ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672

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> cate the public interest in the enforcement of the criminal law while at the same time safeguarding the rights of the individual defendant. The public interest in the accuracy and justice of criminal results is greater than the concern for judicial economy professed in civil cases and we are thus inclined to reject, at least as a general matter, a rule that would spread the effect of an erroneous acquittal to all those who participated in a particular criminal transaction. To plead crowded dockets as an excuse for not trying criminal defendants is in our view neither in the best interests of the courts, nor the public.

447 U.S. at 25, 100 S.Ct. at 2008, 64 L.Ed.2d at 701 (quoting *United States v. Standefer*, 610 F.2d 1076, 1093 (3d Cir.1979)).

[11] With the court of appeals, we are persuaded by the reasoning in *Standefer*. As the court of appeals noted, "there is no question of harassment by successive prosecutions of one who is tried but once, though a co-defendant might earlier have been tried." 636 P.2d at 626; *compare People v. Taylor*, 12 Cal.3d 686, 527 P.2d 622, 527 P.2d 622, 628 (Cal.1974). Nor are we swayed by the fact that Kott might be convicted in the face of Bonneville's earlier acquittal; that possibility merely recognizes "the simple, if discomforting, reality that 'different juries may reach different results under any criminal statute. That is one of the consequences we accept under our jury system.'" *Standefer*, 447 U.S. at 25, 100 S.Ct. at 2008, 64 L.Ed.2d at 701 (quoting *Roth v. United States*, 354 U.S. 476, 492 n. 30, 77 S.Ct. 1304, 1313 n. 30, 1 L.Ed.2d 1498, 1511 n. 30 (1957)). Finally, like the court of appeals we believe that the state's need to have a full and fair adversary proceeding outweighs the interest in promoting judicial economy by minimizing repetitive litigation. Accordingly, we affirm the court of appeals and hold that collateral estoppel did not preclude the state from relitigating whether in fact an assault occurred.[10]

III. *Double Jeopardy*

[12] Kott argues that remanding this case for trial would contravene the state and federal prohibition against twice subjecting a criminal defendant to jeopardy. We disagree.

As the court of appeals noted in this case, "[h]ere the trial judge neither heard all of the evidence against respondent nor concluded that a reasonable jury could not find him guilty beyond a reasonable doubt based upon that evidence. Rather, he concluded that a judgment of acquittal previously entered in favor of a codefendant barred trial of [Kott] under the doctrine of collateral estoppel." *State v. Kott*, 636 P.2d 622, 623–24 (Alaska App.1981). The jury had not been empaneled and sworn, and there is no indication that the defendant had waived his right to a jury trial. At no time, therefore, was Kott subjected to the risk of conviction, and consequently jeopardy did not attach. It is immaterial that the trial judge reviewed the court file and the evidence presented against Kott in the original action against Bonneville. The fact is that at no time prior to the swearing of the jury could the defendant have been subjected to the "risk of a determination of guilt, ... and neither an appeal nor further prosecution constitutes double jeopardy." *See Serfass v. United States*, 420 U.S. 377,

10. Most jurisdictions retain the requirement of mutuality in the criminal area. *See State v. Jiminez*, 130 Ariz. 138, 634 P.2d 950 (1981); *State v. Wilson*, 236 Iowa 429, 19 N.W.2d 232 (1945); *Commonwealth v. Scala*, 8 Mass.App. 202, 392 N.E.2d 869 (1979); *Larsen v. State*, 93 Nev. 397, 566 P.2d 413 (1977); *People v. Felton*, 95 Misc.2d 960, 408 N.Y.S.2d 646 (N.Y.Sup. 1978); *Cleveland v. Ryan*, 106 Ohio App. 110, 148 N.E.2d 691 (1958). *See generally*, 9 A.L.R.3d 203 (1966).

Having determined that the state was barred by collateral estoppel from relitigating the issue of whether an assault occurred, the trial court dismissed Count II of the complaint charging Kott with unlawfully destroying evidence "concerning commission of the crime of assault and battery." There being no crime, reasoned the trial court, there could be no destruction of evidence of a crime. Inasmuch as the court erred in applying nonmutual collateral estoppel, however, it necessarily erred in dismissing the destruction of evidence count.

391–92, 95 S.Ct. 1055, 1064–65, 43 L.Ed.2d 265, 276 (1975).

The decision of the Court of Appeals is AFFIRMED.

MOORE, J., not participating.

MATTHEWS, Justice, concurring.

I agree with parts II and III of the majority opinion which concern collateral estoppel and double jeopardy, respectively. With respect to part I of the opinion, I concur in the result only.

The statute defining the jurisdiction of the court of appeals, AS 22.07.020, was passed by the Alaska State Legislature in 1980. The language in question in this case is that of subsection (d)(2):

> the State has no right of appeal in criminal cases except to test the sufficiency of the indictment or information....

This language was taken, without substantial change, from former AS 22.05.010 defining the jurisdiction of the Supreme Court;[1] and from AS 22.10.020(a) defining the appellate jurisdiction of the superior court.[2] The relevant language of these two statutes was first enacted by the Alaska State Legislature at the advent of statehood, ch. 50, §§ 1, 17, SLA 1959, and has continued without change. Because there is no legislative history to the contrary, and because nearly identical language was used, the legislature clearly intended that the language used in AS 22.07.020(d)(2) would mean what the language used in former AS 22.05.010 and AS 22.10.020(a) had meant. Any other conclusion would border on the preposterous. If the legislature had intended a different meaning it would not have merely copied the phraseology of the earlier statutes.

The question becomes what the former statutes meant. There are two levels of inquiry. The first pertains to the historical purpose of statutes of this type. The second pertains to what these statutes had been construed to mean prior to enactment of AS 22.07.020(d)(2).

The general rule at common law was that the State could not appeal in a criminal case. In *United States v. Sanges*, 144 U.S. 310, 12 S.Ct. 609, 36 L.Ed. 445 (1892), the court, after making an exhaustive review of State authorities, summed up the prevailing view as follows:

> But the decisions above cited conclusively show that under the common law, as generally understood and administered in the United States, and in the absence of any statute expressly giving the right to the State, a writ of error cannot be sued out in a criminal case after a final judgment in favor of the defendant, whether that judgment has been rendered upon a verdict of acquittal, or upon a determination by the court of an issue of law. In either case, the defendant, having been once put upon his trial and discharged by the court, is not again to be vexed for the same cause, unless the legislature, acting within its constitutional authority, has made express provision for a review of the judgment at the insistence of the government.

Id. at 318, 12 S.Ct. at 612, 36 L.Ed. at 448–449. The court made it plain that this rule was generally based on common law grounds rather than constitutional double jeopardy:

> In a few states, decisions denying a writ of error to the State after judgment for the defendant on a verdict of acquittal have proceeded upon the ground that to grant it would be to put him twice in jeopardy, in violation of a constitutional provision.
>
> But the courts of many states, including some of the great authority, have denied, upon broader grounds, the right of the State to bring a writ of error in any criminal case whatever, even when the discharge of the defendant was upon the decision of an issue of law by the

1. Former AS 22.05.010 provided in relevant part: "the State shall have no right of appeal in criminal cases, except to test the sufficiency of the indictment or information."

2. AS 22.10.020(a) provides in relevant part: "[t]he State has no right to appeal in criminal cases, except to test the sufficiency of an indictment or information...."

court, as on demurrer to the indictment, motion to quash, special verdict, or motion in arrest of judgment.

Id. at 313, 12 S.Ct. at 610, 36 L.Ed. at 447 (citations omitted).

The purpose of statutes like AS 22.05.010 was not to constrict the right of the prosecution to appeal, for that was the preexisting common law rule, but to provide an exception to the common law rule and allow the prosecution to appeal. This is discussed at length in both the majority opinion and the dissenting opinion of Mr. Justice White in *United States v. Sisson*, 399 U.S. 267, 293–307, 335–349, 90 S.Ct. 2117, 2131–2138, 2153–2160, 26 L.Ed.2d 608, 626–634, 649–657 (1970). Therefore, from an historical perspective, the purpose of the statutory language is to permit the State to appeal in the circumstances described in the statute.

In *State v. Shelton*, 368 P.2d 817 (Alaska 1962) this court gave a broad reading to the language of AS 22.05.010 permitting the State to appeal to test the sufficiency of an indictment. In *Shelton* the indictment had been dismissed on the grounds that it was based on perjured testimony. As in the present case, there was nothing wrong with the form of the indictment. The trial court simply concluded that a substantive legal doctrine required dismissal. We rejected the view that the statutory term "sufficiency" related only to the form of the indictment and held the State could raise on appeal the validity of the rationale underlying dismissal of the case. In so holding we stated that "sufficiency":

> denotes the concept of adequacy and adaptation to a desired end. An indictment has a purpose—to require a defendant to stand trial for a criminal offense with which he is charged. If it is not adequate to answer the purpose for which it is intended, then it is insufficient, regardless of the fact that it may meet all the formal statutory requisites and have all the appearances of validity. When an indictment is dismissed *for any reason*, the question of its sufficiency may create an issue, and this court has the power of review.

Id. at 820 (emphasis added). This language can only be reasonably read to mean that former AS 22.05.010(a) permitted the State to appeal any dismissal of an indictment or information. Until today, so far as I am aware, this interpretation of *Shelton* has never been questioned.

The rule of interpretation which governs this case is as follows:

> Where a statute has received a contemporaneous and practical interpretation and the statute as interpreted is reenacted, the practical interpretation is accorded greater weight than it ordinarily receives, and is regarded as presumptively the correct interpretation of the law. Because court decisions are readily accessible to public view, the rule has special force when the former construction was made by the judiciary. Thus where the legislature adopts a legislative expression which has received judicial interpretation, such interpretation will be prima facie evidence of the legislative intent.

2A C. Sands, Sutherland Statutory Construction § 49.09, at 256 (4th ed. 1973). Thus, because the legislature reenacted the language formerly contained in AS 22.05.010 permitting the State to appeal to test the sufficiency of an indictment, it logically can be presumed that the legislature intended the reenacted language to mean what this court had formerly said it meant. That meaning is, as we have seen, that the State may appeal "[w]hen an indictment is dismissed for any reason ...." *Shelton*, 368 P.2d at 820. Of course, such a grant of power is limited by constitutional double jeopardy. However, it is not necessary to express in statutory terms this limitation. To do so would be superfluous. Because this interpretation is not different from that given AS 22.07.020(d)(2) by the court of appeals in *State v. Michel*, 634 P.2d 383 (Alaska App.1981) which was in turn relied upon by that court in the present case, I would affirm the court of appeals' interpretation.

The conclusion of the majority opinion that the State may not appeal but it may take a petition for review was explicitly rejected in *State v. Keep*, 397 P.2d 973 (Alaska 1965). In *Keep*, the complaint was dismissed after trial began and the State challenged the dismissal by a petition for review. We held that because the state could not appeal from the final judgment it could not take a petition for review. Doing so would permit "the state to accomplish indirectly what it is prohibited from doing by statute." *Id.* at 975.

The logic of this holding seems correct and it is not directly attacked by today's majority opinion. Instead the majority holds that we implicitly overruled *Keep* in *State v. Browder*, 486 P.2d 925 (Alaska 1971). I think very few reasonable people reading *Browder* would conclude that *Keep* was intended to be overruled. *Keep*, as will be recalled, involved an acquittal after trial had begun. *Browder* involved a conviction at the trial level, an appeal by the defendant to the superior court acting as an intermediate appellate court, a reversal and remand by the superior court, and a petition for review by the state from the order of the superior court to this court. We held that we had jurisdiction to entertain the petition and distinguished *Keep* on the grounds that a final judgment of acquittal was involved in *Keep*, but not in *Browder*. We took pains in *Browder* to limit our holding to petitions taken from "a non-final order or decision...." *Id.* 486 P.2d at 931. We have in two separate cases cited *Keep* and *Browder* together, *State v. Gibson*, 543 P.2d 406, 408 n. 3, (Alaska 1975); *State v. Marathon Oil Co.*, 528 P.2d 293, 295 n. 6, (Alaska 1974), and, until today, we have never suggested that *Browder* is in any way inconsistent with *Keep*.

