

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4563 HHS HB 411 - HB 417

35

Blue Cross
of Washington and Alaska



3111 C Street, Suite 100
P.O. Box 10-2480
Anchorage, Alaska 99510-2480
(907) 561-5065

April 23, 1986

Representative Niilo Koponen
The Alaska State Legislature
Pouch V (M.S. 3100)
Juneau, Alaska 99811

Dear Representative Koponen:

Blue Cross of Washington and Alaska generally agrees with the legislative findings that there are persons in Alaska with limited access to health care services. We do not have any reference to numbers of persons in need, but feel that it is right and proper for the State to provide incremental support when necessary.

Blue Cross of Washington and Alaska supports the utilization of a managed health care system to meet the requirements for programs directed toward those in need. Not only is a managed system a device for cost control, it puts the patient in partnership with the health care provider in developing a course of action in response to illness. This partnership will provide for the best possible care in the most appropriate setting, thusly conserving dollars and providing personal and professional satisfaction to the provider and patient.

Blue Cross of Washington and Alaska questions the inclusion of the psychological associate in the table of providers. We feel the scope of practice of the psychological associates precludes them from rendering a full measure of care. The psychological associate requires supervision of a psychologist, the work plan must be approved and cognizant department must be kept informed of the individual's area of practice. This use of the associate may violate the concept of the managed health care systems approach.

Blue Cross of Washington and Alaska will cooperate with the Legislature, and the Health, Education and Social Services Committee in particular, in developing a program of assistance

Representative Miilo Koponen
April 23, 1986
Page Two

to those persons in need of assistance in obtaining health
care coverage.

Sincerely,



Martin E. Tj or
Senior Representative
Corporate Relations

MET:pas

POSITION PAPER

HOUSE BILL 675

I. Purpose of HB675

HB675 establishes a comprehensive program to address the unmet medical needs of those Alaskans who are not otherwise protected by a private or group health care plan.

II. Discussion

The number of medically uninsured individuals has been steadily increasing nationally due to unemployment, cuts in state and federal programs, and inability of many self-employed individuals to afford continued health care insurance premiums for their families.

Many states have established task forces to define the scope of the problem, and to make recommendations for reducing the number of persons at risk.

HB675 would make a major state commitment to addressing this problem in Alaska. In short, HB675 directs the Department to design a comprehensive medical program that would be offered to all at risk Alaskans at a price they are able to afford. This effort would be directed by a Basic Health Plan Board composed of nine members appointed by the Governor.

The new program would be based on an insurance model that would depend on individuals recognizing their lack of medical protection, and taking steps to correct that by enrolling in the new program. Those "risk-takers" who chose not to take advantage of this special program would remain vulnerable to the financial catastrophe that almost certainly comes with a major medical problem for those who are not prepared for it.

The program would capitalize on new health care financing ideas being used around the nation, and encourage competitiveness in purchasing health care for the persons covered under it.

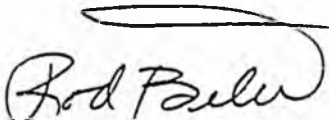
HB675 is a broad, straightforward approach to addressing the needs of medically at risk individuals. The sponsors of HB675 clearly espouse the view that no Alaskan should be confronted with difficulty receiving quality medical attention when confronted with a major medical problem solely due to their inability to purchase adequate health care protection. The Department shares this point of view.

III. Department Position

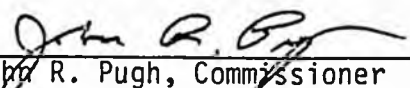
A detailed analysis of HB675 and its financial implications has not been done by the Department. This analysis would be largely dependent on an assessment of the number of individuals who are medically at risk due to lack of medical coverage, or inadequate medical coverage. The Department believes that medical indigency is a serious problem and should be addressed by the Legislature. The Department supports

POSITION PAPER/Department of Health & Social Services

HB675 in concept, but recommends that it be modified to establish funding in the first year to conduct an assessment of the problem, with findings and recommendations reported back to the Legislature in February 1987.

Recommended By: 
Rod Betit, Director
Division of Medical Assistance

Date: 3/26/86

Approved By: 
John R. Pugh, Commissioner
Department of Health and
Social Services

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STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY
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POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

House Hess:

February 10, 1988

February 17, 1988

HOUSE COMMITTEE REPORT

(7)

Date referred: 1/29/88

FURTHER REFERRALS: Judiciary

DATE: 2-17-88

The Health, Education and Social Services Committee has considered HB 412

"An Act relating to the pre-emancipation services for certain minors."

RECOMMENDS:

- replace with CS HB 412 (HESS) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

J. Ellis
Bill Hurd
Chris Ouley
W. H. Hurd

J. Ellis
Chairman's signature
W. H. Hurd

DRAFT

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 412
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to the pre-
emancipation services for certain minors.
Sponsor: HESS
Requestor: _____

Agency Affected: Health and Social Services
BPIJ: Child and Youth Custody
Components: Foster care, Residential care.

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	65.0	70.0	70.0	70.0	70.0	70.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	200.0	400.0	400.0	400.0	400.0	400.0
MISCELLANEOUS						
TOTAL OPERATING	265.0	470.0	470.0	470.0	470.0	470.0
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	265.0	470.0	470.0	470.0	470.0	470.0
FEDERAL FUNDS						
OTHER						
TOTAL	265.0	470.0	470.0	470.0	470.0	470.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

100 Youth to receive informal training in independent living concepts and skills at \$200.00 per child.
45 Youth to receive formal training in independent living skills at \$1000 per child in first year, and 90 per year thereafter at 500 each.

Prepared by: Yvonne M. Chase, Director Phone: 465-3170 (Attachment)
Division: Division of Family and Youth Services Date: 02-17-88

Approved by Commissioner: Myra M. Munson, Commissioner Date: _____
Agency: Department of Health and Social Services

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

FISCAL NOTE (Attachment)

Analysis:

20 Youth to receive supervised independent living or subsidized independent living at \$9000. annually and 40 per year thereafter.

STATE OF ALASKA
1988 LEGISLATIVE SESSION

No. 1
BILL VERSION: CSHB 412 (HFSS)
PUBLISH DATE: HOUSE 2/22/88

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to the pre-
emancipation services for certain minors
Sponsor: HFSS
Requestor: _____

Agency Affected: Health and Social Services
BRU: Child and Youth Custody
Components: Foster Care, Residential Care

15A

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL		3.0	3.0	3.0	3.0	3.0
CONTRACTUAL						
SUPPLIES						
EQUIPMENT		4.5				
LAND & STRUCTURES						
GRANTS, CLAIMS	20.0	253.0	423.0	423.0	423.0	423.0
MISCELLANEOUS						
TOTAL OPERATING	20.0	260.5	426.0	426.0	426.0	426.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	20.0	260.5	426.0	426.0	426.0	426.0
FEDERAL FUNDS						
OTHER						
TOTAL	20.0	260.5	426.0	426.0	426.0	426.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

(See attached Pages(s).)

Prepared by: Yvonne M. Chase, Director *AMC*
Division: Division of Family and Youth Services

Phone: 465-3170
Date: 02-23-88

Approved by Commissioner: Myra M. Munson, Commissioner
Agency: Department of Health and Social Services

Date: 2-24-88

Distribution (by preparer):

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

CENTRAL OFFICE COMPONENT

CSHB 412 (HESS)
HOUSE 2/22/88FY 88 Grants

Initial cost of \$20,000 to develop and purchase training curriculum for emancipation services/ independent living skills, as well as purchase films, video's, and reference materials for foster parents, residential child care providers and state youth correctional institutions.

\$ 20,000.

Total \$ 20,000.

FY 89 Equipment

\$4,500 to purchase a computer for program development and client tracking. This computer would be used in administering the program and to avoid the need for additional personal service costs.

\$ 4,500.

FY 89 Travel

\$3,000 to monitor programs, and to aid in curriculum development and provide training.

\$ 3,000.

Total \$ 7,500.

FY 90-93 Travel

\$3,000 per year to monitor programs, and to aid in curriculum developpe and provide training.

\$ 3,000.

Total \$ 3,000.

FOSTER CARE COMPONENT

FY 88 Grants

\$ 00.

FY 89 Grants

\$25,000 to train 40 foster parents in independent living concepts and skills. These foster parents would then provide training to other foster parents from their areas. These trained foster parents could then provide independent living skills to 50 youth the first year and 125 per year thereafter.

\$ 25,000.

Total \$ 25,000.

House Bill 412

CSHB 412 (HESS)
HOUSE 2/22/88

FY 90-93 Grants

A cost of \$8,000 per year thereafter be required to train additional or new foster parents to accommodate turnover among foster parents, and to update and enhance the curriculum. \$ 8,000.

Total Per Year \$ 8,000.

RESIDENTIAL CHILD CARE COMPONENT

FY 88 Grants

-0-

FY 89 Grants

\$30,000 to train staff from 14 residential child care facilities and 4 youth corrections facilities in the independent living skills curriculum. These care givers would then teach independent living skills to 75 youth the first year and 175 youth each year thereafter. Each of the residential and youth correction facilities would be required to add this component to their treatment programs. \$ 30,000.

\$135,000 to provide supervised independent living to 15 youth ages 17 and older at an annual cost of \$9,000/year for the first year. Costs will vary per youth because of varying levels of maturity and abilities to achieve transition to subsidized independent living or full independence. Maximum time in supervised independent living would be one year. \$135,000.

\$ 63,000 to provide an average subsidy of \$750/month to 7 full time equivalent youth. The amount and length of time subsidies will be provided will vary within a range based on individual needs. A full subsidy will be funded initially and decreasing to zero during the course of a year. \$ 63,000.

FY 90-93 Grants TOTAL \$228,000.

\$10,000 each year to update and enhance the independent living curriculum and to train staff from residential child care facilities and youth corrections facilities due to turnover and the need to update skills. \$ 10,000.

House Bill 412

\$270,000 to provide supervised independent living to 30 youth ages 17 and older at an annual cost of \$9,000/year for the first year. Costs will vary per youth because of varying levels of maturity and abilities to achieve transition to subsidized independent living or full independence. Maximum time in supervised independent living would be one year.

\$270,000.

\$135,000 to provide an average subsidy of \$750/month to 15 full time equivalent youth. The amount and length of time subsidies will be provided will vary within a range based on individual needs. A full subsidy will be funded initially and decreasing to zero during the course of a year. Only youth who have gone through an independent curriculum may be admitted to this program. An independent living subsidy will assist the youth in making the transition to independent living.

\$135,000.

TOTAL \$415,000.

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STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CSHB 41 (HESS)
PUBLISH DATE: HOUSE 4/11/88

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An act relating to the pre-
emancipation services for certain minors
Sponsor: HESS
Requestor: _____

Agency Affected: Health and Social Services
BRU: Child and Youth Custody
Components: Foster care, Residential care.

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL		3.0	3.0	3.0	3.0	3.0
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS		188.4	244.8	244.8	244.8	244.8
MISCELLANEOUS						
TOTAL OPERATING	-0-	191.4	247.8	247.8	247.8	247.8

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS		191.4	247.8	247.8	247.8	247.8
OTHER						
TOTAL	-0-	191.4	247.8	247.8	247.8	247.8

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

See attached page(s).

Prepared by: Yvonne M. Chase, Director
Division: Division of Family and Youth Services
Approved by Commissioner: Myra M. Munson, Commissioner
Agency: Department of Health and Social Services

Phone: 465-3170
Date: 04-08-88
Date: 4-8-88

Distribution (by preparer):

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

CSHB 412 (HESS)
HOUSE 4/11/88

achieve transition to subsidized independent living or full independence. Maximum time in supervised independent living would be one year.

\$2,400 to provide an average subsidy of \$675/month to 4 full time equivalent youth. The amount and length of time subsidies will be provided will vary within a range based on individual needs. A full subsidy will be funded initially and decreased to zero during the course of a year.

TOTAL: \$191.4

FY 90-93

TRAVEL:

Central Office Component \$ 3.0

Travel and per diem for staff to monitor programs, aid in curriculum development, and provide training.
6 Trips x \$600 per trip.

GRANTS:

Foster Care Component \$ 8.0

A cost of \$8,000 per year would be required to train additional or new foster parents to accommodate turnover among foster parents, and to update and enhance the curriculum.

