

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 8672

2509 SJ SB 121 - SB 133

2509

crimes other than homicide are committed⁴⁰ and a binary Southern variable⁴¹ are incorporated to capture the effects of additional exogenous factors that the other control variables do not specifically measure. Values of each of these variables for 1960 and 1970 are shown in Table 1.

Table 1. Aggregate United States values, mean state values and standard deviations for the variables used in the analysis, 1960 and 1970

Variable:	U.S. total*		State means ^(a)		Standard deviations ^(a)	
	1960	1970	1960	1970	1960	1970
Q/N ^(b)	5.1	7.8	4.7	6.6	3.7	3.7
E/C	.0157 ^(c)	0	.0192	0	.0290	0
C/Q	.4132 ^(d)	.3459 ^(d)	.4304	.3729	.1215	.1220
T	82.23 ^(e)	87.54 ^(e)	101.64	70.20	55.66	30.74
Cr ^(b)	1032.9	2738.5	942.7	2364.1	404.3	954.7
Age	.0482	.0634	.0493	.0636	.0043	.0060
NW	.1143	.1253	.1131	.1164	.1424	.1244
Male	.4926	.4867	.4957	.4893	.0094	.0082
Urb	.6986	.7348	.6189	.6619	.1494	.1244
Enr	.622	.869	.8453	.8873	.0641	.0456
Pop ^(f)	180.0	203.8	3.324	3.766	4.142	4.791
Div	.0022	.0035	.0031	.0042	.0049	.0029
Y ^(g)	5660	9506	5418	9172	1002	1487
Pov ^(g)	.184	.107	.1970	.1154	.0962	.0524
Emp	.4488	.4991	.4250	.4815	.0657	.0598
S	.3333	.3333	.2813	.2813	.4560	.4563

(a) Means and standard deviations are unweighted statistics for the 32 states for which no data were missing or undefined; (b) per 100,000 residents; (c) based on 48 states (Alaska and New Jersey did not report these statistics in 1960); (d) based on the 33 states that reported in both 1960 and 1970; (e) based on data from 34 states; (f) in millions; (g) based on income earned in the previous year.

* Aggregate U.S. values are used only in these two columns, in Figure 1, and in the concluding section of this paper.

Following the rationale described in the preceding section, the effects of interest are estimated by forming the equation of first differences:

40. A rationale for the inclusion of the nonhomicide crime rate is given in Klein, Forst, & Filutov, *supra* note 13, at 17-19, and in the accompanying notes 64-65 *infra*.

41. It has become a standard practice in cross-state econometric analysis to incorporate a binary Southern variable to reflect other economic and demographic characteristics. The use of such a variable in the analysis of homicides is further warranted by the fact that the homicide rates in the South are about twice that of the rest of the nation

$$(2) \Delta(Q/N) = a + b_1\Delta(E/C) + b_2\Delta(C/Q) + b_3\Delta T + c_1\Delta Cr + c_2\Delta Age + c_3\Delta NW + c_4\Delta Male + c_5\Delta Urb + c_6\Delta Enr + c_7\Delta Pop + c_8\Delta Div + c_9\Delta Y + c_{10}\Delta Pov + c_{11}\Delta Emp + c_{12}S,$$

where Δ denotes the change in a variable calculated by subtracting the 1960 level from the 1970 level, "a" denotes a constant term, b_i denotes a partial differential coefficient for a sanction variable, and c_j denotes a partial differential coefficient for a control variable.

B. PARAMETER ESTIMATES

These coefficients can be estimated using ordinary least-squares regression analysis, with the full set of independent variables incorporated as regressors. These estimates are based on data from the 32 states⁴² for which values of all the variables shown were reported both for 1960 and 1970:⁴³

$$(3) (Q/N) = - 5.011 + 11.62\Delta(E/C) - 5.714\Delta(C/Q) \\ (R^2 = .002) \quad (2.70) \quad (12.7) \quad (1.02) \\ + .001378\Delta T - .3888\Delta Pop + .001708\Delta Y \\ (.00773) \quad (15.8) \quad (.00004) \\ + .001430\Delta Cr + .3807\Delta NW - 1.892\Delta Age \\ (.000002) \quad (17.8) \quad (130) \\ - .05055 - .2985\Delta Emp - 0.021\Delta Enr \\ (.877) \quad (34.2) \quad (8.53) \\ + 11.24\Delta Urb + .0250\Delta Div + .000002302\Delta Pop \\ (15.3) \quad (150) \quad (.000000411) \\ + 0\Delta Male$$

The numbers in parentheses are standard errors, and R^2 is the coefficient of determination, a measure of the proportion of the variance in the dependent variable that is explained by the independent variables used. Thus, 69 percent of the cross-state variance in the change in the homicide rate from 1960 to 1970 can be attributed to the set of variables in the right-hand side of equation (3).

42. The 32 states on which these estimates are based are Arizona, California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Idaho, Illinois, Kansas, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Mexico, New York, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Utah, Washington, West Virginia, and Wyoming. Construction data were missing for 17 states in 1970, and the average term of incarceration was not available for an additional state (Vermont) in that year.

43. Similar results are obtained when the 1960 level of the homicide rate is included as a regressor to account for nonlinearity in Q/N .

The first result provides no support for the hypothesis that capital punishment deters homicide. The positive regression coefficient for the execution rate variable is, in fact, consistent with a counterdeterrent effect,⁴⁴ but the standard error of this estimate is too large for this finding to be taken seriously.⁴⁵ Equation (3) does provide evidence, on the other hand, of a deterrent effect of convictions on homicides. Those states with the largest reductions in the ratio of homicide convictions to homicide offenses tended to have the largest increases in the homicide rate, other factors held constant.

This regression equation, however, has too many shortcomings to allow it to stand alone as an adequate test of the deterrence hypothesis. Foremost among these is the imprecision in parameter estimation caused by the inclusion of 15 independent variables—ten of which are not significant (at the .10 level)—in an equation constructed from only 32 observations.⁴⁶ Eliminating these ten variables, except for the variable of primary interest, $\Delta(E/C)$, produces a result that fits the data better:

$$\begin{array}{rclclcl} (4) \Delta(Q/N) - & - & 4.222 & + & 17.64\Delta(E/C) & - & 5.070\Delta(C/Q) \\ (R^2 = .577) & & (2.10) & & (8.55) & & (1.68) \\ & & - & 24.91\Delta\text{Pov} & + & .001515\Delta\text{Cr} & + & 39.00\Delta\text{NW} \\ & & (7.52) & & (.000507) & & (13.3) \\ & & + & .0004670\Delta Y & & & & \\ & & (0.00526) & & & & & \end{array}$$

44. Ehrlich explained the potential for a counterdeterrent effect as follows: "[O]ne may argue that the differential deterrent effect of capital punishment on the incentive to commit murder may be offset by the added incentive it may create for those who actually commit this crime to eliminate policemen and witnesses who can bring about their apprehension and subsequent conviction and execution." Ehrlich, *supra* note 3, at 390. Courts or juries may also be more reluctant "to convict defendants charged with murder when the risk of their subsequent execution is perceived to be undesirably high." *Id.* at 405. This latter possibility is discussed in text accompanying notes 57-59 *infra*. Von Weber has suggested as an alternative explanation that capital punishment may induce suicidally-inclined persons to commit murder. H. von Weber, *Selbstmord als Mordmotiv, Monatsschrift für Kriminalmedizin und Strafrechtswissenschaften* 161 (1937).

45. If executions had no effect on homicides, the probability is .37 that random factors alone would have caused the ratio of the regression coefficient for (E/C) to its standard error to be at least 0.91, the result in equation (3).

46. Estimates become increasingly precise (that is, subject to less random error) either as the number of observations increases or as the number of insignificant variables in the regression equation diminishes. The importance of precision in the estimation of the deterrent effect of capital punishment has been discussed by Ehrlich, *supra* note 10, at 22.

This result is basically similar to (3) for the variables of principal focus, except that elimination of nine weak independent variables increases the adjusted coefficient of determination, a standard measure of goodness-of-fit,⁴⁷ from .44 to .48, and increases the statistical significance of five of the six remaining variables.

Equation (4) provides evidence that the sharp increase in the homicide rate during the 1960's was the product of factors other than the abolition of the death penalty. Accounting for what appear to be the most important of these other factors—the murder conviction rate, economic variables, race, and the factors that caused non-capital offenses to escalate during the 1960's—it is apparent that those states in which the actual use of capital punishment ceased during the 1960's experienced no greater increase in the murder rate than did the states that did not use capital punishment in the first place. Under the theory that capital punishment deters murder, one would have predicted the opposite.

C. ROBUSTNESS TESTS

Before drawing inferences from data that are not produced by controlled experimentation, it is appropriate to test whether the estimates are "robust" to (that is, hold up under) departures from the assumptions on which the estimates are grounded.⁴⁸ Equation (4) is based on several assumptions: (1) the murder rate in any given year is influenced by the number of executions in that year; (2) none of the sanction variables is influenced by any of the other variables used in the regression analysis; (3) the variance in the homicide rate is no larger for highly populated states than for the less populated states; and (4) the rate at which non-capital crimes are committed is not affected by, nor does it affect, the other variables in the analysis. Each of these assumptions can be altered to test for robustness, which

47. The formula for the adjusted coefficient of determination, \bar{R}^2 , is

$$\bar{R}^2 = R^2 - (1 - R^2) \left[\frac{K}{(N - K - 1)} \right]$$

where R^2 is the coefficient of determination, K is the number of independent variables, and N is the number of observations. A. Gutman, *ECONOMIC THEORY* 217 (1964).

48. The importance of robustness tests is well established in econometric analysis. H. Theil, *PROBLEMS OF ECONOMETRICS* 615-16 (1971).

will indicate the reliability of the estimates obtained in equation (4).

1. Alternative Constructions of the Execution Rate

Since the execution rate is the independent variable of principal focus in this analysis, it is surely appropriate to vary the methods of measuring it.⁴⁹ The construction used in equations (3) and (4) is based on the number of executions and convictions in 1960 and 1970. One alternative is to use executions in 1960 and 1971 instead of executions in 1960 and 1970, respectively, as objective forecasts of the probability that a murder conviction will lead to execution, since executions have been reported to lag behind convictions by about a year.⁵⁰ The result corresponding to equation (4) using this alternative measure, which is denoted (E_{t+1}/C) , is

$$\begin{aligned} (5) \Delta(Q/N) - & - 5.391 & + & 2.077\Delta(E_{t+1}/C) - & 5.837\Delta(C/Q) \\ (R^2 = 508) & (2.21) & & (11.5) & (1.83) \\ & - 27.32\Delta\text{Pov} & + & .001248\Delta\text{Cr} & + 42.01\Delta\text{NW} \\ & (8.03) & & (.000571) & (15.3) \\ & + .0007518\Delta Y & & & \\ & (.000545) & & & \end{aligned}$$

This result is fundamentally no different from equation (4), suggesting that lagging executions does not alter the observed effect of executions on homicides.⁵¹

To reduce the sampling error associated with the small number of executions that occurred around 1960 and test another lag structure, one can make the numerator of the execution rate the average number of executions over the three-consecutive-year

49. The potential importance of alternative constructions has been stressed in previous analyses of the deterrent effect of capital punishment. Ehrlich, *supra* note 3, at 407-08; Passell, *supra* note 24, at 69-71, 77.

50. Ehrlich, *supra* note 3, at 407. Using data from the Federal Bureau of Prisons, I calculated that the median delay between conviction and execution for persons executed during the period 1950-1970 was 14 months. The distribution is skewed in the positive direction, indicating a mean delay of somewhat more than 14 months. FEDERAL BUREAU OF PRISONS, DEPARTMENT OF JUSTICE, NATIONAL PRISON STATISTICS: EXECUTIONS I (No. 23, February 1960).

51. The decline in R^2 from equation (4) to (5) might be regarded as evidence that the homicide rate is less sensitive to variation in lagged executions than to variation in current executions. More fundamentally, however, it appears systematically related to neither

period centered about the year of the convictions in the denominator.⁵² This execution rate variable is denoted (E_m/C) , and is used in place of (E/C) in equation (4), giving

$$\begin{aligned} (6) \Delta(Q/N) - & - 5.002 & + & 15.80\Delta(E_m/C) - & 5.62\Delta(C/Q) \\ (R^2 = 225) & (2.16) & & (15.4) & (1.78) \\ & - 28.03\Delta\text{Pov} & + & .001403\Delta\text{Cr} & + 40.57\Delta\text{NW} \\ & (7.06) & & (.000551) & (14.2) \\ & + .0008700\Delta Y & & & \\ & (.000545) & & & \end{aligned}$$

Again, this alternative does not produce a result that differs in any important respects from equation (4).

Another execution rate variable can be formed by combining the independent variables (E/C) and (C/Q) into the single variable (E/Q) . Although this combination causes an important control variable, the murder conviction rate, to be lost, it allows all states to be included in the analysis.⁵³ The result is

$$\begin{aligned} (7) \Delta(Q/N) - & - 2.101 & + & 13.17\Delta(E/Q) - & 13.38\Delta\text{Pov} \\ (R^2 = 321) & (1.00) & & (30.1) & (0.02) \\ & + .001441\Delta\text{Cr} & + & 35.00\Delta\text{NW} & + .0001917\Delta Y \\ & (.000100) & & (13.4) & (.000145) \end{aligned}$$

This result is remarkably similar to equation (4) except for the substantial reduction in the proportion of variance in the homicide rate explained by the independent variables, which is produced by the exclusion of the conviction variable and the use of a larger number of observations. This reduction provides further support for the hypothesis that convictions deter homicides, consistent with findings by Ehrlich⁵⁴ and Passell⁵⁵ and with the results of equations (3) through (6).

A final construction of the execution rate is designed to eliminate whatever bias results from the reverse effect that changes in the homicide rate may have on the execution rate. All of the above regression equations assume that the causality runs strictly from executions to homicides. These results will be tested to the extent that the execution rate is a function of the

52. This idea comes from Passell, *supra* note 24, at 66, who used instead a four-year average of executions.

53. See note 42 *supra* and accompanying text.

54. Ehrlich, *supra* note 3, at 410-11. Ehrlich's findings suggest that arrests, convictions, and executions each independently deter the commission of homicides, with arrests appearing to have the strongest effect and executions the weakest.

55. Passell, *supra* note 24, at 69-71.

homicide rate, which would occur, for example, if the demand for capital punishment was stimulated by an increase in the homicide rate. This bias can be reduced by replacing the variable $\Delta(E/C)$ with the estimator $\Delta^o(E/C)$, formed separately by regressing $\Delta(E/C)$ on all the predetermined variables in Table 1.⁵⁶ This alternative produces the result

$$(8) \Delta(Q/N) = - 3.841 + 23.05\Delta^o(E/C) - 0.003\Delta(C/Q) \\ (2.24) \quad (12.8) \quad (1.71) \\ - 23.60\Delta^o\text{Pop} + 0.01527\Delta\text{Cr} + 38.30\Delta\text{NW} \\ (7.82) \quad (0.00525) \quad (13.7) \\ + .0004108\Delta Y \\ (0.00551)$$

which, again, is basically the same as the other equations. Thus, the major finding—that decreases in the execution rate are not associated with increases in the homicide rate—is robust with respect to alternative methods of constructing the execution rate variable.

2. Alternative Structures of Simultaneity

Although equation (1) assumes that the causation is unidirectional, some variables in the equation may be both determinants of murder and products of either the homicide rate itself or factors that influence the homicide rate. This phenomenon, known generally as "simultaneity," was assumed in equation (8). One variable other than the execution rate that may be determined simultaneously with the homicide rate is the rate at which homicide offenders are convicted; it may both affect the homicide rate, as is hypothesized in equation (1), and be produced by changes in the homicide rate. The latter would occur if, for example, the ability to convict homicide offenders was

56. The predetermined variables are ΔAge , ΔNW , ΔMale , ΔUrb , ΔEm , ΔPop , ΔDiv , ΔY , ΔPop , ΔEmp , and S . An alternate estimator, constructed from these variables together with ΔCr , produced a similar result. This general method, called the "two-stage, least-squares regression technique," is described in most standard econometrics textbooks. Because the coefficient of determination, described at equation (3), is difficult to interpret under the application of this technique, it is not reported for equations (8), (9), and (10). See P. DUREN, *ECONOMETRICS: STATISTICAL FOUNDATIONS AND APPLICATIONS* 240-63 (1970). Application of this technique to the analysis of crime deterrence, however, may create problems, since one cannot be confident that the control variables included in the equation of primary interest actually permit accurate identification of the crime function. Fisher & Nagin, *On the Feasibility of Identifying the Crime Function in a Simultaneous Model of Crime Rates and Sanction Levels*, in *DETERRENCE AND INCARCERATION*, *supra* note 13.

impacted by an increase in the load of homicide cases. Failure to account for this reverse effect, or for the effect of changes in the execution rate on the conviction rate,⁵⁷ might bias all the regression coefficients estimated. To deal with this problem, the estimator $\Delta^o(C/Q)$ is constructed by regressing $\Delta(C/Q)$ on the predetermined variables.⁵⁸ This alternative measure of the conviction rate produces the equation

$$(9) \Delta(Q/N) = - 4.007 + 17.88\Delta(E/C) - 7.034\Delta^o(C/Q) \\ (3.02) \quad (10.4) \quad (6.03) \\ - 27.13\Delta^o\text{Pop} + .001300\Delta\text{Cr} + 42.30\Delta\text{NW} \\ (13.3) \quad (0.00020) \quad (10.6) \\ + .0000370\Delta Y \\ (0.00707)$$

Once again, the homicide rate appears unaffected by changes in the execution rate.⁵⁹

Another type of simultaneity may exist with regard to the average term of incarceration served by persons convicted of homicide, T . This would result if, for example, sentences were lengthened in response to an increase in the homicide rate, in an attempt to discourage further homicides. The potential bias produced by this simultaneity can be reduced by forming the variable $\Delta^o T$, constructed by regressing ΔT on the predetermined variables.⁶⁰ The result produced under this construction is

$$(10) \Delta(Q/N) = - 4.508 + 17.08\Delta(E/C) - 6.018\Delta(C/Q) \\ (2.12) \quad (8.55) \quad (11.60) \\ + .000252\Delta^o T - 28.60\Delta^o\text{Pop} + .091383\Delta\text{Cr} \\ (0.0700) \quad (7.00) \quad (0.00521) \\ + 44.72\Delta\text{NW} + .0000320\Delta Y \\ (14.1) \quad (0.00540)$$

This result is basically similar to the others reported above.

