ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672

3257 HJUD GOV'S APPT'S... - TELECONF. WITH LEMON CREEK...

Recommendation No. 4

The ABC Board should improve documentation of its enforcement efforts.

This recommendation was made in our prior audit. Primarily, we had found that the ABC Board did not maintain adequate documentation of its enforcement actions from inception to final resolution. In addition, documentation of actions resulting from informal conferences held with the licensee was not adequate. Although the ABC Board staff has made some improvements (especially the Enforcement Section) our current review disclosed the following additional problems:

1. Documentation of the Director's review of investigative reports is not adequate.

   The Director is required to review all investigative reports generated by the enforcement staff. However, our review showed that 26 of 46 reports did not have documentation of Director review.

2. Documentation of administrative decisions made by the Director is not adequate.

   Not all violations noted by the ABC Board staff are prepared for prosecution. The Director is responsible for making the ultimate decision. Factors considered by the Director include; type of violation, evidence gathered by enforcement staff, prior violations, and the intent of the licensee. Therefore, a violation by one licensee may result in the filing of an accusation whereas a violation by another licensee may not. Our review showed that no documentation is maintained by the Director to show cause for not pursuing a case. As a result, in our review of 35 cases, we found nine cases which were not pursued by the Director although the violation and evidence gathered by the enforcement staff appeared to warrant further action. For example, an investigative report was prepared noting over 140 instances of violence on a licensee's premises over approximately a three year period. The investigators recommended an accusation be filed to suspend or revoke the license. An accusation was not filed and the file did not contain an explanation of why the case was not pursued. Documentation of administrative decisions would ensure proper review and fair treatment of cases.

3. The administrative filing system needs improvement.

   An administrative file is established if violations noted by the Enforcement Section require prosecution by the Director. The file contains documentation of actions arising from the Director and/or Board review.

If another action involving the same licensee arises, then a separate file is created. No system has been established to record a historical summary of administrative actions and penalties imposed by the Board per each licensee. Thus, vital information which could be utilized by the Director and the Board in the decision making process is not readily available. In addition, a historical summary could also be utilized by the enforcement staff when conducting routine inspections to identify potential problem areas and ensure compliance to requirements stipulated by the Board.

We encourage the ABC Board to continue its efforts in implementing procedures to resolve the problems noted in our prior audit.

Additionally, we recommend that the ABC Board develop procedures to resolve the problems noted above.

Recommendation No. 5

The ABC Board should promulgate regulations for the creation of restaurant designation permits and the establishment of fees.

Alaska Statute 04.16.049 requires Board designation of a premise as a restaurant in order to allow access by a minor for dining or employment purposes. Approval of the governing body having jurisdiction over the premise is also required, if access of a minor is allowed for employment purposes.

In an effort to comply with the above requirement, the ABC Board required the licensee to submit an application indicating the type of designation requested. Upon receipt of the application a notification is sent to the governing body requesting their review and approval. The governing body is given 30 days to respond. Once reviewed and approved by the Board a notification is sent to the applicant and a permit is issued. The licensee is required to post the designation permit next to the liquor license. The permit is valid for one calendar year. A licensee must reapply for the permit annually.

Due to the process stated above, the ABC Board has created a new class of permits called restaurant designation permits. However, no regulations have been developed to formally establish the classification. In addition, no application fees or permit fees have been assessed to cover the expenses associated with the processing and issuance of the permits. According to the ABC Board staff, processing of the permits is very time consuming. Approximately 250 applications per year were processed in 1983 and 1984. Over 300 applications have been processed since January 1985.

Alaska Statute 04.06.100 gives the Board the authority to adopt regulations relating to the creation of permits and the establishment of fees. We recommend that the ABC Board take the necessary actions to exercise this authority.

Recommendation No. 6

The ABC Board should strengthen controls over liquor license stock.

A control log is maintained by the ABC Board to monitor the issuance of licenses. However, we found that license documents utilized in the renewal of active licenses are recorded by group sequence. No record is maintained to identify to which licensee each license document was issued.

In addition, the control log does not denote which license documents have been voided because of Board denial or revocation of the license.

A good system of internal controls would enable one to determine the status and location of a license at any given point in time.

The ABC Board should review the control over the issuance of licenses and develop procedures to resolve deficiencies.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analysis indicates both positive and negative attainments of the ABC Board and how its activities relate to the public need factors defined by AS 44.66.050. This analysis is not intended to be comprehensive in nature.

I. The extent of which the board, commission, or program has operated in the public interest.

Public protection gained through licensing to control the manufacture, possession, and sale of alcoholic beverages has been adequately provided by the ABC Board. However, operational efficiency and effectiveness should be improved. See Recommendations 1-6 of this report.

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personal matter.

The 1980 revisions to Title 4 have, for the most part, been beneficial to the operation of the ABC Board. However, as noted in Recommendation No. 2, certain provisions should be amended for the elimination of potentially conflicting elements.

The Board is also restricted in meeting its statutory responsibilities in protecting the public health, safety, and welfare by the size of the enforcement staff which consists of one agent in Juneau; one in Fairbanks; and four, including a supervisory agent, in Anchorage. Including the supervisory agent, there are only six agents with inspection and enforcement responsibilities for 1,679 licensed premises.

The amendments to Title 4 by chapter 93, SLA 1985 will also have an effect on the ABC Board's operation. Population limits for the issuance of licenses were increased thereby resulting in a restructuring of license availability throughout the State. Additional filing requirements were also imposed on the Board. Due to the recent passage of the legislation, the overall impact of the changes could not be determined at this time.

III. The extent to which the board, commission, or agency has recommended statutory changes which are generally of benefit to the public interest.

The ABC Board was instrumental in promoting most of the changes adopted through chapter 93, SLA 1985. In addition, the ABC Board participated in the development of the 1980 revisions to the statutes.

IV. The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

The ABC Board has met an average of eleven times during 1984 and 1985. During each year they have met at least once in each of the four judicial districts. Each meeting has been adequately advertised and open to all interested persons. Staff of the ABC Board are located in Anchorage, Juneau, and Fairbanks and are available to answer inquiries of the general public during all normal business hours. We believe this has provided an adequate forum for allowing public input on Board regulations and decisions.

V. The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

As noted in IV above, the Board has provided an adequate forum for obtaining input from the public.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.

As noted in past reviews the number of formal hearings continue to be few in number. However, the ABC Board has the authority to hold its own hearings on protests which it exercises as a part of its regularly scheduled meetings. Hearings in this manner have been accomplished in a timely manner since the Board meets at least ten times each year.

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

Our review of licensing activity of the ABC Board to determine whether all statutory qualifications of licensees were being met revealed no material exceptions. The Board has therefore presented qualified applicants to serve the public.

VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity of interest.

No discrepancies were noted in this area during our review of the ABC Board.

IX. The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to I and II above and to the previous section, Findings and Recommendations.

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APPENDIXES

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APPENDIX A

STATE OF ALASKA
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD
REVENUE COMPARED WITH EXPENDITURES
Fiscal Years 1983, 1984 and 1985
(UNAUDITED)
(Note 1)

	1983	1984	1985
Revenue (See Schedule 1)	$1,592,957	$1,716,950	$1,701,968
Expenditures	(605,131)	(692,310)	(653,872)
Excess of Revenue Over Expenditures	$ 987,826	$1,024,640	$1,048,096

Schedule 1
Revenue Collected

Types of License	1983	1984	1985
Liquor License Application	$ 86,950	$ 100,000	$ 101,850
Pub	400	800	-0-
Beverage Dispensary	799,050	852,825	852,275
Club	41,200	43,750	44,900
Common Carrier	30,500	43,350	36,675
Restaurant	73,550	89,650	91,850
Retail Store	341,500	368,150	373,300
Wholesale General	146,700	141,350	139,100
Wholesale Malt Beverage	27,900	27,300	12,300
Miscellaneous (Note 2)	45,207	49,775	49,718
Total	$1,592,957	$1,716,950	$1,701,968

Note 1

This revenue/expenditure comparison was prepared from available records and discussions with ABC Board personnel. The records were not audited by us and, accordingly, we do not express an opinion on the ABC Board Revenue Compared with Expenditures nor the Schedule of Revenue Collected.

Note 2

Includes recreational-site licenses, caterer's special events, and conditional contractor's permits.

APPENDIX B

STATE OF ALASKA
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD
NUMBER OF LICENSES BY TYPE
Fiscal Years 1983, 1984, and 1985

Types of License	1983	1984	1985
Pub	1	1	1
Beverage Dispensary	645	645	648
Club	65	71	72
Common Carrier	94	124	129
Restaurant	223	270	292
Retail Store	448	473	492
Wholesale General	16	18	20
Wholesale Malt Beverage	8	8	9
Recreational-Site	13	16	16
Total Licenses	1513	1626	1679

APPENDIX C

STATE OF ALASKA
DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD
DESCRIPTION OF LICENSE TYPES AND FEES

Source	Description	Annual Fee
Application Fee	For each license application.	$50
Beverage Dispensary	To sell or serve on the licensed premises alcoholic beverages for consumption on the licensed premises only.	$1,250
Restaurant or Eating Place	To sell beer and wine for consumption only on the licensed premises.	$300
Club	To sell alcoholic beverages for consumption only on the licensed premises.	$600
Bottling Works	To operate a bottling works where beer and wine may be bottled and sold.	$250
Brewery	To operate a brewery where beer is manufactured and bottled or barreled for sale.	$500
Winery	To operate a winery where wine is manufactured and bottled or barreled for sale.	$250
Package Store	To sell alcoholic beverages to a person in response to a verbal solicitation for purchase received from the person present on the licensed premises or in response to a written solicitation made by a person known to the license for a purchase to be received by the person making the solicitation.	$750
Retail Stock	To sell the remaining stock of a package liquor store when the owner wishes to close or terminate business. Sale may only be to licensed persons.	$100

APPENDIX C

STATE OF ALASKA
DEPARTMENT OF REVENUE
ALCOHLIC BEVERAGE CONTROL BOARD
DESCRIPTION OF LICENSE TYPES AND FEES

Source	Description	Annual Fee
General Wholesale	To sell alcoholic beverages in the original package, and wine in bulk, in quantities of not less than five gallons to holders of licenses.	$1,000 First $100,000 of sales plus $500 - 10,000 on additional sales
Wholesale Malt Beverage and Wine	To sell malt beverages and wine in the original packages in quantities of not less than five wine gallons to holders of licenses.	$200 First $20,000 of sales plus $300 - 10,000 based on additional sales
Distillery	To operate a distillery where alcoholic beverages are distilled and bottled or barreled for sale.	$500
Community Liquor	Authorizes a municipality to operate a beverage dispensary or a package store or both subject to the same conditions and fees applicable to beverage dispensary or package liquor store licenses.	$1,250 Beverage Dispensary 750 Package Store
Common Carrier Dispensary	To sell alcoholic beverages for consumption aboard a vehicle, boat, aircraft, or railroad buffet car licensed by the State or federal agency for passenger travel.	$350 Per vehicle, boat, aircraft or railroad car
Recreational Site	To sell beer and wine at a recreational site during and one hour before and after a recreational event which is not a school event, for consumption on designated areas at the site.	$400
Pub	To sell beer and wine for consumption only at designated premises located on the campus of an accredited college or university.	$400

APPENDIX C

STATE OF ALASKA
DEPARTMENT OF REVENUE
ALCOHLIC BEVERAGE CONTROL BOARD
DESCRIPTION OF LICENSE TYPES AND FEES

Source	Description	Annual Fee
Caterer	Authorizes the holder of a beverage dispensary license to sell or dispense alcoholic beverages at conventions, picnics, social gatherings, sporting events or similar affairs held off the holder's licensed premises.	$50
Special Events	To sell or dispense beer or wine for consumption at designated premises for a specific occasion and limited period of time. Only a nonprofit organization may acquire the permit.	$50 Per day
Conditional Contractor	To sell beer or wine for consumption only on designated premises for one year from the date of issuance of the permit at construction sites which are located outside a city and inside the boundaries of a military or naval reservation.	$600

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STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF REVENUE

POUCH S
JUNEAU, ALASKA 99811
PHONE: (907) 465-2300

OFFICE OF THE COMMISSIONER

December 30, 1985

Mr. Gerald L. Wilkerson
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, AK 99811-3300

Dear Mr. Wilkerson:

This letter is in response to your preliminary audit report on the performance of the Alcoholic Beverage Control Board dated August 21, 1985.

We fully agree with your conclusion "...there is a demonstrated need for this control to continue to exist." Following are our comments about your specific recommendations.

Recommendation No. 1

The ABC Board should document the mitigating circumstances and reasons for not pursuing a suspension or revocation of a license.

We agree. Since your remarks in your interim letter the board's staff has assured that concluding notes from informal conferences are reflected in all administrative proceeding files.

Recommendation No. 2

The Legislature should consider amending Alaska Statute 04.11.510(c) to exclude Board participation in formal conferences.

The issues raised in this recommendation are substantive ones and touch on some of the most controversial topics in administrative adjudication. Thus, while we may disagree with specific conclusions you have reached, we recognize that your position finds support among many in administrative law.

As you have noted, AS 04.11.510 permits an accused licensee to request an informal conference before the director or the board. If the licensee is not satisfied with the results of the conference, he/she may request a formal hearing before the board. You correctly note that when reviewing a case, the board should be unbiased and impartial.

This concern is a problematical one. While the United States Supreme Court has authorized board involvement at both the informal conference and adjudicatory stages of a dispute (Withrow v. Larkin, 421 U.S. 35 (1975)), the Alaska administrative practice has been much more circumspect. The board was heavily queried on this matter. I am

satisfied that the board is provided only limited information about the dispute, that the information provided is solely for the purpose of providing sufficient facts to discuss the basis for settlement, and that the board fully understands that its decision on the merits of a case must be limited to evidence presented on the record at hearing. Except for rare unintentional oversights, informal conferences are recorded.

Because there is legal authority for the present practice and because the board strongly believes that its involvement at the informal conference level has reached expeditious and just results in the past, I am compelled to disagree with Recommendation No. 2.

Recommendation No. 3

The ABC Board should cease the current practice of terminating a license without cause and seek legal advice for clarification of its authority.

