

2540

SJ

HB 103

-

HB 126

2540

Roger Endell  
Commissioner of Corrections  
Office of the Governor  
Juneau, Alaska 99811  
Position Statement: Gave testimony on HB 103.

PREVIOUS ACTION

Cleary Case                    See House Judiciary Committee Meeting  
minutes from: February 11, and March 4,  
1983.

EO 54                            There was no previous action to record.

HB 103                          There was no previous action to record.

ACTION NARRATIVE

TAPE#32 (Side 1)  
Recording  
Number 0003

The meeting was called to order by Chairman Bussell at 1:30 p.m. All members were present with the exception of Rep. Malone, who arrived later.

Chairman Bussell stated the business for the day as EO 54, HB 103, and a teleconference on the Cleary Case.

Number 0035

Rep. Bussell stated, 'I have asked Commissioner Sundberg of the Department of Public Safety to join us today. Commissioner, if you would take the seat at the end of the table, I would appreciate it.

'There is an announcement I would like to make to the committee members, as well as Commissioner Sundberg. I thank you for taking the time to come down here today, Commissioner.

'I wish to inform you and the members of the committee of certain events that took place on Friday, March 4th, which is last Friday. Mr. Dan Hickey, who is the Chief Prosecutor of the State Department of Law, and Mr. Ray Johnston, who is an Investigator for the State Troopers, and Mr. Tim Petumenos, who is an Investigator in the Attorney General's Office, all came to my office that afternoon after the Judiciary hearing meeting to have

a discussion with me. They spent 25 to 30 minutes in my office questioning me about my progress and methods, if you will, and other things concerning my scheduling in getting ready to hold hearings on the Attorney General for confirmation.

'Shortly after they left, and while consulting with my staff, we discovered that Mr. Johnston had left a briefcase behind. It was a spring top, about this color briefcase (he pointed to a folder brownish-red in color). It was sitting on the couch in a popped-open position. Clearly visible, among other things, was a battery-driven recording device with about a five-inch microphone. It took me by surprise. I showed it to Judge Brewer. My first reaction was to make sure that the microphone was hooked to the tape recorder and verify that there was indeed conversation on the tape. To my satisfaction, I am convinced that the conversation on the tape was most likely the conversation that took place in the room.

'It was my belief that everyone in that room, with the exception of me, knew that that conversation was being recorded, if indeed it was. I believe that there is a violation of statute, specifically Alaska Statute 42.20.310, and upon their departure the instrument then became eaves-dropping or bugging devices. I also believe that this happened in direct controversy of the law that as directed by the Alaska Supreme as far back as 1978 in the State vs. Blast.

'Mr. Sundberg, I have no knowledge of how many other legislators that team may or may not have visited that day. I can tell you, in there along with his handcutts and car keys, were other tapes. Tapes that would have fitted other types of recorders.

'At this time Mr. Sundberg, I must ask you, in fact I must insist, that you fully investigate this case or make a case for investigation and report back to this committee in the best fashion that you can. My staff and the staff of all committee members I am sure are extremely busy, but they will cooperate or you have my promise

that they will cooperate, as well as myself, with you in any matter that we possibly can.'

- Number 0117            Commissioner Sundberg replies okay and asks where the briefcase is now.  
Rep. Bussell states that they came back about 15 minutes later and he returned the case to them.
- Number 0126            Chairman Bussell calls an at ease for 4 minutes to connect with the Legislative Teleconference.
- Number 0127            Rep. Clocksin asks a question about the briefcase.
- Number 0140            Rep. Bussell addresses Jim Brown with State of Alaska D.O.C. in Anchorage, in relation to the Cleary vs. Bierne Case to monitor the case movement. He describes the procedures and forms involved in getting a case to the Federal Bureau of Prisons.
- Number 0227            Rep. Bussell asks concerning the forms that a Mr. Schmidt has given to him.
- Number 0235            Jim Brown relates the differences between the forms.  
  
Rep. Malone arrives.
- Number 0250            Rep. Clocksin refers to last year's legislation concerning the transferring of State inmates.  
  
They converse.
- Number 0284            Art Schmidt, with D.O.A.C. in Anchorage, is asked to make a statement concerning his role as a Compliance Officer in the Cleary Case. He goes over the history of the compliance depart and the tasks the Department goes through. The information is available to the Court and the Attorney General's Office. Refers to the Compliance Manual passed out a few weeks ago.
- Number 0380            End of statement.
- Number 0381            Rep. Bussell asks if Art Schmidt is familiar with HB 200.

Art Schmidt replies that he is not. States that it deals with the rights of Peace Officers in relation to being accused of a crime. Then states what was said, this would give Peace Officers more rights than ordinary citizens, and states the forms and rights of ordinary citizens.

Number 0408

Rep. Liska asks if he is finding any subject or items that are unreasonable.

Art Schmidt replies.

Number 0445

Rep. Liska asks about the 48-hours of notice of hearing.

Art Schmidt replies.

Number 0469

Roger Endell is called to testify on EO 54. Chairman Bussell thanks him for coming to testify with his busy schedule.

Number 0480

Rep. Bussell refers to the termination of the Legislative Teleconference and thanks Jim Brown and Art Schmidt.

Jim Brown talks in reference to the Federal prison applicants.

Number 0510

Roger Endell begins his statement concerning EO 54. He states the Governor asked him to look into these matters. He proceeded to interview over 100 Public Safety Court Corrections people in reference to how the Department of Corrections could be improved; many were the same. He believes to accomplish this we need the cooperation of all 3 branches of Government. The main problem is overcrowding. January and February were the highest in increase; at that rate, there is a need for 200 new beds a year. It is getting tough on crime - expensive. We are not the enemy, we want to correct the problem. What would the creation of the Department of Corrections do? Make us even with the agencies of enforcement in the state; give us access to the Office of the Governor; enable us to set up a management structure that is not now established, i.e., the hiring and firing of staff. People will be responsible directly to the Commissioner. The new department has only 10 new positions; the additional

position will slide over from the Department of Health and Social Services as is. No new money is required before FY 84, it comes out of the existing budget. The money further down the line will be in building a new institution. It is time for Alaska to catch up.

Number 0624 Rep. Liska asks if there is a site for a new maximum security prison. Roger Endell replies that as of yet there is not - looking at several sites.

Number 0630 Rep. Barnes asks what the 10 new positions are.

Roger Endell replies, Commissioner, 2 Assistant Commissioners, 3 Regional Directors, 1 Public Relations and miscellaneous.

Number 0638 Rep. Bussell refers to the packets in the committee folders on the new Corrections and information there. He asks about buildings for the department.

Number 0651 Roger Endell replies there are no new buildings for the Department itself.

At the turn of the tape, Rep. Barnes asks again about the new positions.

TAPE#32 (Side 2)  
Recording  
Number 0000

Roger Endell restates his first list of positions, some are deputies.

There is discussion on the new positions.

Number 0060 Rep. Barnes asks about getting those who have met the parole eligibility out to help the space problem in the prison.

Number 0080 Roger Endell comments on the overcrowding and relates it to the passage of tougher laws concerning crime. He states that now the need is for additional beds.

Number 0107 Rep. Malone asks what Roger Endell has done since being appointed to help with the overcrowding problems.

Number 0112

Roger Endell replies he has held several meetings; checked into converting military buildings over to correctional centers; and lists more ideas. Relates the number of possible beds in the facilities in question and the adding of new beds in now existing areas.

Number 0173

Rep. Barnes refers back to Rep. Bussell's statement on the idea of getting those who are parolable.

Roger Endell comments there was a task force to have hearings on this fact.

Number 0210

Rep. Clocksin comments on the overcrowding, the carriage house and the idea of putting in more beds.

Number 0240

Roger Endell comments back on the different facilities.

There is discussion.

Number 0290

They talk of the reclassification system and tools. There is mention of a halfway houses.

Number 0324

Rep. Liska asks if other states are set up like this and how it works.

Roger Endell states that many states do have this administrative set up. He believes they have the same problems as Alaska.

Number 0339

Rep. Liska asks if we can get by without having a maximum security prison.

Roger Endell replies that there is a need for this.

Number 0347

Rep. Liska asks concerning prison work - industrial.

Roger Endell replies that it is extremely hard to set up the area, not putting citizens out of work. Refers to plans to have Lemon Creek to do laundry for the ferry system. He states that it has been approved to grow more potatoes and other vegetables. Relates that these are delayed due to the raising facilities or waiting for the weather to break.

Number 0380 They discuss road signs being done by prisoners. They continue to discuss the possibilities of future prison industries.

Number 0423 Rep. Bussell comments on road signs. Then refers to the Fire Marshal's suggestion on fire prevention in prison.

Roger Endell states that he will talk to him this week.

Number 0446 Rep. Bussell about about the youth, there is nothing in the bills to move the Youth Department to Corrections.

They discuss the placement and division of the Department.

Number 0497 Rep. Wendte asks if the control of Corrections in jeopardy.

Roger Endell replies that if it does not get straightened out, the Courts will take over. The treasury will be dipped into.

Number 0514 Rep. Wendte comments so we need to respond quickly.

Roger Endell replies yes and talks of the cooperation of the 3 branches of Government in the matter of Corrections.

Number 0534 Rep. Wendte asks about the production of the task force.

Roger Endell replies that he is not satisfied and states the provisions as to why. Talks of some of the settlement arguments.

Number 0568 He also states that Eagle River has asked to be withdrawn from class action. Inmates are dissatisfied with the settlement.

Number 0580 Chairman Bussell asks Roger Endell, due to the time limit, if he can come back tomorrow. He agrees to come back at 1:30 p.m. Chairman Bussell thanks Roger Endell for coming.

Number 0529 There being no further items to come before the committee, Chairman Bussell adjourned the meeting at 2:58 p.m.

HOUSE JUDICIARY  
STANDING COMMITTEE  
March 8, 1983  
1:35 p.m.

Members Present: Rep. Russell, Chairman  
Rep. Liska, Vice-Chairman  
Rep. Clocksin  
Rep. Hayes  
Rep. Barnes  
Rep. Malone

Members Absent: Rep. Wendte

COMMITTEE CALENDAR

HB 103 "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."