Residential Care Component \$ 10.0

\$10,000 each year to update and enhance the independent living curriculum and to train staff from residential child care facilities and youth corrections facilities due to turnover and the need to update skills.

\$162,000 to provided supervised independent living to 20 youth ages 17 and older at an annual cost of \$8,100/year. Costs will vary per youth because of varying levels of maturity and abilities to achieve \$162.0

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

313

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CSHB 412 (HESS)
PUBLISH DATE: HOUSE 4/11/88

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An act relating to the pre-
emancipation services for certain minors
Sponsor: HESS
Requestor: _____

Agency Affected: Health and Social Services
BRU: Child and Youth Custody
Components: Foster care, Residential care.

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL		3.0	3.0	3.0	3.0	3.0
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS		189.4	244.8	244.8	244.8	244.8
MISCELLANEOUS						
TOTAL OPERATING	-0-	191.4	247.8	247.8	247.8	247.8

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS		191.4	247.8	247.8	247.8	247.8
OTHER						
TOTAL	-0-	191.4	247.8	247.8	247.8	247.8

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

See attached page(s).

Prepared by: Yvonne M. Chase, Director
Division: Division of Family and Youth Services

Phone: 465-3170
Date: 04-08-88

Approved by Commissioner: Myra M. Munson, Commissioner
Agency: Department of Health and Social Services

Date: 4-8-88

Distribution (by preparer):

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

FY 89TRAVEL:Central Office Component \$ 3.0

Travel and per diem for staff to monitor programs, aid in curriculum development, and provide training. 6 Trips x \$600/trip.

GRANTS:Central Office Component \$ 20.0

Initial cost to develop and purchase training curriculum for emancipation services/independent living skills, as well as purchase films, video's, and reference materials for foster parents, residential child care providers and state youth correctional institution.

Foster Care Component \$ 25.0

Provides training for 40 foster parents in independent living concepts and skills. These trained foster parents could then provide independent living skills to 50 youth the first year and 125 per year thereafter.

Residential Care Component \$143.4

\$30,000 to train 50 staff from 21 residential child care facilities and 4 youth corrections facilities in the independent living skills curriculum. These care givers would then teach independent living skills to 75 youth the first year and 175 youth each year thereafter. Each of the residential and youth correction facilities would be required to add this component to their treatment programs.

\$81,000 to provide supervised independent living to 10 full time equivalent youth ages 17 and older at an annual cost of \$8,100/year for the first year. Costs will vary per youth because of varying levels of maturity and abilities to

CSHB 412 (HESS)
HOUSE 4/11/88

achieve transition to subsidized independent living or full independence. Maximum time in supervised independent living would be one year.

\$2,400 to provide an average subsidy of \$675/month to 4 full time equivalent youth. The amount and length of time subsidies will be provided will vary within a range based on individual needs. A full subsidy will be funded initially and decreased to zero during the course of a year.

TOTAL: \$191.4

FY 90-93

TRAVEL:

Central Office Component \$ 3.0

Travel and per diem for staff to monitor programs, aid in curriculum development, and provide training.
6 Trips x \$600 per trip.

GRANTS:

Foster Care Component \$ 8.0

A cost of \$8,000 per year would be required to train additional or new foster parents to accommodate turnover among foster parents, and to update and enhance the curriculum.

Residential Care Component \$ 10.0

\$10,000 each year to update and enhance the independent living curriculum and to train staff from residential child care facilities and youth corrections facilities due to turnover and the need to update skills.

\$162,000 to provided supervised independent living to 20 youth ages 17 and older at an annual cost of \$8,100/year. Costs will vary per youth because of varying levels of maturity and abilities to achieve \$162.0

CSHB 412 (HESS)
HOUSE 4/11/88

transition to subsidized independent living or full independence. Maximum time in supervised independent living would be one year.

\$64,800 to provide an average subsidy of \$675/month to 8 full time equivalent youth. The amount and length of time subsidies will be provided will vary within a range based on individual needs. A full subsidy will be funded initially and decreasing to zero during the course of a year.

TOTAL:

\$247.8

Angela Salerno
1727 Talkeetna St.
Anchorage, AK 99508
February 12, 1988

House HESS Committee Member:

HB 412 would amend the Alaska Childrens' Code to include another option for service delivery to minors in State custody, pre-emancipation services, which have as their goal independent and productive living. The bill addresses the special needs of adolescents who will not or cannot return to their birth family, and for whom traditional services have been unsuccessful. Youth who have been in the child protection system a long time, in detention or in a series of foster homes, (and data gathered by DFYS in 1985 reveal adolescents do poorly in foster care and thus have multiple placements, but still over half of all children in placement in Alaska are teens) or who enter the system as runaways or castaways can profit from transitional living services designed to teach the adult skills they may have never learned in McLaughlin or in a neglectful or abusive home.

To endorse this bill is to recognize the State's duty to provide services to this special population. Moreover, this bill addresses the overall mission of the Governor's Interim Commission on Children and Youth, economic self-sufficiency for Alaska's young people, and would as well implement one of the Commission's specific recommendations, legislation which would allow for placement of youth in supervised independent living

programs. Pre-emancipation services could be the last State intervention needed by certain troubled youth, prevention measures you must endorse by support of this bill.

There are several different models of pre-emancipation services now in use around the country, and I would like to comment on three which appear most frequently in child care\child protection literature.

1) A groupwork approach in which seven or eight adolescents meet with a social worker in an educational group focusing on adult living skills development. Mauzerall (1983) reports 66% of youth in such a program will be successful in living independently. This type of service is now being offered in Anchorage on a limited basis by the Alaska Youth and Parent Foundation.

2) supervised group homes, "emancipation apartments" are semi-independent specialized homes to prepare youths for independent living. Skills training is comprehensive and includes such topics as financial responsibility, vocational skills, use of community resources, and interpersonal skills. Contracts with group home parents spell out the youths' educational, social and employment plans. There are no such homes in the Anchorage area.

3) the Independent Living Subsidy Program is an innovation in independent living arrangements which provides adolescents 16 years of age or older with subsidies for start-up costs and stipends for continued independent living in residences of their

choice. Payments are made directly to the teenager who must be working, going to school, or engaged in some combination of the two, fulltime. As the youth gains in earning power, subsidies are reduced until the person is self-sufficient. Strong professional social work guidance is essential to this model. In Oregon where this model was pioneered and has been in use for a decade, it was found that 75.8% of the participants successfully made the transition to independent living, and at a cost which was less than for foster care or group homes (Halm 1980).

I believe that the policy outlined in this bill would fill a gap in services to delinquent minors and children in need of aid. Such measures would provide an alternative to dependence on the State or institutionalization for troubled youth. Instead, this policy would assist them in becoming responsible and productive members of Alaskan society.

POSITION PAPER

HOUSE BILL NO. 412

For an Act entitled: "An Act relating to the pre-emancipation services for certain minors."

House Bill No. 412 would require the Department to provide a full range of pre-emancipation services to youths 16 years of age or older to facilitate their transition to full adult independence. It would also establish authority necessary to provide such services. Specifically the bill would:

- 1) require the Department to provide pre-emancipation services to any youth age 16 or older who requested the service;
- 2) authorize extension of Departmental custody beyond a youth's nineteenth birthday in order for the youth to continue receiving pre-emancipation services;
- 3) authorize the Department to utilize supervised independent living situations as placement alternatives for youth committed to Departmental custody;
- 4) authorize the Department to grant or to contract with municipalities or private non-profit organizations for the provision of pre-emancipation services.

Needs Addressed by HB 412

Most youth in our society have the opportunity to acquire the knowledge and skills necessary for successful independence gradually throughout childhood and adolescence. And for most youth the transition to full independence is also accomplished gradually and with the support and assistance of parents or parent substitutes. For youth in state custody and for those youth who are informally emancipated this type of gradual training and transition cannot or does not occur either because of statutory or funding limitations or because of a lack of needed services.

Informal preparation for independence does occur as a part of foster care and residential care placements for older youths in state custody. However, this is not an area of primary focus nor does it follow a special curriculum to ensure its completeness or effectiveness. Foster parents and residential care staff are not generally trained specifically to prepare youths for informal living and there are no mechanisms available to provide for support for the final phases of the transition to independent living.

DEPARTMENT POSITION

The Department has long recognized the need to provide better transition services for children leaving state custody and for other youth who do not have the transition support traditionally provided by parents. The

Department supports the intent of House Bill 412 to address this need. However, there is a need to better define the population of youth for whom the services are intended.

Not all youth who might request pre-emancipation services under the language of the bill would benefit from or be appropriate to receive the services. The current language would not allow the Department flexibility to establish criteria for determining the appropriateness of service. It would require the service to be provided to any youth age 16 or older upon request. Not all children who reach the age of 16 years are ready or appropriate for emancipation services. The appropriateness of a child for pre-emancipation services and the specific services to be provided should be determined on the basis of established criteria in conjunction with the case plan for the individual child. The Department recommends that the bill be amended to provide sufficient administrative flexibility in determining eligibility for pre-emancipation services to accommodate the realities of appropriations provided for the services.

The Department also suggests that the scope of services to be provided be better defined in the bill or that language be structured to provide the Department flexibility in determining the services to be provided. Currently, a variety of programs are being offered in several states which would provide the linkages that are essential for a relatively smooth transition from childhood to adulthood. One of the essential elements in successful programs is a continuum of services. This ensures that the youth do not miss any of the phases, and that the progress to independent living and adulthood is one of gradual preparation, assuring a higher degree of success.

Attached is a chart which outlines the various types of services in the continuum toward independent living which are generally offered in other states. Estimated costs of providing these services to children in the custody of the Department as well as to children outside of state custody are included.

RECOMMENDED:

Yvonne M. Chase
Yvonne M. Chase, Director
Division of Family
and Youth Services

DATE:

2/17/88

APPROVED:

Myra M. Munson
Myra M. Munson, Commissioner
Department of Health
and Social Services

DATE:

2/17/88

Continuum of Services	Informal Independent Living Concepts	Formalized Training Programs	Supervised Practice Living	Self-Sufficiency (After-Care)
Type of Service	Placement in substitute care (Residential or foster care) with the intent of encouraging youth to be involved in decision making, problem solving, and everyday tasks. (Existing Service)	DFYS has a small federal grant (\$6000) to purchase a training curriculum for for youth and their care-takers to work through together. Some skill handling programs already exist in Alaska, but need to focus on this special population of youth.	Both residential care and foster care providers can be trained to work with this population.	Two items of importance here: 1) Only youth who have been through the first three phases should be accepted into these programs; 2) An independent living subsidy (either offered or being developed by 27 states) assists the youth in making the transition to independent living.
Serving All Eligible Children (Total Estimate)	If youth is not in substitute care, independent living seminars would need to be developed and run by private provider. Cost estimate based on 100 children annually. \$20,000.	Cost estimate based on 45 youth in a formal skills development program for one year. \$45,000.	Some new program development needed here. Cost estimate based on 60 children annually. \$540,000. (Average cost of \$9,000. annually per child)	Subsidy estimate based on 31 youth, each with a subsidy for one year. (Average of \$750/month with greater subsidy initially decreases during the year) \$279,000.
Serving Children In State Custody (Total Estimate)	Existing Service - No Additional Cost	Purchase of training materials covered by federal grant; DFYS will provide training to foster parents. (No additional cost)	Cost estimates based on 50 children annually, using same cost per child as those in state custody. \$450,000.	Estimate based on 26 children with a subsidy for one year. \$234,000.

H B

4 13

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

House News:

Feb. 10, 1988

Feb. 23, 1988

HOUSE COMMITTEE REPORT

Date referred: 1/29/88

FURTHER REFERRALS: Finance

DATE: 2-23-88

The Health, Education and Social Services Committee has considered HB 413

"An Act making a special appropriation to the Department of Education for a grant to alleviate the effects of a fire at Wainwright School; and providing for an effective date."

RECOMMENDS:

- replace with CS HB 413 (HESS) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

Alto Kopman

H. Ellis

Mark Stuenkel

SIGNING OTHER RECOMMENDATIONS:

Bill Hudson - Need more fiscal information.

