

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 86/2

2251 HHESS HB 262 - HB 275

tempts to shift some of the responsibility for the harm done to the injured child to that third party, but no doctrine would provide this original defendant with complete immunity from liability. Contributory or comparative negligence statutes which limit or totally bar the payment of compensation to a plaintiff would be inapplicable to CRD related lawsuits. Those statutes apply only when the plaintiff has been shown to have contributed to his injuries by his own careless actions.<sup>130</sup> A pre-school aged child is, in many states, legally incapable of negligence,<sup>131</sup> and his failure to look out for his own safety cannot be raised as a defense in any suit in which that child is a plaintiff.<sup>132</sup>

Nor can the defendant obtain complete immunity from liability by claiming contributory negligence due to the carelessness of a plaintiff child's parents. The "doctrine that the negligence of the parents of a child of tender years shall be imputed to the child" was dismissed in one early case as "not only unsound, but absurd and inhuman,"<sup>133</sup> and that doctrine is universally rejected today.

The child's driver, on the other hand, stands a better chance of claiming immunity if he is brought into the negligence case as a third party defendant. If he is unrelated to the plaintiff he can seek to avoid liability under any guest statutes which exist in that state. These laws, which are no longer as prevalent as they once were, prevent a person from suing his "host" driver for any injuries sustained while riding as a non-paying passenger in that driver's vehicle.<sup>134</sup> The laws have been justified in part by an "assumption of the risk" type of theory and for that reason have often been held inapplicable to young children.<sup>135</sup> The child's driver has a much better chance of claiming immunity, and therefore of imposing the full cost of compensating the child on any other defendants, if he is the plaintiff

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130. See, e.g., COLO. REV. STAT. § 13-21-111 (1973 & Supp. 1979). The Colorado court has made it clear that "[t]he comparative negligence statute is inapplicable where no negligence on the part of the plaintiff can be proven." *Donham v. Karpman*, 37 Colo. App. 233, 236, 547 P.2d 263, 266 (1975), *aff'd*, 192 Colo. 448, 560 P.2d 91 (1977).

131. See, e.g., *Lewis v. Buckskin Joes*, 156 Colo. 46, 396 P.2d 533 (1964) (children of "very tender years" are incapable of negligence and assume no risks).

132. See, e.g., *Majors v. J.C. Penney Co.*, 31 Colo. App. 568, 506 P.2d 399 (1972) (six year old child incapable of contributory negligence).

133. *Denver City Tramway Co. v. Brown*, 57 Colo. 484, 493, 143 P. 364, 368 (1914). See also W. PROSSER, *HANDBOOK OF THE LAW OF TORTS* 490 (4th ed. 1971).

134. See *Brown v. Merlo*, 8 Cal. 3d 855, 506 P.2d 212, 106 Cal. Rptr. 388 (1973).

135. See, e.g., *Burnham v. Witbeck*, 175 Mich. 253, 134 N.W.2d 225 (1965); *Wood v. Morris*, 109 Ga. App. 148, 135 S.E.2d 484 (1964); *Green v. Jones*, 136 Colo. 512, 319 P.2d 1083 (1957).

such lawsuits will tend to preserve family harmony.<sup>142</sup> In any CRD related action, the plaintiff would necessarily be a very young child, incapable of maliciously plaguing his parents with lawsuits. The decision to bring a suit on his behalf will most likely be made by the child's parents, with an awareness that their liability insurer will be the true defendant. Under those circumstances, commencing an action is not evidence of a family's internal strife, but rather of the "provident management of its affairs."<sup>143</sup>

The invalidity of the first two arguments, which ignore the existence of liability insurance, must be conceded before credence can be given to the third argument: allowing children to sue their parents will lead to widespread collusion and fraud against insurance companies.<sup>144</sup> A trust in the jury system and its ability to distinguish between valid and fraudulent claims is the first step which must be taken to reject the argument. The courts have consistently reaffirmed that trust and have relied on juries to prevent injustice to insurance companies in automobile cases between husbands and wives<sup>145</sup> and between close friends.<sup>146</sup> No readily apparent reason exists for refusing to extend that trust to cases involving a parent and child.<sup>147</sup> Indeed, an attempt by a parent to defraud an insurance company in a case which centered on the lack of CRD use would be quite difficult. Because of his age, the plaintiff could not be an active participant in the scheme and could not be counted on to convincingly fake a non-existent harm.

The strongest reason for abrogating parental immunity, at least under the limited circumstances of a CRD law, is largely unrelated

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142. The family harmony argument originated in *Roller v. Roller*, 37 Wash. 242, 79 P. 288 (1905), a much maligned case in which a daughter was prevented from bringing a civil action for rape against her father based on the family harmony theory.

143. *Badigan v. Badigan*, 9 N.Y.2d 472, 479, 174 N.E.2d 718, 723, 215 N.Y.S.2d 35, 41 (1961) (Fuld, J., dissenting).

144. See *Windauer v. O'Connor*, 13 Ariz. App. 442, 477 P.2d 1157 (1971), modified, 107 Ariz. 267, 485 P.2d 561 (1971); *Breinmecke v. Kilpatrick*, 336 S.W.2d 68 (Mo. 1960); *Small v. Rockfield*, 66 N.J. 231, 330 A.2d 335 (1974).

145. See, e.g., *Rains v. Rains*, 97 Colo. 19, 46 P.2d 740 (1935) (abolished interspousal immunity in the context of an automobile negligence case).

146. See, e.g., *Johnson v. Hassett*, 217 N.W.2d 771 (N.D. 1974) in which the court noted the "good sense of the juria" as a protection against fraud in the absence of a guest statute.

147. In abrogating parental immunity, one court stated: "Even assuming that a few fraudulent and collusive claims will slip through judges and juries (and there is no empirical [sic] evidence that the assumption is valid) we believe that this price would not be too great since the alternative is to continue a prophylactic rule which indiscriminately bars all claims." *France v. A.P.A. Transp. Corp.*, 56 N.J. 500, 505, 257 A.2d 490, 493 (1970).

House HEAD: 1:35

Tischer, Kop. Hermann, Fitch

HB 242:

Tischer - Yield to Rep. Clocksin.

Clocksin - 4 pts

- 1) Prohibit w/o Restraint - pg 1 - thru & 28
- 2) Allow - evidence of jailer to use Restraint -  
comparative negligence, Rules of Ct. open as to  
whether this info can be used as evidence.
- 3) Est. of loan program - an expansion of  
existing program under Public Safety.  
Bartlett provides loaner program. Hospitals! both centers
- 4) Prohibition of Sale of deers - which does not meet  
Fed. standards.

Senate Version - amendments to improve bill.

M. Miller - of Fiscal San Loan program - where are funds  
coming from?

Clocksin - Approp in Budget to carry on existing  
program. Fed \$ also provided. Amn -  
Volunteer efforts.

M. Miller - Support bill.

Tischer - Intent? - provide safety for child - goal?  
Mandatory - used w/o exception - how much are  
seats? clocksin - \$40?

- U.S. Standards - Clocksin - could provide - that  
will resist severe blow - not escapable.

- Why look @ statutes to mandate if the program  
is efficient. Quo. Law in city, a parent.

Hermann - Requirement?

Clocksin - 2 proposed Amendments 1) Off-road vehicles

2) exemption to allow for more children than car seats or space available.

Tischer gave Robin Hartlieb's testimony: Rec'd coses. in favor of bill.

- Additional drive for public awareness

Carolyn Crouch: In Support of HB 262. Involved for 3 yrs. 1<sup>st</sup> in N.C. - 1982 law - Automobile accidents are #1 killer of children. Simulated to child immunizations. Raised 10,000 from pizza sector - \$3,000 matched = 500 seats for County Medical Society. \$5 deposit - return \$10 / 1978 Tennessee law - now 22 states comply.

Peggy Wilson - Ark Child Passenger Safety Assoc.  
Supports bill.

Tischer - Six kids - all still living - w/o mandatory legislation. Making it a crime for a parent in not looking out for their youngster.

Clockner - Legis makes it an infraction. Fine of up to \$300 - no jail time.

Dr. Littlebridge tape: 39,000 kids under 5 yrs.

Survey - prior to mandatory statute laws - not effective than Education Programs only. Law should not be necessary & - can't be effective & it is necessary. 60 serious injuries annually.

Boaner Programs - already established - Gov. Sitt, Hth, Arch.

Tischer - Position on bill as written.

Davis - Clockner Amendments:

Motion by Miller:

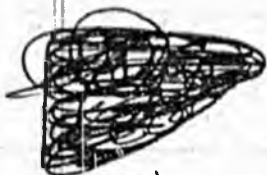
Pg. 1 of HB 262 -- delete <sup>pg. 1</sup> l 11-28' <sup>10</sup>  
Insert from CSSB 163. Trans - l 11  
then p l 3 on pg 3 -  
leaves (d) <sup>changes to new section.</sup> in place

Tischer - Object to examine bill.

Doel - have holding child - use ~~child~~ seat  
belts if in someone elses car -

Clocki - Under 4 - Seatbelt not safe -  
studied how

Clocki - SB 163 only addresses 1<sup>st</sup> part of  
HB 262. Amendments to 163 are  
improvements. Other 3 parts are  
not addressed at all in ~~the~~ Senate  
Version.

 Pg 1 - l 15-17 of SB 163 - Change in  
wording - Fel's set standards

Staff - to put versions together - w/  
any additions to hear on Monday

- Amendment in floor to make CS. -  
CS passes by Monday.

SB 163 TITLE A SPONSOR SUMMARY 16:43 4/26/83 PAGE \*1 OF 2  
AMENDED TITLE  
AN ACT RELATING TO THE USE OF CHILD SAFETY DEVICES IN MOTOR  
VEHICLES,  
AND PROVIDING FOR AN EFFECTIVE DATE

PRIME SPONSOR: FISCHER, V. .  
CO-SPONSORS: HOSS, JOSEPHSON, STURGOLEWSKI, RODEY.  
CURRENT STATUS: 4/22/83 IN (S) JUDICIARY  
SB 165 TITLE A SPONSOR SUMMARY 16:43 4/26/83 PAGE DFH2005I  
TRANSACTION PAGE ABEND APLS IN PROGRAM LBHPAGE 16:44:09  
AN ACT RELATING TO THE USE OF CHILD SAFETY DEVICES IN MOTOR  
VEHICLES;  
AND PROVIDING FOR AN EFFECTIVE DATE

PRIME SPONSOR: FISCHER, V. .  
CO-SPONSORS: HOSS, JOSEPHSON, STURGOLEWSKI, RODEY.  
CURRENT STATUS: 4/22/83 IN (S) JUDICIARY

Linda, the Law Library called with the following information:

The only regulations found in Washington re: child restraint devices are in Title 204, Ch. 16, Sec. 030, as follows:

The standards for approval of motor vehicle seatbelt assemblies, restraining devices for children (8 months-6 years) for use in motor vehicles and harness type restraint assemblies for use in motor vehicles shall be the current standards of the society of automotive engineers As outlined in SAE Handbook.

Passed 2/24/76

4/27/83  
gail

12:30 PM

Compiler's Notes. For table of U.S. decennial population of Tennessee counties, see the supplement to volume 16 (Tables).

Amendments. The 1982 amendment added subsection (c).

Effective Dates. Acts 1982 (Adj.S.), ch. 850, § 4, April 22, 1982.

Section to Section References. This section is referred to in § 55-9-402.

