

ALPHABETICALLY SORTED

2528 SJ SB 528 - SCR 38

2528

AGE	WIFE'S NAME - AGE	MARRIAGE DATES	CRIME	PLACE	CHILDREN RACE (ETHNICITY)	RESIDENCE	APPROXIMATE DATE OF INCIDENT
27	DORIS ANN 24	FILED FOR DIVORCE THE DAY BEFORE THE MARRIAGE	ENTERED WIFE'S RESIDENCE AT 3am WITH GUN. PLACED GUN IN MOUTH OF WIFE AND THREATENED TO KILL HER IF SHE DIDN'T COMPLY.	THEIR HOME	2 - ONE FROM THIS MARRIAGE ONE FROM PREVIOUS MARRIAGE	SACRAMENTO (CITY: CA)	HUSBAND FELL ASLEEP. WIFE UNPLUGGED BEDROOM TELEPHONE SO HE COULD NOT LISTEN IN. CALLED SISTER, WHO CALLED THEIR MOTHER, WHO CALLED POLICE.
31	MIRIAM ANN 26	SEPARATED (DURATION OF MARRIAGE) 10-11-50 TO 11-11-50 8 AUG. 1951 DURATION OF MARRIAGE 18 MONTHS TO 19 MONTHS COMPLETED	FIXED WIFE UP AT HER PLACE OF WORK AND TOOK HER, ONE HER OBJECTIVE, TO HIS HOUSE (SHE, FRANK, VERONICA) OVERLOOKED THE HOUSE, SAVED HER. POLICE.	THEIR HOME	None	SAN DIEGO (CITY: CA)	CONTACTED NEIGHBOR - RAN OUT OF HOUSE AND STARTED KNOCKING ON NEIGHBORS DOORS. SEVERAL WENT BY HOME. SOMEONE FINALLY LET HER IN, SHE CALLED POLICE, WHO PICKED HER UP AND TOOK HER HOME WITH OTHER POLICE FROM NEIGHBORHOOD.
48	KARL ANN 53	SEPARATED (1948-51)	10-11- WIFE DROVE TO HIS HOME AND HAD SEX WITH HER. SHE HAD SEX WITH OTHER MEN. SHE WAS RECOVERED BY WIFE. SHE THREATENED TO KILL HIM AND TOOK HIM TO BEDROOM. HUSBAND WENT TO THEM TO GET HIM, THAT HE WAS RECOVERED IN THEIR MARRIAGE. THREATENED WIFE WITH WIFE'S STRUCKING TO HER BEING KILLED.	WIFE'S HOME	2 daughters (10/13)	BATA (CITY: CA)	POLICE RECEIVED (MARRIAGE CALLED BY DAUGHTER)

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Name	Arrested	Charges	Arrested	Bail	Plea	Trial or Pre-hearing	Court plea	Verdict	Sentence	Other disposition
GREGORY DENN JACKSON	incident Aug 27, 1981 (JAIL TIME BY MARRIAGE COUNSELING)	262 assault wife (1 count) felony 268B - oral cop.	8-31-81 (Municipal) 9-20-81 (Superior)	\$5,000	NO GUILTY (4/13/81)	Pre-trial - 1/14/81		[Plea bargain] To return 262 for dropping 268B ORAL COP. CHARGE	Dec 15, 1981 1 yr. COUNTY JAIL (As condition of Probation)	JACKSON SIGNED HE HAD BEEN PLANNING TO MOVE TO PLAZA, WHERE HE HAD HIS WIFE WOULD JOIN HIM - TO THE JUDGE Heard to no contact in exchange for dropping 268B (oral cop.).
Andrew & Dorothy	12-9-81	262 assault rape 262 wife beating	12-9-81 (Municipal)		plea with dropping wife beating charge	12-9-81 D.O. 12-9-81 D.O. 12-9-81 D.O.	MARRIAGE HEARD 12-9-81	LEFT WIFE AND WIFE THE CHARGES		DIVORCE RECEIVED MARRIAGE.
KENNETH SMITH CLARK	10-81	262 - 2 counts felony assault rape 262 - felony kid- napping	10-25-81	\$50,000	NOT GUILTY (11-30-81)	10-25-81 10-25-81	10-25-81 10-25-81 (inside prison)	PLEA BARGAIN	2-22-82 SMITH suspended sentence county jail & parole proba- tion 10 days formal probation counseling & psychologist & marriage counselor	PLEA BARGAIN - MARRIAGE 262 TO DROP 262 & 262, lowered other count 262 to misdemeanor. Wife refused to testify before prosecutor by family.

AGE	WIFE'S NAME	MARRIAGE STATUS	CRIME	PLACE	CHILDREN	RACE/ETHNICITY	OCCUPATION'S	RESIDENCE	HOW INCIDENT ENDED
26	NATHALIE	23 ESTRANGED	FORCED WAY INTO WIFE'S HOUSE 5 HOURS AFTER BEING RELEASED FROM JAIL ON COVENANT OF COVER FOR VIOLATION OF RESTRAINING ORDER (NOT TO HARM WIFE). CALLED WIFE AND THREATENED TO HARM HER WIFE CALLED HER MOTHER WHO CAME OVER. HUSBAND DROVE INTO HOUSE. MOTHER LEFT TO CALL POLICE. HUSBAND FORCED WIFE OUT OF THE HOUSE. WALKED DOWN THE STREET A BIT. HE TOLD HER HE WOULD KILL HER AND HER TWO CHILDREN IF SHE DIDN'T DO WHAT HE WANTED. WIFE WENT BACK TO HER HOUSE WHERE HE FORCED HER AND HAD FORCED ORAL COUPULATION W/ HER.	WIFE'S HOME	2	BORN BLACK.	Former unemployed	San Diego San Diego	Husband left wife's house and called police. Police arrived while husband was in process of having forced oral copulation with wife.
33		27 SEPARATED (2 mos)	HUSBAND HAD CUSTODY OF CHILDREN (4, 11). LEFT WIFE ALONE. WIFE FOUND OUT AND WENT OVER TO TRY TO TALK. HUSBAND RETURNED AND TOOK WIFE. TALKED WITH HER (SHE WAS ISOLATED FOR A MONTH). CHALLENGED, THREATENED & SCARED (AND A BUNCH OF)	HUSBAND'S HOME	2 (4 & 11)	White female	U.S. Air Force P. is working, not identified in what position (in "mechanical" office environment)	Roseville, California (White)	HUSBAND TALK ASKED AND WIFE CALLED THE POLICE.
30	Debbie A.	27 SEPARATED	THE 1ST WIFE WENT TO HUSBAND'S HOME (WHERE SHE BELONGS) WHO BECAME VERY ANGRY. CALLED HER MOTHER (47), C. (27), J. (27), AND (27). TALKED HER INTO GOING TO HIS HOME TO TALK ABOUT HIS CONVICTIONS. APPROXIMATELY 1970.  THE 2ND WIFE WENT TO HUSBAND'S HOME (WHERE SHE BELONGS) WHO BELIEVED SHE WAS BEING FORCED INTO SEX. SHE CALLED HER MOTHER (47), C. (27), J. (27), AND (27). TALKED HER INTO GOING TO HIS HOME TO TALK ABOUT HIS CONVICTIONS. APPROXIMATELY 1970.	1st (101-10) HUSBAND'S HOME 1st (101-20) IN CAR IN Rural area	1	White female	1st - SUGAR PLANTARY WORKER 2 - EMPLOYED - could not determine in what field.	White, San Diego, San Diego City.	BOTH TIMES, HUSBAND ABUSED AND LET WIFE GO. AFTER 2ND INCIDENT, WIFE CALLED CIVIL ATTORNEY, WHO TOLD HER TO CALL FBI. WIFE WERE CALLED FOR PLEAS AND QUESTIONING COULDN'T FIND HIM; HUSBAND WAS ABLE TO COMMIT SECOND PACE. SECOND INCIDENT, WIFE WAS DRIVEN AWAY FROM Rural Area. CALLED POLICE DIRECTLY.

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NAME	ARRESTED	CHARGES	ARRAIGNED	BAIL	PLEA	TRIAL OR HEARINGS	CONF Plea	VERDICT	SENTENCE	OTHER DISPOSITION
MICHAEL RUBINOVICH 335241 (municip) C107001 (Superior)	11-2-81	262- Spousal Rape 267- Kidnap 664(2)(b)(1) At- tempted O.C.R. Cop.	1-10-82 (municip) 2-3-82 (Superior)	\$100,000	NOT GUILTY	Pre-trial - 3-24-82 Trial - 4-5-82 4-7-82	NOT GUILTY	GUILTY - FELONY 262	4-17-82 5 yrs. formal probation 1 yr. County JAIL.	
GERMAN Schonson A 107121	11-28-81	245(a) - 2 Counts Assault with a Deadly Weapon 262(a) - Spousal Rape 12022.5 - Enhancement (each)	2-10-82 (Super. Ct.)	\$15,000	NOT GUILTY	Pre-trial - 3-24-82 Trial - 5-2-82		PLEA GUILTY TO 262 on 11/10/82 (felony)	4/12/82 3 YEARS STATE PRISON	
RICHARD Y RYES (aka RYS) A 107007	11-6-81	262 - 2 counts Spousal Rape 457 - Burglary 245(a) - Assault with a Knife. 262(a)(2) - 2 counts Spousal Rape 12022.5 (each)	1-26-82 (Sup.)	released on \$2,500	Not Guilty	pre-trial 1/28/82 continued to pre-trial 4-19-82 pre-trial 5-1-82 pre-trial 5-10-82 pre-trial 5/10/82 trial 7/10/82 trial 8/15-82 trial 8-20-82	changed plea before trial.	PLEA GUILTY TO 245a - Dangerous 262, 268, 457.	10-4-82 SUSPENDED SENTENCE. 3 yrs PROBATION	DEPENDENCY FORMED Plea - BARRING CONDITIONS - ORIGINALLY ENTERED, PLEA - BARRING ASPIRO - ASSAULT P.M. BURGLARY 262, BURGLARY FORCED ORAL SEX. AS THE TRIAL APPROACHED, THE DEFENSE WAS GIVEN NOTICE FOR JURY. HE REQUESTED AND OBTAINED A GUYO ORIG. VIA BARBARA TO LUCY/DA DA PAPER WORK IT, BUT AGREED TO WITNESS'S DESIRES.

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	Name	Arrested	Charges	Arrang	Bail	Plea	Trial or Pre-trialing	Court plea	Verdict	Sentence	Other disposition
46 PC	Kenneth Parrish	1981 Dec. 10 - date of arrest; oc- currence Dec. 29 - crim. complaint. Would have been arrested earlier, but had to opt evidence.	262A (2 counts) Burglary - 459 286C - battery 288 a(c) - forcible oral copulation	Jan 7 82	file do not indicate	Not guilty	Hellm. Hearing TRIAL - 6-28-82 continued to November 1, 1982 continued to 10-7-1982	Not Guilty - changed to Guilty at 2nd count of 262	Guilty as plead.	DIAGNOSTIC STUDY TO BE DONE ERRORS SENTENCE 6-9-83	
46 PC	William Curtis OLUNN # 12111	2-20-82	262 - rape 245 - assault w/ a deadly weapon 236 - false impress- ionment 148 - resisting arrest	3-4-82	bonded - held in custody	NOT Guilty changed to guilty	3-17 pre- hearing (municip.) 3-17 pre- hearing 5-10 - pre- trial 5-10 - trial - witness 6-11 - trial - witness 6-21 - trial	Guilty (6 25)  guilty (by plea) to 262 and 245	7 22 moved to B-25 5 yrs STATE Penitentiary	PLAN BY COUNSEL DROPPED - RESISTING ARREST AND FALSE IMPRESSIONMENT CHARGES IN EXCHANGE FOR GUILTY PLEA.	
PC 47	MIGUEL ESCOBAR # 136815	May 11, 1982	262 - Spouse Rape 136.1 - Possession of Firearm 207 - Kidnaping 213.5 - Unlawful Spouse	5-1-81	420,000	Not Guilty	The Lumpkin 5-1-81	Not Guilty changed to Guilty consent of 9-7-81	Then Guilty (felony rape)	4-13-82 5 yrs. STATE Penitentiary (3 for Rape, 2 for gun)	TRUSTEE Dept. DIAGNOSTIC CENTER PHYSICIAN. # 2 RECOMMENDATION TREATMENT METHOD ACTION: "HOSPITALITY AND VISITING PARENTS TO VISIT WIFE"; JUDGE AND D.A. DECISION UNRECORDED AND NOT TO BE DISMISSED.

Age	Wife's name	Marital Status	Crime	Place	Children	Race/Ethnicity	Occupations	Residence	How Incident Used
7-23 D-26	Katherine	Married	He came into house in night thru window - they consorted then sex conduct, then intercourse, and sodomy. 1/2 hr. between rapes - (262)	In her home	1 - very young	M. White (?) (black although) Q white	M. - no idea Q - "just a trustee" wife possibly empty but - self?	Escondido, San Diego	Medical evidence of sex. Some abrasion on chest/neck. He had been physically violent before - so both were fearful. Had to take child to mother's as she didn't want to leave child w/ him - had to get him out of the house - took child to mother's, and left to work. (DA not sure) (7)
31	SIZON 25	SEPARATED	Raped wife, held her hostage in the bedroom of her home. Fired shot at P's father as he fled house to call police.	In her home	NO INFO AVAILABLE	M. BLACK	M. - unemployed P - NOT AVAILABLE	San Jose	1/2 HOUSE APT. POLICE ARRIVED AND SURROUNDED HOUSE, CLOSED BY SHERIFFS.
25	MARY C. 26 W 21	SEPARATED	MIGUEL BECAME INTO WIFE'S HOUSE AT 4AM. TOPLED INTO WALK AT GUN POINT 3 MILES TO HIS APARTMENT (SHE FEELS SHE SHOULD RESISTANCE). ORDERS WIFE TO UNLOCK, HIT HER IN FACE W/ FIST, KICKED HER HEAD INTO THE WALL, AND RAN UP STAIRS.	WIFE'S HOME (SERIOUS INJURY RECEIVED)	2 CHILDREN (ONE BY MIGUEL)	M. M. HISPANIC (M. MEXICAN) MARRIED ALIEN FOR 12 YEARS	M. - Bush by a woman "MEXICAN" JOB P - NO TIME WORKING IN SMALL FARMER CURRENTLY UNEMPLOYED	HOME, SANTA BARBARA	HUSBAND THREATENED TO HURT HER MORE IF SHE CALLED THE POLICE, THEN DROPPED HER OFF AT HER MOTHER'S, WHERE SHE IMMEDIATELY CALLED THE POLICE.

