

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 8672

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Alaska State Legislature

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MEMBER
Resources
Rules
Finance — Sub. Com. Labor

Representative John J. Liska

March 28, 1984

MEMORANDUM

TO: Judiciary Committee

FROM: Rep. John J. Liska

REFERENCE: The purpose of HB 626, "An Act relating to the crime of conspiracy".

The purpose is to make easier the arrest of individuals who are involved in the planning and organization of criminal activities. Such as drug dealers and pornographers.

The following material is attached:

- A. Alaska Statute 11, Chapter 31-attempt and solicitation.
- B. Department of Public Safety position paper.
- C. Fiscal Note.
- D. Articles on organized crime.

1. From Bital Speeches of the Day - "Combatting Organized Crime".
2. Newsweek - "How the Mob Really Works", January 5, 1981.
3. Newsweek - "A Squealers Secrets", January 5, 1981.
"And Now the Israeli Mafia"
4. Newsweek - "Rico the Enforcer", August 20, 1979.
5. Business Week - "Investment", January 10, 1983.
6. Newsweek - "Life in Hiding", January 5, 1981.
7. Nations Business - "Bad News for Labor Racketeers", Oct. 1982.
8. Business Week - "A New Ploy to Fight Takeovers", May 24, 1982.

Secs. 11.20.140 — 11.20.270. [Repealed, § 21 ch 166 SLA 1978. For current provisions on theft, see AS 11.46.100 — 11.46.290.]

Secs. 11.20.280 — 11.20.340. *Embezzlement.* [Repealed, § 21 ch 166 SLA 1978. For theft by failure to make required disposition of funds received or held, see AS 11.46.210.]

Sec. 11.20.345. *Extortion.* [Repealed, § 21 ch 166 SLA 1978. For current law, see AS 11.41.520.]

Sec. 11.20.350. *Receiving Stolen Goods.* [Repealed, § 21 ch 166 SLA 1978. For current law, see AS 11.46.190 and 11.46.210.]

Secs. 11.20.360 — 11.20.510. *False Pretenses and Frauds.* [Repealed, § 21 ch 166 SLA 1978. For theft by deception, see AS 11.46.180; for business and commercial offenses, see AS 11.46.600 — 11.46.730.]

Secs. 11.20.515 — 11.20.650. *Malicious Mischief and Trespass.* [Repealed, § 21 ch 166 SLA 1978. For criminal trespass, see AS 11.46.320 — 11.46.350; for criminal mischief, see AS 11.46.480 — 11.46.486.]

Sec. 11.20.660. [Renumbered as AS 11.76.120.]

Secs. 11.20.670 — 11.20.690. *Misuse, Damage, or Destruction.* [Repealed, § 21 ch 166 SLA 1978. For criminal mischief, see AS 11.46.480 — 11.46.486.]

Chapter 22. Alaska Credit Card Crimes Act.

[Repealed, § 21 ch 166 SLA 1978. For current law, see AS 11.46.285 — 11.46.290.]

Chapter 30. Offenses Against Public Justice.

[Repealed, § 21 ch 166 SLA 1978. For current law, see AS 11.56.]

Chapter 31. Attempt and Solicitation.

Section
100. Attempt
110. Solicitation
140. Multiple convictions barred

Section
150. Substantive crimes involving attempt or solicitation

Collateral references. — 21 Am. Jur. 2d Criminal Law, §§ 158 — 162

22 C.J.S., Criminal Law, §§ 73 — 78.
What amounts to attempt to manufacture intoxicating liquor within criminal law. 22 ALR 225.

Solicitation to crime as substantive common-law offense. 35 ALR 961.

What constitutes attempt to commit robbery. 55 ALR 714.

What conduct amounts to an overt act or act done toward commission of murder so as to sustain charge of attempt to murder. 93 ALR 918.

Criminal offense of obtaining money under false pretenses, or attempting to do so, predicated upon receipt or claim of benefits under insurance policy. 135 ALR 1157.

Attempt to commit crime as to driving, being in control of, or operating a motor vehicle while intoxicated. 47 ALR2d 590.

Entrapment to commit or attempt abortion. 63 ALR2d 1156.

What justifies escape or attempt to escape, or assistance in that regard. 70 ALR2d 1430.

Attempt to commit assault as criminal offense. 79 ALR2d 597.

Fact that gun was unloaded as affecting criminal responsibility for attempt to commit murder. 79 ALR2d 1432.

Attempts to receive stolen property. 85 ALR2d 259.

Attempt to escape or commit prison breach as affected by means employed. 96 ALR2d 520.

Attempts to commit offenses of larceny by trick, confidence game, false pretenses, and the like. 6 ALR3d 241.

Impotency as defense to charge of rape, attempt to rape, or assault with intent to commit rape. 23 ALR3d 1351.

Woman upon whom abortion is committed or attempted as accomplice for purposes of rule requiring corroboration of accomplice testimony. 34 ALR3d 858.

Comment note on impossibility of consummation of substantive crime as defense in criminal prosecution for conspiracy or attempt to commit crime. 37 ALR3d 375.

What constitutes attempted murder. 54 ALR3d 612.

Temporary unauthorized absence of prisoner as escape or attempted escape. 76 ALR3d 695.

What conduct amounts to an overt act or acts done toward commission of larceny so as to sustain charge of attempt to commit larceny. 76 ALR3d 342.

Robbery, attempted robbery, or assault to commit robbery, as affected by intent to collect or secure debt or claim. 88 ALR3d 1309.

property or in attempting to escape, rather than in taking property, as element of robbery, 93 ALR3d 643.

What constitutes attempted bank robbery under 18 USCS §§ 2113(a), making it offense to take or attempt to

any property, money, or other value from bank, 37 ALR Fed. 255.

Criminal responsibility under 18 USCS § 2(b) of one who lacks capacity to commit an offense but who causes another to do so, 52 ALR Fed. 769.

Sec. 11.31.100. Attempt. (a) A person is guilty of an attempt to commit a crime if, with intent to commit a crime, the person engages in conduct which constitutes a substantial step toward the commission of that crime.

(b) In a prosecution under this section, it is not a defense that it was factually or legally impossible to commit the crime which was the object of the attempt if the conduct engaged in by the defendant would be a crime had the circumstances been as the defendant believed them to be.

(c) In a prosecution under this section, it is an affirmative defense that the defendant, under circumstances manifesting a voluntary and complete renunciation of the defendant's criminal intent, prevented the commission of the attempted crime.

(d) An attempt is a

(1) class A felony if the crime attempted is an unclassified felony;

(2) class B felony if the crime attempted is a class A felony;

(3) class C felony if the crime attempted is a class B felony;

(4) class A misdemeanor if the crime attempted is a class C felony;

(5) class B misdemeanor if the crime attempted is a class A or class B misdemeanor.

(e) If the crime attempted is an unclassified crime described in a state law which is not part of this title and no provision for punishment of an attempt to commit the crime is specified, the punishment for the attempt is imprisonment for a term of not more than half the maximum period prescribed as punishment for the unclassified crime, or a fine of not more than half the amount of the maximum fine prescribed as punishment for the unclassified crime, or both. If the crime attempted is punishable by an indeterminate or life term, the attempt is a class A felony. (§ 2 ch 166 SLA 1978; am § 1 ch 102 SLA 1980; am § 10 ch 45 SLA 1982)

Cross references. — For legislative purpose of ch. 45, SLA 1982, see § 1, ch. 45, SLA 1982 in the Temporary and Special Acts.

Effect of amendments. — The 1980 amendment added subsection (e).

The 1982 amendment, substituted "an unclassified felony" for "murder in any

degree or kidnapping" in subsection (2).

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

Editor's notes. — Many of the cases cited in the notes below were decided under former AS 11.05.020.

The word "attempt" generally means the oral or physical effort to do a particular thing. *Wooldridge v. United States*, 407 F. 773 (9th Cir. 1916).

When attempt complete under former law. — See *Lenke v. United States*, 14 Alaska 587, 211 F.2d 73 (9th Cir. 1954); *Wooldridge v. United States*, 407 F. 773 (9th Cir. 1916).

In the area of attempt, criminal responsibility was present under former AS 11.05.020 where there was the formation of a general intent, a preparation to commit the crime, and a direct unequivocal act toward its perpetration. *Braham v. State*, Sup. Ct. Op. No. 1522 (File No. 1522, 171 P.2d 631 (1977), cert. denied, 436 U.S. 910, 98 S. Ct. 2246, 56 L. Ed. 2d 410 (1978)).

When preparation to commit a crime, not followed by an overt act done toward the commission, did not constitute an attempt under former AS 11.05.020. There were borderline cases where it was sometimes difficult to determine whether preparation to commit a crime has come close enough to the accomplishment of the crime so that an attempt had been committed. *Gargan v. State*, Sup. Ct. Op. No. 452 (File No. 773), 436 P.2d 968 (1968).

When preparation to commit a crime, not followed by an overt act done toward its commission, did not constitute an attempt. *Lenke v. United States*, 14 Alaska 587, 211 F.2d 73 (9th Cir. 1954).

When one's acts were of such a preliminary nature so as to constitute mere preparation for the contemplated crime, there was no crime of attempt. *Braham v. State*, Sup. Ct. Op. No. 1522 (File No. 2558), 571 P.2d 631 (1977), cert. denied, 436 U.S. 910, 98 S. Ct. 2246, 56 L. Ed. 2d 410 (1978).

Question of degree. — Whether acts done in contemplation of the commission of a crime were merely preparatory and did not constitute attempt, or whether they were sufficiently close to the consummation of the crime to amount to attempt, was a question of degree and depended upon the facts and circumstances of a particular case. *Braham v. State*, Sup. Ct. Op. No. 1522 (File No. 2558), 571 P.2d 631 (1977), cert. denied, 436 U.S. 910, 98 S. Ct. 2246, 56 L. Ed. 2d 410 (1978).

Inadequacy of former statute. — Former AS 11.05.020 was apparently inadequate to codify effectively as a crime the situation involving the single act of contracting for another to perform a criminal act. *Braham v. State*, Sup. Ct. Op. No. 1522 (File No. 2558), 571 P.2d 631 (1977), cert. denied, 436 U.S. 910, 98 S. Ct. 2246, 56 L. Ed. 2d 410 (1978).

Where defendant contracted with someone to kill another, when he instructed the killer to visit the victim, his intention being that there would be fostered a relationship of trust and confidence between the killer and the victim, thus placing the killer in a position where he would be closer to the victim and could more readily kill him, the killer's visit with the victim, at defendant's direction, was the doing of a direct, unequivocal act toward the commission of the crime of murder, which followed the formation of a criminal intent and a preparation to commit this crime. *Braham v. State*, Sup. Ct. Op. No. 1522 (File No. 2558), 571 P.2d 631 (1977), cert. denied, 436 U.S. 910, 98 S. Ct. 2246, 56 L. Ed. 2d 410 (1978).

Factual impossibility not apparent to actor. — A factual impossibility which was not apparent to the actor at the time should not, as a matter of policy, insulate him from conviction for attempting the commission of the offense. *Gargan v. State*, Sup. Ct. Op. No. 452 (File No. 773), 436 P.2d 968 (1968).

"Empty pocket doctrine." — See *Gargan v. State*, Sup. Ct. Op. No. 452 (File No. 773), 436 P.2d 968 (1968).

Attempt statute applied to attempted violation of narcotic drug statute. — Persons attempting to commit the crime defined by AS 17.10.010 of the Alaska Uniform Narcotic Drug Act (now repealed) were not exempted or excepted from the provisions of the attempt statute. *Simpson v. United States*, 13 Alaska 635, 195 F.2d 721 (9th Cir. 1952).

An attempt was necessarily included in an indictment for statutory rape. *Sekinoff v. United States*, 283 F. 38 (9th Cir. 1922).

Indictment need not specify intent to be proved for attempted rape. — There is authority for the proposition that a specific intent must be proved for the crime of attempted rape. But there is no authority supporting the proposition that the indictment must specify that intent. *State v. Thomas*, Sup. Ct. Op. No. 1077 (File No. 2234), 525 P.2d 1092 (1974).

Title 12
Code of Criminal
Procedure
Title 12
Domestic Estates
Asset Protection Trusts



JUSTICE

How the Mob Really Works

They are the criminals Americans have loved to fear. For 60 years, the batons of organized crime have lived off the nation's thirst for vice: first liquor, then women, gambling, drugs and usurious cash. At the same time, they have become legends in their own land, hyperbolized in the press and pop culture as figures of Evil and Honor, concepts that mean little to the hoodlum on the street. Today, in its middle age, the mob finds itself in a difficult period of transition. Its top leadership is aging. Its young bloods chafe at traditional hierarchies. Its forays into the straight economy are increasingly risky. Most worrisome of all, it faces unprecedented efforts by law enforcement agencies, which have finally found ways to disrupt, if not destroy, criminal networks. Still, the mob is hardly a declining industry; its principal commodities—lust, greed and blood—remain very much in fashion.

1980 was not a good year for the underworld. About 600 mobsters were convicted in Federal courts. They include bosses Frank Tieri of New York, Nicholas

and an informant masqueraded for a year as a crooked insurance agent to record conversations with Carlos Marcello, the reputed boss of the New Orleans crime family. The 70-year-old Marcello was indicted last June for racketeering, fraud and conspiracy. He was accused of agreeing to help the agents bribe Louisiana officials, they were to get state contracts and he was to receive a piece of their action. In courtrooms along the Gulf and East coasts, evidence gathered during a five-year inves-

tigation into dock corruption has brought the convictions of more than a hundred union officials and shippers on bribery and extortion charges. Despite all this, lawmen say they are only containing the mob. "Organized crime is powerful," says Francis M. Mullen, executive assistant FBI director of investigations. "We do not really hope to eliminate it. We hope to diminish its influence."

Within their traditional markets the mob's influence—and profits—keep climb-

Lawmen are making things tougher, but organized crime is finding new ways to make crime pay.



Michael Rizzitello
Los Angeles



Frank Tieri
New York



Dominick Brooklier
Los Angeles

Civella of Kansas City and the entire top echelon of the Los Angeles crime family, who were convicted of racketeering, and former New York boss Joseph Bonanno, who was convicted of conspiracy to obstruct justice. (All of the bosses are appealing.) Tieri and members of southern California's "Mickey Mouse Mafia" were fingered by the most important informer in two decades, Jimmy (The Weasel) Frattino, who now wields his memory the way he once used a garrote (page 36). "These prosecutions illustrate that organized crime is penetrable," says Attorney General Benjamin Civiletti. "It is not, as we sometimes hear, an organization which has such a strong oath of silence that it is immune from Federal investigation."

The FBI has learned the value of going undercover to beat the mob on its own turf. In the Brilab case, two FBI agents

Mafia informants concealed at Senate hearing: 'Mobsters are like cockroaches. You step on them one place and they turn up somewhere else.'



ing Heroin smuggling is again a growth industry. Agents from the Federal Drug Enforcement Administration seized 400 pounds of heroin in the first eleven months of 1980, up one third from all of 1979. The police are not suddenly better, they're just skimming the foam off a flood tide. Professional fences can barely keep up with the loads of hijacked goods they wash clean through burgeoning flea markets and street peddlers. And, says Dominic Amorosa, chief of the Organized Crime Strike Force in Manhattan, "The amount of loan-sharking on the street has never been higher." Inflation has driven hordes of businessmen and bill payers to loan sharks for money borrowed at up to 200 to 300 percent annual interest, using their firms—and their bodies—as collateral.

The mob has also moved into new enterprises. "These people are like cock-~~roaches~~," says one veteran investigator. "You step on them one place and they turn up somewhere else." Record and tape pirates working with underworld bookers now sell enough counterfeit albums to make rock stars weep. Not only legitimate chemical companies dump toxic wastes illegally, now the mob does too. Last April an allegedly Mafia-connected chemical waste warehouse in New Jersey exploded, the lethal mess still hasn't been completely disposed of. Gangsters were also quick to observe that coal mining seems profitable again. They are not only stealing expensive heavy equipment from the sites, but they sell shares in nonexistent or nonproductive mines. The gangs have become so successful

that seven states have pooled investigative resources to fight the crime.

The Reagan Justice Department is expected to maintain the new pressure. Attorney General designate William French Smith inherits a national group of tough, aggressive professional prosecutors and a reformed but still controversial Witness Security Program (page 42).

Pizza. Why should the ordinary citizen care about any of this? Because like it or not, the mob has become a fact of everyday life. If you buy clothes, eat at restaurants with linen napkins, shop in stores that use private garbage services, gamble in casinos, invest in high-flying stocks, have a yen for dirty books, can't start the day without a fresh bagel or finish it without a pizza pie, the mob is there to help. And if you are afraid to venture out at night lest some junkie mugger will be lurking, it's the mob that feeds his habit. "Organized crime is draining millions of dollars—tax-free dollars—from our nation's economy," says FBI director William H. Webster. "Its impact is felt throughout our society."

At the same time, it's important to understand what the mob isn't. The Mafia is not the principal source of economic crimes—price-fixing or shaving work—and product-safety standards. Those are the provinces of conniving businessmen. The kickbacks or other favors that some corporations give politicians often rival anything the mob provides. "Organized crime is a serious problem, but one which is sometimes exaggerated and sometimes minimized for political purposes," says Deputy Assistant Attorney General Irvn Nathan.

Harvard sociologist Daniel Bell once wrote that the underworld serves as one of America's "queer ladders of social mobility." Some criminals climb and get off, others can't wait to get on, and some never leave. The Italian syndicate, called La Cosa Nostra by some gangs and by the FBI, and the Mafia by everyone else, fits the last category. So much has been written about this group that it's difficult to separate myth from fact. This at least seems true: the Mafia is a loose confederation of gangs spread around the country. They work together on projects such as Las Vegas gambling, and operate independently on local affairs such as protection rackets or labor racketeering (chart, page 38).

Shakedown: Organized crime, however, is by no means an Italian monopoly. Jewish and Irish hoodlums have long cooperated with the Mafia. "Guys that hate each other will sit down for money," says a New York police detective. But now new groups have begun to climb Bell's curious ladder. Black outfits in Philadelphia and New York run—in concert with the Mafia—much of the gambling and narcotics action. Chinese gangs shake down San Francisco merchants, the self-proclaimed Israeli Mafia (page 40) extorts money in Los Angeles. Colombian and Cuban drug rings have flooded Florida with their products—and



Joe Bonanno
Lucas

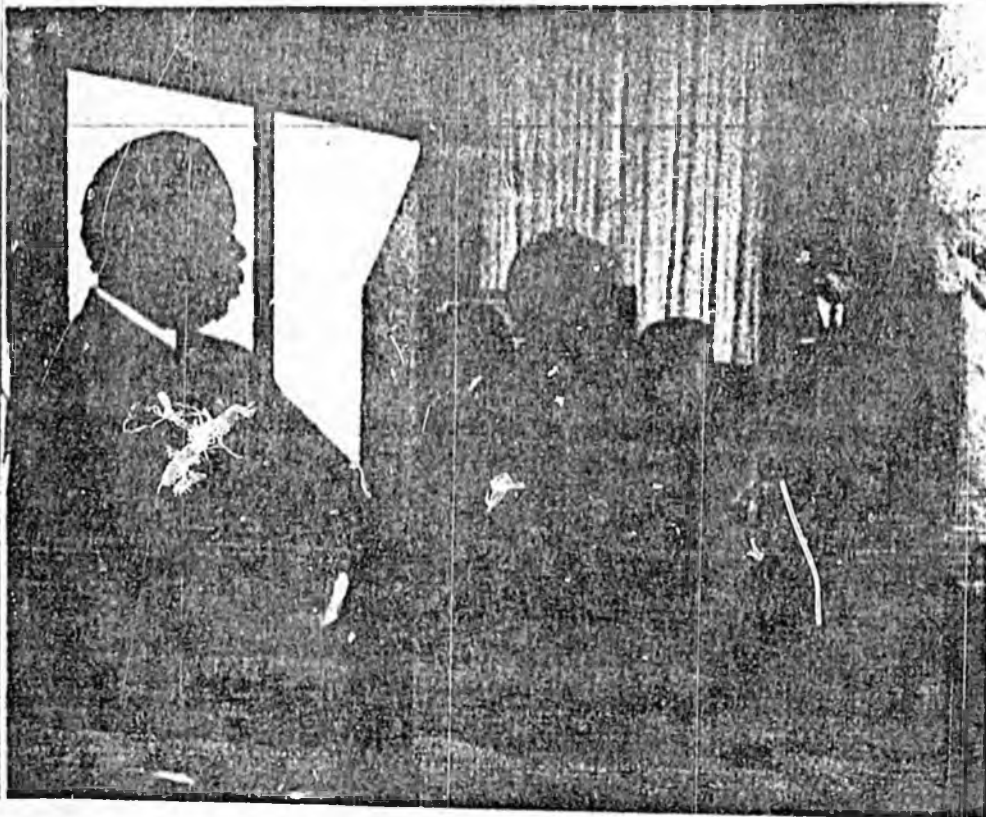


Carlos Marcello
New Orleans



Louis Tom Dragna
Los Angeles

John F. O'Neil - Photographs



Even though there is no question that the crime of attempt requires a specific intent, it seems equally beyond dispute that a charge of attempt to commit a specific crime clearly advises the defendant of the offense with which he is charged. *State v. Thomas*, Sup. Ct. Op. No. 1077 (File No. 2234), 525 P.2d 1092 (1974).

Indictment charging attempted rape and citing only the rape statute held sufficient. — See *State v. Thomas*, Sup. Ct. Op. No. 1077 (File No. 2234), 525 P.2d 1092 (1974).

Defendant may be found guilty though attempt not expressly charged. — Jury could find defendant guilty of the attempt to commit the crime of possessing narcotic drugs despite the fact that the attempt was not expressly charged. *Simpson v. United States*, 13 Alaska 635, 195 F.2d 721 (9th Cir. 1952).

Substantial evidence of attempt. — In a prosecution for possession of narcotic drugs, although there was no substantial evidence that defendant committed the crime charged in the information, there was substantial evidence that she attempted to commit the crime charged. *Simpson v. United States*, 13 Alaska 635, 195 F.2d 721 (9th Cir. 1952).

Same offense for sentencing purposes. — Assault with intent to rob and attempted robbery constituted the "same offense" for sentencing purposes. *Brookins v. State*, Sup. Ct. Op. No. 1936 (File No. 3972), 600 P.2d 12 (1979).

Sentence upheld. — See *Bowie v.*

Sec. 11.31.110. Solicitation. (a) A person commits the crime of solicitation if, with intent to cause another to engage in conduct constituting a crime, the person solicits the other to engage in that conduct.

(b) In a prosecution under this section,

(1) it is not a defense

(A) that the defendant belongs to a class of persons who by definition are legally incapable in an individual capacity of committing the crime that is the object of the solicitation; or

(B) that a person whom the defendant solicits could not be guilty of the crime that is the object of the solicitation;

(2) it is an affirmative defense that the defendant, under circumstances manifesting a voluntary and complete renunciation of the defendant's criminal intent, after soliciting another person to engage in conduct constituting a crime, prevented the commission of the crime.

(c) Solicitation is a

State, Sup. Ct. Op. No. 769 (File No. 1000), 494 P.2d 800 (1972); *Spearman v. State*, Sup. Ct. Op. No. 1210 (File No. 2520), 543 P.2d 202 (1975); *Braham v. State*, Sup. Ct. Op. No. 1522 (File No. 2558), 571 P.2d 631 (1977), cert. denied, 436 U.S. 910, 98 S.Ct. 2246, 56 L. Ed. 2d 410 (1978); *Johnson v. State*, Sup. Ct. Op. No. 1656 (File No. 3424), 580 P.2d 700 (1978); *Ferguson v. State*, Sup. Ct. Op. No. 1791 (File No. 3890), 590 P.2d 43 (1979); *Morris v. State*, Sup. Ct. Op. No. 1830 (File No. 4132), 592 P.2d 1244 (1979); *Ramil v. State*, Sup. Ct. Op. No. 2217 (File No. 4944), 619 P.2d 722 (1980).

Sentence held excessive. — See *Hansen v. State*, Ct. App. Op. No. 218 (File No. 6965), 657 P.2d 862 (1983).

Applied in *Nicholson v. State*, Ct. App. Op. No. 193 (File No. 6192), 656 P.2d 1209 (1982).

Stated in *State v. Silas*, Sup. Ct. Op. No. 1851 (File No. 4237), 595 P.2d 651 (1979); *Coleman v. State*, Sup. Ct. Op. No. 2150 (File No. 4416), 621 P.2d 869 (1980); *Ramil v. State*, Sup. Ct. Op. No. 2217 (File No. 4944), 619 P.2d 722 (1980); *Clark v. State*, Ct. App. Op. No. 96 (File No. 5658), 645 P.2d 1236 (1982); *Tazruk v. State*, Ct. App. Op. No. 195 (File No. 6954), 655 P.2d 788 (1982).

Cited in *Handley v. State*, Sup. Ct. Op. No. 2155 (File No. 3946, 4935), 615 P.2d 627 (1980); *Walker v. State*, Ct. App. Op. No. 234 (File No. 6304), 662 P.2d 948 (1983).

- (1) class A felony if the crime solicited is an unclassified felony;
- (2) class B felony if the crime solicited is a class A felony;
- (3) class C felony if the crime solicited is a class B felony;
- (4) class A misdemeanor if the crime solicited is a class C felony;
- (5) class B misdemeanor if the crime solicited is a class A or class B misdemeanor.

(d) If the crime solicited is an unclassified crime described in a state law which is not part of this title and no provision for punishment of a solicitation to commit the crime is specified, the punishment for the solicitation is imprisonment for a term of not more than half the maximum period prescribed as punishment for the unclassified crime, or a fine of not more than half the maximum fine prescribed as punishment for the unclassified crime, or both. If the crime solicited is punishable by an indeterminate or life term, the solicitation is a class A felony. (2 ch 166 SLA 1978; am § 2 ch 102 SLA 1980; am § 11 ch 45 SLA 1982)

Cross references. — For legislative purpose of ch. 45, SLA 1982, see § 1, ch. 45 SLA 1982, in the Temporary and Special Acts; for legal accountability based on the conduct of another and complicity, see AS 11.16.110.

Effect of amendments. — The 1980 amendment added subsection (d).

The 1982 amendment, substituted "an

unclassified felony" for "murder in any degree or kidnapping" in subsection (c)(1).

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

Former law construed. — See *McConkey v. State*, Sup. Ct. Op. No. 855 (File No. 1464), 504 P.2d 823 (1972); *Cassell v. State*, Ct. App. Op. No. 91 (File No. 5138), 645 P.2d 219 (1982), decided under former AS 11.10.070.

One contracting with another to kill a third person was guilty of attempted first-degree murder, not solicitation. —

See *Braham v. State*, Sup. Ct. Op. No. 1522 (File No. 2558), 571 P.2d 631 (1977), cert. denied, 436 U.S. 910, 98 S.Ct. 2246, 56 L. Ed. 2d 410 (1978), decided under former AS 11.10.070 and 11.15.010.

Cited in *Hoover v. State*, Ct. App. Op. No. 73 (File No. 6223), 641 P.2d 1263 (1982); *P.S. v. State*, Ct. App. Op. No. 194 (File No. 6870), 655 P.2d 1319 (1982).

Sec. 11.31.140. Multiple convictions barred. (a) It is not a defense to a prosecution under AS 11.31.100 or AS 11.31.110 that the crime that is the object of the attempt or solicitation was actually committed pursuant to the attempt or solicitation.

(b) A person may not be convicted of more than one crime defined by AS 11.31.100 or AS 11.31.110 for conduct designed to commit or culminate in commission of the same crime.

(c) A person may not be convicted on the basis of the same course of conduct of both (1) a crime defined by AS 11.31.100 or AS 11.31.110; and (2) the crime that is the object of the attempt or solicitation.

(d) This section does not bar inclusion of multiple counts in a single indictment or information charging commission of a crime defined by AS 11.31.100 or AS 11.31.110 and commission of the crime that is the object of the attempt or solicitation. (§ 2 ch 166 SLA 1978)

NOTES TO DECISIONS

Conspiracy is separate offense. — The crime of conspiracy is generally regarded as a separate offense from the substantive crime that is the object of the conspiracy. Unlike the other preliminary offenses of attempt and solicitation, conspiracy does not merge into a conviction for the substantive crime. *Lythgoe v. State*, Sup. Ct. Op. No. 2235 (File No. 4497), 626 P.2d 1082 (1980).

The no-merger rule means that a defendant can be convicted of both conspiracy and the object of the conspiracy. One reason advanced for this special treatment of conspiracy as a separately punishable offense is that conspiracy has been regarded as a serious crime in itself. *Lythgoe v. State*, Sup. Ct. Op. No. 2235 (File No. 4497), 626 P.2d 1082 (1980).

Sec. 11.31.150. Substantive crimes involving attempt or solicitation. Notwithstanding AS 11.31.140(d),

(1) a person may not be charged under AS 11.31.100 if the crime allegedly attempted by the defendant is defined in such a way that an attempt to engage in the proscribed conduct constitutes commission of the crime itself;

(2) a person may not be charged under AS 11.31.110 if the solicitation in question is defined as a specific crime under other provisions of law. (§ 2 ch 166 SLA 1978)

Chapter 35. Abandonment and Nonsupport.

[Repealed, § 1 ch 39 SLA 1970 and § 21 ch 166 SLA 1978. For current law on desertion and nonsupport of a minor, see AS 11.51.100 — 11.51.120.]

Chapter 36. Failure to Permit Visitation with Minor Child.

[Repealed, § 21 ch 166 SLA 1978. For current law, see AS 11.51.125.]

Chapter 40. Crimes Against Morality and Decency.

[Repealed, § 21 ch 166 SLA 1978. For current law, see AS 11.51.130, 11.51.140, 11.61.110, 11.61.130, 11.61.140 and 11.66.100 — 11.66.150.]

Chapter 41. Offenses Against The Person.

