ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 8672

2420 HJ HB 48 - HB 79

2/2

HB

49

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Bill Sheffield, Governor

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

April 25, 1983

The Honorable Charlie Bussell
Chairman, House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: CS for HB 49
Our file no.: 366-568-83

Dear Representative Bussell:

This letter responds to the several questions relating to the nepotism restrictions proposed in the CS for HB 49, now pending before the House Judiciary Committee.

As discussed at the prior committee hearing, the state is presently a party to litigation which questions the permissible scope of any nepotism prohibition established under the Personnel Rules. Public Employees Local 71 v. State, Case No. 82-4931 Civ. (Third Judicial District). The complaint, filed in June 1982, alleges, in pertinent part, that the director of the division of personnel exceeded statutory authority in adopting Personnel Rule 13 09. The state's position in the litigation is that the personnel Rule was adopted under the authority of AS 39.25. At the present time, the parties are pursuing settlement negotiations.

A brief summary of the legal questions posed in the litigation may prove helpful to the committee. Directly at issue in the litigation is whether AS 39.25.150 confers the requisite statutory authority for the promulgation of any Personnel Rules which relate to a nepotism restriction. See AS 44.62.020. See also Kelly v. Zamarello, 486 P.2d 906, 910 n. 19 (Alaska 1971). If adoption of a nepotism restriction is authorized under AS 39.25, the inquiry turns to whether the rules are "in accordance with standard prescribed by other provision of law." AS 44.62.020. See Boehl v. Sabre Jet Room, Inc., 349 P.2d 585 (Alaska 1960). Our research has not as yet disclosed any Alaska case authority which offers a direct answer to whether it is per-

missible to adopt under the authority of the enabling statute a regulation which extends, but is not inconsistent with, the policy expressed in a separate statutory provision. Two factors may prove relevant were the litigation to proceed to a judicial resolution. First, regulations are typically accorded a presumption of validity. Alaska Intern Industries, Inc. v. Musarra, 602 P.2d 1240 (Alaska 1979). Second, the legislature has amended AS 39.25 subsequent to the enactment of AS 39.10.010, as recently as last session, presumably with knowledge of the long-standing nepotism prohibition in the Personnel Rules. However, since the matter is presently in litigation, any further comment on the merits of the pending litigation would be inappropriate. If, ultimately, the matter is not resolved in the immediate litigation, the Department of Law will review whether the director of personnel enjoys the authority to establish reasonable nepotism restrictions beyond the scope of AS 39.10.010. We are in formed that in the interm the division of personnel does not intend to enforce Personnel Rule 13 09. See 1979 Inf. Att'y Gen. Op. (Feb. 13; J-66-191-79).

The committee also questioned whether any legislative action to amend AS 39.10.010 would unduly prejudice the state's position in the litigation. That the propriety of Personnel Rule 13 09 is questioned in pending litigation should not, in our view, impair the Legislature's ability to address this matter. Any inference drawn from the legislature's action or, alternatively, inaction would be speculative at best, and would not be a determining factor in the litigation. Moreover, an appropriate letter of intent would dispel whatever inference may be suggested due to prospective legislative reform.

The committee also raised several questions broadly relating to the scope of CSHB 49. The proposed bill establishes nepotism restrictions specific to state "department[s] or agenc[ies]." Absent specific statutory provision to the contrary, the nepotism restrictions would not apply, for example, to the appointment of members or employees of regulatory boards and commissions, such as those regulatory bodies established in Title 8 of the Alaska Statutes. Further, in its most expansive scope the restrictions concern only the relationship between a prospective employee and the commissioner, deputy commissioner or executive head of a particular agency or department. The bill does not, therefore, address the situation of a relationship between two persons not employed within the same department or agency. The example raised at the prior committee hearing, the appointment of a legislator's spouse or child to a position in a state agency or, for that matter, to a position on any legislator's personal staff, would not be within the ambit of the present bill. Of course, other rules adopted by the legislature to

manage internal affairs may address such a situation. Finally, a question was raised as to whether it would be appropriate to limit the coverage to persons related by blood or marriage. More specifically, the question concerned the possible extension of the nepotism prohibition to persons in a meretricious relationship. Without addressing any policy implications, we caution that amending the bill to obtain the contemplated policy objectives would render the legislation extremely vulnerable to challenge as violative of the constitutional guarantees to equal protection, due process and personal privacy.

Please let us know if we can offer any further assistance on this matter.

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Jonathan B. Rubini
Jonathan B. Rubini
Assistant Attorney General

JBR:jb

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JUNEAU, ALASKA 99811
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ANCHORAGE, ALASKA 99509
248-1515

CHAIRMAN
HOUSE JUDICIARY COMMITTEE
MEMBER
HOUSE RESOURCES COMMITTEE
MEMBER
SPECIAL COMMITTEE ON FISHERIES
MEMBER
LEGISLATIVE COUNCIL
MEMBER
ALASKA CODE REVISION COMMISSION

Representative Charlie Bussell
ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

April 26, 1983

Mr. Kenneth L. Brown
1501 West 33rd Avenue
Anchorage, Alaska 99503

Dear Mr. Brown:

Thanks for taking the time to write expressing your interest in House Bill 49, an Act relating to nepotism.

The House Judiciary Committee has had House Bill 49 under consideration during several hearings. I tend to agree with you. I see little or no need for this legislation.

It seems to me that our leaders and supervisors should be able to control the work being done by individuals employed for that purpose.

Thank you again for writing and for becoming a part of the legislative process.

Very truly yours,

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn

JUDICIARY
Referral

REPRESENTATIVE CHARLES BUSSE
HOUSE JUDICIARY COMMITTEE

RE: HB-49 (NEPOTISM)

I VEHEMENTLY OPPOSE THIS BILL, AND I SUGGEST YOU DO ALL IN YOUR POWER TO KILL IT. I WORK FOR DOT/PF — IT IS A LARGE STATE DEPARTMENT WITH A LARGE POOL OF EMPLOYEES — I SUGGEST THAT SOMEONE SEE HOW MANY EMPLOYEES WOULD BE AFFECTED IF THIS IS ENACTED.

WHAT PURPOSE DOES THE BILL SERVE THAT THE EXISING LAW DOES NOT? AS LONG AS A PERSON DOES NOT USE THEIR POSITION OR HAVE ANY INFLUENCE IN THE HIRE OF A RELATIVE, ANY FURTHER RESTRICTIONS ARE AN INVASION OF THEIR CIVIL RIGHTS. AND WHAT DOES MARITAL STATUS HAVE TO DO WITH PROMOTIONS? — WHY NOT PASS A LAW AGAINST CO-HABITATION BETWEEN EMPLOYEES? — IT IS A PROPOSAL THAT WOULD BE A FLAGRANT VIOLATION OF PRIVACY. KILL IT!

KENNETH L. BROWN
1501 W 33RD AVE
ANCHORAGE, ALASKA
99503

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT

Senator Bill Ray, Chairman

Pouch YG
Mail Stop 3123
Juneau, Alaska 99811
(907) 465-4442

JUNEAU, ALASKA

MEMORANDUM

March 2, 1983

TO: House Judiciary Committee

FROM: Teresa B. Cramer
Administrative Assistant

SUBJECT: Committee Substitute for House Bill 49 (State Affairs)
Nepotism in State Government

The existing statute prohibiting nepotism in state employment forbids only the employment of anyone related to the executive head of a department or agency. The statute states in full:

> It is unlawful for a person who is the spouse of or is related by blood within and including the second degree of kindred to the executive head of a principal state department or agency to be employed in that department or agency. AS 39.10.010.

The Personnel Rule is more extensive, prohibiting the employment of relatives of the head of a division or subdivision within that division or subdivision. In addition, the Rule prohibits the employment of two related persons in the same agency unless express approval is given by both the appointing authority and the Director of Personnel. A copy of the Rule is attached.

The scope of the Personnel Rule is broader than the statutory authority granted in AS 39.10.010. The rule-making authority given to the Personnel Board by the State Personnel Act may not extend to nepotism, since the nepotism statute is not part of that Act. The Attorney General has advised the Division of Personnel that the nepotism rule exceeds the scope of statutory authority. A lawsuit has been filed challenging the Department of Transportation's implementation of nepotism prohibitions.

The Blue Ribbon Commission recommends that legislation prohibiting nepotism in state employment be adopted to provide statutory authority for the Personnel Rule. The prohibition against employing relatives does limit the opportunities for some Alaskans to find state jobs. The disadvantage to those people should be weighed against the appearance of impropriety and favoritism which is created by people working for a close relative who is a highly-placed state official.

Bill Analysis

Page 1 Line 9 — The first section of the Committee Substitute is based on the existing statute and Personnel Rule. The first paragraph prohibits the appointment of relatives or the spouse of the commissioner, assistant or deputy commissioner of a department or the relatives or spouse of an executive head of an agency. The reference to AS 39.25.020 means that the prohibition will extend to departments or agencies in all branches of government.

Paragraph (a) differs from the existing Personnel Rule and the statute by including reference to assistant and deputy commissioners and by its application to departments and agencies which are not part of the executive branch of government. It also differs by prohibiting the appointment rather than the employment of relatives. Prohibiting appointments of relatives permits people whose relationship is created (by marriage or adoption) after both are employed within a department to continue their employment even if one is the commissioner, deputy or assistant commissioner. However, the relative could not be promoted while related to the commissioner, since a promotion is an appointment to a higher position.

Line 16 — Paragraph (b) prohibits the appointment of relatives of a division director to a position within that division. Like the first section, this prohibition extends to all branches of government through reference to AS 39.25.020.

Line 21 — Paragraph (c) requires that before two relatives may be employed in the same department, the commissioner must approve the appointment in writing. This prohibition is limited to the executive branch.

Line 27 — The commissioner may not approve an appointment if one of the people will be working in a direct supervisory relationship to the other spouse or relative.

Page 2 Line 1 — The commissioner may not approve an appointment which is prohibited by paragraphs (a) or (b).

Line 3 — Paragraph (d) defines "second degree of kindred" as it is defined in the current Personnel Rule. The definition extends beyond the normal definition by including aunts and uncles,

who are usually defined as being third degree kindred. The definition applies only to the nepotism statute.

"Second degree of kindred" is defined to include full, half, and step relationships. It does not include in-law relationships.

Line 7 The second section of the Committee Substitute provides for an immediate effective date.

TBC:lmk
Attachment

13 09.0 Nepotism

13 09.1 No person may be employed in a position in any agency who is the spouse of or is related by blood or marriage within and including the second degree of kindred to the appointing authority of the agency.

13 09.2 No person may be employed in a position in any division or subdivision of any agency who is the spouse of or is related by blood or marriage within and including the second degree of kindred to the head of the division or subdivision of the agency.

13 09.3 No person may be employed in a position in any agency who is the spouse of or is related by blood or marriage within and including the second degree of kindred to any other employee in the agency without the expressed approval of the appointing authority and the Director.

Alaska State Legislature

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT

Senator Bill Ray, Chairman

Pouch YG
Mail Stop 3123
Juneau, Alaska 99811
(907) 465-4442

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13 09.3 No person may be employed in a position in any agency who is the spouse of or is related by blood or marriage within and including the second degree of kindred to any other employee in the agency without the expressed approval of the appointing authority and the Director.

Sec. 39.10.010. Nepotism prohibited. It is unlawful for a person who is the spouse of or is related by blood within and including the second degree of kindred to the executive head of a principal state department or agency to be employed in that department or agency. (§ 1 ch 98 SLA 1959)

Am. Jur. 2d reference. — 63 Am. Jur. 2d, Public Officers and Employees, § 97.

Chapter 15. Official Bonds.

Section	Section
10. Form, amount, and conditions	60. Number of sureties
20. Obligation and effect	70. Justification of sureties
30. Action on bond	80. Release of sureties
40. Recovery on defective bond	90. Proceedings for release of sureties
50. Procedure when bond becomes insufficient	100. Failure to file new bond

Sec. 39.15.010. Form, amount, and conditions. The official bond of an officer or employee of the state required by statute, or rule or regulation under authority of law shall be in a form joint and several, and made payable to the state in the penal sum and with the conditions required by law. (§ 11-2-1 ACLA 1949)

Cross reference. — As to surety bonds furnished by the principal executive officer of each department and subordinate officials, see AS 39.05.050.

Am. Jur. 2d references. — 12 Am. Jur. 2d, Bonds, § 1 et seq.; 63 Am. Jur. 2d, Public Officers and Employees, §§ 122, 414-482.

Sec. 39.15.020. Obligation and effect. Bonds of state officers and employees are in force and obligatory upon the principal and sureties for breach of the condition of the bond committed during the time the officer or employee discharges the duties of or holds the office or appointment. Each bond is considered in force and obligatory upon the principal and sureties for the faithful discharge of all duties required of the officer or employee by any law enacted after the execution of the bond and this condition shall be set out in the bond. (§ 11-2-2 ACLA 1949)

Sec. 39.15.030. Action on bond. An official bond executed by a state officer or employee is in force and obligatory upon the principal and sureties to and for the state, and for the use and benefit of all persons injured or aggrieved by the wrongful act or default of the officer or employee in his official capacity or employment. A person injured or aggrieved may bring suit on the bond in his name. (§ 11-2-3 ACLA 1949)

I. REQUEST
Bill/Resolution [redacted] HB 49
Title An Act relating to nepotism in State employment
Requested by Abood Date 1-25-83

II. FISCAL DETAIL
Agency Affected Administration
Program Category Affected Centralized Administrative Services
BRU, Program, or Subprogram(s) Affected Labor Relations
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

		FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100	PERSONAL SERVICES						
200	TRAVEL						
300	CONTRACTUAL						
400	COMMODITIES						
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

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

POSITIONS

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

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

No fiscal impact.

Gary E. Stevenson

IV. DATE 1-25-83 PREPARED BY [illegible] P. Clark
AGENCY Division of Labor Relations
PHONE 465-4404
OMB Reviewed By: Liz Blecker

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

[illegible]

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 49, SB 56
Title An Act relating to nepotism in State employment
Requested by House State Affairs Date January 24, 1983

II. FISCAL DETAIL
Agency Affected Administration
Program Category Affected Central Administrative Services
BRU, Program, or Subprogram(s) Affected Personnel
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

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

FUNDING (Thousands of Dollars)

GENERAL FUND	0						
FEDERAL FUNDS							
OTHER (Specify Source)							

POSITIONS

FULL TIME							
PART TIME							
TEMPORARY							

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

No fiscal impact presuming the Executive Branch will not be expected to monitor or enforce this Act in the Legislative or Judicial Branch.

