ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 8672

2451 HJ HB 409 - HB 446

2451

2-party election vote set

HB 409

5-17-83

by Bill White
Times Juneau Bureau

Juneau — The House is scheduled to vote today on a bill that, according to the state's top Libertarian, would give the Democratic and Republican parties "a stranglehold on Alaska politics."

The bill would let the names of only two candidates appear on the general election ballot for any state office.

Those candidates would be determined by a method unique to American politics. Total votes cast for candidates from a political party in a primary election would be matched against total votes for candidates of other parties and for independents and write-ins.

For example, in an six-person primary race, an independent might get 10,000 votes, a Libertarian 9,000 votes, two Democrats get 8,000 and 4,000 (for 12,000 total), and Republicans 7,000 and 5,000 (also a 12,000 total). Selected for the general election ballot would be the top Democratic vote-getter and the top Republican.

"The right to vote and to asso-

See Bill, page A-4

Bill would limit candidates

Continued from page A-1

ciate freely are fundamental to the ideal of American government. They should not be trampled upon in such a brazen fashion as contemplated by this bill," said former Fairbanks Rep. Dick Randolph, head of the Libertarian Party, in a statement presented to the Judiciary Committee Monday.

Randolph called the bill "plainly unconstitutional," an effort "to legislate these alternative viewpoints off the ballot" and "an arrogant slap in the face of Alaskan voters."

"They (voters) should have the right to decide which approach to issues best suits them. If competition is good in the marketplace, why isn't it desirable in politics?" said Randolph, whose statement was read by a local Libertarian.

The bill has been on a fast track since the Judiciary Committee introduced it eight days ago. The committee had been working for months on how to limit general election ballots to just two candidates per office.

Libertarians received no notice that the bill would be introduced, Randolph said.

The bill was scheduled for a floor vote today even before the committee approved it on a 4-3 Republican vs. Democrat vote.

Republican State Chairman Ken Stout in a May 11 letter urged his party's legislators to support the bill. Calling it "the most significant piece of legislation for Republicans that we have in this decade," Stout said it is needed to protect "major parties from being diluted by lesser party candidates."

The letter was made public by Libertarians Tuesday.

In the letter, Stout said some "rather ludicrous candidates" were a "constant source of agitation" in the last general election. This is the only piece of legislation he has lobbied for during this session, he added.

Sen. Fritz Pettyjohn, R-Anchorage, said that because more than two candidates ran in general elections, just once since 1962 has the governor been elected with a majority of the votes cast. One of the 20 senators and eight of the 40 representatives also were not picked by most of the voters, he said.

More than half the voters in Alaska belong to no political party.

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

May 11, 1983

SUBJECT: Primary and general election
(CSHB 409 (Judiciary))

TO: Representative Charlie Bussell
Chairman, House Judiciary Committee

FROM: Richard A. Bradley
Legislative Counsel

You have requested a sectional analysis of the above described bill.

As a preliminary matter, I must advise you that a sectional analysis or summary of a bill should not be considered an authoritative statement of the contents of the bill; the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please address a specific request to this office.

Section 1 of the bill amends AS 15.15.030(5). AS 15.15.030 deals with the preparation of the official ballot. The amendment to sec. 30(5) is intended to delete the requirement of present law that "no-party" candidates have their names appear on the general election ballot. As will appear as the bill is examined, these candidates will now be voted on at the primary election.

Section 2 amends AS 15.25.010. The section provides that candidates will be nominated under the provisions of AS 15.25.010 - 15.20.200. Since a new section 201 is being added by the bill which will also regulate the nomination process, the amendment is necessary.

Section 3 adds a new Sec. 15.25.025. It changes the thrust of existing law by stating affirmatively that the director "shall place the names and political group affiliation of person who have been properly nominated under this chapter on the primary election ballot." As you recognize, under

present law, "no-party" candidates are nominated under that chapter (AS 15.25) but do not go on the primary election ballot.

For a full explanation of what it means to be nominated under this chapter, see the comments on AS 15.25.201, below.

In connection with this section, note the repeal (in section 11) of AS 15.25.190; the latter section provides:

> Sec. 15.25.190. PLACEMENT OF NAMES ON GENERAL ELECTION BALLOT. The director shall place the names and the political group affiliation of persons who have been properly nominated by petition on the general election ballot.

Section 4 amends AS 15.25.030(14). That section is a portion of the section that provides for the contents of the "Declaration of Candidacy" of candidates of political parties. Apart from the changes required by Chapter 58, SLA 1982, the changes to this section requires a candidate to state that the candidate is not a candidate for any other office to be voted on at the "primary [OR GENERAL] election". As suggested, under existing law party candidates appear on the primary election ballot; "no-party" candidates appear on the general election ballot only. The purpose of existing law is to prevent an individual from seeking two offices simultaneously. Since candidates may not appear on the general election ballot in any case under this law unless they are nominated, the bill eliminates the reference to the general election.

Section 5 amends AS 15.25.060. Existing law provides that no write-in votes may be counted at the primary election. See AS 15.25.070. This bill repeals AS 15.25.070 in sec. 11 and reverses the policy stated in this section by directing the director to provide spaces for write-in votes on the primary election ballot.

Section 6 repeals and reenacts AS 15.25.180(7). AS 15.25.180 regulates the contents of the nominating petition of no-party candidates. The existing provision provides, in context:

> Sec. 15.25.180. Requirements for Petition. The petition shall state in substance

* * *

(7) the date of the election at which the candidate seeks election,

The amendment simply makes clear the fact that "no-party candidates will have their names appear on the primary election ballot."

Section 7 amends AS 15.25.180(15). AS 15.25.180(15) is a "no-party" counterpart to the party nominee requirement discussed above at sec. 4, amending AS 15.25.030. It requires the "no-party" candidate to certify that no other office is being sought at the primary election. Since candidates may go to the general election ballot only by nomination at the primary, the reference to the possibility of being a candidate at the general election is eliminated.

Section 8 amends AS 15.25.200. The section amends law regulating withdrawal of a "no-party" candidate's name. Because the candidate will be voted on at the primary election in place of the general election, a modification of the scheme of the section was necessary. The section deals affirmatively with a subject that the law is presently silent on: the effect on the candidacy of a team of candidates for governor and lieutenant governor when only one dies or withdraws. The amendment permits the remaining member of the team to submit a replacement name.

Section 9 establishes a new AS 15.25.201. The section is the heart of the bill.

Sec. 201(a) provides that only two candidates are nominated at the primary election for each office for which there will be a vacancy. To determine who those candidates are, the director counts the votes cast for each "no-party" candidate, each write-in candidate, and each candidate of a political party. The director then cumulates the votes of all candidates of each "political party" (as defined in AS 15.60.010(20) and as amended in sec. 10 of the bill. From these totals, the director will determine "which candidate or political party received the largest and the second largest number of votes cast." Then, if "a no-party candidate or a write-in candidate received the largest or second largest count, that candidate shall appear on the general election ballot. If a political party received the largest or second largest count, the candidate of that party who

received the largest number of votes shall appear on the general election ballot."

Sec. 201(b) provides that to determine the parties that have nominated candidates for governor and lieutenant governor, the votes cast for candidates for lieutenant governor are disregarded and the votes for candidates for governor in each party are cumulated.

Section 10 amends AS 15.60.010(20). It changes the definition of "political party" to conform to the requirements of the Supreme Court decision in Vogler v. Miller. It reduces to five percent (from the former ten percent) the number of votes required for a political party candidate for governor at the previous general election for continued status as a political party.

Section 11 repeals AS 15.25.070, 15.25.100, and 15.25.190.

Those sections now provide:

> Sec. 15.25.070. SPECIAL PROVISIONS ON COUNTING BALLOTS. No voter may vote for a person whose name is not on the ballot. Votes cast for a person whose name is not on the ballot shall not be counted, but writing in a candidate's name does not invalidate the entire ballot.
>
> Sec. 15.25.100. PLACEMENT OF NOMINEES ON GENERAL ELECTION BALLOT. The director shall place the name of the candidate receiving the highest number of votes for an office by a political party on the general election ballot.
>
> Sec. 15.25.190. PLACEMENT OF NAMES ON GENERAL ELECTION BALLOT. The director shall place the names and the political group affiliation of persons who have been properly nominated by petition on the general election ballot.

If I may be of further assistance, please advise.

RAB:ljb
19/013

SUMMARY OF VOTER TOTALS, PERCENTAGES OF GOV. ELECTIONS, GENERAL

1962-1982

YEAR	TOTAL VOTES	CANDIDATE #1 / %		CAN.#2 / %		CAN.#3/ %		CAN.#4/5
1962	60,084 (56,681)*	29,627	49.3% (52.2%)	27,054	45% (47.7%)			
1966	67,361 (66,294)	33,145	49.2% (49.9%)	32,065	47.6% (48.3%)	1084	1.6% (1.6%)	
1970	82,405 (80,779)	42,309	51.3% (52.3%)	37,264	45.2% (46.1%)	1206	1.4% (1.4%)	
1974	98,557 (96,163)	45,840	46.5% (47.6%)	45,553	46.2% (47.3%)	4770	4.8% (4.9%)	
1978	129,705 (126,910,	49,580	38.2% (39.%)	33,555	25.8% (26.4%)	25,656	19.8% (20.2%)	
				CAN #4 /%		CAN.#5/%		
				15,656	12.% (13.%)	2,463	1.9% (1.94%)	
1982	199,358 (194,511)	89,918	45.1% (46.2%)	72,291	36.2% (37.1%)	29,067	14.5% (14.9%)	
				CAN. #4/%				
				3235	1.6% (1.66%)			

* NOTE: These numbers and percentages in ( )s are totals excluding votes not cast for one of the candidates listed above; all small write-in votes.

B

CS HJR 9 (CS1HJR 8 (S))
By the Judiciary Comm.

Comments by the Division of Elections

CS HJR 9 "Proposing an amendment to the Constitution of the State of Alaska relating to elections for candidates for Governor and Lieutenant Governor and for members of the legislature."

ANALYSIS : This bill would require that any candidate for state elective office (executive and legislature) receive 50% of the votes cast for the office plus one vote, in the general election. If a candidate for office does not receive this amount, a runoff election shall be held between the top two vote getters.

A review of the 1982 legislative races shows that, if this law were then in effect, one (1) Senate race and eight (8) House races would require runoff elections. It should be noted that in every one of these nine races there were strong Libertarian and Independent candidates.

	Senate #15&16	House #5 A	House #5 B	House #10 B	House #14 B
winner %	41%	45%	49%	48.2%	49%
ack #	-876	-504	-101	-145	-95

	House #16 B	House # 18	House # 19	House # 17
winner %	36%	41%	48.7%	42%
ack #	-1529	-425	-66	-363

Additionally, for point of reference, there were two (2) Senate races won with 50% plus 6 and 12 votes respectively, four (4) Senate race won between 51% and 55%, and four (4) House races won with barely more than 50% (plus 12, 34, 60 and 63 votes respectively)

As was noted previously in comments on the original HJR 9, all gubernatorial races except 1970 would have required a runoff election. Even the decisive 17,000 vote margin of the1982 race left the winner with 45% of the ballots cast for that race, again due to the strong showing of the Libertarian and Independent candidates.

***** BROWSE FILE IN BILL ORDER *****

BILL NUMBER	STATUTE	ACTION
HB 409	15.15.030	AMENDED
HB 409	15.25.025	ADDED
HB 409	15.25.030	AMENDED
HB 409	15.25.060	AMENDED
HB 409	15.25.070	REPEALED
HB 409	15.25.140	REFERENCE
HB 409	15.25.150	REFERENCE
HB 409	15.25.160	REFERENCE
HB 409	15.25.170	REFERENCE
HB 409	15.25.180	AMENDED
HB 409	15.25.180	REPL&REIN
HB 409	15.25.180	REFERENCE
HB 409	15.25.190	REPEALED
HB 409	15.25.190	REFERENCE
HB 409	15.25.200	AMENDED
HB 409	15.25.200	REFERENCE
HB 409	15.25.201	ADDED
HB 409	15.60.010	AMENDED
HB 409	15.60.010	REFERENCE

SELECT A BILL NUMBE AND HIT ENTER BILL NUMBER HB 409 STATUTE 1560010
RETURN TO MAIN MENU ?

***** BROWSE FILE IN BILL ORDER *****

BILL NUMBER	STATUTE	ACTION
HB 409	15.60.010	AMENDED
HB 409	15.60.010	REFERENCE
HB 410	16.05.340	AMENDED
HB 411	01.10.070	REFERENCE
HB 412	18.50.030	REFERENCE
HB 412	18.50.500	ADDED
HB 412	18.50.500	REFERENCE
HB 412	18.50.510	ADDED
HB 412	18.50.510	REFERENCE
HB 412	18.50.520	ADDED
HB 412	18.50.520	REFERENCE
HB 412	25.23.000	REFERENCE
HB 412	25.23.185	ADDED
HB 412	47.35.100	REFERENCE
HB 413	39.20.180	REFERENCE
HB 413	39.50.200	ADDED
HB 413	41.35.300	ADDED
HB 413	41.35.300	REFERENCE
HB 413	41.35.305	ADDED

SELECT A BILL NUMBER AND HIT ENTER BILL NUMBER HB 413 STATUTE 4135305
RETURN TO MAIN MENU ?

STATE OF ALASKA
FISCAL NOTE

[illegible]ision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 409
Title: Relating to Prim & Gen Elections
Sponsor: House Judiciary Committee
Requestor: House Judiciary Committee

II. FISCAL DETAIL

Agency Affected: Office of the Governor
Program Category Affected: Exec Operations
BRU, Program of Subprogram(s) Affected: Division of Elections

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL: Not Provided

IV. ANALYSIS: The passage of this legislation would not have an appreciable fiscal impact on the division.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Dana C. Coffman, Deputy Director Phone: 586-6181
Division: Division of Elections Date: May 10, 1983

Approved by Commissioner: [signature] Date: May 11, 1983
Department: Lieutenant Governor

Distribution:
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3/8/83

SE, SOLDOTNA P.O.M. 5/18/83 18600

D SENATORS: RAY, JOSEPHSON

REP.'S: BUSSELL, LISKA, BARNES, CLOCKSIN, HAYES, MALONE, WENDTE

ROM: LINDA FILER
BOX 148, ANCHOR POINT, AK. 99556 (H) 235-8457

LEASE EXPLAIN HOW HB-409 IS CONSTITUTIONAL. I AM OPPOSED TO IT AND WOU D LIKE
D HEAR MORE PUBLIC HEARINGS.
B-409, PRIMARY & GENERAL ELECTIONS.
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

SNG 18719 MARTIE/MATSU 5/18 4:10 PM

O: ALL LEGISLATORS

ROM: LLOYD RUDD
BOX 359
WASILLA 99687

ONCERNING HB 409, PRIMARY AND GENERAL ELECTIONS

LONG TIME AGO WE FOUGHT A WAR OVER THE ISSUE OF TAXATION WITHOUT REPRESEN-
ATION. LEAVE THE LIMITED ENTRY MENTALITY TO THE FISH INDUSTRY AND NOT THE
OLITICAL ARENA. AS AN EX-COMBAT VETERAN I CAN FEEL NOTHING BUT SHAME AND
ONTEMPT THAT SUCH A BILL SHOULD SURFACE IN ALASKA. THIS BILL IS TOTALLY UN-
MERICAN AND BELONGS WEST OF THE BERING STRAIT.

18/83, SHIRLEE ANC LIO, 18681

O: ALL MEMBERS, ALASKA LEGISLATURE

ROM: KEN NESTING, 7330 SILVER BIRCH DRIVE, ANCHORAGE 99503
H 243-5048 W 243-7976

EEDOM OF CHOICE IS AN AMERICAN PREROGATIVE. HOUSE BILL 409
THE ACT OF PETTY POLITICIANS RUNNING SCARED. DO NOT PASS IT.

****

HB

412

CL

FISCAL NOTE | Revision Date _____, 1983

I. REQUEST

Bill/Resolution No. CSHB 412 (HESS)

Title: Adoptions

Sponsor: Szymanski, Fritz, Malone, & Koponen

Requestor: _____

II. FISCAL DETAIL

Agency Affected: Health & Social Service

Program Category Affected: _____

BRU, Program or Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

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

The source of funding was not identified by the sponsors.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Dan P. Graves [illegible] Phone: 465-3391

Division: Planning, Policy & Program Evaluation/Vital Statistics Date: 5/18/83

Approved by Commissioner: Robert Fowler Smith Date: 5/24/83

Department: Dept. of Health & Social Services

Distribution:

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3/87

HB

421

COMMITTEE REPORT

HOUSE

(7)

FURTHER:

5/25/83

Date: 5-3-84

Mr. Speaker:

The Committee on JUDICIARY has had HB 421

"An Act relating to open containers of alcoholic beverages in motor vehicles."

under consideration and reports it back as follows:

[✓] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

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

and recommends _____

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

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

H 60

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - HB 421

Support

This bill will provide another law enforcement tool toward reducing the drunk drivers on the road.

