were otherwise treated with equal severity, were included in the statute. See, e.g., United States ex rel. Fink v. Heyd, 287 F.Supp. 716 (E.D. La. 1968), cert. denied, 396 U.S. 895, 24 L.Ed.2d 172 (1969)(state provision which effectively denied bail to all persons convicted of a felony and sentenced to at least five years in prison upheld); Gold v. Shapiro, 403 N.Y.S.2d 906 (App. Div. 1978), aff'd, 410 N.Y.S.2d 68 (1978)(post-conviction denial of bail provision held constitutional where entire subclass of drug felons treated equally). Similarly, the Supreme Court of Alaska has upheld differential class treatment of prison escapees where all members of the class received identical treatment. Alex v. State, 484 P.2d 677 (Alaska 1971).

state interest in the chosen means must be balanced against the nature of the constitutional right involved.

State v. Erickson, 574 P.2d 1, 12 (Alaska 1978)(footnotes omitted). In essence, then,

We apply a single test which is nevertheless flexible and dependent upon the importance of the rights involved. Based on the nature of the right, a greater or lesser burden is placed on the state to show that the classification has a fair and substantial relation to a legitimate governmental objective.

Commercial Fisheries Entry Commission v. Apokedak, 606 P.2d at 1264 (footnote omitted).

There is no dispute between the parties concerning the purpose of the post-conviction bail statute. However, we do not find that that statute bears "a fair and substantial relation to the object of the legislation." Isakson v. Rickey, 550 P.2d at 362. It has already been pointed out that many persons who are convicted of crimes not listed within AS 12.30.040(b) present as great a risk of nonappearance and of community harm as do those named within the statute.

A careful limitation on bail to dangerous convicted persons is indeed rationally related to the legislative purposes of continued appearance and community protection. Nevertheless, the selective means instituted by the legislature are not connected with such goals. The decision to bar someone convicted of first degree robbery from a post-conviction bail hearing, while giving this opportunity to someone convicted of second degree murder, calls for some explanation. None is forthcoming.

B. Whether AS 12.30.040(b) Violates the Equal Protection Clause of the Alaska Constitution

Although it is not a requirement that any classification made by the state be perfect, Commercial Fisheries Entry Commission v. Apokedak, 606 P.2d at 1267, it still "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." Isakson v. Rickey, 550 P.2d 359, 362 (Alaska 1976), citing State v. Wylie, 516 P.2d 142, 145 (Alaska 1973).

Alaska's equal protection approach for statutes not affecting fundamental rights was further explicated by the Isakson court:

[W]e will no longer hypothesize facts which would sustain otherwise questionable legislation as was the case under the traditional rational basis standard. Thus, under the new test

Judicial deference to a broad range of conceivable legislative purposes and to imaginable facts that might justify classifications is strikingly diminished. Judicial tolerance of over-inclusive and under-inclusive classifications is notably reduced. Legislative leeway for unexplained pragmatic experimentation is substantially narrowed.

550 P.2d at 362 (footnote omitted). Operationally, this consolidates the two-tiered federal standard and requires that the court look to the legislature's purpose.

It must be determined that this purpose is legitimate, that it falls within the police power of the state. Examining the means used to accomplish the legislative objectives and the reasons advanced therefore, the court must then determine whether the means chosen substantially further the goals of the enactment. Finally, the

all class A felonies. Under AS 11.81.250,⁸ these offenses are of equivalent seriousness to robbery in the first degree and to sexual assault in the first degree; yet, persons convicted of the latter crimes may not receive bail pending appeal while persons convicted of the former may. Consequently, we conclude that a legislative scheme which makes bail optional for some dangerous convicts, but which without apparent explanation denies it to others similarly situated, violates the federal constitution.