I also take issue with the majority's reasoning in two further respects. First, the majority states that when the legislature enacted AS 22.07.020(d)(2) in 1980 it had an analogous federal statute before it. This statement is wrong except in the rather meaningless sense that the legislature had the federal statute available for reference. The legislature also could have looked at a statute of any other state concerning the prosecution's right to appeal, but there is no evidence that it did, just as there is no evidence that the legislature actually considered the federal statute. What the legislature clearly did was to consider the Alaska statutes which had been interpreted by this court and from which the language of AS 22.07.020(d)(2) was copied.

Second, the majority opines that the construction of AS 22.07.020(d)(2) given by the court of appeals would render that subsection superfluous as no more than a restatement of the constitutional prohibition against double jeopardy. However, as we have established, from an historical perspective this statement is wrong. The purpose of statutes like that involved here was to allow the state to appeal. Without an express statutory grant of the right to appeal, the traditional view has been that the State may not appeal in a criminal case.[3]

In summary, the decision of the court of appeals in this case and in *Michel* is consistent with the historical purpose of the statute in question; is consistent with *Shelton* and *Keep;* and is consistent with the rule that when a legislature copies language which has been judicially interpreted, that interpretation is presumed to be what the legislature intended. By contrast, the reasoning of the majority opinion is in conflict with the historical purpose of the language in question; is inconsistent with *Shelton;* requires that the holding of *Keep* be overruled; fails to deal with the holding of *Keep* on its own merits, but takes the unjustified position that *Keep* has already been overruled; and ignores the

3. Further, superfluity in the sense of statutory repetition of a constitutional prohibition is surely one of the most minor of sins of a legislative draftsman. For example, the federal statute, 18 U.S.C. § 3731 (as amended 1971), cited by the majority as a model, (at ——) is guilty of superfluity. ["... no appeal shall lie when the double jeopardy clause of the United States Constitution prohibits further prosecution."]

rule of construction that reenacted language carries with it the meaning imparted by prior published judicial decisions. For these reasons I agree with the court of appeals and disagree with the majority opinion.

Malcolm Scott HARRIS, Appellant,

v.

STATE of Alaska, Appellee.

No. 6580.

Court of Appeals of Alaska.

Feb. 24, 1984.

Defendant was convicted in the Superior Court, Third Judicial District, Anchorage, J. Justin Ripley and Victor D. Carlson, JJ., of theft in second degree and forgery in second degree, and defendant appealed. The Court of Appeals, Coats, J., held that: (1) even if three grand jurors were selected from beyond 50-mile radius of Anchorage courthouse, error did not require dismissal of indictment; (2) defendant's confession was voluntary; (3) defendant voluntarily gave handwriting sample to police, was adequately warned of consequences, and was informed of his right to counsel; (4) State established sufficient foundation to admit testimony of bank official concerning stamp marks on stolen traveler's checks; (5) failure to indicate to jury that they had to find traveler's checks were stolen in order to convict defendant of theft by receiving was not reversible error; (6) offense of receiving stolen traveler's checks and offense of forging those same checks could be separated for purposes of sentencing; (7) defendant was not unfairly denied right to cross-examine author of presentence report; (8) trial court did not err in requiring defendant to pay $7,000 restitution; and (9) eight-year sentence with five years suspended was not excessive.

Conviction and sentences affirmed.

Singleton, J., filed opinion concurring in part and dissenting in part.

1. Indictment and Information ⇐10.1(2)

Even if three grand jurors were selected from beyond 50-mile radius of Anchorage courthouse as required by Rules of Criminal Procedure, error did not require dismissal of indictment, where there was no showing there was any systematic exclusion of any class or group of grand jury or that defendant was prejudiced in any conceivable way. Rules Crim.Proc., Rule 6(c)(1).

2. Criminal Law ⇐412(4)

Suppression per se of unrecorded statements of defendant, where recording was feasible, is not required even though defendant alleges other facts which, if true, would entitle him to have statement suppressed.

3. Criminal Law ⇐414

State has burden of showing that defendant was given *Miranda* warning, waived his *Miranda* rights and made voluntary statements. U.S.C.A. Const. Amend. 5.

4. Criminal Law ⇐1139

In deciding whether confession is voluntary, Court of Appeals undertakes independent review of record.

5. Criminal Law ⇐414

Prosecution must prove that defendant's statement is voluntary by preponderance of evidence.

6. Criminal Law ⇐520(2)

Police conduct in urging defendant to tell truth and telling him that if he did cooperate by telling truth they would help him by bringing his cooperation to attention of prosecuting authorities is not improper as long as, under totality of circumstances, defendant's confession is voluntary.

ing out of violation of injunction issued pursuant to section 160 of Title 29 in a case involving an unfair labor practice. In re Union National de Trabajadores, C.A. Puerto Rico 1974, 502 F.2d 113.

5. —— Right to jury trial

District court, which stated that it would not impose a sentence in excess of six months, properly denied the jury trial motion of defendants, Professional Air Traffic Controllers Organization officers who were charged with criminal contempt for failing to honor temporary restraining orders. U.S. v. Martinez, C.A.La.1982, 686 F.2d 334.

This section giving an accused a right to a speedy and public trial by an impartial jury in all cases of contempt arising under laws of United States governing issuance of injunction or restraining orders in any case involving or growing out of a labor dispute do not apply to contempt proceedings to enforce injunctions issued under section 141 et seq. of Title 29. Pabst Brewing Co. v. Brewery Workers Local Union No. 77, AFL-CIO, C.A.Ill.1977, 555 F.2d 146.

Failure to at least accord defendants statutory right to "demand" trial by jury in criminal contempt proceeding violated due process. Richmond Black Police Officers Ass'n v. City of Richmond, Va., C.A.Va.1977, 548 F.2d 123.

Writ of mandamus requiring jury trial in criminal contempt proceedings instituted by National Labor Relations Board was recalled, following United States Supreme Court decision that jury trials were not required in such cases, since withdrawal of mandate would not substantially prejudice rights of the union defendants and although defendants had spent considerable time and effort preparing for their challenge to jury selection procedure there was no vested interest in bringing such challenge in instant case and such work, which had been done by public interest legal group, presumably would be available in other cases. In re Union Nacional de Trabajadores, C.A.1, 1975, 527 F.2d 602.

Business agent for union local did not have constitutional or statutory right to jury trial on charge of contempt for violation of a "Boys Markets" temporary restraining order which enjoined the local and its officers, agents, members, and all persons in active concert and participation with them from in any manner engaging in a strike, work stoppage or picketing against employer. U.S. v. Partin, C.A.La.1975, 524 F.2d 992, certiorari denied 96 S.Ct. 1493, 425 U.S. 904, 47 L.Ed.2d 753.

Under this section providing that an accused is entitled to a jury trial in all cases of contempt arising under laws of the United States governing issuance of injunctions in any case involving or growing out of a labor dispute, union and officers cited for contempt arising out of their alleged violation of court order enjoining union from striking without complying with notice and waiting requirements of section . of Title 29, were entitled to jury trial. In re Union Nacional de Trabajadores, C.A. Puerto Rico 1974, 502 F.2d 113.

Section 160 of Title 29 stating that in granting or enforcing injunctive relief requested by National Labor Relations Board in connection with alleged unfair labor practice the jurisdiction of court sitting in equity shall not be limited by Norris-LaGuardia Act, section 101 et seq. of Title 29, does not insulate criminal contempt proceedings following issuance of Board-requested injunction from requirement of jury trial under this section giving an accused right to jury in all cases of contempt arising under laws of United States governing issuance of injunctions in a case involving a labor dispute. Id.

Air traffic controller's charged with contempt in violating preliminary injunction requiring them to refrain from concerted effort directed to work slow down or stoppage and to notify their supervisor of their medical and physical condition with supporting medical data were not entitled to jury trial. U.S. v. Robinson, C.A. Alaska 1971, 449 F.2d 925.

CHAPTER 235—APPEAL

§ 3731. Appeal by United States

In a criminal case an appeal by the United States shall lie to a court of appeals from a decision, judgment, or order of a district court dismissing an indictment or information as to any one or more counts, except that no appeal shall lie where the double jeopardy clause of the United States Constitution prohibits further prosecution.

An appeal by the United States shall lie to a court of appeals from a decision or order of a district courts suppressing or excluding evidence or requiring the return of seized property in a criminal proceeding, not made after the defendant has been put in jeopardy and before the verdict or finding on an indictment or information, if the United States attorney certifies to the district court that the appeal is not taken for purpose of delay and that the evidence is a substantial proof of a fact material in the proceeding.

The appeal in all such cases shall be taken within thirty days after the decision, judgment or order has been rendered and shall be diligently prosecuted.

Pending the prosecution and determination of the appeal in the foregoing instances, the defendant shall be released in accordance with chapter 207 of this title.

Business agent for union local did not have constitutional or statutory right to jury trial on charge of contempt for violation of a "Boys Markets" temporary restraining order which enjoined the local and its officers, agents, members, and all persons in active concert and participation with them from in any manner engaging in a strike, work stoppage or picketing against employer. U.S. v. Partin, C.A.La.1975, 524 F.2d 992, certiorari denied 96 S.Ct. 1493, 425 U.S. 904, 47 L.Ed.2d 753.

Under this section providing that an accused is entitled to a jury trial in all cases of contempt arising under laws of the United States governing issuance of injunctions in any case involving or growing out of a labor dispute, union and officers cited for contempt arising out of their alleged violation of court order enjoining union from striking without complying with notice and waiting requirements of section 160 of Title 29, were entitled to jury trial. In re Union Nacional de Trabajadores, C.A. Puerto Rico 1974, 502 F.2d 113.

Section 160 of Title 29 stating that in granting or enforcing injunctive relief requested by National Labor Relations Board in connection with alleged unfair labor practice the jurisdiction of court sitting in equity shall not be limited by Norris-La-Guardia Act, section 101 et seq. of Title 29, does not insulate criminal contempt proceedings following issuance of Board-requested injunction from requirement of jury trial under this section giving an accused right to jury in all cases of contempt arising under laws of United States governing issuance of injunctions in a case involving a labor dispute. Id.

Air traffic controller's charged with contempt in violating preliminary injunction requiring them to refrain from concerted effort directed to work slow down or stoppage and to notify their supervisor of their medical and physical condition with supporting medical data were not entitled to jury trial. U.S. v. Robinson, C.A. Alaska 1971, 449 F.2d 925.

35—APPEAL

ited States shall lie to a court of appeals district court dismissing an indictment or except that no appeal shall lie where the es Constitution prohibits further prosecu-

to a court of appeals from a decision or xcluding evidence or requiring the return , not made after the defendant has been inding on an indictment or information, if district court that the appeal is not taken is a substantial proof of a fact material in

ken within thirty days after the decision, shall be diligently prosecuted.

on of the appeal in the foregoing instanc- ccordance with chapter 207 of this title.

The provisions of this section shall be liberally construed to effectuate its purposes.

(As amended Jan. 2, 1971, Pub.L. 91-64[illegible] tle III, § 14(a), 84 Stat. 1890.)