55-9-214. Safety belts and child passenger restraint systems required — Violations — Penalties. — (a) It shall be unlawful for any person to buy, sell, lease, trade or transfer from or to Tennessee residents, at retail, an automobile which is manufactured or assembled commencing with the 1964 models, unless such automobile is equipped with safety belts installed for use in the left front and right front seats thereof. All such safety belts shall be of such type and be installed in a manner approved by the department of safety of the state of Tennessee. The department shall establish specifications and requirements of approved types of safety belts and attachments. The department will accept, as approved, all seat belt installations and the belt and anchor meeting the specifications of the Society of Automotive Engineers. Provided that in no event shall failure to wear seat belts be considered as contributory negligence, nor shall such failure to wear said seat belt be considered in mitigation of damages on the trial of any civil action.

(b) Effective January 1, 1978, every parent or legal guardian of a child under the age of four (4) years residing in this state shall be responsible, when transporting his child in a motor vehicle owned by that parent or guardian operated on the roadways, streets or highways of this state, for providing for the protection of his child and properly using a child passenger restraint system meeting federal motor vehicle safety standards; provided, however, nothing in this section shall restrict a mother from removing the child from such system and holding the child when the mother is nursing the child, or attending to its other physiological needs. Provided that the term "motor vehicle" as used in this paragraph shall not apply to recreational vehicles of the truck or van type. Provided further that the term "motor vehicle" as used in this paragraph shall not apply to trucks having a tonnage rating of one (1) ton or more. Provided that in no event shall failure to wear a child passenger restraint system be considered as contributory negligence, nor shall such failure to wear said child passenger restraint system be admissible as evidence in the trial of any civil action.

(c) Violation of any provision of this section is hereby declared a misdemeanor and anyone convicted of any such violation shall be fined not less than twenty-five dollars (\$25.00) nor more than fifty dollars (\$50.00) for each violation of subsection (a) of this section and not less than two dollars (\$2.00) nor more than ten dollars (\$10.00) for each violation of subsection (b) of this section. Provided, however, that no court costs shall be imposed or assessed against anyone convicted of a violation of this section. [Acts 1963, ch. 102, §§ 1, 2; 1977, ch. 114, §§ 1, 2; T.C.A., § 59-930; Acts 1981, ch. 86, §§ 1, 2.]

Amendments. The 1981 amendment deleted the words "or assuring that such child is held in the arms of an older person riding as a passenger in the motor vehicle" at the end of the first sentence of subsection (b), added at the end of

the first sentence of subsection (b) the proviso beginning "provided, however," and ending with "other physiological needs", and added the second sentence of subsection (c).

⊗ No Provision for hand holding children

⊗ No Provision for seat belt for under 4 yrs.

Want no "mandatory" - misdeemeanor

## Clocksin

1. Prohibits transport of child w/o restraint
2. Court proceedings - negligence for failure to strap in
3. Establishes loan program
4. Prohibition of sale of device not meeting U.S. Standards

## Caroline Crouch - Supports

North Carolina - active in Leg Passage

Had matching funds

Raised \$10,000, got Grant - \$3,000 Run Medical Auxiliary.

\$15 deposit \$10 refund - Loaner

Peggy Wilson - Pres. at <sup>Child</sup> Pass. Safety Assn.

H

B

2

20

COMMITTEE REPORT

HOUSE

JUDICIARY

FURTHER:

(7)

3/25/83

Date:

4/5/83

Mr. Speaker:

HEALTH, EDUCATION AND SOCIAL SERVICES

The Committee on

has had

SSHB 270

An Act relating to child pornography.

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[x] replace with CS for SSHB 270

[x] same title [ ] new title

and recommends DO PASS

[ ] AND attaches a "Letter of Intent"

[ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] Zero Fiscal Note Attached

[ ] referred to the

Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS:

*M. W. Miller*  
*M. W. Miller*  
*M. W. Miller*  
*M. W. Miller*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Milo H. Hartz*  
CHAIRMAN  
MIL0 H. HARTZ

STATE OF ALASKA  
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: SS HB 270  
Title: Child Pornography  
Sponsor: Alaska  
Requestor: House HESS

II. FISCAL DETAIL

Agency Affected: Law  
Program Category Affected: Admin. of Justice  
BRU, Program of Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		130.1	165.5	175.4	185.9	197.1
200 TRAVEL		10.1	12.8	13.6	14.4	15.3
300 CONTRACTUAL		18.0	20.7	21.9	23.2	24.6
400 COMMODITIES		10.0	5.7	6.0	6.4	8
500 EQUIPMENT		17.5				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		185.6	204.7	217.0	230.0	243.8
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		185.6	204.7	217.0	230.0	243.8
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		3	3	3	3	3
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not specified by sponsor

IV. ANALYSIS: Attached separate page for any Analysis

Prepared By: Richard I. Pegues Phone: 465-3672  
 Division: Administrative Services Date: March 29, 1983  
 Approved by Commissioner: Richard I. Pegues/Asst  
Norman C. Gorsuch, Attorney General Date: March 29, 1983  
 Department: Department of Law

Distribution:

Original to Legislative Finance  
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 Copy to Department (for Governor introduced bills)  
 Copy to Sponsor

Section 1 of this bill adds a new subsection to the current Unlawful Exploitation of a Minor statute, making it a class B felony for a parent or guardian to knowingly allow his child to participate in sexual activities which will be used to produce a pornographic film, TV show, photograph, etc. Since in most cases a parent who would knowingly allow his child to engage in such activity would also be involved in "inducing or employing" the child to perform these acts (conduct which is already covered under existing law), it is expected that there would be only a few additional prosecutions under this portion of the bill. These few new cases could probably be handled by the present prosecution staff.

Section 2 of the bill makes it a class C felony for a person to knowingly sell or distribute pornographic material which visually depicts children engaged in sexual behavior. The bill could result in a large number of additional criminal prosecutions, as the sale or distribution of pornographic material of any sort is not now a criminal offense in this state. It is anticipated that enforcement of the new law would require the addition of two new prosecutors and one new secretary statewide. This estimate is based on the number of establishments in this state which are known to sell pornographic material, the complexity of legal issues that are involved in these types of cases, and the knowledge that con-

victions under similar statutes in other states are almost always appealed on constitutional grounds to the highest appellate court in the state, and frequently to the United States Supreme Court.

Fiscal Analysis - SSHB 270

The impact of HB 270 is expected to result in the addition of two Attorney IV positions (SR 24) and one Legal Secretary position (SR 10).

The first year of this analysis will cover 10 months of FY 84, allowing 2 months for these three positions to be established. The costs beyond FY 84 have been projected on a 12 month basis and include a 6% annual inflation factor.

1st Year (10 months)

	<u>AIV(PFT)</u>	<u>AIV(PFT)</u>	<u>L/SI(PFT)</u>	<u>TOTAL</u>
Personal Services	53.7	53.7	23.4	130.1
Travel	5.0	5.0	-0-	10.0
Contractual	8.0	8.0	2.0	18.0
Commodities - ongoing	1.5	1.5	1.5	4.5
Commod. - single time	2.0	2.0	1.5	5.5
Equipment - single time	1.5	1.5	14.5	17.5
				<hr/>
				185.6

2nd Year (12 months + 6% annual inflation)

Personal Services	68.3	68.3	28.9	165.5
Travel	6.4	6.4	-0-	12.8
Contractual	9.1	9.1	2.5	20.7
Commodities	1.9	1.9	1.9	5.7
				<hr/>
				204.7

1.	POSITION TITLE Attorney IV			RANGE/STEP 24A	BARC. UNIT X	FORM 12 PAGE/LINE 8	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PMT	STAFF MONTHS 10	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.	
3.	CONTINUATION LEVEL	ADDITION			JUSTIFICATION				
4.	TYPE OF EXPENDITURE			AMOUNT	<p>To accommodate the addition of new felony statutes for the prosecution of those who knowingly sell or distribute pornographic material which visually depicts children engaged in sexual behavior, the Department of Law is requesting two new attorney positions and a new secretary position. This is one of two attorney positions which will be responsible for the enforcement of the new felony statutes statewide, including the pursuit of the many cases which will undoubtedly be appealed on constitutional grounds to the state's highest court and to the U.S. Supreme Court. These cases will involve complex legal issues which have been previously unaddressed by Alaska's criminal code.</p>				
	1	2	3						
	PERSONAL SERVICES								
5.	Salary	4,251/month	42,510						
6.	Benefits		6,555						
7.	Supplemental Benefits		2,240						
8.	Fixed Benefits		2,400						
9.	TOTAL PERSONAL SERVICES	01	53,705						
10.	Travel	02	5,000						
11.	Contractual	03	8,000						
12.	Commodities	04	3,500						
13.	Equipment	05	1,500						
14.	Other								
15.	TOTAL COST		,705						
	RECEIPT CODE	FUNDING SOURCE							
16.		Federal Receipts 1002							
17.		G.F. Match 1003							
18.		General Funds 1004		71,705					
19.		I-A Receipts 1005							
20.		Program Receipts 1028							
21.		Other							
FOR B&M USE ONLY									
4A KEY NUMBER _____									

**13** REQUEST FOR  
NEW POSITION

AGENCY Department of Law  
PROGRAM Due Process  
BRU Prosecution  
COMPONENT Third Judicial District

Page \_\_\_\_\_ of \_\_\_\_\_  
Revised Date \_\_\_\_\_

**FY 84**

1.	POSITION TITLE Attorney IV				RANGE/STEP 24A	BARC. UNIT X	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 10	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 8	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION					
4.	TYPE OF EXPENDITURE			AMOUNT						
	1			2			3			
	PERSONAL SERVICES									
5.	Salary 4,251/month			42,510						
6.	Benefits			6,555						
7.	Supplemental Benefits			2,240						
8.	Fixed Benefits			2,400						
9.	TOTAL PERSONAL SERVICES			01			53,705			
10.	Travel			02			5,000			
11.	Contractual			03			8,000			
12.	Commodities			04			3,500			
13.	Equipment			05			1,500			
14.	Other									
15.	TOTAL COST						71,705			
	RECEIPT CODE			FUNDING SOURCE						
16.				Federal Receipts 1002						
17.				G.F. Match 1003						
18.				General Funds 1004			71,705			
19.				I-A Receipts 1005						
20.				Program Receipts 1028						
21.				Other						
FOR B&M USE ONLY 4A KEY NUMBER _____										

To accommodate the addition of new felony statutes for the prosecution of those who knowingly sell or distribute pornographic material which visually depicts children engaged in sexual behavior, the Department of Law is requesting two new attorney positions and a new secretary position. This is the second of two attorney positions which will be responsible for the enforcement of the new felony statutes statewide, including the pursuit of the many cases which will undoubtedly be appealed on constitutional grounds to the state's highest court and to the U.S. Supreme Court. These cases will involve complex legal issues which have been previously unaddressed by Alaska's criminal code.

**13** REQUEST FOR  
NEW POSITION

AGENCY Department of Law  
 PROGRAM Due Process  
 BRU Prosecution  
 COMPONENT Third Judicial District

**FY 84**

Page \_\_\_\_\_ of \_\_\_\_\_

Revised Date \_\_\_\_\_

1.	POSITION TITLE Legal Secretary I				RANGE/STEP 10B	BARC. UNIT GCU	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION	STAFF MONTHS 10	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 8	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION					
4.	TYPE OF EXPENDITURE			AMOUNT						
	1	2	3							
	PERSONAL SERVICES									
5.	Salary	1,726/month	17,260							
6.	Benefits		2,660							
7.	Supplemental Benefits		1,058							
8.	Fixed Benefits		2,400							
9.	TOTAL PERSONAL SERVICES		01	23,400						
10.	Travel		02	-0-						
11.	Contractual		03	2,000						
12.	Commodities		04	3,000						
13.	Equipment		05	14,500						
14.	Other									
15.	TOTAL COST			42,500						
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts 1002								
17.		G.F. Match 1003								
18.		General Funds 1004		42,900						
19.		I-A Receipts 1005								
20.		Program Receipts 1028								
21.		Other								
FOR B&M USE ONLY										
4A KEY NUMBER _____										

This position is required to provide support for the two new attorney positions. This secretary will be responsible for the preparation of a large volume of court documents generated by the appeal of cases dealing with the constitutionality of Alaska's statutes on child pornography. The allocation of a single secretary to serve two full time attorneys is the minimum amount of support needed to meet the workload anticipated and is within the normal ratio of attorneys to secretaries for the Department of Law.