Article

- 1. Homicide (§§ 11.41.100 — 11.41.140)
- 2. Assault and Reckless Endangerment (§§ 11.41.200 — 11.41.250)
- 3. Kidnapping and Custodial Interference (§§ 11.41.300 — 11.41.370)
- 4. Sexual Offenses (§§ 11.41.410 — 11.41.470)
- 5. Robbery, Extortion, and Coercion (§§ 11.41.500 — 11.41.530)

Cross references. — For provisions authorizing arrest without warrant in certain cases where the police officer has rea-

sonable cause to believe that the person has committed a crime under this chapter, see AS 12.25.030(b).

NOTES TO DECISIONS

Cited in *Leuch v. State*, Sup. Ct. Op. No. 2419 (File No. 5255), 633 P.2d 1006 (1981).

Article 1. Homicide.

Section

- 100. Murder in the first degree
- 110. Murder in the second degree
- 115. Defenses to murder
- 120. Manslaughter

Section

- 130. Criminally negligent homicide
- 135. Multiple deaths
- 140. Definition

Collateral references. — 41 Am. Jur. 2d, Homicide, § 1 et seq.

40 C.J.S., Homicide, § 1 et seq.

Homicide by wanton or reckless use of firearm without express intent to inflict injury, 5 ALR 603; 23 ALR 1554.

Homicide or assault in attempting to prevent elopement, 8 ALR 660.

Wife's confession of adultery as affecting degree of homicide in killing her paramour, 10 ALR 470.

What amounts to participation in homicide on part of one not the actual perpetrator, who was present without preconcert or conspiracy, 12 ALR 275.

Intoxication as reducing homicide from murder to manslaughter, 12 ALR 888; 79 ALR 897.

Responsibility of persons participating in jail delivery for homicide committed by one of their number, 15 ALR 456.

Recommendation for mercy, 17 ALR 117; 55 ALR 639.

Homicide by unlawful act aimed at another, 18 ALR 917.

Criminal responsibility of peace officers for killing or wounding one whom they wished to investigate or identify, 18 ALR 1363; 61 ALR 321.

Homicide as affected by time elapsing between wound and death, 20 ALR 1006; 93 ALR 1470.

Humanitarian motives, homicide as affected by, 25 ALR 1007.

Discharge of firearm without intent to inflict injury as proximate cause of homicide resulting therefrom, 55 ALR 921.

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER

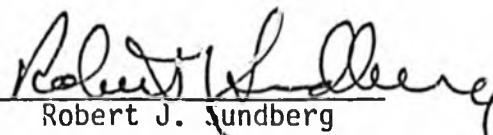
Support

March 3, 1984

HB 626 - "An act relating to the crime of ~~conspiracy~~."

This legislation would facilitate the arrest and prosecution of those individuals who historically are positioned in the upper levels of criminal organizations but who never enter the areas of "hands on" physical criminal activity and therefore avoid being charged, despite their clear responsibility. The most important impact of passage of this legislation would be in prosecutions of those criminal elements involved in narcotics trafficking in Alaska.

We can see a potential for conflict between 11.31.140 (c) and (e). The former prohibits conviction for both conspiracy and the crime which is the object of the conspiracy. 11.31.140 (e) indicates that if multiple crimes are the object of a conspiracy only one count of conspiracy is charged. If two people conspire to commit four similar crimes, under (e) this is one conspiracy count. If, in fact, three crimes are committed, the fourth to occur at a later date and arrests are made before the fourth crime is attempted, under (c) conspiracy could not be charged for the fourth crime because (e) defines one conspiracy count for all four planned crimes and (c) prohibits conviction for both conspiracy and the criminal act itself.


Robert J. Sundberg
Commissioner

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 626
Title: "An act relating to the crime of conspiracy."

Sponsor: Representative Liska
Requestor: House Judiciary
Date of Request: 3-6-84

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

Prepared By: Francis C. Allan *F.C.A.*
Division: Alaska State Troopers

Phone: 269-5691
Date: 03/02/84

Approved by Commissioner: *[Signature]* Robert J. Sundberg
Agency: Public Safety

Date: 3/6/84

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

those differences can be resolved."

Well, those differences are differences in Government structure and philosophy. The common interests have to do with the things of everyday life for people everywhere.

Just suppose with me for a moment that an Ivan and an Anya could find themselves, oh, say, in a waiting room or sharing a shelter from the rain or a storm with a Jim and Sally. And there was no language barrier to keep them from getting acquainted.

Would they debate the differences between their respective Governments? Or would they find themselves comparing notes about their children and what each other did for a living? Before they parted company, they would probably have touched on ambitions and hobbies and what they wanted for the children and problems of making ends meet.

And as they went their separate ways, maybe Anya would be saying to Ivan: "Wasn't she nice. She also teaches music."

And Jim would be telling Sally what Ivan did or didn't like about his boss. They might even have decided they were going to get together for dinner some evening soon.

Above all they would have proven that people don't make wars. People want to raise their children in a world without fear and without war. They want to have some of the good things over and above bare subsistence that make life worth living. They want to work at some craft, trade or profession that gives them satisfaction and a sense of worth. Their common interests cross all borders.

If the Soviet Government wants peace, then there will be peace. Together we can strengthen peace, reduce the level of arms and know in doing so that we have helped fulfill the hopes and dreams of those we represent and, indeed, of people everywhere.

Let us begin now.

Combating Organized Crime

PUBLIC AWARENESS AND SUPPORT

By WILLIAM FRENCH SMITH, *Attorney General of the United States*

Delivered at the Town Hall of California, Los Angeles, California, December 19, 1983

I WOULD like to discuss a subject that affects all of us every day, even though it stays generally hidden from public view. It causes our taxes to go up. It adds to the cost of what we buy. And, worst of all, it threatens our personal safety and that of our families — indeed our very freedom. Its trafficking causes untold damage to human lives and human health, yet its revenues are estimated to exceed the net profit of all the Fortune 500 corporations combined. I am speaking of organized crime.

Although combating organized crime is a difficult undertaking, it is not impossible. Indeed, as I will later explain, many successes are now being achieved in that battle. Unfortunately, the public is little aware of the problem or of what the government is doing to combat it. With greater public awareness of the nature and the threat of organized crime, and with greater citizen participation, we could make substantially more headway.

First, in order to provide the context for our efforts today, some history is in order. During the first years of this century, organized crime was a local enterprise. A gang worked a city, often just a neighborhood. The local police were alone in trying to stop organized crime, and the task proved beyond their powers. There was no federal government involvement. And with the ratification of the Eighteenth Amendment, organized crime began a significant expansion in power and influence.

During Prohibition, organized crime groups vied for shares of a market attracting more and more bootleggers, and frequently fought each other as they tried to expand beyond their once limited turfs. Nonetheless, ethnic animosities and gang rivalries gradually abated during Prohibition as cooperation became necessary in the effort to control larger and larger markets. At a 1929 meeting, leading organized crime figures from major cities recognized the need for a national body to mediate differences among groups and formulate a national policy.

The year 1929 is also notable for the federal government's first substantial appearance in the history of organized crime. It was an inauspicious entry. Disturbed by the lawlessness of Prohibition, President Hoover established that year the National

Commission on Law Observance and Enforcement. Named after its chairman, George Wickersham, the Commission urged an "immediate, comprehensive, and scientific nationwide inquiry into organized crime" in order to "make possible the development of an intelligent plan for its control."

No such inquiry took place, however, and no intelligent plan for the control of organized crime was developed. The FBI did what it could against the gangsters, arresting a few such as Al Capone, who served time for income tax evasion. But the FBI lacked statutory authority to investigate most of the activities of the crime syndicates. During the Thirties and Forties, despite laudable law enforcement efforts by some local and state authorities, organized crime prospered as the federal government generally failed to make a response.

Alcohol provided the major source of income for criminal groups from 1920 until the end of Prohibition in 1933. But organized crime had by then already learned how to diversify. The syndicates easily renewed and increased previous involvements in gambling, prostitution, and narcotics. They began investing in legitimate businesses, and also infiltrated labor unions. Organized crime extended its reach nationwide — establishing operations on the West Coast, including Los Angeles.

Not until 1950 did the federal government finally begin to make a systematic inquiry into organized crime. A special Senate committee directed by Estes Kefauver investigated gambling and racketeering activities in interstate commerce. The committee uncovered a national pattern of bribery and protection payments to law enforcement officials and payoffs to local and state political figures to ensure protection from prosecution. The committee determined that a national criminal organization which it referred to as "The Mafia" did exist, and recommended the creation of a rackets squad within the Justice Department.

The Kefauver hearings stimulated local investigations in cities where the committee had exposed organized crime oper-

ations and public corruption. But even with the knowledge obtained from the hearings, the federal government itself still did not take sustained action. The Department of Justice initiated a drive against the leading racket figures identified in the Senate hearings, but while some convictions and deportations resulted, no permanent investigative or prosecutorial units were established until 1954. Even then, only three lawyers in the department were assigned to the Organized Crime and Racketeering Section, which consequently enjoyed only limited success. Again, the federal government failed to see the immediate and growing threat presented by organized crime — a national threat requiring a national response.

The lack of an effective government response was costly. During the Fifties the syndicates continued to grow and consolidate. Organized crime became more deeply involved in white collar crime and in politics. Mobsters more frequently appeared in respectable places and with respectable people.

Not until the early Sixties did the federal government begin to make a substantial enforcement effort against organized crime. Under Attorney General Robert Kennedy, the FBI began monitoring the activities of 400 of the nation's leading organized crime figures. The number of attorneys in the Organized Crime Section jumped to 17 in 1961, and 68 in 1962. Gradually, too, the number of convictions per year began to increase — from 45 in 1960, to 546 in 1964.

Several years later a commission created by President Johnson made numerous recommendations for changes in the criminal law — each of them designed to challenge organized crime. The Omnibus Crime Control and Safe Streets Act of 1968 and the Organized Crime Control Act of 1970 incorporated all eight of the commission's recommendations regarding proof of criminal violations. The 1968 Act was the first federal law to define the term "organized crime" and included a provision for electronic surveillance under a carefully detailed warrant procedure and strict court supervision. The 1970 Act strengthened the government's legal tools in the evidence-gathering process. One provision — the Racketeer Influenced and Corrupt Organizations Act, or RICO — is arguably the most powerful statute available to federal law enforcement officials, because among other things it allows government to seize the illicit profits of organized crime.

Another important initiative at this time was the creation of the first Organized Crime Strike Force. In 1966, the Department of Justice placed a five-man team of attorneys and supervisory personnel from federal investigative agencies in Buffalo, N.Y. Within a short time, the group, dubbed the "Strike Force," convicted the mob underboss and several syndicate figures. In 1969, the Department of Justice began an expansion of the Strike Force program.

In retrospect, the federal law enforcement and legislative initiatives of the Sixties mark a turning point in the history of the government's response to organized crime. To be sure, during the past 20 years there have been periods when the government has not been as effective as it could have been. At times the effort has been confused and misdirected. Even so, it is in the past two decades that the federal government finally has organized a serious law enforcement response and devised mechanisms such as the Strike Forces that have proved so valuable in combatting organized crime.

In the past three years, the Strike Force program has been augmented in order to better lead the fight against traditional organized crime. Specialized cadres of experienced trial attor-

neys coordinate the activities of criminal investigators from all the major federal law enforcement agencies, as well as the local police.

The strike forces have indicted and convicted many of the principal leaders of the traditional crime families in many of our major cities. They have successfully brought major cases in New York, Boston, Cleveland, Chicago, Denver, Kansas City, Miami, Detroit, Philadelphia, San Francisco, Milwaukee, New Orleans — and Los Angeles. During the past three years, in large part because of the efforts of the Strike Forces, the Department of Justice has indicted, tried, and convicted more than 2,600 members and associates of organized crime.

The use of important enforcement mechanisms developed in the Sixties and Seventies have proved immensely helpful. Electronic surveillance under a carefully detailed warrant procedure and strict court supervision has enabled us to gather information on the very secretive crime families. So has the Witness Security Program, which provides protection for informants willing to testify against former underworld associates. In addition, federal officials have successfully gone undercover, posing as members of organized crime, and also set up undercover operations designed to ferret out members of organized crime.

One of our most successful undercover operations occurred here in Los Angeles. The FBI knew that members of the Mafia regularly extorted pornographers and bookmakers, but no extortion victim was willing to testify. So, the FBI set up its own pornography enterprise, named Forex. Forex was located in Van Nuys and ostensibly sold pornography to South America and Mexico.

Forex wanted to be extorted, but organized crime kept its distance, apparently suspicious of the legitimacy of the new business. So after three months, the FBI used an informant to spread the word on the street that the government was looking into Forex. That helped establish the company's bona fides with organized crime. Still, however, there was no extortion attempt. Next an undercover agent with the new name of Vince Lombard put the word out that the company was being extorted.

That tactic worked. The mobsters moved in. They told Lombard never to extort a pornography business again and to leave the country. They gave Forex the choice of making payments to them or never again doing business anywhere in the United States. At this point we moved in. As a result of our effort which was called "Pornex," the entire ruling hierarchy of the Los Angeles organized crime family was convicted of RICO charges.

With the help of operations such as Pornex, the Organized Crime Strike Forces have destroyed the myth that the leadership of organized crime is "unouchable." One reason the syndicates gained such a foothold in American society is just this myth, which made it easier for them to recruit new members and enforce loyalty. Now that we have more knowledge of how organized crime works, we have been able to decimate the top ranks in many areas.

Although the Strike Force program is an important part of the effort against organized crime, other new approaches have been undertaken in the past three years. Today, organized crime is heavily involved in drug trafficking. Indeed, the drug trade is now our nation's number one crime problem — especially when one considers the criminal activities spawned by drug trafficking. For example, a recent study done of the Baltimore area found that 243 addicts committed a total of almost a half million crimes over an 11-year period — or an average of 2,000

each — one every other day.

The Posse Comitatus law, passed after the civil war, prevents the armed forces from engaging in law enforcement activities. We have sought and obtained an amendment to this law which now permits us to utilize the resources and intelligence gathering capability of the military — for the first time. This has already been enormously valuable in the fight against drug trafficking.

And for the first time, too, we have brought the FBI into the drug enforcement effort by consolidating the Drug Enforcement Administration with the FBI. The FBI has a sophisticated understanding of the organizational and financial aspects of the organized crime cartels. It has unique knowledge of, and ability to follow, the flow of money. This expertise is essential to combatting the highly sophisticated activities of modern organized crime, and it is now being put to work in the fight against drug trafficking. Our departmental reorganization has been highly successful, resulting currently in 765 FBI cases and almost 600 joint DEA-FBI cases.

South Florida has long been the hot spot for drug trafficking. In response, the South Florida Task Force was established in 1982. For the first time, all of the agencies of the federal government dealing with this problem were brought together within a single entity.

The success of this Task Force guided us in formulating the major eight-point initiative against organized crime and drug trafficking announced by President Reagan last year. The centerpiece of the program was the creation of 12 new task forces patterned on the South Florida model and deployed throughout the country. These Task Forces are now fully operational. Already more than 100 indictments against more than 1,000 defendants have been brought. And more than 200 individuals have been convicted.

Of the 425 cases now under investigation by the Drug Task Forces, only a small number involve traditional organized crime. Most involve new or emerging groups attracted to the lucrative profits of drug trafficking. Some names you will recognize but most you will not. They include the Hell's Angels, the Outlaws, the Pagans, the Bandidos, La Nuestra Familia, the Mexican Mafia, the Aryan Brotherhood, the Black Guerrilla Family, the Japanese Yakuza, the Chinese Triad Societies, the Israeli Mafia, and the Cocaine Cowboys.

These modern cartels are involved in the importation and distribution of drugs, the financing of drug trafficking, and money laundering schemes. As is also true of traditional organized crime, they are also engaged, in continuing criminal enterprise, abuse of the bank secrecy laws, narcotics conspiracy, and public corruption. Employing the law enforcement weapons developed to fight traditional organized crime, we are making an assault on these organizations even as they are developing.

Today, as organized crime is developing new and different forms, it is also experiencing another evolution — from national in focus to international, a change mostly related to drug trafficking. Of the three drugs that most trouble us from a law enforcement perspective, two — heroin and cocaine — come exclusively from abroad, and one, marijuana, comes predominantly from abroad. Because of the drug trade, the relationships between organized crime families in New York and Palermo are strikingly similar to those historically existing between organized criminals in New York and Chicago.

It is essential that we develop close working relationships at

the highest levels with the governments of countries that are the source of illegal drugs or through which drugs travel. It is equally important that we understand the problems faced by those countries and that they understand our concerns. Cooperation on procedural matters is an essential step. To this end, we have negotiated, and are continuing to negotiate, mutual assistance law enforcement and extradition treaties with the various countries involved.

Already we have been successful in crop control and eradication programs — notably in Turkey and Mexico. And we are working — however slow the results — with other countries to control the supply and processing of opium and coca plants and their derivatives.

As we proceed with enforcement programs at home and cooperative efforts abroad, we must also keep our knowledge of organized crime up to date. In the past we did not recognize organized crime for the problem that it was. High government officials and some academics often treated the threat of organized crime, and even its existence, with skepticism. For decades organized crime grew because it was not stopped from growing. We — all of us — have paid for the fact that for many years there was no organized response to organized crime. History counsels the wisdom of learning as much as we can about the new and emerging crime cartels so that we can attack them before they become as entrenched as the Mafia did.

At the end of November the President's Commission on Organized Crime, held its first meeting in Washington. As part of the President's eight-point program against organized crime and drug trafficking, the Commission will study organized crime as it exists today, giving special attention to the emerging drug cartels. The Commission will focus public attention on and further define the nature of the evil that affects us all.

Another part of the President's program calls for strengthening the federal criminal laws that touch organized crime. These include sentencing, bail, forfeiture, and numerous other reforms that would measurably improve our law enforcement ability.

I cannot underestimate the importance of congressional action on the crime bill. Instances abound of cases where current law simply fails to serve the interests of justice. For example, federal sentencing law permits so much judicial discretion that a convicted organized crime figure — facing up to 40 years in prison — was instead sentenced — if you can call it that — to a year in a local community treatment center followed by five years of probation. This criminal must spend only his nights at the treatment center — by day he will be free to do as he pleases. This is the astonishing result, after thousands of hours of effort by investigators, prosecutors, and other law enforcement officials.

In the last Congress, the Senate passed a crime bill containing sentencing and other reforms by a vote of 95 to 1. We hope that both the Senate and the House of Representatives will similarly act before the end of the current session in 1984.

Organized crime is a force *Americans* will have to contend against. The Department of Justice — the federal government — cannot do the job alone. Public knowledge about organized crime and support of the government's law enforcement efforts are key to future success.

With greater public awareness of organized crime, and greater public support of the federal law enforcement effort, we can achieve a future different from our past — a future in which the cancer of organized crime is finally brought under our control.



A Squealer's Secrets

Federal investigators call Jimmy (The Weasel) Fratianno the most informative—and reliable—witness they have ever dealt with. Over the past three months

NEWSWEEK'S Ron LaBrecque spent hours with Fratianno, following him coast to coast, listening to his testimony in court and his bluster in private. LaBrecque's report

Jimmy Fratianno remembers the pleasant evening in 1948 that he drove his new Cadillac to a Los Angeles winery. In a dingy, vat-lined workroom, 30 men awaited him around a long wooden table on which a gun and a dagger lay crossed. The men joined hands and one of them recited the rules of the group in a Sicilian dialect that Fratianno did not know. Fratianno did understand *omerta*, the code of silence which dictates that a man leaves the organization only when he is dead—at the hands of his colleagues if he reveals their secrets. Fratianno's finger was pricked with the dagger. Then, after kissing each of his new brothers on the cheek, he became a "man of respect," a "made" member of La Cosa Nostra.

For the next three decades Fratianno engaged in a series of criminal schemes—including murders on contract—that alternately landed him in prison or boosted him in the Mafia hierarchy. But in 1977 the guns seemed about to turn on him. The Los Angeles family believed incorrectly he was ready to launch a rival faction. Acting as always out of self-interest, he sold himself to the government for protection. Now, with the same passionless conscience that made him a successful murderer, he regales investigators with a richly detailed expose of Mafia life, from penny-jealousy killings to high-council business transactions. Fratianno's testi-

mony has helped convict a League of Bombs in San Francisco and Mafia bosses in Los Angeles and New York, and his out-of-court reticences have prompted invaluable intelligence on the mob.

Fratianno began to learn the ropes in Cleveland, where he earned the nickname "Weasel" after he threw a rotten tomato at a cop who couldn't catch him. The son of immigrant parents, he attended Catholic schools until he learned as a teenager to shave dice and started operating profitable crap games in the neighborhood on Sunday mornings. "I was a good hustler. I always had money, so I just went on to organized crime," Fratianno says. "You grow into it because of your environment."

Charmer: Fratianno first went to jail after he and his partners beat up a bookmaker who didn't pay off on a 1937 Indians-Red Sox game. But eight years in Ohio prisons only hardened his survival skills. "I ain't out a week and I gotta get even right away," he says. "I'm looking to rob somebody. There's no thought at all about going back to jail." The target was a West Virginia gambling hall. His share was \$20,000. He parlayed postwar black-market sales into \$90,000 in just a few months, then, looking for bigger prey, took his wife and daughter to Los Angeles. Soon he met Johnny Rosselli, a dapper charmer with show-business friends and a hidden foothold in Las Vegas. Rosselli liked Fratianno and sponsored him for membership in the L.A. family.

One of his first assignments as a made mobster was the assassination of Mickey Cohen, a splashy gambler who headed a rival syndicate. Fratianno planted a bomb beneath Cohen's bedroom and lit the fuse—but it fizzled out. A few months later Fratianno helped make another attempt on Cohen's life. With his wife and daugh-



Fratianno: A life inside the mob

ter, Jimmy dropped by the mobster's Hollywood clothing store, then signaled to gun-toting colleagues that Cohen was inside and vulnerable. The setup ended in failure when the target fortuitously went to the bathroom. But Fratianno eventually made his first hit—on a friend. Frank Nicolò was a Cohen hit man, a loyalist who scorned the pleas of the Italians to defect. Not knowing that Fratianno and his friends were the ones trying to kill his boss, Nicolò visited Fratianno's home one night. "We just took a rope around him and choked him," Jimmy remembers. "It took three minutes, you know, didn't take long."

Juice: Fratianno also helped dispatch Los Angeles family member Frank Dongia. "They just told me to do this, and that's it," he says. "A lot of guys get killed for nothing. If I get into an argument with a guy and I have more juice with the boss, then he gets killed. If he has more juice, then I get killed." It took Fratianno more than a year to track down Louis (Russian Louie) Strauss on a contract from a Las Vegas casino owner. Finally Fratianno lured Strauss to a Palm Springs house where he was efficiently strangled. Fra-

Jimmy the Weasel (second from right) with Frank Sinatra, and with Dean Martin: A man with friends in high and low places



RICO THE ENFORCER

JUSTICE

NEWSWEEK

J. Ray McDermott & Co., a major builder of oil platforms, paid \$508,615 in bribes to the vice chairman of Tenneco Oil Co. to undertake lucrative construction projects in the Gulf of Mexico. But the cost of doing business jumped unexpectedly last year after the firm pleaded guilty on seven criminal counts. A Federal judge in New Orleans not only fined McDermott \$103,000, but confiscated its \$897,000 in illegal profits from the Tenneco deals.

pit as underworld hit men. While Justice officials concede the law must be applied cautiously, they see no need to sheath their weapon. "This is a valuable tool," says Attorney General-designate Benjamin Civiletti. "We will not shy away from using it to pursue corrupt enterprises which do not fit the layman's view of organized crime." With about 200 RICO cases already filed, and the government increasing its use of the statute, the American Bar Association has scheduled a special seminar on how to deal with RICO at its convention this week.

RICO is one of the broadest criminal statutes Congress has ever passed. The law first enumerates 24 Federal and eight

led seven nursing-home owners and three pharmacists to plead guilty and pay fines of \$1 million.

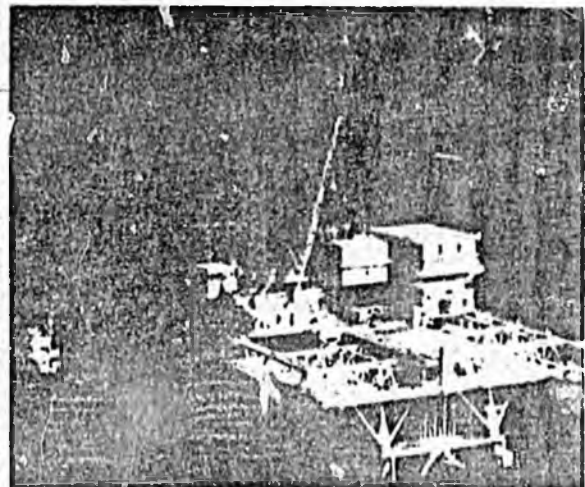
The law also gives prosecutors extraordinary latitude to trace crime back to the otherwise insulated kingpin. "The statute allows a prosecutor to paint a broader picture than could be normally seen by a jury," says Jeremiah T. O'Sullivan, chief of the Organized Crime Strike Force in Boston. For instance, John Christopher was tried in Tampa, Fla., in 1975 for masterminding a ring that kidnapped women and forced them into prostitution. Normally, the scope of the evidence would have been limited to the specific kidnapping; at the RICO trial, however, the judge permitted

While serving as mayor of Lansing, Ill., for sixteen years, Jack O. McNary shook down real-estate developers and invested his booty in two private businesses. Convicted last year of extortion, McNary was sen-



Charis Pugh—Atlanta Journal-Constitution

A new spoils system: The government could not seize a private mansion, but it could take profits from an oil rig, and possibly a used-car lot



Bob Sherman—Camera 5

tenced to three years in prison. He will also have to ransom his businesses, which the government now effectively controls.

These cases share a dubious distinction. The Justice Department prosecuted them—and other button-down crimes—with a law designed specifically to convict Mafia capos. Known as RICO (Racketeer Influenced and Corrupt Organizations), the nine-year-old law allows the government to seize legitimate businesses if they have been used for illegal schemes or as investments for dirty money. Says Chicago attorney Sherman Magidson, "RICO can reach out and castrate people."

The RICO law frightens many lawyers and judges. They worry about language so loosely drawn that it lets the government sweep even small-time white-collar defendants and public officials into the same

state crimes such as murder, extortion or mail fraud; then it states that anyone found to have participated in two of them within a ten-year period has undertaken a pattern of racketeering. If prosecutors can link such patterns to an interstate "enterprise"—loosely defined as virtually any personal association or business—the defendants become subject to imprisonment for up to twenty years, fines of \$25,000 per count and forfeiture. "Taking away businesses from these guys is like taking away tools from a burglar," says New Jersey Federal prosecutor George Wilson.

RICO is an extremely potent weapon for prosecutors. In plea bargaining, when most cases are settled, the potential RICO penalties often lead defendants to make a deal with the government rather than take their chances with a jury. In Chicago, for instance, the fear of forfeiting their business

50 witnesses to describe Christopher's criminal behavior over thirteen years.

The government has used RICO in several important prosecutions against reputed mobsters. In Chicago, two alleged organized-crime hit men were sent to prison for 30 years after RICO convictions. And in Boston, after convicting four extortionists, the government seized the contents of five massage parlors—including 5 gallons of massage lotion and a Christmas tree.

VICTORY: Much of the controversy about RICO has focused on white-collar and government corruption cases. Federal officials won an important victory last month when the U.S. appeals court in New York upheld a guilty verdict in a complicated RICO hospital-fraud prosecution. Prosecutors established that Karl R. Huber, a Phi Beta Kappa Princeton graduate and Harvard law-school-trained attorney, had

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MACHINE CANDIDATE

IDEAS

NEWSWEEK

"First of all," intones the speaker, "let me say that the United States is not a failure. I recognize that it's foolhardy to unilaterally disarm, but..." So begins an upbeat, let's-look-at-the-record foreign-policy speech that could well be the kickoff of the 1980 primaries. The speaker, however, is not Jimmy Carter, Ted Kennedy or even Howard Baker, but a fresh political voice from the Midwest. The name? IBM-370.

The slick-tongued computer-orator is the brainchild of two communications professors who believe that getting elected to

three "dramatic" views of the world, then play to the most widespread of the views. Set in a foreign-policy context, these three attitudes translated into cold-war, neo-isolationist and power-politics mind-sets. On the Panama Canal, for instance, the cold-war view held that the U.S. ought not to surrender the Canal Zone, the neo-isolationist view dictated that the U.S. get out of Panama and the power-politics view supported the negotiation of a new treaty to protect U.S. interests in the zone.

The professors picked twenty such issues to be covered by the speech. They culled newspapers and magazines for months, jotting down quotes that reflected all three positions on all twenty issues, then transferred the quotes onto 60 index cards. Finally, they went to—where else?—Peoria, Ill., to see how the opinions played. Sixty Peorians were asked to sort the cards in order of preference, from those most reflective of their views to those least reflective. Then the subjects rearranged the cards to show how important each issue was to them.

1984-1511: Cragan and Shields fed the results into the computer and instructed it to write a speech based on the most prevalent opinions, complete with adverbs and adjectives. They pushed a button and out came the hypothetical candidate's carefully considered opinion on how best to handle U.S. foreign policy—for Peorians. "The point," says Cragan, "is that you can take any idiot, parade him around the country for twelve months, and get him elected."

But the ultimate purpose behind this slightly 1984-ish project, say the two professors, is to force politicians out of the business of manipulating symbols and back into the business of governing. To that end, their IBM-370 is about to churn out perfect speeches on energy, foreign policy and domestic policy. "When we publish these speeches in 1980," says Cragan, "we hope it will spark enough controversy for someone to ask the candidates why their speeches sound so much like our computer's. Maybe that will get them to say what they really think for a change."

So far, that message hasn't got through. Instead of coming clean, six political aspirants, including a candidate in a gubernatorial primary and a mayoral contender, have already called on Cragan and Shields for a little help from their computer. All were turned down—and lost their races.

DIANE K. SHAH with RICHARD MANNING in Chicago



Jeff Lowenthal—Newsweek

Cragan and computer: 'My fellow Americans...'

public office is becoming more a matter of manipulating campaign symbols than dealing with substance. To prove their thesis, they set out to program the IBM 370 to write the "perfect" foreign-policy speech—one guaranteed, that is, to appeal to the most and offend the fewest in any given audience. "We figured that if we did the proper market-type research and programmed the computer to write a speech reflecting the findings, the speech would end up sounding pretty much like the genuine article churned out by a pack of poll-watching speechwriters," says John Cragan of Illinois State University.