1971 Amendment. First par. Pub.L. 91-644, § 14(a)(1), enacted provision for appeal to a court of appeals from decision, judgment, or order of district court dismissing an indictment or information as to any one or more counts, except that no appeal shall lie where double jeopardy prohibits further prosecution.

Second par. Pub.L. 91-644, § 14(a)(1), enacted provision for appeal to a court of appeals from decision or order of district court suppressing or excluding evidence or requiring the return of seized property in a criminal proceeding, not made after the defendant has been put in jeopardy and before the verdict or finding on an indictment or information, if the United States attorney certifies to the district court that the appeal is not taken for purpose of delay and that the evidence is a substantial proof of a fa[illegible] material in the proceeding.

Such first and second pars. superseded former first eight pars. Pars. one through four had provided for appeal from district courts to Supreme Court from decision or judgment setting aside, or dismissing any indictment or information, or any count thereof and from decision arresting judgment of conviction for insufficiency of indictment or information, where such decision or judgment was based upon invalidity or construction of the statute upon which the indictment or information was founded and for an appeal from decision or judgment sustaining a motion in bar, where defendant had not been put in jeopardy. Pars. five through eight provided for appeal from district courts to a court of appeals where there were no provisions for direct appeal to Supreme Court from decision or judgment setting aside, or dismissing any indictment or information, or any count thereof and from decision arresting a judgment of conviction, and from an order, granting a motion for return of seized property or a motion to suppress evidence, made before trial of a person charged with violation of a Federal law, if the United States attorney certified to the judge who granted the motion that the appeal was not taken for purpose of delay and that the evidence was a substantial proof of the charge pending against the defendant.

Third par. Pub.L. 91-644, § 14(a)(2), authorized within third par., formerly ninth, an appeal within thirty days after order has been rendered.

Fourth par. Pub.L. 91-644, § 14(a), in revising the provisions, had the effect of designating former tenth par. as fourth par.

Fifth par. Pub.L. 91-644, § 14(a)(3), substituted as a fifth par. provision for liberal construction of this section for prior eleventh par. provision respecting remand of case by Supreme Court to court of appeals that should have been taken to such court and treatment of the court's jurisdiction to hear and determine the case as if the appeal were so taken in the first instance and for prior twelfth par. provision respecting certification of case to Supreme Court that should have been taken directly to such Court and treatment of the Court's jurisdiction to hear and determine the case as if the appeal were taken directly to such Court.

Savings Provision. Section 14(b) of Pub.L. 91-644 provided that: "The amendments made by this section [to this section] shall not apply with respect to any criminal case begun in any district court before the effective date of this section [Jan. 2, 1971]."

Legislative History. For legislative history and purpose of Pub.L. 91-644, see 1970 U.S. Code Cong. and Adm. News, p. 5804.

Federal Practice and Procedure

Appellate review
- Arrest of judgment, see Wright: Criminal 2d § 574.
- Criminal contempt proceedings, see Wright: Criminal 2d § 715.
- Decision setting aside or dismissing indictment or information, see Wright: Criminal 2d § 191.
- Dismissal for unnecessary delay, see Wright: Criminal 2d § 814.
- Motion for judgment of acquittal, see Wright: Criminal 2d § 469.
- Search and seizure, see Wright: Criminal 2d § 678.

Government's right to appeal, see Wright: Criminal 2d § 874.

Mandatory release of defendant on his own recognizance upon dismissal of indictment, arrest of judgment and appeal by government, see Wright: Criminal 2d § 767.

Review of federal courts, see Wright, Miller & Cooper: Jurisdiction § 4034 et seq.

Writ applications, see Wright, Miller, Cooper & Gressman: Jurisdiction §§ 3932, 3934.

Notes of Decisions

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1. Constitutionality

Where there was a general finding of guilt rendered by court in a bench trial, and thereafter district court granted defendant's motion to suppress, double jeopardy did not bar an appeal by the government. U.S. v. Rose, 1976, 97 S.Ct. 26, 429 U.S. 5, 50 L.Ed.2d 5.

Where district court, following a nonjury trial, found defendant guilty of charge of possessing marijuana with intent to distribute and thereafter

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

11/7/89
Date

02-519 (REV 8/78)

SB

101

BILL FILE LOG

BILL # SB 101

1/25 Original bill

1/25 Phone call - Legal Services - Terry Kramer from
Bill requires correction on Page 1, line 25
S/B AS 08.08.137

1/25 CSSB101 delivered

1/29 Bill passed out

CSSB 101 (Judiciary)

Amendment #1
By Rodey

Delete lines 15 - 17 and insert:

"in the processing of fingerprints of applicants seeking admission to the Alaska Bar Association and shall release the resulting information to the Association."

Original sponsor: Judiciary Committee

IN THE SENATE BY THE JUDICIARY COMMITTEE

CS FOR SENATE BILL NO. 101 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to character investigation and fingerprinting of applicants to the Alaska Bar Association; and amending Rule 3, section 2 and Rule 5, section 1(b) of the Rules of the Alaska Bar Association."

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

* Section 1. AS 08.08 is amended by adding new sections to read:

Sec. 08.08.136. ASSISTANCE FROM LAW ENFORCEMENT OFFICERS. State and local law enforcement officers shall assist the Board of Governors in an investigation into the conduct of members of the bar and into the character and fitness of an applicant for admission or reinstatement to the bar.

Sec. 08.08.137. FINGERPRINTS. The Board of Governors shall require an applicant for admission to be fingerprinted. The fingerprints shall be used to determine whether the applicant has a record of criminal convictions in this state or another jurisdiction. The Board of Governors may use the information obtained from the fingerprinting only in its official determination of the character and fitness of the applicant for admission to the Alaska Bar Association.

* Sec. 2. AS 08.08.137, enacted by sec. 1 of this Act, has the effect of amending section 2 of Rule 3 and section 1(b) of Rule 5 of the Rules of the Alaska Bar Association by requiring applicants for admission to the bar to submit to fingerprints.

* Sec. 3. AS 08.08.137, enacted by sec. 1 of this Act, applies to

general applicants for admission who take a bar examination after July 31, 1985, and to attorney applicants who move for admission after the effective date of this Act.

BOARD OF GOVERNORS

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ALASKA BAR ASSOCIATION
P.O. BOX 100279
ANCHORAGE, ALASKA 99510
AREA CODE 907/272-7469

RANDALL P. BURNS, EXECUTIVE DIRECTOR
STEPHEN J. VAN GOOR, DISCIPLINARY ADMINISTRATOR AND BAR COUNSEL

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LEW M. WILLIAMS

January 22, 1985

The Honorable Patrick Rodey, Chair
Senate Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Rodey:

The Alaska Bar Association would like to ask your assistance in the enactment of legislation relating to the character investigation of applicants seeking admission to the Bar. Specifically, we are seeking enactment of legislation that would allow the Alaska Bar Association to utilize the services of the Federal Bureau of Investigation (FBI) in processing the fingerprint cards submitted by applicants for admission to the Bar. Currently the cards are submitted for processing only in Alaska. The Bar Association has approval as a secondary user of AJIS, and the Alaska Department of Public Safety routinely provides us information contained within AJIS on applicants. In most cases, however, this reflects only arrests, convictions, suspended imposition of sentences, etc., for in-state violations.

Prior to 1981 the Association's fingerprint cards were also processed by the FBI. FBI rules were subsequently changed to require statutory authority for the submission of fingerprint cards to the FBI and the dissemination of information by the FBI to bar associations. Therefore, I write to ask your support for and sponsorship of such legislation.

As you are probably aware, many applicants seeking admission to the Alaska Bar are not residents of this state and have not lived here for any significant period of time prior to attending law school. In addition, effective January 1, 1985, the Alaska Supreme Court approved amendments to the Bar Rules which allow

for admission without examination (reciprocity). This will most likely bring more applicants from other states who have been out of school for a longer period of time.

Having access to FBI records, which contain information submitted by all states, would enhance our character investigation and background check on bar applicants, and assist us in adding a further level of protection to the public.

I have taken the liberty of enclosing suggested language for such legislation. As the attached correspondence indicates, the FBI has approved similar language in other jurisdictions.

Any support you could give the Association in the submission of a short bill for this purpose would be greatly appreciated. Thank you for your time and consideration of this matter. Should you need additional information, please do not hesitate to contact me.

Sincerely,

ALASKA BAR ASSOCIATION

Deborah O'Regan

Deborah O'Regan
Acting Executive Director

Enclosure

cc: Members, Board of Governors

ALASKAN INVESTIGATIONS

5750 GLACIER HIGHWAY, A-11 • JUNEAU, ALASKA 99801 • (907) 780-6816

March 4, 1985

Honorable Patrick Rodey
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Rodey:

In regards to Senate Bill #101, I am in favor with fingerprinting of applicants for admission to the Alaska Bar Association. However, the processing of fingerprints by a law enforcement officer is not always a good procedure simply because a lot of the law enforcement officers are not properly trained to take a good set of inked fingerprints. At one point of their training they are instructed on how to take inked impressions, but it is not something they do all the time. Unless you are a trained fingerprint expert, such as myself, you don't always know if the set of prints you took will be good enough to go through the remaining procedure. The procedure can be done completely if the inked impressions are done properly. There are a lot of variables to obtaining a good set of prints.

Spending several years with the Alaska State Troopers Crime Lab, Fingerprint Section, I ran across just about all the problems that can be encountered in the taking of inked impressions, and the majority of it was due to lack of training.

As the owner of Alaskan Investigations, a complete fingerprint lab, I hope this information will be of help to you on SB #101, and would be available for any further questions you may have in reference to fingerprinting.

Sincerely,

Robert C. Brookshire
Owner

Bobbie G. Brookshire

S. Van Valkenburg

RCB/bb

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: CSSB 101 (Jud)am

Title: Character Investigation and Fingerprinting

Sponsor: Senate Judiciary

Requestor: House Juciciary

Date of Request: 2-12-85

FISCAL DETAIL

Agency Affected: Public Safetv

Program Category Affected: Administration of Justice

BRU, Program or Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Paul Conger

Phone: 465-4338

Division: Administrative Services

Date: 2-12-85

Approved by Commissioner: for Michael Cleary

Date: 2-14-85

Agency: Public Safetv

Distribution (by Agency preparing fiscal note):

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

7/1/84

SB

112

BILL FILE LOG

BILL # SB 112

2/, Original Bill, fiscal note + transmittal letter

BILL SHEFFIELD
GOVERNOR

SB 112

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 30, 1985

The Honorable Don Bennett
President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that will raise the penalties for breaking into a propelled vehicle (such as a car, truck, boat or airplane) with intent to commit a crime in the vehicle. This change will cure an anomoly in current law, which punishes entry on land with intent to commit a crime more seriously than entry into a person's car or boat with the same intent.

Under existing law, if a person enters a building with intent to commit a crime in the building, the person is guilty of burglary -- a felony. If a person enters upon land with intent to commit a crime on the land, he has committed criminal trespass in the first degree -- a class A misdemeanor; this offense carries a maximum sentence of one year in jail and a $5,000 fine. However, if a person enters a propelled vehicle that is not adapted for overnight accommodation, even with intent to commit a crime (such as theft or criminal mischief) in the vehicle, that person can be charged only with criminal trespass in the second degree -- a class B misdemeanor; this offense carries a maximum penalty of only 90 days in jail and a $1,000 fine.

Breaking into a car or boat to commit a crime should be a class A misdemeanor. It is at least as serious as entering upon land to commit a crime. The way the law stands now, a person is guilty of a more serious offense if he steps onto his neighbor's lawn to steal a lawn chair or a child's toy than if he breaks into a car to steal a purse or a tape deck. Entry into a propelled vehicle without intent to commit a crime (to take a nap, for example) would continue to be a class B misdemeanor.

