

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 86/2

2510 SJ • SB 133 - SB 167

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# STATE OF ALASKA THE LEGISLATURE

FOURTH STATE CAPITOL  
SUNSHINE ALASKA 1981  
P.O. BOX 1100

## LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 4, 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 Ten of the 24 sections would be repealed by SB 1.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 take

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 08.38.201 by deleting the second sentence, which is now obsolete. AS 08.38.191(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 all but one section of the chapter on the Board of Welding Examiners which was terminated under the sunset law. The retained section establishes the piping code of the state.

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 1998. 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.

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 29.83.020, this section could be repealed.

Section 42 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 43 repeals two sections which set forth the minimum teachers' and administrators' salary scales and definitions. The salary scales are obsolete since salaries are set by negotiation. The definitions section is also obsolete by reason of successive reapportionments. The section which contains minimum salaries for teachers (AS 14.29.120) is also obsolete, but contains some material still useful to

the Department of Education and school districts. It will be the subject of a bill being prepared by the department proposing substantial revision in that and other sections.

Sections 44, 45 and 46 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 47 deletes a reference in AS 14.42.015(a)(2) to the Alaska Methodist University and substitutes the successor school, Alaska Pacific University.

Sections 48 and 49 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 50 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 51 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 52 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 53 and 54 correct references to the acknowledgement statute. AS 09.65.012 has been replaced by AS 09.63.020.

Sections 55 and 56 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 57 repeals AS 16.10.530 on the basis of the decision of the Supreme Court in State v. Alex. The case only invalidated AS 16.10.530.

Section 58 substitutes the substantive provisions of repealed AS 11.05.010 for the obsolete reference to the repealed provision.

Section 59 repeals a reference made obsolete by changes in the school foundation program. "Local effort" is no longer a required part of the public school foundation law.

Section 60 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 61 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 62 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 differences, if any, between jurisdiction of the superior court set forth by statute and that set forth by court rule.

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 subsection (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 63 corrects a problem of tense in AS 22.10.040(4).

Section 64 deletes a reference to the legislative board of retirement benefits. That board was repealed in 1980.

Section 65 repeals an obsolete provision in the motor vehicle code. AS 28.10.105(c) was applicable only during 1979.

Section 66 amends AS 28.10.411(b) by deleting a reference to repealed AS 42.15.

Sections 67, 68, and 69 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 70 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 71 and 72 delete references to AS 14.08.161 which has been repealed.

Section 73 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 74 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 75 deletes from AS 38.04.900(a) provisions which were of a temporary nature and are now obsolete.

Section 76 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 77 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).

Section 78 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 79 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 80 repeals the definition of a term no longer used in the section.

Section 81 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 82 updates an obsolete internal reference.

Section 83 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 84 substitutes a reference to AS 38.05.345 for the obsolete reference to repealed AS 38.05.305.

Section 85 makes a number of minor style changes and substitutes a reference to AS 46.15 for an obsolete reference to repealed law.

Section 86 makes the same change to AS 38.08.020 that was made to AS 38.05.057(e)(3) by section 77 of the bill.

Section 87 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 88 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.

Section 89 makes changes in internal references required by the enactment of the Alaska Exemptions Act in 1982.

Section 90 corrects the reference to the head of the Department of Community and Regional Affairs by substituting "commissioner" for "director".

Section 91 corrects the reference in the Alaska Statutes to the United States Board on Geographic Names.

Senator Bill Ray  
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Section 92 deletes a reference to the licensing of embalmers. The referenced provisions were repealed in 1976.

Section 93 supplies the words necessary to make a complete sentence out of the last sentence in AS 44.83.398(f).

Section 94 repeals a reference made obsolete by changes in the school foundation program. See secs. 42 and 60 of this memo.

Section 95 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 96, 97, and 98 delete obsolete material from three sections of AS 46.30. All of the deleted material is dated and no longer necessary.

Section 99 corrects an internal reference in AS 47.-10.230(i).

Section 100 repeals a definition in the child support enforcement chapter that is not used in the chapter. The term defined is "disposable earnings".

Section 101 makes changes in internal references required by the new exemptions statute.

DRD:ljb

STATE OF ALASKA  
THE LEGISLATURE


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 15, 1983

SUBJECT: "An Act making corrective amendments in the Alaska Statutes as recommended by the revisor of statutes" (Work Order No. 13-0470)

TO: Senator Bill Ray  
Chairman, Legislative Council

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."

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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.

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

Section 14 repeals the chapter on the Collection Agency Board which has been rendered obsolete by operation of the sunset statute. The termination date was June 30, 1980.

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Section 34 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 35 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 36 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 37 repeals the three sections which set forth the minimum teachers' and administrators' salary scales and definitions for the sections. The salary scales are obsolete since salaries are set by negotiation.

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Sections 47 and 48 correct references to the acknowledgement statute. AS 09.65.012 has been replaced by AS 09.63.020.

Sections 49 and 50 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 51 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 52 deletes an obsolete provision in AS 18.23.040 relating to punishment for misdemeanors. The effect of this amendment is to make a violation under this section a class A misdemeanor, through operation of the section relating to unclassified misdemeanors, AS 11.81.250(c). Since the penalty for a class A misdemeanor under is up to one year in jail and a fine of up to \$5,000, the penalty would be more severe than under the repealed section referred to presently in AS 18.23.040. Under the repealed section the jail sentence would be the same but the maximum fine would have been only \$500. The legislature may wish to amend this section of the bill to retain the old penalty, or consider establishing this as class E misdemeanor, with a maximum fine of \$1,000 and a term of imprisonment of not more than 90 days.

Section 53 repeals a reference made obsolete by changes in the school foundation program. See sec. 35 of this memo.

Section 54 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 55 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 56 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 subsection (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.

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Section 58 deletes a reference to the legislative board of retirement benefits. That board was repealed in 1980.

Section 59 repeals an obsolete provision in the motor vehicle code. AS 28.10.105(c) was applicable only during 1979.

Sections 60, 61, and 62 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 63 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 64 and 65 delete references to AS 14.08.161 which has been repealed.

Section 66 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 67 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 68 makes changes in internal references required by the enactment of the Alaska Exemptions Act in 1982.

Section 69 corrects the reference to the head of the Department of Community and Regional Affairs by substituting "commissioner" for "director".

Section 70 corrects the reference in the Alaska Statutes to the United States Board on Geographic Names.

Section 71 deletes a reference to the licensing of embalmers. The referenced provisions were repealed in 1976.

Section 72 supplies the words necessary to make a complete sentence out of the last sentence in AS 44.23.398(f).

Section 73 repeals a reference made obsolete by changes in the school foundation program. See secs. 35 and 53 of this memo.

Section 74 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).

Senator Bill Ray  
Page 10  
February 15, 1983

Sections 75, 76, and 77 delete obsolete material from three sections of AS 46.30. All of the deleted material is dated and no longer necessary.

Section 78 corrects an internal reference in AS 47.-10.230(f).

Section 79 repeals a definition in the child support enforcement chapter that is not used in the chapter. The term defined is "disposable earnings".

Section 80 makes changes in internal references required by the new exemptions statute.

DRD:ljb

Enclosure

S

B

/ 39

COMMITTEE REPORT  
SENATE

FURTHER:

Date: \_\_\_\_\_

Mr President:

The Committee on JUSTICE has had \_\_\_\_\_

*Regarding the licensing of big game mammals*

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:

\_\_\_\_\_

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CHAIRMAN



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

March 29, 1983

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

Re: SE 139

Dear Senator Ray:

As I recollect, the captioned bill came out of Senate Resources with a unanimous "do pass."

All the bill does, as far as I can see, is repeal the requirement that big game transporters must be licensed.

The Budget and Audit Committee recommended the repealer after determining that the transporter laws are not needed to protect the safety of the public or manage the game resources.

Very truly yours,

A handwritten signature consisting of a stylized 'R' followed by a horizontal line.

Robert H. Ziegler, Sr.

RHZ:lk

STATE OF ALASKA  
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: SB 139 Date on Bill: 2/23/83  
 Title: repealing the licensing of big game transporters.  
 Sponsor: Resources Committee  
 Requestor: Senate Resources

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:

	FY 83	FY 84	FY 85	FY 86
Revenue	0	0	0	0

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: Col. Robert J. Stickles *RJS* Phone: 269-5532  
 Division: Fish & Wildlife Protection Date: 3/2/83

Approved by Commissioner: *[Signature]* Date: 3/4/83  
 Department: Public Safety

5. Distribution:

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

2/15/83

1 / 4 3  
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- File -

STATE OF ALASKA  
THE LEGISLATURE

FOURTH STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 18, 1983

SUBJECT: Solicitation of prostitutes  
(CSSB 143 (Judiciary))

TO: Senator Bill Ray  
Chairman, Senate Judiciary Committee

FROM: James H. Lear  
Legislative Counsel *JHL*

You have requested our office to prepare a committee substitute for Senate Bill 143 to provide a local option for municipalities to exercise if they wish to prohibit solicitation of prostitutes. You have received two versions in draft form for your consideration.

The first version provides for a local option election that would be held pursuant to a petition by voters within a municipality. If a majority of the voters voting in an election vote to penalize solicitation of a prostitute, such conduct is automatically punishable as a class B misdemeanor without any action by the municipal government. In effect, solicitation of a prostitute would violate a state law but only if committed within the boundaries of a municipality that voted to punish such conduct.

The second version amends AS 11.66.100 by adding a new subsection that would specifically authorize municipalities to enact an ordinance prohibiting solicitation of a prostitute. In the opinion of this office, such legislation would not only be unnecessary but inadvisable.

In the case of Anchorage v. Afualo, 657 P.2d 407 (Alaska 1983), the Alaska Court of Appeals made it clear that such legislation is superfluous.

In its decision the Court of Appeals held that an Anchorage ordinance was not irreconcilably in conflict with the statute prohibiting someone from engaging or offering to engage in sexual intercourse for a fee, but not prohibiting offering a prostitute money for sexual intercourse.

Senator Bill Ray

Page 2

April 18, 1983

It is unnecessary to adopt legislation that would specifically authorize a municipality to do something that the Court of Appeals says they can already do under existing law. It is also inadvisable to adopt a specific authorization such as the one contemplated, since a logical inference could be drawn to support the argument that a municipality cannot enact an ordinance prohibiting criminal conduct unless the Alaska Criminal Code specifically authorizes a municipality to do so.

If you have any further question pertaining to the subject matter of this memorandum, do not hesitate to contact our office.