In an opinion dated September 27, 1985 from the board's assistant attorney general, the board finds its practice to be unwarranted. The matter will not be pursued.

Recommendation No. 4

The ABC Board should improve documentation of its enforcement efforts.

1. Documentation of the Director's review of investigative reports is not adequate.

2. Documentation of administrative decisions made by the director is not adequate.

Nos. 1 and 2. We agree. The director has instituted a more formalized review of investigative reports. The procedure includes a director's review sheet with provision for his signature rather than initials on investigative reports. The review sheet is intended to reflect a written record of the director's review of reports.

3. The administrative filing system needs improvement.

Filing of administrative/adjucticative recommended and completed actions will be supplemented with computerized summary information when computer programs are corrected or appropriate software obtained.

Recommendation No. 5

The ABC Board should promulgate regulations for the creation of restaurant designation permits and the establishment of fees.

We agree. The board has drafted a proposal for designation permits and is preparing to provide public notice for public hearing on a regulation.

We agree. The board has drafted a proposal for designation permits and is preparing to provide public notice for public hearing on a regulation.

Recommendation No. 6

The ABC Board should strengthen controls over liquor license stock.

A license document control number file is established which also contains original licenses if they are voided or not used.

Thank you for your courtesy and the opportunity to respond. If we can provide any additional information, please do not hesitate to let us know.

Sincerely,

Mary A. Nordale
Commissioner of Revenue

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

7/25/89
Data

02-519 (REV 8/78)

Legislative Affairs Agency Report

Alaska State Legislature

House of Representatives

House Judiciary Committee

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4990

MEMORANDUM

TO: All Members of House Judiciary Committee

FROM: Hayden Kaden

SUBJECT: January 15th Hearing

Date: January 13, 1985

AS 24.20.065(a) requires that the Legislative Council annually examine published opinions of state and federal courts and of the Department of Law that rely on state statutes to determine whether or not: (1) the courts or the department are properly implementing legislative purposes; (2) there are court expressions of dissatisfaction with state statutes; (3) the opinions indicate unclear or ambiguous statutes.

Counsel to the House Judiciary Committee has reviewed the Legislative Council report and recommends the committee review the attached summaries to determine what, if anything, should be done in response to the courts' or Attorney General's opinions.

AS 11.46.310(a)
AS 11.46.350(a)

THE COMPONENTS OF THE CRIME OF BURGLARY ARE EXAMINED.

The Court of Appeals of Alaska held that the crime of burglary under AS 11.46.310(a) requires that a person enter or remain unlawfully in a building with the intent to commit a crime within the building. Since the defendant entered the building at a time when it was open for business, the court concluded that his efforts to steal a case of beer from a beer cooler or back room could not constitute the commission of a burglary. Under AS 11.46.350(a), in order to enter or remain unlawfully, a defendant must "enter or remain in or upon premises ... when the premises..., at the time of entry or remaining, is not open to the public and when the defendant is not otherwise privileged to do so...." The court noted that the definition of "building" at AS 11.81.900(b)(3) requires all parts of the building to be treated as part of the building unless the building is divided into "units, including apartment units, offices, or rented rooms...." The court noted that while the defendant's entry of the beer cooler or back room might have constituted a criminal trespass under AS 11.46.330(a)(1), they did not amount to unlawful entries of a building. Arabie v. State, 699 P.2d 890.

In a footnote, the court stated: "We note that the Alaska statute does not distinguish buildings that are only partially open to the public. [T]he legislature could choose to enact specific legislation doing just that. * * * See, e.g., Colo. Rev.

Stats. Sec. 18-4-201(3) (1973 & Supp. 1984) ('A license or privilege to enter or remain in a building that is only partly open to the public is not a license or privilege to enter or remain in that part of the building that is not open to the public.'); N.Y. Penal Law Sec. 140.00(5) (McKinney 1973 & Supp. 1984) (prohibiting entry either of a closed building or of 'that part of the building that was not open to the public'). It is particularly relevant that, when it adopted the language of AS 11.46.350(a), the Alaska legislature was specifically aware of and relied on N.Y. Penal Law Sec. 140.00. See Alaska Department of Law Criminal Code Manual, Derivation Table, page 4-7 (1979)."

Review is recommended.

Sec. 11.46.310. Burglary in the second degree. (a) A person commits the crime of burglary in the second degree if the person enters or remains unlawfully in a building with intent to commit a crime in the building.

(b) Burglary in the second degree is a class C felony. (§ 4 ch 166 SLA 1978)

NOTES TO DECISIONS

For cases construing former law, see notes to AS 11.46.300, analysis line II.

Applied in McManners v. State, Ct. App. Op. No. 123 (File No. 6065), 650 P.2d 414 (1982); Linn v. State, Ct. App. Op. No. 210 (File Nos. 6163, 6188), 658 P.2d 150 (1983).

Quoted in Kirby v. State, Ct. App. Op. No. 117 (File No. 5738), 649 P.2d 963 (1982).

Cited in Ozenna v. State, Sup. Ct. Op. No. 2209 (File No. 4748), 619 P.2d 477 (1980); Zurfluh v. State, Sup. Ct. Op. No. 2238 (File No. 4697), 620 P.2d 690 (1980); Kanipe v. State, Sup. Ct. Op. No. 2242 (File No. 4993), 620 P.2d 678 (1980); Nix v. State, Ct. App. Op. No. 008 (File No. 4879), 624 P.2d 825 (1981); Koteles v. State, Ct. App. Op. No. 232 (File No. 6782), 660 P.2d 1199 (1983).

Sec. 11.46.320. Criminal trespass in the first degree. (a) A person commits the crime of criminal trespass in the first degree if the person enters or remains unlawfully

(1) on land with intent to commit a crime on the land; or

(2) in a dwelling.

(b) Criminal trespass in the first degree is a class A misdemeanor. (§ 4 ch 166 SLA 1978; am § 12 ch 102 SLA 1980)

Effect of amendments. — The 1980 amendment substituted "land" for "real property" at the beginning of paragraph (1) in subsection (a), and substituted "the land" for "that real property" near the end of paragraph (1) in subsection (a).

Collateral references. — 35 Am. Jur. 2d, Forcible Entry and Detainer, §§ 58 — 61; 52 Am. Jur. 2d, Malicious Mischief, § 1 et seq.; 75 Am. Jur. 2d, Trespass, §§ 86 — 94.

36 C.J.S. Forcible Entry and Detainer, § 1 et seq.; 54 C.J.S. Malicious Mischief, § 1 et seq.; 87 C.J.S. Trespass §§ 140 — 165.

Forcible detainer or trespass, where entry was peaceable, 49 ALR 597.

Right to use force to obtain possession of real property to which one is entitled, 141 ALR 273.

Validity, construction, and application of statutes or ordinances penalizing one who enters or remains in dwelling after having been forbidden to do so, 146 ALR 655.

Injunction against repeated or continuing trespasses on real property, 60 ALR2d 310.

Uninvited entry into another's living quarters as invasion of privacy, 56 ALR3d 434.

Sec. 11.46.330. Criminal trespass in the second degree. (a) A person commits the crime of criminal trespass in the second degree if the person enters or remains unlawfully

(1) in or upon premises; or

(2) in a propelled vehicle.

(b) Criminal trespass in the second degree is a class B misdemeanor. (§ 4 ch 166 SLA 1978)

Cross references. — For provisions authorizing arrest without warrant in certain cases where the police officer has reasonable cause to believe that the person has committed a crime under this section, see AS 12.25.030(b).

NOTES TO DECISIONS

Cited in Moxie v. State, Ct. App. Op. No. 246 (File No. 7192), 662 P.2d 990 (1983).

Sec. 11.46.340. Defense: emergency use of premises. In a prosecution under AS 11.46.300, 11.46.310, 11.46.320, or 11.46.330(a)(1), it is an affirmative defense that

(1) the entry, use, or occupancy of premises or use of personal property on the premises is for an emergency in the case of immediate and dire need; and

(2) as soon a reasonably practical after the entry, use, or occupancy, the person contacts the owner of the premises, the owner's agent or, if the owner is unknown, the nearest state or local police agency, and makes a report of the time of the entry, use, or occupancy and any damage to the premises or personal property, unless notice waiving necessity of the report is posted on the premises by the owner or the owner's agent. (§ 4 ch 166 SLA 1978)

Sec. 11.46.350. Definition. (a) As used in AS 11.46.300 — 11.46.350, unless the context requires otherwise, "enter or remain unlawfully" means to

(1) enter or remain in or upon premises or in a propelled vehicle when the premises or propelled vehicle, at the time of the entry or remaining, is not open to the public and when the defendant is not otherwise privileged to do so;

(2) fail to leave premises or a propelled vehicle that is open to the public after being lawfully directed to do so personally by the person in charge; or

(3) enter or remain upon premises or in a propelled vehicle in violation of a provision in an order issued under AS 25.35.010(b) or 25.35.020.

(b) For purposes of this section, a person who, without intent to commit a crime on the land, enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, is privileged to do so unless

(1) notice against trespass is personally communicated to that person by the owner of the land or some other authorized person; or

(2) notice against trespass is given by posting in a reasonably conspicuous manner under the circumstances. (§ 4 ch 166 SLA 1978; am § 9 ch 61 SLA 1982)

AS 11.81.620(a) THE SUGGESTED CRIMINAL DEFENSE OF A "MISTAKE OF LAW" IS CONSIDERED.

The Court of Appeals of Alaska held that in the absence of any statutory or case law establishing or rejecting the defense of "mistake of law," a concern for due process of law requires the establishment of at least a limited defense. It quoted the decision of a Federal court: "It would be an act of 'intolerable injustice' to hold criminally liable a person who had engaged in certain conduct in reasonable reliance upon a judicial opinion instructing that such conduct is legal. Indeed, the reliance defense is required by the constitutional guarantee of due process as illuminated by the Supreme Court in Marks v. United States, 430 US 188 (1977), Cox v. Louisiana, 379 U.S. 559 (1965), and Raley v. Ohio, 360 U.S. 423 (1959)." The court therefore held that the defense of mistake of law is an affirmative defense that the defendant must prove by a preponderance of the evidence; this kind of procedure would allow a defendant in a criminal case to obtain relief where it would be unfair to hold him to knowledge of the law. The court further noted that the defendant did not just rely on a trial court decision; he was the party to the decision and his attorney had advised that the decision meant he could fish. Ostrosky v. State, 704 P.2d 786.

One judge dissented: He was unwilling to create the affirmative defense because, in his view of the legislative history of AS 11.81.620(a), it is clear

that the legislature rejected mistake of law as a defense to criminal responsibility. But he then goes on to suggest that the underlying prosecution is "preposterous" and should be dismissed as a matter of law. He notes that the Department of Law initially believed that the defendant was entitled to fish after the superior court decision unless a stay was issued. The state said as much in a motion for a stay after it realized that the defendant was still fishing. The supreme court justice who issued the stay believed that the stay was necessary to prevent the defendant from relying on the superior court decision. "To hold that [the defendant] could subsequently be prosecuted for sharing this same view seems, under the circumstances, preposterous."

Review is recommended.

lished if a person acts intentionally. (§ 10 ch 166 SLA 1978; am § 44 ch 102 SLA 1980)

Effect of amendments. — The 1980 amendment repealed subsection (a).

NOTES TO DECISIONS

Application of subsection (b) to second-degree murder statute. — Since AS 11.41.110(a)(2) does not specifically establish a mental element for the result ("death") or the surrounding circumstances ("under circumstances manifesting an extreme indifference to the value of human life") involved in second-degree murder, a "reckless" mental state is to be imputed to those two factors based on application of subsection (b) of this section. Neitzel v. State, Ct. App. Op. No. 172 (File No. 6243), 655 P.2d 325 (1982).

For discussion of culpable mental states relating to violation of fish and game laws, see Reynolds v. State, Ct. App. Op. No. 182 (File No. 6432), 655 P.2d 1313 (1982).

Sec. 11.81.615. Offenses defined by age or value. Whenever a provision of law defining an offense requires a determination of the age of the victim or the value of property or services, it is not a defense to the lowest class of offense established by the evidence that the age of the victim is less than the age which would make the offense a higher class of offense or that the value of the property or services exceeds the value which would make the offense a higher class of offense, and a person may be charged and convicted accordingly. (§ 10 ch 166 SLA 1978)

NOTES TO DECISIONS

Restitution based on actual loss. — Where a defendant is charged with a lesser offense but the evidence establishes that he committed a greater offense, a restitutionary award based on the actual loss to the victim is appropriate, even though the loss exceeds the maximum property-value figure which defines the lesser offense. Fee v. State, Ct. App. Op. No. 187 (File No. 6951), 656 P.2d 1202 (1982).

Sec. 11.81.620. Effect of ignorance or mistake upon liability. (a) Knowledge, recklessness, or criminal negligence as to whether conduct constitutes an offense, or knowledge, recklessness, or criminal negligence as to the existence, meaning, or application of the provision of law defining an offense, is not an element of an offense unless the provision of law clearly so provides. Use of the phrase "intent to commit a crime", "intent to promote or facilitate the commission of a crime", or like terminology in a provision of law does not require that the defendant act with a culpable mental state as to the criminality of the conduct that is the object of the defendant's intent.

(b) A person is not relieved of criminal liability for conduct because the person engages in the conduct under a mistaken belief of fact, unless

(1) the factual mistake is a reasonable one that negates the culpable mental state required for the commission of the offense;

(2) the provision of law defining the offense or a related provision of law expressly provides that the factual mistake constitutes a defense or exemption; or

(3) the factual mistake is a reasonable one that supports a defense of justification as provided in AS 11.81.320 — 11.81.430. (§ 10 ch 166 SLA 1978; am § 28 ch 102 SLA 1980)

Effect of amendments. — The 1980 amendment inserted "is a reasonable one that" following "the factual mistake" near the beginning of paragraph (1) of subsection (b), and substituted "a reasonable one" for "of a kind" following "the factual mistake is" near the beginning of paragraph (3) of subsection (b).

