

2427

HJ

HB 85

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HB 103

2427

1.	POSITION TITLE Attorney III				RANGE/STEP 22A	BARG. UNIT X	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PPT	STAFF MONTHS 10	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.		

3.	CONTINUATION LEVEL	ADDITION	
4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	3,714/month	37,140
6.	Benefits		5,727
7.	Supplemental Benefits		2,240
8.	Fixed Benefits		2,400
9.	TOTAL PERSONAL SERVICES	01	47,507
10.	Travel	02	5,000
11.	Contractual	03	8,000
12.	Commodities	04	3,500
13.	Equipment	05	1,500
14.	Other		
15.	TOTAL COST		65,507

JUSTIFICATION

This is the second of two attorney positions required by the Department of Law in order to absorb the significant increase in workload which will result from new legislation authorizing the return, within seven days, of items seized during arrests for fish and wildlife violations. Significant amounts of attorney time will be needed to extend seizures to protect evidence and to protect items that would otherwise be removed from the judicial district where the violation occurred.

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	65,507
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR B&M USE ONLY
4A KEY NUMBER _____

13 REQUEST FOR
NEW POSITION

AGENCY DEPARTMENT OF LAW
PROGRAM ADMINISTRATION OF JUSTICE
BRU PROSECUTION
COMPONENT THIRD JUDICIAL DISTRICT

FY 34

Page _____ of _____
Revised Date _____

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

This position is required to provide support for the two new attorney positions. This secretary will be responsible for the preparation of a large volume of court documents generated by the numerous court filings involving fish and wildlife seizures. The allocation of a single secretary to serve two full time attorneys is the minimum amount of support needed to meet the workload anticipated particularly in view of the long distance, or remote nature of many of the violations.

13 REQUEST FOR
NEW POSITION

AGENCY DEPARTMENT OF LAW
PROGRAM ADMINISTRATION OF JUSTICE
BRU PROSECUTION
COMPONENT THIRD JUDICIAL DISTRICT

FY 84

Page _____ of _____

Revised Date _____

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: CSHB 94 (RES) Date on Bill: 2-8-83
 Title: "An Act relating to the seizure of items used in or in aid of fish and game violations."
 Sponsor: Representative Bettisworth
 Requestor: Legislative Budget Review Committee

1. Estimated fiscal impacts on:

a. Expenditures:

RECEIVED
3-4-83

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86
Capital				
Operating	-	173.9	188.6	199.9
Total				

b. Revenues:

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

No information provided

3. ASSUMPTIONS: This bill would have a significant negative impact upon the Department of Law's efforts to prosecute violations of the state fish and game laws. It allows seizure of items used in violations of the law only if the seizure is necessary to preserve items of evidence. A defendant who disagrees with this judgment on the officer's part may be expected to sue to regain possession, and this would have to be litigated. The bill would require the commitment of additional attorney time to attend the hearings which must be held within seven days after charges are filed in order to extend a seizure. All items, even those which are clearly evidentiary in nature, must be returned to the defendant unless the department obtains a court order allowing the police to keep it. This is a change in criminal procedure which is not found in any other area of criminal law; it would significantly impair our ability to prosecute these cases. In situations where there were multiple defendants, one defendant could request and obtain the return of his property, the other defendants could move to dismiss their charges because the state had not retained possession of the evidence.

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: Daniel W. Hickey, Chief Prosecutor

Phone: 465-3428

Division: Department of Law/ Criminal Division

Date: 3-3-83

Approved by Commissioner: Richard L. Bous / Atty General

Date: 3/3/83

Department: Department of Law

5. Distribution:

- Original to Legislative Finance
- Copy to OMB
- Copy to Sponsor
- Copy to Requestor

2/15/83

COMMITTEE REPORT

HOUSE

3/14

(7)

FURTHER: JUDICIARY

1/20/83

Date: February 2, 1983

Mr. Speaker:

The Committee on RESOURCES has had HB 94

"An Act relating to the seizure of items used in or in aid of fish and game violations."

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

- do pass [] do not pass
- [] do pass with attached amendments(s)
- replace with CS for HB 94 (Rev) [] same title [] new title
- and recommends DO PASS
- [] AND attaches a "Letter of Intent" ~~FI~~ Fiscal Note
- [] reports it back without recommendation
- [] referred to the _____ Committee

Sept 24

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS:

SCHULTZ [Signature]

ARSON [Signature]

ISHA [Signature]

BUNDERY [Signature]

LINGSTAD [Signature]

VASKA [Signature] Do Not Pass

GOLL [Signature]

UBALING [Signature]

[Signature]
CHAIRMAN

AMENDED TITLE:

AN ACT RELATING TO THE SEIZURE OF ITEMS USED IN OR IN AID OF FISH AND GAME VIOLATIONS

PRIME SPONSOR: BETTISWORTH.

CO-SPONSORS: GROSSENDORF.

CURRENT STATUS: 3/14/83 IN (H) JUDICIARY

HB 94 DATE	HOUSE SEQ	ACTION PAGE
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LEGISLATIVE ACTION

01/20/83	01	0070
03/14/83	02	0475
03/14/83	03	0475

FIRST READING -- COMMITTEE REPORTS
 RES -- DNP01, CS05, NR02
 RES F/NOTE HSE SUPPL #24
 JUDICIARY
 RULES

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY
OFFICE OF THE COMMISSIONER

POUCH N
JUNEAU, ALASKA 99811
PHONE:

March 30, 1983

465-4322

The Honorable Charlie Bussell
Alaska State Legislature
State Capitol
Pouch V
Juneau, Alaska 99811



Dear Representative Bussell:

The Department of Public Safety is opposed to CSHB94 (RES) as written in its present form. The Department expresses particular concern over the provision in this Bill allowing seized property to be returned seven days after charges for the violation has been filed in court. Under current law, items which are used in violation of fish and game laws may be seized and held until final disposition of the case or until the individual has posted a bond for return of the property. The purpose for seizing the property is not merely to preserve items as evidence, but is also a sanction for the commission of the offense, the prevention of the movement of items such as boats and airplanes out of the jurisdiction, or their transfer to an innocent purchaser. In the past, persons who are under investigation for, or who have been charged with, offenses, have deliberately transferred their interest in items to prevent seizure by the State. The Department feels that returning the property within seven days undermines the purpose for seizing the property as noted above. However, in light of the proposal to provide a time frame in which the seized property can be returned, the Department of Public Safety recommends amending the current language in CS HB 94 (RES) (page 2, line 2) and insert the following

" . . . unless forfeited by the order of the court, shall be returned within 60 days or upon completion of litigation, whichever comes first, unless retention is approved by Court order." The Department feels that the 60 days limit would provide sufficient time to hold seized property and accomplish the purposes for seizure as discussed above.

Questions also arise as to what standards or reference will be acceptable or required in establishing to the courts if an item has an individual value of \$2,500 or more. For example, a hunting rifle may be seized with an apparent value of \$100; however, the same rifle may be worth no less than \$3,000 to its owner because it is an heirloom.

The Department of Public Safety's records indicate that of twenty-five (25) aircraft seized since 1977, twenty-four (24) were seized through the use of the seizure warrants issued by the courts. Eleven (11) of the twenty-five (25) aircraft were eventually forfeited to the State. Of these eleven (11) aircraft, eight (8) had been released back to the owners by posting bonds prior to their forfeiture by the courts.

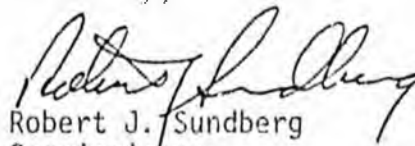
Passage of this Bill, as written, would also have a significant negative impact on the Department of Law's efforts to prosecute violations of the State fish and game laws. Most of the rural bush communities are without any Assistant District Attorneys to provide immediate legal council to Fish & Wildlife Protection officers when needed.

The seizure of evidence or instrumentalities of a violation, and whether it can be used in any case against any defendant is presently regulated quite rigidly by the Constitution of the United States and by the Alaska Rules of Court concerning both criminal and civil procedures. In addition, policies on the seizure of evidence have been established by this Department and are followed by our officers.

As written, this Bill, if passed, would also be in conflict with AS 08.54.210(b) which refers to unlawful acts by big game guides. The conflict would be with a portion of the penalty provision which states "In addition to punishment for a felony, all guns, fishing tackle, boats, aircraft, automobiles or other vehicles, camping gear and other equipment and paraphernalia used in, or in aid of, guiding or transporting activity engaged in during the period of suspension or revocation shall (emphasis added) be confiscated by persons authorized to enforce this chapter."

It has been the priority of the Department of Public Safety to focus its enforcement efforts on violations involving the commercial exploitation of our State's resources. Considering the tremendous value to the State of Alaska of our natural resources and wildlife, the Department of Public Safety strongly believes that any amendments to AS 16.05.190 are not in the State's best interest at this time.

Sincerely,


Robert J. Sundberg
Commissioner

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

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

March 11, 1983

The Honorable John Ringstad, Chairman
House Resources Committee
Pouch V
Juneau, AK 99811

Dear Representative Ringstad:

I am writing in response to Mr. Dave Stancliff's letter to the chief prosecutor inviting comment on the expected impact of CSHB 94 upon the criminal division and the criminal justice system. After analysis of the bill and consultation with other criminal attorneys within the department, I have concluded that the proposed bill is likely to have a negative impact upon efforts to enforce fish and game laws.

Current law provides redress for a person whose property is seized as a result of an illegal search. AS 16.05.190 requires that property be seized under a "valid search", and Rule 37, Alaska Rules of Criminal Procedure, provides that a person who has been subject to an unlawful search and seizure may petition the court for the return of the property and the suppression of its use as evidence.

Although the current statutes do not specifically deal with notice and the right to a hearing to obtain the return of seized property, case law has established that the constitutional right to due process of law requires that the owner of seized property be given immediate notice of any seizure and the opportunity for meaningful hearing. See, for example, State v. Rice, 626 P.2d 104 (Alaska 1981) and F/V American Eagle v. State, 620 P.2d 657 (Alaska 1980).

The American Eagle case involved the seizure of a crab fishing vessel because of the violation of a regulation prohibiting the taking of crab out of season. The court there held that if the seized property was used by its owner in earning a livelihood, notice and an opportunity to contest the state's reasons for seizing the property must follow "within days, if not hours" of the seizure. 620 P.2d at 667. Fish and Wildlife Protection officers and attorneys are well aware of the due process requirements set out in the American Eagle and related cases, and provide immediate notice and an opportunity

Another important reason to seize items, other than to use them as evidence in prosecution, is the deterrence of others. As stated above, forfeiture of large items is generally sought in only most serious fish and game violations. Often these cases involve commercial guides who may violate the law regularly, and who have a commercial motive for their behavior. Only a substantial deterrent will discourage some potential offenders from taking chances and hoping that he will not be caught.

The committee substitute, which adds language requiring an individual item value of \$2,500 or more on line 28 of the bill, is a significant improvement over the original version. Nonetheless, a person who owns a seized item worth over \$2,500 will be able to litigate under CSHB 94, the validity of the decision of the person who seized the item that the seizure was necessary to preserve the item as evidence. This will require the state to attempt to prove the good faith of the person making the seizure, and to present the state's case in advance of the trial in order to convince the court that it is necessary to preserve the item as evidence. As discussed more fully below, this hearing may be held at a time when the state's case is in the early stages of development, when all possible evidence has not yet been obtained.

The proposed language on lines 2 through 4 of page 2 of the bill requires that seized property be returned within seven days after the charges are filed, unless an extension is approved by court order for cause shown. While the language does not explicitly require a hearing for this order, an appellate court will almost certainly interpret the language to require a full hearing on the merits. AS 16.05.190 applies to seizures made without a warrant. If no warrant has been issued, there has not yet been a determination by a neutral judge regarding the existence of probable cause. An ex parte presentation to the court by the state, either through testimony or an affidavit, of the reasons justifying the continued seizure of the item may well violate the due process cause, as an ex parte procedure would deny the defendant a right to be heard on the issue. The American Eagle case makes it clear that the defendant has a right to a hearing on his contention that the state should not continue to hold the seized item.

The proposed language appears to place the burden on the state to demonstrate "cause" in order to justify an extension of the seizure. Thus, the item is automatically returned to the defendant unless the state bears the burden of proof placed upon it. These hearings will ordinarily be taking place during the early stages of the state's case, when all available facts may not yet have been fully developed. Additionally, the standard for "cause" is unclear. Is the only "cause" allowable under the statute the fact that the item will be used as

*The State
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forward*

STATE OF ALASKA THE LEGISLATURE

POUCH V - STATE CAPITOL
JUNEAU ALASKA 99811
907-465-3600

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 10, 1983

SUBJECT: Protection of confiscated property
(Work Order No. 13-0774)

TO: Susan Brody
Acting Director
House Research Agency

FROM: Edward H. Hein
Legislative Counsel

You have asked what legal protections exist in the constitution and the rules of court for owners of property seized in fish and game violation cases. Specifically, this question is asked in light of HB 94, which amends AS 16.05.190. Under that statute, paraphernalia used in violation of AS 16.05 or regulations of the Department of Fish and Game may be seized without a warrant under a valid search. The paraphernalia is subject to forfeiture by court order upon conviction. Otherwise, the paraphernalia must be returned to the owner after completion of the case and payment of any fine imposed.