SB 112

While this is a relatively minor amendment to the criminal law, it recognizes the substantial interest that an innocent person has in maintaining the security of personal property such as cars, planes, boats, construction equipment and ATVs (all-terrain vehicles). I urge your favorable consideration of this bill.

Sincerely,

Bill Sheffield
Governor

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST:
Bill/~~Resolution No.~~: SB 112
Title: "An act relating to criminal trespass."
Sponsor: Governor
Requestor: Governor
Date of Request: January 24, 1985

FISCAL DETAIL:
Agency Affected: DEPARTMENT OF CORRECTIONS
Program Category Affected: Administration of Justice
BRU, Program or Subprogram(s) Affected: Offender Confinement, Reformation and Supervision

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary.

This legislation will have no fiscal impact on the Department of Corrections.

Prepared By: Cynthia Nelson Cynthia Nelson
Division: Special Assistant
Phone: 465-3376
Date: January 25, 1985

Approved by Commissioner: Roger V. Endell by William W. Feburg
Agency: DEPARTMENT OF CORRECTIONS
Date: January 25, 1985

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

CORRECTIONS 7/1/84

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: 112

Title: "An Act relating to criminal trespass."

Sponsor: By Request of the Governor

Requestor:

Date of Request: 10/29/84

FISCAL DETAIL

Agency Affected: Department of Law

Program Category Affected: Administration of Justice - Due Process

BRU, Program or Subprogram(s) Affected: Prosecution

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

This bill cures an anomoly in current law, which treats breaking into a vehicle (not adapted for overnight accommodations) with intent to commit a crime less seriously than entry onto land with the same intent. No fiscal impact will result from enactment of the bill.

Richard L. Pegues

Prepared By: Richard I. Pegues, Director Phone: 465-3672

Division: Administrative Services Date: 10/29/84

Richard L. Pegues for

Approved by Commissioner: Norman C. Gorsuch Date: 10/29/84

Agency: Department of Law

Distribution (by Agency preparing fiscal note):

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

7/1/84

LAW

RECORDS CERTIFICATION

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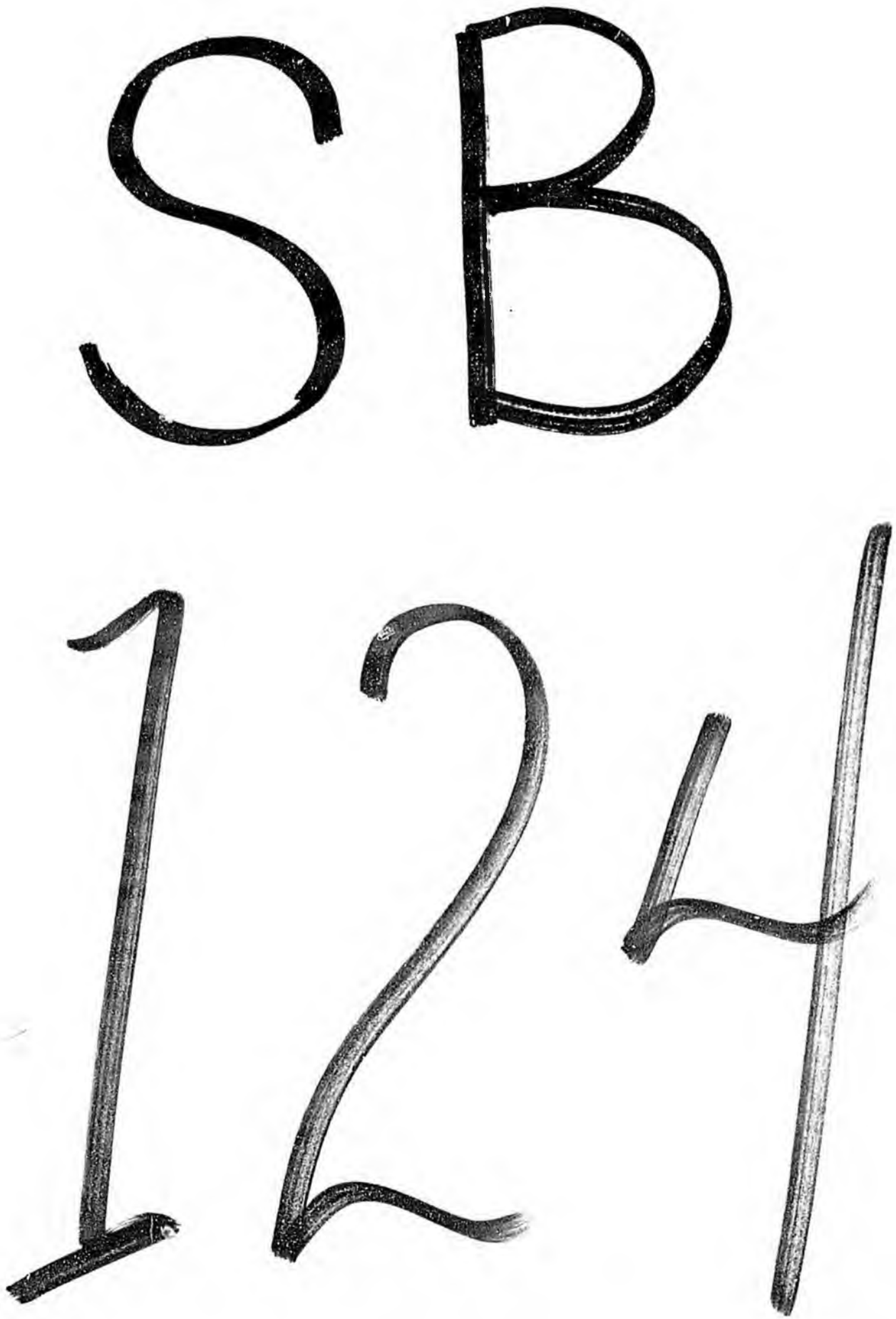
James O. Smith
Signature of Camera Operator

11/7/89
Date

02-519 (REV 8/78)


SB
124

BILL FILE LOG

BILL # SB154

2/4 Bill introduced
2/7 - Copies of Constitutional & Statutory authority
2/7 Bill heard in Committee

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: SB124

Title: "An Act relating to judicial vacancy; ed.

Sponsor: Senate Judiciary

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Alaska Court System

Program Category Affected:

BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Roger Lewis, Committee Aide Phone: 465-3717

Division: Senate Judiciary Committee Date: 2/7/85

Approved by Commissioner: Date: 2/7/85

Agency:

Distribution (by Agency preparing fiscal note):

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

7/1/84

ALASKA CONSTITUTION, ARTICLE IV, SECTION 7

Section 7. Vacancy. The office of any supreme court justice or superior court judge becomes vacant ninety days after the election at which he is rejected by a majority of those voting on the question, or for which he fails to file his declaration of candidacy to succeed himself.

Collateral references. — Validity of requirement that candidate or public officer have b: :n resident of governmental unit for specified period, 65 ALR3d 1048.

Validity and construction of constitutional or statutory provision making legal knowledge or experience a condition of eligibility for judicial office, 71 ALR3d 498.

Sec. 22.05.080. Vacancies. (a) The governor shall fill a vacancy or appoint a successor to fill an impending vacancy in the office of supreme court justice within 45 days after receiving nominations from the judicial council, by appointing one of two or more persons nominated by the judicial council for each actual or impending vacancy. An appointment to fill an impending vacancy becomes effective upon the actual occurrence of the vacancy.

(b) The office of a supreme court justice, including the office of chief justice, becomes vacant 90 days after the election in which the justice is rejected by a majority of those voting on the question or, if the justice fails to file a declaration of candidacy, 90 days after the filing deadline. Upon the occurrence of (1) an actual vacancy; (2) the certification of rejection following an election; or (3) the failure of a justice to file a declaration of candidacy, the judicial council shall meet within 45 days and submit to the governor the names of two or more persons qualified for the judicial office; except that this 45-day period may be extended by the council with the concurrence of the supreme court. In the event of an impending vacancy other than by reason of rejection or failure to file a declaration of candidacy, the council may meet at any time within the 90-day period immediately preceding the effective date of the vacancy and submit to the governor the names of two or more persons qualified for the judicial office. (§ 8(2) ch 50 SLA 1959; am § 30 ch 32 SLA 1971; am § 1 ch 93 SLA 1975; am §§ 5, 6 ch 194 SLA 1976)

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.

Sec. 22.05.090. Oath of office. Each supreme court justice, upon entering office, shall take and subscribe to an oath of office required of all officers under the constitution and such further oath or affirmation as may be prescribed by law. (§ 9 ch 50 SLA 1959)

Sec. 22.05.100. Approval or rejection. Each supreme court justice is subject to approval or rejection as provided in the Alaska Election Code (AS 15). The judicial council shall conduct an evaluation of each justice before the retention election and shall provide to the public information about that justice and may provide a recommendation regarding retention or rejection. Such information and any recommendation shall be made public at least 60 days before the retention elec-

Revisor's notes. — As enacted, the reference in the next-to-last sentence was to AS 15.57.025, which section was repealed by ch. 100, SLA 1980, and reenacted as AS 15.58.050.

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.

Sec. 22.07.070. Vacancies. (a) The governor shall fill a vacancy or appoint a successor to fill an impending vacancy in the office of judge of the court of appeals within 45 days after receiving nominations from the judicial council, by appointing one of two or more persons nominated by the council for each actual or impending vacancy. An appointment to fill an impending vacancy becomes effective upon the actual occurrence of the vacancy.

(b) The office of a judge of the court of appeals becomes vacant 90 days after the election at which the judge is rejected by a majority of those voting on the question or for which the judge fails to file a declaration of candidacy. Upon the occurrence of (1) an actual vacancy; (2) the certification of rejection following an election; or (3) the failure of a judge to file a declaration of candidacy, to succeed the judicial council shall meet within 45 days and submit to the governor the names of two or more persons qualified for the judicial office; however, the 45-day period may be extended by the judicial council with the concurrence of the supreme court. In the event of an impending vacancy other than by reason of rejection or failure to file a declaration of candidacy, the judicial council may meet at any time within the 90-day period immediately preceding the effective date of the vacancy and submit to the governor the names of two or more persons qualified for the judicial office. (§ 1 ch 12 SLA 1980)

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.

Sec. 22.07.080. Restrictions. A judge of the court of appeals while holding office may not practice law, or engage in the conduct of any other profession, vocation or business for profit or compensation, which conduct would interfere with the performance of the judicial duties of the judge, nor may a judge hold office in a political party, or hold any other office or position of profit under the United States, the state or its political subdivisions. A judge of the court of appeals filing for another elective public office other than delegate to a constitutional convention of this state or the United States forfeits the judicial position. (§ 1 ch 12 SLA 1980)

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.

making legal knowledge or experience a condition of eligibility for judicial office. 71 ALR3d 498.

Constitutional restrictions on nonattorney acting as judge in criminal proceeding. 71 ALR3d 562.

Sec. 22.10.100. Vacancies. (a) The governor shall fill a vacancy or appoint a successor to fill an impending vacancy in the office of superior court judge within 45 days after receiving nominations from the judicial council, by appointing one of two or more persons nominated by the council for each actual or impending vacancy. An appointment to fill an impending vacancy becomes effective upon the actual occurrence of the vacancy.