DRAMA: To begin with, Cragan, 35, and partner Donald Shields, 34, of the University of Missouri-St. Louis, theorized that all a politician need do to get elected is recognize that voters generally subscribe to one of

helped rescue his father's failing business empire by overcharging hospitals for equipment. Convicted last year on 30 criminal counts, Huber now faces four years in jail and a fine of \$108,000. He does have one choice: he can pay a fine of an additional \$100,000 or forfeit his corporate holding company to the government.

RICO charges against public officials have a particularly odd twist: the "enterprise" usually involved is the government. A jury convicted five Macon, Ga., police detectives who took money and "carnal" bribes to overlook prostitution and other illegal activities. The criminal enterprise with which they were connected was the vice squad. Florida state judge Samuel Smith was tried for selling acquittals; his judicial district was named as the enterprise.

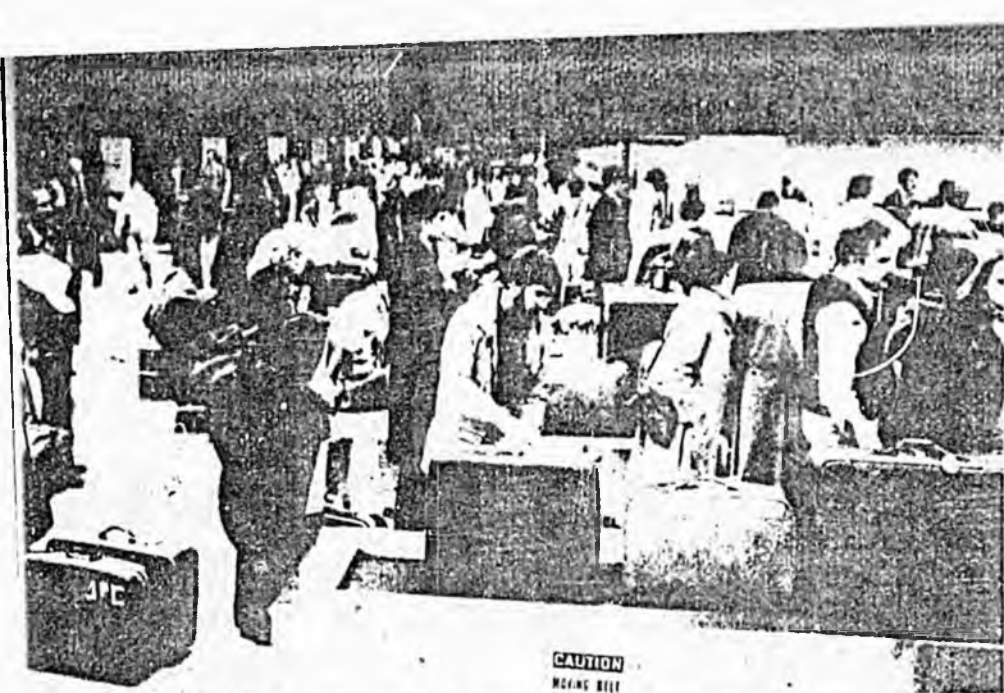
FORFEIT: Some judges are uncomfortable with this creative use of RICO. In May, U.S. Judge Ross Sterling in Texas dismissed a Federal indictment of five Texans accused of an oil swindle. "RICO was designed to keep racketeers out of business, not to make racketeers out of businessmen," Sterling said. Last week, Atlanta Federal Judge Harold Murphy dismissed part of a RICO indictment against porn king Michael Thevis. It would have forced Thevis to forfeit \$1 million in cash and jewelry and his \$4 million mansion if convicted. The law does not extend to what a criminal might have bought with illicit profits, Murphy ruled.

RICO appears flawed in several ways. One is its broad language, which allows the government to collect a batch of minor crimes and call it general racketeering. "We have a joke that if you have a job and send me letters, the government is going to confiscate your property," says prominent Washington defense lawyer William Hundy. The forfeiture provision—not often used—also causes trouble. The statute does not state precisely what happens when profits from racketeering are mixed with legitimate funds to operate a business.

CHIEFTAINS: Nor is it clear how closely tied to property need be to the criminal enterprise for it can be confiscated. In Miami, two alleged chieftains of the "Black Tuna" ring—accused of smuggling 500 tons of marijuana into the U.S.—are arguing that the government has no right to seize a used car business, three houses or a houseboat tied in the indictment.

Whatever its weaknesses, RICO gives the government an effective threat against sophisticated crime. Justice officials, who must approve RICO prosecutions, insist they study every case carefully before proceeding. But they find white-collar criminals especially elusive. "The psychology of these business types is that they're not going to get caught, and if they are, they'll find a way around it," says New York lawyer Jeffrey Ullman. At the least, for white-collar criminals as well as gangsters, RICO seems to be eyeing up the odds.

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Flocks of holiday travelers won't be enough to get the major airlines on an uptrend.

AVIATION

A bleak new year for airline profits

A 2-ft. snowfall grounded planes in Denver on Christmas Eve, but elsewhere most airlines reported holiday traffic heavy enough to bring a moment of cheer to even the gloomiest executives. "I don't take much solace out of that," says Randall Malip, senior vice-president for marketing at USAir Inc. "It just means people who are working have a little more money and are still doing the traditional things. I see no change in the basic underlying problems."

Despite lower fuel bills, lower interest rates, and a slowing in labor-cost increases, 1982 is likely to be the third straight year of record losses for the 11 largest airlines, which lost \$447 million on operations in 1981. What is more, total revenues are expected to drop for the first time in the industry's history.

'An insane probability.' The outlook for 1983 is not encouraging. "As empty as we're flying," says one airline president, "there's an insane probability of sharply increased capacity." Spurred by lower fuel prices, the increased availability of landing slots at large airports, and the major airlines' determination to hold market share against aggressive smaller competitors, carriers are expected to increase flights by nearly 10% in 1983. By adding more seats to planes, industry capacity, in available seat miles, could be up by 15% or more. Northwest Airlines, Frontier Airlines, United Airlines, and Delta Air Lines will be showing some of the heftiest increases.

Although Trans World Airlines Inc. says it is trying to exercise "capacity restraint," the restructuring of its route system is adding capacity at its St. Louis hub. Other airlines have been making similar moves to strengthen their operations, thus increasing the likelihood of an all-out war as carriers slash fares to bring connecting traffic to their hubs.

Dallas' will become an especially bloody battleground next spring if PSA Inc. launches a proposed new venture in that city with 30 planes leased from failed Braniff International Corp. Industry sources also fear that the death throes of weak carriers could spark a repeat of the havoc caused when Braniff slashed fares systemwide in its final days.

Permanent discounts? With the economy recovering only in fits and starts, at best, overcapacity is already chronic. All those empty seats, as well as the cash squeeze at weaker airlines, have led to never-ending fare wars. More than 80% of tickets were sold at discounts averaging 53% in October, the latest month for which figures are available. Revenue per passenger mile was 5.7% lower than in October, 1981. "There'll be this kind of pricing so long as any carrier feels the need to look at things on a short-term basis because of its own situation," says Eva Davis Holman, vice-president at Donaldson, Lufkin & Jenrette Inc.

This year's traffic growth—4.7% in the first 11 months for the major carriers—came almost totally from deeply discounted prices. Travelers are becoming so accustomed to rock-bottom fares, says Julius Maldutis, a vice-president at Salomon Bros., that "we could find the industry establishing itself in a permanent discount structure."

Managements cling to the hope that prices will rise when demand revives, but even the staunchest believers are wavering. Says Morton Ehrlich, senior vice-president for planning at Eastern Air Lines Inc.: "There's something very compelling about very large red bracketed numbers quarter after quarter. I hope I turn out to be right in terms of a little bit of sanity coming back into the business. Unfortunately, logic isn't what brought us to this state."

INVESTMENTS

Can a racketeering law be applied to brokers?

Six investors in California, Nevada, and Virginia bought large amounts of Levitz Furniture Corp. stock on margin in 1981, allegedly on the recommendation of a Smith Barney, Harris Opham & Co. account executive who claimed he knew the furniture warehouse chain was a takeover target. But no takeover occurred, Levitz stock dropped precipitously, and the investors lost \$2.6 million. Now the investors are about to file a joint complaint in Manhattan federal court against Smith Barney. Their stockholder suit will probably be the largest yet to attempt to wield a relatively old legal weapon—the Racketeering Influenced & Corrupt Organizations Act of 1970 (RICO)—in a new way. Under RICO's treble-damages allowance, the investor group will seek amounts totaling \$65.8 million.

"Investing is not like playing blackjack," says Arthur M. Schwartzstein, a Washington lawyer representing four of the six plaintiffs. "If you feel you've been wronged, you don't have to swallow it. There may be avenues of recourse," including RICO.

Aimed at crime. Courts and lawyers remain divided over RICO, which outlaws the use of income received from a "pattern of racketeering" and was aimed at eradicating organized crime. But, says Peter H. Morrison, former chief of the fraud section of the U.S. attorney's office in Manhattan, the law's "reach extends considerably beyond that." Thus, while violations of securities laws are not usually viewed as racketeering, Congress defined the term to include "any offense involving . . . fraud in the sale of securities." And a pattern is defined as two violations of a number of laws, including securities laws, over 10 years.

To date, no court has upheld a claim against a broker under RICO. Future use of the racketeering statute may depend on the Smith Barney case, which is likely to wind its way to the Supreme Court. Smith Barney refused to comment until a complaint is filed.

Schwartzstein and other lawyers who believe RICO applies in securities fraud were heartened by a recent federal court ruling. It dismissed a claim by Shearson/American Express that Congress never intended the law to overlap with the antifraud provisions of the federal securities acts. Says Schwartzstein: "RICO gives David a little negotiating power with Goliath."



Life in Hiding

Frank Calimano came home from the Korean War to find his brother a heroin addict and vowed to get revenge from the mobsters who peddled dope. By the mid-'70s he was a successful heating and air-conditioning contractor in New York, where hoodlums are common as

hammers in the construction trade. Calimano volunteered to provide information to local authorities. Eventually, he penetrated the Mafia's highest circles and became pals with the late gangland chief Carlo Gambino. In 1978 Calimano told his story to a Federal grand jury investigating labor racketeering. Then, to protect him and his family, the government placed the Calimanos in its Witness Security Program and sent them off to Houston with fresh identities.

Almost immediately, Calimano ran into trouble. Because he had no credit record, Calimano had difficulty starting a new business. Old friends recognized him on the street. And Federal prosecutors back in New York did not offer any further help. Calimano fell into a depression; last June he was found hanged in a hospital room, an apparent suicide. Says his widow, Vivian: "I don't want anyone to go into this program the way it is now. You can get better protection from the Mafia."

Born-Again Lives: Calimano was a victim of what had seemed a good idea. The government believed that it owed something to witnesses who provided information about organized crime but feared retaliation from mobsters. It started its assistance in 1970 with "safe houses." When they proved inadequate, Federal authorities agreed in 1975 to do much more: they would move informants and their families to different communities and help them begin completely new lives. But the execution of the plan has always been flawed. At U.S. Senate hearings this month, a string of "protected witnesses," hidden be-

hind a screen and guarded by Federal marshals, confirmed that their born-again lives have been filled with poorly delivered promises, erratic assistance and, sometimes, tragedy.

The program is unusual enough that other government agencies seem unable to cope with it. One thing a protected witness needs at once is a new social-security card so that he can get a job, but the Social Security Administration has been painfully slow in issuing new numbers or transferring old accounts. Fourteen states refuse to provide new birth certificates; some state officials contend that if a witness committed a fraud after they had given him the new identification, they might be held liable.

The U.S. marshals assigned to help the witnesses are often not properly trained for the job and their efforts can be sadly comic. One marshal booked a witness on an airplane under the name "T. Kennedy" and another gave a witness the alias "John Philip Sousa"—ploys guaranteed to attract unwanted and possibly deadly attention. Marshals have given away the new locations of their charges during casual courtroom conversations or in idle barroom chatter. In one Catch-22 incident,

the marshal service refused to give a witness a copy of his own agreement with the government because it included his old name; another marshal told a veterinarian treating the man's dog that the animal was part of the Federal witness-protection program.

Most of the informants in the program are not innocent bystanders. They tend to be either former hoodlums who fell out of favor with their gangs or convicted felons who decided to trade information for better treatment. The reward that the authorities offer is a chance at a fresh start, at least for the informants' families. "I did not want my children to grow up in that environment, because they would have become a part of organized crime," says Joe Cantalupo, who has testified against his former mob colleagues in Brooklyn. But many of these crooks do not know how to live anywhere except in the underworld; they have few skills to sell in straight society.

Informants still in prison can pose special problems. Security in many Federal jails is poor, and protected witnesses suspect that other inmates often can get access to supposedly secret records disclosing their true identities. Fearful that some other prisoner may have a contract to kill them, they fight to stay in isolation. Several witnesses have sued the government to prevent their transfers into the general prison population. These prisoners are effectively cut off from their families as well; even these visits are considered a security risk and are usually limited.

Not Easy: The worst problems, however, occur when the government tries to help law-abiding citizens such as Calimano who have agreed to help the police. Only about 5 per cent of the witnesses fall into this category, but they have the most to lose. It is not easy for a business executive or an accountant to erase his history and start from scratch. Usually, the witness must sacrifice his career, his friends and, for a while at least, a comfortable standard of living. Vivian Calimano's problems continue: Her oldest son cannot establish a line of credit, and she has not received any social-security benefits because her husband's old account has not been transferred to his new number.

Yet no one wants to eliminate the program. "An efficient and effective Federal witness-security program is a vital tool in the fight against organized crime," says Sen. Sam Nunn, whose investigating committee conducted the recent hearings. Some steps have been taken to make the program more efficient. Witnesses now sign a 21-page memorandum of understanding that spells out what they can expect. Prosecutors must brief marshals before handing witnesses into their custody. One hundred and thirty marshals have been trained as "security specialists," and the remainder of the marshal corps is receiving instruction in how to cope with the witnesses' needs. More than 150 major companies now participate in a job pool for protected witnesses. The revamped program seems to be working for some. Still, says Howard Safir, chief of the marshals' protection operation: "Witnesses should only enter when there is no other alternative."

ARIC PRESS with ELAINE SHANNON in Washington



Cantalupo with a friend: A new start for his kids

Bad News for Labor Racketeers . . .



Present efforts to curb corruption among union leaders date back to the 1950s and a committee chaired by Sen. Estes Kefauver (third from right at rear).

THE CHARACTERS change, but it is the same old story, and a disturbingly frequent one. It was recited again a few months ago. A Labor Department official told a Senate committee about the activities of a labor union official, this one a Floridian.

As president of one local, manager of another, president of a district labor council and trustee of a workers' benefit plan, he had access to union workers' funds and embezzled from six labor organizations. Although convicted, he remained in office pending appeals and siphoned off another \$1 million.

Congress now seems determined to close off such opportunities. The vehicle is the Labor-Management Racketeering Act. Already passed unanimously by the Senate, it will be taken up this fall by the House Education and Labor Committee. The bill's sponsor, Sen. Sara Nunn (D-Ga.), says it is a signal to "organized crime and corrupt union leaders that Americans will no longer tolerate" criminal infiaence and activity in organized labor.

In effect, the bill would amend three existing acts—the Labor Management Reporting and Disclosure Act, the Labor-Management Relations Act and the Employment Retirement Income Security Act.

A key provision would provide stronger incentives for unions to purge criminal elements from their ranks. For example, it would be a felony instead of a misdemeanor for employers and unions to engage in payoffs or kickbacks and for a union or workers' bene-

fit fund to hire or employ a convicted criminal.

In addition, the bill doubles to 10 years the period during which a criminal is disqualified from employment with such organizations after conviction or imprisonment.

The bill extends the disqualification to all positions with a union or benefit fund by eliminating the current exemption for "clerical" or "custodial" employees. Thus unions could no longer employ otherwise disqualified criminals as highly paid "clerks" or "custodians."

To prevent convicted criminals from continuing to work for unions or trust funds during lengthy appeals, the bill provides that disqualification for conviction begins on "the date of the judgment of the trial court," regardless of whether the judgment is appealed.

The bill would, however, protect the interests of an individual whose conviction is overturned. His salary would be placed in escrow upon his conviction. If the verdict is reversed, the individual is paid the accrued salary; if the verdict is upheld, the funds are restored to the union.

LABOR DEPARTMENT attitudes would be important to the success of such legislation. The department's role in investigating organized crime within unions in years past—specifically, its reluctance in some instances to initiate probes—has been criticized.

The bill therefore amends previous acts by assigning not merely the authority to investigate but also the responsibility

for prosecution," says Nunn. "In its mostly responsive to the many witnesses who during our hearings testified that the Department of Labor [in the past] had failed to act against labor racketeering."

And we heard from both federal prosecutors and the FBI that the Department of Labor had taken no role in the [government's] fight against criminal corruption on the New York/New Jersey waterfront."

That fight with the International Longshoremen's Association, dating back to the 1950s, was the genesis of the present bill. At the time the nation was shocked by revelations of massive kickbacks and payoffs to Longshoremen's union leaders uncovered by the Senate crime committee chaired by the late Sen. Estes Kefauver (D-Tenn.). The late Sen. John L. McClellan (D-Ark.) later made a stir as chairman of the Senate Permanent Subcommittee on Investigations when it exposed criminal activities by Teamsters union officials.

ACCORDING TO Sen. Don Nickles (R-Okla.), one of the cosponsors of the bill, the fact that corruption has existed within labor's ranks for so many years is due in part "to the enactment of laws that seem to encourage crime." The fact that a convicted union official has been able to remain in office until appeals are exhausted is one example.

"It is time that we change the course of this country's labor laws—time that the laws reflect the high standards Americans expect of us," Nickles says.

In a letter to Nickles, the Justice Department put its weight behind the bill. It wrote:

"Recent convictions involving labor-management corruption on the waterfront and in other industries have demonstrated the continuing need for strong federal legislation to deter the use of extortion, bribery and payments involving conflicts of interest among the parties to collective bargaining."

According to Sen. Warren B. Rudman (R-N.H.), a former attorney general in his state, "Larceny, sabotage and labor disruption have become so prevalent in some union areas that they are included as part of the cost of doing business."

Labor Secretary Raymond J. Donovan has assured the Senate Labor and



Sen. Sam Nunn (D-Ga.) believes that unions need the help of Congress to rid themselves of corruption.

Human Resources Committee that his department would do what was expected of it.

"Our department has an unwavering commitment to protect workers and benefit plan participants. We will use every tool presently available to us to safeguard the integrity of labor organizations and benefit plans ... and we would welcome the additional tools that would be given by the proposed legislation."

The bill would require Donovan's department to investigate abuses of a criminal, not merely a civil, nature. This section of the bill has been opposed on the ground that it encroaches on the crime-fighting authority of other federal investigative and prosecuting agencies. To allay concerns, the bill says

PHOTO: GERRIE JAMES



that nothing in it should be construed as precluding other agencies from conducting their own probes into both civil and criminal violations.

One aspect of the bill that is due for scrutiny by the House is the proposed immediate disqualification of union officers on conviction. Considering that punishment would be meted out before appeals have run their course, the proviso raises "troubling civil liberties issues," says AFL-CIO President Lane Kirkland.

Two other portions of the bill also concern Kirkland. One is a section referring to employer contributions to union-managed trust funds. Kirkland explains that a union official can make an honest error "that has nothing to do with under-the-table employer pay-

... and good news for union members is a Senate-passed bill that awaits action in the House.



The Senate antiracketeering bill, says Sen. Don Nickles (R-Okla.), is a long-awaited change to the course of this country's labor laws.

ment" and that he fears the section's misapplication.

Kirkland also contends that the 10-year disqualification from office could be too severe. "I can't persuade myself that all cases are alike," he says. He has suggested that trial judges be authorized instead to impose disqualification periods of not more than 10 years at the time of conviction.

DESPITE THESE reservations about the bill, Kirkland has endorsed it. His endorsement, he says, stems from organized labor's recognition that it "simply does not have the resources—the trained manpower, the subpoena, the grand jury, the authority to uncover and punish perjury, the due process trial procedures ... and the effective sanctions to punish the guilty."

Understandably, Kirkland feels the bill puts the spotlight too harshly on union officials. "Unlike bankers, businessmen and politicians, union officers are judged according to their worst examples," he told the senators.

Nunn believes that the bill does not harass organized labor but provides the extra assistance needed for unions "to finally rid themselves" of corrupt officials. "The unions have labored to rid themselves of these people," the senator says, "but in many cases they have been unable to do so alone. I believe the unions need the help of Congress."

—Dot Martin

Organized labor does not have "effective sanctions to punish the guilty" on its own, says AFL-CIO President Lane Kirkland.

into pulling hard on one end of the rope. "What the hell, what can I tell you," he calls. "The guys I killed were killers ourselves."

In prison for extortion from 1954 to 1961, he came out finding little honor in his blood brothers. The family refused to turn the money he had left behind from sin sharking and gambling operations, extracted by parole from living in Los Angeles. Fratianno moved to northern California. Combining the construction ade learned from his father, Teamsters contacts and a questionable San Francisco bank loan, he built a million-dollar trucking business in Sacramento. But by 1970 his money was gone, spent to pay debts, partner and fines levied by a state administration intent on separating hoodlums from state contracts.

Bosses: Fratianno, who had transferred his official allegiance to the Chicago family, was asked in the mid '70s by his L.A. colleagues to come back and help run their operations. The following years are the most important to government prosecutors. Fratianno mingled in the often impenetrable realm of crime bosses. He was friendly with Sam Giancana of Chicago. He met Santos Truffante in Florida. He sat with Genovese family boss Frank Tieri in a back-room session at which the old man pointed thumbs down while saying "hit," giving the order to kill a family debtor. And he helped the Los Angeles family set up Frank Bonpensiero, who was discovered to be an FBI informer.

What the family did not know was that by then Fratianno himself had begun selling information to the Feds, who tempted him with cash when he ended still another prison term in 1973. To the ever-hustling Weasel, the information seemed insignificant—another way of making some money. But the contact turned out to be life-saving. Some members of the Los Angeles family thought Fratianno was using his position as an acting boss to aggrandize himself—perhaps to lift his northern California operation into competition with the L.A. mob. Before long he discovered that a contract was out on his life. Since he was facing several new indictments for gambling and racketeering, it was not a difficult choice for him to graduate from part-time tipster to star informant.

Scalping: He testified first at the trial of ten men accused of fraudulently bankrupting the Westchester Premier Theater in Tarrytown, N.Y. As legitimate investors were losing money in the operation, Mafia members and associates were skimming the profits and scalping their own tickets for extra unrecorded income. One of the theater's stars was Frank Sinatra, who performed several concerts there and is now the subject of a New York Federal grand jury investigation for allegedly re-

ceiving \$50,000 of the skimmed profits.

Now 67 and silver-haired, Fratianno talks to exhaustion about his past, because talking is his security. In all his now-regular court appearances, his credibility is attacked by defense attorneys who point to a well-documented history of lying under oath. Jimmy's response is that in the past he lied because he had to; now, only the truth keeps him alive. There is profit in that: his book recounting his adventures will be published next month. "Why should I get paid for writing about the things I've done?" he muses. "I see the point. But I don't want to make a million. I just want something in the bank, to leave something for my wife and kids. I think



Line 1 arrest: From shaved dice to murder

it's a service to the country, what I did."

The government agrees, up to a point, but that may no longer be good enough. Soon the testimony will be over, his official protection will end and Fratianno will live by his hit man's wits. In a Salt Lake City hotel room this fall, watched over by two Federal marshals, he bellowed over the telephone to a Justice Department official in Washington: "I wanta be someplace where there's no mad guys. Where you're taking me, there's a hundred." Then he hung up the phone and chewed stoically on a long Mexican cigar. "Nothing bothers me. What do I give a damn? If it comes, it comes. I ain't gonna age myself on account of it."

"The Last Mafioso: The Treacherous World of Jimmy Fratianno" By Chad Demore, Times Books.

JUSTICE

its tanks with their profits. La Nuova Famiglia grew out of local Hispanics with a flat-top organization thrown together in a California prison, now about 1,000 members work the West Coast. As sociologists Dwight C. Smith Jr. and Richard D. Alba have written, organized crime must be recognized as a part of American society, nurtured and shaped by American circumstances, not simply as an alien, parasitic force.

After decades of books and movies, the gangster is more than a creature of the mean streets; he is a fixture in the American imagination. But his role and symbolic value keep changing, and with it the nation's perception of the underworld. In the 1931 movie "Little Caesar," Edward G. Robinson portrayed the paradigmatic mobster, Rico Bandello, an unrefined hood who deserved killing. By 1954, the focus had shifted to the victim, exemplified by Marlon Brando's Terry Malloy, a broken-down pug left to work on the waterfront after his gangland brother forced him to throw a fight. "I coulda been a contenda," was Terry's complaint, if only the mob hadn't intervened. His recourse to strike back, first with testimony against a corrupt union boss, then with his fists in a triumphant climax where good whips evil on the docks. Only in the movies. Finally, there is the latter-day Brando as The Godfather, Vito Corleone, the gangster as hero, who makes people offers that they cannot refuse.

Warnings: The real-life mob hasn't forgotten how to persuade people. When Peter Salerno, a former Mafia thug who now testifies for the FBI, began his enforcement career, his principal job was simply to stand menacingly, with his broad shoulders and bulging biceps, while his superiors issued warnings to welsing numbers runners or other shaky operatives. Once, he says, during the construction of New York's World Trade Center, he saw a mobster threaten to shove a union foreman down an elevator shaft because the foreman was complaining about phony time cards being punched for nonworking mob members—a modest scam that netted the family \$100,000 in one year.

Sometimes Salerno got more involved. "I've burned big warehouses so people can collect insurance," he says. "We shot up people's houses, I beat up a lot of people. I picked up money from restaurants and businesses that had to pay protection." But always Salerno managed to rationalize his activities—by reminding himself that his victims were bad guys, after all, and by insisting that his heart wasn't in it. "I did it because it was a job, but I got no enjoyment out of it," he claims. "I know one guy, he'd get great enjoyment. I've seen him hit a guy with a bat and put his arm on the curb and break it, then put his leg up and break that too."

To their surprise, however, police have

JUSTICE

controlled a pile of union funds that he was willing to deposit, even in low interest accounts. All he wanted in return were personal, and mostly unsecured, loans for himself, for relatives and for friends who couldn't pass a credit check that wasn't fixed. Some bankers readily took the bait. Robert Prodan, who was then president of the Bank of Bloomfield, N.J., later testified that he would not have made the loans had it not been for the union deposits. Predictably, the loans soon turned sour. According to the Organized Crime Strike Force in Newark, the Bloomfield bank was out \$389,000 in loans made through Palmeri when it collapsed; he was convicted of racketeering and is appealing. Two other New Jersey banks, the State Bank of Chatham and the Springfield State Bank, also folded, in part because of similar Teamster deals.

Bankers aren't the only people who prove that business schools grant degrees and not hulas. In the case of the Magic Marker stock manipulation, for example, the president of the New Jersey pen company, the chief executive of a Philadelphia brokerage house, Delphi Capital Corp., and a stock promoter named Jack Silberger conspired to artificially pump up the company's stock. Yiddy Bloom, a longtime associate of Meyer Lansky, provided Silberger with more than \$100,000 and helped arrange a bank loan for him; with this seed money, Silberger set up a command post in his Miami Beach apartment, with a bank of telephones and a WATS line, and began to make purchases in Magic Marker through different accounts at different brokerages in a dozen cities.

Bubble: Silberger quickly drove the price from \$6.50 to \$31 a share. He used a variety of techniques, bribing a stock-exchange professional for inside information, paying a \$1 bonus to brokers for each share they bought for their clients, and giving \$20,000 to a New York analyst to write a favorable article on the company. When the bubble finally burst, brokers tried to shore up the stock's price by making spot purchases, sometimes without notifying their clients. By then, of course, Bloom had sold out. Lawyers for the Or-



New York's Galante, hit in a cafe: The old must give way

ganized Crime Strike Force in Philadelphia say that he pocketed a \$50,000 profit. Scores of innocent investors lost perhaps as much as \$30 million.

The mob also loves to operate, or at least get a piece of, a "bust-out," which is a scheme to defraud creditors. In the early '70s, Kenneth Weiner and some associates opened discount stores along the South Shore of Massachusetts that sold everything from clothing to calculators. The owners stocked the stores with merchandise

Philadelphia's Bruno, killed outside his home: Revenge was quick

Gerard C. Benene—Philadelphia Inquirer



though the stores quickly sold out, Weiner and his partners had already declared bankruptcy. Although none of the stores lasted eight months, neither the suppliers nor the cops caught on. But Raymond D'Amico, one of the Patriarca crime family did. He told Weiner that the family controlled stolen goods in New England and that fences would stop handling Weiner's trade unless he paid the family 10 percent of the gross. Weiner agreed, crossing the murky line between rogue retailer and mobster partner. Then, fearing for his life, Weiner told his story to the FBI. Fourteen people were convicted of participating in the scam.

Waste: Some analysts see organized crime as a group of entrepreneurs taking advantage of opportunities as they arise. Nowhere does that seem more evident than in the toxic-waste industry. For decades, the mob has controlled private garbage hauling in many urban areas. And what is chemical waste but fancy trash?

When William Carracino ran the Chemical Control Corp. of Elizabeth, N.J., he held down costs by occasionally disposing of his lethal wares in a nearby dump. Although Chemical Control was in bankruptcy, Carracino claims that he refused help from the mob. But one day, Carracino recently told a New York crime committee, a reputed Tieri family member named John Albert came to his office and ordered him out. In the parking lot, Albert pushed Carracino against his car, pulled a gun and asked, "Do you want it now or later?"

Carracino never went back to his office, and Albert took effective control of the company. Last April 60,000 55-gallon drums, stockpiled in Chemical Control's Elizabeth warehouse, exploded; it took firemen ten hours to control the blaze and only favorable winds kept the enormous clouds of toxic smoke from floating over New York City. In November a Federal grand jury indicted Albert and others for fraudulently assuring chemical firms that they would dispose of their wastes.