The true system of simultaneity among variables is likely to be considerably more complicated than has been hypothesized. The results obtained by treating the execution rate, the conviction rate, and the average term of incarceration as endogenous variables, however, as was done in equations (8), (9), and (10), respectively, indicate that the biases due to failure to capture

57. See note 41 *supra*.

58. The predetermined variables under this formulation include those already cited, *supra* note 56, and $\Delta(E/C)$.

59. Alternative estimators of $\Delta(C/Q)$, one formed without $\Delta(E/C)$ and another formed with ΔCr , produce similar results.

60. See note 50 *supra*.

these simultaneous effects in equations (3) and (4) are not large.⁶¹

3. Use of Weighted Regressions

In cross-section analysis the variance of the dependent variable is often larger for more heavily populated places. This condition, known in a more general form as "heteroscedasticity," produces biased estimates of standard errors of the regression coefficients and biased tests of statistical significance. The presence of heteroscedasticity is commonly identified by visual inspection of a plot of the data, although more rigorous methods are available.⁶² To eliminate this bias each observation is generally adjusted by weighting it by the square root of the population. Applying this weighting technique to the observations, under equation (4), the result is

$$(11) \Delta(Q/N) = - 1.927 + 18.50\Delta(E/C) - 6.340\Delta(C/Q) \\ (R^2 = .505) \quad (2.54) \quad (10.6) \quad (1.80) \\ - 26.49\Delta(Pov) + 0.0124\Delta(Cr) + 50.32\Delta(NW) \\ (0.91) \quad (0.00476) \quad (15.8) \\ + 0.007042\Delta Y \\ (0.00564)$$

The similarity of this equation to equation (4) suggests that the general findings are robust with respect to conventional weighting.⁶³

4. Exclusion of the Other-Crimes Variable

One of the control variables used in equations (1) through (11) is the rate at which crimes other than homicide are committed. It was included in an attempt to account for the factors that caused crime to increase generally during the 1960's, since the failure of previous analyses to capture these effects may have interfered substantially with their ability to isolate a pure deterrent effect of capital punishment.⁶⁴ Certain offenses incorporated in this control variable, however, are likely to differ from homicide only in that the victims did not die. Since it is possible

61. Similar results are obtained by endogenizing the rate at which crimes other than homicide are committed.

62. See Goldfeld & Quandt, *Some Tests for Homoscedasticity*, 60 J. AM. STAT. ASS'N 539 (1965).

63. All the unweighted regression results reported in this paper have also been obtained under the weighted technique, with similar results in each instance.

64. See note 40 *supra*.

that some nonhomicide offenses may themselves be deterred by capital punishment, having them in the right-hand side of the regression equation may have affected the estimates of the deterrent effect that were reported above.

It is possible to test the effect of this potential bias, whose direction is not obvious, a priori, by estimating a counterpart to equation (4) without other offenses as a control variable.⁶⁵ The result is

$$(12) \Delta(Q/N) = - 5.371 + 0.584\Delta(E/C) - 6.040\Delta(C/Q) \\ (R^2 = .420) \quad (2.30) \quad (0.27) \quad (1.62) \\ - 10.00\Delta(Pov) + 42.72\Delta(NW) + 0.0142\Delta Y \\ (8.37) \quad (15.1) \quad (0.00480)$$

As before, the deterrent effect of capital punishment is not apparent. While the omission of factors that caused crimes other than homicide to increase during the 1960's produces a result that differs somewhat from equation (4),⁶⁶ it does not, in this analysis, materially alter the finding.

III. CONCLUSION

The aim of this Article was to investigate empirically the deterrent effect of capital punishment. Building on studies by Ehrlich⁶⁷ and Passell,⁶⁸ the influence of the execution rate on the homicide rate was estimated by controlling for the effects of other variables and for the reverse effects of the homicide rate on the sanction variables. This analysis differs from previous ones, however, both because it focuses on a unique decade during which the homicide rate increased by over 50 percent and the use of capital punishment ceased and because it examines changes in homicides and executions over time and across states.⁶⁹

65. When ΔCr is removed from equation (3) the only independent variables that are statistically significant (at 10) are $\Delta(C/Q)$, ΔPov , ΔNW , and ΔY . Hence, our selection of an efficient subset of independent variables, used in equations (4) through (11), is unaffected by the exclusion of ΔCr .

66. The inclusion of ΔCr in equation (4) reduces substantially the appearance of a strong effect of median family income on the homicide rate obtained in (12). Behind this reduction is a large correlation coefficient (.65) for the pair ΔCr and ΔY . The actual relationships between (Q/N) , Cr , Y , and other factors are likely to be extraordinarily complex, and, although the topic is important, exploration of these relationships is beyond the scope of this discussion.

67. See Ehrlich, *supra* note 3; Ehrlich, *Punishment and Deterrence*, *supra* note 24.

68. See Passell, *supra* note 24.

69. This approach appears also to yield more efficient estimates of

The findings do not support the hypothesis that capital punishment deters homicides. The 53 percent increase in the homicide rate in the United States from 1960 to 1970 appears to be the product of factors other than the elimination of capital punishment. Foremost among these are a decline in the rate at which homicide offenses resulted in imprisonment (from 41.3 percent in 1960 to 34.6 percent in 1970 for the states that reported in both years) and increasing affluence during the 1960's.⁷⁰

To obtain a sense of how well the estimates, based as they are on individual observations of 32 states, generalize to the United States as a whole, the coefficients of the basic equation, (4), can be combined with changes in the respective independent variables given in the first two columns of Table 1. This produces a predicted increase of 2.6% homicides per 100,000 residents. That the actual increase was 2.7, as shown in Table 1, provides some assurance that the estimates generalize to the aggregate of 18 states not analyzed in equation (4).

The apparent strength of the incarceration rate variable and the apparent weakness of the execution rate and term of im-

the relationship of primary interest, based on the coefficients of variation of the relevant variables. A variable's coefficient of variation is the ratio of its standard deviation to its mean value. In the extreme case in which a factor does not vary, it can have no relationship at all with another factor.

69. In fact, the coefficients of variation of both the homicide rate and the execution rate are substantially larger (0.923 and 1.51, respectively) in this study than the coefficients of variation for the homicide rate (0.157) and execution rate (0.946) based on annual aggregate United States data for the period 1933 to 1969. The coefficients of variation for the aggregate time-series data are calculated from the independent constructions of Q/N and PXQ_1 , based on Ehrlich, *The Deterrent Effect of Capital Punishment: A Question of Life and Death*, *Sources of Data* at 2, 6 (May 1975) (unpublished paper on file at MINNESOTA LAW REVIEW).

70. One can only speculate as to why the homicide rate rose the most in those states with the greatest increases in wealth. Increases in wealth may have provided more attractive targets to potential offenders and produced heightened expectations and frustration. Since the nationwide increases in family income reported here are attributable to real growth and to inflation in roughly equal shares, see U.S. BUREAU OF CENSUS, *STATISTICAL ABSTRACT OF THE UNITED STATES*, table 1323, at 411 (1972) & Table 1, at p. 752 *supra*, the inflation component may have produced further frustration, thereby exerting additional upward pressure on the homicide rate. According to table 1323, the Consumer Price Index went from 88.7 to 116.3 between 1960 and 1970, an increase of 31.1 percent. During the same period the median family income rose from \$5600 to \$9500, see Table 1, at p. 752 *supra* (values for variable Y_1 are an increase of 67.6 percent. Thus, the percentage increase in the median family income due to inflation was 46.0.

prisonment variables as deterrents to homicide lend some support to Cesare Beccaria's two-hundred-year-old suggestion that certainty of punishment deters more effectively than its severity.⁷¹ There are, however, other explanations for these findings. The appearance of a strong deterrent effect of imprisonments on homicides may be the result of changes in factors omitted from this analysis.⁷² And the apparent weakness of the deterrent effect of long imprisonments may be the product of the inaccuracy of our term-of-imprisonment variable,⁷³ since random errors in the measurement of this variable will bias downward estimates of the deterrent effect of the length of imprisonment.

It seems likely, nonetheless, that this finding of a deterrent effect of imprisonments of persons convicted of murder is more real than spurious. Errors in the measure of murder imprisonments are sure to exist, and these are likely to cause estimates of the deterrent effect of incarceration to understate the true effect.⁷⁴ Moreover, this particular finding is consistent with empirical results presented by Ehrlich and Passell.⁷⁵ And it supports von Hirsch's suggestion that if penalties for homicide were eliminated entirely it is difficult to imagine that the homicide rate would not increase.⁷⁶

The finding that capital punishment, on the other hand, does not deter homicide is remarkably robust with respect to a wide range of alternative constructions of the execution rate, alternative assumptions about simultaneity among the crime and

71. C. BECCARIA, *ON CRIMES AND PUNISHMENTS* 58 (H. Paolucci trans. 1963).

72. Suppose, for example, that exogenous changes in omitted social factors in the 1960's produced a disproportionate increase in stranger-to-stranger homicides. This would cause an increase in the homicide rate to coincide with a decrease in the imprisonment rate, since it is harder to apprehend those who commit stranger-to-stranger homicides. The appearance of a deterrent effect would then be false.

73. Passell, *supra* note 24, at 67, has discussed potential sources of error in the measurement of this variable. A particularly important potential source of error comes from the fact that the measure of the average term of imprisonment is based on released homicide offenders, exclusive of homicide offenders who die in prison, some of whom had rarely already served lengthy terms of incarceration.

74. On the other hand, errors in the measurement of the number of homicides, which appears both as the numerator of the homicide rate, (Q/N) , and the denominator of the conviction rate, (C/Q) , are likely to bias the estimates toward the appearance of a stronger deterrent effect of incarceration than may really exist. Klein, Frost, & Edsby, *supra* note 13, at 17-19.

75. See notes 51-55 *supra* and accompanying text.

76. A. von Hirsch, *DOING JUSTICE* 39 (1976).

sanction variables, whether or not the observations are weighted, and the inclusion of different subsets of available control variables.

Capital punishment may be a justly deserved and appropriate sanction in some instances. It is certainly an effective way to ensure that a person convicted of murder will not commit further crimes. The results of this analysis suggest, however, that it is erroneous to view capital punishment as a means of reducing the homicide rate.

APPENDIX

DATA SOURCES FOR THE VARIABLES USED IN THIS ANALYSIS

- Q/N *Criminal Homicide Rate* = Number of murders and non-negligent manslaughters per 100,000 residents. FEDERAL BUREAU OF INVESTIGATION, DEPARTMENT OF JUSTICE, UNIFORM CRIME REPORTS, table 3, at 38-52 (1960) & table 4, at 72-81 (1970).
- E/C *Execution Rate* = Ratio of the number of executions to the number of homicide prisoners received from court. E/C denotes the ratio of executions to murder convictions that occur in the same year. $E_{i,t}/C$ denotes the ratio of executions to convictions, with the executions occurring the year after convictions. E_m/C denotes the ratio of executions to convictions, where E_m is the mean annual number of executions over the three-year period centered about the year of the convictions. The source of the number of executions is FEDERAL BUREAU OF PRISONS, DEPARTMENT OF JUSTICE, NATIONAL PRISONER STATISTICS: CAPITAL PUNISHMENT, table 2, at 8-9 (No. 45, August 1969) for 1960 and 1961 data, and table 2, at 18-19 (No. SD-NPS-CP-3, November 1975) and table 3 (No. 20, February 1959) for the construction of 1959 data. The source of the number of homicide prisoners received from the court in 1960 is FEDERAL BUREAU OF PRISONS, DEPARTMENT OF JUSTICE, NATIONAL PRISONER STATISTICS: CHARACTERISTICS OF STATE PRISONERS, table A5, at 50-51 (1960); the source of the 1970 data is FEDERAL BUREAU OF PRISONS, DEPARTMENT OF JUSTICE, NATIONAL PRISONER STATISTICS, STATE PRISONERS: ADMISSIONS AND RELEASES, table A2, at 6 (1970).
- C/Q *Incarceration Rate* = Ratio of the number of homicide prisoners received from court to the number of murders and nonnegligent manslaughters. The source of the number of homicide prisoners received from the court is given under E/C. The number of murders and nonnegligent manslaughters is calculated as the criminal homicide rate, described under Q/N, multiplied by the resident population. The source of the resident population is U.S. BUREAU OF THE CENSUS, DEPARTMENT OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES, table 11, at 12 (1974) [hereinafter cited as CENSUS ABSTRACT].
- T *Term of Incarceration* = Mean time, in months, served by homicide prisoners released from prison (including paroles). Calculated from data given in FEDERAL BUREAU OF PRISONS, DEPARTMENT OF JUSTICE, NATIONAL PRISONER STATISTICS: PRISONERS RELEASED FROM STATE AND FEDERAL INSTITUTIONS, tables 6-54, at 22-70 (1960) and FEDERAL BUREAU OF PRISONS, DEPARTMENT OF JUSTICE, NATIONAL PRISONER STATISTICS, STATE PRISONERS: ADMISSIONS AND RELEASES, table 164, at 47-81 (1970).

- Cr *Nonhomicide Crime Rate* = Number of offenses other than murder and nonnegligent manslaughter reported to police per 100,000 residents, calculated as the total crime index rate minus the criminal homicide rate described under Q/N. The sources of the total crime index rate data are the same tables that were cited under the description of Q/N.
- Age *Proportion of Residents of the Ages 21-24* = Ratio of the number of residents of the ages 21 through 24 to the total resident population. The source of the number of persons of the ages 21-24 for 1960 is CENSUS ABSTRACT, *supra*, table 19, at 27 (1962); the source of the 1970 data is CENSUS ABSTRACT, *supra*, table 36, at 31 (1972). The Census Bureau gives the 1960 data for persons between the ages 20-24, which we multiply by 0.8. The source of the total resident population is given under C/Q.
- NW *Proportion of Nonwhites* = Ratio of the number of nonwhite residents to the total resident population. The source of the number of nonwhite residents is CENSUS ABSTRACT, *supra*, table 31, at 29 (1974). The source of the total resident population is given under C/Q.
- Male *Proportion of Males* = Ratio of the number of male residents to the total resident population. The source of the number of male residents is CENSUS ABSTRACT, *supra*, table 17, at 25 (1962) & table 25, at 25 (1972). The source of the total resident population is given under C/Q.
- Urb *Proportion of Urban Residents* = Ratio of urban population to the total resident population. The source of the urban population is CENSUS ABSTRACT, *supra*, table 18, at 17 (1974). The source of the total resident population is given under C/Q.
- Enr *Enrollment Rate* = Ratio of the number of persons enrolled in public elementary and secondary schools to the number of residents of the ages 5-17. CENSUS ABSTRACT, *supra*, table 196, at 122 (1974).
- Pop *Resident Population* = Number of residents, in millions, as of July 1. CENSUS ABSTRACT, *supra*, table 11, at 12 (1974).
- Div *Divorce Rate* = Ratio of the number of divorces to the number of residents. The source of the number of divorces is CENSUS ABSTRACT, *supra*, table 95, at 67 (1974). The source of the number of residents is given under C/Q.
- Y *Median Family Income* = Amount of income, in dollars, such that exactly half the resident families earn at least that much. CENSUS ABSTRACT, *supra*, table 627, at 322 (1974).
- Pov *Proportion of Families in Poverty* = Ratio of the number of families below the low income level to the total number of resident families. CENSUS ABSTRACT, *supra*, table 631, at 391 (1974).

- Emp *Proportion of Adults Employed* = Ratio of the number of residents employed in nonagricultural establishments to the number of residents at least 16 years of age. The source of the number of employed residents is CENSUS ABSTRACT, *supra*, table 363, at 226 (1972). The number of residents at least 16 years of age is calculated from the CENSUS ABSTRACT, *supra*, table 19, at 27 (1962) & table 36, at 31 (1972), as follows: For 1960 we use the resident population at least twenty years of age plus 0.8 times the number of residents between 15 and 19 years of age. For 1970 we use the resident population at least 18 years of age plus one-half the number of residents between 14 and 17 years of age.
- S *Binary Southern Variable* = 1 if the state is Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, or West Virginia; otherwise = 0.

Answer Call: From Utah

Democratic lead in the House today in defense of legislative actions which drew the fire of a Republican congressman.