(b) The office of a superior court judge becomes vacant 90 days after the election at which the judge is rejected by a majority of those voting on the question or, if a judge fails to file a declaration of candidacy, 90 days after the filing deadline. Upon the occurrence of (1) an actual vacancy; (2) the certification of rejection following an election; or (3) the failure of a judge to file a declaration of candidacy, the judicial council shall meet within 45 days and submit to the governor the names of two or more persons qualified for the judicial office; except that this 45-day period may be extended by the council with the concurrence of the supreme court. In the event of an impending vacancy other than by reason of rejection or failure to file a declaration of candidacy, the council may meet at any time within the 90-day period immediately preceding the effective date of the vacancy and submit to the governor the names of two or more persons qualified for the judicial office. (§ 23 ch 50 SLA 1959; am § 2 ch 93 SLA 1975; am §§ 3, 4 ch 194 SLA 1976)

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.

NOTES TO DECISIONS

Cited in In re G.M.B., Sup. Ct. Op. No. 687 (File No. 1412), 483 P.2d 1006 (1971).

Collateral references. — Power of successor judge taking office during term time to vacate, etc., judgement entered by his predecessor. 11 ALR2d 1117.

Sec. 22.10.110. Oath of office. Each superior court judge, upon entering office, shall take and subscribe to an oath of office required of all officers under the constitution and such further oath or affirmation as may be prescribed by law. (§ 24 ch 50 SLA 1959)

Sec. 22.10.120. Number of judges. The superior court consists of 26 judges, five of whom shall be judges in the first judicial district,

al district where
h the seal of the
escribed by the
10 ch 184 SLA

State, Sup. Ct. Op.
133), 564 P.2d 365

district courts
184 SLA 1959;
§ 3 ch 24 SLA

this section."
reports. — For
dment, see 1961

nst., art. I, § 11,
of record" means
tion, such as the
e been created by
to constitutional
legislature has
e specifically as
z v. Anchorage,
le No. 3883), 597

and magis-
d States and
e for at least
) have been
three years
appointment
ve served for
preme court

(b) A magistrate shall be a citizen of the United States and of the state, at least 21 years of age, and a resident of the state for at least six months immediately preceding appointment. The supreme court may prescribe additional qualifications. (§ 11 ch 184 SLA 1959; am § 1 ch 117 SLA 1967; am § 12 ch 12 SLA 1980)

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

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.

Section 36, ch. 12, SLA 1980 provides: "The amendments enacted in Secs. 5, 9 and 12 of this Act apply only to justices and judges appointed on or after the effective date of this Act [March 22, 1980]."

NOTES TO DECISIONS

Appointment of district court judge as superior court judge pro tempore. — The chief justice's authority under Alas. Const., art. IV, § 16 to assign a judge "from one court . . . to another for temporary service," included the authority to appoint a judge of the district court to serve as judge of the superior court pro tempore, regardless of the differences that existed in the qualifications required by statute for permanent appointment to either of those courts prior to the 1980 amendments. Oxereok v. State, Sup. Ct. Op. No. 2076 (File No. 3902), 611 P.2d 913 (1980).

Applied in Buckalew v. Holloway, Sup. Ct. Op. No. 1988 (File No. 4058), 604 P.2d 240 (1979).

Cited in Stephens v. Hammersley, Sup. Ct. Op. No. 1275 (File No. 2505), 550 P.2d 1268, 552 P.2d 652 (1976).

Collateral references. — Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. 65 ALR3d 1048.

Validity and construction of constitutional or statutory provision making legal knowledge or experience a condition of eligibility for judicial office. 71 ALR3d 498.

Validity of age requirement for state public office. 90 ALR3d 900.

Sec. 22.15.170. Selection of district judges and magistrates. (a) The governor shall fill a vacancy or appoint a successor to fill an impending vacancy in an office of district judge within 45 days after receiving nominations from the judicial council by appointing one of two or more persons nominated by the council for each actual or impending vacancy. The appointment to fill an impending vacancy becomes effective upon the actual occurrence of the vacancy.

(b) The presiding judge of the superior court in each judicial district may appoint acting district judges as needed to serve at the pleasure of the presiding judge for a term of no longer than 12 months or until succeeded by an appointment made under (a) of this section, whichever first occurs. An acting district judge shall be a citizen of the United States and of the state, at least 21 years of age, but need not be licensed to practice law in any of the United States and need not have established Alaska residence before appointment. Service as an acting district judge is not considered a judicial service for the purposes of AS

22.25 unless the judge is subsequently appointed under (a) of this section.

(c) The presiding judge of the superior court in each judicial district shall appoint the magistrates for the district court for the judicial district. Each magistrate serves at the pleasure of the presiding judge of the superior court in the judicial district for which appointed.

(d) Vacancies for magistrates shall be filled in the same manner as appointments.

(e) The office of a district court judge becomes vacant 90 days after the election at which the judge is rejected by a majority of those voting on the question or, if a judge fails to file a declaration of candidacy, 90 days after the filing deadline. Upon the occurrence of (1) an actual vacancy; (2) the certification of rejection following an election; or (3) the failure of a judge to file a declaration of candidacy, the judicial council shall meet within 45 days and submit to the governor the names of two or more persons qualified for the judicial office; except that this 45-day period may be extended by the council with the concurrence of the supreme court. In the event of an impending vacancy other than by reason of rejection or failure to file a declaration of candidacy, the council may meet at any time within the 90-day period immediately preceding the effective date of the vacancy and submit to the governor the names of two or more persons qualified for the judicial office. (§ 12 ch 184 SLA 1959; am § 2 ch 138 SLA 1966; am § 2 ch 117 SLA 1967; am § 1 ch 162 SLA 1968; am § 1 ch 165 SLA 1968; am § 3 ch 160 SLA 1972; am §§ 1, 2 ch 194 SLA 1976)

Cross references. — As to voting to approve or reject a district judge, see AS 15.35.100 — 15.35.130.

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. 162, SLA 1968 (HB 461), see 1968 House Journal, p. 168. For legislative committee report on ch. 165, SLA 1968 (HB 463), see 1968 House Journal, p. 160.

NOTES TO DECISIONS

I. General Consideration.
II. Selection Procedure.
III. Magistrates.

I. GENERAL CONSIDERATION.

Stated in Theodore v. State, Sup. Ct. Op. No. 305 (File No. 550), 407 P.2d 182 (1965), cert. denied, 384 U.S. 951, 86 S. Ct. 1570, 16 L. Ed. 2d 547 (1966).

Cited in Stephens v. Hammersley, Sup. Ct. Op. No. 1275 (File No. 2505), 550 P.2d 1268 (1976); Oxereok v. State, Sup. Ct. Op. No. 2076 (File No. 3902), 611 P.2d 913 (1980).

II. SELECTION PROCEDURE.

Constitutionality. — Section 3, ch. 117, SLA 1967, does not violate the provisions of Alaska Const., art. IV, § 4. Delahay v. State, Sup. Ct. Op. No. 648 (File No. 1252), 476 P.2d 908 (1970), appeal dismissed, 402 U.S. 901, 91 S. Ct. 1381, 28 L.Ed.2d 642 (1971).

The selection procedure enacted into law by this section follows the constitutional scheme of Alaska Const., art. IV, § 5, for appointment of supreme court justices and superior court judges. Delahay v. State, Sup. Ct. Op. No. 648 (File No. 1252), 476

alaska judicial council

1031 W. Fourth Avenue, Suite 301, Anchorage, Alaska 99501 (907) 279-2526

EXECUTIVE DIRECTOR
Francis L. Bremson

NON-ATTORNEY MEMBERS
Mary Jane Fate
Robert H. Moss
Renee Murray

ATTORNEY MEMBERS
James B. Bradley
James D. Gilmore
Barbara L. Schuhmann

CHAIRMAN, EX OFFICIO
Jay A. Rabinowitz
Chief Justice
Supreme Court

January 28, 1985

Representative Mike Miller
Chairman, House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Miller:

Identical provisions of AS 22.05.080(b); 22.07.070(b); 22.10.100(b); and 22.15.170(e) require the Judicial Council to meet within 45 days of the occurrence of actual vacancies in the offices of justice of the supreme court or judge of the court of appeals, superior court or district court to submit nominations to the governor to fill such vacancies. While this 45 day selection period was deemed adequate at the time such provisions were orginally enacted, the Council's adoption of bar survey, investigation, interview and related procedures in recent years has rendered compliance with the 45 day requirement nearly impossible. Although the statutes provide a mechanism for obtaining an extension of the deadline upon request, an extension is realistically required in every case. (Attached is a summary of current Judicial Council selection procedures, including an estimate of the minimum number of days currently required, i.e, 70-93, to fill judicial vacancies.)

Therefore, the Judicial Council hereby formally requests that the House Judiciary Committee consider an amendment to the above four statutes changing the 45 day period to a 90 day period. In each of these four sections, the same change would be required and would appear twice, to-wit:

> "....the judicial council shall meet within [45] 90 days and submit to the governor the names of two or more persons qualified for the judicial office; except that this [45] 90-day period may be extended by the council with the concurrence of the supreme court."

Recently, the House Judiciary Committee introduced House Bill 116 by request of the Chief Justice to amend certain other provisions of the same four statutes to conform the language of such statutes to the language of the Alaska Constitution. Because that bill is already before your Committee, we would hope that this proposed further amendment to the same four sections requested by the Council could be considered by your Committee at the same time House Bill 116 is considered. I would be happy to appear in person or by teleconference at that time to testify in support of these proposed amendments.

Thank you in advance for your consideration of our request. If further information is required, please let me know.

Sincerely,

FRANCIS L. BREMSON
EXECUTIVE DIRECTOR

FB/kf

Enclosure

cc: Senate Judiciary Committee
House Judiciary Committee
Judicial Council
Roger Lewis
Hayden Kaden
Art Snowden
Karla Forsythe

JUDICIAL SELECTION PROCEDURES
OF THE ALASKA JUDICIAL COUNCIL

The Alaska Judicial Council is a constitutionally created state agency which evaluates the applications of persons seeking judicial appointment and refers the names of at least two qualified applicants to the Governor for appointment to fill existing or impending vacancies. The following is a brief summary of the judicial selection process--the steps which an applicant must take in order to be considered for a judicial appointment and the steps which are taken by the Judicial Council to insure that applicants are qualified for such appointment.

A. The Application Process

Applicants must first complete the Judicial Council's "Application for Judicial Appointment," which consists of a questionnaire form and two appendices. These appendices request: (1) a physician's certification of the applicant's good health based upon the results of a complete physical examination, preferably one conducted within one year prior to the date of application; or if this is not possible, a certification from the physician who conducted the most recent complete physical examination of the applicant; and (2) a legal writing sample of 5 to 10 pages in length, prepared solely by the applicant within the past five years.

Applicants must submit eight copies of the completed application and appendices to the Judicial Council on or by the date set forth in the notice of vacancy.

Applicants are also encouraged to review the Code of Judicial Conduct (Alaska Rules of Court, Vol. III) during the evaluation process period.

B. The Evaluation Process

Once the application deadline has passed, the Judicial Council begins its evaluation process.

1) The Bar Poll

The Judicial Council sends the names of all applicants to an independent organization, Policy Analysts, Ltd. (PAL) which prepares a survey to be sent to all active members of the Alaska Bar Association. The Bar Survey asks Bar members to rate each candidate on a five point scale [1 (Poor) to 5 (Excellent)] on 11 qualities, including "legal reasoning ability and knowledge of the law" and "integrity", and also asks respondents to rate each candidate as a potential "Good Judge". Survey respondents are asked to indicate whether their numerical ratings are based upon direct professional experience, other personal contacts or reputation; respondents may also decline to evaluate any candidate due to insufficient knowledge. Respondents are invited to offer narrative comments as well.

