

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 86/2

2550 SJ • HB 575 - HB 626 •

Sec. 43.23.065. EXEMPTION OF PERMANENT FUND DIVIDENDS. Fifty percent of the annual permanent fund dividend payable to an individual is exempt from levy, execution, garnishment, attachment, or any other remedy for the collection of debt. This exemption applies to an eligible individual's permanent fund dividend both before and after payment is made to the individual. No exemption is available under this section for permanent fund dividends taken to satisfy child support obligations required by court order [OR], a decision of the child support enforcement agency under AS 47.23.140 - 47.23.220, or an order of restitution under AS 12.55.045(d). In the event a child support obligation and an order of restitution are both outstanding against an individual, the child support obligation shall be given preference.

Sec. 7. This Act applies to eligibility for permanent fund dividends for years after 1983.

ALASKA

STATE LEGISLATURE

**MEMORANDUM**

Wally Kubley stopped by - He <sup>would like you</sup> Bill McIlroy -  
endorsed as one of the "public" members"  
on the Special Committee on Longevity Bonus -  
The Finances of Alaska are also going to  
Send a letter to Governor Sheddwell endorsing  
Mr. McIlroy

100  
30  
130



# Alaska State Legislature


## Senate

Official Business

Pouch V  
State Capitol  
Juneau, Alaska 99811

TO: Senator Bill Ray  
FROM: Senator Joe P. Josephson  
DATE: March 26, 1984

RE: Proposed Substitute for CSHB 575

 Pursuant to your suggestion that we consider CSHB 575 with new language which would transfer permanent fund money from a convicted felon to the felon's spouse, or children, I have had drawn up some proposed language for consideration. I asked the drafters to consider problems associated with the transfer of dedicated funds when they drafted the language. The attached proposed language reflects this effort.

Also, line 21 on page 1, dependent ought to be inserted before children.

Further, line 24 on page 2 will need to be changed from (Health and Social Services) to Corrections now that we have a Department of Corrections. My submittal of this material does not necessarily connote my support of this or any other version of CSHB 575.

TO: Senator Bill Ray  
FROM: Paula d. Scavera  
DATE: March 22, 1984  
RE: CSHB 575 (Finance) (Title am)

This bill prevents an convicted felony offender from collecting a Permanent Fund Dividend during any year that he is jail after the conviction. The money that would normally be paid to this class of recipients from the Permanent Fund is intended to be appropriate annually to the Victims Compensation Fund.

SECTION 1

Adds language to the Permanent Fund program preventing convicted incarcerated felons from collecting Permanent Fund checks.

SECTION 2

Amends Permanent Fund program to provide mechanism for determining amount of permanent fund dividend to paid annually including the now excluded class of convicted felons.

SECTION 3

Amends Permanent Fund program requiring Dept. of Revenue to determine those incarcerated felons who are now ineligible for a Permanent Fund Dividend check. This language refers to the Department of Health and Social Services and should refer to the Department of Corrections.

SECTION 4

Makes changes in Permanent Fund Dividend program apply for dividends awarded in 1984.

SECTION 5

Intent language for the purpose of Victims Crimes Compensation Fund to receive the Permanent Fund Dividend money that would previously gone to the incarcerated felons. However the victims eligible for compensation under this fund are a small percentage of all victims.

SECTION 6

Effective date clause.

# MEMORANDUM

# State of Alaska

TO: Bruce Botelho  
Deputy Commissioner  
Department of Revenue

DATE: February 15, 1984

FILE NO: 366-424-84

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch  
Attorney General

SUBJECT: Review of HB 575,  
relating to PFD pay-  
ments to prisoners

By: Diane T. Colvin *DTC*  
Assistant Attorney General  
Commercial-Juneau

You asked us to review House Bill 575, relating to payment of permanent fund dividends to convicted felons, for possible legal problems. Based on our review, we conclude that the bill, if enacted, could be challenged on a number of grounds. The provisions most vulnerable to legal challenge are summarized below.

HB 575 makes a convicted felon ineligible for a permanent fund dividend. The prohibition is applied not only to a felon who is in prison, but also to one who is on probation, on parole, or under a suspended imposition of sentence (Sec. 1).

There are other state laws that impose similar disabilities on convicted felons. Art. V, § 2, Alaska Constitution, implemented by AS 15.05.030, suspends the right to vote of a person convicted of a felony of moral turpitude. The disability continues until the individual's civil rights are restored by unconditional discharge. Unconditional discharge covers conviction and sentence, including, by definition (AS 15.60.010(32), probation and parole, and, according to an opinion of this office, suspended imposition of sentence. 1980 Inf. Op. Att'y. Gen. (Nov. 7).

Statutes imposing disabilities relating to suffrage have traditionally been upheld as necessary to preserve the purity of elections. The presumption is that one rendered infamous by conviction of a felony is not fit to exercise the privilege of voting. State ex rel. Barrett v. Sartorius, 351 Mo. 1237, 175 S.W.2d 787 (1943). See, also Annot., 36 A.L.R.2d 1238 (1954).

Other statutory provisions affect prisoners' civil rights. AS 33.30.310 provides as follows:

A judgment of imprisonment in the penitentiary for a term less than for life suspends the civil rights of the person sentenced, and forfeits all public offices and all private trusts, authority, or power during the term or duration of imprisonment.

AS 33.30.320 relates to the civil rights of a person sentenced for life.

AS 33.30.310 was found unconstitutional by the Alaska Supreme Court to the extent the statute denied a parolee the right to initiate a civil suit in court. Bush v. Reid, 516 P.2d 1215 (1973). The court held that the statute denied the parolee the right to due process and equal protection. In its equal protection analysis, the court recognized that the state may have a reasonable basis for denying convicts while imprisoned access to the civil courts. Id. 1221. But, the court found, the administration of a parole system differs substantially from the administration of a prison. The reasons that support imposition of disabilities on prisoners cannot logically support the same restrictions on parolees. Id. Thus, the court concluded that although the state has a legitimate interest in restricting some activities of parolees, prohibiting a parolee from initiating a civil action has no logical connection with that interest. Therefore, the court held parolees were denied the right to equal protection.

We believe the court would make a similar finding in regard to the right to a permanent fund dividend while on parole. There may be a legitimate state interest in precluding a person incarcerated from receiving a permanent fund dividend. 1/ It is difficult, however, to construct a logical basis for denying a dividend to a parolee. The purpose of parole, recognized by the court in Bush v. Reid, is the parolee's constructive development and restoration into normal society. Cutting a parolee off from receipt of a permanent fund dividend does not further that purpose, but rather restricts it. We believe the same argument would apply to persons given a suspended imposition of sentence and placed on probation. The broad objectives sought by

---

1/ HB 57 does not indicate what the legitimate state purpose is. It would be advisable for the legislature to make that determination, and to embody the purpose or purposes in a letter of intent to accompany the bill.

TO: Senator Bill Ray  
FROM: Paula d. Scavera  
DATE: March 22, 1984  
RE: CSHB 575 (Finance) (Title am)

This bill prevents an convicted felony offender from collecting a Permanent Fund Dividend during any year that he is jail after the conviction. The money that would normally be paid to this class of recipients from the Permanent Fund is intended to be appropriate annually to the Victims Compensation Fund.

SECTION 1

Adds language to the Permanent Fund program preventing convicted incarcerated felons from collecting Permanent Fund checks.

SECTION 2

Amends Permanent Fund program to provide mechanism for determining amount of permanent fund dividend to paid annually including the now excluded class of convicted felons.

SECTION 3

Amends Permanent Fund program requiring Dept. of Revenue to determine those incarcerated felons who are now ineligible for a Permanent Fund Dividend check. This language refers to the Department of Health and Social Services and should refer to the Department of Corrections.

SECTION 4

Makes changes in Permanent Fund Dividend program apply for dividends awarded in 1984.

SECTION 5

Intent language for the purpose of Victims Crimes Compensation Fund to receive the Permanent Fund Dividend money that would previously gone to the incarcerated felons. However the victims eligible for compensation under this fund are a small percentage of all victims.

SECTION 6

Effective date clause.

Bruce Botelho, Deputy Commissioner  
Department of Revenue  
Our file no.: 366-424-84

February 15, 1984  
Page 3

probation are education and rehabilitation. These objectives are not furthered by restricting the right to receive a permanent fund dividend. Therefore, we believe that revising the bill to restrict receipt of a dividend only to convicted felons who are incarcerated would make the bill much less vulnerable to attack on equal protection grounds.

Another point on which the bill is vulnerable is the period of time for determination of ineligibility. Section 1 of the bill now makes a convicted felon ineligible for a dividend for a particular year if, during all or part of that year, the person is incarcerated, on probation, etc. AS 43.23.005 requires only six months of residency to qualify for a permanent fund dividend. We believe in order to be legally supportable the period of incarceration must coincide with at least some portion of the period of eligibility. 2/

Finally, section 1 of the bill provides that the money that would have been paid to persons made ineligible by the bill be transferred from the dividend fund to the crime victim compensation fund. This may raise problems under Art. IX, § 13, of the Alaska Constitution, relating to expenditures of state funds. A better approach would be for the bill to provide that the legislature may appropriate the amount that would have been paid to the crime victim's compensation fund. In order to effect the transfer, the amount that would otherwise have been paid must be set out in an appropriation bill to the crime victim's compensation fund.

We hope this information is helpful to you. If you have further questions, please contact us.

NCG:DTC:eja

cc: The Honorable Charlie Bussell  
Alaska State House of Representatives

---

2/ 15 AAC 23.615(a) establishes for 1983 dividends an eligibility period from October 3, 1982 through March 31, 1983. This period will probably differ in 1984 and subsequent years because of changes in the statute.

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date 03/07/84

Page 1 of 3  
REQUEST  
Bill/Resolution No: CSHB 575 (Fin)  
Title: An Act relating to permanent fund dividends  
Sponsor: House Finance Committee  
Requestor: House Finance Committee  
Date of Request: March 6, 1984

FISCAL DETAIL  
Agency Affected: Revenue  
Program Category Affected: General Government  
BRU, Program or Subprogram(s) Affected: Permanent Fund Dividend

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES	-	33.6	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	1.0	-	-	-	-
400 SUPPLIES	-	.2	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	34.8	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	34.8	-	-	-	-
TOTAL	-	34.8	-	-	-	-

POSITIONS:

FULL-TIME	-	1	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Dividend fund established by AS 43.23.045.

ANALYSIS: Please see attached narrative for analysis.

Prepared By: Thomas C. Williams, Director  
Division: Enforcement

Phone: 465-2366  
Date: March 7, 1984

Approved by Commissioner: Paul O'Leary  
Agency: DOR

Date: 3/7/84

Distribution (by Agency preparing fiscal note):

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

nc (Fin) - adp.

A. Program Effects

Section 1 further defines the eligibility requirements of AS 43.23.005 by adding a new subsection which declares convicted felons who are incarcerated ineligible to receive a permanent fund dividend if they were incarcerated for said felony during any part of the eligibility period for a particular year's dividend. For example, the six-month eligibility period for the 1984 dividend is October 1, 1983 through March 31, 1984. Under this bill, an individual who was incarcerated for a felony conviction during this period or was incarcerated during any part of this period, would be ineligible for a 1984 permanent fund dividend.

Section 1 also provides that the Department of Health & Social Services will provide a magnetic tape to the Department of Revenue, once a year within 60 days of the close of the PFD eligibility period, listing all convicted felons who were incarcerated during any part of the eligibility period. Modifications will need to be made to the PFD system to do a cross-match on at least all adult applications, so those which appear to be felons can be individually identified and reviewed. The Department of Revenue will, of course, have to be extremely careful that a "non-felon" is not accidentally denied on the grounds of felony conviction. The estimated resources necessary to accomplish this task are identified below under C. Program Summary.

Section 2, combined with the added subsections in Section 3, require the Department of Revenue to estimate the number of convicted felons under sentence for felony as described in Section 1.

Under Section 5, the dividends otherwise payable to the estimated number of individuals, whether or not they file, would then be presumably reappropriated the next legislative session to the Crime Victim Compensation Fund. Since the value of an individual dividend is not known until some time in the fall of a given dividend year, the Legislature would not be able to appropriate the amount described in Section 5 until the session following the dividend year. Since the funds were originally appropriated for the purpose of paying dividends, a reappropriation for the purpose described in AS 18.67 would seem appropriate.

B. Assumptions

1. The PFD program is retained and there are no other substantive changes to the program.
2. The Department of Health and Social Services can provide the Department of Revenue with a magnetic tape accurately identifying all convicted felons who were incarcerated during any part of the eligibility period.

C. Program Summary

This bill would require one full time PFD Investigator who would be assigned felons on a project basis. The primary functions of this position would be to conduct confirming investigations on a portion of applicants identified as felons, resolve instances where an individual was inappropriately identified as a felon, respond to related inquiries, process denials of felons under sentence who do apply, and hold informal conferences related to appeals from felons under sentence. In addition, there would be associated contractual services and supply costs.

Personnel Services (100)

PFD Investigator II (R13) 12 months @ \$2,800/mo. \$33,600

Contractual Services (300)

Telephone, form letters, postage, etc. 1,000

Supplies (400)

General Office Supplies 200

Total \$34,800

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date 03/07/84

REQUEST

Page 1 of 3

Bill/Resolution No: CSHB 575 (Fin)  
 Title: An Act relating to permanent fund dividends  
 Sponsor: House Finance Committee  
 Requestor: House Finance Committee  
 Date of Request: March 6, 1984

FISCAL DETAIL

Agency Affected: Revenue  
 Program Category Affected: General Government  
 BRU, Program or Subprogram(s) Affected: Permanent Fund Dividend

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
10) PERSONAL SERVICES	-	33.6	-	-	-	-
20) TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	1.0	-	-	-	-
400 SUPPLIES	-	.2	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	34.8	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	34.8	-	-	-	-
TOTAL	-	34.8	-	-	-	-

POSITIONS:

FULL-TIME	-	1	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Dividend fund established by AS 43.23.045.

ANALYSIS: Please see attached narrative for analysis.

Prepared By: Thomas C. Williams, Director

Division: Enforcement

Phone: 465-2366

Date: March 7, 1984

Approved by Commissioner: [Signature]

Agency: DOR

Date: 3/7/84

Distribution (by Agency preparing fiscal note):

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

oc (Fin) - adp.

A. Program Effects

Section 1 further defines the eligibility requirements of AS 43.23.005 by adding a new subsection which declares convicted felons who are incarcerated ineligible to receive a permanent fund dividend if they were incarcerated for said felony during any part of the eligibility period for a particular year's dividend. For example, the six-month eligibility period for the 1984 dividend is October 1, 1983 through March 31, 1984. Under this bill, an individual who was incarcerated for a felony conviction during this period or was incarcerated during any part of this period, would be ineligible for a 1984 permanent fund dividend.

Section 1 also provides that the Department of Health & Social Services will provide a magnetic tape to the Department of Revenue, once a year within 60 days of the close of the PFD eligibility period, listing all convicted felons who were incarcerated during any part of the eligibility period. Modifications will need to be made to the PFD system to do a cross-match on at least all adult applications, so those which appear to be felons can be individually identified and reviewed. The Department of Revenue will, of course, have to be extremely careful that a "non-felon" is not accidentally denied on the grounds of felony conviction. The estimated resources necessary to accomplish this task are identified below under C. Program Summary.

Section 2, combined with the added subsections in Section 3, require the Department of Revenue to estimate the number of convicted felons under sentence for felony as described in Section 1.

Under Section 5, the dividends otherwise payable to the estimated number of individuals, whether or not they file, would then be presumably reappropriated the next legislative session to the Crime Victim Compensation Fund. Since the value of an individual dividend is not known until some time in the fall of a given dividend year, the Legislature would not be able to appropriate the amount described in Section 5 until the session following the dividend year. Since the funds were originally appropriated for the purpose of paying dividends, a reappropriation for the purpose described in AS 18.67 would seem appropriate.

B. Assumptions

1. The PFD program is retained and there are no other substantive changes to the program.
2. The Department of Health and Social Services can provide the Department of Revenue with a magnetic tape accurately identifying all convicted felons who were incarcerated during any part of the eligibility period.

C. Program Summary

This bill would require one full time PFD Investigator who would be assigned felons on a project basis. The primary functions of this position would be to conduct confirming investigations on a portion of applicants identified as felons, resolve instances where an individual was inappropriately identified as a felon, respond to related inquiries, process denials of felons under sentence who do apply, and hold informal conferences related to appeals from felons under sentence. In addition, there would be associated contractual services and supply costs.

Personal Services (100)

PFD Investigator II (R13) 12 months @ \$2,800/mo. \$33,600

Contractual Services (300)

Telephone, form letters, postage, etc. 1,000

Supplies (400)

General Office Supplies 200

Total \$34,800

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date 03/07/84

Page 1 of 3

REQUEST

Bill/Resolution No: CSHB 575 (Fin)  
 Title: An Act relating to permanent fund dividends  
 Sponsor: House Finance Committee  
 Requestor: House Finance Committee  
 Date of Request: March 6, 1984

FISCAL DETAIL

Agency Affected: Revenue  
 Program Category Affected: General Government  
 BRU, Program or Subprogram(s) Affected: Permanent Fund Dividend

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
<u>OPERATING</u>						
100 PERSONAL SERVICES	-	33.6	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	1.0	-	-	-	-
400 SUPPLIES	-	.2	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
<u>TOTAL OPERATING</u>	-	34.8	-	-	-	-
<u>CAPITAL</u>	-	-	-	-	-	-
<u>REVENUE</u>	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	34.8	-	-	-	-
<u>TOTAL</u>	-	34.8	-	-	-	-

POSITIONS:

FULL-TIME	-	1	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Dividend fund established by AS 43.23.045.

ANALYSIS: Please see attached narrative for analysis.

Prepared By: Thomas C. Williams, Director  
 Division: Enforcement

Phone: 465-2366

Date: March 7, 1984

Approved by Commissioner: [Signature]  
 Agency: DFR

Date: 3/7/84

Distribution (by Agency preparing fiscal note):

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

100 (Fin) - adp.

A. Program Effects

Section 1 further defines the eligibility requirements of AS 43.23.005 by adding a new subsection which declares convicted felons who are incarcerated ineligible to receive a permanent fund dividend if they were incarcerated for said felony during any part of the eligibility period for a particular year's dividend. For example, the six-month eligibility period for the 1984 dividend is October 1, 1983 through March 31, 1984. Under this bill, an individual who was incarcerated for a felony conviction during this period or was incarcerated during any part of this period, would be ineligible for a 1984 permanent fund dividend.

Section 1 also provides that the Department of Health & Social Services will provide a magnetic tape to the Department of Revenue, once a year within 60 days of the close of the PFD eligibility period, listing all convicted felons who were incarcerated during any part of the eligibility period. Modifications will need to be made to the PFD system to do a cross-match on at least all adult applications, so those which appear to be felons can be individually identified and reviewed. The Department of Revenue will, of course, have to be extremely careful that a "non-felon" is not accidentally denied on the grounds of felony conviction. The estimated resources necessary to accomplish this task are identified below under C. Program Summary.

Section 2, combined with the added subsections in Section 3, require the Department of Revenue to estimate the number of convicted felons under sentence for felony as described in Section 1.

Under Section 5, the dividends otherwise payable to the estimated number of individuals, whether or not they file, would then be presumably reappropriated the next legislative session to the Crime Victim Compensation Fund. Since the value of an individual dividend is not known until some time in the fall of a given dividend year, the Legislature would not be able to appropriate the amount described in Section 5 until the session following the dividend year. Since the funds were originally appropriated for the purpose of paying dividends, a reappropriation for the purpose described in AS 18.67 would seem appropriate.