David Dowley NO REC

ROSE JELLY - No Rec

Alma Hurlay - No Rec - Need more information re: insurance coverage

Alto Kopman
Chairman's signature

H. Ellis

Original sponsor: Adams

Funding Information	
General Fund	\$ -0-
Other Funds	726,858
	<u>\$726,858</u>

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IN THE HOUSE

CS FOR HOUSE BILL NO. 413 (HESS)
 IN THE LEGISLATURE OF THE STATE OF ALASKA
 FIFTEENTH LEGISLATURE - SECOND SESSION
 A BILL

For an Act entitled: "An Act making a special appropriation to the Department of Military and Veterans' Affairs for a grant to alleviate the effects of a fire at Wainwright School; and providing for an effective date."

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

* Section 1. The sum of \$726,858 is appropriated from the disaster relief fund (AS 44.19.048) to the Department of Military and Veterans' Affairs for payment as a grant under AS 44.19.048 to the North Slope Borough to alleviate the effects of a fire at Wainwright School in the village of Wainwright.

* Sec. 2. This Act takes effect immediately under AS 01.10.070(c).



Official Business

Alaska State Legislature

House of Representatives

Al Adams

Chairman

Committee on Finance

WHILE IN SESSION
P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-3706

OUT OF SESSION
P.O. Box 333
Kotzebue, Alaska 99752
(907) 442-3320

1024 W. 6th
Anchorage, Alaska 99501
(907) 274-0615

TO: Representative Niilo Koponen, Co-Chair
Health, Education and Social Services Committee

Representative Johnny Ellis, Co-Chair
Health Education and Social Services Committee

FROM: Representative Al Adams, Chair ~~ABA~~
House Finance Committee

DATE: February 22, 1988

RE: House Bill 413, Wainwright Appropriations

Attached is documentation on estimated costs relevant to the fire at Wainwright School and power plant. These documents were just received late last week and reflect the most current evaluation of need.

Present at the HESS committee meeting will be Martha Stewart of my staff, Suzanne McNabb representing the North Slope Borough, and Jeff Morrison of the Department of Military and Veterans Affairs.

If you need more information before the meeting, please contact Martha Stewart of my office.

Thank you for your consideration of this bill.

NORTH SLOPE BOROUGH

OFFICE OF THE MAYOR

P.O. Box 89
Barrow, Alaska 99723

Phone: 907-852-2611

George N. Ahmaogak, Sr., Mayor



February 19, 1988

Al Adams, Representative
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Representative Adams:

This letter is to provide you with updated information regarding the September, 1987 Wainwright High School and Power Plant fire.

The following is a summary of incurred and estimated total uninsured costs to the North Slope Borough and North Slope Borough School District:

A)

1. Expended to Date (DSR's #1, 2, 3 and partial 4)	837,310.64
Encumbered to Date	<u>113,443.00</u>
Sub-Total:	\$950,753.64
2. Replacement Materials (used but not yet billed for)	100,000.00
3. Additional School District Emergency and Contents costs that require further review prior to determination of non-insurability:	
(DSR #4)	108,370.30
(DSR #5)	<u>122,700.00</u>
Sub-Total (Items A-1 thru A-3)	\$1,281,823.94

B. CH2M Hill Re-design	679,000.00
Covered by Insurance	<u><140,000.00></u>
Sub-Total B:	539,000.00

Letter to Representative Adams
 February 19, 1988
 Page 2

C. Replacement of 500 KW Generator

Labor	20,000.00
Materials	10,000.00
Freight	20,000.00
Travel and Subsistence	8,000.00
Equipment (2 Villages)	10,000.00
Sub-Contract (fencing)	8,000.00

Sub-Total C: 76,000.00

TOTAL REVISED ESTIMATE (A, B & C)	\$1,896,823.94
AMOUNT APPROVED BY STATE	< 939,700.00 >
AMOUNT CURRENTLY REQUESTED	\$ 957,123.94

The following contains a breakdown by Damage Survey Report (DSR) of total expenses incurred to date by the North Slope Borough in connection with the Wainwright High School fire in September of 1987 (Category A, Expended to Date, above):

<u>DSR</u>	<u>DESCRIPTION</u>	<u>ORIGINAL ESTIMATE</u>	<u>EXPENDITURES TO DATE</u>
#1 -	Emergency work associated with the restoration of temporary power.		
	Labor	35,000.00	44,329.45
	Travel	15,000.00	14,721.98
	Materials	20,000.00	26,480.50
	Freight	12,000.00	22,948.62
	Professional Fees	15,000.00	8,618.23
	Miscellaneous	8,000.00	100.00
	Equipment	18,000.00	-0-
	TOTALS	123,000.00	117,198.78

#2 - Work to bring existing elementary wing back into operational order prior to initiating temporary school facilities:

Labor	38,700.00	11,374.39
Travel	17,000.00	9,303.84
Materials	2,500.00	-0-
Freight	1,000.00	-0-
Professional Fees	8,000.00	5,071.06
Miscellaneous	6,000.00	816.07
Equipment	500.00	-0-
TOTALS	73,700.00	26,565.36

Letter to Representative Adams
February 19, 1988
Page 3

<u>DSR</u>	<u>DESCRIPTION</u>	<u>ORIGINAL ESTIMATE</u>	<u>EXPENDITURES TO DATE</u>
#3	- Construction and/or relocation of facilities to provide temporary school for the next two years:		
	Rockford	30,000.00	26,164.38
	Totem Electric	30,000.00	29,741.02
	Barrow Mechanical	30,000.00	29,723.80
	Olgoonik Corporation	300,000.00	251,920.24
	Surfacing and Decking	75,000.00	73,150.00
	Browne House Moving	56,000.00	50,635.00
	Labor	59,000.00	50,216.13
	Travel	15,500.00	13,660.10
	Materials	100,000.00	40,025.87
	Freight	80,000.00	7,376.27
	Professional Fees	12,000.00	11,200.42
	Miscellaneous	13,000.00	142.13
	Equipment	<u>45,000.00</u>	<u>23,961.43</u>
	TOTAL	845,000.00	607,916.79

#4 - Refurnishing of elementary and temporary school facilities and reassigning of personnel to facilitate the temporary facilities and education plans:

Labor	50,000.00	24,700.00
Travel	35,000.00	12,193.28
Materials	6,000.00	41,855.07
Freight	6,000.00	(Included in other categories)
Temporary Furnishing	40,000.00	4,957.04
Curriculum Materials	45,000.00	1,361.81
Miscellaneous	<u>12,000.00</u>	<u>562.50</u>
TOTALS	194,000.00	85,629.70

#5 - Replacement of School District contents destroyed in the building that exceed the \$1 Million in insurance coverage:

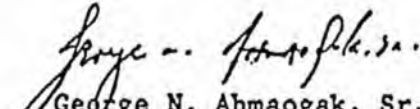
Contents	122,700.00	To Be Determined
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Letter to Representative Adams
February 19, 1988
Page 4

Total uninsured costs for Refurnishing of Temporary Facilities (DSR #4) and Contents (DSR #5) cannot be determined at this time as they are based on our success in negotiating the insurance settlement. The North Slope Borough's policy does cover contents, but terms of the final settlement have not been determined.

If you require any further information, please contact either myself at 852-2611, or Harold Curran, Coordinator of Government Affairs, at 852-2611.

Sincerely,


George N. Ahmaogak, Sr.
Mayor

GNA/KC/nlh

cc: Harold Curran, Coordinator, Government Affairs
K.C. Miller, Grants Administrator, Grants Division
Ervin Martin, Director, Alaska Division of Emergency Services

Attachments 1 thru 7

ALASKA DIVISION OF EMERGENCY SERVICES

ADES APPLICATION

PROJECT APPLICATION FOR STATE FINANCIAL ASSISTANCE

DECLARATION NUMBER _____ PA NUMBER _____
 DECLARATION DATE _____ SUPPLEMENT NO. _____

1. APPLICANT'S NAME AND ADDRESS
 North Slope Borough
 Box 69
 Barrow, AK 99723

2. APPLICANT'S AGENCY
 Name George Ahmoagak
 Title Mayor
 Address Box 69
 Telephone 852-2611

3. PROJECT SUMMARY

	AMOUNT REQUESTED BY APPLICANT	AMOUNT APPROVED BY STATE
A. Debris Clearance	\$ _____	\$ _____
B. Protective Measures	_____	_____
C. Road Systems	_____	_____
D. Water Control Facilities	_____	_____
E. Public Buildings and Equipment	968,200	586,000
F. Public Utilities	196,700	196,700
G. Facilities Under Construction	_____	_____
H. Private Nonprofit Facilities	_____	_____
I. Other Damages (Not in above categories)	194,000	157,000
TOTAL	\$1,358,900	\$939,700

Attach detailed descriptions and estimated costs (to the nearest dollar) for each item of work above for which State financial assistance is requested.

4. FUNDING REQUESTES:

ADVANCE OF FUNDS YES NO

5. REQUEST BY APPLICANT'S AGENCY (Provides assurances on reverse side)

Categorical Flexible Funding In-lieu Contribution

11-2-87 Finance Director [Signature]
 Date Title Signature

6. CONCURRENCE BY GOVERNOR'S AUTHORIZED REPRESENTATIVE IN APPLICANT'S REQUEST

Categorical Flexible Funding In-lieu Contribution

11.5.87 11.5.87 [Signature]
 Date Received Date Approved Signature

(ATTN)

ALASKA DIVISION OF EMERGENCY SERVICES

DAMAGE SURVEY REPORT

(WORKSHEET)

DECLARATION NO.

4. INSPECTION DATE

5. WORK ACCOMPLISHED BY

Contract

Force Account

6. PERCENTAGE OF WORK COMPLETED TO DATE

1. APPLICANT (State Agency, City, Village, etc.)
North Slope Borough

2. PA NO.

ITEM NO. 1

7. WORK CATEGORY ("X" Applicable Box)

Emergency

Permanent

A

B

C

D

E

F

G

H

I

8. DAMAGED FACILITIES (Location, identification and description)

Generation Plant

9. DESCRIPTION OF DAMAGE

Burned to ground

10. SCOPE OF PROPOSED WORK

Emergency work associated with the restoration of temporary power and power grid modification to balance system. Includes temporary power hook ups

11. ESTIMATED COST OF PROPOSED WORK

QUANTITY (a)	UNIT (b)	MATERIAL AND/OR DESCRIPTION (c)	ACTUAL UNINSURED EXPEND. TO DATE	ORIGINAL ESTIMATED AMOUNT
		Labor	44,329.45	35,000
		Travel	14,721.98	15,000
		Materials	26,480.50	20,000
		Freight	22,948.62	12,000
		Professional Services	8,618.23	15,000
		Miscellaneous	100.00	8,000
		Equipment rental (per attached rental rate schedule)	-0-	18,000

12. EXISTING INSURANCE (Type)

AMOUNT

\$

\$ 117,198.78

\$123,000

13. RECOMMENDATION BY STATE INSPECTOR

(Signature, Agency, Date)

Mohawk R 11/6/87

ELIGIBLE

YES NO

ATTACHMENTS

14. CONCURRENCE IN REPORT BY LOCAL REPRESENTATIVE

(Signature, Agency, Date)

Arif

YES NO

ATTACHMENTS

15. STATE REVIEW (Signature, Agency, Date)

[Signature] ADES 11.5.87

11.5.87

ADES 30-2

REVISED 1/82

(ATT-2)

ALASKA DIVISION OF EMERGENCY SERVICES

DAMAGE SURVEY REPORT

(WORKSHEET)

3. DECLARATION NO.

4. INSPECTION DATE

2

5. WORK ACCOMPLISHED BY

Contract

Force Account

1. APPLICANT (State Agency, City, Village, etc.)

North Slope Borough

2. PA NO.

ITEM NO.

2

7. WORK CATEGORY ("X" Applicable Box)

Emergency

Permanent A B C D E F G H I

6. PERCENTAGE OF WORK COMPLETED TO DATE

%

8. DAMAGED FACILITIES (Location, identification and description)

Elementary wing of school

9. DESCRIPTION OF DAMAGE

Bulldozed life support systems and corridor between Elementary and High School sections.

10. SCOPE OF PROPOSED WORK

Bring existing elementary wing back into operational order prior to initiating temporary school facilities.