**13** REQUEST FOR  
NEW POSITION

AGENCY Department of Law  
PROGRAM Due Process  
BRU Prosecution  
COMPONENT Third Judicial District

**FY 84**

Page \_\_\_\_\_ of \_\_\_\_\_

Revised Date \_\_\_\_\_

STATE OF ALASKA  
FISCAL NOTE

Revision Date \_\_\_\_\_, 1983

I. REQUEST

Bill/Resolution No.: HB 270  
 Title: Act relating to child pornography  
 Sponsor: Rep Iiska  
 Requestor: House HESS

II. FISCAL DETAIL

Agency Affected: Public Safety  
 Program Category Affected: Crime & ID  
 BRU, Program of Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis: No Fiscal Impact Anticipated

Prepared By: Paul Conger Phone: 465-4338  
 Division: Administrative Services Date: 3-29-83  
 Approved by Commissioner: [Signature] Date: 3/29/83  
 Department: Public Safety

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3/2/83

POSITION PAPER

Sponsor Substitute for House Bill No. 270

"An Act relating to child pornography."

House Bill No. 270 raises the penalty for exploitation of a minor from a Class C felony to a Class B felony in AS 11.41.455. House Bill No. 270 also adds a new section, Sec. 11.61.125, to Alaska State Statutes which makes distribution of child pornography a Class C felony. The Department estimates that one additional medium security bed will be necessary to house offenders convicted of unlawful exploitation of a minor and/or distribution of child pornography.

Recommended by:

*for Roger C. Lange*  
\_\_\_\_\_  
Roger V. Endell, Director  
Division of Adult Corrections

Date:

*April 1, 1983*  
\_\_\_\_\_

Approved by:

*Robert London Smith*  
\_\_\_\_\_  
Robert London Smith, Ph.D.  
Commissioner

Date:

*4/7/83*  
\_\_\_\_\_

STATE OF ALASKA  
FISCAL NOTE

Revision Date \_\_\_\_\_, 1983

I. REQUEST

Bill/Resolution No.: SS for H.B. #270  
Title: "An Act relating to child porno."  
Sponsor: Representative Liska  
Requestor: HESS Committee

II. FISCAL DETAIL

Agency Affected: Health & Social Services  
Program Category Affected: Justice  
BRU, Program of Subprogram(s) Affected:  
Adult Confinement

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		2.4	5.1	5.4	5.7	6.1
400 COMMODITIES		2.5	5.3	5.6	6.0	6.3
500 EQUIPMENT						
600 LAND & STRUCTURES			-	-	-	-
700 GRANTS, CLAIMS, ETC		.2	.2	.3	.3	.4
TOTAL OPERATING		5.1	10.6	11.3	12.0	12.8
CAPITAL	-0-	146.0	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	151.1	10.6	11.3	12.0	12.8
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

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

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

The source of funds to offset the fiscal impact of this bill has not been identified by the sponsor.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Roger C. Lange *Roger C. Lange* Phone: 465-3376  
Division: Adult Corrections Date: March 31, 1983  
Approved by Commissioner: Robert Gordon Smith Date: 4/7/83  
Department: Health & Social Services

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

3/8/83

#### IV. ANALYSIS

##### A. Assumptions

Based on conversations with Department of Law staff, it is assumed that there will be one additional Class B felony conviction and four Class C felony convictions per year. It is assumed all will be first time offenders. Therefore it is estimated that 50% of the Class B and 20% of the Class C felony offenders will receive terms of confinement. This will result in approximately 1.5 person years per year of jail time will be served.

It is further assumed that the distributors of child pornography will remove these materials from their visible stock and convictions for distribution of child pornography will decrease from the original estimate of four per year.

Therefore, it is estimated that one additional medium security bed will be required if this proposed legislation is enacted.

##### B. Program Summary

1. Positions - An average of one position is required for every 2½ beds. Since only one bed is requested in the fiscal note, no positions are identified as being needed.
2. Other expenditures
  - a. Contractual Services  
Medical care and counseling services \$2400
  - b. Commodities  
Food and clothing \$2500
  - c. Grants  
Inmate gratuities for kitchen, janitorial or other assigned tasks \$200.

##### C. Impact

There will be no significant economic on local government as a result of passage of this bill.

I. REQUEST  
 Bill/Resolution No.: HB 270  
 Title: Child Pornography  
 Sponsor: L.ska  
 Requestor: \_\_\_\_\_

II. FISCAL DETAIL  
 Agency Affected: H&SS  
 Program Category Affected: Social Service  
 BRU, Program of Subprogram(s) Affected: None

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Enactment of this Bill would have no fiscal impact on the Division of Family and Youth Services as child pornography is already included in reporting of abuse.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Michael L. Price, Director *Michael L. Price* Phone: 465-3170  
 Division: Family and Youth Services Date: 3/22/83  
 Approved by Commissioner: Robert Landon Smith *Robert Landon Smith* Date: 4/8/83  
 Department: H & SS

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
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STAFF REPORT

HB 270 RELATING TO CHILD PORNOGRAPHY

MARCH 30, 1983

Dave Palmer

Section 1.

11.41.455 (a) Unlawful exploitation of a minor--defines the crime. This is the existing statute. No change.

(b) This new subsection provides that those adults who have custody of a minor who knowingly permit the exploitation in (a) are guilty of exploitation.

(c) Both offenses are a class B felony.

11.61.125 (a) This new section makes distribution or intent to distribute child pornography a crime.

(b) certain exemptions are allowed for employees of a theater.

(c) Distribution of child pornography is a class C felony.

The SSHB 270 deletes the definition of "obscene". A memo from legal services cites a US Supreme Court case that allows penalization for the production of child pornography and the distribution of material depicting children engaged in sexual conduct without requiring that the material be legally obscene.

Additional amendments are proposed by the sponsor. He requests they be incorporated into the bill as a committee substitute. The proposed changes are attached to this report

Two fiscal notes are attached. a zero note from the Department of Public Safety, and a \$185.6 fiscal note from the Department of Law.

ADDITIONAL AMMENDMENTS  
FOR HOUSE BILL 270

1. Raising age covered from 16 to 18:

Sec. 11.41.455 (a) (Line 14 and 15, Page 1)  
(b) (Line 26, Page 1)

Rationale:

- a. Enforcement of this law is predicated on proving to the court that the persons featured in these pornographic materials is under a certain age. When a victim cannot be positively identified (as in cases where materials are imported from outside Alaska and the child is not physically present) it is very difficult to prove beyond the standard reasonable doubt that a child who has reached the puberty stage of development is under 16 from physical appearance alone. Using 18, it would be much easier to prove when dealing with victims are actually between 13 and 16. This is the age bracket most encountered in the experience of the Anchorage Police Department according to Police Chief Porter.
- b. Under existing law a person under the age of 18 is treated generally as subject to the juvenile system of justice as opposed to the adult system. It is only logical that we apply the same maturity standard when that same person is the victim under the law.
- c. January 26, 1983 Senator Specter introduced similar legislation in Washington, D.C. and the Bill being reviewed by Judiciary uses the age of 18 as its criteria. Should this Bill pass, Alaska State Statutes would conform to the Federal standard.

2. Addition to include "Simulated" sexual acts:

Amend to read in Sec. 11.41.455, Line 16 page 1:

"in the following actual or simulated conduct:"

Rationale:

The deplorable intent is the same whether the sexual acts involved in the exploitation of these children are actual or simulated. We also want to avoid the technicality of having to prove whether the acts were actually performed or only simulated.

3. Change this exploitation of a minor from a Class B Felony to a Class A Felony, and distribution of the materials from a Class C Felony to a Class B Felony.

Rationale:

- a. Experience of experts shows that the "damage" to these victims is of major proportions. These are not minor crimes. Aside from the actual physical injury caused to many of these victims, the psychological damage is often extensive. There is also the continuing threat of having those acts depicted in these pornographic materials publically and graphically exposed throughout the victim's lifetime. There also seems to be a heavy causal effect to the child's subsequent hard delinquency. In addition there seems to be a likelihood that these victims can continue the abuse on their own children.

"An Act relating to child pornography."

House Bill 270 amends the criminal code by adding three major provisions to the laws dealing with child pornography:

1. The parent, legal guardian or person having custody or control of a child under 16 years of age under this Bill commits the crime of unlawful exploitation of a minor if he permits the child to engage in unlawful sexual conduct for commercial purposes;
2. The Bill defines "obscene", which previously had been up to the discretion of the courts to define;
3. The Bill adds a new section which makes the distribution of child pornography materials illegal.

#### BACKGROUND

The extent to which Alaskan youth are victims of child pornography is unknown, although recent investigations by the Anchorage Crime Commission indicate there may be as many as 30 child slavery and pornography rings in Alaska, with networks to the lower 48 and overseas. Anchorage law enforcement officials believe the problem to be worse in Alaska than in other parts of the country due to criminals being drawn to Alaska by its wealth, by the heavy drug and alcohol abuse, the young and mobile Alaskan population and the overloaded law enforcement and court systems. In a case currently before the courts in Anchorage, one individual is charged with 29 counts of sex crimes against juveniles, including the making of pornographic movies.

It is estimated that at least half the youths in McLaughlin have been sexually abused, and some private residential facilities would estimate that closer to 85% - 95% of the youth served have been victims of sexual abuse. Many youth who have been sexually abused at home, runaway and end up being victimized by individuals who lure them into prostitution, child pornography and other illegal activities.

POSITION

The Department of Health and Social Services supports House Bill 270, which considerably strengthens the statutes regarding child pornography. By making it illegal for the person who has the legal custody or control of the child, whether the parent or not, to permit the child to engage in child pornography for commercial purposes, it recognizes the responsibility of parents and custodians to provide protection for children in their care. Secondly, by extending criminal liability to the distributor of child pornography, this bill recognizes that without promotion and marketing of the child pornography materials, there would be no financial motive for the sexual exploitation of children.

RECOMMENDED: Michael L. Price  
Michael L. Price, Director  
Division of Family and  
Youth Services

DATE: March 23, 1983

APPROVED BY: Robert London Smith  
Robert London Smith, Ph.D.  
Commissioner

DATE: 3/30/83

I. REQUEST

Bill/Resolution No.: HB 270  
Title: Child Pornography  
Sponsor: Liska  
Requestor:

II. FISCAL DETAIL

Agency Affected: H&SS  
Program Category Affected: Social Services  
BRU, Program of Subprogram(s) Affected: None

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Enactment of this Bill would have no fiscal impact on the Division of Family and Youth Services as child pornography is already included in reporting of abuse.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Michael L. Price, Director *Michael L. Price* Phone: 465-3170  
Division: Family and Youth Services Date: 3/22/83  
Approved by Commissioner: *Robert L. Smith* Date: 3/30/83  
Department: *H&SS*

Distribution:

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- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

HORETSKI -

OPPOSE AGE to 18.

AGE DETERMINED VISUALLY

EASIER FOR PROSECUTION AGE @ 16

### Amendments

- 1) ACTUAL OR SIMULATED s: 16 page 1
- 2) p 2 li 7 delete "sends or causes to be sent, or
- 3) li 12, 13 delete "minor or a person who reasonably appears to be a minor" Add ... children under the age of <sup>16</sup>18.