Making it a violation to have an open container in the passenger compartment of a motor vehicle should reduce the tendency to drink while in the process of driving, which now is the only violation related to alcoholic beverages in a vehicle.

for Robert J. Sundberg
Commissioner

Alaska State Legislature

House of Representatives

Representative Mike Szymanski

Official Business

SR-A-Box 1304B
Anchorage, Alaska 99502
Phone (907) 349-3373

While in Session:
Pouch V
State Capitol
Juneau, Alaska 99811

April 26, 1984

TO: Representative Charlie Bussell
Chairman, House ~~Judiciary~~ Committee

FROM: Representative ~~Mike~~ Szymanski

SUBJECT: House Bill 421

At the present time, there is no open container statute on the books. Under 13AAC 02 545, drivers are prohibited from drinking while driving but there is nothing which prohibits the driver from being in a car where there is an open alcoholic beverage container.

Nineteen other states have an open container law(see attached analysis). Some of these states have had such a law on the books since the 1930's. Two that are relatively frequent (Hawaii and Utah) were contacted by House Research.

Utah enacted their law in 1981, mainly to make a statewide statement of illegality. They have counties and the counties were locally enacting their own laws about drinking and driving and it caused confusion -- you could drive from one county to another and the law would change. It was also not hgihly enforced because of the confusion.

Hawaii enacted their open container law in 1981. They have never had municipal ordinances. Their law was in response to the county police who, time and again, responded to accidents and found empty alcohol containers at the scene.

From: U.S. Department of Transportation, National Highway Traffic Safety Administration
"Alcohol-Highway Safety: A Digest of State Alcohol-Highway Safety Related Legislation 1983"

ANALYSIS BY STATES--HIGH-INTEREST LEGISLATION (Continued)

State	Dram Shop	Open Container	Community Service	Mandatory Jail-1st Offense	Mandatory Jail--2nd or Other Offense
ALABAMA	Statute				
ALASKA	Statute				
ARIZONA	No		X	X	X
ARKANSAS	No				
CALIFORNIA	No	X			X
COLORADO	Statute		X		
CONNECTICUT	Statute				X
DELAWARE	No				
DISTRICT OF COLUMBIA	Case law				
FLORIDA	Case law		X		
GEORGIA	Statute				
HAWAII	Case law	X	X		
IDAHO	Case law	X			
ILLINOIS	Statute	X			
INDIANA	Case law				X
IOWA	Statute				X
KANSAS	No	X			
KENTUCKY	Case law				X
LOUISIANA	No		X	X	X
MAINE	Statute			X	X
MARYLAND	No	X			
MASSACHUSETTS	Statute				
MICHIGAN	Statute	X	X		
MINNESOTA	Statute	X			
MISSISSIPPI	Case law				
MISSOURI	Case law				
MONTANA	No	X			X
NEBRASKA	No				X
NEVADA	No				X
NEW HAMPSHIRE	No				X
NEW JERSEY	Case law		X		
NEW MEXICO	Case law				X
NEW YORK	Statute				
NORTH CAROLINA	No	X			X
NORTH DAKOTA	Statute	X			
OHIO	Statute	X			

ANALYSIS BY STATES--HIGH-INTEREST LEGISLATION (Continued)

State	Dram Shop	Open Container	Community Service	Mandatory Jail-1st Offence	Mandatory Jail--2nd or Other Offense
OKLAHOMA	No	X			
OREGON	Statute	X			
PENNSYLANIA	Statute		X	X	X
PUERTO RICO	No				
RHODE ISLAND	Statute				
SOUTH CAROLINA	No	X			
SOUTH DAKOTA	No	X			
TENNESSEE	Case law		X	X	X
TEXAS	No				
UTAH	Statute	X	X		
VERMONT	Statute				
VIRGINIA	No				X
WASHINGTON	Case law	X		X	X
WEST VIRGINIA	No		X	X	X
WISCONSIN	No	X			
WYOMING	Statute			X	X
	Case law-12 Statute -20	19	11	8	20

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 421
Title: An Act relating to open containers..."
Sponsor: Rep. Szymanski
Requestor: House State Affairs

II. FISCAL DETAIL

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	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 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: 5/24/83

Approved by Commissioner: [signature] Date: 5/24/83
Department: Public Safety

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3/8/83

HB

444

COMMITTEE REPORT

HOUSE

(7) FURTHER: FINANCE

1/12/84 Date: 1/30/84

Mr. Speaker:

The Committee on JUDICIARY has had SSHB 444

"An Act relating to unlawful restraint of a minor."

under consideration and reports it back as follows:

[X] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for SSHB 444 (Jud) [X] same title [ ] new title

and recommends _____

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

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

H 60 (Rev. 3/81)

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

Committee on Judiciary

SSHB 444
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STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

M E M O R A N D U M January 13, 1984

SUBJECT: Sectional analysis of SSHB 444

TO: Representative Charlie Bussell

FROM: Keith B. Levy KBL
Legislative Counsel

You have requested a sectional analysis of HB 444, "An Act relating to unlawful restraint of a minor." Since your request was submitted, Representative Liska has introduced a sponsor substitute for HB 444, so this analysis follows the sponsor substitute rather than the original bill.

SSHB 444 creates the crime of unlawful restraint of a minor, a class A misdemeanor. The offense is committed if a person takes, entices, or restrains a child under the age of 12 with intent to conceal the child from the child's lawful custodian, under circumstances not amounting to kidnapping (AS 11.41.300) or custodial interference (AS 11.41.320 and 11.41.330). It is an affirmative defense to unlawful restraint of a minor that the defendant acted to protect the child from physical harm.

KBL:ojb
J2/026

Proposed definition of "entice" for SSHB 444, if Committee members should want to use it----Staff.

*Sec. 2. AS 11.41.370 DEFINITIONS is amended by adding a paragraph to read as follows:

(4) "entice" means to solicit, persuade, procure, allure, attract, coax or induce another person to accompany or remain with the person doing the enticing.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: SSHB 444
Title: "...unlawful restraint a minor."
Sponsor: Rep. Liska
Requestor: Rep. Liska
Date of Request: 1/12/84

FISCAL DETAIL
Agency Affected: Department of Law
Program Category Affected: Administration of Justice
BRU, Program or Subprogram(s) Affected: Prosecution

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 86	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		40.6	43.0	45.6	48.3	51.2
200 TRAVEL		4.8	5.1	5.4	5.7	6.0
300 CONTRACTUAL		6.0	6.4	6.8	7.2	7.6
400 SUPPLIES		4.5	3.2	3.4	3.6	3.8
500 EQUIPMENT		1.5	--	--	--	--
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	57.4	57.7	61.2	64.8	68.6
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	57.4	57.7	61.2	64.8	68.6
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not specified by sponsor.

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard I. Pegues, Director (Richard I. Pegues) Phone: 465-3672
Division: Administrative Services Date: 1/18/84
Approved by Commissioner: Norman C. Gorsuch (Richard I. Pegues/COR) Date: 1/18/84
Agency: Department of Law

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

Fiscal Note
Analysis
SSHB 444

January 18, 1984

This bill will provide class A misdemeanor punishment of individuals who unlawfully take, entice or restrain a child under 12 years of age, without rising to the level of child molesting or sexual abuse. The Municipality of Anchorage has a similar ordinance and municipal prosecutors report that they prosecute 20 to 25 such cases each year, based upon the evidence they are able to develop. The incidence of enticement complaints, in the municipality, is much higher averaging about 35 complaints per month.

The department estimates that 40 to 50 of these offenders will be prosecuted each year if this bill is enacted. Because restraint and enticement is not yet unlawful, in most of the state, no hard data on the statewide incidence rate is available. Cases involving young victims are difficult to prove because these victims are usually the prosecution's principal witnesses. Therefore developing these cases can often take a substantial amount of attorney time. The department believes, however, that use of a paralegal trained in assisting the victims of sensitive crimes will be just as effective in developing evidence and far more efficient in terms of state resources. A paralegal assistant, at Anchorage, will be needed, if the bill is enacted.

Fiscal Analysis - SSHB 444

This analysis assumes the addition of a Paralegal Assistant II (SR16), at Anchorage, to develop the evidence needed to prosecute unlawful restraint and enticement of children under 12 years of age. The position will be available to most of Southcentral Alaska and a modest travel budget is provided for that purpose. Costs beyond FY 85 have been calculated with a 6% inflation factor.

Personal Services	40,569
Travel - Paralegal travel 200 pm = 2,400 Witness travel 200 pm = 2,400	4,800
Contractual - Staff communications/copying 250 pm = 3,000 Witness fees 25 each X 10 per mo. = 3,000	6,000
Commodities - Ongoing - expendables and library - 250 pm = 3,000	3,000
Commodities - Single time - new position 1,500	1,500
Equipment - Single time - new position 1,500	1,500
Total	57,369

1.	POSITION TITLE Paralegal Assistant II			RANGE/STEP 16A	BARG. UNIT GGU	FORM 12 PACE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	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	30,876	
6.	Benefits	5,064	
7.	Supplemental Benefits	1,893	
8.	Fixed Benefits	2,736	
9.	TOTAL PERSONAL SERVICES	01	40,569
10.	Travel	02	4,800
11.	Contractual	03	6,000
12.	Commodities	04	4,500
13.	Equipment	05	1,500
14.	Other		
15.	TOTAL COST		57,369

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	57,369
19.		I-A Receipts	1005	
20.		Program Receipts	1020	
21.		Other		

FOR O&M USE ONLY
4A KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

A paralegal assistant will be required to develop evidence to prosecute the crime of unlawful restraint or enticement of children under 12 years of age, if HB 444 is enacted. These cases are difficult to prosecute because of the young age of the victims who are normally the prosecution's principal witnesses. A paralegal, trained in the special techniques necessary to interview and prepare young victims for trial, is best suited for this task.

13 REQUEST FOR NEW POSITION

AGENCY DEPARTMENT OF LAW

PROGRAM ADMINISTRATION OF JUSTICE

BRU PROSECUTION

COMPONENT THIRD JUDICIAL DISTRICT

Revised Date

FY 85

Collateral references. — 1 Am. Jur. 2d, Abduction and Kidnapping, § 1 et seq.

1 C.J.S., Abduction, § 1 et seq.; 51 C.J.S., Kidnapping, § 1 et seq.

Forcing another to transport one as constituting offense of kidnapping or of abduction, 62 ALR 200.

Fiction of loss of services as a condition of action for abduction of child, 72 ALR 847.

Kidnapping or other criminal offense by taking or removal of child by, or under authority of, parent, or one in loco parentis, 77 ALR 317.

Offense of abduction or kidnapping as affected by defendant's belief in legality of his act, 114 ALR 870.

Fraud or false pretenses, kidnapping by, 95 ALR2d 450.

What is harm within provisions of statutes increasing penalty for kidnapping where victim suffers harm, 11 ALR3d 1053.

Seizure or detention for purposes of committing rape, robbery, or similar offense as constituting separate crime of kidnapping, 43 ALR3d 699.

Necessity and sufficiency of showing, in kidnapping prosecution, that detention was with intent to "secretly" confine victim, 98 ALR3d 733.

Sec. 11.41.300. Kidnapping. (a) A person commits the crime of kidnapping if

(1) the person restrains another with intent to

(A) hold the restrained person for ransom, reward, or other payment;

(B) use the restrained person as a shield or hostage;

(C) inflict physical injury upon or sexually assault the restrained person or place the restrained person or a third person in apprehension that any person will be subjected to serious physical injury or sexual assault;

(D) interfere with the performance of a governmental or political function; or

(E) facilitate the commission of a felony or flight after commission of a felony; or

(2) the person restrains another

(A) by secreting and holding the restrained person in a place where the restrained person is not likely to be found; or

(B) under circumstances which expose the restrained person to a substantial risk of serious physical injury.

(b) In a prosecution under (a)(2)(A) of this section, it is an affirmative defense that

(1) the defendant was a relative of the victim;

(2) the victim was a child under 18 years of age or an incompetent person; and

(3) the primary intent of the defendant was to assume custody of the victim.

(c) Except as provided in (d) of this section, kidnapping is an unclassified felony and is punishable as provided in AS 12.55.

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(d) In a prosecution for kidnapping, it is an affirmative defense which reduces the crime to a class A felony that the defendant voluntarily caused the release of the victim alive in a safe place before arrest, or within 24 hours after arrest, without having caused serious physical injury to the victim and without having engaged in conduct described in AS 11.41.410(a)(1) or (2) or 11.41.420. (§ 3 ch 166 SLA 1978; am § 7 ch 102 SLA 1980)

Cross references. — For punishment, see AS 12.55.125(b).

Effect of amendments. — The 1980 amendment inserted "or sexually assault him" following "injury upon him" near the beginning of subparagraph (a)(1)(C), and added "or sexual assault" at the end of subparagraph (a)(1)(C).

Legislative history reports. — For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 28, 1980.

NOTES TO DECISIONS

Editor's notes. — Many of the cases cited in the notes below were decided under former AS 11.15.260.

The crime of kidnapping is designed to protect the general personal security of citizens both in their persons and property. Ladd v. State, Sup. Ct. Op. No. 1480 (File No. 2475), 568 P.2d 960 (1977), cert. denied, 435 U.S. 928, 98 S. Ct. 1498, 55 L. Ed. 2d 524 (1978).

Constitutionality of former statute. — See Levashakoff v. State, Sup. Ct. Op. No. 1446 (File No. 2830), 565 P.2d 504 (1977).

Scope of former statute. — See Crump v. State, Sup. Ct. Op. No. 2309 (File No. 4546), 625 P.2d 857 (1981).

For discussion of elements that were required to be proved under former AS 11.15.260, see Davis v. State, Ct. App. Op. No. 23 (File No. 5100), 635 P.2d 481 (1981).

Exemption. — The new criminal code, which states that it is an affirmative defense that defendant was a relative of the victim, provides for a broader exemption from the kidnapping statute than the absolute exemption for the abduction of a minor by his parent under former AS 11.15.260. Crump v. State, Sup. Ct. Op. No. 2309 (File No. 4546), 625 P.2d 857 (1981).

For case discussing the parental exemption contained in Alaska's former kidnapping statute, AS 11.15.260, Lythgoe v. State, Sup. Ct. Op. No. 2235 (File No. 4497), 626 P.2d 1082 (1980).

Liability of agent for person not entitled to custody of child. — Where a person, while acting as an agent for a parent not entitled to custody, takes a child from one entitled to custody, the person can be convicted of both the substantive crime of kidnapping and conspiracy to kidnap. Crump v. State, Sup. Ct. Op. No. 2309 (File No. 4546), 625 P.2d 857 (1981).

Conspiracy to kidnap. — Conspiracy to kidnap is no longer defined as an offense in Alaska under the newly revised criminal code. Lythgoe v. State, Sup. Ct. Op. No. 2235 (File No. 4497), 626 P.2d 1082 (1980).

Separate crimes. — Rape, assault with a dangerous weapon, and kidnapping were separate crimes with separate elements. Lacy v. State, Sup. Ct. Op. No. 2039 (File No. 3741), 608 P.2d 19 (1980).

Separate sentences were called for where defendant's conduct in kidnapping and raping his victim and assaulting her with a deadly weapon constituted the commission of three distinct offenses, each of which violated a different societal interest. State v. Occhipinti, Sup. Ct. Op. No. 1453 (File No. 3084), 567 P.2d 348 (1977).

Sentences upheld. — See Morrell v. State, Sup. Ct. Op. No. 1577 (File No. 2790), 575 P.2d 1200 (1978); Post v. State, Sup. Ct. Op. No. 642 (File No. 2851), 580 P.2d 304 (1978); Davis v. State, Ct. App. Op. No. 23 (File No. 5100), 635 P.2d 481 (1981); Williams v. State, Ct. App. Op. No. 139 (File No. 5676), 652 P.2d 478 (1982).

Sentence found excessive. — See Hintz v. State, Sup. Ct. Op. No. 2334 (File No. 3541), 627 P.2d 207 (1981).

Applied in Nukapigak v. State, Ct. App. Op. No. 90 (File No. 5820), 645 P.2d 215 (1982); Bidwell v. State, Ct. App. Op. No. 199 (File No. 6290), 656 P.2d 592

(1983); Baker v. State, Ct. App. Op. No. 202 (File No. 6961), 655 P.2d 1324 (1983); Reynolds v. State, Ct. App. Op. No. 262 (File No. 6890), 664 P.2d 621 (1983).

Cited in Nukapigak v. State, Sup. Ct. Op. No. 2667 (File No. 5820), P.2d (1983); Johnson v. State, Ct. App. Op. No. 267 (File No. 6662), 665 P.2d 566 (1983).

Sec. 11.41.320. Custodial interference in the first degree. (a) A person commits the crime of custodial interference in the first degree if the person violates AS 11.41.330 and causes the victim to be removed from the state.

(b) Custodial interference in the first degree is a class C felony. (§ 3 ch 166 SLA 1978)

Collateral references. — Fiction of loss of services as condition of action for abduction of child, 72 ALR 847.