JHL:csh

15/007

STATE OF ALASKA  
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: SB 143 Date on Bill: 2-24-83  
 Title: "An Act making solicitation...punishable as a class B misdemeanor"  
 Sponsor: V. Fischer  
 Requestor: SEN. JUDICIARY

1. Estimated fiscal impacts on: No fiscal impact is anticipated.

a. Expenditures:

(Thousands of Dollars)

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

b. Revenues:

Revenue	FY 83	FY 84	FY 85	FY 86

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

3. Assumptions:

4. Disclaimer:

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

Prepared By: Francis C. Allan <sup>GC 9</sup> Phone: 263-5691  
 Division: Alaska State Troopers mck Date: 3-2-83

Approved by Commissioner: [Signature] Date: 3/8/83  
 Department: Public Safety

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



TONY KNOWLES  
MAYOR

# ANCHORAGE POLICE DEPARTMENT

625 C STREET • ANCHORAGE, ALASKA 99501-3599  
TELEPHONE (907) 279-1441



BRIAN S. PORTER  
CHIEF

February 28, 1983

Senator Vic Fischer  
c/o Mr. David Dye  
Senate State Affairs Committee  
Pouch V  
Juneau, Alaska 99811

Re: Senate Bill 143

Dear Senator Fischer,

The adoption of Senate Bill 143 would bring the State Criminal Code in line with the current parallel ordinance and enforcement policy within the Municipality of Anchorage.

Some years back, Anchorage possessed a traditionally worded ordinance prohibiting soliciting for the purpose of prostitution. It was found by the Court, to be unconstitutional as it only prohibited this behavior for women and not men.

We corrected and redrafted the ordinance and used it successfully against both men and women.

A few months ago, a District Court Judge threw out this ordinance as she felt it conflicted with the intent of the State law that only includes women. While I think a wiser decision would have been to throw out the State Statute, it is now moot as her decision was overturned by the State Court of Appeals.

I support Senate Bill 143. As mentioned, I feel the current construction of AS 11.55.100 (a) is constitutionally questionable. Additionally, prohibiting both men and women from soliciting for the purpose of prostitution is a better deterrent and a much better enforcement tool.

Sincerely,

Brian S. Porter  
Chief of Police

BSP:vka

SENATE JUDICIARY COMMITTEE

Meeting Minutes  
3/28/83

The meeting was called to order by Senator Ray, Chairman at 1:30 p.m.

All members of the Committee were present with the exception of Senator Eliason who was excused. Senator Kerttula attended the meeting and participated in the discussion regarding the first order of business.

The first order of business was Senate Bill 143--Making solicitation of a prostitute by a patron a crime punishable as a class B misdemeanor-- as to which the prime sponsor, Senator Vic Fischer, testified, explaining the purpose of the bill and providing copies of a letter from the Chief of the Anchorage Police Department endorsing the bill (a copy of which is attached hereto).

Senator Ziegler asked a question regarding where the impetus for the bill came from, to which Senator Fischer responded by explaining that it arose out of his personal beliefs and also out of a conversation he recently had with the Chief of the Anchorage Police Department wherein the Chief stated that the enforcement of anti-prostitution statutes will be greatly facilitated by this bill.

Senator Ziegler also asked about similar legislation in other states, to which Senator Fischer responded that he did not have that information presently available.

Senator Kerttula stated that the potential for entrapment has been a major concern in this type of legislation.

Senator Ray asked a question about the type of sexual conduct required for a prosecution or conviction under this statute. Senator Fischer responded to this question and discussion was had wherein Senator Pettyjohn also participated.

Senators Pettyjohn and Ray raised a question about the language "money or other compensation" being too broad and too vague because, according to Senator Pettyjohn, it would include innocent "romantic liaisons" and offers of any incentive, including a ride, dinner or even a piece of cheese (as to the latter, Senator Kerttula pointed out that this seems to be a reference to the potential for "entrapment" that he previously mentioned). Furthermore, Senator Pettyjohn pointed out that such broad, ambiguous language would make the statute subject to prosecutorial abuse.

Further discussion was then had wherein all the Senators participated and in the course of which the following things were mentioned:

Some thought has been given to simply repealing the prostitution statutes; i.e., legalizing prostitution. Senator Fischer actually discussed the matter with enforcement people who were in favor of it, but he feels that politically it just wouldn't go anywhere. Prostitution appears to be a serious problem only in certain parts of Anchorage and it is feared that this bill is apt to create an enforcement problem in localities where the problem doesn't presently exist.

The municipality of Anchorage passed an ordinance that does the same thing as this bill and, although a trial judge declared the ordinance invalid because it allegedly conflicted with the legislative intent of existing state law, the court of appeals more recently reversed that decision and, therefore, it appears that the Anchorage ordinance can be enforced without additional legislation.

Senator Ray proposed a simple redefinition of prostitution to include anyone who engages in sexual conduct, including the offer or acceptance thereof, for compensation. This proposal was discussed at some length and several senators seemed to favor it.

Senator Ray also proposed a local option provision, as to which, after a good deal of discussion, there appeared to be widespread approval.

The second order of business was Senate Bill 167--Relating to correctional facilities, good time computation, and the imprisonment and rehabilitation of offenders--as to which Senator Ray announced that CSHB 103 has just been referred to the Committee and, therefore, further action on Senate Bill 167 will be deferred until CSHB 103 is acted upon. Furthermore, Senator Ray assigned the subcommittee on CSHB 103 to Senator Pettyjohn who agreed to bring the bill up for consideration on Friday, April, 8, 1983.

The third and final order of business was a brief report by Senator Josephson on his recent trip to Washington, D.C., where he had some interesting discussions regarding corrections and juvenile offenders.

There being no further business, the meeting adjourned at 2:04 p.m.

to dismiss or suppress, examinations and hearings on competency, the period during which the defendant is incompetent to stand trial, interlocutory appeals, and trial of other charges.

No pre-trial motion shall be held under advisement for more than 30 days and any time longer than 30 days shall not be considered as an excluded period. (emphasis supplied)

The language of this section which we have emphasized is sufficiently broad to include a period of delay due to granting a motion of counsel to withdraw. Thus, the court would have been justified in concluding that the delay caused by the motion was more than sufficient to bring this case within the 120 day limit prescribed by Criminal Rule 45.

There being no error, the conviction must be affirmed.

**AFFIRMED.**



Debbie PLAS, Appellant,

v.

STATE of Alaska, and Avrum M. Gross,  
Attorney General, Appellees.

Dorothy FARRELL and Jean  
Ross, Petitioners,

v.

STATE of Alaska, Respondent.

Nos. 3530, 3529.

Supreme Court of Alaska.

Aug. 24, 1979.

Appeals were taken from judgments of the Superior Court, Third Judicial District, John Bosshard and C. J. Occhipinti, JJ., in actions challenging constitutionality of prostitution statute. The Supreme Court,

Connor, J., held that clause of prostitution statute prohibiting certain conduct "by a female" was invalid as in violation of equal protection; however, clause "by a female" was separable from remainder of statute so that prostitution proscription, absent "by a female" limiting clause, was valid.

**Affirmed.**

**1. Constitutional Law**  $\Rightarrow$  213.1(2)

In assessing equal protection claims under Alaska Constitution, Court must consider purpose of statute, with legitimacy of purpose, means used to accomplish legislative objective, and then determine whether means chosen substantially further goals of enactment and balance state interest in chosen means against nature of constitutional right which is at issue. Const. art. 1, §§ 1, 3.

**2. Constitutional Law**  $\Rightarrow$  224(5)

In creating criminal offenses it is particularly important for equal protection purposes that any distinctions as to gender rest upon some logical classification having a basis in actual conditions of human life. Const. art. 1, §§ 1, 3.

**3. Constitutional Law**  $\Rightarrow$  224(5)

**Prostitution**  $\Rightarrow$  1

**Statutes**  $\Rightarrow$  64(6)

Clause of prostitution statute prohibiting certain conduct "by a female" was invalid as in violation of equal protection; however, clause "by a female" was separable from remainder of statute so that prostitution proscription, absent "by a female" limiting clause, was valid. Const. art. 1, §§ 1, 3; AS 11.40.210, 11.40.230, Laws 1955, c. 104.

Margie MacNeille, Alaska Legal Services,  
Jeffrey M. Feldman, Asst. Public Defender,  
Anchorage, for appellant and petitioners.

Burry Stern, Asst. Atty. Gen., Anchorage,  
Anne Carpeneti, Asst. Atty. Gen., Daniel W.  
Hickey, Chief Pros., Avrum M. Gross, Atty.  
Gen., Juneau, for appellees and respondent

Before RABINOWITZ,  
NOR, BOOCHEVER,  
THEWS, JJ.

OPINION

CONNOR, Justice.

This opinion arises from review and a criminal case consolidated for review. The facts are uncontested. Appellant Debbie Plas, Alaska State Trooper, was charged with the purpose of prostitution under AS 11.40.230 which reads:

"It is unlawful with intent to procure or solicit, or to solicit for the purpose of prostitution."

In a preceding section,

"Prostitution includes the receiving of the body for carnal intercourse for hire."

It is this statutory definition which is the issue in this appeal.

Appellant Plas was charged against her on this statute was invalid on the ground of the equal protection clause by article 1, sections 1 and 3 of the Constitution, and the Supreme Court's comment to the United States Constitution. The district court granted the state elected not to prosecute. However, enforcement of the statute was continued.

A civil complaint for injunctive relief was filed on behalf of appellant Plas to obtain a ruling, binding on the courts, of the unconstitutionality of Alaska's statutes regulating prostitution offenses. In her complaint she asserted:

1. That she is a citizen of the State of Alaska and

1. AS 11.40.220 states: "It is unlawful to engage in prostitution in the state."

2. In the superior court she sought the granting of review



sons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State."

Article I, section 3, provides:

"*Civil Rights.* No person is to be denied the enjoyment of any civil or political right because of race, color, creed, sex, or national origin. The legislature shall implement this section."

It is significant that the category "sex" was added to article I, section 3, of the Alaska Constitution by amendment in 1972.<sup>3</sup> We must thus consider the statute in the light of this constitutional prohibition, and the guarantee of equal rights and protection under the law contained in article I, section 1, of the Alaska Constitution.

[1] As we stated in *State v. Erickson*, 574 P.2d 1 (Alaska 1978), we must assess equal protection claims under the Alaska Constitution by considering the purpose of the statute, the legitimacy of that purpose, the means used to accomplish the legislative objective, and "then determine whether the means chosen substantially further the goals of the enactment." *Id.* at 12. We must also balance the state interest in the chosen means against the nature of the constitutional right which is at issue. *Id.* at 12.

3. It appears that at least one woman member of the Alaska Constitutional Convention, Delegate Hermann, argued strenuously against the inclusion of that word in this section, on the ground that it was unnecessary. 2 Proceedings of the Alaska Constitutional Convention 1296 (Jan. 5, 1956).