The mob also makes money from clever, small-time crime. At the moment, police say, these are the favored new schemes:

■ Minting phony credit cards, then running up false bills with a cooperating merchant who



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subsequently gets retro-fitted by a team

- Selling packages complete with faked driver's licenses and matching checks waiting to be forged
- Running custom auto repair shops that install stereo equipment and burglar alarms. While the car is being altered, copies of the keys are made and then passed to thieves who later steal the cars

While authorities may have some ideas about what the mob does, underworld income remains a mystery. Official guesses usually begin at \$120 billion—about close

to the Federal Reserve annual report with national accounting for about one-third of the revenue. These figures are difficult, as most gangsters don't keep careful ledgers and cops have been known to pyramid the figures. The FBI's Westler admits he doesn't know how much money the underworld takes in. "I do know," he says drily, "it's a large amount."

"Head Start": The money began to flow freely during Prohibition, when criminals organized to develop complex distribution networks for illegal whisky and to buy the required political and police protection. Ever since, law enforcement has always lagged behind the mob. "They've been in business almost since the turn of the cen-

tury," says Ed Haney, special agent in charge of the FBI's Los Angeles field office. "We didn't address the problem until the early 60s. They've got a long head start."

Some of the problem can be blamed on the government. For decades FBI director J. Edgar Hoover denied that organized crime existed. Federal statutes did not adequately address the special complexities of underworld crime. Law enforcement agencies jealously guarded their turf, refusing to share information—a condition that still occasionally prevails. Finally, in the '60s, Sen. Estes Kefauver turned his investigating committee's spotlight on the national gambling syndicate. Six years later, Robert Kennedy, chief counsel to Sen. John F. McClellan's labor-racketeering investiga-

And Now, the 'Israeli Mafia'

Not long ago some men dropped by a store owned by a Jewish merchant on Fairfax Avenue in Los Angeles and strongly hinted that the businessman should pay them for protection. If he didn't, they suggested, his store and his merchandise might be damaged—or some harm might come to his family. The shopkeeper declined, and within 48 hours he received word that a grenade had exploded at his father's house. No one was hurt, but the merchant was convinced that the thugs meant business; his father lived in Tel Aviv.

It was a typical ploy of a group calling itself the "Israeli Mafia." A gang of ex-cons and former commandos who began as black marketeers in the Israeli seaside city of Bat Yam, they have migrated to America—some by lying on their immigration forms, others simply by entering as tourists and staying illegally—and have established a sophisticated crime ring that trades in extortion, insurance fraud, narcotics and murder. They have neither the breadth nor depth of the Cosa Nostra; they lack its hierarchical structure and the protection it gains from political corruption. But, says one investigator, "they've managed in five years what the Italians took 40 years to do."

From its start in shaking down Jewish merchants in Los Angeles, the Israeli Mafia quickly built its first big-money base: insurance fraud. Members are said to maintain a network of businesses in the Southwest. In a variation of what is known as a "bust-out," they establish a good credit rating for one of the businesses, report a mysterious fire or burglary and collect on insurance claims. Then the supposedly lost merchandise reappears in another store owned by another gang member. Though the scam has yielded millions to the gang, few insurance companies have challenged the claims because of the cost involved and the difficulty in proving fraud.

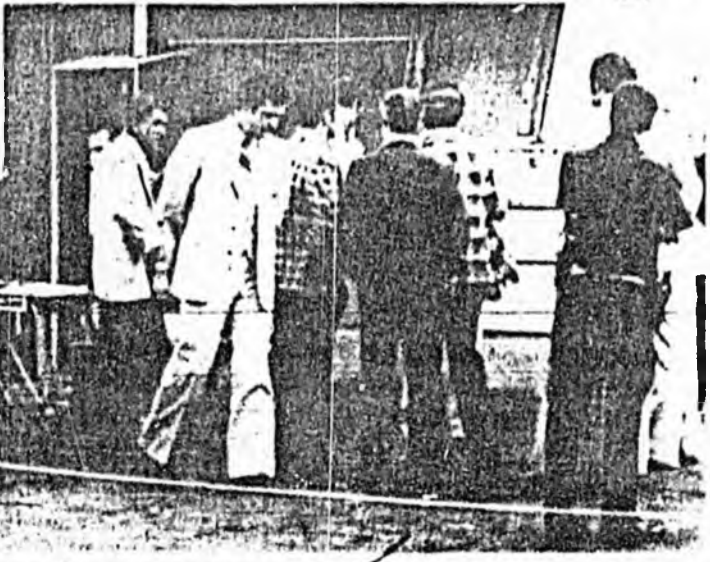
"Code of Silence": In the past year, the Israeli Mafia has channeled its energies into the even more profitable field of narcotics trafficking. "They supply half the cocaine in L.A.," one lawman says. Some gang members have contacts with known dealers in Israel and West Germany, and a series of murders has led authorities to tie the

group to drug deals in Mexico City and Miami. The most recent killing was discovered in October 1979, when a drifter named Dan Van Meter, rummaging through trash bins outside a liquor store in Van Nuys, Calif., came across a plastic bag containing a woman's leg. Police soon found more parts of a young woman identified as Esther Ruven and of her husband, Eliah. Charged with their murder are three men, Joseph Zakaria, Jehuda Avital and Eliah Komertchero, whom police link to the Israeli Mafia. Officials speculate that the Ruvens were cocaine dealers who fell into a dispute over a \$70,000 payment; they were apparently lured to a meeting at the Bonaventure Hotel in Los Angeles, where they were hacked to bits with meat cleavers and knives and stuffed into bags and suitcases.

The savagery, savvy and cross-continental reach of the Israeli Mafia makes the gang increasingly worrisome to law-enforcement officials, who have had little success penetrating it. "Their code of silence is more rigidly enforced than the Italians'," complains one investigator. The government has deported some members, but no one believes those efforts are sufficient to shut down the gang. A federal grand jury looking into narcotics trafficking is expected to begin hearing testimony soon on the Israeli Mafia—a step toward the kind of painstaking investigation that will surely be needed to keep the gang from becoming even more likely namesake.

DESSINA WILLIAMS with RON LAUREL in Los Angeles

Van Meter, police with the remains of Mrs. Ruven: "Managing in five years what the Italians took 40 years to do"



JUSTICE

tion, exposed the rampant corruption in the Teamsters union. Then, as his brother's Attorney General, Kennedy stepped up the assault on organized crime.*

The Justice Department has now made organized crime a top priority. Federal laws have also strengthened its hand both in prosecuting individual mobsters and chipping down their assets. Special strike forces in 26 cities concentrate specifically on organized crime. They combine the resources of Justice lawyers, the FBI, the Drug Enforcement Administration, the Bureau of Alcohol, Tobacco and Firearms, the Department of Labor, and the Internal Revenue, the Customs and Postal services so that the bad guys do not manage to slip between the law-enforcement cracks.

Dirty-Movie Dealers: FBI director Webster has committed more than one-fifth of the bureau's money and manpower to fighting organized crime. The bureau now relies heavily on underworld informants such as Frattiano and undercover "sting" operations run by its own agents. Agents Pat Livingston and Bruce Ellavsky, for instance, spent two years and \$400,000 posing as dirty-movie dealers. They traveled the country, having a drink in Las Vegas, buying films in Miami, attending movie conventions in Los Angeles, making contacts with the mob. "It puts law enforcement face to face with the criminals," says one top FBI agent. "They are so well insulated and so sophisticated that there is no other way to do it." The Livingston-Ellavsky sting led to the indictment of 47 alleged members of a national pornography network, many with strong links to mobsters.

The biggest haul by far came from an operation called Unirac, for union racketeering. Started in 1975, after a Miami shipper named Joseph Teitelbaum tired of paying off International Longshoremen's Association leaders and complained to the cops, the daring investigation turned up corruption on docks from New Orleans to New England. By 1980, 150 government agents had infiltrated the waterfront, developed informants and planted three dozen electronic bugs. So far, Unirac has produced 128 indictments and 110 convictions of union and waterfront-company officials. Among those found guilty of racketeering (their cases are now on appeal): Michael Clemente and Tino Fiumara, top members of New York's Genovese crime family who had effectively controlled crime in the port of New York; snazzy Anthony Scotto, president of I.L.A. Local 1814 in Brooklyn, and a power in New York politics, who took his bribes in posh restaurants, and George Barone, president of Miami Local 1922, who investigators believe also served

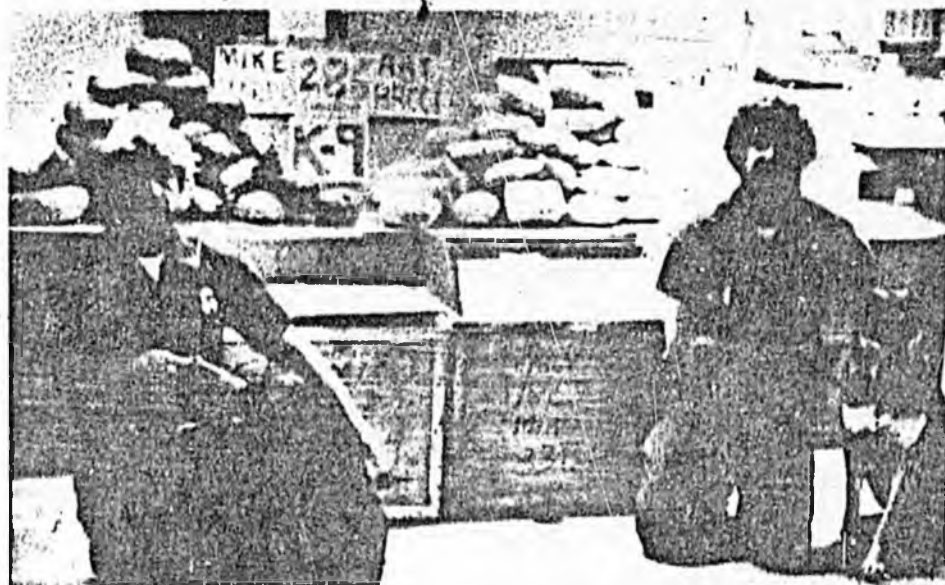
as a bagman for New York gangsters.

Unirac was unusual because it relied not just on undercover agents but on electronic surveillance devices. The bugging evidence often was sensational: one bug planted in Scotto's bleached bull desk recorded him complaining that the payoffs weren't coming in on schedule. Then, on tape, Scotto conceded his error. "I figured it wrong. I must have gotten screwed up when you did a double one at Christmas." As dramatic as such testimony may prove in court, the government no longer relies heavily on recording devices, simply because it is difficult to obtain a warrant to use them. Under a 1968 Federal law, an investigator must convince a judge in advance that a particular phone or room is being used for criminal purposes, and that there is no other way to obtain evidence. That's a simple standard to meet when pursuing bookmakers, but more difficult in com-



Don Negan—Carroll 5

Pornography: The mob's hard-core profits

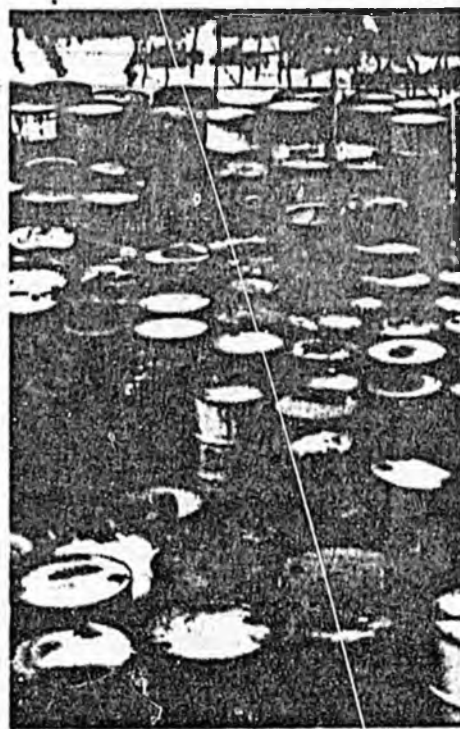


U.S. Customs Service

Cocaine (above) and toxic wastes: Two growth industries for the underworld

plicated economic crimes. One compromise has been for agents to wear recording devices to meetings. This doesn't require a warrant, but if they are caught, they may be killed.

Seized Assets: Frustrated lawmen know that putting big-time mobsters in jail will not break up the underworld; when a gang's head is cut off, it merely grows a new one. To fight the entire apparatus, Congress passed in 1970 the Racketeer Influenced and Corrupt Organizations Act (called RICO, an apt echo of the character in "Little Caesar"). This law allows prosecutors to charge gangsters with the crime of running criminal enterprises and to seize assets illegally used or gained. Before RICO, "we had put a lot of people in jail, and some big people, but that's all we did," says Ed Sharp, FBI agent in charge of the Brooklyn-Queens field office. "Now, instead of going after individuals, we're attacking organizations. We've got to take



John F. Kure—Newsweek

*At the same time, according to recent reports, the CIA was negotiating with Mafia hit men to arrange the assassination of Fidel Castro.

JUSTICE

he assets... and get rid of the incentive."

Unfortunately RICO has promised more than the government has delivered. It has been a marvelous tool to obtain convictions—prosecutors can enthrall jurors with criminal histories and gangland ties—but getting the assets has proven far more difficult. For instance, in the ten years since RICO and a similar narcotics-forfeiture law were passed, only \$675,000 has been forfeited in narcotics cases. "The Justice Department's record in attacking the financial foundations of organized crime has been very nearly nonexistent," says Sen. Joseph R. Biden Jr. of Delaware. "Indeed, I believe it is a major reason [that] illicit drug trafficking continues to flourish in this country." Other parts of the 1970 statutes also lie fallow. Federal prosecutors have seldom sought civil penalties under RICO or the long prison terms they may ask for under the companion Dangerous Special Offenders Act. "Ultimately this record is a failure of imagination and will," says Prof. G. Robert Blakey of the Notre Dame Law School, an authority on organized crime. "The law is there, but they haven't used it."

Turning Point: The government has, however, used RICO in a novel way this year in two significant cases against top mafiosi. It has contended that Mafia families themselves are "illegal enterprises." In one case, a jury convicted Frank Tieri, head of New York's Genovese crime family, of extortion and fraud—and of being a Mafia boss. In the other trial, Dominick Brooklier, Louis Tom Dragna, Samuel Sciortino, Jack Locicero, and Michael Rizzitello of the Los Angeles gang were convicted on racketeering and conspiracy charges. The government has not moved to seize assets in either case—and if it did, it might never find any.

Well-placed Federal sources say that they are preparing another round of important cases. Grand-jury investigations aimed at mobsters are under way in Chicago, Detroit, Milwaukee, Kansas City, Philadelphia, Miami and Las Vegas. Significant labor-racketeering cases against officials of the Laborers' International Union in Florida, New England and Illinois are also expected to surface soon. And FBI agents are buzzing that another hot undercover sting is afoot.

The first big mob test for the Reagan Administration may not come in a courtroom at all, but in negotiations between the Internal Revenue Service and the Teamsters Union's Central States Pension Fund. The pension fund—with assets of \$2.2 billion—has long been known as "the mob's bank," providing funds for casinos and speculative real-estate deals. In 1977, after the IRS threatened to lift the fund's tax exemption, the trustees resigned and outside managers were hired for five years. No one believes that all the mobsters have lost their influence—especially not under



Don Carl Steffen



John Ficara—Newsweek

FBI's Webster, Justice's Margolis: First get the gangsters, then their profits



Agents Ellavsky, Livingston in Las Vegas: Living face to face with the criminals

the lackluster Carter Labor Department—and what happens when the managers' contract expires in 1982 is unclear. But the Teamsters union hopes to have positioned itself to block new restrictions; it was one of two major unions to support Reagan.

Handicap: Lawmen have few illusions about what their year of success means; they are in no danger of jailing all the mobsters and having to find other work. Some of the new strategies are obviously promising. Retiring Attorney General Civiletti, for example, favors industry-wide investigations, rather than the piecemeal headhunting of the past. But the government always starts with a handicap. "For all our talks about goals and strategies, law enforcement in a free society is primarily reactive," says David Margolis, chief of Justice's Organized Crime section. "No matter how effective we are, one kind of crime or another is not going to be stamped out."

Margolis is right; there is no quick fix for any sort of crime. The government could

make a small dent, perhaps, by legalizing such "victimless crimes" as pornography or gambling. But there are obviously limits beyond which the statutory line cannot be nudged.

It has become conventional wisdom, in some circles, to look on the Mafia as something of a service industry: loan sharks serve people the banks won't touch; corrupt labor leaders serve "legitimate" bosses who don't want to negotiate with an honest union. Certainly there would be less business for the mob if there were fewer people in desperate want or more who could control their greed. But the new Mafia, like the old, is not about to be stamped out by a few social improvements, or anything else short of unforeseeable changes in the human animal. At this point, the criminals Americans love to fear have become the criminals they often do business with, the mobsters who won't disappear when the lights go up.

ARIC PRESS with ELAINE SHANNON, RON LABRECQUE and bureau reports

A new ploy to fight takeovers

During the non-trading days between last Jan. 30 and Feb. 1, New York investors for Carl C. Icahn and companies he controls purchased some 1 million shares of Marshall Field & Co. common stock. Together with stock of the Chicago retailer that it already owned, the sudden transactions boosted the Icahn group's holdings to 4 1/2 million shares, about 15% of total Field stock outstanding.

The company's reaction was predictable. It hired a law firm to fight the threat that Icahn would seek control and possibly liquidate the company to sell off its large real estate holdings.

But the legal claim was novel. Skadden, Arps, Slate, Meagher & Flom, the New York law firm well known for its

The racketeering charge could deter investors from making hostile tender offers

corporate takeover department, charged Icahn and his group on Field's behalf with "racketeering," although there has never been any suggestion that Icahn or his companies are in any way affiliated with organized crime, the usual target of the racketeering laws.

Cynical judges. The legal claim was based on an interpretation of the federal Racketeering Influenced & Corrupt Organizations Act of 1970 (RICO) that has caused considerable comment within corporate legal circles in the past year. Some lawyers believe that the racketeering charge, which causes legitimate businesses considerable embarrassment and may work to deter professional investors from making hostile tender offers, could become more common in the coming months.

RICO outlaws the use of income received from a "pattern of racketeering" to acquire a business. A pattern of racketeering is defined, in turn, as any two violations of a number of different laws, including the securities laws, during a 10-year period.

Citing a consent decree that Icahn had just signed with the Securities & Exchange Commission in connection with his acquisition of Hammermill Paper Co. shares, as well as other Icahn activities that had been drawn into question by federal and state agencies, Field insisted that the allegations, if proved, amounted to a pattern of racketeering.

Although RICO has been the law for 12 years, it has surfaced in civil suits only during the past year or so. The reasons given, by securities lawyers who refuse to be quoted by name, are twofold. One

is that federal judges, especially those on the U.S. District Court in Manhattan that hears a large percentage of the nation's takeover cases, are becoming increasingly cynical about the usual claims made by a target company's lawyers. The judges view many cases as legally unjustified attempts by entrenched management to fight off an acquisition justifiable on business or financial grounds.

The second reason is that in 1977 the Supreme Court threw doubt on the right of a target company to sue for fraud under the securities laws. By law, whoever acquires more than 5% of a company's stock must submit to the SEC in a Schedule 13D a statement of his intentions. Defense lawyers have traditionally alleged that the 13D filing is fake or misleading because the acquirer did not disclose his true purposes. But now "the courts are divided over whether a target company has standing to sue," says Martin Lipton, a New York takeover lawyer not connected to the Field case. Under RICO, however, a target company has the explicit right to sue.

In his Schedule 13D, Icahn denied that he and his group had formed any plans to liquidate Field, sell off its assets, merge it with another company, or make any other major change in its corporate structure. The claim was greeted with some skepticism. Since 1975, Icahn had purchased large positions in a number of companies and gained a reputation of seeking control, merger, and sale of assets. Often he ultimately sold the shares back to the companies at a considerable profit.

Severe sanctions. On Feb. 8, Field sued Icahn in Manhattan federal court, charging that he had failed to disclose a plan to acquire 35% of the stock, seize control, and engage in "extraordinary corporate transactions." At the same time, Field laid the groundwork for its racketeering charge.

Beyond the publicity value, a racketeering charge can be worrisome because of the severe sanctions open to judges to impose. RICO allows treble damages, attorneys' fees, and an injunction that theoretically could prevent an investor from attempting future takeovers for a period as long as 10 years.

In the Field case, Skadden Arps attor-

neys persuaded District Judge Pierre S. Leval to issue a temporary restraining order while Icahn made further disclosure of his plans. Icahn had 10 days to scout up a "white knight" to counter Icahn's acquisition bid. Icahn cured the defects. Judge Leval lifted the restraining order, and Icahn continued to buy, ultimately acquiring some 30% of Field shares. Within three weeks, however, Field arranged through Goldman, Sachs & Co. a merger with BATF Inc. at \$20 per share. It is expected to be completed this summer.

Vulnerability. Litigation between Icahn and Field was dropped on Mar. 30, before Judge Leval could rule on the racketeering charges. Had the suit continued, however, Field's lawyers would likely have pressed for documents from Icahn that might have proved their racketeering claims. Under RICO, it is unnecessary to show a conviction, only that



Lawyers may paint investors as racketeers

the alleged violations of law actually occurred. Most of what was discovered during the two months of litigation was sealed by agreement of the parties, who will not comment publicly on the case.

Some corporate lawyers privately condemn the use of RICO in takeover suits as "sewer tactics," "just a diversionary tactic," and "silly." But many agree that the fear of being labeled a racketeer could influence future takeover strategy. And, says one, "those especially vulnerable are professional investors, like Icahn, with a track record."

Whether RICO charges will catch on remains to be seen, but a few attorneys think that their use in the Field case was an important psychological turning point. Says one well-regarded takeover lawyer: "I don't think the racketeering charge is of any moment, but don't quote me because I may have to use it in a case tomorrow." ■

HB

631

REQUEST

Bill/Resolution No. HB 631Title: Relating to runaway childrenSponsor: icka

Requestor: _____

Date of Request: 2/23/84

FISCAL DETAIL

Agency Affected: Dept. of Health & Social ServicesProgram Category Affected: Social and Economic Assistance for the General PopulationBRU, Program or Subprogram(s) Affected: Youth Services BRU/McLaughlin Youth Center

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 84	FY 85	FY 85	FY 87	FY 88	FY 89
100 PERSONAL SERVICES				907.5	952.9	1,000.5
200 TRAVEL				25.2	26.5	27.8
300 CONTRACTUAL				122.6	128.7	135.1
400 SUPPLIES				113.8	119.5	125.5
500 EQUIPMENT				23.3	24.5	25.8
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS				98.2	103.1	108.3
800 MISCELLANEOUS						
TOTAL OPERATING			-0-	1,290.6	1,355.2	1,423.0
CAPITAL			15,442.0			
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		15,442.0	1,290.6	1,355.2	1,423.0
FEDERAL FUNDS					
OTHER					
TOTAL					

POSITIONS:

FULL-TIME			16.0	16.0	16.0
PART-TIME					
TEMPORARY					

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Michael Price, Director Phone: 465-3170
Division: Family and Youth Services Date: _____Approved by Commissioner: Robert Gordon Smith Date: 3/1/84
Agency: Department of Health and Social Services

Distribution (by Agency preparing fiscal note):

- Legislative Finance
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12/1/83

Alaska State Legislature

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Eagle River, Alaska 99577
(907) 688-2526

House of Representatives

John J. Liska

May 11, 1984

MEMORANDUM

TO: Rep. Bussell, Chairman - House Judiciary Committee

FROM: Rep. John J. Liska

SUBJECT: HB 631, "An Act relating to runaway children."

The purpose of this bill is three fold.

- a. Section 1 - is an attempt to require by law a minor to be accountable to either parents at home or a guardian at a foster home or be placed in an appropriate institution.

Presently, if a minor runs away from home, and he is not breaking any laws, he is free to do as he wishes. The intention behind our bill is - The child does not have the maturity to exist in today's society without becoming a subject of prey for a variety of undesirable types of people. If you will refer to item D, Article number 1 - in your packet, it clearly describes what happens to these run away children.

While it is not the intention to violate the rights of any child, we feel it is the responsibility of either the parents or the State to be in control of the minor because at this stage in their life they are not mature enough to be able to function in society on their own.

And the last section of the bill states that a peace officer shall make a reasonable effort to locate a minor who is evading his guardian. Presently the police can, if they want to but they don't have to, try to locate a run away child.

Additionally, it is essential in my opinion that these children not be allowed to remain on the streets, even for a couple of days or long enough to decide at a court hearing whether or not they are to be picked up.

I refer to item D, Article number 2, the longer they are on the streets the more likely they will become involved in situations that will have a life long effect on them. We feel they are incapable of protecting themselves from this involvement and therefore it is the states responsibility to protect them.

May 11, 1984

Page two

In your packet you will find the following for your information:

- A. Copy of HB 631 and committee substitute.
- B. Memorandum from Jos Mapranath, Director-Division of Administrative Services, Department of Public Safety.
- C. Article regarding runaway children.
 - 1. From USA Today March 1979, Life in America, "The Adolescent Runaway: A national Problem"
 - 2. Newsweek Oct. 18, 1982, Life/Style, "A Nation of Runaway Kids"
 - 3. "A second look at the National Program for Runaway and Homeless Youth." By Caroline Croft and Mary Jolly.

JJL/tm

MEMORANDUM

State of Alaska ^{JAN 11 1984}

TO: Jay Hogan, Associate Director
Division of Budget Review
Office of Management and Budget
Office of the Governor

DATE: January 6, 1984

FILE NO:

TELEPHONE NO:

465-4322

FROM: *Jos*
Jos Mapranath, Director
Division of Administrative Services
Department of Public Safety

SUBJECT: Criminally Exploited
Children

We have reviewed the materials submitted on criminally exploited children in Alaska and wish to express our support for the formation of a special law enforcement unit in Anchorage to deal with this serious problem. The unit would be a joint State and local cooperative effort similar to the successful Anchorage Metro Drug Unit. The cost is estimated at \$375.0 for FY 85 and would include one Anchorage P.D. Sergeant, one Anchorage Police Officer, one Anchorage clerical position, and one State Trooper Sergeant.

While we recognize the seriousness of criminal exploitation of children and that this is a growing problem, it is not feasible at this time for either the Anchorage Police Department or the Division of Alaska State Troopers to divert limited existing resources to form the proposed special unit. We would, however, be pleased to participate in such an effort if funding is provided. Therefore, I urge your support of an appropriation in the amount of \$375.0 to fund a special investigative unit on criminally exploited children.

Further details are available upon request. Your consideration of the requested appropriation to deal with this problem is appreciated.

cc: Commissioner Robert J. Sundberg
Commissioner Roger Endell
Peter B. McDowell, OMB
Brian Porter, Chief, APD
Colonel Michael C. Kolivosky, AST
Marroyce Hall, AK Juvenile Crime Commission
Sandra Borbridge, Spec. Assistant to the Governor
Allen Blume, Spec. Staff Assistant to the Governor

TO: Mrs Hall

FROM:

LAW ENFORCEMENT OFFICER KNOWLEDGABLE IN THE FIELD
OF CHILD EXPLOITATION. OFFICERS NAME DELETED AS A
POLICY OF THE ANCHORAGE POLICE DEPARTMENT

DATE: October 20, 1981

SUBJECT: Criminal Activities of Juveniles in Anchorage

The purpose of this brief letter is to state my opinion of the status of current criminal activity involving juveniles in the Anchorage area. As you know I have been a police officer for the past five plus years in the Anchorage area and have worked for two different periods as a counselor at McLaughlin Youth Center. What I am stating here is strictly my opinion and does not represent in any way the viewpoint of my employer, the Anchorage Police Department.

During recent years Anchorage, as well as other communities within the State of Alaska, has experienced a tremendous increase in the level and depth of juvenile criminal activity. I believe that this is in part due to the tremendous growth that this community and this State have experienced in recent years and also because of the ineffectiveness of the criminal justice system to deal with the problem. My opinion of the current status of this activity has developed because of my involvement with juveniles in the community and as a result of my involvement in numerous investigations dealing with some of these problems.

What has developed in this community, as is characteristic of other communities in other States, is a network of criminal activity of which juveniles play a substantial part. This has developed to the extent that many of our young persons so exposed actually are a part of a sub-culture existing in the same space but at different times within the mainstream of our society. This subculture has a set of values and morals that are substantially different than those of the mainbody of our society and paramount within this set of values is the belief that youth equates to victimization. When a young person in our community is, for a variety and combination of reasons, forced out of the home environment and onto the "streets" (so to speak), he is subjected to an elaborate system of victimization on the part of adults within the community who, in essence, use youth to their advantage in the perpetuation of their criminal activities and personal desires.

A young person finding himself/herself within this position is necessarily forced to first, survive. In order to do this, the youth must engage in activities which an adult can support. These activities extend from theft to drug usage/sales and prostitution. Adults involved in these activities will promote the involvement of juveniles to the advantage of the adult while at the same time providing for the juvenile, as a minimum, the basic needs of food, clothing and shelter needed by the juvenile to survive. Juveniles within this community are extensively involved in theft, drugs and prostitution and these activities are promoted and supported by adults within the community. The extent of the

problem is largely unseen, even by many persons within the criminal justice system who deal with these juveniles daily as a part of their jobs, because the juvenile does not often talk about depth of involvement to anyone, other than his/her peer group and in some cases, not even to them. The system tends to look at each individual act by itself, failing to realize that there is a much greater problem, individually and collectively, lurking below the surface of the individual act.

As an example of what I have previously stated, I would estimate that about 50% of all the boys admitted to McLaughlin Youth Center have had some contact with adults of a homosexual nature. I would further estimate that in excess of 25% of these have had what could be termed deep involvement with more than one adult. Often, this kind of activity, develops in relation to other types of activity including the adult using the juvenile for drug sales and to provide merchandise for fencing operations of small and large scale. It is not surprising then, that when the juvenile so involved is picked up for a property crime or drug related offense, the depth of his involvement is never revealed to those professionals within the system that later deal with him.