IV. DATE January 24, 1983 PREPARED BY Frank Raye
AGENCY Administrator Personnel
PHONE 465-4430
OMB Reviewed By: Liz Bleckert

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

47D7/0121-7

(7)

COMMITTEE REPORT

HOUSE

2/28

1/18/83

FURTHER: JUDICIARY

Date: 2/25/83

Mr. Speaker:

The Committee on STATE AFFAIRS has had HB 49

"An Act relating to nepotism in state employment; and providing for an effective date"

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for (State Affairs) CSHB 49(SA) [X] same title [ ] new title

and recommends it do pass

[ ] AND attaches a "Letter of Intent"

[ ] New Fiscal Note

[X] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

Mike Hood

John G. Caldwell

Dick Shultz

Walt Furnace

Ronald L. Jensen

MEMBERS HAVING OTHER RECOMMENDATIONS:

W. Mundell - NO REC

Rep. Mike Hood
CHAIRMAN

H 60

HB 49 TITLE & SPONSOR SUMMARY 08:22 3/02/83 PAGE 1 OF 2

AMENDED TITLE:
AN ACT RELATING TO NEPOTISM IN STATE EMPLOYMENT; AND PROVIDING FOR AN EFFECTIVE DATE

PRIME SPONSOR: HOUSE RULES COMMITTEE.
CO-SPONSORS:
CURRENT STATUS: 2/28/83 IN (H) JUDICIARY

HB 49 HOUSE ACTION 08:22 3/02/83 PAGE 2 OF 2

DATE	SEQ	PAGE	LEGISLATIVE ACTION
01/18/83	01	0039	FIRST READING -- COMMITTEE REPORTS
02/28/83	02	0361	S.A. -- CS05, NR01
02/28/83	03	0361	TWO F/NOTES EQUAL ZERO
			JUDICIARY
			RULES
****	**	**	*** *** ***

neo-plas-tic \,nē-ə-'plas-tik\ *adj* [IS*] **1** : of, relating to, or constituting a neoplasm or neoplasia **2** : of or relating to neoplasticism

neo-plas-ti-cism \-'plas-tə-,siz-əm\ *n* [*ne-* + *plasticism*] : the de Stijl art principle in painting — **neo-plas-ti-cist** \-tə-səst\ *n*

Neo-pla-ton-ic \,nē-(,)ō-plə-'tän-ik, -plā-\ *adj* : of or relating to Neoplatonism or Neoplatonists

Neo-pla-to-nism \,nē-ō-'plāt-'n-,iz-əm\ *n* [ISV] **1** : Platonism modified in later antiquity to accord with Aristotelian, post-Aristotelian, and oriental conceptions that conceives of the world as an emanation from the One with whom the soul is capable of being reunited in trance or ecstasy **2** : doctrines similar to ancient Neoplatonism — **Neo-pla-to-nist** \-'n-əst\ *n*

neo-prene \'nē-ə-,prēn\ *n* [*ne-* + chloro*prene*] : a synthetic rubber made by the polymerization of chloroprene and characterized by superior resistance (as to oils)

neo-scho-las-ti-cism \-skə-'las-tə-,siz-əm\ *n* : a contemporary movement among Catholic scholars aiming to restate the methods and teachings of medieval Scholasticism in a manner suited to the intellectual needs of the present

neo-te-nic \,nē-ə-'tē-nik, -'ten-ik\ *adj* [ISV] : of, relating to, or exhibiting neoteny

neo-te-ny \'nē-ə-,tē-nē\ *n* [NL *neotenia*, fr. *ne-* + Gk *teinein* to stretch — more at THIN] **1** : attainment of sexual maturity during the larval stage **2** : retention of some larval or immature characters in adulthood

ne-o-ter-ic \,nē-ə-'ter-ik\ *adj* [LL *neotericus*, fr. L Gk *neōterikos* fr. Gk, youthful, fr. *neōterios* compar. of *neos* new, young — more at NEW] : recent in origin : MODERN

Neo-zo-ic \-'zō-ik\ *adj* : of, relating to, or constituting the entire period from the end of the Mesozoic to the present time

Ne-pali \nə-'pȯl-ē, -'päl-, -'pal-\ *n, pl* **Nepali** *also* **Nepalis** [Hindi *nepālī* of Nepal, fr. Skt *naipālīya*, fr. *Nepāla* Nepal] **1** : the Indic language of Nepal **2** : a native or inhabitant of Nepal — **Nepali** *adj*

ne-pen-the \ə-'pen(t)-thē\ *n* [L *nepenthes*, fr. Gk *nēpenthes*, neut. of *nēpenthēs* banishing pain and sorrow, fr. *nē-* not + *penthos* grief, sorrow; akin to Gk *pathos* suffering — more at NO, PATHOS] **1** : a potion used by the ancients to dull pain and sorrow **2** : something capable of causing oblivion of suffering — **ne-pen-the-an** \-thē-ən\ *adj*

neph-e-line \'nef-ə-,lēn\ *or* **neph-e-lite** \-,līt\ *n* [F *néphéline*, fr. Gk *nephelē* cloud — more at NEBULA] : a hexagonal mineral $KNa_3Al_4Si_4O_{16}$ that is a usu. glassy crystalline silicate of sodium, potassium, and aluminum common in igneous rocks — **neph-e-lin-ic** \,nef-ə-'lin-ik\ *adj*

neph-e-lin-ite \'nef-ə-lə-,nīt\ *n* [ISV] : a silica-deficient igneous rock having nepheline as the predominant mineral

neph-e-lom-e-ter \,nef-ə-'läm-ət-ər\ *n* [Gk *nephelē* cloud + ISV *-meter*] : an instrument for measuring cloudiness; *specif* : an instrument for determining the concentration or particle size of suspensions by means of transmitted or reflected light — **neph-e-lo-met-ric** \,nef-ə-lō-'me-trik\ *adj* — **neph-e-lom-e-try** \-'läm-ə-trē\ *n*

nephew \'nef-(,)yü, *chiefly Brit* 'nev-\ *n* [ME *nevew*, fr. OF *neveu*, fr. L *nepot-*, *nepos* grandson, nephew; akin to OE *nefa* grandson, nephew, Skt *napāt* grandson] **1 a** : a son of one's brother or sister or of one's brother-in-law or sister-in-law **b** : an illegitimate son of an ecclesiastic **2** *obs* : a lineal descendant; *esp* : GRANDSON

neph-o-scope \'nef-ə-,skōp\ *n* [Gk *nephos* cloud + ISV *-scope* — more at NEBULA] : an instrument for observing the direction and velocity of clouds

nephr- *or* **nephro-** *comb form* [NL, fr. Gk, fr. *nephros* — more at NEPHRITIS] : kidney ⟨*nephric*⟩ ⟨*nephrology*⟩

ne-phrid-i-al \nə-'frid-ē-əl\ *adj* : of or relating to a nephridium

ne-phrid-i-um \-ē-əm\ *n, pl* **ne-phrid-ia** \-ē-ə\ [NL] **1** : a tubular glandular excretory organ characteristic of various coelomate invertebrates **2** : a primarily excretory structure; *esp* : NEPHRON

neph-rite \'nef-,rīt\ *n* [G *nephrit*, fr. Gk *nephros*] : a compact tremolite or actinolite that is the less valuable kind of jade formerly worn as a remedy for kidney diseases

ne-phrit-ic \nə-'frit-ik\ *adj* **1** : RENAL **2** : of, relating to, or affected with nephritis

ne-phri-tis \nə-'frī-təs\ *n* [LL, fr. Gk, fr. *nephros* kidney; akin to ME *nere* kidney, Lanuvian *nebrundines* testicles] : acute or chronic inflammation of the kidney caused by infection, degenerative process, or vascular disease

neph-ro-gen-ic \,nef-rə-'jen-ik\ *adj* **1** : originating in the kidney **2** : developing into or producing kidney tissue

neph-ron \'nef-,rän\ *n* [G, fr. Gk *nephros*] : a single excretory unit esp. of the vertebrate kidney

ne-phro-sis \nə-'frō-səs\ *n* [NL] : degeneration of the kidneys chiefly affecting the renal tubules — **ne-phrot-ic** \-'frät-ik\ *adj or n*

ne plus ul-tra \,nē-,pləs-'əl-trə, ,nā-,plüs-'ül-\ *n* [NL, no further] **1** : the highest point capable of being attained : ACME **2** : the most profound degree of a quality or state

nep-o-tism \'nep-ə-,tiz-əm\ *n* [F *népotisme*, fr. It *nepotismo*, fr. *nepote* nephew, fr. L *nepot-*, *nepos* grandson, nephew — more at NEPHEW] : favoritism shown to a relative (as by giving an appointive job) on a basis of relationship

Nep-tune \'nep-,t(y)ün\ *n* [L *Neptunus*] **1 a** : the god of the sea in Roman mythology **b** : OCEAN **2** : the planet eighth in order from the sun — see PLANET table — **Nep-tu-ni-an** \nep-'t(y)ü-nē-ən\ *adj*

nep-tu-ni-um \nep-'t(y)ü-nē-əm\ *n* [NL, fr. ISV *Neptune*] : a radioactive metallic element that is chemically similar to uranium and is obtained in nuclear reactors as a by-product in the production of plutonium — see ELEMENT table

Ne-re-id \'nir-ē-əd\ *n* [L *Nereid-*, *Nereis*, fr. Gk *Nēreid-*, *Nēreis*, fr. *Nēreus* Nereus] : any of the sea nymphs held in Greek mythology to be the daughters of the sea-god Nereus

ne-re-is \'nir-ē-əs\ *n, pl* **ne-re-ides** \nə-'rē-ə-,dēz\ [NL, genus name, fr. L, Nereid] : any of a genus (*Nereis*) of usu. large often

ner-o-li *or* **ner-o-li oil** \'ner-ə-lē\ *n* [F *néroli*, fr. It *neroli*, fr. Anne Marie de La Trémoille, princess of *Nerole fl* 1670] : a fragrant pale yellow essential oil obtained from orange flowers and used esp. in cologne and as a flavoring

Ne-ro-ni-an \ni-'rō-nē-ən\ *or* **Ne-ron-ic** \-'rän-ik\ *adj* [L *Neronianus*, fr. *Neron-*, *Nero* Nero †A.D. 68 Rom emperor] : of, relating to, or characteristic of Nero or his times

nerts \'nərts\ *n pl, slang* : NUTS 5

nerv- *or* **nervi-** *or* **nervo-** *comb form* [ME *nerv-*, fr. L, fr. *nervus*] : NEUR- ⟨*nervine*⟩

ner-va-tion \,nər-'vā-shən\ *n* : an arrangement or system of nerves *also* : VENATION

¹nerve \'nərv\ *n* [L *nervus* sinew, nerve; akin to Gk *neuron* sinew, nerve, *nēn* to spin — more at NEEDLE] **1** : SINEW, TENDON ⟨strain every ~⟩ **2** : one of the filamentous bands of nervous tissue connecting parts of the nervous system with the other organs and conducting nervous impulses **3 a** : NERVE CENTER 2 **b** : power of endurance or control : FORTITUDE, STRENGTH **c** (1) : BOLDNESS, DARING (2) : BRASS, GALL **4 a** : a sore or sensitive point **b** *pl* : nervous disorganization or collapse : HYSTERIA **5** : VEIN 3 **6** : the sensitive pulp of a tooth **syn** see TEMERITY — **nerved** \'nərvd\ *adj*

²nerve *vt* : to give strength or courage to

nerve cell *n* : NEURON; *also* : a nerve cell body exclusive of its processes

nerve center *n* **1** : CENTER 2b **2** : a source of leadership, control, or energy

nerve fiber *n* : AXON, DENDRITE

nerve gas *n* : a war gas damaging esp. to the nervous and respiratory systems

nerve impulse *n* : the progressive alteration in the protoplasm of a nerve fiber that follows stimulation and serves to transmit a record of sensation from a receptor or an instruction to act to an effector

nerve-less \'nərv-ləs\ *adj* **1** : destitute of strength or courage : FEEBLE **2** : exhibiting control or balance : POISED — **nerve-less-ly** *adv* — **nerve-less-ness** *n*

nerve-rack-ing *or* **nerve-wrack-ing** \'nərv-,rak-iŋ\ *adj* : extremely trying on the nerves

nerv-i-ness \'nər-vē-nəs\ *n* : the quality or state of being nervy

ner-vous \'nər-vəs\ *adj* **1** *archaic* : SINEWY, STRONG **2** : marked by strength of thought, feeling, or style : SPIRITED **3** : of, relating to, or composed of neurons **4 a** : of or relating to the nerves; *also* : originating in or affected by the nerves **b** : easily excited or irritated : JUMPY **c** : TIMID, APPREHENSIVE ⟨~ smile⟩ **5 a** : UNEASY, DISTURBING ⟨~ moment⟩ **b** : ERRATIC, UNSTEADY ⟨~ canoe⟩ **syn** see VIGOROUS — **ner-vous-ly** *adv* — **ner-vous-ness** *n*

nervous breakdown *n* **1** : NEURASTHENIA **2** : a case of neurasthenia

nervous Nel-lie \,nər-və-'snel-ē\ *n* [fr. the name *Nellie*] : a timid or ineffectual person

nervous system *n* : the bodily system that in vertebrates is made up of brain and spinal cord, nerves, ganglia, and parts of the receptor organs and that receives and interprets stimuli and transmits impulses to the effector organs

ner-vure \'nər-vyər\ *n* [F, fr. *nerf* sinew, fr. L *nervus*] : VEIN 3

nervy \'nər-vē\ *adj* **1** *archaic* : SINEWY, STRONG **2 a** : showing calm courage : BOLD **b** : marked by effrontery or presumption : BRASH **3** : EXCITABLE, NERVOUS

ne-science \'nesh-(ē-)ən(t)s, 'nēsh-; 'nes-ē-ən(t)s, 'nēs-\ *n* [LL *nescientia*, fr. L *nescient-*, *nescience*, prp. of *nescire* not to know, fr. *ne-* not + *scire* to know — more at NO, SCIENCE] : lack of knowledge or awareness : IGNORANCE — **ne-scient** \-(ē-)ənt\ *adj*

ness \'nes\ *n* [ME *nasse*, fr. OE *næss*; akin to OE *nasu* nose — more at NOSE] : CAPE, PROMONTORY

-ness \nəs\ *n suffix* [ME *-nes*, fr. OE; akin to OHG *-nissa* -ness] : state : condition : quality : degree ⟨good*ness*⟩

Nes-sel-rode \'nes-əl-,rōd\ *n* [Count Karl R. *Nesselrode* †1862 Russ statesman] : a mixture of candied fruits, nuts, and maraschino used in puddings, pies, and ice cream

Nes-sus \'nes-əs\ *n* [L, fr. Gk *Nessos*] : a centaur shot by Hercules with a poisoned arrow for attempting to carry away his wife

¹nest \'nest\ *n* [ME, fr. OE; akin to OHG *nest* nest, L *nidus*] **1 a** : a bed or receptacle prepared by a bird for its eggs and young **b** : a place where eggs are laid and hatched **c** : a receptacle resembling a bird's nest **2 a** : a place of rest, retreat, or lodging **b** : DEN, HANGOUT **3** : the occupants or frequenters of a nest **4 a** : a group of similar things : AGGREGATION **b** : HOTBED 2 **5** : a group of objects made to fit close together or one within another

²nest *vi* **1** : to build or occupy a nest **2** : to fit compactly together or within one another ~ *vt* **1** : to form a nest for **2** : to pack compactly together

nest egg *n* **1** : a natural or artificial egg left in a nest to induce a fowl to continue to lay there **2** : a fund of money accumulated as a reserve

nest-er \'nes-tər\ *n* **1** : one that nests **2** *West* : a homesteader or squatter who takes up open range for a farm

nes-tle \'nes-əl\ *vb* **nes-tling** \'-(ə-)liŋ\ [ME *nestlen*, fr. OE *nestlian*, fr. *nest*] *vi* **1** *archaic* : NEST 1 **2** : to settle snugly or comfortably **3** : to lie in an inconspicuous or sheltered manner ~ *vt* **1** : to settle, shelter, or house in or as if in a nest **2** : to press closely and affectionately — **nes-tler** \-(ə-)lər\ *n*

nest-ling \'nest-liŋ\ *n* : a young bird that has not abandoned the nest

Nes-tor \'nes-tər, -,tȯ(ə)r\ *n* [L, fr. Gk *Nestōr*] **1** : an aged and wise counselor of the Greeks in the Trojan War **2** *often not cap* : one who is a patriarch or leader in his field

Nes-to-ri-an \ne-'stōr-ē-ən, -'stȯr-\ *adj* **1** : of or relating to the doctrine ascribed to Nestorius and ecclesiastically condemned in 431 that divine and human persons remained separate in the incarnate Christ **2** : of or relating to a church separating from Byzantine Christianity after 431, centering in Persia, and surviving among Assyrians — **Nestorian** *n* — **Nes-to-ri-an-ism** \-,iz-əm\ *n*

¹net \'net\ *n* [ME *nett*, fr. OE; akin to OHG *nezzi* net, L *nodus* knot] **1 a** : a meshed fabric twisted, knotted, or woven together at regular

HB

52

Alaska State Legislature

JUNEAU, ALASKA

BLUE RIBBON COMMISSION ON THE
STATE PERSONNEL ACT

Senator Bill Ray, Chairman

Pouch YG
Mail Stop 3123
Juneau, Alaska 99811
(907) 465-4442

MEMORANDUM

January 25, 1983

TO: House Judiciary Committee

FROM: Teresa B. Cramer Teresa B Cramer
Administrative Assistant

SUBJECT: House Bill 52 - Government Interests in Intellectual Work Products Developed at the Expense of the State

The Blue Ribbon Commission is proposing legislation to create and protect the state's interest in inventions, discoveries and creations developed by state employees or contractors during their employment or developed with the use of state facilities or resources.

The commission became interested in the issue when an employee of the Department of Fish and Game testified about employment problems arising from his patenting of a production scale salmon incubator. He had begun developing the incubator before he accepted employment with the state. He began working for the department and continued his project after securing advice from the Department of Law concerning avoiding the potential conflict of interest. His job for Fish and Game was closely related to the development of incubators. The employee stated that he created the incubator on his own time. He then patented it and sold the patent to a private corporation which marketed it. Thereafter, the department was required to pay royalties for use of the process.