Kidnapping or other criminal offense by taking or removal of child by, or under authority of, parent or one in loco parentis, 77 ALR 317.

Sec. 11.41.330. Custodial interference in the second degree. (a) A person commits the crime of custodial interference in the second degree if, being a relative of a child under 18 years of age or a relative of an incompetent person and knowing that the person has no legal right to do so, the person takes, entices, or keeps that child or incompetent person from a lawful custodian with intent to hold the child or incompetent person for a protracted period.

(b) Custodial interference in the second degree is a class A misdemeanor. (§ 3 ch 166 SLA 1978)

Sec. 11.41.370. Definitions. In AS 11.41.300 — 11.41.370, unless the context requires otherwise,

(1) "lawful custodian" means a parent, guardian, or other person responsible by authority of law for the care, custody, or control of another;

(2) "relative" means a parent, stepparent, ancestor, descendant, sibling, uncle, or aunt, including a relative of the same degree through marriage or adoption;

(3) "restrain" means to restrict a person's movements unlawfully and without consent, so as to interfere substantially with the person's liberty by moving the person from one place to another or by confining the person either in the place where the restriction commences or in a place to which the person has been moved; a restraint is "without consent" if it is accomplished

(A) by acquiescence of the restrained person, if the restrained person is under 16 years of age or is incompetent and the restrained person's lawful custodian has not acquiesced in the movement or confinement; or

(B) by force, threat, or deception. (§ 3 ch 166 SLA 1978)

Why innocent children are in danger

WHEN I was a child 30 years ago, I lived in a quiet suburb with a small road at the front and a large YMCA sports field at the back. We children played both on the road and in the field in confident safety. Cars drove slowly when children were about and everyone connected with the YMCA was considered to be trustworthy. From the age of six, I walked to school alone, I often struck up conversations with strangers. No harm ever came to me.

"You cannot bring up children wrapped in cotton wool," is an old saying, and a reasonable one. Dr Spock and the other child experts warn mothers against the dangers of over-protecting their children. Over-protection turns children into anxious and neurotic adults. Children must learn independence and self-confidence by dealing with life at large.

The recent spate of appalling child murders in the north of England—as well as the rape and assault of little girls in London parks—has served to remind parents of a chilling truth that is gradually becoming obvious in our times: The days of safe childhood seem to be over. We cannot, it seems, raise our children with the freedom of movement and social trust that prevailed in our own childhood. We are gradually realising that children today have to be accompanied to and from school until they are 11 or 12; perhaps with girls until they are [illegible].

Parents are coming to understand, in identifying with the suffering of the little victims' parents, that young children are no longer safe anywhere without adult supervision: not in parks, not on country roads, not in the most ordinary sorts of places. Even Welfare playgrounds especially designed for children need a protective adult eye. Children cannot be sent on shopping errands with an easy mind any more.

Sanguine advice from the child experts about not being neurotically over-protective towards children is all very reasonable and balanced; but the world we are coming to inhabit seems no longer either balanced or reasonable. We may have no choice but to see our children grow up anxious and insecure from over-careful protection: the alternative is to risk their not growing up at all.

This spreading attitude of cautiousness is exemplified by a Home Office film soon to be shown in schools, called "Say No to Strangers." It replaces the more mildly named earlier film, entitled "Never Go With Strangers." The film warns [illegible] never to accept [illegible] from a stranger; never [illegible] a lift from a [illegible] to play out [illegible] to loiter on [illegible] school.

Even so, some teachers and parents consider the film too bland, since it doesn't spell out in stark detail what can happen to a child in sexual assault or murder. And psychologists point out that not all children are assaulted or killed by *strangers*, sometimes the attacker is a person they know. Can you teach children to be wary about speaking even to an apparent friend of the family without imbuing in them a wholehearted misanthrophy, a complete distrust of everyone, and a destruction of the innocence that is the sweetest aspect of the child?

Obviously, children have always had to learn prudence. Many traditional fairy-tales are elliptical warnings to children about the dangers of the big wide world. The child psychologist Bruno Bettelheim thinks it is essential that girls be told "Little Red Riding Hood," because it is such an effective way of explaining, through metaphor and symbol, that there are wicked wolves around who will prey on small girls unless they take precautions. "Hansel and Gretel," "Goldilocks," and "Beauty and the Beast" all express childish fears which are very real; the fear of losing the protection of adults, the fear of being alone in an alien world, the fear of the animal aspect of the male which must be neutralised through some magic power. The child has always had to learn to come to terms with the dangers of life, but there must also be trust: there must also be safe havens, good fairies, helping hunts[illegible] woodcutters who [illegible] kindly godmothers [illegible] princes.

It is when all of life [illegible] threatening and frigh[illegible] that it becomes such [illegible] outlook for children.

Part of the reason [illegible] world has become a [illegible] place for children ste[illegible] the sex revolution [illegible] afraid. The ethic [illegible] revolution is that [illegible] should be free [illegible] sions; sexuality itse[illegible] be "value-free." [illegible] in itself is: neither [illegible] evil . . . it simply exi[illegible] sexual activity betwe[illegible] senting individuals, [illegible] its nature, is 'unna[illegible] This states a recent [illegible] bearing the endorseme[illegible] several doctors, plus [illegible] Alma Birk, counsellor [illegible] Greengross and agony [illegible] Claire Rayner. When [illegible] given out with such au[illegible] that sexuality has no [illegible] basis, it must have a s[illegible] loven[illegible] effect on sick minds.

Similarly, the National Council for Civil Liberties is campaigning for a lowering of the age of consent, and for the removal of some incest taboos—such as that between brother and sister. However well-meaning their aim, there is bound to be a response among a sizeable minority that we really have come to the point where "anything goes." There are adults whose sexual fantasies revolve around children—the pornography is there to prove it, as is the Paedophile Information Exchange — and there are people whose urges lead them to kill. Such people must be affected by a climate of opinion that denounces repressions. When fundamental taboos are stripped away uncontrolled individuals may tend to ask themselves "Why should not I too, do my own thing?"

The libertarian argument that the problems arising in a free society are worth the freedoms. But freedom is always a matter of balancing conflicting rights and interests. And what many people feel is that we are experiencing today, a massive decrease in the freedom of the majority to raise their families with trust in people and the optimism that the whole human being is good. Every day, more evidence against this accumulates.

8.05.160 Enticement. Anch. Municipal code

It is unlawful for any person to accost another person or persons and entice or attempt to entice such other person or persons into any automobile, building, bushes, wooded or secluded area, or any remote public or private place for any unlawful purpose. (Adapted from CAAB 18.05.010M).

Crime heats up in warm weather

by Mary Kaye Ritz
Times Writer

Indecent exposure and child enticement are a couple of the seasonal crimes that soar as the weather warms.

Certain crimes flourish under the cloak of darkness. Investigators call crimes such as burglaries and armed robberies "winter" crimes.

On the other side of the equinox, "spring" crimes include indecent exposure, child enticement and assaults on joggers and bicyclists.

In a sample two-week period in March, police were called to investigate 15 cases of sexual assault or attempted sexual assault on adults, and an additional seven involving children.

Last week, police investigated two separate cases of child enticement, the luring of children for illicit purposes.

In one case, a man near a construction site uttered obscenities and performed indecent acts in front of children, police said.

This spring, cases of child enticement already are on the rise, Officer Jim Rehmann said.

Enticement cases are most frequent during the months of March through May, said former juvenile unit officer, Maggie Borrecco.

Now that spring is here, parents are more likely to warn children about "bad men," and means of luring children into possible danger have become more creative, Lt. David L. Sherbahn said.

Sherbahn, who heads the police department's sexual assault unit, said the familiar "candy, little

See Crimes, page A-4

Crimes

Continued from page A-1

girl?" approach has given way to "help me catch my bunny rabbit in the woods." There have been cases of persons posing as religious representatives luring children as well, he said.

Children are not the only victims of spring criminals.

Anchorage police investigators Sherbahn and William Dennis work on cases of sexual assault, a crime they say is not isolated in spring, but more likely to occur in spring-like weather.

Both investigators and Alaska State Trooper investigator Sgt. Wayne Starr said the reason is simple: more women and children are outside as the weather warms up.

Joggers are also likely to be targets of attack.

Female joggers and bicyclists who wander from well-lit, open areas in the early morning and late evening are prime targets, Dennis said.

The best way to avert the danger of assaults, Dennis said, is to jog with someone else.

Boy offered ride

Anchorage police reported a case of child enticement in South Anchorage Friday involving a 10-year-old boy.

The boy said a man offered him a ride home, but he became frightened and jumped from the car. The boy hid in the woods until the suspect left.

Feb. 1

Abduction attempted

An unidentified man tried to abduct an 8-year-old girl at a bus stop Thursday afternoon.

The girl told Anchorage police that she had just gotten off a People Mover bus at 3:39 p.m. near Lake Ridge Road when the man stopped his car and motioned her over to his car.

As the man began to leave the car, the girl ran to her house and told her parents. The father then called police.

The girl said man was about 40-years-old and drove a blue Dodge pickup that was dirty and had several small dents.

2 sentenced for crimes committed while drunk

April 2, 83

By JANE PRICHARD
Daily News reporter

Two men were sentenced in unrelated cases Friday for crimes they committed during what they claimed were alcohol-induced blackouts.

In one case, Isom Chaney, 49, was sentenced to two years in jail and four years probation for arson. Chaney doused his ex-wife's trailer with 10 gallons of gasoline last July, causing an explosion and a fire.

"After this ordeal I know I want to stop drinking," Chaney told sentencing Judge J. Justin Ripley.

"Society won't tolerate simpleminded alcoholic-induced vengeance," Ripley said before imposing Chaney's sentence, which includes a $36,000 restitution payment.

In the other case, Rex Weston, 23, was sentenced to one year in jail and 18 months probation for grabbing a jogger and a child in a park last September.

According to court papers, Weston accosted a woman jogger but let her go when another runner appeared. He later snatched a 7-year-old girl and carried her upside down toward the woods.

Witnesses chased Weston and he dropped the girl.

Youngsters outside must remain alert

Knight-Ridder Newspapers

With missing-children cases receiving more publicity these days, concerned officials involved in child care are making a greater effort to alert children and parents to possible problems and how to avoid them.

Here are 12 safety tips that parents might want to share with their children.

- Walk tall, look strong and be alert to your surroundings.
- Avoid walking alone. Walk with friends when possible.
- Occasionally vary your route home, but be sure to discuss any changes with parents in advance.
- Do not wear earphones on the street. They block out street noise and make you a good target.
- Do not go into empty buildings. Do not go into any building if you think you are being followed.
- Check to see if you are being followed by looking at reflections in store windows or by crossing the street.
- Never talk about how much money you are carrying.
- Do not hesitate to give up your possessions if someone threatens you.
- Trust your instinct. If you get a funny feeling something might be wrong.
- Know where local stores are in your neighborhood. They are a good place to run to when you need help.
- Know that it's all right to say "no." Don't answer questions from strangers over the telephone.
- It's OK to run away and to scream, bite, hit or kick someone who is trying to hurt you.

Wed, Aug-31-83

ANCHORAGE TIMES 7 MAY 83

'Candyman' gets 8-year term

Robert Sauer, who earned the nickname "Candyman" for enticing young girls with candy and money, was sentenced to eight years in prison Thursday on four counts of sexual abuse of a minor.

Superior Court Judge Ralph Moody told Sauer, 63, "This is one of the most severe child molestation cases I've ever seen."

Moody said the prospects of rehabilitation were questionable for a man of Sauer's age, adding there was a clear need to remove him from the public.

"We can't tolerate crimes against children," he said.

Sauer, who was convicted by a jury Oct. 29, was sentenced to 14 years in prison, then ordered to serve eight years and placed on probation for the other six.

He was charged with engaging in sexual acts with four girls ranging in age from 7 to 11 from late 1981 until mid-1982.

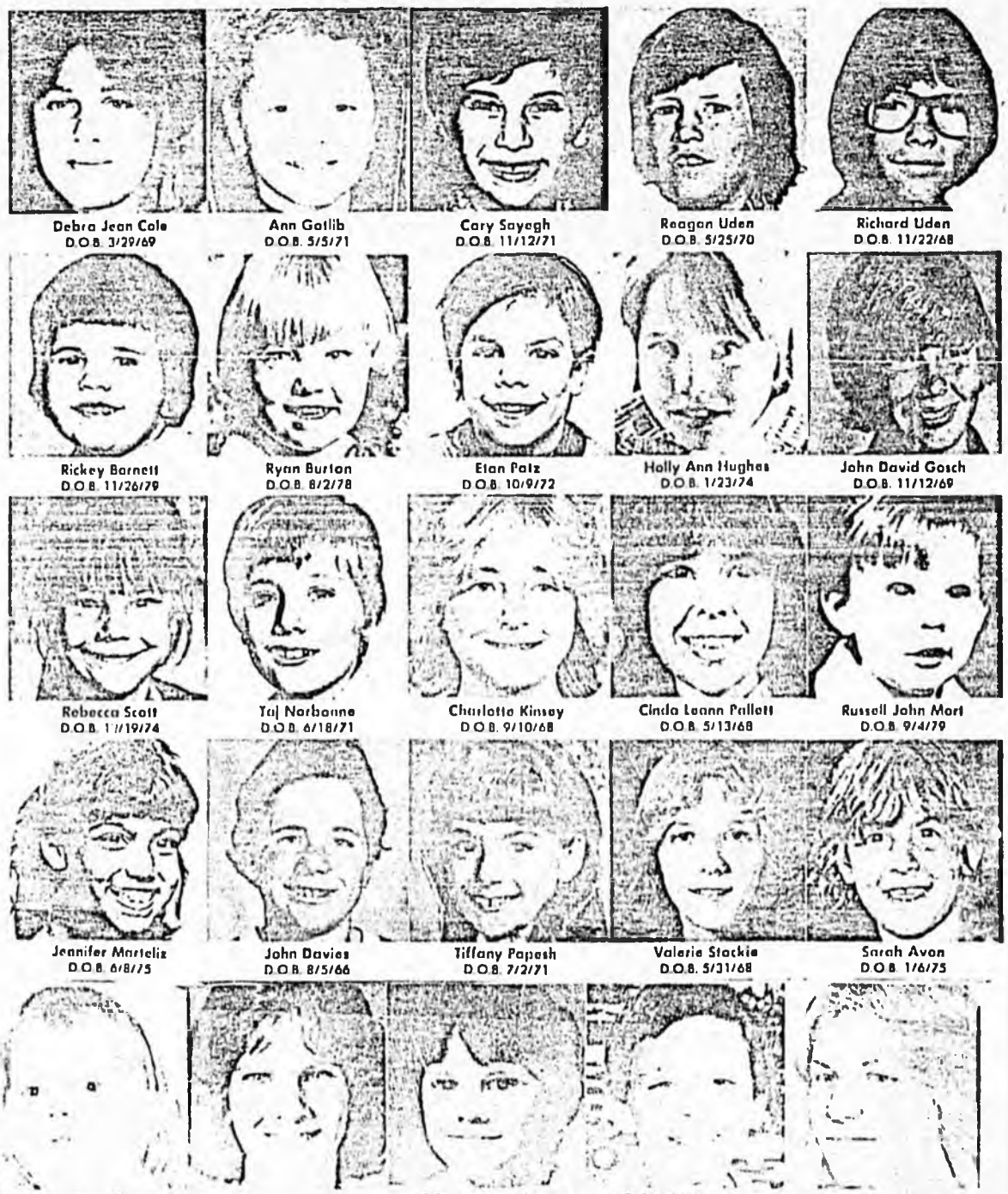
These children appeared on the role call at the conclusion of the television movie

ADAM

Broadcast on NBC, October 10, 1983 9-11 p.m. N.Y.T.

If you think you have any information on the whereabouts of any of these children, or any other missing children, please call CHILD FIND, toll free (800) 431-5005 - in New York (914) 255-1848. All calls will be kept confidential.

Special thanks to NBC and Alan Landsburg Productions for making publication of this poster possible.