Sec. 11.81.630. Intoxication as a defense. Voluntary intoxication is not a defense to a prosecution for an offense, but evidence that the defendant was intoxicated may be offered whenever it is relevant to negate an element of the offense that requires that the defendant intentionally cause a result. (§ 10 ch 166 SLA 1978)

NOTES TO DECISIONS

All intoxication is voluntary unless unknowingly or externally compelled. Evans v. State, Sup. Ct. Op. No. 2505 (File No. 4086), 645 P.2d 155 (1982).

Voluntary intoxication will not support insanity defense. Evans v. State, Sup. Ct. Op. No. 2505 (File No. 4086), 645 P.2d 155 (1982), overruling McIntyre v. State, Sup. Ct. Op. No. 136 (File No. 244), 379 P.2d 615 (1963); McKinney v. State, Sup. Ct. Op. No. 1451 (File No. 2758), 566 P.2d 653 (1977); O'Leary v. State, Sup. Ct. Op. No. 2003 (File No. 2466), 604 P.2d 1099 (1979) insofar as they were contrary to the holding that the accused's voluntary state of intoxication is irrelevant to the issue of insanity.

Addiction to drugs. — Evidence that the defendant was a heroin addict before and after committing the offenses is not sufficient to raise a defense of intoxication. There must be proof that he committed the criminal act while in a state of intoxication before he can avail himself of the defense. Pascoe v. State, Sup. Ct. Op. No. 2249 (File No. 4290), 628 P.2d 547 (1980).

Intoxication considered as to specific intent. — Under former AS 11.70.030, intoxication could be considered as to intent only when the intent required was so-called specific intent. Kimoktoak v. State, Sup. Ct. Op. No. 1704 (File No. 3177), 584 P.2d 25 (1978), decided under former AS 11.30.070.

And where purpose or motive was criminal element. — Former AS 11.70.030 permitted a jury to consider intoxication where purpose or motive was an element of the crime charged. Kimoktoak v. State, Sup. Ct. Op. No. 1704 (File No. 3177), 584 P.2d 25 (1978), decided under former AS 11.30.070.

Knowledge. — Where one is charged with failure to render assistance under AS 28.35.060, and where there is evidence of intoxication, the jury may consider the fact that the accused was intoxicated in determining whether he had the requisite knowledge. Kimoktoak v. State, Sup. Ct. Op. No. 1704 (File No. 3177), 584 P.2d 25 (1978), decided under former AS 11.30.070.

Intoxication is not a defense to second-degree murder, since evidence of intoxication is relevant only in regard to an offense involving intention to cause a result (AS 11.81.630), and second-degree murder is an offense in which the culpable mental state pertaining to the result ("death") is imputed to be recklessness. Neitzel v. State, Ct. App. Op. No. 172 (File No. 6243), 655 P.2d 325 (1982).

Nor to be considered in determining recklessness of conduct. — Due process is not violated by the provision in AS 11.81.900(a)(3) that intoxication is not to

AS 22.20.020

THE QUESTION OF THE DISQUALIFICATION OF A JUDGE BECAUSE OF A RELATIONSHIP TO A PARTY IN LITIGATION BEFORE THE JUDGE IS CONSIDERED.

The Supreme Court of Alaska held that under a law requiring a judge to disqualify himself when he is related to a "party" to litigation before him, if the person is not a named party, but merely the business associate of a named party, the judge is not required to disqualify himself in that case. The Court interpreted sec. 20 as an "objective test" but noted that in 1974, Congress decided that disqualification is appropriate as to the Federal judiciary "when a relative has an interest that could be affected" by the litigation and Congress required disqualification in these cases. The Court then stated: "While making this a required ground for disqualification may be a sound measure, the Alaska legislature has not, as yet, chosen to do so." Blake v. Gilbert, 702 P.2d 631.

Review is recommended.

NOTES TO DECISIONS

Magistrates are "judges of other courts" within the meaning of Alaska Const., art. IV, § 4. Buckalew v. Holloway, Sup. Ct. Op. No. 1988 (File No. 4058), 604 P.2d 240 (1979).

Applied in Larson v. State, Sup. Ct. Op. No. 1430 (File No. 2433), 564 P.2d 365 (1977).

Sec. 22.20.020. Disqualification of judicial officer for cause. (a) A judicial officer may not act as such in a court of which the judicial officer is a member in an action in which

(1) the judicial officer is a party or is directly interested;

(2) the judicial officer was not present and sitting as a member of the court at the hearing of a matter submitted for its decision;

(3) the judicial officer is a material witness;

(4) the judicial officer is related to either party by consanguinity or affinity within the third degree;

(5) either party has retained the judicial officer as their attorney or has been professionally counseled by him in any matter within two years preceding the filing of the action;

(6) the judicial officer feels that, for any reason, a fair and impartial decision cannot be given.

(b) In an action specified in (a) (4) and (5) of this section the disqualification may be waived by the parties and is waived unless a party raises the objection.

(c) If a judicial officer disqualifies himself or herself or consents to disqualification, the presiding judge of the district shall immediately transfer the action to another judge of that district to which the objections of the parties do not apply or are least applicable and if there is no such judge, the chief justice of the supreme court shall assign a judge for the hearing or trial of the action. If a judicial officer denies disqualification the question shall be heard and determined by another judge assigned for the purpose by the presiding judge of the next higher level of courts or, if none, by the other members of the supreme court. The hearing may be ex parte and without notice to the parties or judge. (§ 24-2-1 ACLA 1949; am § 1 ch 48 SLA 1967)

Cross references. — For other statutory provisions concerning disqualification of judges, see AS 22.30.070 (a). As to when a judge should disqualify himself, see Canon 3C of the Code of Judicial Conduct.

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Legislative history reports. — For report on ch. 48, SLA 1967 (SB 66), see 1967 House Journal, p. 311.

NOTES TO DECISIONS

I. GENERAL CONSIDERATION.

The right of an impartial tribunal is embodied in this section. Amidon v. State, Sup. Ct. Op. No. 1999 (File No. 3664), 604 P.2d 575 (1979).

The fact that a judge, as a trier of fact in a pretrial motion, found defendant's testimony "not believable" does not in itself preclude his presiding at the subsequent trial. Coffey v. State, Sup. Ct. Op. No. 1732 (File No. 3002), 585 P.2d 514 (1978), modified on rehearing on other grounds, 596 P.2d 10 (1979).

Defendant to request appointment of another judge for disqualification question. — Under subsection (c) of this section, it is incumbent on defendant to request the chief justice, as presiding judge of the next higher court, to appoint another judge to determine the question of disqualification. Coffey v. State, Sup. Ct. Op. No. 1732 (File No. 3002), 585 P.2d 514 (1978), modified on rehearing on other grounds, 596 P.2d 10 (1979).

Where no request was made to appoint another judge to determine the disqualification question, the fact that defendant was faced with imminent commencement of trial did not justify his failure to pursue his rights under subsection (c) of this section since the entrapment ruling which provided the basis for the allegation of bias was entered nearly three months before trial. Coffey v. State, Sup. Ct. Op. No. 1732 (File No. 3002), 585 P.2d 514 (1978), modified on rehearing on other grounds, 596 P.2d 10 (1979).

Quoted in Wamser v. State, Sup. Ct. Op. No. 1768 (File No. 4166), 587 P.2d 232 (1978).

Cited in Peterson v. State, Sup. Ct. Op. No. 1411 (File No. 2642), 562 P.2d 1350 (1977); Halligan v. State, Sup. Ct. Op. No. 2299 (File No. 5035), 624 P.2d 281 (1981); Deivert v. Oseira, Sup. Ct. Op. No. 2357 (File No. 4910), 628 P.2d 575 (1981).

II. BASES FOR DISQUALIFICATION.

A. Paragraph (a)(2).

Issuing orders based on both live and recorded testimony. — Where, in a superior court proceeding to terminate parental rights in which the judge sat as the trier of fact, one judge presided over the first part of the adjudication hearing, observed the testimony of two of the state's witnesses, and neither made written findings of fact or conclusions of law with respect to this testimony, nor entered an adjudication order; and another judge presided over the continuation of the hearing, observed the testimony of one witness for the state, listened to the tape recorded testimony given before the first judge, and on the basis of both the recorded and live testimony, issued both the order adjudicating the child a neglected child and the order of disposition, the supreme court noted that the terms of paragraph (a)(2) of this section might prohibit the practice adopted by the superior court. In re C.L.T., Sup. Ct. Op. No. 1866 (File No. 3607), 597 P.2d 518 (1979).

B. Paragraph (a)(5).

The purposes of paragraph (a)(5) are to ensure the actual impartiality of a judge and to eliminate any possible appearance or suspicion of bias, thereby preserving the integrity of the judicial process and the confidence of the public. Keel v. State, Sup. Ct. Op. No. 1290 (File No. 2883), 552 P.2d 155 (1976).

By expanding paragraph (a)(5) in 1967, Alaska's legislature evidenced concern about a somewhat distinct problem: namely, that any professional relationship between a judge and one of the parties, formed or nurtured in any manner during the months preceding the judge's elevation to the bench, might create a risk of partiality or the appearance of partiality. Keel v. State, Sup. Ct. Op. No. 1290 (File No. 2883), 552 P.2d 155 (1976).

Disqualification where judge previously employed by state government. — The legislature did not intend, in enacting paragraph (a)(5), to disqualify a judge because of his prior employment by the state government from all cases in which the state appears as a party during the prohibited period of time. Keel v. State, Sup. Ct. Op. No. 1290 (File No. 2883), 552 P.2d 155 (1976).

Superior court judge who had been employed as an assistant district attorney was not disqualified in a case brought by the state against a defendant where there was no possibility that he might have learned of the facts of the alleged crime while serving in his prosecu-

torial role. Keel v. State, Sup. Ct. Op. No. 1290 (File No. 2883), 552 P.2d 155 (1976).

C. Paragraph (a)(6).

Maintenance of appearance of impartiality. — Paragraph (a)(6) of this section does not provide for disqualification where the sole concern is maintenance of the appearance of impartiality. However, in light of the importance of promoting public confidence in the integrity and impartiality of the judiciary, it would be well to permit disqualification under such circumstances. Amidon v. State, Sup. Ct. Op. No. 1999 (File No. 3664), 604 P.2d 575 (1979).

Review of decisions under paragraph (a)(6). — The supreme court rejected the argument that the disqualification standards under paragraph (a)(6) are wholly subjective and therefore not amenable to appellate review. Clearly, review is contemplated on a challenge for cause grounded in bias. The supreme court's duty to assure that judicial proceedings comply with due process mandates appellate scrutiny of allegations of bias. Coffey v. State, Sup. Ct. Op. No. 1732 (File No. 3002), 585 P.2d 514 (1978), modified on rehearing on other grounds, 596 P.2d 10 (1979).

Since the initial determination under paragraph (a)(6) of this section has been placed in the discretion of the trial judge, that judge's decision should be given substantial weight. When the judge does not recuse himself or herself, the decision should be reviewable on appeal only if it amounted to an abuse of discretion. Amidon v. State, Sup. Ct. Op. No. 1999 (File No. 3664), 604 P.2d 575 (1979).

Collateral references. — Disqualification of judge by relative's ownership of stock in corporation which is a party to action. 8 ALR 295; 110 ALR 472.

Right of party in course of litigation to challenge title or authority of judge. 114 ALR 1207.

Disqualification of judge in pending case as subject to revocation or removal. 162 ALR 641.

Relation of judge to one who is party in an official or representative capacity as disqualification. 10 ALR2d 1307.

Mandamus as remedy to compel assertedly disqualified judge to recuse self or to certify his disqualification. 45 ALR2d 937.

Relationship to attorney as disqualifying judge. 50 ALR2d 143.

Disqualification of judge in proceedings to punish contempt against or involving himself or court of which he is a member. 64 ALR2d 600.

Prior representation or activity as attorney or counsel as disqualifying judge. ALR2d 443.

Time for asserting disqualification. ALR2d 1238.

Intervenor's right to disqualify judge. 92 ALR2d 1110.

Disqualification of judge for bias against counsel for litigant. 23 ALR3d 1416.

Disqualification of original trial judge to sit on retrial after reversal or mistrial. 60 ALR3d 176.

Disqualification of judge by state, in criminal case, for bias or prejudice. 68 ALR3d 509.

Membership in fraternal or social club or order affected by a case as ground for disqualification of judge. 75 ALR3d 1021.

Sec. 22.20.022. Peremptory disqualification of a superior court judge. (a) If a party or a party's attorney in a district court action or a superior court action, civil or criminal, files an affidavit alleging under oath the belief that a fair and impartial trial cannot be obtained, the presiding district court or superior court judge, respectively, shall at once, and without requiring proof, assign the action to another judge of the appropriate court in that district, or if there is none, the chief justice of the supreme court shall assign a judge for the hearing or trial of the action. The affidavit shall contain a statement that it is made in good faith and not for the purpose of delay.

(b) No judge or court may punish a person for contempt for making, filing or presenting the affidavit provided for in this section, or a motion founded on the affidavit.

AS 28.35.230(b)
AS 28.15.011(a)

THE LAW COVERING THE PROSECUTION OF A PERSON FOR DRIVING WHILE OPERATING PRIVILEGES ARE SUSPENDED (DWLS) IS EXAMINED WHEN THE PERSON WAS WITHOUT A VALID DRIVER'S LICENSE FROM ANY JURISDICTION.

The Court of Appeals of Alaska held that no present law effectively permitted the prosecution for driving while operator's license was suspended (AS 28.15.291) of a person who had no valid driver's license from this state or any other. The court noted that it was similar to the situation of the 15 year old; the minor could not be prosecuted for driving while his license was suspended if he had no suspended license. Francis v. Anchorage, 641 P.2d 226 (Alaska App. 1982). Finally, the court noted: "We are not insensitive to the fact that the current statutory scheme governing the suspension of driver's licenses and the offense of DWLS, as interpreted by this court in Francis, may in certain instances lead to undesirable results. * * * At this stage, we believe that the solution for any problems stemming from the current statutory language should properly be resolved through legislative action rather than by the process of judicial interpretation." The court further noted that the New York legislature has expressly provided for suspension of the privilege of obtaining a license; for the purposes of DWLS, the New York law defines an expired license as a license. Roberts v. State, 700 P.2d 815.

Review is recommended.

Chapter 15. Drivers' Licenses.

Collateral references. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 96 et seq.