MOVE

Amendments s: 14, 15, 26 from 16-18

TERMS OF IMPRISONMENT

OCTOBER 1, 1982

FIRST FELONY CONVICTION      SECOND FELONY CONVICTION      THIRD FELONY CONVICTION

MURDER I  
 MUR. I & KIDNAP. &  
 M. I. C. S. I  
 SEXUAL ASSAULT  
 1ST \*\*  
 SEXUAL ASSAULT  
 1ST  
 A FELONY \*\*  
 A FELONY  
 B FELONY  
 C FELONY

[20] -- 99	[20] -- 99	[20] -- 99
[5] -- 99	[5] -- 99	[5] -- 99
5 -- (10) -- 30	7 1/2 -- (15) -- 30	12 1/2 -- (25) -- 30
4 -- (8) -- 30	7 1/2 -- (15) -- 30	12 1/2 -- (25) -- 30
3 1/2 -- (7) -- 20	5 -- (10) -- 20	7 1/2 -- (15) -- 20
2 1/2 -- (5) -- 20	5 -- (10) -- 20	7 1/2 -- (15) -- 20
0 -- 10	0 -- (4) -- 10	3 -- (6) -- 10
0 -- 5	0 -- (2) -- 5	0 -- (3) -- 5

\*APPLIES WHEN A DEFENDANT POSSESSED A FIREARM, USED A DANGEROUS WEAPON OR CAUSED SERIOUS PHYSICAL INJURY EXCEPT FOR MANSLAUGHTER.  
 NUMBERS IN (BRACKETS ARE) PRESUMPTIVE SENTENCES. NUMBERS ENCLOSED BY BOXES ARE MANDATORY MINIMUM SENTENCES.  
 NUMBERS TO LEFT OF BRACKETS ARE LOWEST MITIGATED SENTENCES. NUMBERS TO RIGHT ARE HIGHEST AGGRAVATED SENTS.

Introduced: 3/25/83  
Referred: Health, Education & Social  
Services and Judiciary

BY LISKA, ADAMS, BUSSELL, FLOOD, FRITZ,  
GRUSSENDORF, HURLBERT, LINDAUER,  
MALONE, MARTIN, PHILLIPS, SHULTZ,  
SZYMANSKI, TISCHER, WARD, CLOCKSIN,  
PESTINGER, UEHLING AND MCBRIDE

1 IN THE HOUSE

2 SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 270

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to child pornography."

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

8 \* Section 1. AS 11.41.455 is repealed and reenacted to read:

9 Sec. 11.41.455. UNLAWFUL EXPLOITATION OF A MINOR. (a) A person  
10 commits the crime of unlawful exploitation of a minor if, in this  
11 state and with the intent of producing a live performance, film,  
12 photograph, negative, slide, book, newspaper, or magazine that  
13 visually depicts the conduct listed below, the person knowingly  
14 induces or employs a child under <sup>18</sup>16 years of age to engage in, or  
15 photographs, films, or televises a child under <sup>18</sup>16 years of age engaged  
16 in the following <sup>actual or simulated</sup> conduct:

17 (1) sexual penetration;

18 (2) the lewd touching of another person's genitals, anus,  
19 or female breast;

20 (3) the lewd touching by another person of the child's  
21 genitals, anus, or female breast;

22 (4) masturbation;

23 (5) bestiality; or

24 (6) the lewd exhibition of the child's genitals.

25 (b) A parent, legal guardian, or person having custody or con-  
26 trol of a child under <sup>18</sup>16 years of age commits the crime of unlawful  
27 exploitation of a minor if, in this state, the person permits the  
28 child to engage in conduct described in (a) of this section knowing  
29 that the conduct is intended to be used in producing a live

1 performance, film, photograph, negative, slide, book, newspaper, or  
2 magazine that visually depicts such conduct.

3 (c) Unlawful exploitation of a minor is a class B felony.

4 \* Sec. 2. AS 11.61 is amended by adding a new section to read:

5 Sec. 11.61.125. DISTRIBUTION OF CHILD PORNOGRAPHY. (a) A  
6 person commits the crime of distribution of child pornography if the  
7 person ~~sends or causes to be sent, or~~ brings or causes to be brought,  
8 into this state for sale or distribution, or in this state possesses,  
9 prepares, publishes, or prints with intent to distribute, sell, or  
10 exhibit to others for commercial consideration, any matter which  
11 visually depicts conduct described under AS 11.41.455(a), knowing that  
12 the production of the matter involves the use of a ~~minor or a person~~ <sup>child under 18</sup>  
13 ~~who reasonably appears to be a minor~~ engaged in such conduct.

14 (b) This section does not apply to acts that are an integral  
15 part of the exhibition or performance of a motion picture when the  
16 acts are done within the scope of employment by a motion picture  
17 operator or projectionist employed by the owner or manager of a thea-  
18 ter or other place for the showing of motion pictures, unless the  
19 motion picture operator or projectionist

20 (1) has a financial interest in the theater or place in  
21 which employed; or

22 (2) caused the performance or motion picture to be per-  
23 formed or exhibited without the consent of the manager or owner of the  
24 theater or other place of showing.

25 (c) Distribution of child pornography is a class C felony.

# Alaska State Legislature

## COMMITTEES

Vice Chairman — Judiciary

Vice Chairman — Legislative  
Regulations Review

Resources

Finance Sub Committee on Labor



## House of Representatives

John J. Liska

While in Session

Pouch V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-3733

Home - District 15  
Star Route Box 421  
Eagle River, Alaska 99577  
(907) 688-2525

March 14, 1983

### MEMORANDUM

**TO:** All House Members

**FROM:** John J. Liska, Representative - District 15

**SUBJECT:** Child Pornography Legislation

Enclosed is a draft of a Bill I have introduced regarding child pornography. In recent months there have been many newspaper articles regarding this issue. Having had my staff research this subject, we have found that there is no statute that covers the sale or distribution of pornography involving children. Nor is there any statute covering parental consent of the use of their children in pornographic materials.

This Bill addresses all of the above. Your support for this Bill is needed to curb these atrocities.

STATE OF ALASKA  
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 17, 1983

SUBJECT: Child pornography  
(HB 270)

TO: Representative John Liska

FROM: James H. Lear  
Legislative Counsel *JHL*

In response to your request, I drafted HB 270 relating to child pornography. Monday afternoon, Mike Gay requested that I redo the bill to define the word "obscene". He indicated that it would have to be done by 9:00 yesterday morning. With just a short amount of time to fulfill this request, I inserted sec. 2 that would add a new paragraph to AS 11.41.470 (definitions) that would define "obscene" to mean

". . . conduct that, taken as a whole and applying to contemporary community standards,

- (A) appeals to the prurient interest in sex;
- (B) is patently offensive; and
- (C) lacks serious literary, artistic, political, or scientific value."

This definition sets out the standard established by the United States Supreme Court in Miller v. California, 413 U.S. 15, 37 L.Ed.2d 419, 93 S.Ct. 2607 (1973).

You should be advised that the standard set forth in Miller for determining obscenity may be relaxed by the states in prohibiting child pornography. Unfortunately, I was not aware of the July, 1982, case of New York v. Ferber, \_\_\_ U.S. \_\_\_, 73 L.Ed.2d 1113, 102 S.Ct. 3348, in which the United States Supreme Court drew the distinction between child pornography and other forms of obscenity.

I will outline the critical points made in New York v. Ferber, supra, and summarize your alternatives with HB 270.

At issue in New York v. Ferber is the constitutionality of a New York criminal statute which prohibits persons from knowingly promoting sexual performances by children under the age of 16 by distributing material which depicts such performances.

The decision highlights the fact that the federal government and 47 states have sought to combat the problem of child pornography with statutes specifically directed at the production of child pornography. At least half of such statutes do not require that the materials produced be legally obscene (i.e., that apply the Miller standard). Thirty-five states and the United States Congress have also passed legislation prohibiting the distribution of such materials. Twenty states prohibit the distribution of material depicting children engaged in sexual conduct without requiring that the material be legally obscene.

The heart of the New York v. Ferber case is a pronouncement by the United States Supreme Court that it is permissible for a state to penalize the production of child pornography and the distribution of material depicting children engaged in sexual conduct without requiring that the material be legally obscene.

Here is how the Court arrived at that decision. The Court stated the issue as follows:

To prevent the abuse of children who are made to engage in sexual conduct for commercial purposes, could the New York State Legislature, consistent with the first amendment, prohibit the dissemination of material which shows children engaged in sexual conduct, regardless of whether such material is obscene?

The Supreme Court indicated that this case constitutes its first examination of a statute directed at and limited to depictions of sexual activity involving children. The Court then began with the question of whether a state has somewhat more freedom in proscribing works which portray sexual acts or lewd exhibitions of genitalia by children. The Court reviewed the position taken in Miller, supra, that the

. . . states have a legitimate interest in prohibiting dissemination or exhibition of obscene material when the mode of dissemination carries with it a significant

danger of offending the sensibilities of unwilling recipients or of exposure to juveniles.

Miller v. California, 413 U.S., at 19.

The Miller standard, like its predecessors, was an accommodation between the states' interests in protecting the "sensibilities of unwilling recipients" from exposure to pornographic material and the dangers of censure inherent in unabashedly content based laws. Like obscenity statutes, laws directed at the dissemination of child pornography run the risk of suppressing protected expression by allowing the hand of the censor to become unduly heavy. For the following reasons, the Court was persuaded that the states are entitled to greater leeway in the regulation of pornographic depictions of children.

(1) It is evident beyond the need for elaboration that a state's interest in "safeguarding the physical and psychological well-being of a minor" is compelling.

(2) The distribution of photographs of and films depicting sexual activity by juveniles is intrinsically related to the sexual abuse of children.

(3) The advertising and selling of child pornography provides an economic motive for and is thus an integral part of the production of such materials, an activity illegal throughout the nation.

(4) The value of permitting live performances and photographic reproductions of children engaged in lewd sexual conduct is exceeding modest, if not deminimus.

(5) Recognizing and classifying child pornography as a category of material outside the protection of the First Amendment is not incompatible with the Court's earlier decisions.

The Court reiterated that the test for child pornography is separate from the obscenity standard enunciated in Miller, but may be compared to it for purposes of clarity. The Miller formulation is adjusted in the following respects:

(1) A trier of fact need not find that the material appeals to the prurient interest of the average person;

(2) It is not required that sexual conduct portrayed be done so in a patently offensive manner; and

(3) The material at issue need not be considered as a whole.

The Court did indicate, however, that there are limits on the category of child pornography which, like obscenity, is unprotected by the First Amendment. As with all legislation in this sensitive area, the conduct to be prohibited must be adequately defined by the applicable state law, as written or authoritatively construed. Here the nature of the harm to be combatted requires that the state offense be limited to works that visually depict sexual conduct by children below a specified age. The category of "sexual conduct" proscribed must also be suitably limited and described.

The Supreme Court proceeded to analyze the New York statute observing that the forbidden acts to be depicted are listed with sufficient precision and represent the kind of conduct, that, if it were the theme of a work, could render it legally obscene: "Actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sado-masochistic abuse, or lewd exhibition of the genitals". The Court gave special emphasis to the fact that the term "lewd exhibition of the genitals" is not unknown to the Court in this area and, indeed, was given in Miller as an example of a permissible regulation.

The Supreme Court made it perfectly clear that a state is not barred by the First Amendment from prohibiting the dissemination of material which shows children engaged in sexual conduct, regardless of whether such material is obscene.

The Court further clarified its position with regard to child pornography by dismissing the claim that the New York statute is unconstitutionally overbroad because it would forbid the distribution of material with serious literary, scientific or educational value or material which does not threaten the harm sought to be combatted by the state. The Court held this to be the paradigmatic case of a state statute whose legitimate reach dwarfs its arguably impermissible applications. The Court seriously doubted that those arguably impermissible applications of the statute amount to more than a tiny fraction of the materials within the statute's reach.