Rep. Dawson (R-Utah), in a House speech yesterday, accused the Democratic controlled territorial Legislature of actions which might endanger Alaska statehood.

Dawson accused Democrats of "spoiled politics" in the selection of 14 of 25 commissioners to territorial boards and commissions by asking Gov. Henry Henshew.

The Utah Republican, a strong statehood supporter, also criticized a pre-emptive proposal by former Rep. Woodell Ely of Anchorage, speaker of the House in 1953, that the governor be stripped of patronage powers.

House Speaker Richard Gruel (D-Fairbanks) commented:

"Apparently Rep. Dawson is unaware of the old political custom in Alaska: the elected Legislature usually turns down a large percentage of the appointed governor's board appointments. Actually, the 1957 Legislature departed from tradition in confirming the vast majority of the governor's appointments."

"In confirming two-thirds of the Republican governor's appointments," said Senate President Victor Rivers (D-Anchorage), "the Alaska Legislature demonstrated its willingness to cooperate."

Rivers, a brother of Alaska's provisional representative in Washington, Ralph Rivers, added:

"In the interest of harmony and good government, the democratic majority went two-thirds of the way. This is in contrast to the Republican controlled Legislature of 1953 which rejected all appointments of a Democratic governor."

Ely, a registered lobbyist at the 1957 Legislature, commented:

"Unfortunately, Rep. Dawson is 600 miles away from the Alaska situation. Perhaps Ely's demonstration how much we need statehood. I still feel it is obvious that an elected Alaskan can better manage Alaska than an appointed federal official."

There has been introduced in the territorial Legislature a much-criticized Democratic-sponsored bill calling for an elected administrative governor, to serve along side the governor appointed in Washington. The latest version of the proposal would make the appointed governor the first administrative governor, serving until the 1958 general election.

A leading Senate Republican, Sen. Mike Steppovich of Fairbanks, supported Dawson's comments, and said:

"I think he is correct. We'd bet

ALASKA DEATH PENALTY DEW Line

By a 143 vote, with one member absent, the House passed and sent to the Senate a bill that would strike all forms of capital punishment from territorial law.

The vote was 143-0 and a half of the House members were present. The bill was introduced by Rep. Clark Monk and passed by the House today.

Name Roudy Queen Tonight

(Continued from Page 1)
 next, Clark Monk and Glen Phillips of Sun Valley, Idaho; Leon Johannsen, brother of the famous Sven Johannsen, racing under the colors of the Girdwood Ski Club; Charles Burnham of Eielson Air Force Base; Erik Jorgensen, Danny McDonald and Art Stubbings of Fairbanks and seven University of Alaska students—Bill King, Norm Saunders, Hazel Owens, Sam Price, Dave Teague, Harvey Turner and Donald Boyce.

Lute Zell, president of the Anchorage Ski Club, announced the following lineups, according to classes, for the slalom and downhill racing at Arcle Valley.

Class A — Joe Young, Gary King, Clark Monk, Ronnie Seater, Glen Phillips, Bill Northway, Jerry Edwards, Johannes Berge, Harvey Turner, Ray Morris and Gene Cox.

Class B — Earle Walker, Mike Beavers, Frans Bjorklund, Merle Akers, Dick Brown, Roger Ridgeway, Erik Jorgensen, Joe Jurkiewicz, Ray Brachaney, Dan McDonald, Art Stubbings, Ron Ferch, Butch Schwandt and Pat McElroy.

Class C — Charles Burnham, Norm Saunders, Bill King, Alanson Bartholomew, Warren Henry, Edwin Harper, Roger Shaffer, Jerry Palmer, Robert Boehm, Jerry McMillan, Dave Teague, Sperry Zerwas, Ron Davis, Ole Aanfjenn, Don Boyce, Arne Swaid, E. B. Mackenzie, Dick Quinn, Bill Zell, Luke Zell, Sam Price, Ray Morris, Larry Connor and DeMar Long.

Women's division — Hazel Owens, Linda Crocker, Bonnie Weimer, Marie Simon, Laurita Nelson, Marion Brown, Pat Graham and Valerie Drete.

Fur Rendezvous ski trophies will be presented at a banquet Sunday night, 8 o'clock at Forest Park Country Club.

The Alaska Slim Dog Championship races continue tomorrow and finish Sunday. A 25-mile leg is run each day. More than 30 of the territory's top mushers are

participating in the races. The races will be held at the Forest Park Country Club.

The bill was introduced by Rep. Clark Monk and passed by the House today. The bill would strike all forms of capital punishment from territorial law.

Taylor, who introduced the bill with Rep. Victor Facher (D-Anchorage), told the House and a packed gallery yesterday that he had been a lawyer in Alaska 20 years next month.

"I've taken part in 11 homicide trials, quite a few in the first degree," he said. "Both as a prosecutor and a defense attorney," he added.

"I recall a case in Valdez when I was prosecuting a very good friend of mine. A combination of cabin fever and raw alcohol led him to trouble, and fortunately the jury brought in a verdict in the second degree. Had it been different, I would have carried to the grave that seal on my soul."

One of the strong opponents in the bill, Rep. Dora Sweeney (D-Juneau) recalled two famous cases in support of her argument that the death penalty should be continued.

"Remember Willie Ruth Judge," Rep. Sweeney said. "A Juneau girl who horribly decked up two persons and tried to ship their bodies all over everywhere in a trunk, she lives today in an institution, from which she has escaped several times."

Then she pointed to the recent case of John Gilbert Graham, the Colorado youth executed for planting a bomb aboard a commercial airliner and killing more than 50 persons.

"If that happened in Alaska," Mrs. Sweeney said, "and this bill passed, we could not penalize him with any more than life imprisonment—from which he eventually could be freed."

Rep. Seaborn J. Buckalew Jr. (D-Anchorage) protested that the bill "protects a class of people who don't deserve the consideration we are giving them."

Taylor said Rep. Sweeney believed in the commandment "of thou shalt not kill—but," Taylor added: "here is a period after kill."

"Ah, Mr. Buckalew," Taylor said, "has the district attorney complex—show them no mercy."

The bill, as passed after amendments, provides for mandatory life imprisonment for persons convicted of first degree murder.

The old statute also was revised in a section which provides for first degree convictions for persons accused of wrecking a railroad train.

The amendment in that would include mandatory life for a person who "places obstruction or obsta-

Bids Opened

The bids were opened by the Alaska District Office of the Corps of Engineers here yesterday.

The low bidder was Moomey-Obert Co. Its bid for the installation at Cold Bay, near the tip of the Alaska Peninsula, was \$2,225,000. Its bid for a similar job at Cape Serichet, about 100 miles to the west on Unalakleet Island, was \$2,110,000.

The firm also said it would knock off \$100,000 if it receives both jobs. Nine bids were submitted. The government estimate for Cold Bay was \$4,700,000; for Cape Serichet \$4,710,000.

The other bids, with Cold Bay listed first, were:

Chris Berg, Inc., Seattle, \$2,700,000 and \$4,681,000.

Haker & Ford, Bellingham, \$2,200,000 and \$4,500,000.

Peter Kiewit Sons, \$4,128,000 and \$5,151,000.

Brown-Green Co., \$4,000,000 and \$5,218,700.

Morrison-Knudsen Co., \$3,600,000 for Serichet; no bid on Cold Bay.

Beck Constructors and Baber & King, Seattle, \$5,191,000 on Serichet only.

S.S. Mullen Co., Seattle, \$4,770,000 on Cold Bay only.

Grove, Shepherd, Wilson & Kruse of New York and Seattle and J. A. Jones Co., of Charlottesville, N.C., and Seattle, \$5,000,157 and \$5,500,000.

The projects are the first two of six planned in an extension of the defense warning system to the Aleutians.

Baby Show Is Tomorrow

Parents entering their children in the Fur Rendezvous Baby Contest are to bring them to the high school cafeteria tomorrow morning.

Children aged nine months to two years will be judged from 9 to 10; two to three years, 10 to 11; and 3 to 4, 11 to 11:45. Winners in each age group will compete at 2 p.m. tomorrow for the crown of baby king or queen.

Entry blanks are still available at the Spensard Hobby Shop, Northern Commercial Baby Department, Mart Shop and Jack and Jill Shop. To have time, parents are asked to have the entry forms filled in before bringing the children to the show.

The Elmer Homebakers are

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT.

S

B

1

2

2

Elder Abuse Task Force
419 Sixth Street CCS Wing
Juneau, Ak. 99801

Senate Judiciary
Room 103 Capital
Juneau, Ak.99811

Dear Senator Ray and Committee Members,

I am writing on behalf of the Juneau Elder Abuse Task Force in support of the HESS Committee Substitute for SB 122. The Task Force is composed of representatives of agencies in Juneau which serve older persons.

As you may be aware, the Task Force has taken a continuing interest in this legislation. We were pleased that most of our suggestions for revision of the original SB 122 were adopted by the Health, Education and Social Services Committee. We feel that the legislation before you addresses adequately many of the problems of elder abuse in our state.

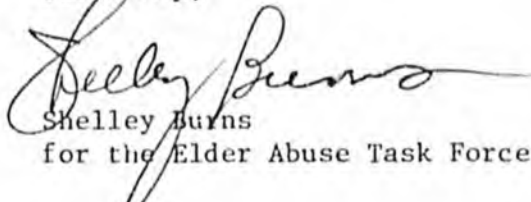
It has never been the intent of our task force to deny any older person the right to choose their own life style. On page 6, line 14, the new definition of "neglect," which we proposed, was adopted precisely to protect freedom of choice regarding life style and the right to privacy of elderly persons.

The intent of this legislation is to protect those people who are in need of protection because of physical or mental disability associated with advancing age.

The older people of our state are generally a strong and independent group. But those of us who are most likely to see elder abuse know that there are still many older Alaskans who need the type of protection this bill mandates in order to live out their lives in dignity.

I would ask you once again to vote in support of this legislation.

Sincerely,


Shelley Burns
for the Elder Abuse Task Force

S

B

/

2

7

COMMITTEE REPORT
SENATE

2/16/83

FURTHER:

Date: 5/1/83

Mr. President:

The Committee on Judiciary has had SB 127

An Act relating to unlawful conduct of minors.

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

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for SB 127 (Jud) same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PAS

[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

2 members N/R

Stephen No Rec.

[Signature]
CHAIRMAN
DO PASS

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99911
907-465-3860

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 27, 1983

SUBJECT: Disclosure of the identity of a minor and the
minor's parents at the court's discretion
(CSSB 127 (Judiciary))

TO: Senator Bill Ray
Chairman, Senate Judiciary Committee
Attn: John Gabrielli

FROM: James H. Lear
Legislative Counsel *JHL*

You have asked our office to prepare a work draft amendment to CSSB 127 (Judiciary) that would provide for disclosure, in the court's discretion, of the identity of a minor and the minor's parents in relation to children's court proceedings. Since the existing law already gives the courts the discretion to decide whether or not to authorize disclosure of the identity of a minor, all that is necessary to comply with your request is to delete certain portions of the bill that appear to conflict with the existing law.

The provisions of AS 47.10.090 address the issue of disclosure of identity. In particular, subsection (b) states:

(b) The name or picture of a minor under the jurisdiction of the court may not be made public in connection with the minor's status as a delinquent child or a child in need of aid unless authorized by order of the court, except that the name of a minor who is found for the second time to have violated a law, which if committed by an adult would be a felony, shall be made public unless the court, for good cause, in certain individual cases, enters an order prohibiting the disclosure.

Rule 26, Rules of Children's Procedure, reiterates that the court has the discretion to decide whether or not to enter

Senator Bill Ray
Page 2
April 27, 1983

an order authorizing disclosure of a minor's identity.
Rule 26 states:

The name or picture of a child under the jurisdiction of the children's court shall not be made available to the public unless authorized by court order accompanied by a written statement reciting the circumstances which support such authorization.

Accordingly, two amendments should be made to reconcile CSSB 127 (Judiciary) to existing law. First, on page 8, lines 9 and 10, delete "the court may not disclose the identity of the minor." This language is in direct conflict with the provisions of AS 47.10.090(b), since the court may enter an order authorizing the disclosure of a minor's identity.

Second, on page 9, line 29, delete the word "prohibiting" and insert the phrase "requiring a court order to authorize". Thus, subsection (d) would read:

The provisions of this section requiring a court order to authorize disclosure of information relating to a minor do not apply to a disclosure to a victim or the victim's parent or guardian under AS 47.10.020(a), 47.10.080(a), and 47.10.140(d).

This amendment would clarify that AS 47.10.090(b) does not prohibit disclosure, but rather, restricts disclosure to instances in which a court order is entered authorizing disclosure.

Hopefully, this information is responsive to your request. If not, do not hesitate to contact our office.

JHL:ljb
16/017

PATRICK M. RODEY
3271 MONTCLAIRE CT.
ANCHORAGE, AK 99503

- GABRIELLI -

DURING SESSION:
POUCH V
UNEAU, AK 9981
(907) 465-3717

ALASKA STATE SENATE

March 18, 1983

TO : Senator Bill Ray, Chairman, Senate Judiciary Committee
FROM: Senator Patrick Rodey *PMR*
RE : Senate Bill 127 "An Act relating to unlawful conduct
of minors"

Enclosed is a copy of the response I received from the Department of Law regarding the above-mentioned bill. Also enclosed is a draft proposed by the Department of Law which I suggest should be used as a Committee Substitute for Senate Bill 127.

Enclosure

*if you have an objection
to my name on the bill
please feel free to use
another title*
R.

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

BILL SHEFFIELD, GOVERNOR

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

March 17, 1983

The Honorable Patrick Rodey
Senator
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Rodey:

In response to your request, I am sending you a copy of a bill drafted by the Department of Law regarding the "waiver" of juveniles charged with serious felony crimes from juvenile to adult court. The bill is provided for your use (if desired) as the basis of a sponsor substitute for SB 127, now before the Senate Judiciary Committee. I am also sending a copy of the bill to Senator Ray and to the House Judiciary Committee.

As you know, under the current law, minors accused of committing criminal offenses are handled in the children's court system unless they are "waived" into adult court after a hearing under AS 47.10.060 (i.e., when the special procedures required for minors are waived). Even for the most serious crimes, waiver under existing law is permitted only if the prosecution can prove to the court that the offender is "not amenable to treatment." If a minor charged with a serious offense has not previously come to the attention of the criminal justice authorities, and thus has never been "treated" under the children's criminal justice system, it is extremely difficult to prove that the minor would not be amenable to treatment, despite the heinous or brutal nature of the crime. If retained in the children's system, the offender must be released when he or she reaches the age of 20. Children's court jurisdiction cannot be extended beyond that point, regardless of an offender's lack of progress in treatment or his or her continuing to be a danger to the community.

The attached bill transfers jurisdiction over persons aged 16 and 17 who are accused of unclassified or class A felonies from the children's court to adult criminal court. The bill retains the children's court's ability to waive, in its discretion, in appropriate cases and after a full hearing, the children's proceedings for minors of any age who are charged with felony offenses. The standard for waiver is somewhat altered, however. Upon motion of the prosecutor, an offender charged with a felony will be transferred to adult court if the court finds that there is "no substantial likelihood"

that the person can be successfully rehabilitated under the jurisdiction of the children's court. The bill lists several factors which the court must consider when determining the likelihood of successful rehabilitation under the children's justice system.

If convicted of the original charge or of any lesser included offense, the defendant would be sentenced as an adult under the current AS 12.55. In order to allow the sentencing judge to consider all relevant factors, however, an offender under the age of 18 would not be subject to mandatory minimum or presumptive sentences on his or her first felony conviction. He or she would be subject to mandatory minimum and presumptive sentences for second or subsequent convictions.

If confined to custody while awaiting trial, or sentenced to a period of incarceration following conviction, the person will be committed to the custody of the Department of Health and Social Services for confinement in an adult facility. It is not considered appropriate to confine persons convicted of serious or brutal felonies to a children's facility, where they could have a detrimental influence upon other, less sophisticated young offenders.

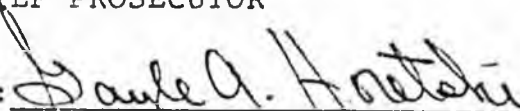
Once a person is tried and sentenced as an adult, that person will be prosecuted as an adult for all subsequent criminal violations. This is to preclude the possibility that a person who has been convicted as an adult and has perhaps served a sentence in an adult facility could be confined in a children's facility following conviction for a subsequent, less serious offense. Again, it is not considered desirable to mingle these older, more sophisticated offenders with the general population found in children's facilities.

This letter is a brief summary of the more important aspects of the attached bill. I would be happy to answer any questions you might have about the bill, and to work with you on incorporating its provisions into SB 127.

Sincerely yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

DANIEL W. HICKEY
CHIEF PROSECUTOR

By: 
Gayle A. Horetzki
Assistant Attorney General

GAH/lb-09

Attachment

that the person can be successfully rehabilitated under the jurisdiction of the children's court. The bill lists several factors which the court must consider when determining the likelihood of successful rehabilitation under the children's justice system.

If convicted of the original charge or of any lesser included offense, the defendant would be sentenced as an adult under the current AS 12.55. In order to allow the sentencing judge to consider all relevant factors, however, an offender under the age of 18 would not be subject to mandatory minimum or presumptive sentences on his or her first felony conviction. He would be subject to mandatory minimum and presumptive sentences for second or subsequent convictions.