EO 54

WITNESS REGISTER

Representative Milo Fritz  
Alaska State Legislature  
Capitol Building, Room 114  
Pouch V  
Juneau, Alaska 99811  
465-3789  
Position Statement: Prime Sponsor of HB 103.

Representative Mike M. Miller  
Alaska State Legislature  
Capitol Building, Room 24  
Pouch V  
Juneau, Alaska 99811  
465-4841  
Position Statement: Gave testimony on HB 103 and EO 54.

Roger Endell, Commissioner  
Department of Corrections  
Office of the Governor  
Juneau, Alaska 99811  
(No phone number given)  
Position Statement: Gave testimony on HB 103 and EO 54.

PREVIOUS ACTION

HB 103

01/21/83: First reading of the bill and referred to the Health, Education & Social Services, Judiciary and Finance Committees.

02/14/83: Health, Education & Social Services Committee recommends it be replaced with CS for HB 103 (HESS) (same title), that it do pass and attaches a fiscal note.  
Concurring: Tischer (Co-Chairman), Fritz (Co-Chairman), Goll, Koponen, Davis and M.W. Miller.

Fiscal note appeared in House Journal Supplement No. 8.

See previous House Judiciary Committee Meeting minutes from: March 7, 1983.

Statutory Reference: AS 44.3C.010 & .020; AS 11.71.305; AS 12.55.025(b) & (d); AS 12.70.220(b) & (c); AS 33.05.080(2); AS 33.15.260(2) & (4); AS 33.30.130(a), .900(1) & (3); AS 33.32.070(a); AS 33.35.010 & .040; AS 33.36.040; AS 41.20.110(b); AS 44.17.005; AS 44.29.020(9); AS 47.08.050(8); AS 47.17.020(a)(4); AS 47.21.010(b)(1); AS 47.30.845(5); & AS 47.37.040(3)

EO 54

House Action: Offered 1/17/83; Referred: Health, Education & Social Services, Judiciary and Finance.

Senate Action: Offered: 1/18/83; Referred: Health, Education & Social Services, Judiciary and Finance.

See previous House Judiciary Committee Meeting minutes from: March 7, 1983.

Statutory Reference: AS 24.30.130(b); AS 12.55.025(b), (d), .055(a), .185(2); AS 12.70.220(b) & (c); AS 33.05.080(2); AS 33.15.260(2) & (4); AS 33.30.130(a), .900(1) & (3); AS 33.32; AS 33.35.040; AS 33.36.040 & .100; AS 44.17.005; AS 44.28.010, .020 & .030; AS 44.29.020(9) & (17)

ACTION NARRATIVE

TAPE#33 (Side 1)  
Recording  
Number 0003

The meeting was called to order by Chairman Bussell at 1:35 p.m. All members were present with the exception of Rep. Wendte, who arrived shortly after the meeting started. Chairman Bussell stated the business for the day as HB 103 and EO 54.

Number 0034

Chairman Bussell calls Representative Milo Fritz, Prime Sponsor of HB 103, to speak on his bill.

Rep. Fritz stated, 'The proposal to change the Division of Corrections within the Department of Health and Social Services to departmental status is one that is supported by the Governor's Office, corrections professionals and the House Health, and Social Services Committee.

'Elimination of the correctional crisis in this State is of primary concern to me, and I know that members of the Judiciary Committee are keenly aware of the problems facing the correctional system. The overcrowding, the mismanagement, the poor conditions and lack of alternatives to incarceration, are all challenges that face us in the current legislative session. You have heard the briefing on the Cleary Case and know that the problems are real and that cooperation between all branches of government will be necessary.

'With proper administration, budgeting and organization the problems can be solved. Proper management is the beginning. The new Department of Corrections and a responsive management team will be the first step. By creating a Department, a commissioner and executive staff can be appointed who answer directly to the commissioner. The existing Division of Corrections has been plagued with inconsistent management within the Division and within the Department of Health and Social Services. The Division has placed a disproportionate load on several Department of Health and Social Services programs, and the goal of the Division of Corrections is not necessarily consistent

with the goals of the Department of Health and Social Services, which are oriented toward public health, public assistance, mental health, and family and youth services.

'The proposal to create a new department, as presented to the Health and Social Services Committee, is to retain 9 existing positions and transfer them to the new Department. One existing position in Corrections will be retained and 10 new positions will be created. Mr. Endell and his staff can speak better to the fiscal and administrative makeup of the Department, so I will leave that to him.

'The issue of juvenile corrections was discussed by the committee. The consensus of the committee was that juvenile corrections should be included in the new Department, but the transition should occur after the new Department is established and has been able to correct some of the immediate problems at hand.

'The lack of specific information regarding the Department of Corrections has been frustrating for those of us who must evaluate the proposal. However, in this instance, considering the scope of the problem and the urgency of the problem, I am willing to give the Governor the benefit of the doubt and trust his office to implement an effective corrections program.'

Number 0112

Rep. Wendte asks to have the difference between HB 103 and EO 54 explained.

Rep. Fritz responds that there are very few differences - none really, just which will go through first.

Number 0127

Rep. Liska asks about the 9 positions.

Rep. Fritz replies that they are new or transfers.

They discuss the number of positions and refer to Roger Endell's testimony on that.

Number 0159

Representative Mike M. Miller was asked to take the witness chair and make a statement;

supports HB 103 and EO 54. He stated the main difference between the two is to have Youth Corrections transferred over. He likes the approach of the Executive Order.

How do we treat the problem? He does not believe more beds is the answer; we cannot have that kind of expense. There is some that can be moved out to make room for the hard core criminals that are dangerous to themselves and the public. Refers to other states, especially Washington. He has the Washington bill on this subject.

We need to do all we can to rehabilitate those in prison; educate them for the time that they are released. Talks of halfway houses and carriage houses. Comments on putting prisoners to work for the community to pay for their expenses.

Rep. M.M. Miller hopes to get a more complete package on this subject. There is work to be done on correctional statutes.

Number 0292

Rep. Wendte asks on the Youth Corrections.

Rep. M.M. Miller would like to see them where they will get the best possible care.

Number 0320

Rep. Bussell talks on why he has gone to the extent that he has on the prison issue. Corrections needs a new department. We need to decide on EO 54 and HB 103; maybe take the best of both. Rep. Bussell favors the appointment of Roger Endell to the head of the Department; he just wants to know where it is going.

They converse on the need for the Department.

Number 0380

Rep. Liska comments on the need for housing and relates the feelings of his district.

Number 0395

Rep. Bussell asks concerning the report Rep. M.M. Miller has from Washington.

Rep. M.M. Miller replies that he will get copies for Rep. Bussell.

Number 0410

Rep. Wendte comments on the system of sentencing and the holding of criminals.

Rep. M.M. Miller responds that he does want the hard core people to stay incarcerated. He states that the United States has the third highest crime rate in the world.

Number 0455

Rep. Bussell calls Roger Endell and thanks him for waiting for the Legislators to testify.

Number 0464

Roger Endell, Commissioner of the Department of Corrections with the Office of the Governor, begins his testimony. He states that the Executive Order will become effective unless it is voted down by both houses, there can be no amendments. HB 103 has nothing to do with EO 54.

Rep. Bussell asks if there is a Concurrent Resolution to be issued to vote down EO 54. He stated that he wants the Executive Order to stay 'alive' if it shows that good will come out of it, i.e., youth.

Number 0495

Roger Endell comments that HB 103 and EO 54 say nothing concerning the movement of Youth Corrections.

Number 0500

Rep. Clocksin questions Roger Endell to see if there is anything behind the screens - plans to move Youth Corrections.

Roger Endell responds that nothing has been agreed to in anyway. It is his personal belief that Youth Corrections should be in the same department.

There is discussion on the condition of the plan of the Administration concerning Youth Corrections between committee members and Roger Endell.

Number 0562

Roger Endell goes over the statistics of those incarcerated in Alaska and the United States. He states that 1 out of 75 people are under the Department of Corrections. He passes out several graphs to show the rise in the number of prisoners (those that are sentenced, unsentenced, sentenced misdemeanors and unsentenced misdemeanors), a number chart of the number of prisoners from January of 1974, to February of 1983, A memo from Ted Corey on the subject count of prisoners in each facility, and the moving

that is going to take place shortly. He proceeds to discuss and explain each of these. Roger Endell states that he has forced his attention on the bedding problem instead of the creation of the Department.

Number 0644

Rep. Liska comments on the housing, i.e., drunk driving.

TAPE#33 (Side 2)  
Recording  
Number 0000

They discuss the conviction of drunk drivers and the issue of licenses.

Number 0050

Rep. Liska states that there is a state where the lesser offenders pay for the housing while they are there.

Number 0065

Roger Endell talks of the situation in Oklahoma and the buying of hotels.

Number 0077

Joe Brewster talks on the taking away of the licenses.

There is discussion on this.

Number 0085

Rep. Bussell comments on drunk driving.

Number 0100

Rep. Clocksin asks on the serving of sentences of 3 days for drunk driving and of not giving them the option to serve the time on the weekend.

Roger Endell responds.

Number 0129

Rep. Clocksin asks about the funds - are they in the Capital Fund or do we need to appropriate the Supplement Capital Budget.

Roger Endell responds.

There is discussion on the funds and the position of the new facility.

Number 0190

Rep. Clocksin stresses his opinion on the need to consider the money and the possibility of an Emergency Capital Appropriation bill.

There is reference to a bill introduced in the Senate.

Number 0278 Roger Endell states he will try his best to get a budget together.

Number 0283 Rep. Bussell asks what is going to happen in the next year.

Roger Endell replies on the things he plans to have appointed this coming year and the steps which they would have to go through. He talks of the 1984 budget.

Number 0380 Rep. Clocksin comments on the alcohol control in connection with State employees.

They discuss the possibility and the control that are under development. They also discuss the transfers of people in alcohol treatment program to Corrections.

There is a comment from a lady in the room on the transferring of people. They are considered as Social Workers.

Number 0460 Roger Endell comments that someone has stated that he has been inconsistent in his testimony and asks if there is something I can clear.

Rep. Clocksin states that he believes it is the shift his position of the Cleary Case.

They talk of the settlement of the Cleary Case and the Federal prisons.

Number 0498 Rep. Bussell asks Roger Endell what he plans to do with the parole problem.