60 C.J.S., Motor Vehicles, §§ 146 to 164.50.

Article 1. Issuance, Expiration and Renewal of Licenses.

Sec. 28.15.010. License required. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.011. Drivers must be licensed. (a) A person may not be denied the privilege to drive a motor vehicle upon a highway in this state, except as prescribed by law.

(b) Every person exercising the person's privilege to drive, or exercising any degree of physical control of a motor vehicle upon a highway, vehicular way or area, or other public property in this state, is required to have in the possession of the person a valid Alaska driver's license issued under the provisions of this chapter for the type or class of vehicle driven, unless expressly exempted by law from this requirement.

(c) A person licensed under the provisions of this chapter may exercise in this state the privilege to drive a motor vehicle and is subject to the restrictions prescribed by this chapter. A municipality may not require a person to obtain any other driver's license to drive or operate a motor vehicle in this state. (§ 19 ch 178 SLA 1978)

or it must meet lighting and audible signalling requirements of law for law enforcement vehicles. If the peace officer is not driving or operating a vehicle or motor vehicle, or operating an aircraft or watercraft, the officer shall wear the uniform of office or display a badge or other symbol of authority so as to be reasonably identifiable as a peace officer.

(c) A person who knowingly fails to stop in violation of (a) of this section is guilty of a class B misdemeanor.

(d) In this section

(1) "lawful purpose" includes making an arrest or issuing a citation, preventing personal injury or property damage in an emergency, and investigating a situation when the peace officer has a reasonable suspicion that imminent public danger exists or that serious harm has recently occurred;

(2) "signal" means a hand motion, audible mechanical or electronic noise device, visual light device, or combination of them, used in a manner that a reasonable person would understand to mean that the peace officer intends that the person stop. (§ 1 ch 66 SLA 1984)

Sec. 28.35.190. Penalty for violation of certain sections. [Repealed, § 47 ch 32 SLA 1971.]

Sec. 28.35.200. Unlawful operation of vehicles. [Repealed, § 20 ch 241 SLA 1976.]

Sec. 28.35.210. Seizure of unsafe or defectively equipped vehicles. [Repealed by implication by AS 28.05.091, enacted by § 6 ch 178 SLA 1978.]

Sec. 28.35.220. Action by state for damages. [Repealed, § 20 ch 241 SLA 1976.]

Sec. 28.35.225. Enforcement. All law enforcement officers in this state and employees of the department designated by the commissioner shall enforce this title and regulations adopted under this title. The state troopers shall advise and instruct all other law enforcement officers in the state concerning the requirements of this title and regulations adopted under this title. (§ 11 ch 241 SLA 1976; am § 7 ch 54 SLA 1979)

Sec. 28.35.230. [Renumbered as AS 28.40.050.]

Sec. 28.35.240. Duty to obey school patrol. [Repealed, § 3 ch 68 SLA 1964.]

Sec. 28.35.245. Motorcycle helmet. (a) After January 1, 1978, motorcycle helmets may not be manufactured or sold in Alaska that do not conform to standards established by regulation by the commissioner of public safety. The regulations shall provide for helmets that allow normal peripheral vision and hearing and minimize neck injuries

to the wearer potentially caused by the helmet. The adoption of these regulations shall be under the provisions of the Administrative Procedure Act (AS 44.62).

(b) A person who has reached the age of majority as defined by AS 25.20.010 may not be required to wear a helmet while operating a motorcycle if the person is the holder of a license which, under regulations adopted under AS 28.15.041, is classified singly as a license to operate a motorcycle. (§ 1 ch 230 SLA 1976)

Collateral references. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 210.

Sec. 28.35.250. Application of law. [Repealed, § 20 ch 241 SLA 1976.]

Sec. 28.35.260. [Renumbered as AS 28.40.100.]

Sec. 28.35.270. [Renumbered as AS 28.40.110.]

Chapter 40. General Provisions.

Sec. 28.40.050. Penalty for violations of law, regulations, and municipal ordinances. (a) It is a misdemeanor for a person to violate a provision of this title unless the violation is by this title or other law declared to be a felony or an infraction.

(b) A person convicted of a misdemeanor for a violation of a provision of this title for which another penalty is not specifically provided is punishable by a fine of not more than $500, or by imprisonment for not more than 90 days, or by both. In addition, the privilege to drive or the registration of vehicles may be suspended or revoked.

(c) Unless otherwise specified by law a person convicted of a violation of a regulation adopted under this title, or a municipal ordinance regulating vehicles or traffic when the municipal ordinance does not correspond to a provision of this title, is guilty of an infraction and is punishable by a fine not to exceed $300.

(d) An infraction, as provided for in (c) of this section, is not considered a criminal offense and may not result in imprisonment, nor is a fine imposed for the commission of an infraction considered a penal or criminal punishment; nor may the commission of a single infraction result in the loss of a driver's license or privilege to drive in this state except as may result from the accumulation of points under AS 28.15.221 — 28.15.261, or the registration of vehicles; nor does a person cited with an infraction have a right to trial by jury or to court-appointed counsel.

(e) Notwithstanding the maximum fine provided for infractions under (c) of this section, for the violation of regulations or special permits issued governing vehicle weight limits, overweight penalties shall be imposed at the rate of five cents for each pound of weight over the authorized weight limit for that vehicle. (§ 50-1-8 ACLA 1949; am § 12 ch 241 SLA 1976; am §§ 22, 23 ch 144 SLA 1977)

Revisor's notes. — Formerly AS 28.35.230. Renumbered in 1984.

NOTES TO DECISIONS

This section governs the penalties for violations of this title, and creates three categories of traffic offenses: felonies, misdemeanors and infractions. State v. Clayton, Sup. Ct. Op. No. 1734 (File No. 3983), 584 P.2d 1111 (1978).

Violations of AS 28.35.050(a) are punishable under this section. Drahosh v. State, Sup. Ct. Op. No. 485 (File No. 849), 442 P.2d 44 (1968).

Meaning of "law" in subsection (c). — The term "law," as used in subsection (c) of this section, refers to statutory enactments of the Alaska legislature and cannot be read to include the provisions of municipal ordinances. Anderson v. Municipality of Anchorage, Ct. App. Op. No. 89 (File No. 5318), 645 P.2d 205 (1982).

Nature of "correspondence" between ordinance and statute required by subsection (c). — The requirement of correspondence stated in subsection (c) of this section calls for a level of similarity between a municipal ordinance and a provision of AS 28 that would make the ordinance a functional equivalent of its statutory counterpart. Anderson v. Municipality of Anchorage, Ct. App. Op. No. 89 (File No. 5318), 645 P.2d 205 (1982).

The legislature's purpose in enacting subsection (d) was to eliminate the criminal stigma from minor traffic offenses while keeping the enforcement of such offenses within the criminal system's procedures. State v. Clayton, Sup. Ct. Op. No. 1734 (File No. 3983), 584 P.2d 1111 (1978).

A prosecution for a traffic infraction is a quasi-criminal proceeding to which certain criminal procedures including the issuance of warrants are applicable. State v. Clayton, Sup. Ct. Op. No. 1734 (File No. 3983), 584 P.2d 1111 (1978).

Although the language in subsection (d) with regard to an infraction not being considered a criminal offense nor a fine therefor a criminal punishment indicates that the legislature did not intend to make minor traffic offenses criminal offenses, it does not follow that the legislature by labeling infractions "noncriminal" meant that they are civil in nature and thus that criminal procedures are not available for the enforcement of infractions. State v. Clayton, Sup. Ct. Op. No. 1734 (File No. 3983), 584 P.2d 1111 (1978).

Notwithstanding the legislative labeling of a traffic infraction a noncriminal offense by this section, it retains many criminal terms, such as "convicted," "violation," "guilty," and "punishable by a fine." State v. Clayton, Sup. Ct. Op. No. 1734 (File No. 3983), 584 P.2d 1111 (1978).

An infraction is not an offense for double jeopardy purposes. Carlson v. State, Ct. App. Op. No. 339 (File No. 7338), 676 P.2d 603 (1984).

Jury trial. — AS 28.10.105(a) and the other registration statutes in pari materia do not specify a violation of the registration statutes as an infraction, and thus under this section, such a violation is a misdemeanor punishable by up to 90 days' imprisonment, and entitling a defendant to a jury trial, denial of which right constitutes prejudicial error, requiring a new trial. Epperly v. State, Ct. App. Op. No. 111 (File No. 659[illegible], 648 P.2d 609 (1982).

Traditional use of criminal process not affected. — In the absence of express contrary declaration, the legislature did not intend by the enactment of subsection (d) to affect the traditional use of the criminal process for enforcement of traffic infractions. State v. Clayton, Sup. Ct. Op. No. 1734 (File No. 3983), 584 P.2d 1111 (1978).

This section makes no changes in the traditional mode of proceeding in criminal matters with the exception of its declaration that a person cited with an infraction does not have a right to trial by jury

or to court-appointed counsel. The action is brought in the name of the state; it is commenced by the filing of a complaint by a law enforcement official; it is prosecuted by the district attorney. The exceptions appear to merely codify existing constitutional law. State v. Clayton, Sup. Ct. Op. No. 1734 (File No. 3983), 584 P.2d 1111 (1978).

Applied in Manderson v. State, Ct. App. Op. No. 198 (File No. 6894), 655 P.2d 1320 (1983).

Stated in Francis v. Municipality of Anchorage, Ct. App. Op. No. 70 (File No. 5659), 641 P.2d 226 (1982).

Cited in Lowry v. State, Ct. App. Op. No. 181 (File Nos. 6328, 6434), 655 P.2d 780 (1982).

Collateral references. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 204.

61A C.J.S., Motor Vehicles, §§ 588 to 595.

Sec. 28.40.100. Definitions for title. (a) Unless otherwise specifically defined or unless the context otherwise requires, in this title and in regulations adopted under this title

(1) "cancel" means the annulment or termination by formal action of the department of a certification, registration, license, permit or privilege issued or allowed under this title or regulations adopted under this title, because of an error or defect in the document issued or the application for issuance or because the person holding the document is no longer entitled to it;

(2) "commissioner" means the commissioner of public safety;

(3) "department" means the Department of Public Safety;

(4) "driver" means a person who drives or is in actual physical control of a vehicle;

(5) "driver's license", or "license" when used in relation to driver licensing, means a license, permit or privilege, whether or not a person holds a valid license issued in this or another jurisdiction, to drive a motor vehicle under the laws of this state;

(6) "highway" means the entire width between the boundary lines of every way that is publicly maintained when a part of it is open to the public for purposes of vehicular travel, including but not limited to every street and the Alaska state marine highway system but not vehicular ways or areas;

(7) "motor vehicle" means a vehicle which is self-propelled except a vehicle moved by human or animal power;

(8) "motorcycle" means a vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground; the term does not include a tractor;

(9) "motor-driven cycle" means a motorcycle, motor scooter, motorized bicycle, or similar conveyance with a motor attached and having an engine with less than 150 cubic centimeters of displacement or with not to exceed five brake-horsepower;

(10) "municipality" means a home rule or general law borough or city including, but not limited to, a unified municipality organized under AS 29.68;

AS 12.25.150(b) THE RIGHTS OF AN ARRESTEE UNDER A BURDEN TO TAKE A BREATHALYZER TEST TO COMMUNICATE AND VISIT WITH AN ATTORNEY ARE DISCUSSED.

The Court of Appeals of Alaska held that the police have no obligation to interrupt or delay a breathalyzer test to permit the arrestee to consult with his attorney who had just arrived. "In so doing, we are not unaware of the provision in AS 12.25.150(b) which expressly provides for an immediate visit with counsel following arrest. We do not construe the statute to give an arrestee who has spoken with counsel by telephone and had a reasonable opportunity to speak with him, a right to delay administration of the breathalyzer examination to permit further consultation." The court apparently concluded that the breathalyzer test was given before the attorney arrived. Municipality of Anchorage v. Marrs, 694 P.2d 1163.

The law cited gives both the "right to telephone or otherwise communicate" and the "right to (have an attorney) immediately visit" the arrestee. Review is recommended.

AS 12.25.150(b) THE RIGHTS OF A PERSON ARRESTED FOR DRIVING WHILE INTOXICATED ARE DISCUSSED.

The Court of Appeals of Alaska held that it is only where the totality of the arrestee's words constitute a request, express or implied, for an opportunity to contact counsel for the purpose of discussing a breathalyzer examination that an opportunity to consult counsel must be provided before the administration of the breathalyzer. The court held that the trial court's conclusion that the arrestee did not "properly" invoke his rights was permissible and therefore the results of the breathalyzer examination need not be suppressed. Van Wormer v. State, 699 P.2d 895.

In a footnote, the court stated, in part: "Our decision in this case depends in large part on Anchorage v. Geber, 592 P.2d 1187 (Alaska 1979), in which the supreme court held that a person arrested for DWI need not be informed of the right to contact counsel before submitting to a breath test. We note, nevertheless, that the time may be ripe for the supreme court to reexamine the continued vitality of its Geber holding. Geber was decided four year's before Copelin v. State, 659 P.2d 1206 (Alaska 1983), which for the first time firmly established an arrestee's right to contact counsel before submitting to a breath test. Moreover, at the time Geber was decided, an individual's refusal to submit to a breath test was not yet subject to criminal prosecution by the state. * * * Both the establishment of the right to

contact counsel and the advent of statewide criminal prosecution of breath tests refusals have immeasurably increased the significance of informing an arrestee of the right to contact counsel. Each person arrested for DWI is required to choose between taking and refusing a breath test. In effect, an incorrect choice results in the commission of a new crime. In these circumstances, advising an arrestee of the right to contact counsel will often be the only way to assure that the arrestee does not, through a mistake or misunderstanding as to what the law requires, commit yet another offense. * * * Adoption by the supreme court of a rule requiring DWI arrestees to be informed of their right to contact counsel may now be justified "

Review is recommended.

Sec. 12.25.110. Breaking open building or vessel to liberate. A peace officer may break open a building or vessel to liberate a person who entered to make an arrest and is detained, or to liberate oneself when necessary. (§ 2.12 ch 34 SLA 1962)

Sec. 12.25.120. Retaking escaped prisoner. If a person arrested escapes or is rescued, the person from whose custody that person escaped or was rescued may immediately pursue and retake that person at any time and in any place in the state. (§ 2.13 ch 34 SLA 1962)

Sec. 12.25.130. Means usable to retake prisoner. [Repealed, § 21 ch 166 SLA 1978. For present provisions, see AS 11.81.370 — 11.81.390.]

