2538 SJ HB 79 - HB 103

2538

Perhaps the most important attribute of the peremptory challenge procedure is that it allows attorneys to represent their clients to the fullest extent without fear of subsequent judicial reprisal in other cases. In the absence of a peremptory challenge rule, judges can develop the attitude that they are always right and that any attorney who challenges their judgment by openly disagreeing with it or appealing it is wrong. In the absence of a peremptory challenge, a challenge to the authority of such a judge will be met with conscious or unconscious retaliatory measures in a subsequent case.

I am pleased to say that in Fairbanks, at least, there is no evidence of such attitudes. However, as they did exist before the peremptory challenge law and do exist in other states without such a law, I am constrained to believe that there is a cause and effect relationship.

I have not had any experience with political controversies in the courts. However, I would assume that the risk of a biased judge is as great there as it is in other types of cases. As a lawmaker, I would think that you would be especially attuned to the importance that an unbiased judge makes in a legal controversy. I am sure you can see as well as I that there is always the potential for the selection of a judge who simply should not be chosen to hear a given case. I also hope you can understand that judges, as human beings, are sensitive to their reputation as to fairness. Since the peremptory challenge rule may be the singlemost important means by which judicial reputations can be developed and communicated, their continued existence is critical.

I understand that there are concerns of expediency which would militate in favor of repealing the peremptory challenge rule. I, for one, favor taking measures which increase the efficiency and reduce the cost of the legal system. Nevertheless, the importance of the peremptory challenge procedure in terms of judicial quality and fairness offsets by far its cost in terms of efficiency and expense. Therefore, I hope that you will oppose passage of House Bill 79.

Sincerely,

James A. Parrish

JAP:mgs

HB 79 TITLE & SPONSOR SUMMARY 10:48 5/19/83 PAGE 1 OF 3

AMENDED TITLE: HB 79AM(CT RULE FLD)

AN ACT REPEALING PEREMPTORY DISQUALIFICATION OF A JUDGE

AND CHANGING RULE 10(C) AND RULE 25(D), RULES OF

CRIMINAL PROCEDURE AND RULE 42(C), RULES OF CIVIL PROCEDURE;

AND PROVIDING FOR AN EFFECTIVE DATE

PRIME SPONSOR: FRITZ.

CO-SPONSORS: LISKA.

CURRENT STATUS: 5/17/83 IN (2) JUDICIARY REFERRAL: FINANCE

DATE	SEQ	PAGE	LEGISLATIVE ACTION
01/19/83	01	0053	FIRST READING -- COMMITTEE REPORTS
02/11/83	02	0223	JUD -- DP04, DNP02, OTHER01
02/11/83	03	0223	JUD CITE FIRST USE SUPPL #7
02/23/83	04	0329	SECOND READING
02/23/83	05	0329	AM01 ADOPTED BY DIV 24-13-03
02/23/83	06	0330	ADVANCED TO 3RD READING BY UNAN CONSENT
05/16/83	18	1372	AM01 ADOPTED BY DIV 27-12-01
05/16/83	19	1372	AM02 ADOPTED BY UNAN CONSENT
05/16/83	20	0000	ADVANCED TO 3RD READING BY UNAN CONSENT
02/23/83	07	0330	THIRD READING
02/23/83	08	0330	PASSED BY DIV 24-13-03
02/23/83	09	0331	SEC 2 FAILED BY DIV 25-12-03
02/23/83	10	0331	EFFECTIVE DATE FLD BY DIV 25-12-03
02/23/83	11	0331	NOTICE OF RECONSIDERATION GIVEN
02/25/83	12	0352	RECONSIDERATION NOT TAKEN UP
05/16/83	16	1379	ACTION NO 008 RESCINDED BY UNAN CONSENT
05/16/83	17	1371	RETURNED TO 2ND READING BY UNAN CONSENT
05/16/83	21	1373	PASSED BY DIV 24-15-01
05/16/83	22	1373	COURT RULE FLD BY DIV 24-15-1
05/16/83	23	1374	EFFECTIVE DATE PASSED BY DIV 27-12-01

DATE	SEQ	PAGE	LEGISLATIVE ACTION
02/24/83	13	0279	FIRST READING -- COMMITTEE REPORTS
02/28/83	13	0279	FIRST READING -- COMMITTEE REPORTS
04/15/83	14	0715	MOVED FROM S (). TO JUD BY UNAN CONSENT
05/12/83	15	0967	RETURNED TO HOUSE
			JUDICIARY
			FINANCE
			RULES

**** ** ** *** *** ***

May 11, 1983

Speaker Joe Hayes
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Speaker Hayes:

On advise from Richard Folta, Legal Counsel for the Legislative Affairs Agency, I am respectfully returning, for your attention, House Bill No. 79(ct rule failed) (repealing peremptory disqualification of a judge), which has been in the Senate Judiciary Committee.

Attached you will find a copy of Mr. Folta's memo along with the original and committee copies of the bill.

Sincerely,

Senator Bill Ray, Chairman
Senate Judiciary Committee

Attachments: 3

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3870

MEMORANDUM May 11, 1983

SUBJECT: HB 79 -- effect on court rules

TO: Senator Bill Ray
Chairman, Senate Judiciary Committee

FROM: Richard C. Folta
Legislative Counsel

Section 2 of the above referenced bill as passed by the House reads:

> (d) A judicial officer may be disqualified only under this section or AS 22.30.070.

It is our opinion that Sec. 2 has the effect of changing Rule 10(c) and Rule 25(d), Rules of Criminal Procedure, and Rule 42(c), Rules of Civil Procedure and to be effective the bill must be approved by an affirmative vote of two-thirds of the full membership of each house under Rule 39(e) of the Uniform Rules. The House bill title should also note the change in the court rules; however that can only be accomplished in the House.

RCF:ljb
19/014

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 79
Title "An Act repealing peremptory disqualification of a judge...."
Requested by House Judiciary Committee Date 1/26/83

II. FISCAL DETAIL
Agency Affected Department of Law
Program Category Affected Administration of Justice
BRU, Program, Or Subprogram(s) Affected Prosecution
(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						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL		X	X	X		

Costs that will occur cannot be determined at this time. See analysis below.

FUNDING (Thousands of Dollars)
General Funds costs that will occur cannot be determined at this time.
Please see analysis below.

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

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

Although not quantifiable at this time, this bill has the potential for causing a significant fiscal impact on the Department of Law, the Public Defender and the Court System. The department rarely uses peremptory disqualification and the department's Criminal Division probably does so only 10 or 12 times each year. The problem will arise from the private criminal defense bar which disqualifies some judges 30% or 40% of the time. If the private bar continues to seek this same level disqualification, based on cause, our prosecutors will then have to devote substantial portions of their time participating in a two-tier disqualification hearing process. Without any prior experience to guide us, the department is hesitant to speculate on the actual cost that this bill might cause. The department does believe that this bill will have the effect of hampering its overall ability to prosecute criminal offenses, by diverting already diminished resources from other matters currently being addressed.

IV. DATE January 28, 1983 PREPARED BY Richard L. Pegues, Dir. Adm. Svcs.
AGENCY Department of Law

Schaible, Staley, DeLisio & Cook, Inc.

A Professional Legal Corporation

Fairbanks Office
Grace Berg Schaible
Howard Staley
Dennis E. Cook
Barbara L. Schulmann
Robert B. Groseclose
Charles D. Silvey, Jr.
Gerard R. LaParle
Gregory W. Lessmeier

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Alan Sherry
Joseph M. Moran
Michael G. Geraghty
Patricia L. Zobel
Walter J. Szudlo
Lynn L. Cassel

Of Counsel:
William V. Boggess

March 29, 1983

Representative Anthony N. Vaska
Pouch V
Juneau, Alaska 99811

Re: House Bill 79,
Repealing Peremptory Disqualification of Judges

Dear Representative Vaska:

House Bill 79 would eliminate the peremptory challenge of judges. It would thus only allow challenges of judges for cause under A.S. 22.20.020. If only challenges for cause are allowed, then challenges for cause will increase. Under the present system, I do not hesitate to appear before judges that I have challenged peremptorily. There are many reasons for changing a judge.

However, if you challenge a judge for cause, it is a very serious accusation. You must state, by affidavit, that you feel the judge cannot be fair and impartial. In a way, you are stating the judge has not followed the judicial canons of ethics. S/he has failed to recuse himself or herself when that is what should have happened. If I ever had to challenge a judge for cause, I would never want to appear before that judge again. I would continue to challenge that judge for cause, particularly if that is what my client wanted or insisted upon.

Using this method of disqualification will cause an increase in legal costs and expenses for clients, and will increase the work of judges. Attorneys will have to file motions to disqualify for cause, accompanied by affidavits and memoranda. There will be hearings on the motion. If the motion is first denied, then it is assigned to another judge for hearing under A.S. 22.20.020(c). If the motion is still denied, the question can go up on appeal, or at least a petition for review can be filed. The peremptory challenge system is so much more efficient, that it should be retained.

If there are problems because there are single judge districts, those are problems should be solved by ingenious

use of telephone hearings, and, if necessary, assignment of a judge from a different district to handle motions and the trial. Eliminating the peremptory challenge of judges will not solve the problem.

Alaska is still a small enough state that many people know judges that they come before. If they are not comfortable, for whatever reason, they should have the right to one peremptory challenge. The times when this has become a problem for the court system are times when a judge has announced publically the sentence s/he intends to give in all drunk driving cases, for example, or cases where lawyers and litigants have consistently felt that the judge's demeanor or decisions were unacceptable.

The peremptory system works very efficiently. If a judge is challenged, another judge is very simply assigned to the case. One piece of paper needs to be filed by the attorney, and another is filed by the courts. (See Civil Rule 42.)

The peremptory challenge of judges should be retained. I urge you to defeat House Bill 79.

Sincerely,

SCHAIBLE, STALEY, DeLISIO & COOK, Inc.

By: Barbara L. Schuhmann
Barbara L. Schuhmann

BLS:skb

...STATE LEGISLATURE

73th Legislature FIRST Session

HOUSE BILL NO. 79

By FRITZ, LISKA

An Act repealing peremptory disqualification of a judge and changing Rule 10(c) and Rule 25(d), Rules of Criminal Procedure and Rule 42(c), Rules of Civil Procedure; and providin for an effective date.

Peremptory disqual. Judge

...ed in the House 1/19, 19 83

4 5 6 7 8 9 10 11 12

May	13	~~Reported back with recommendation~~
May	16	Unfinished Business
May	16	Read second time and
May	11	Read third time and
May	16	PASS Effective Date Yeas 24 Yeas 27 Nays 15 Nays 12 Absent 0 Absent 0 Excused 1 Excused 1
May	16	~~Reconsideration~~ PASS Effective Date Yeas 24 Yeas Nays 15 Nays Absent 0 Absent Excused 1 Excused Reported correctly engrossed Signed by Speaker Sent to Senate

CHIEF CLERK OF THE HOUSE

HISTORY IN THE SENATE

1983		Read first time and referred to Committee on
2	28	S. A. - Judiciary
4	15	~~Reported back with recommendation~~
5	2	~~Returned to Senate for action~~
5	17	~~recommendation that~~ Jud. Fin
		Read second time and
		Read third time and
		PASS Effective Date Yeas Yeas Nays Nays Absent Absent Excused Excused
		Reconsideration PASS Effective Date Yeas Yeas Nays Nays Absent Absent Excused Excused Reported correctly engrossed Signed by President Returned to House

SECRETARY OF THE SENATE

HISTORY IN THE

19		Received from Sen
		Concurred in Senat thus adopting: VOTE
		Failed to concur in ment; asked Senate VOTE
		Senate receded fro VOTE
		Senate failed to rec amendment VOTE
		CC appointed by H
		CC appointed by S
		CC adopted by Ho VOTE
		CC adopted by Sen VOTE
		To enrolling Reported correctly Sent to Governor
		.....
		Filed with Lt. Gov
		Chapter No. .....

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Lynn L. Cassel

Of Counsel:
William V. Boggess

March 29, 1983

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Pouch V
Juneau, Alaska 99811

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Sincerely,

SCHAIBLE, STALEY, DeLISIO & COOK, Inc.

By: Barbara L. Schuhmann
Barbara L. Schuhmann

BLS:skb

Alaska Judicial Council

1031 W. Fourth Avenue, Suite 301
ANCHORAGE, ALASKA
99501
(907) 278-2526

February 28, 1983

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

Dear Senator Ray:

At the request of Judicial Council members, the Council's staff undertook a review of potential solutions to problems created by peremptory challenges to judges. Our work focused on solutions which permit the continued existence of the right to such challenges while alleviating the administrative problems created by their frequent use. Because your committee will be considering both SB 100 and HB 79, we are providing our preliminary memorandum for your information.

The enclosed memo describes our research completed prior to the Council's meeting on February 15 - 16, 1983. Our final report will be presented to the Joint Judiciary Committee on April 6. If you would like to have further information beforehand, please let me know.

Sincerely,

Francis L. Bremson
Executive Director

FB/pd

Enclosure

May 20, 1983
SR #20997-A
Fairbanks Alaska 99701

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

Re: House Bill No. 79am

Dear Senator Ray:

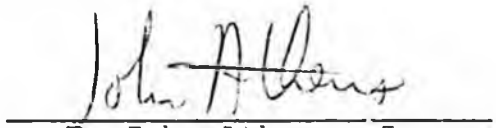
Please do not pass the bill that would repeal the peremptory disqualification of a judge. I am an attorney and have been practicing law in both the public and private sector in Fairbanks for almost twelve years. I consider the right to peremptorily disqualify a judge one of the most important rights afforded a litigant under the court rules. Not only is it important to defendants in criminal cases, but it is at least equally important to plaintiffs and defendants (including the State) in civil cases and to the prosecution in criminal cases.

Although there are many reasons why a litigant might choose to disqualify a judge, the chief value of the right to disqualify a judge is that it gives the litigants a feeling of being treated fairly by the court system. If litigants feel that a judge may be biased or predisposed to rule in a certain way, the credibility and effectiveness of the justice system is severely curtailed.