Roger Endell replies that they are sending him a report. Rep. Bussell asks if there is anything they can do to help. Roger Endell replies that he will let Rep. Bussell know if there is.

Number 0510 Rep. Liska asks on the Cook Inlet facility and the fire protection.

Roger Endell gives a possible solution of an emergency exist to put in more beds, and additional suggestions for improvements in fire protection.

Number 0540

There being no further business to come  
before the committee at this time, Chairman  
Bussell adjourned the meeting at 2:55 p.m.

HOUSE JUDICIARY  
STANDING COMMITTEE  
March 9, 1983  
1:35 p.m.

Members Present: Rep. Bussell, Chairman  
Rep. Liska, Vice-Chairman  
Rep. Barnes  
Rep. Clocksin  
Rep. Wendte

Members Absent: Rep. Malone  
Rep. Hayes

COMMITTEE CALENDAR

HB 103 "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."

EO 54

WITNESS REGISTER

Roger Endell, Commissioner  
Department of Corrections  
Office of the Governor  
Juneau, Alaska 99811  
(No phone number given)  
Position Statement: Gave testimony on HB 103 and EO 54.

PREVIOUS ACTION

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Concurring: Tischer (Co-Chairman), Fritz (Co-Chairman), Goll, Koponen, Davis and M.W. Miller.

Fiscal note appeared in House Journal Supplement No. 8.

See previous House Judiciary Committee Meeting minutes from: March 7, and March 8, 1983.

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EO 54

House Action: Offered 1/17/83; Referred: Health, Education & Social Services, Judiciary and Finance.

Senate Action: Offered: 1/18/83; Referred: Health, Education & Social Services, Judiciary and Finance.

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Statutory Reference: AS 24.30.130(b); AS 12.55.025(b), (d), .055(a), .185(2); AS 12.70.220(b) & (c); AS 33.05.080(2); AS 33.15.260(2) & (4); AS 33.30.130(a), .900(1) & (3); AS 33.32; AS 33.35.040; AS 33.36.040 & .100; AS 44.17.005; AS 44.28.010, .020 & .030; AS 44.29.020(9) & (17)

#### ACTION NARRATIVE

TAPE#34 (Side 1)  
Recording  
Number 0003

The meeting was called to order by Chairman Bussell at 1:35 p.m. Members present were: Representatives Bussell, Liska, Barnes, Clocksin and Wendte. Representatives Malone and Hayes arrived after the meeting started.

Number 0020

Chairman Bussell states the business for the day as EO 54 and HB 103, creating a new Department of Corrections.

Number 0040

Roger Endell, Commissioner of the Department of Corrections with the Office of the Governor, takes the witness chair.

Number 0045

Rep. Bussell asks Roger Endell to correct him if he is wrong, that within in the next week or so, you will have information on the amount of expenditures.

Roger Endell states that that is correct.

They talk of amending HB 103 to include the Division of Youth Corrections. The effective date of EO 54 is April 1; for HB 103 it is July 1.

Number 0110

Rep. Clocksin asks about the transfer and what exactly would be transferred.

There is discussion on the specific area that would be moved.

Number 0170

Rep. Malone arrives.

Number 0212

Rep. Wendte comments on the administrators.

Number 0254

Rep. Liska asks if there is any other states with this type of corrections.

Roger Endell replies that there is probably 50 different systems.

Number 0310

Rep. Hayes arrived at 1:55 p.m.

They discuss if the committee and Roger Endell follow the course centered around the Youth Corrections, the possible transfer and the effects.

Number 0473

There being no further items to come before the committee at this time, Chairman Bussell adjourned the meeting at 2:07 p.m.

STATE OF ALASKA

TASK FORCE ON CORRECTIONS

A Report On the Status of Corrections  
for  
Governor William Sheffield

December/January 1982-1983

The Honorable William J. Sheffield  
Governor  
State of Alaska  
Pouch A  
Juneau, Alaska 99811

January 3, 1983

Dear Governor Sheffield:

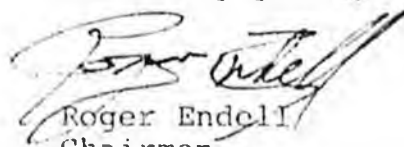
It is my pleasure to present to you the following report of the Task Force on Corrections. We have evaluated the issues and problem areas of correctional administration and management in Alaska as directed in your charge.

It is our hope that you will find the report of this Task Force and its policy recommendations useful to the future administration of a sound correctional system. We believe that it is not only possible but also mandatory that the executive, legislative and judicial branches of state government work diligently and harmoniously to carry out the directive of the Constitution of the State of Alaska for protection of the public and reformation of the offender.

We hope that this report will provide you with, at least, one tool toward that end.

We are pleased that we have had the opportunity to assist you.

Sincerely yours,



Roger Endell  
Chairman  
Task Force on Corrections

GOVERNOR'S TASK FORCE ON CORRECTIONS

December/January 1982-1983

Roger Endell, Chair  
Justice Center  
University of Alaska, Anchorage  
Anchorage, Alaska

Charles Adams  
Former Director, Division of  
Corrections and  
Former Executive Director  
Criminal Justice Planning Agency  
Juneau, Alaska

Ski Olsonoski  
ALASCOM  
Chair, Anchorage Crime  
Commission  
Anchorage, Alaska

Dan Branch  
Private Attorney  
Chair, Citizens Advisory Committee  
Bethel Regional Correctional Center  
Bethel, Alaska

Ed Rhodes  
Deputy Chief  
Anchorage Police Dept. and  
Mayor Tony Knowles'  
Representative  
Anchorage, Alaska

Charlotte Brower  
Former Magistrate, Barrow  
Alaska Court System  
Barrow, Alaska

Pat Wellington  
Alyeska Pipeline Service Co.  
Former Director  
Alaska State Troopers and  
Former Commissioner  
Alaska Department of  
Public Safety  
Anchorage, Alaska

Bert Campbell  
ALASCOM  
Judicial Qualifications Commission  
Anchorage, Alaska

John Carlson  
Former Mayor  
Fairbanks North Star Borough  
Fairbanks, Alaska

Kevin Bruce, Liaison,  
Special Assistant to  
Governor Sheffield

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## INTRODUCTION

### Governor's Charge

Governor William Sheffield's transition Task Force on Human Services identified the management and operation of the Alaska Division of Corrections as a "dominating problem" within the Alaska Department of Health and Social Services. The Task Force on Human Services recommended the appointment of a "Blue Ribbon Task Force on Corrections" to address the following issues and relevant policy and procedural concerns:

1. Prison overcrowding and examination of current capital improvement programs.
2. Rehabilitation and alternatives to institutionalization.
3. Administrative organization and staffing problems.
4. Communications and coordination among justice agencies.
5. Municipal assumption of pretrial detention responsibilities.
6. Institutional location of juvenile corrections in state government.
7. Institutional placement of Corrections in state government.

The Task Force on Corrections was directed to commence an investigation of these identified issues immediately and to prepare and submit a report and policy recommendations to the Governor in early January, 1983.

To carry out its mission, members of the Task Force used two principal investigative methods which provided sources of information. These methods included: 1) the review of a multitude of reports and planning documents written by both in-state and out-of-state correctional practitioners and consultants since 1976; and 2) a statewide and systematic series of interviews with persons from municipal and state governments and local communities who were both knowledgeable about correctional problems and issues, and who were capable of making sound recommendations which would address these problems and issues.

It was not the intent of this Task Force to accumulate all of the voluminous materials and information already existent on this subject and incorporate it into yet one more burdensome volume. We believe that the nearly one million dollars spent on a variety of correctional reports and plans over the past six years provides but one example of the crisis in correctional management. The division has been managed by four different directors in the past six-year period. The most recent director as well as the current director were both hired by the previous administration to move the Division of Correction toward a more stable management situation. Their task was made more difficult because of their lack of knowledge of the unique problems and potential advantages of Alaskan corrections.

Alaska need neither to continue to hire out-of-state leadership nor to contract with out of state consultants. We are not convinced that the other states have developed correctional systems superior to that of Alaska in spite of our current and temporary crisis. We are convinced that knowledgeable and capable leadership should be sought from within our population to manage corrections just as talented and capable Alaskans are found to direct and manage the other departments and divisions within the executive, judicial and legislative branches of state government.

It is clear that there is a crisis in corrections. It is also clear that with sound, long term, and professional management, most of the current problems can and will be resolved. The resolution of these problems will require full cooperation as well as coordination between and among all three branches of Alaska's government--executive, judicial and legislative.

## SUMMARY OF RECOMMENDATIONS

The following represents an abbreviated listing of the major policy recommendations to be found in this report. These statements are not comprehensive and are extracted out of context as an aid to the discussion of issues contained in the charge to the Task Force on Corrections.

### Prison Overcrowding

1. Except for the Anchorage Careage House, no correctional facilities should be closed until adequate new correctional space has been prepared. (p.9)
2. The Careage House should be utilized as corrections' Southcentral Alaska headquarters and as a correctional training center. (p.9)
3. The new Cook Inlet pre-trial facility should not be opened to inmate populations until the facility is ready for secure occupancy and the staff has been properly trained. (p.9)
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5. The Third Avenue and 6th & C correctional centers in Anchorage should be utilized to hold short term offenders and those incarcerated for alcohol related offenses. (p.10)
6. The continued use of Ridgeview should be re-evaluated for potential correctional use in light of economic costs and public benefits. (p.11)
7. Hiland Mountain correctional center near Eagle River must be permitted to return to its original mission. (p.11)
8. Mentally disturbed offenders should continue to be housed temporarily at the Alaska Psychiatric Hospital. (p.12)
9. Sentenced adult female housing space at Meadow Creek (Eagle River) should be added as necessary with much less expensive architecture than past practice. (p.12)
10. The type and methods of construction of the two institutions at Palmer should be copied elsewhere as needed in the state. (p.13)

11. The state should move immediately to evaluate and obtain additional available sites for expansion of correctional operations in the Kenai and Matanuska-Susitna Boroughs. (p.13)
12. Comprehensive correctional services regional centers should be constructed in both Nome and Bethel utilizing either "stick built" or prebuilt modular units or a combination of both. (p.14)
13. All new correctional construction proposals should be evaluated in relationship to the need for increased bed capacity statewide. (p.14)
14. The state should continue to maintain a number of dangerously violent Alaska offenders within the Federal Bureau of Prisons system. (p.15)
15. Either a Matanuska-Sustina or Kenai Borough site should be developed and utilized to provide maximum security prison space. (p.15)
16. Correctional construction should be recognized as a high priority among all units of state government. (p.16)
17. A maximum security institution is needed to securely house a portion of the Alaska offender population. (p.17)