8. Sec. 11.81.250. Classification of Offenses.

(a) For purposes of sentencing under AS 12.55, all offenses defined in this title, except murder in the first and second degree and kidnapping, are classified on the basis of their seriousness, according to the type of injury characteristically caused or risked by commission of the offense and the culpability of the offender. Except for murder in the first and second degree and kidnapping, the offenses in this title are classified into the following categories:

(1) class A felonies, which characteristically involve conduct resulting in serious physical injury or a substantial risk of serious physical injury to a person

To the extent that it limits its burdens to a part of the class of violent or dangerous offenders, there is little in Alaska's classification scheme that is reasonably or rationally related to the state's purpose in denying the opportunity for post-conviction bail. First, the state offers no substantiation for the proposition that a person who has been convicted of robbery in the first degree is any less likely to continue to appear before the court and to follow its orders than someone who has been convicted of a serious crime not covered within AS 12.30.040(b). While it is true that someone convicted of first degree robbery "will serve a considerable amount of time in prison" and will thus have "an incentive for flight," the same may also be said of someone convicted of a crime such as second degree murder. It would also be true of someone convicted a third time for illegally selling narcotics where the possible punishment is life imprisonment. See AS 17.10.200(c)(3).

Second, the state's argument that the public has a greater need to be protected from persons convicted of an offense within 12.30.040(b) than persons convicted of other egregious acts is not convincing. Indeed, some of these other offenses for which bail is an option have been categorized by the legislature to be as serious as or more serious than some of the offenses within AS 12.30.040(b). Second degree murder is an unclassified offense for which life imprisonment is a potential sentence. Manslaughter, assault in the first degree, and arson in the first degree, for example, are

The state cites a pair of legislative criteria in support of the Alaska provision: (1) assurance of continued appearances and amenability to the further orders of the court, and (2) protection of the community. AS 12.30.040(a). Griffith does not contest the reasonableness of these purposes or contend that the legislature's goals are not being met under AS 12.30.040(b). Rather, he argues that the Alaska Legislature has arbitrarily and completely denied him a benefit (the opportunity for bail) which may be granted to others who are similarly situated.

Courts often have held that such "underinclusion" is not a denial of equal protection. They reason that a legislature may recognize an evil and attempt to eliminate the harm where it is most acute. See, e.g., Williamson v. Lee Optical, Inc., 348 U.S. 483, 99 L.Ed. 563 (1955), reh. denied, 349 U.S. 925, 99 L.Ed. 1256 (1955). Factors such as administrative convenience and the need for experimentation have been advanced in support of this approach. See Tussman and tenBroek, The Equal Protection of the Laws, 37 Cal. L.Rev. 341, 348-49 (1949). The presumption of validity for "underinclusive" legislation has, however, been strongest in cases involving economic regulation. Developments in the Law--Equal Protection, 82 Harv. L.Rev. 1065, 1078 (1969); see, e.g., New Orleans v. Dukes, 427 U.S. 297, 303, 49 L.Ed.2d 511, 516-17 (1976). Accordingly, the United States Supreme Court has invalidated a state law where it found that the classification was based upon a distinction between prisoners which did not bear a reasonable relationship to the purpose of the classification. Rinaldi v. Yeager, 384 U.S. 305, 16 L.Ed.2d 577 (1966)(requirement that prisoner, but not probationer, reimburse state for transcripts held violative of equal protection clause).

Under Alaska law, those convicted of felonies are entitled to bail under the same circumstances and subject to the same conditions as are those defendants awaiting trial unless the court expressly finds that no conditions will insure the defendant's attendance at further proceedings or will prevent him from injuring the public. AS 12.30.040(a). An exception to this rule of general availability of bail to convicted felons is made for those convicted of certain specified crimes including, inter alia, robbery in the first degree, the crime for which Griffith was convicted. AS 12.30.040(b). Thus, under current Alaska law, a person convicted of second degree murder (an unclassified offense), AS 11.41.110, an offense punishable by a sentence of at least five years and perhaps as much as ninety-nine years in prison, AS 12.55.125(b), would be entitled to bail unless the court found reasons not to grant bail. However, a person convicted of first degree robbery (a class A felony), AS 11.41.500, an offense punishable by a term of zero to twenty years,⁷ AS 12.55.125(c), would not be eligible for bail no matter what conclusions the trial court reached regarding the risk he posed of fleeing or of harming others. Is there a rational basis for distinguishing between those convicted of second degree murder and those convicted of first degree robbery in determining the availability of bail?

7. While it is unlikely that anyone convicted of second degree murder would receive the minimum five-year term specified in AS 12.55.125(b), it is possible to commit first degree robbery without becoming subject to the minimum six-year term specified in AS 12.55.125(c)(1).