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NAME	ARRESTED	CHARGES	ARRIGN	BAIL	PLEA	TRIAL OR PRE-HEARING	CONT. TRIAL	VERDICT	SENTENCE	DISP. DISTRIBUTION
GARY DALE MICHOIS	2-28-82 3-5-82	262A-2 counts CRIMINAL RAPE 245 - BATTERY 459 - BURGLARY (BURGLARY WITH WEAP. OFF.)	4-13-82	\$5,000 (APR. 1st APR. 2nd) JUNE 10 OR \$10,500 (APR. 2nd) RELEASED ON O.R. AFTER DEA BARGAIN	PLEA GUILTY Plea GUILTY	PRE-LIM. 3-25-82 TRIAL - 6-1-82 NEVER HELD BECAUSE OF CHANGE OF PLEA.	GUILTY TO ASSAULT W/ A DEADLY WEAPON (HIND) IN EXCHANGE FOR DROPPING 2 RAPE CHARGES (DEA BARGAIN) 5-3-82	(DEA - BARGAIN)	6-17-82 36 MONTHS PRISON 180 DAYS (time served)	DEA BARGAINING AT REQUEST OF WIFE. 282 dropped

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JIMMY L. HIGDON	5-19-81 5-11-82 charges filed	262A - 2 counts RAPE 261.2 - RAPE ON CHILD WITH WIFE 280A - CRIMINAL ACT	5-11-82 (month)	\$5,000	PLEA GUILTY	6-11-82 prelim	- CHARGES DROPPED BY D.A. WHICH WIFE REFUSED TO TESTIFY. (WIFE WIFE REFUSED TO TESTIFY OTHER VICTIM ALSO REFUSED SINCE SHE FELT THE CASE SHOULD BE UNRESOLVED [HER TESTIMONY COUNTED]. WIFE IS STILL SAYING SHE DID NOT		D.A. SHEERLY TALKED TO WIFE OUT OF TESTIFYING. D.A. TRIED TO TALK TO WIFE AGAIN, BUT SHE ARRIVED AT HIGDON'S. WIFE EVIDENTLY FURNISHED ADULT MARRIAGE A 1981, AND APPARENTLY TALKED OUT THE 261.2. WIFE FEELS HIGDON'S PROBLEM IS A RESULT OF HIS MARRIAGE. SHE WANTS TO GET MARRIED, BUT NOT JAIL TIME
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PAUL LE RAY VON KNORR	9-2-81 charges filed 4-4-81 (arrested)	262A - 2 counts CRIMINAL RAPE 280A(1) - CRIMINAL ACT (1st) 245 - ASSAULT W/ A DEADLY WEAPON 114.11(a) - MURDER (1st) 114.11(b) - MURDER (2nd) 114.11(c) - MURDER (3rd)	5-2-82 5-10-82 (10/10/81 in month)	\$22,500	PLEA GUILTY	5-2-82 5-10-82 trial pre- lim began in 11-82 and was continued through MAY 1983	PLEA GUILTY	GUILTY ON 5-10-82 OF 2 counts 2nd rape 2nd 1st assault w/ deadly weapon possession of curtains	6-14-82 19 YEARS (YEARS FOR 200 - 2nd 200 CHARGES 20- EVEN SAME REMOVED CONSECUTIVE - 5 yrs. 1st of 2nd - 1st - 2nd same same sentence 10 yrs serving concurrent - ASSAULT WITH DEADLY WEAPON SENTENCE TO BE CONSECUTIVE	since original charges filed, VON KNORR HAS CUSTOMER CHARGES W/ INVESTIGATION, BUSINESS (CHARGE W/ 2nd 1st THAT VON KNORR, ETC. IN HIGDON'S WAS FROM 1981 D.A. SUBSEQUENT TO THE 10-82 FILED - 7) APR OBTAINING OF CHARGE (2 counts)
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AGE	WIFE'S NAME	MARITAL STATUS	CRIME	PLACE	CHILDREN	RACE/ETHNICITY	OCCUPATIONS	RESIDENCE	HOW INCIDENT ENDED
22	CYNTHIA-22	SEPARATED. 3-4 MOS. (MARRIED 6 MOS.)	HUSBAND AND WIFE STILL SEEING EACH OTHER. FEB. 20th, ON A VISIT, 1st DATE OCCURRED, WITH WIFE'S WIFEHOD TO DUMP, SO WIFE, SHE COME INVESTIGATION FELT CASE NOT THAT GOOD, (ET. H) WIFE RELUCTANCE TO GO THROUGH WITH REPORT/ CHARGE, SO RECOMMENDED OR, THOUGH HUSBAND A TEACHER WHO WAS WORKING IN A TEACH SHOP AND UNEMPLOYED. HUSBAND RETURNED ON 4-5. RE- PLAUSIBLY STRONG WIFE, LATER IN, AND HELD HER FOR 14 HOURS.	PS HOME	NONE	BOTH WHITE	M- UNEMPLOYED F- DOMESTIC	20th ULIA (SAN DIEGO)	FATHER TALKED CYNTHIA INTO TOISSING CHARGES.
30		MARRIED 1 LIVING REXNER	WIFE AND HER FRIEND (WHO WAS TEMPORARILY STAYING WITH THEM). THREATENED THEM W/ SHOTGUN.	THEIR HOME	NONE	BOTH WHITE	F- HOUSEWIFE M- UNEMPLOYABLE	20th DELA, MERCED CO.	
35		MARRIED 2 YRS. SEPARATED JUNE 01	WIFE WENT OVER TO MEXICAN HUSBAND'S APT. TO DISCUSS FINANCIAL MATTERS. HUSBAND HIT HER AGAIN FACE/HEAD. THREATENED TO KILL HER. WIFE WENT TO POLICE. POLICE CITATION, FORMED, ZEC. WIFE WIFE TAKE GROUP SO WIFE TO BE PROSECUTED THREATENED WIFE WIFE TO BE PROSECUTED THREATENED WIFE TO BE PROSECUTED.	HIS APT.	NONE	BOTH WHITE	M- MECHANIC/ WELDER F- PART TIME SENIOR PART TIME WIFE AT LAWYER	100, 5000	HUSBAND RELEASED WIFE (AFTER THREATENING HER). WIFE RETURNED HOME. THE DAY AFTER THE INCIDENT, THE WIFE WENT TO THE HOSPITAL BECAUSE HER PAIN IN NECK/HAD, SHE TOLD STAFF AT TIME. WHAT HAPPENED & THEY CALLED POLICE. AT THAT TIME, WIFE DECLINED TO PRESS CHARGES, SAYING SHE JUST WANTED HER HUSBAND TO LEAVE HER ALONE. WHEN HUSBAND SHOWED UP AT HER TOWN HOUSE (WHERE SHE WAS STAYING), SHE THREATENED CHARGES.

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	NAME	ARRESTED	CHARGES	ARRAIGN	BAIL	PLEA	TRIAL OR PREHEARING	OTHER PLEA	VERDICT	SENTENCE	OTHER DISPOSITION
51 PL	ROGER HOWARD ADMIR #26812	6-9-82	(attemp) 262 - Spousal rape 459 - Burglary 236 - False Imprisonment	6-9-82	\$10,000	Not Guilty	'pre-plea' 8-2-82 HEARING 8-11-82 MOVED TRIAL 9-20-82	262 charge dropped. PLEAD GUILTY TO FALSE IMPRISONMENT AND BURGLARY (CASE EVIDENTLY DROPPED & REFUSED UNDER MISDEMEANOR FALSE IMPRISONMENT/DUR-GLARY)	1 yr. County Jail + TIME SERVED (SENTENCE CAN BE PARTIALLY WAIVED OFF BY WORKING ON "TEAM CHALLENGE" PROJECT. (9-15-82) 3 YRS. PROBATION VIOLATION FOR TO VIOLATE RULES.		
52 PL	James P. Jones	7-22-82	262 - Spousal Rape 207 - Kidnapping	9-2-82	\$10,000	PLEAD GUILTY TO KIDNAPPING (262 DROPPED). 9-2-82				7 YRS. (PROBATION EXTENDED BECAUSE OF "RELIABILITY" OF CASE 7-23-82)	PLEA CAN BE ACCEPTED BECAUSE "IT WAS FEARED THAT THE WIFE MIGHT NOT BE CONVICTED ON THE BURGLARY CHARGE"
53 C	Albert Castellanos #85501	4-25-82	262 - Spousal Rape 288(A) - Sexual Child Abuse	Aug. 1st 5-24-82	not available	guilty to 262.	End trial - Plea - Forfeited	guilty	found guilty to 262 (waived 288).	8-20-82 - CHANGED TO 9-10-82 7 YRS. Probation	plea bargain - dropped sexual cop. charge. in return for guilty plea. Castellanos had been previously convicted of raping another woman while the couple was living together before they were married. They were married while he was in prison for the previous rape. Wife furnished notes that showed she had been raped & had been sexually abused by her father. She had been in prison for the rape of her father.

ALBERT CASTELLANOS #85501  
 11-11-82

AGE	WIFE'S NAME	MARITAL STATUS	CRIME	PLACE	CHILDREN	RACE/ETHNICITY	OCCUPATIONS	RESIDENCE	HOW INCIDENT ENDED
23	TERESA-35	SEPARATED G-MOS.	HUSBAND BROKE INTO WIFE'S HOUSE (BURGLARY CHARGE) & ATTEMPTED TO RAPE WIFE. WIFE USED MACE ON HIM. HUSBAND GOT UP, PUT DRESSER IN FRONT OF DOOR. SHE CALLED POLICE, WENT TO CO TO JAIL. WIFE ARRESTED HIM AGAIN.	their house		M <sup>c</sup> -CAUCASIAN	unavailable	ANTIOCH, CONTRA COSTA	USED MACE & HUSBAND LEFT. WIFE CALLED THE POLICE.
31	Audrey -21 WILLS	separated	Kidnapped wife in Fresno, drove her all the way to the coast. Took her to an isolated wooded area and raped her repeatedly.	isolated wooded area off highway 1.	None	BORN CAUCASIAN	M <sup>c</sup> -TRANSIENT P-MAILER'S AIDE	Fresno, Fresno Co.	Police spotted car parked off the road and went to investigate. Found wife and husband and arrested husband.
32	Cardyn Rinta -23	married, wife was trying to leave when rape occurred, plans to divorce husband.	Wife got in her car to leave husband. He was waiting for her inside the car. He accused her of having an affair, ordered her to drive home where he told her he was going to "teach her a lesson" and raped her.	their home.	one daughter	M <sup>c</sup> -HISPANIC P-CAUCASIAN	M <sup>c</sup> -unemployed P-TELEPHONE ASSEMBLER	San Jose, Santa Clara Co.	Both fell asleep in living room. Victim called police in the morning.
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	NAME	ARRESTED	CHARGES	ARRAIGNED	BAIL	PLEA	TRIAL OR REARRESTING	COURT	VERDICT	SENTENCE	OTHER DISPOSITION
54 7C	RUBIN TOLLIVER	4-23-82	262- SPOUSAL RAPE 288(a)-Sexual Intercourse 713.5(a)-Lewdness 271(a)-Sexual Abuse 211.5- Rape	6-7-82	\$10,000	NOT GUILTY	PRE TRIAL- 7-20-82 PRE TRIAL- 7-1-82	1782- LEAD COUNTY TO ALL COUNTY LOCATE 27361		10-8-82 - reset to 10-22-82; Plead guilty 10-27-82 - Fines \$500 - 10-28-82 - Probation 10-28-82	PLEA BROUGHT IN DROPPED IN THE CRIMINAL COURT
55	Anna	Rape: 1-21-82 Kidnap	262 - spousal rape 207 Kidnapping	Believe rape charges dropped MURKIN CHARGE FILED SEPARATELY AGAINST HUSBAND							
56 C	John Daniels	7-26-82	262 rape 288(a) - SPOUSAL SEXUAL INTERCOURSE 295 ASSAULT with a deadly weapon (All 3 occurred at same time)	11-4-82 sent'd to 11-5-82	\$20,000 (not met)	not guilty	Pre Trial on 1/14/83 trial 11-28-82 sent 11-25-82	144 County	guilty By Jury of All Counts 2-20-83	(maximum sentence 20yr) 7-24-83 262-A: 3 years + 2 years for use of deadly weapon - 5 yrs. finest part of sentence to run concurrently	(18 yr old son rest in 80)



	NAME	ARRESTED	CHARGES	ARRAIGNED	BAIL	PLEA	TRIAL or PRE HEARING	COURT PLEA	VERDICT	SENTENCE	OTHER DISPOSITION
57 C	JOE DEAN TAYLOR		12 counts 262 - Spousal rape (1 full, 1 attempted) 208a - Forcible ORAL 11 counts 286c - Seduction  207 - Kidnapping 2 counts 215 - Assault w/ a deadly weapon (upon their daughter) 3 counts			Guilty	None - PLEA BARGAINED	→	Guilty of one count each: spousal rape, felony oral cop., kidnapping (of wife) assault w/ a deadly weapon (upon daughter).	18 months; 29 yr. term. Received 11 years state Prison. Court imposed the aggravated term on all counts, but ran the sentences concurrent to the one charge of oral copulation. w/ wife enhancement.	PLEA BARGAINED "IN AN EFFORT TO SHARE THE VICTIMS THE TRAUMA OF A JURY TRIAL AS WELL AS FOR EVIDENTIARY REASONS"
58 PL	MICHAEL Anthony DIXON	case 11083 amended criminal complaint 1-21-83	262 spousal rape 215 - assault w/ a deadly weapon 182 - Burglary 285 inflicting corporal punishment on a spouse 286a) forced oral copulation 287 rape w/a foreign object 206 - forced seduction	11083 amended		pled guilty to amended charges: assault w/ a deadly weapon & felony wife beating. Charges amended w/ wife's approval		Pled guilty: 215/273.5 → misdemeanor.	1 yr. suspended sentence for county jail. 30 days served. Must complete mental health program.	No visitation of wife. Limited child visitation rights to be arranged.	