#### Administrative Organization

18. The recently completed management plan for corrections should not be fully implemented. (p.19)
19. The revised classification system should be implemented in concert with correctional reorganization and development. (p.19)
20. Corrections should be managed on a decentralized regional basis. (p.20)
21. All jail contracts should be managed by the Department of Corrections. (p.21)
22. A well trained correctional staff is mandatory and critical to efficient management. (p.22)

### Institutional Placement of Corrections in Government

23. The Division of Corrections should be moved quickly and decisively in toto by immediate executive order to Departmental status. (p.24)
24. A Commissioner of Corrections should be appointed by the Governor as soon as possible. (p.24)

### Communication and Coordination Among Justice Agencies

25. A cabinet level body should be directed to coordinate policy and law implementation for the effective administration of justice. (p.26)
26. Management personnel of the agencies of justice (state and local) should coordinate the activities of these agencies at the local and regional level. (p.26)
27. The present partial settlement agreement efforts in the Clary et al. case should be halted and reviewed immediately. (p.26)

### Municipal Responsibilities

28. Municipalities should not be made responsible for the costs of pre-trial incarceration of offenders held on state criminal charges, but municipal-state coordination is essential. (p.28)
29. The state should move immediately to address the law, policies and procedures with regard to public drunkenness and drunk driving. (p.29)
30. The state Office of Alcohol and Drug Abuse should provide comprehensive program services to correctional populations in cooperation with local municipalities. (p.29)

### Juvenile Corrections

31. All youth correctional functions should be organized as a separate division within the Department of Corrections when reorganization is completed and functional. (p.21)

### Rehabilitation and Alternatives to Incarceration

32. The prisoner population of the State of Alaska should be put to work. (p.33)

33. Offender education and recreational programs should be made available to prison populations during the non-work hours of those prisoners. (p.34)
34. A systematic evaluation of approximately 150 parole eligible offenders should be conducted immediately. (p.35)
35. Corrections should provide the opportunity to every offender the resources of a halfway house program for those about to be released -- corrections must correct. (p.35)

## PRISON OVERCROWDING

Class action suits, media accounts, and expert as well as lay opinion have confirmed beyond all doubt that Alaska's statewide system of correctional centers is overcrowded beyond any reasonable margin of safety and security. The Task Force is well aware that the Constitution of the State of Alaska mandates that the state's correctional system must reform offenders and protect the public. In our judgment, the current crisis in corrections only insures that the state cannot carry out its Constitutional mandate. The State of Alaska must move immediately and with diligence to resolve overcrowding in the correctional system.

The members of the Task Force on Corrections are cognizant that the public has demanded that state and local officials "get tough on crime," that the public's attitude is appropriate, but that it is also extremely costly. Therefore, we have developed a series of recommendations which will alleviate the overcrowded conditions in our correctional system at lower costs than proposed by the previous administration which will, at the same time, we believe, provide adequately for protecting the public and reforming offenders.

Recommendation 1:

With the exception of the Anchorage Careage House, no facilities currently holding incarcerated accused or sentenced offenders should be closed until and unless adequate new correctional space has been fully prepared and readied for occupancy.

Recommendation 2:

The Careage House in Anchorage should be utilized immediately as the Division of Corrections' headquarters. All Anchorage area central office, institutional, field services and training employees should be moved immediately from the Frontier Building in Anchorage to this new location for greater cost and operating efficiency. This facility is now owned by the state so that only the costs of utilities and minor necessary renovations need be incurred for the Division of Corrections to operate efficiently from this site.

Recommendation 3:

In spite of the tremendous pressure on the managers of the correctional system, the transfer of offenders into the new Cook Inlet Pretrial Facility in Anchorage should not take place until the institutional staff has been hired, fully trained, and the facility has been completed. To do otherwise will almost assuredly result in major management problems and raise the risks of difficulties within the offender population. When completed, this facility could

operate, as designed, to book and hold all Anchorage area pre-trial detainees, and could have, again as designed, full-time on site magistrate services. This latter procedure would save police man hours and the great expense of prisoner transportation and prevent the unnecessary incarceration of persons able to be released on their own recognizance or to make bail. Use of video equipment would appear to be practical in both Anchorage and Fairbanks at the present time.

Recommendation 4:

The Third Avenue Correctional Center should be utilized to hold short-term offenders, and especially those incarcerated for alcohol-related offenses. It is inappropriate to utilize the facility for booking of new arrestees, for long term offenders, or for the purposes of classification of offenders as was proposed to the Task Force during our discussion with the current director.

Recommendation 5:

The Correctional Center Annex at 6th and C in Anchorage recently received approximately \$1.4 million of renovations in order to comply with a judgment of the court to make it constitutionally sound. It should continue to be fully utilized as a booking facility until the new Cook Inlet institution is operationally ready. Even after Cook Inlet comes on line, the Annex can and should continue to serve as an adequate facility to house short term offenders.

Recommendation 6:

The Ridgeview facility should also continue to be utilized until the Cook Inlet institution is ready. With the opening of Cook Inlet, use of the Ridgeview correctional center should be re-evaluated for potential correctional use in light of economic costs and public benefits. It is possible that Ridgeview could be converted for use as a regional halfway house/community services facility for offenders about to be released and for offenders whom the courts wish to sentence to short term and/or pretrial incarceration (usually followed by probationary supervision). There is a drastic need for this type of less costly facility in the Anchorage area and public opinion should support a "lower risk" use of this present site. Structural and design improvements may be borne by present Division of Corrections expertise and prison labor.

Recommendation 7:

The Hilland Mountain Correctional Center near Eagle River must be relieved as quickly as possible of the burden of too many inmates in the available space. This facility must return to its original mission as a rehabilitation center for first offenders and those of low security risk. This institution has, in the past, been recognized nationally and even internationally as the model correctional center in which offenders might be reformed. The state must insure that the institution performs its task

as it was intended to perform. Mentally disturbed offenders should not, under none but the most unusual of circumstances, be permitted to be housed at this institution.

Recommendation 8:

Mentally disturbed offenders should continue to be housed temporarily at the Alaska Psychiatric Hospital until a special unit can be designed to treat these offenders within appropriate security facilities to be determined by the Division of Mental Health. The Task Force is cognizant of the June 20, 1980 Task Force Report which specifically addresses these issues. We recommend that the report be carefully re-evaluated.

We believe that the Division of Mental Health must assume responsibility for the security and treatment of mentally disturbed offenders. We have found that the previous administration had gone "full circle" in periodic changes of policy with regard to those offenders. This lack of consistency in management decisions has contributed to the current confusion and jeopardizes offender, as well as public, safety.

Recommendation 9:

The Meadow Creek (Women's) Correctional Center near Eagle River and adjacent to the male facility is an example of architectural extravagance where simplicity and a more spartan environment would have sufficed. It now houses 28

adult women and has a capacity of 30. If expansion becomes necessary, less expensive units can be utilized to extend existing capacity.

Recommendation 10:

The two correctional institutions at Palmer (actually near Sutton) provide good examples of the appropriate mix of tax dollars and inmate labor. The original Palmer Camp (minimum security) was built from the ground up by inmate labor (capacity is now approximately 100 offenders). We recommend that this practice be encouraged and continued. The new, nearly \$5 million medium security facility on the same grounds also houses approximately 100 male offenders. Both facilities are fully utilized but there is a clear need for a full range of prison work programs which would keep all offenders busy for at least 40 hours per week.

Recommendation 11:

The State of Alaska should move immediately to evaluate and to obtain available sites which could be utilized to house correctional operations. Site selection should insure provision for rapid availability of housing for up to 100 offenders. Capacities at these sites should have the potential to be increased. The Task Force recommends that one site be located within the Matanuska-Susitna Borough and the other in the Kenai Borough. Sites which have the advantage of existing grounds, utilities and buildings, and which could have security modules added at relative low cost

and high benefit, should be of priority concern. With rapid site acquisitions, this Task Force believes that overcrowding in the Division of Corrections could be addressed dramatically within nine months to one year.

Recommendation 12:

Institutions have previously been approved for construction at both Bethel and Nome. Apparently the availability of funds for the Nome institution are currently in doubt. The Bethel funds have deteriorated in value due to mismanagement of site selection and building design delays. We strongly recommend that either the new Palmer institutional model ("stick built") or prebuilt modular units or any combination be incorporated for sites at both Nome and Bethel as quickly as possible. These facilities should serve as comprehensive correctional services regional centers. They would meet the needs of the southwestern Bethel area and the needs of the Seward Peninsula and Western Alaska regions for short term offenders (up to one year), probation and parole services, community supervision, halfway house, and other correctional related services. These institutions would help to relieve the pressure on the existing state facilities, provide regional treatment and incarceration capabilities, and provide state correctional services where very little now exists.

Recommendation 13:

The Task Force is aware of expansion work at the

Fairbanks and Juneau Correctional Centers and of a new replacement facility in Ketchikan. Ironically, while these modifications are essential, they will not add substantially, if at all, to the overall correctional system bed capacity. With new facilities to be developed rapidly in the Matanuska-Susitna and Kenai Boroughs, these other state regional correctional centers can return to a more efficient operational posture. It may be necessary and advisable to add a pretrial capability to the Fairbanks institution but this should be re-evaluated in light of our other recommendations. We recommend that all new construction proposals be evaluated in relationship to the need for increased bed capacity statewide. The potential for utilizing prison labor should also be evaluated.

Recommendation 14:

The 188 Alaska prisoners currently being held within the Federal Bureau of Prisons need not all be returned to Alaska. This Task Force recommends that the out-of-state population of offenders be carefully screened so that those who might be ready to be returned to Alaska could be brought back in small numbers as new space is readied for them in both new and existing facilities. It should be possible to continue to maintain a number of dangerously violent Alaska offenders within the FBP system.