The employee has filed several grievances over poor performance evaluations, lost promotional opportunities, and an alleged retaliatory layoff which he believed resulted from his patenting the invention. The department testified that there had been considerable morale problems because other employees believed that they had contributed to the development of the process. They thought it unfair that one individual could secure a patent and potentially profit from an invention in which others had participated and in which the state should have an interest.

The Blue Ribbon Commission is concerned that there is no statute protecting the state's interest in the inventions, discoveries and creations made by its employees or made through the use of its facilities. Legislation for the Alaska Energy Center and the Alaska

Resources Corporation gives each agency the authority to hold patents. Nothing in either chapter spells out how the state acquires that interest.

While the proposed legislation does not specifically address the situation which occurred in the Department of Fish and Game, the commission believes that this system would alleviate similar problems in the future. Information about the number of conflict of interest hearings before the Personnel Board indicates that there will probably be no more than two or three applications of the bill per year.

Bill Analysis

Page 1 Line 10	The first section of the proposed legislation gives the state all right, title and interest in any intellectual work product developed during working hours or with the use of state facilities or by employees whose duties include responsibility for research.
Page 4 Line 12	"Intellectual work product" is broadly defined later in the bill to include anything which is subject to patent, trademark or copyright laws.
Page 2 Line 8	A state employee or person under contract with the state is obliged to disclose the development of an intellectual work product to the Alaska Council on Science and Technology and to assign any interest in it to the state. If requested, the person is required to assist the Council in applying for a trademark, patent or copyright. The commission believes that the Council is the most appropriate existing state agency to administer the program.
Page 2 Line 21	The Council is given broad discretion to decide whether to pursue patenting, trademarking, or copyrighting the invention after consultation with affected state agencies. The Council may waive any state interest in the discovery or may waive all interest but retain a royalty-free license in the intellectual work product so that the state would not have to pay for its use in the future. If the state waives its interest, then the inventor would be able to pursue protection of his own interest in the discovery.
Page 3 Line 3	The proposed legislation gives the Council authority to grant monetary recognition to employees who develop an intellectual work product. The recognition could be in

the form of a cash award, a share in any royalties generated by the invention, or in any other manner the Council found appropriate. Payment would, of course, be subject to legislative appropriation. The commission believes that the Council should have wide discretion in implementing the monetary award system in order to best encourage employees in their work and serve the state's interests.

Page 3
Line 13 — Any disagreements between an employee and the state pertaining to ownership of an intellectual work product would be subject to voluntary arbitration if the parties agreed to be bound by the result. If not, then the disagreement could be settled in court. In addition, the state and the employee or contractor may enter into an employment contract which requires compulsory arbitration.

Page 3
Line 29 — Legislators and employees of the University of Alaska are exempted from the chapter. The University has its own policy on intellectual property developed at its expense which is codified in section 2 of the proposed legislation.

Page 4
Line 5 — The Council is granted rule-making authority for the chapter in accordance with the Administrative Procedure Act.

Page 4
Line 24 — Section 2 of the legislation adds language to codify the University of Alaska's right to intellectual work products developed by its employees.

Page 5
Line 7 — Section 3 requires state employees to waive their interest in intellectual work products developed at the expense of the state as set out in section 1 of the bill. The waiver is not subject to negotiation under the Public Employment Relations Act.

Page 5
Line 29 — Section 4 amends the Alaska Council on Science and Technology statutes to add the powers and responsibilities granted by the proposed legislation.

Page 6
Line 7 — Section 5 repeals the patenting powers currently granted to the Alaska Energy Center and the Alaska Resources Corporation. The commission believes that there should be a single system which applies to all legislative, judicial and executive branch employees of the state.

HB

58

POSITION PAPER

CS for SS for House Bill No. 58 (Judiciary)

"An Act relating to a prisoner serving a sentence in full or having probation revoked for refusing to participate in counseling or treatment required by the court."

Section I

AS 12.55.015 Authorized sentences sets forth the conditions a judge may impose, either singly or in combination, on a defendant at the time of sentencing. Section I of CSSSHB 58 adds an additional condition "(9) provide for a sentence to be served in full by a defendant who refuses to participate in available alcohol, drug, sex offender or other mental health treatment required by the sentencing judge."

Section II

Sec. 12.55.080 Suspension of sentence and probation is amended by giving the court the authority to require available alcohol, drug, sex offender or other mental health treatment as a condition of probation.

Section III

AS 12.55.085 Suspending imposition of sentence (b) is amended by giving probation officers and the court the authority to re-arrest a person on probation status in instances of where the probationer refuses to participate in treatment required by the sentencing judge.

Section IV

AS 12.55.100 Conditions of probation (a) is amended by adding "(5) to participate in available alcohol, drug, sex offender or other mental health treatment" as a condition of probation which may be required.

Section V

AS 12.55.110 Notice and grounds for revocation suspension is amended to include refusal by a defendant to participate in available alcohol, drug, sex offender or other mental health treatment required by the court as a condition of probation as good cause for revocation of a suspended sentence.

Section VI

AS 33.15.080 Granting of parole is amended by including the provision that parole may not be granted to a prisoner who has refused available alcohol, drug, sex offender or other mental health treatment recommended by the sentencing judge.

POSITION PAPER/Department of Health & Social Services

Section VII

AS 33.30.250 Work Furlough (g) as amended would prohibit prisoners who refuse to participate in available alcohol, drug, sex offender or other mental health treatment required by the Division of Adult Corrections from being granted work furlough.

Summary

It is understood that the intent of this legislation is to help assure that offenders participate in treatment programs as determined by the court and professional correctional staff. It is noted that the purpose of section 1 of CS for SS for HB 58 is set out elsewhere in the bill and that the language contained in section 1 is unclear. Because the purpose of section 1 is carried throughout the other sections and is not necessary to ensure the intent of the bill is understood, it is recommended that section 1 be deleted.

Recommended by: Roger C. Endell for
Roger V. Endell, Director
Division of Adult Corrections

Date: April 13, 1983

Approved by: Robert London Smith
Robert London Smith, Ph.D.
Commissioner

Date: 4/14/83

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: CS for SS for HB 58
Title: "..prisoner..refusing..treatment
Sponsor: House Judiciary
Requestor: House Finance

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						
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 13, 1983

Approved by Commissioner: Robert Loeber Jr. M.D. Date: 4/14/83
Department Health & Social Services

Distribution:
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3/f/83

IV. ANALYSIS

The earlier fiscal note prepared on House Bill No. 58 assumed a loss of good time by inmates refusing to participate in counseling or treatment. Subsequent testimony at the House Judiciary Committee indicated that it was not the intent of the legislation to take away good time. This is also the opinion of the Office of the Attorney General. Therefore, enactment of this bill would have no fiscal impact on the Division of Adult Corrections.

From Judiciary Committee-----3/22/83

CSSSHB 58

page 2, delete Sec. 4, lines 12 through 16 (& renumber other sections accordingly)

Page 3, delete word available on line 7

on line 8, delete required by the division of corrections, and replace with

recommended by the sentencing court and made available by the Division of Corrections, or determined appropriate and made available by the Division of Corrections.

SUMMARY OF COMMITTEE SUBSTITUTE FOR SSHB 58

Denial of Parole or Furlough

Section 7 - The Parole Board may not parole a prisoner who refuses to participate in alcohol, drug, sex offender or other mental health treatment.

Section 8 - The Division of Corrections may not furlough a prisoner who refuses to participate in treatment.

Revocation of Suspension of Sentence

Sections 2, 3 and 5 - A judge may impose available alcohol, drug, sex offender or other mental health treatment as a condition of probation.

Section 6 - A sentence will be revoked if the defendant refuses to participate in treatment that is required by the judge.

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 58 Date on Bill: 1/26/83
Title: "An Act requiring certain prisoners to serve a full sentence."
Sponsor: Representative Lindauer
Requestor: House Judiciary Committee

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating				-0-	-0-	-0-		
Total				-0-	-0-	-0-		

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

No information provided.

3. Assumptions:

This bill requires that a prisoner who refuses to participate in court ordered counseling while incarcerated may not be released until he has served his full sentence. The bill is not expected to have an appreciable impact on prosecution functions, as the prisoner will have already been convicted and sentenced by the time the question of his release arises. The bill may require the commitment of additional corrections resources, however.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Richard R. Legus for/ Daniel W. Hickey, Chief Prosecutor Phone: 465-3428
Division: Criminal Division Date: 1/28/83
Approved by Commissioner: Richard R. Legus for/ Norman C. Gorsuch, Attorney General Date: 3/2/83
Department: Department of Law

5. Distribution:
Original to Legislative Finance
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2/15/83

Bill No: House Bill No. 58 Date on Bill: January 18, 1983
Title: "An Act requiring certain prisoners to serve a full sentence."
Sponsor: Reps. Lindauer, Barnes, Abood, Pestinger, and Liska
Requestor:

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
Capital					438.0			
Operating					-0-			73.8
Total			-0-	-0-	438.0	-0-	-0-	73.8

b. Revenues:

Revenue			-0-	-0-	-0-	-0-	-0-	-0-

2. Source of funds to offset fiscal impact of bill:

The funding source to offset the fiscal impact of this bill was not identified by the sponsors.

3. Assumptions:

Statistical data is not available regarding the number of inmates currently refusing to participate in counseling or other programs required or recommended by sentencing judges. It is, therefore, assumed that two (2) inmates per year with an average sentence length of six (6) years would refuse to participate in rehabilitation programs required or recommended by the sentencing judge. A prisoner who must fully serve his/her sentence loses all good time. The amount of good time earned during a six (6) year sentence is one and one-half (1½) years.

The fiscal impact in the State's correctional system would be three (3) additional beds (2 inmates per year for an additional 1½ years). It is assumed these individuals would require a medium security setting. The cost for the beds, which would be needed in

Prepared By: Roger C. Lange Roger C. Lange OMB Phone: 465-3376
Division: Adult Corrections Date: Feb. 28, 1983

Approved by Commissioner: Robert London Smith Date: 3/1/83
Department: SRS

5. Distribution:
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3. Assumptions: (continued)

approximately four years, is calculated to be:

3 x $145,000 = $ 438,000.

Based on an estimate of one staff position for every 2.5 inmates, one additional position would be necessary, beginning in FY 1988. Other costs include primarily food, clothing, and medical care, also beginning in FY 1988

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It does not represent the policy of the Sheffield Administration or the final estimate of fiscal impact.

POSITION PAPER/Department of Health & Social Services

POSITION PAPER
Sponsor Substitute for House Bill No. 58

"An Act requiring certain prisoners to serve a full sentence."

House Bill No. 58 adds a new section to AS 30.30 which states that a prisoner who refuses to participate in counseling or other programs required or recommended by the sentencing judge may not be released, paroled, or furloughed until the prisoner's sentence is fully served.

State Statute 33.30.100 authorizes the Commissioner of Health and Social Services to designate the facility where a sentence is to be served. AS 33.30.120 authorizes the Commissioner to transfer prisoners from one facility to another. This provides Adult Corrections the flexibility to effectively manage prison population and to give consideration to prisoner needs.

It is the goal of Adult Corrections to provide a complete rehabilitative process for every prisoner; however, this is not always possible due to availability of certain types of programs, maintaining the integrity of programs, overcrowding, prisoner motivation, length of sentence, etc. At the time of sentencing, all of those factors are not known. It is the duty of the classification committee to identify and evaluate whatever factors may be relevant in each case; including the recommendations of the court. The placement of a prisoner reflects both the prisoner's needs and the needs/capabilities of the system. It should be recognized that factors of individual and system needs may conflict and that it is the responsibility of adult corrections to determine the most appropriate placement and programming.

Prisoners are classified within 30 days of admission to an institution and within 30 days following sentencing. The purpose of this classification is to work with each prisoner to develop a plan of incarceration to meet the prisoner's needs within the constraints of the correctional system. The classification committee addresses insitutional placement, custody level, housing, work, program (including counseling) and furlough. Each prisoner's classification is reviewed a minimum of once every six months during the sentence.

The classification committee considers the availability of beds in correctional facilities in relationship to the type of security required for each prisoner; i.e. maximum, medium, minimum. The committee also considers the prisoner's program/counseling needs in relationship to the custody level. In some cases, prisoners cannot be placed in correctional facilities where specific program/counseling is available due to their custody level; i.e. a maximum custody prisoner would not be placed in a minimum/medium custody setting because of the risk to staff, prison population, and the public presented by the maximum security prisoner.

POSITION PAPER/Department of Health & Social Services

Alaska's prison system does not have the same programs/counseling available at every institution; therefore, we are required to consider security needs before program/counseling needs.

There are two portions of Sponsor Substitute for House Bill No. 58 which are unclear 1) Sec. 33.30.330(a) does not define "sentence is fully served." There is a question of whether good time would be granted to those who are ordered to serve a sentence in full. The attached fiscal note is based on the assumption that good time would not be awarded. 2) The bill does not provide a mechanism to return a prisoner who refuses to participate in counseling or programs to court.

The enactment of House Bill No. 58 would increase the length of time to be served for the certain group of prisoners. Alaska's already overburdened correctional facilities would have to provide additional and very costly new beds to house the prisoners required to serve their full sentences.

Although the intent of this legislative proposal is both positive and admirable, it is not clear that coercion will cause a cure. In fact, it appears that the cure may cost considerably more than the problem and may be constitutionally questionable mechanism to alleviate a relatively minor problem in terms of the small number of uncooperative prisoners. We believe that the correctional division already possesses sufficient resources to deal with this problem through better and more sound prisoner classification and management.

Because of the reasons stated, the Department of Health and Social Services does not support passage of House Bill No. 58.

Recommended by: for Logan C. Savage
Roger V. Endell, Director
Division of Adult Corrections

Date: March 21, 1983

Approved by: Robert London Smith
Robert London Smith, Ph.D.
Commissioner

Date: 3/22/83

STATE OF ALASKA
FISCAL NOTE

Revision Date Mar. 21, 1983

I. REQUEST

Bill/Resolution No.: SS for HB No. 58
Title: "An Act req. prisoners serve full sentence"
Sponsor: Lindauer
Requestor: Judiciary Committee

II. FISCAL DETAIL

Agency Affected: Health & Social Services
Program Category Affected: Admin. of Just.
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						55.5
200 TRAVEL						
300 CONTRACTUAL						6.8
400 COMMODITIES						11.1
500 EQUIPMENT						
600 LAND & STRUCTURES			438.0			
700 GRANTS, CLAIMS, ETC						.4
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	73.8
CAPITAL	-0-	-0-	438.0	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	438.0	-0-	-0-	73.8
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	1
PART-TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

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 of the bill.

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 21, 1983

Approved by Commissioner: Robert London Smith — Date: 3/22/83
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

Statistical data is not available regarding the number of inmates currently refusing to participate in to participate in counseling or other programs required or recommended by sentencing judges. It is, therefore, assumed that two (2) inmates per year with an average sentence length of six (6) years would refuse to participate in rehabilitation programs required or recommended by the sentencing judge. A prisoner who must fully serve his/her sentence loses all good time. The amount of good time earned during a six (6) year sentence is one and one-half (½) years.

The fiscal impact in the State's correctional system would be three (3) additional beds (2 inmates per year for an additional 1½ years). It is assumed these individuals would require a medium security setting. It is assumed that the 3 beds will not be needed for 4½ years as that would be the normal release date for the first offenders affected by this legislation.

B. Program Summary

1. Positions

One Correctional Officer II will be needed based on one staff positions for every 2½ beds in the correctional system. It is estimated the cost for this position, including overtime and shift differential, for FY 1988 will be $55,500.

2. Other Expenditures - FY 1988

a. Contractual Services - $6,800 is estimated to pay for medical services based on FY 1984 estimates of $1,800 per inmate per year.
b. Commodities - $11,100 will be needed for food, clothing, bedding supplies, paper products, etc. This is based on the FY 1984 estimate of $8.00 per inmate day with 6% annual inflation.
c. Grants - $400 is requested to pay gratuities for inmates working on kitchen or janitorial crews.
d. Capital Expenditures - FY 1985
It is estimated 3 beds will be needed. It is assumed that the capital cost will be $146,000 per bed.
Capital needs = 3 x $146,000
= $438,000

C. Impact - There is no economic or local government impact anticipated if this legislation is enacted.

STATE OF ALASKA
Office of the Governor
Budget & Management Div.