Under both the federal and Alaska constitutions, no person may be deprived of property without due process of law. United States Constitution, Amendment XIV; Alaska Constitution, Article I, section 7. The Alaska Supreme Court has spelled out what due process requires in the context of a seizure of property used in a fish and game violation. In F/V American Eagle v. State, 620 P.2d 657 (Alaska 1980), the Court said"

The standards of due process under the Alaska and federal constitutions require that a deprivation of property be accompanied by notice and opportunity for hearing at a meaningful time to minimize possible injury. Where property allegedly used in an illicit act is confiscated by government officials pending a forfeiture action, no notice or hearing is necessary prior to the seizure. However, when the seized

CORRECTION

CORRECTION

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

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

March 11, 1983

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Juneau, AK 99811

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Although the current statutes do not specifically deal with notice and the right to a hearing to obtain the return of seized property, case law has established that the constitutional right to due process of law requires that the owner of seized property be given immediate notice of any seizure and the opportunity for meaningful hearing. See, for example, State v. Rice, 626 P.2d 104 (Alaska 1981) and F/V American Eagle v. State, 620 P.2d 657 (Alaska 1980).

The American Eagle case involved the seizure of a crab fishing vessel because of the violation of a regulation prohibiting the taking of crab out of season. The court there held that if the seized property was used by its owner in earning a livelihood, notice and an opportunity to contest the state's reasons for seizing the property must follow "within days, if not hours" of the seizure. 620 P.2d at 667. Fish and Wildlife Protection officers and attorneys are well aware of the due process requirements set out in the American Eagle and related cases, and provide immediate notice and an opportunity

to be heard when property is seized. Thus, a citizen who believes that his property was wrongfully taken, or who has compelling reasons which justify the return of the property, may petition the court for the immediate return of his property. This is commonly done, generally through the posting of a bond in lieu of the seized property.

As compared to the number of criminal actions filed for the violation of fish and game laws, the seizure of large items of property such as boats and airplanes is used infrequently, and generally for only the most serious violations. The vast majority of seizures of vessels are made pursuant to search and seizure warrants issued by neutral magistrates or judges following a determination of sufficient probable cause. Probably the most common situation in which large items of property are seized without warrants are airplanes seized when an officer observes a violation of a fish and game law such as "same day airborne." The conviction rate on these serious fish and game violations is quite high. Additionally, although the state may request the forfeiture of an item following criminal conviction, this motion is not always granted. Any arguments in mitigation which the defendant wishes to make as to why his property should not be forfeited can be made during his sentencing hearing.

The proposed amendments to AS 16.05.190 provide that all items, even minor ones such as guns or traps, may not be seized unless they are necessary as evidence of a violation. Often, of course, they will be needed as evidence. But the state may choose to seize items for other reasons besides use as evidence. For example, if the item has been seized it can not be used in violation of the law during the pendency of the case. The Alaska Supreme Court has recognized this as a valid consideration in seizure cases. See the American Eagle case cited above.

Another important consideration is the prevention of the transfer from the jurisdiction or sale to an innocent purchaser of property used in fish and game violations. It is not uncommon for the owner of an airplane or vessel who discovers that he may have been observed violating the law to immediately remove the plane or boat from the jurisdiction. Planes which were the subject of an ongoing investigation have been sold to innocent purchasers within days of the alleged violation. AS 16.05.195(e) specifically provides that an item subsequently sold to an innocent purchaser in good faith may not be forfeited. Thus, if the violator manages to sell his plane, nets, vessel, etc. the state has no way to regain possession of that item for forfeiture as part of the criminal sentence.

Another important reason to seize items, other than to use them as evidence in prosecution, is the deterrence of others. As stated above, forfeiture of large items is generally sought in only most serious fish and game violations. Often these cases involve commercial guides who may violate the law regularly, and who have a commercial motive for their behavior. Only a substantial deterrent will discourage some potential offenders from taking chances and hoping that he will not be caught.

The committee substitute, which adds language requiring an individual item value of \$2,500 or more on line 28 of the bill, is a significant improvement over the original version. Nonetheless, a person who owns a seized item worth over \$2,500 will be able to litigate under CSHB 94, the validity of the decision of the person who seized the item that the seizure was necessary to preserve the item as evidence. This will require the state to attempt to prove the good faith of the person making the seizure, and to present the state's case in advance of the trial in order to convince the court that it is necessary to preserve the item as evidence. As discussed more fully below, this hearing may be held at a time when the state's case is in the early stages of development, when all possible evidence has not yet been obtained.

The proposed language on lines 2 through 4 of page 2 of the bill requires that seized property be returned within seven days after the charges are filed, unless an extension is approved by court order for cause shown. While the language does not explicitly require a hearing for this order, an appellate court will almost certainly interpret the language to require a full hearing on the merits. AS 16.05.190 applies to seizures made without a warrant. If no warrant has been issued, there has not yet been a determination by a neutral judge regarding the existence of probable cause. An ex parte presentation to the court by the state, either through testimony or an affidavit, of the reasons justifying the continued seizure of the item may well violate the due process cause, as an ex parte procedure would deny the defendant a right to be heard on the issue. The American Eagle case makes it clear that the defendant has a right to a hearing on his contention that the state should not continue to hold the seized item.

The proposed language appears to place the burden on the state to demonstrate "cause" in order to justify an extension of the seizure. Thus, the item is automatically returned to the defendant unless the state bears the burden of proof placed upon it. These hearings will ordinarily be taking place during the early stages of the state's case, when all available facts may not yet have been fully developed. Additionally, the standard for "cause" is unclear. Is the only "cause" allowable under the statute the fact that the item will be used as

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one to
show*

evidence? Or, is a legitimate concern regarding the removal of the item from the court's jurisdiction or its sale to an innocent purchaser sufficient cause to justify the state's retention of the property? If the item's status as evidence is the only permissible reason to continue to hold the item, then the state would be required to release a boat or plane to an owner even if the owner intends to walk out of the courtroom and remove the item from the state.

Finally, the seven day period allowed before a court extension must be obtained is much too short. Many, if not most, seizures of large items used in fish and game violations are made in remote locations of the state. While the officers involved have the authority to file charges immediately, if appropriate, there may well be no prosecutor or assistant attorney general available locally to handle the hearing. Under the language of the statute as currently drawn, the defendant's property is returned to him automatically after seven days, perhaps even if weather precludes the arrival of a judge or district attorney within the seven day period. It should also be noted that, in a felony case, there may be no judicial officer available with a jurisdiction to hear the case. If a defendant has been indicted for the charges, then only a superior court judge has jurisdiction over the case. A local district court judge or a magistrate could not preside over the forfeiture hearing.

Regarding fiscal impact, a preliminary statement of fiscal impact is attached to this letter. Thank you for allowing the opportunity for comment on CSHB 49. Please contact my office if you have any questions.

Sincerely yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

DANIEL W. HICKEY
CHIEF PROSECUTOR

By:

Gayle Horetski
Gayle Horetski
Assistant Attorney General

GH/lb

Attachments

STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU ALASKA 99811
907-465-3600

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

February 10, 1983

SUBJECT: Protection of confiscated property
(Work Order No. 13-0774)

TO: Susan Brody
Acting Director
House Research Agency

FROM: Edward H. Mein
Legislative Counsel

You have asked what legal protections exist in the constitution and the rules of court for owners of property seized in fish and game violation cases. Specifically, this question is asked in light of HB 94, which amends AS 16.05.190. Under that statute, paraphernalia used in violation of AS 16.05 or regulations of the Department of Fish and Game may be seized without a warrant under a valid search. The paraphernalia is subject to forfeiture by court order upon conviction. Otherwise, the paraphernalia must be returned to the owner after completion of the case and payment of any fine imposed.

Under both the federal and Alaska constitutions, no person may be deprived of property without due process of law. United States Constitution, Amendment XIV; Alaska Constitution, Article I, section 7. The Alaska Supreme Court has spelled out what due process requires in the context of a seizure of property used in a fish and game violation. In F/V American Eagle v. State, 620 P.2d 657 (Alaska 1980), the Court said"

The standards of due process under the Alaska and federal constitutions require that a deprivation of property be accompanied by notice and opportunity for hearing at a meaningful time to minimize possible injury. Where property allegedly used in an illicit act is confiscated by government officials pending a forfeiture action, no notice or hearing is necessary prior to the seizure. However, when the seized

~~property is used by its owner in earning a livelihood, notice and an unconditioned opportunity to contest the state's reasons for seizing the property must follow the seizure within days, if not hours, to satisfy due process guarantees even where the government interest in the seizure is urgent.~~ (Citations omitted)..

The Court also said that while an owner of property seized for a fish and game violation may have a right to obtain release of the property by posing an adequate bond, due process does not require that this be an absolute right. "To permit this," the Court said, "would frustrate one purpose of forfeitures, which is to prevent possible use of the property in further illicit acts." 620 P.2d at 668. The Court indicated, however, that if the property owner can prove he or she was unaware that the property was being used for an illegal purpose, was merely negligent in allowing such use, or had done all that could reasonably be expected to prevent such use, due process probably would require release of the property if adequate bond is posted.

The Court noted that the owners of the F/V American Eagle had raised "a substantial question whether the statutory scheme on its face affords adequate procedural due process". The Court did not decide that question, however, because it said the vessel owners were in fact afforded procedural due process. The seizure in that case was subject to a judicially approved warrant and the owners of the vessel were formally notified of the seizure in a timely manner. It is not clear, however, whether under different circumstances the Court might rule that AS 16.05.190 - 16.05.195 are unconstitutional.

The federal and Alaska constitutions also protect persons from unreasonable searches and seizures of their property. United States Constitution, Amendment IV; Alaska Constitution, Article I, section 14. The primary purpose of these provisions is to protect the privacy of individuals from unreasonable intrusion by the government.

Normally, a search and seizure requires a search warrant. Where the search and seizure is incident to a lawful arrest, a search warrant is not required. Such a search, however, must be limited to the discovery of weapons and evidence within the area of the arrestee's immediate control. A warrantless search of a vehicle used in a crime may be made if there is probable cause to believe that the vehicle

Susan Brody
Page 3
February 10, 1983

contains contraband or evidence, and exigent circumstances exist which prevent the vehicle from being seized or otherwise necessitates an immediate search.

AS 16.05.190 specifically requires that a seizure of property used in or in aid of a fish and game violation be pursuant to a valid search. Although the catchline of this section says "Seizure without warrant . . .", the text of the statute is not limited to warrantless searches. The search, with or without a warrant, must be "valid". In this regard the section adds nothing to the constitutional requirements that already exist.

Once property has been seized under AS 16.05.190, the owner has "an immediate and unqualified right to contest the state's justification for the seizure before a judge under Criminal Rule 37(c)". 620 P.2d at 667. Criminal rule 37(c) provides:

(c) A person aggrieved by an unlawful search and seizure may move the court in the judicial district in which the property was seized or the court in which the property may be used for the return of the property and to suppress for use as evidence anything so obtained on the ground that the property was illegally seized.

I hope this adequately answers your question. If you have any further questions, feel free to contact me at your convenience.

EHH:ljb



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

February 16, 1983

MEMORANDUM

TO: Representative John Ringstad
Attn: David Stancliff

FROM: Susan Brody, Director *SB*

RE: Confiscation of Property in Fish and Game Violations
Research Request 83-66

David Stancliff of your staff asked us to identify the protections which currently exist for owners of property seized in fish and game violation cases. Specifically, we were asked to look at legal protections which exist in the State Constitution, the rules of court procedure, and the policies and procedures of the Department of Public Safety.

We asked Ed Hein of the Legal Services Division to assist us in researching this topic. He prepared the attached memorandum describing relevant provisions in both the federal and State constitutions and in the rules of court. In his memorandum, Mr. Hein discusses a 1980 Alaska Supreme Court case (F/V American Eagle v. State)¹ which directly addresses your concern. To supplement the information provided by Mr. Hein, we contacted Capt. Nutgrass with the Division of Fish and Wildlife Protection in the Department of Public Safety, Bart Rozell, the attorney who represented the owners of the American Eagle in the Supreme Court case mentioned above, and Assistant Attorney General John Gissberg.

Existing Procedures in Fish and Game Violation Cases

When property is seized in conjunction with a fish and game violation, it eventually must be returned to the owner unless forfeited by order of the court. However, the item need only be returned "after completion of the case and payment of the fine, if any" (AS 16.05.195).

When the seized property is used by its owner in earning a livelihood, such as a commercial fishing boat or airplane, the seizure may present a financial hardship for the owner. In these cases, the owner of the seized property has the right to petition the court for an earlier release of the property. However, if the court decides to release the property, the owner often is required to post an adequate bond or to obtain insurance. Property may only be released when it is not essential evidence to the case.

¹ F/V American Eagle v. State, 620 P. 2d 657 (Alaska 1980)

Representative Ringstad

February 16, 1983

Page 2

As an example of this procedure, Capt. Nutgrass described a 1982 violation in which an airplane involved in an illegal hunting operation was seized under a search and seizure warrant obtained by the Division of Fish and Wildlife Protection. In that case, the owner's request for release of the plane was granted by the court, subject to a number of stipulations. These stipulations required the owner to return the aircraft to the State within a specified time period, required the plane to remain in the state, and specified that the owner must provide security either in the form of insurance or a bond for \$17,000, the estimated value of the plane. In this case, the value of the property was estimated during an inspection by the division's chief mechanic. In some instances, an independent appraisal is also required.

John Gissberg, Assistant Attorney General, stated that many of these cases are settled out of court, especially when commercial fishing boats are involved. The settlement allows the owner to keep the boat on the fishing grounds; without settlement, the boat would be transported to a community such as Kodiak for appraisal and storage prior to a court hearing.

Bart Rozell, an attorney with the firm of Faulkner, Banfield, Doogan and Holmes, gave the example of a commercial crab boat seized on the fishing grounds in the Aleutians. The appraisal would have been conducted in Kodiak, thus removing the vessel from the fishing grounds at the height of the season and resulting in a substantial loss of income to the vessel owner. To avoid this income loss, Mr. Rozell emphasized that owners of vessels have no alternative but to settle out of court by paying a large fine.

The dollar amount required for an out-of-court settlement varies from case to case and is established by the Attorney General's Office in consultation with the Division of Fish and Wildlife Protection. Mr. Gissberg noted that they try to require an amount sufficient to discourage the illegal activity from occurring again in the future. He said that the amount is sometimes based on the dollar value of the illegal catch or on some percentage of the boat value. Capt. Nutgrass cited out-of-court settlements for seized crab boats which ranged from \$100,000 to \$350,000.