11. ESTIMATED COST OF PROPOSED WORK

QUANTITY (a)	UNIT (b)	MATERIAL AND/OR DESCRIPTION (c)	ACTUAL UNINSURED EXPEND. TO DATE	ORIGINAL ESTIMATED COSTS
		Labor	11,374.39	28,700
		Travel	9,303.84	17,000
		Materials	-0-	2,500
		Freight	see travel	1,000
		Professional services	5,071.06	8,000
		Micellaneous	816.07	6,000
		Equipment (rate per attached rental rate)	-0-	500

12. EXISTING INSURANCE (Type)

AMOUNT \$

\$ 26,565.36

\$ 73,700

13. RECOMMENDATION BY STATE INSPECTOR

(Signature, Agency, Date) *Mark L. R. 11/5/87*

ELIGIBLE (YES) NO

ATTACHMENTS

14. CONCURRENCE IN REPORT BY LOCAL REPRESENTATIVE

(Signature, Agency, Date)

YES NO

ATTACHMENTS

15. STATE REVIEW (Signature, Agency, Date)

[Signature]

ADES

11.5.87

ALASKA DIVISION OF EMERGENCY SERVICES

DAMAGE SURVEY REPORT
(WORKSHEET)

3. DECLARATION NO. _____

4. INSPECTION DATE _____

5. WORK ACCOMPLISHED BY

Contract

Force Account

1. APPLICANT (State Agency, City, Village, etc.)
North Slope Borough

2. PA NO. _____

ITEM NO. _____

7. WORK CATEGORY ("X" Applicable Box)

Emergency

Permanent A B C D E F G H I

6. PERCENTAGE OF WORK COMPLETED TO DATE
%

8. DAMAGED FACILITIES (Location, identification and description)

High School gymnasium, kitchen, lunch room, class rooms, teachers work room, swimming pool, mechanical room, administrative offices.

9. DESCRIPTION OF DAMAGE

Burned to ground

10. SCOPE OF PROPOSED WORK

Construction and or relocation of facilities to provide temporary school for the next two years. (39,000 sq. ft.)

11. ESTIMATED COST OF PROPOSED WORK

QUANTITY (a)	UNIT (b)	MATERIAL AND/OR DESCRIPTION (c)	ACTUAL UNINSURED EXPEND. TO DATE	ORIGINAL ESTIMATED COSTS
		Rockford	26,164.38	30,000
		Totem Electric	29,741.02	30,000
		Barrow Mechanical	29,723.80	30,000
		Olgoonik Corp	251,920.24	300,000
		Surfacing and Decking	73,150.00	75,000
		Browne House moving	50,635.00	56,000
		Labor	50,216.13	59,000
		Travel	13,660.10	15,500
		Materials	40,025.87	100,000

12. EXISTING INSURANCE (Type)

AMOUNT
\$

\$ See next page

13. RECOMMENDATION BY STATE INSPECTOR
(Signature, Agency, Date)

ELIGIBLE
YES NO

ATTACHMENTS

14. CONCURRENCE IN REPORT BY LOCAL REPRESENTATIVE
(Signature, Agency, Date)

YES NO

ATTACHMENTS

15. STATE REVIEW (Signature, Date)

ADES

11.5.87

9

ALASKA DIVISION OF EMERGENCY SERVICES

DAMAGE SURVEY REPORT
(WORKSHEET)

3. DECLARATION NO.
4. INSPECTION DATE
5. WORK ACCOMPLISHED BY <input type="checkbox"/> Contract <input checked="" type="checkbox"/> Force Account
6. PERCENTAGE OF WORK COMPLETED TO DATE %

1. APPLICANT (State Agency, City, Village, etc.)

DSR #3 continued

2. PA NO.

ITEM NO.

7. WORK CATEGORY ("X" Applicable Box)

Emergency

Permanent

A B C D E F G H I

8. DAMAGED FACILITIES (Location, identification and description)

9. DESCRIPTION OF DAMAGE

10. SCOPE OF PROPOSED WORK

11. ESTIMATED COST OF PROPOSED WORK

QUANTITY (a)	UNIT (b)	MATERIAL AND/OR DESCRIPTION (c)	ACTUAL UNINSURED EXPEND. TO DATE	ORIGINAL ESTIMATED COSTS
		Freight	7,376.27	80,000
		Professional	11,200.42	12,000
		Miscellaneous	142.13	13,000
		Equipment (rate per attached rental rates)	23,961.43	45,000

12. EXISTING INSURANCE (Type)

AMOUNT
\$

\$607,916.79

\$845,500

13. RECOMMENDATION BY STATE INSPECTOR
(Signature, Agency, Date)

ELIGIBLE
YES NO

ATTACHMENTS

14. CONCURRENCE IN REPORT BY LOCAL REPRESENTATIVE
(Signature, Agency, Date)

YES NO

ATTACHMENTS

15. STATE REVIEW (Signature, Agency, Date)

[Handwritten signatures and dates]
ADES 11.5.87

10

ALASKA DIVISION OF EMERGENCY SERVICES		3. DECLARATION NO.			
DAMAGE SURVEY REPORT (WORKSHEET)		4. INSPECTION DATE			
1. APPLICANT (State Agency, City, Village, etc.) North Slope Borough		5. WORK ACCOMPLISHED BY <input type="checkbox"/> Contract <input checked="" type="checkbox"/> Force Account			
2. PA NO.	ITEM NO. 4				
7. WORK CATEGORY ("X" Applicable Box) <input checked="" type="checkbox"/> Emergency <input type="checkbox"/> Permanent <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C <input type="checkbox"/> D <input type="checkbox"/> E <input type="checkbox"/> F <input type="checkbox"/> G <input type="checkbox"/> H <input type="checkbox"/> I <input checked="" type="checkbox"/>		6. PERCENTAGE OF WORK COMPLETED TO DATE %			
8. DAMAGED FACILITIES (Location, identification and description) Books, papers, lesson plans, curriculum materials etc.					
9. DESCRIPTION OF DAMAGE Burned in fire					
10. SCOPE OF PROPOSED WORK School District Emergency Costs. Refurnishing of elementary and temporary school facilities and retraining of personnel to facilitate the temporary facilities and education plans.					
11. ESTIMATED COST OF PROPOSED WORK					
QUANTITY (a)	UNIT (b)	MATERIAL AND OR DESCRIPTION	ANTICIPATED TOTAL UNINSURED COSTS	ACTUAL UNINSURED EXPEND. TO DATE	ORIGINAL ESTIMATED COSTS
		Labor	24,700.00	24,700.00	50,000
		Travel	12,135.00	12,193.28	35,000
		Materials	75,331.00	41,855.07	6,000
		Freight	see travel		6,000
		Temporary furnishings	5,093.00	4,957.04	40,000
		Curriculum materials	137,680.00	1,361.81	45,000
		Miscellaneous	28,211.00	562.50	12,000
12. EXISTING INSURANCE (Type)			283,150.00	85,629.70	\$ 194,000
13. RECOMMENDATION BY STATE INSPECTOR (Signature, Agency, Date)			ELIGIBLE YES NO		ATTACHMENTS
14. CONCURRENCE IN REPORT BY LOCAL REPRESENTATIVE (Signature, Agency, Date)			YES NO		ATTACHMENTS
15. STATE REVIEW (Signature, Agency, Date)			ADES 11.5.87		

(ATT-6)

ALASKA DIVISION OF EMERGENCY SERVICES			DECLARATION NO.	
DAMAGE SURVEY REPORT WORKSHEET			4. INSPECTION DATE	
1. APPLICANT (State, Agency, City, Village, etc.) North Slope Borough			5. WORK ACCOMPLISHED BY	
2. PA NO. ITEM NO. 5			<input type="checkbox"/> Contract <input checked="" type="checkbox"/> Force Account	
7. WORK CATEGORY ("X" Applicable Box)			6. PERCENTAGE OF WORK COMPLETED TO DATE %	
<input type="checkbox"/> Emergency <input checked="" type="checkbox"/> Permanent <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C <input type="checkbox"/> D <input type="checkbox"/> E <input checked="" type="checkbox"/> F <input type="checkbox"/> G <input type="checkbox"/> H <input type="checkbox"/> I				
8. DAMAGED FACILITIES (Location, identification and description) Losses above insured coverage on contents (furniture etc.)				
9. DESCRIPTION OF DAMAGE Burned contents				
10. SCOPE OF PROPOSED WORK Replace School District contents destroyed in the school building that exceed \$1M in insurance coverage.				
11. ESTIMATED COST OF PROPOSED WORK				
QUANTITY (a)	UNIT (b)	MATERIAL AND/OR DESCRIPTION (c)	ACTUAL UNINSURED EXPEND. TO DATE	ORIGINAL ESTIMATED COSTS
		Contents		122,700
12. EXISTING INSURANCE (Type)			AMOUNT \$	TO BE DETERMINED
				\$ 122,700
13. RECOMMENDATION BY STATE INSPECTOR (Signature, Agency, Date) <i>W. L. R?</i>			ELIGIBLE YES NO	ATTACHMENTS
14. CONCURRENCE IN REPORT BY LOCAL REPRESENTATIVE (Signature, Agency, Date) <i>John J. ...</i>			YES NO	ATTACHMENTS
15. STATE REVIEW (Signature, Agency, Date) <i>John J. ...</i>			ADES 11.5.87	

ADES 30-2
REVISED 1/82

(Att 27)

H

B

414

STATE OF ALASKA
THE LEGISLATURE

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BUREAU, ALASKA 99811
907-465-3800

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

House Hess:

February 18, 1988

March 30, 1988

HOUSE COMMITTEE REPORT

(7)

Date referred: 1/29/88

FURTHER REFERRALS: Finance

DATE: 3-30-88

The Health, Education and Social Services Committee has considered HB 414

"An Act imposing a school tax; and providing for an effective date."

RECOMMENDS:

- replace with CS HB 414 (HESS) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Walter E. Kosman

ROD E. GREGG

Bill Hudson - No Rec

Max Humberg - no rec

Gene Kealey - No Rec

Ch Ellis - no rec

Ch Ellis
Co Chairman's signature
Walter E. Kosman



NEA-ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

ANCHORAGE REGIONAL OFFICE

1411 W. 33RD AVENUE
ANCHORAGE, ALASKA 99503
(907) 274-0536

JUNEAU OFFICE

105 MUNICIPAL WAY, SUITE 302
JUNEAU, ALASKA 99801
(907) 586-3090

FAIRBANKS REGIONAL OFFICE

2118 CUSHMAN STREET
FAIRBANKS, ALASKA 99701
(907) 456-4435

February 19, 1988

To: Rep. Ellis & Rep. Koponen, Co-Chairs
Members, House HESS Committee

Re: HB 414; "An Act imposing a school tax; and providing
for an effective date."

NEA-Alaska supports and encourages passage of HB 414.

Because public education has been underfunded by nearly \$100 million over the last 2 years it is essential that every reasonable effort be made to restore essential programs and services which have been eliminated as a result of the funding cuts.

Revenue enhancements through the income tax and other measures are appropriate means of increasing funding to public education as well as by giving it a greater share in the budget priority process. While HB 414 is only one means of revenue enhancement it is appropriate that it be used at least until other and more comprehensive options are available and acceptable.

We encourage the Committee to give serious consideration to increasing the amount of the school tax beyond the proposed \$10 level. We also encourage that consideration be given to broadening the effect of a school tax to include "passive" income such as that derived from rentals and investments.

Thank you for your consideration of our concerns.

Respectfully submitted,

Bob Manners
Executive Secretary

cc: Reps. Wallis, Herrmann, Adams

z19feb4



Official business

Alaska State Legislature

HOUSE OF REPRESENTATIVES

Committee on Finance

P.O. Box V
State Capitol
Juneau, Alaska 99811

January 28, 1988

P R E S S R E L E A S E

JUNEAU -- A bill to reimpose a \$10 annual school tax on all employed Alaskans was filed today by Rep. Kay Wallis, D-Fort Yukon, co-sponsored by Representative Adelheid Herrmann, D-Naknek.

The tax, which would raise an estimated \$3.5 million for educational programs each year, would take effect next January 1. Under the bill (HB 414), employers would deduct the tax from their employees' first paycheck each year and the tax would be due to the state by April 15 the following year.

Only military personnel on active duty would be exempt from the tax, Wallis said.

"This is a fair and equitable tax, and it is a way for all Alaskans to participate in supporting education," Wallis said.

Alaska imposed an identical school tax until 1980, when the Legislature saw it as unnecessary in view of the then-high state revenues and repealed it. The tax generated \$2.6 million the last year it was in effect, according to the Department of Revenue.