Survey responses are returned directly to PAL, which prepares a statistical analysis of all survey responses, including average ratings for each quality for each candidate by range (i.e., excellent, good, acceptable, deficient, poor). Although respondents do not rate candidates in comparison to each other, PAL does prepare an analysis showing relative quantitative rankings among candidates (e.g., 2nd highest average "Good Judge" or "11-item scale" rating out of 10 candidates). (PAL also collates all comments and forwards these in a separate, confidential report to the Council.)

After all applicants have been notified of the survey results, the survey report is released to the public. Survey results are used by the Council members in the evaluative process and each applicant has the opportunity to discuss the survey results with the Council during the interview. [See below, (5)]

2) Letters of Reference

Letters of reference are also considered by the Council in its evaluative process. Reference letters are treated as confidential and may not be viewed by the applicants.

3) Investigation of Applicants

The Council may verify applicants' educational and employment history and investigate medical, criminal, legal civil, credit and professional discipline history. Supreme Court Order 489, effective January 4, 1982, authorizes the Council to review bar applications and bar discipline records. During the course of its investigation the Judicial Council may also seek information on candidate qualifications from such other public or private groups or individuals as may be deemed appropriate. Information gathered during the Council's investigation is treated as confidential and is used only for the purpose of evaluating fitness for judicial appointment.

4) Screening

Following its review of the applications, investigative and survey data, the Council schedules candidate interviews. As a general rule, the Council prefers to interview all candidates; however, the Council may decline to interview any candidate whom it finds to be unqualified. The Council may also decide not to interview candidates who have been recently interviewed for other vacancies, where the Council believes it has sufficient information upon which to base its evaluations. The Council will ultimately review and vote on the qualifications of all applicants, whether or not interviewed.

5) Interviews

The final stage of the evaluation process is a 1/2 hour applicant interview with the full Council. Applicants invited to interview are asked about their judicial philosophy and are given an opportunity to respond to or explain any ratings, reference letters or other information gathered during the investigation.

Following these interviews, the Council submits a panel of nominees to the Governor of those candidates deemed most qualified, provided such panel includes two or more names. (If fewer than two applicants are deemed to be qualified, the Council will decline to submit any names and will re-advertise for the vacancy). Thereafter, the applicants are notified and the Council's nominations are made public. The Governor then has 45 days to appoint a nominee from the list to fill the judicial vacancy.

C. Timing of Judicial Selection Procedures

From the time the Council receives notice of a vacancy to the final applicant interviews, the judicial selection process takes a minimum of 10 weeks. Once the names of the nominees have been submitted, the Governor has up to 45 days to appoint.

The outline below describes the timing of the major procedures followed during the judicial selection process:

1) Written notice of the vacancy is received by the Council. (Day 1).

2) Within 3 days, the position is announced to all members of the Bar Associaton and the application process begins. (Day 4).

3) The deadline for receiving applications is approximately three weeks after the announcement of the position. (Day 25). The deadline for filing for the current vacancy is January 25, 1985.

4) The names and biographies of applicants are made public immediately after the filing deadline. (Day 25)

5) The Judicial Council begins its investigation process, requesting letters of reference, disciplinary histories for each applicant, and such other records as may be deemed appropriate. (Day 25).

6) The Bar Poll is mailed out to all members of the state Bar within three days. (Day 28).

7) Bar members have approximately three weeks to complete and return the Bar Poll. (Day 49). The Bar Polls for the current vacancy must be returned by February 18, 1985. The results are tabulated and analyzed within 14 days following the survey return deadline. (Day 63).

8) The candidates are advised of the bar survey results and the report is made public. (Day 63).

9) Applicant files are screened and applicants selected are advised of the time, date and place of their interviews. (Day 63)

10) Interviews are ordinarily held within the next 30 days (Day 70-93). Interviews for the current judicial vacancy are tentatively scheduled to be held on March 27-28, 1985. Council members vote following the interviews. The Governor and the candidates are immediately notified of the Council's vote and a press release is then issued.

11) The following day, the names of nominees are formally submitted to the Governor, along with copies of nominees' applications and a copy of the Bar Survey. The Governor then has up to 45 days to make an appointment from the list.

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

11/7/89
Date

02-519 (REV 8/78)

SB

125

BILL FILE LOG

BILL # SB 125

2/4 Bill introduced

2/7 Statutory references

2/7 Bill heard in Committee

Sec. 22.10.030. Where actions are to be brought. (a) All actions in ejectment or for the recovery of the possession of, quieting title to, for the partition of, or the enforcement of liens upon, real property shall be commenced in the superior court in the judicial district in which the real property, or any part of it affected by the action, is situated.

(b) If, in a civil action other than one specified in (a) of this section, a defendant can be personally served within a judicial district of the state, the action against that defendant shall be commenced in that judicial district or in the judicial district in which the claim arose.

(c) All prosecutions for crimes and offenses shall be commenced in the judicial district in which the crime or offense was committed.

(d) Subject to AS 22.10.040, a trial and any precedent or antecedent hearings in an action shall be conducted in a senate district within the judicial district at a location which would best serve the convenience of the parties and witnesses. However, if there is any part of more than one senate district within the boundaries of a borough, the trial and related hearings shall be conducted within the borough's boundaries at a location which would best serve the convenience of the parties and witnesses. If the presiding judge of the district determines that there are no facilities, reasonably suited to the purpose, available for the trial or related hearings in the senate district specified in this subsection, the presiding judge may direct the proceedings to be held in the nearest senate district with reasonably suitable facilities.

(e) Actions in cases not covered by this section may be commenced in any judicial district of the state.

(f) Failure to make timely objection to improper venue waives the requirements of this section.

(g) The chief justice of the supreme court may make exceptions to the requirements of this section if, consistent with the state and federal constitutions, the chief justice determines that transportation facilities reasonably require venue in an urban center in an adjoining judicial or senate district. (§ 17(2) ch 50 SLA 1959; am § 1 ch 126 SLA 1971; am § 1 ch 66 SLA 1972; am § 1 ch 137 SLA 1984)

Cross references. — For judicial district in which action may be brought to compel compliance with surface coal mining laws, see AS 27.21.950(d); for commencement of civil actions by persons adversely affected by failure to comply with Alaska Surface Coal Mining Control and Reclamation Act, see AS 27.21.950(d).

Effect of amendments. — The 1984 amendment, effective July 3, 1984, added subsection (g).

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: SB125

Title: "An Act relating to setting of venue by supreme court rule"

Sponsor: Senate Judiciary Comm.

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Alaska Court System

Program Category Affected:

BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Roger Lewis, Committee Aide Phone: 465-3717

Division: Senate Judiciary Committee Date: 2/7/85

Approved by Commissioner: Date: 2/7/85

Agency: Chairman

Distribution (by Agency preparing fiscal note):

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

7/1/84

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James O. Smith
Signature of Camera Operator

11/7/89
Date

02-519 (REV 8/78)

SB

138

POSITION PAPER/Department of Health & Social Services

POSITION PAPER

SENATE BILL 138

"An Act relating to pricing and promotion of alcoholic beverages."

From a public health perspective the Department of Health and Social Services is highly supportive of SB 138. Research supports the contention that lower prices of beverage alcohol leads to higher consumption resulting in increased alcohol health-related problems.

The effect of alcoholic beverage pricing and promotional activities are to increase consumption via lower prices, creating settings conducive to more drinking. The timing of such promotions, often occuring in the early evening following the work day, can also enhance the effects of alcohol since drinkers are often tired and haven't eaten. These situations also contribute to drinking and driving. This is particularly true in Alaska where the automobile, as opposed to public transportation, is the primary method of transportation. Additionally, crowded situations brought on by Happy Hours make it difficult for drink servers to determine whether patrons are of legal age or are intoxicated.

As of 1984, 12 states had restricted alcohol-price promotions to at least some degree and twenty states were considering such legislation. In recent years several military installations have banned Happy Hours as a strategy for reducing the rates of alcohol problems they were experiencing.

In a 1977 study Harvard researchers indicated that both casual and heavy drinkers consumed about twice as much alcohol under Happy Hour conditions than did their counterparts under non-Happy Hour conditions.

The Department would be pleased to provide any additional information relating to SB 138.

Recommended by: Matthew C. Felix

Matthew C. Felix
Coordinator
Office of Alcoholism/
Drug Abuse

Date: 2/19/86

Approved by: John R. Pugh

John R. Pugh
Commissioner
Department of Health
& Social Services

Date: 2/19/86

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SB 138
Title : "An Act relating to pricing and promotion of alcoholic beverages."

Sponsor : V. Fischer
Requestor : Senate State Affairs Committee
Date of Request : 2/8/86

FISCAL DETAIL

Agency Affected : Health & Social Services
BRU : Alcoholism and Drug Abuse

Components : Alcohol Abuse

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	Ø	Ø	Ø	Ø	Ø	Ø
CAPITAL						
REVENUE	Ø	Ø	Ø	Ø	Ø	Ø

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Matthew C. Felix Phone : 586-6201
Division : ALCOHOL + DRUG ABUSE Date : _____

Approved by Commissioner : John R. Pugh Date : 2/19/86
Agency : HEALTH + SOCIAL SERVICES

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
Requestor
Office of [illegible]

SB 138

ALASKA MOOSE ASSOCIATION

OFFICE OF THE

EXECUTIVE COMMITTEE

November 16, 1985

The Executive Committee of the Alaska Moose Association on behalf of its ten-member Lodges and its 7,300 members, would like to have Senate Bill #138 amended to be able to maintain the following traditional practices that have become a part of the Moose fraternalism:

1. Be able to provide one alcoholic beverage to a visiting Moose member from another Moose Lodge.

2. Be able to provide one alcoholic beverage to a newly enrolled member.

3. Be able to provide alcoholic beverages to an individual member or group of members after a work party that has benefited the Lodge and/or community.

4. Be able to substitute drink chips for alcoholic beverages that can be used at a later time.

5. Would like to maintain the "Home Safe Driver" incentive or award for the designated driver to use at a future date.

FROM Senator Zieglers office
SENT FROM THE MOOSE LODGE IN KETCHIKAN

Offered: 2/20/86
Referred: Judiciary

Original sponsor: V.Fischer

2/26 this bill waived OUT of committee by unan

IN THE SENATE BY THE STATE AFFAIRS COMMITTEE

CS FOR SENATE BILL NO. 138 (State Affairs)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to pricing and promotion of alcoholic beverages."

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

* Section 1. AS 04.16 is amended by adding a new section to read:

Sec. 04.16.015. PRICING AND PROMOTION OF ALCOHOLIC BEVERAGES. (a) On premises where alcoholic beverages are sold by the drink, a licensee or a licensee's agent or employee may not

(1) offer or deliver, as a promotional device, free alcoholic beverages to a person or group of persons;

(2) deliver an alcoholic beverage to a person already possessing two or more;

(3) sell, offer to sell, or deliver alcoholic beverages to a person or group of persons at a price less than the price regularly charged for the beverages during the same calendar week, except at private functions not open to the general public;

(4) sell, offer to sell, or deliver an unlimited number of alcoholic beverages to a person or group of persons during a set period of time for a fixed price;

(5) sell, offer to sell, or deliver alcoholic beverages to a person or group of persons on any one day at prices less than those charged the general public on that day, except at private functions not open to the general public;

(6) encourage or permit an organized game or contest on the licensed premises that involves drinking alcoholic beverages or the

awarding of alcoholic beverages as prizes.

(b) A licensee or a licensee's agent or employee may not advertise or promote in any way, either on or off the premises, any of the practices prohibited under (a) of this section.