B. Assumptions

1. The PFD program is retained and there are no other substantive changes to the program.
2. The Department of Health and Social Services can provide the Department of Revenue with a magnetic tape accurately identifying all convicted felons who were incarcerated during any part of the eligibility period.

C. Program Summary

This bill would require one full time PFD Investigator who would be assigned felons on a project basis. The primary functions of this position would be to conduct confirming investigations on a portion of applicants identified as felons, resolve instances where an individual was inappropriately identified as a felon, respond to related inquiries, process denials of felons under sentence who do apply, and hold informal conferences related to appeals from felons under sentence. In addition, there would be associated contractual services and supply costs.

Personal Services (100)

PFD Investigator II (R13) 12 months @ \$2,800/mo. \$33,600

Contractual Services (300)

Telephone, form letters, postage, etc. 1,000

Supplies (400)

General Office Supplies 200

Total \$34,800

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

REQUEST

Bill/Resolution No: HB 575  
Title: An act relating to permanent fund dividends.  
Sponsor: Barnes  
Requestor: Judiciary  
Date of Request: 02/06/84

FISCAL DETAIL

Agency Affected: Revenue  
Program Category Affected: General Government  
BRU, Program of Subprogram(s) Affected: Permanent Fund Dividend

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES	-	33,600	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	4,502	-	-	-	-
400 SUPPLIES	-	200	-	-	-	-
500 EQUIPMENT	-	3,225	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	41,527	-	-	-	-
CAPITAL	-	-0-	-	-	-	-
REVENUE	-	-0-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-0-	-	-	-	-

POSITIONS:

FULL-TIME	-	-1-	-	-	-	-
PART-TIME	-	-0-	-	-	-	-
TEMPORARY	-	-0-	-	-	-	-

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: See attached analysis.

Prepared By: Ervin B. Jones  
Division: Administrative Services

Phone: 465-2313  
Date: 02/10/84

Approved by Commissioner: George Annello  
Agency: Revenue

Date: 2/15/84

Distribution (by Agency preparing fiscal note):

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

COMMITTEE REPORT

HOUSE

(7)

FURTHER: FINANCE

Date: 2-27-84

2/6/84

The Committee on JUDICIARY has had HB 575

"An Act relating to permanent fund dividends; and providing for an effective date."

under consideration and recommends:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for HB 575 (Judiciary)  same title  
 new title.

and recommends THAT IT DO PASS

- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation  Zero Fiscal Note Attached
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

*John J. Istin*  
*[Signature]*  
*Barbara Barnes*  
*Alvin D. Bussell*

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

*Malone No Rec.*  
*Chickens - no rec*

*Alvin D. Bussell*  
 CHAIRMAN



POUCH V  
JUNEAU, ALASKA 99811  
(507) 465-4990

Alaska State Legislature  
HOUSE OF REPRESENTATIVES

REPRESENTATIVE  
CHARLIE BUSSELL  
CHAIRMAN

# Committee on Judiciary

HB 575  
TABLE OF CONTENTS

- A. Proposed Committee Substitute for House Bill No. 575
- B. House Bill No. 575  
"An act relating to permanent fund dividends; and providing for an effective date."
- C. Fiscal Note/Analysis  
Ervin A. Jones, Director, Administrative Services, Department of Revenue.
- D. Analysis  
Tom Williams, Director, Enforcement Division, Department of Revenue.
- E. Letter of Opinion  
Diane T. Colvin, Assistant Attorney General, Department of Law.
- F. Pertinent News Clipping

MEMBERS:  
REP. JOHN LISKA, VICE CHAIRMAN; REP. RAMONA BARNES, EMERITUS;  
REP. JOE HAYES; REP. HUGH MALONE; REP. DON CLOCKSIN; REP. RON WENDTE

## Analysis:

Section 1 of the bill provides for two changes to the current law. First, it provides that convicted felons are ineligible for a permanent fund dividend for any year, when during all or part of that year as a result of their felony conviction, the individual was:

- a. incarcerated
- b. on probation
- c. on parole
- d. under a suspended imposition of sentence.

Secondly, it provides that an amount equal to the foregone dividend would be transferred to the crime victim compensation fund.

There are several major factors which make the provisions of this section, as written, difficult to administer:

1. The permanent fund dividend program is designed by statute to make payments for the same given year for which applications are filed. For example, the 1983 dividend was declared on September 1, 1983, and largely paid by December 31, 1983, based on applications received during the filing period April 1 - June 30, 1983. Assuming the Department of Revenue was able to sort out applications filed by convicted felons who met the requirements of Section 1, we would have to hold all payments until the end of the dividend year, in order to review all applications for "felon status" through the whole year including December. This would not necessarily change the filing period or the declaration date, but would mandate payments being made no sooner than January or February of the year following the dividend year. After the department makes one last massive cross examination of all applications filed, probably in January following the dividend year. The department would still attempt to make all payments by April 30 of the year following the dividend year.
2. The second problem is determining which PFD applicants are convicted felons who meet the statutory test (i.e. incarcerated, on probation, etc.). For the department to identify those persons would require a one-time matching of the PFD master file for a given year against a currently non-existent data base of all Alaskans who met the prescribed condition during the preceding dividend year. This cross match is the one described above as taking place in January following the dividend year. Creating the needed data base would involve two steps:
  - a) Using the OPSIS data base recently established by the Corrections Department, Health & Social Services would need to build a file of all convicted felons who as a result of their felony conviction were, at any time during the dividend year:
    - 1) incarcerated (in or out of Alaska)
    - 2) on probation (in or out of Alaska)
    - 3) on parole (in or out of Alaska).

It should be noted that Corrections has no control over, or records of, convicted felons under suspended imposition of sentence, nor does Corrections have any record of, or knowledge of, Alaska residents who

Analysis (cont.)

are convicted of felonies outside Alaska and are still outside Alaska imprisoned, on parole, on probation, or under suspended sentence. Roger Lang, Deputy Commissioner of Administration for Corrections expressed the opinion that the incidences of the latter would be negligible.

- b) Literally building a tracking system of those felons under suspended sentence. Apparently, individual courts keep these records separately, in a non-computerized fashion. If it is the Legislature's final decision that such a system be created, I think a great deal of study and research, probably by a consultant, would be needed before even an estimate of cost could be arrived at. Deputy Commissioner Lang suggests that the number of convicted felons under suspended sentence in Alaska might be so low as to render the search cost-ineffective.
3. Transferring an amount equivalent to the dividend that is denied the felon applicant to the crime victim compensation fund indirectly funds the crime victim compensation fund (previously strictly a general fund appropriation) from the earnings of the Permanent Fund. Since the number of felons filing will very shortly drop off sharply (when they realize they won't be paid), a more direct appropriation to the crime victims compensation fund would appear to be more beneficial.

In summary, to the extent that a data base is available which identifies the subject felons, and to the extent that they file applications, the Department of Revenue will be able to deny their applications. The cost of doing so, with the exception of suspended sentences, will be very low. The Enforcement Division will need one full-time investigator as reflected on the attached analysis. The postponement of all payments by several months will obviously irritate the general public. For this reason, the department recommends that lines 13, 14 and 15 of the bill be changed to read " . . . permanent fund dividend for a year when, during all or part of the eligibility period for that year's dividend, [that year] as a result of the conviction the individual is incarcerated, on probation, on parole or under a suspended imposition of sentence." This would enable the department to process applications against a fixed file of subject felons and to make payments as soon as the dividend amount is declared.

Enforcement Division Analysis of HB 575  
February 10, 1984

A. Assumptions

1. The PFD program is retained and there are no other substantive changes to the program.
2. It would be possible and practical to obtain information on individual's convicted of a felony. (Please see the discussion under C.)

B. Program Summary

This bill would require one full time PFD Investigator who would be assigned felons on a project basis. In addition, there would be associated contractual services, supply costs, and equipment costs.

	<u>FY '84</u>
<u>Personal Services (100)</u>	
PFD Investigator II (R13)    12 months @ \$2,800/mo.	<u>\$33,600 (1)</u>
<u>Contractual Services (300)</u>	
Telephone	
Telephone purchase    1 phone @    \$60	60 (2)
Installation            1 phone @    \$90	90 (2)
Local Centrex           12 months @ \$46/mo.	552
Long Distance           12 months @ \$150/mo.	1,800
Computer Terminal	
Installation            1 terminal @ \$2,000	<u>2,000 (2)</u>
<u>Total Contractual Services (300)</u>	<u>4,502</u>
<u>Supplies (400)</u>	
General Office Supplies	<u>200</u>
<u>Equipment (500)</u>	
Computer Terminal	1,600 (2)
Desk	575 (2)
Chair	175 (2)
File	275 (2)
Partitions                    2 @ \$300/ea.	<u>600 (2)</u>
<u>Total Equipment (500)</u>	<u>3,225</u>
<u>Total Enforcement</u>	<u>\$41,527</u>

- (1) In FY '85 the cost of the salary and benefits for the investigator is estimated to increase by the negotiated 3.8% salary increase. Accordingly, the FY '85 and subsequent year costs are projected to be \$34,877.
- (2) Several items in contractual services and all equipment items are one time and are not included in FY '85 and subsequent year cost projections.

C. Additional Comments on the Legislation

This legislation is likely to be difficult to administer. The preceding cost analysis was based on the assumption that we would be able to obtain information from several federal, state, and local law enforcement agencies, court systems, and corrections agencies which would have information on the status of felons. Because the bill declares a convicted felon ineligible if at any time during the year he/she was incarcerated, on probation, on parole, or under a suspended sentence the number of ineligibles would grow with each passing day. Since there is not one comprehensive criminal justice system within the United States, it would be a difficult task, at best, to try to obtain and keep that information updated.

Under current law PFD payments could be made in calendar year 1984 for the 1984 program. If subsequent to receiving a PFD payment an applicant became ineligible due to felony conviction, Enforcement would be faced with the task of trying to recover from the felon.

The appeals process may also be impacted as any person who applies and is denied has the right to appeal. It is conceivable that some incarcerated convicted felons, although ineligible by law, may file appeals for the lack of anything else better to do.

TCW/dlr

H

B

5

88

# COMMITTEE REPORT

## SENATE

FURTHER:

Date \_\_\_\_\_

Mr. President

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

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

- do pass
- do pass with attached amendment(s)
- replace with/or-adopt 5 CS for \_\_\_\_\_
- new title
- same title and recommends \_\_\_\_\_
- and attached a "LETTER OF INTENT"  NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Chairman

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

Offered: 3/15/84  
Referred: Finance

Original sponsor: Tischer

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 588 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act providing for the award of costs and attorney  
7 fees to persons who prevail in certain state adminis-  
8 trative proceedings; and providing for an effective  
9 date."

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

11 \* Section 1. AS 09.50 is amended by adding a new section to read:

12 ARTICLE 7. COSTS AND ATTORNEY FEES IN ADMINISTRATIVE PROCEEDINGS.

13 Sec. 09.50.410. AWARD OF COSTS AND ATTORNEY FEES TO RESPONDENT  
14 IN ADMINISTRATIVE PROCEEDING. (a) If action by a state agency re-  
15 sults in an administrative proceeding in which the state agency takes  
16 a position adverse to the respondent and the proceeding is to impose a  
17 civil penalty or tax on a person or to revoke, suspend, limit, or  
18 condition a person's right, authority, license, or privilege, the  
19 hearing officer or other official who presides over the proceeding  
20 shall allow the respondent to recover from the state the respondent's  
21 costs of defense, including attorney fees, if the respondent prevails  
22 in the administrative proceeding.

23 (b) If a civil penalty or tax is imposed on a person in an  
24 administrative proceeding or the proceeding results in the revocation,  
25 suspension, limitation, or conditioning of a right, authority, li-  
26 cense, or privilege and the decision made in the administrative pro-  
27 ceeding is reversed on the merits in a subsequent court proceeding,  
28 the court shall allow the person who was the subject of that decision  
29 to recover the costs of defense in the administrative proceeding.

1 including attorney fees.

2 (c) An award of costs and attorney fees made under this section  
3 shall be 100 percent of the first \$2,000 of costs and attorney fees  
4 and 75 percent of costs and attorney fees in excess of \$2,000.

5 (d) An award of costs or attorney fees made under this section  
6 may be appealed to the superior court.

7 (e) In this section "state agency" means a department, office,  
8 agency or other instrumentality of the state, including the University  
9 of Alaska.

10 \* Sec. 2. This Act applies only to administrative proceedings that are  
11 commenced after the effective date of this Act.

12 \* Sec. 3. This Act takes effect immediately in accordance with AS 01.-  
13 10.070(c).

TRP 4462

Bill No. CSHB 588 (Finance)

Date May 23, 1984

Title "An Act providing for the award of costs and attorney fees to persons who prevail in certain state administrative proceedings."

Contact: Robert W. Landau  
465-2700

This bill appears to have been modeled after the federal Equal Access to Justice Act, 5 U.S.C. §504, which has been in effect since October 1980. The basic provision in the federal law provides as follows:

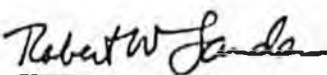
An agency that conducts an adversary adjudication shall award, to a prevailing party other than the United States, fees and other expenses incurred by that party in connection with that proceeding, unless the adjudicative officer of the agency finds that the position of the agency as a party to the proceeding was substantially justified or that special circumstances make an award unjust.

While the Department of Labor does not disagree with the basic purpose of House Bill 588, we believe that the present language of the bill is too broad in scope and should be amended to more closely parallel the federal law. Specifically, the Department recommends that the term "administrative proceeding" in the bill be replaced with the term "adversary adjudication," since the former term could be interpreted to broadly cover all types of informal and non-adjudicatory proceedings between an administrative agency and a private party. Furthermore, the Department recommends that the scope of this bill, like the federal law, should be limited to adjudications under the Administrative Procedure Act since those proceedings are more formal and adversarial in nature and typically involve the use of attorney representation. We believe that if this bill is broadly applied to all manner of administrative proceedings, both informal and formal, it will tend to inject attorneys more than ever into all levels of the administrative process, which we believe over the long run would convert many administrative proceedings from the informal, speedy, and relatively inexpensive process they were designed to be into proceedings that are more formal, time consuming, and costly to all parties. |

In addition, we believe that this bill should contain the same kind of "substantial justification or special circumstances" limitation found in the parallel federal law. In many areas of administrative adjudication in Alaska, the applicable law is new, unclear, or rapidly changing; in these situations, an administrative agency may be substantially justified in going forward and should not be penalized for doing so in good faith. We believe that the inclusion of "substantial justification or special circumstances" language will provide an important safety valve to ensure that the intent of the bill is appropriately implemented.

A fiscal note has been attached.

APPROVED:

  
for Jim Robison  
Commissioner

**POSITION PAPER/**Department of Labor

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

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

REQUEST

Bill/Resolution No.: CS HB 588(Fin)  
 Title: "award of cost and attorney fees to persons...."  
 Sponsor: Tischer  
 Requestor: Senate Judiciary  
 Date of Request: 5/22/84

FISCAL DETAIL

Agency Affected: Labor  
 Program Category Affected: Social Services  
 BRU, Program or Subprogram(s) Affected: Employment Security BRU  
Unemployment Insurance Component

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		54.0	114.5	133.5	155.6	181.5
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		54.0	114.5	133.5	155.6	181.5
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		54.0	114.5	133.5	155.6	181.5
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

ANALYSIS: *Attach a separate page for analysis*

Prepared By: John W. Shay, Jr. Phone: 465-2712  
 Division: Employment Security Division Date: 5/22/84

Approved by *Robert W. Jordan* Date: 5/22/84  
 Agency: Labor

LEG:B:11

Distribution (by Agency preparing fiscal note):

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

12/1/83

FISCAL NOTE

THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE

BILL/RESOLUTION NO: CSHB 588 (FII.)

TITLE: "An Act relating to award of cost and attorney fees to persons...."

AGENCY AFFECTED: Department of Labor

Page 2

Under this bill the Department of Labor, Employment Security Division would be responsible for reimbursing costs and attorney fees to persons who prevail against the State in administrative proceedings for Unemployment Insurance benefit and tax cases.

The following assumptions have been made in preparing this fiscal note.

1. The effective date is July 1, 1984.
2. Four thousand projected cases in FY '85.
3. Thirty percent of the cases will be reversed.
4. Ten percent of the reversed cases will be represented by an attorney.
5. Average cost per case will be \$450 with a maximum fee of \$75 per hour.
6. One hundred percent of the costs and attorney fees will be reimbursable.
7. The number of cases with legal representation will double in FY '86.
8. For FY '87 thru FY '89, 10% increase annually in the reversed cases represented by an attorney.
9. Six percent inflation factor has been used for FY '86 thru FY '89.

LEG:B:11

— FILE —  
Alaska State Legislature

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

While in Juneau  
POUCH V  
JUNEAU, ALASKA 99811



Senate

VICE CHAIRMAN  
SENATE RESOURCES COMMITTEE

MEMBER  
SENATE JUDICIARY COMMITTEE

WESTERN STATES LEGISLATIVE  
FORESTRY TASK FORCE

WESTERN CONFERENCE COUNCIL  
OF STATE GOVERNMENTS

May 9, 1984

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

Re: CSHB 588.

Dear Bill:

I have attached Guy's research on the captioned bill. It very well explains the subject matter of the bill; I favor the legislation.

Too often people get involved in a bureaucratic maze and encounter excessive red tape and unnecessary delay. If a hearing officer, for example, knew that the state could be assessed attorneys fees and/or costs if he made a capricious or arbitrary decision, we might arrive at more efficient processing and handling of claims.

I have not talked to the prime sponsor to find out whether she has a particular target in mind, but I'd be more than happy so to do if requested by you.

Regards,

3-

Robert H. Ziegler, Sr.

RHZ:lk

Attachment

TO: SENATOR ROBERT H. ZIEGLER, SR.  
FROM: GUY VAN DOREN *Guy*  
ADMIN. ASST.  
SUBJECT: CSHB 588

CSHB 588 AN ACT PROVIDING FOR THE AWARD OF COSTS  
AND ATTORNEY FEES TO PERSONS WHO PREVAIL IN CERTAIN STATE  
ADMINISTRATIVE PROCEEDINGS AND PROVIDING FOR AN EFFECTIVE DATE

NEW SECTIONS ADDED TO 09.50

Sec. 1. ARTICLE 7 COST AND ATTORNEY FEES IN ADMINISTRATIVE PROCEEDINGS.

09.50.140 AWARD OF COSTS AND ATTORNEY FEES TO RESPONDENTS IN  
ADMINISTRATIVE PROCEEDINGS.

(a) Allows a respondent, who prevails in an administrative proceeding involving a civil penalty on that person or revocation, suspension, limitation or the conditioning of a persons license or privilege, to recover from the state, the costs of defense including attorney fees.

(b) Allows respondent to recover from the state the reasonable costs of the appeal and the administrative proceedings, including reasonable attorney fees, if the original determination imposes a civil penalty or revocation, suspension, limitation or conditioning of a right, authority, license or authority and that decision is reversed in a subsequent court proceeding.

(c) Provides that the award of attorney fees may not exceed \$75 and hour for services actually rendered and the total may not exceed \$10,000 unless the limitation results in the extreme hardship of the prevailing party.

(d) Provides that the award of attorney fees or costs made under this section may be appealed to Superior Court.

\*\*\*\*\* (who pays for the appeal???)

(e) Provides that this provision does not apply to claims for costs or attorney fees that are specifically authorized by statute or rules of court.

(f) Defines state agency and includes the Univ. of Alaska

Section 2. Provides that the act applies only to proceedings commenced after the effective date of this act.

Section 3. Immediate effective date.