Any juvenile who, for whatever reasons, spends more than a short amount of time living away from a home and on the "streets" will become involved to a greater or lesser degree in the kind of activity I have just described. Since the adult(s) involved use the juvenile for their purposes, the normal role of adult guidance in the maturing process is severely distorted which in turn perpetuates the problem as the juvenile grows older and changes from being the victim to the user. Over a period of time of involvement in these kinds of activities the youth gradually begins to believe that the only thing that will change his being used to another's advantage is age and that when that age is attained the role can be reversed.

It is virtually impossible for a young person to survive away from home without becoming involved in these kinds of activities because of the inability of a young person to legitimately obtain the basic necessities of food, clothing and shelter necessary for survival. It is further, virtually impossible, for that young person to steal enough through burglary, robbery or theft to attain these necessities. As such, the young person in that position, must turn to other more profitable activities. These activities involve drugs and prostitution. The problem is further compounded, in most cases, because of the emotional problems that the youth is experiencing as the result of his necessity to leave the home or to replace the home needs with persons met outside the home and his resultant turn towards drug useage. Drugs are expensive and not within the reach of the average young person through legitimate earnings. Adults desiring use of juveniles for sexual purposes are well aware of the juvenile's problems and will frequently provide, either the basic needs of survival, or drugs or both in return for sexual favors. In many cases, the juvenile can provide sexual favors for a much higher than could be obtained through other types of criminal activity. Adults desiring these kind of favors are very perceptive in being able to identify those juveniles that are in a position to which they would be susceptible to such propositions.

All this exists on a large scale in the Anchorage area. The extent of this existence increases steadily because of the inability of the Criminal Justice System and the community to control it. I would estimate that the extent of the

problem in Anchorage is proportionately greater than it is in other comparable communities in the United States, again for a variety of reasons. It is common knowledge that large scale fencing operations exist within the Anchorage area as is evidenced by the very small percentage of stolen property that is recovered and the relatively high frequency of recovery of stolen property from Alaska in other states. The extent of drug sales operations and drug useage amongst juveniles in the Anchorage area, again, is particularly high to the extent that it is virtually impossible for any young person not to be exposed to drugs, and not just marijuana, beginning in junior high school. The extent of juvenile prostitution activities, particularly as it involves males, is also extremely high in the Anchorage area to the degree that virtually all juveniles living out of the home are exposed and many still living at home are exposed.

There exists, in Anchorage, houses where juveniles on the run can find temporary shelter. These houses are provided either directly or indirectly by an adult. Unfortunately, there are strings attached to the use of the house by the juvenile. There have been commercial pornography operations involving sexual involvement of juveniles in the most perverted kinds of sexual activity operating in the Anchorage area. These operations have been directed by organizations from without the State of Alaska. There have been commercial prostitution operations within the Anchorage area in which juveniles were the merchandise and in which the fees paid were extremely high. There have been large scale drug operations in which juveniles, many of them going to school and living at home, were involved as the primary pushers. There have been large scale fencing operations in the Anchorage area in which merchandise stolen by juveniles was fenced by adults to create huge profits.

The depth of this whole problem is really seen when one realizes what becomes of the juvenile that is involved in these kinds of activities. All young persons growing up need adult guidance and emotional support in order that a moral and value system can develop. If the child receives, for this need, guidance and "emotional support" from persons that only wish to use him, it is understandable how we are developing a subculture of increasing size within the mainstream of our primary culture, in which the value system is as foreign as one would be from a far Eastern country. The use of youth for personal gain is as foreign to the basis of our culture as is the crime of murder and yet we are allowing this to exist, and to in fact grow, within the Anchorage area to a massive degree. Much of this problem is a criminal problem and must be solved through enforcement means. To this end we are sorely lacking.

LIFE IN AMERICA

The Adolescent Runaway:

A NATIONAL PROBLEM

"No one seems willing to accept clear responsibility for the thousands of children over 15 who stand outside the jurisdiction of family courts, criminal courts, and, in large part, the child welfare system."

by Bruce Ritter, O.F.M.

OVER a decade ago I became involved, almost against my will, with one of the major problems of any large metropolitan area when 10 runaway children, from the ages of 14-17, sought my help, asking to sleep on the floor of my apartment in the East Village of New York City. I was exercising at that time a ministry of service to the poor. These particular 10 children had been sexually abused by some punks in the neighborhood, had been burned out of the abandoned building in which they were living, and before that had been forced to make a pornographic movie in order to pay for their room and board.

Because I could not find any place for them in the child welfare system, I kept them. They simply moved into my apartment. So many hundreds of homeless young people began knocking on my door that I and my friends were forced to begin a new child care agency. Since that time, over 10 years ago, Covenant House has sheltered

many thousands of runaway and self-emancipated kids, returning many to their homes and keeping many for long-term care. Hundreds upon hundreds were victims of child abuse.

Many people are unaware of the enormous dimensions of the problem of runaways and homeless children in our society—or what can happen to them. Over 1,000,000 juveniles run away every year in this country. According to a New York City Police estimate, there are at least 20,000 runaways under 16 in New York City at any one time. If you add to that number the many thousands of *self-emancipated* youngsters between the ages of 16-18 and even the greater number between 19 and 21, the numbers of children on the streets are staggering.

These numbers are not just pulled out of a rhetorical hat. In the first year after the Covenant House crisis center, Under Twenty One, was opened (April 1, 1977), well over 4,000 children have sought our help, over 500 of them were 15 and under, another 900 were between 16 and 17, and over 1,500 between 18 and 20. Covenant House expects to serve about 3,000 walk-in children under 18 at its Eighth Avenue center this year who should not be on the streets, but for whom no effective programs exist. As a result, these children are frequently subjected to the

grossest kind of abuse. About 7,000 children under the age of 21 had come to Under Twenty One for help during 1978.

A question of responsibility

The very complex issues raised by these thousands of homeless young people cross a dozen different jurisdictions—states' rights, parents' rights, children's rights, family and criminal court questions, the nature of the child care system, etc. The thinking and practice regarding the rights of juveniles has been evolving so quickly over the past 10 years that legislators have had great difficulty keeping up with the changing status of juveniles in our country. The ambiguity and confusion and differences in statutes between one state and another and within the same state make it almost impossible on occasion to resolve the legal status of a runaway or homeless child. Until recently, the problem of runaways was always considered essentially a police matter. The juveniles were to be found and returned home. Yet, an overburdened New York City police force can no longer cope with the huge numbers (there is a seven man unit assigned for that purpose) and the police do not have any jurisdiction over children 16 and older.

Editor Bruce Ritter is the Executive Director of Covenant House and Under Twenty One, a child care agency in New York City that specializes in caring for runaway and homeless children and urban youth.

problem is especially acute for 16 and over since the law simultaneously permits a child of 16 to disempower himself and then effectively disfranchises that child. For the most part a child can not get the medical care he or she needs, can not easily apply for public assistance, can not get into contracts, and can not find a decent job. Children are free to wander the streets, panhandling, exploiting, and being exploited. No one seems willing, either, to accept clear responsibility for the thousands of children of 15 who stand outside the jurisdiction of family courts, criminal courts, or in large part, the child welfare system. Neither Special Services for Children, the Division for Youth, or the Department of Social Services will get into immediate jurisdiction and responsibility for a 16 year old boy or girl wandering up and down 42nd Street, so it is manifestly not in the best interest of the child or the general public to permit this to happen, *some jurisdiction must take the clear responsibility.* We operate on a principle, originally, of *caveat puer* let the child beware. Covenant House can document an almost endless series of children of 15 for whom it can find no one to accept responsibility, no court, no family, no part of the child welfare system. The tangle of conflicting jurisdictions, of vague and ambiguous laws, a severe fiscal crisis, and the fact that most of these kids are black and panish make it easy to let them fall through the cracks. Many thousands of them become willing or unwilling victims of the \$1,500,000,000 sex industry that feeds on children in the Times Square area. They have few options, cold, hungry, homeless, desperate for attention, they fall easy prey to the sex merchants who know all too well how to exploit them. These children find it almost impossible to get help. Until Covenant House, with the help of the Roman Catholic Archdiocese, opened its Under Twenty One crisis center on April 1, 1977, there were absolutely no services for these thousands of children in the Times Square area. Covenant House is always understaffed, underfinanced, and overwhelmed by the numbers of children coming to us at all hours of the day and night.

During the first year that Under Twenty One was open, over 4,000 children came to us for help and over 60% of these had some contact, major or minor, with prostitution and pornography. The list of horror stories are both

- A 14 year old boy chased into our center by his pimp, a man of 40, who had a broken bottle. The man wanted to kill the boy, who had escaped after being held prisoner for six weeks in a Times Square hotel.

- A pimp who offered us \$500 for a young girl in our center.

- A 16 year old call boy with a contract on him. All he wanted to do was escape. He had made the mistake of ripping off one of his johns.

- A 14 year old girl, held prisoner, raped, and forced into prostitution, her hair dyed and with a false I.D. saying she was 18, who had gotten a job in an Eighth Avenue strip joint.

They are not bad kids and it is wrong to think that they are. They are good kids whose only crime is, for the most part, to be cold, hungry, and homeless, with no skills, no resources, cut off from jobs or the possibility of getting medical help or public assistance. Since they have nothing to sell, except themselves, they are easily victimized and abused by the so called victimless crime of prostitution.

There are many hundreds of juveniles caught up in a vicious, degrading life style that kills many of them. They are caught in a kind of quicksand and can not easily escape. Hundreds will come, have already come, to Under Twenty One this year. Under Twenty One stays open 24 hours a day and offers a kid no questions when he or she asks for help, food, shelter, protection from their pimp and exploiters, a chance to go home again if that is possible, a chance to get a job, to go to school, to begin to think that they might live. Many times I have heard a kid say "Bruce, I'm not going to make it, I'm going to die out there, the street is going to kill me." A 17 year old boy said to me recently,

"Bruce, can you give me one reason why I shouldn't jump off the Brooklyn Bridge?" It was hard for me to answer.

What can be done

Why do we permit it? Why and how can such a wholesale abuse and neglect of children happen in our society? We seem both unable and unwilling to do anything about it.

There is much that can and must be done. It would be easy and unfair to attack the police for inadequate enforcement of existing laws. The police in New York City quite clearly have limited ability to achieve effective enforcement. At the same time, however, it is quite clear that the crime of child prostitution and abuse is not a priority for our police. Neither is it a priority for our district attorneys and the Attorney General, nor the judges of our

criminal courts, who could exercise a little more fortitude in handing out sentences, nor for our politicians, who only seem to discover the problem of child abuse and prostitution around election time.

Prostitution and this loathesome child abuse are big business and are obviously protected. What other reason could explain the apparent immunity with which this blatant, sick, savage destruction of children is carried on in our society?

We not only need more effective enforcement and more vigorous prosecution of the criminals that buy and sell children and more effective community action, we also need programs to help the thousands of juveniles on the streets that turn to prostitution simply in order to survive.

As I recently stated

"Last night 67 children came in off the street looking for a bed. Because we were able to provide one for them, they did not sleep on the street or in someone else's bed. We are almost without funds, our resources are still strained to the utmost. With the cold weather coming on, we estimate that as many as 80 or 100 kids a night will come to us for help. We are committed to not sending a child away without a bed. I did it once, and I can't do it again. As long as I live I can never forget the faces of the kids that knocked on my door every day, one night. One of them said, 'Are you Bruce?' and I said I was, and he said, 'Do you take kids in?' and I said, 'Yes,' and he said, 'Can we stay with you?' I said, 'No, because we have no room,' and he began to cry and he said, 'Where can I go and what can I do?' I said, 'You can go back into the street and look out.' And he stopped crying and looked at me and said, 'I can do that.' He did. They both went back onto the street. One boy was 15, the other was 14."

Our records can document hundreds of cases of child abuse and maltreatment, drawn at random from our files. Based on our experience at Under Twenty One, we can distinguish three broad categories of gross child abuse: abuse within a family setting, abuse on the street, and abuse by bureaucracy.

Abuse within a family setting

In these cases, children came to Under 21 because of abuse by parents or guardians and because they did not have any other recourse. Typically, this is the tragic plight of thousands of runaway children who every year find themselves in a dangerous and punitive situation far from home. This type of child abuse is certainly the best known and considered the public attention has already been focused on it. The following are typical examples.

The program is financed by the New York State Office of Child Welfare, the New York City Board of Social Services, and the private contributions of individuals.

LIFE/STYLE

A Nation of Runaway Kids

Louis, 15, homeless, has long been lonelier than many a street-bounced, drug-addicted mother, an indifferent father and a savage stepmother who repeatedly hit the 15-year-old boy and tried to choke him to death. Nevertheless, Louis is a most reluctant runaway. His macho mask crumples as he sits in a cheerful Houston shelter—some what incongruously called Family Connection—and speaks softly of those he still loves. "I didn't want to leave her, but she said to get out and don't come back," he quavers, near tears whenever he mentions the mother who finally pushed him aside. Then, as other teen-agers return within earshot, Louis recoups his cool. "I learned the hard way," he says. "Ain't nobody going to do nothing for me but myself."

A new generation of American youngsters is on the run—often at a desperate pace. They resemble less their romantic predecessors, from Huck Finn to the flower children than refugees fleeing the wreckage of their families. Many are more truly castaways than runaways, forced from their homes by neglect, abuse or abandonment. "These kids are running from something, not to something," says Russell Frank, director of The Runaway Place, a Boston shelter. As many as 50 percent may be fleeing physical abuse, including sexual assaults. A growing number are economic refugees, evicted by jobless parents who can no longer support them. "This is one of the first times we've seen people voluntarily bringing their kids in," says Carol Frank of the Child Welfare League. "It's a dust-bowl kind of thing."

Others, without being told to leave home, may be driven out by violent arguments, drinking bouts, and other recession-related strains in the family. "A 14-year-old can't understand fully that his father may be depressed over losing his job," says Washington social worker Robbie Callaway. "As economic conditions get tougher, more and more kids are going to be out on the street."

'Meat Rack': The thoroughfares they travel include the likes of the infamous Minnesota strip located near Times Square—so named for the many blond nymphets from out of town who sell themselves there—and the "meat rack" on Hollywood's Santa Monica Boulevard where boy hookers are on display. Too young to work legally, a significant number support themselves by stealing, drug dealing or peddling sex. Like apprentice delinquents, they huddle in abandoned buildings, on

park benches or in the warm breeze from subway gratings. Many runaway kids display a pathetic ingenuity, fearful of pimps and muggers as well as policemen, one Philadelphia youth buried himself to his chin every night in a playground sandbox. But for most of the young nomads, there may be no place to hide: some 50,000 runaways simply disappeared last year.

There's no telling where they went, since



Way station: Seeking aid at New York bus terminal

the United States does not keep computerized track of missing children as it does missing cars. By the most conservative estimates, however, each year more than 1 million kids between 10 and 17 leave home. Until 1974 the government's main helping hand was an arrest for juvenile delinquency. Then Congress—disturbed by reports of deaths and maltreatment in jails, reform schools and other institutions—passed the Runaway and Homeless Youth Act, to establish federally funded telephone hot lines and temporary teen-age shelters. But the 166 shelters—with their hopeful names like Halcyon House or Stepping Stone—serve only 45,000 kids in a year, roughly 5 percent of the runaway population, for a maximum stay of between two weeks and 30 days—and proposed Federal budget cutbacks threaten to cramp the space still more.

Fortunately for their survival odds, most runaways are relatively timid. According to juvenile welfare experts, mostly no further than a relative or friend, and 90 percent return home within 48 hours. The remainder, however, seem singularly ill-equipped for even a temporary life on the loose. A recent report from the U.S. Department of Health and Human Services, based on shelter admissions, indicates the average runaway is 15. That's a drop of one year from the 1976 average—and kids as young as nine are now turning up with alarming regularity. Most of the kids are white (70 percent) and female (56.7 percent, although the gaps are closing). Forty percent are school dropouts,

many of whom can barely read and have minimal self-esteem. They are scarcely a cadre of hardened criminals. HHS estimates that 60 percent have never been in any kind of trouble with police authorities before they run.

'Flirters': Left to their own devices, kids develop a distinctive subculture. Lark is scrupulously observed around Boston male prostitutes are expected to work near the bus terminal, while females work the notorious Combat Zone. Hard-core street kids are supposed to congregate on Boston Common, where the head-to-toe troops are. "Flirters" in local jargon hang out in Herald Square. Some runaways try to create the communalism of the boys' club, but when one makes some money, many will rent a room for themselves, splitting the wardrobe on wine, dope, and food. In one northeast suburb of Philadelphia, teen transients even built their own haven in the woods with lumber stolen from construction sites, complete with escape tunnels. Survival lessons are willingly shared, to score a free restaurant meal with a minimum of fuss (a gambit sometimes known as "chew and screw"), leave the waitress a tip before you walk out without paying the check.

Time seems to be the greatest divider, determining which runaways can be salvaged. "If a kid has lived in the street for a month or so, it becomes very hard to reach him," says Father Bruce Ritter, founder of New York City's Covenant House for runaway youths. "If it's been six months, we've almost lost him, and if it's a year, he's gone. The poison works very, very quickly." In many cases, it takes only two days; beyond the 48-hour mark, one in 10 teen-agers is likely to become a prostitute. Incoming naifs are quickly spotted at such entry points as New York's Port Authority Bus Terminal by pimps or their scouts, sometimes called catchers. Blue-janed Marcia R., 13, remembers that she was barely off the bus from Ohio before a "man in one of those hats" approached her. He was headed off by a man and woman, two self-professed "good Samaritans."

Do you know someone with ALS? (Lou Gehrig's disease)

If you do, then you know how devastating ALS can be. But, you may not know that throughout the country, friends and relatives of ALS patients are doing something about ALS by setting up Local Chapters of the National ALS Foundation.

Local Chapters are resource centers—places where ALS patients and their families can find out what services are available. They can get together for rap sessions, to share and ease the burden of ALS, and to find out that they are not alone.

Local Chapters can generate public awareness—raise money for the all important research—and bring us one step closer to finding a cure for ALS.

To learn how you can help set up a Local Chapter and to be part of a growing, nationwide organization that's doing something about ALS, contact the National ALS Foundation, 185 Madison Avenue, New York, NY 10016, or call (212) 679-4016.

LIFE/STYLE



Back home: Darcy Reeves (front) with mother and sister

tans" who offered to take her to their house. The Port Authority police were also converging on her and won the contest, she was soon on a plane headed home. "You soon find out that all those 'good people' who want to 'help you' want something in return," says a Philadelphia 16-year-old who was not so lucky—and is now pregnant by her newfound "friend."

Pimps: Hustlers operate in a netherworld all their own. In Hollywood, for instance, there's a wage scale of sorts. Attractive new arrivals can earn top dollar (\$250 or so, on up) from the homosexual "chicken hawks" who cruise Santa Monica Boulevard in search of young boys. "Everyone knows the regulars, so when they see a new face, they have to try you," explains one young denizen. "After they get to know you, though, you have to do more and more to earn your money." Times can be even tougher for girls, who usually have pimps to support, and staying straight is often well-nigh impossible. L.A. police detective Larry Broadhurst still shudders over one young victim from two years ago. "She was a real good-looking blond girl," he recalls. "A pimp approached her to work for him, and she refused. Told him she didn't want to have anything to do with his business." The pimp didn't give up; he followed her and pounded on her motel door. "When she opened it, this guy just stuck a knife right through her head."

Authorities are trying to provide more effective refuge. In Boston, the vans from Bridge Over Troubled Waters roll right up to the kids on the streets, offering dentists,

doctors and drug therapy. At many shelters the rules are stricter than those at the homes the kids have left. At Houston's Family Connection, residents must rise at 8:30 a.m., cook all their own meals, clean their rooms and request permission to stay out after 5:30. Generally, the shelters' goal is to identify family problems, begin counseling and return the runaways—except to parents who abuse them. The success rate runs anywhere from 50 to 70 percent. "We desperately need more places like this," says Sandra Reeves of Houston, whose 15-year-old daughter, Darcy, has run away three times, only to be reunited through family counseling. "Please tell mothers and fathers that their children can come home."

To help those children who resolutely won't—or can't—go home again, states and municipalities have also been changing their juvenile laws. At least 17 states now allow courts to "waive juvenile" status, so that they may hold jobs and

apartments on their own, in Connecticut, a 16-year-old can effectively "divorce" abusive parents and be treated as an adult. Some law-enforcement officials are less than enthusiastic about the liberalization trend, claiming they're now unable to step in and aid troubled runaways. But some frustrated parents are saying "good riddance" to incorrigible adolescents. Toughlove, the Pennsylvania-based parents organization, suggests families lock the doors behind difficult runaways until they promise to change—while providing them with a list of other Toughlovers who will act as caretakers. In several states, wits-end parents can also ask the courts to designate perennial trouble-makers "persons in need of supervision"; they can then be picked up for running away, and a judge can impose psychiatric care or other treatment.

Rebels: To be sure, not every vagabond child can be classified as either innocent or incorrigible. Some classic rebels without cause still take off from pure pique or boredom. Beth, 16, showed up at a shelter in Prince Georges County, Md., claiming she had been maltreated by her mother; the "abuse" turned out to be a failure to provide designer jeans. But many experts say such cases represent a declining minority. "There is the child who is just too big for his britches," concedes Alice O'Shea, chief of the child-advocate unit in Philadelphia's Office of the Public Defender. "But they are the minority." Experts say only 10 percent of runaways qualify as "spoiled brats."

Authorities worry that strained juvenile

Sinclair Lewis
 John Galsworthy
 Saul Bellow
 Fitzhugh Dunsen
 John Updike
 Raymond Chandler
 Ralph Waldo Emerson
 William Faulkner
 F. Scott Fitzgerald
 William S. Burroughs
 Ernest Hemingway
 H. D.
 Gertrude Stein
 Thornton Wilder

Jack Kerouac
 Maxine Hong Kingston
 Maxine Kumin
 D.H. Lawrence
 Marianne Moore
 Annas Niska
 Joyce Kilmer
 Frank O'Hara
 Kathleen Tegen
 Ezra Pound
 Charlotte Stetson
 Wallace Stevens
 Dylan Thomas
 William Carlos Williams
 Richard Wright

The literary
 magazines that
 first published
 these great writers
 are going
 out of business.
 Unless you help

facilities won't be able to handle an influx of
 teenagers who jump, or are pushed out on
 their own. Financing for shelters is precar-
 ious, although Congress authorized more
 than \$20 million, the administration pro-
 posed only \$6.6 million in the current budget.
 Several senators managed to boost the figure
 to \$18 million. Even that amount would pro-
 vide less than \$18 per runaway—and the
 budget battle must be fought again when the
 current funding expires Dec. 15. "The pri-
 vate sector cannot and will not pick this pro-
 gram up," says Rep. Pat Williams of Mont-
 ana. "This is a bedpan program, the kind
 that no one wants to get involved in, and that
 is why the Feds got into it in the first place."

Ultimate Rejection: Yet even if sufficient
 money could be found to put counselors on
 every street corner, more fundamental ques-
 tions would remain. One's own home is, af-
 ter all, supposed to be the place where they
 have to take you in, no matter what, being
 forced to leave it can be the ultimate repul-
 sion. Sister Dolores Gattamatti of New
 York's Noah's Ark shelter deplors "the Kleenex
 mentality" that brings most young
 charges to her door. "We live in a society
 where we use things and just throw them
 away," she says. "I swear, a lot of people
 have this attitude toward kids." And so the
 throwaway children pile up, from New York
 to California, to be exploited and brutalized.
 Sooner or later, those who cast them off must
 realize that children are not so easily dispo-
 sable. The longer they remain on the streets,
 the less chance they can ever be reclaimed—
 and the more they will cost everyone.

LYNN LANGWAY, with JEFFREY M. HALL
 in New York; MARY FORD, with JEFFREY
 M. HALL; JAMES H. HARRIS, with JEFFREY
 M. HALL; and JAMES H. HARRIS, with JEFFREY
 M. HALL.

Lookout, Father Kitter in Times Square



A Second Look at the National Program for Runaway and Homeless Youth

By Caroline J. Croft and Mary K. Jolly

Introduction

Before legislative action by Congress and the President in 1974, it had been estimated that more than a million youth a year left their homes without parental permission — a finding later corroborated by *The National Statistical Survey of Runaway Youth*, completed in 1976 by the Department of Health, Education and Welfare (HEW) under a Congressional mandate.¹ The 1976 study revealed that as many as 1.3 million juveniles ran from their own or foster homes each year, with 773,000 of these juveniles remaining at large overnight. This was creating a substantial law enforcement problem for the inundated communities and significantly endangering the runaway youth on the streets who were exposed to criminal, physical, sexual and drug abuse and exploitation. The tragedy in Houston which cost the lives of 28 children, all reported missing from home, aggravated the problem and heightened the concern of federal, state and local government leaders as well as private sector youth advocacy agencies.

In response to the growth and pervasiveness of the runaway problem, the Runaway Youth Act was signed into law by President Gerald R. Ford. Also known as Title III of the larger Juvenile Justice and Delinquency Prevention Act of 1974, the Runaway Youth

Act enabled HEW to establish a national program for the care of runaway youth. That law authorized the HEW secretary to award grants-in-aid to eligible agencies seeking to establish or to continue operating shelters for runaway youth.

This article details the salient aspects of the National Runaway Youth Program from its inception to the present. In addition to identifying the prominent features of the program from an historical perspective, it reports on an evaluation of the program performed by an independent contractor, a demographic profile of runaway and homeless youth and the future directions for the program. In addition, a new publication, entitled *The Legal Status of Adolescents*, is summarized at the end of this article.

Runaway Youth Program: Historical Notes

Congress, in passing the initial Runaway Youth Act, placed the responsibility for locating, detaining and returning runaway youth outside overburdened police and juvenile justice agencies. Congress also defined the problem as one of an interstate nature and concluded that federal intervention was needed as well as a more reliable reporting system for runaway (not until 1977) youth and a more effective temporary shelter care system outside the law enforcement structure.

In addition to the funding of shelter facilities for runaway youth, the Runaway Youth Act provided funds for counseling and after-care services, for the provision of technical assistance to grantees, for the conduct of a National Statistical Survey of Runaway Youth in the nation and for the yearly submission of an annual report to Congress by the secretary of HEW on the status and accomplishments of the shelters (funded under the provisions of Section 315 of the Act). Other provisions included the setting of a maximum authorization level of \$10 million per year for the 1974, 1975 and 1976 fiscal years.²

In providing grants, Congress stipulated that priority consideration be given those applicants which could demonstrate each of the following factors: grant requests of less than \$100,000, documentation of a successful experience in serving runaway youth and applicants with program budgets smaller than \$150,000.

Congress delineated four goals in the initial law which remain unchanged and upon which the Department of Health and Human Services (HHS) has based its administration of the national program. These Congressional objectives for funded runaway programs, Section 315 of the Act, are set forth as follows:

- (1) their effectiveness in alleviating the problems of runaway youth;
- (2) their ability to reunite children with their families and to encourage the resolution of intrafamily problems through counseling and other services;
- (3) their effectiveness in strengthening family relationships and encouraging stable living conditions for children; and
- (4) their effectiveness in helping youth decide upon a future course of action.

In October 1977 the 95th Congress reauthorized the Runaway Youth Act, adding states and coordinated networks of runaway service providers to the list of eligible agencies. The 1977 legislation also expanded the service population for funded programs to homeless youth and provided for support of short-term training to Title III grantees. Congress raised the authorization level for

each of the three years of the extended life of the Act from \$10 million to \$25 million.

In November 1980 the 96th Congress enacted P.L. 96-509, the Juvenile Justice Amendments of 1980, which President Carter signed into law on Dec. 8, 1980.³ Title III of this legislation retitled the Runaway and Homeless Youth Act, reauthorized the runaway and homeless youth program administered by HHS for an additional four years, maintained the annual authorization level at \$25 million and mandated that HHS alter its formula for distribution of appropriated funds for the support of programs for runaway and homeless youth on the statutory basis of the number of youth under 18 years of age in each state jurisdiction.

The program received \$11 million for each fiscal year 1981 and 1982. The Administration has allocated only \$6.6 million for fiscal year 1983, which begins Oct. 1, 1982. However, it is likely that Congress will not approve the budget by that date, and that the program will operate with \$11 million under a Continuing Resolution.

The 1980 Amendments, along with a revised formula for allocation of funds and new approaches with regard to the consolidation of social services administered by HHS, will impact the future nature and development of the National Program for Runaway and Homeless Youth. In its reauthorization decision in November 1980, the Congress expressed unanimous bipartisan support for continuation of the program until 1984. Major problems, issues and needs remain, however, which are identified and discussed below. A more detailed review and analysis of these issues is available in HHS' Annual Report to the Congress for Fiscal Year 1980.⁴

Program Evaluation — Major Findings

In August 1979, HHS undertook the task of evaluating the National Program and published results of this assessment by an outside contractor.⁵ The evaluation has provided the basis for requesting the President and Congress for reauthorization of the program in the spring of 1979 and, as already reported, Congress and the President then extended HHS' authority for continuation of the pro-

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gram, with several amendments, in the fall of 1980.

In the official report to HHS the *National Evaluation of the Runaway Youth Program* contained the major findings below:

- The National Runaway Youth Program has successfully operationalized the goals of the Runaway Youth Act cited above;
- In addition to addressing the legislative goals, the projects funded under the RYA have developed a number of additional goals;
- The projects funded under the RYA are extremely diverse both in terms of their structures and their client populations;
- A growing "professionalism" was found among the projects funded under the RYA;
- The most serious service limitations with the National Runaway Youth Program are the provisions of follow-up or aftercare services mandated in the Act;
- The National Runaway Youth Program is serving a widely diversified client population;
- The National Runaway Youth Program is achieving substantial positive client impact levels;
- In general projects funded under the RYA achieve similar success with a wide variety of clients;
- The National Evaluation found that a positive relationship exists between goals operationalization and positive client impact;
- The projects funded under the RYA are expanding their fiscal capabilities by generating new funding sources and developing volunteer programs;
- A variety of service, client and fiscal concerns are giving way to emerging new service models within the area of runaway youth services.