Representative John Liska  
Page 5  
March 17, 1983

The Supreme Court refused to assume that the New York Courts will widen the possibly invalid reach of the statute by giving an expansive construction to the proscription on "lewd exhibitions of the genitals". Whatever overbreadth might exist should be cured through case by case analysis of the fact situations to which its sanctions, assertedly, may not be applied.

Now, how does this decision effect HB 270?

It means that HB 270 could be amended to delete the definition of "obscene" set out in sec. 2 of the bill, since it is permissible for the state to enforce AS 11.41.455 and AS 11.61.125 without a court finding that a depicted touching or exhibition is obscene. I would suggest, however, inserting the word "visually" before the word "depicts" on page 1, line 13, and on page 2, line 18; and changing the word "obscene" to "lewd" on page 1, lines 18, 20, and 24.

The suggested changes to HB 270 would give the state much greater latitude in enforcing the child pornography laws and still be within the constitutional guidelines set forth by the United States Supreme Court.

JHL:ljb  
10/012

Introduced: 3/16/83  
Referred: Health, Education &  
Social Services and Judiciary

BY LISKA, ADAMS, BUSSELL FLOOD,  
FRITZ, GRUSSENDORF, HURLBERT,  
LINDAUER, MALONE, MARTIN, PHILLIPS,  
SHULTZ, SZYMANSKI, TISCHER AND  
WARD

1 IN THE HOUSE

2

HOUSE BILL NO. 270

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to child pornography."

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

8 \* Section 1. AS 11.41.455 is repealed and reenacted to read:

9           Sec. 11.41.455. UNLAWFUL EXPLOITATION OF A MINOR. (a) A person  
10 commits the crime of unlawful exploitation of a minor if, in this  
11 state and with the intent of producing for any commercial purpose a  
12 live performance, film, photograph, negative, slide, book, newspaper,  
13 or magazine that depicts the conduct listed below, the person know-  
14 ingly induces or employs a child under 16 years of age to engage in,  
15 or photographs, films, or televises a child under 16 years of age  
16 engaged in the following conduct:

17                   (1) sexual penetration;

18                   (2) the obscene touching of another person's genitals,  
19 anus, or female breast;

20                   (3) the obscene touching by another person of the child's  
21 genitals, anus, or female breast;

22                   (4) masturbation;

23                   (5) bestiality; or

24                   (6) the obscene exhibition of the child's genitals.

25 *New* (b) A parent, legal guardian, or person having custody or con-  
26 *to* trol of a child under 16 years of age commits the crime of unlawful  
27 exploitation of a minor if, in this state, the person permits the  
28 child to engage in conduct described in (a) of this section knowing  
29 that the conduct is intended to be used in producing for a commercial

1 purpose a live performance, film, photograph, negative, slide, book,  
2 newspaper, or magazine.

3 *SAME →* (c) Unlawful exploitation of a minor is a class B felony.

4 \* Sec. 2. AS 11.41.470 is amended by adding a new paragraph to read:

5 (4) "obscene" means, conduct that, taken as a whole and  
6 *new* applying contemporary community standards,

7 (A) appeals to the prurient interest in sex;

8 (B) is patently offensive; and

9 (C) lacks serious literary, artistic, political, or  
10 scientific value.

11 \* Sec. 3. AS 11.61 is amended by adding a new section to read:

12 Sec. 11.61.125. DISTRIBUTION OF CHILD PORNOGRAPHY. (a) A  
13 person commits the crime of distribution of child pornography if the  
14 person sends or causes to be sent, or brings or causes to be brought,  
15 into this state for sale or distribution, or in this state possesses,  
16 prepares, publishes, or prints with intent to distribute, sell, or  
17 exhibit to others for commercial consideration, any visual or printed  
18 matter which depicts conduct described under AS 11.41.455(a), knowing  
19 that the production of the matter involves the use of a minor engaged  
20 in such conduct.

21 (b) This section does not apply to acts that are an integral  
22 part of the exhibition or performance of a motion picture when the  
23 acts are done within the scope of employment by a motion picture  
24 operator or projectionist employed by the owner or manager of a thea-  
25 ter or other place for the showing of motion pictures, unless the  
26 motion picture opera<sup>r</sup>or or projectionist

27 (1) has a financial interest in the theater or place in  
28 which employed; or

29 (2) caused the performance or motion picture to be

1 performed or exhibited without the consent of the manager or owner of  
2 the theater or other place of showing.

3 (c) Distribution of child pornography is a class C felony.

STAFF REPORT

HB 270

child Pornography

SECTION 1

11.41.455 <sup>withheld</sup> (2) EXPLOITATION of a minor - DEFINES THE CRIME -  
THIS IS EXISTING STATUTE

(b) This NEW subsection provides that those adults who HAVE CUSTODY of a minor who KNOWINGLY knowingly permit the EXPLOITATION in (2) ARE GUILTY of EXPLOITATION

(c) Both offenses are a CLASS B FELONY -  
(SEE CHART)

11.61.125 (2) ~~B~~ This NEW SECTION MAKES DISTRIBUTION or intent to distribute child pornography a crime.

(b) CERTAIN EXEMPTIONS FOR EMPLOYEES of a theater ARE ALLOWED.

(c) Distribution is a CLASS C FELONY.

H

B

2

5

# COMMITTEE REPORT

## HOUSE

JUDICIARY

(7)

FURTHER:

3/13/83

Date: \_\_\_\_\_

Mr. Speaker: HEALTH, EDUCATION AND SOCIAL SERVICES

The Committee on \_\_\_\_\_ has had HB 275

An Act relating to the establishment of prison facilities.

under consideration and reports it back as follows:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for HB 275  same title  
 new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation  Zero Fiscal Note Attached
- referred to the \_\_\_\_\_ Committee

**MEMBERS SIGNING  
DO PASS**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**MEMBERS HAVING  
OTHER RECOMMENDATIONS:**

Wesley Tucker No Rec

MILO H. FETZ No Rec

M. W. Miller No Rec

Adolf Hermann No Rec

\_\_\_\_\_ No Rec

\_\_\_\_\_ No Rec

Wesley Tucker  
CHAIRMAN  
MILO H. FETZ

Staff Report  
HB 275 Relating to Prison Facilities  
Dave Palmer  
April 18, 1983

HB 275 mandates that after July 1, 1983, all newly maximum security prisons be constructed in the vicinity of Palmer, Wasilla and Sutton.

The position paper from Department of Health and Social Services adamantly opposes the bill, and requests that the decision on correctional facility locations be based on criminal justice criteria.

The fiscal note is zero based on lack of information.

Next referral is to Judiciary Committee

POSITION PAPER / Department of Health & Social Services

POSITION PAPER

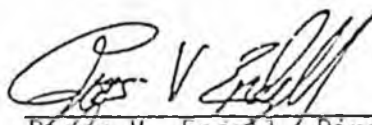
House Bill No. 275

"An Act relating to the establishment of prison facilities."

House Bill No. 275 modifies AS 33.30.020 by making that section subject to the provisions of AS 33.30.025 which is entitled Location of Facilities. AS 33.30.025 requires that after July 1, 1983, the Commissioner shall locate all newly constructed maximum security prison facilities within the vicinity of Palmer, Wasilla, and Sutton.

The Department of Health and Social Services and the Division of Adult Corrections totally opposes the concept of predetermined building sites for prison facilities. It is imperative that such decisions be made by professional correctional practitioners and based on sound criminal justice criteria for site location to ensure that the prison facilities meet standards for programming, security, and safety.

Recommended by:

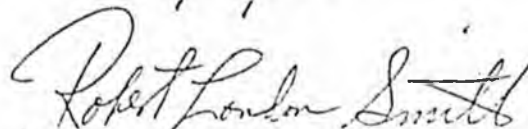


Roger V. Encell, Director  
Division of Adult Corrections

Date:

3/25/83

Approved by:



Robert London Smith, Ph.D.  
Commissioner

Date:

3/30/83

Requestor: House HESS  
 Sponsor: Reps. Larson & Lacher  
 Title: "An Act relating to estab. of prison fac.  
 Bill/Resolution No.: House Bill No. 275

Agency Affected: Health & Social Services  
 Program Category Affected: Admin. of Justice  
 BRU, Program of Subprogram(s) Affected: Adult Confinement

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-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. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not applicable.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Roger C. Lange *Roger C. Lange* Phone: 465-3376  
 Division: Adult Corrections Date: March 23, 1983  
 Approved by Commissioner: Robert L. Anderson *Robert L. Anderson* Date: 3/30/83  
 Department: Health & Social Services

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

FISCAL NOTE

House Bill No. 275

Page 2

IV. ANALYSIS

No specific additional costs can be identified related to the requirement to locate all newly constructed maximum security prison facilities within the vicinity of Palmer, Wasilla, and Sutton.

POSITION PAPER

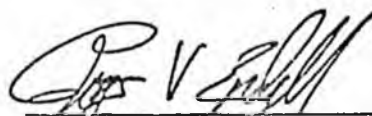
House Bill No. 275

"An Act relating to the establishment of prison facilities."

House Bill No. 275 modifies AS 33.30.020 by making that section subject to the provisions of AS 33.30.025 which is entitled Location of Facilities. AS 33.30.025 requires that after July 1, 1983, the Commissioner shall locate all newly constructed maximum security prison facilities within the vicinity of Palmer, Wasilla, and Sutton.

The Department of Health and Social Services and the Division of Adult Corrections totally opposes the concept of predetermined building sites for prison facilities. It is imperative that such decisions be made by professional correctional practitioners and based on sound criminal justice criteria for site location to ensure that the prison facilities meet standards for programming, security, and safety.

Recommended by:

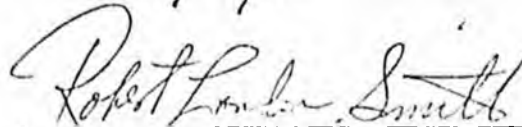


Roger V. Endell, Director  
Division of Adult Corrections

Date:

3/25/83

Approved by:



Robert London Smith, Ph.D.  
Commissioner

Date:

3/30/83

RECEIVED  
MILG H. FRITZ, M.D.  
MAR 30 6 24 PM '83

I. REQUEST  
 Bill/Resolution No.: House Bill No. 275  
 Title: "An Act relating to estab. of prison  
 Sponsor: Reps. Larson & Lacher  
 Requestor: House HESS

II. FISCAL DETAIL  
 Agency Affected: Health & Social Services  
 Program Category Affected: Admin. of Justice  
 BRU, Program of Subprogram(s) Affected: Adult Confinement

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-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. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not applicable.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Roger C. Lange *Roger C. Lange*  
 Division: Adult Corrections

Phone: 465-3376  
 Date: March 23, 1983

Approved by Commissioner: Robert Gordon Smith, M.D.  
 Department: Health & Social Services

Date: 3/30/83

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

IV. ANALYSIS

No specific additional costs can be identified related to the requirement to locate all newly constructed maximum security prison facilities within the vicinity of Palmer, Wasilla, and Sutton.

POSITION PAPER

Senate Bill No. 224

"An Act relating to the establishment of prison facilities."

Senate Bill No. 224 modifies AS 33.30.020 by making that section subject to the provisions of AS 33.30.025 which is entitled Location of Facilities. AS 33.30.025 requires that after July 1, 1983, the Commissioner shall locate all newly constructed maximum security prison facilities within the vicinity of Sutton.

The Department of Health and Social Services and the Division of Adult Corrections totally opposes the concept of predetermined building sites for prison facilities. It is imperative that such decisions be made by professional correctional practitioners and based on sound criminal justice criteria for site location to ensure that the prison facilities meet standards for programming, security, and safety.