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 588  
 Title: An Act....award of costs and attorney fees....  
 Sponsor: Tischer  
 Requestor: Judiciary  
 Date of Request: 3/1/84

FISCAL DETAIL

Agency Affected: Education  
 Program Category Affected: Elementary & Secondary Education  
 BRU, Program or Subprogram(s) Affected: Management, Law & Finance

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>						
<b>CAPITAL</b>						
<b>REVENUE</b>						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

This is not a zero fiscal note. Financial impact of the bill is indeterminate.

ANALYSIS: Attach a separate page for analysis

Prepared By: Steve Hole Phone: 465-2800  
 Division: Commissioner's Office Date: 3/1/84

Approved by Commissioner: Harold Reynolds, Jr. Date: 3/1/84  
 Agency: Education

Distribution (by Agency preparing fiscal note):

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

12/1/83

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

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

REQUEST

Bill/Resolution No: HB 588  
 Title: Award of costs and attorney fees.  
 Sponsor: Tischer  
 Requestor: House Judiciary  
 Date of Request: \_\_\_\_\_

FISCAL DETAIL

Agency Affected: Revenue  
 Program Category Affected: \_\_\_\_\_  
 BRU, Program of Subprogram(s) Affected: \_\_\_\_\_

EXPENDITURES/REVENUES: (in thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
<u>OPERATING</u>						
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 SUPPLIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
<u>TOTAL OPERATING</u>	-	-	-	-	-	-
<u>CAPITAL</u>	-	-	-	-	-	-
<u>REVENUE</u>	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
<u>TOTAL</u>	-	-	-	-	-	-

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Fiscal impact of this legislation would be difficult to project as the number of hearings in question is unknown.

ANALYSIS: Attach a separate page for analysis.

Prepared By: Bruce M. Botelho  
 Division: Commissioner's Office

Phone: 455-2300  
 Date: 02/29/84

Approved by Commissioner: [Signature]  
 Agency: [Signature]

Date: 2/29/84

Distribution (by Agency preparing fiscal note):

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

## Analysis for HB 588

HB 588 would require presiding officers in administrative proceedings to award respondents their "costs of defense, including attorney fees."

There are two fundamental deficiencies with this bill. First, and the most significant, is the infusion of additional issues for appeal in cases that might not otherwise be appealed. A review of Alaska Supreme Court decisions will disclose numerous cases appealed on two related issues: (1) who is the prevailing party, and (2) the reasonableness of costs and attorney fees. Because the almost universal practice in this country has been to preclude attorney fees at the administrative level, administrative hearing officers have not had to divert their attention to this issue. In this regard it should be noted that, like criminal cases, taxation and license disciplinary proceedings have been considered exercises of the sovereign's power for the public welfare for which no attorney fees should be awarded. Second, the bill is imbalanced in that it does not provide for compensation to the state when the state prevails in proceedings.

The motivation for litigation over costs and attorney fees might be reduced by inclusion of language limiting the amount of recovery. This would be especially helpful in cases before the Department of Revenue in which millions of dollars are at issue. Such a limitation might take the following form:

"A claim for costs and attorney fees may not exceed \$75 an hour for services actually performed by the attorney of the claimant and may not exceed \$5,000."

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

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

REQUEST

Bill/Resolution No.: HB 588  
 Title: "award of cost and attorney fees to persons...."  
 Sponsor: Tischer  
 Requestor: Judiciary Comm.  
 Date of Request: February 28, 1984

FISCAL DETAIL

Agency Affected: Labor  
 Program Category Affected: Social Services  
 BRU, Program or Subprogram(s) Affected: Employment Security BRU  
Unemployment Insurance Component

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		24.0	50.9	56.0	61.6	67.7
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		24.0	50.9	56.0	61.6	67.7
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		24.0	50.9	56.0	61.6	67.7
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

ANALYSIS: Attach a separate page for analysis

Prepared By: John W. Shay, Jr. Phone: 465-2712  
 Division: Employment Security Division Date: 2-29-84  
 Approved by Commissioner: Jim Robinson Date: 2-29-84  
 Agency: Labor

LEC:B:11

Distribution (by Agency preparing fiscal note):

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

12/1/83

FISCAL NOTE

THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE

BILL/RESOLUTION NO: HB 588

TITLE: "An Act relating to award of cost and attorney fees to persons...."

AGENCY AFFECTED: Department of Labor

Page 2

Under this bill the Department of Labor, Employment Security Division would be responsible for reimbursing costs and attorney fees to persons who prevail against the State in administrative proceedings for Unemployment Insurance benefit and tax cases.

The following assumptions have been made in preparing this fiscal note.

1. The effective date is July 1, 1984.
2. Four thousand projected cases in FY '85.
3. Thirty percent of the cases will be reversed.
4. Ten percent of the reversed cases will be represented by an attorney.
5. Average cost per case will be \$400.
6. Fifty percent of the cost will be reimbursable under Alaska Rules of Civil Procedure, Rules 32 (Designation of reasonable cost).
7. The number of cases with legal representation will double in FY '86.
8. For FY '87 thru FY '89, 10% increase annually in the reversed cases represented by an attorney.
9. Six percent inflation factor has been used for FY '86 thru FY '89

LEG:8:11

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

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

REQUEST

Bill/Resolution No.: 588  
 Title: An Act providing for the  
award of costs & attorney's fees.  
 Sponsor: Tischer  
 Requestor: \_\_\_\_\_  
 Date of Request: 2/9/84

FISCAL DETAIL

Agency Affected: Commerce & Economic Dev.  
 Program Category Affected: Consumer Protection  
 BRU, Program or Subprogram(s) Affected:  
Alaska Transportation Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		10.0				
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		10.0				

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND		10.0				
FEDERAL FUNDS		-0-				
OTHER		-0-				
TOTAL		10.0				

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

If the Bill was amended, the State agency could collect its cost and attorney fees when it prevails thus offsetting the costs when the respondent prevails.

ANALYSIS: Attach a separate page for analysis

Prepared By: Keith H. Miller Phone: 561-4216  
 Division: Alaska Transportation Commission Date: 2/16/84  
 Approved by Commissioner: [Signature] Date: 3/1/84  
 Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):


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

12/1/83

ANALYSIS FOR FISCAL NOTE

It is not possible to accurately predict the future fiscal impact of this bill with any certainty. The problems in predicting is that there is no certainty on the number of proceedings that will occur; there is no way of predicting the number wherein the respondent prevails; and there is no way of predicting the amount of fees that would be awarded.

A review of the 283 ATC proceedings that would appear to be covered by this legislation that were initialed in 1983 indicates that four cases might have justified the awarding of costs and attorney fees to the respondent. It should be noted that some of these proceedings are still open.



STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

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

REQUEST

Bill/Resolution No.: HB NO. 588  
 Title: "An Act relating to costs and attorney fees."  
 Sponsor: Rep. Tischer  
 Requestor: Jud & Finance  
 Date of Request: \_\_\_\_\_

FISCAL DETAIL

Agency Affected: Commerce & Economic Dev.  
 Program Category Affected: Public Protection  
 BRU, Program or Subprogram(s) Affected: Occupational Licensing

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		70.0	73.5	77.2	81.0	85.1
400 SUPPLIES						
500 EQUIPMENT						
500 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANECUS						
TOTAL OPERATING	0	70.0	73.5	77.2	81.0	85.1
CAPITAL						
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
GENERAL FUND	0	70.0	73.5	77.2	81.0	85.1
FEDERAL FUNDS						
OTHER						
TOTAL	0	70.0	73.5	77.2	81.0	85.1

POSITIONS:

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not identified by the sponsor.

ANALYSIS: Attach a separate page for analysis (See Attached)

Prepared By: Darrell Miller Phone: 465-2535  
 Division: Occupational Licensing Date: 3/1/84  
 Approved by Commissioner: Richard A. Lyon Date: 3/1/84  
 Agency: Commerce & Economic Development

Distribution (by Agency preparing fiscal note):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

FISCAL ANALYSIS:

Assumptions: This bill, if enacted in its present form, would provide a fiscal impact on the Division of Occupational licensing operations through administrative proceedings for the 22 licensing functions of the division, boards and commission.

In FY '82 the division concluded a total of 76 administrative proceedings, of which at least 17 were concluded in partial, or total, favor of the respondent.

In FY '83 the division concluded a total of 21 administrative proceedings, of which at least 11 were concluded in partial, or total, favor of the respondent.

Under the provisions of this bill, a respondent, as the prevailing party, would be entitled to an award of costs and attorney fees, in full or in part, as the case may be, in an administrative proceeding conducted by the division.

The Alaska Rules of Civil Procedure, Rules 79 and 82, are somewhat flexible in the awarding of costs and attorney fees to a prevailing party.

Each instance would require individual analysis and the estimate of the fiscal impact incurred by the division under this bill can only be an estimate that is unsupported by factual documentation at this time.

No fiscal impact would be incurred for other operating costs of the division under the provisions of this bill.

HOUSE BILL NO. 588

300 CONTRACTUAL (Note: 5% inflation rate projected for future)

The FY '82 and 83 combined total of administrative proceedings concluded in partial or full favor of the respondent was 28, or an average of 14 each year.

Estimate: Average costs and attorney fees for the respondent per proceeding; \$5,000.00.

14 proceedings x \$5,000.00 = \$70,000.00

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

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

REQUEST

Bill/Resolution No.: CS HB588(Fin)  
Title: An Act providing for the  
award of costs and attorney fees....  
Sponsor: Tischer  
Requestor: Sen Judiciary  
Date of Request: 5-9-84

FISCAL DETAIL

Agency Affected: Public Safety  
Program Category Affected: Life and Property Protection  
BRU, Program or Subprogram(s) Affected: Motor Vehicles/Driver Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		69.0	74.9	79.4	84.2	89.3
200 TRAVEL		6.0	6.4	6.8	7.2	7.6
300 CONTRACTUAL		19.6	20.8	22.0	23.3	24.7
400 SUPPLIES		.4	.4	.4	.4	.5
500 EQUIPMENT		17.7	-0-	-0-	-0-	.5
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS		463.2	491.0	520.5	551.7	584.8
800 MISCELLANEOUS						
TOTAL OPERATING		575.9	593.5	629.1	666.8	707.4
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		575.9	593.5	629.1	666.8	707.4
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		2	2	2	2	2
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Bill Brown  
Division: Motor Vehicles

Phone: 465-4335  
Date: May 8, 1984

Approved by Commissioner: [Signature]  
Agency: Public Safety

Date: 5/9/84

Distribution (by Agency preparing fiscal note):

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

12/1/83

In 1983, the Division of Motor Vehicles held approximately 350 driver's license suspension/revocation hearings (not including November and December DWI hearings), and 180 motor vehicles title revocation and determination hearings. This year we are averaging over 100 driver's license hearings per month as a result of the new DWI law. About 25% of last year's hearings were found in favor of the citizen. Attorney time on driver's license hearings is estimated at 4 hours for each hearing, and for motor vehicle titles at 6 hours each.

Recently some attorneys have been advertising that they will take cases on a contingency basis in which there would be no cost to the client. In the situations addressed in this bill, if the attorney won the case the attorney would be paid by the State. If the case was lost, however, the attorney would collect no fee.

If this bill were to pass, especially with the above type of advertisements, it would have a tendency to increase the number of hearings. It is also felt that if this bill were to pass, regardless of the above-mentioned advertisements, more people would request hearings than in the past. Thus one additional hearing officer and clerical support will be needed.

100 - Personal Service

1 Hearing Office, Range 16 (new Class)	41.0	
1 Clerk IV, Range 9	28.2	
		69.0

200 - Travel

Hearing Officer to various locations to conduct hearings	6.0	6.0
--	-----	-----

300 - Contractual

310 Phones, tolls, postage	1.2	
320 Forms	.3	
330 Space Rental, 300 sq. ft. @2.25	8.1	
360 Equipment Rental	8.0	
1 AJIS terminal		
.382 DP Chargeback	2.0	
Programming and maintenance		19.6

400 - Commodities

Normal Office Supplies	.4	.4
------------------------	----	----

500 - Equipment

Office Equipment, 2 employees	3.9	
WAN, Word processing station	12.0	
Recording/Transcribing Equipment	1.8	
		17.7

700 - Claims

ATTORNEY FEES

A. Driver's License:

1. Limited licenses issued at hearings:  
60 per month = 720 annually x 4 hours  
each = 2,880 hours x \$75 per hour 216.0
2. Respondent complies with law, thus license  
action is rescinded at hearing:  
10 per month = 120 annually x 4 hours  
each = 480 hours x \$75 per hour 36.0
3. Other driver's license hearings:  
10 per month = 120 annually  
x 4 hours each = 480 hours x \$75 per  
hour 36.0

B. Title and Registration

1. Determination of ownership:  
10 per month = 120 annually x 6 hours  
each = 720 hours x \$75 per hour 54.0
2. Other  
2 per month = 24 annually x 6 hours  
each = 144 hours x \$75 per hour 10.8

TOTAL: 352.8

OTHER COSTS

Respondent's transportation, loss of wages,  
transcript preparation; etc. 1,104 incidents  
@\$100 average per case 110.4  
SUBTOTAL 463.2

TOTAL 575.9

ASSUMPTIONS:

Effective date of July 1, 1984. Six percent inflation factor used for FY-86 and subsequent years. Due to uncertain areas involving technical/procedural problems outlined in our bill analysis and position paper, the assumption was made that the respondent was "prevailing" in the situations outlined in those areas, and the State would have to pay costs and attorney fees. Clarification of those areas may change the projected expenditures listed in Line Item 700.

1.	POSITION TITLE Clerk IV			RANGE/STEP 9B	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anch	ELECTION DISTRICT 7-15	LEG.	
3.	CONTINUATION LEVEL			ADDITION	JUSTIFICATION				
4.	TYPE OF EXPENDITURE			AMOUNT					
	1	2	3						
	PERSONAL SERVICES								
5.	Salary	20,400							
6.	Benefits	3,656							
7.	Supplemental Benefits	1,251							
8.	Fixed Benefits	2,723							
9.	TOTAL PERSONAL SERVICES	01	28,0						
10.	Travel	02							
11.	Contractual	03							
12.	Commodities	04	.1						
13.	Equipment	05	2.1						
14.	Other								
15.	TOTAL COST		36.2						
	RECEIPT CODE	FUNDING SOURCE							
16.		Federal Receipts	1002						
17.		G.F. Match	1003						
18.		General Funds	1004	30.2					
19.		I-A Receipts	1005						
20.		Program Receipts	1028						
21.		Other							
FOR B&M USE ONLY									
4A KEY NUMBER _____									

Each time action is taken against a person's driving privilege or vehicle registration/title, the individual has the right to ask for a hearing per AS 28.05.131-141. With passage of this bill additional hearings will be requested, and this position will be necessary to process the paperwork generated by hearings requests, and hearings.

Would handle paperwork for scheduling hearings, notifying individuals of hearing date, time and location, and keep appropriate records. Would handle inquiries concerning hearings.

Would be responsible to see that computer files are updated to reflect when license action is stayed upon receipt of a request for a hearing. Also that the computer files are updated to reflect a hearing officer's decision.

Would be responsible to see that hearing records are transcribed as necessary, and to prepare certified copies of those records for courts, prosecutors, private attorneys, etc

Would prepare documents required by the court whenever an appeal is filed. This includes "Notice of Parties", "Affidavits", "Notice of Filing of Record", etc.

**13** REQUEST FOR  
NEW POSITION

AGENCY Public Safety  
PROGRAM Life and Property Protection  
BRU Motor Vehicles  
COMPONENT Driver Services

Page \_\_\_\_\_ of \_\_\_\_\_  
Revised Date \_\_\_\_\_

**FY 85**

1.	POSITION TITLE (Hearing Officer) Driver Improvement Specialist				RANGE/STEP 16A	BARC. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPRDV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anch	ELECTION DISTRICT 7-15	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION					
4.	TYPE OF EXPENDITURE				AMOUNT					
	1		2		3					
	PERSONAL SERVICES									
5.	Salary		30,876							
6.	Benefits		5,534							
7.	Supplemental Benefits		1,893							
8.	Fixed Benefits		2,728							
9.	TOTAL PERSONAL SERVICES		01		41.0					
10.	Travel		02		6.0					
11.	Contractual		03							
12.	Commodities		04		.3					
13.	Equipment		05		1.8					
14.	Other									
15.	TOTAL COST				49.1					
	RECEIPT CODE				FUNDING SOURCE					
16.					Federal Receipts 1002					
17.					G.F. Match 1003					
18.					General Funds 1004					
19.					I-A Receipts 1005					
20.					Program Receipts 1028					
21.					Other					
FOR B&M USE ONLY										
4A KEY NUMBER _____										

This position will be responsible to hold hearings under the Division of Motor Vehicles administrative suspension program. The majority will be driver license hearings. In addition to holding hearings, would be required to prepare for each hearing, maintain appropriate records, and render a written decision of each hearing.

Each time action is taken against a person's driving privilege, or vehicle registration/title, the individual has the right to ask for a hearing per AS 28.05.131-141. With the passage of this bill additional hearings will be requested, and this position will be necessary if hearings are to be held in a timely manner.

Will travel to various cities throughout Southcentral Alaska to conduct hearings at the office of the department nearest to the residence of the person requesting the hearing, as required by AS 28.05.141(b).

**13** REQUEST FOR  
NEW POSITION

AGENCY Public Safety  
PROGRAM Life and Property Protection  
BRU Motor Vehicles  
COMPONENT Driver Services

Page \_\_\_\_\_ of \_\_\_\_\_  
Revised Date \_\_\_\_\_

**FY 85**

POSITION PAPER

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

HB 588

Award of Costs and Attorney Fees,  
State Administrative Proceedings

While this department supports the intent of this legislation, we believe that, as it is presently written, it would result in the complication and escalation of what is now a very simple process.

The great majority of adjudicatory hearings and compliance hearings before this department have not involved attorneys. Those that have become a nightmare of motions to be decided, and extensions of time that delayed the decision months beyond the limits set in our regulations. A formal atmosphere was created in what was intended to be a quasi-judicial setting.

Under AS 46.35.090(e), this department "need not conform to the Administrative Procedure Act" when a permit decision is adjudicated. However, when a proceeding becomes complicated with factors not anticipated when our regulations were drafted, we are forced to look elsewhere for guidance, i.e., the Administrative Procedure Act and the Alaska Rules of Court. Such complication was clearly not envisioned when the adjudicatory process was developed for us.

Further, a memo dated July 8, 1982 from Art Peterson at Department of Law addressing award of costs and fees, states "It is difficult to relate [the concept of 'prevailing party'] to either the single-party or multi-party permit-application adjudications handled by your department."

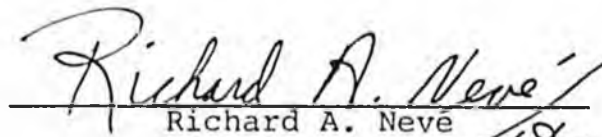

Another factor to consider is that very few of the decisions which have been adjudicated before this agency have been overturned. That fact indicates that, in most cases, the person who challenges a department decision, hoping to recover costs under this legislation, would then face the unnecessary burden of paying for an attorney.

We certainly appreciate the intent of this legislation. Not many private citizens can devote the time and effort spent by Juanita McCallon in her adjudication of the Auke Bay Breakwater permit, or by Mr. and Mrs. Allen in their adjudication of the Soldotna Landfill permit. The best we were able to do was commend them for their efforts. Perhaps a ceiling amount awardable for reasonable costs only would be more appropriate in such matters.

On the other extreme we find the Cube Cove adjudication where five attorneys participated. I do not think it would be out of line to suggest that costs and fees in that case will amount to five figures. In addition to extensive attorney time (at \$110/hour), expert witnesses, consultants, and heavy travel costs were incurred for field work. Assessing fiscal impact from future hearings of this type (which this legislation would encourage) would be close to impossible.