If confined to custody while awaiting trial, or sentenced to a period of incarceration following conviction, the person will be committed to the custody of the Department of Health and Social Services for confinement in an adult facility. It is not considered appropriate to confine persons convicted of serious or brutal felonies to a children's facility, where they could have a detrimental influence upon other, less sophisticated young offenders.

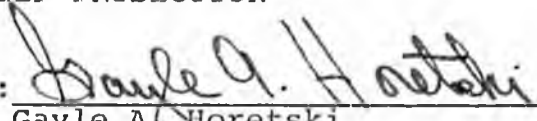
Once a person is tried and sentenced as an adult, that person will be prosecuted as an adult for all subsequent criminal violations. This is to preclude the possibility that a person who has been convicted as an adult and has perhaps served a sentence in an adult facility could be confined in a children's facility following conviction for a subsequent, less serious offense. Again, it is not considered desirable to mingle these older, more sophisticated offenders with the general population found in children's facilities.

This letter is a brief summary of the more important aspects of the attached bill. I would be happy to answer any questions you might have about the bill, and to work with you or Mr. Gabrielli on incorporating its provisions into SB 127.

Sincerely yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

DANIEL W. HICKEY
CHIEF PROSECUTOR

By: 
Gayle A. Horetzki
Assistant Attorney General

GAH/lb-09

Attachment

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

BILL SHEFFIELD, GOVERNOR

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

March 17, 1983

The Honorable Bill Ray, Chairman
Senate Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Ray:

In response to your request, I am sending you a copy of a bill drafted by the Department of Law regarding the "waiver" of juveniles charged with serious felony crimes from juvenile to adult court. The bill is provided for your use (if desired) as the basis of a sponsor or committee substitute for SB127, now before the Senate Judiciary Committee. I am also sending a copy of the bill to Senator Rodey and to the House Judiciary Committee.

As you know, under the current law, minors accused of committing criminal offenses are handled in the children's court system unless they are "waived" into adult court after a hearing under AS 47.10.060 (i.e., when the special procedures required for minors are waived). Even for the most serious crimes, waiver under existing law is permitted only if the prosecution can prove to the court that the offender is "not amenable to treatment." If a minor charged with a serious offense has not previously come to the attention of the criminal justice authorities, and thus has never been "treated" under the children's criminal justice system, it is extremely difficult to prove that the minor would not be amenable to treatment, despite the heinous or brutal nature of the crime. If retained in the children's system, the offender must be released when he reaches the age of 20. Children's court jurisdiction cannot be extended beyond that point, regardless of an offender's lack of progress in treatment or his continuing to be a danger to the community.

The attached bill transfers jurisdiction over persons aged 16 and 17 who are accused of unclassified or class A felonies from the children's court to adult criminal court. The bill retains the children's court's ability to waive, in its discretion, in appropriate cases and after a full hearing, the children's proceedings for minors of any age who are charged with felony offenses. The standard for waiver is somewhat altered, however. Upon motion of the prosecutor, an offender charged with a felony will be transferred to adult court if the court finds that there is "no substantial likelihood"

TO : Senator Ray
FROM : John
DATE : 3/22/83
RE : SB 127

Attached please find the cover letter from Gail Horetski of the Dept. of Law, along with their proposed "juvenile waiver" bill.

You had instructed me to take this proposed bill, incorporate several sections of our original SB 127, and have a new committee substitute drafted for further consideration.

However, a problem has arisen:

As explained by Sen. Rodey when he testified, the original SB 127 was a compromise worked out last session between the Dept. of Law and its opponents. The opponents apparently consist of social workers and probation officers, headed by a prominent woman professor and social worker, who are adamantly against the Dept. of Law and have been calling for a special task force to completely revise the entire Juvenile Code.

Thus, if we adopt the Dept. of Law's bill at this point, the opponents will undoubtedly be up in arms and probably feel that they've been cheated because, after working out a compromise last session, they've had no input in the drafting of this new legislation.

Therefore, I propose that before we have a new committee substitute drafted we allow these opponents of the Dept. of Law to testify at our Committee hearing to consider the proposed Dept. of Law draft. After this is done, you can best decide exactly what kind of committee substitute you want drafted.

In any case, pursuant to your instructions, I am making sure that the Dept. of Law's opponents have an opportunity to be heard.

Please let me know if you want me to proceed as originally instructed or as suggested above.

OK
Good idea, John,
BR

CS/HB 109 - IS THE GOOD'S KILL

1 IN THE SENATE

~~BY THE RULES COMMITTEE BY~~
~~REQUEST OF THE GOVERNOR~~
PROPOSED COMMITTEE SUBSTITUTE
FOR SENATE BILL NO. 127

2
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to persons 16 years of age or older
7 who are charged with unclassified or class A fel-
8 onies; and amending the children's proceedings waiver
9 statutes."

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

11 * Section 1. AS 12 is amended by adding a new chapter to read:

12 CHAPTER 7. JURISDICTION OVER MINORS.

13 Sec. 12.07.010. JURISDICTION OVER MINORS CHARGED WITH SERIOUS
14 FELONIES. (a) A person 16 years of age or older, but under the age
15 of 18, who is alleged to have committed an offense designated as an
16 unclassified or class A felony must be charged, arrested, and prose-
17 cuted as an adult.

18 (b) If the court has waived juvenile jurisdiction over a person
19 under the age of 18 under AS 47.10.060, that person must be prosecuted
20 as an adult.

21 (c) A person subject to the jurisdiction of the court under this
22 section will be tried under the procedures set out in this title and
23 in the Alaska Rules of Criminal Procedure.

24 (d) References in AS 47.10.010, 47.10.060, and this chapter to
25 the age of a person refer to the person's age at the time of the
26 offense.

27 Sec. 12.07.020. SENTENCING AND DISPOSITION. (a) A person
28 subject to the jurisdiction of the court under AS 12.07.010 who is
29 convicted of the offense charged or of any lesser included offense

1 must be sentenced under the provisions of AS 12.55.

2 (b) If a person under the age of 18 who is subject to the juris-
3 diction of the court under AS 12.07.010 is confined to custody while
4 awaiting trial or sentenced to a period of incarceration upon convic-
5 tion, the person must be committed to the custody of the Department of
6 Health and Social Services for confinement in a correctional facility
7 for adult offenders.

8 (c) A person who has been convicted of an offense after being
9 prosecuted as an adult under AS 12.07.010 must be prosecuted as an
10 adult for any subsequent criminal offense.

11 * Sec. 2. AS 12.55.125 is amended by adding a new subsection to read:

12 (j) Notwithstanding any other provision in this section, a
13 person convicted of his first felony offense while under the jurisdic-
14 tion of the court under AS 12.07.010 is not subject to the mandatory
15 minimum and presumptive sentences required for first offenders.

16 * Sec. 3. AS 12.55.145 is amended by adding a new subsection to read:

17 (f) If a person subject to the jurisdiction of the court under
18 AS 12.07.010 is convicted of a felony offense, the conviction is to be
19 considered a prior conviction for presumptive sentencing purposes.

20 * Sec. 4. AS 47.10.010(a) is amended to read:

21 (a) Except as otherwise provided in this chapter and AS 12.07,
22 proceedings [PROCEEDINGS] relating to a minor under 18 years of age
23 residing or found in the state are governed by this chapter [, EXCEPT
24 AS OTHERWISE PROVIDED IN THIS CHAPTER,] when the court finds the minor

25 (1) to be a delinquent minor as a result of violating a
26 criminal law of the state or of a municipality of the state; or

27 (2) to be a child in need of aid as a result of

28 (A) the child being habitually absent from his home or
29 refusing to accept available care, or having no parent, guardian,

1 custodian or relative caring or willing to care for him, includ-
2 ing physical abandonment by

3 (i) both parents,

4 (ii) the surviving parent, or

5 (iii) one parent if the other parent's rights and
6 responsibilities have been terminated under AS 47.10.080 or
7 voluntarily relinquished;

8 (B) the child being in need of medical treatment to
9 cure, alleviate, or prevent his suffering substantial physical
10 harm or mental harm as evidenced by failure to thrive, severe
11 anxiety, depression, withdrawal, or untoward aggressive behavior
12 or hostility toward others, and his parents are unwilling to
13 provide the medical treatment;

14 (C) the child having suffered substantial physical
15 harm or if there is an imminent and substantial risk that the
16 child will suffer such harm as a result of the actions done by or
17 conditions created by his parent, guardian or custodian or the
18 failure of his parent, guardian or custodian adequately to super-
19 vise him;

20 (D) the child having been sexually abused either by
21 his parent, guardian or custodian, or as a result of conditions
22 created by his parent, guardian or custodian, or by the failure
23 of his parent, guardian or custodian adequately to supervise him;

24 (E) the child committing delinquent acts as a result
25 of pressure, guidance, or approval from his parents, guardian or
26 custodian; [.]

27 (F) the child having suffered substantial physical
28 abuse or neglect as a result of conditions created by the child's
29 parent, guardian or custodian.

1 * Sec. 5. AS 47.10.060 is repealed and reenacted to read:

2 Sec. 47.10.060. WAIVER OF JUVENILE JURISDICTION. (a) Upon
3 motion of the prosecutor, and after a hearing, the court shall waive
4 juvenile jurisdiction over a person under the age of 18 if the court
5 finds, based upon the preponderance of the evidence,

6 (1) that there is probable cause to believe that the person
7 has committed an offense which would be a felony if committed by an
8 adult; and

9 (2) that there is no substantial likelihood that the person
10 can be successfully rehabilitated within the juvenile justice system.

11 (b) In determining the likelihood of successful rehabilitation
12 within the juvenile justice system, the court shall consider

13 (1) the seriousness of the offense;

14 (2) whether the offense constituted a substantial danger to
15 the public;

16 (3) whether the offense was committed in an aggressive,
17 violent, premeditated, or willful manner;

18 (4) whether the offense was against persons or against
19 property, greater weight being given to an offense against persons,
20 especially if personal injury resulted;

21 (5) whether the offense is a part of a repetitive pattern
22 of delinquent acts, even though previous offenses may have been less
23 serious;

24 (6) the age, maturity, educational background, and degree
25 of criminal sophistication of the person;

26 (7) the success of any previous attempts to rehabilitate
27 the person;

28 (8) whether juvenile jurisdiction over the person can be
29 retained long enough to allow for effective treatment or

1 rehabilitation; and

2 (9) the treatment resources available to the juvenile
3 justice system.

4 (c) The court shall determine the weight to be given to each of
5 the factors listed in (b) of this section and shall issue a written
6 decision. A finding that there is no substantial likelihood of suc-
7 cessful rehabilitation of the person under the juvenile justice system
8 may be based on any one or a combination of the factors. If the court
9 waives juvenile jurisdiction over a person, the court shall order the
10 juvenile case closed; the person must then be prosecuted as an adult.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29



Superior Court

State of Alaska

FIRST JUDICIAL DISTRICT
415 MAIN STREET, ROOM 402
KETCHIKAN, ALASKA 99901

Chambers of
THOMAS E. SCHULZ, Judge

February 24, 1983

The Hon. Bill Ray
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Senate Bill No. 127

Dear Senator Ray:

I wanted to write and express my agreement with Section 2 of Senate Bill 127 which raises the amount recoverable in a civil action against parents of an unemancipated minor from \$2000 to \$5000. That increase is well justified by simply taking into account the effects of inflation over the last several years.

I also wanted to comment on Section 4 which contains an amendment to AS 47.10.020(a). Apparently new language is being added to that section to provide that the victim may obtain information from the court concerning the manner, "in which it (the court) informally adjusted or disposed of the matter. The court may not disclose the identity of the minor." I disagree with a provision prohibiting the court from disclosing to the victim the identity of a minor who has caused damage to that victim's person or property. I think the statute should very clearly allow the court to disclose the identity of both the minor and his parents to the victim so that if restitution orders made by the court are deemed insufficient or inappropriate, the victim has the information available with which he can pursue the civil remedies provided earlier in the statute. It does not make sense to me to keep this information from the victim, and I believe it sends the wrong message to both the minor and his parents in those cases in which kids are involved in doing damage to person or property. Particularly the kids ought to be told up front that the court will not be part of any procedure that inhibits the "accounting", if you will, between them and the victim. I would recommend that that last sentence be removed from Section 4.

Very truly yours

Thomas F. Schulz
Superior Court Judge

STATE OF ALASKA
THE LEGISLATURE

POU 14 STATE CAPITOL
JUNEAU ALASKA 99811
907 463 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 27, 1983

SUBJECT: Disclosure of the identity of a minor and the
minor's parents at the court's discretion
(CSSB 127 (Judiciary))

TO: Senator Bill Ray
Chairman, Senate Judiciary Committee
Attn: John Gabrielli

FROM: James H. Lear
Legislative Counsel *JHL*

You have asked our office to prepare a work draft amendment to CSSB 127 (Judiciary) that would provide for disclosure, in the court's discretion, of the identity of a minor and the minor's parents in relation to children's court proceedings. Since the existing law already gives the courts the discretion to decide whether or not to authorize disclosure of the identity of a minor, all that is necessary to comply with your request is to delete certain portions of the bill that appear to conflict with the existing law.

The provisions of AS 47.10.090 address the issue of disclosure of identity. In particular, subsection (b) states:

(b) The name or picture of a minor under the jurisdiction of the court may not be made public in connection with the minor's status as a delinquent child or a child in need of aid unless authorized by order of the court, except that the name of a minor who is found for the second time to have violated a law, which if committed by an adult would be a felony, shall be made public unless the court, for good cause, in certain individual cases, enters an order prohibiting the disclosure.

Rule 26, Rules of Children's Procedure, reiterates that the court has the discretion to decide whether or not to enter

Senator Bill Ray
Page 2
April 27, 1983

an order authorizing disclosure of a minor's identity.
Rule 26 states:

The name or picture of a child under the jurisdiction of the children's court shall not be made available to the public unless authorized by court order accompanied by a written statement reciting the circumstances which support such authorization.

Accordingly, two amendments should be made to reconcile CSSB 127 (Judiciary) to existing law. First, on page 8, lines 9 and 10, delete "the court may not disclose the identity of the minor." This language is in direct conflict with the provisions of AS 47.10.090(b), since the court may enter an order authorizing the disclosure of a minor's identity.

Second, on page 9, line 29, delete the word "prohibiting" and insert the phrase "requiring a court order to authorize". Thus, subsection (d) would read:

The provisions of this section requiring a court order to authorize disclosure of information relating to a minor do not apply to a disclosure to a victim or the victim's parent or guardian under AS 47.10.020(a), 47.10.080(a), and 47.10.140(d).

This amendment would clarify that AS 47.10.090(b) does not prohibit disclosure, but rather, restricts disclosure to instances in which a court order is entered authorizing disclosure.

Hopefully, this information is responsive to your request. If not, do not hesitate to contact our office.

JHL:ljb
16/017

FILE WITH SB127

1408 West Tenth Avenue
Anchorage, Alaska 99501

March 18, 1983

The Honorable Bill Ray
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: Senate Bill No. 127

Dear Senator Ray:

This letter is to explain that my letter of March 14, 1983 was written in my capacity as a private citizen who has had personal experience with the juvenile justice system over the past 14 years.

Sincerely,

Vic

Victor D. Carlson

VDC:gp

cc: Senator Rodey
Arthur H. Snowden, II

HEK - send to [unclear]
March 17, 1983

Senator Bill Ray
Pouch V
Juneau, Alaska 99811
(Mail Stop 3100)

Dear Senator *Bill* Ray:

Thank you for taking the time to talk with me recently about Senate Bill 127 relating to juvenile prosecution.

As you requested I am sending you the references for recent research on the effects of legislation in Minnesota and New York which provides for the prosecution of juveniles by the adult courts. That research revealed that instead of increasing the incarceration of juveniles, conviction rates for serious crimes were often lower - than would have been the case in juvenile court. That research is referred to in these articles -

¹Kiersh, Edward, "Minnesota Cracks Down on Chronic Juvenile Offenders," Correction Magazine, (New York) 7 (6) 21-28, 1981

Roysher, Martin; Edelman, Peter, Treating Juveniles as Adults in New York: What Does it Mean & How Is It Working? Albany, New York State Division for Youth 1980

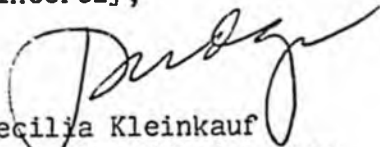
Sobie, Merrie, The Juvenile Offender Act: A Study of the Acts' Effectiveness & Impact on the New York Juvenile Justice System, New York Foundation for Child Development, 1981

Senate Bill 127 does provide for a hearing in juvenile court and also provides a set of criteria for the judge to use in deciding whether the juvenile shall be prosecuted as an adult. That approach is preferable to an automatic waiver and also to the wide latitude now available to the courts. It is interesting to note, however, that Mr. John Pugh, Dept. Commissioner, Dept. of Health & Social Services testified recently before House Judiciary Committee that 16 waiver petitions were filed in juvenile court last year and 12 of them were granted. So it seems the courts are waiving most of the serious juvenile offenders to adult court. Alaska Chapter, National Association of Social Workers has requested statistical information from the court system to verify this or to provide actual data on the use of the waiver. We will share that info with you when we receive it.

TO: Senator Bill Ray
Page #2

I would appreciate being notified of future hearings on SB 127 and perhaps provided an opportunity via a telephone speaker system to give testimony.