Constitutional Protections

As noted in the memorandum from Ed Hein, the Alaska Supreme Court's ruling in F/V Eagle v. State discusses the constitutional due process requirement as it pertains to fish and game violation seizures. The Court noted that the case had raised "a substantial question whether the statutory scheme on its face affords adequate procedural due process." Although it did not decide in the vessel owners' favor, the Court noted that:

...when the seized property is used by its owner in earning a livelihood, notice and an unconditional opportunity to contest the state's reasons for seizing the property must follow the seizure within days, if not hours, to satisfy due process guarantees even where the government interest in the seizure is urgent. (see attached memorandum)

Bart Rozell, the attorney who represented the owners of the American Eagle, believes that the existing State statute does not adequately protect the rights of owners of seized property. In his opinion, the right of the property owner to a prompt post-seizure hearing should be clearly specified in statute. John Gissberg agreed that establishing the right to a prompt hearing in statute would be an appropriate action in light of the American Eagle case. Both Mr. Rozell and Mr. Gissberg also mentioned the possibility of having the State conduct vessel appraisals at the site of the violation.

AG's office

State v. Rice² is another State Supreme Court case which deals with the question of due process guarantees for owners of seized property; it specifically addresses the rights of innocent owners of seized property. The court ruled that Cessna Finance, an innocent holder of an interest in a seized airplane, had been "deprived of its constitutional rights to substantive due process through the failure of the statutory scheme ... to provide for remission of the interests of innocent non-negligent third parties in the forfeited item." Relevant sections of this decision are attached for your information.

As Mr. Rozell and Mr. Gissberg have dealt extensively with the issue of confiscated property in fish and game violations, you may wish to contact them directly for further information on this problem; Bart Rozell can be reached at 586-2210 and John Gissberg's can be reached through the A.G.'s office, 465-3600. In addition, both Ed Hein and I are available to answer any further questions.

SB/sj

Attachments

² State of Alaska v. Wilder S. Rice and Cessna Finance Corporation, 626 P.2nd 104 (Alaska 1981).

conducting the search for property which is taken as a result of the search. The enumeration of specific things does not limit the meaning of words of a general nature. (§ 22 art I ch 94 SLA 1959)

This section is constitutional. 1959 Op. Att'y Gen., No. 15.

This section is tailored carefully to art. I, § 14, of the Alaska Constitution and is therefore valid. 1959 Op. Att'y Gen., No. 15.

There is no constitutional requirement that all searches be with warrant. 1961 Op. Att'y Gen., No. 19.

And reasonable searches may be made without warrant. 1961 Op. Att'y Gen., No. 19.

"Reasonable search". — A reasonable search is one made (a) upon probable cause that fruits of a crime or evidence relating to the crime will be found; (b) under circumstances which would make the securing of a warrant impracticable. 1961 Op. Att'y Gen., No. 19.

The mere observation of items which are in plain view or which are open and apparent, is not a search. Consequently, evidence based on such observations is admissible so long as the observing officer was legally in the position where the observations were made. *Klockenbrink v. State*, Sup. Ct. Op. No. 631 (File No. 1149), 472 P.2d 958 (1970).

A search may be made pursuant to a valid arrest, providing that the arrest is made prior to the search. 1961 Op. Att'y Gen., No. 19.

Requirement of written signed statement objectionable but valid. — The amendment requiring a written signed statement of the reason for the search is objectionable but valid. It is objectionable because it unnecessarily ties the hands of the field agents charged with enforcement of the fish and game laws, and is a provision which is quite uncommon, if not unique. 1959 Op. Att'y Gen., No. 15.

Sec. 16.05.190. Seizure without warrant and confiscation by court. Guns, traps, nets, fishing tackle, boats, aircraft, automobiles or other vehicles, sleds, and other paraphernalia used in or in aid of a violation of this chapter, or rule or regulation of the department may be seized under a valid search, and all fish and game, or parts of fish and game, or nests or eggs of birds, taken, transported, or possessed contrary to the provisions of this chapter, or rule or regulation of the department shall be seized by any person designated in § 150 of this chapter. Upon conviction of the offender or upon judgment of the court having jurisdiction that the item was taken, transported, or possessed in

Such requirement will not validate an invalid search. — The statutory requirement that fish and game agents fill out a form stating the objects of search will not make an otherwise invalid search valid. 1961 Op. Att'y Gen., No. 19.

But it may invalidate an otherwise valid search if not complied with. 1961 Op. Att'y Gen., No. 15.

This section requires that notice be given to the person "in control" of crab pots. *Nathanson v. State*, Sup. Ct. Op. No. 1310 (File No. 2541), 554 P.2d 456 (1976).

Failure to notify owner of crab pots was not a violation of this section where officers of the Department of Fish and Game approached the crab pots to conduct a search to check the extent of compliance with a regulation providing that fishermen could place their crab pots in the water up to 72 hours prior to the opening of the season and the owner was not present, attending to his crab pots, since there being no "person in control of the property or object to be searched," the officers were unable to give him the required notice. *Nathanson v. State*, Sup. Ct. Op. No. 1310 (File No. 2541), 554 P.2d 456 (1976).

Notice required for search of vessel, building, etc. — The considerations leading to the conclusion that no notice was required for a search of crab pots would not apply to the search of a vessel, building or other effects in which the owner would have a reasonable expectation of privacy. *Nathanson v. State*, Sup. Ct. Op. No. 1310 (File No. 2541), 554 P.2d 456 (1976).

Area of vessel open to search. — In the case of a vessel, the limits of the area open to search probably include the entire vessel. 1961 Op. Att'y Gen., No. 19.

violation of and game, disposed of be transmit Guns, traps and other p rule or reg court, shall the fine, if

A seizure is under the prov v. State, Sup. Ct. 391 P.2d 946 (

Forfeiture. In case of forf acts upon the interest of all actually appea the title of changed, and forfeiture tra future prog Pollastrine, 8

It divests th necessarily d whether of th the thing forf it should not lienholder equ It binds the United States (1929).

Section mandatory a — This sec mandatory fo game, birds discretionary (guns, traps, State, Sup. Ct 545 P.2d 629

Not betwee proceedings. legislature contraband a mandatory a not between forfeiture pp Sup. Ct. Op. P.2d 629 (197

Sec. 16.1 fishing ge. paraphern; regulation

violation of this chapter or rule or regulation of the department, all fish and game, or parts of them are forfeited to the state and shall be disposed of as directed by the court. If sold, the proceeds of the sale shall be transmitted to the proper state officer for deposit in the general fund. Guns, traps, nets, fishing tackle, boats, aircraft, or other vehicles, sleds, and other paraphernalia seized under the provisions of this chapter, or rule or regulation of the department, unless forfeited by order of the court, shall be returned, (after completion of the case and payment of the fine, if any.) (§ 23 art I ch 94 SLA 1959)

A seizure is a prerequisite to forfeiture under the provisions of this section. *Rubino v. State*, Sup. Ct. Op. No. 215 (File No. 395), 391 P.2d 946 (1964).

Forfeiture acts upon the thing itself. — In case of forfeiture, the decree of the court acts upon the thing itself and binds the interest of all the world, whether any party actually appears or not. If it is condemned, the title of the property is completely changed, and the new title acquired by the forfeiture travels with the thing in all its future progress. *United States v. Pollastrine*, 8 Alas. 104 (1929).

It divests titles and liens. — A forfeiture necessarily divests every existing right, whether of title or lien or other interest, in the thing forfeited. There is no reason why it should not extinguish the right of a lienholder equally with that of the owner. It binds the interests of all the world. *United States v. Pollastrine*, 8 Alas. 104 (1929).

Section distinguishes between mandatory and discretionary forfeiture. — This section distinguishes between mandatory forfeiture of contraband (fish, game, birds) upon conviction, and discretionary forfeiture of paraphernalia (guns, traps, aircraft, etc.). *Graybill v. State*, Sup. Ct. Op. No. 1234 (File No. 2386), 545 P.2d 629 (1976).

Not between criminal or civil forfeiture proceedings. — The distinction which the legislature sought to draw between contraband and paraphernalia is between mandatory and discretionary forfeiture, not between requiring criminal or civil forfeiture proceedings. *Graybill v. State*, Sup. Ct. Op. No. 1234 (File No. 2386), 545 P.2d 629 (1976).

Sec. 16.05.195. Forfeiture of equipment. (a) Guns, traps, nets, fishing gear, vessels, aircraft, other motor vehicles, sleds, and other paraphernalia or gear used in or in aid of a violation of this title, or regulation promulgated under this title, and all fish and game or parts

Forfeitures, even when civil in form, are basically criminal in nature. *Graybill v. State*, Sup. Ct. Op. No. 134 (File No. 2386), 545 P.2d 629 (1976).

"Order of the court" may refer to orders rendered following criminal conviction. — Since the "case" and "fine" referred to in this section concern criminal proceedings, it is reasonable to interpret an "order of the court" as likewise referring to orders rendered subsequent to a criminal conviction, as well as those following a separate civil action. *Graybill v. State*, Sup. Ct. Op. No. 1234 (File No. 2386), 545 P.2d 629 (1976).

Valid forfeiture where defendant convicted under AS 16.05.920. — Where defendant was convicted under AS 16.05.920, which makes certain acts unlawful, in order to effect a valid forfeiture of defendant's aircraft, it was not necessary for the state to institute a separate civil in rem proceeding against the aircraft. *Graybill v. State*, Sup. Ct. Op. No. 1234 (File No. 2386), 545 P.2d 629 (1976).

While forfeiture is a civil remedy unless otherwise provided by statute, this section, as it applied to a defendant who was convicted under AS 16.05.920, did so provide. *Graybill v. State*, Sup. Ct. Op. No. 1234 (File No. 2386), 545 P.2d 629 (1976).

For cases construing seizure and forfeiture under the provision of ACLA 1949, § 39-2-10, see *United States v. One Fish Trap*, 7 Alas. 215 (1924); *United States v. The Pacific*, 7 Alas. (1924); *United States v. One Floating Fish Trap*, 7 Alas. 334 (1925); *The M. & M.*, 3 Alas. 17 (1923).

Cited in *Wacek v. State*, Sup. Ct. Op. No. 1108 (File No. 2166), 530 P.2d 751 (1975).

be enacted to benefit the state. It is desired that the department participate in the federal aid programs on the same basis as other states. (§ 20 art I ch 94 SLA 1959)

Sec. 16.05.150. Enforcement authority. The following persons are peace officers of the state and they shall enforce this chapter:

- (1) an employee of the department authorized by the commissioner;
- (2) a police officer in the state;
- (3) any other person authorized by the commissioner. (§ 21 art I ch 94 SLA 1959)

Enforcement of fish and game laws on military reservations. — Where the military does not assign sufficient personnel to enforce fish and game laws on military reservations, state game officials as well might enforce them, possibly by deputizing state game officials as federal marshals, since 10 U.S.C. 2671(c) makes violation of state fish and game laws a federal offense. 1964 Op. Att'y Gen., No. 2

Since state fish and game laws operate

on a federal military reservation, not only as federal law but also as state law, both the federal and state officers may enforce these laws. 1964 Op. Att'y Gen., No. 2

State officers should have full access to military reservations in Alaska, subject to safety and military security requirements, to enforce laws and manage and harvest fish and game resources. 1964 Op. Att'y Gen., No. 2

Sec. 16.05.160. Duty to arrest. Each person designated in § 150 of this chapter shall arrest a person violating this chapter, or any rule or regulation made under this chapter, in his presence or view, and shall take the person immediately for examination or trial before an officer or court of competent jurisdiction. (§ 21 art I ch 94 SLA 1959)

Cited in *Schuster v. State*, Sup. Ct. Op. No. 1305 (File No. 2911), 553 P.2d 925 (1976).

Sec. 16.05.170. Power to execute warrant. Each person designated in § 150 of this chapter may execute a warrant or other process issued by an officer or court of competent jurisdiction for the enforcement of this chapter, and may, with a search warrant, search any place at any time. The judge of a court having jurisdiction may, upon proper oath or affirmation showing probable cause, issue a warrant in all cases. (§ 21 art I ch 94 SLA 1959)

Sec. 16.05.180. Power to search without warrant. Each person designated in § 150 of this chapter may without a warrant search any thing or place if the search is reasonable or is not protected from searches and seizures without warrant within the meaning of § 14, art. I of the state constitution, which specifically enumerates "persons, houses and other property, papers and effects." However, before a search without warrant is made a signed written statement by the person making the search shall be submitted to the person in control of the property or object to be searched, stating the reason the search is being conducted. A written receipt shall be given by the person

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY
OFFICE OF THE COMMISSIONER

POUCH N
JUNEAU, ALASKA 99811
PHONE:

March 4, 1983

Mr. Dave Stancliff
Professional Aide
House Committee on Resources
Pouch V
Juneau, AK 99811


Dear Mr. Stancliff:

In review of the Committee's substitute draft of CS HB 94 (Res) no fiscal or logistical impact is foreseen. The substitute draft would provide, in some cases, a more workable solution with the wording "within seven days after charges are filed with the court." We are not sure what standards or reference will be acceptable or required in establishing to the courts if an item has an individual value of \$2,500.00 or more. An individual king or tanner crab pot could have an estimated value of \$600.00; however, as the bill is worded on line 14, 15, and 16, a seizure of a pot could be argued as being unnecessary to preserve the pot as evidence of the crime. This would include an aircraft, vehicle or vessel exceeding the individual value of \$2,500.00.

It could be logically argued in court that an aircraft seized during a major game violation was not necessary to preserve the aircraft as evidence of a crime. The officer could identify the aircraft by number, physical description and by taking photographs. This would preclude the seizure of items as instruments of the crime and by having the ability to bring that item before the court of jurisdiction.