We recommend amendments that would either place a ceiling on any amount that might be awarded, or that would at least restrict the award of attorney fees to proceedings which fall strictly under the Administrative Procedure Act.

DATED: March 1, 1984.

  
Richard A. Neve  
Commissioner 

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

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

**REQUEST**

Bill/Resolution No.: HB 588  
Title: Costs & attorney fees, administrative proceedings

Sponsor: Tischer  
Requestor: Tischer  
Date of Request: 2/29/84

**FISCAL DETAIL**

Agency Affected: ADEC  
Program Category Affected: \_\_\_\_\_

BRU, Program or Subprogram(s) Affected: \_\_\_\_\_

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		50.0	100.0	150.0	200.0	
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>		50.0	100.0	150.0	200.0	
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:**

**ANALYSIS:** Attach a separate page for analysis

Prepared By: Billie Trent Phone: 465-2600  
Division: Commissioner's Office Date: 3/1/84  
Approved by Commissioner: Richard A. Newell Date: 3/1/84  
Agency: Environmental Conservation

Distribution (by Agency preparing fiscal note):

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

12/1/83

FISCAL ANALYSIS

HB 588

The figures given are based on the fact that in 1983, ten hearings were granted, one of which may result in the reversal of an agency decision, at an estimated cost of \$50,000 for costs and attorney fees.

For estimating future fiscal impact, we have assumed that passage of HB 588 would result in more hearings being requested and granted, with a similar percentage of reversals.

In truth, there is no way to accurately estimate fiscal impact. Each case is different and could result in complications and costs even greater than the case now pending and mentioned above.

ENVIRONMENTAL CONSERVATION

Article 5. ADJUDICATORY HEARINGS

Section

- 200. Request for an adjudicatory hearing
- 210. Stay of decision
- 220. Action on hearing requests; intervention.
- 230. Consolidation
- 240. Discovery
- 250. Prehearing conference
- 260. Deciding officer
- 270. Hearings
- 280. Certification of record
- 290. Findings and briefs
- 300. Decision
- 310. Relaxation of regulations

18 AAC 15.200. REQUEST FOR AN ADJUDICATORY HEARING.

(a) Within 30 days after service of a decision under secs. 80 or 160 of this chapter, or AS 46.03.170, any person may serve a request on the commissioner for an adjudicatory hearing. The request must contain:

(1) the name, mailing address, and telephone number of the person making the request;

(2) the names and addresses of all persons adversely affected by the decision whom the requestor represents;

(3) a clear and concise factual statement of the nature and scope of the interests of the requestor, and an explanation of how and to what extent those interests would be directly and adversely affected by the decision;

(4) a clear and concise statement of the genuine factual issues proposed for consideration at the hearing; and

(5) where applicable, specific reference to the contested terms or conditions of the decision, as well as suggested alternative terms and conditions, which, in the judgment of the requestor, would be required to implement applicable criteria.

(b) Where application was made solely for a permit amendment, requests for an adjudicatory hearing may not raise issues relating to the validity of the permit for which an amendment is sought, nor to unrelated terms and

## ENVIRONMENTAL CONSERVATION

18 AAC 15.220. ACTION ON HEARING REQUESTS; INTERVENTION. Within 10 days after service of a request for an adjudicatory hearing, the department will serve its decision on the request upon the requestor. The department will grant a request for a hearing if the request discloses that the requestor would be adversely affected by the department's decision, that the requestor has raised a genuine issue of fact material to the decision, and that the requirements of sec. 200 of this chapter have otherwise been met. If the department grants an adjudicatory hearing request, it will publish notice of the action in a newspaper of general circulation for the affected area, and will serve notice on all persons who either submitted timely written comments or testified at a public hearing on the application. A person wanting to intervene in the proceedings may serve upon the commissioner and all parties a petition for intervention containing the information specified in sec. 200 of this chapter, within 10 days after publication of notice or mailing of notice under this section, whichever first occurs. Any party may serve an objection to the intervention petition within 10 days after service of the petition upon him. The department will reach a decision on the intervention request within 10 days after the expiration of the period for serving an objection according to the criteria established in this section. (Eff. 11/25/77, Register 64)

Authority: AS 46.03.020(10)  
 AS 46.03.090  
 AS 46.03.100  
 AS 46.03.110  
 AS 46.03.160  
 AS 46.03.330  
 AS 46.03.720  
 AS 46.35.090(e)

18 AAC 15.230. CONSOLIDATION. When more than one hearing request is granted, all requests will be joined in a single proceeding. Each requestor, the applicant where the applicant has made no request, and the department will be made parties to the proceeding. Notice of consolidation will be given to all parties within 20 days after the granting of the last timely request for an adjudicatory hearing. (Eff. 11/25/77, Register 64)

Authority: AS 46.03.020(10)  
 AS 46.03.090  
 AS 46.03.100  
 AS 46.03.110  
 AS 46.03.160  
 AS 46.03.330  
 AS 46.03.720  
 AS 46.35.090(e)

## ENVIRONMENTAL CONSERVATION

(b) At the pre-hearing conference, the deciding officer may explore, and is empowered to make any appropriate order regarding:

(1) the simplification, clarification, or limitation of the issues, the striking of immaterial issues, and the summary disposition of issues over which there is no genuine dispute;

(2) the admission of facts and the genuineness of documents, and stipulations with respect to facts and documents;

(3) objections to the introduction into evidence at the hearing of any written testimony, documents, papers, exhibits, or other submissions proposed by a party; however, the failure to raise an evidentiary objection at the conference does not preclude a party from raising the objection at the hearing;

(4) matters of which official notice will be taken;

(5) establishment of a schedule, including definite or tentative times relating to the progress of the hearing;

(6) the taking and introduction of depositions;

(7) the use of affidavits in place of oral testimony;

(8) accepting, on good cause shown, supplements to the witness and evidence lists provided under sec. 240 of this chapter (specifically including rebuttal evidence to matters submitted under sec. 240(b) of this chapter);

(9) the exclusion of unduly repetitive or irrelevant evidence; and

(10) any other matter which will expedite the hearing or aid disposition of the matter.

(c) The prehearing conference will be tape recorded.

(d) The deciding officer will prepare, and will serve upon all parties, within 10 days after holding the conference, a written prehearing order reciting the actions taken at the prehearing conference and setting out the schedule for the hearing. The order will include a written statement of the areas of factual agreement and disagreement and of the methods and procedures to be used in developing the evidence and the respective duties of the parties in

ENVIRONMENTAL CONSERVATION

(d) No issue, testimony or real or documentary evidence may be introduced or advanced at the hearing which was not previously disclosed under secs. 240 or 250(b)(8) of this chapter. The deciding officer may waive this prohibition if the failure to previously disclose was due to:

- (1) surprise;
- (2) newly-discovered evidence which by due diligence could not have previously been discovered and disclosed; or
- (3) fraud, misrepresentation, or other misconduct of an opposing party.

(e) The prohibition of (d) of this section does not apply to evidence offered solely to rebut or impeach matters first disclosed pursuant to sec. 250(b)(8) of this chapter. (Eff. 11/25/77, Register 64)

Authority: AS 46.03.020(10)  
AS 46.03.090  
AS 46.03.100  
AS 46.03.110  
AS 46.03.160  
AS 46.03.330  
AS 46.03.720  
AS 46.35.090(e)

18 AAC 15.280. CERTIFICATION OF RECORD. As soon as the hearing transcript has been prepared, the deciding officer shall certify the record of the hearing and provide notice of the certification to all parties. Except for good cause shown, the cost of transcribing the hearing must be borne by the requestor. Where there is more than one requestor, the deciding officer may apportion the costs. (Eff. 11/25/77, Register 64)

Authority: AS 46.03.020(10)  
AS 46.03.090  
AS 46.03.100  
AS 46.03.110  
AS 46.03.160  
AS 46.03.330  
AS 46.03.720  
AS 46.35.090(e)

18 AAC 15.290. FINDINGS AND BRIEFS. Within 10 days after notice of the certification of the record under sec. 280 of this chapter, a party may serve upon the deciding officer, and all parties, proposed findings of fact. The deciding officer, at the close of the hearing, will, in his discretion, also order the submission of briefs if he:

ENVIRONMENTAL CONSERVATION

Article 6. GENERAL PROVISIONS

Section

900. Time computations

910. Service

920. Definitions

18 AAC 15.900. TIME COMPUTATIONS. Time computations under this chapter will be made in accordance with AS 01.-10.080. (Eff. 11/25/77, Register 64)

Authority: AS 46.03.020(10)  
AS 46.03.090  
AS 46.03.100  
AS 46.03.110  
AS 46.03.160  
AS 46.03.330  
AS 46.03.720

18 AAC 15.910. SERVICE. (a) Any matter required to be served under this chapter may be served by personal delivery, or by registered or certified mail (return receipt requested). Additionally, any matter required to be served before a request for an adjudicatory hearing under sec. 200 of this chapter may be served by first class mail.

(b) Upon the granting of a request for an adjudicatory hearing under sec. 220 of this chapter, a copy of all matters subsequently served, and proof of service, must be mailed to the deciding officer, or to the commissioner if a deciding officer has not yet been appointed. Proof of service must be made by an affidavit of service.

(c) When a pleading or paper filed in a case discloses that a requestor or respondent is represented by counsel, service upon the requestor or respondent must be made upon his attorney.

(d) When mail is used for service, service occurs upon mailing for the purpose of the serving party's obligation, and upon receipt for the purpose of commencing time limits upon the receiving party. (Eff. 11/25/77/, Register 64)

Authority: AS 46.03.020(10)  
AS 46.03.090  
AS 46.03.100  
AS 46.03.110  
AS 46.03.160  
AS 46.03.330  
AS 46.03.720

ENVIRONMENTAL CONSERVATION

(10) "respondent" means the person defending the department's decision. (Eff. 11/25/77, Register 64)

Authority: AS 46.03.020(10)  
AS 46.03.090  
AS 46.03.100  
AS 46.03.110  
AS 46.03.330  
AS 46.03.720

CHAPTER 95. ADMINISTRATIVE ENFORCEMENT.

ARTICLE 1. COMPLIANCE ORDERS.

SECTION

- 010. Initiation of compliance order proceedings
- 020. Respondent's report and objection
- 030. Compliance order
- 040. Effective date of order
- 050. Scheduling of hearing
- 060. Hearing officer
- 070. Discovery
- 080. Prehearing conference
- 090. Hearing procedures
- 100. Proposed findings
- 110. Decision
- 120. Petition for reconsideration
- 130. Transcript of hearing
- 140. Service
- 150. Relaxation of regulations
- 160. Consent orders
- 170. Relationship to Administrative Procedure Act

18 AAC 95.010. INITIATION OF COMPLIANCE ORDER PROCEEDINGS. (a) Compliance order proceedings are initiated by the service of a notice of intent to issue a compliance order upon the person or persons responsible for an actual or threatened violation. The notice of intent will be signed by the deputy commissioner.

(b) The notice of intent will:

- (1) recite the condition, activity or conduct which the deputy commissioner has determined is causing or is threatening to cause a violation;
- (2) disclose the basis of the deputy commissioner's determination;
- (3) specify the statute, regulation, order, permit or certificate which is being or threatens to be violated;
- (4) request of the respondent a detailed report specifying what measures have been or are being taken, or are proposed to be taken, to correct, control or prevent the violation; and
- (5) briefly describe the statutory procedures of compliance order proceedings, and the penalties and liabilities to which the respondent is exposed.

(1) if the record warrants, terminate the compliance order proceedings against the respondent;

(2) if he determines that a defense raises a serious and substantial issue, and that the public health or environment will not be unduly harmed or threatened by the delay inherent in a bifurcated hearing, treat the objection as a notice of defense and set the matter for hearing in conformity with secs. 50-130 of this chapter; or

(3) if he determines that the defenses do not raise a serious and substantial issue, or that the public health or environment would be unduly harmed or threatened by the delay inherent in a bifurcated hearing, notify the respondent of this determination, and provide the respondent with the unexpired portion of the service period for the report, or five days, whichever is greater, in which to serve his report; notification may be made orally.

(f) A determination by the deputy commissioner under (e)(3) of this section does not constitute final agency action. Findings of fact and, when appropriate, conclusions of law supporting the determination will be made in the compliance order issued under sec. 30 of this chapter, and the deputy commissioner's findings and conclusions may be contested in a hearing held after the issuance of the compliance order.

(g) If a timely served objection raises the defense specified in (c)(4) of this section, and the deputy commissioner determines that there is good cause for the objection, he shall serve a supplemental notice of intent within seven days of service of the objection. If the deputy commissioner determines that there is not good cause for the objection, he shall so notify the respondent within three days of service of the objection. Notification may be made orally. Upon notification, respondent will be afforded the unexpired portion of the service period for the report, or five days, whichever is greater, in which to serve his report.

(h) Upon service of a motion on the deputy commissioner within seven days of service of the notice of intent (or within three days of notification of a determination under (e)(3) or (g) of this section) the deputy commissioner shall grant an extension for service of the report upon finding that:

(1) good cause exists for the extension; and

(2) the public health or environment will not be unduly harmed or threatened by the extension.

(i) The time period specified in the notice of intent (or in a determination made under (e)(3) or (g) of this section) for service of the report will be held in abeyance from the date of service of a motion under this subsection until service of the decision by the deputy commissioner. If an extension request is denied, the respondent will be afforded the unexpired portion of the service period for the report, or five days, whichever is greater, in which to file the report.

(j) Neither the report, nor any evidence directly obtained as a result of exploitation of the report, will be used against a person providing the report in any criminal proceeding concerning the violation or violations to which the notice of intent is addressed.

(c) If the respondent does not make a timely request for a hearing, no other action is necessary by the deputy commissioner or the commissioner or his designee. The deadlines of the order fall due as specified in the order. (Eff. 7/24/77, Register 63)

AUTHORITY: AS 46.03.020(10)  
AS 46.03.850

18 AAC 95.050. SCHEDULING OF HEARING. (a) Immediately upon service of a request for a hearing (or upon a determination under sec. 20(c)(2) of this chapter), the department will schedule a hearing to be held no later than 20 days after service of the request or determination. The location of the hearing will conform to AS 44.62.410. Notice of the hearing will be immediately served upon the respondent.

(b) At any time before the hearing, a party may serve upon the commissioner or his designee, and the opposing party, a request for postponement of the hearing. Postponements will only be granted by the commissioner or his designee in unusually complex cases, or when a failure to grant a postponement would pose a substantial hardship to the requesting party. No postponement will be granted when significant harm to the public health or environment will result from a delay.

(d) If the respondent served his request for a hearing more than 10 days after service of the compliance order, a request by the respondent for postponement of the hearing will be viewed with disfavor, and will be granted only in the most extraordinary of circumstances. (Eff. 7/24/77, Register 63)

AUTHORITY: AS 46.03.020(10)  
AS 46.03.850

18 AAC 95.060. HEARING OFFICER. (a) Immediately upon service of a request for a hearing, the department will arrange for the appointment of a hearing officer under AS 44.62.350.

(b) The department will hear the case with the hearing officer. The hearing officer will preside at the prehearing conference and the hearing, rule on the admission and exclusion of evidence, advise the department on matters of law, and be present during post-hearing consideration of the case.

(c) The case will be heard by the commissioner or his designee. The commissioner or his designee will, in his discretion, be accompanied during any proceeding, conference or deliberation by a representative of the Department of Law other than an attorney who has been involved in the investigation or prosecution of the case. The Department of Law representative shall be subject to the requirements and restrictions of AS 44.62.630. The commissioner may designate any employee of the department, other than an employee involved in the investigation or prosecution of the case.

(d) Notice of designation under (c) of this section will be served upon the respondent no later than 10 days prior to the hearing. (Eff. 7/24/77, Register 63)

AUTHORITY: AS 46.03.020(10)  
46.03.850

- (1) the identification and simplification of disputed issues of fact and law;
- (2) the entry of stipulations of fact and documents, and the exclusion of irrelevant or unduly repetitive matters;
- (3) matters of which official notice will be permitted to be taken;
- (4) scheduling an onsite inspection;
- (5) accepting, on good cause shown, supplements to the discovery responses submitted under secs. 70(b) and (c) of this chapter (specifically including rebuttal evidence by the prosecuting office);
- (6) limitation of the number of expert and other witnesses;
- (7) procedure at the hearing; or
- (8) any other matter that may expedite the hearing or aid in the disposition of the proceeding.

(c) No transcript or recording of any prehearing conference will be made unless a request for one by one of the parties is granted by the hearing officer. Except for good cause shown, the requesting party shall bear the cost of the taking of the transcript or recording. The hearing officer shall prepare and file for the record a prehearing order, which must incorporate any stipulations or agreements made by the parties at or as a result of the conference and all rulings upon matters considered at the conference. (Eff. 7/24/77, Register 63)

AUTHORITY: AS 46.03.020(10)  
AS 46.03.850

18 AAC 95.090. HEARING PROCEDURES. (a) The sequence of argument, examination and summation must follow that of a civil proceeding, except to the extent modified under sec. 80(b)(7) of this chapter. However, either the hearing officer may or the commissioner, in his discretion, will or the commissioner's designee may question a witness.

(b) No issue, defense, testimony or real or documentary evidence may be introduced at the hearing which was not previously disclosed pursuant to either secs. 70(b) or (c) or sec. 80(b)(5) of this chapter. This prohibition may be waived by the hearing officer if the introduction would not unduly prejudice the opposing party, and the failure to disclose was due to:

- (1) surprise or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have previously been discovered and disclosed; or
- (3) fraud, misrepresentation or other misconduct of the opposing party.

(c) Neither the submission nor granting of a petition for reconsideration acts as a stay of any provision of the compliance order unless the commissioner otherwise directs. Applications for a stay will be granted only when the petition raises serious and substantial questions regarding the validity of the order, and no significant harm to the public health or environment will be caused by a delay.

(d) After granting a petition, and upon a review of the record, the commissioner will affirm, modify or reverse the order made under sec. 110(a) of this chapter within 20 days of the granting of the petition. The commissioner will, in his discretion, also order the taking of new evidence.

(e) A petition for reconsideration by the respondent pertaining to a hearing held under sec. 20(e)(2) of this chapter may be served only after service of the order under sec. 110 of this chapter affirming or modifying the compliance order. (Eff. 7/24/77, Register 63)

AUTHORITY: AS 46.03.020(10)  
AS 46.03.850

18 AAC 95.130. TRANSCRIPT OF HEARING. Hearings must be tape recorded. At any time after the close of the hearing, a party may request a transcript of the hearing from the department. Except for good cause shown, the party requesting the transcript shall pay the cost of the transcript and all requested copies of it before the party may take possession of the transcript. (Eff. 7/24/77, Register 63)

AUTHORITY: AS 46.03.020(10)  
AS 46.03.850

18 AAC 95.140. SERVICE. (a) Any matter required to be served under this chapter may be served by personal service, registered mail, or certified mail, return receipt requested.

(b) Proof of service must be made by an affidavit of service, or on appropriate forms if service is made by a peace officer. Upon the filing of a notice of defense, a copy of all matters subsequently served, and proof of service, must be mailed to the commissioner or his designee; and they become part of the administrative record.

(c) When a pleading or paper filed in a case discloses that a respondent is represented by counsel, service upon the respondent must be made upon his attorney.

(d) Where applicable, service of the notice of intent and compliance order must be delivered or mailed in conformity with Rule 4(d)(4)-(11) of the Alaska Rules of Civil Procedure.

(e) When mail is used for service, service occurs upon the date of postmark for the purpose of the serving party's obligations, and upon receipt for the purpose of commencing time limits upon the receiving party.