For Further Information Contact Representative F. Kay Wallis
465-3732

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act Imposing a School Tax

Agency Affected: Revenue
BRU: _____

Sponsor: Wallis, Herrmann & Adams
Requestor: HESS & Finance

Components: _____

EXPENDITURES/REVENUES: (MILLIONS of Dollars)

	FY 86	FY 89	FY 90	FY 91	FY 92	FY 93
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	3.5	3.5	3.6	3.7

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Projected revenues are based on historical school tax collections applied against Department of Labor employment/population trends.

Prepared By: Bob Elliott ^{BE} Phone: 465-2173
Division: Revenue - Research Date: 02/16/88

Approved by Commissioner: Hugh Malone ^{H Malone} Date: 02/16/88
Agency: Department of Revenue

Distribution (by preparer):

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

FISCAL NOTE

REQUEST: _____

Revision Date: _____
Title: "An Act imposing a school tax; and providing for an effective date."
Sponsor: Wallis, Herrman and Adams
Requestor: Health, Education & Finance

Agency Affected: Revenue
BRU: Income and Excise Audit Division

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
OPERATING						
PERSONAL SERVICES	-	56.6	56.6	56.6	56.6	56.6
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	32.6	8.2	8.2	8.2	8.2
SUPPLIES	-	2.0	2.0	2.0	2.0	2.0
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	91.2	66.8	66.8	66.8	66.8
CAPITAL						
	-	-	-	-	-	-
REVENUE						
	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	91.2	66.8	66.8	66.8	66.8
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Steven E. Kettel, Director *Steven E. Kettel* Phone: (907) 465-2320
Division: Income and Excise Audit Division Date: February 17, 1988

Approved by Commissioner: *J. Michael* Date: 2/17/88
Agency: _____

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

HB 414

Prepared By: Steven E. Kettel
Income and Excise Audit
February 17, 1988

Personal Services

<u>Position</u>	<u>Location</u>	<u>Annual Salary/Benefits</u>
Clerk IV	Juneau	\$29.0
Clerk III	Juneau	\$27.6

Contractual

Two Wang PC Terminals (\$3.5)	\$7.0 *
Communications	\$1.2
Forms Design and Printing	\$7.0
VS Memory Upgrade	\$11.1 *
Modular Furniture/Chairs	\$2.8 *
Five 5-drawer legal file cabinets	<u>\$3.5 *</u>
TOTAL	\$32.6

* One time item

Supplies

Office and Wang Supplies	\$2.0
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Analysis

House Bill 414 would essentially reinstate in 1989 the \$10 school tax that was repealed in 1980. The provisions of the Bill are nearly identical to the provisions under AS 43.45 prior to repeal.

House Bill 414 would impose a \$10 tax on each individual 19 or older employed in the state. An employer would be required to deduct and withhold the school tax from an individual's compensation in the first payroll period after January 1 of each year, or in the first payroll period following employment. The school tax would be paid to the department by the employer by April 16 of the following year. Self employed individuals would also pay the school tax by April 16 of the following year. An employer would be required to give each employee a type of W-2 form showing the school tax deduction. The department would be required to develop forms for all these purposes. The school tax would be deposited into the general fund where the legislature could make appropriations for public education.

For instance, the individual income tax was required to be withheld and remitted to the department at various times. Payment to the department in the form of a required deposit was due for any month in which withheld taxes totaled \$500. Quarterly returns were required in all cases and undeposited taxes were due at that time. Yearly return reconciliations were then required to be filed with the department and tax balances, if any, were required to be paid. Penalties were applicable for the failure to make monthly deposits as well as penalties for the failure to file quarterly and annual returns and pay the appropriate taxes. A responsible party could be held personally liable for any failure to withhold and pay over the taxes. The school tax was simply incorporated into the individual income tax provisions as far as reporting and payment were concerned.

In contrast, HB 414 would require that the department implement similar procedures for the collection of only the school tax. This would involve developing a withholding program, drafting regulations, and the allocation of resources to the administration of the program, including developing and processing of forms and payments.

Employers would also be required to implement procedures in their payroll programs to insure the withholding and remittance of the school tax. While the employers now must withhold for federal income tax purposes, there is currently no withholding or reporting to the state for tax purposes. Employers would be required to make monthly deposits, quarterly returns, and annual reconciliations of the school tax to the department.

Department Position

The department opposes this bill because the administrative costs and burden to administer the school tax would be very high in relation to the revenues. Each year 15,541 Alaskan businesses would be required to file an annual report with the department. This additional time consuming requirement for these businesses is just plain not worth the effort. This would incur extensive paperwork and files maintenance.

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STATE OF ALASKA
THE LEGISLATURE

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907-465-3800

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

House Hess:

February 24, 1988

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 1, 1988

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

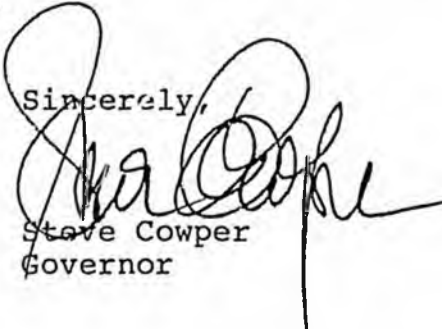
Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill reducing liability of the state, and those acting on behalf of the state, for damages relating to release and supervision of persons in custody of the state who are on conditional release from confinement.

Proposed AS 09.50.255, in sec. 1 of the bill, provides for negligence immunity of the state and its agents and contractors. However, the state and those acting on behalf of the state, would still be liable in specific instances involving gross negligence, defined in proposed AS 09.50.255(b) as "reckless disregard for the safety of individual, identifiable victims." Guidance as to the meaning of "reckless" may be derived from AS 11.81.900(a)(3), which defines "recklessly" for the purposes of the Criminal Code.

Immunity is extended to state contractors because liability insurance is generally unavailable or prohibitively expensive for contractors. If a particular contractor is able to obtain insurance, it is expected that eliminating the necessity for that insurance would result in that cost saving being passed on to the state.

Sincerely,



Steve Cowper
Governor

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Dept. of Corrections
 Title: "An Act limiting liability relating to release and supervision." BRU: _____
 Sponsor: Rules Committee Components: _____
 Requestor: Governor

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
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. The monies needed to pay liability judgments are provided through supplemental requests by the Department of Law.

Prepared by: Susan Knighton, Director of Admin. Services Phone: 465-3376
 Division: Administrative Services Date: 1-18-88
 Approved by Commissioner: Susan Humphrey-Barnett Date: 1-18-88
 Agency: Department of Corrections

Distribution (by preparer) :

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

FISCAL NOTE

REQUEST: _____

Revision Date: _____ Agency Affected: Department of Law
 Title: "An Act limiting liability...release
...supervision...persons...state custody..." BRU: Legal Services
 Sponsor: Rules/by Request of the Governor Components: Operations
 Requestor: House HESS

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director
 Division: Administrative Services

Phone: 465-3672
 Date: February 24, 1988

Approved by Commissioner: Grace Berg Schabole, Atty. Gen.
 Agency: Department of Law

Date: February 24, 1988

Distribution (by preparer) :

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 417

This bill amends AS 09.50 by adding a new section that limits the state's liability for the acts of persons under state control, but who have been conditionally released from state institutional custody, to gross negligence. The Governor has proposed raising the legal standard under which the state can be found liable as a result of a 1986 decision on the part of the Alaska Supreme Court in a lawsuit entitled Division of Corrections v. Neakok. Essentially, the Court, in its three to two decision, imposed a broad duty on the state to prevent probationers and parolees from harming others, thus establishing a low standard of negligence by which the state would be held liable in these matters. Although the Department of Law often represents the state in defending negligence suits, the payment of successful claims is handled by the Division of Risk Management. That division has been requested to provide an analysis of the savings that will accrue to the state if this bill is enacted. There will not be a fiscal impact on the Department of Law.

DIVISION OF CORRECTIONS, DEPARTMENT OF HEALTH & SOCIAL SERVICES; Alaska Board of Parole; and State of Alaska, Petitioners,

v.

Warren NEAKOK, and Dorcus Neakok, as representative survivors, guardians of any minors and/or Personal Representatives of the Estate of Warren Hardy Neakok, Jr., and the Estate of Warren Hardy Neakok, Jr.; Amy Nukapi-gak, as representative survivor, guardian of any minor survivors, and/or Personal Representative of the Estate of Julia Tukrook, and the Estate of Julia Tukrook; Walter Toorak, as representative survivor, guardian of any minor survivors, and/or Personal Representative of the Estate of Virginia Toorak, and the Estate of Virginia Toorak, Respondents.

No. 7230.

Supreme Court of Alaska.

June 20, 1986.

Rehearing Denied Aug. 16, 1986.

Relatives of murder victims of parolee brought action for damages against state, Division of Corrections, Department of Health and Social Services, and state parole board, claiming negligence in failing to impose special conditions of release, in failing to supervise parolee adequately while he was on parole, and in allowing him to return to small, isolated community without police officers or alcohol counseling, and in failing to warn his victim of his dangerous propensities. The Superior Court, Second Judicial District, Kotzebue, Paul B. Jones, J., denied state's motion to dismiss or for summary judgment, and state petitioned for review. The Supreme Court, Compton, J., held that: (1) parole board was in no way at fault and could not be liable for murders; (2) state had duty to control parolee or warn potential victims of danger of parolee, though unable to predict specific victims; (3) state was not immune from liability for breach of duty under "discre-

tionary function" exception to liability; and (4) whether state's breach of duty was proximate cause of murders presented question for jury.

Affirmed in part, reversed in part, and remanded.

Matthews, J., filed dissenting opinion in which Rabinowitz, C.J., joined.

1. Pardon and Parole ⇐56

State parole board could not be liable for murders by parolee, where it was undisputed that prison officials did not forward material concerning parolee to board prior to his release, board did not become aware of parolee's release until some time after fact, board was never informed that parolee was violating any term of his general conditions of release so that it might direct his arrest, and board was never requested to act by anyone. AS 09.50.250.

2. Negligence ⇐10

Most important single criterion for imposing a duty of care is foreseeability.

3. Negligence ⇐2

Party standing in special relationship to either dangerous person or potential victim is required to control dangerous person or warn or otherwise protect victim, as exception to general rule that party is not required to prevent foreseeable harm when, to do so, he or she must control conduct of another person or warn of such conduct.

4. States ⇐112.2(2)

State had duty of due care with respect to parolee, as result of its increased ability to foresee dangers parolee posed and because of its substantial ability to control parolee.

5. States ⇐112.2(2)

State could be held liable for its failure to act reasonably and carefully with respect to parolee only if it could have foreseen that its failure to do so might cause harm to victims killed by parolee.

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6. Pardon and Parole ¶68

State is required to consider public safety in its administration of parole system, and to supervise parolees in such a way that danger to public is minimized. Const. Art. 1, § 12.

7. Negligence ¶2

Inability to predict specific victim of dangerous person does not absolve custodian from duty to use due care to protect others who might foreseeably be in danger by that person; refusing to follow *Thomas v. County of Alameda*, 27 Cal.3d 741, 167 Cal.Rptr. 70, 614 P.2d 728.

8. States ¶112.2(2)

Murders or victims were not, as matter of law, sufficiently unforeseeable to relieve state of liability for consequences of its negligence in failing to use due care in supervising parolee, given foreseeability of parolee's acting violently toward those around him if not supervised or counseled, and if given access to alcohol and firearms. Const. Art. 1, § 12.

9. Pardon and Parole ¶68

States ¶112.2(2)

State corrections personnel have duty to use due care in supervising parolees and in protecting foreseeable victims of parolees they know, or reasonably should know, to be dangerous; recognition of duty does not make state liable for all harm caused by parolees, but rather makes it liable only when its negligent supervision and administration of their parole causes injury in question. Const. Art. 1, § 12.

10. Pardon and Parole ¶68

Murder victims of parolee were not sufficiently unidentifiable that state's duty of care in connection with parolee could not require it to inform them of conditions of parole and of any information leading it to believe parolee could be dangerous, where parolee was released in small and isolated community without either police or parole officers.

11. Pardon and Parole ¶56

Whether state breached its duty of care with respect to parolee by failing to

supervise parolee more closely, to impose special conditions of parole, to warn residents of small, isolated community of his dangerous propensities, or to take other protective measures presented question of fact for jury.