Debra Jean Cole
D.O.B. 3/29/69

Ann Gotlib
D.O.B. 5/5/71

Cary Sayegh
D.O.B. 11/12/71

Reagan Uden
D.O.B. 5/25/70

Richard Uden
D.O.B. 11/22/68

Rickey Barnett
D.O.B. 11/26/79

Ryan Burton
D.O.B. 8/2/78

Etan Patz
D.O.B. 10/9/72

Holly Ann Hughes
D.O.B. 1/23/74

John David Gosch
D.O.B. 11/12/69

Rebecca Scott
D.O.B. 1/19/74

Taj Norbonne
D.O.B. 6/18/71

Charlotte Kinsey
D.O.B. 9/10/68

Cinda Leann Pollett
D.O.B. 5/13/68

Russell John Mori
D.O.B. 9/4/79

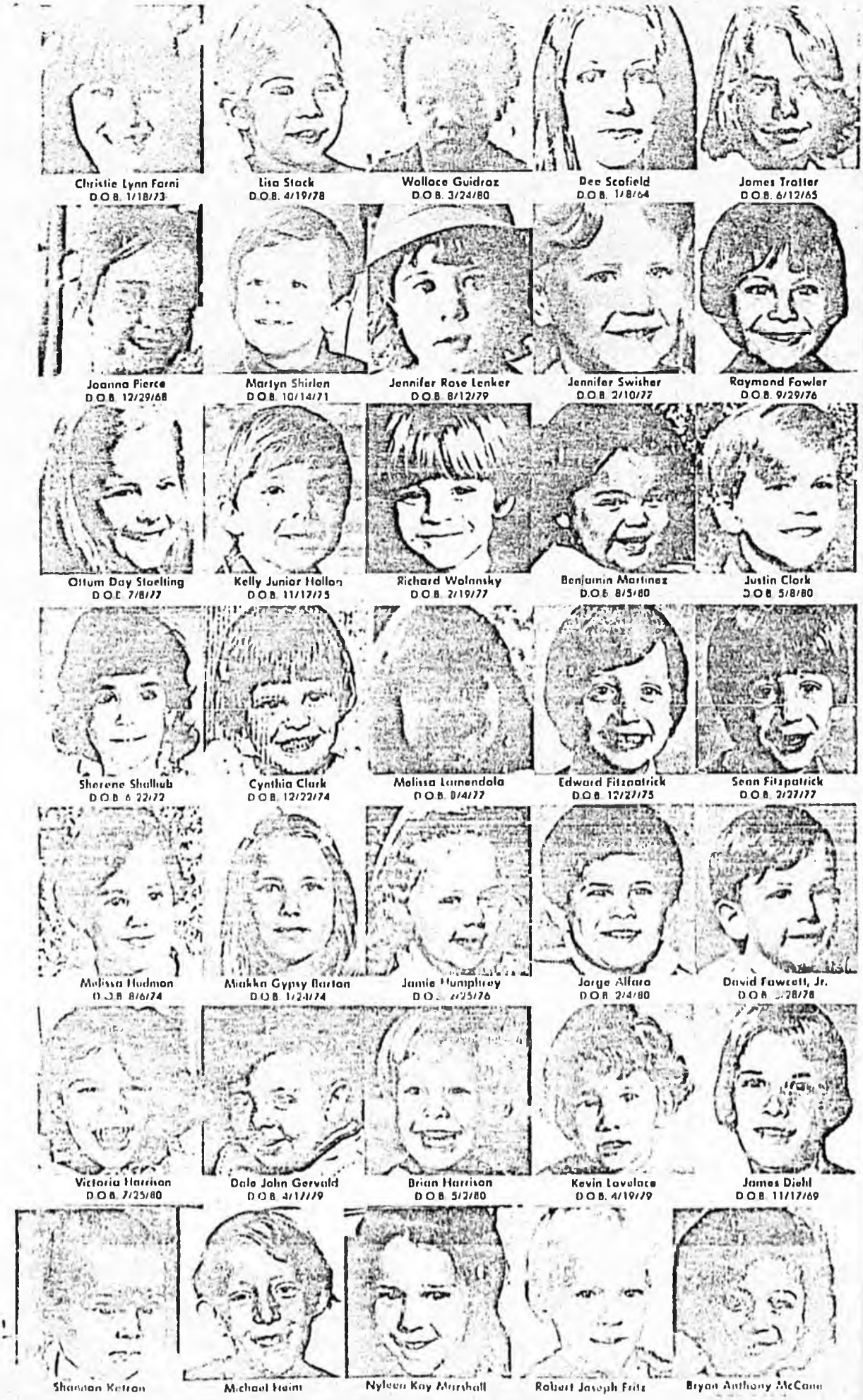
Jennifer Marteliz
D.O.B. 6/8/75

John Davies
D.O.B. 8/5/66

Tiffany Papesh
D.O.B. 7/2/71

Valerie Stackie
D.O.B. 5/31/68

Sarah Avon
D.O.B. 1/6/75


Christie Lynn Farni
D.O.B. 1/18/73
Lisa Stock
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Wallace Guidroz
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Dee Seafield
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James Trotter
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Joanna Pierce
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Martyn Shirlen
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Kelly Junior Hollon
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Benjamin Martinez
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Cynthia Clark
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Edward Fitzpatrick
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Robert Joseph Fritz
Bryan Anthony McCann

ANC TIMES 18 MAY 83

Rodriquez lured students, witness says

by Jeff Berliner
Times Writer

Carlos "Chico" Rodriquez enticed West High School students into his web of pornography, burglary, drugs and sex, the jury in the Rodriquez trial was told Tuesday.

A former West High School student took the witness stand and declared that Rodriquez had told him, "I get a whole bunch of people from West."

The youth, now 21, said he had just had sex — at the invitation of Rodriquez — with a girl described as a West High student but a stranger to the boy, when Rodriquez made the remark.

The 1302 W. 26th Ave. home where Rodriquez lived and allegedly directed his ring of juvenile burglars, prostitutes and pornography stars is just a short distance rom West High.

Now an Anchorage college student, the witness described how he willingly engaged in sex with Rodriquez after the man picked him up in a chance encounter. The young man said he had just left work at midnight one summer night in 1978 and was walking to an all-night store when Rodriquez offered him a ride.

The youth acknowledged smoking marijuana with Rodriquez and consenting to have sex first with the girl Rodriquez had in his bedroom and then with Rodriquez himself. He said he returned later for more drugs and sex.

But it turned out that the Rodriquez house was apparently under surveillance. The young man, then 16 and enrolled in an Alaska State Trooper youth training program, was confronted by troopers about drug use and later picked out of a surveillance photo showing him entering Rodriquez' house.

However, this youth was characteristically different than the other prosecution witnesses who have testified against Rodriquez. Dressed in a three-piece suit and speaking articulately and forthrightly, the then-trooper trainee offered details about the several sexual encounters in no uncertain terms. He also described the movie studio set-up Rodriquez had to show and make pornographic films.

The student's testimony was in contrast to that of other prosecution witnesses who, down and out, said they found refuge with Rodriquez and reluctantly traded sexual services for money and drugs. Or, in some cases, they said they were raped or tried to fight off the man's sexual advances. Most were homeless and in trouble with the law.

Tuesday Superior Court Judge Ralph Moody charged Defense Lawyer Mitchel Schapira with delving too deeply into the backgrounds of the troubled youths. Schapira, in an attempt to discredit the prosecution witnesses, has gone over and over their drug-using habits and their run-ins with authorities.

Moody ordered the jury out of the courtroom Tuesday morning while he threatened Schapira with legal sanctions if he continued a line of questioning, which made it appear as if the witnesses were on trial and not his client.

Rodriquez faces 28 felonies in the case and all 12 victims named in the indictment have testified. Prosecutor Paul Olson is calling to the stand other witnesses to corroborate the stories told by the victims.

The only girl to testify became confused about which neighborhood the man she knew as "Romeo" really lived in and, although she could remember few details about the month she reportedly lived with Rodriquez, she told jurors she remembered his tattoo.

Another witness Tuesday told jurors that Rodriquez came to his aide at Chilkoot Charlie's when his car wouldn't start. He returned with Rodriquez to the older man's house to get some cables to jump-start the boy's car. But instead, the boy testified, Rodriquez jumped him. Rodriquez allegedly ripped down the boy's pants before the youth was able to knock the man down, run back to the bar and summon police. Officers found the boy hysterical and the Rodriquez home dark and deserted.

The teen told jurors that Rodriquez' house was full of drug paraphenalia and "looked like a whorehouse inside."

HB

445

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

M E M O R A N D U M January 13, 1984

SUBJECT: Sectional analysis of HB 445

TO: Representative Charlie Bussell
Chairman, House Judiciary Committee

FROM: Keith B. Levy KBL
Legislative Counsel

You have requested a sectional analysis of HB 445, "An Act relating to attorney fees." Under present law (AS 09.60.010) the Supreme Court has the discretion to determine by rule or order what attorney fees may be ordered to the prevailing party in civil cases. Under the authority of that section, the Supreme Court enacted Civil Rule 82. Civil Rule 82 does not deal with attorney fees in public interest cases. However, in a number of cases, the Court has determined that in a genuine public interest case, it is an abuse of discretion for the trial court to award attorney fees against the plaintiff if the defendant prevails. See Gilbert v. State, 526 P.2d 1131 (Alaska 1974); Anchorage v. McCabe, 586 P.2d 986 (Alaska 1977); Thomas v. Croft, 614 P.2d 795 (Alaska 1980); and SEACC v. State, ___P.2d___, No. 2662, (Alaska 1983).

House Bill 445 provides that in a civil suit against a non-governmental party, it is not an abuse of discretion to award attorney fees, even if it is a genuine public interest case.

KBL:lmb
L3/080

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4990

Alaska State Legislature
HOUSE OF REPRESENTATIVES

REPRESENTATIVE
CHARLIE BUSSELL
CHAIRMAN

Committee on Judiciary

HB 445
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STATE OF ALASKA
THE LEGISLATURE

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KBL:lmb
L3/080

FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HB 445
Title: "An Act relating to attorney fees."
Sponsor: Rep. Liska
Requestor: Rep. Liska
Date of Request: 1-18-84

FISCAL DETAIL
Agency Affected: Department of Law
Program Category Affected: General Government
BRU, Program or Subprogram(s) Affected: Legal Services Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard I. Pegues, Director (Richard I. Pegues) Phone: 465-3672
Division: Administrative Services Date: 1-19-84

Approved by Commissioner: Norman C. Gorsuch (Richard I. Pegues/for) Date: 1-19-84
Agency: Department of Law

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

Fiscal Note
Analysis
HB 445

January 19, 1984

This bill appears to adopt by statute the criteria established by Alaska Supreme Court decisions over the past several years. Because this criteria for awarding attorney fees in public interest lawsuits is already being followed by the courts, no additional fiscal impact is expected to result by enactment of this legislation.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

M E M O R A N D U M June 17, 1983

SUBJECT: The public interest exception to the award of attorney's fees (Work Order No. 13-1434)

TO: Representative John J. Liska

FROM: Keith B. Levy KBL
Legislative Counsel

You have asked a number of questions in regard to the public interest exception to the award of attorney's fees in court actions. Specifically, you have asked:

1. What is the state law on attorney's fees?

2. Does CSSB 196 (Rules) am protect the non-governmental defendant from the potential financial burden of a public interest law suit when the plaintiff loses?

3. If not, how can the non-governmental defendant in this type of case be adequately protected?

I will address each of these questions separately.

1. State law on attorney's fees

AS 09.60.010 provides:

> Except as otherwise provided by statute, the supreme court shall determine by rule or order what costs, if any, including attorney fees, shall be allowed the prevailing party in any case.

Under the authority of this section, the Supreme Court has adopted Civil Rule 82. Rule 82 sets out a schedule of attorney's fees to be awarded the prevailing party, "unless the court, in its discretion, otherwise directs." Rule 82 also provides

> Should no recovery be had, attorney's fees for the prevailing party may be fixed by the court in its discretion in a reasonable amount.

The public interest exception to Rule 82 states that "it is an abuse of discretion to award attorney's fees against a losing party who has in good faith raised a question of genuine public interest before the courts." Gilbert v. State, 526 P.2d 1131, 1136 (Alaska 1974). The exception is not provided for by statute or court rule, rather, it is a matter of public policy established by the Alaska Supreme Court in a number of cases. See Gilbert v. State, 526 P.2d 1131 (Alaska 1974); Anchorage v. McCabe, 586 P.2d 986 (Alaska 1977); Thomas v. Croft, 614 P.2d 795 (Alaska 1980); and SEACC v. State, ___ P.2d ___, No. 2662, (Alaska 1983). Citing these cases, the court in SEACC, supra, stated that the policy behind the public interest exception is

> . . . to encourage plaintiffs to raise issues of public interest by removing the awesome financial burden of such a suit.
>
> * * *
>
> . . . a plaintiff who in good faith seeks to vindicate matters infused with strong public policy concerns should not be penalized by having attorney's fees taxed against it unless its suit is frivolous.

SEACC, supra, at 24. Thus, the award of attorney's fees in the state is governed by statute, court rule, and public policy as determined by the Supreme Court.

2. The effect of CSSB 196 (Rules) am

CSSB 196 (Rules) am amends AS 09.60.010 by adding a new subsection to read:

> (b) The supreme court shall by rule or order provide that the court in its discretion may compel a plaintiff in an action to post a bond or other acceptable surety with the court in an amount determined by the court to be reasonable under (a) of this section.

This section merely gives the court the discretion to require a plaintiff to post a bond or other surety to cover any costs or attorney's fees that may be awarded against the

plaintiff. Since the court may not award attorney's fees against a losing plaintiff in a genuine public interest case anyway, the new section does nothing for the winning defendant. Thus, even if CSSB 196 (Rules) am is enacted, it will have no affect on the public interest exception to the award of attorney's fees.

3. Providing adequate protection for winning non-governmental defendants in public interest cases

The court in SEACC, supra, ruled that the public interest exception applies in cases involving non-governmental defendants as well as governmental defendants. As noted above, the purpose of the public interest exception is to avoid penalizing a public interest plaintiff with heavy attorney's fees if the law suit is not frivolous. Citing Kenai Lumber Co. v. Leresche, 646 P.2d 215 (Alaska 1982), the court in SEACC, supra, pointed to the following criteria which must be met before the public interest exception can be asserted by a losing plaintiff:

> "(1) Is the case designed to effectuate strong public policies?
>
> "(2) If the plaintiff succeeds will numerous people receive benefits from the lawsuit?
>
> "(3) Can only a private party have been expected to bring the suit?
>
> "(4) Would the purported public interest litigant have sufficient economic incentive to file suit even if the action involved only narrow issues lacking general importance?"

SEACC, supra, at 25. The Supreme Court feels that these criteria are sufficient to ensure that a plaintiff may not freely harass an innocent defendant with a frivolous law suit under the cloak of the public interest exception without suffering the consequences. It would appear that the criteria successfully do just that. They effectively limit the public interest exception to situations where a private plaintiff is bringing a meritable law suit in the genuine public interest with no opportunity for financial gain to itself. It is difficult to imagine a plaintiff bringing a law suit merely for harassment under such circumstances. Accordingly, I would conclude that non-governmental

defendants in public interest law suits are already adequately protected under the law.

If your intent is to protect non-governmental defendants from frivolous law suits, an amendment to the current law is unnecessary. However, if you wish to eliminate the public interest exception as it applies to non-governmental defendants, that could be done by amending AS 09.60.010 to limit the court's discretion in awarding attorney's fees in these cases.

KBL:ljb
24/024

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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

October 24, 1983

MEMORANDUM

TO: Representative John Liska

FROM: Nancy Pease
Legislative Analyst NP

RE: Public Interest Exemption Lawsuits
Research Request 83-200

Linda Edgeworth of your staff asked for information on public interest lawsuits in Alaska courts with regard to the exemption of attorney's fees. She indicated that you were specifically interested in public interest cases since 1978 in which the defense prevailed, and for such cases, the available information on the costs to the defendants and plaintiffs.

The general rule for attorney's fees in Alaska courts is that the losing party in a lawsuit may be ordered to pay, at the court's discretion, part of the prevailing party's attorney's fees as a compensatory gesture. The amount of attorney's fees charged to the losing party is determined by the court, either in accordance with a fee schedule based on the amount of the money judgement recovered in the case or, if there is no monetary recovery, "a reasonable amount" relative to the prevailing party's costs in trying the case [Alaska Rules of Court, Civil Rule 82].

The Alaska Supreme Court in Gilbert v. State, (Alaska 1974), established a "public interest" exception to this rule by holding that " it is an abuse of [the court's] discretion to award attorney's fees against a losing party who has in good faith raised a question of genuine public interest before the courts" [526 P.2d at 1136]. Thus, the exception is designed to encourage plaintiffs to bring issues of public interest to the courts.

Ed Hein of the Legislative Affairs Agency's Legal Services Division explained to me that the Alaska Supreme Court has identified four criteria for determining whether a case may be designated as public interest litigation:

1. Does the case have the potential to affect public policies?

2. Will numerous people receive benefits from the lawsuit if the plaintiff succeeds?

3. Could only a private party be expected to bring this suit?

4. Did the plaintiff have sufficient economic incentive to bring the lawsuit regardless of any issues of public interest involved?

If the court can answer "yes" to the first three questions and "no" to the fourth question, then the case will be designated a public interest lawsuit, the exception to Rule 82 will apply, and the court will not charge the losing party with the prevailing party's attorney's fees.

Many of the highly-publicized class action lawsuits that involve Alaska are brought in federal courts. The federal court either awards attorney's fees at their discretion or in accordance with Alaska Rules, according to Joanne Meyers, Clerk of the Court at the Federal District Court in Anchorage. Ms. Meyers said there was no general rule analagous to Alaska Rule 82 for award of attorney's fees in federal courts. There may be federal statutes governing award of fees in specific types of suits, for example, the Civil Rights Attorney's Fees Awards Act (42 U.S.C. § 1988). These statutes may be raised in State court, as was the above Act in the public interest case of Tobeluk v. Lind, 589 P2.d 873 (Alaska 1979).