So too, the "rational basis" test is the relevant one in the instant case. While at least one federal court has noted that "the right to bail is 'fundamental' in that it involves issues of personal freedom in the most immediate and literal sense of those words," United States v. Thompson, 452 F.2d 1333, 1340 (D.C. Cir. 1971) (dictum), cert. denied, 405 U.S. 998, 31 L.Ed.2d 467 (1972), it still is well accepted that the receipt of post-conviction bail is not constitutionally guaranteed. See, e.g., Powers v. Schwartz, 448 F.Supp. 54, 56 (S.D. Fla. 1978), vacated as moot, 587 F.2d 783 (1976); United States ex rel. Bad Heart Bull v. Parkinson, 385 F.Supp. 1265, 1266 (D. S.D. 1974).

A state may, if it chooses, decline to provide a system for post-conviction bail, simply because convicted persons do not have a right to bail pending appeal. See, e.g., In re Podesto, 544 P.2d 1297 (Cal. 1976). "What is required is that where the state has set up a classification of bailable and non-bailable offenses, the classification must not violate the right to due process and equal protection guaranteed by the Fourteenth Amendment." Powers v. Schwartz, 448 F.Supp. at 56. Following the "rational basis" approach,

The applicable test . . . is 'whether the classification is reasonable, possesses some rational connection to the measure's legitimate purpose and treats all within the class alike.' Under this test, legislation is presumed to be reasonable, and any reasonably conceivable facts justifying the classification will be accepted.

Commercial Fisheries Entry Commission v. Apokedak, 606 P.2d at 1262 (footnotes omitted).

permits) under both the fourteenth amendment and the Alaska Constitution. The court noted that, in light of Alaska's differing standard of review in some equal protection cases, the claim needed to be considered separately under both federal and state law. Id. at 1261. The dual analysis of the court in Apokedak will be followed here.

A. Whether AS 12.30.040(b) Violates the Equal Protection Clause of the United States Constitution

In examining the claim presented in Apokedak under the fourteenth amendment, the supreme court first considered whether the classification scheme at issue involved a suspect classification or a fundamental right. The court found that neither were involved and thus used the "rational basis" test, instead of the "strict scrutiny" test,⁶ to assess the state's interest in creating the statutory classifications. Id. at 1261-62.

6. The United States Supreme Court has applied dual standards to equal protection challenges. The state must prove a "compelling state interest" to justify classifications based on race, national origin, or alienage (so called suspect classifications), and such classifications are subject to strict scrutiny. A similar standard is applied when fundamental rights are at stake. There is no general agreement, however, among supreme court justices as to which rights are "fundamental" beyond those found in the first amendment.

In cases not involving suspect classes or fundamental rights, the United States Supreme Court has generally applied the less restrictive rational basis test. Id. at 1261-62.

alleging that it violates the equal protection clauses of the federal⁴ and state⁵ constitutions. We agree and reverse. While Griffith's federal challenge is dispositive, we nevertheless construe the Alaska Constitution as well in the event that intervening federal authority might otherwise require further proceedings.

I. WHETHER AS 12.30.040(b) IS CONSTITUTIONAL UNDER
THE EQUAL PROTECTION LAWS OF THE UNITED
STATES AND OF ALASKA

In Commercial Fisheries Entry Commission v. Apokedak, 606 P.2d 1255 (Alaska 1980), the Supreme Court of Alaska carefully considered an equal protection claim (involving the restrictive granting of fishing

Footnote 3 continued:

(b) Notwithstanding the provisions of (a) of this section, if the offense a person has been convicted of is murder in the first degree, robbery in the first degree, kidnapping, or sexual assault in the first degree under AS 11.41.410(a)(1), he may not be released on bail either before sentencing or pending appeal.

4. U.S. Const. amend. XIV, provides in part that no state may "deny to any person within its jurisdiction the equal protection of the laws."