AGE	WIFE'S NAME/AGE	STATUS	CRIME	PLACE	CHILDREN	RACE/ETHNICITY	OCCUPATIONS	RESIDENCE	HOW INCIDENT ENDED
		ESTRANGED	KIDNAPED WIFE AND 2 YR OLD DAUGHTER TO COUNTRYSIDE. THREATENED MOTHER'S CHILD! KIDNAP MOTHER, ASSAULTED DAUGHTER.	county side	1 (2 yr old daughter)				
35	MARY 24	ESTRANGED	HUSBAND ENTERED WIFE'S BEDROOM AT 2:30 AM. HE TOOK KNIFE TO HER THROAT. OFFERED WIFE 1000 BIRMINGHAM, TOLD HER TO BE QUIET. RAN THE BLADE OF THE KNIFE ACROSS HER THROAT, UNDER HER NOSE, TOWARDS THE EYES.	WIFE'S HOUSE			Unemployed	BIRTH: CRESCENT CITY	Husband left, threatening wife not to call police.

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APPENDIX II

State-by-State  
Information on Marital Rape  
Exemption Laws

by Joanne Schulman

Staff Attorney with the National Center  
on Women and Family Law, Inc.

A husband's rape of his wife is not a crime in most states. This legal right of wife rape is known as the "marital rape exemption," and is included in most states' rape statutes.

There are many types of marital rape exemptions. The state-by-state summary divides the exemptions into the following categories.

CATEGORY

- 1 *Absolute Exemption.* A husband can never be prosecuted for rape of his wife so long as the parties are married. The exemption still applies even if the parties are separated by court order. The exemption only ends when the parties are divorced; when the man is no longer legally the victim's husband.
- 2 *Partial Exemption.* A husband can be prosecuted for rape of his wife in some circumstances. Some states allow prosecution if the rape occurred after one spouse filed papers in court to end the marriage, or when the parties were not living together. The event or circumstance that ends the exemption differs from state to state.
- 3 *Cohabitant Exemption.* A man who is living with a woman that he is not legally married to cannot be prosecuted for raping her. Often this exemption is stated as a "defense," rather than a bar to prosecution. Thus, the district attorney may institute rape charges against the man, but he cannot be convicted of rape if he can prove he was living with the victim.
- 4 *Voluntary Social Companion Exemption.* This exemption may apply to husbands, cohabitants and social companions (i.e., dates). There is no requirement that the rapist live or have lived with the victim. Most states that have this type of exemption require that there have been past voluntary sexual relations between the defendant and victim in order for the exemption to apply. However, West Virginia does not require any past sexual activity.

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CATEGORY	
5	<i>Silent Statute.</i> The law does not mention whether husbands may or may not be prosecuted for rape of their wives. It has been assumed, until recently, that husbands could <i>not</i> be prosecuted because of Hale's alleged "common law" marital rape exemption. However, recent lawsuits in New Jersey, Massachusetts and Florida have held that no "common law" exemption exists. Thus, it is not clear if husbands can be prosecuted for marital rape in these "silent" states. Whether marital rape is a crime in these states will depend on future judicial decision, or legislative interpretation of the statutes.
<i>No Exemption</i>	The marital rape exemption has been abolished; husbands can be charged with rape of their wives in all or most cases.
<i>Rape Degrees</i>	In some states, there are different "types" of rape, murder, assault, etc. In most states, the criminal laws punish rape more or less severely depending on the circumstances of the rape (e.g., whether a weapon was used; age, mental and/or physical condition of the victim; whether the assault involved illegal sexual penetration, conduct, contact or use of a foreign object). These differences in the law are called "degrees." It is not possible to give a uniform definition for each "degree" as each state bases its rape degrees on different factors. (The fact that the marital rape exemption may apply in some rape degrees and not others has political and practical significance. The law is saying that it will tolerate certain violence by husbands against their wives that it will not tolerate between strangers. Practically, the different application of the exemption, based on the degree of rape charged, may decide whether marital rape cases will ever be prosecuted or what, if any, penalty will be imposed.)
<i>Gender-Neutral Statutes</i>	Traditionally, the law defined rape as a crime only men could commit. Thus, only husbands were granted the "immunity" or protection of the marital rape exemption. Today, many states have rewritten their laws in gender-neutral terms. Under these new rape laws, women can also be prosecuted for rape and the immunity granted under the marital rape exemption is extended to both spouses. The following chart does not incorporate these gender-neutral changes since it is intended to reflect reality rather than pure "legalese."

These categories are general, and states may fall into more than one category. In addition, considerable legislation and litigation has been occurring over the last two years, and therefore the following chart only reflects the law as of July 1, 1981.

STATE	CATEGORY	STATUS OF MARITAL RAPE LAW	CITATIONS*
Alabama	1, 3	Husbands and cohabitators can <del>now</del> be charged with rape of mate.	Title 13A-6-60(4), 13A-6-61
Alaska	2	Husband can only be charged with rape of wife if parties were living apart or he caused	Stat § 11.41.445(a)

\*The citations are included so interested readers can more easily obtain full details of these laws.

STATE	CATEGORY	STATUS OF MARITAL RAPE LAW severe physical injury (besides the rape).	CITATIONS*
Arizona	2	Husband cannot be charged with wife rape while parties are living together.	R.S. § 13-1404-06
Arkansas	5	Statute only exempts husbands in statutory rape cases. Whether marital rape is a crime will depend on judicial decision or legislative interpretation of "common law" exemption.	Stat. § 41-1803, et seq.
California	No Exemption	Husband can be charged with crime of "spousal rape." Thirty-day reporting requirement.	Pen. C. § 262
Colorado	2	Husband cannot be charged with rape of wife while parties live together.	R.S. § 18-3-409
Connecticut	No Exemption to First-Degree Rape; 1, 3	Spouse/cohabitators can be charged with first degree rape; marital and cohabitor exemption for all other sexual assaults.	Pen. Code § 53a-67(b), as amended by H.B. 5247
Delaware	J, 4	"Voluntary social companion" of victim cannot be charged with first degree rape; this may exempt husbands, cohabitators and "dates." Cohabitators (and spouses living together) cannot be charged with rape of mate.	D.C.A. §§ 761-764, 772(b)
District of Columbia	5	Not known if "common law" exemption applies, making marital rape legal.	R.S.D.C. § 22-2801
Florida	No Exemption	Husbands can be charged with rape of wife, the same as a stranger. ( <i>State v. Larry Smith</i> )	S.A. § 794.011
Georgia	5	Statute only exempts husbands in statutory rape cases. Marital rape may be legal under "common law" exemption; will	C.A. § 26.2001, 2018

\*The citations are included so interested readers can more easily obtain full details of these laws.

STATE	CATEGORY	STATUS OF MARITAL RAPE LAW	CITATIONS*
		depend on judicial decision or legislative interpretation of statute.	
Hawaii	4, 2	"Voluntary social companion" of victim cannot be charged with forcible (first degree) rape; this may exempt husbands, cohabitators and "dates." Husbands cannot be charged with "lesser" sexual assaults of wife while parties are living together.	R.S. § 707-730 to 732
Idaho	2	Husband cannot be charged with rape of wife <i>unless</i> parties have been living apart at least 180 days or legal action for divorce or separation started (petition filed).	C. § 18-6107
Illinois	1	Husband can <i>never</i> be charged with rape of wife.	A.S. Ch. 38 § 11-1
Indiana	2	Husbands cannot be charged with rape of wife <i>unless</i> parties live apart and court action for separation or divorce started (petition filed).	S.A. § 35-42-4-1(b)
Iowa	<i>No Exemption to First- and Second-Degree Rape; 1</i>	Husbands <i>can</i> be charged with first and second degree rape of wife. Husbands and cohabitators <i>cannot</i> be charged with third degree sexual abuse of mate.	C.A. § 709.2 to 709.4
Kansas	1	Husband can <i>never</i> be charged with rape of wife.	S.A. § 21-3502
Kentucky	2	Husbands and cohabitators cannot be charged with rape of spouse <i>unless</i> court order of separation.	R.S. § 510.010 (3)
Louisiana	2	Husband cannot be charged with rape of wife <i>unless</i> court order of separation.	R.S.A. § 14.41

\*The citations are included so interested readers can more easily obtain full details of these laws.

STATES*	STATE	CATEGORY	STATUS OF MARITAL RAPE LAW	CITATIONS*
730 to 732	Maine	2, 3	Husbands and cohabitants cannot be charged with rape of mate while parties living together.	R.S.A. Title 17A § 251, 252
77	Maryland	2	Husband cannot be charged with rape of wife <i>unless</i> court order of separation.	A.C. § 27-464D
§ 11-1	Massachusetts	No Exemptions	Husbands can be charged with rape of wife same as a stranger (no exemption). ( <i>Commonwealth v. Chretien</i> )	A.L. Ch. 265 § 22; Ch. 277 § 39
1-4-1(b)	Michigan	2	Husbands cannot be charged with rape of wife <i>unless</i> parties live apart and court action for separation or divorce started (petition filed).	M.S.R.C.C. Ch. 23 § 2340
1 to 709.4	Minnesota	No Exemption	Husbands can be charged with rape of wife under most circumstances.	S.A. § 609.349
32	Mississippi	2, 5	Husband cannot be charged with "sexual battery" of wife <i>unless</i> parties living apart. Separate "rape" statute does <i>not</i> exempt husbands; unknown if marital rape is a crime.	MCA § 97-3-95 to 103, (Supp. 1980)
10 (3)	Missouri	2	Husband cannot be charged with rape of wife <i>unless</i> court order of separation.	A.S. § 566.010:2
1	Montana	2, 3	Husbands/cohabitants cannot be charged with rape of mate while parties are living together.	R.C. § 45-5-306
of these	Nebraska	No Exemption	Husband can be charged with rape of wife the same as a stranger.	R.S. § 28-319, 320
	Nevada	2	Husbands cannot be charged with rape of wife <i>unless</i> parties live apart and court action for separation or divorce started (petition filed).	R.S. § 200.373

\*The citations are included so interested readers can more easily obtain full details of these laws.

STATE	CATEGORY	STATUS OF MARITAL RAPE LAW	CITATIONS*
New Hampshire	<i>No Exemption</i>	Husband <i>can</i> be charged with rape of wife under most circumstances.	RSA 632-A:5 (H.B. 51C, effective 8/81)
New Jersey	<i>No Exemption</i>	Husbands <i>can</i> be charged with rape of wife, same as a stranger (no exemption).	S.A. § 2C:14-5(b)
New Mexico	2, 3	Husbands/cohabitants cannot be charged with rape of their mates <i>unless</i> parties living apart or legal action for divorce or separation started (petition filed).	Stat. § 30-9-10, 11
New York	2	Husband cannot be charged with rape of wife <i>unless</i> court order of separation.	Pen. L. § 130.00
North Carolina	2	Husband cannot be charged with rape of wife <i>unless</i> court order of separation or spouses living apart pursuant to written agreement.	G.S. § 14-27.8
North Dakota	2	Husbands cannot be charged with rape of wife <i>unless</i> court order of separation.	C.A. § 12.1-20-01, 02, 03
Ohio	2	Husband cannot be charged with rape of wife <i>unless</i> parties live apart and court action started (petition filed) or written separation agreement entered into.	ORC § 2907.01, 02
Oklahoma	1	Husband can <i>never</i> be charged with rape of wife.	S.A. Title 21 § 1111
Oregon	<i>No Exemption</i>	Husbands can be charged with rape of wife same as a stranger.	R.S. § 165.305
Pennsylvania	2, 3	Husbands/cohabitants cannot be charged with rape of mates <i>unless</i> parties living apart or written separation agreement entered into.	S.A. Title 18 § 3103

\*The citations are included so interested readers can more easily obtain full details of these laws.

STATE	CATEGORY	STATUS OF MARITAL RAPE LAW	CITATIONS*
Rhode Island	2	Husband cannot be charged with rape of wife <i>unless</i> court order of separation.	G.L. § 11-37-1
South Carolina	2	Husband cannot be charged with rape of wife <i>unless</i> court order of separation.	C. § 16-3-658
South Dakota	1	Husband can <i>never</i> be charged with rape of wife.	C.L.A. § 22-22-1
Tennessee	2	Husband cannot be charged with rape <i>unless</i> court action for divorce or separation started (petition filed).	C.A. § 39-3702
Texas	1, 3	Husbands and cohabitor can <i>never</i> be charged with rape of wife/mate.	§ 21-02(a) § 21-12
Utah	2	Husband cannot be charged with rape of wife <i>unless</i> court order of separation.	Crim. C.A. § 76-3-402, 407
Vermont	1	Husband can <i>never</i> be charged with rape of wife.	S.A. Title 13 § 3232
Virginia	5	Unknown if marital rape is a crime.	Code 18.2-61, <i>et seq.</i> (effective 7/1/81)
Washington	1	Husband can <i>never</i> be charged with rape of wife.	R.C.A. Ch. 9A-44.010, <i>et seq.</i> (Supp., 1979)
West Virginia	1, 3, 4	Husbands and cohabitants can <i>never</i> be charged with rape of mate. "Voluntary social companion" cannot be charged with 1st degree sexual assault (date-rape exemption).	Code § 61-8B-1
Wisconsin	2	Husband cannot be charged with rape of wife <i>unless</i> parties live apart and court action for divorce or separation started (petition filed).	S.A. § 940.223(6)
Wyoming	2	Husband cannot be charged with rape of wife <i>unless</i> court order of separation.	S.A. § 6-4-307

\*The citations are included so interested readers can more easily obtain full details of these laws.

# ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

110 SEWARD #13 JUNEAU ALASKA 99801

(907)585-3550

## POSITION PAPER

SB528: An Act relating to the spousal defense to sexual assault

The Alaska Network on Domestic Violence and Sexual Assault, a non-profit corporation composed of 20 programs statewide that provide services to victims of domestic violence and sexual assault, supports SB528, which would remove the marital exemption in cases of rape.

Under current Alaskan law, in order for a woman to prosecute her husband for rape, the couple must either be living apart or the perpetrator would have had to cause serious physical injury to the victim. In the opinion of the Network, this exemption provides no protection to the married woman who is the victim of forced, not consensual, sexual contact with her husband.

The Network is especially concerned about this issue because of the proven correlation between domestic violence and marital rape. A study conducted by Morton Hunt in 1979 and reported in Family Circle magazine indicated that one-fifth of the estimated 2 million battered wives in America were "forced to have sex as part of the beating or as a sequel to it." In a survey of 930 women conducted in 1981 and reported in the Family Law Quarterly, 14% of the women indicated that they were victims of marital rape.

By passing laws which recognize spouse abuse and child sexual assault as serious crimes, the Legislature has indicated that criminal behavior is not based on the relationship of the perpetrator and victims. The Network believes that the same recognition should be afforded the crime of rape within marriage, and urges your support of this bill.

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TO: Senator Bill Ray

FROM: Paula d. Scavera

DATE: April 4, 1984

SECTIONAL ANALYSIS SB 539

SECTION 1

Gives the court an option of offering community work in lieu of a fine if the violator is unable to pay a fine. Sets a dollar value for each hour of community work. Gives the court the option in misdemeanor offenses of offering community work for jail sentences. Adds language so that the court may order a defendant to do community work as a condition of parole.

(Due to new department that was created-- on Line 20 the Department of Health and Social Services should be deleted and Department of Corrections inserted)

SECTION 2

Sets out guidelines for courts to follow in imposing community work service for various types of offenses.

SECTION 3

Changes "he" to "the defendant".

Adds cross references to the new language.

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

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

REQUEST:

Bill/Resolution No.: SB 539  
Title: "An Act relating to community work.."

Sponsor: Judiciary Committee  
Requestor: Judiciary Committee  
Date of Request: April 6, 1984

FISCAL DETAIL:

Agency Affected: DEPARTMENT OF CORRECTIONS  
Program Category Affected: \_\_\_\_\_  
Administration of Justice  
BRU, Program or Subprogram(s) Affected: Northern, Southcentral & Southeastern Regional Corrections

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY84	FY 85	F 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	*	*	*	*	*

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
TOTAL	-0-	*	*	*	*	*

\* See Analysis - Program Summary.

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						
TOTAL						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

The source of funds to offset the impact of this bill has not been identified by the bill sponsor.

ANALYSIS: Attach a separate page for any Analysis.

Prepared By: Roger C. Lange *Roger C. Lange*  
Division: Administrative Services

Phone: 465-3376  
Date: April 9, 1984

Approved by Commissioner: Roger V. Endell *Roger V. Endell*  
Department: DEPARTMENT OF CORRECTIONS

Date: April 9, 1984

Distribution:

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

ANALYSIS

I. Assumptions:

Enactment of Senate Bill No. 539 would expand authority for requiring persons guilty of crimes to perform community work, and would standardize the upper and lower limits of hours of community work to which a defendant could be sentenced according to the classification of the offense. The bill also specifies that the work be performed for and under the supervision of the State, a political subdivision of the State, or a non-profit organization.

It is assumed that enactment of this bill would:

- A. Increase the number of persons required to perform community work over that which now exists;
- B. Require effort by either the Department of Law or the Department of Corrections to develop/coordinate community work programs; and
- C. Increase the time-accounting activities required as a result of increased number of participants.

Therefore, it is assumed that there will be incremental costs generated as a result of this legislation, if passed.

II. Program Summary:

With the information available at this time, it is not possible to predict the extent of fiscal impact on the Department of Corrections. Community Counselors may be required to work with political subdivisions or non-profit organizations to develop and/or expand meaningful work projects. Depending on the time during the sentence of an incarcerated person, additional supervision may be necessary to accomplish the community work program. An adequate record keeping system must be kept to assure that all hours required for community work are performed (recording of hours worked; running balance of hours of work remaining, etc.).

It is the considered opinion of the Department of Corrections that it will take a year of tracking to measure the fiscal impact of this bill. There will be a fiscal impact, but the magnitude cannot be estimated at this time.

III Economic Impact:

Enactment of this bill would not have any significant impact on the State's economy.

IV. Impact on Local Governments:

Enactment of this bill may have a slight impact on local governmental units supervising community work programs, but this impact should be offset by the product of the work program.

DEPARTMENT OF CORRECTIONS  
Pouch T  
Juneau, Alaska 99811

POSITION PAPER  
Senate Bill No. 539

"An Act relating to community work as a part of a criminal sentence."

Senate Bill No. 539 would expand authority for the community work program for sentenced offenders and establish the minimum/maximum numbers of hours a defendant could be sentenced to community work in the various classes of criminal offenses.

The general public would benefit as a result of the performance of the community work projects at little or no cost. It could also result in a slight reduction in the number of inmate days of care when performance of community work is done in lieu of incarceration.

The Department of Corrections agrees in concept with this proposed legislation and supports its passage.

Prepared by:

*Roger C. Lange*

Roger C. Lange  
Internal Management Administrator

Date:

*April 5, 1984*

Approved by:

*William W. Ladwig*

William W. Ladwig  
Assistant Commissioner  
for Administration  
Department of Corrections

Date:

*April 9, 1984*



## THE CITY AND BOROUGH OF JUNEAU

CAPITAL OF ALASKA

155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

April 4, 1984

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

File: SB 539 (Community Work Services by Convicted Persons)

Dear Senator Ray and Members of the Judiciary Committee:

While the assembly of the city and borough has not had an opportunity to review this bill and take a position on it, the municipality does presently participate in a community work program with the state of Alaska.

I offer the following comments and suggestions for your consideration. First, a close reading of the new language to be added in lines 10 through 15 on page 1 indicates that a defendant convicted of a misdemeanor for which the court imposes only a fine may not be offered the option of performing community work. Persons convicted of a misdemeanor may be offered the option of community work only when the sentence is imprisonment. I do not know whether this was intentional or not, but you may want to consider why a person convicted of a violation and fined \$100 may be given the option of community work while a person convicted of a misdemeanor and fined \$100 may not be given the same option.

There may be something of an inconsistency in the way violations are handled. It appears under the new language to be added under AS 12.55.055(a) that the court may offer the option of community work to a person convicted of a violation and that the person works off the fine imposed at the rate of \$5.00 per hour. Under the new subsection (d) it appears that the court may require a person to perform community work if they have been convicted of a violation. However, under the standards that are proposed under the new subsection (d) a person convicted of a violation may not be required to work less than eight hours nor more than twenty hours. This means that a person convicted of a violation who is fined \$300 may be given the option of working off the fine by performing sixty hours of community work; however, if the court wants to sentence the person to community work it would be able to require only twenty hours of community work. If the bill is amended to permit the court to offer community work as an alternative to a fine for a misdemeanor conviction, the same type of problem would probably occur for misdemeanors. You may want to expand the range of hours of work that

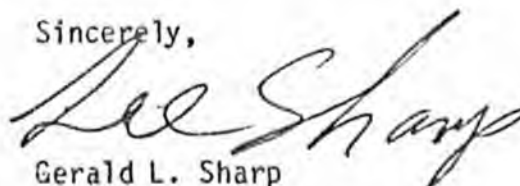
may be required when a defendant is sentenced to perform community work. In addition, the bill raises the question of whether a sentence of performing community work is in lieu of all fines and imprisonment or is in addition to authorized fines and imprisonment, or is a partial substitute for fines or imprisonment. Language clarifying this question would be helpful. Also, if it is intended that the community work be a partial substitute for fine or imprisonment, there should be some indication of how the conversion is made; e.g., fines at the rate of \$5.00 an hour and imprisonment at the rate of eight hours of community work for each day of imprisonment.

There are two matters of concern to the municipality. First, it appears that this bill applies only to offenses committed under the state statutes. For example, the new subsection (d) tracks with the state criminal code, and not with municipal ordinances. If the courts are to be able to offer or require convicted defendants to perform community work when the conviction is under a municipal ordinance, the bill should be changed to clearly indicate that municipal ordinance violations are included. If that is done, please bear in mind that the new subsection (d) will probably have to be changed and that violations of municipal ordinances range in seriousness from those of violations under the state criminal code to class C felonies yet they are all lumped together under a single category of ordinance violation.

The second area of concern to the municipality is the employee/employer relationship of a person performing community work for the municipality and the liability of the municipality for the acts of such community work persons while performing community work. While there is an attorney general's opinion to the effect that persons performing community work are not employees for worker's comp purposes, a statutory clarification of the status probably would not hurt; also, you may want to change that status.

Municipalities and private nonprofit corporations hesitate to participate in the community work program because of the added exposure to claims arising out of acts of the person performing the community work. Because the community work program is an alternative sentencing mechanism which is a function exclusively within the purview of the court, it would seem appropriate to place liability for the acts of the person performing community work on the court system. For the purpose of providing protection to the municipalities and nonprofit corporations that are willing to provide community work service opportunities to the court system, I suggest that this bill be amended to make it clear that persons performing community work as a part of a sentence be considered employees of the court system for worker's compensation purposes and that the state assume the liability for the acts of such persons if the acts are committed while the person is performing his or her community work. This approach should do much to eliminate one of the major problems municipalities and nonprofit corporations have in making available opportunities for convicted persons to perform community work.

Sincerely,



Gerald L. Sharp  
City-Borough Attorney

TO: Senator Bill Ray

FROM: Paula d. Scavera

DATE: April 4, 1984

SECTIONAL ANALYSIS SB 539

SECTION 1

Gives the court an option of offering community work in lieu of a fine if the violator is unable to pay a fine. Sets a dollar value for each hour of community work. Gives the court the option in misdemeanor offenses of offering community work for jail sentences. Adds language so that the court may order a defendant to do community work as a condition of parole.

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SECTION 2

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SECTION 3

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Adds cross references to the new language.

COMMUNITY WORK SERVICE

YEARLY REPORT

Office Location All Southeast Offices

Year 1983

Felony Clients:

Referred This Year	<u>72</u>
Active This Year	<u>152</u>
Terminated Favorably This Year	<u>24</u>
Terminated Unfavorably This Year	<u>12</u>
Total # Hours Performed	<u>7,844</u>

Misdemeanor Clients:

Referred This Year	<u>276</u>
Active This Year	<u>364</u>
Terminated Favorably This Year	<u>20</u>
Terminated Unfavorably This Year	<u>12</u>
Total # Hours Performed	<u>3,332</u>

Juvenile Clients:

Referred This Year	<u>208</u>
Active This Year	<u>292</u>
Terminated Favorably This Year	<u>76</u>
Terminated Unfavorably This Year	<u>16</u>
Total # Hours Performed	<u>2,452</u>

Diversion Clients:

Referred This Year	<u>        </u>
Active This Year	<u>67</u>
Terminated Favorably This Year	<u>43</u>
Terminated Unfavorably This Year	<u>13</u>
Total # Hours Performed	<u>2,022</u>

Grand Total Hours Performed This Year

15,650

# STATE OF ALASKA

## DEPARTMENT OF LAW

### CRIMINAL DIVISION PRETRIAL DIVERSION PROGRAM

March 27, 1984

BILL SHEFFIELD, GOVERNOR

REPLY TO:

- POUCH KT  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3678
- 941 W 4th ST.  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 278-3508
- 733 7th AVE.  
FAIRBANKS, ALASKA 99701  
PHONE: (907) 452-7713

The Honorable Thomas E. Schulz  
Presiding Judge  
First Judicial District  
415 Main St.  
Ketchikan, AK 99901

Re: Community Work Service  
Guidelines

Dear Judge Schulz:

I want to thank you for your time when I was in Ketchikan on February 16. Our discussion on the community work service program renewed my hope that some of the problems we are experiencing can be rectified and that this program will achieve its full potential as an alternative disposition for offenders. I apologize for not getting back to you earlier on this matter, however, with the Legislature in session it seems as though some of my normal responsibilities get relegated to the back burner.

As you are aware, the Pretrial Services Section of the Criminal Division, Department of Law is responsible for the placement and monitoring of offenders in community work service. As an adjunct to employment of community work service for diverted offenders, we contracted with the Adult Corrections Agency to provide a similar service for sentenced felons. At the time we entered into this agreement, we sought a consolidation of work under this program in order to promote uniformity in its application. As we undertook to perform these contracted duties, we likewise decided to offer our services to the district courts for sentenced misdemeanants. As we were under no duty to offer this service, it became our lowest priority, and we would undertake it to the extent of our available resources. We believed that this would offer a greater range of constructive alternatives to the courts at sentencing while, likewise continuing the uniform standards that are necessary to an efficient and successful program. Until recently we have been very satisfied with the cooperation between the community work service staff and the judiciary, and we feel that, at least in the First Judicial District, the program

is working well. However, as of lately, we are beginning to experience some difficulties, particularly with the service offered to District Court. I am disinclined to discontinue this service, however, unless the problems are rectified, I will find it necessary to do so. As you suggested, I have reviewed the problems we are experiencing, and offer the following standards for your consideration. I feel if these standards are utilized throughout the First Judicial District, the community work service program will continue to be an efficient and successful alternative program.

The nature of the problems we are encountering is wide. District court judges are ordering the performance of community work service in lieu of the payment of fines. While not an objectionable practice, obvious abuses are coming to light. For example, performance of a single hour of community work service in lieu of a \$10 fine amounts to a significant waste of my staff's time, not to mention the difficulty I have in believing that an offender didn't have \$10, and had no prospects of procuring \$10 within the foreseeable future.