We are still opposed to any amendments effecting AS 16.05.190 as it provides the necessary protection to the citizen as well as the State.

Sincerely,


Robert J. Sundberg
Commissioner

TESTIMONY ON HB 94

HOUSE RESOURCES COMMITTEE

March 11, 1983

Presented by Gregory F. Cook
Faulkner, Banfield, Doogan & Holmes
P.O. Box 1150
Juneau, Alaska 99802
(907) 586-2210

HB 94 seeks to amend existing law relating to seizure and forfeiture of items used in fish and game violations. The bill is a good start, but in my opinion, it needs significant amendments before it should be adopted.

Seizure and forfeiture of equipment used to commit violations of fish and game laws are critical enforcement tools. These tools are needed to conserve fishery and wildlife resources. At the same time, however, it is important for the State to recognize the rights of innocent owners. The bill as it now stands does not recognize these basic, constitutional rights known generally as "due process" requirements.

The Alaska Supreme Court and the United States Supreme Court have each addressed the need to protect the rights of innocent (and non-negligent) owners of property used by a "third person" for the commission of a crime. All persons must be presumed innocent until proven guilty. A seizure of nets, a vessel, or an airplane occurs before a trial showing guilt or



Alaska Sportfishing Association

3605 Arctic Blvd., Suite 800 • Anchorage, Alaska 99503

February 28, 1983

Representative Dick Shultz
Co-Chairman, Natural Resources Committee
Pouch V
Juneau, AK 99811

Dear Representative Shultz:

The Alaska Sportsfishing Association urgently requests your support in denying confirmation to Governor Sheffield's appointees to the Board of Fisheries until such time as two, true sportsfishing representatives are appointed to the board. Please keep in mind that the Board of Fisheries meets on March 21, 1983, whether these appointees are confirmed or not. Sportsfishing and tourism for 1983 and beyond will be affected by their decisions.

The appointments to the Board of Fisheries by Governor Sheffield has triggered a highly indignant response by sportsfishing enthusiasts throughout Alaska. The lobbying and pressures brought by commercial-fishing interests have decreased the representation to this critical body from three to what we now consider to be effectively zero.

The Board of Fisheries has the power to allocate fish above escapement requirements to the various fishing interests. We feel that the appointments, as they currently exist, are an absolute insult to the 100,000 licensed sportsfishermen in the Anchorage-bowl, and a serious threat to sportsfishing interests from the Matanuska Valley to Homer. The five sportsfishing associations in the Anchorage area asked for an appointment with Governor Sheffield while he was here. He did not even grant time to listen to our grievance.

We do not contend that the appointees are not highly respected and qualified people. We simply insist on true sportsfishermen being placed on the Board of Fisheries to represent sportsfishing and the highly valuable tourist industry when allocating fish resources.

We do question the ability of Mr. Paul Weller, the only appointee with sportsfishing inclinations, to fairly represent the sportsfishing side. The last time a sportsfishing representative was chosen from the Kenai-Soldotna area (Dr. Fair), who truly represented the sportsfishermen and acted on their behalf, was forced to resign after receiving threatening phone calls, attempted boycott of his business, chiding to his children at school, and malicious acts to his private property. Mr. Weller is backed by Lottie Ettelman, a long-time, setnet-fishing operator and commercial-fishing activist (in addition to being a top democrat in that area). In fairness to Mr. Weller, he was considerate enough to attend our general membership meeting on February 8, 1983, which displayed some interest in representing our cause, though there was a feeling he lacked knowledge of fishing issues (after four years of representation on the Kenai-Soldotna Advisory Committee).

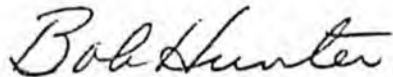
Representative Dick Shultz
February 28, 1983
Page 2

In my earlier letter to Governor Sheffield before the appointments were made, we recommended Mr. William E. Moulton, Jr., and Ms. Toni Salmeier as two superbly-qualified individuals who have been highly involved in both the sportsfishing and tourist industry. Mr. Moulton is also a Fish and Wildlife graduate.

Additionally, your support in the speedy passage of House Bill 63 is requested. This bill would establish sportsfishing on an equal basis with subsistence fishing and would at least minimize the devisiveness of the priority subsistence issue.

These and many other actions are drawing keen interest by sportsfishers throughout Alaska. I assure you that we intend to track actions taken and to keep the public aware of the responsiveness of their legislators.

Sincerely,



Robert L. Hunter, President
Alaska Sportsfishing Association

CORRECTION

CORRECTION

TESTIMONY ON HB 94

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The Alaska Supreme Court and the United States Supreme Court have each addressed the need to protect the rights of innocent (and non-negligent) owners of property used by a "third person" for the commission of a crime. All persons must be presumed innocent until proven guilty. A seizure of nets, a vessel, or an airplane occurs before a trial showing guilt or


innocence. Due process of law guarantees the following rights to everybody whose equipment is seized under AS 16.05.190:

- (1) judicial review of specific facts supporting the seizure before the seizure happens;
- (2) reasonable notice to the owner that a seizure has occurred;
- (3) the right of the owner to a prompt, meaningful, post-seizure judicial hearing;
- (4) the right to petition for "remission" or "mitigation" of the seizure;
- (5) ~~the opportunity to post a bond and secure~~ release of the item seized.

Seizures and forfeitures are complex areas of law. Drafting a bill that meets the requirements of the Alaska Constitution and the United States Constitution will require significant additional drafting work. I respectfully call the attention of the Resources Committee members to this fact, and suggest that the Judiciary Committee could be the proper forum to make those corrective amendments. I stand ready to assist both committees, and legislative counsel in this matter.

Thank you for your time and attention.

Respectfully submitted,


Gregory F. Cook
March 10, 1983



Alaska Sportfishing Association

3605 Arctic Blvd., Suite 800 • Anchorage, Alaska 99503

MAR 2 - 1983

February 28, 1983

Representative Dick Shultz
Co-Chairman, Natural Resources Committee
Pouch V
Juneau, AK 99811

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We do question the ability of Mr. Paul Weller, the only appointee with sportsfishing inclinations, to fairly represent the sportsfishing side. The last time a sportsfishing representative was chosen from the Kenai-Soldotna area (Dr. Fair), who truly represented the sportsfishermen and acted on their behalf, was forced to resign after receiving threatening phone calls, attempted boycott of his business, chiding to his children at school, and malicious acts to his private property. Mr. Weller is backed by Lottie Ettelman, a long-time, setnet-fishing operator and commercial-fishing activist (in addition to being a top democrat in that area). In fairness to Mr. Weller, he was considerate enough to attend our general membership meeting on February 8, 1983, which displayed some interest in representing our cause, though there was a feeling he lacked knowledge of fishing issues (after four years of representation on the Kenai-Soldotna Advisory Committee).

Representative Dick Shultz
February 28, 1983
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Sincerely,



Robert L. Hunter, President
Alaska Sportsfishing Association

CSHB 94 ANALYSIS

Section 1

Authorizes the seizure of items discovered under a valid search if the person making the search determines that the items in question should be held as evidence of a fish and game violation. Parts of fish or game nests or eggs of birds taken, transported, or possessed may also be seized.

Disposal of fish and game, or their parts that have been seized, is left up to the court if the person they have been seized from is convicted. If the court sees fit to sell the fish and game used as evidence proceeds shall, by way of the proper state officer, be deposited in the general fund.

Items seized having an individual value of \$2500 or more cannot be held beyond 7 days after charges are filed in court for the associated violation, unless an extension is approved by court order for cause shown.

Policy Question

Should citizens who have had items valued at \$2500 or more seized in an alleged fish and game violation be afforded the opportunity to have the court ascertain within 7 days after charges are filed whether or not the items seized should be held as evidence in the case.

Possible Considerations

- 1) Remedies that are now available without this proposed change in law.
- 2) Costs of implementing this law
- 3) Costs to citizens under present system, should they be found innocent

STATE OF ALASKA
FINAL* STATEMENT OF FISCAL IMPACT

Bill No: CSHB 94 Date on Bill: 2/8/83
 Title: Seizure of items used in or in aid of fish and game violations
 Sponsor: Bettisworth and Grussendorf
 Requestor: House Resources Committee

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

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

b. Revenues:

Revenue							
---------	--	--	--	--	--	--	--

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

3. Assumptions:

*This statement has been reviewed by the OMB in the Office of the Governor.

Prepared By: Richard P. Barrier *[Signature]* Phone: 264-0545
 Division: Alaska Court System Date: 3/8/83

Approved by Commissioner: _____ Date: _____
 Department: _____

Reviewed by OMB: _____ Date: _____
 Phone: _____

5. Distribution:
- Original to Legislative Finance
 - Copy to Department
 - Copy to Sponsor
 - Copy to Requestor

2/24/83

HR

FISCAL NOTE

Expenditure Type
 Revenue Type

I. REQUEST

Bill/Resolution No. HB 94

Title An Act relating to the seizure of items used in or in aid of fish and game violations
Requested by Bettisworth & Grussendorf Date 1/27/83

II. FISCAL DETAIL

Agency Affected Department of Public Safety

Program Category Affected Fish & Wildlife Protection

BRU, Program, Or Subprogram(s) Affected Fish & Wildlife Protection

(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	0	0	0			

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

RECEIVED

FEB 7 1983

LEGISLATIVE FINANCE

IV. DATE 1/27/83

PREPARED BY Col. R. J. Stickles Phone 269-5532

DIVISION: F&WP Initials

Original: Legislative Finance
cc: Budget and Management

DEPARTMENT OF PUBLIC SAFETY Initials

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/82)

AS

2/11/83

STATE OF ALASKA
FISCAL NOTE

Revision Date Mar. 11, 1983

I. REQUEST

Bill/Resolution No.: CS HB 94
 Title: "Seizure of items..F & G violations"
 Sponsor: Representative Bettisworth
 Requestor: House Resources Committee

II. FISCAL DETAIL

Agency Affected: FISH AND GAME
 Program Category Affected: KRMEC
 BRU, Program of Subprogram(s) Affected:
Commercial Fisheries, Game & Sport Fish

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						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Beverly Reaume
 Division: Administration
 Approved by Commissioner: Don W. Collinsworth
 Department: Fish and Game

Phone: 465-4120
 Date: 03/11/83
 Date: 3-11-83

Distribution:

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

3/8/83

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

file copy
BILL SHEFFIELD, GOVERNOR

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

March 30, 1983

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

Dear Representative Bussell:

I am writing on behalf of the Criminal Division of the Department of Law to comment on the expected impact upon the criminal division and the criminal justice system of a bill currently being considered by your committee: CSHB 94. After analysis of the bill and consultation with other criminal attorneys within the department, I have concluded that the proposed bill is likely to have a negative impact upon efforts to enforce fish and game laws.

Current law provides redress for a person whose property is seized as a result of an illegal search. AS 16.05.190 requires that property be seized under a "valid search", and Rule 37, Alaska Rules of Criminal Procedure, provides that a person who has been subject to an unlawful search and seizure may petition the court for the return of the property and the suppression of its use as evidence.

Although the current statutes do not specifically deal with notice and the right to a hearing to obtain the return of seized property, case law has established that the constitutional right to due process of law requires that the owner of seized property be given immediate notice of any seizure and the opportunity for meaningful hearing. See, for example, State v. Rice, 626 P.2d 104 (Alaska 1981) and F/V American Eagle v. State, 620 P.2d 657 (Alaska 1980).

The American Eagle case involved the seizure of a crab fishing vessel because of the violation of a regulation prohibiting the taking of crab out of season. The court there held that if the seized property was used by its owner in earning a livelihood, notice and an opportunity to contest the state's reasons for seizing the property must follow "within days, if not hours" of the seizure. 620 P.2d at 667. Fish and Wildlife Protection officers and attorneys are well aware of the due process requirements set out in the American Eagle and related cases, and provide immediate notice and an opportunity

to be heard when property is seized. Thus, a citizen who believes that his property was wrongfully taken, or who has compelling reasons which justify the return of the property, may petition the court for the immediate return of his property. This is commonly done, generally through the posting of a bond in lieu of the seized property.

As compared to the number of criminal actions filed for the violation of fish and game laws, the seizure of large items of property such as boats and airplanes is used infrequently, and generally for only the most serious violations. The vast majority of seizures of vessels are made pursuant to search and seizure warrants issued by neutral magistrates or judges following a determination of sufficient probable cause. Probably the most common situation in which large items of property are seized without warrants are airplanes seized when an officer observes a violation of a fish and game law such as "same day airborne." The conviction rate on these serious fish and game violations is quite high. Additionally, although the state may request the forfeiture of an item following criminal conviction, this motion is not always granted. Any arguments in mitigation which the defendant wishes to make as to why his property should not be forfeited can be made during his sentencing hearing.

The proposed amendments to AS 16.05.190 provide that all items, even minor ones such as guns or traps, may not be seized unless they are necessary as evidence of a violation. Often, of course, they will be needed as evidence. But the state may choose to seize items for other reasons besides use as evidence. For example, if the item has been seized it can not be used in violation of the law during the pendency of the case. The Alaska Supreme Court has recognized this as a valid consideration in seizure cases. See the American Eagle case cited above.

Another important consideration is the prevention of the transfer from the jurisdiction or sale to an innocent purchaser of property used in fish and game violations. It is not uncommon for the owner of an airplane or vessel who discovers that he may have been observed violating the law to immediately remove the plane or boat from the jurisdiction. Planes which were the subject of an ongoing investigation have been sold to innocent purchasers within days of the alleged violation. AS 16.05.195(e) specifically provides that an item subsequently sold to an innocent purchaser in good faith may not be forfeited. Thus, if the violator manages to sell his plane, nets, vessel, etc. the state has no way to regain possession of that item for forfeiture as part of the criminal sentence.