Recommendation 15:

Related to #14 immediately above, this Task Force

recommends that either the Matanuska-Susitna or Kenai Borough site, or both, should be utilized to provide maximum security space potential to house Alaska's more serious offenders through the use of maximum security units. Such facilities holding up to 300 offenders have been built in the outside states using modular units and are apparently functioning well at low cost relative to poured concrete and steel institutions and have ample security provisions. Only Butler buildings (or similar) need be added for industrial work and/or recreational space.

Recommendation 16:

The Task Force recommends that new site acquisitions, construction additions and building renovations be completed expeditiously as the highest priority through the channels of state government while minimizing both hindrances and costs. The Department of Transportation and Public Facilities should recognize prison construction as a high priority. Building supplies and prisoner labor should be utilized in building renovations and in the construction of non-secure buildings. Security buildings should be built expeditiously by contract labor from the private sector and full service warranties on all new construction should be mandatory. Corrections should have its own facility planners who can expedite construction and renovation work statewide. We recommend that a project evaluation be required upon completion of all major construction.

Recommendation 17:

Finally, in regard to the need for a maximum security facility in Alaska, the Task Force received clear and compelling testimony from state and local police representatives, the court system, knowledgeable citizens, and correctional professionals that Alaska now needs a maximum security institution. Our recommendation is that the Cook Inlet building design and/or modular security units be constructed in a Southcentral location.

ADMINISTRATIVE ORGANIZATION AND  
STAFFING PROBLEMS

A clear and consistent pattern of evidence and opinion has been presented to this Task Force that the Division of Corrections has suffered, and is suffering from, a lack of clear leadership from within the Division and from within the Department of Health and Social Services. We earlier identified the fact that the Division of Corrections has been headed by four directors over the past six-year period, and that the most recent past director and the current director were employed by the previous administration from positions they held in the lower contiguous states. They came to Alaska with the disadvantages of not knowing the "territory" and those within the system who were weak from those who had/have strong potential leadership and management ability.

We believe that strong, decisive and professional leadership and management is essential to successful correctional operations in this state. Further, a sense of history, of past failures and accomplishments, of goals and objectives peculiar to the unique strengths and weaknesses of Alaska and Alaskans is essential for state correctional managers.

The multitude of reports, plans and recommendations from experts and practitioners from within the state and beyond have repeatedly stated that we need not transfer and repeat the mistakes of correctional systems elsewhere. We have found, as one interviewee stated, that too often divisional and departmental management decisions have been based, not on merit, but on perceptions. Interrelationships and coordination of services within the Department of Social Services have proven to be complex and perhaps impossible under the current umbrella structure of the Department. We will address the institutional placement of corrections within state government in a separate section.

We make the following recommendations with regard to the elimination of organization and staffing problems within the current organization of corrections.

Recommendation 18:

The management plan recently completed at a cost of over \$100,000 by the Touche-Ross management and accounting firm should not be implemented until it has been reviewed by the new Department of Corrections. Portions of the plan appear to be unrealistic and unworkable.

Recommendation 19:

While the division managers may be commended for their efforts to develop an improved classification system for the division, we believe that even a superlative classification system will be of little use when bed space alternatives are

not yet available to which offenders might be classified. In order for a correctional classification system to work effectively, there must exist a range of correctional institutional and community placement alternatives with available space in each, to which offenders may be directed. A range of facilities from maximum, medium, minimum, to and including, community halfway houses must first be available. While a sophisticated matrix classification system will be useful eventually, we feel it ironic that the basis for the management structure of the system can be found in a report to the Alaska Legislature written five years ago in 1978. We recommend that the revised classification system be implemented in concert with division reorganization and development.

Recommendation 20:

We have examined the potential reorganization of the organizational and management structure of the division along both functional and regional lines. This Task Force strongly recommends that the division be reorganized immediately upon a decentralized regional concept. It is our opinion, and the opinion of the majority of the interviewees within and outside of corrections, that a regionalized management structure would bring increased efficiency and accountability to correctional operations statewide. While a specific plan is inappropriate for this Task Force, our preliminary findings are that regional

directors should be appointed for each of the geographic regions - southeast, southcentral, and interior. A fourth regional director should be appointed to manage correctional services in rural Alaska - an area that has suffered from a policy of "benign neglect." Regional Directors should be partially-exempt positions. Each regional director should have full responsibility and authority for managing all correctional services in the region. These responsibilities should include but not be limited to the supervision of institutions, probation and parole, other field services and personnel and budget, and should include coordination with the presiding superior court judges, trooper detachment commanders, district attorneys, public defenders, local chiefs of police and peripheral service agencies. Each regional director should be encouraged to establish local citizen advisory groups to advise him or her on correctional programs in the area. Communications between the state's citizens and correctional managers will be enhanced via this mechanism.

Recommendation 21:

The members of this Task Force recommend that the agreement for administration of local jail contracts should transfer, under a new agreement, from the Department of Public Safety to a new Department of Corrections and that both governmental units should prepare their FY 84 budgets

accordingly. We believe that all correctional operations administered in part, or totally, by the State of Alaska should be housed in only one administrative unit.

Recommendation 22:

Professionalism in the ranks of the correctional system and in the management structure is of critical concern to this Task Force. Formal educational standards should be established, in addition to agency in-house training for all correctional and field service positions. A uniformed, neat and well-groomed correctional officer staff within the institutions with a well-trained, and professional demeanor would do much to enhance the morale and credibility of correctional staffs. The need for initial and periodic formal education and training is critical. Training can be physically conducted at the Carcage House in Anchorage where board and room can be provided at low relative cost.

INSTITUTIONAL PLACEMENT OF CORRECTIONS  
IN STATE GOVERNMENT

As stated previously by the transition Task Force on Human Services, the management and operation of the Division of Corrections is a "dominating problem" within the Alaska Department of Health and Social Services and is of critical concern. Several factors were identified by that Task Force which contributed to that assessment. Our Task Force on Corrections, in re-examining those previous conclusions, and in conducting our own independent investigation has found agreement that it is essential to move Corrections to departmental status.

The three guiding factors of greatest relevance are: 1) that the Division has suffered from lack of continuously stable and professional management within the Division and within the Department of Health and Social Services; 2) the fiscal and management needs of the Division of Corrections has placed tremendous demands on the resources of the Department of Health and Social Services; and 3) the primary factor and mission of the Department of Health and Social Services has been oriented toward community health, public assistance, mental health and family services and is neither

efficiently organized nor properly prepared to address the problems of corrections within the criminal justice system. Therefore, the Task Force on Corrections recommends the following:

Recommendation 23:

The Division of Corrections should be moved quickly and decisively in toto by immediate executive order to departmental status. We have found unanimous agreement from virtually all persons interviewed, from all regions of the state, and from all segments of the criminal justice system - police, courts, corrections, law - and from the citizen sector that departmental status is not only justified but necessary. The Task Force has considered previous proposals which discussed a transitional phasing-in of the division toward a cabinet level position. We have concluded that a transitional movement will cause undue delays and probably result in a less efficient and more burdensome administrative process. We recommend a "quick and clean" transfer by executive decree.

Recommendation 24:

A Commissioner of Corrections should be appointed by the Governor as soon as possible. A deputy commissioner and four regional directors (the latter explained in a recommendation elsewhere in this report) should be appointed by the commissioner to manage the new Department of Corrections.

COMMUNICATION AND COORDINATION AMONG  
JUSTICE AGENCIES

This Task Force and the practitioners in the justice system from both the previous and present state administrations, and those from municipal law enforcement departments whom we interviewed, are clear in their request for statewide coordination of criminal justice policy and law. The activities of the Governor's Commission on the Administration of Justice under the direction of the previous administration were primarily oriented toward the dispersion of federal dollars which emanated from the Law Enforcement Assistance Administration (LEAA). With the demise of the federal program, the Governor's Commission (GCAJ) ceased to function.

New criminal laws and new policies and procedures emanating from one department or sector of the government can have a serious impact on the management and administration of other governmental units. For this reason alone, it is critical to insure that clear communication and sound coordination take place among the managers of the justice system statewide. We recommend the following:

Recommendation 25:

The Governor should empanel members of his administration who have justice administration responsibilities, invite representatives of appropriate related agencies, and appoint lay citizens to coordinate policy and law implementation for the effective administration of justice.

Recommendation 26:

Appropriate management level personnel of the agencies of justice should meet regularly for the purpose of coordinating the activities of the justice agencies at the local and regional level. These groups should be made up of the regional director of corrections, the presiding superior court judge, the local chief (or chiefs) of police, the local trooper detachment commander, the district attorney, the public defender, a municipal attorney and a lay citizen. We found at least one excellent example of this type of coordination and recommend that this management technique be emulated at least regionally across the state.

Recommendation 27:

We believe there are serious potential ramifications from the current effort at pre-settlement in the Cleary case. We strongly recommend that the present partial settlement agreement effort between the State of Alaska and Michael Cleary et al be halted and reviewed immediately and that the state proceed to trial, if necessary, in defense of the State.

## MUNICIPAL RESPONSIBILITIES

The Task Force has examined the potential for municipal assumption of pre-trial detention responsibilities. This issue has been of concern because of the differences which exist between the larger urban population centers of the state and the smaller municipalities. That is, within the larger cities, no municipal facilities exist to hold prisoners while they await trial. The burden of pre-trial detention is assumed by the state. On the other hand, the small town police chief must be administratively responsible for housing the arrestee until trial or other disposition is reached. The state has therefore developed contractual arrangements with local municipalities to reimburse or otherwise pay for the maintenance of prisoners held on state charges.

It can cost approximately \$50 per day to book and hold a minor criminal offender in a jail bed which may have cost up to \$125,000 per bed to construct. It is clear that relatively minor offenders should be held in less costly prison or jail space.

There should be an incentive for local municipalities to increase their crime prevention and criminal diversion programs at least for minor offenders who potentially take

up expensive bed space needed for the serious criminal predator. It has been argued that if the municipalities were paying all costs of pre-trial incarceration related to crime at the local level, a substantial incentive (because of the high costs of incarceration) would exist for the cities to develop substantial prevention and diversion programs.

Recommendation 28:

The Task Force on Corrections recommends that municipalities not be made responsible for the costs of the pre-trial incarceration of offenders held on state criminal charges. The impact of such a requirement would be that very costly expenditures would be incurred immediately by every municipality statewide. We believe that the state can and should be responsible for the management and administration of criminal defendants being tried under state statutes. We do believe and strongly recommend however, that careful coordination between and among the criminal justice professionals in both state and local governments is essential to sound management of the system.