4. We find unpersuasive the state's argument that the definition section of the statute, AS 11.40.210, is ambiguous, and that when taken with the general prohibitory section, AS 11.40.220, and the punishment section, AS 11.40.250, which applies to a "person" convicted, the definition can be read to contain an implied prohibition of male prostitution.

5. For example, in *Lamb v. Brown*, 456 F.2d 18 (10th Cir. 1972), the court struck down an Oklahoma statute which allowed females under the age of 18 years to be proceeded against

[2] It is apparent that the statute invidiously discriminates against females. The offense of prostitution is capable of being committed by a male,<sup>4</sup> but is nowhere made criminal by the statute. In striking at prostitution the legislation singles out only the female body as the critical physical element of the crime. In view of gender neutrality required by article I, section 3, of the Alaska Constitution, the means used to accomplish the legislative end lacks rational justification. In creating criminal offenses it is particularly important that any distinctions as to gender rest upon some logical justification having a basis in the actual conditions of human life.<sup>5</sup> In our view the statute is unconstitutional insofar as it limits its operation to selling of only a female body.<sup>6</sup> This does not, however, end our task.

The language which presents the constitutional difficulty here is the phrase "by a female" contained in AS 11.40.210. We must consider whether the statute, with that offending language stricken, can still accomplish its general intended purpose, and thus be saved from total nullity through the operation of the severability clause of this statute.<sup>7</sup> We think that the statute can be so sustained, with the mentioned words omitted. For the provision would then read:

"Prostitution includes the giving or receiving of the body for sexual intercourse for hire."

under the juvenile code rather than by a criminal proceeding, but entitled males to such benefits only if they were under the age of 16 years. See also *Craig v. Boren*, 429 U.S. 190, 97 S.Ct. 451, 50 L.Ed.2d 397 (1976); *Reed v. Reed*, 404 U.S. 71, 92 S.Ct. 251, 30 L.Ed.2d 225 (1971).

6. As Judge Cates put it, concurring in *Holloway v. City of Birmingham*, 55 Ala.App. 568, 574, 317 So.2d 535, 541 (1975), "[O]ur society, either in a sepsis or asceticism, should be evenhanded."

7. Chapter 104, § 6, SLA 1955 provides:

"If any portion of this Act shall be declared unconstitutional, such decision shall not affect the validity of the remaining portions or sections of this Act."

It would then be neutral as to gender, it would accomplish the broad aim of the statute, and would not unreasonably distort the legislative intent." We believe that this is the proper solution to the problem.

[3] We hold that the clause "by a female" is invalid for violating article I, section 3, of the Alaska Constitution, but that the balance of the statute remains legally intact. In view of our holding we need not decide the question of whether appellant Plas has standing to attack the statute.

AFFIRMED.



Julie CARLSON and James  
Carlson, Appellants,

v.

STATE of Alaska, Appellee.  
No. 3919.

Supreme Court of Alaska.

Aug. 24, 1979.

Plaintiff and her husband brought action against the State for injuries inflicted at highway turnout by bear allegedly attracted to the site by accumulated, uncollected garbage on State-owned property. The Superior Court, Third Judicial District, Victor D. Carlson, J., granted summary judgment for the State, and plaintiffs appealed. The Supreme Court, Burke, J., held that: (1) the State did not fall within discretionary acts exception to waiver of sovereign immunity in Alaska Tort Claims Act, and (2) unresolved questions of fact precluded granting of summary judgment for the State.

Reversed and remanded.

8. See *Lynden Transport, Inc. v. State*, 532 P.2d 700, 713 (Alaska 1975), where we set forth the test for severability as follows:

The test for determining the severability of a statute is twofold. A provision will not be deemed severable "unless it appears both

### 1. Judgment ⇐181(2)

It is only existence of issues of material fact which precludes granting of motion for summary judgment. Rules of Civil Procedure, rule 56(c).

### 2. States ⇐112.2(1)

Under planning-operational test for determining applicability of "discretionary act" sections of Alaska Tort Claims Act, in which decisions that rise to level of planning or policymaking are considered "discretionary acts" which do not give rise to tort liability, while decisions that are merely operational in nature are not considered to be "discretionary acts" and therefore are not immune from liability, distinction between planning decisions and operational decisions does not depend merely on who made decision, but rather on type of decision that is being made, examined within analytical framework which is sensitive to policies underlying discretionary function or duty exception. AS 09.50.250(1).

### 3. States ⇐191(1)

The reason for preserving sovereign immunity for certain acts of the state is necessity for judicial abstention in certain policymaking areas that have been committed to other branches of government. AS 09.50.250.

### 4. States ⇐112.2(2)

The state's decision on broad question of whether to maintain highway turnouts in winter at all is "policy determination" that cannot give rise to tort liability; however, decisions made pursuant to that policy on how to implement it are "operational decisions" which impose duty upon state to act with reasonable care. AS 09.50.250(1).

See publication Words and Phrases for other judicial constructions and definitions.

that, standing alone, legal effect can be given to it and that the legislature intended the provision to stand, in case others included in the act and held bad should fall." (footnote omitted)

t that the statute invidiously discriminates against females. The statute is capable of being applied to males,<sup>4</sup> but is nowhere made applicable to males. In striking at prostitution singles out only the critical physical element of gender neutrality. The use of gender neutrality in section 3, of the Alaska Constitution means used to accommodate lack of rational justification for criminal offenses it is not that any distinctions upon some logical justification in the actual condition of a female body.<sup>5</sup> In our view the statute is unconstitutional insofar as it limits its application to only a female body.<sup>6</sup> We think that the statute, with the mentioned provision, end our task.

which presents the constitutional issue is the phrase "by a female" in AS 11.40.210. Whether the statute, with the phrase stricken, can still be considered to have a general intended purpose, rather than total nullity, is a question of the severability of the statute.<sup>7</sup> We think that the statute, with the mentioned provision, is unconstitutional.

includes the giving or receiving of sexual intercourse

code rather than by a crime. The statute entitles males to such benefits under the age of 16 years. See *Roberts v. Loren*, 429 U.S. 190, 97 S.Ct. 1717 (1976); *Reed v. Reed*, 404 U.S. 251, 30 L.Ed.2d 225 (1971).

put it, concurring in *Holloman v. Holloman*, 55 Ala.App. 568, 100 So.2d 541 (1975), "[O]ur society, with its emphasis on asceticism, should be even-

SLA 1955 provides: "If any provision of this Act shall be declared unconstitutional, such decision shall not affect the remaining portions of the Act."

ever, where a lease contains a non-waiver provision such as the one contained in the subject lease, courts have given full effect to those provisions and have held that previous failures on the landlord's part to cancel for a breach of a covenant do not constitute a waiver of such a provision.<sup>8</sup> Thus, given the existence of a non-waiver provision, the landlord may demand strict compliance with a lease provision concerning time of payment without giving prior notice of such demand.<sup>9</sup>

[4, 5] We hold that because of the non-waiver provision of the lease, the state did not waive its right to rely solely on the May 5, 1964, notice before cancelling the lease.<sup>10</sup> Therefore, the superior court was correct in determining that the issue as to the mailing of the supplemental notice was not material.<sup>11</sup>

Affirmed.

(1961); *Powell v. Cannon*, 119 Cal.App. 2d 748, 260 P.2d 202 (1953); *Beck v. Trovato*, 260 Iowa 693, 150 N.W.2d 657 (1967); *Milbourn v. Aska*, 81 Ohio App. 79, 77 N.E.2d 610 (1949); *Bertrand v. Pate*, 284 S.W.2d 802 (Tex.Civ.App.1955). These cases are in line with analogous contract doctrine. 6 S. Williston, *Law of Contracts* § 856, at 231 (3d ed. 1962); 3A A. Corbin, *Law of Contracts* § 764, at 532-33 (1960); *Restatement of Contracts* § 311 (1932).

8. *Robinson v. Hadley*, 351 F.2d 385 (9th Cir. 1965); *Williams v. Behrend*, 55 A.2d 138 (D.C.Mun.App.1947); *Streeter v. Middlemas*, 240 Md. 169, 213 A.2d 471 (1965). For cases involving non-waiver provisions in contracts, see *Lundberg v. Switzer*, 146 Wash. 416, 263 P. 178 (1928); *Brown v. Chowchilla Land Co.*, 50 Cal.App. 164, 210 P. 424, 427 (1922).

9. In this regard we find the court's reasoning in *Lundberg v. Switzer*, 146 Wash. 416, 263 P. 178, 179 (1928), persuasive:

[T]he parties had a right to place in the contract any terms or conditions which were not unlawful or against public policy. In providing in the contract that acceptance of the delayed payments should not operate as a waiver of future payments, it cannot be said that the parties did anything which contravened any rule of law or went coun-

Joseph H. JOHNSON, Appellant,  
v.  
STATE of Alaska, Appellee.  
No. 1338.

Supreme Court of Alaska.  
Oct. 6, 1972.

Defendant was convicted before the Superior Court, Third Judicial District, Edward V. Davis, J., of living on the earnings of a prostitute and procuring a female for prostitution, and he appealed. The Supreme Court, Boney, C. J., held that failure to instruct on need for corroboration of testimony of prostitute, who was the sole witness and whose testimony was not otherwise corroborated, was plain error requiring reversal of conviction for procuring for prostitution.

ter to public policy. Where the vendor has waived strict performance by accepting delayed payments, he may by due notice to the purchaser reinstate strict performance . . . as to subsequent payments after having waived that performance by accepting delayed payments, it would seem to follow that the parties to the contract in the first instance, if they saw fit to do so, could agree that the acceptance of delayed payments should not operate to waive strict performance as to any future payments. (Citations omitted)

10. Because we have disposed of this issue solely by reviewing the lease provisions, we need not decide the issue raised by the state as to the effect of the regulations governing the lease of state lands. In this regard, the state contended that the requirements of notice and non-waiver provisions of the regulations cannot be altered by conduct of a state employee.

11. Further, Stephens has suggested that we keep in mind the equitable principle that "equity abhors a forfeiture." We have not been unmindful of that maxim; however, the record in this case discloses no equities in favor of Stephens that would dictate application of that maxim. More particularly, the record fails to indicate that any improvements had been placed on the land by Stephens.

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conviction on one count affirmed and other count reversed and case remanded.  
Bochever, J., not participating.

1. Criminal Law  $\S$ 911

A motion for a new trial is addressed to the sound discretion of trial judge.