To identify public interest exemption cases, I reviewed law journals and talked with many people in the legal system, but I was unable to obtain all of the desired information. Unfortunately, there is no practical system for identifying public interest lawsuits in Alaska that have not been appealed to the Alaska Supreme Court. At the trial court level, each judicial district in Alaska maintains its own files of cases, indexed by the parties' names but not by the issues contested in the cases. The only reference to cases which were closed in the trial courts is the recall of people involved in the legal system. To this end, I have contacted agencies that frequently initiate class actions (the Sierra Club Legal Defense Fund, the Alaska Resources Defense Council, Alaska Legal Services Corporation, Alaska Human Rights Commission, AkPIRG, etc.). However, all of the unsuccessful class actions that I found in this way were eventually appealed to the Alaska Supreme Court.

Another problem in identifying public interest lawsuits is that unless the exemption from award of fees was contested in an appeal, a lawsuit involving issues of public concern may not be widely recognized as a public interest case.

Attached is a list of lawsuits appealed to the Alaska Supreme Court since 1978 in which the losing plaintiff argued for application of the public interest exception. I have provided a short summary of the issues in the original trial, and the grounds for appeal. The first set of cases closely parallels the suit involving Schnabel Lumber Co., which Ms. Edgeworth mentioned in her correspondence. In these cases, the losing public interest plaintiffs were all exempted from paying the winning defendants' legal fees.

In the next set of cases, the court found sufficient economic incentives for the plaintiff to have brought the case regardless of any public issues involved. In these cases, the court ordered the losing plaintiffs to pay the defendants' fees, despite their service to the public in raising genuine public issues. The final two cases also involved issues of genuine public interest, but special exceptions governed the payment of legal fees.

In this same period, the Supreme Court has rejected as "private disputes" other appeals in which the plaintiff argued for the public interest exemption. These cases, which did not meet criteria #1-3, are cited briefly at the end of the list.

I have been able to report on the costs to the litigants in only a few cases. Unfortunately, parties contacted were usually unable or unwilling to report their costs to us.

I hope this information is helpful. If you have further questions on this issue, please let us know how we can assist you.

NP

Attachment

ATTACHMENT A
ALASKA SUPREME COURT CASES

ALASKA SUPREME COURT CASES
INVOLVING PUBLIC INTEREST CLAIMS

I. Cases in which the public interest exception applied:

Anderson v. State, 584 P.2d 539 (Alaska 1978)

Appellants: Oris O. Anderson and Aiko Anderson.
Appellee: State of Alaska, Department of Highways.

The Andersons sued the State for allegedly committing fraud when it did not properly notify them of the condemnation of a strip of their land for a road right-of-way.

The plaintiffs lost their case but were not required to pay part of the defendants attorney's costs because they raised issues of public importance. The legal staff of the State Attorney General's office was unable to estimate the State's legal expenses. The plantiffs funded their suit personally.

City of Yakutat v. Ryman, 654 P.2d 794 (Alaska 1980)

Appellant: City of Yakutat.
Appellee: Frank L. Ryman, Jr.

Ryman charged the city with failing to comply with the statutory requirements for levying property taxes. He sued to obtain a refund of his general property taxes for a three year period.

He was awarded the refund for two of the three years and part of his costs for that portion of the case. The city appealed, and Ryman cross-appealed.

Ultimately, the City of Yakutat paid the plaintiff's costs for the issues it lost, and was denied collection of its own costs for the issues it won because Ryman was acting in the public interest. The City's law firm would not disclose their charges in this case despite the City's permission to do so.

Thomas v. Croft, 614 P.2d 797 (Alaska 1980)

Appellants: Lowell Thomas, Jr., Lieutenant Governor of Alaska; Patty Ann Polley, Director, Division of Elections, et al.
Appellee: Chancy Croft.

In the original suit, two losing gubernatorial candidates sued the successful primary candidates, Croft and Hammond, and State election officials. They charged that improprieties in the State's conduct of the election might have been sufficient to change the outcome. The State lost and appealed. The Supreme Court reversed the decision, ruling that the misconduct and irregularities in the election were not sufficient to have changed the outcome.

Croft could not collect his legal costs from the public interest plaintiffs, but he collected $15,000 from his co-defendant, the State, since their actions and not his own had prompted the suit. The attorney general's office was unable to estimate the cost to the State of defending the election officials. .

Douglas v. Glacier State Telephone, 615 P.2d 580 (Alaska 1980)

Appellant: John H. Douglas and Jean Douglas.
Appellees: Glacier State Telephone Co. and Kenai Peninsula Borough.

The Douglases challenged a local sales tax on interstate phone calls charged to phones within the Kenai Borough. They claimed that the tax violated the Commerce Clause, and that the Borough had violated equal protection laws by not collecting the tax from customers of a certain utility.

The telephone company prevailed, but the Douglases were exempted from paying the company's attorney's fees which totalled $8,800.

Whitson v. Anchorage, 632 P.2d 233 (Alaska 1980)

Appellant: Carl Whitson, Individually and as Officer, Agent, or Employee of the Libertarian Party, and the Libertarian Party.
Appellee: Anchorage, a Municipal Corporation.

The City challenged Whitson's petition to place on the ballot an initiative allowing voters to block tax increases. The City won and was awarded attorney's fees. Whitson appealed the award of fees, claiming he deserved a public interest exemption.

The Supreme Court denied the City its attorney's fees, which totalled $5,778.

Falke v. Fairbanks North Star Borough, 648 P.2d 599 (Alaska, 1982)

Appellant: Wolfgang Falke
Appellees: Fairbanks North Star Borough and the State of Alaska.

Falke claimed that the service area provisions of a State statute violated the constitutional rights of Borough residents. Falke lost the case, but was exempted from paying the Borough's attorney's fees.

The Fairbanks Borough Attorney estimates the Borough's legal costs in this case at $10,000 for the trial and appeal. The plaintiff funded his suit against the Borough himself.

Hammond v. North Slope Borough, 645 P.2d 750 (Alaska, 1982)

Appellants: Jay Hammond, Governor of the State of Alaska; Robert E. LeResche, Commissioner of the Department of Natural Resources; Frances C. Ulmer, Director, Division of Policy Development and Planning; Amoco Production Co.; Atlantic Richfield Co.; other oil companies; et al.
Appellees: North Slope Borough, Eben Hopson, Sr., Jacob Adams; City of Barrow; Village of Nuiqsut; et al.

Several Alaska villages and individuals charged that the State's decision to lease offshore tracts for oil and gas exploration would harm the natural environment and the Inupiat Eskimos' traditions and lifestyle. The State prevailed, but the plaintiffs were not required to pay the State's attorney's fees because of the public interest issues raised by the case.

Again, the attorney general's office could not estimate the State's legal expenses. The plaintiffs were represented by the Alaska Legal Services Corporation.

SEACC v. LeResche, not yet published in the law digest, (Alaska 1983)

Appellant: Southeast Alaska Conservation Council.
Appellee: Robert E. LeResche, Commissioner of the Department of Natural Resources; other officials of the State of Alaska; and Schnabel Lumber Company.

SEACC charged the State's Department of Natural Resources with signing an illegal contract with Schnabel Lumber. SEACC, represented in court by the Sierra Club Legal Defense Fund, alleged that the contract violated the State's principals of sustained-yield timber management. SEACC lost the case and the Superior Court ordered SEACC to compensate Schnabel for $25,000 of its attorney's fees. SEACC was released from this order when they appealed.

The attorney general's office couldn't estimate the State's legal expenses. Bill Oliver of Schnabel Lumber Co. listed the direct legal costs of the case as $210,00, raised from the following sources: Schnabel Lumber Company paid $70,000; various groups and individuals across the state donated $20,000; the City of Haines paid $32,000 as amicus cureae (a friend of the court); and the Borough of Haines levied a 1% sales tax, raising $98,000. Schnabel Lumber was ordered to pay $10,000 toward the legal fees of SEACC for its appeal to the Supreme Court.*

---

* Mr. Oliver listed the following indirect costs of the suit:

Loss of bonding. Bonding companies became nervous over the suit and withdrew bonding. When Schnabel could not fulfill a $2.6 million contract with the U.S. Forest Service because of the delays of the suit, the Forest Service sued for default. The Forest Service last week agreed to settle for $200,000, but not before Schnabel had incurred additional legal expenses. Schnabel also had to default on a contract with a Chinese firm because of a stay issued in the case.

Loss of jobs. According to Mr. Oliver, fifty mill workers, 35 loggers, 40 longshoremen, and 35 office and other workers were laid off during the suit. The payroll lost to the community totalled $3 million.

Additional losses included maintenance costs to the mill during the shutdown of $30,000 per month.

II. Cases for which the court denied the public interest exemption based on the economic incentive for the lawsuit (criterion #4):

Gold Bondholders Protective Council v. Atchison, Topeka and Santa Fe Railway Co., 658 P.2d 776 (Alaska 1983)

Appellants: Gold Bondholders Protective Council; Richard L. Randolph; David Brenner; Karl L. Flaccus; and Lee R. Ellenberg.
Appellees: Atchison, Topeka & Santa Fe Railroad.

The Bondholders sued the bond issuers seeking to enforce a clause in the bonds dating back to 1895 which promised interest payments in gold coin. The bond issuers defended successfully and were awarded $15,521 in legal expenses. The Bondholders appealed the award.

Fees were charged to the losing plaintiff despite the issues of genuine public concern that the plaintiff raised.

Weaver Bros., Inc. v. Alaska Transporation Commission, 588 P.2d 819 (Alaska 1978)

Appellant: Weaver Bros., Inc.
Appellees: Alaska Transporation Commisssion; K & W Trucking Co. Inc; and O. G. Ness doing business as O. G. Ness Truck Company.

Weaver Bros. protested the Transportation Commission's approval of the transfer of a motor carrier permit between two competitive firms. The Supreme Court affirmed the Commission's decision and ordered Weaver Bros. to pay its competitors' attorneys' fees despite the issues of genuine public concern that Weaver Bros. lawsuit had raised.

Sisters of Providence v. Department of Health and Social Services, 648 P.2d 986 (Alaska 1982)

Appellant: Sisters of Providence in Washington, Inc.
Appellees: Department of Health and Social Services, State of Alaska and Lake Otis Clinic, Inc.

Providence Hospital challenged DHSS's decision concerning a competitor's certificate of need. The Superior Court ruled for the competitor and charged the competitor's fees to Providence Hospital. Providence appealed.

Because of the competetive business advantage at stake in this case, fees were charged to the losing plaintiff despite the issues of genuine concern that the plaintiff had raised.

Kenai Lumber Co. v. LeResche, 646 P.2d 215 (Alaska 1982)

Appellant: Kenai Lumber Co., Inc.
Appellees: Robert LeResche, Commissioner of the Department of Natural Resources of the State of Alaska; Geoffrey Haynes, Director of Division of Lands of the Department of Natural Rescources, et al; and South-Central Timber Development, Inc.

Kenai Lumber claimed that DNR and a competitive timber firm had illegally circumvented the State's competitive bidding process by negotiating amendments to a long term timber contract.

Because competitive business advantages may have motivated this suit, the court charged the winner's fees to the losing plaintiff despite the issues of genuine public concern that the plaintiff raised.

III. Cases in which special exceptions applied to the award of fees:

Tobeluk v. Lind, 589 P.2d 873 (Alaska 1979)

Appellants: Anna Tobeluk and Henry A. Tobeluk, minors, by their father and next friend John Tobeluk, et al.
Appellees: Marshall L. Lind, as Commissioner of Education, et al.

Alaska Native schoolchildren brought action to compel the State to build secondary schools in their villages. Following settlement of this issue, the Tobeluks' motion for costs and attorney's fees was denied by the Superior Court, and the Tobeluks appealed.

The court ruled that neither party clearly prevailed and declined to award fees.

Horowitz v. Alaska Bar Association, 609 P.2d 39 (Alaska 1980)

Appellants: Bruce Horowitz, William Parker, James Love; David Loutrel; Wilson A. Rice; John E. Duggan; Donald E. Clocksin; Thomas G. Beck; Elizabeth Ratner; Randall Simpson; Phillip R. Voland; and Jeffrey Lowenfels.
Appellee: The Alaska Bar Association.

A group of attorneys charged that a business meeting of the ABA board of governors had violated federal and State due process rights and the Alaska open meeting statute.

Fees are rarely awarded in suits involving the ABA because the ABA acts as an arm of the judiciary to uphold court rules. ABA declined to specify its expenses.

IV. Cases which did not meet criteria #1-3 to qualify as public interest cases:

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

Rouse v. Anchorage School District, 613 P.2d 263 (Alaska 1

Hilbers v. Municipality of Anchorage, 66 P. 2d 31 (Alaska 19

White v. Alaska Insurance Guaranty Association, 592 P.2d 367 (A a l

ioses specified in the decree.

) Except for specific constitutional and statutory age requirements oting and use of alcoholic beverages, a minor whose disabilities are oved for general purposes has the power and capacity of an adult. uding but not limited to the right to self-control, the right to be iciled where one desires, the right to receive and control one's ings, to sue or to be sued, and the capacity to contract. (§ 2 ch 233 \ 1976)

ec. 09.55.600 — 09.55.640. [Renumbered as AS 25.35.010 — 35.060.]

Chapter 60. Costs.

Collateral references. — 20 Am. Jur. Costs, § 1 et seq.

20 C.J.S., Costs, § 1 et seq.

Allowance of costs in litigation by neficiary respecting trust, on theory st fund was created or preserved, 9 LR2d 1150.

Allowance of costs in litigation by neficiary for partition of trust property, ALR2d 1219.

Actual payment of costs as a condition to smissal under rule or statute providing r voluntary dismissal without prejudice on such terms and conditions as court ms proper, 21 ALR2d 633.

Allowance of fees for guardian ad litem ppointed for infant defendant, as costs, 30 LR2d 1148.

Costs in action for removal of trustee of oting trust, 34 ALR2d 1142.

Unsuccessful litigant's payment of costs s barring his right to appeal from judgnent on merits, 39 ALR2d 194.

Appealability of order or judgment warding or denying costs but making no ther adjudication, 54 ALR2d 927.

Depositions, costs and fees as affected by Rule 30(b) of the Federal Rules of Civil Procedure, and similar state statutes and rules, relating to preventing, limiting, or terminating the taking of, 70 ALR2d 738.

Liability of state, or its agency or board, for costs in civil action to which it is a party, 72 ALR2d 1379.

Taxation of costs and expenses in proceedings for discovery or inspection, 76 ALR2d 953.

Liability for costs in action against lessee for breach of covenant as to repairs, 80 ALR2d 1032.

Constitutionality, construction, and application of statutes, requiring bond or security for costs and expenses in taxpayers' action, 89 ALR2d 333.

Allowance as costs, of such items as maps, models, wall charts, photographs, and the like, 97 ALR2d 138.

Validity and construction of statute or rule allowing attorneys' fees to out-of-state defendant successfully defending suit brought in state, 51 ALR3d 1336.

Right of indigent to proceed in marital action without payment of costs, 52 ALR3d 844.

prevailing party [illegible] awarding costs where both parties prevail on affirmative claims, 66 ALR3d 1115.

Construction and application of state statute or rule subjecting party making untrue allegations or denials to payment of costs or attorneys' fees, 68 ALR3d 209.

Condemnor's liability for cost of condemnee's expert witnesses, 68 ALR3d 546.

Construction of provision, in compromise, prosecuting appeal in state court, 81 ALR3d 661.

Continuance of civil case as conditioned upon applicant's payment of costs or expenses incurred by other party, 9 ALR4th 1144.

Allocation of defense costs between primary and excess insurance carriers, 19 ALR4th 107.

Sec. 09.60.010. Costs allowed prevailing party. Except as otherwise provided by statute, the supreme court shall determine by rule or order what costs, if any, including attorney fees, shall be allowed the prevailing party in any case. (§ 5.14 ch 101 SLA 1962)

Cross references. — For related court rules, see Civ. R. 54, 79 and 82.

NOTES TO DECISIONS

I. GENERAL CONSIDERATION.

Applied in Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

Quoted in Albritton v. Estate of Larson, Sup. Ct. Op. Nn. 413 (File No. 793), 428 P.2d 379 (1967); Thomas v. Croft, Sup. Ct. Op. No. 2135 (File No. 4719), 614 P.2d 795 (1980).

Cited in Guin v. Hu, Sup. Ct. Op. No. 1810 (File No. 3742), 591 P.2d 1281 (1979); Stone v. Stone, Sup. Ct. Op. No. 2522 (File No. 5674), P.2d (1982).

II. RIGHT TO COSTS.

A. Generally.

The right to costs is purely statutory. Mutual Benefit Health & Accident Ass'n v. Moyer, 9 Alaska 235, 94 F.2d 906 (9th Cir.), cert. denied, 9 Alaska 292, 304 U.S. 581, 58 S. Ct. 1054, 82 L. Ed. 1543 (1938).