12. States ¶112.2(2)

State's treatment of parolee before his release was too remote from parolee's murders to give rise to duty to victims; any duty state might have had to offer rehabilitative programs in prison did not render it liable for murders.

13. States ¶112.2(1)

While discretionary function exception immunizes formulation of policy, state may be held liable if that policy is negligently implemented. AS 09.50.250.

14. States ¶112.2(2)

Actions of prison counselor and parole officer in formulating parole plan, selecting special condition for parole, supervising parolee, and failing to inform appropriate people of parolee's status and of his dangerous propensities could not be characterized as basic policy decision and, therefore, state did not have immunity with respect to such actions as result of parolee's murdering three people. AS 09.50.250.

15. Pardon and Parole ¶56

Whether state's duty to supervise parolee adequately and to impose special conditions of parole on him was proximate cause of parolee's murdering three people presented question for jury.

16. States ¶112.2(2)

Parolee's acts of murdering three people were not superseding cause of injury relieving state from liability for its own alleged negligence in failing to supervise parolee adequately or to impose special conditions of parole on him.

Robert L. Eastaugh, Delaney, Wiles, Hayes, Reitman & Brubaker, Anchorage, for petitioners.

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Robert H. Wagstaff, Anchorage, for respondents.

Before RABINOWITZ, C.J., BURKE, MATTHEWS and COMPTON, JJ., and SHORTELL, J.*

OPINION

COMPTON, Justice.

On August 18, 1980, while highly intoxicated, Clifford Nukapigak shot and killed his teenaged stepdaughter and her boyfriend, and raped, beat and strangled to death another woman. *Nukapigak v. State*, 663 P.2d 943 (Alaska 1983). The murders took place in Point Lay, an isolated community of less than 100 residents and no resident law enforcement officers. Nukapigak had been mandatorily released from prison six months before the murders, having served a six-year sentence, less statutory good time, for an assault and rape committed in 1975. At the time of the murders he had the status of a supervised parolee,¹ and was reporting by mail to a parole officer.

This case involves a claim for damages against the State of Alaska, the Division of Corrections, Department of Health and Social Services, and the Alaska Parole Board, by relatives of the three persons whom Nukapigak murdered. The plaintiffs claim negligence in failing to impose special conditions of release at the time of Nukapigak's release, to supervise Nukapigak adequately while he was on parole, in allowing him to return to a small, isolated community without police officers or alcohol counseling and in failing to warn his victims of his dangerous propensities. This petition followed the trial court's denial of the

* Shortell, Superior Court Judge, sitting by assignment made pursuant to Article IV, section 16, of the Constitution of Alaska.

1. The mandatory release statute, AS 33.20.040(a), provides:

A prisoner serving the term or terms for which the prisoner was sentenced less good time deductions shall be released unconditionally if there remains less than 180 days to serve under the sentence. If there remains

more than 180 days to serve under the sentence, a prisoner, upon release, shall be considered as if released on parole until the expiration of the maximum term or terms for which the prisoner was sentenced less 180 days.

I. FACTUAL AND PROCEDURAL BACKGROUND

Clifford Nukapigak had a history of violence while intoxicated which had led to a series of convictions beginning in 1973. In 1973 and 1974, he was convicted twice for beating his wife. Both incidents occurred while he was so drunk that he did not remember them afterwards. He was convicted in 1975 for raping a woman and stabbing and cutting her vagina. Again, he had been drinking heavily and claimed to have no recollection of his actions. In imposing a six-year sentence for the rape, the trial court considered comments made to a probation officer by Point Lay residents indicating that he had raped other women, beat his wife, and tried to rape his stepdaughter while drunk. *Nukapigak v. State*, 562 P.2d 697 (Alaska 1977). A psychiatric evaluation completed at the time expressed concern that Nukapigak's repressed sadistic impulses made him especially dangerous.

While incarcerated, Nukapigak received four months of individual transactional therapy, and participated in an alcohol treatment program and in Alcoholics Anonymous for some time. His therapist recommended that he receive additional alcohol treatment before he was released. In April and May of 1979, he wrote to Superior Court Judge Gerald J. Van Hoomissen, requesting an order to participate in a comprehensive alcohol program outside of the prison in Fairbanks. Despite Judge Van Hoomissen's approval, he was not allowed to enroll in the program, apparently be-

more than 180 days to serve under the sentence, a prisoner, upon release, shall be considered as if released on parole until the expiration of the maximum term or terms for which the prisoner was sentenced less 180 days.

Nukapigak had accrued 707 days of good time.

2. Since this petition is from a denial of the state's summary judgment motion, we must make all factual inferences in favor of Neakok.

propensity to violence; and (4) Failure to provide effective counseling and treatment before he was released.³

The defendants moved to dismiss or for summary judgment, claiming that (1) they were immune from Neakok's suit, (2) they owed Neakok no duty to protect him from Nukapigak's acts, (3) they did not proximately cause Nukapigak's acts, and (4) they could not legally have intervened with Nukapigak to the extent proposed by Neakok. The motion was denied, and this petition followed.

[1] As the parties have recognized, the central questions in this case are (1) whether the defendants owed a duty to Nukapigak's victims, and (2) whether, even if such a duty was owed, the defendants are immune from liability for any breach of that duty.⁴ We conclude that the state did owe a duty to protect Nukapigak's foreseeable victims. We further conclude that the actions (and inactions) of the state's employees which form the basis for Neakok's claims were, in large part, ministerial acts for which the state may be held liable.

II. DUTY

While the parties have treated the issue of the defendants' immunity as a threshold question, we agree with the California Supreme Court that "[c]onceptually, the question of the applicability of a statutory immunity does not even arise until it is determined that a defendant otherwise owes a duty of care to the plaintiff and thus would be liable in the absence of such immunity."

3. Neakok does not allege that the state was negligent in releasing Nukapigak. His release was mandated by AS 33.20.040.
4. Plaintiffs have sued defendants collectively, not segregating theories of liability between them. Defendant Alaska Parole Board has been sued as an entity, individual Board members have not been sued, and no theory of liability specifically addressed to the Board has been asserted. At the time of this incident, the Parole Board was a creature of AS 33.15.010, existing within the Department of Health and Social Services. The Administrative Procedures Act did not apply to the chapter. AS 33.15.250. Prison counselors and parole officers were employees of the Department.

Davidson v. City of Westminster, 32 Cal.3d 197, 185 Cal.Rptr. 252, 649 P.2d 894, 896 (1982). We therefore begin our analysis with an examination of the duty the state owed to Neakok.

"Duty," as the word is used in negligence law, "is not sacrosanct in itself, but only an expression of the sum total of those considerations of policy which lead the law to say that a particular plaintiff is entitled to protection." Prosser, *Law of Torts* (4th ed. 1971) at 325-26. In *D.S.W. v. Fairbanks North Star Borough School District*, 628 P.2d 554, 555 (Alaska 1981), we adopted a list of "considerations" set forth by the California Supreme Court to aid in deciding when, as a matter of policy, a particular plaintiff is entitled to protection. These considerations include foreseeability of harm, the closeness of connection between the defendant's conduct and the plaintiff's injury, the moral blame attached to the defendant's conduct, the policy of preventing further harm, the extent of the burden to the defendant and consequences to the community of imposing a duty of care, and the availability, cost and prevalence of insurance for the risk involved.

A. Foreseeability.

[2, 3] The most important single criterion for imposing a duty of care is foreseeability. *Tarasoff v. Regents of the University of California*, 17 Cal.3d 425, 131 Cal. Rptr. 14, 22, 551 P.2d 334, 342 (1976). The general rule of negligence law is that a defendant owes a duty of care "to all per-

The legal status of the Board is unclear. However, it is undisputed that (1) prison officials did not forward material concerning Nukapigak to the Board prior to his release; (2) the Board did not become aware of Nukapigak's release until sometime after the fact; (3) the Board was never informed that Nukapigak was violating any term of his general conditions of release so that it might direct his arrest; and (4) the Board was never requested to act by anyone. Thus we conclude that reasonable minds could not differ regarding the absence of fault on the part of the Board, and accordingly summary judgment should have been entered in favor of the Board.

sons who are foreseeably endangered by his conduct, with respect to all risks which make the conduct unreasonably dangerous." *Rodriguez v. Bethlehem Steel Corp.*, 12 Cal.3d 382, 115 Cal.Rptr. 765, 776, 525 P.2d 669, 680 (1974). Traditionally, however, the common law has not required a defendant to prevent foreseeable harm when, to do so, he or she must control the conduct of another person or warn of such conduct. *Tarasoff*, 131 Cal.Rptr. at 22-23, 551 P.2d at 342-43. This rule has an important exception: When a defendant stands in a special relationship to either the dangerous person or the potential victim, the defendant is required to control the dangerous person or warn or otherwise protect the victim. Restatement (Second) of Torts Section 315 (1965).

[4] The state contends that its relationship with Nukapigak was not sufficiently close to give rise to a duty to control him. It argues that a duty to control a third person should be limited to situations where a dangerous person is in the defendant's actual custody or negligently released from custody, or where the hazard is created by the defendant. See, e.g., *Bradley Center v. Wessner*, 250 Ga. 199, 296 S.E.2d 693 (1982); *Grimm v. Arizona Board of Pardons and Parole*, 115 Ariz. 260, 564 P.2d 1227 (1977); *Morgan v. District of Columbia*, 449 A.2d 1102 (D.C.App.1982).

We do not believe that a duty to control or warn can be so narrowly limited. Although the state was required to release Nukapigak, he remained under state supervision as a parolee. It could regulate his movements within the state, require him to report to a parole officer under conditions

5. At the time of Nukapigak's release, there was apparently some confusion among parole officers and prison counselors as to whether special conditions of parole could be imposed on mandatory releasees. This confusion stemmed from dicta in a plurality opinion in *Morton v. Hammond*, 604 P.2d 1 (Alaska 1979), which suggested that the parole of a mandatory releasee could be revoked for violation of statutory conditions of parole, but that special conditions could not be imposed. However, the Parole Board and the Division of Corrections did not change their policies in response to *Morton* and continued to

set by that officer or a prison counselor, require him to undergo treatment for alcoholism, and impose and enforce special conditions of parole including requirements that he refrain from the use of alcohol, participate in an alcohol rehabilitation program, and that he consent to a search of his residence to see if he possessed firearms. It could revoke his parole and reincarcerate him if he violated these conditions.⁵ While the state could not completely control Nukapigak's conduct, it was hardly in the position of a stranger who (at least according to the traditional rule) cannot be expected to interfere with the conduct of a third person.

Moreover, the special relationship between Nukapigak and the state was not solely defined by Nukapigak's status as a parolee. Prior to his release, Nukapigak was incarcerated for over four years. During that time, close observation had led at least one prison counselor to conclude that Nukapigak presented a special danger to his stepdaughters, and had caused other corrections personnel to suggest that he would be dangerous to society if he resumed drinking. The state's enhanced ability to observe the conditions under which a prisoner might be expected to be especially dangerous increases its potential ability to limit his dangerousness as a parolee.

The state thus stands in a special relationship with a parolee, both because of its increased ability to foresee the dangers the parolee poses and because of its substantial ability to control the parolee. Given this special relationship, it is not unreasonable

treat mandatory releasees identically with other prisoners.

We agree with the concurring opinion of Rabinowitz, C.J. and Matthews, J. in *Morton*, 604 P.2d at 4, and with the more recent decision of the court of appeals (*Braham v. Beirne*, 675 P.2d 1297 (Alaska App.1984)), that mandatory releasees, who are "considered as if released on parole" (AS 33.20.040) are subject to the same conditions of parole as any other parolee. We therefore conclude that the parole of a mandatory releasee may be revoked if he or she violates special conditions of parole.

to impose a duty to protect the victims.