Another important reason to seize items, other than to use them as evidence in prosecution, is the deterrence of

others. As stated above, forfeiture of large items is generally sought in only most serious fish and game violations. Often these cases involve commercial guides who may violate the law regularly, and who have a commercial motive for their behavior. Only a substantial deterrent will discourage some potential offenders from taking chances and hoping that he will not be caught.

The committee substitute, which adds language requiring an individual item value of \$2,500 or more on line 28 of the bill, is a significant improvement over the original version. Nonetheless, a person who owns a seized item worth over \$2,500 will be able to litigate, under CSHB 94, the validity of the decision of the person who seized the item that the seizure was necessary to preserve the item as evidence. This will require the state to attempt to prove the good faith of the person making the seizure, and to present the state's case in advance of the trial in order to convince the court that it is necessary to preserve the item as evidence. As discussed more fully below, this hearing may be held at a time when the state's case is in the early stages of development, when all possible evidence has not yet been obtained. Also, the bill does not explain how determination of an item's value is to be made. Should an item's value be based upon its purchase price? Replacement cost? Fair market value? If fair market value is the appropriate criterion, is it the market value at the place and time seized, or at the time of later disposal? If these questions are not resolved, they are likely to provoke future litigation on the issue.

The proposed language on lines 2 through 4 of page 2 of the bill requires that seized property be returned within seven days after the charges are filed, unless an extension is approved by court order for cause shown. While the language does not explicitly require a hearing for this order, an appellate court will almost certainly interpret the language to require a full hearing on the merits. As 16.05.190 applies to seizures made without a warrant. If no warrant has been issued, there has not yet been a determination by a neutral judge regarding the existence of probable cause. An ex parte presentation to the court by the state, either through testimony or an affidavit of the reasons justifying the continued seizure of the item would probably not provide the defendant sufficient due process of law, as an ex parte procedure would deny the defendant a right to be heard on parte procedure would deny the defendant a right to be heard on the issue. The American Eagle case makes it clear that the defendant has a right to a hearing on his contention that the state should not continue to hold the seized item.

The proposed language appears to place the burden on the state to demonstrate "cause" in order to justify an

extension of the seizure. Thus, the item is automatically returned to the defendant unless the state bears the burden of proof placed upon it. These hearings will ordinarily be taking place during the early stages of the state's case, when all available facts may not yet have been fully developed. Additionally, the standard for "cause" is unclear. Is the only "cause" allowable under the statute the fact that the item will be used as evidence? Or, is a legitimate concern regarding the removal of the item from the court's jurisdiction or its sale to an innocent purchaser sufficient cause to justify the state's retention of the property? If the item's status as evidence is the only permissible reason to continue to hold the item, then the state would be required to release a boat or plane to an owner even if the owner intends to walk out of the courtroom and remove the item from the state.

Finally, the seven day period allowed before a court extension must be obtained is much too short. Many, if not most, seizures of large items used in fish and game violations are made in remote locations of the state. While the officers involved have the authority to file charges immediately, if appropriate, there may well be no prosecutor or assistant attorney general available locally to handle the hearing. Under the language of the statute as currently drawn, the defendant's property is returned to him automatically after seven days, perhaps even if weather precludes the arrival of a judge or district attorney within the seven day period. It should also be noted that, in a felony case, there may be no judicial officer available within a jurisdiction to hear the case. If a defendant has been indicted for the charges, then only a superior court judge has jurisdiction over the case. A local district court judge or a magistrate could not preside over the forfeiture hearing.

Thank you for allowing the opportunity for comment on CSHB 49. Please contact me if you have any questions.

Very truly yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

DANIEL W. HICKEY
CHIEF PROSECUTOR

By: 

Gayle A. Horetski
Assistant Attorney General

GAH/gb-85

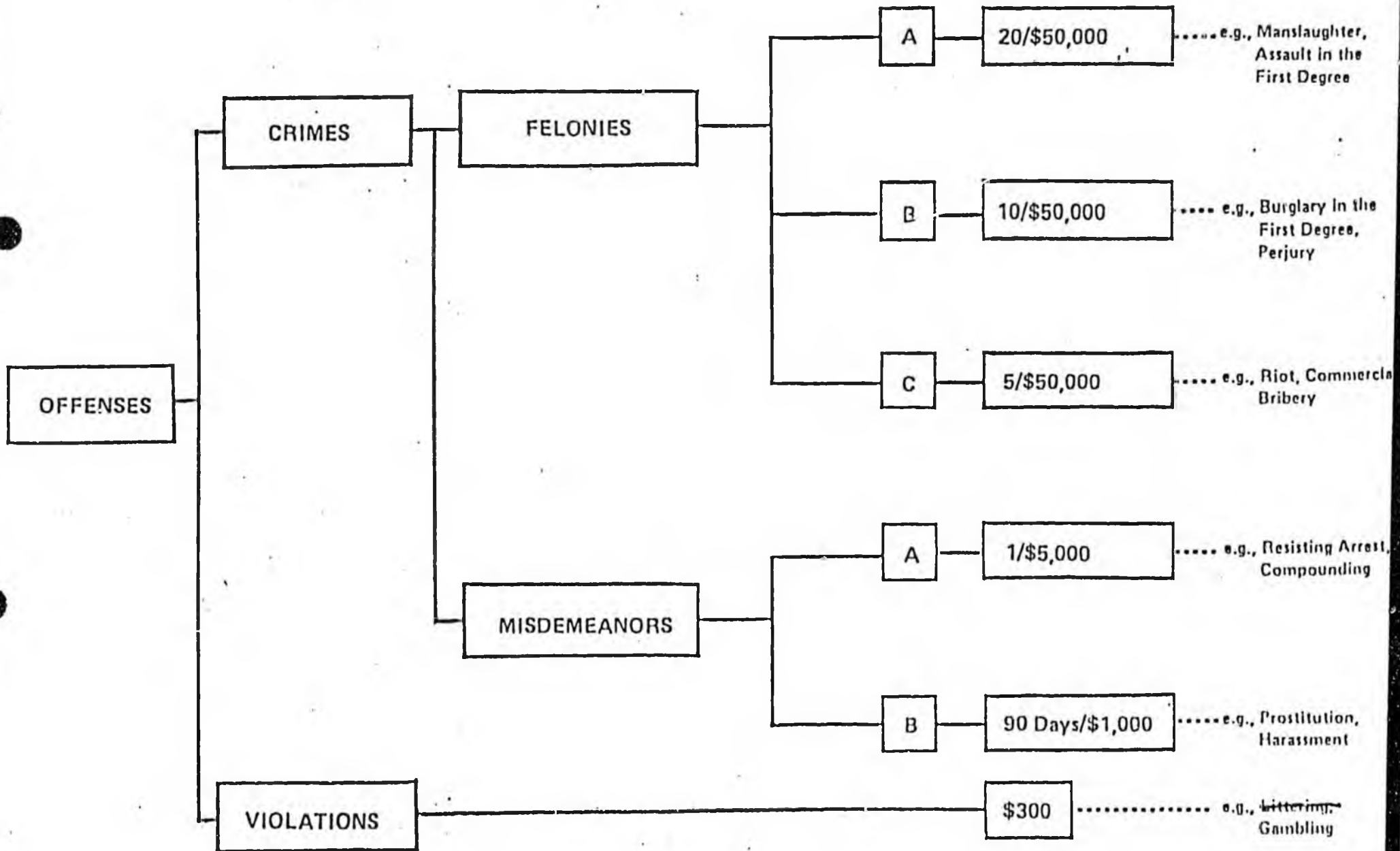
Attachments

HB

100

CLASSIFICATION OF OFFENSES UNDER THE REVISED CRIMINAL CODE

15



Unclassified Felonies - Murder I - 20-99/\$75,000

Murder II, Kidnapping - 5-99/\$75,000

Sexual Assault



STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: House Bill No. 100 Date on Bill: Jan. 26, 1983
 Title: "An Act relating to assaulting a peace officer, fire fighter, or emergency responder."
 Sponsor: Lacher and Szymanski
 Requestor: _____

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

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

b. Revenues:

Revenue								
---------	--	--	--	--	--	--	--	--

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

3. Assumptions:

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.

Prepared By: Mark S. Johnson Phone: 465-3027
 Division: Public Health, Emergency Medical Services Section Date: 2/28/83
 Approved by Commissioner: *Kathleen Smith, Ph.D.* Date: 3/8/83
 Department: Health and Social Services

5. Distribution:

- Original to Legislative Finance
- Copy to OMB
- Copy to Sponsor
- Copy to Requestor

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. House Bill No. 100
Title "An Act relating to assaulting a peace officer, fire fighter, or emergency
Requested by Lacher and Szymanski Date Jan. 26, 1983 response:

II. FISCAL DETAIL

Agency Affected Department of Health and Social Services
Program Category Affected Emergency Medical Services
BRU, Program, Or Subprogram(s) Affected Emergency Medical Services
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

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

FUNDING (Thousands of Dollars)

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

POSITIONS

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

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

IV. DATE Jan. 26, 1983 PREPARED BY Mark S. Johnson
AGENCY EMS Section, Dept. of Health & Social Service
Original: Legislative Finance PHONE 465-3027
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/82)

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: SSHB 100 Date on Bill: 2/23/83
 Title: "An Act relating to assaulting a peace officer, fire fighter, or emergency responder."
 Sponsor: Representative Lacher
 Requestor: House Judiciary Committee

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86
Capital				
Operating		129.5	144.3	153.0
Total		129.5	144.3	153.0

b. Revenues:

Revenue				
---------	--	--	--	--

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

No information provided.

3. Assumptions:

The sponsor substitute for HB 100 sets and clarifies the felony levels for assaults upon peace officers and other emergency responders. As was noted in our original Statement of Fiscal Impact, approximately 50-100 criminal cases would be prosecuted as felonies rather than misdemeanors. Therefore, because of the increased likelihood of trials, increased length of trials, and more aggressive motion practice, additional attorney and other staff resources would be required.

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 I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Division Date: 3-10-83
 Approved by Commissioner: Norman C. Gorsuch, Attorney General Date: 3-10-83
 Department: Department of Law

5. Distribution:

- Original to Legislative Finance
- Copy to OMB
- Copy to Sponsor
- Copy to Requestor

2/15/83

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: SSHB 100
 Title: Act relating to assaulting a police...
 Sponsor: Rep. Lacher
 Requestor: House Judiciary

II. FISCAL DETAIL

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

IV. ANALYSIS: Attach a separate page for any Analysis No fiscal impact anticipated

Prepared By: Paul Conger Phone: 465-4338
 Division: Administrative Services Date: 3-16-83

Approved by Commissioner: [Signature] Date: 3/17/83
 Department: Public Safety

Distribution:

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- Copy to Office of Management and Budget (for Legislature introduced bills)
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Alaska State Legislature

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



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

House of Representatives

M E M O R A N D U M

TO: Representative Bussell
House Judiciary Committee Chairperson

FROM: Representative Lacher
House C&RA Committee Chairperson. *[Signature]*

DATE: May 8, 1983

SUBJECT: Proposed Judiciary CS to SSHB 100

The Judiciary Committee Substitute to SSHB 100 is the result of excellent committee work and I fully support the proposed changes.

The amendments added to SSHB 100 in the House Judiciary CS provide more comprehensive legislation, covering all of the relevant Statutes. The Judiciary CS combines the positive aspects of both the Senate and House bills. I view these changes as an improvement on SSHB 100 and fully endorse the Judiciary Committee Substitute.

The increase in penalties and clarification of the law, in terms of the full range of emergency responders, is a much needed piece of legislation. I urge your committee to pass out CSSHB 100.

Alaska State Legislature

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




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

House of Representatives

MEMORANDUM

TO: Representative Bussell
House Judiciary Committee Chairperson

FROM: Representative Lacher
House C&RA Committee Chairperson 

DATE: May 8, 1983

SUBJECT: Proposed Judiciary CS to SSHB 100

The Judiciary Committee Substitute to SSHB 100 is the result of excellent committee work and I fully support the proposed changes.

The amendments added to SSHB 100 in the House Judiciary CS provide more comprehensive legislation, covering all of the relevant Statutes. The Judiciary CS combines the positive aspects of both the Senate and House bills. I view these changes as an improvement on SSHB 100 and fully endorse the Judiciary Committee Substitute.

The increase in penalties and clarification of the law, in terms of the full range of emergency responders, is a much needed piece of legislation. I urge your committee to pass out CSSHB 100.

Alaska State Legislature




Barbara Lacher, Chairman
Mae Tischer, Vice-Chairman
Randy Phillips
Milo Fritz
Don Clocksin
Jack McBride
Mike Szymanski

Room 104
State Capitol
Juneau, Alaska 99811

Pouch V
Juneau, Alaska 99811

House of Representatives Committee on Community & Regional Affairs

To: House Judiciary Committee
From: Representative Barbara Lacher 
Date: March 10, 1983
Subject: SS HB 100

You previously considered HB 100, and many questions and problems were brought to light at that time. Therefore, I had this sponsor substitute prepared. I believe this new legislation will answer your concerns, as well as addressing the concerns of our emergency responders, fire-fighters, and peace officers.

The sponsor substitute increases the penalty for an assault on an emergency responder by one degree. For example, if an assault upon a person would normally be considered a Class C felony, it would become a Class B felony if the assault were upon a peace officer, fire fighter, emergency technician, paramedic, ambulance attendant, or other emergency responder while in the performance of official duties.

My goal is to increase protection for emergency responders, while decreasing the number of assaults on them. These people are the protectors of our society. Endangering them and interfering with their efforts to protect our lives and property should be a more serious crime.

I believe that, if we make the public aware that these assaults will result in more severe penalties than would normally be dealt by our courts, we can curb these attacks. I urge your wholehearted support of HB 100.