And no such right existed at common law. Mutual Benefit Health & Accident Ass'n v. Moyer, 9 Alaska 235, 94 F.2d 906 (9th Cir.), cert. denied, 9 Alaska 292, 304 U.S. 581, 58 S. Ct. 1054, 82 L. Ed. 1543 (1938).

The authority to make awards of attorney fees is derived from this section, which is of relatively ancient origin, dating from an Act of Congress of June 6, 1900, 31 Stat. 415-18, which was amended in 1923 by the Territorial Legislature of Alaska to expressly permit the courts to impose reasonable attorney's fees. Stepanov v. Gavrilovich, Sup. Ct. Op. No. 1823 (File No. 3236), 594 P.2d 30 (1979).

Rule 82(a), which allows for the recovery of reasonable attorney's fees, is supported

by legislation which specifies that the supreme court shall determine when attorney's fees are to be awarded. Thus, the award of attorney's fees is authorized, though not mandated, by statute. Klopfenstein v. Pargeter, 597 F.2d 150 (9th Cir. 1979).

There is no statute authorizing awards of attorney's fees in child in need of aid proceedings, nor has any rule or order authorizing such an award been promulgated. Cooper v. State, Sup. Ct. Op. No. 2453 (File Nos. 4906, 4970), 638 P.2d 174 (1981).

Civil R. 82 established pursuant to delegation of authority in section. — Civil R. 82, authorizing awards of attorney's fees to the prevailing party in civil litigation, apart from eminent domain proceedings, was established by the supreme court pursuant to a legislative delegation of authority found in this section. Crisp v. Kenai Peninsula Borough School Dist., Sup. Ct. Op. No. 1771 (File No. 3318), 587 P.2d 1168 (1978).

B. Prevailing Party.

No party is entitled to costs until he prevails in the suit, in other words, until judgment is entered. Mutual Benefit Health & Accident Ass'n v. Moyer, 9 Alaska 235, 94 F.2d 906 (9th Cir.), cert. denied, 9 Alaska 292, 304 U.S. 581, 58 S. Ct. 1054, 82 L. Ed. 1543 (1938).

The prevailing party is entitled to costs. Owen Jones & Sons v. C.R. Lewis Co., Sup. Ct. Op. No. 795 (File No. 1460), 497 P.2d 312 (1972).

The prevailing party is entitled to costs, including an award for attorney's fees. De Witt v. Liberty Leasing Co., Sup. Ct. Op. No. 818 (File No. 1638), 499 P.2d 599 (1972).

No costs allowed where both prevail. — Where both parties prevailed in part in an action under the Miller Act (40 USC 270b) no costs should be taxed to either party. United States ex rel. Miller & Bentley Equip. Co. v. Kelly, 192 F. Supp. 274 (D. Alas. 1961).

"Prevailing party". — The prevailing party to a suit is the one who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention. He is the one in whose favor the decision or verdict is rendered and the judgment entered. De Witt v. Liberty Leasing Co., Sup. Ct. Op. No. 818 (File No. 1638), 499 P.2d 599 (1972); Cooper v. Carlson, Sup. Ct. Op. No. 907 (File No. 1769), 511 F.2d 1305 (1973).

A party does not have to prevail on all of the issues in the case to be a "prevailing party." Malvo v. J.C. Penney Co., Sup. Ct. Op. No. 901 (File No. 1630), 512 P.2d 575 (1973).

A litigant who is successful in defeating a claim of great potential liability may be the prevailing party even though the other side is successful in receiving an affirmative recovery. Cooper v. Carlson, Sup. Ct. Op. No. 907 (File No. 1769), 511 P.2d 1305 (1973).

Where a party prevailed on every liability issue, and was unsuccessful only in his argument that he was entitled to nominal damages on his counterclaim, he was the prevailing party. Cooper v. Carlson, Sup. Ct. Op. No. 907 (File No. 1769), 511 P.2d 1305 (1973).

As a general rule, the "prevailing party" is considered to be the party who has successfully prosecuted or defended against the action, the one who is successful on the "main issue" of the action and in whose favor the decision or verdict is rendered and the judgment entered. In re V.M.C., Sup. Ct. Op. No. 1103 (File No. 2107), 528 P.2d 788 (1974).

The determination of which party prevails in certain cases is, like the award of attorney's fees, within the discretion of the trial judge. Owen Jones & Sons v. C.R. Lewis Co., Sup. Ct. Op. No. 795 (File No. 1460), 497 P.2d 312 (1972); In re V.M.C., Sup. Ct. Op. No. 1103 (File No. 2107), 528 P.2d 788 (1974).

The determination of which party prevailed is committed to the discretion of the trial court and is reviewable on appeal only for abuse. De Witt v. Liberty Leasing Co., Sup. Ct. Op. No. 818 (File No. 1638), 499 P.2d 599 (1972); State ex rel. Palmer Supply Co. v. Walsh & Co., Sup. Ct. Op. No. 1583 (File No. 2816), 575 P.2d 1213 (1978).

Affirmative recovery not determinative. — It is not an immutable rule that the party who obtains an affirmative recovery must be considered the prevailing party. Owen Jones & Sons v. C.R. Lewis Co., Sup. Ct. Op. No. 795 (File No. 1460), 497 P.2d 312 (1972).

Prevailing party not determined by amount of recovery. — Judgment was entered for plaintiff and the defendant's counterclaim was dismissed therefore plaintiff was the prevailing party within the purview of this section, even though it did not recover the full measure of the relief it prayed for. Buza v. Columbia Lumber Co., Sup. Ct. Op. No. 254 (File No. 453), 395 P.2d 511 (1964).

An incidental recovery is not a sufficient recovery to bar a party who has defended a large claim from being considered a prevailing party. Owen Jones & Sons v. C.R. Lewis Co., Sup. Ct. Op. No. 795 (File No. 1460), 497 P.2d 312 (1972).

III. AWARD.

A. Generally.

Apportionment of costs. — If the problem involved in the litigation is one of general interest and the prevailing party is not wholly without benfit because of the instigation of the proceedings it may be proper to apportion the costs on an equitable basis and each may be made to bear his own. Kederick v. Heintzleman, 16 Alaska 333, 141 F. Supp. 633 (D. Alas. 1956).

Where part of the defendants are successful and part are unsuccessful the cost of bringing the successful defendants into court should be taxed against plaintiff and not against the unsuccessful defendants. Humphries v. Starns, 12 Alaska 535, 87 F. Supp. 374 (D. Alas. 1949).

Waiver. — Parties to an action may by stipulation waive their respective rights to costs and attorney's fees. Jones v. Fuller-Garvey Corp., Sup. Ct. Op. No. 172 (File No. 344), 386 P.2d 838 (1963).

Costs in habeas corpus proceeding. — Where a habeas corpus proceeding is found to be without merit, the courts have taxed costs, apparently on the basis of the necessity and merit of the proceedings. Application of Spracher, 17 Alaska 144, 150 F. Supp. 565 (D. Alas. 1957).

Liability of state for costs. — See Reynolds v. Wade, 16 Alaska 221, 140 F. Supp. 713 (D. Alas. 1956); Fidalgo Island Packing Co. v. Phillips, 16 Alaska 621, 147 F. Supp. 883 (D. Alas. 1957).

Allowance of witness fees. — See Humphries v. Starns, 12 Alaska 535, 87 F. Supp. 374 (D. Alas. 1949).

The award is discretionary. — See notes under same catchline under analysis line III B, "Attorney's Fees."

Amount of the award of costs and fees held not unreasonable. — See In re V.M.C., Sup. Ct. Op. No. 1103 (File No. 2107), 528 P.2d 788 (1974).

B. Attorney's Fees.

Allowance of attorneys' fees as costs. — See Baker v. Marvel Creek Mining Co., 5 Alaska 348 (1915); Forno v. Coyle, 75 F.2d 692 (9th Cir. 1935); Pilgrim v. Grant, 9 Alaska 417 (1938); Columbia Lumber Co. v. Agostino, 13 Alaska 34, 184 F.2d 731 (9th Cir. 1950); United States ex rel. Brady's Floor Covering v. Breeden, 14 Alaska 214, 110 F. Supp. 713 (D. Alas. 1953); Jonas v. Bank of Kodiak, 17 Alaska 755, 166 F. Supp. 739 (D. Alas. 1958); Varnell v. Swires, 261 F.2d 891 (9th Cir. 1958).

Statutory authorization for the allowance of attorney's fees is of relatively ancient origin. McDonough v. Lee, Sup. Ct. Op. No. 378 (File No. 674), 420 P.2d 459 (1966).

The award of attorney's fees as costs is governed by the Rules of Civil Procedure. McDonough v. Lee, Sup. Ct. Op. No. 378 (File No. 674), 420 P.2d 459 (1966).

Attorney's fees not covered by literal requirements of Civ. R. 79(b). -- While attorney's fees are costs, they are not covered by the literal requirements of Civ. R. 79(b), which specifies items allowed as costs. State v. University of Alaska, Sup. Ct. Op. No. 2303 (File No. 4579), 624 P.2d 807 (1981).

Federal law governs allowance of attorney's fees in case involving construction of federal statute. — In cases involving the construction of federal statutes the federal law rather than the law of the state in which the action is brought governs with regard to the allowance of attorney's fees. Gilliam v. A. Shyman, Inc., 205 F. Supp. 534 (D. Alas. 1962).

The allowance of attorney's fees in diversity cases is governed by state law, except that the amount thereof should be governed by the federal rules of court. Danzas, Ltd. v. National Bank, 222 F. Supp. 671 (D. Alas. 1963), modified, 226 F. Supp. 928 (D. Alas. 1964).

Full reimbursement not automatically to be awarded. — The prevailing party in each case should not automatically be awarded the full amount of the attorney fees incurred. Malvo v. J.C. Penney Co., Sup. Ct. Op. No. 901 (File No. 1630), 512 P.2d 575 (1973).

If a successful litigant were to receive full reimbursement for all expenses incurred in the case with no requirement of justification and no consideration of the "good faith" nature of the unsuccessful party's claim or defense, there would be a serious detriment to the judicial system. Malvo v. J.C. Penney Co., Sup. Ct. Op. No. 901 (File No. 1630), 512 P.2d 575 (1973).

Public interest plaintiffs. — The trial court may, in its discretion, award full attorney's fees to public interest plaintiffs. City of Anchorage v. McCabe, Sup. Ct. Op. No. 1490 (File No. 2737), 568 P.2d 986 (1977).

The basis for awards of attorney's fees to public interest plaintiffs is to encourage plaintiffs to raise issues of public interest by removing the awesome financial burden of such a suit. City of Anchorage v. McCabe, Sup. Ct. Op. No. 1490 (File No. 2737), 568 P.2d 986 (1977).

It is an abuse of discretion to award attorney's fees against a losing party who has in good faith raised a question of genuine public interest before the courts. City of Anchorage v. McCabe, Sup. Ct. Op. No. 1490 (File No. 2737), 568 P.2d 986 (1977).

Attorney's fees may be awarded against plaintiffs who litigate good-faith claims. — See Stepanov v. Gavrilovich, Sup. Ct. Op. No. 1823 (File No. 3236), 594 P.2d 30 (1979).

Reliance upon invalid zoning ordinance. — It would be unfair to impose attorney's fees on a party who had relied on a zoning ordinance which was found to be invalid. City of Anchorage v. McCabe, Sup. Ct. Op. No. 1490 (File No. 2737), 568 P.2d 986 (1977).

Use of in-house counsel. — There is no express prohibition against awarding attorney's fees when a party's active representation in litigation is by in-house counsel rather than by retained counsel. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1550 (File No. 3223), 573 P.2d 862 (1978).

Where teacher's dismissal is affirmed. — Application of Civ. R. 82, relating to awards of attorney's fees, was not extended to allow an award of attorney's fees against a teacher whose dismissal is affirmed. Crisp v. Kenai Peninsula Borough School Dist., Sup. Ct. Op. No. 1771 (File No. 3318), 587 P.2d 1168 (1978).

Given a teacher's statutorily guaranteed right to contest his dismissal in the courts, it would be manifestly unreasonable to penalize the exercise of that right by allowing an award of any attorney's fees to the school district dismissing him. Crisp v. Kenai Peninsula Borough School Dist., Sup. Ct. Op. No. 1771 (File No. 3318), 587 P.2d 1168 (1978).

The award is discretionary with the trial judge and is reviewable on appeal only for abuse. Cooper v. Carlson, Sup. Ct. Op. No. 907 (File No. 1769), 511 P.2d 1305 (1973).

The matter of awarding attorney's fees is committed to the discretion of the trial court. The supreme court shall interfere with the exercise of that discretion only where it has been abused. Malvo v. J.C. Penney Co., Sup. Ct. Op. No. [illegible] (File No. 1630), 512 P.2d 575 (1973).

The award of costs and fees to the prevailing party is clearly within the broad discretion of the trial court. In re V.M.C., Sup. Ct. Op. No. 1103 (File No. 2107), 528 P.2d 788 (1974).

The supreme court has recognized that the trial judge has wide discretion in awarding attorney's fees to a prevailing party. City of Anchorage v. McCabe, Sup. Ct. Op. No. 1490 (File No. 2737), 568 P.2d 986 (1977).

Trial judge need not make formal findings of fact and conclusions of law to justify his decision denying attorney's fees. An oral explanation on the record is sufficient. Larry v. Dupree, Sup. Ct. Op. No. 1652 (File No. 3714), 580 P.2d 3[illegible] (1978).

Abuse of discretion. — An abuse of discretion is established where it appears that the trial court's determination as to attorney's fees was manifestly unreasonable. De Witt v. Liberty Leasing Co., Sup. Ct. Op. No. 818 (File No. 1635), 499 P.2d 599 (1972); Malvo v. J.C. Penney Co., Sup. Ct. Op. No. 901 (File No. 1630), 512 P.2d 575 (1973); Cooper v. Carlson, Sup. Ct. Op. No. 907 (File No. 1769), 511 P.2d 1305 (1973).

While the supreme court has made it clear that the award of attorney's fees to the prevailing party is not mandatory, it is equally clear that the denial of a motion for such fees may not be arbitrary or capricious or for some improper motive. Cooper v. Carlson, Sup. Ct. Op. No. 907 (File No. 1769), 511 P.2d 1305 (1973).

Only upon a clear abuse of discretion can the supreme court interfere with its exercise, such abuse being established only where it appears that the court's determination is manifestly unreasonable. In re V.M.C., Sup. Ct. Op. No. 1103 (File No. 2107), 528 P.2d 788 (1974).

The supreme court will interfere only where the trial court's determination as to attorney's fees appears to be "manifestly unreasonable." City of Anchorage v. McCabe, Sup. Ct. Op. No. 1490 (File No. 2737), 568 P.2d 986 (1977).

Discretion not abused. — The trial court did not abuse its discretion by permitting the request for attorneys' fees 13 days after the judgment. State v. University of Alaska, Sup. Ct. Op. No. 2303 (File No. 4579), 624 P.2d 807 (1981).

Award excessive. — An award of attorney's fees over 90 percent of what was requested, where there was no evidence that the other party's claim was frivolous, excessive. State v. University of Alaska, [illegible] P.2d 807 (1981).

Sec. 09.60.015. Attorney fees in small tort actions. (a) In any action for damages where the amount pleaded is $1,000 or less, and the plaintiff, when represented by counsel, prevails in the action, the plaintiff shall be allowed a reasonable amount to be fixed by the court as attorney fees for the prosecution of the action as a part of the costs of the action if the court finds that written demand for the payment of the claim was made on the defendant 20 days or more before the commencement of the action. However, no attorney fees shall be allowed to the plaintiff if the court finds that the defendant tendered to the plaintiff before the commencement of the action, an amount not less than the damages awarded to the plaintiff.

(b) If the defendant, when represented by counsel, pleads a counterclaim which does not exceed $1,000, and the defendant prevails in the action, the defendant shall be allowed a reasonable amount to be fixed by the court as attorney fees for the prosecution of the counterclaim as part of the costs of the action. (§ 1 ch 18 SLA 1972)

Sec. 09.60.020. Liability of guardian ad litem for costs. No person appointed guardian ad litem by a court for an infant or incompetent defendant is liable for the costs of the action. (§ 5.08 ch 101 SLA 1962)

Sec. 09.60.030. Guardian's responsibility for allowance against infant plaintiff. When costs or disbursements are adjudged against an infant plaintiff or incompetent, the guardian by whom the plaintiff appeared in the action is responsible for the payment, and payment may be enforced against the guardian as if the guardian were the actual plaintiff. (§ 5.09 ch 101 SLA 1962)

Sec. 09.60.040. Costs where party is a representative. In actions in which an executor, administrator, trustee of an express trust, or a person authorized to represent a party is a party, costs may be allowed as in other cases. However, when costs are allowed against that party, they are chargeable solely upon the estate, fund, or party represented unless the court orders the costs to be paid by that party personally for mismanagement or bad faith in the conduct of the action. (§ 5.10 ch 101 SLA 1962)

Sec. 09.60.050. Costs awarded against state, borough, city or other public agencies. When the state or a borough, city, or other public agency or entity or an officer thereof in an official capacity is a party, costs shall be awarded against it on the same basis as against any other natural person or party. However, when the action is brought upon the information of a natural person, that person shall be liable for costs awarded against the state. The costs shall not be recovered from the state until after execution has issued for the costs against that person and has been returned unsatisfied in whole or in part. (§ 5.11 ch 101 SLA 1962)

Rule 82. Attorney's Fees.