ARTICLE 5. DEFINITIONS

SECTION

900. Definitions

18 AAC 95.900. DEFINITIONS. As used in this chapter, unless the context otherwise requires:

- (1) "commissioner" means the commissioner of the Department of Environmental Conservation;
- (2) "department" means the Department of Environmental Conservation;
- (3) "designee" means the employee of the department to whom the commissioner has delegated the power to hear and decide a particular case;
- (4) "objection" means a submission by the respondent, in response to a notice of intent, which raises any matter specified in sec. 20(c) of this chapter;
- (5) "party" means the respondent and the prosecuting office;
- (6) "prosecuting office" means the division or regional office of the department primarily responsible for prosecution of a case;
- (7) "reasonable assurance" means that, after taking into account predictable natural or human intervention, the remaining risk of violation is negligible, and the costs of further reducing the negligible risk are disproportionate to the remaining risk itself; a lowering of the risk beyond that level is not a "reasonable assurance";
- (8) "report" means a detailed submission by the respondent, in response to a notice of intent, which specifies what measures have been or are being taken, or are proposed to be taken to correct or prevent the violation;
- (9) "threatened violation" means that it is more likely than not that, unless corrective or preventive measures are taken, a violation will occur in the foreseeable future; and
- (10) "violation" includes a violation of a provision of AS 46.03 or AS 30.25, or of a regulation, permit, certificate, order or term or condition of a permit, certificate or order issued or promulgated by the department under authority of AS 46.03 or AS 30.25. (Eff. 7/24/77, Register 63)

AUTHORITY: AS 46.03.020(10)  
AS 46.03.850

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - HB 588

Opposed

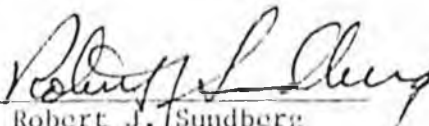
February 17, 1984

HB 588, An Act providing for the award of costs and attorney fees to persons who prevail in certain state administrative proceedings; and providing for an effective date.

The Department is opposed to this piece of legislation. There are too many questionable areas as to when costs would have to be paid, such as the following examples:

- 1) A number of motor vehicle hearings are held at the request of a citizen who is disputing another's right to a motor vehicle or title. The department acts as the hearing officer to determine the facts and decide the proper owner. This is classified as a departmental hearing so the question arises, is the department liable for the fees of the winner?
- 2) If the driver's license suspension is under the financial responsibility law, and the citizen complies with the law prior to the hearing, such as entering into a settlement agreement with the injured party and buying insurance, the hearing officer does not sustain the department's action (in actuality the action would be withdrawn), does this mean the respondent "prevails"?
- 3) If the driver's license revocation is as a result of a DWI arrest in which the citizen took the breath test and the results were above .10; and the citizen asks for an administrative review to obtain a limited license; and the hearing officer grants the limited license; does this mean the respondent "prevails"?

Another item of concern is that most hearing officers are department employees. Although they always attempt to be completely unbiased, the subconscious realization that an adverse decision will cost the State money may have an influence. Even if it didn't, and I'm sure it wouldn't, the respondent's attorney could so claim in challenging the decision.

  
Robert J. Sundberg  
Commissioner

H B

6 2 6

— FILE —  
**Alaska State Legislature**

COMMITTEES

Vice Chairman — Judiciary  
Vice Chairman — Legislative  
Regulations Review  
Resources  
Finance Sub Committee on Labor



While in Session  
Pouch V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-3733

Home - District 15  
Star Route Box 421  
Eagle River, Alaska 99577  
(907) 688-2526

**House of Representatives**

John J. Liska

May 9, 1984

M E M O R A N D U M

TO: Senate Judiciary Committee

FROM: Rep. John J. Liska

REFERENCE: The purpose of HB 626, "An Act relating to the crime of conspiracy".

The purpose is to make easier the arrest of individuals who are involved in the planning and organization of criminal activities. Such as drug dealers and pornographers.

The following material is attached:

- A. Alaska Statute 11, Chapter 31-attempt and solicitation.
- B. Department of Public Safety position paper.
- C. Fiscal Note.
- D. Articles on organized crime.
  1. From Bital Speeches of the Day - "Combatting Organized Crime".
  2. Newsweek - "How the Mob Really Works", January 5, 1981.
  3. Newsweek - "A Squealers Secrets", January 5, 1981.  
"And Now the Israeli Mafia"
  4. Newsweek - "Rico the Enforcer", August 20, 1979.
  5. Business Week - "Investment", January 10, 1983.
  6. Newsweek - "Life in Hiding", January 5, 1981.
  7. Nations Business - "Bad News for Labor Racketeers", Oct. 1982.
  8. Business Week - "A New Ploy to Fight Takeovers", May 24, 1982.

Secs. 11.20.140 — 11.20.277. Larceny. [Repealed, § 21 ch 166 SLA 1978. For current provisions on theft, see AS 11.46.100 — 11.46.290.]

Secs. 11.20.280 — 11.20.340. Embezzlement. [Repealed, § 21 ch 166 SLA 1978. For theft by failure to make required disposition of funds received or held, see AS 11.46.210.]

Sec. 11.20.345. Extortion. [Repealed, § 21 ch 166 SLA 1978. For current law, see AS 11.41.520.]

Sec. 11.20.350. Receiving Stolen Goods. [Repealed, § 21 ch 166 SLA 1978. For current law, see AS 11.46.190 and 11.46.210.]

Secs. 11.20.360 — 11.20.510. False Pretenses and Frauds. [Repealed, § 21 ch 166 SLA 1978. For theft by deception, see AS 11.46.180; for business and commercial offenses, see AS 11.46.600 — 11.46.730.]

Secs. 11.20.515 — 11.20.650. Malicious Mischief and Trespass. [Repealed, § 21 ch 166 SLA 1978. For criminal trespass, see AS 11.46.320 — 11.46.350; for criminal mischief, see AS 11.46.480 — 11.46.486.]

Sec. 11.20.660. [Renumbered as AS 11.76.120.]

Secs. 11.20.670 — 11.20.690. Misuse, Damage, or Destruction. [Repealed, § 21 ch 166 SLA 1978. For criminal mischief, see AS 11.46.480 — 11.46.486.]

### Chapter 22. Alaska Credit Card Crimes Act.

[Repealed, § 21 ch 166 SLA 1978. For current law, see AS 11.46.285 — 11.46.290.]

### Chapter 30. Offenses Against Public Justice.

[Repealed, § 21 ch 166 SLA 1978. For current law, see AS 11.56.]

### Chapter 31. Attempt and Solicitation.

Section	Section
100. Attempt	150 Substantive crimes involving attempt or solicitation
110. Solicitation	
140. Multiple convictions barred	

Collateral references. — 21 Am. Jur. 2d Criminal Law, §§ 158 — 162.

22 C.J.S., Criminal Law, §§ 73 — 78.  
What amounts to attempt to manufacture intoxicating liquor within criminal law, 22 ALR 225.

Solicitation to crime is substantive common-law offense, 35 ALR 961.

What constitutes attempt to commit robbery, 55 ALR 714.

What conduct amounts to an overt act or act done toward commission of murder so as to sustain charge of attempt to murder, 53 ALR 918.

Criminal offense of obtaining money under false pretenses, or attempting to do so, predicated upon receipt or claim of benefits under insurance policy, 135 ALR 1167.

Attempt to commit crime as to driving, being in control of, or operating a motor vehicle while intoxicated, 47 ALR2d 590.

Entrapment to commit or attempt abortion, 53 ALR2d 1156.

What justifies escape or attempt to escape, or assistance in that regard, 70 ALR2d 1430.

Attempt to commit assault as criminal offense, 79 ALR2d 587.

Fact that gun was unloaded as affecting criminal responsibility for attempt to commit murder, 79 ALR2d 1432.

Attempts to receive stolen property, 85 ALR2d 259.

Attempt to escape or commit prison breach as affected by means employed, 96 ALR2d 520.

Attempts to commit offenses of larceny by trick, confidence game, false pretenses, and the like, 6 ALR2d 241.

Impotency as defense to charge of rape, attempt to rape, or assault with intent to commit rape, 23 ALR2d 1351.

Woman upon whom abortion is committed or attempted as accomplice for purposes of rule requiring corroboration of accomplice testimony, 34 ALR2d 858.

Comment note on impossibility of consummation of substantive crime as defense in criminal prosecution for conspiracy or attempt to commit crime, 37 ALR2d 375.

What constitutes attempted murder, 54 ALR2d 612.

Temporary unauthorized absence of prisoner as escape or attempted escape, 76 ALR2d 695.

What conduct amounts to an overt act or acts done toward commission of larceny so as to sustain charge of attempt to commit larceny, 76 ALR2d 842.

Robbery, attempted robbery, or assault to commit robbery, as affected by intent to effect or secure debt or claim, 100 ALR2d 1309.

...of information in receiving property or in attempting to escape, rather than in taking property, as element of robbery, 93 ALR3d 643.

What constitutes attempted bank robbery under 18 USC § 2113(a), making it offense to take or attempt to

take, by force, violence, or other threat of any property, money, or other thing of value from bank, 37 ALR Fed. 233.

Criminal responsibility under 18 USC § 21(a) of one who lacks capacity to commit an offense but who causes another to do so, 62 ALR Fed. 769.

Sec. 11.31.100. Attempt. (n) A person is guilty of an attempt to commit a crime if, with intent to commit a crime, the person engages in conduct which constitutes a substantial step toward the commission of that crime.

(b) In a prosecution under this section, it is not a defense that it was factually or legally impossible to commit the crime which was the object of the attempt if the conduct engaged in by the defendant would be a crime had the circumstances been as the defendant believed them to be.

(c) In a prosecution under this section, it is an affirmative defense that the defendant, under circumstances manifesting a voluntary and complete renunciation of the defendant's criminal intent, prevented the commission of the attempted crime.

(d) An attempt is a

- (1) class A felony if the crime attempted is an unclassified felony;
- (2) class B felony if the crime attempted is a class A felony;
- (3) class C felony if the crime attempted is a class B felony;
- (4) class A misdemeanor if the crime attempted is a class C felony;
- (5) class B misdemeanor if the crime attempted is a class A or class B misdemeanor.

(e) If the crime attempted is an unclassified crime described in a state law which is not part of this title and no provision for punishment of an attempt to commit the crime is specified, the punishment for the attempt is imprisonment for a term of not more than half the maximum period prescribed as punishment for the unclassified crime, or a fine of not more than half the amount of the maximum fine prescribed as punishment for the unclassified crime, or both. If the crime attempted is punishable by an indeterminate or life term, the attempt is a class A felony. (§ 2 ch 166 SLA 1978; am § 1 ch 102 SLA 1980; am § 10 ch 45 SLA 1982)

Cross references. — For legislative purpose of ch 45, SLA 1982, see § 1, ch. 45, SLA 1982 in the Temporary and Special Acts

Effect of amendments. — The 1980 amendment added subsection (e).

The 1982 amendment, substituted "an unclassified felony" for "murder in any

degree or kidnapping" in subsection (d).  
Legislative history reports. — For a report on Chapter 102, SLA 1980 (1979 CSSR 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 72, May 28, 1980.

...notes. — Many of the cases cited in the note below were decided under former AS 11.06.020.

The word "attempt" generally means the kind of physical effort to do a particular thing. Woodridge v. United States, 410 F. 773 (9th Cir. 1916).

When attempt complete under former law. — See Lemke v. United States, 14 Alaska 587, 211 F.2d 73 (9th Cir. 1954); Woodridge v. United States, 410 F. 773 (9th Cir. 1916).

The mere presence of attempt, criminal liability was present under former AS 11.06.020 where there was the formation of criminal intent, a preparation to commit the crime, and a direct unequivocal act toward its perpetration. Braham v. State, Sup. Ct. Op. No. 1522 (File No. 171 P.2d 631 (1977), cert. denied, 436 U.S. 910, 98 S. Ct. 2246, 56 L. Ed. 2d 410 (1978)).

Preparation to commit a crime, as followed by an overt act done toward its commission, did not constitute an attempt under former AS 11.06.020. There were borderline cases where it was difficult to determine whether preparation to commit a crime has come close enough to the accomplishment of the crime so that an attempt had been committed. Gargan v. State, Sup. Ct. Op. No. 452 (File No. 773), 436 P.2d 968 (1968).

Preparation to commit a crime, not followed by an overt act done toward its commission, did not constitute an attempt. Laska v. United States, 14 Alaska 587, 410 F.2d 773 (9th Cir. 1954).

When one's acts were of such a preliminary nature as to constitute mere preparation for the contemplated crime, there was no crime of attempt. Braham v. State, Sup. Ct. Op. No. 1522 (File No. 2558), 571 P.2d 631 (1977), cert. denied, 436 U.S. 910, 98 S. Ct. 2246, 56 L. Ed. 2d 410 (1978).

Question of degree. — Whether acts were done in contemplation of the commission of a crime were merely preparatory and did not constitute attempt, or whether they were sufficiently close to the commission of the crime to amount to attempt, was a question of degree and depended upon the facts and circumstances of a particular case. Braham v. State, Sup. Ct. Op. No. 1522 (File No. 2558), 571 P.2d 631 (1977), cert. denied, 436 U.S. 910, 98 S. Ct. 2246, 56 L. Ed. 2d 410 (1978).

Inadequacy of former statute. — Former AS 11.06.020 was apparently inadequate to codify effectively as a crime the situation involving the single act of contracting for another to perform a criminal act. Braham v. State, Sup. Ct. Op. No. 1522 (File No. 2558), 571 P.2d 631 (1977), cert. denied, 436 U.S. 910, 98 S. Ct. 2246, 56 L. Ed. 2d 410 (1978).

Where defendant contracted with someone to kill another, when he instructed the killer to visit the victim, his intention being that there would be fostered a relationship of trust and confidence between the killer and the victim, thus placing the killer in a position where he would be closer to the victim and could more readily kill him, the killer's visit with the victim, at defendant's direction, was the doing of a direct, unequivocal act toward the commission of the crime of murder, which followed the formation of a criminal intent and a preparation to commit this crime. Braham v. State, Sup. Ct. Op. No. 1522 (File No. 2558), 571 P.2d 631 (1977), cert. denied, 436 U.S. 910, 98 S. Ct. 2246, 56 L. Ed. 2d 410 (1978).

Factual impossibility not apparent to actor. — A factual impossibility which was not apparent to the actor at the time should not, as a matter of policy, insulate him from conviction for attempting the commission of the offense. Gargan v. State, Sup. Ct. Op. No. 452 (File No. 773), 436 P.2d 968 (1968).

"Empty pocket doctrine". — See Gargan v. State, Sup. Ct. Op. No. 452 (File No. 773), 436 P.2d 968 (1968).

Attempt statute applied to attempted violation of narcotic drug statute. — Persons attempting to commit the crime defined by AS 17.10.010 of the Alaska Uniform Narcotic Drug Act (now repealed) were not exempted or excepted from the provisions of the attempt statute. Simpson v. United States, 17 Alaska 635, 195 F.2d 721 (9th Cir. 1952).

An attempt was necessarily included in an indictment for statutory rape. Sekinoff v. United States, 283 F. 38 (9th Cir. 1922).

Indictment need not specify intent to be proved for attempted rape. — There is authority for the proposition that a specific intent must be proved for the crime of attempted rape. But there is no authority supporting the proposition that the indictment must specify that intent. State v. Thomas, Sup. Ct. Op. No. 1077 (File No. 2234), 625 P.2d 1092 (1974).

Even though there is no question that the crime of attempt requires a specific intent, it seems equally beyond dispute that a charge of attempt to commit a specific crime clearly advises the defendant of the offense with which he is charged. *State v. Thomas*, Sup. Ct. Op. No. 1077 (File No. 2234), 525 P.2d 1092 (1974).

Indictment charging attempted rape and citing only the rape statute held sufficient. — See *State v. Thomas*, Sup. Ct. Op. No. 1077 (File No. 2234), 525 P.2d 1092 (1974).

Defendant may be found guilty though attempt not expressly charged. — Jury could find defendant guilty of the attempt to commit the crime of possessing narcotic drugs despite the fact that the attempt was not expressly charged. *Simpson v. United States*, 13 Alaska 635, 195 F.2d 721 (9th Cir. 1952).

Substantial evidence of attempt. — In a prosecution for possession of narcotic drugs, although there was no substantial evidence that defendant committed the crime charged in the information, there was substantial evidence that she attempted to commit the crime charged. *Simpson v. United States*, 13 Alaska 635, 195 F.2d 721 (9th Cir. 1952).

Same offense for sentencing purposes. — A suit with intent to rob and attempted robbery constituted the "same offense" for sentencing purposes. *Brookins v. State*, Sup. Ct. Op. No. 1936 (File No. 3972), 600 P.2d 12 (1979).

Sentence upheld. — See *Bovic v.*

*State*, Sup. Ct. Op. No. 769 (File No. 1477), 491 P.2d 800 (1972); *Spearman v. State*, Sup. Ct. Op. No. 1210 (File No. 2520), 542 P.2d 202 (1975); *Ibrahim v. State*, Sup. Ct. Op. No. 1522 (File No. 2558), 571 P.2d 677 (1977), cert. denied, 436 U.S. 910, 56 S.Ct. 2246, 56 L. Ed. 2d 410 (1978); *Johnson v. State*, Sup. Ct. Op. No. 1656 (File No. 3324), 580 P.2d 700 (1978); *Ferguson v. State*, Sup. Ct. Op. No. 1791 (File No. 3890), 599 P.2d 43 (1979); *Morris v. State*, Sup. Ct. Op. No. 1830 (File No. 4132), 572 P.2d 1244 (1979); *Hambl v. State*, Sup. Ct. Op. No. 2217 (File No. 4944), 619 P.2d 722 (1980).

Sentence held excessive. — See *Hanson v. State*, Ct. App. Op. No. 2180 (File No. 6955), 657 P.2d 862 (1983).

Applied in *Nicholson v. State*, Ct. App. Op. No. 1931 (File No. 6192), 656 P.2d 129 (1982).

Stated in *State v. Silas*, Sup. Ct. Op. No. 1854 (File No. 4237), 595 P.2d 651 (1979); *Coleman v. State*, Sup. Ct. Op. No. 2199 (File No. 4116), 621 P.2d 869 (1980); *Barclay v. State*, Sup. Ct. Op. No. 2217 (File No. 4944), 619 P.2d 722 (1980); *Clark v. State*, Ct. App. Op. No. 96 (File No. 5658), 645 P.2d 1236 (1982); *Tarruk v. State*, Ct. App. Op. No. 195 (File No. 6954), 655 P.2d 784 (1982).

Cited in *Hambl v. State*, Sup. Ct. Op. No. 2155 (File Nos. 4946, 4953), 615 P.2d 627 (1980); *Wulber v. State*, Ct. App. Op. No. 234 (File No. 6304), 662 P.2d 949 (1983).

**Sec. 11.31.110. Solicitation.** (a) A person commits the crime of solicitation if, with intent to cause another to engage in conduct constituting a crime, the person solicits the other to engage in that conduct.

(b) In a prosecution under this section, (1) it is not a defense

(A) that the defendant belongs to a class of persons who by definition are legally incapable in an individual capacity of committing the crime that is the object of the solicitation; or

(B) that a person whom the defendant solicits could not be guilty of the crime that is the object of the solicitation;

(2) it is an affirmative defense that the defendant, under circumstances manifesting a voluntary and complete renunciation of the defendant's criminal intent, after soliciting another person to engage in conduct constituting a crime, prevented the commission of the crime.

(c) Solicitation is a

- (1) class A felony if the crime solicited is an unclassified felony;
- (2) class B felony if the crime solicited is a class A felony;
- (3) class C felony if the crime solicited is a class B felony;
- (4) class A misdemeanor if the crime solicited is a class C felony;
- (5) class B misdemeanor if the crime solicited is a class A or class B misdemeanor.