The evaluation was most encouraging to HHS, the National Council of Juvenile and Family Court Judges, Congress and many other organizations which support the National Program. However, a great disservice would be done if readers of this article conclude that this major social problem has been reduced in scope and an acceptable solution found. Another section of this article identifies major needs, concerns and issues which

must be understood and addressed if a full decade of federal intervention with regard to runaway and homeless youth is to achieve success. Not all funded programs have succeeded. Some have closed because of financial, management or program shortcomings. Since several areas of the nation are underserved, the 96th Congress included in the reauthorized legislation a provision for distribution of appropriated funds on the basis of a state's youth population under the age of 18. This will generate a definite impact on the funding process. Unless larger appropriations are forthcoming, some programs will receive less than \$10,000 in grant funds from HHS for a year's program support.

Extent to Which National Program for Runaway and Homeless Youth has Reduced Involvement of Youth in Law Enforcement and Juvenile Court Systems

While the reduction of the involvement of runaway youth in police-juvenile court processes are not a primary objective of the Runaway Youth Act, HHS found that one of the positive byproducts reported by many of the HHS-funded Title III programs has been a pronounced reduction in the number of runaway youth involved directly in community law enforcement and court processes. Not only has the number of youth handled by the police been substantially reduced in some communities, but the number of these youth who appear in court and undergo adjudication has decreased. The most successful programs are those in which police, court and runaway staff work together in a cooperative and coordinated way. Rather than taking a boy or girl into a detention facility they are taken instead to a runaway shelter by the local police. If the runaway programs did not exist the traditional pattern would be followed which would involve the issuance of a warrant and appearance in court for a series of jurisdictional, adjudicatory and dispositional procedures. An increasing number of runaway and homeless youth are being referred by the police and court officials to the runaway centers. In a few cases the centers have not won the confidence of police and court agencies, and have had difficulty devel-

oping the type of program and services which merit community support and respect. HHS is most sensitive to allegations that federally funded shelter-type programs are below standard. In its monitoring of the programs HHS stressed sanitation and other regulations which apply at either state or federal levels. A few programs have been closed and federal support withdrawn as a result of failure to operate on the basis of acceptable fiscal, licensing and regulatory practices.

Program Growth and Development Since 1974

Since the first 66 runaway houses were funded by HEW in 1975, the program has grown to 160 programs funded in 48 states, the District of Columbia, Guam and Puerto Rico. A National Switchboard, located in Chicago, has proved to be a vital element in the National Program. Congress recognized this importance by amending the legislation in 1980 to specifically authorize funding of a National Toll-Free Communications System. The number of youth served in HHS-funded programs approximated 43,000 a year as of 1980. In addition more than 200,000 calls were made to the National Switchboard in 1980 by runaway and homeless youth, parents and relatives.⁶

A new, four-year funding cycle was conducted in 1981 under the reauthorized legislation and HHS expected the demand for grant funds to be higher than the previous appropriation of \$11 million. Many worthy programs cannot be funded by HHS because of the severe limit on funds. Some geographic areas are underserved, thus creating concern at a time when federal grant funds are dwindling. One of the most encouraging developments since the passage of the Act in 1974 has been the success enjoyed by many of the Title III programs in securing financial support from local public and private sources. Modest successes have been achieved with the organization in some of the states of coordinated networks of runaway service providers, authorized by the 96th Congress in its 1977 amendments to the Runaway Youth Act. These networks or coalitions have improved the intra and interstate need for speedy com-

munications regarding the immediate care of runaway and homeless youth. They have led in some cases to more effective coordination of effort and expansion of services without additional expense, as agencies have pooled their limited resources.

Programs have actively sought non-federal financial support from a variety of sources. Their success in diversifying their funding base while reducing dependence on federal funds has had a stabilizing and strengthening effect.

A National Profile of Runaway Youth

A summary profile of runaway youth derived from the client forms submitted to the Youth Development Bureau by the programs funded under the Runaway Youth Act revealed that the types of youth who received services were diversified as to age, sex, ethnicity, school status, family-type problem and related case characteristics.⁷ One major finding since the passage of the initial Runaway Youth Act in 1974 which the profile presents is that 45.2 percent of the youth in the national distribution were runaways in the legal-administrative definition of the term, 19.3 percent were youth involved in non-runaway crises, 15.5 percent were cases where youth and parents had mutually agreed to separate and the remaining cases were in the potential runaway or other categories. Females made up 59.7 percent of the population served, 40.6 percent were boys. The age range was from 4 to 20 years of age with the critical range 10-18 years. Eighty percent of the youth served were in this 10-18 age range with modal age being 16 years. As to racial-ethnic distributions, 74 percent of the youth served were white, 15.5 percent were black, not of Hispanic origin; 6 percent were Hispanic; with the remainder American Indian, Asian or unknown. Youth living with the parents or legal guardian before the runaway episode made up 82.4 percent of the population served; 4.1 percent were living in foster homes; the remainder with relatives, friends or unknown. In terms of school status before the runaway episode, 60.1 percent were attending school; 17.3 percent were drop outs; 10.5 percent were listed as truant; while the

remainder were graduated or graduated of the profile services by run of the runaways. The remainder were too truancy was 1 percent felt them emotion had been parent; 7.7 percent preceded by the parents. were peer pr school grades

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remainder were shown as expelled, suspended or graduated. A final but important segment of the profile disclosed the reasons for seeking services by runaway youth. Eighteen percent of the runaway youth reported that their parents were too strict; 9.6 percent reported that truancy was the cause for seeking services; 9.8 percent felt that their parents had neglected them emotionally; 7.9 percent stated that they had been pushed out of their homes by the parent; 7.7 percent felt that the runaway was preceded by an inability to communicate with the parents. Among the remaining causes were peer problems, parental conflicts, bad school grades and youth emotional problems.

Future Directions for National Program

With the change in administrations in Washington, a number of scenarios developed with regard to youth services administered by federal executive branch agencies. No definitive reorganization of these services has been announced but the various transition teams created by President Reagan have reviewed a wide range of human service programs. In his budget message to Congress, the secretary of HHS proposed the consolidation into one block grant of 12 social service programs, including runaway and homeless youth. The secretary also supported continued support for the National Program for Runaway and Homeless Youth Act at the \$10 million level for fiscal year 1982.

In its future planning for the National Program the Youth Development Bureau has established the following goals:

1. consolidation of the gains made to date by the runaway and homeless youth centers in further improving their services. This includes creating more effective systems of case and class advocacy for runaway and homeless youth; and the development of networks and coalitions for maximum coordination of effort at federal, state and local-private sector levels.
2. administration of the reauthorized Runaway and Homeless Youth Act until 1984 on the basis of Congressional and HHS goals. Regional and state jurisdiction will play a more prominent role in the process of administering the program.
3. development of a national policy for youth development. In this connection the Bureau is playing an active role in the planning of national, state-local and private sector conferences, seminars and workshops which deal with runaway and homeless youth.
4. the bureau will concentrate in the years ahead on the further diversification of services provided by the centers for runaway and homeless youth. Emphasis on family factors and processes, and the development of a more effective national system of aftercare services for runaway and homeless youth, will be integral parts of this endeavor.
5. the Bureau will continue to actively support the Federal Coordinating Council on Juvenile Justice and Delinquency Prevention under the chairmanship of the attorney general. It will intensify its efforts to achieve more effective interagency and intragovernmental collaboration at the federal level in areas such as substance abuse, youth employment, adolescent abuse and teen pregnancy. It will seek more active working relationships with federal agencies such as the departments of Justice, Labor and Education in the efforts being made to maximize federal resources available for youth programs.
6. within the funds available the Bureau will continue to fund service demonstration projects in the areas of adolescent health, family dysfunction, pregnancy, youth employment and substance abuse. It will continue to conduct studies of youth needs within HHS and will endeavor to develop a more comprehensive approach to the delivery of services to vulnerable youth and their families.
7. in its technical assistance and training initiatives for Title III grantees the Bureau will stress the development, at the program level, of maximum capability for service delivery, the accessing of non-federal funding sources and the further managerial improvements in the operation of these centers. An annual Youth Service Institute was planned in 1981 for selected Title III and federal agency staff with the

- emphasis on skills building and problem-solving training.
8. the Bureau will continue to fund a National Toll-Free Communication System to serve runaway and homeless youth and their families. Some expansion of this system is planned with one objective being a more efficient operation and wider geographic coverage of the nation.
 9. a primary objective for the 1980s is the continuation of the effort to further develop positive roles for youth at all levels of the program. A specific publication titled *Youth as a Resource* was made available in the summer of 1981.

The Legal Status of Adolescents⁸

In late 1980 HHS published a 500-page compendium and discussion of the laws and court decisions affecting minors titled *The Legal Status of Adolescents*. It is an updated and expansion of a 1975 publication *The Legal Status of Runaway Youth*, which members of the National Council of Juvenile Court Judges and a wide range of juvenile justice and youth-serving agencies and officials found extremely useful.

This document contains summary tables of laws affecting minors in each state with regard to emancipation, employment, hitchhiking, medical consent, truancy and other legal considerations which are important to juvenile and family courts, attorneys, youth agency officials, parents and guardians as well as the runaway and homeless youth themselves. *The Legal Status of Adolescents* was prepared for HHS under a contract with the Scientific Analysis Corp. of San Francisco and the Regional Institute of Social Welfare, Athens, Ga. This report clearly shows that the legal rights of juveniles are defined differently in different states and that the recognized capabilities of youth to make important legal decisions also varies considerably from state to state.

Until recently, the report notes, the law treated childhood as "an homogenous state," making no distinction between the capacities of younger and older children. According to the report, progress with respect to the rights of young people has frequently come through

the courts. The authors point to a series of court decisions in the past 10 years that have affirmed the Constitutional rights of children and carved out areas in which they can make decisions on their own. Among the Supreme Court cases cited are *In re Gault*, *Carey v. Population Services Int'l* and *Bellotti v. Baird* which concern, respectively, due process protection for juveniles in court proceedings, availability of contraceptives to minors and the right of a minor to have an abortion without her parents' consent.

In expanding children's rights, the report says state legislatures have often responded to court decisions or to mandates in federal legislation, such as the requirement in the child abuse and neglect law that an abused or neglected child be assigned a *guardian ad litem* to represent his interests in court.

Legislatures, the report says, have been slow in some areas to initiate changes to reflect "the progressively developing capacity of minors." In some states, changes have occurred largely in areas of high public health concern — venereal disease, pregnancy, drug abuse — areas in which the report says "the community benefits from having the child free to seek help on his own.

"As a society, we pay lip service to the idea that children are growing up faster than ever," the report says, but state legislatures and the federal government "have been reluctant to match that observation with statutory changes.

"A more worthwhile world for adolescents," the report concludes, "means more equity for them as a group vis a vis other age groups and at the same time more special recognition of their needs as a group facing the challenge of leaving childhood and becoming adults."

Author's addresses:

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National Rifle Association
(Former Counsel, Senate Committee of the
Judiciary, subcommittee on the Constitution)

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¹Opinion Research Corp., *Comprehensive National Statistical Survey* (Washington, D.C.: U.S. Department of Health, Education and Welfare, 1970).

²*The Runaway Youth Act*, Title III, P.L. 93-415 (Washington, D.C.: U.S. Department of Health, Education and Welfare).

³*Juvenile Justice Amendments of 1980*, Title III-Runaway and Homeless Youth Act, P.L. 96-509 (Washington, D.C.: U.S. Department of Health and Human Services).

⁴*Fiscal Year 1980-Annual Report to Congress-Runaway Youth* (Washington, D.C.: U.S. Department of Health and Human Services).

⁵*Executive Summary*, National Evaluation of the Runaway Youth Act (Washington, D.C.: U.S. Department of Health and Human Services, 1979).

⁶*Annual Report to Congress*.

⁷*Ibid.*

⁸*The Legal Status of Adolescents* (Washington, D.C.: Office of the Secretary, U.S. Department of Health and Human Services, 1979).

Revision Date: _____

REQUEST
 Bill/Resolution No.: HB 631
 Title: "An act relating to runaway children."
 Sponsor: Representative Liska
 Requestor: House HESS
 Date of Request: 3/19/84

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

Prepared By: Francis C. Allan G.C.A. Phone: 269-5691
 Division: Alaska State Troopers MCK Date: 03/12/84
 Approved by Commissioner: Robert J. Sundberg Date: 3/20/84
 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

HB

647

Alaska State Legislature

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VICE-CHAIRMAN
Judiciary
Legislative Regulations Review

MEMBER
Resources
Rules
Finance — Sub. Com. Labor

Rep. . sentative Jonn J. Liska

April 11, 1984

MEMORANDUM

FROM: Rep. John J. Liska

REFERENCE: HB 647, "An act relating to the possession of concealed weapons."

The purpose of HB 647 is to give the citizens of Alaska a method to apply for a permit to carry a concealed weapon.

Presently, Alaska Statutes permit only Police Officers to carry concealed weapons. There may be instances when a citizen would be justified in carrying a concealed weapon.

I feel this is an issue which needs to be addressed and HB 647 is a vehicle for that discussion.

Anchorage has the highest rape rate of any city - Nation wide. More criminals are incarcerated in Alaska per population than any other state. The fact that the police do not have to protect the individual, as shown in Warren vs. District of Columbia.

The above are just some of the facts that should be considered while discussing this bill.

Enclosed is the following:

- A. Alaska Statutes 11.61.200 and 18.67.162
- B. Model Concealed Weapons legislation.
- C. Warren vs Dist. of Columbia. Police not required to protect individual citizen.
- D. Oregon Statute 166.240 carrying of Concealed Weapons
- E. Utah - carrying Concealed Weapons
- F. Washing ton - 9.41.050 carrying pistol

HB 647 cont.
April 11, 1984
Page two

- G. House Research Information - 33 states allow citizens to carry concealed weapons in some circumstances.
- H. Letter from office of District Attorney Las Vegas, Nevada.
Population 463,087/Permits issued 639
.0013% of their population received permits
- I. Letters regarding body guard from Commissioner Sundberg and Mr. Berrier.
- J. Letters of support in Rep. Liska's File.

JJL/tm

§ 18.67.162

HEALTH AND SAFETY

§ 18.80.050

Effect of amendments. — The 1983 amendment, in subsection (a), added the paragraph (1) and (2) designations, added paragraph (3), and made minor word changes. In subsection (b), the amendment

repealed paragraphs (1) and (2) and inserted "by the offender while intoxicated or" in paragraph (4). In subsection (c), the amendment deleted the former last sentence and made a minor word change.

Sec. 18.67.162. Crime victim compensation fund. There is created a crime victim compensation fund which shall be administered by the Violent Crimes Compensation Board. The fund consists of money appropriated to it by the legislature. The fund shall be administered in accordance with the provisions of this chapter. Money distributed from the fund shall be in addition to other sources of compensation provided in this chapter. (§ 7 ch 96 SLA 1983)

New Section 18.67.010

Chapter 80. State Commission for Human Rights.

Article

1. Creation and Organization of Commission (§ 18.80.060)

NOTES TO DECISIONS

Alaska's civil rights statute should be broadly construed to further the goal of eradication of discrimination. Alaska

USA Fed. Credit Union v. Fridrikson, Sup. Ct. Op. No. 2478 (File No. 5230), 642 P.2d 804 (1982).

Article 1. Creation and Organization of Commission.

Section

60. Powers and duties of the commission

Sec. 18.80.010. Creation.

NOTES TO DECISIONS

Cited in *McDaniel v. Cory*, Sup. Ct. Op. No. 2383 (File Nos. 4793, 4794), 631 P.2d 82 (1981).

Sec. 18.80.070. Regulations.

NOTES TO DECISIONS

Quoted in *Borkowski v. State*, Sup. Ct. Op. No. 2688 (File No. 6541), P.2d (1983).

(b) It is an affirmative defense to a prosecution under (a),
section that

(1) the defendant took reasonable steps to remove the
from the highway; and

(2) no person suffered physical injury as a result of the presence
the substance on the highway.

(c) Obstruction of highways is a class B misdemeanor. (§ 7 of
SLA 1978)

Collateral references. -- 39 Am. Jur.
2d, Highways, Streets and Bridges,
§§ 281-310.

39A C.J.S., Highways, §§ 217-231.

Article 2. Weapons and Explosives.

Section	Section
200. Misconduct involving weapons in the first degree	230. Possession of burglary tools
210. Misconduct involving weapons in the second degree	240. Criminal possession of explosives
220. Misconduct involving weapons in the third degree	250. Unlawful furnishing of explosives

Collateral references. -- Validity and
construction of gun control laws, 28
ALR3d 845.

Sec. 11.61.200. Misconduct involving weapons in the first degree. (a) A person commits the crime of misconduct involving weapons in the first degree if the person

(1) knowingly possesses a firearm capable of being concealed on one's person after having been convicted of a felony by a court of this state, a court of the United States, or a court of another state or territory;

(2) knowingly sells or transfers a firearm capable of being concealed on one's person to a person who has been convicted of a felony by a court of this state, a court of the United States, or a court of another state or territory;

(3) manufactures, possesses, transports, sells, or transfers a prohibited weapon;

(4) knowingly sells or transfers a firearm to another whose physical or mental condition is substantially impaired as a result of the introduction of an intoxicating liquor or drug into that other person's body;

(5) removes, covers, alters, or destroys the manufacturer's serial number on a firearm with intent to render the firearm untraceable; or

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(6) possesses a firearm on which the manufacturer's serial number has been removed, covered, altered, or destroyed, knowing that the serial number has been removed, covered, altered, or destroyed with the intent of rendering the firearm untraceable.

(b) It is an affirmative defense to a prosecution under (a)(1) or (2) of this section that

(1) the person convicted of the prior offense on which the action is based received a pardon for that conviction;

(2) the underlying conviction upon which the action is based has been set aside under AS 12.55.085 or as a result of post-conviction proceedings; or

(3) a period of five years or more has elapsed between the date of the person's unconditional discharge on the prior offense and the date of the possession, sale, or transfer of the firearm.

(c) It is an affirmative defense to a prosecution under (a)(3) of this section that the manufacture, possession, transportation, sale, or transfer of the prohibited weapon was in accordance with registration under 26 U.S.C. 5801-5872 (National Firearms Act).

(d) The provisions of (a)(3) of this section do not apply to a peace officer acting within the scope and authority of the officer's employment.

(e) As used in this section,

(1) "prohibited weapon" means any

(A) explosive, incendiary, or noxious gas

(i) mine or device that is designed, made, or adapted for the purpose of inflicting serious physical injury or death;

(ii) rocket, other than an emergency flare, having a propellant charge of more than four ounces;

(iii) bomb;

(iv) grenade;

(B) device designed, made, or adapted to muffle the report of a firearm;

(C) metal knuckles;

(D) switchblade or gravity knife;

(E) firearm that is capable of shooting more than one shot automatically, without manual reloading, by a single function of the trigger; or

(F) rifle with a barrel length of less than 16 inches, shotgun with a barrel length of less than 18 inches, or firearm made from a rifle or shotgun which, as modified, has an overall length of less than 26 inches;

(2) "unconditional discharge" has the meaning ascribed to it in AS 12.55.185.

(f) Misconduct involving weapons in the first degree is a class C felony. (§ 7 ch 166 SLA 1978)

Title 12
Code of Criminal
Procedure

Title 13
Decedent's Estates
Guardianships and Trusts

Title 11
Criminal Law

Editor's notes. — The cases cited in the notes below were found in the following AS 11.35.010 and 11.35.010.

Constitutionality of former statute prohibiting possession by a convict. — See *United States v. Farwell*, 11 Alaska 507, 76 F. Supp. 35 (D. Alaska 1948).

Legislative intent. — The purpose of the felon in possession statute was to prevent the concealment and use of firearms in violent crime. *Davis v. State*, Sup. Ct. Op. No. 816 (File Nos. 1428, 1436), 499 P.2d 1025 (1972), cert. granted, 410 U.S. 925, 93 S. Ct. 1392, 35 L. Ed. 2d 586 (1973), rev'd on other grounds, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

Former section included crime committed in another state. — See *United States v. Farwell*, 11 Alaska 507, 76 F. Supp. 35 (D. Alaska 1948).

The term "concealed" means that the weapon is not discernible through ordinary observation by persons coming into proximity with the person carrying it, as persons do in the ordinary and usual associations of life. *McKee v. State*, Sup. Ct. Op. No. 721 (File No. 1273), 488 P.2d 1039 (1971).

A weapon is concealed if it is hidden from ordinary observation. It need not be absolutely invisible to other persons. *McKee v. State*, Sup. Ct. Op. No. 721 (File No. 1273), 488 P.2d 1039 (1971).

Actual possession was not required under former statute. — See *Davis v. State*, Sup. Ct. Op. No. 816 (File Nos. 1428, 1436), 499 P.2d 1025 (1972), cert. granted, 410 U.S. 925, 93 S. Ct. 1392, 35 L. Ed. 2d 586 (1973), rev'd on other grounds, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974); *Gordon v. State*, Sup. Ct. Op. No. 1126 (File No. 2204), 533 P.2d 25 (1975).

A revolver need not be fully assembled or immediately capable of firing in order to qualify as a weapon. *Davis v. State*, Sup. Ct. Op. No. 816 (File Nos. 1428, 1436), 499 P.2d 1025 (1972), cert. granted, 410 U.S. 925, 93 S. Ct. 1392, 35 L. Ed. 2d 586 (1973), rev'd on other

grounds, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

And it is immaterial whether the gun is loaded and ready for immediate use. — See *Davis v. State*, Sup. Ct. Op. No. 816 (File Nos. 1428, 1436), 499 P.2d 1025 (1972), cert. granted, 410 U.S. 925, 93 S. Ct. 1392, 35 L. Ed. 2d 586 (1973), rev'd on other grounds, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

Furnishing ammunition included under former statute. — See *In re Robson*, Sup. Ct. Op. No. 1573 (File No. 3448), 575 P.2d 771 (1978).

It was necessary to show a prior conviction in order to prove one essential element of the crime of possession of a firearm by a person previously convicted of a felony. *Mead v. State*, Sup. Ct. Op. No. 502 (File No. 804), 445 P.2d 229 (1968), cert. denied, 396 U.S. 855, 90 S. Ct. 117, 24 L. Ed. 2d 104 (1969).

Conviction may be based on circumstantial evidence. — Conviction of "felony in possession" may be based on circumstantial evidence of possession. *Davis v. State*, Sup. Ct. Op. No. 816 (File Nos. 1428, 1436), 499 P.2d 1025 (1972), cert. granted, 410 U.S. 925, 93 S. Ct. 1392, 35 L. Ed. 2d 586 (1973), rev'd on other grounds, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

It was error to refuse to give an instruction defining the term "concealed." *McKee v. State*, Sup. Ct. Op. No. 721 (File No. 1273), 488 P.2d 1039 (1971).

Sentence for possession by convict upheld. — See *Deveroux v. State*, Sup. Ct. Op. No. 1259 (File No. 2636), 548 P.2d 1296 (1976); *Ozenna v. State*, Sup. Ct. Op. No. 2209 (File No. 4748), 619 P.2d 477 (1980).

Applied in *McManners v. State*, Ct. App. Op. No. 123 (File No. 6065), 650 P.2d 414 (1982); *Fry v. State*, Ct. App. Op. No. 197 (File No. 6810), 655 P.2d 789 (1983).

Cited in *Kampe v. State*, Sup. Ct. Op. No. 2242 (File No. 4993), 620 P.2d 678 (1980); *Bell v. State*, Ct. App. Op. No. 216 (File No. 6707), 657 P.2d 787 (1983).

Collateral references. — 79 Am. Jur. 2d, Weapons and Firearms, §§ 7-34.
94 C.J.S., Weapons, §§ 3-23.

Sec. 11.61.210. Misconduct involving weapons in the second degree. (a) A person commits the crime of misconduct involving weapons in the second degree if the person

(1) possesses on the person a firearm while under the influence of an intoxicating liquor or drug;

(2) discharges a firearm from, on, or across a highway; or

(3) discharges a firearm with reckless disregard for a risk of damage to property or a risk of physical injury to a person.

(b) For purposes of (a)(1) of this section, a person is under the influence of an intoxicating liquor or drug when, as a result of the introduction of an intoxicating liquor or drug into the person's body, physical or mental abilities are impaired so that the person no longer has the ability to possess a firearm with the caution characteristic of a sober person of ordinary prudence under the same or similar circumstances.

(c) Misconduct involving weapons in the second degree is a class A misdemeanor. (S 7 ch 166 SLA 1978; am §§ 21, 22 ch 102 SLA 1980)

Revisor's notes. — Subsection (b) of this section was adopted in ch. 102, SLA 1980, as subsection (c). However, the subsections have been rearranged to conform with the format of AS 11 as revised in 1978.

Effect of amendments. — The 1980 amendment rewrote paragraph (1) of sub-

section (a), and added present subsection (b).

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 29, 1980.

NOTES TO DECISIONS

Separate punishment where defendant fired at cabin and truck. — Separate punishment upon conviction of two counts of misconduct involving weapons in the second degree, and two counts of criminal mischief in the third degree, where evidence established that defendant fired a rifle at a cabin and a pickup truck did not violate the double jeopardy provisions of this section since there were different and significant differences between the intent in the two crimes. *State v. Smith*, Ct. App. Op. No. 103 (1980), P.2d 419-20. For cases construing former statute

prohibiting careless use of firearms, see *Giles v. United States*, 10 Alaska 455, 144 F.2d 800 (9th Cir. 1944); *Burke v. United States*, 242 F.2d 761 (9th Cir. 1956).

For case construing former statute prohibiting furnishing, pointing or discharging firearm in a public place, see *Wooch v. State*, Sup. Ct. Op. No. 1108 (File No. 2466), 530 P.2d 751 (1975).

Quoted in *Zinn v. State*, Ct. App. Op. No. 189 (File No. 6210), 656 P.2d 1200 (1983).

Cited in *Dyer v. State*, Ct. App. Op. No. 268 (File No. 6133), P.2d 1196 (1984).

Collateral references. — Use of the word "without intent to inflict injury," S 7 ch 166 SLA 1978; 23 ALR 1554.

Death from discharge of firearms, 55 ALR 924.

Sec. 11.61.220. Misconduct involving weapons in the third degree. (a) A person commits the crime of misconduct involving weapons in the third degree if the person

Title 12
Code of Criminal
Procedure

CRIMINAL LAW

(1) lawfully possesses a deadly weapon, other than an ordinary pocket knife, that is concealed on the person;

(2) lawfully possesses a loaded firearm on the person in any place where possessing liquor is sold for consumption on the premises;

(3) being an emancipated minor under 16 years of age, possessing a firearm without the consent of a parent or guardian of the minor.

(b) In a prosecution under (a)(1) of this section, it is an affirmative defense that the defendant, at the time of possession, was

(1) in the defendant's dwelling or on land owned or leased by the defendant appurtenant to the dwelling; or

(2) actually engaged in lawful hunting, fishing, trapping, or other lawful outdoor activity that necessarily involves the carrying of a weapon for personal protection.

* (c) The provisions of (a)(1) and (2) of this section do not apply to a peace officer acting within the scope and authority of the officer's employment.

(d) In a prosecution under (a)(2) of this section, it is a defense that the defendant, at the time of possession, was

(1) on business premises owned by or leased by the defendant; or

(2) on business premises in the course of the defendant's employment for the owner or lessee of those premises.

(e) For purposes of this section, a deadly weapon on a person is concealed if it is covered or enclosed in any manner so that an observer cannot determine that it is a weapon without removing it from that which covers or encloses it or without opening, lifting, or removing that which covers or encloses it.

(f) For purposes of (a)(2) of this section, a firearm is loaded if the firing chamber, magazine, clip, or cylinder of the firearm contains a cartridge.

(g) Misconduct involving weapons in the third degree is a class B misdemeanor. (§ 7 ch 166 SLA 1978; am § 23 ch 102 SLA 1980)

Effect of amendments. — The 1980 amendment substituted "land owned or leased by him" for "property" preceding "appurtenant to" near the middle of paragraph (1) of subsection (b).

Legislative history reports. — For revision of 1978 legislative committee report on AS 11 61 220, see 1979 House Journal, pp. 632 -- 633. 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 29, 1980.

Opinions of attorney general. — Because AS 11 55 020 now this section excepts only "peace officers" from the general prohibition against carrying concealed weapons, other persons, including state employees charged with limited law

enforcement duties unless a peace officer within the meaning of AS 01 10 060(6), may not carry concealed weapons. December 22, 1977, Op. Att'y Gen.

A comparison of the language of AS 18 05 01(6), which describes the general powers and duties of a specially commissioned officer, with that of AS 18 05 01(8), which describes the powers and duties of commissioned officers of the Department of Public Safety with particular reference to "member" of the state troopers, supports the conclusion that a specially commissioned officer is a "peace officer" for purposes of both AS 01 10 060(6) and AS 11 55 020 (now this section) when performing law enforcement duties within the limitations set forth on the face of a special commission and fur-

Furthermore, may carry concealed weapons without violating AS 11.55.010 (now this section) while performing these duties to

the extent permitted by the commission itself. December 22, 1977, Op. Att'y Gen.

NOTES TO DECISIONS

Ordinance prohibiting concealment of weapons in automobiles not prohibited. — This section does not imply a legislative intent to create a privilege to conceal a weapon in an automobile, nor does it implicitly require state-wide uniformity of weapons regulations; thus, municipal ordinance interpreted as forbidding concealing of weapons in auto-

mobiles was not prohibited by this section. City of Anchorage v. Richards, Ct. App. Op. No. 173 (File Nos. 6387, 6459, 6504, 6540), 654 P.2d 797 (1982).

Sentence for carrying a concealed weapon upheld. — See Orena v. State, Sup. Ct. Op. No. 2209 (File No. 4748), 619 P.2d 477 (1980) (decided under former AS 11.55.010).

Collateral references. — Offense of carrying weapon on person as affected by case where defendant was at the time, 73 ALR 599.

Scope and effect of exception, in statute forbidding carrying of weapons, as to person on his own premises or at his place of business, 57 ALR2d 938.

Offense of carrying concealed weapon as affected by manner of carrying or place of concealment, 43 ALR2d 492.

Sec. 11.61.230. Possession of burglary tools. (a) A person commits the crime of possession of burglary tools if the person possesses a burglary tool with intent to use or permit use of the tool in the commission of

- (1) burglary in any degree;
- (2) a crime referred to in AS 11.46.130(a)(3); or
- (3) theft of services.