ALASKA STATE FIREFIGHTERS ASSOCIATION

HOUSE JUDICIARY COMMITTEE

Hearing on House Bill No. 100 Relating to Assaulting a Peace Officer,
Fire Fighter, or Emergency Responder

February 14, 1983

Mr. Chairman:

My name is E. Robert Haag representing the Alaska State Firefighters Association and the Alaska Fire Chiefs Association.

We wish to speak in favor on the intent of House Bill No. 100 now before your Committee.

Our two Associations at their annual meetings last October 1983 passed a number of resolutions pertaining to the Fire Service. We did not make a resolution dealing with the specific subject in Hous Bill No. 100 for additional wordage to AS 11.41.220 (a). However, we do believe that the suggested additional sub paragraph (3) is important in that it defines responders.

We would suggest consideration of some wordage chane in lines 18 and 19. The suggested change is the same we made in the Senate Judiciary Committee hearing on Senate Bill No.24 on February 2, 1983.

Lines 18 and 19 revised to read "or other emergency responder, regardless of rank, functions or duties being performed".

Alaska State Legislature

REPRESENTATIVE
BARBARA LACHER
PO BOX 478
PALMER, ALASKA 99645
(907) 376-4215



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

House of Representatives

To: House Judiciary Committee
From: Representative Barbara Lacher
Date: February 14, 1983
Subject: Background: House Bill 100 *BL*

I introduced HB 100 at the request of firefighters in my district. The intent of the bill is two-fold: to ensure that peace officers, firefighters, emergency medical technicians, and other emergency responders are recognized by the law as "persons", so that those assaulting emergency responders are successfully prosecuted; and to raise the penalty for assaulting emergency responders.

As I understand the problem, there was a court decision in which a judge ruled that emergency responders are not "people" in the eyes of the law. This bill defines emergency responders, and the penalty for assaulting one.

Further, there is apparently no middle ground in assigning penalties for assaulting emergency responders; the assault is termed either a misdemeanor or a Class B felony. Peace officers, firefighters, and other emergency responders would like a penalty that falls in between the two, for those times when physical injury is not "serious" as defined by statute (part of the criteria for the Class B felony), but when physical harm is caused to the responder that should be considered more serious than a misdemeanor.

Last Friday, the Senate Judiciary Committee heard teleconference testimony on SB 24, the companion bill to HB 100. Officer George Novacky, on behalf of the Anchorage Police Department, indicated in his testimony that 113 APD officers were assaulted in 1982. These officers missed a total of 253 work days in 1982 due to the injuries they received--approximately one work year lost because of assaults on officers.

In his testimony, Novacky also noted that there are restraints on what an officer can do when responding to a situation, but there are no such restraints on a person who assaults an officer. Raising the penalty for assaulting emergency responders may provide a deterrent to this type of behavior.

A total of ten people testified to the Senate Judiciary Committee. All but one of these people supported the companion bill. The one exception was Gayle Horetzki, who spoke on behalf of the Department of Law; she felt that existing statutes adequately address the intent of the bill.

I have attached a list of the participants in Friday's Senate teleconference, as well as messages I have received in support of the bill.

If you have further questions, I will be happy to be of assistance.

attachments

THE FOLLOWING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

Copy of letter pg 10 of 11

File 210303

RESOLUTION NO. 02-1 Amended

WHEREAS Alaska Statutes, Title 11, Section 11.46.400 states:

A person commits the crime of arson in the first degree if by starting a fire or causing another explosion, he intentionally damages protected property of any property which is his own or another's; and the act results in physical injury or prohibited property or another in danger of damage, and

WHEREAS Alaska Statutes, Title 11, Section 11.01.500(1)(a) states: "Person" means a natural person and, when appropriate, an organization, government, or governmental instrumentality; and

WHEREAS in the case of the State of Alaska vs. Markland Superior Ct., the defendant was charged with arson in the first degree, and

WHEREAS in the case of the State of Alaska v. Markland Superior Court Judge Taylor stated in the instructions to the jury that, "Arson is not a person within the crime or first degree arson";

HOW, THEREFORE, BE IT RESOLVED BY THE ALASKA FIRE CHIEFS' ASSOCIATION AS FOLLOWS:

Section 1: That the Alaska Fire Chiefs' Association direct the Alaska Fire Chiefs' Association President to have the Alaska Statutes, Title 11 (Alaska Criminal Code) amended to read in Section 11.46.400,

A person commits the crime of arson in the first degree if, by starting a fire or causing an explosion, he intentionally damages protected property of another or of any property, whether his own or another's, and they are recklessly placing another person, including fire service personnel, police officers, and public employees, in danger of physical injury or protected property of another in danger of damage.

APPROVED in conference October 30, 1982 in Ketchikan, Alaska.

Wesley J. Davis, Jr., President

SENATOR FRITZ PETTYJOHN
REPRESENTATIVE BARBARA LACHER

ERIC TODD THEIN
SASILLA VOLUNTEER FIRE DEPT.
P.O. BOX 49
SASILLA 99687 PH. 376-3750

Am

HE100 AND SB24
WITH THE PASSING OF THIS LEGISLATION THE WHOLE PUBLIC SAFETY DIVISION, (WHETHER
FULL TIME OR PARTIME) SHOULD FILL THE 'BILL' TO PROSECUTE CRIMINALS TO THE
LARGEST EXTENT. HOWEVER IT WILL ALSO REMAIN UP TO THE JUDGES AND D.A.'S TO
CARRY OUT THE AMENDMENT TO THE FULLEST EXTENT.

THIS BILL WILL SHOW THE PUBLIC THAT PUBLIC SAFETY PERSONNEL HAVE A JOB TO DO
WITHIN THE LAW, (WHICHEVER DIVISION POLICE, FIRE, OR AMBULANCE.)

SENATOR FRITZ PETTYJOHN
REPRESENTATIVE BARBARA LACHER

TERRY SIMPSON
SASILLA FIRE DEPARTMENT
GENERAL DELIVERY
SASILLA 99687 PH. 376-2903

Am

HE100 AND SB24
IF THIS PASSES THROUGH, THEN I HOPE IT WILL DECREASE THE POSSIBILITY OF ARSON,
AND THOSE WHO ARE JUST VOLUNTEER FIREMEN WILL BE COVERED BY SOME MEANS. THEN
THE PEOPLE WHO THINK ABOUT COMMITTING ARSON ARE GOING TO TAKE A SECOND THOUGHT
BEFORE DOING SO.

SENATOR FRITZ PETTYJOHN
REPRESENTATIVE LACHER

RAEJEAN MYERS
SASILLA VOLUNTEER FIRE DEPT.
SP 5079
SASILLA 99687 PH. 376-5426 (HOME) 376-5309 (WORK)

HE100 AND SB24
~~IF THE AMENDMENTS WITH AN AMENDMENT TO THE AMENDMENT TO READ 'WILLFULLY
' INTENTIONALLY' RATHER THAN 'RECKLESSLY.' THE WORD IS TOTALLY INAPPROPRIATE
TO BE USED HERE. I'M SURPRISED IT HAS EVER THIS FAR IN THE PAPERWORK.~~

Am

THE PRECEDING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

OMNI #1 **** NOTE TIME CONSTRAINT, TESTIFIER #2

TO TESTIFY:

- 1.) KATHLEEN GRAY/ANCHORAGE POLICE DEPT., 625 C ST., ANCHORAGE 264-4155
 - 2.) GUY TUTTERDA/APD***** PLEASE NOTE TIME CONSTRAINT, HE IS ONLY ON HIS LUNCH HOUR; WOULD LIKE TO SPEAK ASAP *****
 - 3.) RICHARD WILLIAMS/ANCHORAGE EMS PARAMEDIC, 211 WEST 7TH, ANCHORAGE 264-4949
 - 4.) HOLLY PLOOG/APDEA, 701 W. 58TH ST., ANCHORAGE 99502, 561-1158
 - 5.) PAT CHEESE, ANCHORAGE EMS PARAMEDIC, 1764 EAGLE RIVER RD., EAGLE RIVER 694-3688
 - 6.) RON BECKER/APD, P.O. BOX 3-004 ECB., 995-7333-
 - 7.) WALT STIEHM/APD, 625 C STREET., ANCHORAGE 345-5799
- 8.) GEORGE NOVAKY/APD, 625 C STREET

TO OBSERVE:

- 1.) DAVID SKITT/ANCHORAGE EMS PARAMEDIC, 211 W. 7TH, ANCHORAGE

MSG 83-00007918 PRTY 1 02/11/83 13:37:02 ORIG: LF02 IN= 0001 OUT= 0011
 FROM: LYNDA/FBX TO: ALL
 TARGET: LJHZ SUBJ: SEN. JUD 2/11 T/C

FBX MSG #1
 FAIRBANKS:

TO TESTIFY:

- 1. JEANNE OSTNES, EMRG. MED. SVS., P.O. BOX 2120, FBX. 99707 456-3978
- 2. ROCKY DUNCAN, FBX. FIREFIGHTERS, 656 7TH AVE., FBX.99701 452-1557

-----EOM

MSG 83-00007921 PRTY 1 02/11/83 13:38:32 ORIG: LM00 IN= 0004 OUT= 0012
 FROM: MARTIE/MATSU TO: TELECONFERENCE MODERATOR
 TARGET: LJHZ SUBJ: SEN JUDICIARY T/C, SB24

MSG #1

TO TESTIFY

- 1. JAKE WRIGHT, WASILLA FIRE DEPARTMENT, WASILLA, ALASKA

MSG 83-00007922 PRTY 1 02/11/83 13:38:53 ORIG: LA08 IN= 0005 OUT= 0013
 FROM: CANDY ANCHORAGE TO: LINDA/JNU
 TARGET: LJHZ SUBJ: SEN JUDICIARY T/C ONGOING

OMNI #2

GEORGE NOVAKY OF APD, TESTIFIER #8, HAS JUST INDICATED A TIME CONSTRAINT. HE WOULD LIKE ALSO TO GO ASAP. HE EXPLAINS THAT MOST PEOPLE HERE HAVE SPECIFIC INCIDENTS TO DISCUSS, WHILE HE HAS SOME GENERAL COMMENTS. I TOLD HIM I WOULD PASS HIS REQUEST ON.

City of Delta Junction

Box 229

Delta Junction, Alaska 99737

907 - 895 - 4656

The North End of the Alaska Highway

March 3, 1983

Representative Charlie Bussell
Pouch V
Juneau, Alaska 99811

Dear Representative Bussell:

The City Council of Delta Junction reviewed pending legislation at their March 1, 1983 meeting. They voted unanimously to endorse and provide their support on the following bills:

HB42 An Act relating to the determination of population for purposes of calculating amounts of state aid; and providing for an effective date.

HB100 An Act relating to an avalanche and fire weather forecasting system; and providing for an effective date.

HB119 An Act making a special appropriation for payment as a grant to the community of TOK for a rescue ambulance apparatus; and providing for an effective date.

HB136 An Act making an appropriation to the Department of Revenue for financial assistance to municipalities; and providing for an effective date.

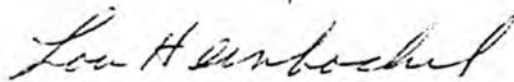
HB153 An Act making a supplemental appropriation to the Department of Revenue for financial assistance to municipalities; and providing for an effective date.

HB162 An Act authorizing general law municipalities to limit the number of consecutive full terms certain municipal officials may serve.

HB172 An Act relating to municipal government; and providing for an effective date. (title 29 rewrite).

House Bill 164 was also reviewed by the Council and they voted four to two against endorsing and supporting this legislation.

Sincerely,

A handwritten signature in cursive script, reading "Lou Heinbockel". The signature is written in dark ink and is positioned above the typed name.

Louis E. Heinbockel, Mayor
City of Delta Junction

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: SSHB 100 Date on Bill: 2/23/83
 Title: "An Act relating to assaulting a peace officer, fire fighter, or emergency responder."
 Sponsor: Representative Lacher
 Requestor: House Judiciary Committee

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86
Capital				
Operating		129.5	144.3	153.0
Total		129.5	144.3	153.0

b. Revenues:

Revenue				
---------	--	--	--	--

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

No information provided.

3. Assumptions:

The sponsor substitute for HB 100 sets and clarifies the felony levels for assaults upon peace officers and other emergency responders. As was noted in our original Statement of Fiscal Impact, approximately 50-100 criminal cases would be prosecuted as felonies rather than misdemeanors. Therefore, because of the increased likelihood of trials, increased length of trials, and more aggressive motion practice, additional attorney and other staff resources would be required.

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 I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Division Date: 3-10-83
 Approved by Commissioner: Richard I. Pegues
Norman C. Gorsuch, Attorney General Date: 3-10-83
 Department: Department of Law

5. Distribution:

Original to Legislative Finance
 Copy to OMB
 Copy to Sponsor
 Copy to Requestor

2/15/83

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: SSHB 100
 Title: Act relating to assaulting a police...
 Sponsor: Rep. Lacher
 Requestor: House Judiciary

II. FISCAL DETAIL

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

IV. ANALYSIS: Attach a separate page for any Analysis No fiscal impact anticipated

Prepared By: Paul Conger
 Division: Administrative Services

Phone: 465-4338
 Date: 3-16-83

Approved by Commissioner: *[Signature]*
 Department: Public Safety

Date: 3/17/83

Distribution:

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

3/2/83

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: House Bill No. 100 Date on Bill: Jan. 26, 1983
 Title: "An Act relating to assaulting a peace officer, fire fighter, or emergency responder."
 Sponsor: Lacher and Szymanski
 Requestor: _____

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

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

b. Revenues:

Revenue								
---------	--	--	--	--	--	--	--	--

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

3. Assumptions:

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.