(d) If the crime solicited is an unclassified crime described in a state law which is not part of this title and no provision for punishment of a solicitation to commit the crime is specified, the punishment for the solicitation is imprisonment for a term of not more than half the maximum period prescribed as punishment for the unclassified crime, or a fine of not more than half the maximum fine prescribed as punishment for the unclassified crime, or both. If the crime solicited is punishable by an indeterminate or life term, the solicitation is a class A felony. (1 2 ch 166 SLA 1978; am § 2 ch 102 SLA 1980; am § 11 ch 45 SLA 1982)

**Cross references.** — For legislative purpose of ch. 45, SLA 1982, see 4 1, ch. 45, SLA 1982, in the Temporary and Special Acts; for legal accountability based on the conduct of another and complicity, see AS 11.16.110.

**Effect of amendments.** — The 1980 amendment added subsection (d). The 1982 amendment substituted "an

unclassified felony" for "murder in any degree or kidnapping" in subsection (a)(1).

**Legislative history reports.** — For a report on Chapter 102, SLA 1980 (HCS CSSR 541), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 28, 1980.

NOTES TO DECISIONS

**Former law construed.** — See *McConkey v. State*, Sup. Ct. Op. No. 855 (File No. 1464), 562 P.2d 823 (1972); *Cassell v. State*, Ct. App. Op. No. 91 (File No. 5135), 645 P.2d 219 (1982), decided under former AS 11.10.070.

**One contracting with another to kill a third person was guilty of attempted first-degree murder, not solicitation.** —

See *Ibrahim v. State*, Sup. Ct. Op. No. 1522 (File No. 2558), 571 P.2d 631 (1977), cert. denied, 436 U.S. 910, 56 S.Ct. 2246, 56 L. Ed. 2d 410 (1978), decided under former AS 11.10.070 and 11.15.010.

Cited in *Hoover v. State*, Ct. App. Op. No. 73 (File No. 6223), 611 P.2d 1263 (1982); *P.S. v. State*, Ct. App. Op. No. 191 (File No. 6870), 655 P.2d 1119 (1982).

**Sec. 11.31.140. Multiple convictions barred.** (a) It is not a defense to a prosecution under AS 11.31.100 or AS 11.31.110 that the crime that is the object of the attempt or solicitation was actually committed pursuant to the attempt or solicitation.

(b) A person may not be convicted of more than one crime defined by AS 11.31.100 or AS 11.31.110 for conduct designed to commit or culminate in commission of the same crime.

(c) A person may not be convicted on the basis of the same course of conduct of both (1) a crime defined by AS 11.31.100 or AS 11.31.110; and (2) the crime that is the object of the attempt or solicitation.

Title 11  
Criminal Law

This section does not bar inclusion of multiple counts in a single indictment or information charging commission of a crime defined by AS 11.31.100 or AS 11.31.110 and commission of the crime that is the object of the attempt or solicitation. (§ 2 ch 166 SLA 1978)

NOTES TO DECISIONS

Conspiracy is separate offense. — The crime of conspiracy is generally regarded as a separate offense from the substantive crime that is the object of the conspiracy. Unlike the other preliminary offenses of attempt and solicitation, conspiracy does not merge into a conviction for the substantive crime. *Lythgoe v. State*, Sup. Ct. Op. No. 2235 (File No. 4497), 626 P.2d 1082 (1980).

The no merger rule means that a defendant can be convicted of both conspiracy and the object of the conspiracy. One reason advanced for this special treatment of conspiracy as a separately punishable offense is that conspiracy has been regarded as a serious crime in itself. *Lythgoe v. State*, Sup. Ct. Op. No. 2235 (File No. 4497), 626 P.2d 1082 (1980).

Sec. 11.31.150. Substantive crimes involving attempt or solicitation. Notwithstanding AS 11.31.140(d),

(1) a person may not be charged under AS 11.31.100 if the crime allegedly attempted by the defendant is defined in such a way that an attempt to engage in the proscribed conduct constitutes commission of the crime itself,

(2) a person may not be charged under AS 11.31.110 if the solicitation in question is defined as a specific crime under other provisions of law. (§ 2 ch 166 SLA 1978)

Chapter 35. Abandonment and Nonsupport.

[Repealed, § 1 ch 39 SLA 1970 and § 21 ch 166 SLA 1978. For current law on desertion and nonsupport of a minor, see AS 11.51.100 — 11.51.120.]

Chapter 36. Failure to Permit Visitation with Minor Child.

[Repealed, § 21 ch 166 SLA 1978. For current law, see AS 11.51.125.1]

Chapter 40. Crimes Against Morality and Decency.

[Repealed, § 21 ch 166 SLA 1978. For current law, see AS 11.51.130, 11.51.140, 11.61.110, 11.61.130, 11.61.140 and 11.66.100 — 11.66.150.]

Chapter 41. Offenses Against The Person.

Article

- 1. Homicide (§§ 11.41.100 — 11.41.140)
- 2. Assault and Reckless Endangerment (§§ 11.41.200 — 11.41.250)
- 3. Kidnapping and Custodial Interference (§§ 11.41.300 — 11.41.370)
- 4. Sexual Offenses (§§ 11.41.410 — 11.41.470)
- 5. Robbery, Extortion, and Coercion (§§ 11.41.500 — 11.41.530)

Cross references. — For provisions authorizing arrest without warrant in certain cases where the police officer has rea-

sonable cause to believe that the person has committed a crime under this chapter, see AS 12.25.030(b).

NOTES TO DECISIONS

Cited in *Leuch v. State*, Sup. Ct. Op. No. 2419 (File No. 5255), 633 P.2d 1066 (1981).

Article 1. Homicide.

Section

- 101. Murder in the first degree
- 110. Murder in the second degree
- 115. Defenses to murder
- 120. Manslaughter

Section

- 130. Criminally negligent homicide
- 135. Multiple deaths
- 140. Definition

Collateral references. — 41 Am Jur 2d, Homicide, § 1 et seq.

40 C.J.S., Homicide, § 1 et seq.  
Homicide by wanton or reckless use of firearm without express intent to inflict injury, 5 ALR 603; 23 ALR 1551.

Homicide or assault in attempting to prevent elopement, 8 ALR 660.  
Wife's confession of adultery as affecting degree of homicide in killing her paramour, 10 ALR 470.

What amounts to participation in homicide on part of one not the actual perpetrator, who was present without preconcert or conspiracy, 12 ALR 275.

Intoxication as reducing homicide from murder to manslaughter, 12 ALR 898; 79 ALR 897.

Responsibility of persons participating in jail delivery for homicide committed by one of their number, 15 ALR 456.

Recommendation for mercy, 17 ALR 117; 55 ALR 619.

Homicide by unlawful act aimed at another, 18 ALR 917.

Criminal responsibility of peace officers for killing or wounding one whom they wished to investigate or identify, 18 ALR 1368; 61 ALR 321.

Homicide as affected by time elapsing between wound and death, 20 ALR 1006; 93 ALR 1470.

Humanitarian motives, homicide as affected by, 25 ALR 1067.

Discharge of firearm without intent to inflict injury as proximate cause of homicide resulting therefrom, 55 ALR 921.

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER

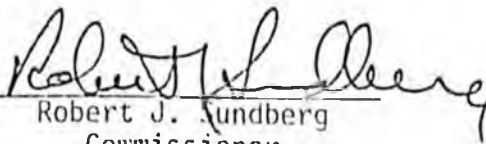
Support

March 3, 1984

HB 626 - "An act relating to the crime of conspiracy."

This legislation would facilitate the arrest and prosecution of those individuals who historically are positioned in the upper levels of criminal organizations but who never enter the areas of "hands on" physical criminal activity and therefore avoid being charged, despite their clear responsibility. The most important impact of passage of this legislation would be in prosecutions of those criminal elements involved in narcotics trafficking in Alaska.

We can see a potential for conflict between 11.31.140 (c) and (e). The former prohibits conviction for both conspiracy and the crime which is the object of the conspiracy. 11.31.140 (e) indicates that if multiple crimes are the object of a conspiracy only one count of conspiracy is charged. If two people conspire to commit four similar crimes, under (e) this is one conspiracy count. If, in fact, three crimes are committed, the fourth to occur at a later date and arrests are made before the fourth crime is attempted, under (c) conspiracy could not be charged for the fourth crime because (e) defines one conspiracy count for all four planned crimes and (c) prohibits conviction for both conspiracy and the criminal act itself.

  
Robert J. Lundberg  
Commissioner

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

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

REQUEST

Bill/Resolution No.: HB 626  
 Title: "An act relating to the crime of conspiracy."  
 Sponsor: Representative Liska  
 Requestor: House Judiciary  
 Date of Request: 3-6-84

FISCAL DETAIL

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CAPITAL</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>REVENUE</b>						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Francis C. Allan *F.C.A.* Phone: 269-5691  
 Division: Alaska State Troopers Date: 03/02/84

Approved by Commissioner: *[Signature]* Robert J. Sundberg Date: 3/6/84  
 Agency: Public Safety

Distribution (by Agency preparing fiscal note):

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

12/1/83

those differences can be resolved?"

Well, those differences are differences in Government structure and philosophy. The common interests have to do with the things of everyday life for people everywhere.

Just suppose with me for a moment that an Ivan and an Anya could find themselves, oh, say, in a waiting room or sharing a shelter from the rain or a storm with a Jim and Sally. And there was no language barrier to keep them from getting acquainted.

Would they debate the differences between their respective Governments? Or would they find themselves comparing notes about their children and what each other did for a living? Before they parted company, they would probably have touched on ambitions and hobbies and what they wanted for the children and problems of making ends meet.

And as they went their separate ways, maybe Anya would be saying to Ivan: "Wasn't she nice. She also teaches music."

And Jim would be telling Sally what Ivan did or didn't like about his boss. They might even have decided they were going to get together for dinner some evening soon.

Above all they would have proven that people don't make wars. People want to raise their children in a world without fear and without war. They want to have some of the good things over and above bare subsistence that make life worth living. They want to work at some craft, trade or profession that gives them satisfaction and a sense of worth. Their common interests cross all borders.

If the Soviet Government wants peace, then there will be peace. Together we can strengthen peace, reduce the level of arms and know in doing so that we have helped fulfill the hopes and dreams of those we represent and, indeed, of people everywhere.

Let us begin now.

## Combating Organized Crime

### PUBLIC AWARENESS AND SUPPORT

By WILLIAM FRENCH SMITH, *Attorney General of the United States*

*Delivered at the Town Hall of California, Los Angeles, California, December 19, 1983*

I WOULD like to discuss a subject that affects all of us every day, even though it stays generally hidden from public view. It causes our taxes to go up. It adds to the cost of what we buy. And, worst of all, it threatens our personal safety and that of our families — indeed our very freedom. Nothing causes untold damage to human lives and human wealth, yet its revenues are estimated to exceed the net profit of all the Fortune 500 corporations combined. I am speaking of organized crime.

Although combating organized crime is a difficult undertaking, it is not impossible. Indeed, as I will later explain, many successes are now being achieved in that battle. Unfortunately, the public is little aware of the problem or of what the government is doing to combat it. With greater public awareness of the nature and the threat of organized crime, and with greater citizen participation, we could make substantially more headway.

First, in order to provide the context for our efforts today, some history is in order. During the first years of this century, organized crime was a local enterprise. A gang worked a city, often just a neighborhood. The local police were alone in trying to stop organized crime, and the task proved beyond their powers. There was no federal government involvement. And with the ratification of the Eighteenth Amendment, organized crime began a significant expansion in power and influence.

During Prohibition, organized crime groups vied for shares of a market attracting more and more members, and frequently fought each other as they tried to expand beyond their once limited turf. Nonetheless, crime, mobsters and gang rivalries gradually abated during Prohibition, as cooperation became necessary in the effort to control larger and larger markets. At a 1929 meeting, leading organized crime figures from major cities recognized the need for a national body to mediate differences among groups and formulate national policy.

The year 1929 is also notable for the federal government's first substantial appearance in the history of organized crime. It was an inauspicious entry. Distracted by the lawlessness of Prohibition, President Hoover established that year the National

Commission on Law Observance and Enforcement. Named after its chairman, George Wickersham, the Commission urged an "immediate, comprehensive, and scientific nationwide inquiry into organized crime" in order to "make possible the development of an intelligent plan for its control."

No such inquiry took place, however, and no intelligent plan for the control of organized crime was developed. The FBI did what it could against the gangsters, arresting a few such as Al Capone, who served time for income tax evasion. But the FBI lacked statutory authority to investigate most of the activities of the crime syndicates, during the thirties and forties, despite laudable law enforcement efforts by some local and state authorities. Organized crime prospered as the federal government generally failed to make a response.

Alcohol provided the major source of income for criminal groups from 1920 until the end of Prohibition in 1933. But organized crime had by then already learned how to diversify. The syndicates vastly renewed and increased previous involvements in gambling, prostitution, and narcotics. They began investing in legitimate businesses, and also infiltrated labor unions. Organized crime extended its reach nationwide — establishing operations on the West Coast, including Los Angeles.

Not until 1930 did the federal government finally begin to make a systematic inquiry into organized crime. A special Senate committee directed by Justice Kefauver investigated gambling and racketeering activities in interstate commerce. The committee uncovered a national pattern of bribery and protection payments to law enforcement officials and payoffs to local and state political figures to ensure protection from prosecution. The committee determined that a national criminal organization which it referred to as "The Mafia" did exist, and recommended the creation of a rackets squad within the Justice Department.

The Kefauver hearings stimulated local investigations in cities where the committee had exposed organized crime oper-

ations and public corruption. But even with the knowledge obtained from the hearings, the federal government itself still did not take sustained action. The Department of Justice initiated a drive against the leading racket figures identified in the Senate hearings, but while some convictions and deportations resulted, no permanent investigative or prosecutorial units were established until 1954. Even then, only three lawyers in the department were assigned to the Organized Crime and Racketeering Section, which consequently enjoyed only limited success. Again, the federal government failed to see the immediate and growing threat presented by organized crime — a national threat requiring a national response.

The lack of an effective government response was costly. During the Fifties the syndicates continued to grow and consolidate. Organized crime became more deeply involved in white-collar crime and in politics. Mobsters more frequently appeared in respectable places and with respectable people.

Not until the early Sixties did the federal government begin to make a substantial enforcement effort against organized crime. Under Attorney General Robert Kennedy, the FBI began monitoring the activities of 400 of the nation's leading organized crime figures. The number of attorneys in the Organized Crime Section jumped to 17 in 1961, and to 51 in 1962. Gradually, — the number of convictions per year began to increase — from 45 in 1960, to 546 in 1964.

Several years later a commission created by President Johnson made numerous recommendations for changes in the criminal law — each of them designed to challenge organized crime. The Omnibus Crime Control and Safe Streets Act of 1968 and the Organized Crime Control Act of 1970 incorporated all eight of the commission's recommendations regarding proof of criminal violations. The 1968 Act was the first federal law to define the term "organized crime" and included a provision for electronic surveillance under a carefully detailed warrant procedure and strict court supervision. The 1970 Act strengthened the government's legal tools in the evidence-gathering process. One provision — the Racketeer Influenced and Corrupt Organizations Act, or RICO — is arguably the most powerful statute available to federal law enforcement officials, because among other things it allows government to seize the illicit profits of organized crime.

Another important initiative at this time was the creation of the first Organized Crime Strike Force. In 1966, the Department of Justice placed a five-man team of attorneys and supervisory personnel from federal investigative agencies in Buffalo, N.Y. Within a short time, the group, dubbed the "Strike Force," convicted the mob underboss and several syndicate figures. In 1969, the Department of Justice began an expansion of the Strike Force program.

In retrospect, the federal law enforcement and legislative initiatives of the Sixties mark a turning point in the history of the government's response to organized crime. To be sure, during the past 20 years there have been periods when the government has not been as effective as it could have been. At times the effort has been confused and misdirected. Even so, it is in the past two decades that the federal government finally has organized a serious law enforcement response and devised mechanisms such as the Strike Forces that have proved so valuable in combatting organized crime.

In the past three years, the Strike Force program has been augmented in order to better lead the fight against traditional organized crime. Specialized cadres of experienced trial attor-

neys coordinate the activities of criminal investigators from all the major federal law enforcement agencies, as well as the local police.

The strike forces have indicted and convicted many of the principal leaders of the traditional crime families in many of our major cities. They have successfully brought major cases in New York, Boston, Cleveland, Chicago, Denver, Kansas City, Miami, Detroit, Philadelphia, San Francisco, Milwaukee, New Orleans — and Los Angeles. During the past three years, in large part because of the efforts of the Strike Forces, the Department of Justice has indicted, tried, and convicted more than 2,600 members and associates of organized crime.

The use of important enforcement mechanisms developed in the Sixties and Seventies have proved immensely helpful. Electronic surveillance under a carefully detailed warrant procedure and strict court supervision has enabled us to gather information on the very secretive crime families. So has the Witness Security Program, which provides protection for informants willing to testify against former underworld associates. In addition, federal officials have successfully gone undercover, posing as members of organized crime, and also set up undercover operations designed to ferret out members of organized crime.

One of our most successful undercover operations occurred here in Los Angeles. The FBI knew that members of the Mafia regularly extorted pornographers and bookmakers, but no extortion victim was willing to testify. So, the FBI set up its own pornography enterprise, named Forex. Forex was located in Van Nuys and ostensibly sold pornography to South America and Mexico.

Forex wanted to be extorted, but organized crime kept its distance, apparently suspicious of the legitimacy of the new business. So after three months, the FBI used an informant to spread the word on the street that the government was looking into Forex. That helped establish the company's bona fides with organized crime. Still, however, there was no extortion attempt. Next an undercover agent with the new name of Vince Lombard put the word out that the company was being extorted.

That tactic worked. The mobsters moved in. They told Lombard never to extort a pornography business again and to leave the country. They gave Forex the choice of making payments to them or never again doing business anywhere in the United States. At this point we moved in. As a result of our effort which was called "Pornex," the entire ruling hierarchy of the Los Angeles organized crime family was convicted of RICO charges.

With the help of operations such as Pornex, the Organized Crime Strike Forces have destroyed the myth that the leadership of organized crime is "untouchable." One reason the syndicates gained such a foothold in American society is just this myth, which made it easier for them to recruit new members and enforce loyalty. Now that we have more knowledge of how organized crime works, we have been able to decimate the top tiers in many areas.

Although the Strike Force program is an important part of the effort against organized crime, other new approaches have been undertaken in the past three years. Today, organized crime is mainly involved in drug trafficking. Indeed, the drug trade is now our nation's number one crime problem — especially where one considers the criminal activities spawned by drug traffic. For example, a recent study done of the Baltimore area found that 233 addicts committed a total of almost a half million crimes over an 11-year period — or an average of 2,000

each — one every other day.

The Posse Comitatus law, passed after the civil war, prevents the armed forces from engaging in law enforcement activities. We have sought and obtained an amendment to this law which now permits us to utilize the resources and intelligence gathering capability of the military — for the first time. This has already been enormously valuable in the fight against drug trafficking.

And for the first time, too, we have brought the FBI into the drug enforcement effort by consolidating the Drug Enforcement Administration with the FBI. The FBI has a sophisticated understanding of the organizational and financial aspects of the organized crime cartels. It has unique knowledge of, and ability to follow, the flow of money. This expertise is essential to combatting the highly sophisticated activities of modern organized crime, and it is now being put to work in the fight against drug trafficking. Our departmental reorganization has been highly successful, resulting currently in 765 FBI cases and almost 600 joint DEA-FBI cases.

South Florida has long been the hot spot for drug trafficking. In response, the South Florida Task Force was established in 1982. For the first time, all of the agencies of the federal government dealing with this problem were brought together within a single entity.