It is becoming evident that the inquiry and examination of offenders sentenced to pay fines under AS 12.55.035 is not being conducted. Routinely, offenders are ordered to pay fines and immediately upon denial of the ability to pay the fine, they are given community work service in lieu thereof. AS 12.55.035(d) provides a procedure whereby the court can permit an offender to pay a fine over a period of time. Awareness and employment of this provision would vest some integrity in AS 12.55.035, and foreclose obvious abuses. Additionally, I believe the court has the inherent power to bring an offender who is "unable" to pay a fine back before it and have that offender voluntarily execute an assignment of a permanent fund dividend to satisfy an outstanding fine. Finally, on this issue, I believe that it is implicit in the Court of Appeals decision in Brezenoff v. State, 658 P.2d 1359 (Alaska 1983) that the court needs to fully explore an offender's claimed inability to pay before it makes that determination.

Another problematic area is the failure of the courts to follow through on those individuals who fail to perform community work service. While it may be somewhat inconvenient for some judges to do so, the fact that an

offender has ignored the court's judgment to perform community work service should not be dismissed. Time and again, my staff has attempted to put some teeth into the court's orders by unfavorably terminating offenders who fail to perform community work service. To our knowledge, in Ketchikan, nothing ever happens to these offenders (In Sitka and Juneau, Orders to Show Cause are issued, and offenders are held to answer for failure to comply). Rather, offenders in Ketchikan are either rereferred for community work service or the court merely dismisses the judgments without satisfaction. Needless to say, in smaller communities such as Ketchikan, word of the court's disinclination to back up its judgments becomes common knowledge within the community and operates to destroy the effectiveness of programs such as community work service.

Consistent with your request, I have discussed the operation of the community work service here in Southeast with my staff. We offer for your consideration the following minimum standards which need to be met to ensure a successful program:

1. Minimum Number of Hours. Considering there is a certain amount of time which we must invest in each referral for screening, placement and monitoring functions, as well as paperwork for each referral which we require of placement agencies, it is not cost-effective to work with any offender who has less than eight hours of community work service to perform.
2. Community Work Service in Lieu of Fines. C.W.S. should not be allowed as an alternative to a fine except (a) when a thorough examination of the offender is made to ascertain the inability to pay the fine; (b) the offender is unlikely to be able to pay the fine in the future under AS 12.55.-035(d); and (c) there is a substantial reason why the offender is unable to assign his permanent fund dividend to satisfy the fine. Only if this procedure is followed will community work service in lieu of fines be a legitimate alternative. Once an offender is found to be unable to satisfy a fine and community work service is ordered, the offender should not be permitted to "buy" his way out of Community Work Service by suddenly

"finding" sufficient funds to satisfy the fine. Realistically, if a thorough examination of the offender occurs before ordering performance of community work service in lieu of a fine, then this should not be a problem. It is problematic in terms of monitoring offenders to have them change from community work service to payment of the fine, especially when my staff is rarely notified of this occurrence.

3. Time Limits. When an offender is ordered to perform community work service, a time limit in which the work must be performed should be set. This reinforces in the offender the connection between community work service and the offense. Usually for misdemeanants or violators, a time period of three months, is sufficient although an extension of that period under legitimate circumstances should be allowed. For most minor offenders who rarely receive more than fifty hours, this amounts to one day per week for no more than half the thirteen week period. It is quite inconceivable that an offender cannot schedule that type of available time. And, as I previously stated, when the offender does have other legitimate activities which preclude performance within this period, adjustments in the time period can be arranged.
4. Unfavorable Terminations and Enforcement of the Court's Order. The major problem administering this program occurs with offenders who fail to perform. On numerous occasions, offenders ordered to perform community work service either fail to ever appear, or having appeared and been placed, fail to follow through. For example, a recent placement in Ketchikan was so unreliable and unsatisfactory in his performance that the referral agency has discontinued using Community Work Service offenders.

This type of offender is regularly terminated from the program with the cases being referred back to the court for further action. In Juneau and Sitka, these unfavorable terminations result in the offender being brought back before the court;

and additional consequences normally ensue. This is generally in the form of either jail time or additional community work service hours for contempt of court. In Ketchikan, there are generally no additional consequences, and the offender is rereferred to my staff for another chance. This type of offender is not any more responsive than previously. There has even been a case brought to my attention wherein the court just vacated its previous sentence. Needless to say, the credibility and integrity of the program are severely damaged. Absent consequences, especially in a community the size of Ketchikan, our ability to instill responsibility or otherwise motivate the more obdurate offender is strictly limited. Even a "You'll perform, or else" approach won't work when the offender knows the "or else" is meaningless. Only if the "or else" truly results in more severe consequences can this program be successfully and properly administered.

5. Referral of Municipal Cases. Although we generally do not make the distinction between the original source of a case referred for community work service, there is an exception. In that we are constantly in need of referral agencies which can absorb a large number of offenders and which will provide the greatest benefit to the largest number of people, we have utilized municipal governments for placements. However, there have been a few municipalities that have refused to accept referrals, not out of a lack of need for additional help, but only because they disagree with State policy regarding sharing any financial liability that may result from placement of these offenders. As a result of this position, we have likewise assumed the policy of not accepting cases involving municipal offenses in these communities. In the First Judicial District, only Ketchikan is affected by this policy, therefore we do not accept Ketchikan municipal cases.
6. Uniformity. In administering this program state-wide, I have noted a large disparity in the ordering of community work service. In your role as head of the sentencing guidelines committee, I

know you'll understand the offensiveness of disuniformity in sentencing practices. While this issue is not a "bottom line," it is one that needs to be addressed, and I would welcome any suggestions you might offer in seeing that some consistency occurs in ordering community work service.

The first problem in this area concerns the number of hours of community work service ordered as a reflection of the severity of the offense. I am enclosing a copy of the standards we employ within the diversion program when requiring community work service, as well as a copy of legislation I worked on a number of years ago on the same subject. If these numbers are agreeable to you, perhaps their implementation here would be the first step in instituting uniform guidelines for community work service.

The second area of concern involves the rate of exchange when an offender performs community work service in lieu of a fine. In Fairbanks, Anchorage, Juneau and Sitka, conversion is at the rate of \$5.00 per hour. In Ketchikan, the rate is \$10.00 per hour. The biggest anomaly occurs in Saxman, where community work service is performed at a rate of \$10.00 per hour, with our major referral agency being the City of Saxman. That municipality allows other residents to work off utility debts, performing the same work as the community work service referrals, but at a rate of \$7.00 per hour. Needless to say, this creates some problems.

I'm not sure of the resolution to these problems, but any assistance you can offer would be appreciated.

The Honorable Thomas E. Schulz  
Presiding Judge  
First Judicial District

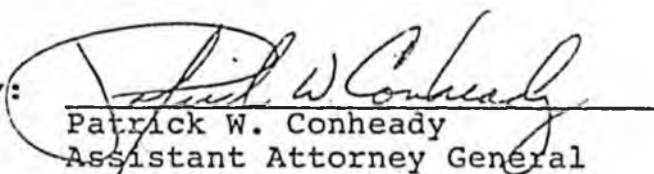
March 27, 1984  
Page 7

In conclusion, I again want to thank you for your time and your efforts. Imposition of these standards throughout the First Judicial District will ensure a legitimate community work service program.

Sincerely,

NORMAN C. GORSUCH  
ATTORNEY GENERAL

By:

  
Patrick W. Conheady  
Assistant Attorney General

Enclosures

Copies to: Kelly Richards, Juneau  
Sue White, Sitka  
Kathy Saporito, Anchorage  
Patty Moss, Fairbanks

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**COMMITTEE REPORT**  
**SENATE**

FURTHER:

Date \_\_\_\_\_

Mr. President

The Committee on \_\_\_\_\_ considered \_\_\_\_\_

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

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for \_\_\_\_\_
- new title
- same title and recommends \_\_\_\_\_
- and attached a "LETTER OF INTENT"  NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS

\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Chairman recommendation



OFFICIAL BUSINESS

ALASKA STATE LEGISLATURE - SENATE  
COMMITTEE ON LABOR AND COMMERCE

SENATOR RICHARD I. ELIASON  
CHAIRMAN

POUCH V • JUNEAU, ALASKA 99811  
(907) 465-3844

MEMORANDUM

TO: Senator Bill Ray, Chair  
Senate Judiciary Committee

FROM: Senator Dick Eliason *Dick*

DATE: May 8, 1984

RE: SB 546 - "An Act relating to automobile service corporations"

CSSB 546 (L & C) is intended to permit automobile service corporations (auto clubs) to form and operate in Alaska. The Division of Insurance was instrumental in drafting this legislation and strongly supports the concept encompassed in CSSB 546.

A virtually identical bill, HB 704, is currently in Senate Rules having passed the House 36 - 0 on April 23. An immediate effective date clause included in the Senate version is the only difference between these two bills. At the request of Steve Silver, a representative of the American Automobile Association, the Labor and Commerce Committee passed a committee substitute which would enable auto clubs to organize in the state as soon as this legislation is passed. Unfortunately, the immediate effective date clause could not have been added to HB 704 as it would have required a change in title.



Automobile  
Service  
Corporations

SENATE BILL NO. 546, by the Labor and Commerce Committee.  
Sets out statutory requirements for automobile service corporations under Title 21 (Insurance):

--Would require a person providing or intending to provide automobile service corporation services to be incorporated as a nonprofit corporation and be currently authorized as an automobile service corporation under a certificate of authority issued by the Director of the Division of Insurance. Articles of incorporation are to be submitted to the Director before they are filed with the Commissioner of Commerce and Economic Development, and the Commissioner is not allowed to file the articles or amendments unless the Director's approval is endorsed.

--The Director is not allowed to issue a certificate of authority and is required to revoke an existing certificate unless the corporation, if newly formed, possesses sufficient available working funds to pay all reasonably anticipated costs of acquisition of new business and operating expenses, other than losses, for a period of not less than six months following the date of issuance of the certificate of authority. The auto service corporation must post a bond in the amount of \$50,000 with the Director and must fulfill all other applicable statutory requirements.

page 755

--Outlines procedures for applying for a certificate of authority through the Division of Insurance. Applicants are required to file articles of incorporation, a copy of the bylaws, copies of proposed subscribers' contracts, financial statements, the required bond, and a copy of any other relevant document reasonably requested by the Director of the Division of Insurance.

--Requires an automobile service corporation to establish and maintain unimpaired reserves as follows: "... (1) a reserve in an amount not less than all legal obligations of the corporation, other than claims originating under subscriber's contracts, due but unpaid; (2) a reserve equal to but not less than the amount necessary by reasonable estimate to pay all claims incurred under subscriber's contracts but currently unpaid, and including a reasonable additional amount to cover claims incurred but not reported to the corporation at the time of determination of the corporation's financial condition; and (3) a reserve equal to 50 percent of all sums charged and received by the corporation during the calendar period covered by the financial statement, on account of indemnity benefits provided in subscriber's contracts for terms for which premium was last paid and unexpired at the date of the financial statement." The reserves constitute a liability of the corporation in a determination of its financial condition. Instead of the reserves required, and the bond required, the auto service corporation may file a bond in the amount of \$250,000.

--Requires the corporation to establish and maintain complete and accurate records and accounts, and lists other provisions of insurance statutes that apply to automobile service corporations. Defines terms used.

Does not provide for an effective date (becomes law 90 days following Governor's signature).

This proposal is intended to permit automobile service corporations (auto clubs) to form and operate in Alaska. Since automobile service corporations do provide very limited forms of insurance, they are currently required to form as an insurer under Title 21. This is effectively a barrier since those requirements are aimed at a different kind of entity. The division recognizes that the requirements for an automobile service corporation do not need to be as stringent as for a normal insurer and support the concept encompassed in SB 546. This bill is very similar to CSHB 704(L&C).

Sec. 21.59.010. Page 1, lines 10-18.

This section requires that an automobile service corporation is subject to the provisions of the new chapter. It excludes insurers with a certificate of authority issued under AS 21.09. It also provides that only provisions referred to or contained in AS 21.59 apply to an automobile service corporation.

Sec. 21.59.020. Page 1, lines 19-29 and page 2, lines 1-7.

This section requires that the automobile service corporation be a nonprofit corporation and hold a certificate of authority issued by the director. It also establishes some procedural requirements about order of filing certain documents if the automobile service corporation is a domestic.

Sec. 21.59.030. Page 2, lines 8-22.

This section establishes qualifications for a certificate of authority. The automobile service corporation must be financially sound and it must post a bond assuring that it will meet its contractual obligations.

Sec. 21.59.040. Page 2, lines 23-29 and page 3, lines 1-21.

This section lists the documents needed to obtain a certificate of authority. (4) provides an option of two ways to provide some evidence of financial soundness. The rest is almost boilerplate requirements for issuance of a certificate of authority. On page 3, line 10, the first of three differences between the Senate and House versions of this bill appear. SB 546 uses "four fiscal years" while CSHB 704(L&C) uses "three fiscal years". The division has no preference on this item.

Sec. 21.59.050. Page 3, lines 22-29 and page 4, lines 1-14.

Subsections (a) and (b) provide the reserves needed if the bond filed under Sec. 21.59.030(2) is for \$50,000. Subsection (c) makes no special reserve requirements if the bond filed under Sec. 21.59.030(2) is for \$250,000. Since the amounts for which the automobile service corporation will be at risk are very low for each subscriber, the bond is a good substitute.

Sec. 21.59.060. Page 4, lines 15-21.

This section requires that records be kept on a generally accepted accounting principles basis rather than that usual to an insurer, a statutory basis.

Sec. 21.59.070. Page 4, lines 22-29 and all of page 5.

Since this is an exclusive statute, one to which provisions outside of the chapter do not apply, this section is needed to bring other appropriate sections of the insurance code to bear on automobile service corporations. The second difference between the Senate and House versions of this bill appears on page 4, line 28. The Senate version considers automobile service corporations "mutual insurers", while the House version considers them "stock insurers". The division prefers "stock insurers" since there are impediments in the Title for this kind of corporation when considered a "mutual insurer". The third difference between the Senate and House versions of this bill appears on page 5, line 3. In the Senate version AS 21.09.100 - 21.09.260 apply to automobile service corporations, while in the House version AS 21.09.100, and AS 21.09.120 - 21.09.210. The division prefers the latter since AS 21.09.110 and AS 21.09.220 - 21.09.260 are not appropriately applied to an automobile service corporation.