2. Criminal Law  $\S$ 942(2)

Where prostitute's probation officer and mother testified at hearing to perpetuate recantation testimony and presented evidence refuting at least some of prostitute's recantation and prostitute's trial testimony and pretrial sworn statements were substantially similar to her trial testimony and recantation consists of unsworn oral statements, it was not abuse of discretion to deny a new trial on ground of newly discovered evidence; fact that prostitute was sole prosecution witness did not require otherwise. AS 11.40.300, 11.40.350.

3. Criminal Law  $\S$ 510

Corroboration of prostitute's testimony was necessary to convict defendant of procuring a female for prostitution. AS 11.40.350, 12.45.040.

4. Criminal Law  $\S$ 507(7)

Phrase "illicit connection" as mentioned in statute requiring corroboration of testimony of an injured female to secure conviction for inveigling, enticing, or taking away an unmarried female for purposes of prostitution does not encompass living off the earnings of a prostitute; phrase is a Victorian euphemism for unlawful sexual intercourse. AS 11.40.300, 12.45.040.

See publication Words and Phrases for other judicial constructions and definitions.

5. Criminal Law  $\S$ 510

Corroboration of prostitute's testimony was not necessary to convict defendant of living on the earnings of a prostitute. AS 11.40.300, 12.45.040.

6. Criminal Law  $\S$ 510

Testimony of accomplices, like that of injured females, must be corroborated in order to support a conviction of inveigling, enticing, or taking away an unmarried female for purposes of prostitution. AS 12.45.040.

7. Criminal Law  $\S$ 511(1)

To be sufficient, evidence corroborating testimony of the injured female in prosecution for enticing, inveigling or taking away an unmarried female for purposes of prostitution should be considered in conjunction with the prostitute's testimony; such evidence must be consistent and harmonious with her testimony and evidence will be adequate for purposes of corroboration statute if it dispels the assumed distrust of the prostitute's testimony. AS 12.45.040.

8. Criminal Law  $\S$ 511(1)

Testimony of prostitute's probation officer and mother, which testimony was generally consistent and harmonious with that of the prostitute, could not be considered as corroborating prostitute's testimony, for purpose of convicting defendant of procuring a female for prostitution, where such testimony was only brought forth at hearing to perpetuate recantation testimony to be considered in ruling on motion for new trial. AS 11.40.350, 12.45.040.

9. Criminal Law  $\S$ 511(9)

Trial testimony of prostitute's uncle that he knew defendant and had seen his niece with defendant during period in which niece had testified to being a prostitute working for defendant and that defendant gave affirmative response to uncle's inquiry if defendant thought it was right for the niece to be out on the streets could not be read to corroborate prostitute's testimony that defendant had led her into the profession, in violation of procuring statute. AS 11.40.350, 12.45.040.

10. Criminal Law  $\S$ 1038(2), 1173(2)

Failure to instruct on need for corroboration of testimony of prostitute, who was the sole witness in prosecution for procur-

ing a female for prostitution and whose testimony was not otherwise corroborated, was plain error requiring reversal. AS 11.40.350, 12.45.610.

Victor D. Carlson, Public Defender, Michael L. Rubinstein, Meredith A. Wagstaff, Asst. Public Defenders, Anchorage, for appellant.

John E. Havelock, Atty. Gen., Juneau, Robert L. Eastaugh, Asst. Dist. Atty., Anchorage, for appellee.

Before BONEY, C. J., and RABINOWITZ, CONNOR and ERWIN, JJ. [BOOCHEVER, Justice, not participating].

### OPINION

BONEY, Chief Justice.

The defendant, Joseph H. Johnson, was tried by a jury and convicted of two counts. Count I charged him with living on the earnings of a prostitute in violation of AS 11.40.300.<sup>1</sup> Count II charged him with procuring a female for prostitution in violation of AS 11.40.350.<sup>2</sup>

At trial, the state called only one witness, a female then 15 years of age and of limited mentality. She had begun her career as a prostitute when she was 13 years old, and, was, by her own testimony, a thief and a user of marijuana, "speed," and mescaline. Her testimony, though replete with inconsistencies, alterations, and admitted lies, was generally to the effect that Johnson had led her into prostitution,

1. AS 11.40.300 provides:

A male person who acts as an employee or servant in and about a room, house, or place of prostitution, or who engages or assists in operating or managing a room, house or building for the purpose of carrying on prostitution, or a male or female person who knowingly lives on, or is supported in whole or in part by the money or other valuable consideration realized, procured or earned by a female person through the prostitution of any other female person is guilty of a felony, and upon conviction, is punishable by imprisonment in

and that he had lived, at least in part, on her earnings as a prostitute.

The sole witness presented by the defense was the prostitute's uncle. He testified that he knew Johnson and that he had seen his niece with Johnson in Anchorage during the period during which she had testified to being a prostitute working for Johnson. He stated that he had asked if Johnson thought it was right for the niece to be "out on the streets" and that the reply was "yes."

After his conviction, but prior to the entry of judgment, Johnson moved for a new trial based on newly discovered evidence in the form of the prostitute's recantation of her testimony. Before the motion was ruled on, a hearing to perpetuate the recantation testimony was held. At that hearing, the superior court informed the prostitute of the gravity of the offense of perjury and the seriousness of the penalty therefor. The court advised her that she had a right not to testify, that she had a right to a court appointed attorney, and that her testimony could be used against her in a prosecution for perjury. The prostitute chose not to testify.

Some evidence was, however, produced at the hearing. The prostitute's probation officer and mother did testify, presenting evidence refuting at least some of the prostitute's recantation. Three exhibits were also offered. The first was a transcription of the prostitute's unsworn oral recantation as recorded in the office of Johnson's counsel. The other two were her sworn statements made prior to trial,

the penitentiary for not less than two years nor more than five years.

2. AS 11.40.350 provides:

A person who induces, entices or procures, or attempts to induce, entice or procure a female for the purpose of prostitution or concubinage, or for other immoral purpose, or to enter a house of prostitution in the state, is guilty of a felony, and upon conviction is punishable by imprisonment in the penitentiary for a period of not less than two years nor more than 20 years, or by a fine of not less than \$1,000, or by both.

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both of which were substantially similar to her trial testimony.

The motion for a new trial was subsequently denied. Johnson was then sentenced to five years on each count, to be served concurrently.

Two sets of issues are raised on this appeal. The first relates to the denial of the new trial, the second to the applicability of AS 12.45.040,<sup>3</sup> our corroboration statute.<sup>4</sup>

## I

Johnson argues that the superior court erred in denying his motion for a new trial based on newly discovered evidence.

In denying Johnson's motion, the superior court relied upon our decision in *Salinas v. State*<sup>5</sup> where we adopted from *Pitts v. United States*<sup>6</sup> the standard for granting a new trial on the basis of newly discovered evidence:

A motion for a new trial based on the ground of newly discovered evidence has to meet the following requirements: (1) It must appear from the motion that the evidence relied on is, in fact, newly discovered

covered, i.e., discovered after the trial; (2) the motion must allege facts from which the court may infer diligence on the part of the movant; (3) the evidence relied on must not be merely cumulative or impeaching; (4) must be material to the issues involved; and (5) must be such as, on a new trial, would probably produce an acquittal.<sup>7</sup>

The superior court concluded that, while the first four criteria had been met, the fifth criterion had not been satisfied.

[1] A motion for a new trial is, by the clear weight of authority, addressed to the sound discretion of the trial judge.<sup>8</sup> Johnson does not argue that the superior court abused its discretion; indeed he concedes there was no abuse. Rather, Johnson argues that the "peculiar circumstances at bar" require a different rule of narrow application to those cases where each and every element of the state's case is dependent upon the credibility of a single witness who later recants. He argues that the fact of recantation calls the witness's veracity into issue, and, since reasonable men could

## 3. AS 12.45.040 provides:

Upon a trial for inveigling, enticng, or taking away an unmarried female for the purposes of prostitution, or for seducing and having an illicit connection with an unmarried female, the defendant shall not be convicted upon the testimony of the injured female unless her testimony is corroborated by some other evidence tending to connect the defendant with the commission of the crime.

## 4. An originally filed, the appeal raised only issues going to the denial of the motion for a new trial. After confronting the parties at oral argument with the corroboration statute, this court ordered them to file supplemental briefs on the applicability of AS 12.45.040. The parties were specifically directed to discuss the following six questions:

1. Is AS 12.45.040 applicable to either Count I or II of the indictment?

2. Assuming AS 12.45.040 is applicable to either or both counts, discuss the sufficiency of the evidence to corroborate the testimony of [the prostitute] as to the applicable count.

3. Discuss the evidentiary test applicable under AS 12.45.040, and discuss spe-

cifically the application of the rule announced in *Oxenberg v. State*, 302 P.2d 803 (Alaska 1961).

4. Was an instruction concerning the corroboration of the testimony of [the prostitute] required? Discuss the type and content of any instruction required?

5. Assuming there was no evidence sufficient to corroborate the testimony of [the prostitute], was it plain error to fail to apply the statute?

6. Assuming there was evidence sufficient to corroborate the testimony of [the prostitute], was it plain error to fail to instruct us to the requirement of corroboration?

## 5. 373 P.2d 512 (Alaska 1962).

## 6. 263 P.2d 808 (9th Cir. 1959), cert. den'd, 360 U.S. 919, 70 S.Ct. 1438, 3 L.Ed.2d 1535 (1959).

7. *Id.* at 819; *quoted*, *Salinas v. State*, 373 P.2d 512, 514 (Alaska 1962).8. *United States v. Johnson*, 327 U.S. 106, 111-112, 66 S.Ct. 464, 90 L.Ed. 502, 565-566 (1945); *Pedersen v. State*, 429 P.2d 327, 333 (Alaska 1966); *Salinas v. State*, 373 P.2d 512, 513 (Alaska 1962).



then differ on that issue, requires a new trial.

[2] We disagree with Johnson and conclude that the instant case presents no special circumstances compelling a special rule. We agree with the United States Supreme Court that the orderly administration of criminal justice requires that the trial judge, who is by virtue of his relationship to the case exceptionally well qualified to pass on the newly discovered evidence, be the one to whose sound discretion the motion for a new trial be committed.<sup>9</sup> Here, the superior court had to consider the prostitute's unsworn recantation as against her trial testimony, her two sworn statements, and the testimony of her mother and her probation officer, all of which were generally consistent. In view of this evidence, the trial court was well within the bounds of discretion in concluding not only that the evidence would not produce an acquittal, but also that the recantation was not to be believed.

There was no error in denying the motion for a new trial.

## II

We turn now to the issues raised concerning the applicability of our corroboration statute.

Although the uncorroborated testimony of a victim of a sex crime was sufficient to support a conviction at common law,<sup>10</sup> her testimony was not received without question. As early as 1680 it was recognized that:

9. *United States v. Johnson*, 327 U.S. 100, 111-112, 66 S.Ct. 404, 90 L.Ed. 502, 505-506 (1945).