Also, there needs to be a way for parties to keep a bad judge from hearing their case. Disqualification of a judge for cause under AS 22.20.020 is difficult and only applies in very limited circumstances. A peremptory disqualification is a very efficient way for a party to free himself from the control of a judge who the party thinks (rightly or wrongly) will treat him unfairly.

Please listen to the lawyers (both private and public) and judges that are involved in the justice system and have direct experience with peremptory disqualifications. Please don't base your decision on whether to pass the bill on budgetary reasons. I know of exceedingly few lawyers who believe that this valuable right to peremptorily disqualify a judge should be done away with. Whatever good might be accomplished by the repeal will be vastly overshadowed by the resulting erosion of public confidence in the court system.

Very sincerely,



E. John Athens, Jr.

TAKEN FROM THE SENATE JUDICIARY COMMITTEE MEETING MINUTES OF

MAY 11, 1983:

The third order of business was House Bill 79--Repealing peremptory disqualifications of judges, as to which Senator Ray announced that he is sending the bill back to the House with a letter to Speaker Hayes, (letter attached) stating that, based on information recently received, it is the Judiciary Committee's belief that the bill was either improperly passed or the title is wrong and that these problems must be resolved by the House. There were no objections to this course of action and it was so ordered.

TESTIMONY OF JUDGE JAMES D. HORNADAY, HOMER
February 2, 1983

Mr. Chairman and ladies and gentlemen of the Committee, thank you for holding this hearing and inviting me to address the Committee. I hope I am not the monster judge that everyone has been talking about. My name is James D. Hornaday and from a perspective of nearly 20 years in Alaska I am speaking to you today as a judge. The judicial cannons permit and even require that judges speak out for the improvement of the administration of justice. And with all of the comments by many of my lawyer friends I feel a little like David when he went up against Goliath. The men and women of good will can and do differ in their opinions, and it does remind a little of the old Alaska adage that if the lawyers are against something it must be worthwhile. I wish it were someone else who was on the line rather than me, frankly I would rather be playing basketball or working on a legal history project. But the question of the peremptory challenge is involved with the independence of the judiciary and the decreasing respect for the judiciary. First of all, the peremptory challenge is not a fundamental constitutional right; it does not even exist anywhere in the Federal system, and there are Federal judges in every state and territory. Apparently it does not even exist in the vast majority, about two-thirds of the states. Alaska is in the extreme minority. It did not exist in Alaska until a few years ago when some lawyers pushed it through the Legislature. The Federal system and the majority of states get along just fine without it. Now as one example, drunk driving cases are the most serious problem facing the Alaska Court System. Over half of all the jury trials in the entire Court System are drunk driving cases. Drinking was involved in over 80% of the traffic fatalities; over 200 thousand are killed or injured annually on our nation's highways. Let's make clear what the Legislature has already done; the Legislature has passed legislation providing for up to one year in jail and $5,000 fine, revocation of licenses and community work. Now the statutes specifically states that for the first offense a defendant is to receive not less than 72 consecutive hours. It is too serious a problem to leave in the hands of the attorneys and that is the non-effect of the peremptory challenge without cause. Judges are concerned about the peremptory challenge; it is affecting sentences. The Chief Justice has stated publicly that the peremptory challenge moderates sentences and that a judge has to walk a fine line and if they get too far over they will be removed by the peremption. I was told by the presiding judge that I had to take peremptions into consideration when I sentence. It is the most frequent topic of conversation at the Annual Judicial Conference. The leading authority on court delay called the Alaska peremptory challenge an absolute abomination, those were his words. Representatives of the National Center of State Courts were amazed at the existence of the removal without cause. I have heard judges tell the Chief Justice they are concerned about the peremption. It is a problem state-wide, not just in Homer. You have heard the lawyer in Bethel and the problems there. You've heard the judges in Fairbanks. It exists in Kodiak, Ketchikan, Juneau and all over the state, even in multi-judge areas. Now we announced a pattern of sentencing in drunk driving cases in Homer about a year ago which was effective, but sentences were clearly within the sentences permitted by the Legislature. Fifteen days is less than 5% of the maximum penalty. Although the announced pattern is no longer in effect and was rescinded when the higher court ruled that it could not be applied. There are sentencing patterns in Alaska, attorneys keep records of the sentences of judges. So there are patterns but known only to the judges and the lawyers. The public, including the potential defenders, do not know the patterns. It is time to open up the System and bring it out from behind the closed doors of the

legal profession. Now I was a lawyer for 10 years and you are never going to satisfy the lawyers on sentencing. About 6 years ago we initiated the first work program, alternate work program, for drunk drivers in Alaska. Some lawyers supported, but other complained that work was a cruel and unusual punishment. Now the program has been reinstituted pursuant to the community work which the Legislature has made a sentencing tool. Now the lawyers are complaining that we are giving too much community work. Also the argument that the System would be flooded with time consuming challenges for cause is questionable, as several attorneys have indicated that they would not use challenges for cause. Further the presiding judge denied a challenge because against me on hearing a DWI case after the announced policy was rescinded. The hearing took all of 10 minutes. The Court System and the people of Alaska should not be held held hostage by attorneys threating to plug the System with challenges for cause. Further judges will disqualify themselves if for some reason they should not hear a case. There is already a procedure for this approach that is in effect. However, again note that a judge has to give a reason why they are disqualifying themselves. Related to the peremptory challenge is another deep concern which I have as a 20 year Alaskan and as a lawyer and a judge and a citizen, and that is the growing lack of respect for the Alaska Judiciary among the members of the public. Reportedly, concern over the Justice System trailed only the capitol move and subsistence in intensity in the recent election. Almost half of the voters in the Third District voted not to retain the trial judges last November. This negative vote is up nearly 10% in only 4 years. How many years will it be before all judges are defeated? Some of the longer serving judges remember when they received 85% approval ratings. For the first time in nearly 20 years in the legal profession, so many people told me they were voting against all of the judges that I lost count. And note that, at least to-date, that most of the people, most of the lay people, testifying to you are against the peremption, only the lawyers are testifying before you in favor of it. That should tell you something. We pride ourselves in Alaska on the merit selection appointment procedure for judges. The Judicial Council recommends the Governor appoints and the people vote, and yet the present situation with the peremptory challenge is worse than the most partisan political election of judges, and that a very few attorneys can remove a judge a hold the System hostage. The cost to the public and the wasted expense and time is high. The selection process of which we are so proud and the public vote means absolutely nothing. Just as an example, I was required to move to Homer to take the judgeship in Homer. The Judicial Council recommended me for Homer and the Governor specifically appointed me to Homer. The family moved here and has put down deep roots; we have children in school of all ages. I received good ratings from the lawyers and the highest rating from the Alaska Peace Officers and was retained overwhelming by the voters in the November election in my home area by a 2 to 1 margin. And although I appreciate Mrs. Barnes' invitation to Anchorage, I would prefer frankly to remain in Homer. I did live in Anchorage for a couple years and I have, we have, a lot of friends up there, however we are pretty deeply rooted in Homer at the present time. Two weeks after the election I was asked to transfer to Anchorage because of the peremptions. I have been assured that there is no other reasons for my transfer, only the peremptions. None of my sentences have ever been reversed as excessive. Now there are checks and balances that are far more appropriate than peremptions without cause and they are numerous. If a judge is doing something improper turn them over to the Judicial Qualifications Commission, or challenge the judge for cause, or test the judge in the retention elections, or appeal the judge's decision, or ask the judge to voluntarily disqualify himself. The message is going out loud and clear to the judges in Alaska, to the attorneys and to the public that inspite of the vote of thousands that vote means nothing, and a handful of attorneys can accomplish the transfer

of a judge, and threaten other judges through peremptions for which they do not even have to give a reason. All the attorneys have talked about before you are the rights of their clients, and these are important rights, no one would say that they are not. But what about the rights of the victims? What about the rights of society? The Constitution clearly requires a judge to sentence to protect society and reformation. No where in the Constitution, in the statutes or in the case law is there any indication that a judge is to sentence in order to avoid peremptions. And yet the Chief Justice of the Alaska Supreme Court has stated publicly that this is happening, and any judge who will level with you will tell you the same. The tail is wagging the dog at the present time as the attorneys are in effect controlling sentencing, and are now even controlling the transfer of judges. Thank you.

Superior Court
State of Alaska
FOURTH JUDICIAL DISTRICT
P.O. BOX 130
BETHEL, ALASKA
99559

CHAMBERS OF
CHRISTOPHER R. COOKE, PRESIDING JUDGE

PHONE: (907) 543-2298

January 19, 1983

Mr. Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

Enclosed is my response to your questionnaire of January 10, 1983. I am glad the Legislature has taken the time and effort to gather information from those involved in the criminal justice system regarding problems and recommendations for change.

As judge in a single-judge court in a rural region, many of my responses reflect perceptions from this vantage point. I am not fully informed as to the operation of all components of our system throughout the state.

I would like to underscore several matters raised in the questionnaire. First, I believe we are facing a crisis in our correctional system. Additional facilities must be built at once, and in particular the long-promised but never-built jail facility in Bethel should be constructed without further delay.

It also appears to me that a large number of the people being committed to jail from this region are young, unsophisticated, uneducated, and lacking in basic employment skills. This situation may grow more acute with the trend toward presumptive sentences for first offenders and a possible easing of waiver standards for juvenile offenders. I think special consideration should be given to establishing a correctional institution aimed at youthful offenders where they could receive an opportunity for education and vocational training without being co-mingled with more experienced convicts.

The peremptory challenge problem is a difficult one for a single-judge location. However, I am not convinced that the proposed elimination of the challenge would be an improvement. It would produce more challenges for cause which would be time consuming to resolve and might tarnish the

image of the judge system. However, I think that the court system could do a better job of responding to change of judge situations.

I am pleased with your interest in examining the use of peremptory challenges in jury selection. I think that a reduction in the number of challenges would speed up the trial process greatly particularly in rural locations where convening juries is expensive and time-consuming. Often it takes us longer to select a jury for a felony trial than it does to present the evidence. I would suggest a reduction of peremptory challenges to three on each side, the number used in civil and misdemeanor cases, for all trials. This will also greatly reduce the possibility that peremptory challenges can be used to manipulate the jury to exclude, for example, members of a particular racial group or women in sexual assualt cases, etc.

Thank you again for your interest in these matters.

Very truly yours,

Christopher R. Cooke

Christopher R. Cooke
Superior Court Judge

CRC:fs

cc: Senator John Sacket
Representative Tony Vaska

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

...Y STATE CAPITOL
...AU, ALASKA 99811
...907 465 3800

Another memo
May be coming
from [illegible] Fulton,
Leg. Counsel saying
the bill must go
back to the House

MEMORANDUM   May 26, 1983

SUBJECT: Status of HB 79

TO: Senator Robert H. Ziegler, Sr.

FROM: Billy G. Berrier BGB
Director
Division of Legal Services

You have asked whether, in light of the procedural history of this bill, it is properly before the Senate Judiciary Committee.

In my opinion it is properly before the committee.

Changing a court rule is the only legislative procedure which has essentially been prescribed by our Supreme Court. In Leege v. Martin, 379 P.2d 447 (Alaska 1963), the Court held:

> "Judicial power to make rules of practice and procedure is not absolute. The legislature may change rules initiated by the judiciary when the desirability of making a change is evident, such as in a case where a particular rule of procedure may involve considerations of public policy that are better left to the legislature to pass upon. But this power of legislative review is not without restrictions. The constitutional convention was careful to provide that court rules could not be changed as simply as other laws could be enacted. A two-thirds vote of the members elected to each house, rather than a simple majority, is required in order to change rules of practice and procedure.
>
> "The object of such a limitation is to prevent unintentional, rash, ill-considered and too easy intervention by the legislature which would ultimately frustrate the sound purpose in giving courts the primary authority and responsibility for regulating their own affairs.

> But that object cannot be achieved unless the attention of the legislature is directed to the fact that it is employing, not just its general power of enacting laws, but its particular power of reviewing the exercise of an authority vested in the judicial branch of government. During every session since statehood the legislature has passed laws containing some procedure. Efforts are being made to more effectively screen all bills to eliminate procedure, but the danger that bills containing some procedure will escape notice and be enacted will always be present. Unless the specific intent of the legislature to change procedure is expressed in the bill itself, the courts, as a matter of practical necessity, will have to regard procedural changes as unintentional. While the procedure that may be contained in a given bill was included with the best of intentions and without realizing its possible effect on established court operations, it often is so basic as to require wholesale revision of as many as six sets of court rules. The only answer is cooperation between the legislative and judicial branches. Notification in the bill itself that the intent to change procedure seems to be a partial answer. Another partial answer is to advise the Supreme Court when such a bill is being considered and give it an opportunity to be heard so that the legislature will be advised on all ramifications of the proposed change.
>
> "As a matter of reason and necessity and in order to give article IV, section 13 of the constitution a practical working interpretation, we must hold that a legislative enactment will not be effective to change court rules of practice and procedure unless the bill specifically states that its purpose is to effect such a change. Since chapter 112 does not contain such a statement of purpose, that portion of the statute which purports to forbid the granting of stays pending appeal is ineffective and does not change rules of practice and procedure made and promulgated by this court."

The legislature has prescribed in its Rules that a change in Court Rules must be noted in the title, must contain a section expressly citing the Court Rule and must note the change proposed. This satisfies the notice requirement in Leege.