Sec. 12.25.140. Property taken from defendant on arrest. When money or other property is taken from a person arrested upon a charge of a crime, the officer taking it shall immediately make duplicate receipts for the property, specifying particularly the amount of money or kind of property taken. The officer shall deliver one receipt to the person arrested and the other to the judge or magistrate who examines the charge or, if the arrest is after the information or indictment, to the clerk of the court where the action is pending. (§ 2.15 ch 34 SLA 1962; am § 9 ch 8 SLA 1971)

Legislative history reports. — For report on ch. 8, SLA 1971 (HB 15), see 1971 House Journal, p. 52.

Sec. 12.25.150. Rights of prisoner after arrest. (a) A person arrested shall be taken before a judge or magistrate without unnecessary delay, and in any event within 24 hours after arrest, including Sundays and holidays. This requirement applies to municipal police officers to the same extent as it does to state troopers.

(b) Immediately after an arrest, a prisoner shall have the right to telephone or otherwise communicate with the prisoner's attorney and any relative or friend, and any attorney at law entitled to practice in the courts of Alaska shall, at the request of the prisoner or any relative or friends of the prisoner, have the right to immediately visit the person arrested.

(c) It shall be unlawful for an officer having custody of a person so arrested to wilfully refuse or neglect to grant the prisoner the rights provided by this section. A violation of this section is a misdemeanor, and, upon conviction, the offender is punishable by a fine of not more than $100, or by imprisonment for not more than 30 days, or by both.

(d) In addition to the criminal liability in (c) of this section, an officer having a prisoner in custody who refuses to allow an attorney to visit the prisoner when proper application is made therefor shall forfeit and pay to the party aggrieved the sum of $500, recoverable in a court of competent jurisdiction. (§ 2.16 ch 34 SLA 1962; am § 10 ch 8 SLA 1971; am § 2 ch 31 SLA 1973; am § 18 ch 127 SLA 1974)

Sec. 12.25.100. Breaking into building or vessel to effect arrest.

NOTES TO DECISIONS

Conduct constituting substantial compliance.

Though the "knock and announce" rule requires that the police announce their authority and purpose before breaking into dwellings to execute a search warrant, there was substantial compliance with the "knock and announce" sections where the defendant had called the police to turn herself in for possessing over five pounds of marijuana, she refused to admit the police when they arrived, the police staked out her house while they acted to secure a warrant, they knocked on the door after securing the warrant, announced "It's the police," waited approximately a minute without getting a response, and forced open the door. Fleener v. State, Ct. App. Op. No. 396 (File No. A-9), 686 P.2d 730 (1984).

Sec. 12.25.150. Rights of prisoner after arrest.

NOTES TO DECISIONS

III. RIGHT TO CONTACT ATTORNEY.

Right of driving while intoxicated suspect to contact attorney. — Phone conversation with the public defender constituted contact with an attorney under Copelin. Pappas v. Municipality of Anchorage, Ct. App. Op. No. 470 (File No. A-170), P.2d (1985).

Right to private consultation with a lawyer was not abrogated during a phone call with the public defender even though the police officer could overhear the suspect due to his yelling and shouting. Pappas v. Municipality of Anchorage, Ct. App. Op. No. 470 (File No. A-170), P.2d (1985).

A DWI suspect cannot be forced to contact an attorney chosen by the police; but where the suspect agreed to speak with the public defender, argument that if the suspect is dissatisfied with an attorney he has agreed to speak with, he should be permitted another opportunity to contact counsel was foreclosed where the suspect never requested a specific attorney or even asked to see a phone book. Pappas v. Municipality of Anchorage, Ct. App. Op. No. 470 (File No. A-170), P.2d (1985).

Right to counsel before breathalyzer test.

It is only where the totality of the arrestee's words constitute a request, express or implied, for an opportunity to contact counsel for the purpose of discussing a breathalyzer examination that an opportunity to consult counsel must be provided prior to administration of the breathalyzer. Once the breathalyzer examination is completed or refused and videotaping finished, the suspect is entitled to the full use of the rights guaranteed by subsection (b) and Criminal Rule 5(b). Van Wormer v. State, Ct. App. Op. No. 473 (File No. A-320), P.2d (1985), summarizing Copelin v. State, 659 P.2d 1206 (Alaska 1983), Svedlund v. Anchorage, 671 P.2d 378 (Alaska App. 1983), and Anchorage v. Erickson, 690 P.2d 20 (Alaska App. 1984).

Where the judge determined, based on the evidence, that the DWI defendant's statements regarding having somebody present did not relate to a desire to consult with counsel about breathalyzer examinations or field sobriety test, but rather related to having someone present to observe the administration of the test, perhaps a technician, to insure its validity, the judge was not clearly erroneous in concluding that the defendant did not properly invoke his Copelin rights and that the results of the breathalyzer examination should not be suppressed. Van Wormer v. State, Ct. App. Op. No. 473 (File No. A-320), P.2d (1985). The court noted that its decision in the case depended in large part on Anchorage v. Geber, 592 P.2d 1187 (Alaska 1979), in which the supreme court held that a person arrested for DWI need not be informed of the right to contact counsel

before submitting to a breath test and further noted, that the time may be ripe for the supreme court to reexamine the continued vitality of its Geber holding.

Arrestee has no right to delay administering of breathalyzer test for further attorney consultation. — The Court of Appeals does not construe this section to give an arrestee who has spoken with counsel by phone and had a reasonable opportunity to speak with him a right to delay administration of a breathalyzer examination to permit further consultation. Municipality of Anchorage v. Marrs, Ct. App. Op. No. 440 (File No. A-352), 694 P.2d 1163 (1985).

Where a defendant had the opportunity to consult on the telephone with counsel, he received the rights guaranteed him by Copelin v. State; and the police were under no duty to delay administration of a breathalyzer examination until counsel could be present, regardless of how short a period that might, in fact, have entailed. Municipality of Anchorage v. Marrs, Ct. App. Op. No. 440 (File No. A-352), 694 P.2d 1163 (1985).

Sec. 12.25.160. Arrest defined.

NOTES TO DECISIONS

Arrest for speedy trial purposes.

Where a defendant was suspected of driving while intoxicated leading to an injury accident, was informed that he could submit to a blood test at the hospital or be arrested and transported to the state police where he would be required by law to submit to a breath test to determine his blood-alcohol level, was released after the blood sample was taken, and was never handcuffed or moved from the hospital, the trial court could find that although the defendant was in police custody, the custody never amounted to an arrest as defined in this section. Greenawalt v. Municipality of Anchorage, Ct. App. Op. No. 434 (File No. A-536), 692 P.2d 983 (1985).

Chapter 30. Bail.

Sec. 12.30.060. Violation of conditions.

NOTES TO DECISIONS

Cited in Lipscomb v. State, Ct. App. Op. No. 477 (File Nos. A-67/68), P.2d (1985).

Chapter 35. Search and Seizure.

Sec. 12.35.015. Issuance of search warrant upon testimony communicated by telephone or other means.

Revisor's notes. Criminal Rule 38.1(b), effective June 15, 1985, provides that AS 12.35.015 governs the issuance of search warrants by telephone.

RECORDS
CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

7/25/89
Date

02-519 (REV 8/78)

TELECONFERENCE WITH INMATES AT LEMON CREEK CORRECTIONAL CENTER, 3-4-85

5 TAPES OF INMATES DISCUSSING WHAT THEY WANT TO SAY TO LEGISLATORS AT TELECONFERENCE — KEPT AT END OF 1985-86 HOUSE JUDICIARY TAPES.

SOUTH EAST REGIONAL RESOURCE CENTER
S.E.R.R.C. INC.

218 Front St. Juneau, Alaska 99801
Phone: 586-6806

MEMORANDUM

TO: Representative Mike Miller, Chairman
House Judiciary Committee

FROM: Rosalee T. Walker, Coordinator
Juneau Corrections Adult Education

RE: Teleconference

The South East Regional Resource Center is the vendor to provide adult education classes for the inmates at the Lemon Creek Correctional Center in Juneau. Government and law is one of the topics that is addressed in the required Life Skills classes. As one of the activities in our class this year, the students wanted to study some of the legislative bills that have been introduced during this legislative session.

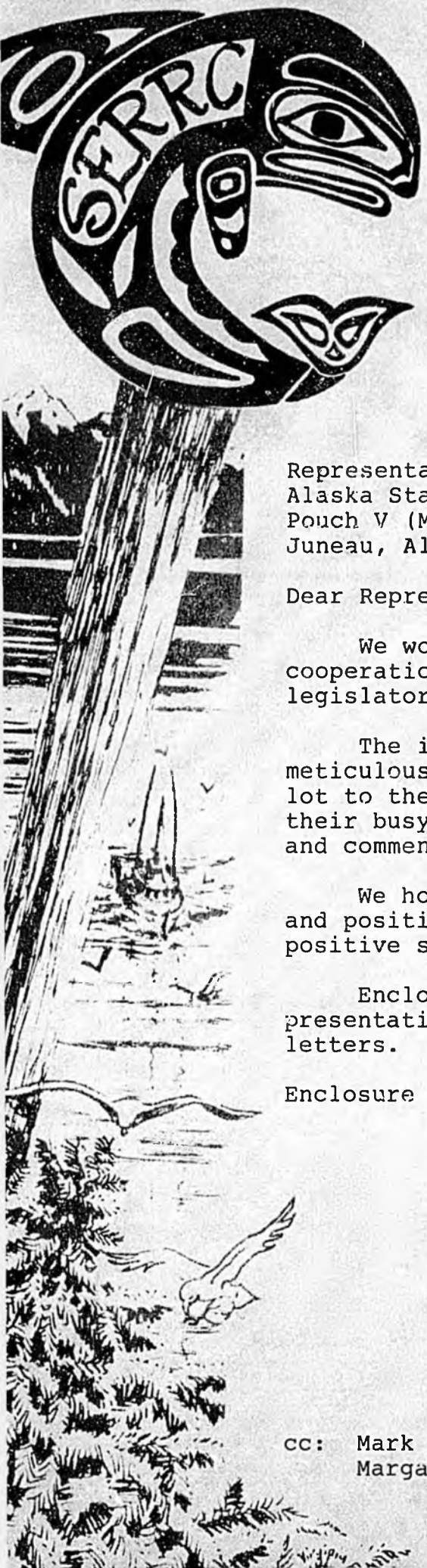
We really appreciate your giving the participants the opportunity to express their comments on the bills that are being considered.

In the selection of the participants we tried to reflect a broad spectrum, with regard to age, length of incarceration, gender, and seriousness of offense. Participants have been given the option to choose whether or not to identify themselves. For the record, however, the institution can provide any data that is requested.

Your positive consideration of this activity is very important to all of us who are involved. Again, we thank you.

cc: Mary Jo Welch, Education Coordinator - LCCC
Mark L. Hanson, Director, Juneau Adult Education
Mike Mosher, Department of Education

Satellite Center 444 Dock Street, Ketchikan, Alaska 99901
Phone (907) 225-5250



SOUTH EAST REGIONAL RESOURCE CENTER
S.E.R.R.C. INC.

218 Front St. Juneau, Alaska 99801
Phone: 586-6806

MAR 13 1985

March 6, 1985

Representative Mike Miller
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Representative Miller:

We would like to thank you for your support and cooperation with the inmate's presentation to the legislators.

The inmates who were involved worked very hard and meticulous on their presentation. It certainly meant a lot to them that these legislators took the time out of their busy schedule to come listen to their critique and comments of current legislation.

We hope there will be more of these cooperative and positive endeavors towards our efforts to develop positive skills. Again, thanks for your support.

Enclosed you will find a prepared summary of their presentation, as well as their individual thank you letters.

Enclosure

Sincerely,

Janet Underwood
Janet Underwood
ABE/GED Instructor

Rosalee T. Walker
Rosalee Walker
ABE/GED Coordinator

cc: Mark Hanson
Margaret Pugh

Satellite Center 444 Dock Street, Ketchikan, Alaska 99901
Phone (907) 225-5250

AGENDA

OPENING STATEMENT
(MICHAEL L. HUTCHINSON)

HB-187 INMATE EDUCATIONAL ADVISORY COMMITTEE.
1) ROBERT GREENE
2) DEBRA ATHAWAL

PRESUMPTIVE SENTENCING SUMMATION
Prepared by:
1) Chuck Cudmore-speaker
2) Ted Palmer

HB-85 CORRECTIONAL RESTITUTIONAL CENTERS
Prepared by:
1) Michael L. Hutchinson-speaker
2) Bill Bidwell

HB-104 COMPUTATION, FORFEITURE, RESTORATION OF STATUTORY GOOD TIME
Prepared by:
1) Michael L. Hutchinson-speaker

HB-114 CORRECTIONAL FACILITIES-IMPRISONMENT-REHABILITATION OF OFFENDERS
Prepared by: Michael L. Hutchinson & Paul Staal
1) Paul Staal-speaker

HB-119 CAPITAL PUNISHMENT. (moral statement)
Prepared by:
1) Paul Staal-speaker

HB-141 DISCRETIONARY AND MANDATORY PAROLE
Prepared by:
1) Don Huitt-speaker

CLOSING STATEMENT
(Michael L. Hutchinson

PRESUMPTIVE SENTENCING SUMMATION
Presentation-Charles Cudmore

This presentation is strictly for the purpose of giving some of our ideas and thoughts on the now existing presumptive sentencing statute. It will cover some of the problems that we as inmates see them and also a couple of suggestions that may or may not be beneficial in solving these problem areas.

There is no reason to go into all of the facets of the presumptive law, so we will try to direct our comments to specific problems.

First and most important is the problem of motivation. We feel that when a person is sentenced to a definite period of incarceration without the possibility of parole, then he or she looses all initiative to program themselves. If a person knows that the corrections system has to release them after they serve 3/4 of their sentence, then they have no reason to try to program themselves. On the other hand, should that same person know that he will be eligible for parole, then he will make an effort to start a program early in his sentence so as to be eligible for the parole board.