10. 7 J. Wigmore, *Evidence* § 2061, at 342 (3d ed. 1940).

11. I. M. Hale, *Pleas of the Crown* 633, 635 (1680), *quoted in* 7 J. Wigmore, *Evidence* § 2061 at 342, 345; *see* *Kelly v. United States*, 90 U.S.App.D.C. 125, 104 F.2d 150, 153 (1952); *State v. Dixon*, 47 Haw. 444, 390 P.2d 759 (1964); *De Armond v. State*, 285 P.2d 236, 238 (Okla. Cr.1955); *Rice v. State*, 195 Wis. 181, 217 N.W. 607, 608 (1928).

. . . [T]he credibility of [the victim's] testimony, and how far forth she is to be believed, must be left to the jury, and is more or less credible according to the circumstances of fact that concur in that testimony . . . . It is one thing whether a witness be admissible to be heard; another thing, whether they are to be believed when heard. It is true, rape is a most detestible crime, and therefore ought severely and impartially to be punished by death; but it must be remembered that it is an accusation easily to be made and hard to be proved; and harder to be defended by the party accused, tho never so innocent.<sup>11</sup>

The unjust convictions derived from factually unfounded accusations result from:

. . . [T]he heinousness of the offense many times transporting the judge and jury with so much indignation that they are hastily carried to the conviction of the person accused thereof, by the confident testimony sometimes of malicious and false witnesses.<sup>12</sup>

The early articulations of reasons for requiring corroboration were couched in terms of protecting male defendants from the untruthful accusations of unchaste and immoral women.<sup>13</sup> The possibility that unfounded malice<sup>14</sup> or blackmail<sup>15</sup> might lead to a false accusation has also motivated the courts to require corroboration of the complaining witnesses' testimony. Among the accusations most productive to a blackmailer are those which can be committed verbally, such as inducing a female

12. I. M. Hale, *Pleas of the Crown* 363 (ed. 1778), *quoted in* *De Armond v. State*, 285 P.2d 236, 238 (Okla. Cr.1955).

13. *E. g.*, *Boddie v. State*, 52 Ala. 305, 308 (1875), *quoted in* 7 J. Wigmore, *Evidence* § 2061 at 345 (1940).

14. *People v. Jordan*, 23 Mich.App. 375, 178 N.W.2d 659, 662 (1970) (a startling example of a conviction for rape based upon uncorroborated testimony).

15. *Kelly v. United States*, 90 U.S.App.D.C. 125, 104 F.2d 150, 153 (1952).

for the purpose of proof in Count II. As to the admitted offense, the Court in the District of Columbia threatened to charge one with

. . . [H]as been sufficiently equivoque violence to constitute a threatened person per cause of the threat. the crime, and so de accusation of it, of privilege, that the la accusation is a coercion not resist. This case in which a threat supply the place of a

Courts have also recognized far more subtle than malice might lead to of sexual misbehavior tives may cause even to bring false charges have been known to be attacks and then to be rounding circumstances that one might conclude themselves believed their o

[3] AS 12.45.040 statute, applies to veigling,<sup>16</sup> enticing,<sup>17</sup> an unmarried female for titution.<sup>21</sup> Count II

16. *Id.* (footnotes omitted), State, 12 Ga. 203, 3

17. *State v. Butenhoff*, N.W.2d 894, 899 (C

18. *Coltrane v. United D.C.*, 295, 418 F.2d

19. "To lend on or not ceiving; to ensure to entice by enjoining tice alluring, entu Webster's New Int of the English Language (1960).

20. "(1.) To incite draw on by exciting lure; attract bad sense, to lead ev' to tempt." *Webster's International Dictionary of* 851 (2d ed. 1930).

for the purpose of prostitution as charged in Count II. As to another verbally committed offense, the Court of Appeals for the District of Columbia has noted that a threat to charge one with such an offense:

... [I]t has been held repeatedly to be sufficiently equivalent to force and violence to constitute robbery if the threatened person parts with money because of the threat. 'So abominable is the crime, and so destructive is even the accusation of it, of all social right and privilege, that the law considers that the accusation is a coercion which men cannot resist. This seems to be the only case in which a threat to prosecute, will supply the place of actual force.'<sup>16</sup>

Courts have also recognized that motives far more subtle than blackmail or overt malice might lead to unfounded allegations of sexual misbehavior. Psychological motives may cause even mature complainants to bring false charges.<sup>17</sup> Complainants have been known to have fantasized sexual attacks and then to have described the surrounding circumstances so convincingly that one might conclude that they themselves believed their own testimony.<sup>18</sup>

[3] AS 12.45.040, our corroboration statute, applies to prosecutions for inveigling,<sup>19</sup> enticing,<sup>20</sup> or taking away an unmarried female for the purposes of prostitution.<sup>21</sup> Count II refers to AS 11.40.350

which prohibits one from "induc[ing], entic[ing] or procur[ing] . . . a female for the purpose of prostitution."<sup>22</sup> Both the purposes underlying our corroboration statute and the similarity in phrasing between AS 12.45.040 and AS 11.40.350 dictate that corroboration be required for conviction of Count II.

[4,5] The transaction alleged in Count I however, is economic, not sexual; the purpose of AS 11.40.300 is to inhibit prostitution, rather than to protect the chastity of young women. Under Count I, there is no "injured female" within the meaning of that phrase as used in AS 12.45.040.<sup>23</sup> The possibility that an accusation such as is made in Count I might be motivated by spite or abnormal psychological condition has not been recognized as being any greater than for other nonsexual offenses. The purpose of AS 12.45.040 is thus irrelevant to Count I. We conclude, therefore, that there was no error in not applying the corroboration statute to Count I.<sup>24</sup>

[6,7] The testimony of accomplices, like that of injured females, must be corroborated in order to support a conviction.<sup>25</sup> The inherent distrust which attaches to accomplice testimony is very similar to that which attaches to the testimony of injured females: either type of testimony may be motivated by blackmail, malice, or an abnormal psychological condition.<sup>26</sup> We

16. *Id.* (footnotes omitted) quoting *Long v. State*, 12 Ga. 293, 319 (1852).

17. *State v. Butenhoff*, 279 Minn. 177, 155 N.W.2d 804, 809 (Minn.1968).

18. *Coltrane v. United States*, 135 U.S.App. D.C. 205, 418 F.2d 1131, 1134 (1969).

19. "To lead on or astray by blinding, or deceiving; to ensnare or win over by guile; to entice by enjoling . . . To practice alluring, enticing, or ensnaring." Webster's New International Dictionary of the English Language 1305 (2d ed. 1960).

20. "(1.) To incite or instigate. (2.) To draw on by exciting hope or desire; to allure; attract . . . Often, in a bad sense, to lead astray; to induce to evil, to tempt." Webster's New International Dictionary of the English Language 854 (2d ed. 1960).

21. Note 3 *supra*.

22. Note 2 *supra*.

23. Johnson's contention that "illicit connection," as mentioned in AS 12.45.040, encompasses living off the earnings of a prostitute is unfounded. "Illicit connection" is a Victorian euphemism for unlawful sexual intercourse. Black's Law Dictionary 883 (4th ed. 1951).

24. *Accord*, *State v. Hargon*, 2 Or.App. 553, 470 P.2d 383, 385 (1970); *State v. McCowan*, 203 Or. 551, 280 P.2d 976, 979 (1955).

25. AS 12.45.020.

26. The desire to self-exculpate may lead a person to falsify accomplice testimony. A similar motivation, to escape prosecution as a prostitute in exchange for testimony against the person who procured her, may apply to injured females.

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therefore conclude that the proper standard by which to determine if there was adequate corroboration should be the same for accomplices and injured females. We have previously discussed at length the standard for corroboration of accomplice testimony in *Oxenberg v. State*.<sup>27</sup> As modified for the present context the features of the test are as follows: the corroborating evidence should be considered in conjunction with the prostitute's testimony; such evidence must be consistent and harmonious with her testimony; the corroborating evidence will then be adequate for purposes of AS 12.45.040 if it dispels the assumed distrust of the prostitute's testimony which in the first instance lead to the corroboration requirement.<sup>28</sup>

[8,9] Here, we can find no corroborating evidence which the jury could have considered.<sup>29</sup> The testimony of the prostitute's uncle, discussed above, was consistent and harmonious with the prostitute's own testimony in that it may be read to indicate that she was in fact a prostitute and that Johnson was aware of her career. However, it can not be read to support the prostitute's testimony that Johnson had led her into her profession and thereby violated AS 11.40.350. Thus the uncle's testimony in no way dispels the distrust which gives rise to the corroboration requirement.

We hold, therefore, that, while corroboration was needed for conviction of the offense charged in Count II, there was none.

27. 362 P.2d 803, 805-808 (Alaska 1961).

28. *Id.* at 897.

29. We note that the testimony of the prostitute's probation officer and mother was generally consistent and harmonious with that of the prostitute. However, their testimony was not before the jury but was only brought forth at the hearing to perpetuate testimony to be considered in ruling on the motion for a new trial. Their testimony can not, therefore, be considered for purposes of AS 12.45.040.

We next must consider whether or not the failure of the trial court to apply AS 12.45.040, and thereby to instruct the jury on the need for corroboration, constitutes plain error.

[10] We believe that a corroboration instruction requirement would serve three purposes: the judge would be required to make a preliminary determination that the evidence, if believed by the jury, is sufficient to satisfy the need for corroboration;<sup>30</sup> the instruction would call to the attention of the jury the fact that the testimony in need of corroboration may be motivated or influenced by factors which should lessen its credibility unless it is adequately corroborated; it would require that, before the jury can find the defendant guilty, it must find the corroborative evidence credible and supportive of the testimony of the injured female.<sup>31</sup> We fail to see how the *Oxenberg* standard of corroboration can be implemented and how the purposes of AS 12.45.040 can be effectuated<sup>32</sup> unless the jury is instructed as to corroboration. We therefore hold that it was plain error not to apply the corroboration statute and thereby not to instruct the jury on corroboration. The conviction on Count II must be reversed.<sup>33</sup>

Johnson's conviction for living off the earnings of a prostitute, as charged in Count I, is affirmed. His conviction for procuring a female for prostitution, as charged in Count II, is reversed. The case is remanded with directions to dismiss Count II.

30. See *State v. ...*, 154 Mont. 231, 462 P.2d 186, 190 (Mont.1969).

31. *U. v. United States v. Bryant*, 137 U.S. App.D.C. 124, 1327, 1332 (1969) (rape instruction).