Corrections managers do not and cannot select their prison population. The gatekeepers at the front door of the state system of corrections are the local police, troopers, prosecution and court personnel. They should work cooperatively to insure that offenders are held in space appropriate to the level and nature of their offense.

Corrections has an obligation to insure that a variety of types and levels of security is available to the law enforcement community.

Recommendation 29:

While we are reluctant to recommend that still other task forces be formed to investigate and resolve other issues, it is clear that there is a compelling need to address the law, policies and procedures with regard to public drunkenness and drunk driving. The issue has appropriately been identified by the public and in the media as one which demands specific attention. We therefore recommend immediate attention to this issue.

Recommendation 30:

We recognize the high statistical correlation between alcohol abuse and crime. We recommend that the State Office of Alcohol and Drug Abuse (SOADA) should provide alcohol and drug abuse program services in cooperation with local municipalities to correctional centers and community service offices statewide. There is a crucial need for a comprehensive approach to the problem of substance abuse, including "in-house", after care and follow-up program services to offenders.

## JUVENILE CORRECTIONS

Following completion of the Correctional Master Plan for the State of Alaska in 1979, the previous Commissioner of the Department of Health and Social Services moved the juvenile corrections segment of the Division of Corrections to the Division of Family and Children's Services. The argument for this move was primarily that the juvenile side of the corrections organization always would receive secondary prioritization in relationship to the demands of adult confinement. The benefits were to be that greater attention to juvenile needs would be the result of the transfer of juvenile institutions and probation supervision services to the family services division.

We have heard ample and persuasive testimony that all persons who have been adjudicated as delinquent or criminal should be managed organizationally within the same governmental unit. We are convinced that the age of the offender separates juvenile crime from adult crime and that many of the most serious crimes are being committed by young offenders.

We have also found duplication of effort within the Department of Health and Social Services. Where previously

a probation officer in Nome, Barrow or Haines, for example, could supervise and direct both adults and juveniles, it now seems that these services may require both adult and juvenile specialists.

It is also clear that serious juvenile offenders require strong and decisive management by both the courts and corrections. Violent juvenile offenders require secure supervision and incarceration.

P<sup>r</sup>ated to the preceding discussion, we make the following recommendations.

Recommendation 31:

The entire present organization of youth corrections should be moved as a Division of Juvenile Corrections, to the new Department of Corrections when reorganization is completed and functional. Management of this division should be decentralized to fit the regional organization of the Department. For example, the juvenile institution in Fairbanks and the juvenile probation and field services operations should be accountable to the regional director of corrections in Fairbanks. There is no apparent need to add additional staff to juvenile corrections as a result of this transfer, although there may be a need for additional juvenile staff for other reasons to be defined at a later date.

## REHABILITATION AND ALTERNATIVES

### TO INCARCERATION

The public has a right to demand a positive return for its investment in corrections. While protection of the public from the offenders who are sent to jail or prison is reasonably assured, that protection exists primarily during the length of the prisoner's incarceration. Long term protection can only be brought about by the reformation of the offender as mandated by the Constitution of the State of Alaska. Prisoners can return to the state's population as better persons or more bitter as a result of their prison experiences.

Idleness in our prison system, mixed with overcrowding can and will produce chaos and perhaps result in violence to both property and persons. There is a dearth of meaningful work opportunities for the prison population. Make-work institutional maintenance is the routine alternative for even a minority of prisoners. Prison industries and public works projects should be implemented in all long term correctional centers. Restitution and community services opportunities for individual prisoners who are not security risks should be made available and taken into consideration by parole authorities for those prisoners who are eligible.

A system of relatively inexpensive community treatment halfway houses should be available within the Department of Corrections range of institutions. Offenders who fail or who are not yet ready for release should not be eligible for these lesser security facilities. However, all offenders nearing eventual release should be placed under the carefully coordinated and supervised system of halfway house resources. A full range of maximum to halfway house security level institutions is essential to the reformation of offenders and the efficient management of offender populations. We recommend the following:

Recommendation 32:

The prisoner population in the State of Alaska should be put to work. While the unemployment rate in Alaska is seasonally and regionally high, the citizens of the state can no longer endure an idle segment of otherwise able bodied prisoners. Prison industries and public works projects have been adequately addressed in the Correctional Master Plan. It is not our intent here to review these already voluminous plans. We intend to emphasize the need for a halt to planning and the commencement of activity. Corrections must be given the resources to provide meaningful work opportunities for the offender population. Cutting and clearing of land, stream rehabilitation, trail building, and parks maintenance and construction are but a few examples of public works projects which would benefit

the citizens of the state as well as the non-violent offender population. Eight hour a day work habits can be learned and law abiding skills can be developed. Adequate pay to prisoners can and should be permitted with the responsibility that the working offender repay the state and/or the victim for at least the partial cost of his crime. His or her family can be partially supported as a result of prison labor, board and room can be at least partially paid, and small amounts can be set aside in savings toward release. The non-working offender should not be entitled to the same privileges granted to the working population.

Recommendation 33:

We agree with current correctional policy that any offender who does not possess a high school diploma or its equivalent should be required to complete a G.E.D. program if feasible within the length of his or her incarceration.

We feel strongly however, that these offenders and those who already possess a high school diploma and who wish to take part in educational and recreational programs should do so in their non-working hours - the same as working citizens of the state outside of the prison system. Higher education courses, arts and crafts and other culturally oriented programs should be encouraged and funded. But prisoners pursuing college educations should seek out and apply for Alaska Student Loans the same as "freeworld"

students. The Department of Corrections should coordinate and contract with local school districts, the Department of Education, and the University of Alaska Statewide Systems for teaching resources.

Recommendation 34:

This Task Force has learned that there are approximately 150 parole eligible offenders within the corrections' institutional population. These offenders apparently meet all of the current qualifications for eligibility for parole consideration but have not applied. In relationship to the very high cost of prison bed space and the current crisis in overcrowding, we strongly recommend that a systematic evaluation of these offender eligibles be conducted immediately.

Recommendation 35:

The Department of Corrections should provide the opportunity to every offender the resources of a halfway house program for those about to be released. Offenders should be encouraged to be self-sufficient, apply for jobs, seek out community treatment resources and renew the ties with the law abiding community including family and friends. Close coordination and carefully organized transitions should be mandatory as the offender moves from secure institutions to halfway houses and finally to the community. Probation and parole field staffs should develop community resources and a system of community volunteers to assist

offenders in making the transition. Community service halfway houses should also be available to probationers, parolees, and ex-offenders who are in need of assistance. The use of university and community college interns should be encouraged in these facilities. Finally, the Department of Corrections should assure that alcohol, mental health and vocational rehabilitation services provided through other departments and divisions of state and local governments are heavily utilized. These offenders should not receive treatment not otherwise available to "ordinary" citizens. However, corrections must correct.

GOVERNOR'S TASK FORCE ON CORRECTIONS  
ACKNOWLEDGEMENTS  
INTERVIEWEES BY GEOGRAPHIC AREA

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Mark Rowland  
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John Franklin.

Ray Clements, Chair.  
Anch. Crime Comm.  
Comm. on Corrections  
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Sup. Ct.

Dale Curda, Magistrate

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Youth Corrections

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West. Det., AK St. Troop.

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Dillingham

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Ak State Troopers

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Corp. Bachman, AST

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Univ. Within Walls project

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John Scribner, Dep. Comm.  
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Office of Governor

Kenai Peninsula

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Cmdr., C Det., AST

C. E. Swackhammer, Det. Cmdr.  
Det. C, AST

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Seward Police Dept.

Duane Udland, Chief  
Soldotna Police Dept.

Walt Koenol, Corr. Supv.  
City of Kenai

Rick Ross, Chief  
Kenai Police Dept.

Mike Daugherty, Chief  
Homer Police Dept.

Ketchikan

Robert Andrews  
Asst. Supt. Corr. Ctr

Nome

Bob Lewis, Dist. Atty.  
Gail Frank, Supt.  
Nome Corr. Ctr.  
Charles Tunley, Pres. Judge  
2nd Jud. Dist.

Valdez

Don Wagner, Valdez  
Police Dept.

Kodiak

Ed Martin, Chief  
Kodiak Police Dept.

Palmer

Dick Giles, Asst. Supt.  
Pgms. and Dennis Vincent,  
Asst. Supt., Security,  
Palmer Corr. Ctr.

Stan Zaborac, Supt.  
Palmer Corr. Ctr.

Red Henderson, Chief  
Palmer Police Dept. and  
Pres., Ak Chiefs of Pol.  
Assn.

Beverly Cutler, Judge  
Sup. Ct., 3rd Dist.

Correctional Center Site Visits

Anchorage, 3rd Avenue  
Ridgeview  
Cook Inlet (under const.)  
Meadow Creek (Eagle River,  
women)  
Palmer Med. Security  
Palmer Jail - new (under  
const.)  
Fairbanks Youth Facility  
Bethel  
Juneau Johnson Center

Anchorage, 6th Avenue  
Careage House  
Hiland Mountain (Eagle  
River, men)  
Palmer Min. Security  
Palmer Jail - Police  
Dept. (old)  
Fairbanks Corr. Ctr.  
Barrow  
Kenai City Jail

Sees Thru

CSHB 103

ADD: 44.30.010  
" .020

11.71.305

33.15.010

41.20.110 (b)

47.08.050 (8)

47.10.47 sep.

EO 54

12.55.025 (b)  
" (d)  
12.55.055 (a)

12.55.185 (2) - Rep.

12.20.220 (b)(c)

33.05.080 (2)

33.15.260 (2) (\*)

33.30.130 (a)

33.30.900 (1) (3)

33.32.010 (1)

33.32.015

33.32.030

33.32.060

33.32.080 (c)

33.32.090

33.36.040

33.36.100

44.17.005

ADD: 44.28.010  
44.28.020  
44.27.030

44.29.020 (9) (17) REP.