(c) Nothing contained in this section shall be construed to prohibit a licensee or a licensee's agent or employee from offering free food or entertainment at any time, from serving wine by the bottle or carafe or beer by the pitcher with meals, or from including an alcoholic beverage as part of a meal package.

ALASKA STATE LEGISLATURE
SENATE JUDICIARY COMMITTEE

SENATOR PATRICK RODEY, CHAIRMAN
SENATOR TIM KELLY, VICE-CHAIR
SENATOR JAN FAIKS
SENATOR RICK HALFORD
SENATOR ROBERT ZIEGLER, SR.

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3717

March 2, 1986

Katherine Bigler, President
Anchorage Chapter, M.A.D.D.
2205 East Tudor Road, Suite 38
Anchorage, Alaska 99504

Dear Ms. ~~Bigler~~ KATHERINE

Thank you for your recent letter requesting my support of the speedy passage of Senate Bill 138 through the Senate Judiciary Committee which I chair. You will be pleased to know that I have waived SB 138 out of my committee and onto the next committee of referral.

Again, thank you for your letter. Keep up the good work!

Very truly yours,

Pat

Patrick M. Rodey

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

11/7/89
Date

02-519 (REV 8/78)

SB

139

BILL CONTACT/ACTION

DATE	CONTACT/ACTION
2/7	Bill introduced / referred
2/25	Dept. of Public Safety Position Paper
4/2	Hickerson memo; Editorial;
	Dept. of Law letter
4/4	- J.N. memo from Public Safety + Law -
	- Contacted Sam Crane - ACLU - 276-5152
	- Contacted Del Smith - Chiefs of Police 279-1441
	✓ Invite to Make Decon - Hal Brown
	271-5071
	✓ Paul Grant - ACLU Board Member
	586-2701 (w) -
	will let us know if/who will testify
1/21/80	Public Safety. FN - Zero
1/30	Talked to Gayle Hovetski - she will
	let us know if there is a new Dept of Law
	position. 3424.
2/5	Called PAUL GRANT - ACLU - Rep will attend
	" DEL SMITH - CHIEFS OF POLICE NOT IN office today
	" GAYLE HOVETSKI - DOL - will have SOMEONE
	AVAILABLE FOR QUESTIONS

1984 Report

CRIME COMMISSION BOARD RECOMMENDATION

During the course of receiving input from various state and federal law enforcement agencies, the one consistent point was the lack of a conspiracy law in the state of Alaska.

Because none of the committees addressed that particular issue, members of the Crime Commission Board felt they should make a recommendation concerning the need for the state to have a conspiracy law. Therefore, it is the unanimous recommendation of the Board of Directors of the Anchorage Chamber of Commerce Crime Commission that the state pass a conspiracy law during the 1985 session of the legislature.

The passage of a State Conspiracy Law will provide a very important tool for Alaska Law Enforcement in dealing with sophisticated crimes involving drugs, white collar crime, stolen property, and arson, to name a few.

LAW ENFORCEMENT/CRIME COMMITTEE

Committee Chairman: George King

NARCOTICS

RECOMMENDATIONS

1. The State Legislature should pass a bill similar to the 1984 House Bill 698, "Act Relating to Marijuana," i.e., the recriminalization of marijuana should be uniform with Federal law.

2. The Anchorage Municipality and/or the State Legislature should pass new or rewrite existing laws and ordinances to prohibit the display or sale of items used solely by drug users. The Municipal Ordinance Chapter 8.20 should be amended to prohibit the sale of products with implied drug usage.

3. Increase Anchorage Metro Unit and APD manpower, equipment, and budgets to aid in the investigation, arrest, and documentation of cases for prosecution to effectively control and deter this crime category.

ALASKA STATE LEGISLATURE
SENATE JUDICIARY COMMITTEE

SENATOR PATRICK RODEY, CHAIRMAN
SENATOR TIM KELLY, VICE-CHAIR
SENATOR JAN FAIKS
SENATOR RICK HALFORD
SENATOR ROBERT ZIEGLER, SR.

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3717

JANUARY 31, 1986

TO: MIKE SPAAN

FROM: ANN PLUNKETT

As promised, I'm leaving you relevant portions of the 1977 Alaska Criminal Code Revision, as well as the "original" conspiracy bill introduced by John Liska in 1984. The language contained in Sec. 1 of our SB139, narrowing the wording to controlled substances and prostitution, is a Rodey amendment.

If you have any more questions, just call. See you on Thursday.

SENATOR PATRICK RODEY, CHAIRMAN
SENATOR TIM KELLY, VICE-CHAIR
SENATOR JAN FAIKS
SENATOR RICK HALFORD
SENATOR ROBERT ZIEGLER, SR.

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3717

January 21, 1986

U.S. Attorney Michael Spaan
701 C Street
Anchorage, AK 99501

Dear Mr. Spaan:

The Senate Judiciary Committee will be hearing Senate Bill 139, "An Act relating to the crime of conspiracy," on Thursday, February 6, at 1:30 p.m. You are invited to attend and share your comments with members of the committee.

Enclosed you will find a copy of SB 139; if you require any further information, please contact Ann Plunkett at 465-3717.

Sincerely,

Pat

Patrick M. Rodey

Encl.

SENATOR [illegible], CHAIR
SENATOR TIM KELLY, VICE-CHAIR
SENATOR JAN FAIKS
SENATOR RICK HALFORD
SENATOR ROBERT ZIEGLER, SR.

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3717

January 23, 1986

Harold M. Brown
Attorney General
Pouch K
Juneau, AK 99811

HMB

Dear General Brown:

The Senate Judiciary Committee will be hearing Senate Bill 139, "An Act relating to the crime of conspiracy," on Thursday, February 6, at 1:30 p.m. You are invited to attend and share your comments with members of the committee.

Enclosed you will find a copy of SB 139; if you require any further information, please contact Ann Plunkett at 465-3717.

Sincerely,

Pat

Patrick M. Rodey

Encl.

Introduced: 2/13/84
Referred: Judiciary and Finance

BY LISKA

IN THE HOUSE

HOUSE BILL NO. 626

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the crime of conspiracy."

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

* Section 1. AS 11.31 is amended by adding new sections to read:

Sec. 11.31.120. CONSPIRACY. (a) An offender commits the crime of conspiracy if, with the intent to promote or facilitate an illegal activity, the offender agrees with one or more persons to engage in or cause the performance of that activity and the offender or one of the persons does an overt act in furtherance of the conspiracy.

(b) If an offender commits the crime of conspiracy and knows that a person with whom the offender conspires to commit a crime has conspired or will conspire with another person or persons to commit the same crime, the offender is guilty of conspiring with that other person or persons to commit that crime, whether or not the offender knows their identities.

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

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

(2) that a person with whom the defendant conspires could not be guilty of the crime that is the object of the conspiracy because of

(A) lack of criminal responsibility or other legal incapacity or exemption;

(B) unawareness of the criminal nature of the conduct

in question or of the criminal purpose of the defendant; or

(C) any other factor precluding the culpable mental state required for the commission of the crime.

(d) In a prosecution under this section, it is a defense that, if the criminal objective were achieved, the defendant would not be legally accountable under AS 11.16.120(b) for the conduct of the person with whom the defendant conspired.

(e) In a prosecution under this section it is an affirmative defense that the defendant, under circumstances manifesting a voluntary and complete renunciation of the defendant's criminal intent, gave timely warning to law enforcement authorities or otherwise made proper effort to prevent the commission of the crime that was the object of the conspiracy. Renunciation by one conspirator does not affect the liability of another conspirator who does not join in the renunciation.

(f) The liability of a conspirator for offenses committed in furtherance of the conspiracy, including a crime that is the object of the conspiracy, shall be determined under AS 11.16.

(g) Conspiracy is a

(1) class A felony if the object of the conspiracy is a crime punishable as an unclassified felony;

(2) class B felony if the object of the conspiracy is a crime punishable as a class A felony;

(3) class C felony if the object of the conspiracy is a crime punishable as a class B or class C felony.

(h) In this section "illegal activity" means an offense

(1) against the person under AS 11.41, punishable as a felony;

(2) against property under AS 11.46, punishable as a class

A or class B felony;

(3) against public administration under AS 11.56, punishable as a felony;

(4) against public order under AS 11.61, punishable as a felony;

(5) involving controlled substances under AS 11.71, punishable as an unclassified, class A, or class B felony; or

(6) involving alcoholic beverages under AS 04, punishable as a felony.

Sec. 11.31.125. DURATION OF CONSPIRACY FOR PURPOSES OF LIMITATIONS OF ACTIONS. (a) For purposes of applying AS 12.10 governing limitations of actions, in a prosecution under AS 11.31.120, conspiracy is a continuing course of conduct that terminates

(1) when the crime that is its object is completed;

(2) when the agreement is abandoned by the defendant and by the person with whom the defendant agreed; or

(3) as to an individual defendant, when the defendant abandons the agreement by advising the person with whom the defendant agreed of the defendant's abandonment or the defendant informs law enforcement authorities of the existence of the conspiracy and of the defendant's participation in it.

(b) For purposes of (a)(2) of this section, abandonment of an agreement is rebuttably presumed if neither the defendant nor anyone with whom the defendant conspired does an overt act in furtherance of the conspiracy during the applicable period of limitations.

* Sec. 2. AS 11.31.140 is amended to read:

Sec. 11.31.140. MULTIPLE CONVICTIONS BARRED. (a) It is not a defense to a prosecution under <u>AS 11.31.100 - 11.31.120</u> [AS 11.31.100 OR AS 11.31.110] that the crime that is the object of the attempt,

conspiracy, or solicitation was actually committed pursuant to the attempt, conspiracy, or solicitation.

(b) A person may not be convicted of more than one crime defined by AS 11.31.100 - 11.31.120 [AS 11.31.100 OR AS 11.31.110] for conduct designed to commit or culminate in commission of the same crime.

(c) A person may not be convicted on the basis of the same course of conduct of both (1) a crime defined by AS 11.31.100 - 11.31.120 [AS 11.31.100 OR AS 11.31.110]; and (2) the crime that is the object of the attempt, conspiracy, or solicitation.

(d) This section does not bar inclusion of multiple counts in a single indictment or information charging commission of a crime defined by AS 11.31.100 - 11.31.120 [AS 11.31.100 OR AS 11.31.110] and commission of the crime that is the object of the attempt, conspiracy, or solicitation.

(e) If a person conspires to commit more than one crime under AS 11.31.120, the person commits only one crime of conspiracy if the multiple crimes are the object of the same agreement.

HOUSE JUDICIARY
STANDING COMMITTEE
March 29, 1984
1:43 p.m.

Members Present:	Rep. Bussell, Chairman Rep. Liska, Vice-chairman Rep. Clocksin Rep. Barnes Rep. Hayes
Members Absent:	Rep. Malone Rep. Wendte

COMMITTEE CALENDAR

HB 626	"An Act relating to the crime of conspiracy."
HB 562	"An Act relating to service of process in cases involving domestic violence."

WITNESS REGISTER

Gayle Horetski
Department of Law
Pouch KC
Juneau, AK 99811
465-3428
Position Statement: Testified in favor of HB 626

PREVIOUS ACTION

HB 626	First reading - 2/13/84. Judiciary Committee Report and Fiscal Note is on page 3100 of the 1984 House Journal. Committee referrals - Judiciary, Finance and Rules.
HB 562	First reading - 2/1/84. C&RA Committee Report and Fiscal Note is on page 2981 of the 1984 House Journal. Committee referrals - Community & Regional Affairs, Judiciary, Finance and Rules.

ACTION NARRATIVE

TAPE# 139 Recording Number 0005	The Judiciary Committee meeting was called to order by Chairman Bussell at 1:43 p.m..