The courts of a nation have imposed potential victims of sons or institutions with that third mark case of *Tara University of California*, 131 Cal.Rptr. 14, 5. California Supreme special relationship between a patient imposed duty to act reasonable victims of the *District of Columbia* Cir. 1977), modified hearing *en banc*, 1978), the District Court of Appeals relationship between a parolee imposed a duty to protect the victims. In *Semler v. of Washington, D.C.* Cir.1976), cert. den. S.Ct. 83, 50 L.Ed.2d that a court probate state hospital a special patient which require protect the public from *son v. State*, 69 Cal. 240, 447 P.2d 352 (1980); *Petersen v. State*, 671 P.2d 230 (1983) between the state and the relationship. Each of these cases of a duty to control

[5] Having decided to be required to use

6. It is possible that protected Neakok control than would Neakok's claim allowed, failed to use due care control it legitimate. Whether the murder for this alleged failure rather than of duty. as a matter of law, from a duty to exercise care, merely be

to impose a duty of care on the state to protect the victims of parolees.⁶

The courts of a number of other jurisdictions have imposed a duty to protect the potential victims of a third party on persons or institutions with a special relationship with that third party. In the landmark case of *Tarasoff v. Regents of the University of California*, 17 Cal.3d 425, 131 Cal.Rptr. 14, 551 P.2d 334 (1976), the California Supreme Court held that the special relationship between a psychotherapist and a patient imposes on the therapist a duty to act reasonably to protect the foreseeable victims of the patient. In *Rieser v. District of Columbia*, 563 F.2d 462 (D.C. Cir. 1977), modified on other grounds on hearing *en banc*, 580 F.2d 647 (D.C. Cir. 1978), the District of Columbia Circuit Court of Appeals held that the special relationship between a parole officer and a parolee imposed a duty on the parole officer to protect the parolee's potential victims. In *Semler v. Psychiatric Institute of Washington, D.C.*, 538 F.2d 121 (4th Cir. 1976), *cert. denied* 429 U.S. 827, 97 S.Ct. 83, 50 L.Ed.2d 90 (1976), it was held that a court probation order imposed on a state hospital a special relationship with a patient which required the hospital to protect the public from him. See also *Johnson v. State*, 69 Cal.2d 782, 73 Cal.Rptr. 240, 447 P.2d 352 (1968); *Lipari v. Sears, Roebuck & Co.*, 497 F.Supp. 185 (D.Neb. 1980); *Petersen v. State*, 100 Wash.2d 421, 671 P.2d 230 (1983). The relationship between the state and a parolee is comparable to the relationship found sufficient in each of these cases to justify the imposition of a duty to control a third person.

[5] Having decided that the state may be required to use due care to control the

6. It is possible that the state could not have protected Neakok without exercising greater control than would have been permissible. Neakok's claim alleges, however, that the state failed to use due care in exercising whatever control it legitimately did have over Nukapigak. Whether the murders would have occurred but for this alleged failure is a question of causation rather than of duty. We cannot conclude that, as a matter of law, the state should be excused from a duty to exercise that limited control carefully merely because it was not unlimited.

actions of a third party, we turn to the question of whether the injury to Neakok was a foreseeable hazard of its failure to use due care in supervising Nukapigak. As we noted at the outset, consideration of the foreseeability of injury is central to a determination of whether a duty of care exists. The state may be held liable for its failure to act reasonably and carefully only if it could have foreseen that its failure to do so might cause harm to Neakok.⁷

[6] Article I, section 12 of the Alaska State Constitution requires that penal administration be "based upon the principle of reformation and upon the need for protecting the public." We have held that the public is an intended beneficiary of this article. *Abraham v. State*, 585 P.2d 526, 531 (Alaska 1978). The state is thus required to consider public safety in its administration of the parole system, and to supervise parolees in such a way that danger to the public is minimized. "Due care" in supervising parolees and in planning for their parole is defined in part by the need to protect the public from dangerous parolees. In light of this constitutional framework, it is difficult to accept the argument that harm to the public is not a foreseeable consequence of the failure to exercise due care.

The state regulations, policies and procedures governing the parole and supervision of mandatory releasees provide a number of avenues through which "due care" may be defined. At the time Nukapigak was released, state policy required that a release plan be formulated for each parolee, and that his or her field officer investigate it for authenticity and to determine wheth-

7. While a specific case-by-case determination of foreseeability and causation lies within the province of a jury, the existence of a duty is a question of law. *Semler v. Psychiatric Institute of Washington, D.C.*, 538 F.2d 121, 124. In deciding whether Nukapigak's criminal acts were a "foreseeable" risk of a failure to use due care, we do not determine whether, under the specific facts of this case, state employees should have foreseen that the murders would occur.

er it was the best plan available. This investigation included verification of the parolee's proposed address and place of employment. A Parole Board directive also required that special conditions of parole be considered for all releasees who had been convicted of crimes of violence, who had physically injured their victims, or who had been sentenced to an effective sentence of more than five years. Under these special conditions, Nukapigak could have been required to refrain from drinking, participate in an alcohol rehabilitation program, or to live in a community with appropriate supervisory personnel. The evidence Neakok has submitted indicates that either Nukapigak's prison counselor or his parole officer could have imposed special conditions of parole. In addition, Parole Board regulations allowed the appointment of a local resident as a parole advisor to work with a parolee and report specific events to his parole officer.

It should not be difficult to foresee that the failure to use due care in following these procedures, and in supervising a parolee after his or her release, might result in harm to the public. In Nukapigak's case, the potential effects of a failure to use due care appear especially clear. Nukapigak had committed violent crimes against both relatives and strangers while intoxicated. He had been identified by a

number of sources as a potential danger to society if he resumed drinking. A psychological evaluation had cautioned that "because his explosive personality is so ingrained, Clifford is likely to have continuing problems maintaining [his] newly learned self-discipline and control in a non-structured environment if he continues drinking." In light of this information, it was not unforeseeable that if Nukapigak was not supervised or given counseling, and if he was allowed access to alcohol and firearms, he might act violently toward those around him.⁸

The state argues that, even if it could have foreseen that a failure to supervise Nukapigak carefully might have endangered the public at large, it owed no special duty to Neakok. It contends that it could not have identified Nukapigak's specific victims and that it therefore owed them, as members of the public, no actionable duty.⁹

[7] The question of whether a duty to control a dangerous person may be imposed when the dangerous person's victims cannot be specifically identified has divided the jurisdictions that have considered it. Although the *Tarasoff* court did not emphasize the identifiability of the victim, subsequent California cases have refused to impose a duty except to readily identifiable victims. See *Thomas v. County of Alameda*, 27 Cal.3d 741, 167 Cal.Rptr. 70,

8. We cannot accept the state's assertion that the murders were not foreseeable because Nukapigak has never killed before and because Nukapigak was convicted of intentional murder and could not therefore have acted in a drunken stupor. Neakok has submitted evidence that indicates that the state was on notice that Nukapigak was violent and uncontrollable when drunk. In light of this knowledge, it was not unforeseeable that, if he became drunk, he would commit violent crimes. The state's inability to predict the exact nature of these violent crimes or the exact degree of his intoxication while committing them does not absolve it of a duty to act reasonably to prevent them.

9. To the extent that the state argues that it cannot be held liable to an individual for breach of a duty owed to the public at large, its argument must be rejected. We expressly disavowed the "duty to all, duty to no one" doctrine—providing that the state may owe a duty

only to persons with whom it has a special relationship—in *Adams v. State*, 555 P.2d 235, 241-42 (Alaska 1976):

[W]e consider that the "duty to all, duty to no one" doctrine is in reality a form of sovereign immunity, which is a matter dealt with by statute in Alaska, and not to be amplified by court-created doctrine. An application of the public duty doctrine here would result in finding no duty owed the plaintiffs or their decedents by the state, because, although they were foreseeable victims and a private defendant would have owed such a duty, no "special relationship" between the parties existed. Why should the establishment of duty become more difficult when the state is the defendant? Where there is no immunity, the state is to be treated like a private litigant. To allow the public duty doctrine to disturb this equality would create immunity where the legislature has not.

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614 P.2d 728 (1980). Other courts have held that a duty of care may be owed to anyone within a "class of persons" foreseeably put at risk.¹⁰ Thus, in *Lipari v. Sears, Roebuck & Co.*, 497 F.Supp. 185, 195 (D.Neb.1980), it was held that a psychiatric hospital owed a duty to protect anyone foreseeably endangered by a patient and could therefore be held liable for the deaths caused when the patient shot into a crowd in a nightclub. In *Petersen v. State*, 100 Wash.2d 421, 671 P.2d 230, 237 (1983), the Washington Supreme Court held that a state psychiatric hospital could be held liable to a persons injured in a car crash by a patient it had negligently treated. In both cases the specific identify of the victim was wholly unforeseeable, even if the harm caused was not.

We agree with those courts which have held that the inability to predict the special victim of a dangerous person does not absolve a custodian from a duty to use due care to protect others who might foreseeably be endangered by that person. Where the state, through its negligence, allows a parolee to cause foreseeable harm to a third person, we see no reason to predicate liability wholly on the state's ability to predict the victim's name. A victim may be "foreseeable" without being specifically identifiable.

The victims in this case, moreover, were foreseeable as more than simply members of the general public. All three were residents of an isolated community of fewer than 100 residents¹¹ into which Nukapigak was released. One of them was one of Nukapigak's stepdaughters; the others

were her boyfriend and her aunt. Nukapigak's stepdaughter, had been identified by at least one prison employee as particularly at risk. If they were foreseeably endangered, their close friends and relatives may also have been within a zone of especially foreseeable victims.¹²

[8] We conclude that both Nukapigak's victims and his actions were within the zone of foreseeable hazards of the state's failure to use due care in supervising Nukapigak. A trier of fact may decide that, under the circumstances, state employees' use of care in supervising Nukapigak or in planning and administering his parole could not have prevented the murders, or that the state did, in fact, act reasonably. We cannot conclude as a matter of law, however, that the murders or the victims were sufficiently unforeseeable to relieve the state of liability for the consequences of its negligence.

B. Other Criteria.

The remaining *D.S.W.* criteria, on balance, also militate in favor of imposing a duty of due care on the state. There is no question that the plaintiffs suffered injury; the asserted failure to supervise Nukapigak adequately—if proved at trial—can be viewed as closely connected to that injury. The state's abrogation of its own responsibility for adequately supervising this particularly dangerous parolee—if proved at trial—cannot be characterized as anything but morally blameworthy. A rule imposing liability for such derelictions would, in all probability, aid in deterring such conduct in the future.

10. We note that the California cases that have limited a duty of care to identifiable victims have focused on the duty to warn. The special considerations surrounding imposition of a duty to warn may justify limiting its scope. See *infra* at 1130.

11. Point Lay had a total population in 1980 of from thirty to sixty-eight residents. Alaska, Description of Resources in the Cities and Villages [Criminal Justice Planning Agency, October 1981] sets the figure at thirty. Alaska's 1980 Population, a Preliminary Look, [Alaska Dept. of Labor, January 1, 1981] estimates the village's population at sixty-eight.

12. Cf. *Hedlund v. Superior Court*, 34 Cal.3d 695, 194 Cal.Rptr. 805, 669 P.2d 41 (1983). In that case, the California Supreme Court held that a psychotherapist was under a duty to protect the young son of a woman who had been identified as a potential victim of a mental patient. The court noted that it was not "unreasonable to recognize the existence of a duty to persons in close relationship to the object of a patient's threat, for the therapist must consider the existence of such persons both in evaluating the seriousness of the danger posed by the patient and in determining the appropriate steps to be taken to protect the named victim."

The state argues that the burdens and consequences of imposing financial liability for failure to supervise adequately would be severe and unwarranted. It claims that the imposition of such a duty would cause "intolerable judicial interference with judicial corrections' decisions" and impose an economic burden, "reordering state priorities in allocating manpower and funds" and causing other socially desirable programs to suffer. We are not convinced by the generalized arguments the state has presented on this issue. By imposing a duty of due care on corrections personnel we are not requiring that the state spend limitless sums of money taking every conceivable precaution to prevent any possible violent action on the part of any parolee. We merely conclude that state officials have the duty, within the confines of existing policies and budgetary constraints, to exercise due care in supervising parolees. We do not believe that a rule imposing such a duty will significantly expand the responsibility of the state to the public and to its parolees; it might, however, convince state officials of a need to consider more carefully the decisions they make that might have potentially disastrous consequences.