5. Alaska Const. art. I, § 1, provides in part, "that all persons are equal and entitled to equal rights"

The trial court denied bail in reliance on AS 12.30.040(b).³
In this appeal, Griffith challenges the constitutionality of AS 12.30.040(b)

Footnote 1 continued:

(5) Employment and financial circumstances: name of employer at time of arrest and during pre-trial release; type of work; how long so employed; any offer or promise of employment if released pending appeal; assets of the appellant or of relatives or friends relevant to the ability to post money bail;

(6) Health: history of mental illness, alcoholism, or addiction to drugs, if any;

(7) Residence: length of residence in the city or town in which the appellant resided at the time of arrest;

(8) Criminal history: criminal convictions within ten years prior to the present arrest; if the appellant has ever forfeited bail, or had release, probation, or parole revoked, the date, the name and location of the court, and a brief description of the circumstances; whether the present offense was committed while the appellant was on bail or other release or on probation or parole; any other criminal charges pending against the appellant at the time the motion is filed.

(c) The decision of the court of appeals on an application under this rule is a "final decision" within the meaning of Rule 302. (Supreme Court Order 439 effective November 15, 1980)

3. This provision is best understood when read in the context of the entire statute, AS 12.30.040:

Release after conviction. (a) A person who has been convicted of an offense and is awaiting sentence, or who has filed an appeal shall be treated in accordance with the provisions of AS 12.30.020 unless the court has reason to believe that no one or more conditions of release will reasonably assure the appearance of the person as required or prevent the person from posing a danger to other persons and the community. If that determination is made, the person may be remanded to custody. This section does not affect the right of a person appealing from a judgment of conviction from a district court to the superior court to be released on bail pending appeal under Rule 2(c) of the District Court Rules of Criminal Procedure.

Continued on p. 5.

The supreme court has implemented this statute by the adoption of two appellate rules: Rule 206(b)¹ and Rule 207.²

1. Appellate Rule 206(b). Stay of Execution and Release Pending Appeal in Criminal Cases:

(b) Release Pending Appeal. When an appeal on the merits is pending, an appeal under AS 12.30.030(b) from an order refusing bail pending appeal or imposing conditions of release pending appeal shall be in the form of a motion filed in the merit appeal. The motion shall comply with Rule 503, and shall contain specific factual information relevant to the factors set forth in AS 12.30.020(c), including but not limited to the following:

(1) The full name of the appellant, the trial court docket number of the case, the offenses of which the appellant was convicted, the date of sentencing, and the complete terms of the sentence;

(2) That application for release pending appeal has been made to the trial court, the reasons given by the trial court for denying the application in whole or in part, and facts and reasons demonstrating why the action of the trial court on the application was erroneous or an abuse of discretion;

(3) A concise statement of the question or questions to be raised on the appeal with a showing that the question or questions were raised in the trial court;

(4) Family: marital status; length of marriage; children, and their ages; other relatives in the area of residence;

Continued on p. 4.

2. Appellate Rule 207. Appeals Relating to Release Prior to Judgment:

An appeal authorized by AS 12.30.030(b) or AS 12.30.040, relating to the release of a criminal defendant prior to the entry of final judgment, shall be determined promptly. The appeal shall take the form of a motion and shall comply with Rules 206(b) and 503. The appellee may respond as provided in Rule 503(d). The court of appeals or a judge thereof may order the release of the appellant pending such an appeal. The decision of the court of appeals on such an appeal is a "final decision" within the meaning of Rule 302. (Supreme Court Order 439 effective November 15, 1980)

On March 27, 1981, Charles A. Griffith was convicted by a jury of robbery in the first degree, AS 11.41.500. He has appealed that conviction and the resulting sentence. That appeal is pending and is not yet ripe for decision and consequently, it will not be addressed in this opinion. The sole issue before us now concerns Griffith's challenge to an order denying him bail both pending sentencing and after sentencing pending a determination of his merit appeal. These issues are appealable apart from the appeal on the merits. See AS 12.30.030(b) which provides in relevant part:

When a court denies a motion under (a) of this section [a motion for release from pretrial or post-conviction detention] or conditions of release have been imposed by the court having original jurisdiction over the offense, an appeal may be taken to the court having appellate jurisdiction over the court denying the motion or imposing the conditions subject to the rules of the Supreme Court of Alaska, and the District Court Rules of Criminal Procedure. The order of the lower court shall be affirmed unless it is found that the lower court abused its discretion. If it is held that the lower court did abuse its discretion, the appellate court may modify, vacate, set aside, reverse, remand the action for further proceeding, or remand the action directing entry of the appropriate order, which may include ordering the person to be released under AS 12.30.020(a). The appeal shall be determined promptly.