Prepared By: Mark S. Johnson Phone: 465-3027
 Division: Public Health, Emergency Medical Services Section Date: 2/28/83
 Approved by Commissioner: *Kelley Gordon Smith, Ph.D.* Date: 3/8/83
 Department: Health and Social Services

5. Distribution:

- Original to Legislative Finance
- Copy to OMB
- Copy to Sponsor
- Copy to Requestor

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. House Bill No. 100
 Title "An Act relating to assaulting a peace officer, fire fighter, or emergency
 Requested by Lacher and Szymanski Date Jan. 26, 1983 responder

II. FISCAL DETAIL

Agency Affected Department of Health and Social Services
 Program Category Affected Emergency Medical Services
 BRU, Program, Or Subprogram(s) Affected Emergency Medical Services
 (Note: If more than one budget component is affected, separate line-item
 amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

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

FUNDING (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER (Specify Source)	0	0	0	0	0	0

POSITIONS

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL TIME	0	0	0	0	0	0
PART TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

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

IV. DATE Jan. 26, 1983 PREPARED BY Mark S. Johnson
 AGENCY EMS Section, Dept. of Health & Social Services
 Original: Legislative Finance PHONE 465-3027
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/82)

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 100 Date on Bill: 1/20/83
 Title: "An Act relating to assaulting a peace officer, fire fighter, or emergency responder,"
 Sponsor: Representative Lacher
 Requestor: House Judiciary Committee

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86
Capital				
Operating		129.5	144.3	153.0
Total		129.5	144.3	153.0

b. Revenues:

Revenue				
---------	--	--	--	--

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

No information provided.

3. Assumptions: This bill raises to a felony those assaults upon peace officers and other emergency responders which are currently prosecuted as misdemeanors under the criminal code. Based upon the broad coverage of the bill, the Department of Law estimates that approximately 50-100 criminal cases would be prosecuted as felonies rather than misdemeanors. Because of increased likelihood of trials, increased length of trials, and more aggressive defense motion practice, additional attorney and staff resources would be required.

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.

Prepared By: Daniel W. Hickey Phone: 465-3428
 Division: Department of Law, Criminal Division Date: 2/15/83
 Approved by Commissioner: Norman C. Gorsuch, Attorney General Date: 2/15/83
 Department: Department of Law

5. Distribution:

- Original to Legislative Finance
- Copy to OMB
- Copy to Sponsor
- Copy to Requestor

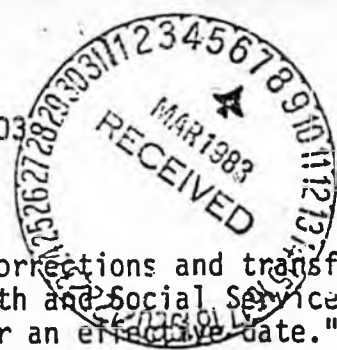
2/8/83

HB

103

POSITION PAPER

House Bill No. 103



"An Act establishing a Department of Corrections and transferring certain functions of the Department of Health and Social Services to the Department of Corrections; and providing for an effective date."

House Bill No. 103 adds a new chapter to Title 44 which establishes a Department of Corrections and gives the Department the responsibility to administer state programs including 1) state prisons and state prisoners; 2) probation and parole; 3) extraditions and detainers.

The bill changes the language in Titles 11, 12, 33, 41, 44, and 47 to reflect a Department of Corrections, rather than Department of Health and Social Services and/or Division of Adult Corrections. House Bill No. 103 excludes delinquent juveniles from the responsibilities of the new Department by omission of conforming amendments.

The Department of Health and Social Services supports the concept of House Bill No. 103 and recommends its passage. We do not view this bill as being in conflict of Executive Order 54 but, in fact, is supportive of the Governor's order.

Recommended by:

Roger V. Endert

Roger V. Endert, Director
Division of Adult Corrections

Date:

2-9-83

Approved by:

Robert London Smith

Robert London Smith, Ph.D.
Commissioner

Date:

2/11/83

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: House Bill No. 103 Date on Bill: January 21, 1983
 Title: "An Act establishing a Department of Corrections . . ."
 Sponsor: Reps. Fritz, Koponen, Furnace, Goll, and Davis
 Requestor: _____

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
Capital	-0-	-0-	-0-	-0-		
Operating	250.0	951.6	1008.7	1069.3		
Total	250.0	951.6	1008.7	1069.3		

b. Revenues:

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
Revenue	-0-	-0-	-0-	-0-		

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

The funding source to offset the fiscal impact for FY 1983 is contained in delete/add supplemental submitted by the Department of Health and Social Services. Funding for FY 1984 has not been identified by the bill sponsors.

3. Assumptions:

House Bill No. 103 will create the Department of Corrections necessitating the transfer of the Division of Corrections and Parole Board from the Department of Health & Social Services to the new department, creation of ten new positions, the reclassification of nine Division of Corrections positions and the transfer of 13 positions from the Department of Health & Social Services Divisions of Management and Budget and Administrative Services to the new Department.

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.

Prepared By: Roger C. Lange *Roger C. Lange* Phone: 465-3376
 Division: Adult Corrections Date: February 8, 1983

Approved by Commissioner: Robert London Smith Date: 3/7/83
 Department: HEALTH & SOCIAL SERVICES

5. Distribution:

- Original to Legislative Finance
- Copy to OMB
- Copy to Sponsor
- Copy to Requestor



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

February 25, 1983

MEMORANDUM

TO: Representative Mae Tischer

FROM: Jonathan Sheod *J.S.*
Research Sta

RE: Texas Department of Corrections Education and Rehabilitation
Programs
Research Request 83-18

Heidi Borson of your staff requested that we provide you with information pertaining to the educational and rehabilitation programs operated by the Texas Department of Corrections (TDC). We have contacted officials with the TDC and obtained the following information.

The Texas Department of Corrections' education and rehabilitation services can be divided into three main classes of programs. First, Texas operates programs which provide vocational, basic, and college education. Second, Texas has a work policy which requires employment for all inmates. Finally, Texas offers a number of treatment programs for inmates.

Education

The educational programs in the Texas Department of Corrections are administered by its Treatment Division. The programs include the Windham School System, the Division of Continuing Education, and the Apprenticeship and Training Program.

The Windham School System was established as an independent school district for Texas state prisoners by an act of the Texas State Legislature in 1969. The Windham School System is comprised of the adult basic and vocational education programs in the Department's twenty-three institutions. Windham is part of the TDC's Education Department; however, as a school district, the Windham School System is funded through the Texas Education Agency's State Minimum Foundation Program. Therefore, Windham does not compete for funds with other areas of corrections operations.

Representative Tischer

February 25, 1983

Page Two

All twenty-three institutions in the Texas Correctional System have full competency-based education programs for grades K-12. Inmates can receive either a G.E.D. or a competency-based high school diploma.

In addition, each correctional unit has a vocational training program. In all, thirty different trades are taught in this program, although not every trade is taught at each institution.

According to Cheryl Moore, Assistant Director of Curriculum at Windham, the adult basic education program offers a diverse curriculum, which includes not only such basics as math, reading, communications, and science, but also music, art, dance, and physical education. The Windham School system is required to offer a wide range of courses to meet the Texas Education Agency's curriculum standards for school districts.

Inmates who score at a fifth-grade level or below on the Test of Adult Basic Education must participate in the basic education program until such time as they can score above the fifth-grade level on the test. After that, participation in the program is completely voluntary. Inmates can enter or leave the program at any time.

Inmates in the Texas prison system must work at some kind of a job within the system. According to Ms. Moore, participation in the education program does not excuse inmates from this obligation. Inmates typically attend school the equivalent of one day per week and work for four days per week.

The average daily count for the Windham School System is about 12,000 inmates. Ms. Moore stated that the system has a very high turnover rate, and considerably more inmates participate at some point during the year than is indicated by the daily average. The Texas correctional system as a whole has a population of approximately 34,000 inmates. The budget for the Windham School system was about \$11,000,000 in FY 82.

College courses are available through the TDC Division of Continuing Education. The TDC contracts with community colleges and a few universities in Texas to have instructors come to the institution and teach courses. Associate, Bachelor of Arts, and Bachelor of Science degrees are available to inmates through this program.

However, not all of the institutions in the Texas correctional system offer college courses. Inmates in institutions without college programs who desire to take courses can request a transfer to an institution that does offer college courses. But, because the prisons in the Texas system are classified by categories of inmate population, inmates

may not be eligible for transfer to some institutions. Furthermore, as the Texas correctional system has become more crowded, inmates may have to wait for substantial periods of time before space is available at another institution.

According to Ms. Moore, the Texas State Education Agency pays for the tuition of full-time community college students. The Department of Corrections pays for the first three credit hours of college for inmates, the inmates must pay for their next three credit hours, and the Texas Education Agency pays for any additional classes.

In addition to basic education and college, the Texas Department of Corrections also offers an apprenticeship program for inmates. The program is designed to meet the standards established by the Texas Labor Board, which certifies tradesmen. Inmates in this program receive some class work, but also practice their trade at the institution to which they are assigned. The kinds of trades available for apprenticeship are limited to those that are practiced at a particular institution. Trades currently available to inmates for apprenticeship include cooks, auto mechanics, butchers, and dental technicians.

Employment

Texas Department of Corrections officials frequently cited the strong emphasis the Department places on work ethic as a means of rehabilitation. As noted earlier, all Texas state prisoners are required to work. Prisoners are not paid for their labor, but receive "good time credits" for their work. Inmates may receive a maximum of two days credit for one day worked. The amount they receive is dependent upon the skill level of their employment and their behavior.

According to Charles Brown, Assistant Director of Public Affairs for the Department of Corrections, inmates entering the system begin by working at unskilled agricultural labor for a probationary period. If they demonstrate that they can adapt to the demands of regular work, they are given a job in one of the areas of corrections operation. These jobs may be in maintenance, food service, education, medical care, and many of the other operations of the Department. In addition, Texas operates a prison industry program which employs a substantial number of inmates. If inmates lack necessary skills to move straight into these positions, they are provided with on-the-job training.

It is generally agreed that Texas has the most comprehensive prison industry program in the nation. The state prison system manufactures

Representative Tischer
February 25, 1983
Page Four

virtually all of its product needs, including the production of its own food, the spinning of its own cotton for clothing, and the manufacturing of shoes for its prisoners. The system has 63,000 acres of land to grow its corn and cotton and to raise its 16,000 head of cattle. The Texas program also has a number of specialized industries; e.g., micro-filming and data processing of state agency records and refurbishing fire trucks and school buses.

Prior to 1979, state law prohibited the sale of prison-made products to any agency other than the Texas Department of Corrections. The statute has since been amended to allow goods to be sold to state and federal agencies and foreign governments on a contractual basis.

According to John Bradley, with the Texas Department of Corrections, the state prison system is able to realize substantially lower operating costs than most systems because of its extensive use of prison labor. Most bookkeeping in the plants, for example, is done with inmate labor. The system's 23 factories are managed with a supervision ratio of 9 inmates to 1 supervisor.

Treatment Programs

According to Charles Brown, the Texas Department of Corrections Treatment Division is the umbrella organization for several different types of services. The Windham School System, the Division of Continuing Education, health services, social services, and the chaplaincy program are all administered by the Treatment Division. This division is where those rehabilitative programs not related to inmate work are contained.

Mr. Brown stated that the Behavioral Medicine program offered a broad range of psychological treatment to fit the needs of the inmates. Programs include individual and group counseling, and medication. However, inmates who need very intensive mental health care are referred to the state mental hospital.

The Treatment Division also operates a pre-release program which assists inmates in obtaining employment, medical care and social services upon their release from prison. The Treatment Division also offers alcohol abuse treatment programs for inmates.

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We hope we have provided a useful overview of the education and rehabilitation programs provided to inmates of the Texas correctional system. If you have any questions, or should you want us to provide more detailed information on a particular program mentioned in this memorandum, please do not hesitate to contact us.

JS/sj

High Court Asked to Give Police 'Room for Mistakes'

By Fred Barbash

Washington Post Staff Writer

The Supreme Court was asked yesterday to give police "room for some mistakes" by relaxing the controversial "exclusionary rule," which bars illegally seized evidence from criminal trials.

Illinois Assistant Attorney General Paul R. Biebel Jr. asked the court to establish a "good faith" exception to the 69-year-old rule: illegal evidence would be allowed when authorities could show they did not know it was illegal.

The exclusionary rule has become a symbol for many conservatives who believe there is an imbalance in the criminal justice system that lets criminals off on technicalities. Legislation has been introduced in Congress to create a good-faith exception.

But many groups, including the American Bar Association, support the strict application of the exclusionary rule, saying that it is the only effective deterrent to police abuse in searches and seizures.

The debate over the rule's application is considered one of the most important criminal justice disputes to come before the court in the last 20 years.

The case began on May 3, 1978, when police in Bloomington, Ill., received an anonymous letter alleging

that Susan and Lance Gates "make their living on selling drugs." The letter said that the couple had more than \$100,000 worth of drugs in their basement and soon would be traveling to Florida to obtain more. Authorities verified the couple's address and, with the help of the Drug Enforcement Administration, located the couple in Florida, where they were placed under surveillance.

While the Gates were returning to Illinois, police obtained a search warrant for the couple's home and car. On May 7, when the couple returned home, police conducted the search and found 350 pounds of alleged marijuana in the trunk of their car and more in the house, along with weapons, ammunition and drug paraphernalia. The couple was indicted on drug charges.

But before their trial an Illinois judge, in a ruling subsequently affirmed by the state's supreme court, ruled that the search warrant had been invalid because it was based on an anonymous letter. Under the exclusionary rule, all the evidence seized from the couple's car and home was declared inadmissible at trial. Illinois appealed to the U.S. Supreme Court.

If the Supreme Court upholds the "good faith" exception to the rule sought yesterday, the evidence could be admitted because the police

thought that they had a valid warrant.

"There is no evidence that the police acted in a willful, negligent way," Biebel told the justices. "Their action can only be characterized as thorough and professional. . . . This is clearly not the kind of police activity the exclusionary rule was meant to deter."

His argument was supported on behalf of the Reagan administration by Solicitor General Rex E. Lee.