(b) As used in this section, "burglary tools" means

- (1) nitroglycerine, dynamite, or any other tool, instrument, or device adapted or designed for use in committing a crime referred to in (a)(1)-(3) of this section; or
- (2) any acetylene torch, electric arc, burning bar, thermal lance, oxygen lance, or other similar device capable of burning through steel, concrete, or other solid material.

(c) Possession of burglary tools in a class A misdemeanor. (§ 7 ch 106 sl.A 1978)

Collateral references. — 13 Am. Jur. 2d, Burglary, § 74-77; 13 C.J.S., Burglary, § 43-45.

Validity, construction and application of statutes relating to burglary tools, 33 ALR2d 708.

Sec. 11.61.240. Criminal possession of explosives. (a) A person commits the crime of criminal possession of explosives if the person possesses or manufactures an explosive substance or device and intends to use that substance or device to commit a crime.

Title 12
Code of Criminal
Procedure

Title 15
Deceit, Embezzlement,
Guardianship and Trusts

(STATE CARRYING FIREARM PERMIT STATUTE)

STATE OF (MONTANA) *0112/84*

MAR 27 1984

101.01 (a)

Upon the filing of an application pursuant to Section 101.01 (b), a permit to carry a concealed weapon shall be issued by the chief law enforcement officer of the applicant's place of residence unless the applicant:

1. has had a judgement of conviction entered, by a court of Montana, another state or of the United States, against him for: murder, non-negligent manslaughter, forcible rape or sodomy, mayhem, kidnapping, robbery, burglary, aggravated assault, arson, or attempt to conspiracy to commit such a crime; and the applicant has not been pardoned for such conviction or had his civil rights restored or such conviction has not been expunged or set aside;
2. is a fugitive from justice;
3. has been adjudicated, by a court of Montana, another state or the United States, an alcoholic, unless such adjudication has been withdrawn or reversed;
4. is an unlawful user of narcotics;
5. has been adjudicated, by a court of Montana, another state or the United States, a mental defective, unless such adjudication has been withdrawn or reversed;
6. is committed to any mental institution;
7. has renounced his United States citizenship and his United States citizenship has not been restored;
8. is an alien illegally in the United States;
9. is under 21 years of age;
10. has, within the past three years, been convicted of a violation of Section 101.04 or 101.05; or

11. is otherwise prohibited by law from transporting, receiving, or possessing such a weapon.

101.01 (b)

An application shall be made in writing on a form provided by the chief law enforcement officer. Such form shall include only the applicant's name, address, height, weight, race, color of hair, color of eyes, date of birth, and a certification, signed by the applicant, that he is not disabled from receiving a permit pursuant to Section 101.01(a).

101.01 (c)

Permits shall be issued or denied in writing within 45 days of the date the application is received by the chief law enforcement officer. If the chief law enforcement officer fails to issue or deny the permit within 45 days, the applicant may file a petition for a writ of mandamus in the (trial court) of the (county or city) in which he resides to compel the chief law enforcement officer to issue the permit. If the court mandates the chief law enforcement officer to issue the permit, it shall award attorney's fees and costs to the applicant. If the permit is denied, the chief law enforcement officer shall state, in writing, the specific reason(s) for the denial.

101.02

In the event of a denial or revocation, the applicant may, within 60 days of the date of denial or revocation is received by the applicant, file a petition for judicial review in the (trial court) which shall make a de novo determination whether the applicant is disabled, pursuant to section 101.01(a), from being issued a permit, and may consider evidence presented by either party whether to not considered by the chief law enforcement officer. If the court mandates the chief law enforcement officer to issue the permit, it shall award attorney's fees and costs to the applicant.

101.03 A permit shall be valid throughout the state and shall be valid until revoked pursuant to Section 101.04.

101.04 If, subsequent to the issuance of the permit, a permit holder should become disabled from being issued a permit pursuant to the provisions of Section 101.01(a), the chief law enforcement officer shall, after notifying the permit holder in writing of such disability, revoke the permit. The permit holder may seek judicial review of such a revocation pursuant to the provisions of Section 101.02.

101.05 Carrying a faked, altered, or revoked permit, or a permit belonging to another, shall be punishable as a misdemeanor.

106.06 Knowingly and willfully providing false information on an application filed pursuant to Section 101.01(b) shall be punishable as a misdemeanor. Upon conviction, if a decision on the application is pending, the application shall be denied; if the permit has been issued, it shall immediately be revoked.



NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
1600 Rhode Island Avenue, N.W.
WASHINGTON, D.C. 20036

OFFICE OF THE
GENERAL COUNSEL

M E M O R A N D U M

TO: Louis Brune
FROM: Bob Dowlut *BD*
DATE: March 12, 1984
RE: Alaska House Bill 557

The bill would allow a court to "order the forfeiture to the state of any deadly weapon possessed or used by the defendant during the commission of the offense."

The use of the term "or" means that a weapon may be forfeited under two separate sets of circumstances:

1. The deadly weapon was used by the defendant during the commission of the offense.
2. The deadly weapon was possessed by the defendant during the commission of the offense.

The conduct sought to be proscribed in the first set of circumstances is typically proscribed in forfeiture statutes. It focuses on the misuse of a firearm.

The conduct targeted in the second set of circumstances need not involve the misuse of a firearm. For example, a firearm could be forfeited if it was possessed by the defendant during the commission of a traffic offense. To remedy this potential problem, I recommend the following language:

(9) order the forfeiture to the state of any
deadly weapon (A) used by the defendant during

the commission of the offense or (B) any deadly
possessed by the defendant during the commission
of arson, burglary, robbery, manslaughter, mur-
der, kidnapping, rape, attempted rape, assault
with intent to commit a felony, riot, jail break,
or unlawful delivery or sale of a controlled
substance; as used in this paragraph, "deadly
weapon" means a deadly weapon as defined in
AS 11. 81. 900.

law existing at the time of the commission of the offense in the same manner as if this Act had not become law."

Sec. 12.55.005. Declaration of purpose. The purpose of this chapter is to provide the means for determining the appropriate sentence to be imposed upon conviction of an offense. The legislature finds that the elimination of unjustified disparity in sentences and the attainment of reasonable uniformity in sentences can best be achieved through a sentencing framework fixed by statute as provided in this chapter. In imposing sentence, the court shall consider

- (1) the seriousness of the defendant's present offense in relation to other offenses;
- (2) the prior criminal history of the defendant and the likelihood of his rehabilitation;
- (3) the need to confine the defendant to prevent further harm to the public;
- (4) the circumstances of the offense and the extent to which the offense harmed the victim or endangered the public safety or order;
- (5) the effect of the sentence to be imposed in deterring the defendant or other members of society from future criminal conduct; and
- (6) the effect of the sentence to be imposed as a community condemnation of the criminal act and as a reaffirmation of societal norms. (§ 12 ch 166 SLA 1978)

Cross reference. — For discussion of sentencing goals, see note to AS 12.55.120. report on ch. 106, SLA 1978 (HR 661), see 1978 Senate Journal Supplement No. 47 (June 12, 1978).
Legislative history report. — For

Sec. 12.55.010. Imprisonment on judgment for payment of fine.

Repealed by § 21 ch 166 SLA 1978.

Cross references. — As to fines, see AS 12.55.035. As to enforcement of fines, see AS 12.55.051. Editor's note. — The repealed section derived from § 8.01, ch. 34, SLA 1962.

Sec. 12.55.015. Authorized sentences. (a) Except as limited by AS 12.55.125 — 12.55.175, the court, in imposing sentence on a defendant convicted of an offense, may singly or in combination

- (1) impose a fine when authorized by law and as provided in AS 12.55.035;
- (2) order the defendant to be placed on probation under conditions specified by the court which may include provision for active supervision;

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 (4) impose
 (5) order
 12.55.045;
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 SLA 1980)

Effect of a
 amendment re
 subsection (b).
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 Legislative
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 (May 29, 1980).
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Sec. 12.55.
Repealed

- (3) impose a definite term of periodic imprisonment;
- (4) impose a definite term of continuous imprisonment;
- (5) order the defendant to make restitution as provided in AS 12.55.045;
- (6) order the defendant to carry out a continuous or periodic program of community work as provided in AS 12.55.055;
- (7) suspend execution of all or a portion of the sentence imposed as provided in AS 12.55.080;
- (8) suspend imposition of sentence as provided in AS 12.55.085.

(b) The court, in exercising sentencing discretion as provided in this chapter, shall impose a sentence involving imprisonment when

- (1) the defendant deserves to be imprisoned, considering the seriousness of his present offense and his prior criminal history, and imprisonment is equitable considering sentences imposed for other offenses and other defendants under similar circumstances;
- (2) imprisonment is necessary to protect the public from further harm by the defendant; or
- (3) sentences of lesser severity have been repeatedly imposed for substantially similar offenses in the past and have proven ineffective in deterring the defendant from further criminal conduct.

(c) ~~In addition to the penalties authorized by this section, the court may invoke any authority conferred by law to order a forfeiture of property, suspend or revoke a license, remove a person from office, or, impose any other civil penalty.~~ (§ 12 ch 166 SLA 1978; am § 37, ch 102 SLA 1980)

< already in state law!

Effect of amendment. — The 1950 amendment rewrote paragraph (3) of subsection (b).

Editor's note. — The cases cited in the note below were decided under former AS 11.05.140.

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

There is no authority which would sanction the expansion of the superior court's jurisdiction to pass sentence into a realm of review and modification which is statutorily vested in either the supreme court or the executive branch of government. Therefore, the superior court lacks jurisdiction to review its own sentence, after it has entered a judgment

on that matter, more than 60 days after it has imposed sentence. *Davenport v. State*, Sup. Ct. Op. No. 1218 (File No. 2202), 543 P.2d 1204 (1975); *Szeratics v. State*, Sup. Ct. Op. No. 1525 (File No. 3390), 572 P.2d 63 (1977).

Test to be used in determining whether multiple offenses can be punished separately. — See *State v. Occhipinti*, Sup. Ct. Op. No. 1405 (File No. 3084), 562 P.2d 348 (1977).

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. 1405 (File No. 3084), 562 P.2d 348 (1977).

Sec. 12.55.020. Enforcing judgment to pay money.

Repealed by § 21 ch 166 SLA 1978.

(10) "culpable mental state" means "intentionally", "knowingly", "recklessly", or with "criminal negligence", as those terms are defined in (a) of this section;

(11) "dangerous instrument" means any deadly weapon or anything which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is capable of causing death or serious physical injury;

(12) "deadly force" means force which the person uses with the intent of causing, or uses under circumstances which he knows create a substantial risk of causing, death or serious physical injury; "deadly force" includes intentionally discharging or pointing a firearm in the direction of another person or in the direction in which another person is believed to be and intentionally placing another person in fear of imminent serious physical injury by means of a dangerous instrument;

(13) "deadly weapon" means any firearm, or anything designed for and capable of causing death or serious physical injury, including a knife, an axe, a club, metal knuckles, or an explosive;

(14) "deception" means to knowingly

(A) create or confirm another's false impression which the defendant does not believe to be true, including false impressions as to law or value and false impressions as to intention or other state of mind;

(B) fail to correct another's false impression which the defendant previously has created or confirmed;

(C) prevent another from acquiring information pertinent to the disposition of the property or service involved;

(D) sell or otherwise transfer or encumber property and fail to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether or not that impediment is a matter of official record; or

(E) promise performance which the defendant does not intend to perform or knows will not be performed;

(15) "defense", other than an affirmative defense, means that

(A) some evidence must be admitted which places in issue the defense; and

(B) the state then has the burden of disproving the existence of the defense beyond a reasonable doubt;

(16) "drug" has the meaning ascribed to it in AS 11.71.900(9);

(17) "dwelling" means a building that is designed for use or is used as a person's permanent or temporary home or place of lodging;

(18) "explosive" means a chemical compound, mixture, or device that is commonly used or intended for the purpose of producing a chemical reaction resulting in a substantially instantaneous release of gas and heat, including dynamite, blasting powder, nitroglycerin, blasting caps, and nitrojelly, but excluding salable fireworks as defined in AS 18.72.050, black powder, smokeless powder, small arms ammunition, and small arms ammunition primers;

(19) "felon" means a person convicted of a crime for a term of

(20) "fiduciary" means a trustee, receiver, or agent of another person;

(21) "firearm" means a handgun, shotgun, or rifle, or any other device which is capable of discharging a projectile;

(22) "force" means the use of physical force or the threat of force; "force" includes the threat of death or serious physical injury;

(23) "government" means the state of Alaska, a territory, or a political subdivision of a territory; "government" includes a corporation, partnership, or other entity created by a treaty or agreement;

(24) "highway" means a public road, bridge, walk, or other facility used as a public thoroughfare;

(25) "include" means to include, but not to be limited to;

(26) "incapable" means unable to understand the nature and consequences of one's actions;

(27) "intoxicated" means a person whose mental faculties are so impaired by the use of alcohol or any other substance that the person is unable to understand the nature and consequences of one's actions;

(28) "law" means a statute, regulation, or other official rule or policy;

(29) "lease" means a contract for the use of real property for a term of years;

(30) "meta-analysis" means a statistical analysis of the results of multiple studies to determine the overall effect size of a treatment or intervention;

(31) "misconduct" means a failure to perform one's duties in a professional or official capacity;

(32) "nondiscriminatory" means not based on race, sex, or other protected characteristics;

(33) "offense" means a violation of a law or regulation;

(34) "official" means a person who is authorized to perform a public duty or function;

(35) "officially" means in a formal or official capacity;

(36) "omission" means a failure to perform a duty or obligation;



Official Business

Alaska State Legislature

House of Representatives

Representative Mike Szymanski

SR-A-Box 1324B
Anchorage, Alaska 99502
Phone (907) 349-3373

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

February 23, 1984

Lou Brune
NRA-ILA
1600 Rhode Island Avenue, NW
Washington, D.C. 20036

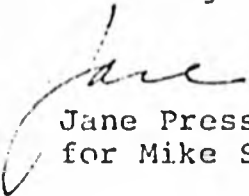
Dear Lou:

Attached is a copy of HB 557, a bill relating to forfeiture of weapons used to commit a crime. Statutes that would be affected by this bill are also attached.

The House Judiciary Committee has no immediate plans for hearing this bill.

I will be sure to let Mike know that you called.

Best Regards,


Jane Press
for Mike Szymanski

P.S. Perhaps you can help me too? A while back Mike had asked me to get the names and addresses of the NRA representatives in Alaska. Could you please provide us with this information?

Thanks.

Carolyn WARREN, et al., Appellants,

v.

DISTRICT OF COLUMBIA, et
al., Appellees.

Wilfred NICHOL, Appellant,

v.

DISTRICT OF COLUMBIA METROPOL-
ITAN POLICE DEPARTMENT, et
al., Appellees.

Nos. 79-6, 79-394.

District of Columbia Court of Appeals.

Argued En Banc April 13, 1981.

Decided Dec. 21, 1981.

Suits against District of Columbia and individual members of metropolitan police department for negligent failure to provide adequate police services were dismissed by the Superior Court, Joseph M. Hannon and William C. Pryor, JJ., and plaintiffs appealed. The Court of Appeals, Nebeker, J., held that: (1) fact that police answered call and arrived outside premises which were scene of burglary and assaults did not give rise to special duty on part of police toward victims therein, and police officers were not answerable in damages for failing to ascertain that assaults were continuing upon victims therein, or for leaving premises without so ascertaining, and (2) where unknown occupants in vehicle which rear-ended another proceeded to beat operator of foremost vehicle, duty of officer arriving on scene was directly related to his official and general duty to investigate offenses, and his directing companion of assault victim to cease efforts to identify assailants, and thus to break off violent confrontation, related solely to his duty to public generally and possessed no additional element necessary to create overriding special relationship and duty to particular persons, and gave rise to no liability.

Affirmed.

Kelly, J., filed opinion concurring in part and dissenting in part in which Mack, J., joined.

Newman, C. J., filed statement concurring in part and dissenting in part.

1. District of Columbia \Leftrightarrow 7

Government and its agents are under no general duty to provide public services, such as police protection, to any particular individual citizen, but, rather, duty to provide public services is owed to public at large, and, absent special relationship between police and individual, no specific legal duty exists.

2. District of Columbia \Leftrightarrow 7

That police answered call and arrived outside premises which were scene of burglary and assaults did not give rise to special duty on part of police toward victims therein, and police officers were not answerable in damages for failing to ascertain that assaults were continuing upon victims therein, or for leaving premises without so ascertaining.

3. District of Columbia \Leftrightarrow 7

Where unknown occupants in vehicle which rear-ended another proceeded to beat operator of foremost vehicle, duty of officer arriving on scene was directly related to his official and general duty to investigate offenses, and his directing companion of assault victim to cease efforts to identify assailants, and thus to break off violent confrontation, related solely to his duty to public generally and possessed no additional element necessary to create overriding special relationship and duty to particular persons, and gave rise to no liability.

Stephen A. Friedman, Washington, D. C., for appellants.

Charles L. Reischel, Deputy Corp. Counsel, with whom Judith W. Rogers, Corp. Counsel, and David P. Sutton, Asst. Corp. Counsel, Washington, D. C., were on the petition, for appellees.

Before NEWMAN, Chief Judge, and KELLY, KERN, NEBEKER, HARRIS, MACK and FERREN, Associate Judges.

POSSESSION AND USE OF FIREARMS

166.180 Negligently wounding another. Any person who, as a result of his failure to use ordinary care under the circumstances, wounds any other person with a bullet or shot from any firearm, or with an arrow from any bow, shall be punished by imprisonment in the county jail for a period not to exceed six months, or by a fine not to exceed \$500, or both. In addition, any person so convicted shall forfeit any license to hunt, obtained under the laws of this state, and shall be ineligible to obtain a license to hunt for a period of 10 years following the date of his conviction. [Formerly 163.310]

Note: 166.180 to 166.340 were enacted into law by the Legislative Assembly but were not added to or made a part of the Oregon Criminal Code of 1971 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

166.190 Pointing firearm at another; courts having jurisdiction over offense. Any person over the age of 12 years who, with or without malice, purposely points or aims any loaded or empty pistol, gun, revolver or other firearm, at or toward any other person within range of the firearm, except in self-defense, shall be fined upon conviction in any sum not less than \$10 nor more than \$500, or be imprisoned in the county jail not less than 10 days nor more than six months, or both. Justices of the peace and district courts have jurisdiction concurrent with the circuit court of the trial of violations of this section. When any person is charged before a justice of the peace with violation of this section, the court shall, upon motion of the district attorney, at any time before trial, act as a committing magistrate, and if probable cause be established, hold such person to the grand jury. [Formerly 163.320]

Note: See note under 166.180.

166.210 Definitions for ORS 166.250 to 166.470. As used in ORS 166.250 to 166.270, 166.280, 166.290 and 166.410 to 166.470:

(1) "Firearm" means a weapon, by whatever name known, which is designed to expel a projectile by the action of black powder or smokeless powder and which is readily capable of use as a weapon.

(2) "Pistol," "revolver" and "firearms capable of being concealed upon the person," apply to and include all firearms having a barrel less than 12 inches in length.

(3) "Machine gun" means a weapon of any description by whatever name known, loaded or unloaded, from which two or more shots may be

fired by a single pressure on the trigger device. [Amended by 1977 c.769 §1; 1979 c.779 §3]

Note: See note under 166.180.

166.220 Attempting to use dangerous weapon; carrying dangerous weapon with intent to use it. (1) Any person who attempts to use, or who with intent to use the same unlawfully against another, carries or possesses a dagger, dirk, dangerous knife, razor, stiletto, or any loaded pistol, revolver or other firearm, or any instrument or weapon of the kind commonly known as a blackjack, slung shot, billy, sandclub, sandbag, metal knuckles, nunchaku sticks, bomb or bombshell, or any other dangerous or deadly weapon or instrument, commits a Class C felony.

(2) The carrying or possession of any of the weapons specified in subsection (1) of this section by any person while committing, or attempting or threatening to commit a felony or a breach of the peace or any act of violence against the person or property of another is presumptive evidence of carrying such weapon with intent to use the same in violation of subsection (1) of this section.

(3) For the purpose of subsection (1) of this section, any knife with a blade longer than three and one-half inches when carried concealed upon the person, is a dangerous weapon. [Amended by 1975 c.700 §1]

Note: See note under 166.180.

166.230 [Repealed by 1979 c.779 §7]

166.240 Carrying of concealed weapons. (1) Except as provided in ORS 166.260; 166.290 and subsection (2) of this section, any person who carries concealed about his person in any manner, any revolver, pistol, or other firearm, any knife, other than an ordinary pocketknife, or any dirk, dagger, slung shot, metal knuckles, or any instrument by the use of which injury could be inflicted upon the person or property of any other person, shall be punished upon conviction by a fine of not less than \$10 nor more than \$200, or by imprisonment in the county jail not less than five days nor more than 100 days, or both.

(2) Nothing in subsection (1) of this section applies to any sheriff, constable, police or other peace officer, whose duty it is to serve process or make arrests. Justices of the peace have concurrent jurisdiction to try any person charged with violating any of the provisions of subsection (1) of this section. [Amended by 1977 c.454 §1]

Note: See note under 166.180.

166.250 Unlawful possession of weapons. (1) Except as otherwise provided in this section, ORS 166.260, 166.270, 166.280, 166.290 or 166.410 to 166.470, any person who possesses or has in his possession any machine gun, or carries concealed upon his person or within any vehicle which is under his control or direction any pistol, revolver or other firearm capable of being concealed upon the person, without having a license to carry such firearm as provided in ORS 166.290, is guilty of a misdemeanor, unless he has been convicted previously of any felony or of any crime made punishable by this section, ORS 166.260, 166.270, 166.280, 166.290 or 166.410 to 166.470, in which case he is guilty of a felony.

(2) This section does not prohibit any citizen of the United States over the age of 18 years who resides in or is temporarily sojourning within this state, and who is not within the excepted classes prescribed by ORS 166.270, from owning, possessing or keeping within his place of residence or place of business any pistol, revolver or other firearm capable of being concealed upon the person, and no permit or license to purchase, own, possess or keep any such firearm at his place of residence or place of business is required of any such citizen.

(3) Firearms carried openly in belt holsters are not concealed within the meaning of this section. [Amended by 1979 c.779 §4]

Note: See note under 166.180.

166.260 Persons not affected by ORS 166.250. ORS 166.250 does not apply to or affect:

(1) Sheriffs, constables, marshals, policemen, whether active or honorably retired, or other duly appointed peace officers.

(2) Any person summoned by any such officer to assist in making arrests or preserving the peace, while said person so summoned is actually engaged in assisting the officer:

(3) The possession or transportation by any merchant of unloaded firearms as merchandise.

(4) Members of the Army, Navy or Marine Corps of the United States, or of the National Guard, when on duty.

(5) Organizations which are by law authorized to purchase or receive weapons described in ORS 166.250 from the United States, or from this state.

(6) Duly authorized military or civil organizations while parading, or the members thereof when going to and from the places of meeting of their organization.

(7) Members of any club or organization, for the purpose of practicing shooting at targets upon the established target ranges, whether public or private, while such members are using any of the firearms referred to in ORS 166.250 upon such target ranges, or while going to and from such ranges.

(8) Licensed hunters or fishermen while engaged in hunting or fishing, or while going to or returning from a hunting or fishing expedition.

(9) A corrections officer while transporting or accompanying an individual convicted of or arrested for an offense and confined in a place of incarceration or detention while outside the confines of the place of incarceration or detention. [Amended by 1977 c.207 §1]

Note: See note under 166.180.

166.270 Certain exconvicts forbidden to possess arms. (1) Any person who has been convicted of a felony under the law of this state or any other state, or who has been convicted of a felony under the laws of the Government of the United States, who owns, or has in his possession or under his custody or control any pistol, revolver, or other firearms capable of being concealed upon the person, or machine gun, commits the crime of exconvict in possession of a firearm.

(2) For the purposes of this section, a person "has been convicted of a felony" if, at the time of his conviction for an offense, that offense was a felony under the law of the jurisdiction in which it was committed. Provided, however, that such conviction shall not be deemed a conviction of a felony if:

(a) At the time of conviction, and pursuant to the law of the jurisdiction in which the offense occurred, the offense was made a misdemeanor by the type or manner of sentence actually imposed; or

(b) The offense was for possession of marijuana.

(3) Subsection (1) of this section shall not apply to any person who has been convicted of only one felony under the law of this state or any other state, or who has been convicted of only one felony under the laws of the United States, which felony did not involve the possession or use of a firearm, and who has been discharged from imprisonment, parole or probation for said offense for a period of 15 years prior to the date of alleged violation of subsection (1) of this section.

(4) Exconvict in possession of a firearm is a Class C felony. [Amended by 1975 c.702 §1]

Note: See note under 166.180.

166.275 Possession of weapons by inmates of penal institutions. Any person committed to any penal institution who, while under the jurisdiction of any penal institution or while being conveyed to or from any penal institution, possesses or carries upon his person, or has under his custody or control any dangerous instrument, or any weapon including but not limited to any blackjack, slingshot, billy, sand club, metal knuckles, explosive substance, dirk, dagger, sharp instrument, pistol, revolver or other firearm without lawful authority, is guilty of a felony and upon conviction thereof shall be punished by imprisonment in the penitentiary for a term not more than 20 years. [1953 c.533 §1]

Note: See note under 166.180.

166.280 Seizure of concealed weapons; destruction; exception; sale by auction. (1) The unlawful concealed carrying upon the person or within the vehicle of the carrier of any machine gun, pistol, revolver or other firearm capable of being concealed upon the person, or any firearm used during the commission of any felony or misdemeanor is a nuisance. Any such weapons taken from the person or vehicle of any person unlawfully carrying the same are nuisances, and shall be surrendered to the magistrate before whom the person is taken, except that in any city, county, town or other municipal corporation the weapons shall be surrendered to the head of the police force or police department.

(2) The officers to whom the weapons are surrendered, except as provided under subsection (4) of this section or upon the certificate of a judge of a court of record or of the district attorney of the county that their preservation is necessary or proper to the ends of justice, shall have authority and be responsible, subject to applicable laws, for selling such weapons or shall destroy the weapons to such extent that they are wholly and entirely ineffective and useless for the purpose for which they were manufactured.

(3) Upon the certificate of a judge or of the district attorney that the ends of justice will be subserved thereby, such weapon shall be preserved until the necessity for its use ceases, at which time, except as provided under subsection (4) of this section, the court shall order that the weapons be delivered to the officials having responsibility under applicable laws and subsection (2) of this section for selling such weapons, or destroying the weapons to such extent that they are wholly and entirely ineffective and

useless for the purpose for which they were manufactured.

(4) In the event any such weapon has been stolen and is thereafter recovered from the thief or the thief's transferee, it shall not be destroyed but shall be restored to its lawful owner as soon as its use as evidence has been served, upon identification of the weapon and proof of ownership.

(5) The sale of any weapons under this section shall be by public auction. The agency holding the weapons shall conduct the auction annually. The agency shall publish notice of the time and place of the auction in the principal local newspaper no less than 20 nor more than 30 days before the date of the auction. Written or printed notice of the auction shall also be posted in three public places of the county where the sale is to take place, not less than 10 days successively. The agency shall permit public inspection of the weapons to be auctioned. Items shall be sold individually unless there is no interested bidder, in which case they may be sold in lots. [Amended by 1981 c.767 §1]

Note: See note under 166.180.

166.290 Issuance of license to carry weapon concealed; fees; liability. (1) The sheriff of a county, upon proof before him, that the person applying therefor is of good moral character, and that good cause exists for the issuance thereof, may issue to such person a license to carry concealed a pistol, revolver or other firearm for a period of one year from the date of the license, upon payment of the fee established under subsection (3) of this section. The fees shall be turned over to the treasurer of such county and credited to the general fund thereof.

(2) All applications for licenses shall be filed in writing, signed by the applicant, and shall state the name, occupation, residence and business address of the applicant; his date of birth, height, weight, color of eyes and hair, and reason for desiring a license to carry the weapon. The sheriff shall require that the applicant submit to fingerprinting at the time of applying for issuance or renewal of a license under this section. Any license issued upon the application shall set forth the foregoing data and shall, in addition, contain a description of the weapon authorized to be carried, giving the name of the manufacturer, the serial number and the caliber thereof. The record of each license issued or renewed under this section shall be kept in the office of the county clerk. The applications and licenses shall be uniform throughout the state, upon forms to be prescribed by the Attorney General.

(3) Fees for the issuance and renewal of licenses under this section shall be set by the governing body of each county at an amount estimated to provide for the administration of this section, but the fees shall not exceed:

- (a) \$10 for the issuance of a license.
- (b) \$2.50 for the renewal of a license.

(4) Neither a sheriff nor any authorized representative of a sheriff who is engaged in the receipt and review of any application for or in the issuing or denial of any license under this section shall incur any civil or criminal liability as the result of the lawful performance of his duties under this section. [Amended by 1973 c.391 §1]

Note: See note under 166.180.

166.300 Killing another as cause for loss of right to bear arms. (1) Any person who has committed, with firearms of any kind or description, murder in any degree, or manslaughter, either voluntary or involuntary, or who in a careless or reckless manner, kills or injures another with firearms, and who, at any time after committing murder or manslaughter or after said careless or reckless killing or injury of another, carries or bears firearms of any kind or description within this state, shall be punished upon conviction by a fine of not more than \$500, or by imprisonment in the county jail not to exceed one year, or both.

(2) Subsection (1) of this section does not deprive the people of this state of the right to bear arms for the defense of themselves and the state, and does not apply to any peace officer in the discharge of his official duties or to a member of any regularly constituted military organization while on duty with such military organization.

(3) Justices of the peace, district courts, county courts and all other courts having jurisdiction as justices of the peace, shall have concurrent jurisdiction with the circuit courts of all prosecutions under subsection (1) of this section.

Note: See note under 166.180.

166.310 Concealed weapon found on arrested person; information to be filed. Whenever any person is arrested and it is discovered that he possesses or carries or has possessed or carried upon his person any loaded pistol, revolver or other firearm, or any weapon named or enumerated in ORS 166.220, in violation of ORS 166.220, 166.510 or 166.520, the person making the arrest shall forthwith lay an information for a violation of the section against the person arrested, before the nearest or most ac-

cessible magistrate having jurisdiction of the offense, and the magistrate must entertain and examine the information and act thereon in the manner prescribed by law.