NOTICE: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska, 99501, in order that corrections may be made prior to permanent publication.

THE COURT OF APPEALS OF THE STATE OF ALASKA

CHARLES A. GRIFFITH,)	
)	
Appellant,)	File No. 5914
)	
v.)	<u>O P I N I O N</u>
)	
STATE OF ALASKA,)	
)	[No. 71 - March 4, 1982]
Appellee.)	
_____)	

Appeal from the Superior Court of the State of Alaska, Fourth Judicial District, Fairbanks, Warren W. Taylor, Judge.

Appearances: David C. Backstrom, Assistant Public Defender, Fairbanks, and Dana Fabe, Public Defender, Anchorage, for Appellant. Thomas A. Miller, Assistant District Attorney, Harry L. Davis, District Attorney, Fairbanks, and Wilson L. Condon, Attorney General, Juneau, for Appellee.

Before: Bryner, Chief Judge, Coats and Singleton, Judges.

SINGLETON, Judge.
COATS, Judge, concurring.



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

JUNE 1, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

HB 633 - "An Act prohibiting personal recognizance release when the offense charged is a violent offense."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 2:00 P.M. Committee members present were: Senators Rodey, Anderson, and Parr. Senators Bennett and Ray were absent.

003 - Call to order.

008 - Chairman Rodey brought HB 633 before the committee.

025 - Senator Anderson expressed concern of people being released prematurely without going through all of the proper proceedings and causing a threat to society.

216 - After a brief discussion, Senator Anderson moved to adopt the Senate committee substitute and pass the bill from committee with individual recommendations. There was no objection and the bill was passed.

229 - Chairman Rodey brought a resolution dealing with a code of ethics before the committee. There was a question of having the Legislative Council or a Joint Ethics Committee doing the work during the interim.

234 - Senator Rodey expressed that careful work is more important than the work being done quickly.

236 - Senator Anderson suggested giving it to the Legislative Council.

245 - Senator Rodey stated that he would prefer to have three appointed by each house.

246 - Senator Anderson suggested changing line 26 to read "three" instead of "five", and line 27 also.

255 - Chairman Rodey mentioned that the committee did not have to pass on the resolution. He was going to give the resolution to the Rules Committee, but he wanted to know the committees opinion.

337 - Chairman Rodey adjourned the meeting at 2:25 P.M.



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January 14, 1982

CHAIRMAN EX OFFICIO
EDMOND W. BURKE
CHIEF JUSTICE
SUPREME COURT

Melissa Fouse
Office of Senator Sturgulewski
Pouch V
Juneau, Alaska 99811

Dear Melissa:

This is to confirm the statistical information I provided you in our telephone conversation of January 14, regarding the number of serious felony offenders released on their own recognizance. As I explained to you on the phone, the Judicial Council's data includes information on custodial status -- i.e., own recognizance, bail, etc. -- at the time of sentencing. The data includes all offenses committed in 1980 that were originally charged as a felony that resulted in a conviction in Anchorage, Fairbanks, and Juneau.

<u>Offense</u>	<u>Number of Cases</u>	<u>N</u>	<u>Number cases on own recogn. at sentencing % of all cases</u>
Murder 1	5	0	0%
Murder 2	3	0	0%
Kidnapping	1	0	0%
Manslaughter	3	0	0%
Assault 1	10	2	20%
Sex. Assault 1	10	2	20%

Melissa Fouse
January 14, 1982
Page Two

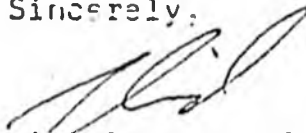
<u>Offense</u>	<u>Number of Cases</u>	<u>N</u>	<u>Number cases on own recogn. at sentencing % of all cases</u>
Robbery 1	13	0	0%
Assault 2	23	3	13%
Sex. Assault 2	1	0	0%
Robbery 2	8	1	12%
Negligent Homicide	1	1	100%

I have enclosed three recent Judicial Council reports that you may find helpful. They include, (1) Alaska Felony Sentences: 1976-1979, (2) "Preliminary Report on Fish and Game Offense Sentences", and (3) "Preliminary Report of 1980 Felony Sentencing Patterns"

I hope the information I have included, above, is helpful. Please do not hesitate to contact me if we can be of any further assistance.