AS 21.03. This chapter deals with the scope of the insurance code.

AS 21.06. This chapter establishes the authority and powers of the director of insurance.

AS 21.09.050. This section bars misleading or duplication of insurer names.

AS 21.09.100. This section deals with management and affiliations of insurers.

AS 21.09.110. This section deals with application for a certificate of authority. It should be removed since Sec. 21.59.040 adequately deals with the subject.

AS 21.09.120-170. These sections deal with the certificate of authority, issuance, refusal to issue, ownership, continuance, expiration, reinstatement, amendment, revocation, suspension, and duration of suspension of a certificate of authority.

AS 21.09.180-190. These sections deal with service of process.

AS 21.09.200. This section deals with an annual statement.

AS 21.09.210. This section deals with taxation.

AS 21.09.220-260. These sections deal with the countersignature law and acts connected with a business conducted through an agency system. Since this is not the way that automobile service corporations ordinarily conduct business, the sections should be removed.

AS 21.12. This chapter defines the kinds of insurance.

AS 21.36. This chapter deals with unfair trade practices and frauds.

AS 21.69. This chapter deals with organization and corporate procedure for domestic corporations.

AS 21.78. This chapter deals with rehabilitation and liquidation of impaired or insolvent insurers.

AS 21.90. This chapter contains the general penalty section and general definitions for the insurance code.

Sec 21.59.900.

Definition section.

SUGGESTED AMMENDMENTS TO SB 546.

On page 4, line 28, change the word "mutual" to read "stock"

On page 5, line 4, change "AS 21.09.100 - 21.09.260" to read "AS 21.09.100 and AS 21.09.120 - 21.09.210".

Proposed Amendments

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DEPARTMENT OF ADMINISTRATION  
POSITION PAPER ON SB 552  
MAY 22, 1984

SB 552 would permit a judge to order that an attorney's work product be turned over to an adverse party. The bill may present problems to the extent that it would erode the policy of encouraging a lawyer to fully investigate the facts of the matter which he or she is handling. If an adversary were free to inspect the contents of an attorney's file, including correspondence, memoranda, reports, exhibits, drafts of proposed pleadings or briefs, plans for presentation of proofs, and investigators' notes of witness interviews, an attorney's present freedom and ability to collect for study all available data, favorable and unfavorable, would be greatly hindered.

The Code of Professional Responsibility, which governs the conduct of attorneys, provides that a lawyer should preserve the confidences and secrets of a client. This professional canon has two purposes. First, it encourages a client to feel free to discuss whatever he wishes with his lawyer. Second, it guarantees that a lawyer may be equally free to obtain information beyond that volunteered by his or her client. It is this goal of encouraging a lawyer to be fully informed of all of the facts of a case which underlines this ethical canon as well as the judicial policy of protecting an attorney's work product.

The policy statement of this bill is consistent with the goals of the professional canons of ethics and the work product privilege. However, since the bill would permit disclosure of work product under rather subjectively defined circumstances, an attorney may be chilled from fully investigating the case based on the fear that opposing counsel will be granted the right to inspect the product of that investigation.

In summary, although the policy statement of the bill is admirable the bill's substance may encourage courts to allow disclosure of attorney work product. This would hamper the ability of attorneys to fully investigate all facts of their cases, favorable and unfavorable, in order to realistically appraise the strength of a case and to fully advise their clients.

BY: *Dana Fabe*  
Dana Fabe, Public Defender  
Public Defender Agency

DATE: 5/22/84

BY: *Lisa Rudd*  
Commissioner Lisa Rudd  
Department of Administration

DATE: 5/23/84

FILE WITH SB 552

# Alaska State Legislature

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

While in Juneau  
PO BOX 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

May 18, 1984

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

Re: SB 552

Dear Bill:

Let me take you down memory lane a moment. When I was active in the practice of law, discovery procedures used to be the bane of my legal existence. Motions to produce, interrogatories and depositions involved a tremendous amount of time and a lazy attorney, who had perhaps spent a couple of hours in the preparation of his case could have access to my work product which might have taken me 100 hours to prepare and/or to accumulate.

Our courts have uniformly bent over backward to allow counsel seeking discovery total access to opposing counsel's work product, which I don't think and never have thought, was fair.

In other words, I favor the legislation.

In support of this assertion, I attach miscellaneous memoranda and correspondence.

Very truly yours,

Robert H. Ziegler, Sr .

RHZ:1k

Attachments

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 7, 1984

SUBJECT: Discovery of attorneys'  
trial preparation efforts  
(Work Order No. 13-2241)

TO: Senator Jay Kerttula  
Senate President

FROM: Keith B. Levy *KBL*  
Legislative Counsel

Enclosed is a draft of a bill you requested, creating a privilege from pre-trial discovery of certain work product materials prepared in anticipation of trial by attorneys. Rule 26 of the Alaska Rules of Civil Procedure deals with this issue. As you know, if a bill has the effect of amending a court rule, the bill must indicate so expressly and requires a two-thirds majority to pass. It is my opinion that your bill does not actually amend the court rule, and therefore these requirements need not be met. But you should be aware that an argument could be made that the bill does amend the rule.

Rule 26(b) of the Alaska Rules of Civil Procedure provides that certain work product materials that are not privileged may be discovered if the party seeking discovery makes a showing of "undue hardship." Rule 26(b)(3) specifically provides:

In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

Thus, the rule provides protections for attorney work product similar to the privilege created in your bill, although the language of the rule is not as strong as the language used in the bill. The bill merely requires the court to

Senator Jay Kerttula

Page 2

May 7, 1984

"protect against disclosure," while the bill forbids disclosure under any circumstances. The argument could be made that the bill amends the rule by prohibiting discovery of certain materials that are now discoverable under the terms of Rule 26. However, this argument is rebutted by subsection (b)(1) of the rule which provides, in part,

Parties may obtain discovery regarding any matter, not privileged which is relevant to the subject matter involved in the pending action. . . (Emphasis added.)

Accordingly, the rule only applies to materials that are not privileged, either by statute or common law. Since your bill creates a statutory privilege with respect to attorney work product, it has the effect of removing it from the terms of the rule. The result, in my opinion, is that the bill does not amend the rule since it simply makes the work product material privileged, and therefore not subject to the rule.

If I may be of further assistance, please feel free to contact me.

KBL:ojb  
J7/031

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# ALASKA STATE LEGISLATURE - SENATE

SENATOR RICHARD I. ELIASON

LABOR AND COMMERCE COMMITTEE, CHAIRMAN  
RESOURCES COMMITTEE  
JUDICIARY COMMITTEE  
FISHERIES SUB-COMMITTEE



P.O. BOX 143  
SITKA, ALASKA 99835

POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-4916

## MEMORANDUM

TO: Sen. Bill Ray, Chair  
Senate Judiciary Committee

FROM: Sen. Dick Eliason *Dick Eliason*

DATE: March 23, 1983

RE: SR 4 - Relating to fees paid to jurors

As requested I reviewed the above-referenced resolution and I am now reporting my findings to you.

Senate Resolution 4, introduced by Senator Paul Fischer, urges the Alaska Supreme Court to amend Supreme Court Administrative Rule 14 to increase juror fees to \$40 per full day and \$20 per half day spent as a member of the jury venire. At the present time, jurors are paid \$25 per full day and \$12.50 per half day.

Art Snowden, Administrative Director for the Alaska Court System, has indicated a \$5 increase to jurors has been included in the Court System's FY 84 operating budget at a cost of \$197,000 per year. The fiscal impact of increasing the fee \$15 as urged in SR 4 would be \$591,000 per year.

Both Senator Paul Fischer and Art Snowden have indicated their willingness to present testimony concerning SR 4.

STATE OF ALASKA  
FISCAL NOTE

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

I. REQUEST

Bill/Resolution No.: SR-4  
 Title: Fees Paid to Jurors  
 Sponsor: Paul Fischer  
 Requestor: \_\_\_\_\_

II. FISCAL DETAIL

Agency Affected: Alaska Court System  
 Program Category Affected: Justice  
 BRU, Program of Subprogram(s) Affected: Alaska Court System

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		592.8	592.8	592.8	592.8	592.8
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
<b>TOTAL OPERATING</b>		592.8	592.8	592.8	592.8	592.8
<b>CAPITAL</b>						
<b>REVENUE</b>						

FUNDING: (Thousands of Dollars)

GENERAL FUND		592.8	592.8	592.8	592.8	592.8
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard P. Barrier, Deputy Admin. Director Phone: 264-0545  
 Division: Alaska Court System, Administration Date: 3/22/83

Approved by Commissioner: \_\_\_\_\_ Date: \_\_\_\_\_  
 Department: \_\_\_\_\_

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

SCR

29

# COMMITTEE REPORT

## SENATE

FURTHER:

Date: 12/1/57

Mr. President:

The Committee on Education has had one

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

\_\_\_\_\_

\_\_\_\_\_

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MEMBERS HAVING  
OTHER RECOMMENDATIONS:

\_\_\_\_\_

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\_\_\_\_\_

CHAIRMAN

THE LEGISLATURE OF THE STATE OF ALASKA  
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SENATE CONCURRENT RESOLUTION NO. 29  
 Title Proposing an amendment to the Uniform Rules of the Alaska State Legislature relating  
 Requested by to recommendations in committee reports. Date 06/21/83

Requested by: Senate Judiciary Committee

II. FISCAL DETAIL

Agency Affected Legislative Affairs Agency  
 Program Category Affected General Government  
 BRU, Program, Or Subprogram(s) Affected Session

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

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

FUNDING (Thousands of Dollars)

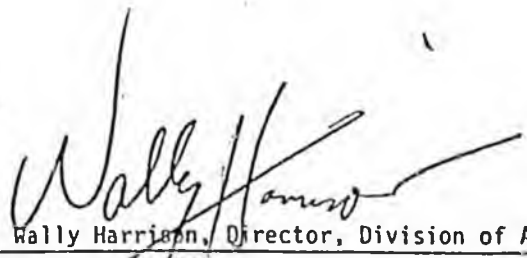
GENERAL FUND	-0-	-0-				
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS                      None                      None

FULL TIME						
PART TIME						
TEMPORARY						

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

This is a zero fiscal note.



IV. DATE 06/21/83 PREPARED BY Wally Harrison, Director, Division of Admin. Svcs.  
 AGENCY Legislative/Affairs Agency

Original: Legislative Finance      PHONE 465-2850  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)

SCR

3 8

# COMMITTEE REPORT

## SENATE

FURTHER:

Date March 25 1974

Mr. President

The Committee on GOVERNMENT considered SGE 30

Bill to amend the constitution of the state.

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

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for SGE 30
- new title
- same title and recommends \_\_\_\_\_
- and attached a "LETTER OF INTENT"  NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS

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Chairman recommendation

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT

RECEIVED

NOV 4

ANNA TOBELUK, et al., )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
MARSHALL LIND, et al., )  
 )  
Defendants. )

FILED  
IN OPEN COURT  
Superior Court  
State of Alaska  
Anchorage  
Date 10-27-76  
Wesley H. Miller, Clerk  
Shelley K. Kelly, Deputy

Office of the Attorney  
Anchorage  
Alaska

No. 72-2450

ORDER APPROVING SETTLEMENT

This cause came on before the court for a hearing in Anchorage, Alaska, on October 27, 1976, to consider objections, any, by members of the plaintiff class to the Agreement of Settlement and proposed Consent Decree filed by the parties.

The court having considered the Agreement of Settlement and proposed Consent Decree, and finding them fair and reasonable, is hereby ORDERED, ADJUDGED and DECREED that the Agreement of Settlement and Consent Decree are hereby approved and incorporated herein as part of this Order.

DATED at Anchorage, Alaska, this 27th day of October, 1976.

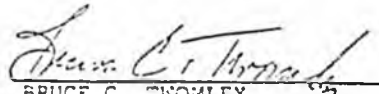
*Wesley H. Miller*  
JUDGE OF THE SUPERIOR COURT


STIPULATION

The attorneys for the respective parties hereto hereby agree and stipulate to the form and contents of the foregoing proposed Order.

Respectfully submitted,

AVRUM M. GROSS,  
Attorney General  
State Capitol  
Pouch K, Juneau, Alaska 99811  
465-3600

  
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Attorneys for Defendants

Attorneys for Plaintiffs

DATED October 26, 1976

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2 THIRD JUDICIAL DISTRICT

3 ANNA TOBELUK, et al., )  
4 Plaintiffs, )  
5 vs. )  
6 MARSHALL LIND, et al., )  
7 Defendants. )

8 No. 72-2450

9 AGREEMENT OF SETTLEMENT

10 WHEREAS, a civil action has been brought by Alaska  
11 Native (Eskimo, Indian and Aleut) children of secondary school  
12 age to secure the provision of secondary schools in their  
13 communities of residence, in which plaintiffs allege (a)  
14 a pattern and practice of racial discrimination against  
15 Alaska Natives in the non-provision of local secondary schools,  
16 in violation of the constitution and laws of the United States  
17 and Alaska (U.S. Const. Amend. XIV; 42 U.S.C. §§1981, 1983,  
18 2000d; Alaska Const. Art. I §1); and (b) a disparity between  
19 the manner in which secondary education is provided to the  
20 plaintiffs and the manner in which such education is offered to  
21 most other Alaska school children, which unduly burdens the  
22 exercise of plaintiffs' right to a public education, which is  
23 not justified by either a rational basis or a compelling state  
24 interest, and which is therefore violative of Article I §1 of  
25 the Alaska Constitution; and

26 WHEREAS, defendants allege that while they desire to  
27 provide secondary education facilities as set forth herein,  
28 and intend to do so within the limits of public funds, they  
29 have no constitutional obligation to provide the secondary  
30 facilities set out in this agreement; and  
31  
32

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PHONE 800 3331

1 WHEREAS, the parties in order to avoid lengthy liti-  
2 gation, wish to resolve this matter by means of settlement;

3 NOW, THEREFORE, the parties, through their attorneys,  
4 subject to the approval and order of this Court, hereby agree  
5 as follows:

6 STATEMENT OF AGREED FACTS

7 Jurisdiction

8 1. Jurisdiction is vested in this court by  
9 AS 22.10.020.