(a) Allowance to Prevailing Party.

(1) Unless the court, in its discretion, otherwise directs, the following schedule of attorney's fees will be adhered to in fixing such fees for the party recovering any money judgment therein:

ATTORNEY'S FEES IN AVERAGE CASES

	Contested	*Without Trial*	*Non-Contested*
First $2,000	25%	20%	15%
Next $3,000	20%	15%	12.5%
Next $5,000	15%	12.5%	10%
Over $10,000	10%	7.5%	5%

Should no recovery be had, attorney's fees for the prevailing party may be fixed by the court in its discretion in a reasonable amount.

(2) In actions where the money judgment is not an accurate criteria for determining the fee to be allowed to the prevailing side, the court shall award a fee commensurate with the amount and value of legal services rendered.

(3) The allowance of attorney's fees by the court in conformance with the foregoing schedule is not to be construed as fixing the fees between attorney and client.

(4) Attorney's fees upon entry of judgment by default shall be determined by the clerk. In all other matters the court shall determine attorney's fees. Awards not pursuant to the schedule set forth in subparagraph (1) of this Rule shall be made only upon motion.

(b) Allowance in Mental Cases. In proceedings under the Mental Health Act, the attorney appointed to represent the patient shall be allowed and paid a fee of $25.00, unless the judge, in his discretion, orders otherwise. A lay advisor appointed in such proceedings shall be allowed and paid a fee of $10.00, unless the judge, in his discretion, orders otherwise. (Amended by Supreme Court Order 497 effective January 18, 1982)

William Sidney GILBERT, Appellant,

v.

STATE of Alaska and H. A. Boucher, Lieutenant Governor, Appellees.

No 2290.

Supreme Court of Alaska.

Sept. 30, 1974.

Action for declaratory judgment by potential candidate for state senator, seeking declaration that requirement of three-year residency in state and one-year residency in election district for election to legislative office violated the candidate's equal protection rights. The Superior Court, Third Judicial District, Anchorage District, P. J. Kalamarides, J., denied the petition, awarded attorney's fees to the state, and candidate appealed. The Supreme Court, Erwin, J., held that the residency requirement served a compelling state interest and thus did not deny candidate equal protection; but that it was an abuse of discretion to award attorneys' fees against the candidate who had in good faith raised a question of genuine public interest before the courts.

Affirmed in part and reversed in part.

1. Constitutional Law ⇨83(1), 211
Elections ⇨21

Residency requirements for state legislative candidacy of three years in state and one year in election district serve compelling state interests, and thus neither violated potential candidate's rights to equal protection or to freedom of interstate travel, nor did they violate voters' rights to participate in elections. Const. art. 1, § 1; art. 2, § 2; AS 15.25.030; U.S.C.A.Const. Amend. 14.

2. Constitutional Law ⇨209

Where statute challenged as violative of equal protection burdens fundamental or basic right, it can be sustained only upon showing that it promotes compelling governmental interest. U.S.C.A.Const. Amend. 14.

3. Elections ⇨7

Constitutional residency requirements for legislative candidates should be viewed with strict judicial scrutiny, i. e., whether they serve compelling state interest. Const. art. 2, § 2.

4. Costs ⇨172

Award of attorney's fees to state against potential candidate for legislature who in good faith raised issue of constitutionality of residency requirements was abuse of discretion. Rules of Civil Procedure, rule 82.

5. Costs ⇨172

It is not purpose of award of attorney's fees to penalize party for litigating good-faith claim but rather partially to compensate prevailing party where such compensation is justified. Rules of Civil Procedure, rule 82.

6. Costs ⇨172

It is abuse of discretion to award attorney fees against losing party who has in good faith raised question of genuine public interest before courts. Rules of Civil Procedure, rule 82.

John W. Wood, Anchorage, for appellant.

Norman C. Gorsuch, Atty. Gen., Juneau, Timothy G. Middleton, Asst. Atty. Gen., Anchorage, for appellees.

Before RABINOWITZ, C. J., and CONNOR, ERWIN, BOOCHEVER, and FITZGERALD, JJ.

OPINION

ERWIN, Justice.

This appeal involves a challenge to the constitutionality of article II, section 2 of the Alaska Constitution and AS 15.25.030, which collectively conditions eligibility for seeking legislative office upon three years residency in the state and one year in the election district

Appellant is a citizen of the United States and has been a resident of Alaska

We see no viable alternative means of advancing these important interests alleged by the state. Appellant suggests that these interests may be met by imposing some sort of subjective test upon potential legislators. We disagree. To create a subjective test of candidates' knowledge, understanding or character would necessarily place undue power in the hands of those who would implement such a standard. We think it better that a relative few be delayed from realizing their political aspirations for a relatively brief period than that some group of persons pass upon the fitness of all candidates before they are permitted to present themselves to the voters.

Nor can these interests be protected by relying solely upon the electoral process itself. Voters are, in a sense, "consumers" of the product portrayed by the persons they elect to office. In these days of "packaged" media candidates, they often cannot know what is in the package until they have made their selection and observed the utility of the product. In adopting their constitution, the voters of Alaska chose to protect themselves from unknown deficiencies in their candidates by imposing objective standards upon those who would hold legislative office.

We conclude that while objective tests for candidacy unavoidably place a burden upon the privilege of running for political office, the burden is both temporary and slight and is necessary to promote governmental interests which are compelling.

[4] We turn to the question of whether the award of attorneys' fees to the state by the trial court was a proper exercise of discretion by the trial court pursuant to Civil Rule 82. Appellant alleges that the issues litigated here relate to a matter of public interest and contends that awarding fees in this type of controversy will deter citizens from litigating questions of general public concern for fear of incurring the expense of the other party's attorneys' fees.

[5, 6] It is not the purpose of Rule 82 to penalize a party for litigating a good faith claim but rather partially to compensate the prevailing party where such compensation is justified.[33] We have previously intimated that denial of attorneys' fees might be appropriate in a proper case where the public interest is involved.[34] As a matter of sound policy, we hold that it is an abuse of discretion to award attorneys' fees against a losing party who has in good faith raised a question of genuine public interest before the courts. Accordingly, we reverse the award of attorneys' fees to the state in this matter.

Affirmed in part and reversed in part.

ALASKA RENT-A-CAR, INC., d/b/a Avis Rent-A-Car, Appellant,

v.

The FORD MOTOR COMPANY, a corporation, Appellee.

No. 1823.

Supreme Court of Alaska.

Oct. 4, 1974.

Third-party action to recover against manufacturer of leased vehicle involved in rear-end collision. The Superior Court, First Judicial District, Juneau, Hubert A. Gilbert, J., entered summary judgment in favor of manufacturer, and lessor appealed. The Supreme Court, Connor, J., held that issue as to whether it might be inferred from evidence that defect existed in leased vehicle when it left hands of manu-

33. Malvo v. J. C. Penney Co., Inc., 512 P.2d 575, 587 (Alaska 1973).

34. Mobil Oil Corp. v. Local Boundary Comm'n, 518 P.2d 92, 101 (Alaska 1974); Jefferson v. City of Anchorage, 513 P.2d 1099, 1102 (Alaska 1973).

Outdoors

Supreme Court affirms public interest exemption

By MARK BAUMGARTNER
Empire Staff Reporter

Alaska's non profit public interest groups can breathe a little easier after the state Supreme Court overturned a Juneau court ruling that the Southeast Alaska Conservation Council must pay attorney fees in a case it lost.

SEACC in 1979 sued the state's Department of Natural Resources, charging the agency broke the law when it signed a contract with the Schnabel Lumber Co. of Haines. SEACC said the contract was illegal because it violated principles of sustained-yield timber management.

Then-Juneau Superior Court Judge Allen T. Compton ruled the contract was valid. He also did something which hadn't been done before; he ordered SEACC, a non-profit public interest group, to partially reimburse Schnabel for his 'orney fees.

SEACC appealed Compton's ruling on the grounds public interest groups are exempt from a state rule requiring losing parties to pay the prevailing party's attorney fees.

The Supreme Court on April 29 affirmed Compton's ruling on the legality of the timber contract. Justice Warren W. Matthews wrote the court's opinion approving the contract. Justice Jay A. Rabinowitz wrote a dissenting opinion, arguing the state used an incorrect definition of sustained yield when it determined an acceptable harvest level.

But the high court also found it was "an abuse of discretion" to award attorney fees against SEACC because the group in good faith raised a question of genuine public interest.

Compton has since been appointed to the Supreme Court. He did not participate in the Supreme Court's hearing of SEACC's appeal.

"We're delighted we didn't have to pay the $25,000," said SEACC executive director Jim Stratton, referring to the amount Compton had awarded Schnabel Lumber Co.

The group found a benefactor to put up a $25,000 bond, he said, payable if SEACC lost the appeal. Its status as a non-profit organization means the group relies on contributors to finance most its day-to-day operations, he said.

$25,000 represents one-third of SEACC's operating budget for this year, he said.

SEACC was represented in the May, 1982, Supreme Court appeal by Stephan Volker, an attorney with the Sierra Club Legal Defense Fund. Volker told the court that taxing a losing public interest group with attorney fees would have a "broad chilling effect on public interest litigation."

The lower court ruling "scared a lot of people, made them cautious," said Eric Smith, director of Trustees for Alaska, an Anchorage-based public interest law firm, in a recent interview.

Smith said he was unaware of a public interest group deciding not to sue because of the ruling. But the precedent makes them think twice, he said.

Justice Allen Compton: His 1979 Superior Court ruling that a non-profit organization must pay attorney fees in a case it lost has been overturned by the Alaska Supreme Court.

"If you define 'chilling effect' as having a psychological influence than I think that's the case," he said.

"Clients always want to know what they're undertaking" when they consider a lawsuit, Smith said. "They want to know if it will cost them anything."

Most of Trustees for Alaska's cases are in federal court, Smith said, and the group interprets federal law as providing a public interest exemption from an assessment of attorney fees in losing cases.

Stratton said Compton's ruling didn't deter SEACC from bringing litigation.

In his ruling, Compton found SEACC acted in good faith in sueing DNR and so he declined to tax SEACC with the state's attorney costs.

He acknowledged the public interest exemption but said Schnabel, as a private intervener in the case, received no benefit from SEACC's action.

In fact, Compton said, Schnabel was harmed by the lawsuit. He ordered SEACC to reimburse Schnabel for part of the company's attorney fees.

That ruling should stand, according to the Supreme Court opinion in the case, unless there was an "abuse of discretion."

The court ruled the award to Schnabel of attorney fees was an abuse of discretion, and therefore reversed the ruling.

In making its finding the Supreme Court reiterated the reason for the public interest exemption is "to encourage plaintiffs to raise issues of public interest by removing the awesome financial burden of such a suit."

The court affirmed its support of the policy behind the public interest exemption to Civil Rule 82 (used to fix attorney fees).

"Since the policy seeks to encourage the vindication of the public interest, we perceive no reason to distinguish between the public or private character of the defendant in a public interest lawsuit," the opinion states.

Here's the crux of the opinion — "It is the interest that the plaintiff seeks to protect and not the public or private character of the defendant that is the touchstone" of the public interest exemption to Rule 82.

The court said every Alaskan would have benefitted from the lawsuit had there been a finding timber was not being harvested according to sustained yield forestry.

Furthermore, the court said, since the timber contract was between the state and a private logger no public entity could have been expected to bring this suit. It took a private group — SEACC — to do it. It's case was neither frivolous nor in bad faith, the court found, and SEACC had no economic incentive for bringing the suit.

In other words, SEACC and other private non-profit groups meeting these tests must not be discouraged by the threat of having to pay attorney fees if it brings a losing case to court.

STATE OF ALASKA
THE LEGISLATURE

POUCH V STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM January 20, 1984

SUBJECT: Relationship between HB 445 and Civil Rule 82

TO: Representative Charlie Bussell
Chairman, House Judiciary Committee

FROM: Keith B. Levy KBL
Legislative Counsel

You have requested an opinion on the effect HB 445, "An Act relating to attorney fees," will have on the award of attorney fees in public interest cases in light of the existing Civil Rule 82. Specifically, you have asked whether, under Rule 82, an award of attorney fees will be mandatory in every public interest case in which the plaintiff prevails against a nongovernmental entity, if HB 445 is enacted. For the reasons set out below, it is my opinion that under Rule 82, if HB 445 is enacted, an award of attorney fees will not be required in every case and the trial judge will have the discretion to make this determination within certain limits.

HB 445, by repealing the "public interest exception" to the award of attorney fees, makes Rule 82 applicable in public interest cases. Rule 82(a)(1) clearly makes the award of attorney fees within the discretion of the trial judge. It sets out a schedule of suggested fees for the party recovering a money judgement, but provides that the court may in its discretion ignore the schedule. Rule 82(a)(1) further provides:

> Should no recovery be had, attorney's fees for the prevailing party may be fixed by the court in its discretion in a reasonable amount.

Thus, it is clear from the language of Rule 82(a)(1) that the award of attorney fees, whether there is a money judgement or not, is within the discretion of the trial judge. However, Rule 82(a)(2) seems to provide for certain situations in which the award of attorney fees is not discretionary, but mandatory. It provides:

> In actions where the money judgement is not an accurate criteria [sic] for determining the fee to be allowed to the prevailing side, the court shall award a fee commensurate with the amount and value of legal services rendered. (Emphasis added).

The use of the word "shall" seems to indicate that in cases in which there is no apparent relationship between the money judgement and the attorney's fee, the award of attorney fees is mandatory. A careful reading of the case law on Rule 82 leads me to the conclusion, however, that this would be an erroneous interpretation of the rule. The cases indicate that, subject only to the limitation that the award not be "manifestly unreasonable," attorney fees under rule 82 are not mandatory, but discretionary.

The Alaska Supreme Court has said in a number of cases that the denial of attorney fees altogether under Rule 82 is not necessarily an abuse of discretion. Cooper v. Carlson, 511 P.2d 1305 (Alaska 1973); Larry v. Dupree, 580 P.2d 326 (Alaska 1978). The trial judge has wide discretion in awarding attorney fees and the supreme court will overturn the trial judge's decision only of it is "manifestly unreasonable." Malvo v. J.C. Penney Co., 512 P.2d 575 (Alaska 1973).

Although it is not always clear from these cases whether the Court made its decision under Rule 82(a)(1) or (a)(2), a more recent case indicates that the determination of whether Rule 82(a)(2) comes into consideration at all is within the discretion of the trial judge. In Arctic Slope Native Association v. Paul, 609 P.2d 32 (Alaska 1980), the Supreme Court considered whether or not an award of full attorney fees was appropriate. After citing rule 82(a)(2), the Court said

> In this case the trial judge concluded that the money judgement was not an accurate criterion for establishing the appropriate fee.

Thus, the trial court made its own determination of the attorney fees. The Supreme Court agreed with this assessment by the trial judge, indicating that the determination of whether Rule 82(a)(2) comes into play at all is within the discretion of the trial judge. In other words, the award of attorney fees under Rule 82(a)(2) is not mandatory in the sense that the trial judge has discretion

to determine whether 82(a)(2) applies. Once the trial judge determines that 82(a)(2) applies, some attorney fees must be awarded. But the trial judge has the discretion to ignore 82(a)(2) as long as that decision is not manifestly unreasonable.

In conclusion, HB 445 does not make an award of attorney fees in public interest cases mandatory by making Civil Rule 82 applicable. Although Rule 82(a)(2) does seem to make an award of attorney fees mandatory, the award under Rule 82(a)(1) is discretionary, and the trial judge has the discretion to determine whether to apply Rule 82(a)(1) or (a)(2).

KBL:ojb
J2/056

cc: Representative Don Clocksin

HB

446

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

M E M O R A N D U M January 13, 1984

SUBJECT: Sectional Analysis of House Bill 446

TO: Representative Charlie Bussell
Chairman, House Judiciary Committee

FROM: Russ Josephson
Legislative Counsel

You have asked for a sectional analysis of HB 446. This bill consists of a single section. It adds a new section of law to the motor vehicle statutes to fill a gap in the existing law. Very simply, it requires a person to stop a motor vehicle when pursued by a law enforcement vehicle that is using lights or a siren to indicate that the peace officer would like the pursued driver to stop.

RJ:lmb
L3/082

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 01/16/84

REQUEST
Bill/Resolution No.: SSHB446
Title: "...stop at the direction of a Peace Officer
Sponsor: Rep. Liska & Syzmanski
Requestor: House Judiciary
Date of Request: 1-16-84

FISCAL DETAIL
Agency Affected: Public Safety
Program Category Affected: Administration of Justice
BRU, Program or Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

No Fiscal Impact.