Miss  
4:30  
FOST

THE BASIC PROBLEM:

F.O.'s 53 & 54

*John G. ...  
Discipline papers*

CS HB-103 -

SPONSOR  
POSITION PAPER  
SUMMARY

Lynn Asper 3867

Jan Cramer 4990

47.10.060  
DIFFERENT HRGS.  
SAME PETITION FILED -  
ADJUDICATION -  
DELINQUENT  
ADMISSIBLE TO TREATMENT

delinquency

2 TYPES OF JUV  
ADJUDICATED  
IN NEED OF ~~THE~~ AID  
DELINQUENT

Handled by  
NEW DEPT

Youth

only an administrative change

ENDER RECOMMEND IT HIMSELF  
PERSONAL

DYFS

AS GOT FURTHER INTO IT  
FOR YOUTH CORRECTIONS  
NOT POSITION OF PRESENT DSS

HISTORICALLY  
puts corrections back  
in 78-79

DRAFTED 103 TO MEET

{ if declared delinquent  
title 47  
mechanism for runaways

just changes  
Division of CORR's to  
Dept of CORR's

no substantive changes  
just splitting div out of DSS  
transfer

Admin of  
Intersite compacts -  
EXTRADITION  
CORRECTIONS

---

Secs 26 - 58 - - Juvenile

entire title 47.10

figure why in trouble, who should handle  
PROCEDURES

if forced into crime by adults  
considered CH. IN NEED OF AID

- WAIVED MINOR -

H B

126

**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

# TELEGRAM

ALASCOM, INC.  
PHONE: 586-6442  
JUNEAU, AK 99802

1983 JUN 20 PM 12 04

02006 ANCHORAGE AK 30 06-20 952A ADT

PMS ATTN PAULA SCAVERA/BILL MELLOW

ROOM 103 CAPITOL BLDG **1891**

JUNEAU AK

WE ARE AWARE THAT YOUR WORKING ON A REDRAFT OF HB126.

ALTHOUGH THERE ARE SOME IMPROVEMENTS, THE BILL IS STILL  
UNCONSTITUTIONAL. STRONGLY URGE A NO VOTE.

SANDRA SAVILLE, WENDELL KAY, BILL BITTNER

MSG 83-00025958 PRTY 1 06/20/83 10:57:12 ORIG: LA05 IN= 0001 OUT= 0029  
FROM: SHIRLEE ANC LIO TO: PONS JUREAU INFO  
TARGET: LJHL SUBJ: POM

---

TO: SENATOR RAY  
ATTN: PAULA SCAVERA AND BILL MELLOW

FROM: MIKE SCHNEIDER, 880 "N" STREET, SUITE 202, ANCHORAGE 99501  
(RES: SRA BOX 1020, 99502) H 345-7227 W 277-4551

THANKS FOR PROMPT RESPONSE TO MY REQUEST FOR WORKING DRAFT OF  
SCS FOR HB 126. THE BILL IN THIS FORM IS STILL CLEARLY UNCONSTITUTIONAL  
AND HAS BEEN HELD SO EVEN WHEN LEGISLATIVE INTENT TO PROMOTE  
HOSPITALITY IS EXPRESSED IN THE LAW OR ASSUMED BY THE COURT. EVERY  
PERSON IN SOCIETY HAS A DUTY TO CONDUCT THEMSELVES REASONABLY  
EVEN WHEN THEY ACT UPON REQUEST AND WITHOUT COMPENSATION. THIS  
BILL WOULD MAKE PRIVATE PILOTS A UNIQUELY PRIVILEGED GROUP;  
NO STATE SINCE 1939 HAS CREATED SUCH A CLASS.

\*\*\*\*\*

BERNARD P. KELLY  
L. AMES LUCE  
GREGORY J. GREBE

LAW OFFICES  
**KELLY & LUCE**  
A PROFESSIONAL CORPORATION  
1015 WEST SEVENTH AVENUE  
ANCHORAGE, ALASKA 99501  
(907) 279-9571

June 2, 1983

Senator Patrick Rodey  
State Senate  
Juneau, AK 99801

Dear Senator Rodey:

I am enclosing a package of materials which was generated by Michael Schneider to the House Judiciary Committee on House Bill 126 (the Aircraft Guest Statute). The thesis of these documents is to show that this passenger bill would be unconstitutional.

We believe that there are other reasons for defeating this bill. It is like MICA where there may be unaffordable insurance coverage. I am sure it can be established that the insurance is too high because writing individual coverage for certain types of risks is something the insurance industry doesn't like to do and therefore they charge inordinant premiums for such situations. I think a better solution can be found than taking away people's rights. If the guest passenger statute were passed, there are many situations, such as people who pay for part of the gas for the airplane ride or who make a business arrangement of some kind with the pilot, such as a salesman and accountant or lawyer and client, etc., which situations avoid the guest statute. Private pilots who want the legislation are seeking a liability picture where they don't have to pay for any insurance. Yet, to my way of thinking, this is a trap for the pilot because the guest statute might be avoided on one of the basis outlined above or the statute might be held unconstitutional. Pilots in those situations would be lulled into a false sense of security and as a result could lose their personal assets.

In the meantime, the victims, widows and survivors of deceased passengers in aircrafts may have to be demeaned by going on welfare or public assistance. This legislation treats them as an underprivileged class as compared to victims in other types of venicular accidents, such as boats and cars.


We would like to be kept apprised regarding a hearing on this bill. I will arrange to either be personally present or have a knowledgeable fellow attorney come down to argue against this legislation.

Senator Patrick Rodey  
June 2, 1983  
Page Two.

Thank you for any information you can provide us  
on hearings, time tables and the like.

Very truly yours,

KELLY, LUCE & GREBE



BERNARD P. KELLY

BPK/llm

Enclosures

DENNIS M. MEYER  
MICHAEL J. SCHNEIDER

*Hostas & Schneider, P.C.*

640 N. STREET, SUITE 202  
ANCHORAGE, ALASKA 99501

AREA CODE 907  
277-4000

April 14, 1983

Joseph Brewer  
Staff Counsel  
House Judiciary Committee  
Pouch V  
Juneau, AK 99811

Re: House Bill 126 (Aircraft Guest Statute)

Dear Joe:

As I mentioned in our phone conversation the other day, the above bill makes it necessary for a passenger in a private aircraft to prove the pilot was grossly negligent or intoxicated before that passenger can maintain a successful claim for personal injury or death. This bill would appear to be terrible public policy as passengers are rarely, if ever, in a position to assess the risks of any given flight in any given aircraft. Indeed, the control of critical decisions regarding weather, terrain, and performance capabilities of the aircraft is always in the hands of the pilot no matter what the passenger's opinion on the matter might be.

Legislation of this type has been held unconstitutional in a number of states. The first group of cases that I will refer to deal specifically with airplane guest statutes:

1. Messmer v. Ker, 524 P.2d 536 (Idaho 1974), airplane guest statute held unconstitutional.
2. Longnecker v. Noordyk Mooney, Inc., 232 N.W.2d 654 (Mich. 1975), exception for guest passenger requiring proof of gross negligence or wilful and wanton misconduct is unconstitutional.
3. Lichtenburger v. Gordon, 510 P.2d 865 (Nev. 1973).

Identical constitutional and public policy issues are raised by automobile guest statutes. Automobile guest statutes have been consistently held unconstitutional by recent cases:

1. Brown v. Merlo, 506 P.2d 212 (1973), plaintiff-guest was injured when host's Jeep crossed centerline of highway and collided with embankment on

opposite side of road; court held classification which bar guest statute created between those allowed and those denied recovery for injuries due to negligence does not have a substantial and rational relationship to statute's purpose of protecting hospitality of host driver and preventing collusive lawsuits and therefore, as applied to negligently-injured guest, the guest statute violates equal protection guarantees of California and United States Constitutions; judgment for defendant reversed.

2. Newman v. Coleman, 524 P.2d 541 (Idaho 1974).

3. Manistee Bank & Trust Co. v. McGowan, 232 N.W.2d 636 (Mich. 1975), to deny guest's recompense for negligently-inflicted injury, death, or loss cannot be justified as reasonable means to promote hospitality, foster gratitude, prevent collusion, perjury or fraud, reduce insurance premiums, or protect generous drivers from vexacious litigation by ungrateful guests or conniving hitchhikers.

4. Stanfill v. Powers, 243 N.W.2d 24 (1976), auto guest statute violative of equal protection clause of Michigan Constitution.

5. Lakonen v. 8th Judicial District Court, 538 P.2d 574 (Nev. 1975), Nevada's automobile guest statute unconstitutional as denying equal protection of the laws.

6. McGeehan v. Bunch, 540 P.2d 238 (N.M. 1975), classifications created by guest statutes, as between those who are denied and those who are permitted recovery for negligently-inflicted injuries, do not bear substantial and rational relation to statute's purpose of protecting hospitality of host driver and preventing collusive lawsuits; statute is unconstitutional and void as denial of equal protection of law.

7. Johnson v. Hassett, 217 N.W.2d 771 (N.D. 1974).

8. Primes v. Tyler, 331 N.E.2d 723 (Ohio 1975).

9. Nehring v. Russell, 582 P.2d 68 (Wyo. 1978), an action arising out of injuries sustained by plaintiff while riding as passenger in vehicle driven by defendant, court held that Wyoming's guest statute violates state constitution which requires "uniform operation of laws;" reasons for prohibition imposed upon guest from suing host to promote hospitality and gratuity and to prevent possible collusion were no longer viable, as party to be protected by guest statute today is unsure, not host and judicial system is well armed with numerous implements for prevention and detection of fraud.

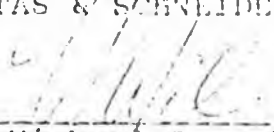
I hope the above convince you, as they have convinced me, that House Bill 126 suffers from irreparable State and Federal Constitutional infirmity. As a former president of the Alaska Academy of Trial Lawyers and the present Chairman of the Alaska Action Trust, I can assure you and the members of the House Judiciary Committee that the plaintiff's trial bar in this State is much opposed to this legislation. More

importantly, this legislation promotes the interests of a very limited group of people to the detriment of the public in general.

Thanks very much for your time and consideration of my thoughts with regard to this bill.

Sincerely,

MESTAS & SCHNEIDER, P.C.

By  \_\_\_\_\_  
Michael J. Schneider

MJS:nh

P.S. What wonders arrive in the mail!! Since dictating this, I received (and have enclosed) a comprehensive treatment of the guest statute issue by an independent research group. Hope it helps.