Recommended by:

*for Roger V. Endell*  
\_\_\_\_\_  
Roger V. Endell, Director  
Division of Adult Corrections

Date:

*April 1, 1983*  
\_\_\_\_\_

Approved by:

*Robert London Smith*  
\_\_\_\_\_  
Robert London Smith, Ph.D.  
Commissioner

Date:

*4/7/83*  
\_\_\_\_\_

STATE OF ALASKA  
FISCAL NOTE

Revision Date \_\_\_\_\_, 1983

I. REQUEST

Bill/Resolution No.: Senate Bill No. 224  
Title: "An Act relating to estab. of prison  
Sponsor: Reps. Larson & Lacher  
Requestor: House HESS

II. FISCAL DETAIL

Agency Affected: Health & Social Servs.  
Program Category Affected: Justice  
BRU, Program of Subprogram(s) Affected: Adult Confinement

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-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. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not applicable.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Roger C. Lange *Roger C. Lange* Phone: 465-3376  
Division: Adult Corrections Date: April 1, 1983

Approved by Commissioner: Robert London Smith *Robert London Smith* Date: 4/17/83  
Department: Health & Social Services

Distribution:

- Original to Legislative Finance
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3/8/83

FISCAL NOTE  
Senate Bill No. 224  
Page 2

#### IV. ANALYSIS

No specific additional costs can be identified related to the requirement to locate all newly constructed maximum security prison facilities within the vicinity of Sutton.

HOUSE HEALTH, EDUCATION & SOCIAL SERVICES  
STANDING COMMITTEE  
April 18, 1983  
1:05 p.m.

Members Present: Rep. Tischer, Co-Chair  
Rep. Fritz, Co-Chair  
Rep. M.W. Miller, Vice-Chair  
Rep. Davis  
Rep. Koponen  
Rep. Goll  
Rep. Herrmann

COMMITTEE CALENDAR

HB 275: "An Act relating to the establishment of  
prison facilities."  
HB 217: "An Act relating to the establishment of  
prison facilities."  
HB 219: "An Act relating to Local Citizen Advisory  
Boards of the University of Alaska."

WITNESS REGISTER

Rep. Larson  
District 16-B  
State Capitol Building  
Pouch V  
Juneau, Alaska 99811  
465-3727

Position Statement: Supported locating the next maximum security  
prison in the Palmer, Wasilla or Sutton  
area; described the advantages of the area  
such as easy access, already established  
recreation, medical and social service  
facilities; said he was amenable to changing  
the intent of the bill to locate all maximum  
security prisons in the designated area to  
that of locating the next facility in the  
Sutton area.

Rep. Lacher  
District 16-A  
State Capitol Building  
Pouch V  
Juneau, Alaska 99811  
465-4894

Position Statement: Pointed out the planning which has occurred  
for many years for a maximum security prison  
in the Palmer, Wasilla, Sutton area; said

that the prison was always intended for that area and only recently the site decision had become a political football.

Roger Lang  
Department of Health & Social Services  
Division of Corrections  
Juneau, Alaska 99811  
465-3376

Position Statement: Testified against HB 275 and HB 217; stated that the Division is opposed to any specific naming of an area where prison facilities may be constructed; stated that the usual process in site determination begins with an appropriation from the Legislature followed by the decision regarding the site location.

Davis Gray  
Palmer Chamber of Commerce  
Palmer, Alaska

Position Statement: Supported comments made by Representatives Larson and Lacher; acknowledged the effort and time spent planning for a prison in the Palmer area; commented that competition for a prison site was new and not very productive.

Sen. Gilman  
State Capitol Building  
Pouch V  
Juneau, Alaska 99811  
465-4935

Position Statement: Commented that HB 217 was drafted because the Seward community was concerned it would not be considered with other communities for the next maximum security site location; stated that the location decision should be left to Corrections to decide based on their own goals and objectives not by the Legislature.

Willard Dunham  
Co-Chair  
Seward Citizens Task Force  
Seward, Alaska

Position Statement: Described the background behind Seward's proposal for a maximum security prison site; commented on the suitability of the location for a security institution and the availability of private industries and educational facilities for prison industry programs; referred to the need for a prison in Seward due to the high unemployment rate.

Louis Bencardino  
Seward Administration  
Seward, Alaska  
224-3331

Position Statement: Showed the committee a drawing of the proposed site in Seward; described the proposed prison industry programs; stated that Seward has offered to build the prison for the State; said he trusted Roger Endell to pick the site best suited for the state's needs.

Belle Blue  
(Betty Breck)  
Juneau, Alaska 99801  
586-4103

Position Statement: Urged the committee to address the sociological conditions which lead to crime instead of spending more and more money on building new prisons.

#### PREVIOUS ACTION

HB 275: 3/18/83 - First Reading.  
Committee referrals - HESS, Judiciary and Rules Committees.  
No previous action in HESS.

HB 217: 2/21/83 - First Reading.  
Committee referrals - HESS, Judiciary and Rules Committees.  
No previous action in HESS.

HB 219: 2/21/83 - First Reading.  
Committee referrals - HESS, Finance and Rules Committees.  
See HESS minutes of April 11 and 15, 1983.

#### ACTION NARRATIVE

TAPE#31  
Recording  
Number 0001

Co-Chair Tischer called the meeting to order at 1:05 p.m. Representatives Fritz, Miller, Davis, Herrmann, Koponen and Goll were present. Co-Chair Tischer announced the

committee calendar and the Chair's intent to move all three bills out of committee.

Number 0047

Rep. Davis welcomed Rep. Herrmann, who is filling in for Rep. Cato, to the committee.

Number 0067

Rep. Larson, sponsor of HB 275, commented on the history of corrections related activity in the Palmer, Sutton and Wasilla areas; described the medical, social, and family services already available in the area for prisoners, prison employees, and their respective families. Rep. Larson acknowledged the decline of oil revenues, but stated that the courts mandated that Alaska bring maximum security back to Alaska. Rep. Larson argued that HB 275 would help mitigate extra costs by offering the State the lowest costs of all proposed sites in terms of construction and operation.

Number 0148

Rep. Larson encouraged the committee to make a decision after looking at future revenues and State responsibilities with regards to prisoners now in the lower '48.

Number 0167

Rep. Tischer commented on the strong impact of the mandate to center all maximum security prisons in one area.

Number 0181

Rep. Larson said he would welcome a committee substitute to change lines 10 - 20 to read; "the commissioner locate a newly constructed maximum security prison facility within the vicinity of Palmer, Wasilla, or Sutton".

Rep. Larson said that the reason for mandating that all maximum security prisons be built in one area was to conserve resources by concentrating building, capitol, and facilities in one location.

Number 0203

Rep. Davis pointed out Roger Endell's, Division of Corrections, recommendation to spread maximum security sites throughout the state.

Number 0220

Rep. Larson spoke about the desirability of concentrating future sites around food, recreation and housing facilities which are already available.

Number 0234

Rep. Tischer asked about the impact of HB

275 on the Mat-Su Community. Rep. Larson responded that initially people would need education in order to work with the prisoners, but then the prison would provide approximately 250 jobs for the community and increase sales for local businesses. Rep. Larson also stated that the growth impact would be within the borough's ability to provide services.

Number 0286

Rep. Davis said he had difficulty locking in all prisons to one area; asked if Rep. Larson would object to changing "all" to "a" maximum security prison and "shall locate" to "may locate". Rep. Larson said that would be satisfactory.

Number 0300

Co-Chair Tischer asked the committee to stand at ease per the request of Rep. Lacher.

Number 0302

Rep. Larson said he was amenable to a committee substitute which would change line 19 to read; "the commissioner shall locate a newly constructed maximum security prison facility within the vicinity of Palmer, Wasilla, or Sutton".

Number 0328

Rep. Goll suggested adding the word "next" before "maximum security prison facility". Rep. Larson agreed to the suggestion.

Number 0347

Rep. Tischer directed HESS staff to write a committee substitute with the suggested changes for HB 275.

Number 0366

Rep. Larson said he would approve any wording which would mandate that the next maximum security prison be located in the Sutton area.

Number 0375

Rep. Lacher, co-sponsor of HB 275, stated that HB 275 was introduced because planning had centered on a maximum security site in Sutton for many years, but then with the change in Administration, the location of the next maximum security site was questionable and subject to competition from other communities. Rep. Lacher argued that the site is badly needed and should be located close to Anchorage.

Number 0413

Rep. Goll asked why there was a delay in building the prison at Sutton if all the

plans were already made. Rep. Lacher said she believed that the prison is not built yet because it is being used as a political football.

Number 0426

Roger Lang, Division of Adult Corrections, stated that the Division is opposed to any specific naming of an area where a prison facility must be constructed. Mr. Lang contended that site considerations should be studied by the Division, not decided by the Legislature.

Number 0449

Rep. Goll questioned Mr. Lang about the status of the Division's decision. Mr. Lang said the Division has considered 7 proposals thus far.

Number 0459

Rep. Fritz commented that the decision could not be reached before establishing the Department.

Number 0488

Rep. Koponen asked the witness what criteria the Division would use to determine the next prison site, for example how many prisoners would it need to house? Mr. Lang responded that the Division is considering a 300 bed maximum security facility with the possibility for an additional 100 beds, and said that currently 200 maximum security prisoners are housed out of Alaska.

Number 0514

Rep. Davis asked how many prisoners would qualify for the maximum security site. Mr. Lang answered that approximately 250 maximum security inmates located in and out of state would qualify. Rep. Davis stated an interest in receiving more information on the criteria which would determine the location of the next site.

Number 0535

Rep. Tischer argued that the Division had plenty of time already to provide HESS with that information.

Number 0543

Rep. Goll pointed out a letter from the Department of Health and Social Services indicating that no decision would be reached until funding for planning was authorized by the Legislature. Rep. Goll commented that the delay was not productive, and admonished the Department to let the Legislature worry about funding after the Department decides on a site.

Number 0566

Davis Grey, Palmer Chamber of Commerce, supported the comments made by Representatives Lacher and Larson, and acknowledged the effort and time spent on planning for a prison in the Palmer area. Mr. Grey said competing for a prison site was new and only lead to more studies and lobbying. Mr. Grey urged the Division to make the decision soon on the basis of site suitability.

Number 0611

Co-Chair Tischer presented HB 217 for committee consideration, and pointed out that HB 217 also mandates that all maximum security prison facilities shall be located within the vicinity of Seward.

Number 0633

Senator Gilman, District D, stated that he was not speaking for Rep. Cato, the bill's sponsor, and agreed to the similarity between HB 217 and HB 275. Sen. Gilman explained that Rep. Cato drafted HB 217 because the Seward community was concerned that they would not be one of the communities considered for the next maximum security site. Sen. Gilman contended that the site location should be left to Corrections to decide on the basis of their goals and objectives, not by the Legislature.

Number 0663

Mr. Dunham, Co-Chair Seward Citizens Task Force, stated that Seward submitted a proposal for a maximum security prison site under the Hammond Administration after the Anchorage and Sutton communities indicated they did not want the prison. Mr. Dunham asserted that Seward offers the most economic alternative for the state and described the location of the proposed prison site. Mr. Dunham explained that the proximity of the site to vo-tech programs, industrial sites, the University of Alaska, and the Institute of Marine Sciences would be conducive to prison industries.

Number 0718

Mr. Dunham said he would like to know what is required for the prison site now, and stressed the high unemployment rate in Seward.

Number 0743

Louis Bencardino, Seward Administration, showed the committee a sketch of the proposed prison site and its surroundings.

Mr. Bencardino said that authorities have made arrangements with private industry for prison industries, and have offered to build the prison for the state. The witness also pointed out that Seward has a port which is two days closer than Anchorage to the Lower '48. Mr. Bencardino agreed that some of the other proposed prison sites have merit, and said he trusted Roger Endell to pick out the best site. Mr. Bencardino supported letting the Division judge the various proposals.