However, the legislature has the power to make substantive law which involves court procedure without changing the rules. The statutes involved in HB 79 are basically substantive law but also contain procedural matters. In Channel Flying, Inc. v. Bernhardt, 451 P.2d 579 (Alaska 1969), the Court held:

> "Respondents also contend that AS 22.20.022 is invalid as violating the rule-making power of this court. The Alaska Constitution vests in the supreme court the authority to 'make and promulgate rules governing practice and procedure in civil and criminal cases in all courts.' The legislature has no power to makes rules, but only to change them by two-thirds vote. The question here is whether the disqualification statute constitutes a rule governing practice and procedure in the courts which the legislature had no constitutional authority to make. The answer to that question depends on whether the subject matter of the statute is substantive or procedural. If it is substantive in nature it is a matter within legislative prerogative; if it is procedural, it falls within the ambit of this court's rule-making power.
>
> "This statute does not merely regulate procedure. With or without it the particular action in court takes the same course. The statute rather creates and defines a right -- the right to have a fair trial before an unbiased and impartial judge. This is something more than merely prescribing a method of enforcing a right. The main subject matter of the statute is substantive in nature and was within the province of the legislature to deal with. AS 22.20.022 is not invalid as an attempt to usurp the rule-making powers of this court insofar as it provides for a peremptory disqualification of a judge."

Based solely on that holding it would appear that the bill does not change the Court Rule. However, the holding was somewhat modified by Gieffels v. State, 552 P.2d 661 (Alaska 1976), where the Court held:

> "AS 22.20.022 encompasses both procedural and substantive matters. In Channel Flying, Inc. v. Bernhardt, supra, 451 P.2d at 576, we held that:

> "'AS 22.20.022 is not invalid as an attempt to usurp the rule-making powers of this court insofar as it provides for a peremptory disqualification of a judge. (emphasis added)'

"The procedure to be followed in implementing the substantive right created by AS 22.20.022, however, is subject to the rule-making powers of the court.

In Roberts v. State, 458 P.2d 340, 346 n. 17 (Alaska 1969), we implied that perhaps not all of AS 22.20.022 was a valid exercise of legislative power:

> "'In certain respects AS 22.20.022 was sustained as a valid exercise of legislative power in Channel Flying, Inc. v. Bernhardt . . . (emphasis added)'

"Although the legislature has the power to create the right to a fair trial before an unbiased judge, and the right to pre-empt a judge without requiring actual proof of bias or interest, it has very limited power to provide for the means by which that pre-emption right may be exercised. Until the legislature validly changes Criminal Rule 25(d), that rule is the sole provision which may be consulted in determining whether the pre-emptive right was properly exercised and the effect of the pre-emption on the procedural and administrative functions of the court system. Therefore, insofar as Rule 25(d) regulates only the procedural aspects of the peremptory right created by AS 22.20.022, and to the extent that the rule does not infringe upon the substantive right created by statute, the provisions of Rule 25(d) supersede the legislative enactment.

"Criminal Rule 25(d) regulates the means or method by which a party's peremptory challenge takes effect. The major changes found in Rule 25(d) provide for different time limitations, do away with the need for the filing of an affidavit alleging the inability to obtain a fair and impartial trial and specify the procedure to be followed when a presiding judge is challenged. These changes, for the most part, in no way impair the substantive right to a fair trial before an unbiased judge created by AS 22.20.022; in fact, Rule 25(d) generally

> liberalizes the method by which a party may exercise a peremptory challenge."

Under both the case law and the Uniform Rules failure to adopt a change in Court Rules does not defeat the substantive provision in a bill.

The bill clearly has legal effect apart from whatever change it makes to the Court Rules. Peremptory challenges are made under AS 22.20.022 and questions, other than procedural questions, are decided under that law.

While the procedural history of the bill is complex it can be readily summarized. The House adopted the substantive language of the bill and failed the effective date and the change in Court Rules. The bill was sent to the Senate and then returned to the House. The House rescinded its actions and by amendments added the change in Court Rules and the effective date provisions back in the bill. The House then adopted the bill and adopted the effective date, but again failed to adopt the change in Court Rules. It again transmitted the bill to the Senate where it was referred to the Senate Judiciary Committee.

As I noted above the bill has substantive effect even without the change in Court Rules. Of course, without the change the Court Rules would prevail to the extent there is a conflict.

Rule 39(e) of the Uniform Rules provides that

> If the section effecting a change in the court rule fails to receive the required two-thirds vote, the section is void and without effect and is deleted from the bill.

In this instance both the substantive change and the procedural change are inherent in the same section. Therefore, the section cannot be deleted. In light of the notice requirements in Leege, it would be very questionable to delete the Court Rules reference.

Although both the legal and procedural aspects are complex it is my opinion that the bill is properly before the committee.

BGB:ljb
22/002

Alaska Judicial Council

NONATTORNEY MEMBERS
MARY JANE FATE
JOHN E. LONGWORTH
ROBERT H. MOSS

ATTORNEY MEMBERS
JAMES B. BRADLEY
JOSEPH L. YOUNG
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CHIEF JUSTICE,
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EXECUTIVE DIRECTOR
FRANCIS L. BREMSON

February 2, 1983

M E M O R A N D U M

TO: Judicial Council Members

FROM: Francis L. Bremson

RE: Peremptory Challenges of Judges

The Judicial Council voted on December 3, 1982 to examine the use of peremptory challenges to judges in other states. The purpose of this review was to determine whether there were tested solutions to the administrative problems which can arise with the frequent use of challenges in single-judge courts. Ms. Teri Carns was assigned responsibility for taking a preliminary look at available literature, contacting court personnel in other states, and using other means as needed to outline potential avenues for further exploration. Ms. Carns will be available to discuss this subject at our meeting on February 15. The following memorandum summarizes her research to date.

1) States Allowing Peremptory Disqualification of Judges

All of the following states have some procedure, whether statutory or embodied in court rules, which is similar to Alaska's peremptory challenge of judges.

Arizona	Minnesota	North Dakota
California	Missouri	Oregon
Idaho	Montana	South Dakota
Illinois	Nevada (civil only)	Washington
Indiana	New Mexico	Wisconsin
		Wyoming

The list is taken from an article in the Oregon Law Review (Disqualification of Judges for Prejudice or Bias, 48 Ore. L. Rev. 311 (1969)). Because the article is fourteen years old, more states may have adopted peremptory challenge provisions during the intervening years. The article notes that some states require affadavits supporting the allegation of bias or prejudice, while the most restrictive states do not allow prejudice or bias of the judge as the sole ground for his disqualification.

2) Studies Available on Peremptory Challenges

We have received reports or studies from California, Idaho, Illinois, the National Center for State Courts, and the American Bar Association. Much of the material received has focused on legal rather than administrative aspects of challenges. Only two studies involving data collection have been received. The California Judicial Council prepared a study in 1962, five years after legislation authorizing peremptory challenges had been passed. The Council found no significant problems at that time. An Idaho study completed in December 1982 noted that three (of 21) judges in the state had been challenged frequently, but most of the challenges were in multi-judge courts. Neither study appears to be particularly relevant to the present situation in Alaska.

The other reports which have been sent to us include copies of statutes and court rules from several states, a report from the National Center for State Courts which describes various grounds for disqualifying judges, recommendations and commentary from the American Bar Association, and an Illinois judicial discipline case centering on the use of peremptory challenges by an Illinois law firm. All of these reports provide useful background information about the range of possibilities in the legal interpretation of peremptory challenges. They would certainly be helpful in drafting legislation or changes in court rules, but none of them address the administrative issues which the Council staff's work was to emphasize.

3) Administrative Solutions

Telephone conversations with court administrators in several states proved to be the most efficient way of discovering answers to the questions raised by Judicial Council members. Three of the states contacted thus far had developed procedures to be used when a judge was disqualified. These are described below.

A. Washington. Pro-tem judges are used in single-judge courts when the regular judge is disqualified in civil cases. An attorney is chosen from a pool of local "experienced" (at least ten to fifteen years of legal practice) lawyers. Parties to the action must stipulate that the attorney is acceptable to them as a judge for the case; if not, another attorney is chosen. In criminal cases, the disqualified judge is apparently responsible for obtaining another judge, although the procedure for this was not discussed.

B. California. Judges in single-judge courts are matched, at the time of their appointment, with another judge in a nearby court in a reciprocal arrangement. If either judge is disqualified, the reciprocating judge automatically takes his place. If both are disqualified, the central administrative office becomes involved in assigning a third (or additional) judge(s). The court's administrative office said that this reciprocal arrangement was effective enough that peremptory challenges did not create serious administrative problems. Pro-tem judges (attorneys appointed on a case-by-case basis, as in Washington) had been employed at one time, but the office said that California's experience with them was not positive enough to continue their use.

C. Wyoming. A judge challenged in Wyoming is allowed to select his own replacement from among all the judges of the state. The effect of this policy is that peremptory challenges are rarely used. If the judge is being disqualified because of his sentencing policies, he can replace himself with a judge who has similar philosophies. It may be noted that some states prohibit the disqualified judge from naming another judge to hear the case, precisely for the reason that he could frustrate the intent of peremptory challenges by choosing a judge with similar philosophies or biases. Countering that, the former Wyoming court administrator contends that allowing the judge this option prevents "judge-shopping".

One other solution which has been suggested for use in Alaska is teleconferencing. The Council staff has not had the opportunity to thoroughly research this possibility. It is presently used by the court on occasion, and may be significantly less costly than transporting a judge to outlying communities.

Further Work

The Judicial Council staff will continue to contact states which allow peremptory challenges to determine what other administrative solutions or legal alternatives may be available.

FLB/jrm

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M May 11, 1983

SUBJECT: HB 79 -- effect on court rules

TO: Senator Bill Ray
Chairman, Senate Judiciary Committee

FROM: Richard C. Folta
Legislative Counsel

Section 2 of the above referenced bill as passed by the House reads:

> (d) A judicial officer may be disqualified only under this section or AS 22.30.070.

It is our opinion that Sec. 2 has the effect of changing Rule 10(c) and Rule 25(d), Rules of Criminal Procedure, and Rule 42(c), Rules of Civil Procedure and to be effective the bill must be approved by an affirmative vote of two-thirds of the full membership of each house under Rule 39(e) of the Uniform Rules. The House bill title should also note the change in the court rules; however that can only be accomplished in the House.

RCF:ljb
19/014

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 79
Title "An Act repealing peremptory disqualification of a judge..."
Requested by House Judiciary Committee Date 1/26/83

II. FISCAL DETAIL
Agency Affected Department of Law
Program Category Affected Administration of Justice
BRU, Program, Or Subprogram(s) Affected Prosecution
(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						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL		X	X	X		

Costs that will occur cannot be determined at this time. See analysis below.

FUNDING (Thousands of Dollars)
General Funds costs that will occur cannot be determined at this time. Please see analysis below.

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

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

Although not quantifiable at this time, this bill has the potential for causing a significant fiscal impact on the Department of Law, the Public Defender and the Court System. The department rarely uses peremptory disqualification and the department's Criminal Division probably does so only 10 or 12 times each year. The problem will arise from the private criminal defense bar which disqualifies some judges 30% or 40% of the time. If the private bar continues to seek this same level disqualification, based on cause, our prosecutors will then have to devote substantial portions of their time participating in a two-tier disqualification hearing process. Without any prior experience to guide us, the department is hesitant to speculate on the actual cost that this bill might cause. The department does believe that this bill will have the effect of hampering its

IV. DATE January 28, 1983 PREPARED BY Richard L. Pegues, Dir. Adm.Svcs.
AGENCY Department of Law
PHONE 465-3672

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/82)

OMB review by Guy Bell

overall ability to prosecute criminal offenses, by diverting already diminished resources from other matters currently being addressed.

HB

82

COMMITTEE REPORT

SENATE

FURTHER:

Date: _____

Mr. President:

The Committee on _____ has had _____ _____

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

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

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

and recommends _____

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

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

_____

_____

_____

_____

_____

_____

_____

_____

_____

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

_____

_____

_____

_____

_____

_____

CHAIRMAN

HB

91

COMMITTEE REPORT

SENATE

FURTHER:

Date: _____

Mr. President:

The Committee on _____ has had _____

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

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] 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

Lee Joseph Hess

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____
CHAIRMAN

FILE WITH HB 91

Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811

REPRESENTATIVE
ROBERT H. "BOB" BETTISWORTH

211 CUSHMAN STREET
FAIRBANKS, ALASKA 99701

M E M O R A N D U M

TO: Senator Bill Ray, Chairman
Senate Judiciary Committee

DATE: January 12, 1983

FROM: Representative Bettisworth PHB

RE: Scheduling of SCSHB 91 (HESS) "An Act relating to disclosure of vital statistic records and information; and providing for an effective date."

At this time I would like to request that SCSHB 91 (HESS) be scheduled for hearings by the Senate Judiciary Committee at your earliest convenience.

As you can see, the House Judiciary Committee made two changes to the original bill:

1. Amended language on lines 20 & 21 to include other than genealogical or historical research; and

2. deletion of regulative authority by the Department, line 25.

These changes appear to be somewhat restrictive and cumbersome and were removed by the Senate HESS Committee in the current version of the bill. This version of HB 91 is consistent with my original intent.

I will be out of town during the week of January 16-22 and will be available beginning January 23. My staff member, Linda Otey, can be contacted for any further information. Thank you for your consideration of this request.

POSITION PAPER

SENATE CS FOR CS FOR HOUSE BILL NUMBER 91 (HESS)

6-9-83

"An Act relating to disclosure of vital statistics records"

The amendment to AS 18.50.310 to add a new subsection under (f) is similar to a provision in the Model State Vital Statistics Act which is endorsed by the Council of State Governments.

By making public, birth records after 100 years, and death, marriage, and divorce records after 50 years, it will satisfy the need expressed by many who desire to research their "roots". Because of the model law, many states have enacted this provision, with success, because, those vital records relating to the living and next of kin, are still primarily protected.

Passage of Senate CS For CS For House Bill No. 91 (HESS) would make public about 33,000 of the 700,000 records in the custody of the State Registrar of Vital Statistics.

It is acknowledged that care must be exercised in providing a place for the public review of these records, while assuring the continued safekeeping of the documents. The existing staff can monitor the record review.

The Department of Health and Social Services recommends passage of Senate CS for CS for House Bill No. 91 (HESS).