32. We further note that AS 12.45.040 states that "the defendant shall not be convicted" on uncorroborated testimony. (Emphasis added.) The plain meaning of the emphasized phrase requires reversal.

33. See *Burgas v. State*, 489 P.2d 130, 133 (Alaska 1971).

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Affirmed.

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#### 1. Appeal and Error

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#### 2. Specific Performance

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Original sponsor: V.Fischer

1 IN THE SENATE BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 143 (Judiciary)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act authorizing municipalities to make solicita-  
7 tion of a prostitute by a patron a crime of prosti-  
8 tution."

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

10 \* Section 1. AS 11.66.100 is amended by adding a new subsection to  
11 read:

12 (B) Notwithstanding the provisions of (a) of this section, a  
13 municipality may enact an ordinance making it unlawful for a person to  
14 solicit another person to engage in sexual conduct by offering to  
15 provide monetary or other compensation.

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17 *Renumber existing (B) to (c)*

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19 *In (a) change the gender*

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MEMORANDUM

TO: Senator Kerttula

FROM: Elizabeth J. Hickerson

RE: SB 147 "An Act relating to safeguarding self-identity and address of motor vehicle operators involved in accidents."

DATE: March 21, 1983

SB 147 amends the motor vehicle statute AS 28.35.060 (Duty of Operator to Give Information and Render Assistance.) The statute presently provides that operators of motor vehicles involved in accidents that result in injury or death are required to give their name, address and vehicle license number to the person struck or injured or the operator of the other vehicle involved. Failure to so provide is punishable by imprisonment by not more than one year or by a fine of not more than \$500 or both.

The intent of SB 147 is to provide an alternative means of releasing identifying information to the operator of the other motor vehicle involved in an accident. This option would allow an operator to provide only the operator's vehicle license number and informing the recipient of the license information that the operator will provide the local police department or the Alaska State Troopers with the operator's name and address.

The purpose of providing an alternative means of identification is to safeguard one's identity particularly in circumstances where the operator is alone and fears releasing such information to a total stranger. While in most cases operators of motor vehicles will willingly provide the information as required by AS 28.35.060, there are situations where due to security measures one is apprehensive to release home location. By providing the operator's vehicle license number and additional information to law enforcement agents the essential information is properly recorded.

According to the Division of Motor Vehicles the name and address on a motor vehicle registration is public information and can be identified through the vehicle license number and released upon request.

# STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY  
OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH N  
JUNEAU, ALASKA 99811  
PHONE:

[RECEIVED]

March 14, 1983

APR 14 1983

Josephson,

Senator Vic Fischer  
Pouch V  
Juneau, AK, 99811

Dear Senator Fischer:

In response to your request for a Position Paper on SB 147, the following is submitted.

First let me state that all motor vehicle traffic accidents are not investigated by the police. If there is not bodily injury, and property damage is less than \$500, an accident need not be reported to the police. Even if damages exceed \$500, not all accidents are reported and/or investigated by police for several reasons, sometimes due to nonavailability of an officer at the time of the accident.

If this Bill were to pass, the person at fault, or any other operator, could legally refuse to provide any other driver or injured person with name and address information at the scene of the accident. They could state they will call the police, and leave said information with a police agency. However, a large percentage of those who refused to give their name and address at the scene would not call the police, thus the other driver or injured person would have little recourse. For those who did call the police it could create a burden on police agencies in trying to coordinate the information. A participant, and an attorney may contact different police agencies.

The section of the Bill which states the operator must provide the vehicle license number would basically be of little value. The other party to the accident can easily determine that by looking at the vehicle. Plus, this is of little benefit in determining the party responsible for damages as a person cannot tell from the registered owners name who was driving at the time of the accident. The other party, or injured person, would be required to contact the registered owner, which may also prove to be of little value in determining who the driver was if the owner does not know (stolen vehicle, etc.), or does not wish to reveal that data to the other person involved.

An injured party would not be able to file action in small claims court without an attorney, because they would be unable to obtain the name and address of the operator.

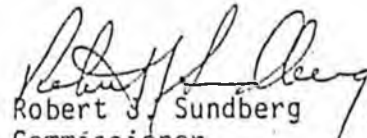
Senator Vic Fischer  
March 14, 198.  
Page Two

The Division of Motor Vehicles currently releases information from accident reports to participants, however, not attorneys or insurance companies without authorization from the participant, per AS 28.15.151. In situations where a person takes advantage of this Bill, and refuses to release his name to the injured party, and the accident is investigated, the injured party must hire an attorney to obtain the information from an investigating agency or DMV, and provide a written release authorization form.

If the police or DMV have the data, I'm sure the injured party will be able to obtain the name and address from their attorney, if they can afford to hire one. Therefore, I feel this does little more than drum up business for attorneys. In an effort to protect victims of accidents, it has the tendency to create extreme hardships on others. I don't feel this "benefit" would be used by the "sweet young lady", but by the "rebel rousers".

The law is too open for misuse, and places an unnecessary burden on the public and police agencies.

Sincerely,

  
Robert J. Sundberg  
Commissioner

ALASKA STATE LEGISLATURE

SENATE STATE AFFAIRS COMMITTEE

POUCH V, JUNEAU 99811

SENATOR VIC FISCHER, CHAIRMAN

(907) 465-4954



March 24, 1983  
Room  
3:00pm

Butrovich  
Capitol Bldg.

Members Present

Senator Vic Fischer, Chair  
Senator Bill Ray, Vice-Chair  
Senator Pat Rodey  
Senator Jalmar Kerttula

-----  
SB 147--Safeguarding self-identity and address of motor vehicle operators involved in accidents  
-----

Anna Kerttula, Aide to Senator Jalmar Kerttula, spoke in favor of the bill. She said that some persons involved in accidents found it uncomfortable to give out their names and addresses to total strangers. There is a fear that this could lead to harassment. She offered an amendment which would require persons involved in accidents to give their name and vehicle license number but not their address to the other party.

Senator Kerttula (prime sponsor) said that the intent of this bill is to deter after accident confrontations at a person's residence.

Senator Ray moved and asked unanimous consent to adopt the amendment and to move the bill from committee with individual recommendations. There was no objection.

-----  
HCR 2--Relating to travel by senior citizens aboard vessels of the state marine highway system  
-----

Senator Fischer stated that Senator Eliason had requested a committee substitute which would include handicapped persons under this resolution.

Marty Nusbaum, director of the Alaska Marine Highway System, stated that in the winter there was no problem traveling on a space available basis but in the summer it was possible for someone to get bumped in the middle of their trip.

Senator Ray expressed concern that organized tours of elderly citizens would take advantage of the free passage provisions of this resolution.

Mr. Nusbaum said that this resolution would apply only to feeder lines and this would mitigate the problem since most tours are on the mainline ferries.

Senator Fischer asked why there was a zero fiscal note when the bill analysis indicated that this resolution could cause a loss of revenues of up to \$175,000.00. Mr. Nusbaum said that his understanding is that fiscal notes only reflect expenditures and not revenue losses.

Representative Grussendorf (prime sponsor) spoke in favor of the bill. He was of the opinion that the only senior citizen who would take advantage of this resolution would be residents of those communities served by the feeder lines or relatives of these residents.

Senator Ray offered an amendment which would strike the term "older Alaskans" and insert the term "senior citizens" wherever the former appear.

A general discussion followed regarding residency restrictions on the marine highway systems. The consensus was that federal rules prohibited residency restrictions where federal funds are used. The marine highway system receives federal highway funds.

Senator Eliason testified in favor of the proposed committee substitute.

Senator Ray moved and asked unanimous consent to adopt the committee substitute as amended and to move the bill from committee with individual recommendations. There was no objection.

Dove Kull, representing herself, testified in favor of the resolution.

-----  
SB 106--Prison overcrowding  
-----

David Dye, aide to the committee, explained a proposed committee substitute to the committee. A memo summarizing Mr. Dye's remarks is attached to this report.

Mike Stark, Department of Law, testified in favor of the CS and stated that Mr. Endell, director of the Division of Corrections also supported it.

Senator Ray commented that many inmates who are eligible for parole under the present system do not apply and choose to remain incarcerated.

Senator Fischer asked what the public safety considerations were under this bill. Mr. Stark stated that he thought that these concerns would

be minimal since only non-violent felons would be released and that they would all be within 120 days of the end of their original sentence.

Senator Ray expressed concern that the public would blame the legislature if inmates released under this bill committed an offense while on parole.

Senator Fischer asked if some screening process could be built into the bill. Mr. Stark stated that there was already a built in screening process. No violent criminals would be released. Under the regular parole process violent felons can be released but not under this bill.

Senator Rodey moved and asked unanimous consent for adoption of the committee substitute and to move the bill from committee with individual recommendations. There was no objection.

Senator Fischer adjourned the meeting at 4:00pm.

by  
David Dye  
Committee Aide

# ALASKA STATE LEGISLATURE

SENATE STATE AFFAIRS COMMITTEE

SENATOR VIC FISCHER, CHAIRMAN

PCUCH V, JUNEAU 99811

(907) 465-4954



TO: Senate State Affairs  
Committee Members

FROM: David Dye,   
Committee Aide

DATE: March 24, 1983

RE: Draft CS for Senate Bill 106--Prison overcrowding

This draft CS addresses concerns identified by the committee at the first hearing on this bill. The draft is the product of the cooperative effort of committee staff, department of law staff and corrections staff.

According to the Division of Corrections estimates, SB 106 would release approximately 40 felons in an emergency overcrowding situation. This draft CS would release approximately 55 felons and an additional 30 misdemeanants. To be eligible for release, misdemeanants must be serving a sentence of 20 days or longer and have served at least one-half of that sentence. Under these criteria drunk drivers incarcerated for a mandatory minimum sentence on first or second offense would not be eligible for release.

The draft differs from the original bill in the following ways (page and line references are to the draft CS):

Page 2, line 2. A state of emergency overcrowding is certified after a 25 day waiting period instead of 30 days.

Page 2, line 3. The director shall immediately certify the state of overcrowding following the 25 day waiting period rather than have 48 hours to so certify.

Page 2, line 5. The director has 5 days to submit a list of prisoners eligible for release after the 25 day waiting period rather than 15 days.

Page 3, lines 6, 17 and 21. Parole or probation may be revoked for a violation of a municipal ordinance which is punishable by imprisonment. In the original bill violation of any municipal ordinance could revoke probation or parole.

Page 3, line 25. Limits the applicability of subsection (a) to felons (a new subsection (b) applies to misdemeanants, see below).

Page 3, line 28. The requirement that a prisoner be continuously incarcerated during the 25 day period of the waiting period has been deleted.