Sincerely,



Cecilia Kleinkauf
Assoc Prof/Chairperson

CK:par

cc: Senator Pat Rodey



ACK - COPY TO [unclear] 11-20
SB 127

Superior Court
State of Alaska

THIRD JUDICIAL DISTRICT

303 K Street
Anchorage, Alaska 99501

Chambers of
VICTOR D. CARLSON, Judge

March 14, 1983

The Honorable Bill Ray
Alaska State Senate
Pouch V
Juneau, Alaska 99811

RE: Senate Bill No. 127

Dear Senator Ray:

This letter is written to convey my concerns about the changes which the bill introduced by you and Senator Rodey would create in children's proceedings.

Of major concern is the mixing of criminals (those minors who are waived to adult court) with the run-of-the-mill delinquent. The likelihood of a minor who is waived to adult court receiving a sentence which can be served by the time he becomes 19 is remote. This means a minor who receives at a minimum a 20-year sentence for first degree murder, AS 12.55.125(a), or seven years for an armed robbery, AS 12.55.125(c)(2), will spend the first part of his incarceration in the relative benign environment of the McLaughlin Youth Center and the remainder at a relatively harder institution like Lemon Creek.

The program at McLaughlin Youth Center is effective both on account of the highly motivated personnel and the incentive minors have to change. The addition of persons with long sentences who know they are going to prison at age 18 will disrupt the program and make the job of the McLaughlin Youth Center staff more difficult.

I request that you consider the impact of mixing persons with long sentences into the McLaughlin Youth Center population.

The whole area of vicariously liability for torts committed by another has problems not yet addressed in Alaska. I question if the impression left by proposed AS 34.50.020(d) is intended,

The Honorable Bill Ray
Juneau, Alaska 99811

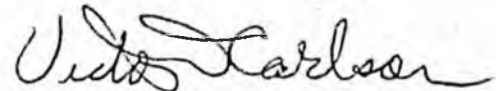
March 14, 1983
-2-

ie. that only emancipated minors can be sued for their torts. It is my understanding of the current law that a person regardless of age is responsible for his actions so long as he possesses the capacity to control and understand his actions.

Proposed AS 04.10.060(a)(1) provides that "... the court may retain jurisdiction if ...". The "court" is the superior court whether the minor is being sentenced as an adult or being treated a delinquent. I understand what is being proposed but find the language to be ambiguous and ambiguities in criminal statutes present problems for all concerned.

Thank you for considering this letter. I am

Very truly yours,



Victor D. Carlson
Superior Court Judge

VDC:gp

cc: Senator Rodey
Karla Forsythe
William Hitchcock, Esq.



Superior Court

State of Alaska

FIRST JUDICIAL DISTRICT
415 MAIN STREET, ROOM 402
KETCHIKAN, ALASKA 99901

Chambers of
THOMAS E. SCHULZ, Judge

February 24, 1983

The Hon. Bill Ray
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

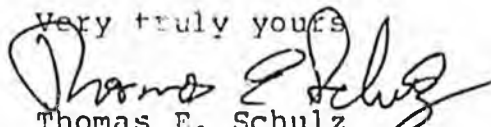
Re: Senate Bill No. 127

Dear Senator Ray:

I wanted to write and express my agreement with Section 2 of Senate Bill 127 which raises the amount recoverable in a civil action against parents of an unemancipated minor from \$2000 to \$5000. That increase is well justified by simply taking into account the effects of inflation over the last several years.

I also wanted to comment on Section 4 which contains an amendment to AS 47.10.020(a). Apparently new language is being added to that section to provide that the victim may obtain information from the court concerning the manner, "in which it (the court) informally adjusted or disposed of the matter. The court may not disclose the identity of the minor." I disagree with a provision prohibiting the court from disclosing to the victim the identity of a minor who has caused damage to that victim's person or property. I think the statute should very clearly allow the court to disclose the identity of both the minor and his parents to the victim so that if restitution orders made by the court are deemed insufficient or inappropriate, the victim has the information available with which he can pursue the civil remedies provided earlier in the statute. It does not make sense to me to keep this information from the victim, and I believe it sends the wrong message to both the minor and his parents in those cases in which kids are involved in doing damage to person or property. Particularly the kids ought to be told up front that the court will not be part of any procedure that inhibits the "accounting", if you will, between them and the victim. I would recommend that that last sentence be removed from Section 4.

Very truly yours


Thomas E. Schulz
Superior Court Judge

FILE

February 10, 1983

377-047-83

Gayle A. Horetski

Juvenile Waiver
legislation

Following a review of Title 11, I have determined that the following offenses are presently classified as "unclassified offenses";

AS 11.41.100 Murder in the First Degree
AS 11.41.110 Murder in the Second Degree
AS 11.41.300 Kidnapping
AS 11.41.410 Sexual Assault in the First Degree
AS 11.71.010 Misconduct Involving Controlled
Substances in the First Degree

The following are classified as "class A felonies";

AS 11.41.120 Manslaughter
AS 11.41.200 Assault in the First Degree
AS 11.41.500 Robbery in the First Degree
AS 11.46.400 Arson in the First Degree
AS 11.56.300 Escape in the First Degree
AS 11.31.110(c)(1) Solicitation (to commit an
unclassified offense)
AS 11.71.020 Misconduct Involving Controlled
Substances in the Second Degree

SB 127

CECILIA "Pudge" KLEINKLUS ^{H/AUS}

SOCIAL WORKER
ASSOC PROF AT UAA

WANTS TASK FORCE TO
REDO ENTIRE JUVENILE
CODE

FISCAL IMPACT

statistics on how often
waiver used, etc - Art
Snowden

Social Workers agreed to
SB 127, as well as D of L,
last year

COMPROMISE WAS ALL
WORKED OUT

SPJ or VCF
may introduce
bill



Alaska State Legislature
State Senate

Committee on Judiciary

Senator Bill Ray
Chairman
Senate Floor Leader

Pouch V
State Capitol
Juneau, Alaska 99811

April 21, 1983

The Honorable Thomas E. Schulz
Superior Court
First Judicial District
415 Main Street, Room 402
Ketchikan, AK 99901

Re: Senate Bill 127

Dear Judge Schulz:

Herewith please find a copy of a newly proposed committee substitute for the captioned bill.

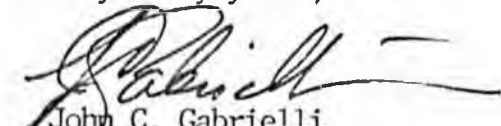
The two sections about which you expressed concern have been retained as sections number 10 and 13 in the proposed committee substitute.

The provision prohibiting disclosure of a minor's identity is still in section 13, but during prior hearings on the original bill at least one Committee member voiced concerns similar to yours. Therefore, it is quite likely that a corrective amendment will be proposed, and the undersigned has initiated research of that issue and the problems involved in providing for discretionary disclosure; e.g. 's precisely which sections of the Alaska Statutes need to be amended to accomplish that objective, and will it involve an amendment of court rules requiring passage by a 2/3 majority vote.

Senator Ziegler, who is a member of the Committee, is aware of your concerns and I am sure he will give them due consideration.

Your input is sincerely appreciated and if I can provide additional information or be of assistance to you in any way, please feel free to call me at 465-4451.

Very truly yours,


John C. Gabrielli
Counsel

JCG:jg
Encl.

cc: Senator Ziegler



Alaska State Legislature
State Senate

Committee on Judiciary

Senator Bill Ray
Chairman
Senate Floor Leader

Pouch V
State Capitol
Juneau, Alaska 99811

April 22, 1983

The Honorable Victor D. Carlson
Superior Court - Third Judicial District
303 K Street
Anchorage, AK 99501

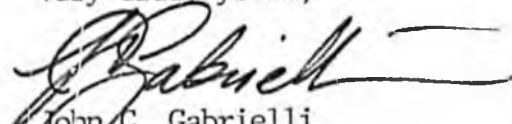
Re: Senate Bill 127

Dear Judge Carlson:

Herewith please find a copy of a newly proposed committee substitute for the captioned bill.

Your input is sincerely appreciated and if I can provide additional information or be of assistance to you in any way, please feel free to call me at 465-4451.

Very truly yours,


John C. Gabrielli
Counsel

JCG:jg
Encl.

Ind. Daily News, 3/22/83

Prisons department bill stalled in committee

The Associated Press

JUNEAU — The minority Democrats Monday delayed, at least for two days until the Alaska House meets again, passage of a bill to create a Department of Corrections.

The minority prevented the bill (HB103) from moving to the third reading — when it can be approved as law — by preventing the needed three-fourths vote. The vote was 11-25 against movement.

Democrats indicated they want a clear signal from Gov. Bill Sheffield's administration on whether the juvenile corrections should be moved immediately to the new department.

Creating the corrections department separate from the Department of Health and Social Services was the subject of an executive order turned down last week by the Legislature.

At one point, lawmakers said they had been told the administration would be satisfied with juvenile correc-

tions in the new department. But that opinion was a personal one of Division of Corrections Director Roger Endell, according to an Endell letter read by Rep. Jim Duncan, D-Juneau.

Endell, Duncan said, now has taken the Sheffield administration position to delay the shift of juvenile corrections from the health and social services department.

But House Judiciary Chairman Charlie Bussell, R-Anchorage, said as late as Saturday Endell said he could live with the juvenile corrections coming into his department July 1, 1983.

It was when minority Democrats failed to get that date delayed a year that they came up with the parliamentary tactic to hold the bill over a day.

Clocks in and other Democrats fought for keeping juvenile corrections in DHSS so the new department could get itself operating with stability.

March 22, 1983

The Honorable Victor D. Carlson
Superior Court Judge
Superior Court, State of Alaska
303 K Street
Anchorage, Alaska 99501


Re: Senate Bill 127

Dear Judge Carlson:

Herewith please find a copy of a "Juvenile Waiver" bill drafted by the Department of Law as a possible Judiciary Committee Substitute for Senate Bill 127.

Any comments you may wish to make are welcome. Also, there will probably be hearings on this proposed legislation in the near future and if you would like to testify, either in person or by teleconference, please let us know so that suitable arrangements can be made.

Very truly yours,


John C. Gabrielli
Counsel

Enclosure

TO : Nancy Groszeck

FROM : John Gabrielli 

DATE : 4/4/83

RE : SB 127 (Juvenile Waiver)

Attached please find the source of the statistics recently cited by John Pugh when he testified before the House Judiciary on CSHB 109.

These are Alaska figures, but they are apparently based on federal, rather than state, definition of the crimes involved.

1982 figures are presently being compiled by the Alaska State Troopers, but there's no word on when they will be available.

The extra copy is for Pudge.

Ext. 4451 if you have any questions.



Alaska State Legislature
State Senate

Committee on Judiciary

Senator Bill Ray
Chairman
Senate Floor Leader

Pouch V
State Capitol
Juneau, Alaska 99811

April 4, 1983

Jim Ayers
Alaska Youth Advocates
204 East Fifth, Room 211
Anchorage, AK 99501

Re: SB 127

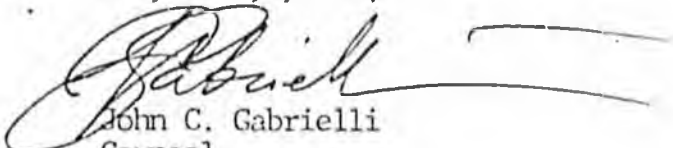
Dear Jim:

Pursuant to our telephone conversation of even date, herewith please find a copy of the Department of Law's proposed draft of a committee substitute for the captioned bill which is currently pending before our committee.

As I indicated, SB 127 is coming up for consideration at a public hearing here in Juneau at 1:30 p.m. on Friday, April 15, 1983, and at that time we expect that Pudge Kleinkauf as well as other opponents of the Department of Law's proposal will testify.

If I can be of further assistance in this or any other matter before our committee, please feel free to call me at 465-4451.

Very truly yours,


John C. Gabrielli
Counsel

JCG:jg
Encl.

MSG 83-00003715 PRY 1 03/25/83 18:51:26 ORIG: LA01 IN= 0020 OUT= 0118
FROM: MARCIE, ANC INFO TO: JUNEAU INFO
TARGET: LJHL SUBJ: MESSAGE FOR JOHN GABRIELLI

PLEASE DELIVER THE FOLLOWING MESSAGE TO JOHN GABRIELLI AS SOON AS POSSIBLE:

TO: JOHN GABRIELLI, AID, SENATOR RAY'S OFFICE

FROM: PUDGE KLEINKHAUF

RE: GROUPS & INDIVIDUALS INTERESTED IN ISSUE OF JUVENILE WAIVER
FOR TELECONFERENCE

DANA FARE, PUBLIC DEFENDER 279-7541

ROBERT HICKERSON, LEGAL SERVICES 272-9431

SHARON EGGERS, AK YOUTH ADVOCATES 274-6541

DENNY PATELLA, FAMILY CONNECTION 279-0551

MARGARET WOLF 277-1977

JEAN STASSEL, LEAGUE OF WOMEN VOTERS 276-8927

JAN STUMP 694-9279

SALLY KNEELAND 863-2115

JOANIE CLEARY, NORTH PACIFIC RIM NATIVE CORPORATION 276-2121 H-274-9056

SALLY LAUSTER H: 277-6471

JOHN GARVIN, AK CHILDREN SERVICES 276-4515

SHERRY ECHRICH H: 345-7893

KATIE HURLEY, COM ON STATUS OF WOMEN 561-4227

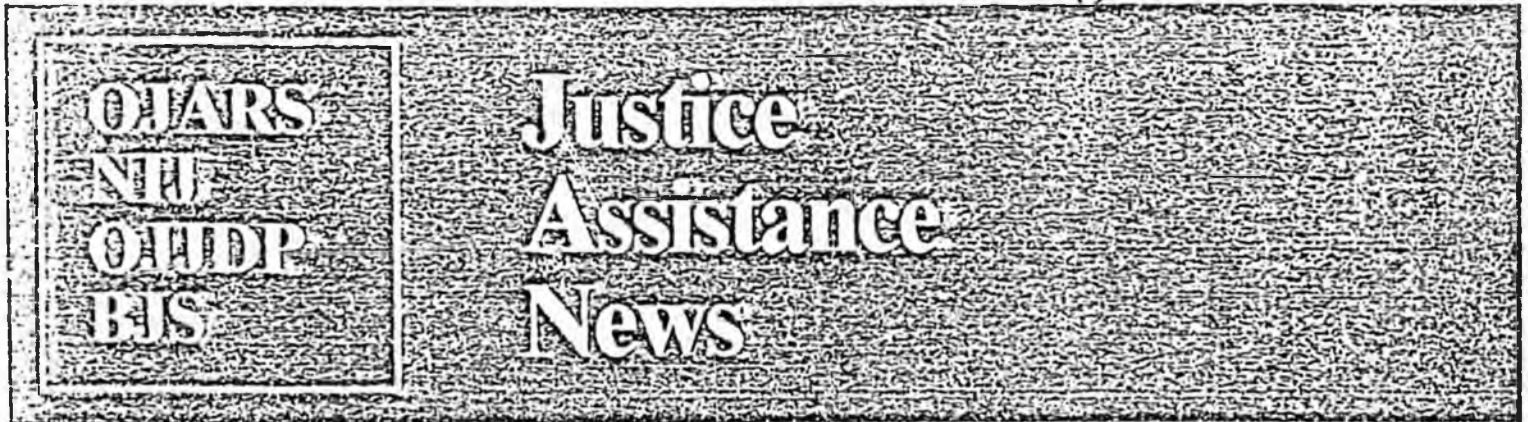
JOAN HURST, CAMP FIRE 279-3551

I WILL BE IN TOUCH WITH YOU THURSDAY, MARCH 31.
THANKS FOR YOUR HELP. PUDGE

EOM



Reference
Summary of Study



NIJJDP Study Reports

Treatment Of Youths In Adult And Juvenile Courts Similar

An overwhelming majority of youths judicially waived to adult courts from juvenile courts receive no confinement at all—contrary to the general view they are treated more strictly in adult courts, according to a study by the National Institute for Juvenile Justice and Delinquency Prevention.

In states with judicial waivers, only 32 percent of the juveniles waived to adult courts were sent there because of a crime against a person—again countering the general view that only violent youths are sent to adult court, said the study, adding that property offenses accounted for 45 percent of the juvenile waivers to adult courts. The other 23 percent included public order and similar minor offenses such as prostitution and being drunk in public.

The study, "Youth In Adult Courts: Between Two Worlds," was a three-year research project conducted by the Academy for Contemporary Problems, Columbus, Ohio. It was conducted under a grant from NIJJDP, the research arm of the Office of Juvenile Justice and Delinquency Prevention (OJJDP).

The project was one of a series of four simultaneous studies dealing with juvenile justice issues that covered 42 months and cost \$2.4 million.

The thrust of the study was to determine how many juveniles were being referred to adult courts, for what types of offenses, and under what circumstances. Every procedure (judicial waiver, concurrent jurisdiction, excluded offense,

lower age of jurisdiction) that can be used to transfer youths to adult court was examined. The goal was to provide policymakers with statistical, legal, and research data.

None of the views expressed in this report is necessarily that of the Depart-

ment of Justice or any of its bureaus or agencies.

In-depth Interviews Conducted

Using 1978 as the base year for data collection, the academy studied how

(continued on page 6)



On behalf of all Justice System Improvement Act agency employees, I want to wish you and your families a happy and healthy holiday season.