On the subject of overcrowding, we see more persons entering the system and less leaving. This is due primarily to the presumptive sentencing.

There are still various interpretations as to how the law was intended by the trial judges. One judge may view a particular statute differently than another.

It has not satisfied the intent of the law. It was intended to correct the disparity of sentances handed down by different judges. As in the Langton case, we see that these disparities still exist.

It takes the power and discrection out of the hands of the judges and puts it into the hands of the prosecutors. It will depend on how the DA wishes to charge a person to decide how much time that person will serve.

All of the bills we will be discussing today deal with the possibility of changing the allowance for statutory good time to be given an inmate. If this is in fact passed, the the presumptive statutes will of necessity have to be changed to coincide with that bill. If not, then it is conceivable that persons under presumptive sentencing could end up serving time that was awarded as good time.

the individual instution.

4.) Vocational programs to be offered to both male and female inmates at all coed instutions.

5.) Coed parcipitation avilable in all programs offered in all instutions throughout the state.

EDUCATIONAL BILL PRESENTATION

by Debrah Athwal/Robert Green

I. To take the power of education from corrections and give it back to the University of Alaska.
2. And make this advisory comittee something that will remain, and not come up for a dismissal. Make this a continious-ever lasting comittee.
    a.) Custody level affects programs eligibility, with regard to security.
    b.) This institutions majority population is of a close custody level.
3. Prision access to the Advisory Comittee so that the inmates can voice their concerns.
4. Staggered term for purpose of a continual board (until succors are appointed) so that the intention of the comittee is carried through.
5. Place a neutral Director over that Advisory Board.

In conclusion to the above statement, we agree to this advisory comittee being set up so that consideration will be given to Inmate Degree Programs, Vocational Programs, and Prision Industeries with regard to the inmates concerns.

PRESENT EDUCATION BILL House Bill #187

I. Governor appoints 5 members of his chioce to the board.
   1.) No previous experience necessary.
   2.) No prision administrators or inmates may preside on this board.
      A.) Civillians only?
   3.) Board only to last the length of the present Governor's appointed office term of 4 years.
   4.) New board with new administrators evey 4 years, ie, new programs also or cancellation of existing ones?

II. Existing Prision Educational Programs at L.C.C.C.
   1.) Basic G.E.D. program
   2.) First and second level college classes
      A.) No degree or certification program for the college classes offered at the present time.

III.) Documented Educational Programs which are non-existant
   1.) Vocational
      A.) Automotive Mechanics
   2.) Greenhouse (Physically existant bldg.) No student classes
      A.) Horticulture
      B.) Botany
      C.) Soil Irregation and Cultivation
      D.) Fertilization
   3.) Barber School
   4.) Cooking Instruction in kitchen
   5.) 2 year college education program

REVISED EDUCATION BILL House Bill #187

In addition to the 5 board members nominated by the Governor we would like to recommend the following amendaments:

I. An independant Certified individual with some kind of a degree in one of the following catagories:
   1.) Humanaties
   2.) Sociology
   3.) Psychology
   A.) Someone who is not a board member, nor in any way affiliated with the department of corrections, or the University of Alaska, to act as a director for both the educational programs and also for the funding appropiated for these programs and also the 5 members of the board.

II. Duties of the director to include the following:
   1;) Quartely funding audits for both the educational and Vocational training programs to insure monies alegated for these programs are spent appropiately.
   2.) The director to make themselve available on a monthly basis to both the inmates, Instituational Staff, Educational Staff and the board members in case of any problems which may arise with either any of the programs or monies appropiated for these programs.
   3.) To make sure that a list of programs that are filed as being offered at L.C.C.C. actually do in fact exsist.

III. Security ratings for inmates at L.C.C.C.
   1.) L.C.C.C. is a Multi Level Close Maxium Security Instution.
      a.) How custody rating affects the inmates educational opportunities.
      b.) Programs to be geared for a "close" security population to be able to offer them to approximatel 70-80% of the population at L.C.C.C.

IV. Suggested programs for inmates at L.C.C.C.
   1.) 4 year college program
   2.) Certification and Degrees awarded for college courses completed

As for solutions to the problem, we see only two major ways to correct it:

1. Make parole eligibility for those persons sentenced under the presumptive law.
2. Do away with the presumptives.

QUESTIONS

1. What is the status of presumptive sentencing right now?

2. What provisions for change are being considered?

3. What alternatives are being considered and how will they be implemented?

4. How would any changes enacted now affect those of us now under presumptive sentence? Would these changes be retroactive ?

THANK YOU

HB- 85 CORRECTIONAL RESTITUTIONAL CENTERS
Presentation-Michael L. Hutchinson, Bill Bidwell

If we were to assume the intention of this house bill, we would have to assume that it is designed to solve the overcrowding of the present correctional system. The wording and structure of this bill doesn't fullfil the assumed intention. Our major problem with this bill is the eligibility requirements.

Pge 1, line 15.
Should read, "term of imprisonment that <u>was imposed</u>," instead of could have been imposed.

Somewhere in this bill there should be a ceiling limitation of 36 months to participate in this program. Once a person has served a portion of his sentence, and has a remaining sentence of a tentitive release date of 36 months, and upon meeting other eligibility requirements, would therefor also be eligible for this program.

Pge. 1, line 21.
States "to determine eligibility, the court shall hold a hearing at which the defendant and the prosecution are allowed to present evidence.

This should also include in some manner that a defendant be afforded the oppurtunity for re-evaluation, for example, at approximate six (6) month intervals to determine defendants eligibility. This hearing should be held upon the request of the defendant or possibly upon the request of the commissioner of corrections.

Pge. 1, line 26.
Presently states "(1) must be employable and agree to secure employment.

We would like to add -(1) agree to secure employment within a time period of 30 to 60 days.

Pge. 2, line 1.
States (3) may not have been convicted of an offense involving violence or the use of force.

Anyone, irregardless of the nature of offense, should be afforded the oppurtunity to participate in a program such as this one, if the said defendant shows ability and worthyness in a sincere manner. This also reaffirms the requested re-evaluation time period of every six (6) months.

Pge. 2, line 16.
should state-"not to exceed the maximum term of imprisonment that was imposed"--in place of could have been imposed.

HB-85 cont.

This bill should also state that the inmate receives the standard amount of statutory good time.

1. This may be taken as being an understood factor. We would like it clarrified so that no-one would have to assume this fact; by stating that the inmate will receive statutory good time.

For inmates presently incarcerated to the care of the Division of Corrections, an eligibility hearing should be granted by the Division of Corrections as outlined by departemental procedures and regulations. Again we are re-affirming a re-evaluation hearing at approximate six (6) month intervals.

In conclusion: these are our comments and suggestions regarding House Bill 85, thank you.

HB-104 COMPUTATION, FORFEITURE, RESTORATION OF STATUTORY GOOD TIME
Presentation-Michael L. Hutchinson

I am addressing house bill 104-"an act relating to computation, forfeiture and restoration of statutory good time."

Our group as a whole have concluded that this bill is of our agreement--except for one deletion that we feel needs to be made.

Pge. 1, line 12.
Against the state should be deleted from this line.

Our reasoning behind this is so that city offenders will also receive good time. By leaving "against the state" in this house bill, you are denying municipality offenders the right to earn good time that is being afforded state offenders. This good time should include them as well.

In conclusion--we agree to the nature of this house bill, with regard to our concerns to Pge. 1, line 12. Thank You.

HB-114 CORRECTIONAL FACILITIES-IMPRISONMENT-REHABILITATION OF OFFENDERS
Presented by: Paul Staal
Prepared by: Michael L. Hutchinson & Paul Staal

Pge. 3 line 21.
Correctional facilities provided through agreement may be in this state or in another state.

We feel and believe strongly that ("may be in") should be deleted and replaced with the wording (within). Also, ("or in another state") should be deleted.

It has been outwardly voiced by the federal ~~burial~~ of prisons that they no longer wish to retain Alaska state prisoners. In fact this state is supposedly in the process of making arrangements to bring back all out of state Alaska prisoners to our own state. We may be a young state, but we are a state with many resources. Our state should carry the burden of maintaining the incarceration of our own Alaska state prisoners. Therefor we would not be sending prisoners out of state; so agreements or contracts with out of state agencies would be unnecessary.

Pge. 4, lines 5-9 sect. (d).
This whole section should be deleted from this bill, and for the same reasoning as outlined above.

Pge. 5, lines 14-17.
Should also be deleted from this bill for the same above listed reasoning. (Alaska prisoners should remain in Alaska.)

The state of Alaska is attempting to shift the burdon of Alaska to other states with regard to the housing of Alaska state prisoners. Alaska isn't facing their responsibilities. The federal government has already stated that they do not wish to enter into agreements with the state of Alaska in order to house Alaska prisoners.

Pge. 5, lines 18-24.
This section needs to be reworded to contain the following factors insome form so that the placement of a prisoner in a facility for a term of incarceration is taken into consideration.

The sentencing judge should designate a defendant in or to a correctional region that is benificial to the defendant with regards to security and programs. Apparent factors are family/community ties, programing and pending court proceedings.

HB-114 cont.

Pge. 7, line 10.
States, "the commissioner may assign a prisoner committed to the commissioners' custody to any programs established...

We prefer that on line 10, that "may assign" be deleted, and on line 11, delete the words "to any". Therefor the sentence, as we would like it to read would be; the commissioner will make available to a prisoner committed to the commissioners custody, programs established under...

Pge. 7, line 13.
We would like "and prisoners" added so that it reads: (1) safeguards to the public and prisoners.

We can see that the first concern is to protect the public, but we feel the prisoner should also be a factor with regard to employment. Safty is a factor to any employment.

Pge. 8, line 1.
Where it deals with furloughs, the subject of furloughs.

I would like to make a comment in regard to this section. I would like to stress that furloughs and programs should not be limited to just non-violent offenders. Violent crime offenders with a showing of good faith should be allowed the same oppurtunities for programing and furloughs as non-violent offenders.

Pge. 9, Victims right to comment.
We wish to basicly bring our concerns to your attention to this issue.

We agree that this is a good idea, what we want to stress is that we don't want so much weight given to the victims'opinions that it hinders the rehabilitation or rehabilitative process of the defender. The opinions should be considered--considered with respect to the rest of the information provided for deceision making factors.

Pge. 10, line 18-19. family visitations
Instead of a six month time limitation period, we would like it to read every 3 or 4 months. On a quarterly basis.

To be eligible for such furloughs, the individual prisoner would have had to shown the division of corrections that they have earned or need such a furlough. We would also like to see that the Commissioner have this authority to deceide the eligibility of an offender to participate in a furlough. Commissioners assessment according to the individuals need.

HB-cont.

Pge. 11, line 3.
An addition to this section for clarrification purposes, giving a percentage of funds for the purpose of making personal purchases.

For example, our now existing in-house commissary and special commissary, which is done through policies and procedures already established by the commissioner of corrections.

Pge. 13, line 4.
States-The commissioner may direct a prisoner to participate in a type of productive employment...

We would prefer that the words "may direct" be deleted and additions added so that this sentence would read as: (c) The commissioner will make available to a prisoner the oppurtunity to participate in a type of productive employment...

Pge 13, lines 12-13. Pay of Prison Inmates.
States at a rate determined by the commissioner.

There is a desparity in the wages between Prison Industries and in house work. We feel that it should be considered on an equal basis. If the work the prisoner is employed at, is essential to the smooth operation of the institution in a constructive manner, the pay should be equivelant to that of Prison Industry and outside work programs. Some consideration in comparison should be made.

For example--a kitchen job position receives the maximum amount of pay at 40 cents an hour. Which works out to three dollars a day. Prison Industries lowest pay is 65 cents an hour. Their highest pay is 1.15 an hour. Right off the bat you have a 25 cent difference between the lowest pay of a prison industry employee and the highest pay of a kitchen employee. I find this hard to understand, especially since the kitchen position is somuch more essential to the operation of an institution.

In conclusion on house bill 114, we have presented our objective opinions, we hope that they are benificial and worthy of your consideration. Thank you.

HB-119 CAPITOL PUNISHMENT
Prepared by: Paul Staal

We would like to go on record as being opposed to this bill.

1. The finality of a death sentence leaves no room for error.
2. It has not been shown to be a deterent.
3. It is not cost effective.
4. The poor and ninorities will be the ones to suffer such punishment because of lack of legal counsel.

It is felt that revenge is revenge, and revenge brutalizes the society, if it is okay to kill in this instance, then there will be other instances where citizens may feel its okay.

In conclusion, we feel it is bad to kill, whether it be the society or an individual in that society.

HOUSE BILL # 141

by, Donald Huitt

Hello,

My name is Donald Huitt and I am addressing House Bill #141. House Bill #141 is well written, we agree with this bill partically. There is only one specific amendment that is nedded in House Bill #141, in order for us to be in full agreement.

The amendment we would make in this bill would be on page #4, lines 15 and 16, section B.

There it reads;

"A prisioner is not eligilbe for discretionary parole if the prisioner is serving a presumptive sentence."

We believe that the amendment should in fact read;

"A prisioner is eligible for discretionary parole if the prisioner is serving a presumptive sentence, presumptive sentenced prisioners would be eligible for descretionary parole after serving 50% of their time, including good time incurred."

We believe that the adoption of this bill would:

1. Lessen the cost to the state
2. Reduce overcrowding
3. Allow judges to be more discretionary
4. Allow the prisoner a ray of hope for the future and thus give him the initiative to program himself.

Thank you

Bill Bidwell
PO Box 309
Juneau, Alaska
99801

March 6, 1985

Sir:

I wish to take this time to thank you for giving your valuable time to those of us at the Lemon Creek Correctional Center. It was a most rewarding and informative session.

Those of us in the institutions throughout the state have a lot of ideas which we feel would help iron out some of the problems in both the corrections system and the legal system. It is therefore quite an occasion when we get to personally present these ideas to a group of legislators.

I hope that you and your associates in the legislature can and will benefit from our ideas and thoughts. We would also appreciate the opportunity to voice our ideas and thoughts again to you in the future.

Again, please accept my heartfelt thanks and appreciation for the opportunity which you afforded us.