Page 4, lines 3-4 and 6-7. This bill is made applicable to crimes committed under the old criminal code.

Page 4, line 12. Adds language to subsection (E) limiting its applicability to felons (a new subsection (b) applies to misdemeanants, see below).

Page 4, line 14. Changes this criterion to 120 days rather than 90 days.

Page 4, line 16. Adds a requirement that a felon serve at least one-half of his or her sentence.

Page 4, line 17. Subsection (b) is added to release with misdemeanants under different eligibility criteria than felons.

Page 5, lines 13-16. Adds definitions of "felony" and "misdemeanor".

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Official Business

# Alaska State Legislature

## Senate

Pouch 7  
 State Capitol  
 Juneau, Alaska 99811

TO: Senator Ray, Chairperson  
 Senate Judiciary Committee  
 FROM: Senator Josephson  
 DATE: April 29, 1983

RE: SB 153 - Senate Judiciary Subcommittee Report

Pursuant to your instructions, I have researched the propriety of SB 153 for the Committee's consideration. Senate bill 153 would provide, that a person commits a felony if the person knowingly obstructs a private citizen who assists a peace officer or judicial officer in the performance of official duties.

An obstruction of the nature identified in SB 153 would be an assault in most cases. Assaults and related offenses are covered in AS 11.41.200 - 41.250 of the criminal code. Punishments for assault range from class A felony detention to class A misdemeanor detention depending, of course, upon the facts of the case. SB 153 would make it a felony, regardless of the facts or the resulting injuries, for a person to obstruct a private citizen assisting another person duty only to the other person's status.

The major difficulty with SB 153 is that it would conflict with this committee's earlier approval of CSSB 24, "An Act relating to penalties for assaulting a peace officer, firefighter, or other emergency responder." We concurred in our deliberations that not all assaults in circumstances covered under CSSB 24 should be felonious solely because of the status of the persons sought to be protected. The punishment would be based upon a factual analysis of the case at hand.

Approval of SB 153 would be anomalous. The bill would make it a more serious offense to obstruct a private citizen who assists a peace officer or judicial officer than it does to commit an assault directly upon a peace officer or judicial officer. I would recommend that the original sponsor, Senator Rodey, be invited to comment upon this apparent anomaly and advise the Committee whether he concurs with this analysis.

cc: Senator Pat Rodey

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STATE OF ALASKA  
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

March 9, 1983

SUBJECT: Assignment of judges  
(SB 159)

TO: Senator Bill Ray

FROM: Keith B. Levy *KBL*  
Legislative Counsel

Under SB 159, AS 22.15.190(c) would limit assignment of district judges to a period of 90 days unless the judge consents. Upon reflection, I believe that this provision may be unconstitutional. Article IV, section 16 of the state constitution provides, in part,

The chief justice of the supreme court shall be the administrative head of all courts. He may assign judges from one court or division thereof to another for temporary service.

In effect, the constitution gives the power to assign judges to the chief justice of the Supreme Court, which the chief justice may presumably delegate to the presiding judge in each judicial district. However, since that power is expressly granted to the Supreme Court and the doctrine of separation of powers is recognized in the state constitution, it is probably unconstitutional for the legislature to assume that power.

Subsections (a), (b), and (d) probably do not present this constitutional problem since they merely define the court's ability to assign judges rather than limiting it as subsection (c) does.

If I may be of further assistance, please advise.

KBL:ljb  
1/018

*Camarot, Sandberg & Hunter*

AN ASSOCIATION OF PROFESSIONAL CORPORATIONS

HENRY J. CAMAROT  
MARK A. SANDBERG  
RANDOLPH W. HUNTER

CARR-GOTTSTEIN BUILDING, SUITE 500  
310 "K" STREET  
ANCHORAGE, ALASKA 99501

TELEPHONE  
AREA CODE 907  
276-6363

April 25, 1983

Senator Bill Ray  
State Capitol  
Pouch V  
Juneau, Alaska 99811

Re: CSSB 159 (Reassignment of Judges without their permission).

Dear Bill:

To clarify any misconceptions where I'm coming from, let me explain my thoughts regarding the above Bill, and reference the applicable law that bears on the subject -- and refute some of the arguments I understand were made before the Senate Judiciary Committee.

I support this Bill because:

(1) It will put District Court judges in the same category as Superior Court Judges insofar as judge assignment is concerned. A.S. 22.10.140 reads as follows:

22.10.140. Chief justice may assign superior court judges. The chief justice may assign a superior court judge for temporary duty from time to time not to exceed 90 days annually anywhere in the state except to permit completion of hearings in progress. A judge may be temporarily assigned for longer and additional periods with the consent of that judge.

The underlining portions makes my comment self-evident. At present this law only applies to Superior Court Judges. It is equally appropriate that District Judges not be assigned for other than temporary assignment without their consent, and the Legislature can so decree.

(2) Passage of the Bill will manifest that if the preemption rights against judges are to be continued (and I don't see much chance that they will be repealed), then defense attorneys are not to have a weapon against judges such as is being imposed against Judge Hornaday in Homer. In other words, if the preempt is used to such an extent by these attorneys that a presiding judge feels administratively he has to remove a judge to another area, then these attorneys are a threat to an independent judiciary. This Bill will make it clear the system will not allow Judges to be threatened by the pre-empt tactic. Certainly, Superior Court Judges are not so threatened.

(3) It will solve a lawsuit proceeding, thus clarify the existing law and save the State considerable expense to litigate the above issues.

As to the applicable law: It's almost self-explanatory.

The only direct applicable State Constitutional provision is Article IV §16 and it reads:

§16 Court Administration. The Chief Justice of the Supreme Court shall be administrative head of all courts. He may assign judges from one court or division thereof to another for temporary service.\*\*\*(Emphasis added).

That the Legislature has involved itself in assigning Superior Court Judges, and District Judges and Magistrates is apparent from the Statute referred to above (A.S. 22.10.140) and A.S. 22.15.190 (See copy attached), the only problem is they're treated differently.

Thus, the State Constitution says the Judges may only be assigned to another Court or "division" on a temporary basis. The Statutes as interpreted by the local presiding judge restricts Superior Court Judges to temporary assignments, but allows District Judges to be reassigned permanently. It is a precedent, because it has never been done before in Alaska. And it is playing havoc with the man (Judge Hornaday) and his family, four children and a wife. The youngsters have to be pulled out of school, the family home has to be sold, etc.

*Camaret, Sandberg & Hunter*

If you have any further questions about any of the above, please do not hesitate to contact me.

Very truly yours,

CAMAROT, SANDBERG & HUNTER

By *George S.*

**Sec. 22.15.190. Assignment of district judges and magistrates.** Each district judge and each magistrate shall hold court at such times and places as are assigned by the presiding judge of the superior court of the district. The presiding judge in any judicial district may assign any district judge or magistrate within the district to serve temporarily in any other judicial districts. Rules and procedures for temporary assignment including the emergency situation where a superior court judge is not readily available to assign a district judge or magistrate shall be as prescribed by the supreme court. § 14 ch 154 SLA 1959, am § 3 ch 24 SLA 1966.

**Editor's notes.** This section was with AS 22.15.190 and § 4 Chapter 58 redrafted by the revisor of statutes in SLA 1952. remove personal pronouns in conformity

#### NOTES TO DECISIONS

**Stated in** *Treadwell v. State*, Sup. Ct., 1965, cert. denied, 384 U.S. 931, 56 S.Ct. Op. No. 305, File No. 550-407 P.2d 182, 1570, 16 L.Ed.2d 547, 1966.

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COMMITTEE REPORT  
SENATE

FURTHER:

Date: \_\_\_\_\_

Mr. President:

The Committee on \_\_\_\_\_ has had \_\_\_\_\_

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)
- Consider* replace with CS for SB 113 (Prop)  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:

\_\_\_\_\_

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CHAIRMAN

POSITION PAPER  
SENATE BILL NO. 163

"An Act relating to the use of child safety devices in motor vehicles; and providing for an effective date."

Background:

More Alaskan children are killed or injured in car accidents than any other single disease or type of accident. The Alaskan accidental mortality rate is 105% higher than the rest of the United States; and 40% of these deaths are due to car accidents. National statistics have shown that the majority of deaths and injuries to children resulting from car accidents could be prevented if parents would "buckle up" their children.

Position:

Because children can't protect themselves the department fully supports mandatory child restraint laws.

The Department recommends the following change:

Since the focus of this law is to encourage utilization of approved child restraints, the Department recommends a rewording of Section 1.2(b)(c) to place the emphasis on the purchase of the car restraint rather than the fine. For example:

- "(b) If persons provide proof of purchase or acquisition of an approved child safety device or seatbelt to the court within 72 hours after the issuance of a citation, the court shall dismiss the citation.
- (c) If the citation is not dismissed, and the person is convicted of a violation of (a) of this section they may be subject to a fine of \$300."

In addition the Department believes that this Bill will be enhanced if support is provided for community education programs and car seat loaner programs. Community education programs are important to insure that citizens understand the benefit of child passenger restraints. This support could be ensured by designating a State agency such as the Office of Highway Safety or the Division of Public Health to be responsible for the preparation and dissemination of information regarding child passenger restraints.

Assisting communities in starting car seat loaner programs could be accomplished by providing seed money to those communities without existing loaner programs. Since most of the larger communities (Anchorage, Fairbanks, Juneau, Sitka) currently have loaner programs, seed money would only need to be available for smaller communities that have extensive street systems or that are on the highway system.

STATE OF ALASKA  
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: Senate Bill No. 163 Date on Bill: 3/8/83  
 Title: "An Act relating to the use of child safety devices in motor vehicles;"  
 Sponsor: Transportation and Judiciary  
 Requestor: \_\_\_\_\_

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

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

b. Revenues:

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

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

Responsibility for identification of funds is that of the author of the bill.

3. Assumptions:

4. Disclaimer:

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

Prepared by: Vernellia Randall  Phone: 465-3104  
 Division: Public Health Date: 3/11/83

Approved by Commissioner: Robert L. Smith, M.D. Date: 3/23/83  
 Department: PH & CH

5. Distribution:

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

2/8/83

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# COMMITTEE REPORT

## SENATE

FURTHER:

Date: \_\_\_\_\_

Mr. President:

The Committee on Judiciary has had SB 167

~~Relating to correctional facilities, good time computation, and the imprisonment and rehabilitation of offenders.~~

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 167 (amended)  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:

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\_\_\_\_\_  
CHAIRMAN

POTENTIAL OPPONENTS TO SB 16?