The past year has brought many changes to the JSIA program and the criminal justice community. We expect 1983 to present many new changes and challenges, and we are committed to meeting these demands with the same determination and high degree of professionalism that has marked our efforts of the past.

We must find new resources, form new partnerships, and strengthen past alliances as we continue the fight against crime and work to improve the criminal justice system. This will require a greater role for the private sector, public and civic organizations, and the average citizen. This strengthening of business, civic, and public ties with local law enforcement agencies will, I am sure, prove an invaluable asset in the coming year—and in the years that lie before us.

Again, we at the JSIA agencies wish you the very best during this holiday season.

Robert F. Diegelman
Acting Director, OJARS

Methods Vary For Referring Youths To Adult Courts

(continued from page 1)

youths were handled in every county in the U.S., the District of Columbia, and the federal courts. In-depth interviews were conducted in 10 states with prosecutors, judges, public defenders, legislators, civil leaders, and media personnel.

The study said the typical youth referred to adult court was 17, male, and white.

The study revealed that every jurisdiction has at least one legal mechanism for trying youths (under age 18) in criminal courts.

There are 13 states which provide for concurrent jurisdiction between juvenile and adult courts for persons under the age of 18. In these states, forums for trial are determined at the prosecutor's discretion. In six of these states, concurrent jurisdiction applies only to traffic or other minor violations. In the remaining seven states, this discretion is applicable to all offenses, or to most serious offenses committed by older juveniles.

Some Crimes Excluded

Thirty-one states exclude certain crimes from juvenile court jurisdiction. In 20 of these 31 jurisdictions the only exclusions are for traffic offenses and other minor misdemeanors. The remaining 11 states exclude very serious crimes, usually murder and other capital offenses, from juvenile court jurisdiction. Seven of these states have established minimum ages of 13 to 16, under which such youths will be referred to juvenile courts even though they are charged with those designated offenses.

In 37 states where one is a juvenile until age 18, and in the one state where the age is 19, some 12,300 youths were referred to adult court during 1978. In those 38 states over 9,000 juveniles were judicially waived to adult courts, over 2,000 youth were prosecuted for serious offenses in adult courts due to concurrent jurisdiction provisions, and over 1,300 youth were prosecuted as adults because of excluded offenses provisions. These youth were either waived by the juvenile court or the prosecutor exercised authority to try them in adult court, or they were prosecuted as adults because of the serious nature of their crime (such as murder, rape, or armed robbery).

In 12 states where one is a juvenile until age 16 or 17 (e.g., lower ages of

jurisdiction), some 250,000 youths were prosecuted in adult court in 1978. Juveniles who are 16 or 17 in these states are routinely handled as adults for any violation of criminal law, no matter how minor. Only one of these states permitted 16 or 17 year old youths to be referred back to the juvenile courts. In the other 11 states, they are, without exception, arrested, detained, tried, and sentenced as adult offenders.

The most common offenses for which youths in these 12 states were referred to adult court were such "public order" offenses as liquor and drug violations. Further, this pattern was found to be generally consistent in most of the states.

In addition to these youths, the study said that as a result of hundreds of city, county, state, and federal laws, in 1978 an estimated one million persons under 18 were tried in adult courts for misdemeanor offenses such as traffic violations, fish and game offenses, and water safety abuses.

Case Dispositions Studied

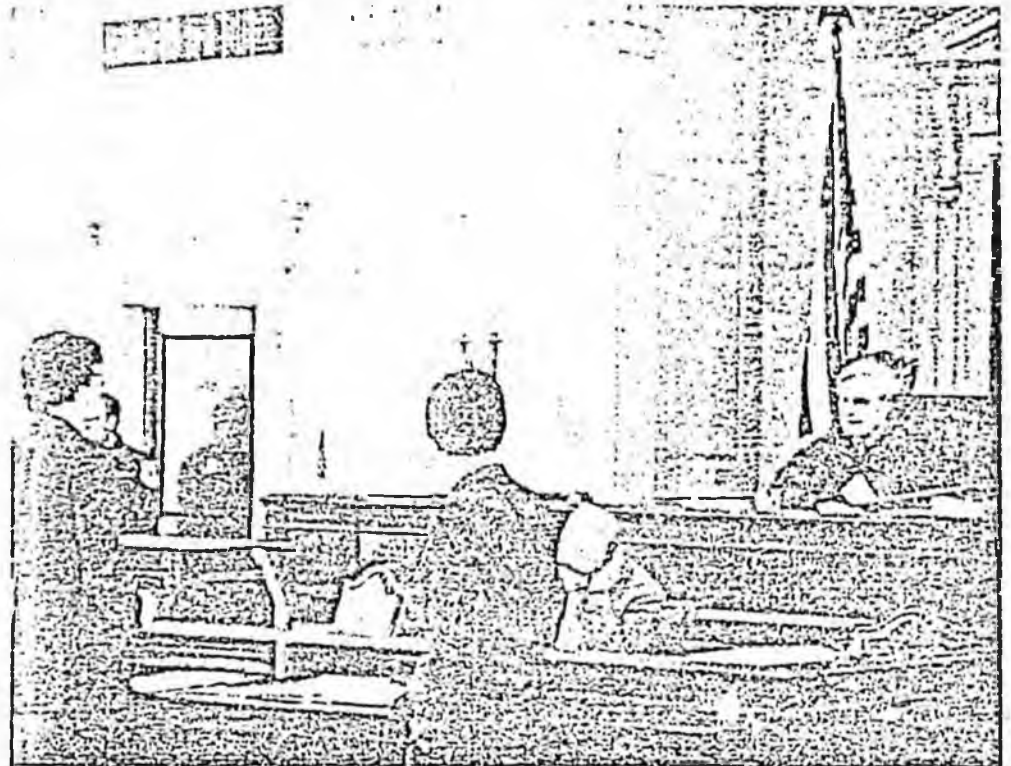
The study also examined adult court dispositions of juvenile cases. Among the 7,318 youths judicially waived to adult court, disposition data were available on 3,418 of them. Ninety percent of

these cases resulted in conviction or guilty pleas. Just over one-half of those convicted received sentences not calling for incarceration—such as fines or probation. Less than one-half of this convicted group received a sentence of confinement. Among those confined, 27 percent received sentences of one year or less, 39 percent received sentences of one to five years, 16 percent received five to 10 years, 14 percent received sentences of over 10 years, 2 percent got intermediate sentences, and 2 percent got life.

Eighty percent of the "known" concurrent jurisdiction (312) and lower age of jurisdiction cases (353) resulted in sentences of one year or less.

Project Director Joseph White said that in many cases the defendant served only a small portion of the sentence. He pointed out that the average length of confinement in juvenile facilities is about nine months, and that these include a significant proportion of non-serious cases.

Commenting on the study, Mr. White said, "the apparent reason for transferring or waiving many juveniles to adult courts—that they will receive stiffer sentences than in juvenile court—does not appear to be substantiated in this research."



The study found that most youths referred to adult courts are not treated more strictly there than they would be in juvenile court.

"The key point is that there are only a small number of juveniles who are being referred to adult courts that are actually being confined for longer periods of time than could have been accommodated in the juvenile system."

Mr. White pointed out that although many cases are transferred to adult courts because of the seriousness of the crime, more than half of the juveniles transferred had not committed crimes against a person.

Waiver Recommended

Based on the examination of every procedure presently used to transfer youths to adults courts, the author recommended that the best way for legislatures to construct appropriate legal mechanisms for the referral of youths to adult courts is through the use of judicial waiver. Only this legal device offers a method by which: both prosecutorial and judicial discretion may be exercised and controlled; juveniles who can be effectively handled by juvenile courts are spared needless contacts with the criminal court system and the unnecessary duplication of defense costs; and the judicial machinery is spared the strain of unnecessary delays in order to transfer juveniles to courts where their cases will ultimately be tried. This conclusion is consistent with recommendations of national juvenile justice standards.

These results are from the first of a three-phase research effort. Phase two involves an examination of court dispositions in selected jurisdictions among three groups of offenders charged with similar offenses:

- Juveniles handled in juvenile court.
- Juveniles handled in adult court.
- Young adults (aged 18 to 26) handled in adult court.

In phase three the sentences received by the juveniles will be studied. Results are expected to be available in about 15 months.

Donna M. Hamparian was the academy's principal investigator and researcher for the study.

Individual copies of the study, "Youth in Adult Courts: Between Two Worlds," are available free of charge by writing the National Criminal Justice Reference Service, Box 6000, Rockville, Maryland 20850, telephone: 301/251-5500. Copies of individual state summaries also are available for a small fee. ■

Law Enforcement Training Offered

The federal government has launched a pilot program offering advanced specialized training courses for state and local law enforcement personnel at the Federal Law Enforcement Training Center in Glynco, Georgia.

Courses include court security, officer survival, questioned documents, advanced law enforcement photography, marine law enforcement techniques, fraud and financial investigation, advanced arson for profit investigation, driver training, protective operations, and undercover investigative techniques. Class fees and room and board are paid by the students.

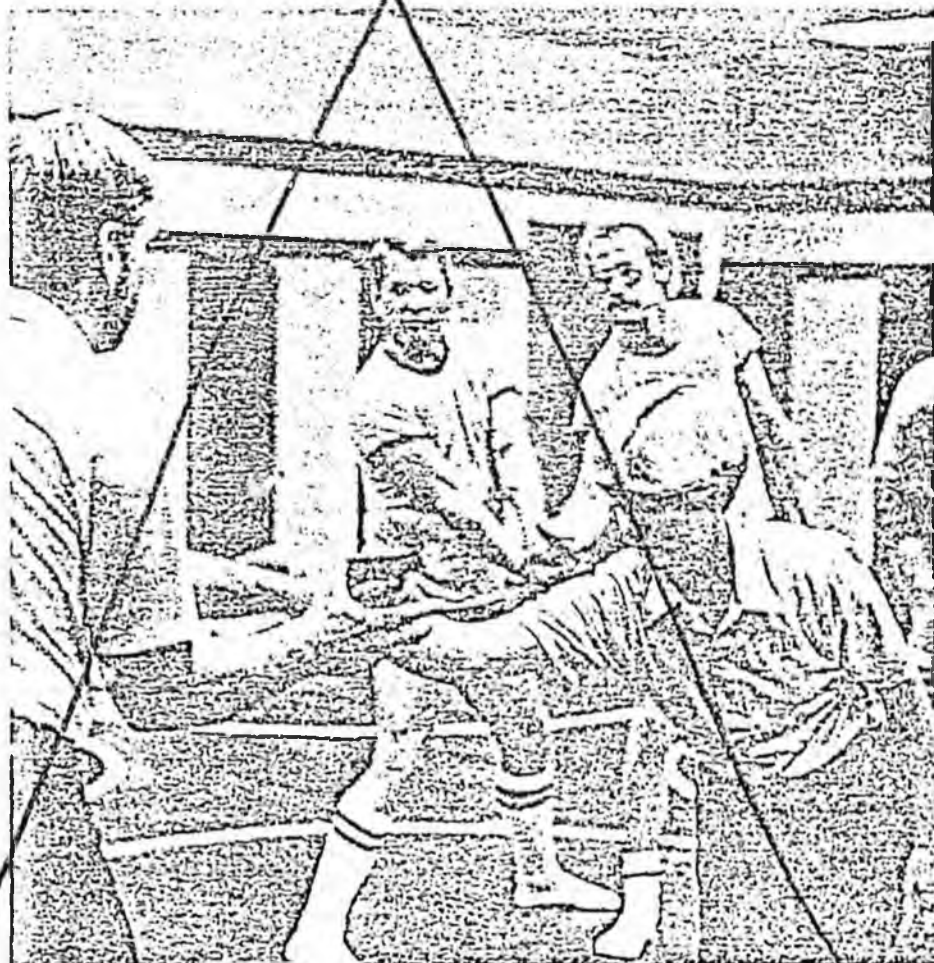
"The goal of this program is to test the hypothesis of offering advanced specialized training for state and local law enforcement personnel on a cost reimbursable basis at the Federal Law Enforcement Training Center," said

George H. Bohlinger, executive director of the training program.

"If this pilot program responds to the real needs and demands for advanced specialized training and provides a quality product, the potential exists for the chartering of a permanent National Center for State and Local Law Enforcement Training."

The program is jointly sponsored by the Departments of Justice and Treasury and is administered through the State and Local Law Enforcement Training Program. It stems from a recommendation of the Attorney General's Task Force on Violent Crime.

Additional information about the program is available by writing to the State and Local Training Coordinator, FLETC, Glynco, Ga. 31524, or calling the Washington, D.C., program office at 202/566-4086. ■



FLETC Physical Specialties Instructors Terry Raines (left) and Lynn Diskin demonstrate a technique for disarming an assailant.

PROPOSAL FOR NEW
YOUTHFUL OFFENDER
FACILITIES -

John Pugh -
AS POTENTIAL WWS

Dave Webb
Mike PRICE FYS
Endell



Superior Court

State of Alaska

FIRST JUDICIAL DISTRICT
415 MAIN STREET, ROOM 402
KETCHIKAN, ALASKA 99901

Chambers of
THOMAS E. SCHULZ, Judge

February 24, 1983

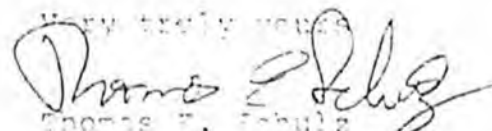
The Hon. Bill Pav
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Senate Bill No. 127

Dear Senator Pav:

I wanted to write and express my agreement with Section 2 of Senate Bill 127 which raises the amount recoverable in a civil action against parents of an unemancipated minor from \$2000 to \$5000. That increase is well justified by simply taking into account the effects of inflation over the last several years.

I also wanted to comment on Section 4 which contains an amendment to AS 47.10.020(a). Apparently new language is being added to that section to provide that the victim may obtain information from the court concerning the manner, "in which it (the court) informally adjusted or disposed of the matter. The court may not disclose the identity of the minor." I disagree with a provision prohibiting the court from disclosing to the victim the identity of a minor who has caused damage to that victim's person or property. I think the statute should very clearly allow the court to disclose the identity of both the minor and his parents to the victim so that if restitution orders made by the court are deemed insufficient or inappropriate, the victim has the information available with which he can pursue the civil remedies provided earlier in the statute. It does not make sense to me to keep this information from the victim, and I believe it sends the wrong message to both the minor and his parents in those cases in which kids are involved in doing damage to person or property. Particularly the kids ought to be told up front that the court will not be part of any procedure that inhibits the "accounting", if you will, between them and the victim. I would recommend that that last sentence be removed from Section 4.

Very truly yours

Thomas E. Schulz
Superior Court Judge

—ACK— send to [unclear]
March 17, 1983

Senator Bill Ray
Pouch V
Juneau, Alaska 99811
(Mail Stop 3100)

Dear Senator Ray:

Thank you for taking the time to talk with me recently about Senate Bill 127 relating to juvenile prosecution.

As you requested I am sending you the references for recent research on the effects of legislation in Minnesota and New York which provides for the prosecution of juveniles by the adult courts. That research revealed that instead of increasing the incarceration of juveniles, conviction rates for serious crimes were often lower - than would have been the case in juvenile court. That research is referred to in these articles -

¹Kiersh, Edward, "Minnesota Cracks Down on Chronic Juvenile Offenders," Correction Magazine, (New York) 7 (6) 21-28, 1981

Roysher, Martin; Edelman, Peter, Treating Juveniles as Adults in New York: What Does it Mean & How Is It Working? Albany, New York State Division for Youth 1980

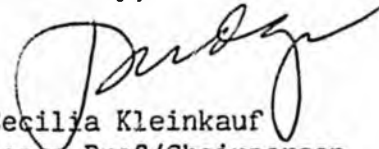
Sobie, Merrie, The Juvenile Offender Act: A Study of the Acts' Effectiveness & Impact on the New York Juvenile Justice System, New York Foundation for Child Development, 1981

Senate Bill 127 does provide for a hearing in juvenile court and also provides a set of criteria for the judge to use in deciding whether the juvenile shall be prosecuted as an adult. That approach is preferable to an automatic waiver and also to the wide latitude now available to the courts. It is interesting to note, however, that Mr. John Pugh, Dept. Commissioner, Dept. of Health & Social Services testified recently before House Judiciary Committee that 16 waiver petitions were filed in juvenile court last year and 12 of them were granted. So it seems the courts are waiving most of the serious juvenile offenders to adult court. Alaska Chapter, National Association of Social Workers has requested statistical information from the court system to verify this or to provide actual data on the use of the waiver. We will share that info with you when we receive it.

TO: Senator Bill Ray
Page #2

I would appreciate being notified of future hearings on SB 127 and perhaps provided an opportunity via a telephone speaker system to give testimony.

Sincerely,

A handwritten signature in cursive script, appearing to read 'C. Kleinkauf', written in black ink.

Cecilia Kleinkauf
Assoc Prof/Chairperson

CK:par

cc: Senator Pat Rodey

ACK - COPY ROBERT WEN
SB 127



Superior Court
State of Alaska

THIRD JUDICIAL DISTRICT

303 K Street

Anchorage, Alaska 99501

Chambers of
VICTOR D. CARLSON, Judge

March 14, 1983

The Honorable Bill Ray
Alaska State Senate
Pouch V
Juneau, Alaska 99811

RE: Senate Bill No. 127

Dear Senator Ray:

This letter is written to convey my concerns about the changes which the bill introduced by you and Senator Rodey would create in children's proceedings.