Roll was taken and he read the bills up for consideration today. States that HB 562 had a CS prepared which failed to answer the questions and problems before the troopers and the city of Anchorage. It is noted that there will be further work on HB 562.

Number 0030 Chairman Busseil turns the time to HB 626.

Number 0035 Gayle Horetski comes before the committee. "This bill adds additional sections to the criminal law for conspiracy. Most states have some laws for conspiracy. When the criminal code was adopted in 1986, the conspiracy sections were not adopted because of the belief of lack of need. Now we have to prove that someone attempted to commit a crime. Very hard to do."

Ms. Horetski refers to "illegal activity". Reads section (h), page 2.

(h) In this section "illegal activity" means an offense

(1) against the person under AS 11.41, punishable as a felony;

(2) against property under AS 11.46, punishable as a class A or class B felony;

(3) against public administration under AS 11.56, punishable as a felony;

(4) against public order under AS 11.61, punishable as a felony;

(5) involving controlled substances under AS 11.71, punishable as an unclassified, class A or class B felony; or

(6) involving alcoholic beverages under AS 04, punishable as a felony.

HB 626 requires that a person do things. Sec. (a) page 1. An offender commits the crime of conspiracy if, with the intent to promote or facilitate an illegal activity, the offender agrees with one or more persons to engate in or cause the performance of that activity and the offender of one of the persons does an overt act in furtherance of the conspiracy.

There will be provisions for a person to back out of the conspiracy. It is taken from existing law. Penalties are outlined on page 2.

Multiple conviction barred is taken from existing law.

Number 0175 — Rep. Barnes asks Ms. Horetski if she supports this bill as is.

Ms. Horetski answers yes.

Number 0185 — Rep. Hayes asks if prostitution is covered in this bill. The answer is no.

Number 0210 — Rep. Barnes moves and asks unanimous consent to pass HB 626 from committee with individual recommendations. There is no objection.

Number 0220 — With no further business to come before the committee, Chairman Bussell adjourns at 1:53 p.m..

Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3733

DISTRICT 15
STAR ROUTE BOX 421
EAGLE RIVER, ALASKA 99577
(907) 688-2526

VICE-CHAIRMAN
Judiciary
Legislative Regulations Review

MEMBER
Resources
Rules
Finance — Sub. Com. Labor

Representative John J. Liska

March 28, 1984

M E M O R A N D U M

TO: Judiciary Committee

FROM: Rep. John J. Liska

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

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

The following material is attached:

A. Alaska Statute 11, Chapter 31-attempt and solicitation.

B. Department of Public Safety position paper.

C. Fiscal Note.

D. Articles on organized crime.

1. From Bital Speeches of the Day - "Combatting Organized Crime".
2. Newsweek - "How the Mob Really Works", January 5, 1981.
3. Newsweek - "A Squealers Secrets", January 5, 1981.
   "And Now the Israeli Mafia"
4. Newsweek - "Rico the Enforcer", August 20, 1979.
5. Business Week "Investment", January 10, 1983.
6. Newsweek - "Life in Hiding", January 5, 1981.
7. Nations Business - "Bad News for Labor Racketeers", Oct. 1982.
8. Business Week - "A New Ploy to Fight Takeovers", May 24, 1982.

file Conspiracy

BILL SHEFFIELD, GOVERNOR

REPLY TO:

☒ OFFICE OF THE CHIEF PROSECUTOR
POUCH KC
JUNEAU, ALASKA 99811
PHONE: (907) 465-3428

☐ OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
1031 WEST 4TH AVENUE, SUITE 3
ANCHORAGE, ALASKA 99501-599
PHONE: (907) 279-7424

DEPARTMENT OF LAW

CRIMINAL DIVISION

October 17, 1984

Ms. Elizabeth Hickerson
Senate Advisory Council
1024 W. 6th Avenue, Suite 203
Anchorage, AK 99501

Dear Ms. Hickerson:

This is in response to your September 13 letter to Assistant Attorney General Gayle Horetski, requesting this Department's position on conspiracy legislation along the lines of HB 626, introduced last session. As we discussed during our telephone conversation last week, this Department is generally in favor of some type of conspiracy law. However, we do not think that it is appropriate that such a law be passed right now, nor do we think that law enforcement in Alaska is being adversely affected without a conspiracy law at the present time.

As you know, conspiracy laws can easily create unforeseen legal and tactical problems which arise whenever the class of potential co-defendants is expanded. For example, the usual problems with using co-defendant statements are further compounded when more and more people are charged or can be charged as conspirators. More importantly, and of primary concern to us at this time, is that the existence of a conspiracy law makes it possible for a greater number of witnesses to assert fifth amendment rights, even if they are not charged. As a result of such claims, the state will be forced to give more and more grants of immunity in order to obtain needed testimony. We believe that expanding the number of immunity grants is inappropriate (1) because of the unsettled nature of the law on immunity in Alaska, and (2) because unnecessary grants of immunity subject witnesses to lines of cross-examination that are detrimental to the prosecution in any criminal case.

For these reasons we do not favor a conspiracy law at this time and, if one is ultimately to be introduced at some point in the future, it must be limited in such a way as to avoid the problems raised above.

As I mentioned to you over the phone, we do not think our prosecution program is suffering because we do not have a

state conspiracy law. At the present time we have a close working relationship with the United States Attorney's Office for the District of Alaska whereby appropriate cases have been prosecuted in federal court under applicable conspiracy laws and well-settled federal immunity provisions. The State of Alaska is participating in the U.S. Department of Justice Cross-Designation Program, which permits state prosecutors to become specially designated assistant U.S. attorneys to handle criminal cases in federal court under the direction of the U.S. Attorney for Alaska. Therefore if the state uncovers a large narcotics conspiracy, for example, it can be prosecuted in federal court by the state prosecutor who is most familiar with the case because of his or her involvement in the initial investigation.

We hope we have been responsive to your concerns, and we apologize for the delay in getting back to you.

Very truly yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

DANIEL W. HICKEY
CHIEF PROSECUTOR

By: Dean J. Guaneli
Dean J. Guaneli
Assistant Attorney General

DJG/so-39

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER

Support

2/20/85

SB 139 "An Act relating to the crime of conspiracy."

Alaska is the only state that does not have a conspiracy statute. Presently law enforcement agencies are unable to charge suspects with a felony even if they can prove that a crime was planned with every intention of carrying it out.

Robert J. Sundberg
Commissioner

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SB 139
Title : "ar act relating to the crime of conspiracy"

Sponsor : Senator Rodey
Requestor : Senate Judiciary
Date of Request : 1/24/86

FISCAL DETAIL

Agency Affected : Public Safety
BRU : Alaska State Troopers

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Kathy Niles, Admin. Ass't
Division : Commissioner's Office
Phone : 465-4336
Date : 1/24/86

Approved by Commissioner : for Lindsey
Agency : Public Safety
Date : 1-25-86

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

10/25/85

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SB 139
Title : "An Act relating to the crime of conspiracy."

Sponsor : Sen. Rodev
Requestor : Senate Judiciarv Committee
Date of Request : Januarv 24, 1986

FISCAL DETAIL

Agency Affected : Department of Law
BRU : Prosecution

Components : Third Judicial District

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		60.0	73.6	75.8	78.1	80.4
TRAVEL		4.5	5.6	5.8	5.9	6.1
CONTRACTUAL		11.2	13.8	14.2	14.6	15.0
SUPPLIES		3.5	2.5	2.6	2.7	2.8
EQUIPMENT		1.5	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		80.7	95.5	98.4	101.3	104.3
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND		80.7	95.5	98.4	101.3	104.3
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

.e see attached analysis.

Richard L. Pegues

Prepared by : Richard I. Pegues, Director — Phone : 465-3672
Division : Administrative Services Division — Date : 2/05/86

Richard L. Pegues / FOR

Approved by Commissioner : Harold M. Brown, Attorney General — Date : 2/05/86
Agency : Department of Law

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

10/25/85

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 139

This bill makes it a crime for two or more persons to "conspire" together to violate state or municipal laws regarding drugs and prostitution. Enactment of this bill will permit state attorneys to prosecute conspirators even though the crime that was the object of a conspiracy may not have been completed.

With the limits set by the bill, the major focus of enforcement attention will be upon the major narcotics rings which have appeared in the state during the last few years.

Investigation and prosecution of large-scale drug trafficking cases is extremely time-consuming and labor intensive. Major narcotics rings are carefully planned and organized, and it requires the same degree of planning and organization to detect, investigate, infiltrate, and ultimately break the rings. A good example is the single big drug case that the state was able to pursue in FY 85 -- the "Black Gold" heroin ring in Anchorage. The case involved 29 separate individuals (most charged with selling heroin), almost all of whom were granted separate trials, thus creating 29 cases out of a single operation. So far there have been no acquittals, although a few defendants have fled the state and are now fugitives.

The "Black Gold" investigation required the "full-time" (12 hours a day, 6 or 7 days a week) direction and legal assistance of two experienced prosecutors for over two months. In addition to obtaining over 25 search warrants, the prosecutors consulted on a daily, sometimes hourly, basis with and guided the efforts of three teams of officers: a "surveillance" team varying from 10-20 officers to keep track of the members of the ring; a "buy" team of 4-8 officers working closely with informants to purchase narcotics; and an "investigation" team of 2-6 officers who compile telephone records and other evidence in order to discover links between individuals and organizations.

Under a conspiracy law, the scope of enforcement authority would be expanded to include more persons involved in the ring, leading to larger and more complicated investigations and prosecutions, but leading to more effective enforcement of our drug laws. Effective enforcement of these laws, especially at this point in Alaska's history, is critical. With the opening of the new international wing at the Anchorage airport, there has been an increase in the number of international flights with passengers "off-loading" in Anchorage. With new routes of access

to Alaska, and new types to drugs to deal in, traffickers will have a field day. We must try to prevent the infiltration into the state of new organizations intended to fill the void left by the prosecution of the Resek-Marin family (FY 84), the Black Gold ring (FY 85) and, most recently, the Azzarella-Serra organizations (FY 86).

Considering the increase in sophisticated narcotics trafficking, and the efforts necessary to adequately meet this threat, the Department of Law believes that the dedicated services of at least one full-time attorney in Anchorage will be required to effectively carry out conspiracy prosecutions under this legislation.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 139

Fund Summary - SB 139

	Attorney IV	Total
71000	60.0	60.0
72000	4.5	4.5
73000	11.2	11.2
74000	3.5	3.5
75000	1.5	1.5
TOTAL	80.7	80.7

FY 87 costs are on a 10 month, first-year basis. Costs beyond FY 87 are on a 12 month, full-year basis, less one-time costs, and including a 3% annual inflation factor.

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Attorney IV	1	24/A	PX			

Time Status	Staff Months	RP Number	Location	Election District	Leg.		
PFT	10		Anchorage	8			

Type of Expenditure		Amount
1	2	3
Salary	46,870	
Benefits	13,174	
Premium Pay		
Other		
Total Personal Services		60,044
Travel		4,500
Contractual		11,180
Commodities		3,500
Equipment		1,500
Other		
Total Cost		80,724

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	80,724
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number __ __ - __ __ - __ __ - __ __ - __ __

Justification

This position is requested to provide prosecution services of defendants who conspire to violate state and municipal laws regarding drugs and prostitution. Investigation and prosecution of large-scale drug trafficking cases is extremely time consuming and labor intensive and will require a minimum of one full-time attorney. Allocation to the full-working level of Attorney IV is recommended because of the seriousness of the crimes being prosecuted.

Request For New Position

Agency: Department of Law
BRU: Prosecution
Component: Third Judicial District

Revised Date

FY 87