Note: See note under 166.180.

166.320 Setting springgun or setgun.

(1) Any person who places or sets any loaded springgun, setgun, or any gun, firearm or other device of any kind designed for containing or firing explosives, in any place where it may be fired, exploded or discharged by the contact of any person or animal with any string, wire, rod, stick, spring or other contrivance affixed to or connected with it, or with its trigger, shall be punished upon conviction by a fine of not less than \$100 nor more than \$500, or by imprisonment in the county jail for not less than 30 days nor more than six months, or both.

(2) Subsection (1) of this section does not apply to any loaded springgun, setgun, firearm or other device placed for the purpose of destroying gophers, moles or other burrowing rodents, and does not prevent the use of a coyote getter by employes of county, state or federal governments engaged in cooperative predatory animal control work.

Note: See note under 166.180.

166.330 Use of firearms with other than incombustible gun wadding. Any person who uses in any firearms discharged on lands within this state, not his own, anything other than incombustible gun wadding, shall be punished upon conviction by a fine of not less than \$5 nor more than \$100, or by imprisonment in the county jail for not less than two days nor more than 60 days.

Note: See note under 166.180.

166.340 [1965 c.20 §§2, 3; 1969 c.351 §1; repealed by 1981 c.41 §3]

**POSSESSION OF
DESTRUCTIVE DEVICE OR
FIREARM IN PUBLIC
BUILDING**

166.360 Definitions for ORS 166.360 to 166.380. As used in ORS 166.360 to 166.380, unless the context requires otherwise:

(1) "Capitol building" means the Capitol, the Supreme Court Building, the State Office Building, the State Library Building, the Labor and Industries Building, the State Highway Building, the Agriculture Building or the Public Service Building and includes any new buildings which may be constructed on the same grounds

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CRIMINAL CODE

PART 3

EXPLOSIVES

76-10-301. Unlawful handling of explosives in city or town.

Cross-References.

Bus Passenger Safety Act, bombing buses or terminals, carrying explosives into terminal or aboard bus, 76-10-1505, 76-10-1507.

PART 5

WEAPONS

Section

76-10-504. Carrying concealed dangerous weapon.

76-10-513. License to carry concealed weapon — Requirements for issuance.

76-10-514. License — Application form.

76-10-515. License — Fingerprints transmitted to bureau of criminal investigation — Report from bureau.

76-10-501. Definitions.

Cross-References.

Bus Passenger Safety Act, offenses related to dangerous weapons or firearms, 76-10-1504, 76-10-1505, 76-10-1507.

76-10-503. Possession of dangerous weapon — Persons, etc.

Constitutionality.

Conviction of an alien under this section for possession of a firearm was not unconstitutional. State v. Vlacil (1982) 645 P 2d 677 (two justices concurring, one justice concurring with separate opinion, and two justices concurring in the result).

Aliens.

State regulation of the possession of firearms by aliens has not been preempted by federal law. State v. Vlacil (1982) 645 P 2d 677 (two justices concurring, one justice con-

curring with separate opinion, and two justices concurring in the result).

Parolees.

Testimony by a Colorado parole officer that defendant was under his supervision did not permit inference that the parole was from a felony conviction since parole officer had no personal knowledge of the conviction; copies of Colorado court records certified by a notary public who had no custody of the documents were not properly authenticated and could not be received in evidence as proof that defendant had been convicted of a felony. State v. Lamorie (1980) 610 P 2d 342.

76-10-504. Carrying concealed dangerous weapon. (1) Any person, except those persons described in section 76-10-503 and those persons exempted under section 76-10-510, carrying a concealed dangerous weapon, as defined in this part 5, is guilty of a class B misdemeanor, except that a firearm that contains no ammunition and is enclosed in a case, gun box, or securely-tied package shall not be considered a concealed weapon, but:

(a) If the dangerous weapon is a firearm and contains no ammunition, he shall be guilty of a class B misdemeanor;

(b) If the dangerous weapon is a firearm and contains ammunition, he shall be guilty of a class A misdemeanor; or

(c) If the dangerous weapon is a sawed-off shotgun, or if the dangerous weapon is a firearm and is used to commit a crime of violence, he shall be guilty of a felony of the third degree.

(2) Nothing in this part 5 shall prevent any person, except persons described in section 76-10-503, from keeping within his place of residence, place of business, or any vehicle under his control any firearm, except that it shall be a class B misdemeanor to carry a loaded firearm in a vehicle.

History: C. 1953, 76-10-504, enacted by L. 1982, ch. 17, § 1.

enacted by chapter 196, Laws of Utah 1973. — Laws 1982, ch. 17.

Compiler's Notes.

Laws 1982, ch. 17, § 1 repealed old section 76-10-504 (C. 1953, 76-10-504, enacted by L. 1973, ch. 196, § 76-10-504), relating to carrying concealed dangerous weapons, and enacted new section 76-10-504.

Effective Date.

Section 2 of Laws 1982, ch. 17 provided that the act should take effect upon approval. Approved February 19, 1982.

"Carrying."

A person will be deemed to be "carrying" a concealed weapon where such weapon is shown to be under the person's control and within his immediate, easy or ready access; it is not required that the weapon be upon one's person to constitute "carrying" within the meaning of this section. *State v. Williams* (1981) 636 P 2d 1092.

Lesser included offenses.

The offense of carrying a loaded firearm in a vehicle, 76-10-505, is not a necessarily included offense of carrying a concealed dangerous weapon. *State v. Williams* (1981) 636 P 2d 1092.

Title of Act.

An act relating to concealed weapons; providing for a cross reference to relevant statutes; allowing an exemption from the statute when a firearm contains no ammunition and is enclosed in a case, gun box or securely-tied package; exempting from the statute firearms kept in a home, place of business, or vehicle; prohibiting a loaded firearm from being kept in a vehicle; and providing an effective date.

This act repeals and reenacts section 76-10-504, Utah Code Annotated 1953, as

76-10-505. Carrying loaded firearm in vehicle or on street.

Cross-References.

Registered private security officer exempt during performance of duties, 58-45-20.

Lesser included offense.

The offense of carrying a loaded firearm in a vehicle is not a necessarily included offense of carrying a concealed dangerous weapon, 76-10-504. *State v. Williams* (1981) 636 P 2d 1092.

76-10-506. Threatening with or using dangerous weapon, etc.

Aggravated assault.

Aggravated assault, 76-5-103, committed by use of a deadly weapon is not the same crime proscribed by this section, and a per-

son convicted of aggravated assault is not entitled to receive the misdemeanor penalty provided by this section, but is to be sentenced under 76-5-103. *State v. Verdin* (1979) 595 P 2d 862.

76-10-513. License to carry concealed weapon — Requirements for issuance. (1) The sheriff of a county, commissioner of public safety, chief of police, city marshal, town marshal, or other head of the police department of any city or county, upon proof that the person applying is of good character, and upon a showing that good cause exists for the issuance, may issue to such person a license to carry a concealed weapon within their jurisdiction for any period of time not to exceed one year from the issuance date of the license.

(2) A license may include reasonable restrictions which the issuing authority deems warranted including, but not limited to, time, place, or circumstances under which the applicant may carry the weapon.

History: C. 1953, 76-10-513, enacted by L. 1973, ch. 196, § 76-10-513; L. 1979, ch. 76, § 1.

Compiler's Notes.

The 1979 amendment designated the former section as subsec. (1); substituted

9.40.120 Incendiary devices—Penalty. Every person who possesses, manufactures, or disposes of an incendiary device knowing it to be such is guilty of a felony, and upon conviction, shall be punished by imprisonment in a state prison for a term of not more than twenty-five years. [1971 ex.s. c 302 § 4; 1969 ex.s. c 79 § 3.]

Severability—1971 ex.s. c 302: See note following RCW 9.41.010.

9.40.130 Incendiary devices—Exceptions. RCW 9.40.120, as now or hereafter amended, shall not prohibit the authorized use or possession of any material, substance, or device described therein by a member of the armed forces of the United States or by firemen, or peace officers, nor shall these sections prohibit the use or possession of any material, substance, or device described therein when used solely for scientific research or educational purposes or for any lawful purpose. RCW 9.40.120, as now or hereafter amended, shall not prohibit the manufacture or disposal of an incendiary device for the parties or purposes described in this section. [1971 ex.s. c 302 § 5; 1969 ex.s. c 79 § 4.]

Severability—1971 ex.s. c 302: See note following RCW 9.41.010.

Chapter 9.41

FIREARMS AND DANGEROUS WEAPONS

Sections	
9.41.010	Terms defined.
9.41.025	Committing crime when armed—Penalties—"Inherently dangerous" defined—Resisting arrest.
9.41.030	Being armed prima facie evidence of intent.
9.41.040	Unlawful possession of a short firearm or pistol—Certain persons not precluded from ownership of firearms.
9.41.050	Carrying pistol.
9.41.060	Exception to restriction on carrying pistol.
9.41.070	Issue of licenses to carry—Fee—Revocation—Renewal.
9.41.080	Delivery to minors and others forbidden.
9.41.090	Commercial sales regulated—Requirements for delivery—Hold on delivery.
9.41.093	Exemptions.
9.41.095	Denial of application—Appeal.
9.41.097	Supplying information on persons purchasing pistols or applying for concealed pistol licenses.
9.41.098	Forfeiture of firearms, order by courts—Return to owner—Confiscation by law enforcement officer.
9.41.100	Dealers to be licensed.
9.41.110	Dealer's licenses, by whom granted and conditions thereof—Wholesale sales excepted—Permits prohibited.
9.41.120	Certain transfers forbidden.
9.41.130	False information forbidden.
9.41.140	Alteration of identifying marks—Exceptions.
9.41.150	Exemptions.
9.41.160	General penalties.
9.41.170	Alien's license to carry firearms—Exception.
9.41.180	Setting spring gun.
9.41.185	Coyote getters.
9.41.190	Machine guns prohibited—Exception.
9.41.200	Machine gun defined.
9.41.210	Penalty.
9.41.220	Machine guns and parts contraband.
9.41.230	Aiming or discharging firearms.
9.41.240	Use of firearms by minor.
9.41.250	Dangerous weapons—Evidence.

9.41.260	Dangerous exhibitions.
9.41.270	Weapons apparently capable of producing bodily harm, carrying, exhibiting, displaying, or drawing unlawful—Penalty—Exceptions.
9.41.280	Students carrying dangerous weapons on school premises—Penalty—Exceptions.
9.41.290	Consistency of local laws.

Carrying loaded shotgun or rifle in vehicle: RCW 77.16.250.

Explosives: Chapter 70.74 RCW.

Rifles and shotguns, purchasing out-of-state and by nonresidents: Chapter 19.70 RCW.

Shooting firearm from, across, or along public highway: RCW 77.16.260.

9.41.010 Terms defined. (1) "Short firearm" or "pistol" as used in this chapter means any firearm with a barrel less than twelve inches in length.

(2) "Crime of violence" as used in this chapter means:

(a) Any of the following felonies, as now existing or hereafter amended: Any felony defined under any law as a class A felony or an attempt to commit a class A felony, criminal solicitation of or criminal conspiracy to commit a class A felony, manslaughter in the first degree, manslaughter in the second degree, indecent liberties if committed by forcible compulsion, rape in the second degree, kidnapping in the second degree, arson in the second degree, assault in the second degree, extortion in the first degree, burglary in the second degree, and robbery in the second degree;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, which is comparable to a felony classified as a crime of violence in subsection (2) (a) of this section; and

(c) Any federal or out-of-state conviction for an offense comparable to a felony classified as a crime of violence under subsection (2) (a) or (b) of this section.

(3) "Firearm" as used in this chapter means a weapon or device from which a projectile may be fired by an explosive such as gunpowder.

(4) "Commercial seller" as used in this chapter means a person who has a federal firearms license. [1983 c 232 § 1; 1971 ex.s. c 302 § 1; 1961 c 124 § 1; 1935 c 172 § 1; RRS § 2516-1.]

Severability—1983 c 232: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 232 § 14.]

Severability—1971 ex.s. c 302: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 302 § 35.]

Severability—1961 c 124: "If any part of this act is for any reason declared void, such invalidity shall not affect the validity of the remaining portions of this act." [1961 c 124 § 13.]

Preemption and general repealer—1961 c 124: "All laws or parts of laws of the state of Washington, its subdivisions and municipalities inconsistent herewith are hereby preempted and repealed." [1961 c 124 § 14.]

Short title—1935 c 172: "This act may be cited as the 'Uniform Firearms Act.'" [1935 c 172 § 18.]

Severability—1935 c 172: "If any part of this act is for any reason declared void, such invalidity shall not affect the validity of the remaining portions of this act." [1935 c 172 § 17.]

Construction—1935 c 172: "This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it." [1935 c 172 § 19.]

9.41.025 Committing crime when armed—Penalties—“Inherently dangerous” defined—Resisting arrest. (Effective until July 1, 1984.) Any person who shall commit or attempt to commit any felony, including but not limited to assault in the first degree, rape in the first degree, burglary in the first degree, robbery in the first degree, riot, or any other felony which includes as an element of the crime the fact that the accused was armed with a firearm, or any misdemeanor or gross misdemeanor categorized herein as inherently dangerous, while armed with, or in the possession of any firearm, shall upon conviction, in addition to the penalty provided by statute for the crime committed without use or possession of a firearm, be imprisoned as herein provided:

(1) For the first offense the court shall impose a sentence of not less than five years, which sentence shall not be suspended or deferred;

(2) For a second offense, or if, in the case of a first conviction of violation of any provision of this section, the offender shall previously have been convicted of violation of the laws of the United States or of any other state, territory, or district relating to the use or possession of a firearm while committing or attempting to commit a crime, the offender shall be imprisoned for not less than seven and one-half years, which sentence shall not be suspended or deferred;

(3) For a third or subsequent offense, or if the offender shall previously have been convicted two or more times in the aggregate of any violation of the law of the United States or of any other state, territory, or district relating to the use or possession of a firearm while committing or attempting to commit a crime, the offender shall be imprisoned for not less than fifteen years, which sentence shall not be suspended or deferred;

(4) Misdemeanors or gross misdemeanors categorized as “inherently dangerous” as the term is used in this statute means any of the following crimes or an attempt to commit any of the same: Simple assault, coercion, vehicle prowling, escape in the third degree, obstructing a public servant, theft in the third degree, resisting arrest, and communication with a minor for immoral purposes.

(5) If any person shall resist apprehension or arrest by firing upon a law enforcement officer, such person shall in addition to the penalty provided by statute for resisting arrest, be guilty of a felony and punished by imprisonment for not less than ten years, which sentence shall not be suspended or deferred. [1982 1st ex.s. c 47 § 1; 1981 c 258 § 1; 1969 ex.s. c 175 § 1.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

9.41.030 Being armed prima facie evidence of intent. In the trial of a person for committing or attempting to commit a crime of violence, the fact that he was armed with a pistol and had no license to carry the same shall be prima facie evidence of his intention to commit said crime of violence. [1935 c 172 § 3; RRS § 2516-3.]

9.41.040 Unlawful possession of a short firearm or pistol—Certain persons not precluded from ownership

of firearms. (1) A person is guilty of the crime of unlawful possession of a short firearm or pistol, if, having previously been convicted in this state or elsewhere of a crime of violence or of a felony in which a firearm was used or displayed, the person owns or has in his possession any short firearm or pistol.

(2) Unlawful possession of a short firearm or pistol shall be punished as a class C felony under chapter 9A-.20 RCW.

(3) As used in this section, a person has been “convicted” at such time as a plea of guilty has been accepted or a verdict of guilty has been filed, notwithstanding the pendency of any future proceedings including but not limited to sentencing, post-trial motions, and appeals. A person shall not be precluded from possession if the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted or the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(4) Except as provided in subsection (5) of this section, a person is guilty of the crime of unlawful possession of a short firearm or pistol if, after having been convicted of any felony violation of the uniform controlled substances act, chapter 69.50 RCW, or equivalent statutes of another jurisdiction, or after any period of confinement under RCW 71.05.320 or an equivalent statute of another jurisdiction, or following a record of commitment pursuant to chapter 10.77 RCW or equivalent statutes of another jurisdiction, he owns or has in his possession or under his control any short firearm or pistol.

(5) Notwithstanding subsection (1) of this section, a person convicted of an offense other than murder, manslaughter, robbery, rape, indecent liberties, arson, assault, kidnapping, extortion, burglary, or violations with respect to controlled substances under RCW 69.50.401(a) and 69.50.410, who received a probationary sentence under RCW 9.95.200, and who received a dismissal of the charge under RCW 9.95.240, shall not be precluded from ownership, possession, or control of a firearm as a result of the conviction. [1983 c 232 § 2; 1961 c 124 § 3; 1935 c 172 § 4; RRS § 2516-4.]

Severability—1983 c 232: See note following RCW 9.41.010.

9.41.050 Carrying pistol. (1) Except in the person's place of abode or fixed place of business, a person shall not carry a pistol concealed on his or her person without a license to carry a concealed weapon.

(2) A person who is in possession of an unloaded pistol shall not leave the unloaded pistol in a vehicle unless the unloaded pistol is locked within the vehicle and concealed from view from outside the vehicle.

(3) A person shall not carry or place a loaded pistol in any vehicle unless the person has a license to carry a concealed weapon and: (a) The pistol is on the licensee's person, (b) the licensee is within the vehicle at all times that the pistol is there, or (c) the licensee is away from the vehicle and the pistol is locked within the vehicle and concealed from view from outside the vehicle. [1982 1st

ex.s. c 47 § 3; 1961 c 124 § 4; 1935 c 172 § 5; RRS § 2516-5.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

9.41.060 Exception to restriction on carrying pistol. The provisions of RCW 9.41.050 shall not apply to marshals, sheriffs, prison or jail wardens or their deputies, policemen or other law enforcement officers, or to members of the army, navy or marine corps of the United States or of the national guard or organized reserves when on duty, or to regularly enrolled members of any organization duly authorized to purchase or receive such weapons from the United States or from this state, or to regularly enrolled members of clubs organized for the purpose of target shooting or modern and antique firearm collecting or to individual hunters: *Provided*, Such members are at, or are going to or from their places of target practice, or their collector's gun shows and exhibits, or are on a hunting, camping or fishing trip, or to officers or employees of the United States duly authorized to carry a concealed pistol, or to any person engaged in the business of manufacturing, repairing, or dealing in firearms or the agent or representative of any such person having in his possession, using, or carrying a pistol in the usual or ordinary course of such business, or to any person while carrying a pistol unloaded and in a secure wrapper from the place of purchase to his home or place of business or to a place of repair or back to his home or place of business or in moving from one place of abode or business to another. [1961 c 124 § 5; 1935 c 172 § 6; RRS § 2516-6.]

9.41.070 Issue of licenses to carry—Fee—Revocation—Renewal. (1) The judge of a court of record, the chief of police of a municipality, or the sheriff of a county, shall within thirty days after the filing of an application of any person issue a license to such person to carry a pistol concealed on his person within this state for four years from date of issue, for the purposes of protection or while engaged in business, sport or while traveling. However, if the applicant does not have a valid permanent Washington driver's license or Washington state identification card or has not been a resident of the state for the previous consecutive ninety days, the issuing authority shall have up to sixty days after the filing of the application to issue a license. Such citizen's constitutional right to bear arms shall not be denied to him, unless he:

- (a) Is ineligible to own a pistol under the provisions of RCW 9.41.040; or
- (b) Is under twenty-one years of age; or
- (c) Is subject to a court order or injunction regarding firearms pursuant to RCW 10.99.040, 10.99.045, or 26.09.060; or
- (d) Is free on bond or personal recognizance pending trial, appeal, or sentencing for a crime of violence; or
- (e) Has an outstanding warrant for his or her arrest from any court of competent jurisdiction for a felony or misdemeanor.

The license shall be revoked immediately upon conviction of a crime which makes such a person ineligible to own a pistol or upon the third conviction for a violation of this chapter within five calendar years. The license shall be in triplicate, in form to be prescribed by the department of licensing, and shall bear the name, address, and description, fingerprints and signature of the licensee, and the licensee's driver's license number or state identification card number if used for identification in applying for the license. The original thereof shall be delivered to the licensee, the duplicate shall within seven days be sent by registered mail to the director of licensing and the triplicate shall be preserved for six years, by the authority issuing said license.

(2) The fee for the original issuance of a four-year license shall be twenty dollars: *Provided*, That no other additional charges by any branch or unit of government shall be borne by the applicant for the issuance of the license: *Provided further*, That the fee shall be distributed as follows:

(a) Four dollars shall be paid to the state general fund;

(b) Four dollars shall be paid to the agency taking the fingerprints of the person licensed; and

(c) Twelve dollars shall be paid to the issuing authority for the purpose of enforcing this chapter.

(3) The fee for the renewal of such license shall be twelve dollars: *Provided*, That no other additional charges by any branch or unit of government shall be borne by the applicant for the renewal of the license: *Provided further*, That the fee shall be distributed as follows:

(a) Four dollars shall be paid to the state general fund; and

(b) Eight dollars shall be paid to the issuing authority for the purpose of enforcing this chapter.

(4) A licensee may renew a license if the licensee applies for renewal within ninety days before or after the expiration date of the license. A license so renewed shall take effect on the expiration date of the prior license. A licensee renewing after the expiration date of the license must pay a late renewal penalty of ten dollars in addition to the renewal fee specified in subsection (3) of this section.

(5) Notwithstanding the requirements of subsections (1) through (4) of this section, the chief of police of the municipality or the sheriff of the county of the applicant's residence may issue a temporary emergency license for good cause pending review under subsection (1) of this section.

(6) A political subdivision of the state shall not modify the requirements of this section. A civil suit may be brought to enjoin a wrongful refusal to issue a license. The prevailing party is entitled to reasonable costs, including attorneys' fees. [1983 c 232 § 3; 1979 c 158 § 1; 1971 ex.s. c 302 § 2; 1961 c 124 § 6; 1935 c 172 § 7; RRS § 2516-7.]

Severability—1983 c 232: See note following RCW 9.41.010.

Severability—1971 ex.s. c 302: See note following RCW 9.41.010.



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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

October 28, 1983

MEMORANDUM

TO: Representative John Liska

FROM: Heidi Borson ^{HAB}
Legislative Analyst

RE: Concealed Weapons
Research Request 83-217

Mary Witman of your staff requested that we provide information on concealed weapons laws and handgun training programs in Alaska and other states. Specifically, she asked us to research the following topics:

- Can Alaska residents obtain permits to carry concealed weapons?
- Which states allow citizens to carry concealed weapons? What are the consequences, i.e., how is the crime rate affected?
- What handgun training programs exist in other states, especially for women? How have these programs affected the crime rate?

In collecting data to respond to this request, I contacted law enforcement and public safety officials in several states, and the National Rifle Association headquarters in Washington, D.C.; I also used information on concealed weapons compiled by our agency for a previously released research request.

CONCEALED WEAPONS LAWS IN ALASKA AND OTHER STATES

Alaska law provides that citizens may purchase and possess firearms; however, under AS 11.61.220, carrying a concealed weapon constitutes a class B misdemeanor. Furthermore, no statutory provision exists for obtaining a permit to carry a concealed weapon under any circumstances.

Representative John Liska
October 28, 1983
page 2

Fifteen other states and the District of Columbia also prohibit carrying concealed weapons. Those states are listed below:

Arizona	Kentucky	Ohio
Arkansas	Missouri	Oklahoma
Hawaii	Nebraska	Tennessee
Illinois	New Mexico	Texas
Kansas	North Carolina	Wisconsin

The remaining 33 states permit citizens to carry concealed weapons in some circumstances. Each of those states, except Vermont, requires citizens to obtain permits to carry concealed weapons; however, permit policies vary greatly. Some states, like Washington, issue permits upon demand, while other states, like Delaware and West Virginia, have such stringent permit policies that permits are seldom issued. A list of states which allow citizens to carry concealed weapons and a description of their concealed weapons laws follow:

- Alabama allows its county sheriffs to issue permits for carrying concealed weapons. The penalty for carrying a concealed weapon without a permit varies according to county.
- In California, permits to carry concealed weapons are issued by local sheriffs or police departments. Illegal possession of a concealed weapon is a misdemeanor.
- State law in Connecticut authorizes first selectmen, chiefs of police, and state police to issue permits for the possession of handguns. No distinction is made between concealed and unconcealed weapons. Violation of the statute is a felony with a maximum penalty of a \$1,000 fine and/or five years in prison.
- Delaware has a system of permits for carrying concealed weapons; however, few permits are actually issued. To obtain a permit, the applicant must show cause such as a demonstrated threat to his or her life or a job which involves transporting large sums of money. Permits are issued by state courts and the Attorney General's office. Carrying a concealed weapon without a permit is a felony.
- County commissions in Florida may issue permits for the possession of firearms, concealed or unconcealed. Carrying a concealed weapon without a permit is a felony, while carrying an unconcealed weapon without a permit is a misdemeanor. Counties set their own criteria for the issuance of permits.



Office of the District Attorney

CLARK COUNTY COURTHOUSE
LAS VEGAS, NEVADA 89101
(702) 386-4703

MAR 27 1984

ROBERT J. MILLER
DISTRICT ATTORNEY

REX BELL
ASSISTANT DISTRICT ATTORNEY

March 23, 1984

Representative John Liska
Pouch V
Juneau, Alaska 99801

Re: Carrying Concealed Weapon permits

Dear Representative Liska:

District Attorney Robert J. Miller has asked me, as his Assistant, to send you copies of our Carrying Concealed Weapon laws which I am hereby enclosing. The main law that could be of interest is 202.350 which covers more of the area that you are concerned with. The other statutes we have enclosed are simply for your information.

The Sheriff of our County has issued 639 Concealed Weapon permits to date. During this year he has pulled three (3) of these. The three were pulled generally on the basis that the individuals abused their privilege by flashing the weapon but not pulling it on anybody. In my experience, it is very unusual for us to pull any permits. Before a Concealed Weapon permit is issued, the persons are very carefully screened and we are very selective as to who gets a permit.

I hope that this information will be of help to you and if there is anything further that we can do for you, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Rex A. Bell".

REX A. BELL
ASSISTANT DISTRICT ATTORNEY

RAB:bkw

enclosures

cc: Robert J. Miller,
District Attorney

1003

MAR 20 1984
MAR 26 1984

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 26, 1984

SUBJECT: Permit for armed bodyguard
TO: Representative John Liska
FROM: Billy G. Berrier *BGB*
Director
Division of Legal Services

You have asked whether in our opinion AS 18.65.500 gives the Commissioner of Public Safety the authority to issue permits for armed bodyguards.

In my opinion it does not.

The section provides:

Sec. 18.65.500

USE OF ARMED BODYGUARDS.

A person who, in this state, hires another person to guard a person in this state with arms or deadly weapons, or a person who comes into this state armed with deadly weapons for the purpose of guarding a person, without a written permit from the commissioner of public safety, is guilty of a misdemeanor and upon conviction is punishable by imprisonment for not more than 60 days, or by a fine of not more than \$1,000, or by both.

It could be argued that the commissioner by implication is granted the power to issue permits because of the term "without a written permit from the Commissioner of Public Safety".

The more plausible argument is that the language is for the purpose of recognizing the possibility that other law may give the commissioner authority to issue permits and therefore this language prevents inconsistency.

Representative John Liska
Page 2
March 26, 1984

This is strengthened by the context in which the section was adopted. It was part of Chapter 59 Session Laws of Alaska 1976. The title was "Relating to the licensing of security guards and security guard agencies and providing for an effective date". The security guard provisions are Article 4 of AS 18.65 (Sec. 18.65.400-490) and the section involved is Article 5 of that chapter.

The context of the Act makes it clear the question of licensing was before the legislature so it appears the intent to restrict the use of armed bodyguards was controlling and the choice not to give power here to issue permits was intentional.

BGB:ojb
J5/008

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

POUCH N
JUNEAU, ALASKA 99811
PHONE: 465-4322

April 2, 1984

The Honorable John J. Liska
Representative
Alaska State Legislature
Pouch V
Juneau, AK 99811

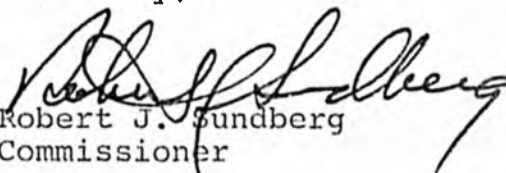
Dear Representative Liska:

This is in response to your inquiries about the relationship of issuing concealed weapon licenses by the Department as it relates to AS 18.65.500 "Use of Bodyguards."

This Department does not issue concealed weapon licenses under any circumstances. There is no provisions for doing so and the Department wishes it to remain that way.

Since the enactment of AS 18.65.500, there has been no known request for "a written permission," nor has anyone been arrested for violation of the statute. The statute makes reference to any arms or deadly weapon, but does not mention concealed.

Sincerely,


Robert J. Sundberg
Commissioner

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST
Bill/Resolution No.: HB 647
Title: "... possession of
concealed weapons."
Sponsor: Representative Liska
Requestor: House Judiciary
Date of Request: 3/23/84

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)

OPERATING	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
100 PERSONAL SERVICES		173.3	163.5	173.3	183.7	194.7
200 TRAVEL		2.0	2.1	2.2	2.3	2.4
300 CONTRACTUAL		156.6	166.0	176.0	186.6	197.8
400 SUPPLIES		13.0	13.8	14.6	15.5	16.4
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		364.3	345.4	366.1	388.1	411.3
CAPITAL						
REVENUE		560.0	420.0	420.0	420.0	420.0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Program Receipts)		364.3	345.4	366.1	388.1	411.3
TOTAL		364.3	345.4	366.1	388.1	411.3

POSITIONS:

FULL-TIME		4	4	4	4	4
PART-TIME						
TEMPORARY		2				

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not indicated by sponsor of bill.

ANALYSIS: Attach a separate page for analysis

Prepared By: Francis C. Allan Phone: 269-5691
 Division: Alaska State Troopers Date: 03/23/84
 Approved by Commissioner: Robert J. Sundberg Date: 3/27/84
 Agency: Public Safety

Distribution (by Agency preparing fiscal note):
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