CATEGORY	Admin. of Justice
COVER PROGRAM	
AGENCY	Health & Social Services
DIVISION	Adult Corrections
BUDGET REQUEST UNIT	Adult Confinement
BUDGET COMPONENT	

REVISED PROGRAM
REQUEST FOR NEW POSITION

FY 1988

POSITION TITLE: Correctional Officer II

LOCATION: Not determined

TYPE (FULL OR PART-TIME): PFT

NUMBER REQUESTED: 1

RANGE	BARGAINING UNIT
13	GGU

MONTHLY SALARY	# MONTHS (CY)
2899	12

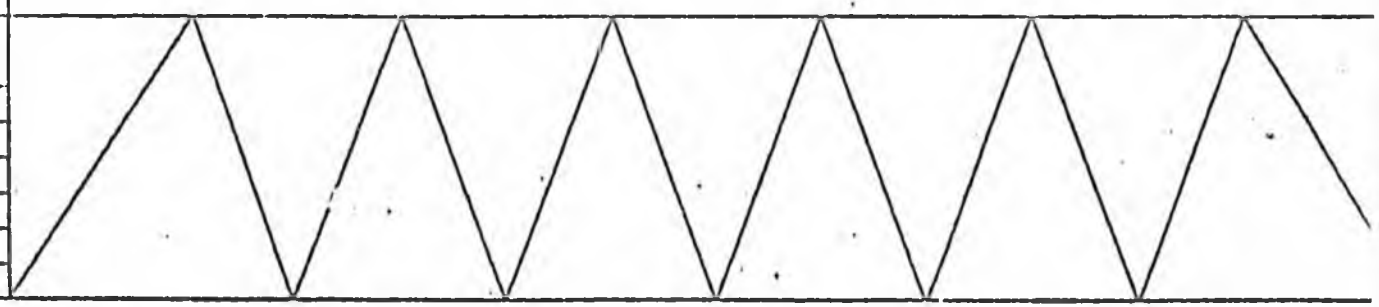
JUSTIFICATION:

To provide security and supervision of inmates in a correctional center. It is estimated that one position is needed for every 2 1/2 inmates. The proposed legislation will result in the need for an estimated 3 additional beds within the corrections system. Therefor, one additional correctional officer will be needed in FY 1988.

01 PERSONAL SERVICES	55,500
02 TRAVEL	
03 CONTRACTUAL	
04 COMMODITIES	
05 EQUIPMENT	
08 OTHER	
TOTAL	55,500
1002 FEDERAL	
1003 G/F MATCH	
1004 GENERAL FUND	55,500
1005 I/A RECEIPTS	
1023 PROGRAM RECEIPTS	

DETAIL OF RELATED EXPENSES

Salary 34,788 + Shift Diff. 652 + Overtime 5,408 + Variable Ben. 8,206 + SBS 2,504 + Peace Officer 3,942



SSHB 58

The Anchorage Times

City / State

- The Blotter
- Obituaries
- Tell it to Bud

Nov. 2
1982

Judges' sentences may be ignored

by Jeff Berliner
Times Writer

Sentencing orders handed down by state judges may be ignored when a convict refuses to take part in rehabilitation programs in jail, according to Commissioner of Health and Social Services Helen Beirne.

Sentencing orders also may be ignored when the length of a sentence is too short to offer much promise for rehabilitation," Beirne wrote in a letter to assistant municipal prosecutor Mike Marsh, who questioned why the Division of Corrections — which is in Beirne's department — is able to ignore judges' recommendations.

Marsh focused his criticism on the case of Amos Singletary, convicted of nine crimes for enticing or dragging young girls into his car. Singletary has a past rape conviction and a sentence which ordered that he be enrolled in a sex offender program in prison.

Singletary was never enrolled in such a program following his Feb. 19 sentencing, and District Court Judge John Mason released him after he had served 6½ months of a one-year sentence. Singletary was placed on probation and ordered to get professional counseling outside since he wasn't getting it in jail.

Two weeks after his release, Singletary was picked up for violating his probation by returning to a home where two of his earlier victims lived. Mason sentenced Singletary to another year in jail on Oct. 13, and again ordered that Singletary be placed in a prison sex offender treatment program.

Beirne said she had a staff member contact Singletary in jail, and that "Mr. Singletary continued to take the position that he is not guilty and that he does not wish to participate in sex offender treatment."

Singletary did not deny his guilt in court. And Marsh said prosecutors dropped eight other enticement charges in exchange for Singletary's accepting the evidence against him.

Mason had sentenced Singletary to a year in jail in February. In her letter, Beirne reported Singletary's projected release date as July 6.

Because the sex offender program "is of a long-term nature," Beirne said there was no point in enrolling Singletary.

But according to Marsh, Singletary had 5½ months left to serve as of July 6.

"It would not be realistic to treat an individual over a period of less than a year," Beirne wrote. Marsh, attributing that judgment to a staff psychiatrist.

Mason last month sentenced Singletary to another year in jail, and for the second time ordered that he be enrolled in the sex offender rehabilitation program.

Although the second one-year sentence came on Oct. 13, Beirne said Singletary's release date has been set for April 30.

Beirne, quoting another psychiatrist, wrote Marsh that "chronic offenders such as Mr. Singletary are not very amenable to treatment, and that an absolute minimum of nine months in treatment would be necessary to offer the slightest hope of having an effect on his behavior."

DeM
senter

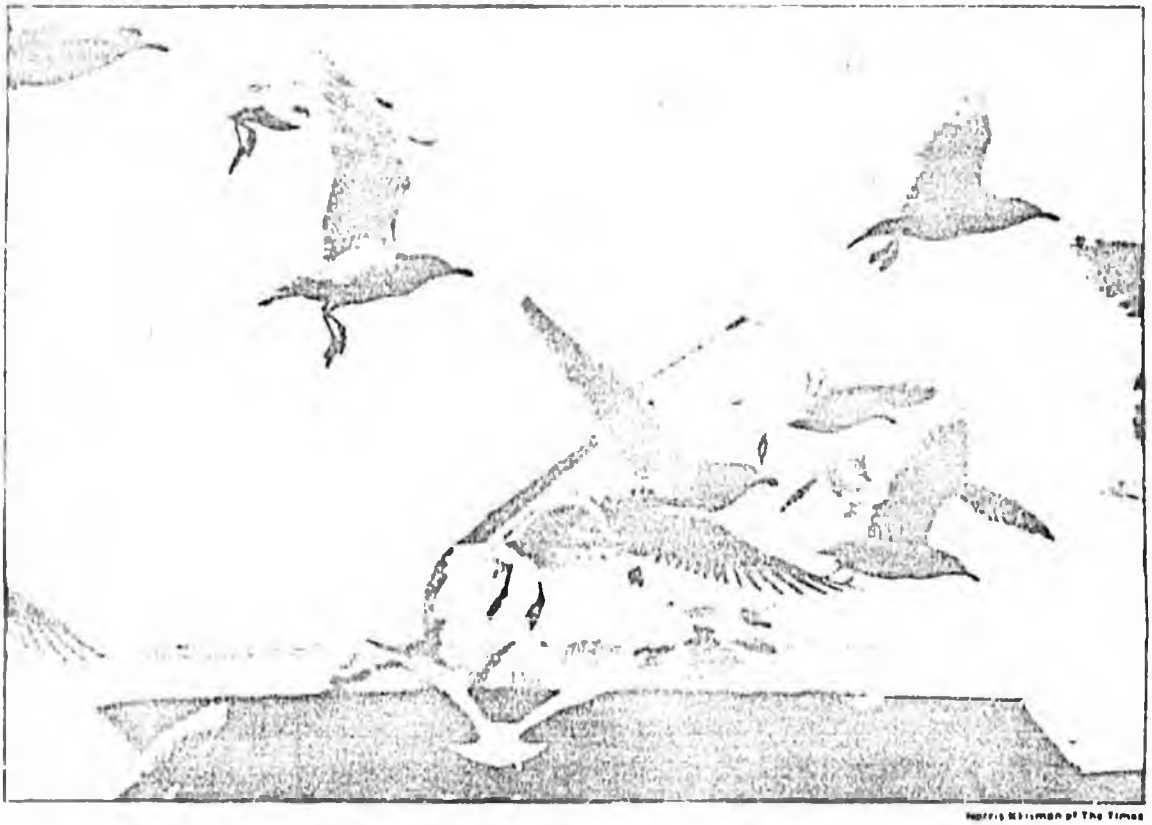
Convicted perjurer Mic
tenced to serve four years
oath in the bribery scan
George Hohman's expulsi
ate.

State superior court
handed down the sentence
condition of the sentence,
seek drug counseling.

The 35-year old DeMan
15 of seven counts of perjur

Carlson sentenced De
each count. But the sent
which means DeMan will s
years in jail.

Canadair salesman Sig
used DeMan as a go-betw
into securing state funds fo
aircraft from Canadair



Times Staff Photo by Jim Lehman

INTO WILD BLUE GANDER

Waterfront gulls were sent a-flapping as a low-flying helicopter chased them from their perch near the roof in the background. This photo was taken in Wrangell before the gulls headed south for the winter.

Alaskan c
to be reva

by Jeff Berliner
Times Writer

The state plans to overhaul its court system to simplify civil litigation and to cut the time it takes to get a civil case to trial after it's filed.

Alaska will be the first state in the country to undertake a project of this magnitude. The doors of the court system will be opened to experts from the National Center for State Courts in January.

State Supreme Court Chief Justice Edmund Burke will appoint a task force to work with the center's consultants.

The \$450,000 project will take a year to complete, but court system administrator Art Snowden said it will reduce costs for litigants and make Alaska's courts among the most efficient in the country.

It now take 18 months for a civil suit to go to trial.

"Although our time frame is one of the best in the country, it can be improved," Snowden said.

"No state has undertaken an examination of its litigation process on the scale here proposed," according to a proposal from the court center's western regional office in Sacramento, Calif. "The results should benefit litigants in Alaska and serve as provocative example to other states."

The project will cover three areas:

- Divorce — A task force will look at

Honored Army officer dies

Maj. Gen. Charles Martin [illegible] commander of the U.S. Army in Alaska, died Saturday of [illegible] in Washington, D.C. He was [illegible].

[illegible] began his Army career at Clemson University. He graduated from the Command and General Staff College and later, the Army War College.

He served on the staff of Headquarters Allied Forces Southern Europe in the early 1970s, and was chief of the plans branch in the United Nations Command in Korea.

Budget issue tops ag

by Beth Barrett
Times Writer

The public will have a second chance Tuesday to testify on Mayor Tony Knowles proposed [illegible] operating budget and his [illegible] million capital and utility spending plan.

The Knowles spending p
the fee schedule for city per
sanitary system inspection
increased from \$50 to \$150.
new permit structure would
with the cost of inspections

Nov. 1, 1983 H. Times 55 AB50

Division ignores judge's order

by Jeff Lerner
Times Writer

An assistant municipal prosecutor may ask a judge to haul Division of Corrections officials into court to explain why they are ignoring a judge's sentence of a convicted sex offender.

Anchorage District Court Judge John Mason echoed the concern expressed by prosecutor Mike Marsh over corrections officials' failure to place Amoe Singletary in a sex offender treatment program.

And a prison official acknowledged that Singletary is not an isolated case — that others sentenced to jail have not been placed in the counseling programs selected by judges as part of their sentences.

"We can't force people to participate in a program," said Hiland Mountain prison superintendent Frank Sauser.

Sauser said that ignoring a judge's sentencing recommendation is not uncommon.

"It occurs not just with this (sex offender program), but with all kinds of treatment," he said.

Sauser said conditions of sentences handed down by judges are ignored when it involves a treatment program in which an inmate refuses to participate.

Mason and Marsh expressed dismay that the court does not have the power to order the Division of Corrections to carry out the sentence Mason imposed on Singletary almost three weeks ago.

This is the second time Mason has sent Singletary to jail and asked that he be enrolled in a sex offender treatment program. The first time the request was ignored, Mason released Singletary so he could get counseling out of jail that was not provided in prison.

One day after the second sentencing, on Oct. 14, Marsh wrote Commissioner of Health and Social Services Helen Beirne asking her to intervene, because corrections responsibilities fall under her department. Copies of the letter also went to Division of Corrections director Robert Hatrack, Sauser, Mason, Gov. Jay Hammond and Attorney General Wilson Condon.

Marsh has not received a response to his letter. A spokesman for Beirne, Judy Shiller, said Beirne would "probably" respond this week. She didn't say what her response would be.

Short of hauling corrections officials into court, Mason said he may first try to get through to them by telephone and in writing.

Mason first sentenced Singletary to jail — recommending his placement in the sex offender program at Hiland Mountain — in February after Singletary pleaded no contest to nine crimes and had eight other charges dropped in exchange for his plea.

Singletary was sentenced to three years in jail — with two years suspended — on seven counts of trying to entice young girls into his car and two counts of assault and battery for trying to force them into his car. Singletary also has a prior rape conviction.

When Mason learned that Singletary was not getting any psychological treatment, he ordered his release on supervised probation so he could get professional counseling.

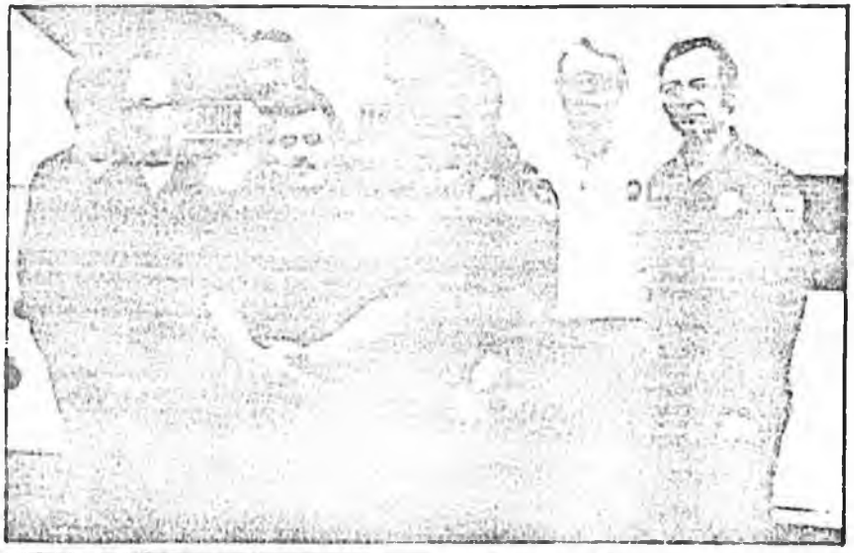
But two weeks after his release, Singletary was picked up outside a foster children's home where two of his former victims lived. A condition of his probation had been that he have no contact with young girls.

In sentencing him to jail again, this time for another year, Mason again stressed that he wanted Singletary enrolled in the sex offender treatment program. Mason threatened to release Singletary again so he could get professional counseling if the state failed to give him the treatment in jail.

Marsh said Singletary is a danger to society and "the number one goal should be protection of society." He has urged Singletary be sent to jail for the full 4½-year maximum term.

Singletary has been in the Third Avenue jail for the three weeks since his sentencing and the Division of Corrections has one more week under the law to classify him and respond to Mason's sentence.

"They may resist that," said Mason, "but there's nothing I can do. That's a corrections problem and corrections has a lot of problems now. We don't have the authority to order them to do it, only to recommend."



RESCUE TEAM

Eight veteran Anchorage firefighters recently completed 40 hours of intensive underwater rescue training for white water, lakes and rivers. Each member of the class already has five years experience in water rescue and recovery. From left, they are firefighters Kent Bohac and Mike House; engineers Paul Burns, Claude Adams, Dean Fortain and Larry Tish; battalion chief and team leader Kent Andersen; and firefighter John Huxley.

State extends funding for quake research

Associated Press

Fairbanks — State officials say they will continue to fund 30 earthquake monitoring stations which were scheduled to close in December because of federal funding cuts.

The seismic stations are one of six University of Alaska projects which will get state funding under the Legislature's plan to appropriate state funds to shore up programs affected by the tight federal budget.

The stations are located in the southern Cook Inlet area, monitoring one of the most active earthquake areas in the state.

John Eichelberger, director of the university's Geophysical Institute, said closing the stations would be equivalent to shutting down weather monitoring stations.