Number 0799

Rep. Fritz asked the witness what prison industries Seward had in mind. Mr. Bencardino listed the fishing industry, fabrication industry, and bottom fishing processing plant.

Number 0822

Rep. Tischer questioned why efforts had been concentrated on maximum security prisons when medium security prisons are also overcrowded. Mr. Bencardino said the community would rather have a maximum security facility and asserted that the proposed location was well suited for maximum security facilities.

Number 0848

Roger Lang, Division of Adult Corrections, stated that his testimony for HB 217 was the same as that for HB 275. Mr. Lang contended that HB 217 was also to site specific.

Number 0854

Rep. Tischer asked Mr. Lang what was holding up the Division's decision. Mr. Lang responded that last year's budget included a request for a maximum security facility which was tentatively set for the Palmer/Wasilla area. The request was part of a bond package which was vetoed by Governor Hammond. Mr. Lang stated that the FY '84 request for a maximum security facility did not specify the Palmer area.

Number 0888

Rep. Fritz repeated that the delay was due to the fact that the Governor had not signed the bill to make the Division of Adult Corrections into a Department. Rep. Tischer retorted that prisons were built under the Division in the past.

Number 0897

Mr. Lang stated that decisions are usually not made by the Division until an appropriation is made by the Legislature.

- Number 0914 Rep. Goll suggested the Division make a site decision soon regardless of past policy in order that the Legislature could appropriate money.
- Number 0929 Rep. Davis reminded the committee that the final decision would now rest with the Commissioner of the Department of Health and Social Services.
- Number 0950 Belle Blue, Juneau citizen, agreed that the increase in crime warranted attention for new prison sites, but indicated that the roots of crime are sociological. Ms. Blue recommended that the committee address conditions in society, such as unemployment, which lead to crime.
- Number 0970 Co-Chair requested the witness to confine her remarks to the bill at hand.
- Number 0977 Co-Chair Tischer asked the committee if there was further discussion before she entertained a motion to move a committee substitute for HB 275.
- Number 0992 Rep. Larson repeated his suggestions for amended wording on Lines 19 and 20; "the commissioner shall locate the next maximum security prison facility within the vicinity of Palmer, Wasilla or Sutton".
- Number 1000 Rep. Miller argued that the committee should also add Haines, Seward, Cordova, etc. after Sutton because they too have valid concerns. Rep. Miller said he had a problem with passing out two bills which directly conflict with each other.
- Number 1010 Rep. Larson disagreed with adding the other communities because they had not introduced a bill and done as much back-up work as the Palmer community had. Rep. Larson suggested letting HB 275 answer the immediate need for a prison and then looking at the other sites.
- Number 1015 Rep. Tischer stated that because of the immediate crisis with regards to prison overcrowding, it was the Chair's intent to bring up both bills for discussion before the public, and to help Roger Endell get on with his job as head of Corrections.

- Number 1050 Rep. Tischner asked for a motion to amend HB 275 at the wishes of the sponsor. Belle Blue requested permission to testify. Rep. Tischer denied permission.
- Number 1054 Rep. Fritz contended that the committee should listen to the witness. Co-Chair Tischer called an at ease.
- Number 1060 Belle Blue stated basic objection to giving large amounts of money to prison facilities instead of other programs to reduce crime. Ms. Blue argued that crime is only a symptom of more basic sociological problems.
- Number 1088 Rep. Davis thanked the witness for her testimony and then stated that he would either pass one bill out or the other and that he personally would vote "no recommendation" on both bills.
- Number 1095 Discussion regarding past policy for determining prison sites.
- Number 1109 Rep. Koponen indicated that the Legislature does have the authority to make the final decision, but questioned if the Legislature had the right criteria upon which to base its decision.
- Number 1129 Rep. Fritz predicted that the final decision would be very political, and commented that the committee could just as well add the names of other communities onto either HB 275 or HB 217.
- Number 1141 Rep. Miller suggested naming a deadline for the Division to decide on a site.
- Number 1149 Rep. Goll stated that the House and Senate leadership should direct the Division to decide on a site before the Legislature appropriates money.
- Number 1167 Rep. Davis asserted that passing either bill out of committee could raise false hopes for either Seward or the Palmer area.
- Number 1178 Rep. Tischer said she had no intention of calling for a "do pass" and told Rep. Davis that he was free to vote however he wanted. Co-Chair Tischer then called for a motion.
- Number 1191 Rep. Miller moved to draft a committee

substitute for HB 275 with the suggested language changes to Section 2, and then made a motion to move CSHB 275 out of committee with individual recommendations.

Number 1202

Co-Chair Tischer called for a vote on the first motion. The committee voted unanimously to replace HB 275 with CSHB 275. Co-Chair Tischer called the previous question on the second motion.

Number 1215

Rep. Goll pointed out that committee members had the option not to sign if they did not support the bill, and did not want it to leave committee.

Number 1225

Co-Chair Tischer called for a vote on the second motion. The committee voted unanimously against moving HB 275 out of committee.

Number 1227

Rep. Miller moved to make the same changes to Section 2 of HB 217. Co-Chair Tischer called for a vote on the motion. The motion passed by a 6 to 1 vote.

Number 1240

Rep. Miller moved to pass CSHB 217 out of committee. Co-Chair Tischer called for a vote. The motion to move CSHB 217 failed unanimously.

Number 1246

Co-Chair Tischer presented SSHB 219 for committee consideration, stated her intent to move the bill out of committee, and asked for a motion to that effect.

Number 1252

Rep. Goll so moved. Rep. Davis objected. Rep. Goll withdrew his motion.

Number 1260

Rep. Fritz moved to pass SSHB 219 out of committee with individual recommendations. The motion passed by vote of 4 to 3.

Number 1275

Co-Chair Tischer adjourned the meeting at 3:02 p.m.

Introduced: 3/18/83  
Referred: Health, Education and  
Social Services and Judiciary

1 IN THE HOUSE

BY LARSON AND LACHER

2

HOUSE BILL NO. 275

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the establishment of prison  
7 facilities."

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

9 \* Section 1. AS 33.30.020 is amended to read:

10 Sec. 33.30.020. COMMISSIONER TO ESTABLISH AND ADMINISTER PRISON  
11 FACILITIES. Subject to the provisions of AS 33.30.025, the [THE]  
12 commissioner shall establish prison facilities and classify the pris-  
13 oners in prison facilities. The commissioner shall provide for the  
14 safety, subsistence, proper government, and discipline of prisoners.  
15 The commissioner shall establish programs for the treatment, care,  
16 rehabilitation and reformation of prisoners.

17 \* Sec. 2. AS 33.30 is amended by adding a new section to read:

18 Sec. 33.30.025. LOCATION OF FACILITIES. After July 1, 1983, the  
19 commissioner shall locate <sup>the new</sup> ~~all newly constructed~~ maximum security  
20 prison facilities within the vicinity of Palmer, Wasilla, <sup>or</sup> and Sutton.

*Rep. Long - Corrections - Financial report*

*250 prisoners*

*David Gray Palmer Chamber, Commission*

# Alaska State Legislature

REPRESENTATIVE  
BARBARA LACHER  
P.O. BOX 478  
PALMER, ALASKA 99645  
(907) 376-4215



WHILE IN JUNEAU  
POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-4894

## House of Representatives

April 18, 1983

### MEMORANDUM

TO: Representative Tischer

FROM: Representative Lacher *BL*

SUBJECT: HB 275

I request that your Committee seriously consider reestablishing the Palmer/Sutton area as the state's number one site choice for the new maximum security prison.

Enclosed is a copy of a recent cost-benefit report on locating the state maximum security facility in the Mat-Su valley versus other proposed state locations. Please examine the conclusions on page 12 of this report and take these into consideration in your review of this issue.

I would like to take this opportunity to remind you that the previous Administration selected the Palmer/Sutton site location, five years ago, for very good reasons. The factors which led to the selection of the Palmer/Sutton site have not changed in the brief period of time that has lapsed in the recent administrative change. I therefore urge you to seriously reconsider the selection of the Palmer/Sutton site as the state's location site for the new maximum security prison.

Some of the factors which led to the original selection of the Palmer/Sutton site are:

- 1) The Mat-Su area is well known in the State for the significantly lower costs in construction. This lower overall cost factor, in construction, is due to the Mat-Su proximity to efficient transportation, an immediately available work force, readily available construction industries and supplies, and other locational factors that directly effect the overall cost of construction.
- 2) The Palmer/Sutton area has several suitable sites for such a facility which already provide the necessary utility facilities that a maximum security prison would require. These in place utility facilities would, therefore, also significantly reduce overall construction costs.

3) The Palmer/Sutton area offers a site location that is semi-isolated from a population center while at the same time remaining accessible to necessary public support facilities, (e.g., Anchorage Superior Court, Mat-Su and Native hospitals, libraries, etc.).

4) A qualified and available work force is to be found in the Mat-Su area, once the facility is in place.

5) Several acceptable sites are located on State lands within the Palmer/Sutton area, eliminating the cost of land acquisition.

6) The governing bodies of the Mat-Su Borough and the two major cities in the District, Palmer and Wasilla, have endorsed resolutions, with public support, for the location of the maximum security prison in the Palmer/Sutton area.

I would appreciate the serious reconsideration, by the House HESS Committee, of the Palmer/Sutton area for site selection for the new maximum security prison.

BENEFIT / COST ANALYSIS OF ALTERNATIVE  
SITE SELECTIONS OF THE STATE OF ALASKA  
MAXIMUM SECURITY PRISON

1

BENEFIT / COST ANALYSIS OF ALTERNATIVE  
SITE SELECTIONS OF THE STATE OF ALASKA  
MAXIMUM SECURITY PRISON

Prepared for:

The Matanuska-Susitna Borough

Prepared by:

Policy Analysts, Ltd.

Applied Research Associates, Inc.

2

#### EXECUTIVE SUMMARY

Consideration for locating a long-term correctional facility should include three major categories at the very least. First is the economics from the State agency's point of view (operating efficiency). Second is the impact of the facility (short and long term) on the local community, in terms of employment, housing, support services demanded, and risk. Third is the impact of location on the prisoner population and their needs for visitation by family, attorneys, and parole boards.

Location of the facility in question in the Mat-Su Borough is seen as providing optimum siting for any facility which is not placed in Anchorage itself. In comparison with other locations under consideration: its proximity to Anchorage (the location where 44% of the convicted felons we currently send to the Lower 48 were arrested) is ideal - about 50 miles; it has suitable land available, in several locations; its state payrates and construction/facility maintenance costs are lower than the Seward/Whittier/Valdez alternatives; it has a labor force available for construction/operation with high unemployment; there is unoccupied housing available; and there would be no further costly delays to construction (estimated at up to a year for a possible increase in cost of \$4-5 million) due to planning for a new site. Over a 20-year period, costs in the Seward area would amount to more than \$21,500,000 higher than in Palmer, while a similar forecast for Valdez is more than \$50,000,000 higher than Palmer.

Community support for a Prison in the Matanuska-Susitna Borough is widespread and concerns over housing and social impacts can be easily addressed and mitigated.

3

## INTRODUCTION

This report presents a brief explanation of a decision to site the South Central Regional Long Term Facility in the Matanuska-Susitna Borough. (The facility will henceforth be referred to as the Prison). Sources for the information include the Alaska Department of Transportation and Public Facilities, the Alaska Department of Health and Social Services, the Mat-Su Borough Comprehensive Plan (Draft), the site-evaluation done by TRA/Farr et al in September, 1982, and the Alaska Court System 1982 Annual Report.

The three major areas of concern when locating a Prison are:

- 1) the economics/logistics/regulatory compliance from the operating agency's point of view;
- 2) the impact on the community which is proximate to the Prison;  
and
- 3) the impact on the prisoner population of the location, i.e. expense and difficulty of visits by relatives and attorneys and visits to parole boards and courts.