10 Plaintiffs

11 2. The named plaintiffs are Alaska Native children of  
12 secondary school age. They have completed the 8th grade, and  
13 are between the ages of 14 and 20. The named plaintiffs  
14 reside in six villages in various parts of the state. Each of  
15 these villages has an elementary school. In the villages of  
16 Kikachak, Kuigillingok, Nekoryuk, and Nunapitchuk, the  
17 elementary school is operated by the United States Department  
18 of the Interior's Bureau of Indian Affairs. In the villages of  
19 Ullakaket and Kongiganak, a public elementary school is  
20 operated. There are no public secondary schools (comprising  
21 grades 9-12) in these communities. In order to attend  
22 secondary school, the plaintiffs must leave their homes and  
23 families for nine months each year in order to participate  
24 in boarding programs.<sup>1/</sup> Some of the named plaintiffs have  
25 attended school in Anchorage, Bethel, Fairbanks, Kodiak,  
26 Sitka, Unalakleet, Wrangell, or Chemawa (Oregon); some have  
27 dropped out of these programs thus terminating their classroom  
28 education; others have not continued their schooling beyond  
29 the 8th grade level available in their community of residence.

30  
31 <sup>1/</sup> "Boarding programs" as used herein means boarding home  
32 programs and dormitory programs.

STATE OF ALASKA  
COURT OF JUDICIAL BRANCH  
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Defendants

1  
2 3. Defendants Katherine T. Hurley, August Anderson,  
3 Beverly Horn, Thelma Langdon, Darwin Heine, Malcolm Roberts,  
4 Jan Hohman, as members of the State Board of Education of the  
5 State of Alaska, are responsible, pursuant to AS 14.07.020(1)  
6 and AS 14.07.075, for formulating statewide educational  
7 policy, administering funds to provide certain educational  
8 services, and directing the operations of the State Department  
9 of Education, which has general supervision over the public  
10 schools of the state.

11 4. Defendant Marshall L. Lind is the Commissioner  
12 of Education and, as such, is the principal executive officer  
13 of the Department of Education.

Class

14  
15 5. This action is properly maintained as a class  
16 action. The named plaintiffs represent a class whose members  
17 are Alaska Native children of secondary school age who reside  
18 in communities in the unorganized borough wherein (1) a public  
19 elementary school is operated, or an elementary school is  
20 operated by the Bureau of Indian Affairs; (2) a secondary  
21 school comprising grades 9-12 is not so operated, nor is daily  
22 transportation to such a secondary school available; and (3)  
23 a majority of resident children eligible to attend secondary  
24 school are Native.

25 6. The class consists of approximately 2663 Alaska  
26 Native children living in the 126 communities set forth in  
27 Schedule B, attached hereto. Because there are no accurate  
28 data on the number of children out of school, the exact size  
29 of the class is uncertain.

30 7. The class is so numerous that joinder of all  
31 members is impracticable. There are questions of law and fact  
32 common to the class, the claims of the plaintiffs are typical

STATE CAPITOL  
POUCH # JUNEAU, ALASKA 99801  
PHONE 4653500

1 of the claims of the class, and the plaintiffs have fairly and  
 2 adequately protected the interests of the class. Separate  
 3 actions by individual members of the class would create a risk  
 4 of inconsistent adjudications with respect to the individual  
 5 members of the class and would thereby establish incompatible  
 6 standards of conduct for the defendants. The defendants have  
 7 acted on grounds generally applicable to the class, thereby  
 8 making appropriate final injunctive or corresponding declaratory  
 9 relief with respect to the class as a whole.

10 3. Notice to members of the plaintiff class shall be  
 11 given as follows:

12 (a) by the Department of Education, by mailing  
 13 to the local school committee in each community set forth in  
 14 Schedule B, attached hereto, a Notice of Settlement in a form  
 15 approved by the Court; and

16 (b) by delivery of a joint press release of the  
 17 parties to the television and radio stations, newspapers, and  
 18 wire services in the state.

19 General Facts

20 9. Prior to the turn of the century, a dual school  
 21 system emerged unofficially in Alaska as resentment grew among  
 22 the relatively few whites over emphasis on education for Natives  
 23 and a belief that integrated schools would give only inferior  
 24 education. In towns such as Juneau, Douglas and Sitka, where  
 25 there were proportionately greater white populations, segregated  
 26 schools were established. Segregated schools were also  
 27 established at Bethel, Nome, Egegik, Chitina, Ft. Yukon, and,  
 28 as of 1929-30, at least a dozen other locations. In at least  
 29 12 of these communities there was a secondary school for non-  
 30 natives only. With the increase in population caused by the  
 31 Gold Rush in the late 1890's, agitation grew for the establish-  
 32 ment of a separate system of schools for the non-Native popula-  
 tions. In 1900, Congress provided for the establishment and

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 JUNEAU, ALASKA 99801  
 PHONE 485-3800

1 local control of independent schools for whites within  
2 incorporated towns. By 1903, 9 incorporated town schools for  
3 white children had been established; as of 1917-18, there were  
4 15 such schools, six of which graduated between 1 and 13  
5 students each from secondary school.

6 10. Two statutes enacted by Congress in the early  
7 1900's gave official sanction to this dual system. Under a  
8 1917 amendment to the Alaska Organic Act, the Territorial  
9 Legislature was empowered "to establish and maintain schools  
10 for white and colored children and children of mixed blood  
11 who lead a civilized life in said territory..." Act of March  
12 3, 1917, ch. 167, 39 Stat. 321. In the second statute, the  
13 Nelson Act originally passed in 1905, the federal government  
14 assumed responsibility for the education of Alaska Natives in th  
15 following terms:

16 The education of the Eskimos and Indians in  
17 Alaska shall remain under the direction and  
18 control of the Secretary of the Interior,  
19 and schools for and among the Eskimos and  
20 Indians of Alaska shall be provided for by  
21 an annual appropriation, and the Eskimo and  
22 Indian children of Alaska shall have the same  
23 right to be admitted to any Indian boarding  
24 school as the Indian children in the States  
25 or Territories of the United States.  
26 Act of Jan. 27, 1905, Title IX, ch. 1, §309,  
27 33 Stat. 619.

28 The Nelson Act clarified previous legislation and extended it  
29 to rural areas, relieving the U.S. Bureau of Education of  
30 responsibility for the education of white and mixed blood  
31 children, while the education of these children was provided  
32 by the Territory and local municipal authorities. The Bureau  
continued maintenance of a few white schools until local  
authorities gradually became able to assume full responsibility.  
The number of so-called Nelson schools--for children of white  
or mixed blood leading "a civilized life" in communities outside  
of incorporated towns--grew from 10 in 1907 to 46 in 1918.

1           11. The pre-statehood pattern of sending Native  
2 children away from their home villages to secondary boarding  
3 schools, which is reflected in the current system of secondary  
4 education, was generated by the dual school system. This pattern  
5 developed from the federal government's policy of sending Native  
6 children away from their home villages to secondary boarding  
7 schools, while territorial officials undertook to provide local  
8 secondary schools for white and mixed-blood children for whose  
9 education the Territory was responsible. The key to the  
10 federal government's program of acculturating Alaska Natives  
11 lay in the special education of the most intellectually advanced  
12 youth. In spite of many criticisms, the U.S. Bureau of Education  
13 continued this policy of sending the brightest children to  
14 boarding schools for a basically vocational education, and then  
15 returning them to their villages. Most were sent to Indian  
16 schools in the United States. However, the deleterious effects  
17 of sending children to school so far away, including health  
18 hazards and sociological maladjustments, soon became evident,  
19 and in 1925 the federal government initiated a program of  
20 establishing vocational boarding schools within Alaska. Schools  
21 were opened in Eklutna, near Anchorage; at Kanakanak, on  
22 Bristol Bay; and at White Mountain, on the Seward Peninsula.  
23 These schools were eventually superceded by Mt. Edgecumbe, a BIA  
24 boarding school for Natives established at the former naval  
25 air station of Sitka in 1947. Rural Native students were presented  
26 with the choice of either staying at home and forgoing  
27 attendance at a secondary school or leaving home and  
28 attending Mt. Edgecumbe. When enrollment at Mt. Edgecumbe  
29 eventually exceeded the school's capacity, the BIA began  
30 admitting Native Alaskans to Indian boarding schools in other  
31 states. Hundreds of Alaska Natives entered boarding  
32 schools in Chemawa, Oregon and Chillico, Oklahoma.

1 12. While secondary school opportunities for  
2 Natives were generally limited to enrollment in the boarding  
3 schools, secondary schools for whites were started in an  
4 increasing number of communities, including those with small  
5 secondary enrollments. By 1950-51, there were 34 public  
6 secondary schools in the state. Only 5 had enrollments  
7 exceeding 100; 24 had enrollments under 50, and 12 had  
8 enrollments of 10 or fewer. As of 1958-59, there were 34 public  
9 secondary schools in the state. Only six of these schools were  
10 in communities with a school population at least 50 per cent  
11 Native.

12 13. The cumulative effect of instituting boarding  
13 programs for Natives, while local secondary schools were  
14 generally provided where non-Natives resided, is indicated by  
15 the relative proportions of Native and non-Native secondary  
16 school age children who presently reside in communities which  
17 have elementary schools but not secondary schools. The  
18 proportion of such "unhoused" Native children to the total  
19 Native secondary school population in the state (including  
20 public and BIA schools) is 42 per cent. The proportion of  
21 "unhoused" non-Native children to the total non-Native  
22 secondary school population in the State (including public  
23 and BIA schools) is .4 per cent.

24 14. At the time statehood was attained, a vestige  
25 of the dual system existed in Alaska, in that the BIA operated  
26 schools for Alaska Natives while Alaska's territorial legislature  
27 and Department of Education provided schools primarily  
28 attended by non-Natives. This vestige has hindered the State's  
29 provision of secondary schools in villages wherein the BIA  
30 operates elementary schools. The state followed a policy  
31 through the early 1970's of leaving to the discretion of the  
32 BIA, in the villages wherein the BIA operates elementary  
schools, the extent and nature of primary and secondary

1 education, including whether a local secondary school should  
2 be operated in such villages. The state's policy included not  
3 constructing secondary schools in villages which had BIA elementary  
4 schools.

5 15. After 1966, the state adopted a policy of  
6 constructing regional secondary schools and dormitories and  
7 developing boarding home programs. While affording a greater  
8 number of Natives residing in the unorganized borough a  
9 secondary education within the state, these efforts did not  
10 completely eradicate the pattern--generated by the former dual  
11 school system established prior to statehood--of requiring a  
12 large proportion of Native children to board away from home  
13 if they wished to attend a secondary school. Boarding Home  
14 Programs have existed in Anchorage, Bethel, Fairbanks, Kodiak,  
15 Nome and a number of villages. A total of 32 boarding home  
16 programs are now operating, with a total enrollment of 851  
17 students. Dormitories have been operated in Bethel, Nome,  
18 and Kodiak. The only dormitory now operating is in Bethel,  
19 with 175 students.

20 16. Since 1967 the State has reduced the number of  
21 Native students leaving the state for a secondary education  
22 from 850 to 39 in 1975. These 39 students continued to attend  
23 secondary schools outside the state by choice, in order to  
24 complete programs of study.

25 17. In the late 1960's officials in the Department  
26 of Education concluded that the regional secondary school  
27 program was failing to provide all the benefits originally  
28 envisaged, and had detrimental effects upon some of the students  
29 which outweighed the benefits they were deriving from the  
30 program. Furthermore, technological advances enhanced the  
31 quality of secondary education which could be provided in  
32 rural locations. In 1970, the Department discontinued the  
33 construction of dormitories and large regional secondary schools

and began a program of providing local secondary schools. Since 1970, this program has resulted in the unorganized borough in the completion of 11 local secondary schools with 7 more presently under construction, and funds appropriated for an additional 6. As a result of steps taken prior to the negotiation of this agreement, 29 of the 140 predominantly Native communities in the unorganized borough which presently have an elementary school will, by 1977, have a local secondary school, grades 9 to 12, or daily access to such a school. There are 26 predominantly non-Native communities in the unorganized borough which presently have an elementary school. Sixteen of these communities have had local secondary schools or daily access to such schools within the last three years or will have such schools or daily access by 1977.<sup>2/</sup> There are a total of 170 communities in the unorganized borough which have elementary schools.

18. The absence of local secondary schools in each of the 126 villages set forth in Schedule B, attached hereto, is attributable at least in part to the pattern of secondary education produced by the dual school system established prior to statehood.

19. Approximately 2783 secondary school age children reside in communities in the unorganized borough which have a public elementary school or an elementary school operated by the Bureau of Indian Affairs, but which do not have a secondary

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<sup>2/</sup> Of the 10 predominately non-Native communities without local secondary schools, 9 are located in the southeastern portion of the state. These 9 communities are "logging camps", which are constructed temporarily on U.S. Forest Service land leased for a period of approximately twenty years for the purpose of conducting logging operations. Seven of the 10 villages have projected secondary enrollments of 7 or fewer students; 3 of the villages have projected secondary enrollments of 13-18 students.

STATE CAPITOL  
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1 school through the 12th grade nor daily access to such a school.

2 The State Department of Education refers to such children for  
3 statistical purposes as "unhoused". Over 95 percent (2663)  
4 of these unhoused children are Native; less than 5 percent  
5 (120) are non-Native. This compares with a 1974-75 secondary  
6 student population enrolled in the unorganized borough school  
7 district of 1301 Native and 617 non-Native children,<sup>3/</sup> and a  
8 secondary student population enrolled state-wide in public and  
9 EIA schools of 6288 Native and 28,105 non-Native children.