The $1,040 grant to continue the [illegible] operations for the next [illegible] months will underwrite [illegible] time, telephone circuits [illegible] transmit data, helicopter [illegible] service the stations and not been found," he said. "If we don't get new money by the first of July, we are right back where we were two weeks ago."

Other state grants for university projects include:

- $150,000 to the School of Mineral Industry for minerals research.
- $40,000 to the Division of Life Sciences for continued research on brucellosis vaccine for controlling disease prevalent among reindeer.
- $35,000 to the Institute of Water Resources for studies of arsenic contamination of groundwater and streams near placer mining operations.
- $5,000 for the Rural Education Health Careers Program.

Anchorage police promote 2 officers

Two Anchorage police corporals — Mark Marsh and Gary Russell — have been promoted to sergeant, according to Police Chief Brian S. Porter.

Marsh, who will be supervisor of the Crisis Intervention Response Team, joined the department in 1971 as a reserve officer.

After becoming a full-time officer in 1972, he worked in the warrants section, the dispatch center, on traffic patrol and trained new recruits. He is now enrolled at Anchorage Community College, where he is studying for a degree in police administration.

Russell will become supervisor of robbery investigations. After joining the department in Ju[illegible]

Troop[illegible]

by Cary Virtue
Times Writer

Alaska is one of the few stat[illegible] which does not have a full-fledg[illegible] crime lab. But Alaska Sta[illegible] Trooper commander Tom Ande[illegible]son hopes to change that.

Anderson will ask Gov. J[illegible] Hammond to set aside $8.1 milli[illegible] in his proposed 1983-84 budget [illegible] build a fully equipped crime l[illegible] However, Anderson said it will [illegible] up to the new governor whether [illegible] submit it to the legislature.

"In this day and age of mode[illegible] scientific progress, it's becom[illegible] more and more difficult to effe[illegible]tively investigate a case with[illegible] strong support from a crime la[illegible] Anderson said. "We just [illegible] hardly operate without it."

State law enforcement agenc[illegible] here now send most of their te[illegible]

Court re[illegible]

Times Washington Bureau

Washington — The U.S. [illegible]preme Court ruled against N[illegible] Slope Eskimos today, refusin[illegible] reopen their legal battle aga[illegible] the federal government for all[illegible] damages to their homeland.

The court let stand wit[illegible] comment a U.S. Court of C[illegible] decision that denied compens[illegible] to Inupiat Eskimos for dam[illegible]

Subsiste[illegible] spark c[illegible]

by A.J. McClanahan
Times Writer

Newspaper ads in favor [illegible] subsistence priority repeal [illegible]tive, which depict dozens of w[illegible] heads, are an "intentional m[illegible]resentation" of the facts, say [illegible]nents of the ballot measure.

The actual photograph[illegible] gests waste," said Jane A[illegible] spokeswoman for the group [illegible]ing the repeal initiative, Al[illegible] for Sensible Fish and Game [illegible]agement.

The photograph is severa[illegible] old, she said, and shows [illegible] heads for an entire village [illegible] before they were distributed [illegible] tagers.

But a spokesman for the [illegible] side, Alaskans for Equal [illegible] and Hunting Rights, defen[illegible] ad.

The repeal effort will st[illegible] clusive subsistence sh[illegible] rights of Alaska marine [illegible] mals," said Sam McDow[illegible] outspoken supporter of spo[illegible]ting rights and a leader in th[illegible] tive drive.

The taking of marine ma[illegible] would not be directly affect[illegible] repeal of state law, becau[illegible] are managed under the [illegible] Marine Mammal Protect[illegible]

Angvik charged that the [illegible] posts that the taking of [illegible] mammals is managed u[illegible] current state priority sub[illegible] law.

"That's erroneous an[illegible] who put it in knew that,"

Collision hal[illegible] high speed c[illegible]

A high-speed chase [illegible] Spenard ended Sunday [illegible]

Alaska Court System
State of Alaska

KARLA L. FORSYTHE
General Counsel

OFFICE OF ADMINISTRATIVE DIRECTOR

303 K Street
Anchorage, AK 99501

M E M O R A N D U M March 2, 1983

To: Representative Charlie Bussell
Chairman, House Judiciary Committee

Representative John Liska
Vice-Chairman, House Judiciary Committee

Representative Joe Hayes
Representative Ramona Barnes
Representative Hugh Malone
Representative Don Clocksin
Representative Ron Wendte

From: Karla L. Forsythe
General Counsel
Alaska Court System

Subject: SSHB 58

Thank you for this opportunity to comment on SSHB 58.

This bill amends existing law to preclude the release, parole or furlough of any prisoner who refuses to participate in programs recommended or required by the court, unless the prisoner at a court hearing shows good cause for failure to participate. The prisoner is entitled to be represented by counsel.

Since the length of prisoners' sentences will be at stake, and since prisoners can be expected to raise the issue of lack of available programs, the bill will result in increased contested hearings. Any new hearings add to the already considerable workload of the courts. Although this bill taken by itself does not require additional manpower, continued caseload increases will require additional judicial resources.

In Anchorage alone, the police force has increased 169% since 1976, from 174 officers covering 31 square miles to 294 officers covering 110 square miles in 1983. DWI arrests have increased by 276% from 1977, from 651 to 1797. Small claims in Anchorage are

up 172% from 1977. Search warrant requests have also increased, up 538% from 1975 (99 search warrants in 1975; 532 in 1982). In-court deputies for the Anchorage district court accrued a total of 787 hours of overtime last year. Alcohol screening statistics point to a 34% increase in new cases since 1977. These cases are a continuing responsibility for the court, because non-compliance affidavits are filed in about 25% of the cases, requiring court hearings and bench warrants.

In general, as legislative action continues to increase penalties, attorneys litigate longer and harder to protect their clients' interest.

The effectiveness of legislation which involves the justice system is directly related to the ability of the courts to process cases efficiently. As with other bills which provide for additional court hearings, the benefits of SSHB 58 should be analyzed in this context.

KLF:smh

Representative John Lindauer
District 10-A
3933 Geneva Place
Anchorage, AK 99508

Alaska State Legislature

House of Representatives

While in Juneau
Pouch V
Juneau, AK 99811
465-3709

Received 1/24/83

1/24/83

January 21, 1983

TO: House Judiciary Committee

FROM: Representative John Lindauer

SUBJECT: House Bill #58: "An Act requiring certain prisoners to serve full sentence."

The purpose of this Act is to motivate convicts to accept counseling or other rehabilitation programs required or recommended by the sentencing judge.

Presently, convicts may refuse to accept counseling or rehabilitation and then may be released early by the Commissioner on the premise that the convict will not be rehabilitated if he or she stays in jail.

Copy to Bill file

HB

60

HB 60--Lindauer--An Act providing or conditional pardon."

1--At first glance, it would seem to fly in the face of Art. XIV, Sec. 1, (But probably doesn't)

U.S. Constitution, where it reads, in part:

> "....No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Arguably, if such a law were tested in Alaska, a pardoned person requested to leave the state could say (1) privileges to stay in Alaska were abridged, (2) did not have the "immunity" of being protected by Alaska laws, or (3) infringements were made on his liberty to remain in the state of his choice and (4) was denied "equal protection" of Alaska laws.

2--Article I, Alaska Constitution, under "inherent Rights" gives citizens the same kind of protection.

Probably similar arguments could be made under Alaska Constitution, and the additional hue and cry that the State cannot make "unjust distinctions between persons." (See Legee v. Martin, 379 P.2d 477(1963)

3--HOWEVER, COUNTERING THAT,

is Art. II, Sec. 21, Executive Clemency, as follows:

> "Subject to procedure prescribed by law, the governor may grant pardons, commutations, and reprieves, and may suspend and remit fines and forfeitures. This power shall not extend to impeachment. A parole system shall be provided by law."

(a) The Legislature has not yet prescribed procedures relative to executive clemency or how it should be carried out. THis measure would be the first, or come closest, to that proposition.

(b)--Obviously, the Governor already has the power to grant pardons. There is no Alaska case law on same and apparently there are no standards prescribed anywhere that the Governor would have to meet.

In other words, "he can do it if he wants to."

(c)--I understand from BIlly Berrier such executive clemency arrangements have been upheld in at least two jurisdictions (but he was unable to give me case law citations and I haven't the hours to research it, yet).

(d)--"Executive clemency", I think, is quite different from a Judge handing down a sentence. In the latter case, to make such a condition as a part of a sentence, the Judge would be dealing with law and very likely would be acting unconstitutionally and the provision probably could be successfully challenged. Action challenging Governors action under this kind of law probably would be unsucessful.

****

Alaska State Legislature

Representative John Lindauer
District 10-A
3933 Geneva Place
Anchorage, AK 99508

While in Juneau
Pouch V
Juneau, AK 99811
465-3709

House of Representatives

March 11, 1983

MEMORANDUM

TO: House Judiciary Committee

FROM: Representative John Lindauer

RE: House Bill #60: "An Act providing for conditional pardon."

The intent of HB 60 is to offer a released prisoner the option of leaving the state of Alaska in exchange for a Governor's conditional pardon.

Recividism is a major problem in Alaska allowing Alaska's released convicts to leave the state would insure that these convicts would not terrorize, rape, burglarize, or assault Alaskans. Hopefully, a new climate and location often closer to the "home" from whence they came, would assist in their rehabilitation.

The transport by the convict would be voluntary. However, should the individual renig on his agreement, he would fall again under the provisions of his parole.

Alaska State Legislature

Representative John Lindauer
District 10-A
3933 Geneva Place
Anchorage, AK 99508

While in Juneau
Pouch V
Juneau, AK 99811
465-3709

House of Representatives

March 11, 1983

MEMORANDUM

TO: House Judiciary Committee

FROM: Representative John Lindauer

RE: House Bill #60: "An Act providing for conditional pardon."

The intent of HB 60 is to offer a released prisoner the option of leaving the state of Alaska in exchange for a Governor's conditional pardon.

Recividism is a major problem in Alaska allowing Alaska's released convicts to leave the state would insure that these convicts would not terrorize, rape, burglarize, or assault Alaskans. Hopefully, a new climate and location often closer to the "home" from whence they came, would assist in their rehabilitation.

The transport by the convict would be voluntary. However, should the individual renig on his agreement, he would fall again under the provisions of his parole.

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: House Bill No. 60
Title: providing for cond. pardon...
Sponsor: Lindauer
Requestor: House Judiciary

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 26, 1983

Approved by Commissioner: Robert Loeber Sewell, Ph.D. Date: 4/28/83
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

Enactment of House Bill No. 60 would not impact the Division of Adult Corrections as offenders receiving conditional would not require supervision.

HB

75

The Anchorage Times

Saturday, February 19, 1983

Exclusionary rule change sought

by Steve Hansen
Times Writer

A Senate resolution aimed at amending the so-called exclusionary rule received a strong endorsement from several prosecutors, law enforcement officials and citizens who testified before a Senate Judiciary Subcommittee public hearing here Friday.

If the resolution receives similar support from at least two-thirds of the state House and Senate, the amendment will appear on the ballot in the 1984 general election.

Under the rule, if a judge decides that evidence has been gathered illegally by law enforcement officials, it is inadmissable in court. And if a defendant is brought to trial based on evidence gathered in an illegal search, the charges can be dismissed.

The exclusionary rule is based primarily on the U.S. Constitution's prohibition of illegal search and seizure by the government. But many states have the same type of prohibition either in their constitutions, or in their statutes.

Opponents of the rule say it often allows criminals to go free on legal technicalities.

The resolution, co-sponsored by Sen. Bill Ray, D-Juneau, and Sen. Fritz Pettyjohn, R-Anchorage, would modify the rule.

Under the provisions of the resolution, even if officers did not follow correct constitutional procedures in gathering evidence, it would be admissible if the state could prove the police acted in "good faith."

Pettyjohn called the resolution "the most significant piece of criminal legislation this legislature will address."

Alaska law currently guarantees the right of citizens to be "secure in their persons, houses and other property, papers, and effects" and against "unreasonable" searches and seizures.

It also states that warrants must be issued based on probable cause, must describe the place to be searched, and the persons or things to be seized.

If the resolution is approved by the legislature and voters, the following amendment will be added:

"A person whose rights under this section are violated has a cause of action for civil damages against the peace officer who violates this section. Evidence seized in violation of this section shall not be suppressed in a criminal prosecution if it is discovered by a peace officer acting in the good-faith belief that the officer's conduct is constitutional and if there is a reasonable basis for that belief."

District Attorney Victor Crumm, Municipal Prosecutor Allen Bailey and U.S. Attorney Michael Spaan were among those who testified in favor of the "good-faith" resolution at Friday hearing.

Sens. Joe Josephson and Pat Rodey, both D-Anchorage, and Pettyjohn hosted the hearing.

Crumm said the charges against some suspects are now being reduced or amended if he thinks the evidence would not be admitted by the court.

Bailey repeated Crumm's statement, adding, "But in my opinion if one rapist walks (away free) then that's too many."

Bailey was making reference to a case he handled in which a conviction against a rapist was thrown out because the evidence was ruled inadmissable.

Spaan said the exclusionary rule should be amended because it "doesn't benefit an innocent party but it benefits the guilty."

He said the alternative to allowing a judge to decide whether evidence was obtained in a "good-faith" mistake was "worth letting a guilty person go unpunished."

After the hearing, Pettyjohn said he felt confident the proposal would receive the required two-thirds majority in both legislative bodies.

"I doubt it will have that much trouble because it is such a common-sense proposition," he said.

And if it goes before the voters?

"I think it will sail," Pettyjohn said.

FBI 5
47

Police support easing evidence regs for court

By CHRIS JARVIS 1/28/83
Empire Staff Reporter

The Board of Directors of the Alaska Peace Officers Association has recommendedeasing the "fruit of the poisoned tree" doctrine, which prohibits admitting evidence in court if it was obtained illegally.

In its annual winter meeting the board unanimously supported a bill introduced by Sen. Fritz Pettyjohn, R-Anch., which would allow evidence to be admitted even if it was obtained illegally if the officer acted in good faith and believed a search was proper.

"It's bad to put a potentially dangerous person back on the street just because of a technical error," said board chairman Warren Suddock.

Suddock is a captain in the Uniformed Field Services Division of the Anchorage Police Department.

If evidence is obtained illegally out of negligence or malice, however, the officer should be liable for criminal, civil or internal discipline, Suddock said.

Lawmakers should also make assaulting a police officer and causing injury that requires minor medical treatment third degree assault, which is a felony, said Suddock. Currently, assaulting a police officer is considered resisting arrest, a misdemeanor.

Suddock also called for clarification of penalties for drunk driving convictions.

"For a myriad of reasons," such as lack of space in the jails, "a lot of people don't pay the penalty," he said.

The Legislature should clarify the law to prevent the "set-up of some ludicrous bookkeeping systems to keep people guessing what three days is," he said, referring to judges who sentence drunk drivers to three days in jail without specifying three 24-hour days.

Southeast judges seem to know three days means 72 hours, Suddock said.

Pettyjohn seeks to tighten state's exclusionary rule

by Hal Spencer
Associated Press

Times 1-25-93

Juneau — An Anchorage police officer spots what he suspects is a getaway car moments after an armed robbery. He stops the vehicle, but its driver flees. The policeman discovers a loaded pistol in a paper bag under the seat.

It is possible, says Sen. Fritz Pettyjohn, that the hypothetical driver, later charged with armed robbery, would "walk free" because the car was searched without a warrant.

It's called the "exclusionary rule," and it's firmly rooted in the U.S. Constitution's Fourth Amendment protections against unreasonable searches and seizures.

Pettyjohn, an Anchorage Republican and former prosecutor, is leading a fight to tighten Alaska's statute on the rule so that often-inadmissable evidence can be used in court.

A portion of the proposal would permit introduction of the evidence "if the prosecution satisfies the judge that the peace officer's conduct was taken in a reasonable, good-faith belief that the conduct was proper and that the evidence discovered should not be kept from the trier of fact, if otherwise admissable, because the conduct resulted in only a technical violation of the defendant's right to be protected from unlawful searches and seizures."

The bill, sponsored by Pettyjohn and three other senators, reached the Senate Judiciary Committee on Monday and was assigned to Pettyjohn, in his capacity as a member of that committee.

The freshman senator said he expects "heat from civil libertarians" on the measure, but is prepared to devote a lot of energy to its passage.

"The result of this (proposal) would be that if an officer makes a good-faith and reasonable effort to comply with the Fourth Amendment, the evidence he obtained in the course of a search or seizure will not be thrown out of court," Pettyjohn said.