"On the cost side," Lee said, "highly relevant and probative evidence was excluded, damaging the 'judicial integrity' of the legal process. On the benefit side, it is difficult to see anything that would be deterred. The police obtained the warrant. . . . They did what they should have done."

No one argued yesterday that the police had done anything wrong. This is why criminal law experts viewed the case as the perfect test of the exclusionary rule, first enunciated by the court in 1914.

The problem, it was conceded, was with the magistrate who issued the warrant based on the anonymous letter. The Fourth Amendment to the Constitution says that "no warrants shall issue, but upon probable cause" for believing that they will produce evidence of a crime.

Justice Sandra D. O'Connor,

whose vote is crucial for opponents of the exclusionary rule, asked how could the courts then deter "improper or even flagrant decisions by magistrates?"

"Under your view," she told Lee, "that would be perfectly all right."

"Not perfectly. . . ." Lee started to say before being interrupted by O'Connor.

"Perhaps there is a secondary motive [for the exclusionary rule]," she said. "Perhaps it's to make sure" that the government as a whole, and not just the police, "doesn't engage in misconduct."

Justice John Paul Stevens picked up the theme.

"How do you deter magistrates," he wanted to know. "Are you saying it's all right for magistrates to issue warrants on less than probable cause?"

The Gates' lawyer, James W. Reilly, also addressed this issue. Application of a good-faith exception in this case, he warned, "will immunize the warrant process" from review by courts. Reilly added that it would "establish a lesser standard for warrants" than the Constitution requires.

Reilly avoided the merits of the case almost entirely yesterday, while appealing to the Burger's court's sympathy for states' rights. He told the justices that the Illinois courts

based their decision on state law and state court rulings and that the Supreme Court should not even be reviewing it.

While procedural, this argument has proven effective in other cases in attracting votes from conservatives.

Yesterday was the second time the court has heard *Illinois vs. Gates*. In the first oral argument, in October, the "good-faith" exception was not an issue. The court specifically asked to have the case reargued on that point. This was an unusual action that required five votes and signaled the likelihood of a favorable ruling from a majority of the justices.

Estelle says working with youth answer to rising prison population

By DAN HILL
Staff Writer

Texas Department of Corrections Director W.J. Estelle challenged a crowd gathered at the monthly Chamber of Commerce First Friday luncheon, to "do something" about the rising prison population, by working with young people in their own community to keep them out of the criminal justice system.

"We've all got to stop and re-evaluate our priorities," Estelle said. "They don't just turn 18 years old, and suddenly turn criminal, they grow up that way."

Estelle said it was every individual's responsibility to take care of the children in his own home

and community, and take enough interest in them to let them know that there are alternatives to crime.

"You and I have taken that interest in our own children, most of us have anyway, but there are many others who have not, and that's why our prisons are full," Estelle said.

Estelle added that working on the problem of keeping individuals out of trouble is something that's going to take a lot of work.

"The real heroes in the criminal justice system are those who are spending their valuable time working with troubled youth, and even bigger heroes are those that totally get involved with our young

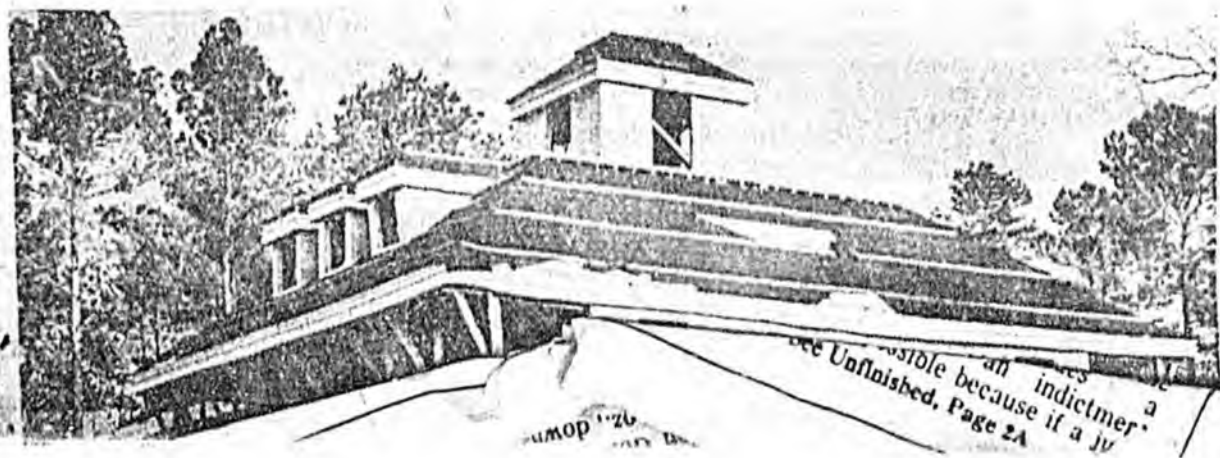
people before they get in trouble, giving them something wholesome to do, to keep them out of trouble in the first place."

Estelle said that the time has come for action and for a commitment to the children and youth, and that it had to start on the neighborhood and community level.

"We've got to come to the understanding that we've got to solve the problem ourselves, and you can start by controlling what goes on within a one-mile radius of where you work and live," he said.

Estelle said that everyone understands that you have to pay taxes to have good schools, and he See Estelle, Page 2A

ed house center of controversy





Estelle speaks

Department of Corrections Director W. J. Estelle speaks at the Lufkin Chamber of Commerce First Friday luncheon. (Staff Photo)

Entertainers signed up for '83 Houston Rodeo

The Livestock Show and officials announced Friday a line-up of performers scheduled for the Show, February 23 through March 6.

Performers include:

- 23, Kool and the Gang.
- 24, Mel Tillis.
- 25, Merle Haggard.
- 26, Hank Williams, Jr., and Lacy J. Dalton.
- 27, Eddie Rabbitt, and the Judds.
- 28, Conway Twitty,

and Ricky Scaggs, Janie

- March 2, Don Williams.
- March 3, Crystal Gayle.
- March 4, Larry Gatlin and the Gatlin Brothers Band.
- March 5, Charley Pride.
- March 6, Oak Ridge Boys.

Ticket sales began Saturday, Dec. 4 at the Astrodome box office, Ticket Master, and Ticketron outlets. Prices are \$8 and \$4.

They are also available by mail. Write Rodeo Ticket Director; P.O. Box 25395; Houston, Texas; 77265.

Rodeo tickets include admission to all livestock show events, except the NCHA World's Championship Finals and the World's Championship Rodeo.

Estelle

Continued from Page 1A

said that the same sort of idea applies in the criminal justice system — you can't have the protection you want without paying for it.

Abortion

Continued from Page 1A

abortion," Taylor said.

"Some people (in Planned Parenthood) are very well-meaning," Martin said, and do not know Planned Parenthood includes abortions in their counseling.

Taylor said Planned Parenthood does not actually perform abortions but provides "referral listings of places they can have it done."

The organization will recommend to the woman that she not have an abortion after the first trimester of pregnancy, Taylor said.

Planned Parenthood serves a need in Angelina County, Prince said. About 3,800 people in the county received services from it last year.

"We'll have to make a decision that is best for the majority. We can't satisfy everybody," he added.

Planned Parenthood in Lufkin will receive \$2,500 from United Way this year, according to Prince, less than one percent of the \$285,000 distributed by United Way in the county. That is about two percent of Planned Parenthood's total budget.

The Right to Life board is trying to incorporate for two reasons. Members want to become a tax-exempt charitable organization and to be more credible. "In the eyes of the public, you're more credible if you have an organization with structure," Martin said.

Right to Life also plans to form a political action committee. During elections the committee will publish a list of candidates and their positions on abortion, Martin said.

Eventually, the board would like to provide a counseling service for women on abortion alternatives. "If you take a stand against something, you have to provide viable options," Martin said.

Until then, they will work closely with Birthright, a national counseling service with an office in Nacogdoches.

Mrs. Karen Castillo, director of Birthright there, said the service provides counseling on alternatives such as adoption and maternity homes.

Birthright is not church-

Estelle has been the TDC since 1972, and sought-after speaker and lecturer in the field of justice.

Birthright will offer services and teach Right to Life volunteers how to counsel.

Since Birthright is not in politics, Mrs. Castillo said to Life will handle the aspect.

Martin said there are national pro-life, anti-abortion movements, and the local group hasn't decided which one to go with.

Dr. Brian Carlin, a member of the group, said his views on abortion are "fairly mild" compared to the views of Right-to-Life members. The doctor said he is not absolutely certain when the unborn is human.

He said he is against abortion because there is a possibility life begins at conception. "At least a person can say is that a possibility," he said. "If there is a possibility that there is a human there, you ought not to abort."

Carlin said that if the unborn is human, then it has the right to a process of law before death. "We don't have any reasons for aborting the kid."

Most abortions are done because of the inconvenience of the pregnancy, he said.

Even if the pregnancy is the result of rape, Carlin said the unborn has rights. "The abortion didn't do anything."

One of the national Right to Life organization's main goals is the passage of an amendment to the U.S. Constitution that would make abortion unlawful, Martin said.

Martin said Right to Life has nothing to do with birth control but "once a life has been produced, that life must be protected."

Martin said that although Right to Life opposes pro-abortion movements they "don't plan to be ugly to anybody about it. You're not going to change anybody's mind by being ugly. With an issue that's as emotional as that, you need to present it so people know you're doing it out of love for the unborn, rather than out of hate for someone else."

Although most people involved in

MSG 83-00001278 PRTY 1 03/17/83 10:36:56 ORIG: LA07 IN= 0002 OUT= 0119
FROM: CAROL TO: JUNEAU LIO
TARGET: LJHL SUBJ: POM

TO: REPRESENTATIVE ADAMS, CHAIRMAN, HOUSE FINANCE COMMITTEE
REPRESENTATIVES BETTISWORTH, FLOOD, CRUSSENDORF, HURLBERT, LINDAUER,
MARTIN, PESTINGER, WARD, ZHAROFF, AND DUNCAN
REPRESENTATIVE CHARLIE RUSSELL, CHAIRMAN, HOUSE JUDICIARY COMMITTEE

FROM: THELMA P. LANGDON
EXEC. ASSISTANT TO JOHN GARVIN
ALASKA CHILDREN'S SERVICES
1200 E. 17TH AVENUE
ANCHORAGE 99504 276-4515

DR

RE: CSHB 103

WE ARE OPPOSED TO TRANSFERRING JUVENILE CORRECTIONS INTO THE NEW DEPARTMENT
OF CORRECTIONS FOR SEVERAL REASONS. THE PHILOSOPHY OF TREATMENT FOR
JUVENILES NEEDS TO BE DIFFERENT THAN THAT FOR ADULTS.

JUVENILE DELINQUENTS HAVE MORE IN COMMON WITH CHILDREN IN NEED OF AID
THAN THEY DO WITH ADULT CRIMINALS.

WE RECOMMEND THAT IT REMAIN IN DHSS.

FROM: JEAN HIGGS, 2910 W. NORTHERN LIGHTS BLVD, 9-E, ANCH 99503
H 248-3750 W 561-1905

I STRONGLY URGE YOU TO CONSIDER APPROPRIATION FOR SB 158,
SECTION 15. RECOMMEND HOUSE BILL 202 BY ADAMS AND LISKA.
RECOMMEND HOUSE BILL 103 BY JUDICIARY COMMITTEE. THE ABOVE
ARE CONCERNS FROM AN ALASKAN CITIZEN.



FROM: SHIRLEE ANC LIO
TARGET: LJHL SUBJ: POM

TO: FOMS JUNEAU INFO

4/1/83, SHIRLEE ANC LIO, 4992

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: JOHN W. MORRILL, 3621 CARLTON AVE., ANCHORAGE 99503
H 248-4644 W 561-1433

RE: HB 103

John W. Morrill



PLACING JUVENILE OFFENDERS IN A DEPARTMENT EMPHASIZING INCARCERATION OVER TREATMENT AND REHABILITATION WOULD INCREASE JUVENILE AND ADULT CRIME. PRESENTLY INSTITUTIONALIZATION MEANS THE CHILD WILL BE AVAILABLE FOR INTENSIVE COUNSELING AND EDUCATION. COMMUNITY PLACEMENTS CAN'T GUARANTY AVAILABILITY. MR. ENDELL'S INSTITUTIONS WON'T PROVIDE TREATMENT; THEREFORE, JUVENILE OFFENDERS BECOME ADULT CRIMINALS.

4/1/83, SHIRLEE ANC LIO, 4995

TO: ALL MEMBERS, ALASKA LEGISLATURE

FROM: MIKE SHORT, 8631 TURF COURT, ANCHORAGE 99504
H 337-5167 W 561-1433



I WOULD ENCOURAGE MEMBERS OF THE LEGISLATURE TO KILL HOUSE BILL 103. IF ADEQUATE RESEARCH IS DONE BY THE MEMBERS, I BELIEVE THE CHOICE IS OBVIOUS. THE BILL WOULD BE A TERRIBLE ALTERNATIVE TO THE CURRENT SYSTEM. PROBLEMS DO EXIST, BUT WOULD ESCALATE IF HB 103 IS APPROVED.

TO: ALL MEMBERS OF THE LEGISLATURE

FROM: GORDON HAYS, 7800 DEBARR #514, ANCHORAGE 99504
333-9946 H 561-1433 EXT 83 W

RE: HB 103



RESEARCH THROUGHOUT THE US INDICATES A SIGNIFICANT DIFFERENCE BETWEEN JUVENILE AND ADULT CRIME AND THE OFFENDERS THEMSELVES. THE FOCUS OF FAMILY AND YOUTH SERVICES IS TREATMENT OF THE CAUSE; OF CORRECTIONS THE INCARCERATION OF OFFENDERS. THE TWO CANNOT BE COMBINED WITHOUT THE JUVENILE, THE FAMILY, THE ALASKAN SOCIETY SUFFERING.