Of major concern is the mixing of criminals (those minors who are waived to adult court) with the run-of-the-mill delinquent. The likelihood of a minor who is waived to adult court receiving a sentence which can be served by the time he becomes 19 is remote. This means a minor who receives at a minimum a 20-year sentence for first degree murder, AS 12.55.125(a), or seven years for an armed robbery, AS 12.55.125(c)(2), will spend the first part of his incarceration in the relative benign environment of the McLaughlin Youth Center and the remainder at a relatively harder institution like Lemon Creek.

The program at McLaughlin Youth Center is effective both on account of the highly motivated personnel and the incentive minors have to change. The addition of persons with long sentences who know they are going to prison at age 18 will disrupt the program and make the job of the McLaughlin Youth Center staff more difficult.

I request that you consider the impact of mixing persons with long sentences into the McLaughlin Youth Center population.

The whole area of vicariously liability for torts committed by another has problems not yet addressed in Alaska. I question if the impression left by proposed AS 34.50.020(d) is intended,

The Honorable Bill Ray
Juneau, Alaska 99811

March 14, 1983
-2-

ie. that only emancipated minors can be sued for their torts. It is my understanding of the current law that a person regardless of age is responsible for his actions so long as he possesses the capacity to control and understand his actions.

Proposed AS 04.10.060(a)(1) provides that "... the court may retain jurisdiction if ...". The "court" is the superior court whether the minor is being sentenced as an adult or being treated a delinquent. I understand what is being proposed but find the language to be ambiguous and ambiguities in criminal statutes present problems for all concerned.

Thank you for considering this letter. I am

Very truly yours,



Victor D. Carlson
Superior Court Judge

VDC:gp

cc: Senator Rodey
Karla Forsythe
William Hitchcock, Esq.

And. Daily News, 3/22/83
Prisons department bill stalled in committee

The Associated Press

JUNEAU — The minority Democrats Monday delayed, at least for two days until the Alaska House meets again, passage of a bill to create a Department of Corrections.

The minority prevented the bill (HB103) from moving to the third reading — when it can be approved as law — by preventing the needed three-fourths vote. The vote was 11-25 against movement.

Democrats indicated they want a clear signal from Gov. Bill Sheffield's administration on whether the juvenile corrections should be moved immediately to the new department.

Creating the corrections department separate from the Department of Health and Social Services was the subject of an executive order turned down last week by the Legislature.

At one point, lawmakers said they had been told the administration would be satisfied with juvenile correc-

tions in the new department. But that opinion was a personal one of Division of Corrections Director Roger Endell, according to an Endell letter read by Rep. Jim Duncan, D-Juneau.

Endell, Duncan said, now has taken the Sheffield administration position to delay the shift of juvenile corrections from the health and social services department.

But House Judiciary Chairman Charlie Bussell, R-Anchorage, said as late as Saturday Endell said he could live with the juvenile corrections coming into his department July 1, 1983.

It was when minority Democrats failed to get that date delayed a year that they came up with the parliamentary tactic to hold the bill over a day.

Clocks in and other Democrats fought for keeping juvenile corrections in DHSS so the new department could get itself operating with stability.

HB 127

2/28/83 - Discussion w/ Sen Roy -
ALSO TALKED TO Joel Horetski
& Jim Lear

AGREED -

WAIT UNTIL DEPT OF LIA'S
PROPOSED LEGISLATION IS
REVIEWED (& POSSIBLY AMENDED)
BY GOVERNOR'S OFFICE

THEN

HAVE JIM INCORPORATE THE 2
SECTIONS FROM OUR BILL & DRAFT
A COMPREHENSIVE CS FOR US

IT'LL TAKE AT LEAST 2-3
WKS.

S

B

131

COMMITTEE REPORT

SENATE

2/17/53

FURTHER:

Date: _____

Mr. President:

The Committee on Judiciary has had 59 131

An Act providing for immunity from civil liability for certain persons who render services in response to a disaster relief operation. and 1953. date.

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

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

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

SENATOR MOSS'S TESTIMONY FOR SB 131

THIS LEGISLATION IS INTRODUCED TO PREVENT A POSSIBLE PROBLEM WHICH COULD ARISE IF A PRIVATE CITIZEN (EITHER AS AN INDIVIDUAL OR AS A PRIVATE COMPANY) WERE PRESSED INTO SERVICE BECAUSE OF A DISASTER AND AT THE REQUEST OF A GOVERNMENT OFFICIAL OF AN AGENT OF THE GOVERNMENT. UNDER PRESENT LAW, IF AN INDIVIDUAL WERE TO PROVIDE SUCH A SERVICE, EVEN ACTING IN GOOD FAITH, HE PERSONALLY COULD BE HELD LIABLE FOR DAMAGE CAUSED.

AS YOU ARE UNDOUBTEDLY AWARE, MOST DISASTER ASSISTANCE OPERATIONS DEPEND UPON QUICK AND EFFECTIVE MOBILIZATION OF THE COMMUNITIES' RESOURCES. INCREASING LITIGATION, AND THE POTENTIAL LIABILITY RESULTING THEREFROM, MAKES IT EXTREMELY IMPORTANT TO MINIMIZE THE IMPACT OF ANY LAWSUITS ARISING OUT OF ANY DISASTER ASSISTANCE OPERATION. PERSONS PROVIDING DISASTER ASSISTANCE SHOULD NOT BE HELD TO THE SAME STANDARD OF CARE AS PERSONS PERFORMING THE SAME OPERATIONS UNDER NORMAL CIRCUMSTANCES. IT WOULD BE A SORRY STATE OF AFFAIRS IF A PERSON FAILED TO RENDER DISASTER ASSISTANCE WHEN NEEDED SOLELY BECAUSE OF FEAR OF LEGAL LIABILITY.

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: Senate Bill No. 131 Date on Bill: 2/17/83
 Title: "An Act providing for immunity...(for) persons...(rendering)...disaster relief."
 Sponsor: Moss
 Requestor: _____

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

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

b. Revenues:

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

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

Source of funds not identified by sponsor.

3. Assumptions:

No fiscal impact.

4. Disclaimer:

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

Prepared By: Francis C. Allan *F.C.A.* Phone: 269-5691
 Division: Alaska State Troopers Date: 3-9-83

Approved by Commissioner: *[Signature]* Date: 3/10/83
 Department: Public Safety

5. Distribution:

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

2/15/83

March 1, 1983

The Honorable Bill Ray,
Alaska State Senator
Pouch V
Juneau, Alaska 99811

Dear Senator Ray:

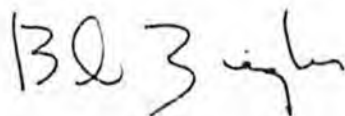
SB 131, an Act providing for immunity from civil liability for certain persons who render service in response to a disaster relief operation, adds a new section to A.S. 09.65. Most of Chapter 65 deals with the non-liability of persons who render various types of aid. (Emergency aid, inspection of aircraft, administration of blood tests. . .)

The new section in Chapter 65 provides that a person who furnishes equipment or services at the request of a police agency, fire department, rescue or emergency squad, or other governmental agency during a state of emergency declared by an authorized representative of the state or local government is not liable for the death of or injury to any person or damage to any property caused by that person's actions, unless intentional, reckless or negligent operation is involved.

Subsection (b) of the new section provides that the above section does not affect the right of a person injured to receive worker's compensation or any other types of compensation due.

The bill is basically another type of good samaritan bill designed to protect a person furnishing goods or services in an emergency situation; I can find nothing objectionable about the bill.

Regards,



Robert H. Ziegler, Sr.

RHZ:lk



SKILL
RESPONSIBILITY
INTEGRITY

THE ALASKA CHAPTER
ASSOCIATED GENERAL CONTRACTORS
OF AMERICA, INC.

BOX 4-2500 • ANCHORAGE, ALASKA 99509
TELEPHONE (907) 276-5354
TELEX 25-394



5201 SPENARD ROAD
ANCHORAGE
RICHARD M. PITTENGER
MANAGER

February 24, 1983

The Honorable Bill Ray
Senate Judiciary Committee
Alaska Senate
Pouch V
M.S. 3100
Juneau, Alaska 99811

RE: Senate Bill 131

Dear Senator Ray:

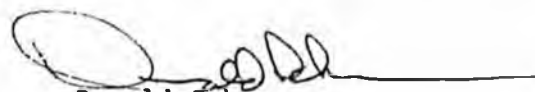
On behalf of the Alaska Chapter of Associated General Contractors of America, I offer support to the passage of SB 131. Similar statutes have been enacted by Michigan, Kansas, Oregon, Texas, Wisconsin, Hawaii, Idaho, Ohio, New Hampshire and Pennsylvania.

Obviously, Alaska has had its share of disasters -- from the 1964 earthquake to the 1967 flood in Fairbanks. As you are undoubtedly aware, most disaster assistance operations depend upon quick and effective mobilization of the communities' resources. Increasing litigation and the potential liability resulting therefrom, makes it extremely important to minimize the impact of any lawsuits arising out of any disaster assistance operation. Persons providing disaster assistance should not be held to the same standard of care as persons performing the same operations under normal circumstances. It would be a sorry state of affairs if a person failed to render disaster assistance when needed solely because of fear of legal liability.

We believe enactment of SB 131 will help preserve the natural tendency of persons to render assistance when necessary. I urge you and your fellow Senators to expeditiously move this bill through the Senate.

Sincerely,

ALASKA CHAPTER
ASSOCIATED GENERAL CONTRACTORS


Derald Schoon
President

cc: Senator Bettye Fahrenkamp
Senator Pappy Moss
Senator Robert H. Ziegler, Sr.

/bj

S

B

/

3

3

FILE WITH SB133
Alaska State Legislature

SENATOR
ROBERT H. ZIEGLER, SR.
307 BAWDEN STREET
KETCHIKAN, ALASKA 99901

While in Juneau
POUCH V
JUNEAU, ALASKA 99811

VICE CHAIRMAN
SENATE RESOURCES COMMITTEE

MEMBER
SENATE JUDICIARY COMMITTEE

WESTERN STATES LEGISLATIVE
FORESTRY TASK FORCE

WESTERN CONFERENCE COUNCIL
OF STATE GOVERNMENTS

Senate

May 16, 1983

All Members of the
Alaska State Senate
Juneau, Alaska

Dear Senators:

At Senator Ray's request, I have attached the following hereto: (1) the most recent proposed CSSB 133; (2) the Revisor's letters of February 15, 1983, March 23, 1983 and May 4, 1983; and (3) my subcommittee letter of April 14, 1983.

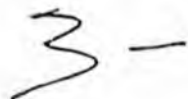
Senator Faiks has indicated the bill will probably be calendared in the near future.

It is the hope of the Judiciary Committee Chairman that you will review this material prior to the date it is calendared in order that if you have any questions concerning the legislation you can contact me, my A.A. Guy Van Boren, Counsel for the Judiciary Committee, John Gabrielli, and David Dierdorff, Revisor of Statutes.

Once you start to pick a bill of this nature apart on the floor, you will encounter complex problems.

If any Senator has amendments to propose, we would appreciate your submitting them to Mr. Gabrielli.

Very truly yours,



Robert H. Ziegler, Sr.

RHZ:lk

Enclosures

Alaska State Legislature

SENATOR
ROBERT H. ZIEGLER, SR.
307 BAWDEN STREET
KETCHIKAN, ALASKA 99901

While in Juneau
POUCH V
JUNEAU, ALASKA 99811



Senate

VICE CHAIRMAN
SENATE RESOURCES COMMITTEE

MEMBER
SENATE JUDICIARY COMMITTEE

WESTERN STATES LEGISLATIVE
FORESTRY TASK FORCE

WESTERN CONFERENCE COUNCIL
OF STATE GOVERNMENTS

April 14, 1983

Senator Bill Ray,
Chairman - Senate Judiciary Committee
Alaska State Legislature
Juneau, Alaska 99811

RE: CSSB 133

Dear Senator Ray:

Your man John, my guy Guy and Revisor of Statutes Dave Dierdorff have labored mightily on the captioned bill.

It would be my suggestion that you distribute copies of the committee substitute and the Revisor's letter of March 23rd to all members of the Senate at least one week before the Rules Committee Chairperson intends to calendar it.

In the committee letter of transmittal to the Senate membership, if I may offer another suggestion, you could say that if anyone has any questions about the bill to get in touch with you, me or our staff people prior to the day it is calendared.

It is obviously my intent to get the mother through the Senate without getting bogged down in floor fights or amendments.

Regards,

3 -

Robert H. Ziegler, Sr.

RHZ:lk

Enclosure



Alaska State Legislature
State Senate

Committee on Judiciary

Senator Bill Ray
Chairman
Senate Floor Leader

Pouch V
State Capitol
Juneau, Alaska 99811

TO : All Senators

FROM : Senator Ray, Chairman of the Judiciary Committee *BR*

RE : CSSB 133--Corrective amendments to the Alaska Statutes as recommended by the revisor of statutes.

The following materials are attached hereto:

1. CSSB 133 in its entirety;
2. Revisor's letter of 3/23/83; and
3. Judiciary subcommittee chairman Ziegler's letter of 4/14/83.

This bill is presently scheduled for consideration by the Judiciary Committee on Monday, May 2, 1983, at 1:30 p.m. in the Butrovich room.

If you have any questions about the bill, please feel free to contact any of the following persons as soon as possible:

Senator Ziegler -- Ext. 3743
Guy Van Doren -- " 3743
John Gabrielli -- " 4451
Dave Dierdorff -- " 2450

Your cooperation in helping to expedite the processing of this lengthy and complex piece of legislation will be sincerely appreciated.

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

POUCH M
JUNEAU, ALASKA 99811
PHONE: 465-2400

April 27, 1983

The Honorable Bill Ray
Chairman
Senate Judiciary Committee
Pouch V
Juneau, AK 99811

Dear Senator Ray:

My staff has reviewed CSSB 133 (Jud) which will be heard in the Judiciary Committee on Monday, May 2. I submit two amendments to that proposed legislation for your consideration. In both cases we have discussed these amendments with Mr. Deardorf, the revisor, and with Tom Koester of the Attorney General's Office. They both agree that the change we are requesting is a matter of policy.

Page 21, Lines 14-20 should read:

*Sec. 78. AS 38.05.057(e)(3) is amended to read:

(3) notice of the application period and the date of the lottery shall be given in accordance with AS 38.05.345[(e)]; and

Page 23, Lines 20-27 should read:

* Sec. 87. AS 38.08.020 is amended to read:

Sec. 38.08.020. PUBLIC NOTICE. The director shall publish notice of the availability of the land in the same manner as provided in AS 38.05.345[(e)].

We are requesting this change rather than the change recommended by the revisor in order to make all public notice requirements consistent as provided in AS 38.05.345. In some cases this may require the department to do somewhat more rigorous public notice than previously required. However, we feel that the result will be less confusion for the public and for department officials implementing these programs.

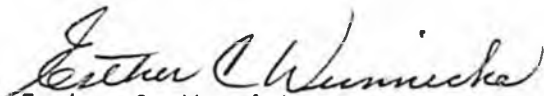
The Honorable Bill Ray

-2-

April 27, 1983

If you have any questions about these recommendations, please call my office. We will be available to testify on this bill as requested.

Sincerely,

A handwritten signature in cursive script, reading "Esther C. Wunnicke".

Esther C. Wunnicke
Commissioner

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 2, 1983

SUBJECT: Revisor's bill
(CSSB 133 (Judiciary))

TO: Senator Bill Ray
Chairman, Senate Judiciary Committee

FROM: David R. Dierdorff 
Revisor of Statutes

In light of the changed position of the Department of Natural Resources and the language of CSSB 222 (Resources), the following language should be substituted for Secs. 78 and 87 of CSSB 133 (Judiciary):

* Sec. 78. AS 38.05.057(e) (3) is amended to read:

(3) notice of the application period and the date of the lottery shall be given in accordance with AS 38.05.345 [AS 38.05.345(e)]; and

* Sec. 87. AS 38.08.020 is amended to read:

Sec. 38.08.020. PUBLIC NOTICE. The director shall publish notice of the availability of the land in the same manner as provided in AS 38.05.345 [AS 38.05.345(e)].

The revisor's memo dated March 23, 1983, would need to be modified by substituting the following text for the discussion of Sec. 78:

Section 78 amends a reference in AS 38.05.057 to the notice provisions of AS 38.05.345. Note that there is still an AS 38.05.345(e), but that the section was substantially rewritten after AS 38.05.057(e) (3) was enacted, resulting in the repeal of the notice provisions of former AS 38.05.345(e). The present provisions are irrelevant in the context of the reference found in AS 38.05.057(e) (3).

Senator Bill Ray
Page 2
May 2, 1983

The discussion of Sec. 87 in the revisor's memo does not require a change, as it merely refers back to the above text accompanying Sec. 78.

DRD:ljb
17/015

STATE OF ALASKA
THE LEGISLATURE

POUCHY STATE CAPITOL
FIDELITY ALASKA 99501
987-443 2800

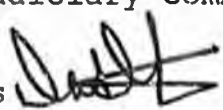
LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 23, 1983

SUBJECT: "An Act making corrective amendments in the Alaska Statutes as recommended by the revisor of statutes" (CSSB 133 (Judiciary))

TO: Senator Bill Ray
Chairman, Senate Judiciary Committee

FROM: David R. Dierdorff 
Revisor of Statutes

This bill was prepared by the revisor of statutes under AS 01.05.036 which provides, in part, that the revisor of statutes shall

". . . prepare for submission to the legislature legislation for the correction or removal of . . . deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of . . . the statute law of this state."