The senator said the exclusionary rule seems to come up most often in drug-related cases, "but it's really as most terrible in violent crime cases."

The measure "is in response to grass roots pressure," said Sen. Bill Ray, D-Juneau, Judiciary Committee chairman.

Sen. Patrick Rodey, D-Anchorage, chairman of the Judiciary Committee last year, attended Monday's meeting and said a study of the exclusionary rule by a former state prosecutor will be completed by the first half of February.

The study, performed by Barry Stern, now a professor of law in Boston, will be made available to the committee, he said.

Pettyjohn said he has strong feelings about what he called shackles placed on police officers by the exclusionary rule and he said he is confident the U.S. Supreme Court soon will tighten the rule.

POUCH V
JUNEAU, ALASKA 99811
465-4990

P.O. BOX 4-1325
ANCHORAGE, ALASKA 99509
248-1515

CHAIRMAN
HOUSE JUDICIARY COMMITTEE
MEMBER
HOUSE RESOURCES COMMITTEE

Representative Charlie Bussell

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

February 23, 1983

Juneau Bar Association
P. O. Box No. 1312
Juneau, Alaska 99802

ATTENTION: Ms. Kathy Kolkhorst

SUBJECT: Information Request on Status of HB 75 and SB 49

Dear Ms. Kolkhorst:

Enclosed is a copy of a brief report which was made to me by a House Judiciary staff member who attended the first hearing held on SB 49.

As you can see the three Anchorage Senate attorneys gathered precious little information at their hearing. I also understand the Senate intends little or no further action with the bill at this time.

HB 75 is in the House Judiciary at this time and I plan little effort on it at this time. I prefer to give the Feds time to make some changes.

If you have a chance, please stop by Room No. 124 in the Capitol. You may be interested in our regular hearing schedules.

Regards,

Representative Charlie Bussell
Chairman, Committee on Judiciary

CB:lyn

Received
1/24/83
2-21-83
CB

JUNEAU BAR ASSOCIATION

P.O. Box 1312
Juneau, AK 99802

January 24, 1983

The Honorable Charlie Bussell, Chairman
House Judiciary Committee
Pouch V - Room 126 Capitol
Juneau, Alaska 99811

Dear Representative Bussell:

The Juneau Bar Association at its Friday meeting discussed, for the first time, Senate Bill 49 and House Bill 75 which would limit the application of the exclusionary rule.

The membership was quite interested in gaining more information about the effects of the two bills and directed me to request that your committee schedule the bills for further hearings to permit reflection and comment.

We appreciate your consideration of this request and would ask to be kept informed of scheduled hearings on these bills.

Sincerely,

Kathy Kolkhorst/pc

Kathy Kolkhorst

1,768

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

JUD

FISCAL NOTE

☐ Expenditure Type
☐ Revenue Type

I. REQUEST
Bill/Resolution No. HB 75
Title "An act relating to the exclusionar, rule;..."
Requested by _____ Date _____

II. FISCAL DETAIL
Agency Affected Department of Public Safety
Program Category Affected Administration of Justice
ERU, Program, Or Subprogram(s) Affected Alaska State Troopers
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

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

FUNDING (Thousands of Dollars)

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

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

No fiscal impact is anticipated.

RECEIVED
FEB 4 1983
LEGISLATIVE FINANCE

IV. DATE January 25, 1983 PREPARED BY F. C. Allan F.C.A. Phone 269-5691
DIVISION State Troopers Initials
DEPARTMENT OF PUBLIC SAFETY mlm Initials 1/31

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

33-001 (Rev. 12/80) OMB Reviewed by: Eric Laschever

MSG 83-00002857 PRTY 1 01/20/83 18:39:18 ORIG: LB00 IN= 0010 OUT= 0119
FROM: WALLY IN BETHEL - TO: JUNEAU INFORMATION
TARGET: LJHL SUBJ: P O M

TO: CHAIRMAN, HOUSE JUDICIARY COMMITTEE
CHAIRMAN, SENATE JUDICIARY COMMITTEE

FR: ANGSMAN LAW OFFICES
PETER ERHARDT
PO BOX 758
BETHEL, ALASKA 99559 PHONE: 543-2973

I WOULD LIKE TO SEE A PUBLIC HEARING SCHEDULED ON BOTH HB75 AND SB49. I FEEL THESE ARE VERY IMPORTANT BILLS AND INPUT FROM THE PUBLIC AS WELL AS THE LEGAL COMMUNITY WOULD BE QUITE HELPFUL, BEFORE PASSING THESE BILLS OUT OF COMMITTEE.

THANK YOU FOR YOUR CONSIDERATION.

HB

79

(7)

COMMITTEE REPORT

HOUSE

FURTHER:

1/19/83

Date: 2-9-83

Mr. Speaker:

The Committee on JUDICIARY has had HB 79

An Act repealing peremptory disqualification of a judge and changing Rule 10(a) and Rule (25(d), Rules of Criminal Procedure and Rule 42(c) Rules of Civil Procedure; and providing for an effective date.

under consideration and reports it back as follows:

[X] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

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

and recommends _____

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

[X] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

H 69

F.c 11

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 79
Title "An Act repealing peremptory disqualification of a judge..."
Requested by House Judiciary Committee Date 1/26/83

II. FISCAL DETAIL
Agency Affected Department of Law
Program Category Affected Administration of Justice
BRU, Program, Or Subprogram(s) Affected Prosecution
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

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

Costs that will occur cannot be determined at this time. See analysis below.

FUNDING (Thousands of Dollars)
General Funds costs that will occur cannot be determined at this time.
Please see analysis below.

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

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

Although not quantifiable at this time, this bill has the potential for causing a significant fiscal impact on the Department of Law, the Public Defender and the Court System. The department rarely uses peremptory disqualification and the department's Criminal Division probably does so only 10 or 12 times each year. The problem will arise from the private criminal defense bar which disqualifies some judges 30% or 40% of the time. If the private bar continues to seek this same level disqualification, based on cause, our prosecutors will then have to devote substantial portions of their time participating in a two-tier disqualification hearing process. Without any prior experience to guide us, the department is hesitant to speculate on the actual cost that this bill might cause. The department does believe that this bill will have the effect of hampering its

II. Fiscal Detail

Agency Affected Department of Law

Program Category Affected Administration of Justice

BRU, Program, Or Subprogram(s) Affected Prosecution

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

EXPENDITURES (Thousands of Dollars)

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

Costs that will occur cannot be determined at this time. See analysis below.

FUNDING (Thousands of Dollars)

General Funds costs that will occur cannot be determined at this time. Please see analysis below.

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

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

Although not quantifiable at this time, this bill has the potential for causing a significant fiscal impact on the Department of Law, the Public Defender and the Court System. The department rarely uses peremptory disqualification and the department's Criminal Division probably does so only 10 or 12 times each year. The problem will arise from the private criminal defense bar which disqualifies some judges 30% or 40% of the time. If the private bar continues to seek this same level disqualification, based on cause, our prosecutors will then have to devote substantial portions of their time participating in a two-tier disqualification hearing process. Without any prior experience to guide us, the department is hesitant to speculate on the actual cost that this bill might cause. The department does believe that this bill will have the effect of hampering its

Richard L. Pegues

IV. DATE January 28, 1983 PREPARED BY Richard L. Pegues, Dir. Adm.Svcs.

AGENCY Department of Law

Original: Legislative Finance PHONE 465-3672

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/82)

OMB review by Guy Bell

overall ability to prosecute criminal offenses, by diverting already diminished resources from other matters currently being addressed.

NOTIFICATION OF BILL HEARING

WEEK OF:

BILL #	BILL TITLE	DEPARTMENT	DATE	SPONSOR	DATE
HB 79	Judge & staff Pay	Dept of Law Richard (F.N.)	1/26	Fritz + Liska	

Lawyers' muscle

THE LAWYERS in Homer continue to prevail in the case of the transfer of District Court Judge James Hornaday from their town to Anchorage.

Those lawyers wouldn't try criminal cases before the judge because he was handing out severe punishment for drunken drivers. So many of them boycotted his courtroom that Judge Hornaday had little to do. Anchorage lawyers had to be sent to Homer to handle the load.

Judge Hornaday protested his forced move by appealing it. This week, a memo filed with state and federal court from the attorney of the presiding judge who made the transfer maintains it was done through due process.

The peremptory challenges in Homer have turned out to be a powerful instrument in the lawyers' control over that small community's judicial system. They also have frustrated the efforts of a conscientious judge to control the drunk driving on Alaska's roads and highways.

THE LAW that allows peremptory challenges needs modification so that abuses such as the one in Homer can be avoided. Judges need to be able to concentrate on the business at hand and not be required to concern themselves with lawyers' attitudes.

Working on proposals for such a modification would be a good job for the members of the legislature between the time they adjourn this year and meet again next January.

TIMES 5-20-83

Pre-emption of judges 'disruptive'

by Jeff Berliner
Times Writer

Times 2-6-83

A handful of state judges are "disrupting" the state court system because they are removed from cases so frequently, says state court administrator Art Snowden.

Court records show that one Anchorage judge and five other judges from around the state are excused from cases far more than their colleagues.

Although the current debate over pre-emptions has focused on Homer District Court Judge James Hornaday, he is not the only judge regularly excused from cases by lawyers. There are 42 trial judges in the state, (the eight appellate judges may not be pre-empted), and lawyers routinely excuse six of them.

According to court records, in addition to Hornaday, the judges most regularly bumped from

See Judges, page A-1

Judges

(Continued from page A-1)

cases are Juneau District Court Judge Gerald Williams, Fairbanks District Court Judge Stephen Cline, Anchorage Superior Court Judge Karl Johnstone, Juneau Superior Court Judge Roger Pegues, and Wrangell Superior Court Judge Henry Keene.

By law, attorneys have a right of pre-emption, called peremptory challenge, which means that each side in a case may excuse the judge assigned to that case one time. The parties involved do not have to state the reason. Lawyers have five days from the initiation of a case to file a notice for a change of judge. The legislature is now considering a bill to repeal lawyers' right to pre-empt a judge.

Court officials have called the pre-emption an "administrative nightmare" because of the problems in reassigning judges.

"It is more efficient without it," Snowden said, adding that the court system has not taken a policy on the peremptory challenge and is probably split on the issue.

Snowden called it "a disruption" that costs the state court system an average of $20,000 yearly in extra costs of reassigning cases to other judges.

The biggest expense, Snowden said, is paying travel and expense money to have judges journey to one-judge areas to fill in where the only judge in town has been legally removed from a case.

That has happened so much in Homer that Hornaday has been ordered to pack up, leave town, and don his judicial robes in Anchorage. Even if lawyers pre-empt him there, the reasoning is, there are other judges to fill in. Presiding Judge Mark Rowland ordered Hornaday to move to Anchorage by June 1 to fill a judicial vacancy here.

Hornaday has been pre-empted from about 84 percent of the criminal cases assigned to him. His lawyer, Henry Camarot, claims that Hornaday is pre-empted 8 percent of the time when all his cases are considered.

Cline, Williams and Johnstone are taken off cases up to half the time. All four of the most pre-empted judges have been retained in office by voters in recent elections.

Johnstone, the only Anchorage judge regularly excused, is also the only judge who hears civil cases almost exclusively. The others regularly hear criminal cases, too. Johnstone is pre-empted three times more than all the other Anchorage Superior Court civil judges put together, and his pre-emptions climbed to a high of 20 in December. Judges are assigned between 30 and 40 new cases monthly. Johnstone was pre-empted 153 times in 1982, up from 71 in 1981. And although Johnstone said last summer that his pre-emptions were going down, court records show they are on the rise.

But in Anchorage, the state's biggest judicial district, Johnstone's cases are simply reassigned to another Anchorage judge. That can't be done in Homer, where Hornaday is the only judge. His removal means that court administrators have to send in another judge to hear Hornaday's cases.

Last week the House Judiciary Committee held two days of hearings on the bill to abolish the pre-emption. Lawyers argued against the bill, claiming the pre-emption is used to excuse a judge who may not give their client a "fair shake."

Both defense attorneys and Anchorage municipal prosecutor Allen Bailey argued for keeping pre-emptions around so they have a tool to excuse a judge they think is either too lenient or too harsh when it comes to sentencing.

Judge blames lawyers for high disq

Empire - 2-8-83

Lawyers counter that challenges are needed to guarantee fairness

By CHRIS JARVIS
Empire Staff Reporter

Lawyers, not judges, are to blame for the high frequency with which some judges are disqualified from cases, Juneau District Court Judge Gerald O. Williams said today.

Williams is frequently disqualified from hearing cases because, in his opinion, "Alaska is the most lawyer-whipped state in a lawyer-whipped country."

Williams and Juneau Superior Court Judge Rodger Pegues have been named as two of six Alaska trial judges most frequently disqualified from cases. Pegues is on vacation and was unavailable for comment.

Alaska Court Administrator Art Snowden said the peremptory challenges, which allow lawyers to ask for a different judge without stating a reason, are an "administrative nightmare," noting it costs the state an estimated $30,000 a year to fly judges into a jurisdiction to hear a case.

Williams, a former Alaska State Trooper, said members of the bench should not be blamed.

Williams said it is his responsibility to make sure a person accused of a crime is brought to trial within 120 days of his arrest, he said. He thinks peremptory challenges are often used to prolong the time before trial.

Lawyers generally disagree.

"I don't know of any attorney" who uses peremptory challenges only to prolong

...qualification rate

cases, said lawyer Richard Burnham.

According to current rules, an attorney on either side of a case can request a judge be disqualified without giving a reason.

Requiring attorneys to say why a judge should be disqualified would present problems if a judge is not disqualified and the attorney must then argue a case before him, Burnham said.

Although acknowledging it costs money to fly a judge to hear the cases of a disqualifed judge, Burnham said there are other solutions to the problem. For example, he said, a superior court judge could hear district court cases or, if that is not possible, another district judge could be hired.

"It doesn't seem to me the goal of the judicial system is to run cheaply. It's to give people their day in court," Burnham said.

Williams, however, said if a case is prolonged long enough; eventually a case

Continued on Page 2

Judge...

Continued from Page 1

could be dismissed because the time limit for trial has been passed.

Admitting he is sometimes curt when on the bench, Williams said he finds it difficult to "put someone in jail in a nice way."

He defended his record, saying he treats everyone who is convicted in his court in the same way.

"I've still got friends who are mad at me (for sentencing them to jail), but it goes with the turf," he said.

"I admit I'm old fashioned," Williams said. He seldom likes to grant delays in court proceedings because cases often end up dismissed when delayed too long, he said.

Peremptory challenges are often used by attorneys in a "tactical and strategic" manner, Williams said.

Of defense attorneys, Williams said, "It is in their interest to prolong to avoid a trial."

However, it is not always in the best interest of the defendent, Williams said. Peremptory challenges and continuances might result in an attorney's client staying in jail, if not able to make bail, he said.

It is the court's responsibility to assure efficiency in the system especially with criminal case loads in Juneau almost doubling in four years, he said.

Sometimes 30 to 60 days will have elapsed days since a person's arrest before making the first court appearance. That leaves as few as 60 days before the case may go to trial, Williams said, noting motions for continuances, if granted, could extend beyond the 120 day limit.

Although some people who see Williams on the bench for the first time might see him as "a combination of Attila the Hun and Genghis Kahn," he said it is because his experience has taught him he must be absolute when passing judgement.

"I may appear curt in court but I've learned through experience that you've got to do it," he said.

Christian Ministers Association of Kachemak Bay
P.O. Box 2018
Homer, Alaska 99603

December 9, 1982

Judge Mark C. Rowland
303 K Street, Courtroom D
Anchorage, AK 99501

Dear Judge Rowland,

Your office and the judicial system are held in high regard by us and our children. We value justice as one of the key ingredients in our democratic way of life. We regularly instruct our children to respect the law and to deal in a just way with their companions and fellow citizens.

In this context we cannot understand why you should order Homer District Court Judge James Hornaday transfered to Anchorage against his will and against the overwhelming wishes of our community. As we understand, there is no precedence for this.

Therefore, we ask — for justice sake — that Judge Hornaday be retained as our District Court Judge. Secondly, you should know that we wholeheartedly endorse the policies of Judge Hornaday in sentencing DWI offenders. Finally, we request that the whole peremption policy be reviewed in light of these circumstances.

A judge serves his community in an exceptional manner. His policies are supported by the people he serves. He is an outstanding example for our children. Yet, he is transfered against his will. That seems a strange reward — even stranger justice.