Sincerely,

Bill Bidwell

Bill Bidwell

March 5, 1985

Dear Sir:

I wish to take this opportunity to personally thank you for the time which you took out of your busy schedule and afforded to those of us at the Lemon Creek Correctional Center. I know that your time is very limited while the legislature is in session and very much appreciate the amount which you all gave to us so that we could voice our opinions on some of the issues before you.

I felt that the presentation went very well and would only hope that another chance can be afforded those of us in the correctional system to help in any way possible.

We would very much appreciate the chance to voice our opinions on other issues. Perhaps, as was mentioned at the meeting, we could make a practice of allowing inmates the option of making a comment or two on issues which affect us. We would try to do this in a sincere, intelligent manner.

Again, I wish to thank you for giving your valuable time to hear what those of us in the correctional system have to say.

Sincerely,

Charles Cudmore

Representative Mike Miller
Pouch V
Juneau, Alaska 99801

Dear Mr. Miller,

I would like to thank you for taking the time out of your busy schedule to come out to L.C.C.C. and meet with us on Monday, March 4, 1985.

I was very proud to be able to be a part of what I considered to be a very important step foreward in the relations between the correctional institutions and the state officials for the State of Alaska.

Very Respectfully Yours,

Ms. Debrah Athwal

AGENDA

OPENING STATEMENT
(MICHAEL L. HUTCHINSON)

HB-187 INMATE EDUCATIONAL ADVISORY COMMITTEE.
1) ROBERT GREENE
2) DEBRA ATHAWAL

PRESUMPTIVE SENTENCING SUMMATION
Prepared by:
1) Chuck Cudmore-speaker
2) Ted Palmer

Mike's corrections files

HB-85 CORRECTIONAL RESTITUTIONAL CENTERS
Prepared by:
1) Michael L. Hutchinson-speaker
2) Bill Bidwell

HB-104 COMPUTATION, FORFEITURE, RESTORATION OF STATUTORY GOOD TIME
Prepared by:
1) Michael L. Hutchinson-speaker

HB-114 CORRECTIONAL FACILITIES-IMPRISONMENT-REHABILITATION OF OFFENDERS
Prepared by: Michael L. Hutchinson & Paul Staal
1) Paul Staal-speaker

HB-119 CAPITAL PUNISHMENT. (moral statement)
Prepared by:
1) Paul Staal-speaker

HB-141 DISCRETIONARY AND MANDATORY PAROLE
Prepared by:
1) Don Huitt-speaker

CLOSING STATEMENT
(Michael L. Hutchinson

Presumptive Sentencing:
1. Takes away initiative to program themselves.
2. Still lots of disparity between convicts/sentences
3. Make presumptive people eligible for parole
4. Questions: Status of presumptive sentency?
How effect present convicts

CAPITAL PUNISHMENT -
oppose
"Murder is murder"

OVERCROWDING: Does presumptive
drunk driving

Introduced: 2/13/85
Referred: Health,Education &
Social Services, Judiciary and
Finance

IN THE HOUSE

BY M.M.MILLER

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 187

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the Inmate Education Advisory Council."

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

* Section 1. AS 33.30 is amended by adding new sections to read:

Sec. 33.30.400. INMATE EDUCATION ADVISORY COUNCIL ESTABLISHED. There is created in the Department of Corrections the Inmate Education Advisory Council to coordinate inmate education services.

Sec. 33.30.410. MEMBERSHIP AND TERM OF OFFICE. The council consists of five members who are appointed by and serve at the pleasure of the governor.

Sec. 33.30.420. COMPENSATION. Members of the council receive no compensation for their services but are entitled to per diem and travel allowances authorized by law for other boards and commissions.

Sec. 33.30.430. DUTIES. The council shall

(1) research and make recommendations regarding inmate education in the state's prisons;

(2) coordinate a system of inmate education that is based on the individual inmate's education level;

(3) hire the staff necessary to carry out the provisions of AS 33.30.400 - 33.30.440; and

(4) perform all acts necessary to carry out the purposes of AS 33.30.400 - 33.30.440.

Sec. 33.30.440. DEFINITION. In AS 33.30.400 - 33.30.440 "council" means the Inmate Education Advisory Council.

Introduced: 1/18/85
Referred: Health,Education & Social Services, Judiciary and Finance

IN THE HOUSE BY THE JUDICIARY COMMITTEE

HOUSE BILL NO. 85

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to correctional restitution centers."

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

* Section 1. AS 12.55.015 is amended by adding a new subsection to read:

(e) If the defendant is ordered to serve a definite term of imprisonment, the court may recommend that the defendant serve all or part of the term in a correctional restitution center. The term of service in a correctional restitution center may not exceed the maximum term of imprisonment that {was imposed could have been imposed.}

INMATES

* Sec. 2. AS 12.55 is amended by adding a new section to read:

Sec. 12.55.021. ELIGIBILITY TO SERVE TIME IN A CORRECTIONAL RESTITUTION CENTER. (a) The court may not allow a defendant to serve time in a correctional restitution center unless the court specifically finds that the defendant meets the eligibility requirements imposed by this section. To determine eligibility, the court shall hold a hearing at which the defendant and the prosecution are allowed to present evidence.

(b) To be eligible to serve time in a correctional restitution center, the defendant

within 30, 60 days

(1) must be employable and agree to secure employment and obey the rules of the center;

(2) must be an individual who otherwise would have been sentenced to imprisonment in a prison facility;

(3) may not have been convicted of an offense involving violence or the use of force, as defined in AS 11.81.900, and may not have a history of violence; in this section, violence or the use of force includes possession of a dangerous instrument, as defined in AS 11.81.900, in the commission of an offense, whether or not the dangerous instrument was actually used; and

(4) may not have been convicted of an offense under AS 11.41.410 - 11.41.470 or an offense in the state or another jurisdiction having elements substantially identical to an offense under AS 11.41.410 - 11.41.470.

* Sec. 3. AS 12.55.086(a) is amended to read:

(a) When the imposition of sentence is suspended under AS 12.55.085, the court may require, as a special condition of probation, that the defendant serve a definite term of continuous or periodic imprisonment, <u>including imprisonment in a correctional restitution center,</u> not to exceed the maximum term of imprisonment that could have been imposed.

* Sec. 4. AS 33.30 is amended by adding new sections to read:

ARTICLE 3A. CORRECTIONAL RESTITUTION CENTERS.

Sec. 33.30.282. CORRECTIONAL RESTITUTION CENTERS. (a) The commissioner shall establish correctional restitution centers in the state. The purpose of the centers is to provide certain nonviolent offenders with rehabilitation through community service and employment while protecting the community through partial incarceration of the offender.

(b) The commissioner shall adopt regulations setting standards for the operation of the centers including

(1) requirements that the centers be secure and in compliance with state and local safety laws;

(2) standards for disciplinary rules to be imposed on prisoners confined to the centers;

(3) standards for the granting of emergency absence to prisoners confined to the centers; and

(4) standards for periodic review of the performance of prisoners confined to the centers.

Sec. 33.30.284. COMMUNITY ADVISORY COMMITTEES. The commissioner shall appoint a community advisory committee for each center, to consist of five members of the community in which the center is located. The committee shall consider complaints made against prisoners confined to a center and shall make recommendations to the commissioner.

Sec. 33.30.286. DISTRIBUTION OF PRISONER'S EARNINGS. The employer of a prisoner confined to a center shall pay the prisoner's earnings to the commissioner. The commissioner shall deposit the earnings in a fund to be paid to the prisoner upon release from the center after making and distributing deductions for

(1) an amount determined by the commissioner for the cost of the housing, food, and clothing provided to the prisoner;

(2) necessary travel expenses to and from work and other incidental expenses of the prisoner;

(3) an amount determined by the court to be necessary for the support of the prisoner's dependents; and

(4) an amount determined by the court to be necessary for restitution to the victims of an offense committed by the prisoner.

Sec. 33.30.288. CONFINEMENT TO THE CENTER. (a) A prisoner shall be confined to the center at all times except while

(1) at work and traveling to and from work;

(2) attending and traveling to and from a community service

project approved by the commissioner; and

(3) on emergency absence.

(b) The commissioner may grant an emergency absence to a prisoner confined to a center to obtain medical treatment or diagnosis.

* Sec. 5. AS 33.30.900 is amended by adding a new paragraph to read:

(10) "center" means a correctional restitution center.

Introduced: 1/23/85
Referred: Health,Education &
Social Services and Judiciary

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

HOUSE BILL NO. 104

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to computation, forfeiture and restoration of statutory good time."

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

* Section 1. AS 33.20.010 is repealed and reenacted to read:

Sec. 33.20.010. COMPUTATION OF GOOD TIME. Notwithstanding AS 12.55.125(f)(3) and (g)(3), a prisoner convicted of an offense [against the state,] and sentenced to a term of imprisonment exceeding three days, who follows the rules of the correctional facility in which the prisoner is confined, is entitled to a deduction of one-third from the term of imprisonment rounded off to the nearest day.

* Sec. 2. AS 33.20.050 is amended to read:

Sec. 33.20.050. FORFEITURE FOR OFFENSE. If during the term of imprisonment a prisoner commits an offense or violates the rules of the correctional facility [INSTITUTION], all or any part of the prisoner's [EARNED] good time may be forfeited under regulations adopted by the commissioner of corrections.

* Sec. 3. AS 33.20.060 is amended to read:

Sec. 33.20.060. RESTORATION OF LOST GOOD TIME. The commissioner of corrections may restore forfeited or lost good time or such portion of it which the commissioner considers proper if the prisoner demonstrates progress in faithfully observing the rules of the correctional facility in which the prisoner is confined [UPON RECOMMENDATION OF THE KEEPER OR PERSON IN CHARGE OF THE PENAL OR CORRECTIONAL INSTITUTION IN WHICH THE PRISONER IS INCARCERATED].

Introduced: 1/25/85
Referred: Health,Education &
Social Services,Judiciary and
Finance

Fed 5
Govt bill.

IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

HOUSE BILL NO. 114

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to correctional facilities, and the imprisonment and rehabilitation of offenders."

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

* Section 1. AS 11.56.340 is repealed and reenacted to read:

Sec. 11.56.340. UNLAWFUL EVASION IN THE FIRST DEGREE. (a) A person commits the crime of unlawful evasion in the first degree if, while charged with or convicted of a felony,

(1) the person fails to return to official detention within the time authorized following temporary leave granted for a specific purpose or limited period; or

(2) while on furlough under AS 33.30.101 -- 33.30.131 the person fails to return to the place of confinement or residence within the time authorized by those having direct supervision.

(b) Unlawful evasion in the first degree is a class A misdemeanor.

* Sec. 2. AS 11.56.350 is repealed and reenacted to read:

Sec. 11.56.350. UNLAWFUL EVASION IN THE SECOND DEGREE. (a) A person commits the crime of unlawful evasion in the second degree if, while charged with or convicted of a misdemeanor,

(1) the person fails to return to official detention within the time authorized following temporary leave granted for a specific purpose or limited period; or

(2) while on furlough under AS 33.30.101 -- 33.30.131 the person fails to return to the place of confinement or residence within

the time authorized by those having direct supervision.

(b) Unlawful evasion in the second degree is a class B misdemeanor.

* Sec. 3. AS 12.47.050(d) is repealed and reenacted to read:

(d) Notwithstanding any contrary provision of law, a defendant receiving treatment under (b) of this section may not be released on either furlough under AS 33.30.101 -- 33.30.131, except for treatment in a secure setting, or parole.

* Sec. 4. AS 33.30.010 -- 33.30.900 are repealed.

* Sec. 5. AS 33.30 is amended by adding new sections to read:

CHAPTER 30. CORRECTIONAL [PRISON] FACILITIES AND PROGRAMS [PRISONERS].

ARTICLE 1. ESTABLISHMENT, CONTROL, AND MANAGEMENT.

Sec. 33.30.011. DUTIES OF COMMISSIONER. The commissioner shall

(1) establish, maintain, operate, and control correctional facilities suitable for the custody, care, and discipline of persons charged or convicted of offenses against the state or held under authority of state law;

(2) classify prisoners and, for persons committed to the custody of the commissioner, establish programs, including furlough programs that are reasonably calculated to

(A) protect the public;

(B) maintain health;

(C) create or improve occupational skills;

(D) enhance educational qualifications;

(E) support court-ordered restitution; and

(F) otherwise provide for the rehabilitation and reformation of prisoners, facilitating their reintegration into society;

(3) provide necessary medical services for prisoners in correctional facilities or who are committed by a court to the custody of the commissioner, including examinations for communicable and infectious diseases; and

(4) provide necessary psychological or psychiatric treatment if a physician or other health care provider, exercising ordinary skill and care at the time of observation, concludes with reasonable medical certainty that

(A) a prisoner exhibits symptoms of a serious disease or injury that is curable or may be substantially alleviated; and

(B) the potential for harm to the prisoner by reason of delay or denial of care would be substantial.

Sec. 33.30.021. REGULATIONS. The commissioner shall adopt regulations to implement this chapter.

Sec. 33.30.031. CONTRACT FOR CONFINEMENT AND CARE OF PRISONERS. (a) The commissioner shall determine the availability of state correctional facilities suitable for the detention and confinement of persons held under authority of state law. If the commissioner determines that suitable state correctional facilities are not available, the commissioner may enter into an agreement with a public or private agency to provide necessary facilities. Correctional facilities provided through agreement may be in this state or in another state. The commissioner may not enter into an agreement with an agency unable to provide a degree of custody, care, and discipline similar to that required by the laws of this state.

(b) The commissioner may not enter into an agreement with a privately operated correctional facility under (a) of this section unless the purpose is to involve prisoners in a program established under AS 33.30.091 -- 33.30.131 or to confine prisoners convicted of a

misdemeanor.

(c) Earnings of a person employed while confined in a privately operated correctional facility established under (a) of this section are subject to the provisions of AS 33.30.131.

(d) The commissioner may enter into an agreement with the United States, another state, a municipality of this state, or another state agency, to provide a correctional facility for the custody, care, and discipline of a person held under authority of the law of that jurisdiction.

Sec. 33.30.041. LEASE OF CORRECTIONAL FACILITY TO MUNICIPALITY. (a) The commissioner may enter into an agreement with a municipality of the state for the lease of a state correctional facility or for the use and operation of a state correctional facility for the joint benefit of the municipality and the state, if the commissioner determines that it would be in the best interest of the state.