The success of this Task Force guided us in formulating the major enforcement initiative against organized crime and drug trafficking announced by President Reagan last year. The centerpiece of the program was the creation of 12 new task forces patterned on the South Florida model and deployed throughout the country. These Task Forces are now fully operational. Already more than 100 indictments against more than 1,000 defendants have been brought. And more than 200 individuals have been convicted.

Of the 125 cases now under investigation by the District Task Forces, only a small number involve traditional organized crime. Most involve new or emerging groups attracted to the lucrative profits of drug trafficking. Some names you will recognize but most you will not. They include the Hell's Angels, the Outlaws, the Pagans, the Banditos, La Nuestra Familia, the Mexican Mafia, the Aryan Brotherhood, the Black Guerilla Family, the Japanese Yakuza, the Chinese Triad Societies, the Israeli Mafia, and the Cocaine Cowboys.

These modern cartels are involved in the importation and distribution of drugs, the financing of drug trafficking, and money laundering schemes. As is also true of traditional organized crime, they are also engaged in continuing criminal enterprise, abuse of the bank secrecy laws, narcotics conspiracy, and public corruption. Employing the law enforcement weapons developed to fight traditional organized crime, we are mounting an assault on these organizations even as they are developing.

Today, as organized crime is developing in new and different forms, it is also experiencing another evolution — international in focus to international, a change native related to drug trafficking. Of the three drugs that most trouble us from a law enforcement perspective, two — heroin and cocaine — come exclusively from abroad, and one, marijuana, comes predominantly from abroad. Because of the drug trade, the relationships between organized crime families in Los Angeles and Palermo are strikingly similar to those historically existing between organized criminals in New York and Chicago.

It is essential that we develop close working relationships at

the highest levels with the governments of countries that are the source of illegal drugs or through which drugs travel. It is equally important that we understand the problems faced by those countries and that they understand our concerns. Cooperation on procedural matters is an essential step. To this end, we have negotiated, and are continuing to negotiate, mutual assistance law enforcement and extradition treaties with the various countries involved.

Already we have been successful in crop control and eradication programs — notably in Turkey and Mexico. And we are working — however slow the results — with other countries to control the supply and processing of opium and coca plants and their derivatives.

As we proceed with enforcement programs at home and cooperative efforts abroad, we must also keep our knowledge of organized crime up to date. In the past we did not recognize organized crime for the problem that it was. High government officials and some academics often treated the threat of organized crime, and even its existence, with skepticism. For decades organized crime grew because it was not stopped from growing. We — all of us — have paid for the fact that for many years there was no organized response to organized crime. History counsels the wisdom of learning as much as we can about the new and emerging crime cartels so that we can attack them before they become as entrenched as the Mafia did.

At the end of November the President's Commission on Organized Crime held its first meeting in Washington. As part of the President's effort to combat organized crime and drug trafficking, the Commission will study organized crime as it exists today, receive special attention to the emerging drug cartels. The Commission will focus public attention on the hidden world of organized crime and the evil that it inflicts on

virtually all of us. The Commission calls for strengthening the federal government's fight on organized crime. These include strengthening law enforcement, and numerous other reforms and suggestions to improve our law enforcement ability.

I cannot overstate the importance of congressional action on the crime bill. It makes a point of cases where current law simply fails to give top interests of justice. For example, under the current law, a defendant is given such judicial discretion that a convicted organized crime figure — facing up to 10 years in prison — can be sentenced — if you can call it that — to a year to a local opportunity treatment center followed by five years of probation. This criminal must spend only five nights at the treatment center. The day he will be free to do as he pleases. This is the disappointing result, after thousands of hours of effort by investigators, prosecutors, and other law enforcement officials.

In the last Congress, the Senate passed a crime bill containing 50 financing and other reforms by a vote of 95 to 1. We hope that both the Senate and the House of Representatives will similarly act before the end of the current session in 1984.

Organized crime is a force *Americans* will have to contend against. The Department of Justice — the federal government — cannot do the job alone. Public knowledge about organized crime and support of the government's law enforcement efforts are key to future success.

With greater public awareness of organized crime, and greater public support of the federal law enforcement effort, we can achieve a future different from our past — a future in which the cancer of organized crime is finally brought under our control.



JUSTICE

# How the Mob Really Works

They are the criminals Americans have loved to hear of for 70 years, the barons of organized crime have lived off the nation's thirst for vice: lust liquor, when women, gambling, drugs and usurious cash. At the same time, they have become legends in their own land, hyperbolized in the press and pop culture as figures of Evil and Honor, concepts that mean little to the hoodlum on the street. Today, in its middle age, the mob finds itself in a difficult period of transition. Its top leadership is aging. Its young bloods chafe at traditional hierarchies. Its forays into the straight economy are increasingly risky. Most worrisome of all, it faces unprecedented efforts by law enforcement agencies, which have finally found ways to disrupt, if not destroy, criminal networks. Still, the mob is hardly a declining industry. Its principal commodities—lust, greed and blood—remain very much in fashion.

1980 was not a good year for the underworld. About 600 mobsters were convicted in Federal courts. They include bosses Frank Tieri of New York, Nicholas

and an informant masqueraded for a year as crooked insurance agents to record conversations with Carlos Marcello, the reputed boss of the New Orleans crime family. The 70-year-old Marcello was indicted last June for racketeering, fraud and conspiracy. He was accused of agreeing to help the agents bribe Louisiana officials, they were to get state contracts and he was to receive a piece of their action. In courtrooms along the Gulf and East coasts, evidence gathered during a five-year inves-

tigation into dock corruption has brought the convictions of more than a hundred union officials and shippers on bribery and extortion charges. Despite all this, lawmen say they are only containing the mob. "Organized crime is powerful," says Francis M. Mullen, executive assistant FBI director of investigations. "We do not really hope to eliminate it. We hope to diminish its influence."

Within their traditional markets the mob's influence—and profits—keep climb-

*Lawmen are making things tougher, but organized crime is finding new ways to make crime pay.*

Civella of Kansas City and the entire top echelon of the Los Angeles crime family, who were convicted of racketeering, and former New York boss Joseph Bonanno, who was convicted of conspiracy to obstruct justice. (All of the bosses are appealing.) Tieri and members of southern California's "Mickey Mouse Mafia" were targeted by the most important informer in two decades, Jimmy (The Weasel) Frattino, who now wields his memory the way he once used a garrote (page 76). "These prosecutions illustrate that organized crime is penetrable," says Attorney General Benjamin Civiletti. "It is not, as we sometimes hear, an organization which has such a strong oath of silence it is immune from Federal investigation."

The FBI has learned the value of going undercover to beat the mob on its own turf. In the Horab case, two FBI agents

*Mafia informants concealed at Senate hearing. Mobsters are like cockroaches. You step on them one place and they turn up*



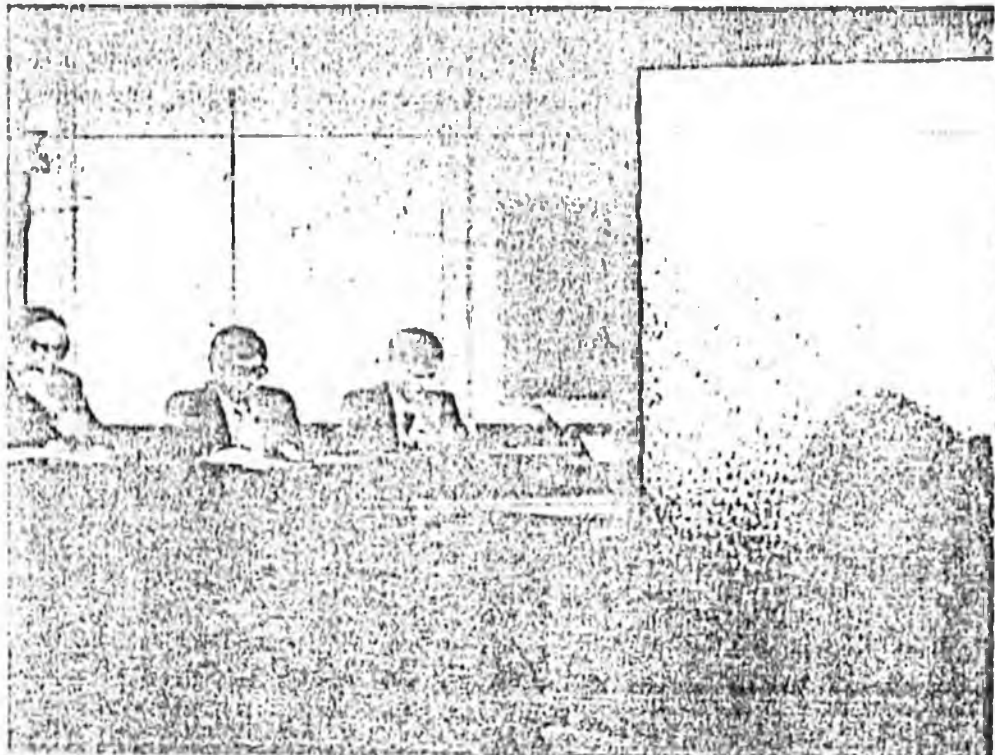
Michael Rizzitello  
Los Angeles



Frank Tieri  
New York



Dominick Brooklier  
Los Angeles



ing. Heroin smuggling is again a growth industry. Agents from the Federal Drug Enforcement Administration seized 400 pounds of heroin in the first eleven months of 1970, up one third from all of 1969. The police are not suddenly better; they're just skimming the foam off a flood tide. Professional fences can barely keep up with the loads of hijacked goods they wash clean through burgeoning flea markets and street peddlers. And, says Dominic Antonia, chief of the Organized Crime Strike Force in Manhattan, "the amount of loan sharking on the street has never been higher." Inflation has driven hordes of businessmen and bill payers to loan sharks for money borrowed at up to 200 to 300 per cent annual interest, using their firms—and their bodies—as collateral.

The mob has also moved into new enterprises. "These people are like cockroaches," says one veteran investigator. "You step on them one place and they turn up somewhere else." Record and tape pirates working with underworld backing now sell enough counterfeit albums to shake tax stats weep. Not only legitimate chemical companies dump toxic wastes illegally, now the mob does too. Last April an allegedly Mafia-connected chemical waste warehouse in New Jersey exploded, the lethal mess still hasn't been completely disposed of. Gangsters were also quick to observe that coal mining seems profitable again. They are not only stealing expensive heavy equipment from the sites, but they sell shares in nonexistent or nonproductive mines. The gangs have become so successful

that seven states have pooled their police resources to fight the crime.

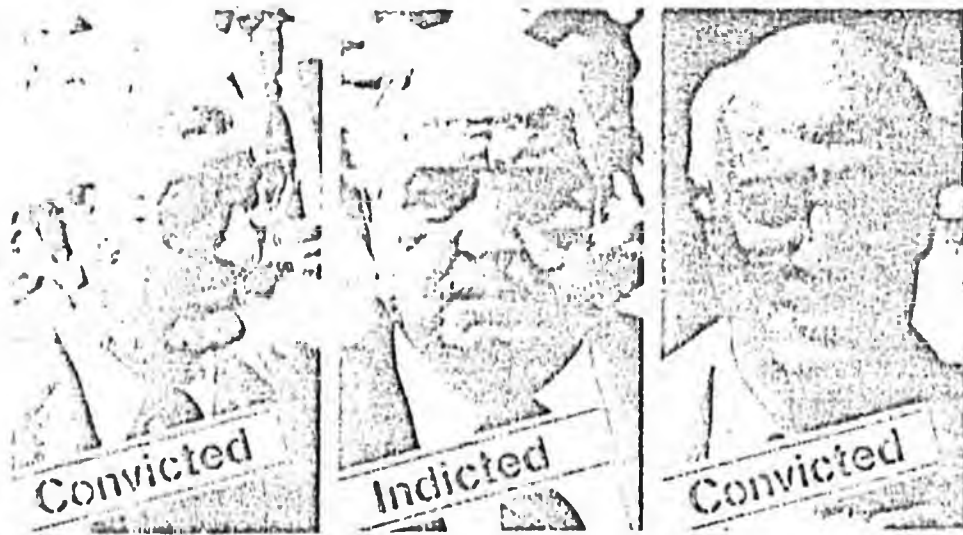
The Reagan Justice Department is expected to maintain the new pressure. At times, it general designate William French Smith publicly a national group of tough, aggressive professional prosecutors and a reformed but still controversial Witness Security Program (page 42).

**Pizza:** Why should the ordinary citizen care about any of this? Because like it or not, the mob has become a fact of everyday life. If you buy clothes, eat at restaurants with linen napkins, shop in stores that use private garbage services, gamble in casinos, invest in high flying stocks, have a yen for dirty books, can't start the day without a fresh bagel or finish it without a pizza pie, the mob is there to help. And if you are afraid to venture out at night lest some junkie mugger will be lurking, it's the mob that feeds his habit. "Organized crime is draining millions of dollars—tax free dollars—from our nation's economy," says FBI director William H. Webster. "Its impact is felt throughout our society."

At the same time, it's important to understand what the mob isn't. The Mafia is not the principal source of economic crimes—price-fixing or shaving work—and product safety standards. Those are the provinces of conniving businessmen. The kickbacks or other favors that some corporations give politicians often rival anything the mob provides. "Organized crime is a serious problem, but one which is sometimes exaggerated and sometimes minimized for political purposes," says Deputy Assistant Attorney General Irvin Nathan.

Harvard sociologist Daniel Bell once wrote that the underworld serves as one of America's "queer ladders of social mobility." Some criminals climb and get off, others can't wait to get on, and some never leave. The Italian syndicate, called La Cosa Nostra by some gangs and by the FBI, and the Mafia by everyone else, fits the last category. So much has been written about this group that it's difficult to separate myth from fact. This at least seems true: the Mafia is a loose confederation of gangs spread around the country. They work together on projects such as Las Vegas gambling, and operate independently on local affairs such as protection rackets or labor racketeering (chart, page 38).

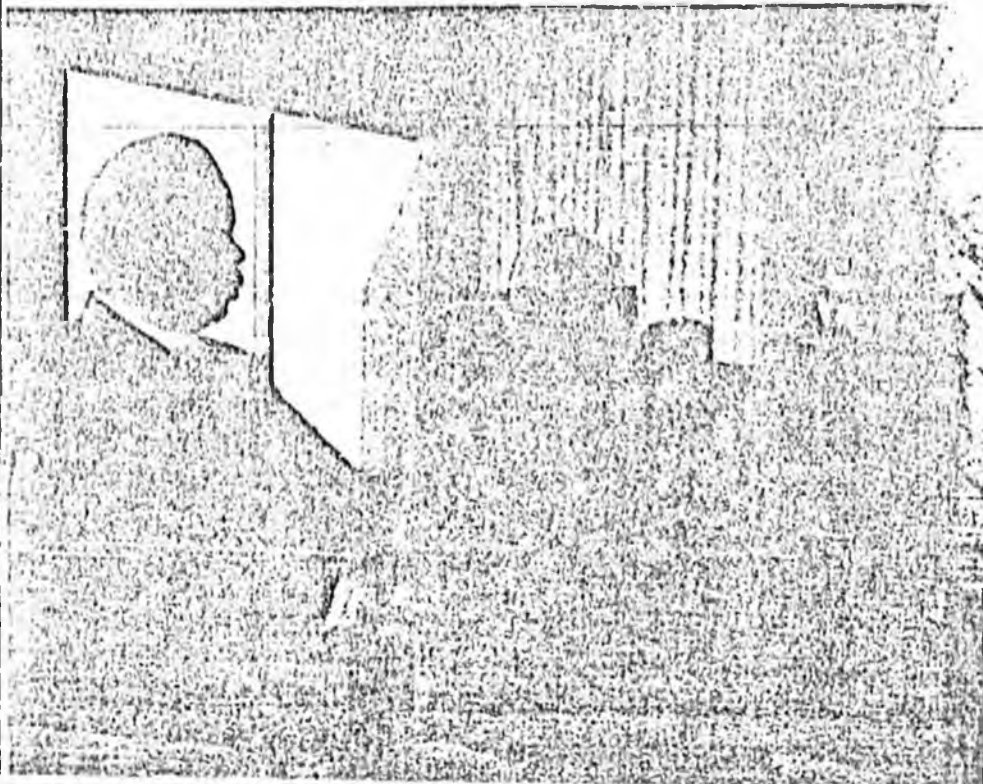
**Shakedown:** Organized crime, however, is by no means an Italian monopoly. Jewish and Irish hoodlums have long cooperated with the Mafia. "Guys that hate each other will sit down for money," says a New York police detective. But now new groups have begun to climb Bell's curious ladder. Black outfits in Philadelphia and New York run—in concert with the Mafia—much of the gambling and narcotics action. Chinese gangs shake down San Francisco merchants, the self-proclaimed Israeli Mafia (page 40) extorts money in Los Angeles. Colombian and Cuban drug rings have flooded Florida with their products—and



Joe Bonanno,  
Tucson

Carlos Marcello,  
New Orleans

Louis Tom Dragna,  
Los Angeles



some quilling based on one end of the rope. What he did was what you'd expect he did. The guys I called were killers, muscle.

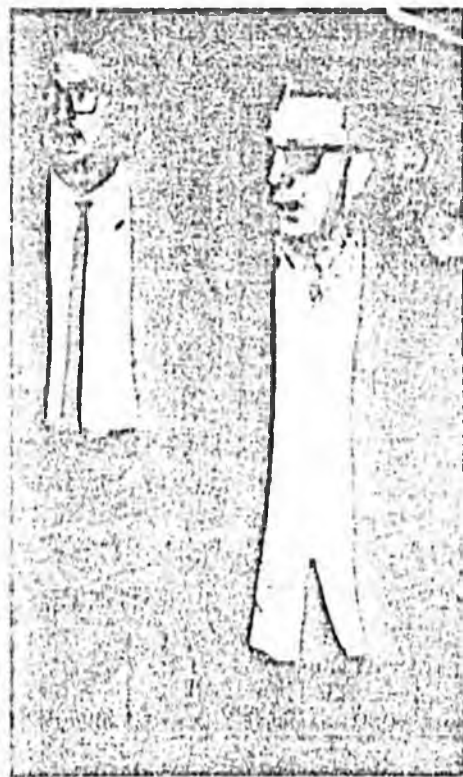
In prison for a short time from 1934 to '40 he— and his brother, often known as a blood brother. The family refused to turn the money he had left behind from drinking and gambling operations— extracted by parole from living in Los Angeles. Frattano moved to northern California. Continuing the construction job learned from his father, Frattano's contacts and a questionable San Francisco mob loan, he built a million-dollar trucking business in Sacramento. But by 1970 his money was gone, spent to pay debts, partner and fines levied by a state administration intent on separating his family from state conflicts.

**Hoaxes:** Frattano, who had transferred his official allegiance to the Chicago family, was asked in the mid-'60s by his L.A. colleagues to come back and help run their operations. The following years are the most important to government prosecutors. Frattano mingled in the often impenetrable realm of crime bosses. He was friendly with Sam Giancana of Chicago, Vincent Santos, Trafficante in Florida. He sat with Genovese family boss Frank Leri in a back room session at which the old man pointed thumbs down while saying "hit," giving the order to kill a family member. And he helped the Los Angeles family set up Frank Tompagnaro, who was discovered to be an FBI informer.

What the family did not know is that is then Frattano himself had begun selling information to the Feds, who tempted him with cash when he ended still another prison term in 1973. To the ever hustling Weasel, the information seemed insignificant—another way of making some money. But the contact turned out to be life-saving. Some members of the Los Angeles family thought Frattano was using his position as an acting boss to aggrandize himself—perhaps to lift his northern California operation into competition with the L.A. mob. Before long he discovered that a contract was out on his life. Since he was facing several new indictments for gambling and racketeering, it was not a difficult choice for him to graduate from part-time tipster to star informant.