Speaking for the Christian Ministers Association, I am

Sincerely yours,

J Schmidt

The Rev. John D. Schmidt, President
235-7600

cc: Chief Justice Edmond Burke

COMMUNITY MENTAL HEALTH CENTER

Box 2274
Homer, Alaska 99603-2274
(907) 235- 7701

RESOLUTION

SOUTH PENINSULA MENTAL HEALTH ASSOCIATION, INC.

December 11, 1982

Whereas, Judge James Hornaday has proven to be an effective and competent District Court Judge serving the Homer Court, and

Whereas, Judge Hornaday was overwhelming endorsed by the residents of his jurisdiction during the recent election, and

Whereas, the right of the State Judicial system to move a Judge without public hearing or other procedural considerations is currently being questioned,

Be it hereby resolved that the South Peninsula Mental Health Association requests the retention of Judge Hornaday in the Homer District Court, and

Be it further resolved that the judicial pre-emption statutes in Alaska should be thoroughly reviewed and that the procedures for moving a Judge from one jurisdiction to another should be standardized through promulgation of appropriate regulations.

Resolution passed at the Board of Directors meeting on December 11, 1982.

Joe P Aprill

Reverend Joe Aprill, Chairperson

December 6, 1982

Homer Chamber of Commerce

Judge Mark C. Rowland
303 K Street
Courtroom D
Anchorage, AK 99501

Dear Judge Rowland:

The community and surrounding areas of Homer is greatly dismayed to learn of your decision to transfer Judge James C. Hornaday from Homer to Anchorage. We strongly urge your reconsideration in this matter.

Judge Hornaday has been an excellent judicial representative for Homer for many years. His home and family are here. We do not want to lose Judge Hornaday to this area.

This community has steadfastly supported Judge Hornaday's courageous stand against the crime of drunken driving and we wholeheartedly support his sentencing procedures.

Please find attached petitions of support in favor of Hornaday being retained as District Judge in this area.

Sincerely,

HOMER CHAMBER OF COMMERCE

Jim Daily,
President

JD:lag
Enclosures

cc: Governor Bill Sheffield
Judge Edmond Burke
Homer City Council
Kenai Peninsula Borough Assembly
Rep. Milo Fritz
Hugh Malone
Sen. Paul Fischer
Don Gilman

Post Office Box 541 • Homer, Alaska 99603

CITY OF HOMER
P.O. BOX 335
HOMER, ALASKA 99603-0335

Box 335
Homer, Alaska 99603

CITY OF HOMER

REPLY TO:

- ☐ City Hall
  Ph. (907) 235-8121
- ☐ Port of Homer
  Ph. (907) 235-8597
- ☐ Harbor Master
  Ph. (907) 235-8959
- ☐ Public Works Dept.
  Ph. (907) 235-8120
- ☐ City Engineer
  Ph. (907) 235-6368

December 6, 1982

The Honorable Mark Rowland
Presiding Judge of the Superior Court
303 "K" Street
Anchorage, AK 99501

Dear Judge Rowland:

We, as a community, strongly oppose the transfer of Judge James Hornaday. Judge Hornaday's stance on drunk driving is looked upon as a favorable public service in the community. Perhaps the laws of pre-emption should be closely scrutinized and amended out of necessity in administering a trial court system.

Jim Hornaday is an active participant in community affairs, an impeccable family man, and contributes strong support to this rural community. The type of program he advocates serves the individual rights of our citizens to travel the streets of Homer with less probability of being harmed by drunk drivers.

As Mayor of Homer, I petition you to cancel the transfer order removing Judge Hornaday from this community as District Court Judge.

Sincerely,

Erle Cooper
Mayor

EC:lcr
CC: Governor Bill Sheffield
Judge Edmond Burke
District 5, Legislative Delegation

CITY OF HOMER
HOMER, ALASKA

RESOLUTION 82-20(S)

A RESOLUTION SUPPORTING A STIFF SENTENCING POLICY FOR DRIVING WHILE INTOXICATED (DWI).

WHEREAS, the absence of sidewalks in Homer requires pedestrians to walk along the traveled ways, subjecting themselves to potential vehicle associated accidents; and,

WHEREAS, studies which have been conducted show that the higher the blood alcohol level, the greater the likelihood of an accident; and,

WHEREAS, there has been an increase in D.W.I. cases of some seventy-seven percent (77%) between 1980 and 1981 in the Homer District Court; and,

WHEREAS, the City Council of the City of Homer wishes to have life, liberty and property protected from potential injury by person(s) who drive while under the influence of alcohol;

NOW THEREFORE, BE IT RESOLVED that the Common Council of the City of Homer, Alaska, supports a stiff sentencing policy for Driving While Intoxicated (DWI).

BE IT FURTHER RESOLVED that copies of this resolution be directed to the State legislators of Alaska.

DATED in Homer, Alaska this 14th day of June, 1982.

CITY OF HOMER

Sam Matthews

Sam Matthews, Mayor Pro tem

ATTEST:

Kathleen F. Herold

Kathleen F. Herold, City Clerk

C. R. BALDWIN
ATTORNEY
P. O. BOX 4210
KENAI, ALASKA 99611
TELEPHONE (907) 283-7167

December 23, 1982

Milo H. Fritz
Box 158
Anchor Point, Alaska 99556

Dear Milo:

This letter is prompted by the article concerning your position on certain legal reforms you have proposed which appears in the December 20 issue of The Clarion.

You were quoted as indicating that you expected the legal profession to oppose your bill removing the right of peremptory challenges. I know of very few attorneys who have ever exercised their right to file a peremptory challenge against a judge. I, myself, have never filed one and I agree that no such right should exist. I have not made a study of other jurisdictions but would be very surprised if the right exists in very many states. Presumably, the law was originally passed by well meaning individuals who enjoy tinkering with the system. I wish you well in pushing the legislation and offer you my support.

I was surprised that you were quoted as indicating your interest in enacting legislation which would impose a limit on attorney's fees in probate matters. Although I do not do any probate work myself at the present time, it has been my experience in the past that after the passage of the Uniform Probate Act and the institution of simplified probate procedures, many attorneys are now charging fees which are lower than they were in the past. In the case of a large estate I would suggest that a fee based upon the percentage of that estate would be unconscionable. From the attorney standpoint, it generally does not cost any more to probate a large estate than to probate a small one. Prior to the passage of the Uniform Probate Act, that was not the case.

Philosophically, I am opposed, as I am sure you are,

to the State interfering in contract relationships between professionals and their clients. I would suggest that a legislature which would concern itself with fees charged by an attorney to his client would also not hesitate in interfering with the fees charged by a physician to his patient. As a practical matter, a client who is overcharged by an attorney presently has recourse to the fee arbitration panel which operates under the auspices of the Alaska Bar Association. In light of the foregoing, I would request that you rethink your position on supporting a limit on attorneys fees.

Thank you for your attention to my comments. I wish you well in Juneau this year.

Very truly yours,

Rick

C. R. BALDWIN

CRB/hs

LAWS OF ALASKA

1967

Source: SB 66 am

Chapter No. 48

AN ACT

Relating to the disqualifications of judicial officers; and providing for an effective date.

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

* Section 1. AS 22.20.020 is repealed and re-enacted to read:

Sec. 22.20.020. DISQUALIFICATION OF JUDICIAL OFFICER FOR CAUSE. (a) A judicial officer may not act as such in a court of which he is a member in an action in which

(1) he is a party or is directly interested;

(2) he was not present and sitting as a member of the court at the hearing of a matter submitted for its decision;

(3) he is a material witness;

(4) he is related to either party by consanguinity or affinity within the third degree;

(5) either party has retained him as their attorney or has been professionally counseled by him in any matter within two years preceding the filing of the action;

(6) the judicial officer feels that, for any reason, he cannot give a fair and impartial decision.

(b) In an action specified in (a)(4) and (5) of this section the disqualification may be waived by the parties and is waived unless a party raises the objection.

(c) If a judicial officer disqualifies himself or

consents to disqualification, the presiding judge of the district shall immediately transfer the action to another judge of that district to which the objections of the parties do not apply or are least applicable and if there be no such judge, then the chief justice of the supreme court shall assign a judge for the hearing or trial of the action. If a judicial officer denies his disqualification the question shall be heard and determined by another judge assigned for the purpose by the presiding judge of the next higher level of courts or, if none, by the other members of the supreme court. The hearing may be ex parte and without notice to the parties or judge.

* Sec. 2. AS 22.20 is amended by adding a new section to read:

Sec. 22.20.022. PREEMPTORY DISQUALIFICATION OF A SUPERIOR COURT JUDGE. (a) If a party or his attorney in a superior court action, civil or criminal, files an affidavit alleging under oath that he believes that he cannot obtain a fair and impartial trial, the presiding judge shall at once, and without requiring proof, assign the action to another judge of that district, or if there be none, then the chief justice of the supreme court shall assign a judge for the hearing or trial of the action. The affidavit shall contain a statement that it is made in good faith and not for the purpose of delay.

(b) No judge or court may punish a person for contempt for making, filing or presenting the affidavit provided for in this section, or a motion founded on the affidavit.

(c) The affidavit shall be filed within five days after the case is at issue upon a question of fact, or within five days after the issue is assigned to a judge, whichever event occurs later, unless good cause is shown for the failure to file it within that time.

(d) No party or his attorney may file more than one affidavit under this section in an action and no more than two affidavits in an action.

* Sec. 3. This Act applies to all actions pending, but not set for trial on the effective date of this Act.

* Sec. 4. This Act takes effect on the day after its passage and approval or on the day it becomes law without approval.

Approved by Governor: March 28, 1967
Actual effective date: March 29, 1967

Appeal from joint judgment.—See Stanley v. Greenberg, 5 Alaska 178.

Am. Jur. reference.—2 Am. Jur., Appeal and Error, § 1 et seq.

Sec. 22.15.250. Disposition of fines. When by law any fees, fines, forfeitures, or penalties are levied and collected by the district magistrate or deputy magistrate, the proceeds and all other money collected shall be accounted for and transmitted to the administrative director of the judicial system for transfer to the general fund of the state except as provided in § 270 of this chapter. (§ 21 ch 184 SLA 1959)

Sec. 22.15.260. Bond. Before entering upon his duties each district magistrate and deputy magistrate shall execute and file with the administrative director a surety bond in form and amount to be determined by rule of the supreme court. The state shall pay for the bond. (§ 22 ch 184 SLA 1959)

Am. Jur. reference.—30A Am. Jur., Judges, § 12.

Sec. 22.15.270. Retention of fines, etc., by political subdivisions. All fines, penalties and forfeitures resulting from violations of ordinances of political subdivisions shall be returned to the political subdivision whose ordinance is involved in the manner provided by rule of the supreme court. The political subdivision shall pay to the state administrative director of the court for transfer to the general fund of the state such sums as shall pay for the judicial services rendered to the political subdivision by the magistrate rendering the services. Fines, penalties and forfeitures imposed after appeals accrue to the state, unless the appeal is prosecuted by the political subdivision. (§ 23 ch 184 SLA 1959)

Chapter 20. Officers and Employees.

Article
1. Judicial Officers (§§ 22.20.010—22.20.030)
2. Attorneys (§§ 22.20.040—22.20.090)
3. Commissioner of Public Safety (§§ 22.20.100—22.20.140)

Article 1. Judicial Officers.

Section
10. Judicial officer defined
20. Disqualification of judicial officer
30. Power of judicial officers

Pre-1967 Law

Sec. 22.20.010. Judicial officer defined. The term "judicial officer" means a supreme court justice, including the chief justice, a judge of the superior court, a district magistrate and a deputy magistrate. (§ 54-2-1 ACLA 1949)

Am. Jur. reference.—14 Am. Jur., Courts, § 22.

Sec. 22.20.020. Disqualification of judicial officer. (a) A judicial officer may not act as such in a court of which he is a member in any of the following cases:

(1) in an action or proceeding to which he is a party or in which he is directly interested;

(2) when he was not present and sitting as a member of the court at the hearing of a matter submitted for its decision;

(3) when he is related to either party by consanguinity or affinity within the third degree;

(4) when he has been attorney in the action or proceeding in question for either party;

(5) when a party, or an attorney for a party to an action or proceeding, civil or criminal, files an affidavit that the judge before whom the action or proceeding is to be tried or heard has a personal bias or prejudice either against him or his attorney or in favor of an opposite party, or attorney for an opposite party, to the suit, and that it is made in good faith and not for the purpose of delay, and the affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed within one day after the action, suit, or proceeding is at issue upon a question of fact, unless good cause is shown for the failure to file it within that time. No party or attorney may file more than one such affidavit in any case. The provisions of this subdivision apply only to the superior court.

(b) In the cases specified in (3) and (4) of this section the disqualification may be waived by the parties and is waived unless a party raises the objection. (§ 54-2-1 ACLA 1949)

Revisor's note.—Also see the Rules of Civil Procedure relating to "Disability of a Judge."

This section contains the only conditions under which the judge should abandon the trial of a cause and send it to another judge. United States v. Pratt, 3 Alaska 400, affirmed in 170 F. 881.

The affidavit must assert facts from which a sane and reasonable mind may infer bias or prejudice. United States v. Pioneer Packing Co., 10 Alaska 70; Graff v. Electrical Enterprises, Inc., 12 Alaska 322.

And is subject to strict construction. — That affidavits of prejudice are to be strictly construed has been held consistently. United States v. Pioneer Packing Co., 10 Alaska 70.

Personal bias must be shown.—The affidavit of prejudice must show that a personal bias exists, and the holding is that judicial bias or rulings of a judge which are the subjects of correction on appeal do not constitute personal bias. United States v. Pioneer Packing Co., 10 Alaska 70.

Filing of affidavit.—The affidavit must be filed within the time specified by statute and the recused judge must determine the question. United States v. Pioneer Packing Co., 10 Alaska 70.

Requires that cause be at issue upon question of fact.—This section specifically requires that the cause be at issue upon a question of fact before the affidavit may be filed. United States v. Pioneer Packing Co., 10 Alaska 70.

When cause is at issue.—A cause is not at issue upon a question of fact until all permissible motions and demurrers have been waived or filed and passed upon, and the proper pleading, setting forth the claims of the respective parties, has been filed. United States v. Pioneer Packing Co., 10 Alaska 70.

Mere assertion of bias insufficient. —A mere assertion of belief that the judge is biased or prejudiced, giving no reasons in its support, does not disqualify the judge under the provisions of this section. Pacific Coal, etc., Co. v. Pioneer Min. Co., 205 F. 577.

It is a mistake to assume that a judge can be ousted from jurisdic-

tion to try a cause upon an allegation of mere bias or prejudice. United States v. Pratt, 3 Alaska 400, affirmed in 170 F. 881.

Attorney may allege prejudice in a respectful manner.—An attorney may in a proper case, in a respectful manner, allege that the judge is prejudiced against his client, and unless the act is done with reckless disregard of truth, or with the express intention to reflect upon the honor and integrity of the judge, it is not a contempt. Tjosevig v. United States, 225 F. 5.

And untrue or excess facts are not proper ground for contempt or criticism.—Where an attorney filed a proper affidavit of prejudice and of interest, if the facts therein stated were untrue, the fact that they were untrue is not a proper basis for adjudging a contempt, nor is the fact that the affidavit contained more than was necessary to accomplish the change of judges a ground for punishment or criticism. Paul v. United States, 36 F. (2d) 639.

Duty of judge not to withdraw from case where affidavit is insufficient.—A judge against whom an insufficient showing for recusation has been made owes it to his oath of office and to the litigant who has invoked the jurisdiction of the court over which he regularly presides not to withdraw from the case, where an insufficient affidavit of prejudice has been filed, however much his personal feelings may incline him to do so. Graff v. Electrical Enterprises, Inc., 12 Alaska 322.

Statements made by the judge in a prior suit involving a different defendant, and in the case at bar, did not show any objectionable attitude on the part of the judge, or any personal bias against the defendant in the case at bar. United States v. Pioneer Packing Co., 10 Alaska 70.

Cited in Stringer v. United States, 16 Alaska 305, 233 F. (2d) 947.

ALR references.—Disqualification of judge by relative's ownership of stock in corporation which is party to action, 8 ALR 295; 110 ALR 472.

State's right to file affidavit disqualifying judge for bias, 115 ALR 866.

Right of party in course of litigation to challenge title or authority of judge, 144 ALR 1207.