I look forward to meeting with you in Juneau in the near future.

Sincerely,



Nicholas Maroules
Executive Director

Enclosures: as stated



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

MAY 18, 1892

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

"B 633 - "An Act authorizing an advisory vote on raising the age of majority to 21 for the purpose of regulation of alcoholic beverages and authorizing an advisory vote on legalizing possession of marijuana by adults for their own use; and providing for an effective date."

CSHB 112 - "An Act relating to revocation or limitation of the driver's license of a person under 19 years of age who is convicted of driving while intoxicated, and authorizing persons 16 years of age or older to be present in certain premises that serve alcoholic beverages."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 3:20 P.M. Committee members present were: Senators Parr, Ray, Rodey, and Anderson. Senator Bennett was absent.

005 - Call to order.

015 - Chairman Rodey brought HB 633 before the committee.

060 - Representative Anderson testified against placing the HESS Committee substitute language on HB 633, stating it was dirty politics.

122 - After brief discussion, Senator Ray suggested an amendment adding a ballot question on whether the voting age be raised from 18 to 21.

205 - After discussion, Senator Ray's amendment was adopted with no objection.

249 - Senator Anderson moved that the Senate CSHB 633 along with Senator Ray's amendment be added to CSHB 155 St. Aff. amended. There was no objection.

264 - Chairman Rodey brought HB 112 before the committee.

289 - Senator Ray objecting to section one, stated that if you allow kids 16 years of age to enter premises where liquor is served, you are just going to put the burden on the licensees. The licensees are not going to let them in anyway, so they will be the one's who will have to turn them away, instead of the law.

580 - Senator Rodey states that the language evoking the license of a person under the age of 19 who is picked up for driving while intoxicated is a good idea and important to public safety.

605 - Senator Ray moves to delete Sec. 1 & 2 of the bill.

606 - Senator Parr objects. Chairman Rodey takes a vote on the motion. Senator Parr votes no. Senators Ray, Rodey, and Anderson vote yes. The motion is adopted.

614 - Senator Anderson moved to adopt the CS and move the bill from committee. There was no objection.

639 Chairman Rodey adjourned the meeting at 4:00 P.M.

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 4, 1982

SUBJECT: Single subject rule
TO: Senator Charles H. Parr
FROM: Billy G. Berrier *BGB*
Director
Division of Legal Services

You have asked whether questions for an advisory vote relating to increasing the drinking age and legalizing the use of marijuana may be combined in one bill without violating the single subject rule.

The single subject rule is contained in Section 13, Article II, Constitution of the State of Alaska which provides:

SECTION 13. Every bill shall be confined to one subject unless it is an appropriation bill or one codifying, revising, or rearranging existing laws. Bills for appropriations shall be confined to appropriations. The subject of each bill shall be expressed in the title. The enacting clause shall be: "Be it enacted by the Legislature of the State of Alaska."

The primary aim of the rule has been stated by our court to be restraint of the log-rolling process in the legislature and describes log-rolling as deliberately inserting in one bill several dissimilar or incongruous subjects in order to secure the necessary support for passage of the measure. Suber v. Alaska State Bond Committee, 414 P.2d 546 (1966).

The test which broadly stated:

"Ultimately the decision in cases of this kind must be made on a basis of practicality and reasonableness. In

Senator Charles H. Parr
Page 2
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determining whether a bill is confined to one subject we agree with the statement:

'All that is necessary is that the act should embrace some one general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject.'

was adopted in Gellert v. State, 522 P.2d 1120 (Alaska 1974), and has been quoted in each subsequent case in point in Alaska with approval. It is therefore well settled that this broad language is the standard against which compliance with the single subject rule is to be tested.

There would appear to be a connection both logically and in popular understanding between the use of alcohol and the use of marijuana since the use of either has related although not identical social policy implications.

In my opinion this would not violate the single subject rule.

BGB:ljb

H B

6 3 7