**Scalping:** He testified first at the trial of ten men accused of fraudulently bankrupting the Westchester Premier Theater in Larkstown, N.Y. As legitimate investors were losing money in the operation, Mafia members and associates were skimming the profits and scalping their own tickets for extra dollars of side income. One of the theater's stars was Frank Sinatra, who performed several concerts there and was the subject of a New York Federal grand jury investigation for allegedly re-

ceiving \$50,000 of the skimmed profits. Now 67 and stout bearded, Frattano talks to exhaustion about his past, he cannot talk to his security. In an hour or so, regular court appearances, his credibility is attacked by defense attorneys who point to a well-documented history of lying on his oath. Frattano's response is that in the past he lied because he had to, now with the truth keeps him alive. There is just one bit too a book recounting his adventures will be published next month. "Who should I get paid for writing about the things I've done?" he muses. "I see the point. But I don't want to make a million. I just want something in the bank to leave something for my wife and kids. I think



Under arrest: From shaved dice to murder

it's a service to the country, what I did." The government agrees, up to a point, but that may no longer be good enough. Soon the testimony will be over, his official protection will end and Frattano will live by his hit man's wits. In a Salt Lake City hotel room this fall, watched over by two Federal marshals, he belabored over the telephone to a Justice Department official in Washington. "I wanta be someplace where there's no mad guys. Where you're taking me, there's a hundred." Then he hung up the phone and chewed stonically on a long Mexican cigar. "Nothing bothers me. What do I give a damn? If it comes, it comes. I ain't gonna age myself on account of it."

*By Tom Wessel, The True Story of the Los Angeles Mob, and by Stephen Lee, Time Books.*

## JUSTICE

its banks with their profits. The Los Angeles family grew an Italian Hospital with a staff of 100 and a net worth of \$1 million. A mid-state prison now holds 144 convicts with the West Coast. As seen in part by Dwight D. Smith Jr. and Richard D. Villa have written, organized crime must be recognized as a part of American society, not feared and shaped by American court decisions, not simply as an alien, parasitic force.

After decades of books and movies, the gangster is more than a creature of the mean streets; he is a fixture in the American imagination. But his role and symbolic value keep changing, and with it the nation's perception of the underworld. In the 1931 movie "Little Caesar," Edward G. Robinson portrayed the paradigmatic mobster, Rico Bandello, an unrepentant boss who deserved killing. By 1954, the boss had shifted to the victim, exemplified by Marlon Brando's Terry Malloy, a broken-down pug left to work on the waterfront after his gangland brother forced him to throw a fight. "I coulda been a contender," was Terry's complaint, if only the mob hadn't intervened. His recourse, to strike back, first with testimony against a corrupt union boss, then with his fists in a triumphant climax where good whips evil on the docks. Only in the movies. Finally, there is the latter-day Brando as The Godfather, Vito Corleone, the gangster as hero, who makes people offers that they cannot refuse.

Warnings: The real-life mob hasn't forgotten how to persuade people. When Peter Salerno, a former Mafia thug who now testifies for the FBI, began his enforcement career, his principal job was simply to stand menacingly, with his broad shoulders and bulging biceps, while his superiors issued warnings to welsing numbers runners or other shaky operatives. Once, he says, during the construction of New York's World Trade Center, he saw a mobster threaten to shove a union foreman down an elevator shaft because the foreman was complaining about phony time cards being punched for nonworking mob members—a modest scam that netted the family \$100,000 in one year.

Sometimes Salerno got more involved. "I've burned big warehouses so people can collect insurance," he says. "We shot up people's houses. I beat up a lot of people. I picked up money from restaurants and businesses that had to pay protection." But always Salerno managed to rationalize his activities—by reminding himself that his victims were bad guys, after all, and by insisting that his heart wasn't in it. "I did it because it was a job, but I got no enjoyment out of it," he claims. "I know one guy, he'd get great enjoyment. I've seen him hit a guy with a bat and put his arm on the curb and break it, then put his leg up and break that too."

To their surprise, however, police have



## JUSTICE

tion exposed the rampant corruption in the Teamsters union. Then, as his brother's Attorney General, Kennedy stepped up the assault on organized crime.\*

The Justice Department has now made organized crime a top priority. Federal laws have also strengthened its hand both in prosecuting individual mobsters and crushing down their assets. Special strike forces in 26 cities concentrate specifically on organized crime. They combine the resources of Justice lawyers, the FBI, the Drug Enforcement Administration, the Bureau of Alcohol, Tobacco and Firearms, the Department of Labor, and the Internal Revenue, the Customs and Postal services so that the bad guys do not manage to slip between the law-enforcement cracks.

**Dirty-Movie Dealers:** FBI director Webster has committed more than one-fifth of the bureau's money and manpower to fighting organized crime. The bureau now relies heavily on underworld informants such as Fratiano and undercover "sting" operations run by its own agents. Agents Pat Livingston and Bruce Ellavsky, for instance, spent two years and \$400,000 posing as dirty-movie dealers. They traveled the country, having a drink in Las Vegas, buying films in Miami, attending movie conventions in Los Angeles, making contacts with the mob. "It puts law enforcement face to face with the criminals," says one top FBI agent. "They are so well insulated and so sophisticated that there is no other way to do it." The Livingston-Ellavsky sting led to the indictment of 47 alleged members of a national pornography network, many with strong links to mobsters.

The biggest haul by far came from an operation called Umrac, for union racketeering. Started in 1975, after a Miami shipper named Joseph Teitelbaum tired of paying off International Longshoremen's Association leaders and complained to the cops, the daring investigation turned up corruption on docks from New Orleans to New England. By 1980, 150 government agents had infiltrated the waterfront, developed informants and planted three dozen electronic bugs. So far, Umrac has produced 128 indictments and 110 convictions of union and waterfront-company officials. Among those found guilty of racketeering (their cases are now on appeal): Michael Clemente and Tino Fiumara, top members of New York's Genovese crime family who had effectively controlled crime in the port of New York; snazzy Anthony Scotto, president of ILA Local 1814 in Brooklyn, and a power in New York politics, who took his bribes in posh restaurants; and George Barone, president of Miami Local 1922, who investigators believe also served

as a fugitive for San Francisco gangster.

Umrac was unusual because it relied in part on undercover agents but on electronic surveillance devices. The bugging evidence often was sensational: one bug planted in Scotto's bleached buff desk recorded him complaining that the payroll wasn't coming in on schedule. Then, on tape, Scotto conceded his effort: "I figured it wrong. I must have gotten screwed up when you did a double one at Christmas." As dramatic as such testimony may prove in court, the government no longer relies heavily on recording devices, simply because it is difficult to obtain a warrant to use them. Under a 1968 Federal law, an investigator must convince a judge in advance that a particular phone or room is being used for criminal purposes, and that there is no other way to obtain evidence. That's a simple standard to meet when pursuing bookmakers, but more difficult in com-



*Pornography: The mob's hard-core profits*



U.S. Customs Service

*Cocaine (above) and toxic wastes: Two growth industries for the underworld*

plicated economic crimes. One compromise has been for agents to wear recording devices to meetings. This doesn't require a warrant, but if they are caught, they may be killed.

**Seized Assets:** Frustrated lawmen know that putting big-time mobsters in jail will not break up the underworld; when a gang's head is cut off, it merely grows a new one. To fight the entire apparatus, Congress passed in 1970 the Racketeer Influenced and Corrupt Organizations Act (called RICO, an apt echo of the character in "Little Caesar"). This law allows prosecutors to charge gangsters with the crime of running criminal enterprises and to seize assets illegally used or gained. Before RICO, "we had put a lot of people in jail, and some big people, but that's all we did," says Ed Sharp, FBI agent in charge of the Brooklyn-Queens field office. "Now, instead of going after individuals, we're attacking organizations. We've got to take



AP/WIDE WORLD

\*At the same time, according to recent reports, the CIA was trying, with Mafia hit men to arrange the assassination of Fidel Castro.

## JUSTICE

obtained a pile of union funds that he was willing to deposit, even in low interest accounts. All he wanted in return were personal and most of unsecured loans for himself, for relatives and for friends who couldn't pass a credit check that wasn't fixed. Some bankers readily took the bait. Robert Prodan, who was then president of the Bank of Bloomfield, N.J., later testified that he would not have made the loans had it not been for the union deposits. Predictably, the loans soon turned sour. According to the Organized Crime Strike Force in Newark, the Bloomfield bank was out \$389,000 in loans made through Palmeri when it collapsed; he was convicted of racketeering and is appealing. Two other New Jersey banks, the State Bank of Chatham and the Springfield State Bank, also folded, in part because of similar Teamster deals.

Bankers aren't the only people who prove that business schools grant degrees and not halos. In the case of the Magic Marker stock manipulation, for example, the president of the New Jersey pen company, the chief executive of a Philadelphia brokerage house, Delpin Capital Corp., and a stock promoter named Jack Silberger conspired to artificially pump up the company's stock. Yiddy Bloom, a longtime associate of Meyer Lansky, provided Silberger with more than \$100,000 and helped arrange a bank loan for him; with this seed money, Silberger set up a command post in his Miami Beach apartment, with a bank of telephones and a WAIS line, and began to make purchases in Magic Marker through different accounts at different brokerages in a dozen cities.

**Bubble:** Silberger quickly drove the price from \$6.50 to \$31 a share. He used a variety of techniques: bribing a stock-exchange professional for inside information, paying a \$1 bonus to brokers for each share they bought for their clients, and giving \$20,000 to a New York analyst to write a favorable article on the company. When the bubble finally burst, brokers tried to shore up the stock's price by making spot purchases, sometimes without notifying their clients. By then, of course, Bloom had sold out. Lawyers for the Or-



*New York's Galanti, hit in a cafe: The old must give way*

ganized Crime Strike Force in Philadelphia say that he pocketed a \$50,000 profit. Scores of innocent investors lost perhaps as much as \$20 million.

The mob also loves to operate, or at least get a piece of, a "bust-out," which is a scheme to defraud creditors. In the early '70s, Kenneth Weiner and some associates opened discount stores along the South Shore of Massachusetts that sold everything from clothing to calculators. The owners stocked the stores with merchandise

*Philadelphia's Bruno, killed outside his home: Revenge was quick*

Gerard C. Hennessy—Philadelphia Inquirer



organized crime as a group of entrepreneurs taking advantage of opportunities as they arise. Nowhere does that seem more evident than in the toxic-waste industry. For decades, the mob has controlled private garbage hauling in many urban areas. And what is chemical waste but fancy trash?

When William Carracino ran the Chemical Control Corp. of Elizabeth, N.J., he held down costs by occasionally disposing of his lethal wares in a nearby dump. Although Chemical Control was in bankruptcy, Carracino claims that he refused help from the mob. But one day, Carracino recently told a New York crime committee, a reputed Tieri family member named John Albert came to his office and ordered him out. In the parking lot, Albert pushed Carracino against his car, pulled a gun and asked, "Do you want it now or later?"

Carracino never went back to his office, and Albert took effective control of the company. Last April 60,000 55-gallon drums, stockpiled in Chemical Control's Elizabeth warehouse, exploded; it took firemen ten hours to control the blaze and only favorable winds kept the enormous clouds of toxic smoke from floating over New York City. In November a Federal grand jury indicted Albert and others for fraudulently assuring chemical firms that they would dispose of their wastes.

The mob also makes money from cleaner, small-time crime. At the moment, police say, these are the favored new schemes:

- Minting phony credit cards, then running up false bills with a cooperating merchant who

## JUSTICE

the assets—and get rid of the incentive.”

Unfortunately RICO has promised more than the government has delivered. It has seen a marvelous tool to obtain convictions—prosecutors can enthrall jurors with minimal histories and gangland ties—but getting the assets has proven far more difficult. For instance, in the ten years since RICO and a similar narcotics-forfeiture law were passed, only \$675,000 has been forfeited in narcotics cases. “The Justice Department’s record in attacking the financial foundations of organized crime has been very nearly nonexistent,” says Sen. Joseph Biden Jr. of Delaware. “Indeed, I believe it is a major reason [that] illicit drug trafficking continues to flourish in this country.” Other parts of the 1970 statutes also he fallow. Federal prosecutors have seldom sought civil penalties under RICO or the long prison terms they may ask for under the companion Dangerous Special Offenders Act. “Ultimately this record is a failure of imagination and will,” says Prof. G. Robert Blakey of the Notre Dame Law School, an authority on organized crime. “The law is there, but they haven’t used it.”

Turning Point: The government has, however, used RICO in a novel way this year in two significant cases against top mafiosi. It has contended that Mafia families themselves are “illegal enterprises.” In one case, a jury convicted Frank Terr, head of New York’s Genovese crime family, of extortion and fraud—and of being a Mafia boss. In the other trial, Dominick Brooklier, Louis Tom Dragna, Samuel Sciortino, Jack Loeicero and Michael Rizzitello of the Los Angeles gang were convicted on racketeering and conspiracy charges. The government has not moved to seize assets in either case—and if it did, it might never find any.

Well-placed Federal sources say that they are preparing another round of important cases. Grand-jury investigations aimed at mobsters are under way in Chicago, Detroit, Milwaukee, Kansas City, Philadelphia, Miami and Las Vegas. Significant labor-racketeering cases against officials of the Laborers’ International Union in Florida, New England and Illinois are also expected to surface soon. And FBI agents are buzzing that another hot undercover sting is afoot.

The first big mob test for the Reagan Administration may not come in a courtroom at all, but in negotiations between the Internal Revenue Service and the Teamsters Union’s Central States Pension Fund. The pension fund—with assets of \$2.2 billion—has long been known as “the mob’s bank,” providing funds for casinos and speculative real-estate deals. In 1977, after the IRS threatened to lift the fund’s tax exemption, the trustees resigned and outside managers were hired for five years. No one believes that all the mobsters have lost their influence—especially not under



Dun Carl Malton



Justice's Margolis

*FBI's Webster, Justice's Margolis: First get the gangsters, then their profits*



*Agents Ellavsky, Livingston in Las Vegas: Living face to face with the criminals*

the lackluster Carter Labor Department—and what happens when the managers’ contract expires in 1982 is unclear. But the Teamsters union hopes to have positioned itself to block new restrictions; it was one of two major unions to support Reagan.

**Handicap:** Lawmen have few illusions about what their year of success means; they are in no danger of jailing all the mobsters and having to find other work. Some of the new strategies are obviously promising. Retiring Attorney General Civiletti, for example, favors industry-wide investigations, rather than the piecemeal headhunting of the past. But the government always starts with a handicap. “For all our talks about goals and strategies, law enforcement in a free society is primarily reactive,” says David Margolis, chief of Justice’s Organized Crime section. “No matter how effective we are, one kind of crime or another is not going to be stamped out.”

Margolis is right; there is no quick fix for any sort of crime. The government could

make a small dent, perhaps, by legalizing such “victimless” crimes as pornography or gambling. But there are obviously limits beyond which the statutory line cannot be nudged.

It has been the conventional wisdom, in some circles, to look on the Mafia as something of a service industry; loan sharks serve people the banks won’t touch; corrupt labor leaders serve “legitimate” bosses who don’t want to negotiate with an honest union. Certainly there would be fewer people in desperate want or more who could control their greed. But the new Mafia, like the old, is not about to be stamped out by a few social improvements, or anything else short of unforeseeable changes in the human animal. At this point, the criminals Americans love to fear have become the criminals they often do business with, the mobsters who won’t disappear when the lights go up.

ARIC PRESS with ELAINE SHANNON, RON LABRECQUE and bureau reports

# A Squealer's Secrets

Federal investigators call Jimmy the Weasel Frattiano "the most informative and reliable witness they have ever dealt with over the last three months."

NEWSWEEK'S Ron Lattreque spent hours with Frattiano following him out to court, listening to his testimony in court and his bluster in private. Lattreque's report.

Jimmy Frattiano remembers the play on an evening in 1944 that he drove his new Cadillac to a Los Angeles winery. In a dingy, vat-lined workroom, 30 men awaited him around a long wooden table on which a gun and a dagger lay crossed. The men joined hands and one of them recited the rules of the group in a Sicilian dialect that Frattiano did not know. Frattiano did understand *omertà*, the code of silence which dictates that a man leaves the organization only when he is dead—at the hands of his colleagues if he reveals their secrets. Frattiano's finger was pricked with the dagger. Then, after kissing each of his new brothers on the cheek, he became a "man of respect," a "made" member of La Cosa Nostra.

For the next three decades Frattiano engaged in a series of criminal schemes—including murders on contract—that alternately landed him in prison or boosted him in the Mafia hierarchy. But in 1977 the guns seemed about to turn on him; the Los Angeles family believed incorrectly he was ready to launch a rival faction. Acting as always out of self interest, he sold himself to the government for protection. Now, with the same passionless conscience that made him a successful murderer, he regales investigators with a richly detailed expose of Mafia life, from petty jealousy killings to high-council business transactions. Frattiano's testi-

mony has helped convict a Frankfurter, a Beatty, two Francoses and Mafia bosses in Los Angeles and New York, and his out-of-court revelations have provided invaluable intelligence on the mob.

Frattiano began to learn the ropes in Cleveland, where he earned the nickname "Weasel" after he threw a rotten tomato at a cop who couldn't catch him. The son of immigrant parents, he attended Catholic schools until he learned as a teen-ager to shave dice and started operating profitable crap games in the neighborhood on Sunday mornings. "I was a good hustler. I always had money, so I just went on to organized crime," Frattiano says. "You grow smart because of your environment."

Charmer: Frattiano first went to jail after he and his partners beat up a bookmaker who didn't pay off on a 1937 Indians Red Sox game. But eight years in Ohio prisons only hardened his survival skills. "I ain't out a week and I gotta get even right away," he says. "I'm looking to rob somebody. There's no thought at all about going back to jail." The target was a West Virginia gambling hall. His share was \$20,000. He parlayed postwar black market sales into \$90,000 in just a few months, then, looking for bigger prey, took his wife and daughter to Los Angeles. Soon he met Johnny Rosselli, a dapper charmer with show-business friends and a hidden foothold in Las Vegas. Rosselli liked Frattiano and sponsored him for membership in the L.A. family.

One of his first assignments as a made mobster was the assassination of Mickey Cohen, a splashy gambler who headed a rival syndicate. Frattiano planted a bomb beneath Cohen's bedroom and lit the fuse—but it fizzled out. A few months later Frattiano helped make another attempt on Cohen's life. With his wife and daugh-



Frattiano: A life inside the mob

ter Jimmy dropped by the mobster's Hollywood clothing store, then signaled to gun-toting colleagues that Cohen was in safe and vulnerable. The setup ended in failure when the target fortuitously went to the bathroom. But Frattiano eventually made his first hit—on a friend. Frank Nicolosi was a Cohen hit man, a loyalist who scorned the pleas of the Italians to defect. Not knowing that Frattiano and his friends were the ones trying to kill his boss, Nicolosi visited Frattiano's home one night. "We just took a rope around him and choked him," Jimmy remembers. "It took three minutes, you know, didn't take long."

"Juice": Frattiano also helped dispatch Los Angeles family member Frank Borga. "They just told me to do this, and that's it," he says. "A lot of guys get killed for nothing. If I get into an argument with a guy and I have more juice with the boss, then he gets killed. If he has more juice, then I get killed." It took Frattiano more than a year to track down Louis (Russian Louie) Strauss on a contract from a Las Vegas casino owner. Finally Frattiano lured Strauss to a Palm Springs house where he was efficiently strangled. Fra-

Jimmy the Weasel (second from right) with Frank Sinatra, and with Dean Martin: A man with friends in high and low places