ACLU - Nancy Gordon  
PUBLIC DEFENDERS  
PROBATION OFFICERS  
CORRECTIONS OFFICERS (JAIL GUARDS)

WHOEVER DID THE FISCAL NOTE TO EXPLAIN  
WHY IT'S ZERO

- TIM STEARNS IN ANCH, WHO REP'D  
THE INMATES  
CHNR - 563-3877

AK BAR Assoc'n  
Juneau BA  
Anch BA  
FBKS BA

Bill Bryson, ATLA

STATE OF ALASKA  
FISCAL NOTE

Revision Date \_\_\_\_\_, 1983

I. REQUEST

Bill/Resolution No.: SB 167  
 Title: "...correctional facilities...(ect.)"  
 Sponsor: Rules/Governor  
 Requestor: \_\_\_\_\_

II. FISCAL DETAIL

Agency Affected: Public Safety  
 Program Category Affected: Admin of Justice  
 BRU, Program of Subprogram(s) Affected: Alaska State Trooper

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		200.0	212.0	224.7	238.1	252.3
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
<b>TOTAL OPERATING</b>		200.0	212.0	224.7	238.1	252.3
<b>CAPITAL</b>						
<b>REVENUE</b>						

FUNDING: (Thousands of Dollars)

GENERAL FUND		200.0	212.0	224.7	238.1	252.3
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

Not identified by sponsor of Bill.

IV. ANALYSIS: Attach a separate page for any Analysis See attached.

Prepared By: Jos Mapranath Phone: 465-4336  
 Division: Administrative Services Date: 03/25/83  
 Approved by Commissioner: [Signature] Date: 3/25/83  
 Department: Public Safety

Distribution:

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

3/8/83

This will have a tremendous impact. We will be, by statute, responsible for all injuries or medical problems the subject may have incurred prior to our taking custody.

As stated, this will have even a greater impact on municipal police agencies than on this Department.

Costs shown are for medical services. A 6% inflation factor is applied to FY 85 and beyond.

STATE OF ALASKA  
FISCAL NOTE

Revision Date \_\_\_\_\_, 1983

I. REQUEST

Bill/Resolution No.: SB 167  
 Title: "...correctional facilities..."  
 Sponsor: Rules Committee (request of Gov.)  
 Requestor: \_\_\_\_\_

II. FISCAL DETAIL

Agency Affected: Public Safety  
 Program Category Affected: Admin of Justice  
 BRU, Program of Subprogram(s) Affected: Alaska State Troopers, DPS Administrator

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		(65.3)				
200 TRAVEL		(47.7)				
300 CONTRACTUAL		(3254.0)	212.0	224.7	238.2	252.5
400 COMMODITIES		(10.0)				
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		(3377.0)	212.0	224.7	238.2	252.5
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		(3377.0)	212.0	224.7	238.2	252.5
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		(1)				
PART-TIME						
TEMPORARY						

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

Not identified by sponsor of Bill.

IV. ANALYSIS: Attach a separate page for any Analysis

See attached.

Prepared By: Marcia Lynn McKenzie  
 Division: Administrative Services

Phone: 465-4349

Date: 03/29/83

Approved by Commissioner: [Signature]  
 Department: Public Safety

Date: 3/29/83

Distribution:

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

3/8/83

I. Alaska State Troopers BRU

The Alaska State Troopers will be affected by the proposed Section 33.30.071(c). This will have a tremendous impact. We will be, by statute, responsible for all injuries or medical problems the subject may have incurred prior to our taking custody. As stated, this will have even greater impact on municipal police agencies than on this Department. Costs shown are for medical services. A 6% inflation factor is applied to FY 85 and beyond.

Increased costs to Public Safety:

	FY 84	FY 85	FY 86	FY 87	FY 88
Contractual Services	200.0	212.0	224.7	238.1	252.3

II. DPS Administration BRU

Under the proposed Section 33.30.031, the Department of Public Safety would no longer be responsible for local contract jail facilities in sixteen communities and funding for these contracts would be transferred to Corrections. The Special Assistant to the Commissioner of Public Safety (Range 21-J) would also be transferred to Corrections with corresponding associated costs. The incumbent of this position has expertise in the area of administration of small jail facilities and is responsible for contract negotiation and monitoring, including on-site inspections. The Special Assistant's other functions will be reassigned to other staff personnel within the Department of Public Safety.

Funding transferred from Public Safety to Corrections:

	FY 84
Personal Services *	[65.3]
Travel	[47.7]
Contractual Services	[3,454.0]
Commodities	[10.0]
TOTAL	[3,577.0]

\* 1 position, Special Assistant to the Commissioner (Range 21-J)

III. Net Fiscal Impact on the Department of Public Safety:

	FY 84	FY 85	FY 86	FY 87	FY 88
Alaska State Troopers	200.0	212.0	224.7	238.2	252.5
DPS Administration	[3,577.0]*				
TOTAL	[3,377.0]	212.0	224.7	238.2	252.5

\* Includes Special Assistant to the Commissioner

STATE OF ALASKA  
FISCAL NOTE

Revision Date \_\_\_\_\_, 1983

I. REQUEST

Bill/Resolution No.: SB 167  
 Title: "...correctional facilities... (etc.)"  
 Sponsor: Rules/Governor  
 Requestor: \_\_\_\_\_

II. FISCAL DETAIL

Agency Affected: Public Safety  
 Program Category Affected: Admin. of Justice  
 BRU, Program or Subprogram(s) Affected:  
 Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

IV. ANALYSIS: Attach a separate page for any Analysis

No fiscal impact is anticipated.

Prepared By: Marcia Lynn McKenzie  
 Division: Administrative Services

Phone: 465-4349  
 Date: 03/25/83

Approved by Commissioner: [Signature]  
 Department: Public Safety

Date: 3/25/83

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3/8/83



Superior Court  
State of Alaska

THIRD JUDICIAL DISTRICT

303 K Street  
Anchorage, Alaska 99501

Chambers of  
VICTOR D. CARLSON, Judge

April 11, 1983

John C. Gabrielli, Esq.  
Counsel  
Senate Committee on the Judiciary  
Pouch V  
Juneau, Alaska 99811

Re: Proposed Judiciary Committee  
Substitute for SB 127,  
Juvenile Waiver

Dear Mr. Gabrielli:

This is in response to your letter of March 22, 1983. As I understand the intent of the drafters of the proposed bill, any person 16 years of age or older who is charged with an unclassified or class A felony is to be treated as an adult.

It appears as if this objective can be accomplished by amending AS 47.10.010(b) to read:

A minor is unamenable to treatment under this chapter if he is charged with violating a criminal law of the state designated as an unclassified felony or class A felony and he was 16 years of age or older when the alleged crime was committed or if he has been found to be unamenable to treatment under this chapter before or if he probably cannot be rehabilitated by treatment under this chapter before he reaches 20 years of age. . . .

John C. Gabrielli, Esq.  
Juneau, Alaska 99811

April 11, 1983

- 2 -

I strongly support section two which lifts the requirements of presumptive sentencing for persons who are less than 18 years old when they commit a crime.

Section three which specifically states that a criminal conviction of a person who committed his crime while under 18 is a prior conviction appears to be redundant.

Section five sets forth several factors to be considered in deciding amenability. The Alaska Supreme Court has interpreted the existing waiver standards to include substantially the proposed factors. The proposed factors will result in additional litigation which would be unnecessary if the factors were not changed.

I am Thanking you for giving me an opportunity to comment.

Very truly yours,

*Vic*

Victor D. Carlson  
Superior Court Judge

VDC:rw

Proposed Amendment to SB 167: Sec. 33.30.071(c), line 21. Add:

This does not preclude the law enforcement agency from requiring the prisoner to compensate the agency for the cost of the medical services.

*Failed*  
SB 167 <sup>replaces</sup> { p. 12 line 22 - p. 13 line 9 }

\* Sec. 3. AS 33.20.010 is repealed and reenacted to read:

Sec. 33.20.010. COMPUTATION OF GOOD TIME. Notwithstanding AS 12.55.125(f)(3) and (g)(3), each prisoner, other than a juvenile delinquent, convicted of an offense against the state and sentenced to imprisonment, whose record of conduct shows that the prisoner has faithfully observed the rules of the institution in which the prisoner is confined, is entitled to a deduction from the term of imprisonment of

*Same*

(1) one day for every three days of good conduct served if the prisoner is serving a sentence for the offense of murder in the first degree, murder in the second degree, kidnapping or misconduct involving a controlled substance in the first degree, or is sentenced to a presumptive term of imprisonment under AS 12.55.125(c), (d), (e) or (i); and *Class A B and C*

(2) one day for every two days of good conduct served if the prisoner is serving a sentence for any other offense.

*1st offender - not presumptive mis*

*1st offense Rap 1 for 3  
Armed -  
Sex Abuse Muns 1 for 3*

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SB 167 { replaces  
p. 11 lines 17-24 }

Amend #2

Sec. 33.30.181. EFFECT OF JUDGMENT OF CONVICTION ON CIVIL RIGHTS. (a) A person who is convicted of a felony involving moral turpitude as defined in AS 15.60.010 is disqualified from voting in a state or municipal election until his unconditional discharge.

(b) A person who is convicted of a crime is disqualified from serving as juror until his unconditional discharge.

New Sec

(c) A person who is imprisoned on a criminal charge may not bring a civil action except one involving constitutional rights during the time of imprisonment, and then only for declaratory or injunctive relief. This section limits the time within which an action may be brought to the time set out in AS 9.10.140.

(d) In this section, "unconditional discharge" has the meaning ascribed to it in AS 12.55.185.

3428

- ① Pg 2. sec 5. ① doesn't belong  
at all (delete)
- ② Pg 8 L 2-3-4 -  
Lang - didn't agree  
& Changes men





MEMO

TO : Jim Lear, Legal Services Counsel  
FROM : John Gabrielli, Senate Judiciary Counsel  
RE : CSSB 167 (JUD)  
DATE : 5/19/83



Attached hereto please find SB 167--Correctional facilities; good time computation, etc. This is a governor's bill which apparently hasn't gone through your office before.

In addition to cleaning up the language and structure of the bill by making whatever non-substantive changes you deem appropriate, please draft a Senate Judiciary committee substitute containing the following amendments to the original bill:

1. On page 5, at line 21, add the following sentence (or words to the same effect):

This does not preclude the law enforcement agency from requiring the prisoner to compensate the agency for the cost of the medical services.

2. On page 7, at line 11, add the word "or" right after the semicolon.
3. On page 7, at line 13, delete the semicolon and the word "or" and add a period.
4. On page 7, delete everything on lines 14 and 15.
5. On page 8, at line 19, delete the words "one-third" and <sup>in their place,</sup> add the term "one-half" or other words to that effect.
6. On page 8, at line 23, delete the words "one-third" and add in their place the term "one-half" or other words to that effect.