10 20. Members of the plaintiff class enrolled in the  
11 boarding program have experienced accelerated drop-out rates,  
12 psychological and social problems, including disruption of  
13 family life and loss of sense of identity, and failure to live  
14 up to educational potential. Studies of drop-out rates  
15 indicate far higher rates among Native children attending  
16 boarding programs than among Native children residing at home  
17 while attending secondary school. This drop-out problem is  
18 in part attributable to severe homesickness often experienced by  
19 students in the boarding program. Some children who have  
20 finished the eighth grade in their villages have never gone  
21 away to attend secondary school. Others, while enrolled in  
22 a boarding program, have transferred on numerous occasions  
23 from program to program, without attaining discernible  
24 educational benefits from any program.

25 21. Dormitory and boarding home programs have  
26 high costs in relation to the educational benefits provided  
27 Typically, school absenteeism has been high. Furthermore,  
28 many village students are unable to benefit from the wide

29 <sup>3/</sup> These figures do not include 11 Native and 1,056 non-Native  
30 children enrolled in on-base secondary schools. Prior to the  
31 establishment of AUBSD, these on-base schools have been  
32 operated by the Alaska State-Operated School System. All  
33 children attending on-base elementary schools were  
34 provided secondary schools or daily access to such schools.

POUCE K. JUREAU ALASKA 85511  
PHONE 483 3000

1 range of courses available at urban schools because they  
2 do not have the academic background to take advantage of  
3 them. Frequently, they end up in courses for slow learners.  
4 Yet these are the most expensive secondary school programs.  
5 In FY 1974, the rural boarding program cost an average of  
6 \$4,200 per student per year for education and boarding,  
7 while dormitory programs cost \$5,600 per student per year.  
8 The per student cost of local secondary school programs  
9 in the unorganized borough in FY 1974 was approximately  
10 \$2,000. In FY 1975, the per student instructional cost for rural  
11 secondary school programs was approximately \$2,300. For rural  
12 boarding home programs, the cost was approximately \$4,600  
13 per student. The cost of dormitory programs remained  
14 substantially higher. Actual costs per student in dormitory  
15 programs may end up higher because of the high drop-out rate,  
16 while the dormitory's fixed costs remain the same.

17 22. Harmful effects have resulted from the boarding  
18 programs. Village students placed in both dormitory and  
19 boarding home programs often do not receive the guidance  
20 necessary to enable them to cope with town life or with  
21 emotional problems which they experience. Also, the sending  
22 of Native children to secondary schools outside of their villages  
23 has had harmful effects on village cultural and family life  
24 and on the student's relationship to each. When the student  
25 who attends a boarding program returns to his village in the  
26 summer, he finds it difficult to readjust to village life  
27 because of the increasing differences between himself and  
28 the other members of his village. He is unable to fully  
29 identify with either the town or village way of life. Such  
30 students are in the process of becoming what anthropologists  
31 term "marginal" people: usually, they are not assimilated into  
32 the town culture with which they must contend in order to  
attend secondary school, while at the same time they have become

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PHONE 462 3000

1 estranged from the village way of life. For many of these  
2 students, secondary school graduation represents the point of  
3 no return. If they have come this far, it is unlikely that  
4 they will ever return to the village permanently.

5 23. Although village children who choose not to  
6 board away from home to attend secondary school are eligible to  
7 enroll in correspondence study, this program has in the past  
8 been unsatisfactory for most such children.<sup>4/</sup> This is so in  
9 large part because, for most students, parental interest and  
10 supervision are essential if the student is to complete correspondence  
11 courses successfully, and most village parents have not had  
12 sufficient formal education to supervise such courses  
13 effectively. Though the Department has greatly upgraded the  
14 elementary and secondary correspondence program in recent years  
15 by increasing the budget therefor from \$61,405 in 1970 to  
16 \$848,373 for the unorganized borough for 1975-76; secondary  
17 correspondence courses, which have been obtained from programs  
18 in Nebraska and Illinois, have not been sufficiently adapted  
19 to the educational needs and the culture of village children.  
20 Furthermore, the problem of parental inability to supervise a  
21 secondary school course of study continues to limit the effective-  
22 ness of the correspondence program for many students.

23  
24 <sup>4/</sup> Historically, the number of children in the plaintiff  
25 class who have been served by secondary correspondence is small,  
26 as indicated by the overall figures for correspondence  
27 participation. For example, as of June, 1973, there were 60  
28 active secondary students enrolled in correspondence studies  
29 statewide out of a total of between 600-700 elementary and  
30 secondary students. Between 1959 and 1972, 41 students  
31 received diplomas via correspondence study. Between 1960  
32 and 1963, 7 students received high school diplomas after  
33 having completed 2 years or more study via secondary correspondence.  
34 The number of these students, if any, who meet the criteria of  
35 membership in the plaintiff class is not known.

STATE COURTS  
POUCH W. JUNEAU, ALASKA, 99811  
PHONE 483-3005

1 24. Small secondary schools have long been an  
2 accepted and, unlike the boarding programs, a successful  
3 feature of the State's educational program, and it has been  
4 the Department's policy since 1970 to construct such schools  
5 in Native villages in the unorganized borough.

6 25. A 9th grade program was provided beginning  
7 in 1971-72 to accommodate 8 students in Anderson Village, and  
8 successive grades were added yearly through 1974-75, when 52  
9 students were enrolled in grades 9-12, notwithstanding that  
10 such students had daily access to a larger secondary school  
11 in Nenana; a secondary school facility, including a gymnasium,  
12 chemistry laboratory, workshop, home economics room and  
13 academic classrooms, has been constructed in Thorne Bay (1974-  
14 75 enrollment, grades 9-12; 23); secondary school instruction,  
15 under the supervision of a certificated teacher, was begun in  
16 Whittier in 1974-75 (enrollment, grades 9-11: 8); secondary  
17 school instruction under the supervision of the certificated  
18 elementary school teacher employed in the community, utilizing  
19 correspondence materials, was provided in Gustavus in 1972-73  
20 for 5 students and in 1972-73 for 2 students, in Cape Pole  
21 in 1972-73 for 5 students, in Port Alice in 1973-74 for 5  
22 students, and in Paxson in 1972-73 for 1 student, in 1973-74  
23 for 2 students, and in 1974-75 for 1 student. The communities  
24 of Anderson Village, Thorne Bay, Whittier, Gustavus, Cape Pole,  
25 Port Alice, and Paxson are predominantly non-Native. Of the  
26 126 communities on Schedule B, attached hereto, 5 have larger  
27 projected secondary enrollments than the 1974-75 enrollment  
28 of Anderson Village; 48 have projected secondary enrollments  
29 equal to or larger than the 1974-75 enrollment of Thorne Bay;  
30 111 have projected secondary enrollments equal to or larger  
31 than the enrollment of Gustavus in 1971-72, Cape Pole in  
32 1972-73, or Port Alice in 1973-74; and all have larger  
projected secondary enrollments than the enrollment of Gustavus

in 1972-73 or Pauson in 1972-75.

26. Prior to the initiation of this action, local secondary schools were not provided in other large Native communities. The largest such community was Barrow, which did not have a secondary school through the 12th grade until 1974-75, when enrollment, grades 9-12, was 161.

27. Though the cost of constructing rural schools was quadrupled since 1966, the per-pupil operating costs of boarding programs is and historically has been far higher than the per-pupil costs of rural schools, since the State must assume the financial burden of housing, feeding and supervising children who do not reside at home. When construction costs for new secondary school facilities are included in the per-pupil costs of providing local secondary schools, the long-range costs remain comparable to, and in many instances lower than, the costs of providing boarding programs.

28. In addition to the fiscal costs of operating boarding programs, there may be heavy social costs, in addition to those set forth in paragraphs 20 and 22, above. Because of these social costs, the State may well bear increased costs for social services--including welfare, rehabilitative programs, and law enforcement--which will be lessened to the extent that children living at home with their families in their own villages are not subjected to the problems which have arisen in the boarding programs.

29. The parties agree that the relief herein provided, whereby each community set forth on Schedule B, attached hereto, will be afforded the opportunity to have its own secondary program, is an educationally sound approach for a number of reasons. It is the present policy of the State Board of Education and the Commissioner to provide local secondary schools because, based upon the best information

FRANK P. BROWN, ALASKA BICENTENNIAL  
PHONE 4623800

1 currently available, such schools offer the greatest educational  
2 benefits for most students in the unorganized borough at  
3 the lowest over-all costs. The assumed educational benefits  
4 of larger secondary schools have not materialized for most  
5 village students. The majority of such students have not  
6 enrolled in specialized curricula but in basic courses which  
7 can be taught in village schools. Village secondary schools  
8 offer a basic skills curriculum, which can be enriched  
9 by a variety of supplementary programs, in a personal  
10 atmosphere and in small-group situations. Local traditions,  
11 customs, and skills can be transmitted from the adult generation  
12 without the severe social dislocation inherent in removing  
13 adolescents from familiar surroundings.

14 30. The parties further agree that it is an  
15 educationally sound approach, based upon the best information  
16 currently available, to offer to each community set forth on  
17 Schedule B, attached hereto, the opportunity to choose not to  
18 have a secondary school program, to have a partial program,  
19 or to have a four-year program, in accordance with the  
20 regulatory provisions set forth in Schedule A, attached hereto.

FOULM P. LONZAU, ALASKA BEBII  
PHONE 465 3630

CONSENT DECREE

1  
2 1. The provisions of the regulations set forth  
3 in Schedule A, attached hereto, are hereby incorporated  
4 herein as provisions of this Consent Decree. No change  
5 in the regulations which affects plaintiffs' entitlements  
6 thereunder shall be permitted.

7 2. The Commissioner of the Department ("Department"  
8 herein means the Department of Education as defined by AS  
9 14.07.010, sec. 1, ch. 98 SLA 1966) shall designate a person  
10 who shall be responsible for administering the implementation  
11 of this Consent Decree. This person shall have such administra-  
12 tive authority, fiscal resources and staff support, including  
13 clerical assistance, as are necessary effectively to administer  
14 this decree. Attorneys for the plaintiffs shall be entitled to  
15 frequent access to this person to review and make inquiries  
16 regarding the implementation of this decree.

17 3. The Department shall ensure that no later  
18 than November 1, 1976, the governing body of the appropriate  
19 school district shall notify the residents of all communities  
20 identified in Schedule B, attached hereto, of the community's  
21 entitlement to a secondary school, pursuant to 4 AAC 05.040.  
22 The Department shall require that the governing body of  
23 the school district, at the time it provides written notification,  
24 file with the Commissioner a copy of such written notice  
25 (or, if a form is used a copy of such form), together with  
26 a statement of the date(s) such notification was provided to  
27 each community. On request of the local school committee  
28 in any community identified in Schedule B, attached hereto,  
29 the Department shall within a reasonable time conduct a  
30 meeting in such community at which the entitlements secured  
31 by this decree will be explained. In any community which  
32 requests that a secondary school not be conducted in such

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1 community, the Department shall, in any subsequent school  
2 year, on request of the local school committee, promptly  
3 conduct such a meeting.

4 4. The Department shall conduct an inventory  
5 during 1976 in all communities identified in Schedule B,  
6 attached hereto, except those which have expressed their  
7 opposition to a secondary school in accordance with 4 AAC  
8 05.050, of public facilities which could be converted, either  
9 temporarily or permanently, into secondary classroom space. In  
10 conducting this inventory, the Department shall contact the  
11 local school committee in each village, and shall incorpo-  
12 rate in the inventory report the committee's view regarding  
13 the conversion of facilities to secondary classroom space.

14 5. The Department shall prescribe by regulation  
15 that the governing body of a school district, with the  
16 assistance of the local school committees, shall conduct, no  
17 later than June 1, 1977, and May 1 of each subsequent school  
18 year, a survey of secondary school-age children who are not  
19 enrolled in school. The Department shall require that the  
20 information gathered by each survey shall be submitted to the  
21 Department by the governing body of the school district. The  
22 Department shall ensure that the governing body of the school  
23 district establishes a program to encourage each secondary  
24 school-age child who is not enrolled in secondary school, as  
25 identified in the annual survey, to finish secondary school.

26 6. The Department shall secure compliance with  
27 the provisions of 4 AAC 05.040 regarding the establishment  
28 of local secondary schools in accordance with the following  
29 schedule:

30 (a) In any community wherein there is available  
31 a suitable facility in which to conduct a local secondary  
32 school (or certain grades thereof), a local secondary school  
(or those grades which can be reasonably accommodated in  
the facility) shall be established as soon as practicable,

1 with classes commencing no later than Fall, 1977.

2 (b) In any community where an existing  
3 public facility may be temporarily rendered suitable by  
4 means of renovation at a cost not to exceed \$10,000, the  
5 renovation, subject to the availability of funds, shall  
6 be undertaken and a secondary school shall thereafter be  
7 established as soon as practicable.

8 (c) In any community wherein there is available  
9 no suitable facility in which to conduct a local secondary  
10 school, and wherein no existing public facility may be rendered  
11 suitable by renovation under subparagraph (b) above, major  
12 renovation will be undertaken or a new secondary school  
13 facility shall be constructed as soon as practicable. The  
14 Department shall take all reasonable steps to ensure that  
15 construction of each such secondary school facility for  
16 which construction funds are provided in a 1976 bond issue  
17 is completed no later than Fall, 1977, or, if such facility  
18 is designated on Schedule C, attached hereto, as a major  
19 facility, no later than Fall, 1978; and that each such secondary  
20 school facility for which construction funds are provided  
21 in a 1978 bond issue is completed no later than Fall, 1979,  
22 or if such facility is designated on Schedule C, attached  
23 hereto, as a major facility, no later than Fall, 1980.

24 7. The Department agrees that money presently  
25 available to the State for rural secondary school construction,  
26 heretofore unexpended, shall be expended at the sites specified  
27 in Schedule D, attached hereto, in the amounts necessary to  
28 provide at each site a comprehensive secondary education  
29 facility, which shall include, but not necessarily be limited  
30 to, academic classrooms, facilities appropriate for instruction  
31 in vocational education and home economics, indoor physical  
32 education space and related support facilities and mechanical  
space. The Department further agrees and represents that

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