RECOMMENDED BY: Joan T. Brooks

JOAN T. BROOKS
STATE REGISTRAR
BUREAU OF VITAL STATISTICS

DATE: June 2, 1983

RECOMMENDED BY: Daniel J. Middleton

DANIEL J. MIDDLETON
DIRECTOR
DIVISION OF PLANNING, POLICY,
AND PROGRAM EVALUATION

DATE: June 2, 1983

APPROVED BY: Robert Lemon Smith

ROBERT LEMON SMITH, M.D.
COMMISSIONER

DATE: 6/7/83

DEPARTMENT OF HEALTH & SOCIAL SERVICES/Department of Health & Social Service

STATE OF ALASKA
FISCAL NOTE | Revision Date , 1983

I. REQUEST
Bill/Resolution No.: SCS for CS for HB91
Title: Disclosure of Vital Statistics
Sponsor: Bettisworth
Requestor: Senate HESS

II. FISCAL DETAIL
Agency Affected: Health & Social Services
Program Category Affected:
BRU, Program of Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

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

The source of funding was not identified by the sponsor.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Joan P. Broaker M.P.H. Phone: 465-3391
Division: Planning, Policy & Program Evaluation/ Vital Statistics Date: June 2, 1983

Approved by Commissioner: Robt Loraine Smith M.D. Date: 6/7/83
Department: Department of Health and Social Services

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)

3/83

Effect of amendments. — The 1970 amendment inserted "dissolution" near the beginning and near the middle of the first sentence of subsection (a) and near the middle of subsection (b), and inserted "petitioner or" at the beginning of the second sentence of subsection (a).

Article 4. Records.

Collateral references. — 39 Am. Jur. 2d, Health, § 51; 66 Am. Jur. 2d, Records and Recording Laws, §§ 1-30.

39A C.J.S., Health and Environment, §§ 41, 42.

Sec. 18.50.290. Corrections and amendments. (a) A certificate or record registered by the bureau may be amended only in accordance with this chapter and the regulations the department adopts to protect the integrity and accuracy of vital statistics records.

(b) A certificate that is amended under this section shall be marked "amended," with the date of amendment. A summary description of the evidence submitted in support of the amendment shall be endorsed on or made a part of the record. The department shall prescribe by regulation the conditions under which additions or minor corrections may be made to vital statistics records without the certificate being considered amended.

(c) Upon receipt of a certified copy of a court order changing the name of a person born in the state and upon request of the person or his parent, guardian, or legal representative, the state registrar shall amend the certificate of birth to reflect the new name.

(d) When a certificate is corrected or amended under this section, the state registrar shall instruct the local custodian of the copy of the certificate to make the changes in the copy. (§ 25 ch 118 SLA 1960)

Sec. 18.50.300. Reproduction of records. To preserve original documents the state registrar may prepare typewritten, photographic, or other reproductions of original records and files in his office. When certified by him, the reproduction shall be accepted as the original record. (§ 26 ch 118 SLA 1960)

SCSHB91

Sec. 18.50.310. Disclosure of records. (a) To protect the integrity of vital statistics records, to insure their proper use, and to insure the efficient and proper administration of the vital statistics system, it is unlawful for a person to permit inspection of, or to disclose information contained in vital statistics records, or to copy or issue a copy of all or

part of a record, except as authorized by regulations issued under this chapter.

(b) The bureau may permit the use of data contained in vital statistics records for research purposes.

(c) Information in vital statistics records indicating that a birth occurred out of wedlock shall not be disclosed except upon order of a superior court or as provided by regulations.

(d) Appeals from decisions of the custodians of local records refusing disclosure under (a) and (b) of this section shall be made to the state registrar, whose decision is binding upon the custodians of local records.

(e) The department may by regulation provide for the release of information to authorized representatives of organizations or foundations that counsel the next of kin of victims of infant sudden death syndrome. (§ 27 ch 118 SLA 1960; am § 1 ch 132 SLA 1978)

→HB91 &SCSHB91 (f) new subsection; Statute of limitations

Effect of amendments. — The 1978 amendment added subsection (e).

Sec. 18.50.320. Copies of data from vital records. Except as otherwise provided and in accordance with the regulations adopted under AS 18.50.310,

(1) the bureau and the custodian of permanent local records shall, upon request, issue a certified copy of a certificate or record in their custody, or a part of it and each copy issued shall show the date of registration or recording; and copies issued from records marked "delayed," "amended," or "court order" shall be similarly marked and shall show the effective date;

(2) a certified copy of a certificate or a part of it issued in accordance with (1) of this section is considered the original for all purposes, and is prima facie evidence of the facts stated, provided that the evidentiary value of a certificate or record filed more than one year after the event, or a record which has been amended, or a presumptive death certificate, shall be determined by the judicial or administrative body or official before whom the certificate is offered as evidence;

(3) the National Office of Vital Statistics may be furnished the copies or data it requires for national statistics, if the bureau is reimbursed for the cost of furnishing the data and the National Office of Vital Statistics shall not use the data for purposes other than statistical purposes unless authorized by the state registrar;

(4) federal, state, local, and other public or private agencies, upon request, may be furnished copies or data for statistical purposes on the terms or conditions prescribed by the bureau;

(5) no person or agency may prepare or issue a certificate or part of a certificate which purports to be an original, certified copy, or copy of a certificate of birth, death, fetal death, or marriage, except as authorized in this chapter or the regulations adopted under it. (§ 28 ch 118 SLA 1960)

Section 2/SCSHB91

Sec. 09.25.090. Objections to tender. The person to whom a tender is made shall at the time specify any objection the person may have to the money, instrument, or property, or the person waives it. If the objection is to the amount of money, the terms of the instrument, or the amount or kind of property, the person shall specify the amount, terms, or kind which the person requires, or is precluded from objecting later. This section shall not be construed to modify or change in any manner corresponding provisions of the Uniform Commercial Code (AS 45.01 — 45.09). (§ 3.20 ch 101 SLA 1962)

NOTES TO DECISIONS

It is not necessary to tender cash. Ward v. Miller, 13 Alaska 752 (1952)

And a check, unobjected to, would constitute a proper tender. Ward v. Miller, 13 Alaska 752 (1952).

Sec. 09.25.100. Disposition of tax information. Information in the possession of the Department of Revenue which discloses the particulars of the business or affairs of a taxpayer or other person is not a matter of public record, except for purposes of investigation and law enforcement. The information shall be kept confidential except when its production is required in an official investigation or court proceeding. These restrictions do not prohibit the publication of statistics presented in a manner that prevents the identification of particular reports and items, or prohibit the publication of tax lists showing the names of taxpayers who are delinquent and relevant information which may assist in the collection of delinquent taxes. (§ 3.21 ch 101 SLA 1962)

Collateral references. — Validity, construction, and effect of state laws requiring state officials to protect confidentiality of income tax returns and information, 1 ALR4th 959.

Sec. 09.25.110. Inspection and copies of public records. Unless specifically provided otherwise the books, records, papers, files, accounts, writings, and transactions of all agencies and departments are public records and are open to inspection by the public under reasonable rules during regular office hours. The public officer having the custody of public records shall give on request and payment of costs a certified copy of the public record. (§ 3.22 ch 101 SLA 1962)

Cross references. For proof of public records, see Evid. R. 1005; for management and preservation of public records, see AS 40.21.

Civil Procedures - Title 9 - referenced in Sect. 2

NOTES TO DECISIONS

For discussion of the history of this section, see City of Kenai v. Kenai Peninsula Newspapers, Inc., Sup. Ct. Op. No. 2479 (File Nos. 4954, 5433), 642 P.2d 1316 (1982).

Broad policy. — This section and AS 09.25.120 articulate a broad policy of open records. City of Kenai v. Kenai Peninsula Newspapers, Inc., Sup. Ct. Op. No. 2479 (File Nos. 4954, 5433), 642 P.2d 1316 (1982).

The "agencies and departments" language used in this section must be read as referring to the agencies and departments of the governments to which the statute applies, but that language itself does not define what the applicable level of government is. City of Kenai v. Kenai Peninsula Newspapers, Inc., Sup. Ct. Op. No. 2479 (File Nos. 4954, 5433), 642 P.2d 1316 (1982).

The word "public" as used in this section and AS 09.25.120 with "officer" refers both to state and local officials. City of Kenai v. Kenai Peninsula Newspapers, Inc., Sup. Ct. Op. No. 2479 (File Nos. 4954, 5433), 642 P.2d 1316 (1982).

Application to municipalities. — The provisions of this section are applicable to municipalities. City of Kenai v. Kenai Peninsula Newspapers, Inc., Sup. Ct. Op. No. 2479 (File Nos. 4954, 5433), 642 P.2d 1316 (1982).

In light of the common law rule, legislative history, and the court's reading of the sections, the state supreme court will construe this section and AS 09.25.120 as that court would have construed them prior to 1957, which is as a strong legislative declaration that records in the possession of municipalities shall be available for public inspection, subject to exceptions based on need. City of Kenai v. Kenai Peninsula Newspapers, Inc., Sup. Ct. Op. No. 2479 (File Nos. 4954, 5433), 642 P.2d 1316 (1982).

Disclosure of applications for public posts. — Strong public interest in the disclosure of the affairs of government generally, and in an open selection process for high public officials in particular, requires public disclosure and inspection of applications for posts having substantial discretionary authority. City of Kenai v. Kenai Peninsula Newspapers, Inc., Sup. Ct. Op. No. 2479 (File Nos. 4954, 5433), 642 P.2d 1316 (1982).

University of Alaska. — The legislature intended to include the University of Alaska within the scope of state agencies subject to the public records statute. Carter v. Alaska Pub. Employees Ass'n, Sup. Ct. Op. No. 2657 (File No. 6586), P.2d (1983).

The president of the University of Alaska is a public officer for purposes of this section. Carter v. Alaska Pub. Employees Ass'n, Sup. Ct. Op. No. 2657 (File No. 6586), P.2d (1983).

Collateral references. — Finding of draft board as evidence of physical condition of one registered, 16 ALR 247.

Admissibility of report of public officer or employee on cause of or responsibility for injury to person or damage to property, 153 ALR 163; 69 ALR2d 1148.

Sec. 09.25.120. Inspection and copying of public records. Every person has a right to inspect a public writing or record in the state, including public writings and records in recorders' offices except (1) records of vital statistics and adoption proceedings which shall be treated in the manner required by AS 18.50; (2) records pertaining to juveniles; (3) medical and related public health records; (4) records required to be kept confidential by a federal law or regulation or by state law. Every public officer having the custody of records not included in the exceptions shall permit the inspection, and give on demand and on payment of the legal fees therefor a certified copy of the writing or record, and the copy shall in all cases be evidence of the

Civil Procedures Title 9 - referenced in Sect 2

original. Recorders shall permit memoranda, transcripts, and copies of the public writings and records in their offices to be made by photography or otherwise for the purpose of examining titles to real estate described in the public writings and records, making abstracts of title or guaranteeing or insuring the titles of the real estate, or building and maintaining title and abstract plants, and shall furnish proper and reasonable facilities to persons having lawful occasion for access to the public writings and records for those purposes, subject to reasonable rules and regulations, in conformity to the direction of the court, as are necessary for the protection of the writings and records and to prevent interference with the regular discharge of the duties of the recorders and their employees. (§ 3.23 ch 101 SLA 1962)

NOTES TO DECISIONS

For discussion of the history of this section, see City of Kenai v. Kenai Peninsula Newspapers, Inc., Sup. Ct. Op. No. 2479 (File Nos. 4954, 5433), 642 P.2d 1316 (1982).

Broad policy. — AS 09.25.110 and this section articulate a broad policy of open records. City of Kenai v. Kenai Peninsula Newspapers, Inc., Sup. Ct. Op. No. 2479 (File Nos. 4954, 5433), 642 P.2d 1316 (1982).

Effect of "in the state" language. — When the legislature chose to say "in the state," and not "of the state" in the first sentence of this section, they were conscious of the fact that they were defining scope and had it been intended to limit the application of this section to state agencies and departments, it could easily and clearly have done so. City of Kenai v. Kenai Peninsula Newspapers, Inc., Sup. Ct. Op. No. 2479 (File Nos. 4954, 5433), 642 P.2d 1316 (1982).

The word "public" as used in AS 09.25.110 and this section with "officer" refers both to state and local officials. City of Kenai v. Kenai Peninsula Newspapers, Inc., Sup. Ct. Op. No. 2479 (File Nos. 4954, 5433), 642 P.2d 1316 (1982).

Application to municipalities. — The provisions of AS 09.25.110 and this section are applicable to municipalities. City of Kenai v. Kenai Peninsula Newspapers, Inc., Sup. Ct. Op. No. 2479 (File Nos. 4954, 5433), 642 P.2d 1316 (1982).

In light of the common law rule, legislative history, and the court's reading of the sections, the state supreme court will construe AS 09.25.110 and this section as that court would have construed them prior to 1957, which is as a strong legislative declaration that records in the possession of municipalities shall be available for public inspection, subject to exceptions based on need. City of Kenai v. Kenai Peninsula Newspapers, Inc., Sup. Ct. Op. No. 2479 (File Nos. 4954, 5433), 642 P.2d 1316 (1982).

Disclosure of applications for public posts. — Strong public interest in the disclosure of the affairs of government generally, and in an open selection process for high public officials in particular requires public disclosure and inspection of applications for posts having substantial discretionary authority. City of Kenai v. Kenai Peninsula Newspapers, Inc., Sup. Ct. Op. No. 2479 (File Nos. 4954, 5433), 642 P.2d 1316 (1982).

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Collateral references. — 66 Am.Jur.2d, Records and Recording Laws, §§ 12-31.

76 C.J.S., Records, §§ 34-41.

Validity, construction, and application of statutes making public proceedings open to the public, 38 ALR3d 1070.

Confidentiality of records as to recip-

Civil Procedures - Title 9 - referenced in Sect 2

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Validity, construction, and application of statutory provisions relating to public access to police records, 82 ALR3d 19.

Restricting access to judicial records of state courts, 84 ALR3d 598.

Payroll records of individual government employees as subject to disclosure to public, 100 ALR3d 699.