(b) An agreement executed by the commissioner under (a) of this section must provide that

(1) the state has the right to detain or confine persons held under authority of law in the correctional facility;

(2) the administrator of the correctional facility agrees to implement an order, concerning a prisoner, issued by a court of the state;

(3) the administrator of the correctional facility shall comply with the law, and regulations adopted by the commissioner, relating to the custody, care, and discipline of persons detained or confined in the correctional facility; and

(4) the commissioner may inspect the correctional facility at reasonable times to determine the conditions under which a prisoner is detained or confined.

(c) The agreement executed by the commissioner under (a) of this section may require the administrator of the correctional facility to comply with requirements that the commissioner considers necessary for the protection of the public or for the quality of care and programs for prisoners required by this chapter and regulations adopted by the commissioner.

ARTICLE 2. COMMITMENTS, PROGRAMS, AND FURLOUGHS.

Sec. 33.30.051. COMMITMENT TO COMMISSIONER. A person convicted of an offense against the state must be committed to the custody of the commissioner for the term of imprisonment which the court directs.

Sec. 33.30.061. COMMISSIONER TO DESIGNATE FACILITY. (a) The commissioner shall designate the correctional facility to which a prisoner is to be committed to serve a term of imprisonment or period of ~~temporary commitment~~. The commissioner may designate a facility without regard to whether it is maintained by the state, is located ~~within the judicial district in which the prisoner~~ was convicted, or is located in the state.

(b) The decision of the commissioner to designate a facility for the commitment of a prisoner pending appeal is not subject to review absent a clear and convincing showing by the prisoner that the prisoner would be denied the right to counsel. The decision of the commissioner to designate a facility is not, under any other circumstance, subject to review unless the prisoner makes a clear and convincing showing of an abuse of discretion.

Sec. 33.30.071. RESPONSIBILITY FOR PRISONERS PENDING COMMITMENT. (a) Notwithstanding AS 33.30.011(1), the commissioner of public safety shall provide for the custody, care, and discipline of prisoners pending arraignment or commitment by a court to the custody of the commissioner of corrections. Except as provided in (c) of this

section, the responsibility for providing necessary medical services for prisoners remains with the commissioner of corrections under AS 33.30.011(3). The commissioner of corrections and the commissioner of public safety are not responsible for providing custody, care, and discipline for a person detained under AS 47.37.170, unless the person is admitted into a state correctional facility.

(b) The responsibility of the commissioner of public safety under (a) of this section does not begin until a prisoner is accepted into the custody of the commissioner of public safety, or admitted into a correctional facility or other facility designed for holding prisoners, and the commissioner of public safety is notified of the acceptance or admission.

(c) Medical services for a prisoner who is unconscious or in immediate need of medical attention before admission to a correctional facility or commitment by a court to the custody of the commissioner of corrections must be provided by the law enforcement agency having custody of the prisoner. The law enforcement agency may require the prisoner to compensate the agency for the cost of medical services provided for a pre-existing medical condition not arising out of the prisoner's arrest.

Sec. 33.30.081. TRANSPORTATION OF PRISONERS. (a) The commissioner of public safety is responsible for transporting a prisoner to and from the court having jurisdiction over the prisoner and for delivering a prisoner to a correctional facility upon temporary or final commitment by a court or upon transfer of a prisoner from one correctional facility to another either inside or outside the state.

(b) The commissioner of corrections is responsible for furnishing return transportation to the place of arrest for a prisoner held in a state correctional facility, upon release from custody.

(c) The commissioner of public safety is responsible for furnishing return transportation to the pla of arrest for a prisoner who is released from custody before admission to a state correctional facility.

(d) The commissioner of corrections shall adopt regulations governing the furnishing of transportation, discharge payments, and clothing to prisoners upon release from a state correctional institution at any stage of a criminal proceeding.

Sec. 33.30.091. DESIGNATION OF PROGRAMS. Except as provided in AS 33.30.111, the commissioner may assign a prisoner committed to the commissioner's custody to any program established under AS 33.30.011(2) considering

(1) safeguards to the public and prisoners

(2) the prospects for the prisoner's rehabilitation;

(3) the availability of program and facility space;

(4) the prospect of future judicial proceedings requiring the presence of the prisoner;

(5) the nature and circumstances of the offense for which the prisoner was sentenced;

(6) the needs of the prisoner as determined by a classification committee and any recommendations made by the sentencing court;

(7) the record of convictions of the prisoner with particular emphasis on crimes specified in AS 11.41;

(8) the use of drugs or alcohol by the prisoner;

(9) the length of the prisoner's sentence; and

(10) other criteria considered appropriate by the commissioner, including experimental evaluation of correctional programs that are consistent with protection of the public.

Don't limit to non-violent offender

Sec. 33.30.101. FURLOUGHS. (a) The commissioner shall adopt regulations governing the granting of furloughs to prisoners to

(1) obtain counseling and treatment for alcohol or drug abuse;

(2) secure or attend vocational training;

(3) obtain medical or psychiatric treatment;

(4) secure or engage in employment;

(5) attend educational institutions;

(6) secure a residence or make other preparation for release;

(7) appear before a group whose purpose is a better understanding of crime or corrections; or

(8) for any other rehabilitative purpose the commissioner determines to be in the interests of the prisoner and the public.

(b) If the commissioner determines that a prisoner can live under reduced supervision without violating the law or the conditions established for the conduct of the prisoner, the commissioner may grant a furlough after considering

(1) the factors in AS 33.30.091;

(2) violations, if any, by the prisoner of a condition of a prior furlough;

(3) the history, if any, of institutional misconduct by the prisoner; and

(4) the best interests of the prisoner and the public.

Sec. 33.30.111. PRE-RELEASE FURLOUGHS. (a) Furlough programs established under AS 33.30.101 must include pre-release furloughs designed to facilitate the reintegration of a prisoner into society.

(b) A facility that is specifically adapted to provide a residence outside prison, including a halfway house, group home, or other

placement which provides varying levels of restriction and supervision, may be used for a prisoner on a pre-release furlough.

(c) The restrictions and supervision required for a pre-release furlough must provide safeguards that minimize risk to the public and include, as a minimum,

(1) frequent contact with the prisoner by persons supervising the prisoner;

(2) knowledge by supervisory staff of the location of the prisoner;

(3) periodic reports by supervisory staff to the commissioner on the performance of the prisoner while on furlough; and

(4) a residential setting in which persons supervising a prisoner are obliged to immediately report to the commissioner any violation of a condition set for the prisoner's conduct.

(d) Notwithstanding AS 33.30.101(b) and other eligibility criteria established by the commissioner,

(1) a prisoner sentenced to a definite term of imprisonment of more than one year but less than five years is not eligible for a pre-release furlough until the prisoner has served at least one-third of the sentence;

(2) a prisoner sentenced to a definite term of imprisonment of five years or more is not eligible for a pre-release furlough until the prisoner has served at least one-third of the sentence or is within three years of the release date, whichever is later.

(e) A prisoner may request a pre-release furlough under procedures adopted by the commissioner. If the commissioner denies a request for a pre-release furlough, the commissioner shall provide the prisoner with a written explanation of the reasons for the denial.

(f) Upon request of the victim, in the case of a prisoner

Victims opinion ok but not too much weight

convicted of a crime against a person, notice of the commissioner's intent to consider the prisoner for a pre-release furlough must be sent to the victim. The victim may comment in writing on the intent of the commissioner to release the prisoner on pre-release furlough status. The commissioner shall consider the comments of the victim before making a final decision to release a prisoner on a pre-release furlough. The victim shall keep the commissioner apprised of the victim's current mailing address. If the victim requests notification, the commissioner shall make every reasonable effort to notify the victim of an intent to release the prisoner on a pre-release furlough. The notice must contain the expected date of the prisoner's release, the geographic area in which the prisoner will reside and other pertinent information concerning the prisoner's release that may affect the victim.

Sec. 33.30.121. SHORT-DURATION FURLOUGHS. (a) A short-duration furlough is an authorized leave of absence from a correctional facility for a period not to exceed 12 hours at any one time, except for

(1) family visitations, which may not exceed one week nor occur more frequently than once in each six month period; or

(2) medical treatment, for which the furlough may not last longer than necessary for the treatment.

(b) A short-duration furlough may be granted to a prisoner at any time under regulations adopted by the commissioner.

Sec. 33.30.131. PRE-RELEASE FURLOUGH INVOLVING EMPLOYMENT. (a) Unless alternative arrangements are expressly approved by the commissioner, when a prisoner is employed outside a correctional facility as part of a furlough program, the earnings of the prisoner must be sent by the employer to the commissioner. If an employer transmits the earnings to the commissioner, the employer has no liability to the

prisoner for the earnings. The commissioner shall disburse the earnings of the prisoner under procedures adopted by the commissioner to

(1) pay for the room, board, and personal expenses of the prisoner in an amount or at a rate determined by the commissioner;

(2) pay any restitution or fine ordered by the sentencing court;

(3) reimburse the state for an award made for violent crimes compensation under AS 18.67 arising out of the criminal conduct of the prisoner;

(4) pay a civil judgment arising out of the criminal conduct of the prisoner; and

(5) support the dependents of the prisoner.

(b) After making the disbursements authorized under (a) of this section, the commissioner shall retain the balance remaining in the account of the prisoner and give it to the prisoner upon release. The commissioner may permit the prisoner to draw upon a portion of this money for other purposes that the commissioner considers appropriate.

(c) Only the earnings retained by the commissioner under (b) of this section are subject to lien, attachment, garnishment, execution, or other proceedings to encumber money or property.

Sec. 33.30.141. EFFECT OF VIOLATION OF FURLOUGH CONDITIONS OR FAILURE TO RETURN. (a) If a prisoner on a furlough violates the conditions established for the prisoner's conduct, the commissioner may immediately require the return of the prisoner to actual confinement for a period not to exceed the balance of the term of imprisonment and may initiate disciplinary proceedings authorized by regulations adopted by the commissioner.

(b) The failure of a prisoner on a furlough to return to the place of confinement or residence within the time specified by those

having direct supervision over the prisoner is an unlawful evasion under AS 11.56.340 -- 11 56.350.

ARTICLE 3. GENERAL PROVISIONS.

Sec. 33.30.151. EMPLOYMENT OF PRISON INMATES. (a) It is the policy of the state that prisoners be productively employed for as many hours each day as feasible, not to exceed 40 hours per week unless overtime has been specifically approved by the commissioner. The term "productively employed" includes the following kinds of employment:

(1) routine maintenance and support services essential to the operation of a correctional facility;

(2) education including both academic and vocational;

(3) industrial, agricultural, and service activities conducted in accordance with AS 33.32;

(4) public conservation projects including but not limited to forest fire prevention and control, forest and watershed enhancement, recreational area development, construction and maintenance of trails and campsites, fish and game enhancement, soil conservation, and forest watershed revegetation;

(5) renovation, repair or alteration of existing correctional facilities as permitted by AS 44.65.050(d); and

(6) other work performed inside or outside of a correctional facility if the work has minimal negative impact on an existing private industry or labor force in the state as determined by the commissioner.

(b) The commissioner may enter into contracts or cooperative agreements with any public agency for the performance of conservation projects. The commissioner may enter into a contract with an individual or agency for the employment of prisoners if the work to be

performed will have minimal negative impact on an existing [illegible]ate industry or labor force in the state as determined by the co[illegible]ssioner.

(c) The commissioner may direct will make avail. to a prisoner to participate in a type of productive employment listed in (a)(1), and (4)-(6) of this section while the prisoner is confined in a correctional facility. A prisoner who refuses to participate in productive employment when directed under this section is subject to disciplinary sanctions imposed in accordance with regulations adopted by the commissioner.

Sec. 33.30.156. PAY OF PRISON INMATES. Each prisoner who is productively employed, as defined in AS 33.30.151(a)(1) or (3) - (6), may receive for that work compensation at a rate determined by the commissioner under AS 33.32.050 if the money is available from legislative appropriations. The provisions of AS 33.32.050 and AS 33.32.-040(b) apply to prisoners employed in the correctional industries program and to prisoners productively employed in activities outside that program.

Sec. 33.30.161. TRANSMISSION OF DOCUMENTS. (a) When a prisoner is admitted to a correctional facility, a copy of the commitment must be delivered with the prisoner as evidence of the authority of the correctional facility to hold the prisoner.

(b) When a person is sentenced to a term of imprisonment, copies of the pre-sentence report, sentencing report prepared under AS 12.55-.025 and any other information of the probation office or of the court that may affect the person's rehabilitation must be transmitted to the superintendent of the correctional facility in which the prisoner will be confined.

(c) The commissioner shall adopt regulations providing for the security, confidentiality, and use of documents transmitted under (b)

of this section.

Sec. 33.30.171. SUPERINTENDENT OF CORRECTIONAL FACILITY MAY ADMINISTER OATHS AND ACKNOWLEDGMENTS. The superintendent of a correctional facility or the superintendent's assistant may administer oaths to and take acknowledgments from a prisoner, but may not request nor accept compensation from a prisoner for acts performed under this section.

Sec. 33.30.181. TELEPHONE MONITORING INSIDE CORRECTIONAL INSTITUTIONS. Notwithstanding AS 42.30.300 and 42.30.310, the commissioner may authorize the use of monitoring or recording equipment to listen to a telephone conversation of a prisoner in order to preserve the security and orderly administration of the institution and to protect the public, if a warning is posted by the telephone informing the prisoner that a call may be monitored or recorded. Prisoner telephone calls to attorneys may not be monitored nor recorded except when authorized by a court.

Sec. 33.30.191. EFFECT OF JUDGMENT OF CONVICTION ON CIVIL RIGHTS. (a) A person who is convicted of a felony involving moral turpitude as defined in AS 15.60.010 is disqualified from voting in a state or municipal election until the person's unconditional discharge.

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

(c) A person who is convicted of a criminal charge or is serving a term of imprisonment for a criminal offense may not bring a civil action against the state, a state agency, or an employee of the state unless it is an action for violation of the person's constitutional rights during the time of imprisonment. The time within which the action may be brought is limited as set out in AS 09.10.140.