Each of these areas will be discussed in detail in the following report.

4

#### AGENCY CONSIDERATIONS

The agency in question is the Alaska Department of Health and Social Services, Division of Corrections. It is responsible for the confinement of felons and others at the direction of the Court System. The facility in question would house convicted felons with relatively long sentences who are currently confined in the Lower 48 via the Federal Bureau of Prisons. There are currently around 200 of these prisoners, and the number is constantly increasing. The State has agreed to provide confinement facilities for its prisoners by 1987, hence the need for a maximum security prison in Alaska. A 1981 Facilities Profile projected 1982 sentenced felons to be 720 rising to 1176 by 1986. Current trends suggest that these figures are well below actual figures and thus conservative.

General requirements for the facility are determined by criteria of the American Correctional Association Standard 4147 and include location within 50 miles of a population centered over 10,000 with access to hospital, courts, and public transportation. This standard is not to be taken lightly. Service support both from the judicial system and logistical support systems rise in cost the further a facility is located from a population center. Examples include care for serious medical problems, psychiatric service support, support from the legal community, goods and services support for operation and maintenance, educational support services, etc. Siting criteria, developed by the Criminal Justice Planning Agency include: the size of the site should be 75-100 acres with 55 acres developable for the facility and a buffer space (developable means less than a 20% slope with drained soils, not on a flood plain, and suitable for sewage disposal and construction; and State ownership of the land. The Sutton site originally chosen for the Prison has 640 acres with more than enough developable land; access to the Glenn Highway is acceptable for the Prison's purposes; it is State owned and roughly 50 miles from Anchorage with local health care, services, and public transportation.

The economics of the Prison analysis includes construction, maintenance, and operation. In comparison with other sites, both construction and operation costs are significantly lower: construction in Seward would be

approximately 10% higher with maintenance estimated to be 5% higher, while payroll costs would be about 4% higher (State employees get a two-step increase to work in Seward). This would amount to \$4-5 million in construction, about \$100,000 in annual maintenance, and approximately \$225,000 in salaries. Construction in Valdez would be 20% higher with maintenance 6% lower (though on a higher base cost), while payroll costs would be 16% higher (State employees get a five-step increase to work in Valdez). This would amount to \$7-8 million in construction, roughly \$500,000 in annual maintenance, and an estimated \$900,000 in salaries. In other words, start-up costs are \$4-8 million higher and yearly costs are \$325,000 - \$1,400,000 higher in other locations. In addition, there would be delays in project commencement if current site studies had to be abandoned; unofficial State estimates put this delay at up to a year, with attendant increases in final cost of construction as well as loss of the use of a facility for that year. The placement of any multi-million dollar State facility would require a thorough site evaluation and review. The costs of studies completed to date would have to be written off and repeated. In addition, the loss of time could jeopardize the agreement to transfer prisoners held in federal facilities by 1987, and certainly raise the cost of construction \$4-5 million due to the inflationary impact of delay.

Finally the siting of any facility should consider sharing facilities already owned by the State. The Palmer Correctional Facility could readily share much of its services, such as dieticians, counselors, security and maintenance people, storage facilities, etc. Ancillary services, such as staff recreation and transportation can also be shared.

Table 1 shows approximate costs due to re-siting.

6

TABLE 1

SITE EXAMPLES - 20 YEAR COST DIFFERENTIALS (1)

	<u>Palmer</u>	<u>Seward.</u>	<u>Valdez</u>
Construction	\$ 0	\$ 4,500,000	\$ 7,500,000
Delay	0	4,500,000	4,500,000
Payroll (2)	0	4,500,000	18,000,000
Maintenance (2)	0	2,000,000	10,000,000
Travel (2)	<u>0</u>	<u>6,000,000</u>	<u>10,000,000 (est.)</u>
TOTAL	\$ 0	\$21,500,000	\$50,000,000

(1) Table is designed to demonstrate relative cost differences among three sites which serve as examples for a variety of Southcentral locations in relationship to their proximity to Anchorage.

(2) 20-year costs above Palmer/Sutton site in 1982 dollars.

⑦

## COMMUNITY IMPACT

Impact on the local community of a Prison includes the economic impact due to employment in construction and operation of the Prison, demand for housing and support of the staff, demand for public services, environmental impact, and risk of escaped felons.

The economic impact would be mostly positive, dominated by increased employment and economic growth through provision of services to the Prison. The Borough has a history of unemployment rates higher than either Anchorage or the State as a whole, running from 11-17%, hence would be able to absorb increased labor requirements happily. It currently has a labor force of around 11,000 with almost 2,000 unemployed and an unemployment rate of 17.6% (February 1983). This is up from 15.7% a year ago. It has a resident population which includes skills necessary to operate a confinement facility (there currently exists a similar low-risk facility in Sutton). We feel that it could easily absorb the additional requirement for labor and staff. In addition, the Matanuska-Susitna Borough is the only labor market in Alaska which can effectively draw from other areas on a regular year-round basis. Its proximity to Anchorage, particularly Eagle River/Chugiak area provides the site with a potential labor market area of 108,000. This capacity compares to Valdez, with a February, 1983, labor force estimate of 3,035 and Seward with 1,671. The Mat-Su labor market area is 3.6 - 6.6 times larger without drawing upon the larger Anchorage market. Currently, about 2,500 people commute between Mat-Su and Anchorage daily for employment. This level is similar to the entire labor market of the other sites considered here.

Land and housing is available freely, with over 800,000 acres of privately held land in the Borough and almost 1,000 vacant housing units. There is a 25-bed hospital, three health care centers, and two mental health centers, so medical support is available. With retail sales over \$50 million a year, the local economy can easily support the additional requirements of the Prison for supplies and routine services; utilities currently are available at the site due to the Palmer Correctional Facility.

CS

The environmental impact is considered nil and the risk of escaped felons is already being borne due to existing facility.

(9)

LEVELS OF COMMUNITY SUPPORT  
PALMER/SUTTON PRISON SITE

Examination of agencies, government bodies and other organizations in the Mat-Su Borough indicates that the level of community support for locating the prison in Palmer/Sutton is very strong. Appendix B depicts the historical development of community action since late 1981. The information was gathered through interviews conducted in the public and private sectors in the communities of Palmer, Wasilla and Sutton. Local government officials in Palmer and Wasilla, and Borough officials have unanimously supported the proposal of the construction of a maximum security facility at Sutton since its inception. Both the Wasilla and Palmer Chambers of Commerce have also passed resolutions in its favor; and the Palmer Chamber is in the process of raising \$10,000 to finance a lobbying effort in Juneau. It is of interest to note that the Palmer Chamber has been relatively inactive in recent years; however, the Sutton siting issue has generated tremendous interest and involvement by the business sector of this organization. The Chamber of Commerce funds are being matched by both the City and Borough governments.

The Palmer Elks have a very special interest in the Sutton siting. This organization owns the 640 acres which adjoin the proposed site. The Palmer Elks Club in conjunction with the State Elks Association, are in the process of drawing up plans to develop this land into a youth camp with special focus on handicapped children. The State Association has unanimously supported the recreation siting with the full understanding of the State's proposal to build the maximum security facility on the adjoining land.

The only concern appears to be with some of the people living in the Sutton area. Press coverage of the original State public hearings regarding the siting of the proposed facility indicated that community opinion was against the siting. However, interviews conducted of Mat-Su residents revealed several concerned families who had formed a rather "vocal minority." One interviewee indicated that the minority was, in fact, intimidating, and some of these residents are also on the Sutton Community Council, a newly recognized council whose origins are through the Alpine Civic Club. The

Alpine Civic Club did conduct a very questionable telephone survey in December, 1982 to ascertain the public opinion of the proposed siting at Sutton. Most of the interviewers were known to be against the siting.

One key difficulty in assessing community opinion is that no real information dissemination regarding the impact of the site selection as well as the costs/benefits had been made available to the local community at the time of these surveys. It is the belief of resident and local government officials living in the area that opposition has arisen largely out of fear and misunderstanding of the impact of such a siting. In fact, following a joint open meeting between the Palmer Chamber of Commerce and the Sutton Community Council on March 23, one Borough Assemblyman now plans to request the Borough Planning Department to assist the Sutton community in a needs assessment and impact analysis. One major concern of this group is impacts on the local housing market. In actuality, the site is located four miles south of Sutton and six miles north of Palmer. Such impact would be more likely to occur in the larger community of Palmer and areas south, with its more accommodating infrastructure.

(11)

## PRISONER IMPACT

In the case of prisoner impact, the location of the Prison is of lesser importance than it would be with pre-trial or low-risk facilities, since they have fewer occasions to travel to court or to otherwise leave the Prison. There are, however, costs associated with visits by others to them: social visits by family and friends become more difficult as the proximity of the Prison to population centers becomes greater. Similarly, visits by parole boards become more expensive and difficult with increasing distance from Anchorage.

It is difficult to calculate the costs associated with increasing the distance travelled by those wishing to visit the Prison. Hertz recently estimated the cost of ownership/use of a vehicle to be over 40 cents per mile nationally, so such costs could be appreciable when applied to State parole board members travelling to visit a felon. To illustrate the impact, if we assume that each of the projected prisoners would average 24 annual contacts involving personal, legal, other professional, or transport of prisoner to Anchorage for legal, medical, or other reasons, then: in 1982 dollars, the Seward site would add \$6 million in travel costs over 20 operational years and while Valdez would add \$30 million. This does not consider overnight accommodations which are increasingly likely the further the site is from Anchorage.

A centrally located site in South Central Alaska is critical to minimize problems for families and professional personnel. A 1981 Profile of Prisoners housed through the Federal Bureau of Prisons in the Lower 48 showed that 44% of the prisoners had been arrested in Anchorage, and 27% in Fairbanks. Over 70% of those visiting prisoners would be able to drive easily to the Sutton site and the balance would be travelling through Anchorage to get to the Prison. Appendix A to this report provides further data on the prison population housed in the Lower 48.

12

## CONCLUSION

Two things stand out after a review of the data on the proposed Prison. They are: 1) that such a facility should be located as close to Anchorage as possible; and 2) that such a facility is greatly needed.

## LOCATION

Factors affecting the operating agency indicate that agency costs will be minimized with placement in the Matanuska-Susitna Borough, and that operating criteria will be met with prison location at the Palmer/Sutton site.

Factors affecting the local community indicate that the Prison would be a welcome addition, reducing unemployment and increasing the economic base. Public support in the Matanuska-Susitna Borough is widespread, and opposition is centered on issues easily mitigated.

Factors affecting the Prison population indicate a preference for the Mat-Su location, in terms of reasonable access to personal, legal, and other support systems.

## FACILITY NEED

The combination of a large prison population housed outside the State through the Federal Bureau of Prisons with a rapidly increasing need for confinement space results in a fairly desperate requirement for this Prison. Conservative estimates of correctional facilities needs by fiscal year 1986 show that total required bed space will only be met through the construction of at least 300 prison bed spaces.

13

APPENDIX A

DATA FROM AUGUST 10, 1981 PROFILE OF PRISONERS HOUSED THROUGH THE FEDERAL BUREAU OF PRISONS IN THE L-48

Alaska Resident Time Before Crime

<u>Time</u>	<u>Number</u>	<u>Percent</u>
Less than 6 mo.	17	10
6-12 mo.	17	10
1.1-9 yr.	12	6
2-2.9 yr.	5	3
More than 3 yrs.	123	71

AGE

<u>Age</u>	<u>Number</u>	<u>Percent</u>
Under 20	1	.5
20-30	86	49
31-40	59	34
41-50	19	11
Over 50d	9	5

CRIME CLASS

<u>Class</u>	<u>Number</u>	<u>Percent</u>
Unclassified felon	67	30
Class A felon	96	55
Class B felon	9	5
Class C felon	2	2