THE RESEARCH GROUP

1000 UNIVERSITY AVENUE  
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April 7, 1983

Michael J. Schneider, Esquire  
880 North Street, Suite 202  
Anchorage, Alaska 99501

Dear Mr. Schneider:

As you may know, The Research Group is a firm of 65 specialized attorneys which provides lawyers across the nation with professional legal support in the areas of legal research, writing, and analysis.

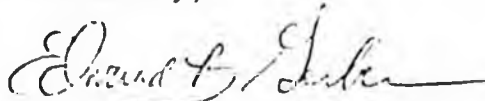
In addition, and of more immediate concern to the Alaska Trial Lawyer's Association, we have broad experience in preparing national and state surveys and other major studies. For example, we researched and wrote a seven volume study for The Commerce Department evaluating the status of American products liability law.

We are often commissioned to draft independent, objective studies of selected legal areas which our clients utilize in presentations to legislative and other governing bodies. Most recently, we conducted a national comparative study of various components of Indiana tort law for the Indiana Trial Lawyers Association.

The benefits to your organization of utilizing our attorneys for such studies are the economies of our service and the persuasive weight which attends an independent study performed by a nationally recognized firm which specializes in legal research and analysis. To aid you in evaluating the potential usefulness of our "major study" work product, I am enclosing an excerpt from a recently completed study.

We would be happy to discuss with you ways in which we can be of assistance to your organization. Please contact me directly (toll-free 800-446-1870) should you desire further information relative to our services or to receive a cost estimate for a specific project.

Sincerely,



Edward B. Gerber  
Vice President

EBG/ntt  
Enclosure

# The Research Group



2421 Ivy Road, P.O. Box 7187, Charlottesville, Virginia 22906  
Telephone Toll Free 800/446-1870, Virginia Attorneys call collect 804/977-5690

PREFACE BY THE RESEARCH GROUP, INC.\*

The Research Group was commissioned by the Indiana Trial Lawyers Association to undertake a national, comparative study of various components of Indiana tort law. It was the highest priority of both parties that the study reflect a thorough, independent and objective analysis of the pertinent legal authority. Accordingly, this report accurately states the present status of American jurisprudence concerning the selected areas of inquiry but takes no stance nor makes any judgments as to the propriety or impropriety of the Indiana position.

\*The Research Group is a private corporation of 65 specialized attorneys located in Charlottesville, Virginia. It is recognized as the nation's leading firm in providing private practitioners, corporate counsel, and attorneys in government with legal analysis, research and writing.

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## GUEST STATUTES

### I. Introduction

Single and multi-vehicle automobile accidents long have been a familiar sight on American highways. In most cases, a person injured in an automobile accident can sue the person who caused the accident and thereby recover money damages for medical, property, and other expenses incurred because of the accident. Hence, in most states, an automobile passenger can sue the driver of his vehicle and recover damages for any injury caused by the driver's negligence.<sup>1</sup> In Indiana and five other states, however, special laws prohibit such suits if the passenger was a non-paying guest<sup>2</sup> of the driver, unless the driver's conduct was so outrageous as to evidence more than a simple lack of care.<sup>3</sup> These laws typically are referred to as "guest statutes" or "guest rules."<sup>4</sup>

The divergence of viewpoint in this area essentially reflects a fundamental disagreement as to whether the burdens placed on automobile passengers by guest laws are outweighed by the policies guest laws are believed to promote. This disagreement began shortly after guest laws were first created in the 1920s and continues today.<sup>5</sup> The dispute as to the social desirability of guest laws is particularly reflected in the large number of states which have repealed

or judicially invalidated guest laws approved in earlier years.<sup>6</sup>

The following discussion examines in more detail the present status of automobile guest laws in the United States. As a starting point, guest laws are viewed nationally from a historical perspective and the policies which guest laws were designed to promote are identified. Against this background, the operation of the Indiana guest statute is considered and an attempt to invalidate the statute is briefly discussed. Guest laws then are viewed solely from a midwestern perspective. Finally, a listing is provided of the current status of guest laws in all 50 states.

## II. Commentary

### A. The Development of Guest Laws In The United States

By the mid-1920s the automobile began to have a considerable impact on American society.<sup>7</sup> Automobile accident cases began to clog court calendars and more and more drivers purchased automobile liability insurance.<sup>8</sup> Insurance companies complained of being presented with a large number of fraudulent claims in which a host driver falsely confessed to "negligence so as to permit . . . [the driver's] guest--presumably a friend or relative--to collect from the host's insurance company."<sup>9</sup> Some authorities also felt that

drivers, threatened by the possibility of lawsuits instituted by ungrateful guest passengers, might refrain from offering rides to others, particularly hitchhikers. As one commentator has noted:<sup>10</sup>

The justification [for guest laws] most frequently espoused in one form or another has been the notion of protecting the hospitable driver from suits by an ungrateful guest. The economic conditions of the 1930's gave particular force to the hospitality rationale for the guest statutes. The Depression is credited with causing a substantial increase in the number of hitchhikers on America's highways. It was feared that these strangers would take advantage of generous but unsuspecting motorists, and thus offend society's sense of justice and hospitality.

State legislatures, stimulated by "persistent and effective lobbying on the part of liability insurance companies,"<sup>11</sup> responded to these problems by enacting guest statutes. The legislatures believed that, by precluding guest suits for injuries caused by a driver's ordinary negligence, passenger-driver insurance collusion could be avoided and the protection of driver hospitality insured.<sup>12</sup>

In 1927, Connecticut and Iowa enacted the first automobile guest statutes.<sup>13</sup> By 1939 guest statutes had been enacted in 29 states.<sup>14</sup> In addition, three states created guest laws through judicial decisions.<sup>15</sup> Accordingly, 32 states have enforced guest laws at some time.

Since their appearance in the 1920s and 1930s, "guest

statutes have been subject to some praise but a great deal more criticism." Proponents of guest laws traditionally have argued that the social importance of promoting driver hospitality and preventing collusive lawsuits outweighs the burden placed on guest passengers by the statutes' prohibition against passenger-driver suits. Early critics countered by questioning whether guest laws were constitutional. Pointing out that guest laws treat guest passengers different from other automobile victims, these critics contended that guest laws "denie[d] to guests in motor vehicles the equal protection of the laws."<sup>18</sup>

The United States Supreme Court in 1929, however, rejected this contention in a case arising under the Connecticut statute.<sup>19</sup> Notwithstanding this validation, the Connecticut legislature repealed the Connecticut guest statute in 1937.<sup>20</sup> The Kentucky Court of Appeals in 1932 also invalidated the Kentucky guest statute, finding that the statute violated the Kentucky constitution.<sup>21</sup> More than 20 years passed, however, before another court or legislature invalidated a guest law.<sup>22</sup>

In the late 1960s and the early 1970s, courts and legislatures in an increasing number of states began to re-examine the constitutionality and the social desirability of guest laws. Opponents of the laws questioned whether

quest laws truly operated to promote driver hospitality. These critics denied that the presence or absence of a guest law actually influenced most drivers' decisions to offer rides to passengers.<sup>23</sup> They also argued that widespread social changes which had occurred since the 1930s--particularly the significantly greater number of drivers carrying automobile liability insurance in the 1970s than the 1930s--eliminated any possibility of "rider ingratitude."<sup>24</sup>

The guest law critics also questioned whether the laws could be justified on grounds that they prevented passengers and drivers from colluding against insurance companies. Even if some fraudulent claims were inevitable, these critics found it unreasonable to prohibit all guest suits merely because of the possibility of fraudulent collusion in some cases.<sup>25</sup>

Finding the foregoing arguments persuasive, the California Supreme Court in 1973 held the California guest statute to be unconstitutional, finding that the statute's discrimination against guest passengers could not be justified on grounds that the statute promoted driver hospitality and prevented collusive lawsuits.<sup>26</sup> Following the California Supreme Court's lead, 12 other state supreme courts struck down their guest laws on constitutional grounds.<sup>27</sup>

In addition to these court decisions, eight state legislatures between 1969 and 1979 repealed their guest statutes on policy or constitutional grounds.<sup>26</sup> Four state legislatures, declining to repeal their guest statutes outright, effectively repealed their guest laws by enacting amendments which substantially narrowed the statutes' scope.

Notwithstanding the abrogation or repeal of guest statutes in many states in the 1970s, the courts in other states rejected constitutional challenges to guest statutes.<sup>30</sup> These courts generally found that the promotion of hospitality and prevention of collusion rationales<sup>31</sup> provided sufficient justification to uphold the guest/non-guest classification created by guest statutes.<sup>32</sup> Although upholding the statutes on constitutional grounds, the opinions of some of these courts, however, reflect the beliefs of individual justices that guest statutes are no longer socially desirable and should be repealed.<sup>33</sup>

As of November 1982, five states--Alabama, Arkansas, Delaware, Indiana, and Utah--retain guest statutes in force substantially as enacted.<sup>34</sup> In addition, one state--Georgia--retains a judicially created guest law.<sup>35</sup> Four states--Illinois, Nebraska, Texas, and Virginia--retain guest statutes which have been effectively repealed through amendment.<sup>36</sup>

B. The Indiana Guest Statute

Originally enacted in 1929, the Indiana guest statute is quite similar to the guest statutes enacted by a number of other states.<sup>37</sup> The statute provides that a motor vehicle owner or operator is not liable for the ". . . injuries to or death of a guest, while being transported without payment therefor . . . unless such injuries or death are caused by the wanton or wilful misconduct of such operator . . . [or] owner . . . ." <sup>38</sup> Hence, where an accident is caused by the ordinary negligence of the host driver, the driver cannot be held liable to an injured passenger if the passenger was a non-paying guest of the driver.

The payment requirement has caused some confusion.<sup>39</sup> Where a passenger is invited or permitted to ride with a driver primarily for social rather than business purposes, the passenger may be deemed a guest even though he has contributed to gas expenses or otherwise has made some incidental form of "payment" to the driver. The ultimate test is the motive of the driver in inviting or permitting the passenger to ride. If the driver's motive was social companionship, the passenger will usually be considered a guest despite an incidental payment. Conversely, if the driver expects to obtain some material gain from the passenger's presence, the passenger usually will not be con-