Sec. 09.25.121. Copies of public records for veterans. When a copy of a public record is required by the division of veterans' affairs, Department of Commerce and Economic Development or by the United States Veterans' Administration to be used in determining the eligibility of a person to participate in benefits, the official custodian of the public record shall, without charge, provide the applicant for the benefits, a person acting on behalf of the applicant, or an authorized representative of the division of veterans' affairs or the United States Veterans' Administration with a certified copy of the record. (§ 1 ch 35 SLA 1981)

Revisor's notes. — Enacted as AS 09.25.123. Renumbered in 1981.

Cross references. — As to records of veterans of the armed forces, see AS 26.10.070.

Sec. 09.25.125. Enforcement: Injunctive relief. A person having custody or control of a public record who obstructs or attempts to obstruct, or a person not having custody or control who aids or abets another person in obstructing or attempting to obstruct, the inspection of a public record subject to inspection under AS 09.25.110 or 09.25.120 may be enjoined by the superior court from obstructing, or attempting to obstruct, the inspection of public records subject to inspection under AS 09.25.110 or 09.25.120. (§ 1 ch 74 SLA 1975)

Sec. 09.25.130. Effect of private seals and scrolls. Private seals and scrolls as a substitute for seals are abolished. They are not required to an instrument, but when used their effect remains unchanged. (§ 3.10 ch 191 SLA 1962)

Sec. 09.25.150. Claiming of privilege by public official or reporter. Except as provided in AS 09.25.150 — 09.25.220, no public official or reporter may be compelled to disclose the source of information procured or obtained while acting in the course of duties as a public official or reporter. (§ 1 ch 115 SLA 1967)

Cross references. — For court rule recognizing statutory privileges, see Evid. R. 501.

Collateral references. — 81 Am.Jur.2d, Witnesses, §§ 141-147, 287-302.

98 C.J.S., Witnesses, §§ 432-440, 450-457.

Right of one against whom testimony is offered to invoke privilege of communication between others, 2 ALR2d 645.

Admissibility of recordings in evidence as affected by privileged nature of communications, 58 ALR2d 1037.

Construction of statute creating privilege against disclosure of communications made to stenographer or confidential clerk, 96 ALR2d 159.

Privilege of newspaper or magazine and persons connected therewith not to dis-

February 24, 1983

House Health, Education and
Social Services Committee
Room 112, Capitol Building
Pouch V
Juneau, AK 99811

attn: Mr. Dave Palmer

Although I earnestly wish to testify in person on HB91, I am unable to postpone a trip on March 4th and, therefore, am submitting the following testimony in favor of the bill:

I am both a family and professional genealogist (Alaskan Records Research, Business License number BL000201); hold a BLA with history emphasis from the University of Alaska, Juneau; am a full-time student in the Master of Arts in Teaching program at Alaska Pacific University; am employed half-time at the UAJ library; tutor history, english, geography, and logic at UAJ; am Alumni Representative on the UAJ Assembly; have published a family history and am currently working (in my spare time) on an historical novel.

With this variety of efforts underway, you can understand why I have little time to spend writing back and forth to prospective clients to obtain the written permissions required before I can access vital statistics data as my client's personal representative.

As it stands now, individuals can obtain vital statistics on their own ancestors but professionals or those working on far distant lateral relatives may not easily do so. A business must be cost-effective. Repeated correspondence is not (unless I raised my fees to cover it, which would price me out of the market). Thus, I simply refer many inquiries to the office of Vital Statistics and so lose the fees I could obtain for doing the research myself.

Passage of this bill will help all who are searching for long-lost relatives who "went up north to the goldrush and were never heard of again."

Being the first of my family to reside in Alaska, I have no family interest in opening Alaska's records. However, I would personally like to see my state on a par with the rest of the country. After tracing several thousand of my own ancestors, lateral, and collateral relatives through most of the northern states and Ontario, and collecting hundreds of official documents dated from 1738 to 1978, I have never been refused a record because of access restrictions except hospital patient records. I feel that this bill is a step in the right direction but could go further. People researching in Alaska should meet with no more roadblocks than I have experienced in other states. I would like to see the time limits of 100 and 50 years reduced to about 30 years, if the purpose is genealogical research. The most persuasive argument against opening birth records is the problem of illegitimacy. Besides the fact that it no longer carries the stigma it once did, a professional genealogist couldn't care less what the records say, all he or she is interested in

is locating them for the client. The client or individual researcher is a member of the illegitimate child's family and thus has a personal interest in keeping the fact of illegitimacy within the family.

I feel a person's right to know about their own heritage outweighs any "right to privacy" of their ancestors and this includes a person's right to hire a researcher if unable or unwilling to travel to Juneau to do their own research. Therefore, I highly recommend passage of this bill, preferably with an amendment allowing disclosure to genealogists of those vital records not made public by AS 18.50.310(f).

Sincerely

Kit Stewart

Kit Stewart
9119 Nagoon Lane
Juneau, AK 99801
789-9411

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M October 21, 1981

SUBJECT: Confidentiality of vital statistics records (Work Order No. 12-1977)

TO: Representative Robert H. Bettisworth

FROM: Edward H. Hein EH
Legislative Counsel

You have asked whether vital statistics records are confidential and, if so, why they are confidential.

The records of the Bureau of Vital Statistics, Department of Health and Social Services, include chiefly certificates of birth, death, adoption, marriage and divorce. These records are generally confidential and access to them is limited.

Under AS 09.25.120 every person has a right to inspect public records. A specific exception is made, however, for records of vital statistics and adoption proceedings, which are treated as required by Alaska's Vital Statistics Act (AS 18.50.010 - 18.50.380). The Act provides that in order to "protect the integrity of vital statistics records, to ensure their proper use, and to ensure the efficient and proper administration of the vital statistics system", release of records or the information contained in them must be authorized by regulation. The regulations appear in Title 7, Chapter 5 of the Alaska Administrative Code.

Under the regulations, inspection or copying of vital statistics records or disclosure of the information contained in them is not permitted unless "authorized by these regulations, and in accordance with the instructions of the State Registrar." (7 AAC 05.920) The State Registrar has authority to declare that certain parts of particular records are confidential and cannot be copied or recorded in any local office without her specific permission. (7 AAC 05.945)

The regulations specifically provide that a superior court order is required for access to records pertaining to adoption and illegitimacy. (AS 18.05.310; 7 AAC 05.670; 7 AAC 05.935) The regulations also specifically provide for access to particular records as necessary by state or federal government agents acting in the performance of official duties. (7 AAC 05.930) Another regulation allows disclosure of information from vital statistics records for statistical and research purposes, provided that no individuals can be identified from the information furnished. (7 AAC 05.950) The regulations do not specifically provide for release of information to anyone else, even persons named in the records.

The key provision dealing with disclosure of records is 7 AAC 05.925. It provides that a person must fill out an application for inspection, disclosure or copying of records. The applicant must have "a direct interest in the matter recorded", and information must be "necessary for the determination of personal or property rights." The Attorney General last year advised the department that, contrary to the bureau's long-standing interpretation of the regulation, the personal or property right need not belong to the person named in the record or his immediate family. Op. Atty. Gen. (Alaska, January 30, 1980)

State Registrar Joan Brooks says that the bureau provides access to records to the registrant, next-of-kin, legal guardian, legal counsel and others who demonstrate the required "direct interest" under 7 AAC 05.925. She says that the bureau follows guidelines established in the Model State Vital Statistics Act of 1977.

The Alaska Vital Statistics Act (AS 18.50) was based on the 1959 Model Vital Statistics Act. (See 1960 House Journal, pages 498 - 500, enclosed) The section dealing with disclosure (AS 18.50.310) has remained unchanged since 1960. The regulations have been in effect since before statehood, and the State Registrar informs me that the Bureau of Vital Statistics has adhered generally to the current confidentiality policy since 1913, when vital statistics records first started being kept in Alaska.

What little legislative history we have reveals nothing concerning the policy underlying the disclosure provisions

in the statute. One can reasonably assume that a major policy consideration underlying the disclosure provisions is protection of individual privacy. This, of course, is consistent with the right of privacy established in the Alaska Constitution, Article I, sec. 22. A second reason for limiting access was, no doubt, to protect the records from being altered, destroyed, stolen or misfiled by the public. A third reason for limiting disclosure might have been administrative convenience, i.e., preventing the bureau from being overburdened by requests for information.

I have enclosed for your interest a comment on the 1959 Model Act. The comment appeared in Suggested State Legislation for 1961, published by the Council of State Governments. In 1973, Model State Vital Statistics Regulations were proposed. The 1977 Model Act and Model Regulations are the first revisions since 1959 and 1973, respectively.

EHH:ljb

Enclosures

HOUSE BILL 91

"An Act relating to disclosure of vital statistics records"

The amendment to AS 18.50.310 to add a new subsection under (f) is similar to a provision in the Model State Vital Statistics Act which is endorsed by the Council of State Governments.

By making public, birth records after 100 years, and death, marriage, and divorce records after 50 years, it will satisfy the need expressed by many who desire to research their "roots". Because of the model law, many states have enacted this provision, with success, because, those vital records relating to the living and next of kin, are still primarily protected.

Passage of H. B. 91 would make public about 33,000 of the 675,000 records in the custody of the State Registrar of Vital Statistics.

It is acknowledged that care must be exercised in providing a place for the public review of these records, while assuring the continued safekeeping of the documents. The existing staff can monitor the record review.

The Department of Health and Social Services recommends passage of House Bill Number 91.

RECOMMENDED BY: Joan P. Brooks

JOAN P. BROOKS
STATE REGISTRAR
BUREAU OF VITAL STATISTICS

Date: February 8, 1983

APPROVED BY: Robert London Smith

ROBERT LONDON SMITH, Ph.D.
COMMISSIONER
DEPARTMENT OF HEALTH &
SOCIAL SERVICES

Date: 2/11/83

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

No: House Bill Number 91 Date on Bill:
e: "An Act Relating to disclosure of vital statistics records"
sor:
estor: Representative Bettisworth

Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
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b. Revenues:

venue								

Source of funds to offset fiscal impact of bill:

Responsibility for identification of funding is that of the author of the bil

Assumptions:

Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It do not represent the policy of the Sheffield Administration or the final estimate of fis impact.

pared By: Joan Brooks Lee D. Lee 1st. Phone: 465-3391
ision: Planning, Policy and Evaluation/Vital Statistics Date: February 22, 198

roved by Commissioner: Robert Loeb Smith Date: 2/22/83
artment: H & SS

Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor

PLEASE RETURN THIS QUESTIONNAIRE TO THE:

ALASKA VISITORS ASSOCIATION

Please reply to:

Tourism is everybody's business.

LEGISLATIVE KEY CONTACT
QUESTIONNAIRE

Dear AVA Members:

We need your assistance. AVA is supporting many tourism priorities this session, and you can help make a difference. Our confidential KEY CONTACT Program is one which will enable AVA's Executive Director and lobbyist to enlist your support, when appropriate, to contact a particular legislator about specific AVA legislative goals.

If you wish to be called, please indicate below and send this form back to us, so that we'll know for future mailings.

All information you provide will be kept confidential. While we may only need your assistance once or twice this session, it is helpful to know in advance who can and would be willing to help when the chips are down.

Please fill out the following questionnaire carefully. With your help, we may well reach our 1983 legislative goals.

* * * * *

NAME DOROTHY I. CLIFTON

COMPANY VOLUNTEER DIRECTOR " ARCHIVES ALIVE "(VALDEZ HISTORICAL SOCIETY, I:
CITY OF VALDEZ PAYS ALL OF THE COSTS INVOLVED. (N.

MAILING ADDRESS P.O. BOX 6 VALDEZ, ALASKA 99686

WE HAVE 3300 SQ. FT. IN THE ROYAL CENTER ON EGAN DRIVE

PHONE (work) (907) 835-4367 (3 PHONES) (home) (907) 835-4367 AND A RECORDER ON 835-4377
USUALLY 24 HOURS UNLESS AT STORE, P.O., OUT OF TOWN...

Are you willing to assist in AVA's Key Contact program. YES/NO (Circl

What special issues are you personally aware of and able to advise AVA about (i.e., state regulations, capital projects, administrative policies or tourism issues).

IN THE ARCHIVES WE HAVE ANY (MOST) SUBJECT COVERED REGARDLESS OF AGE, EI
WE GET ALL OF THE MAIL-OUTS FROM JUNEAU AND KEEP THEM NUMERICALLY AND SC
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TO GENEALOGY AND GRANDPA WAS HERE OR I WAS BORN HERE...SEE ATTACHED HOUS
BILL NO. 91. WE THOUGHT PEOPLE HAD A RIGHT TO KNOW & THINGS WERE RELAX:

AN ISSUE ON OUR MINDS RIGHT NOW.

Do you have any legislative concerns about which you would like AVA to watchdog and keep you informed.

VISITORS ARE PEOPLE TOO AS WELL AS PEOPLE THAT LIVE IN OUR STATE. GETTI RECORDS WAS BAD ENOUGH BEFORE AND I WAS MAGISTRATE, RECORDER, REGISTRAR JUST OVER FIVE YEARS HERE IN VALDEZ (STATE) AND HAD TO COMPLY. WHEN ONE DOES FIND OUT THEY ARE ADOPTED OR WHATEVER IT CAUSES [illegible] DUE LOT OF THINGS LIKE THEY HAVE BEEN LIED TO ALL OF THEIR LIVES, ETC. IN T ARCHIVES WE TRY TO HELP PEOPLE FIND ANSWERS TO WHATEVER AND KEEP THEM IN FORMED ABOUT OUR STATE REGARDLESS OF WHAT THE QUESTIONS ARE. THAT IS WH ALL OF US DO WITH OUR VISITORS.

Alaska State Legislature

REPRESENTATIVE
ROBERT H. "BOB" BETTISWORTH

POUCH V
JUNEAU, ALASKA 99811

P.O. BOX 80288
COLLEGE, ALASKA 99708

MEMORANDUM

DATE: April 2, 1983

TO: Rep. Charlie Bussell, Chairman
House Judiciary Committee

FROM: Rep. Bob Bettisworth

RE: HB 91: An Act relating to disclosure of vital statistics records and information

I respectfully request that the House Judiciary Committee move HB 91 to its next committee of referral.