Disqualification of judge in pending case as subject to revocation or removal, 162 ALR 641.

Sec. 22.20.030. Power of judicial officers. A judicial officer may

(1) preserve and enforce order in his immediate presence, and in the proceedings before him, when he is engaged in the performance of a duty imposed upon him by law;

(2) compel obedience to his lawful orders, as provided by law;

(3) compel the attendance of persons to testify in a proceeding pending before him in the cases and manner provided by law;

(4) administer oaths to persons, in a proceeding pending before him, and in all other cases where it may be necessary in the exercise of his powers and the performance of his duties;

(5) take and certify the proof and acknowledgment of a conveyance of real property, or any other written instrument authorized or required to be proved or acknowledged;

(6) take and certify the acknowledgment of satisfaction of a judgment in any court;

(7) take and certify an affidavit or deposition to be used in any court of justice or other tribunal of the state. (§§ 54-2-3, 54-2-5, 54-2-6 ACLA 1949)

The power to punish for contempt is the highest exercise of judicial power. United States v. Pratt, 3 Alaska 400, affirmed in 170 F. 881.

It is not an incident to the mere exercise of judicial functions. United

Memorandum

Alaska Court System

TO: Karla Forsythe
General Counsel

DATE : February 2, 1983

FROM: Robert G. Fisher
Fiscal Officer

SUBJECT: Travel Costs - Pre-emptions

The following information is provided in response to your request for information on the cost of travel arising from the pre-emption of judges.

Several problems prevent an accurate reporting of these costs. To begin with, Technical Operations does not accumulate statistics strictly on the number of pre-emptions. Some statistics are available for all the categories of disqualifications, but not all courts are represented. Secondly, the travelling judges do not report the specific reason for travelling to other courts on their reimbursement claims. The result is the court does not have the capability to identify the actual cost of pre-emptive disqualifications.

Despite these problems, all judicial travel claims for the period of 7/1 through 12/31/82 were reviewed. Those claims which appeared to be related to the pre-emption or disqualification of a judge were analyzed further. While this method of estimating costs is not perfect, it provides an approximate cost figure.

The schedule presented below shows the travel costs of providing judicial coverage for disqualifications at various court locations during the six month period ending 12/31/82.

COURT LOCATION	TRAVEL COSTS
Juneau - District Court	$ 2,500
- Superior Court	600
Ketchikan - District Court	1,250
- Superior Court	1,100
Bethel - Trial Courts	3,900
Kenai - Trial Courts	650
Homer - District Court	2,700
TOTAL	$12,700

Note - With per diem for travelling Judges, annual costs would probably be $50,000 or so, according to Art Snowden - JJ Brewer

The approximate annual cost would be $25,400. To obtain estimated costs for individual locations the six month figures should be doubled.

Adm. F-1
Rev. 2-73

TESTIMONY OF ATTORNEY HENRY CAMAROT, ANCHORAGE
February 3, 1983

Gentlemen and (unable to hear the period of 4 log numbers due to static in the teleconference) except for a short period when I left Alaska I practiced in the State of Oregon. I presently represent District Judge James Hornaday in respect to an order that was issued by the Honorable Mark Rowland, presiding Superior Court Judge for the Third Judicial District. In that order, Judge Hornaday had been directed to move from Homer, Alaska, his place of residence for some seven years, to Anchorage, Alaska to permanently fill the office of District Judge in the Anchorage area. I come in favor of repealing the perempt statute. Alternatively I wish to make several other comments and I think they can be interpreted as clear recommendations. The consideration of the perempt statute repeal perhaps can be invaluated against the framework of the true factual situation that currently exists; infact, I got the impression as I was listening to some of the witnesses testify, that this law seems to be directed all towards Judge Hornaday, when I believe the issue is far greater than Judge Hornaday.

Some eight years ago more or less Judge Hornaday gave up a successful 10 year law practice to accept an appointment as the acting district judge in Homer. The condition of his employment at thr time that he moved to Homer. He moved to Homer. The Legislature established a Homer District Judge position. He applied to the judicial council for that office in Homer. His name was forwarded to the Governor for that office and that office began in Homer. He was appointed by the Governor for that specific office. The Judicial council twice recommended him for retention and he has twice been overwhelming retained by the vote in the election of the Third District. More recently, in the election of 1982, more people turned out to testify on his behalf before the judicial council meetings held in Homer than for any other judge in the state. He also passed with the lawyers in the bar poll and received the highest rating of any judge with the Alaska Peace Officers Association.

Judge Hornaday has established deep roots in Homer. His wife, Karen, teaches violin to many children and serves as chairperson on the Homer Parks and Recreation Commission. She serves on many church and civic activities and just recently helped passed the bond issue of the building of the new high school in Homer. His daughter, Mary, is a sophomore
in college and his son, Dan, is a high school sophomore who worked his way up to the staring quarterback on the football team. He also plays on the basketball team. Dan is usually on the honor roll. Their son, Joshua, is in the third grade and is into music, Little League and Cub Scouts. Five year old Matthew has just started kindergarten. The Judge is active in Little League matters, Chamber of Commerce matters and plenty of other activities. When he left the private practice and accepted the appointment as the district judge in Homer, he made substantial financial sacrifices. He was required to sell his home and a commercial building that had been partially set aside as a retirement income. When he moved to Homer, he bought a home there. That was to be his home and that was to be his community for years to come.

We have all heard about how in early 1982, the first part of 1982, Judge Hornaday decided to do something about the drunk driving. He was deeply concerned about this continuing highway travesty, which he was aware resulted in the killing and maiming of over 200,000 Americans a year. It was frustrating to him. Apparently, drunk driving cases constitute over 50% of all the jury trials in the Alaska court system. For many reasons, and because he also serves at times as a coroner and probate judge, because of times when he has come in direct contact with auto crash results, leaving maimed bodies and grieved families or person who have suffered injuries, thereby, felt he had to do

something. He wanted to do it, not by legislative action, but what he wanted to do was in a true effort to be fair, give notice beforehand that persons convicted of a drunk driving in his court would receive a 60 day sentence with 45 suspended and 15 days actually having to be served. Now at the outstead let me point out this is not the maximum sentence, as some people have suggested. The maximum sentence under AS23.35.030 is $1000 or by imprisonment for not more than one year or by both. Now it is not the minimum sentence, which is 72 consecutive hours in the first instance. But what he was really doing, was, he was really giving fair warning beforehand to attorneys and drivers, particularly those consuming alcohol and driving under the influence, that this is what he would do. Now that resulted in an increase in Judge Hornaday being perempted. This is not to say that Judge Hornaday had not been perempted on prior occasions, but this announced policy seemed to have resulted in a definite increase in the peremptions that he experienced prior to the spring of 1982. Let me stop here and note that he was not legislating at that time. He was not attempting to. But what he was doing again just simply identifing the symptom patterns. Now when it was called to his attention that the public statement could not be followed, that he had to consider matters on a case to case basis, he acknowledged that. He publicly recinded the policy and he did sentence on a case-by-case basis. And he did not give 15 days in every insistence. He did go back to the 72 hours, frequently. But the peremptions continued. Continued to the point that Presiding Judge Mark Rowland determined, as he put it, it became administratively a nightmare and was costly to the system. And the system is one of the things I want to talk about.

Now the statistics put together by the court administrator regarding Judge Hornaday and our statistics will be at odds. Truthfully speaking, we don't think that there is comparable statistics that show that one District Judge or Superior Court Judge, particularly in areas where there is only one judge, that experience any more or less peremptions than Judge Hornaday had been experiencing. We don't know to what degree the peremptions compare. But we do know that there are problems and there are serious problems and the problems are going to continue in our opinion with the peremption statute in other areas as they have happened in the past in Wrangell, Petersburg, Ketchikan, Juneau and Kodiak. In any event, Judge Rowland believes that Judge Hornaday's peremptions in Homer were occurring to such a degree that he determined that he had to move Judge Hornaday out of Homer. I don't suggest that Judge Rowland is not acting in good faith. He was very candid when he said that it is the exercising of the peremption by counsel out of the current statute and the resulting costs of bringing in another judge from Anchorage, which is causing him to issue his order. Judge Rowland is attempting to follow obligations imposed on him as the presiding judge to properly administer the court system. And also to be concerned about the costs endowed in his responsibility.

In that regard, as I understand it from Judge Hornaday, Judge Hornaday was advised that he should consider peremtory challenges in sentencing persons before him as a particular consideration. I am sure this is done to avoid having the experse of the cost of having to send another District Judge to Homer when Judge Hornaday was perempted. Chief Justice Burke in a public hearing in Homer indicated perempts had to be considered in sentencing. So, I think we ought to recognize the issue that peremptions affect sentencing, that with the statute as it exists, the system should acccept that the consequences and cost and, threaten, the independence of the judiciary. So it's understood, are we challenging Judge Rowland's order on Judge Hornaday's behalf because I believe that there are serious constitutional and legal arguments on whether he has the authority to take the action he did. But aside from that, and if it be found that Judge Rowland does have the power and authority to remove a District Judge

from his place of residence and the office to which he is assigned, then the problem will still remain. Let's turn for a moment to the defense attorneys or primarily to the ones that are utilizing the perempt statutes.

I have talked with defense attorneys, quite a few of them, and I recognize what they are saying. They can not claim that Judge Hornaday has been more stern in his sentencing practices than other judges. They contend they are under ethical duties to advise the client that he or she has a right to perempt Judge Hornaday. I hear what those defense counselors are saying. But I also know that this constitutes and is just as clear an act as judge-shopping as any other act would be if not for the perempt statute. Even if the attorney contended that he had a ethical responsibility, it's judge shopping. In other instances in my opinion, they are using the perempt for purposes of delay in coming to trial. The delay is always an act that has to do with the defendant because anything can happen between the time of the charge and the actual time of the trial. But what is truly more troubling is, and what must be troubling to an elected official, be he legislator or otherwise, be he judge or otherwise, regarding what the justification might be claimed in respect to the perempt statute, the bottom line is not withstanding thousands of voters particularly those voters in the Homer area voting in favor of the man, Judge Hornaday. There will still be a few members of the bar who are mainly able to sufficiently prevail upon the presiding judge so as to require Judge Hornaday to be removed from one area to another. I don't say they are making personal contact, I say they are doing that through the perempt statute. In my mind as it has already been indicated, the perempt statute and peremption rule interferes with the judicial process under the Constitution and the court responsibility to perform the duties endowed upon them. It also destroys the independence of the judge and to a degree I believe it interferes with the oath of office that each judge takes that he will support the state and federal constitution and will faithfully discharge the duties of his office as a judge of the court to which he is appointed, to the best of his ability. It destroys the independence of the judge. I sincerely believe that it is very wrong to remove a judge who is regarded as judicially competent and I would like to make a note that the major incidents that I have heard in respect to Judge Hornaday has nothing to do with his ability in a civil case, nothing to do with his ability during the course of a trial, presumably it has to do with his sentencing in DUIL cases and some pr' trial motions, other than that attorney after attorney have told me he is a very competent, capable judge. But the clutch of the issue comes down to this, if the peremption statutes are to stay in existance and Judge Rowland's order is to remain in effect, then every judge appointed to a district judge area is subject to be reassigned depending on how his rulings and sentencing practices are viewed by the attorneys. I suggest that the precedent being established here is extreme for the reasons already stated. It should be a matter of a state-wide concern. What happens to the next District Judge that goes to Homer. He accepts that office in the wake of Judge Hornaday's reassignment, if that occurs. He knows that the presiding judge doesn't want to have make another reassignment. He does know that he has to avoid peremptions and to avoid peremptions he obviously must not follow the practices followed by Judge Hornaday. Peremption has an effect on sentencing without a question. The matter of degree perhaps in Homer is a matter of degree anywhere. I know that there are many judges today in Alas who are very concerned about this order. I think it is a matter for new judicial candidates to consider as part of the input as to whether or not they want to become judges. They are invited to place themselves, as now, in front of the judicial council for particular judicial office. They have to realize they maybe reassigned. Against this background I wish to make the following recommendations. I thought a lot about

the perempt statute and I believe that it has one part of it that makes me feel that it should be repealed and its the view of it being unfair.

I submit to you that whether its the filing of an affidavit or a simple notice of a change of judge of Criminal Rule 25 and Civil Rule 43, the accusation is that litigants can not receive a fair and impartial trial. If the judge has no opportunity to defend himself against that charge, although it clearly imputes his integrity. In my opinion the judge, whether it's Judge Hornaday or any other judge is denied due process, he cannot defend his integrity which is so important to a judge. I would suggest in the first inistance, therefore, that the particular AS22.20.022 be repealed.

Then I have an alternative suggestion. I have a lot of respect for my brethren. I see the attorneys here in mass. I've heard them. Accordingly, realistically speaking, that perempt statute cannot be repealed. I would like to give you perhaps a compromise. I would suggest that there would be a statute passed or present statute amended, rejecting the reassignment of any Superior Court or District Judge from the area of his residence to any other location. It is not say that a judge cannot be temporarily assigned, as the Constitution recognizes, and it takes place periodically, so long as there is a time limit on each assignment each year. I think the wholesome affect of this type of law is that if the perempt statute is to be continue as part of the Alaska Judicial processes that it be recognized as part of the overall system, including the cost of reassigning a judge to the area where the peremption right is imposed. It will also reassure other members of the judiciary or future potential members, that have to give that fact their consideration. They are weighing the pros and cons of continuing or becoming a judge.

Another alternative, the second alternative, I would suggest would be given serious consideration, would be to limit the perempt statute to those areas that have more than one judge serving a community, such as Anchorage and Fairbanks, and deny the invoking of the peremptory challenge for no cause where there are single judges, whether they be Superior or District Court Judges in other areas.

I realize that this would not be as popular and be subject to constitutional attack. However, I believe that it could withstand that constitutional attack.

I wish to thank the committee for allowing me to make this presentation. I sincerely hope that reservation in supporting this and that the recommendations maybe of some assistance to the committee. Needless to say, in the final analysis, in the case of Judge Hornaday, that any action taken by the legislature, I sincerely hope, will allow him to stay in Homer. Thank you.

TESTIMONY IN FAVOR OF PASSAGE OF HB 79

THANK YOU, MR. CHAIRMAN.

I AM REP. MILO FRITZ FROM ANCHOR POINT, NEAR HOMER ALASKA.

THE FIRST COURT OF JUSTICE IN ALASKA WAS ESTABLISHED BY THE U.S. IN 1900 UNDER JUDGE JAMES WICKERSHAM IN EAGLE ON THE YUKON RIVER. SINCE THEN, THE COURT SYSTEM HAS GROWN IN SIZE AND COMPLEXITY TO MEET THE CHANGING NEEDS OF THE TIMES AND THE INCREASE IN POPULATION.

GENERALLY SPEAKING, THE LEGAL NEEDS OF THE PEOPLE OF ALASKA, EXCEPTING THE DISSIDENTS AND ECCENTRICS PRESENT IN ANY AGE, WERE ADEQUATELY MET. UNTIL 1967, PEREMPTORY DISQUALIFICATION OF A JUDGE COULD ONLY BE INVOKED FOR CAUSE, THAT IS, FOR A GOOD, TRENCHANT REASON. AND I BELIEVE, MR. CHAIRMAN, THAT NO REASONABLE PERSON CAN OBJECT TO THAT.

IN 1967, ACCORDING TO THE SESSION LAWS OF ALASKA FOR THAT YEAR AND APPEARING IN ALASKA STATUTES, THAT IS THE LAWS OF ALASKA KNOWN AS AS 22.20.022, AN ADDITION WAS MADE, MAKING IT POSSIBLE FOR THE PETITIONER, THAT IS THE LAWYER OR THE CLIENT TO DISQUALIFY A JUDGE WITHOUT PROVIDING ANY REASON WHATSOEVER. AND IT IS THE PURPOSE OF HB 79 TO STRIKE THIS 1967 AMENDMENT TO ALASKA LAW FROM THE BOOKS MAKING PEREMPTORY CHALLENGE OF A JUDGE POSSIBLE ONLY FOR CAUSE, THAT IS, FOR A VALID REASON.

IN THE ELECTION OF NOVEMBER 2, 1982, THE VOTERS IN THE THIRD JUDICIAL DISTRICT VOTED 57,000 TO 38,000 TO RETAIN JUDGE JAMES C. HORNADAY ON THE BENCH. ON THE KENAI PENINSULA, WHERE