Prepared By: Francis C. Allan mck F.C.A. Phone: 269-5691
Division: Alaska State Troopers Date: 01/16/84

Approved by Commissioner: Robert J. Sundberg R.J.S. Date: 1-19-84
Agency: Public Safety

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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

September 15, 1983

MEMORANDUM

TO: Representative John Liska

FROM: Deb Pomeroy
Administrative Assistant

RE: Stopping for a Police Officer
Research Request 83-199

Linda Edgeworth, of your staff, asked whether or not there is a statute requiring a motorist to stop when flagged down by a police officer. She also asked for information regarding a case in which a defendent was charged with failure to stop for a police officer. The defendant was acquitted because no statute set out this requirement. I spoke with the Gretchen Derr in the Commissioner's Office of the Department of Public Safety, who provided the attached correspondence pertaining to this issue.

The case the defendant won occurred prior to April 28, in Soldotna. A motorist had failed to stop when the police officer turned on the flashing lights and siren, and was subsequently charged with violating 13 AAC 02.140. I spoke with the District Attorney's Office in Kenai and requested the judge's decision as well as any pertinent documents. These will be forwarded to you as soon as we receive them.

The Alaska Adminstrative Code 13 AAC 02.140 (attached) states that "upon the approach of an authorized emergency vehicle...or a police vehicle making use of either a visual or an audible signal, the driver of every vehicle...shall yield the right-of-way by slowing, stopping, changing lanes or pulling to the right-hand edge of the roadway clear of an intersection to await passage of the emergency vehicle" (emphasis added). It appears that 13 AAC 02.140 pertains mostly to emergency situations.

Judge Anderson of Anchorage, who heard the case, ruled that the State had "made a half hearted attempt" in writing the regulation when it defined what a motorist must do when approached by a police vehicle with visual lights in a non-emergency situation. He went on to state that the police officer was attempting to stop a suspected violator when there was no existing emergency, and that the violator was therefore not required to stop.

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - SSHB446

Support with Amendment

January 16, 1984

SSHB446 - "An Act relating to the duty to stop at the direction of a peace officer.

This legislation deals with the public's responsibility to follow the directions of peace officers in emergency situations. Some confusion has existed on this subject on the part of the public due to the inconcise wording of present regulations (13.AAC.02.140). This proposed legislation clarifies the duty of the public without infringing upon their rights.

The wording in Sec. 28.35.184 requires that a person guilty of flight from a police officer is guilty of a class C felony. This is felt to be too severe a penalty and we request that it be amended to a class B misdemeanor. The original wording would result in many individuals having felony records that now only face misdemeanor violations. Additionally, the numerous violations of the section may place an unnecessarily heavy burden upon the Criminal Justice System.

Robert J. Sundberg
Commissioner

CITY OF KENAI
"Oil Capital of Alaska"
P. O. BOX 580 KENAI, ALASKA 99611
TELEPHONE 283-7535

August 25, 1982

Commissioner William R. Nix
Department of Public Safety
Pouch N
Juneau, AK. 99811

Dear Commissioner Nix,

Request your staff review 13 AAC 02140(a) for possible language changes. As the section is presently interpreted by the local court any one of several possible actions is sufficient to comply with the yield requirement.

If the intent is to require that whenever possible the motorist is to yield to an emergency vehicle by pulling over to the right and stopping, then the other language should possibly be modified or deleted.

If after your review, you determine that this appears to be a local court interpretation, and not a statewide problem or concern, please advise.

Sincerely,

Richard A. Ross
Chief of Police
Kenai Police Dept.

RAR/mp

Soldotna Police Department
P.O. Box 2499
Soldotna - Alaska 99669

Duane Udland
Chief of Police

April 28, 1983

Commissioner Robert Sundberg
Department of Public Safety
Pouch N
Juneau, AK 99811

Dear Commissioner Sundberg:

I am requesting that your staff review 13 AAC02.140 (a) for possible changes. Recently Soldotna had a case ruled on by Judge Anderson from Anchorage. The judge ruled that the State had "made a half hearted attempt" in writing the regulation when it defined what a motorist must do when approached by a police vehicle with visual lights on in a non-emergency situation.

The judge went on to say that in the case of Soldotna where the police officer was attempting to stop a suspected violator there was no existing emergency and the suspected violator was not required to stop. The judge then dismissed the citation that had been issued under the authority of 13 AAC02.140.

I am including in this letter a copy of a similar request made by Chief Ross of the Kenai Police Department. In the case of Kenai our local judge also dismissed a citation because the way the regulation is worded. It seems there is concern from more than one court about this regulation.

I have one other concern about the rules of the road contained in 13 AAC. Presently there is no regulation titled "Excessive Acceleration" or some other similar language. A problem comes up frequently when you have a motorist who spins his tires intentionally under heavy acceleration.

The only possible citation that can be issued in this situation is negligent driving. Our court has consistently ruled that absent other factors such as fishtailing, loss of control, etc. the elements of negligent driving are not satisfied.

It would seem to me that a new regulation could be written to cover this type of driving. This type of regulation would be most helpful in curtailing this sort of driving.

Thank you for your time and consideration.

Sincerely,

Duane D. Udland

Duane Udland
Chief of Police

mb

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

DIVISION OF STATE TROOPERS

P.O. BOX 6188 ANNEX
ANCHORAGE, ALASKA 99502
PHONE:

September 3, 1982

Richard A. Ross
Chief of Police
Kenai Police Department
Kenai, AK 99611

Re: 13 AAC02.140 (a)

Dear Chief Ross:

Your letter to Commissioner Nix dated August 25, 1982 has been forwarded to me for reply.

As the above cited regulation is now written, it would appear that any of the required actions now listed in the regulation would suffice to comply with it's requirement. The Uniform Vehicle Code clearly sets out that a motorist must drive to the right-hand edge or curb and stop until an emergency vehicle has passed. Though most of the basic regulation was originally taken from the Uniform Vehicle Code, for some reason 13 AAC02.140 (a) was not strictly followed and perhaps should be changed.

I will forward your suggestion to the Commissioner's committee for regulatory changes for its consideration.

Sincerely yours,

Mr. Joseph D. Balfe
Assistant Attorney General
for Law Enforcement

cc: Mr. Ken Simpson

12:113LH

MEMORANDUM State of Alaska

TO: Robert J. Sundberg
Commissioner
Department of Public Safety

DATE: May 3, 1983

FILE NO:

TELEPHONE NO: 465-4322

FROM: Inspector Frank N. Gorham
Assistant to the Commissioner
Department of Public Safety

SUBJECT: Chief Udland Letter
re: Failure to Stop

As requested, research was done on the requirements, or more, the lack of requirements for a person to stop when signaled to do so by a police officer.

I could find but one area of the State Statutes that requires a person (driver of a vehicle) to obey the signals of an officer. Even at that, it only relates to the condition of directing traffic. See attached AS 28.35.180.

The 13 AAC 2.140 does not directly require a vehicle to stop but makes it an option when an emergency vehicle of any type is approaching. Nor does the companion, 13 AAC 2.195, related to pedestrians.

Also attached is a proposed addition to either the Administrative Code or State Statutes that should serve the purpose. Not being a legal beagle, I am not sure how many holes it has in it.

Enclosures: a/s

MEMORANDUM State of Alaska

TO: Joseph Balfe
Assistant Attorney General
Department of Public Safety

DATE: May 12, 1983

MAY 16 1983

FILE NO:

TELEPHONE NO: 465-4322

FROM: Lt. Col. James D. Vaden
Office of the Commissioner
Department of Public Safety

SUBJECT: Failure to Stop

Please draft a change in our regulations requiring an individual to stop when lawfully directed to do so by a peace officer.

Return the draft to me and I will begin the procedures necessary to change the traffic regulations.

Since this problem could involve situations not involving a vehicle, we should also propose changes in the statutes. That recommendation should be held until the Administration requests proposed changes through legislation.

Attachments: a/s

cc: Robert J. Sundberg
Commissioner
Department of Public Safety

5/13/83
Rep. John Lisko —
RE: our conversation on 5-11-83 —
We will proceed as outlined above.
Thank you.
Robert J. Sundberg
Comm

02-001A (Rev. 10/79)

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

POUCH N
JUNEAU, ALASKA 99811
PHONE: 465-4322

November 4, 1983

Ms. Mary Whitman
Administrative Assistant
Legislative Affairs Agency
Pouch V
Juneau, AK 99811

Dear Ms. Whitman:

This is in reference to your request related to input from this department on HB 446, "An act relating to stopping a motor vehicle at the direction of a peace officer."

I have enclosed some statutes from other states, and the I.A.C.P. model "Uniform Vehicle Code" recommendation on the subject. The statutes sources were from the states of California, Oregon, and Washington. As can be seen, there are a variety of approaches, but all with the same theme.

As for this State, as reflected in a previous internal memorandum of this department, of which you have a copy, there are no requirements for a person, under any circumstances, to stop at the request of, or lawful command of a peace officer except when he is actually regulating or directing traffic (AS 28.35.280). Nor do any administrative code provisions require a person, under any circumstances, to stop as the result of a lawful order of a peace officer (13 AAC 02.140 and 13 AAC 02.195).

The department's desire, and I am sure you would find it the entire law enforcement community's desire, is to develop an all encompassing obedience statute covering a person, vehicle, boat, or aircraft. Whether this can be achieved is another matter.

House Bill 446, as it is now written, meets a portion of law enforcement needs, but may be somewhat vague and broad as it relates to "law enforcement vehicle."

If not being presumptive, and keeping in mind that the author is not trained in the legalized framing of statutes, the following is, at least, a draft revision of HB 446 for

12-L2LH

consideration that would meet the law enforcement needs. The draft is not in proper form.

Sincerely,

ROBERT J. SUNDBERG
COMMISSIONER

BY: Inspector Frank N. Gorham
Assistant to the Commissioner

cc: Emil Notti
Legislative Assistant
to the Governor

Norman Gorsuch
Attorney General
Department of Law

Col. Michael Kolivosky, Director
Division of Alaska State Troopers
Department of Public Safety

ATTEMPTING TO FLEE OR ELUDE POLICE OFFICER
1964

WHEREAS, The International Association of Chiefs of Police advocates and supports adoption of sound traffic regulations, couched in clear and effective terms so as to merit approval by the courts; and

WHEREAS, For this purpose the International Association of Chiefs of Police consistently supports efforts of the National Committee on Uniform Traffic Laws and Ordinances to develop and maintain the Uniform Vehicle Code to the highest degree of perfection as representing the best example of legislation recommended to the various states for adoption by their legislatures; and

WHEREAS, It is in the furtherance of this purpose that the various provisions of the Uniform Vehicle Code be made as legally sound as possible and be amended as and when necessary and advisable in order to correct defects therein which become apparent in practice from time to time; and

WHEREAS, Traffic officers often find themselves confronted with the problem of drivers who refuse to obey police commands to stop, and who flee from such officers, usually at high speed, sometimes extinguishing their lights at night, or otherwise seek to elude the officer; and

WHEREAS, Some states, including Colorado, Delaware, Oregon, Utah and Washington, have recently enacted legislation making such actions a misdemeanor of serious nature, some calling for mandatory revocation of the driver's license of persons convicted under such statutes; and

WHEREAS, Members of the International Association of Chiefs of Police are primarily concerned with such violations and directly affected by such driver actions and conduct, it is appropriate that the International Association of Chiefs of Police take the lead in formulating a standard or model form of law defining the offense of fleeing from or attempting to elude a police officer; and

WHEREAS, It is in the interest of promoting uniform legislation of this kind, and in the interest of more effective police patrol performance, that such legislation be recommended for adoption by all states; and

WHEREAS, The Uniform Vehicle Code is the proper

medium by which such legislation may be so recommended; now, therefore, be it

RESOLVED, That the International Association of Chiefs of Police hereby recommend to the Council of State Governments and the National Committee on Uniform Traffic Laws and Ordinances that the following new section be added to the Uniform Vehicle Code:

> "Fleeing or attempting to elude police officer. (a) Any driver of a motor vehicle who, having been given a visual or audible signal by a police officer directing said driver to bring his motor vehicle to a stop, willfully fails or refuses to obey such direction, increases his speed, extinguishes his lights, or otherwise flees or attempts to elude the officer, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not less than ($50 - $100 - $200) nor more than ($500), or by imprisonment for not less than (10 - 30 - 60) days nor more than (6) months, or both such fine and imprisonment. The signal given by the police officer may be by hand, voice, emergency light or siren. Provided, the officer giving such signal shall be in uniform, prominently displaying his badge of office and, if driving a vehicle, such vehicle shall be appropriately marked showing it to be an official police vehicle. (b) Upon receiving notice of such conviction the department may forthwith suspend the operator's or chauffeur's license of the person so convicted for a period of not more than (six) months."

whether the person is a problem drinker or drug-dependent person, as defined in ORS 482.477; and

(b) Complete a treatment program or information program designated by the court and paid at the expense of the person convicted. [1955 c.451 §87; 1979 c.744 §43; 1981 c.861 §15; 1981 c.898 §3]

487.545 Use of chemical analysis to show intoxication. (1) At the trial of any civil or criminal action, suit or proceeding arising out of the acts committed by a person driving a motor vehicle while under the influence of intoxicants, if the amount of alcohol in the person's blood at the time alleged is less than .10 percent by weight of alcohol as shown by chemical analysis of the person's breath, blood or urine, it is indirect evidence that may be used with other evidence, if any, to determine whether or not the person was then under the influence of intoxicants.

(2) Not less than .10 percent by weight of alcohol in a person's blood constitutes being under the influence of intoxicating liquor.

(3) Percent by weight of alcohol in the blood shall be based upon grams of alcohol per one hundred cubic centimeters of blood. [1955 c.451 §88; 1977 c.867 §54; 1981 c.898 §4]

487.550 Reckless driving. (1) A person commits the crime of reckless driving if the person recklessly, as defined in ORS 161.085 (9), drives a vehicle upon a highway in a manner that endangers the safety of persons or property.

(2) Reckless driving is a Class A misdemeanor. [1955 c.451 §91; 1981 c.898 §5]

487.555 Fleeing or attempting to elude a police officer. (1) A driver of a motor vehicle commits the crime of fleeing or attempting to elude a police officer if, when given visual or audible signal to bring the vehicle to a stop, he knowingly flees or attempts to elude a pursuing police officer.

(2) The signal given by the police officer may be by hand, voice, emergency light or siren.

(3) As used in this section, "police officer" means a sheriff, municipal policeman or member of the Oregon State Police in uniform, prominently displaying his badge of office or who is operating a vehicle appropriately marked showing it to be an official police vehicle.

(4) Fleeing or attempting to elude a police officer is a Class A misdemeanor. [1955 c.451 §91]

487.560 Driving while suspended or revoked or beyond license restriction. (1) A person commits the crime of driving while suspended or revoked if the person drives a motor vehicle upon a highway during a period when the person's license or permit to drive a motor vehicle or the person's right to apply for a license to drive a motor vehicle in this state has been suspended or revoked by a court or by the division or if the person drives a motor vehicle outside the restrictions of a license issued under ORS 482.475 or 482.477.

(2) In a prosecution under subsection (1) of this section, it is an affirmative defense that:

(a) An injury or immediate threat of injury to human or animal life and the exigency of the circumstances made it necessary for the defendant to drive a motor vehicle at the time and place in question, or

(b) The defendant had not received notice of the defendant's suspension or revocation as required by ORS 482.570 or in the manner provided in paragraph (c) of subsection (3) of this section.

(3) The affirmative defense under paragraph (b) of subsection (2) of this section shall not be available to the defendant if:

(a) The defendant refused to sign a receipt for the certified mail containing the notice; or

(b) The notice could not be delivered to the defendant because the defendant had not notified the division of the defendant's address or a change in the defendant's residence as required by ORS 482.290 (3); or

(c) At a previous court appearance, the defendant had been informed by a trial judge that the judge was ordering a suspension or revocation of the defendant's license, permit or right to apply; or

(d) The defendant had actual knowledge of the suspension or revocation by any means prior to the time the defendant was stopped on the current charge.

(4) Any of the evidence specified in subsection (3) of this section may be offered in the prosecution's case in chief.

(5) Except as provided in subsection (6) of this section, driving while suspended or revoked is a Class A misdemeanor.

(6) Driving while suspended or revoked is a Class C felony if the suspension or revoca-

tion was [illegible] son is an [illegible] 484.730 or [illegible] lowing offe

(a) An [illegible] criminally [illegible] suiting fro

(b) Any [illegible] proof of [illegible] operation

(c) Fail[illegible] or involved [illegible] results in [illegible] person

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(e) Flee[illegible] officer

(f) Dri[illegible] intoxicant[illegible] 1977 c.86

STO

487.573 [illegible] ing outside

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(2) Unl[illegible] ing in a re[illegible] tion.

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