Your committee staff person, Mr. Steve Cramer, has provided me with a draft copy of the House Judiciary Committee's substitute, and I readily concur that this version provides clarification of the intent.

Again, I urge the House Judiciary Committee's action on this bill.

Thank you.

Bob Bettisworth

a false status, occupation, membership, license, privilege, or identity himself or another person shall be fined not more than $[ ] imprisoned not more than [ ] years, or both.

) Any person who uses any such document to commit a crime shall punished by fine or imprisonment or both equal to that required by ute for the accompanying offense. Such sentence shall be served con-itively with that of the accompanying offense.

ection 4. [*Severability.*] [Insert severability clause.]

ection 5. [*Repeal.*] [Insert repealer clause.]

ection 6. [*Effective Date.*] [Insert effective date.]

Model State Vital Statistics Act (1977 Rev. Act)

The Model State Vital Statistics Act is a document designed to be used by state registrars of vital statistics and state legislators when considering revision of the vital statistics laws. The main objectives of the 1977 revision of the model act are (1) to incorporate current social customs and practices and current technology into the policies and procedures of the vital statistics system in the states, (2) to promote the uniformity of these policies and procedures to the end that all vital records will be readily acceptable in all places as prima facie evidence of the facts therein recorded, (3) to enhance the level of comparability of vital statistics data among the states, and (4) to minimize duplication within the vital statistics system and thereby achieve maximum administrative economy.

The historical philosophy of the vital statistics systems in the United States is that vital events be registered only in the state in which they occur. This concept is maintained in this revision of the model act. The jurisdiction of the state registrar extends only to boundaries of his state, and standards for registration may be set and enforced only for those events occurring within those boundaries. This is a very important concept in maintaining the validity of vital records in their use for legal purposes. If it is to be respected, the appropriate procedures for recording birth and death information for United States citizens born or dying in foreign countries and certification of birth information for aliens adopted by United States citizens must continue to be the responsibility of those federal agencies which retain jurisdiction over recording these events.

While this revision of the model act does not constitute an abrupt departure from earlier acts, there are several modifications that should be noted. The most significant change relates to the establishment of a centralized system for the collection, processing, registration, and certification of vital records in each state, whereby all vital events are reported directly to the State Office of Vital Statistics. However, the model act contains authorization for local offices to perform those functions the state registrar may direct, including the receipt and processing of vital records and the issuance of certified copies, when such offices can be shown to be an aid to efficient and effective operation of the system. The model act further provides for the options of allowing such local offices to work with records only for their designated geographic area or to be given access to the entire state file and allowing them to issue certified copies without regard to where the event occurred within the state. The important concept, however, is that these offices are part of the State Office of Vital Statistics and are under the direct control of the state registrar.

The recommendation for a change from a locally oriented vital statistics system to a centralized system is based on several considerations: (1) a centralized system produces more timely registration of the records, thereby improving the timeliness of all operations, including publication of statistical data as well as fulfillment of citizens' needs for vital records services; (2) it decreases duplication and cost since many activities presently performed at local vital records offices are repeated at the state office; (3) it reduces the opportunity for fraudulent use of certified copies [illegible] to the records will be easier to control and certified copies will

...ords of each [divorce, dissolution of marriage, or annulment] decree ...ated during the preceding calendar month.

...(c) [Provision for a recording fee may be added here if desired.]]

...ection 22. [*Amendment of Vital Records.*]

...) A certificate or report registered under this act may be amended ... in accordance with this act and regulations adopted by the state agen... protect the integrity and accuracy of vital records.

...) A certificate or report that is amended under this section shall be ...ked "Amended," except as otherwise provided in this section. The ...of amendment and a summary description of the evidence submitted ...pport of the amendment shall be endorsed on or made a part of the ...rd. The state agency shall prescribe by regulation the conditions un... which additions or minor corrections may be made to certificates or ...ds within one year after the date of the event without the certificate ...cord being marked "Amended."

Upon written request of both parents and receipt of a sworn ac...knowledgment of paternity signed by both parents of a child born out of ...lock, the state registrar shall amend the certificate of birth to show ...paternity if paternity is not already shown on the certificate of birth. ...certificate shall not be marked "Amended."

Upon receipt of a certified copy of an order of [court of competent ...isdiction] changing the name of a person born in this state and upon ...est of such person or his or her parents, guardian, or legal represent... the state registrar shall amend the certificate of birth to show the ...name.

Upon receipt of a certified copy of an order of [court of competent ...isdiction] indicating the sex of an individual born in this state has been ...ged by surgical procedure and that such individual's name has been ...ged, the certificate of birth of such individual shall be amended [as ...ified in Regulation 10.8(a)(5)] to reflect such changes.

When an applicant does not submit the minimum documentation ...ired in the regulations for amending a vital record or when the state ...istrar has reasonable cause to question the validity or adequacy of ...applicant's sworn statements or the documentary evidence, and if the ...encies are not corrected, the state registrar shall not amend the ...record and shall advise the applicant of the reason for this action and ...further advise the applicant of the right of appeal to [court of com... jurisdiction].

When a certificate or report is amended under this section, the ...registrar shall report the amendment to any other custodians of the ...record and their record shall be amended accordingly.

...ion 23. [*Reproduction of Vital Records.*] To preserve vital records, ...e registrar is authorized to prepare typewritten, photographic, electronic, or other reproductions of certificates or reports in the [Office of Vital Statistics]. Such reproductions when certified by the state registrar shall be accepted as the original records. The documents from which permanent reproductions have been made and verified may be disposed of as provided by regulation.

Section 24. [*Disclosure of Information from Vital Records.*]

(a) To protect the integrity of vital records, to ensure their proper use, and to ensure the efficient and proper administration of the system of vital statistics, it shall be unlawful for any person to permit inspection of, or to disclose information contained in vital records, or copy or issue a copy of all or part of any such record except as authorized by this act and by regulation or by order of [court of competent jurisdiction]. Regulations adopted under this section shall provide for adequate standards of security and confidentiality of vital records.

(b) The state agency may authorize by regulation the disclosure of information contained in vital records for research purposes.

(c) Appeals from decisions of custodians of vital records, as designated under authority of Section 6(b), who refuse to disclose information, or to permit inspection or copying of records as prescribed by this section and regulations issued hereunder, shall be made to the state registrar whose decisions shall be binding upon such custodians.

(d) When 100 years have elapsed after the date of birth, or 50 years have elapsed after the date of death, marriage, or [divorce, dissolution of marriage, or annulment], the records of these events in the custody of the state registrar shall become public records and information shall be made available in accordance with regulations which shall provide for the continued safekeeping of the records.

Section 25. [*Copies or Data from the System of Vital Statistics.*] In accordance with Section 24 and the regulations adopted pursuant thereto:

(1) The state registrar [and other custodian(s) of vital records authorized by the state registrar to issue certified copies] shall upon receipt of a written application issue a certified copy of a vital record in his or her custody or a part thereof to any applicant having a direct and tangible interest in the vital record. Each copy issued shall show the date of registration and copies issued from records marked "Delayed" or "Amended" shall be similarly marked and show the effective date. The documentary evidence used to establish a delayed certificate shall be shown on all copies issued. All forms and procedures used in the issuance of certified copies of vital records in the state shall be provided or approved by the state registrar.

(2) A certified copy of a vital record or any part thereof, issued in accordance with Section 25(1), shall be considered for all purposes the same as the original and shall be prima facie evidence of the facts stated

HB 91

"Vital statistics" refers to records of birth, death, fetal death, marriage, divorce, adoption and related data. With specific exceptions, vital statistics are not available for inspection.

The language of HB 91, taken from the 'Model State Vital Statistics Act' published by the Public Health Service, opens records to the public: birth records - 100 years after date of birth; and marriage, death, divorce, dissolution of marriage or annulment records - after 50 years.

Passage of HB 91 will make public approximately 33,000 of the 675,000 records held by the State Registrar of Vital Statistics. The bill addresses the concerns of geneological researchers. A zero fiscal note is attached to the bill. Committee of next referral is the Judiciary Committee.

Dave Palmer
March 4, 1983

HB

103

COMMITTEE REPORT

SENATE

FURTHER:

Date: _____

Mr. President:

The Committee on _____ has had _____

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

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

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

and recommends _____

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

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

_____

_____

_____

_____

_____

_____

_____

_____

_____

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

_____

_____

_____

_____

_____

_____

CHAIRMAN

April 4, 1983

The Honorable Thomas E. Schulz
Presiding Judge
First Judicial District
415 Main Street, Room 402
Ketchikan, Alaska 99901

Re: CSHB 103

Dear Judge Schulz:

On behalf of Senator Ziegler and the other members of the Senate Judiciary Committee I would like to extend an invitation for you to participate in a teleconference hearing on the captioned bill on the afternoon of Friday, April 8, 1983.

CSHB 103 is entitled as follows:

> "An Act establishing a Department of Corrections and transferring certain functions of the Department of Health and Social Services to the Department of Corrections; and providing for an effective date."

If you wish to participate, please contact your local Legislative Information office, at 225-90675, or the undersigned, at 465-4451, for additional details, including copies of the bill and other pertinent information.

Very truly yours,

John C. Gabrielli
Counsel

JCG:jj
cc: Senator Ziegler

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

BILL/Resolution No.: Senate CS CSHB103
Title: Act establishing Dept. of Corr.
Sponsor: Senate Judiciary
Requestor: Senate Finance

II. FISCAL DETAIL

Agency Affected: Health & Social Services
Program Category Affected: Justice
BRU, Program of Subprogram(s) Affected: Administration & Support

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING		*	*	*	*	*
100 PERSONAL SERVICES	88.3					
200 TRAVEL	42.0					
300 CONTRACTUAL	63.3					
400 COMMODITIES	4.0					
500 EQUIPMENT	8.0					
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	205.6	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	205.6	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	10	10	10	10	10	10
PART-TIME						
TEMPORARY						

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

Funding for FY 84 has been included in the Governor's budget request in the amount of $951,600. Funding for FY 83 has been identified in Senate Bill No. 158 as a delete/add supplemental.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Roger C. Lange Roger C. Lange Phone: 465-3376
Division: Adult Corrections Date: April 29, 1983

Approved by Commissioner: Robert Loeb, M.D. Date: 5/4/83
Department Health & Social Services

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

IV. ANALYSIS

A. Assumptions

Passage of this bill will create a new Department of Corrections. The funding identified for FY 83 will provide for two months of personal services for 10 new positions and increases for 6 existing positions which are being re-classified.

The fiscal impact will carry forward into subsequent fiscal years. However, the Governor's budget included funding for FY 84.

B. Program Summary

1. Positions

Ten new positions are required to implement C.S. for House Bill No. 103 (Judiciary), as follows:

a. Special Assistant II
b. Regional Director - Rural
c. Executive Secretary II
d. Programmer/Analyst V
e. Personnel Officer III
f. Administrative Officer I
g. Secretary II
h. Information Officer II
i. Secretary I
j. Clerk Typist III

2. Other Expenditures

a. Travel - Administrative and field travel for Commissioner, Assistant Commissioners, Regional Directors, and Special Assistants.

b. Contractual Services - These funds are for space lease costs, telephone charges, office equipment rentals (postage meters, word processing), janitorial services, etc.

c. Commodities - Office suplies, departmental forms, etc.

C. Impact

This bill will have no impact on the State's economy or local government units.

CSHB 103

Superior Court

State of Alaska

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

Chambers of
THOMAS E. SCHULZ, Judge

April 21, 1983
(dictated April 14)

The Hon. Robert H. Ziegler, Sr.
Alaska State Senator
Pouch V
Juneau, Alaska 99811

Re: Committee substitute for H.B.103

Dear Senator Ziegler:

I have your letter of April 4. Unfortunately, it did not arrive in time for me to plan on being at the teleconference at CS HB 103. I do favor the establishment of a department of corrections primarily because I believe that corrections has been short changed as one of the subdivisions in the Department of Health and Social Services and I believe that corrections needs departmental status in order to get a reasonably appropriate share of the budget.

I do strongly oppose placing juvenile delinquents in the new Department of Corrections. I already have an excellent indication of where juveniles will fit in in that new department's overall scheme of things. I was told yesterday (April 15) that approximately the middle of May I will no longer have any place to detain juvenile delinquents. Apparently the bed crunch in the state jail is making it impossible for juveniles to be transferred to the new facility in Ketchikan. There is no funding to staff the old detention home after the new jail opens, so apparently we will have to detain the kids on the street. I understand the population crunch in the state jails, (which is no doubt caused by Alaska's weak knee judges not putting anybody in jail) but I am not very sympathetic to the way the current administration in corrections is "solving" the problem. It may cost a little more money, but I am sure that our programs for both delinquent youth and children in need of aid will be better off if the delinquent youth are kept in the

Division of Social Services and kept out of the Division of Corrections. The letter from Alaska Children's Services, Inc. summarizes my position on most points very well.

Very truly yours

Thomas E. Schulz
Superior Court Judge

TES:ju

FILE WITH SB103

Alaska Foster Parents Association

P. O. BOX 8651 • ANCHORAGE, ALASKA 99508

April 13, 1983

Mr. Bill Ray, Senator
Pouch V
Juneau, AK 99811

Dear Senator Ray:

Alaska Foster Parent Association urges you to not pass HR 103 as written. We are opposed to the inclusion of juvenile corrections with adults under the New Department of Corrections for the following reasons:

1) With the many urgent tasks confronting a new Department of Corrections juveniles would be the last considered and be overlooked.

2) The philosophical treatment of juvenile offenders is and needs to continue to be different. Juvenile corrections is still ahome, family, and community oriented treatment and rehabilatative program rather than punitive.

3) Crimes of juvenile offenders are different from adult--
   a) mostly property crime status offenses,
   b) less successful and less finanical involvement,
   c) mostly non-violent, without weapons.