It is suggested that this memorandum accompany the bill through its legislative course.

SECTIONAL ANALYSIS

Section 1 improves the definition of "municipality" that was first enacted as a part of the Alaska Aeronautics Act of 1949, subsequently rewritten during the bulk formal revision of the Alaska Statutes and amended by the 1974 revisor's bill. The present definition excludes unified municipalities, which we do not believe was intended, and, if interpreted strictly, also excludes home rule cities or boroughs, as there are no classifications of home rule municipalities. The latter problem was the inadvertent result of an amendment made to the revisor's bill as it progressed through the legislature in 1974. The proposed new definition is identical to that which is contained in the revised municipal code (SB 1) and will be valid whether or not SB 1 passes.

It should be mentioned that this section is but one of 24 sections of the Alaska Statutes which define municipality. Those 24 sections contain ten different definitions. Only eight of the 24 sections contain definitions which are essentially identical; however, all but two or three of the definitions are fairly similar in most respects. Ten of the 24 sections would be repealed by SB 1. It is the revisor's opinion that it would be wise to consider placing a general definition of "municipality" in AS 01.10.060. That would eliminate the need for a definition of "municipality" in other parts of the Alaska Statutes except where the use of the term required some variation from the standard definition.

Section 2 deletes the definition of "domestic fur farm animal" from AS 03.05.010(c)(6). The definition is preceded by a definition of "fur farming" and is limited to the purposes of the paragraph in which it is contained. The term "domestic fur farm animal" does not occur in the paragraph nor does it occur at any other place in the Alaska Statutes.

Section 3 clarifies the term "director" in AS 03.10.-030(e). The term is not defined in AS 03.10 and appears only in this section.

Section 4 repeals all of AS 03.19. This chapter deals exclusively with the small grain incentive program, a program which ended with the crop year 1975. The division of agriculture has confirmed that this material is obsolete and that it is quite unlikely that a program of this type would ever be used in the future.

Sections 5 and 6 clarify responsibilities in the programs related to diseased livestock. When responsibilities in Title 3 were divided between the Departments of Natural Resources and Environmental Conservation by Executive Order in 1981, the sections immediately preceding and following the sections amended by Secs. 5 and 6 of the revisor's bill were changed to place responsibility in the Department of Environmental Conservation. However, by virtue of the definitions applying to Title 3, the word "commissioner" in AS 03.45.060 and AS 03.45.070 must be read as "commissioner of natural resources". Since all sections in AS 03.45 are part of an integrated scheme, it is our opinion that the failure to change the references to commissioner in these two sections was an oversight. Both sections also make

changes in the use of pronouns in accordance with Chapter 58, SLA 1982.

Section 7 repeals references to the Board of Barbers, Board of Hairdressers, Board of Welding Examiners, and Collection Agency Board. The latter two boards were "sunsetting" and the first two were repealed by Chapter 159, SLA 1980.

Section 8 corrects an apparent oversight. When the Board of Hairdressers and Board of Barbers were repealed they were combined into the Board of Barbers and Hairdressers. However, the name of that board was not added to the list in AS 08.01.010, which sets forth the boards subject to AS 08.01.

Section 9 amends AS 08.02.010(a) to correct a reference to nurses and to make consistent the reference to other professions. The term "professional nurse" is no longer defined in AS 08.68.410 as a result of 1982 amendments. The section also contains two changes to remove gender indicating pronouns.

Sections 10 and 11 repeal obsolete references to the Collection Agency Board and the Board of Welding Examiners which are found in the section setting forth the schedules for the sunset of regulatory boards.

Section 12 repeals an obsolete requirement in the chapter on the licensing of public accountants. The paragraph repealed had application only for a period in the 1960's.

Section 13 corrects an error in tense which appears in AS 08.20.140.

Section 14 repeals those sections in AS 08.24 which established the Collections Agency Board and a paragraph which defined "board" for the chapter. The board was terminated by operation of the sunset statutes. The termination date was June 30, 1980.

Sections 15 - 21 amend provisions in the law licensing and regulating collection agents to delete references to the terminated Collection Agency Board.

Sections 22 and 23 correct internal references in AS 08.36. AS 08.36.310 was repealed and replaced by AS 08.36.315 in 1980.

Section 24 repeals an obsolete definition. The word defined is not used in the chapter and has not been used since prior to the original bulk formal revision of the Alaska Statutes.

Sections 25 and 26 repeal and remove material which has become obsolete through the passage of time and is no longer necessary.

Section 27 amends AS 08.68.270(4) to reflect the changes in the drug laws which went into effect on January 1, 1983. The deleted sections of the Alaska Statutes which were referenced in this paragraph were repealed in the drug legislation passed last session.

Section 28 repeals AS 08.71.220 which is an obsolete portion of the chapter regulating dispensing opticians. The provisions of this section were in the nature of temporary transition provisions for licensing.

Section 29 repeals a subsection of AS 08.80.295 which is obsolete. The mandate of subsection (e) was to extend for a "period of two years following September 16, 1976".

Section 30 amends AS 08.88.201 by deleting the second sentence, which is now obsolete. AS 08.88.191(a) no longer provides for petitions for an additional examination.

Sections 31 and 32 amend provisions in AS 08.88 to reflect the 1980 repeal of AS 08.88.211 and substitute the current references.

Section 33 repeals the chapter on the Board of Welding Examiners which was terminated under the sunset law.

Section 34 corrects a reference to the federal bankruptcy act in the exemptions act passed by the last session of the legislature. Chapter "XIII" refers to the Wage Earner Plan of the old bankruptcy act of 1898. The amendment conforms the reference to the current bankruptcy law. We have also changed the citation to federal law to conform to our present style.

Section 35 makes another correction in the exemptions act. There is no consumer price index for the month of December. The Anchorage index is issued every other month. The index which would be used to establish December price relationships would, in fact, be the November consumer price index.

Section 36 corrects internal references to reflect the 1982 legislative action repealing the referenced section in AS 09.35 and establishing AS 09.38, the Alaska Exemptions Act.

Section 37 corrects an incorrect reference to the court rules. Rule 2(c) of the District Court Rules of Criminal Procedure has been repealed and replaced by Rule 603(b) of the Rules of Appellate Procedure.

Section 38 makes a change in AS 12.47.030(b) to reflect the fact that the assertion by a criminal defendant of evidence to establish that the defendant was guilty but mentally ill is not a defense to a criminal prosecution. It is, rather, a strategy which involves the presentation of mitigating factors in order to affect the disposition of the matter following a conviction.

Section 39 amends AS 14.07.058(e) to clarify the meaning of the word "board". In AS 14.60, the word "board" is defined for AS 14 to mean the State Board of Education. Consequently, the use of the word with no further identification could be confusing.

Section 40 amends AS 14.17.080 to remove obsolete references. Basic need is no longer defined in AS 14.17.021 and there is no longer any matching under AS 14.17.071. As a matter of fact, AS 14.17.071 has been repealed.

Section 41 also deletes obsolete references that result from the changes in policy in the school foundation program. The second sentence of the amended section is also changed to conform the internal reference to our present style. If appropriate changes were made in AS 29.88.020, this section could be repealed.

Section 42 amends AS 14.17.190(b) to delete a reference to money acquired from school district "local effort". "Local effort" is no longer a required part of the public school foundation act.

Section 43 repeals AS 14.17.225(d) because the underlying statute, AS 14.17.215 was repealed in 1980 by sec. 20, Chapter 26, SLA 1980.

Section 44 repeals the three sections which set forth the minimum teachers' and administrators' salary scales and defi-

nitions for the sections. The salary scales are obsolete since salaries are set by negotiation.

Sections 45, 46 and 47 delete obsolete references to the old state-operated-school system and substitute the regional educational attendance area. In sec. 46, the phrase "school board" is substituted for "district" because "district" is not defined in AS 14. "School board" is.

Section 48 deletes a reference in AS 14.42.015(a)(2) to the Alaska Methodist University and substitutes the successor school, Alaska Pacific University.

Sections 49 and 50 delete references to the old tuition grant program that was declared unconstitutional by the Alaska Supreme Court some time ago and repealed by Chapter 94, SLA 1980 and Chapter 59, SLA 1982.

Section 51 repeals the definition of a phrase that is not used in the scholarship loan program. The term "part-time student" is not used in the Alaska Statutes. HB 174 would introduce the term to AS 14, but a definition is not necessary in the context it appears in HB 174.

Section 52 repeals a chapter that is obsolete and inoperative. When the chapter was enacted in 1972 it was based on participation in "the federal child nutrition act of 1971". However, that federal legislation was never enacted. No programs have been implemented or regulations adopted under this chapter.

Section 53 deletes from AS 14.57.020(b), relating to the state museum collections advisory committee, a sentence which was necessary only during the initial year of operation of the committee.

Sections 54 and 55 correct references to the acknowledgement statute. AS 09.65.012 has been replaced by AS 09.63.020.

Sections 56 and 57 correct an apparent oversight in AS 16.10. The sections presently read as if any fisherman who sells fish without an entry permit or interim use permit is in violation of the sections. However, certain fishermen are not required to have entry permits or interim use permits, so certain types of fish could legally be sold. The suggested amendments make it clear that fishermen who are not

required to hold a permit under AS 16.43 can sell fish without violating these sections.

Section 58 repeals AS 16.10.500 - 16.10.620 on the basis of the decision of the Supreme Court in State v. Alex. Technically, the case only invalidated AS 16.10.530 but the effect was to wipe out the entire program set forth in these sections. The present program is operated under AS 43.76.

Section 59 substitutes the substantive provisions of repealed AS 11.05.010 for the obsolete reference to the repealed provision.

Section 60 repeals a reference made obsolete by changes in the school foundation program. See sec. 42 of this memo.

Section 61 corrects an incorrect internal reference in AS 21.60.010(d). The section currently referenced contains a definition of "insurance" rather than a penalty.

Section 62 repeals and reenacts AS 22.05.020 which establishes the composition and general powers of the Supreme Court. The repeal and reenactment deletes obsolete material relating to the number of justices and organizes the section into three subsections for clarity.

Section 63 is a repeal and reenactment of AS 22.10.020, which sets forth the jurisdiction of the superior courts. The sole purpose of the rewriting is to make the section more readable. There have been no substantive changes and it is not the purpose of this section to override any differences between jurisdiction of the superior court set forth by statute and that set forth by court rule. In other words, in those ways that this material may differ from the rules, the repealed and reenacted statute does not necessarily override should it pass by more than a two-thirds vote.

There are three minor changes which should be noted. In new subsection (a), the words "but not limited to" have been deleted following the word "including". Since the words "include" or "including" are not exclusive words, it is unnecessary to use the term "but not limited to" following such words in the Alaska Statutes. In new (h), the internal reference to the Alaska Native Claims Settlement Act has been changed to conform to present style. The other change is the deletion of a reference to AS 23.10.192 in new sub-

section (i). That section was repealed in 1980 and the provisions of AS 18.80, which are still referenced, have picked up the provisions of the repealed section.

Section 64 corrects a problem of tense in AS 22.10.040(4).

Section 65 deletes a reference to the legislative board of retirement benefits. That board was repealed in 1980.

Section 66 repeals an obsolete provision in the motor vehicle code. AS 28.10.105(c) was applicable only during 1979.

Section 67 amends AS 28.10.411(b) by deleting a reference to repealed AS 42.15.

Sections 68, 69, and 70 delete references to a statute which was repealed when the new criminal code was enacted in 1978. The proper references to the provisions on unlawful evasion have been substituted.

Section 71 revises a definition in the Agreement on Detainers. The term defined, "state" was changed to "party state" through amendments to the original bill. However, the definition was not changed. "State" needs to be defined in this law, as the term is used to include the jurisdictions of the United States which are not states, e.g., Puerto Rico and the District of Columbia. "Party state" does not need to be defined, as it is clear from a reading of the Agreement on Detainers that a party state is a state (as defined) which is a party to the agreement. Without some change, some confusing results occur in reading the law to which the definitions apply. Consequently, the legislature should either adopt the amendment proposed in this section, or adopt the amendment and an additional amendment as follows:

(4) "party state" means a state which is party to this agreement.

Sections 72 and 73 delete references to AS 14.08.161 which has been repealed.

Section 74 repeals AS 37.14.060 - 37.14.100, which comprised Article 2 of AS 37.14. This article was not to be effective until the Board of Regents of the University of Alaska approved certain matters. In fact, the Board of Regents

disapproved all matters on August 17, 1978. Consequently, the repealed sections never took effect.

Section 75 deletes a reference in AS 38.04.065(a) to a statute repealed in 1981 and substitutes a reference to the present notice provisions.

Section 76 deletes from AS 38.04.900(a) provisions which were of a temporary nature and are now obsolete.

Section 77 rewrites the paragraph in AS 38.04.910 which defines "state park" for AS 38.04. The old definition contained specific references to some of the laws designating areas which fall within the definition of state parks, but has not been kept up to date as new areas have been designated. It is our opinion that it would be better to enact a definition such as that proposed in this section and maintain a current list of laws designating the various areas in a note to the section.

Section 78 deletes a reference to a repealed section and substitutes the substantive provisions of that repealed section. After consultation with the Departments of Law and Natural Resources, we felt that this substitution would more accurately reflect legislative intent and present administrative practices. Note that there is still an AS 38.05.345(e), but that the section was substantially rewritten after AS 38.05.057(e)(3) was enacted, resulting in the repeal of the provisions of former AS 38.05.345(e). The present provisions are irrelevant in the context of the reference found in AS 38.05.057(e)(3).

Section 79 deletes the last sentence of AS 38.05.057(g), as the sentence is no longer necessary. AS 38.05.055, referenced in the sentence, has been rewritten and no longer contains any requirements for contracts. AS 38.05.065 now establishes certain terms required for contracts under this section. The deletion of "or his representative" is consistent with the law requiring the deletion of gender indicating pronouns, and is not required in this provision, since other provisions authorize the director to act through designated representatives. See AS 38.05.035.

Section 80 amends AS 38.05.078(e) to reflect the fact that (b) of the section has been repealed. The reference is retained as "former (b)" to insure that the remedies contained in (e) will be available to the state in the event

of an action involving a contract for the purchase of land authorized by the repealed subsection.

Section 81 repeals the definition of a term no longer used in the section.

Section 82 amends AS 38.05.079(a) to reflect the repeal of two sections referenced in the subsection. In the case of AS 38.05.047, the reference is retained, but the reader will know that the section is no longer operative. In the case of AS 38.05.305, a reference to AS 38.05.345 was substituted. That section now contains all of the notice procedures.

Section 83 updates an obsolete internal reference.

Section 84 also updates an obsolete internal reference. A review of the legislative history of AS 38.05.102 (amended by this section) indicates that the spanned reference should be to the entire article on leasing. In any event, AS 38.05.100 has been repealed.

Section 85 substitutes a reference to AS 38.05.345 for the obsolete reference to repealed AS 38.05.305.

Section 86 makes a number of minor style changes and substitutes a reference to AS 46.15 for an obsolete reference to repealed law.

Section 87 makes the same change to AS 38.08.020 that was made to AS 38.05.057(e) (3) by section 78 of the bill.

Section 88 corrects an error in the internal references in AS 39.25.120(b) which were created by the repeal and reenactment, with some renumbering, of AS 39.25.150.

Section 89 adds the Alaska Power Authority and the Alaska Resources Corporation to the list of agencies included in the definition of "state commission or board" for purposes of the conflict of interest laws. These boards are subject to AS 39.50 by the terms of the laws establishing them, but they were not added to the list in AS 39.50.200. This oversight was brought to our attention by the staff of the Alaska Public Offices Commission. Other matters brought to our attention will be handled through notes to this section in the 1983 supplement or editorial corrections.

Senator Bill Ray
Page 11
March 23, 1983

Section 90 makes changes in internal references required by the enactment of the Alaska Exemptions Act in 1982.

Section 91 corrects the reference to the head of the Department of Community and Regional Affairs by substituting "commissioner" for "director".

Section 92 corrects the reference in the Alaska Statutes to the United States Board on Geographic Names.

Section 93 deletes a reference to the licensing of embalmers. The referenced provisions were repealed in 1976.

Section 94 supplies the words necessary to make a complete sentence out of the last sentence in AS 44.83.398(f).

Section 95 repeals a reference made obsolete by changes in the school foundation program. See secs. 42 and 60 of this memo.

Section 96 amends the Alaska Securities Act to clarify the time that is available to take an appeal from an administrative order. The Alaska Court Rules of Appellate Procedure allow only 30 days for an appeal from an administrative decision. However, this section of the securities act currently allows 60 days. This is a direct conflict and should be resolved. The applicable appellate rule is Rule 602(a)(2).

Sections 97, 98, and 99 delete obsolete material from three sections of AS 46.30. All of the deleted material is dated and no longer necessary.

Section 100 corrects an internal reference in AS 47.-10.230(f).

Section 101 repeals a definition in the child support enforcement chapter that is not used in the chapter. The term defined is "disposable earnings".

Section 102 makes changes in internal references required by the new exemptions statute.

DRD:ljb

Enclosure