4) Juvenile offenders have a greater link with the Department of Health and Social Services than with adult corrections. They are often victims of child abuse, neglect and family breakdown. The biggest difference between juvenile delinquents and child in need of aid in foster homes is the delinquents have been caught! There must be strong coordination between those responsible to child in need of aid care and juvenile corrections as many move from one system to the other. When the new Department of Corrections is being set up we fear we will loose the treatment, the prevention like that now exist under the Department of Health and Social Services. There must be close coordination between juveniles in foster home placements and youth correctional facilities.

5) In many cases a juvenile under corrections is able to go into a foster home while still on probation. This not only saves the state a significant amount of money (over $100 per day per child) but is a more successful treatment mode. Division of Family and Youth Services has recently developed a specialized foster care program to provide more services and support to foster homes to enable more juveniles to be kept in foster homes rather than youth correctional facilities. Also, in rural Alaska you would have to duplicate services now carried under the Division of Family and Youth Services: i.e. new foster homes and therefore be more costly.

In closing we urge you to not include juvenile corrections under the new Department of Corrections but keep them under Department of Health and Social Services. One suggestion to counter the argument that juvenile offenders are just like adults is to strengthen the waiver laws to allow more serious juvenile offenders to be tried as adults.

If you need more information please do not hesitate to call or write the Alaska Foster Parent Association.

Sincerely,

Louiese Rodoni

Louiese Rodoni, President
Alaska Foster Parent Association
333-2323

Adult Corrections in Alaska

Current Issues in Administration and Management

House Research Agency
Alaska State Legislature
January 1983

House Research Agency Report 82-E

ADULT CORRECTIONS IN ALASKA:

CURRENT ISSUES IN ADMINISTRATION AND MANAGEMENT

Betty Barton
Jon Sherwood
House Research Agency
Alaska State Legislature
February 1983

House Research Agency Report 82-E

PREFACE

Following adjournment of the Twelfth Alaska Legislature, the House Research Agency was asked to undertake a special project concerning the State Division of Adult Corrections. Specifically, the Agency was asked to review the current issues confronting correctional services in Alaska and to explore whether an alternative management structure could help to alleviate problems that have arisen in the field of criminal justice. This report examines these and other issues relating to adult corrections in Alaska.

Authorized by the Agency's bipartisan governing committee, this report has been prepared for the entire membership of the Alaska House of Representatives. It was written in recognition that corrections is a topic of significant concern for many Alaskans and one which often elicits divergent opinions regarding its needs and solutions. The purpose of this report, then, is to provide a general framework for analyzing adult corrections issues in Alaska. It is not the intent of this report to advance a particular correctional philosophy, but rather to transmit information which can assist legislators in their development of appropriate State policies.

Since this project was initially presented to us, a number of changes have been proposed for the Division of Adult Corrections. Perhaps of greatest significance, Governor Sheffield has promulgated Executive Order No. 54 to establish a Department of Corrections. In the preparation of our report, we have attempted to keep abreast of this and other proposed modifications.

This report reflects only a portion of the House Research Agency's research concerning adult corrections and criminal justice. Members of the Alaska House of Representatives are welcome to contact the House Research Agency with additional research requests pertaining to this subject.

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SUMMARY OF FINDINGS

Corrections Trends

Prisoner Profile. Approximately one out of every 600 U.S. citizens is currently incarcerated. In Alaska, the incarceration rate is significantly higher; approximately one out of every 400 of the state's residents is imprisoned. Alaska's prison population has increased by 49 percent in the past four years. In September 1982, the total institutional population, including both sentenced and unsentenced felons and misdemeanants, was 1,269; by January 1987, the population is expected to exceed 2,000. This would require the State to double its existing correctional center capacity of 979 beds.

According to a 1982 report by the Division of Adult Corrections, about two-thirds of the inmates within State correctional facilities are 30 years old or younger. The majority of the in-state inmates were incarcerated for offenses against the person, including murder, sexual assault, robbery, and assault. Over 60 percent of the in-state prisoners had no prior institutional experience and 86 percent were held on felony charges.

A 1980 study of felony sentencing by the Alaska Judicial Council found that 57 percent of all urban felons and 63 percent of all rural felons had used alcohol at the time of their offense. The percentage was highest for individuals convicted of murder or kidnapping. Four times as many urban felons had histories of alcohol addiction as had histories of drug addition. A rural felon was almost twenty times more likely to have a history of alcohol addiction as drug addiction.

State Responsibility for Corrections. The State of Alaska administers all correctional activities, either directly or through contract providers, including all services for pretrial detainees, misdemeanants, probationers, and parolees. Most other states are only responsible for the supervision of sentenced offenders; the responsibility for pretrail prisoners and short-term sentenced offenders rests with local governments.

The Division of Adult Corrections operates pretrial, short-term, and long-term facilities throughout the state. The State also contracts with sixteen local governments for the operation of local jails. However, these contracts are administered by the Department of Public Safety. The Division of Adult Corrections is also responsible for the supervision of parolees and probationers, the operation of several community corrections programs, and the welfare of almost two hundred Alaska felons who have been sent to institutions operated by the Federal Bureau of Prisons.

Mentally ill offenders are not in the custody of the Division of Adult Corrections. They are the responsibility of the Division of Mental Health. The Division of Family and Youth Services is responsible for juvenile corrections.

In Alaska, $133,464,300 was authorized in FY 83 for operational expenditures in the administration of justice. This includes justice-related expenditures within the Departments of Public Safety, Law, Health and Social Services, and the Alaska Court System. Of this amount, approximately 30 percent is for adult correctional services.

Prisoner Litigation. As of 1981, 29 states have had court orders pertaining to prison overcrowding and inadequate living conditions for prisoners. In Alaska, issues relating to the quality of care and the general standard of living available for prisoners have resulted in several court suits.

Perhaps of greatest significance to Alaska's correctional policies is Cleary v. Beirne, a class action suit filed in 1981. Plaintiffs have charged that Alaskan prisoners residing within State facilities as well as those State inmates housed in federal prisons outside Alaska have been deprived of a number of constitutional and statutory rights. State representatives and the plaintiffs' attorneys have negotiated and signed a partial settlement. The second part of Cleary, which pertains to major issues such as prisoner education and medical treatment, has not been resolved, and is set for trial in the Third Judicial District of the Superior Court for the State of Alaska in June 1983.

In recent years, courts have consistently held that access to adequate programs is the right of all prisoners. Although the partial settlement agreement of the Cleary case settled some program issues, it is likely that the trial portion of the Cleary suit will further address program issues.

The problem of overcrowding is central to prisoner litigation. Research indicates that there is a relationsip between prison overcrowding and increased death rates, increased suicide rates, increased inmate assaults and inmate killings, increases in self-mutilations, increases in stress-related illnesses and psychiatric commitments in correctional institutions.

Corrections Management

The growth in the correctional population over the last few years has placed an increasing burden on the management of the Division of Adult Corrections. Corrections management does not appear to have kept pace with the growth in the correctional system in Alaska, and the Division of Adult Corrections is considered to be in serious need of management attention.

In the area of prison management, classification of prisoners and facilities is considered a very important concern by many individuals. Both Charles Campbell and Robert Hatrak, former directors of the Division of Adult Corrections, stressed the importance of a good classification system for effective prison management. Unfortunately, during the last several years, overcrowding has resulted in inmates being assigned to institutions based on the availability of space rather than on the basis of a consistent classification policy.

As some institutions have exceeded their rated capacity, space for isolation and security holding has been reduced. Some of these cells are currently housing prisoners for whom no other cells are available. In addition, space for activities such as contact visitation, attorney conferences, and recreation may no longer be adequate for the number of prisoners now in an institution.

In the area of administrative management, the Division's ability to provide support for its general operation was a frequent concern. It was reported that the Division lacks adequate central office staffing levels. Several problems regarding the Division's personnel structure were identified. There have been frequent reclassifications of administrative positions, and administrative personnel have been transferred from post to post frequently.

Two problems in the area of staff development facing the Division are insufficient staff training and inadequate opportunities for career advancement.

Most of the individuals contacted for this study agreed that there is a need for the Division to coordinate its activities with other agencies within the Alaska criminal justice system. Some believed that a formal structure was needed both to promote better coordination between the various agencies within the Alaska criminal justice system and to initiate research of a broader interagency scope.

Several sources identified a need for the Division to improve its communication with the public and with other organizations, including the Legislature. Two suggestions for improving communication were appointing a public information officer and establishing advisory boards for corrections, either at the local or regional level.

Legislative Alternatives for Corrections

A number of alternatives are available in Alaska for improving the delivery of correctional services. The following areas would require legislative involvement:

- Increasing correctional bed space;
- Modifying State laws affecting who goes to prison, the length of stay in prison, or the capacity of the correctional system;
- Strengthening correctional management through reorganization;
- Improving communications and decision making in criminal justice agencies.

Increasing Corrections Capacity. Justice professionals in Alaska advocate different strategies for increasing the capacity of the correctional system. The major options are as follows:

- Develop a comprehensive capital expansion program that immediately provides for site acquisition and construction of new facilities and renovation of existing prisons.
- Establish a scaled-down capital improvements program that addresses the State's most critical spatial requirements; develop a long-term capital improvements plan following the completion of a comprehensive reassessment of the system's current capacity, a revision of prisoner classification methods, and an analysis of future population growth trends.
- Implement no plans for major capital improvements until a comprehensive analysis of the system's current capacity, prisoner classification methods, and prisoner population growth trends is completed.

Cost is one of the key issues in evaluating these three options. There is also some concern among criminal justice professionals that the construction of additional facilities may increase prison populations, and hence, raise expenditures. Some states have found that the construction of additional prison facilities has not eased problems of overcrowding.

The former Division of Policy Development and Planning under the Hammond administration recommended against long-term commitments for additional prison expansion until the following tasks are completed: refinement of interagency problem solving; consideration of alternatives to institutionalization; evaluation of other states' responses to their prison overcrowding problems; research into the cause of prison population growth; and reevaluation of prison capacity.

Some correctional authorities disagree that the resolution of these issues must be a prerequisite to capital planning. The State is currently diverting a significant number of offenders from correctional institutions, and substantial reductions in incarceration levels may

not be possible without jeopardizing public safety. Governor Sheffield's Task Force on Corrections concluded that additions to facilities, building renovations and new site acquisitions should be "completed expeditiously as the highest priority through channels of state government while minimizing both hindrances and costs."

Under the terms of the recent settlement of the out-of-state prisoner portion of the Cleary case, the State is committed to building a 300-bed maximum security facility.

Revising State Laws. Many states are attempting to rectify problems of prison overcrowding by modifying state laws affecting:

- the number of people who enter prisons;
- the length of time that people spend in prisons; and
- the capacity of the prison system.

A state legislature can take several steps to control the number of people who enter the prison system, including enacting laws that decriminalize or reclassify designated offenses, broadening the type of sanctions that may be rendered, and enacting a comprehensive community corrections act.

There are several alternatives available for legislative consideration which affect the length of incarceration, including: modifications of sentencing policies; expanded use of "good time" credits and work credits; and revision of parole policies.

A number of alternatives besides the construction or renovation of facilities have been established in other states as a means of altering the capacity of a prison system. Some states have established standards and capacity limits for facilities and have adopted emergency overcrowding measures. Others have increased the options that are available to correctional agencies in their placement of offenders.

Departmental Status for Corrections. Governor Sheffield recently issued Executive Order 54, which, if approved by the Legislature, would create a Department of Corrections. If the Legislature rejects Executive Order 54, the State still has a number of options for improving the organization and placement of correctional services. These include:

- Moving the Division into a different department. The Departments of Law, Public Safety, and Community and Regional Affairs have each been mentioned as potential recipients of the Division.
- Relocating the Division to the Governor's Office.

- Keeping the Division in the Department of Health and Social Services. A deputy commissioner position could be established with primary responsibilities for policy development and program oversight of corrections-related activities.

- Establishing a Board of Corrections.

Criminal Justice Decision Making. In some respects, the difficulties that the Division of Adult Corrections has experienced in recent years have been inherited from other aspects of decision making within Alaska's criminal justice system. It has been suggested by some that the State establish a process for interagency communication and policy development, including a cabinet level criminal justice planning committee for the purpose of resolving current policy issues and for long-range planning and policy development.

ADULT CORRECTIONAL SERVICES: AN OVERVIEW OF THE PROBLEM

Adult correctional services is only one component of the criminal justice system. Nonetheless, it is corrections--its prisons, programs, and its methods of probation and parole--that frequently draws more public scrutiny and concern than any other aspect of criminal justice. In part, this public interest is caused by the tremendous size of corrections; it is second only to police services in both scale and cost. In terms of program complexity, it is doubtless foreranking. Adult corrections is charged with the custody, supervision, and management of the nation's criminal offenders. In other words, adult corrections has responsibility for a range of services from custodial care of the pretrial detainee to the provision of vocational services to the paroled offender. Consequently, although it is the final link in the criminal justice process, the scope of corrections is enormous and is continuing to grow as the number of people who pass through the system increases.

CRIME TRENDS AFFECTING ADULT CORRECTIONS

To a degree, the growth in correctional programs has occurred in response to increasing crime rates. Between 1960 and 1972, the nation's crime rate increased 151 percent; between 1972 and 1981, the rate rose an additional 46.4 percent. Approximately 13.3 million criminal offenses occurred in 1981, which is roughly the same number of crimes that occurred in 1980.[1]

Alaska's crime rate in 1980 was less than one percent lower than that of the United States. In that year, Alaska ranked fourteenth among the 50 states in total index crime; the state's rate for violent crime was 24 percent lower than the national index, and the rate for property crimes was 3 percent greater.[2] According to the Alaska Department of Law, the number of violent crimes reported--including murder, rape, robbery, and aggravated assault--increased 27 percent between 1980 and 1981. In Anchorage, for example, the number of sexual assaults increased by 48 percent; robberies increased 28 percent; and murders by 20 percent.

These figures may reflect only a portion of the number of crimes actually committed. The U.S. Bureau of Crime Statistics, which provides national estimates relating to the incidence of victimization, estimated that

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[1] U.S. Department of Justice, Federal Bureau of Investigation, Uniform Crime Report 1974 and 1981.

[2] Office of Justice Assistance, Department of Law, Crime in Alaska, 1981, p. 6. The crime rate index provides a means for comparing existing and historical data regarding the incidence of crime to the total population. The rate is defined as the number of incidents per 100,000 inhabitants.

roughly one-third of the Part I offenses[3] committed in the U.S. in 1978 were reported to the police. There is some indication that the percentage of violent crimes that are reported in Alaska may be somewhat lower.[4]

Reasons for the increase in crime are varied. One known factor is the current large national population of young adult males between the ages of 18 and 30. Research has found that a significantly high level of criminal activity occurs among this age group. Data compiled in 1978 indicated that 79.5 percent of all prisoners in state prisons were under 35 years of age.[5] A significant portion of Alaska's population falls within this age group. Other social conditions, particularly the high per capita consumption of alcohol, have also been significant contributors to the incidence of crime in Alaska.

Another factor affecting the increase in crime--both nationally and within Alaska--is the poor economic climate in the U.S. In Alaska, which is still commonly perceived as a "land of opportunity," this has resulted in a growing number of transient individuals entering the state and has caused further increases in the state's unemployment rate. A high level of unemployment is commonly associated with increased criminal activity.

Regardless of its cause, the increase in crime appears to have prompted a reassessment of correctional policies and procedures within the nation. In many states, policymakers have responded by establishing harsher criminal justice laws that have provided for mandatory sentences, increased sentences, and reductions in parole. An example of changing philosophies is found in California. In 1976 the California legislature amended its sentencing code. Included within the preface of the new law was the observation that rehabilitation was no longer regarded to be a legitimate purpose of California prisons.[6] Other states have revised laws and programs in response to new public attitudes toward crime.

To some extent, Alaskans have followed a similar course. In 1974, a policy providing for mandatory minimum sentencing was enacted. In 1975, then-Attorney General Avrum Gross implemented a policy that eliminated plea bargaining from the court process. A primary goal of this

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[3] Part I offenses--a classification established by the FBI--include murder, rape, robbery, burglary, larceny, and theft. Generally, a Part I offense is a felony.

[4] Christine Johnson and Jonathan Sherwood, Alaska State Legislature, House Research Agency, "Crime Statistics: Number of Convictions," Research Request No. 81-184, December 10, 1981.

[5] Kenneth Carlson, American Prisons and Jails: Population Trends and Projections, National Institute of Justice, pp. 21 and 28, (hereafter cited as American Prisons and Jails).

[6] Ibid.

action was to dispense with the prosecutor's role in sentencing in order to "let the sentence be the product of an independent decision by the trial judge."[7] Alaska was the first state to have enacted such a policy. In 1978, the Alaska State Legislature enacted a comprehensive revision of the criminal code which included the establishment of presumptive sentencing for all repeat felons and for a limited number of first-time Class A felons. Legislation was also enacted that provided for mandatory incarceration of DWI (driving while intoxicated) offenders. In 1982, the legislature revised State drug laws and further amended Alaska's criminal laws to enact uniform penalty provisions to "effectively combat illicit trafficking in controlled substances."

Although the results of changes in policies such as these are difficult to measure, it is apparent that one product of their implementation is an increased caseload for correctional agencies. This, in turn, results in higher costs of program operation.

THE RISING COSTS OF CORRECTIONAL PROGRAMS

In 1979, public crime control expenditures in the United States were found to be in excess of $25 billion annually--roughly 55 percent of this was spent on police services, 23 percent for corrections, and 22 percent for courts, prosecution, and defense and other aspects of the justice system. Almost 86 percent of all criminal justice expenditures represent state and local outlays.[8] It is clear that the administration of justice has become an expensive burden for all levels of government.

In Alaska, $133,464,300 was authorized for operational expenditures in the administration of justice in FY 83. This includes justice-related expenditures within the Departments of Public Safety, Law, Health and Social Services, and the Alaska Court System. Of this amount, approximately 30 percent is for adult correctional services. Justice-related expenditures within the Department of Public Safety consume the largest portion of the authorization--32 percent. The following chart ranks the departments by size of authorization.

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[7] National Institute of Justice, Alaska Bans Plea Bargaining, July 1980.

[8] Tim J. Flanagan, ed., Criminal Justice Research Center, Sourcebook of Criminal Justice Statistics--1981, U.S. Department of Justice, Bureau of Justice Statistics, Albany, 1982, p.7.

Table I
Administration of Justice
Operating Budget Summary: FY 83
(in thousands)

Dept. of Public Safety - Ak.State Troopers - Jail Contracts - Support & Services	$43,412.3	32%
Dept. of Health and Social Services - Adult Corrections (adult confinement, adult probation and community programs, and corrections administration) - Parole Board	39,566.4	30%
Alaska Court System - Courts - Judicial Qualifications - Judicial Council	34,522.6	26%
Dept. of Law - Prosecution - Criminal Appeals - Pretrial Diversion - Action & Discretionary Grants - Administration & Support	9,966.1	8%
Dept. of Administration - Public Defender	4,156.6	3%
Office of the Governor - Status of Women Commission - Human Rights Commission	1,840.3	1%
TOTAL	$133,464.3	100%

SOURCE: Fiscal Year 1983 Operating and Capital Budget
Summary of Appropriations

Within the Department of Health and Social Services, the Administration of Justice budget category includes the following components: adult confinement, adult probation and community programs, corrections administration and support, and parole boards. Excluding $258,300 authorized for the parole board, this budget category is the operating budget for the Division of Adult Corrections.

Adult confinement includes all of the operational costs of the State's correctional centers, contracts for the care of Alaska prisoners incarcerated both in and outside Alaska, and the correctional industries program. This budget unit represents 83 percent of DHSS' Administration of Justice expenditures for FY 83.

The FY 83 Administration of Justice budget for DHSS reflects a 28 percent increase above the previous year's authorization. An examination of the separate budget request units (BRU's) indicates that 36.7 percent of this increase is due to an increase in the amount appropriated for adult confinement.

Table 2
Department of Health and Social Services
Administration of Justice
Operating Budget Summary: FY 83
(in thousands)

Budget Request Unit	Authorization	Amount of Change: prior year auth.	% of change: prior year
Adult Confinement	$33,016.5 (83%)	+$8,878.6	+ 36.7%
Adult Prob/Comm.Prgm.	4,646.5 (12%)	+ 55.3	+ 1.1%
Corr. Admin.& Support	1,645.1 (4%)	- 300.2	- 15.3%
Parole Board	258.3 (1%)	+ 31.8	+ 14.0%
Total	$39,566.4 (100%)	+$8,665.5	+ 28.0%

SOURCE: Fiscal Year 1983 Operating and Capital Budget
Department of Health and Social Services

For the Fiscal Year 1984 operating budget, the Division of Adult Corrections has requested $47,133,800 compared to its FY 83 authorization of $39,308,100. This reflects a 19.9 percent increase above the prior year's authorization.

In its review of the Department of Health and Social Services, Governor Sheffield's Transition Task Force on Human Services commented that adequate treatment of "the corrections issue" would require substantial budgetary increases--estimated to be between 35 and 50 percent. State agencies have been asked to make a 5 percent reduction in the FY 84 budget preparation. Consequently, the Task Force argued that budgetary increases within the Division of Adult Corrections might occur "at the expense of other departmental programs."[9]

[9] State of Alaska, Office of the Governor, Transition Task Forces Report For Governor Sheffield, "A Report on the Department of Health and Social Services," Juneau, 1982, p.4.

Beyond cost considerations, there is some indication that substantive changes in criminal justice policies and procedures have impaired the overall effectiveness of the correctional system. The issues are best illustrated through an examination of prison overcrowding.

PRISON OVERCROWDING

Described in a recent report as the "four horsemen of corrections," the related problems of prison overcrowding, inadequate institutional living conditions, prison violence, and federal court takeover are confronting many correctional institutions throughout the nation.[10] An examination of institutional growth trends in recent years indicates why these problems have occurred.

The 1970s was a decade of unprecedented increases in prison populations. Throughout the century, excluding a segment of time during World War II when the number of prisoners declined, the prison population maintained approximately the same growth rate as the civilian population.[11] Between 1965 and 1980, however, adult arrest rates increased by 75 percent, state and federal prison populations increased by roughly 78 percent and community probation and parole caseloads increased by 142 percent. Since 1970, prison populations have nearly doubled. The nation's current prison population, estimated to be about 500,000, is growing at a rate of roughly 170 per day. In other words, approximately one out of every 600 U.S. citizens is currently incarcerated. In Alaska, the incarceration rate is significantly higher; approximately one out of every 400 of the state's residents is imprisoned.

Population Trends in Alaska's Prisons

According to a report prepared by former Attorney General Wilson Condon, Alaska's prison population has increased by 49 percent in the past four years.[12] In Fiscal Year 1982, the State Division of Adult Corrections had an institutional population increase of 22 percent, a probation-

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10 Robert Mathias and Diane Steelman, National Council on Crime and Delinquency, Controlling Prison Populations: An Assessment of Current Mechanisms, Draft, National Council on Crime and Delinquency, May 1982, submitted to the National Institute of Corrections in partial fulfillment of NIC Grant No. CQ-9, p. 27, (hereafter cited as Controlling Prison Populations).

11 American Prisons & Jails, Vol.II, p. 13.

12 Alaska Office of the Attorney General, Memorandum to the File from Wilson L. Condon, Attorney General, "Analysis of Corrections Population Projections," November 23, 1982.

parole increase of 21 percent, and a 75 percent increase in the numbers of persons in community placement.[13] In September 1982, the total institutional population, including both sentenced and unsentenced felons and misdemeanants, was 1,269; by January 1987, the population is expected to exceed 2,000.[14]

These numbers would require the State to double its existing correctional center capacity of 979 beds, or 1,183 beds on an emergency basis. Eighty-three additional beds are available in State halfway houses. The remaining number of prisoners are housed in prisons outside Alaska. According to the Department, as of June 1982, 15.5 percent of the State's prisoners were held in federal prisons outside Alaska; in prior years, this percentage has been as high as 20 percent. As of January 1, 1983, 191 prisoners were housed in federal prisons and 74 prisoners were held in State halfway houses.[15] Table III on the following page indicates the current capacities of Alaska's existing correctional centers.

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13 Alaska Department of Health and Social Services, Division of Adult Corrections, Memo to Robert S. Hatrak, Director, from Kermit Humphries, Coordinator - Planning and Operations, October 11, 1982.

14 Alaska Department of Health and Social Services, Division of Adult Corrections, Office of the Director. The Division uses a simple regression line based on actual growth in prison population over the past three years.

15 In addition, the Department's Division of Mental Health and Developmental Disabilities houses individuals who were found not guilty by reason of insanity at the Alaska Psychiatric Institute in Anchorage.

Table 3
Alaska State Correctional Centers
Capacity and Populations

State Correctional Centers	Normal Capacity[a]	Emergency Capacity[a]	Prisoner Count 1/82[b]	Prisoner Count 1/83[a]
SCC - Anchorage				
• Sixth Avenue	100	100[b]	100	94
• Third Avenue	65	65[b]	83	64
SCC - Eagle River				
• Hiland Mountain	160	240	153	212
-Special Treatment	10	14		
• Meadow Creek	28	28	26	28
SCC - Palmer				
• Minimum Custody	106	120	130	138
• Medium Custody	100	150	95	98
SCC - Fairbanks			164	181
• Temporary Unit	56	56		
• Expanded Unit	110	125		
SCC - Nome	30	31	33	40
SCC - Juneau				
• Lemon Creek	90	105	132	127
• Johnson Human Svcs.	4	4	1	2
SCC - Ketchikan	30	30	28	28
SCC - Ridgeview	90	115	134	94
Careage House				13
Total	979	1,183	1,079[c]	1,119[d]

[a] Department of Health and Social Services, Division of Adult Corrections.

[b] Attorney General's Office, Memo to File No. J66-516-82 from Wilson L. Condon regarding Analysis of Corrections Population Projections, November 23, 1982.

[c] This figure does not include the 61 prisoners that were confined in State halfway houses during this period or the 188 prisoners held in federal prisons outside of Alaska.

[d] This figure does not include the 78 prisoners that were confined in State halfway houses during this period or the 191 prisoners held in federal prisons outside of Alaska.

The State's most immediate spatial needs are for short-term detention, medium, and maximum security facilities.[16] As an immediate solution to its facility requirements, the Department has been using temporary facilities and modular units.

As a long-term solution, the Department has advocated the construction of additional facilities, a reassessment of its method of determining capacity limits of institutions, and a revision of its current method of classification of prisoners. The latter topic will be discussed in a subsequent section of this report.

As the numbers of individuals confined increases, so do the total costs of care. As of FY 81, the average cost of care for a prisoner in Alaska's institutions was approximately $24,338 per year. Although the methods of computing costs of care vary from state to state, it appears that Alaska's per diem costs historically have been considerably higher than those in other states.

A second problem arising from overcrowding is the potential weakening of prison security. Between October 1980 and July 1982, 19 prisoners escaped from Alaska prisons.[17] Although each individual was apprehended, the escapes have given cause for concern. Although some of these incidences were attributable to temporary conditions arising from construction, deficiencies in security measures were a factor in many of the escapes. Supervisory staff error, for example, was clearly a factor in five of the escapes.[18]

A related concern is the potential for violence in crowded prison settings. This and other byproducts of overcrowding can cause professional dissatisfaction among correctional employees which in turn can result in significant staff turnover. Correctional centers in the Fairbanks and Anchorage areas are particularly overcrowded.

A third problem--possibly of greatest concern to state governments--is the potential for litigation filed on behalf of prisoners claiming that inadequate living conditions violate their constitutional rights.

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16 The state's short-term needs will be partially resolved following the completion of the new Cook Inlet Correctional Center. Scheduled to open in October 1983, this facility is currently intended to house pretrial detainees and unsentenced felons. Seventy-two of the facility's beds will be made available for occupancy in early February 1983.

17 Betty Barton, House Research Agency, "Prison Escapes," Research Request No. 82-169, (hereafter cited as "Prison Escapes").

18 Ibid.