[9] We therefore hold that state corrections personnel have the duty to use due care in supervising parolees and in protecting the foreseeable victims of parolees they know, or reasonably should know, to be dangerous.¹³ This duty requires that such officials take whatever precautions that a reasonable person with their knowledge and authority would take. We emphasize that the recognition of the duty does not make the state liable for all harm caused

13. We recognize the difficulties inherent in a requirement that prison authorities accurately predict the potential dangerousness of released prisoners. Cf. *Tarasoff*, 131 Cal.Rptr. at 24-25, 551 P.2d at 344-45. See also Diamond, *The Psychiatric Prediction of Dangerousness*, 123 U.Penn.L.Rev. 439, 451 (1974). We do not intend to impose such a requirement. We do believe, however, that prison officials may be required to take into account the known characteristics of those they supervise when formulating plans for parole and in carrying out the

by parolees, but rather makes it liable only when its negligent supervision and administration of their parole causes the injury in question. See *Lipari v. Sears, Roebuck & Co.*, 497 F.Supp. 185, 192 (D.Neb.1980).

Neakok has alleged that the state was negligent, not solely in failing to supervise Nukapigak adequately, but also in failing to warn his victims and the residents of Point Lay that he was dangerous. The state contends that it had no duty to warn Nukapigak's potential victims, both because it could not predict who they were, and for policy reasons.

Ordinarily, the duty to use reasonable care to protect the foreseeable victims of a dangerous person may require a third party to take one or more of various steps, depending on the nature of the case. "Thus it may call for him to warn the intended victim or others likely to apprise the victim of the danger, to notify the police, or to take whatever other steps are reasonably necessary under the circumstances." *Tarasoff*, 131 Cal.Rptr. at 20, 551 P.2d at 340. The cases that have held that warnings may be appropriate, however, have generally involved specifically identifiable victims. See, e.g., *Tarasoff; Jablonski by Pahls v. United States*, 712 F.2d 391 (9th Cir.1983). These cases have concluded that the policy reasons against issuing warnings are overshadowed when they can be limited to, and substantially protect an identified potential victim.

[10] We recognize that a requirement of warnings, unlike a requirement of careful supervision, carries with it the danger that a parolee will be stigmatized and rehabilitation thus seriously impaired. We have no interest in requiring, as a matter

actual supervision of parolees. In a similar context, the California Supreme Court noted that

Within the broad range of reasonable practice and treatment in which professional opinion and judgment may differ, the therapist is free to exercise his or her own best judgment without liability; proof, aided by hindsight, that he or she judged wrongly is insufficient to establish negligence.

Tarasoff, 131 Cal.Rptr. at 25, 551 P.2d at 345.

of law, that potentially dangerous parolees be emblazoned with scarlet letters¹⁴ proclaiming their status and criminal history before they are released from prison. Therefore, if Nukapigak's victims were foreseeable only as members of a limitless class of unidentifiable victims of foreseeably dangerous behavior, we would not impose a duty to warn.

Nukapigak's victims were not unidentifiable, however. As we have already noted, their status as residents of this small, isolated community, and as the stepdaughter and the close friends and relatives of the stepdaughter of Nukapigak, make them significantly more "identifiable" than members of the general public would be.¹⁵ Moreover, as residents of a community without police or parole officers, they may have had a much greater need for warnings than would a resident of a city with better access to traditional mechanisms of social control.

The California Supreme Court set forth its reasons for refusing to impose a duty to warn where a specific victim was not identifiable in *Thompson v. County of Alameda*, 27 Cal.3d 741, 167 Cal.Rptr. 70, 614 P.2d 728 (1980). The state argues that the circumstances of this case are substantially similar to those at issue in *Thompson*, and urges us to find guidance in that case. In *Thompson*, the court held that the authorities responsible for releasing a juvenile offender who had threatened to murder an unidentified child in his mother's neighborhood had no duty to warn the parents of neighborhood children. It based its holding in part on a belief that requiring warnings in that case would be "unwieldy and of little practical value," producing "a cacaphony of warnings that by reason of their sheer volume would add little to the effective protection of the public." *Id.* 167 Cal. Rptr. at 77, 614 P.2d at 735. The court

14. See N. Hawthorne, *The Scarlet Letter* (1850), in which the protagonist, Hester Prynne, was forced to wear a scarlet "A" on her clothing as punishment for having committed adultery.

15. Several courts have ruled that a duty to warn may be found where a third party has informa-

added that "the generalized warnings sought to be required here would do little to increase the precautions of any particular members of the public who may already have become conditioned to locking their doors, avoiding dark and deserted streets, instructing their children to beware of strangers and taking other precautions." *Id.* 167 Cal.Rptr. at 78, 614 P.2d at 736.

In contrast to the circumstances at work in *Thompson*, warnings in this case would not necessarily have been either unwieldy or ineffectual. The difficulties inherent in deciding which of the residents of a densely populated urban area to warn, and the dangers of a "cacaphony of warnings" disappear when the community at issue has 68 residents. It is not unreasonable to imagine that the residents of a small, isolated community have not become conditioned to protecting themselves from random violence, and that they might be much more profoundly affected by warnings. Moreover, the possibility of issuing discrete warnings to persons in a position to use them effectively is much more realistic in a village like Point Lay than in a relatively anonymous urban neighborhood. Under these circumstances, we cannot conclude that, as a matter of law, a requirement of warnings would be unduly burdensome, futile, or counterproductive.

Other factors present here, and absent in *Thompson*, militate against precluding a finding that the state, had it exercised due care, would have warned Nukapigak's foreseeable victims. When the state releases a potentially dangerous parolee into an isolated community without either police or parole officers, it may reasonably be expected to take some action to protect the residents. The state contends that, because of budgetary constraints, this protective action cannot include the assignment of a parole officer to the community or the

tion which should have put it on notice that an identifiable potential victim was in danger. See *Jablonski by Pahls v. United States*, 712 F.2d at 398; *Lipari v. Sears, Roebuck & Co.*, 497 F.Supp. at 189, n. 3.

requirement that an officer visit the parolee there periodically. We are unwilling to hold that, under these circumstances, the state's duty of care could not require it to inform the residents of the conditions of a releasee's parole and of any information which leads it to believe he or she might be dangerous.¹⁶

Although the California court refused to impose a duty to warn under the facts of *Thompson*, it did note that "[i]n those instances in which the released offender poses a predictable threat of harm to a named or readily identifiable victim or group of victims who can be effectively warned of the danger, a releasing agent may well be liable for failure to warn such person." *Thompson*, 167 Cal.Rptr. at 80, 614 P.2d at 738 (emphasis added). We conclude that the residents of a small remote village may constitute a "group of victims" who are sufficiently identifiable to justify imposing a duty to warn. We therefore hold that, if Neakok can prove that the state knew or reasonably should have known that the residents of Point Lay, or Nukapigak's ultimate victims, were seriously endangered when Nukapigak was released into Point Lay, the state's duty of due care may have included a duty to warn them of the danger.¹⁷

[11, 12] In conclusion, the state had a legally imposed duty to supervise Nukapigak, and a concomitant authority to impose conditions on his parole and to reincarcerate him if these conditions were not met. It thus exercised substantial control over

16. The Chairman of the Parole Board testified to the Board's approach when an unrehabilitated prisoner is paroled as a mandatory releasee:

[I]f it's in a remote situation, we throw up our hands, and if its in Anchorage, we tell the P.O. that we want him to notify the police and everybody concerned that this person is out, is on mandatory release and that they need to do whatever they can do to try to make sure that they don't get involved in something too serious before we pick them back up.

17. Our holding does not necessarily impose a duty to warn on the state. Instead, we merely hold that the trier of fact is not precluded from finding that the state, had it acted reasonably,

him. We hold that, in exercising this control, the state was obligated to use reasonable care to prevent Nukapigak from causing foreseeable injury to other people. Whether the state breached its duty of care by failing to supervise Nukapigak more closely, to impose special conditions of parole, to warn the residents of Point Lay of his dangerous propensities, or to take other protective measures is a question of fact which a jury must decide.¹⁸

III. IMMUNITY

Even if the state owed a duty of due care to Nukapigak's foreseeable victims, it cannot be held liable for the breach of that duty if it is immune under the "discretionary function" exception set forth in AS 09.50.250. AS 09.50.250 provides in part:

A person or corporation having a contract, quasi-contract, or tort claim against the state may bring an action against the state in the superior court.... However, no action may be brought under this section if the claim

(1) ... is an action for tort, and based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a state agency or an employee of the state, whether or not the discretion involved is abused; ...

The state contends that all of the decisions made in connection with Nukapigak's supervision and conditions of parole were dis-

would have issued warnings to the victims or to the residents of Point Lay.

18. Neakok's complaint alleges that the state was negligent in failing to provide Nukapigak with effective treatment for alcoholism and violence while he was in prison. Neither party mentions this count in its brief. We conclude that the state's treatment of Nukapigak before his release is too remote from Neakok's injuries to give rise to a duty to Neakok. While the state may well have owed Nukapigak a duty to offer rehabilitative programs in prison, we are unwilling to hold the state liable to Neakok for its failure to rehabilitate Nukapigak.

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cretionary, and that it is therefore immune from any liability.¹⁹

In interpreting AS 09.50.250, we have consistently held that "liability is the rule, immunity the exception." *Johnson v. State*, 636 P.2d 47, 64 (Alaska 1981); *Japan Air Lines Co. v. State*, 628 P.2d 934, 937 (Alaska 1981); *Adams v. State*, 555 P.2d 235, 244 (Alaska 1976). We have recognized that the purpose of the exception is "to preserve the separation of powers inherent to our form of government by recognizing that it is the function of the state, and not the courts of private citizens, to govern." *Japan Air Lines Co.*, 628 P.2d at 936. This purpose is served when the planning and policy decisions of other branches of government are insulated from liability. See, e.g., *Wainscott v. State*, 642 P.2d 1355 (Alaska 1982). On the other hand, however, "not all decisions or acts of state employees fall within the exception;" rather, immunity attaches "only [w]here there is room for policy judgment and decision." *Japan Airlines Co.*, 628 P.2d at 936 (emphasis in original), quoting *Dalehite v. United States*, 346 U.S. 15, 36, 73 S.Ct. 956, 968, 97 L.Ed. 1427, 1441 (1953).

In distinguishing between protected and unprotected levels of government decision making, we have followed a number of jurisdictions in holding the government liable for its "operational" decisions, but not for decisions made at a "planning" level. Under this planning-operational test, only decisions that rise to the level of basic planning or policy formulation will be considered discretionary; decisions that implement policy decisions and are ministerial or operational in nature will not be immune. *Johnson v. State*, 636 P.2d at 64; *State v. I'Anson*, 529 P.2d 188, 193 (Alaska 1974).

In adopting the planning-operational test, we followed the California Supreme Court in rejecting "simple semantic inquiry into the meaning of the word 'discretionary,'"

19. The Parole Board argues that the decisions of the Board are policy decisions and must be immunized. Parole Board members, as distinguished from parole officers, have frequently been afforded quasi-judicial immunity from liability for their decisions. See *Pope v. Chew*, 521 F.2d 400 (4th Cir.1975); *Pate v. Alabama Board*

since "almost any act, even driving a nail involves some 'discretion.'" *State v. Abbott*, 498 P.2d 712, 720 (Alaska 1972), quoting *Johnson v. State*, 69 Cal.2d 782, 73 Cal.Rptr. 240, 447 P.2d 352 (1968). We concluded that the planning-operational test "has the analytic virtue of focusing on the reasons for granting immunity to the governmental entity," and is therefore "a well-reasoned approach to the problem." *State v. Abbott*, 498 P.2d at 721. The test's focus allows it "to give legislative and executive policymakers sufficient breathing space in which to perform their vital policy making functions," *Tarasoff v. Regents of the University of California*, 17 Cal.3d 425, 131 Cal.Rptr. 14, 30, 551 P.2d 334, 350 (1976), while avoiding the immunization of every minor exercise of discretion. Since adopting the planning-operational test we have refused to immunize even acts that involve substantial exercise of discretion, but that did not rise to the level of policy decisions. See, e.g., *Moloso v. State*, 644 P.2d 205, 219 (Alaska 1982).

In view of these guidelines for applying the discretionary function exception, we cannot accept the state's argument that all decisions that concern parole are discretionary and must be immunized. The state argues that parole decisions necessarily require sensitive balancing of competing interests of rehabilitation and public safety and are, by their nature, policy decisions. However, Neakok's claims against the state are based primarily on day-to-day acts of corrections personnel. These employees were not involved in basic policy making; they were instead assigned to implement the policies passed down to them by the Parole Board and by their superiors or required of them by the basic tenets of negligence law. In describing their decisions as involving policy making, the state has, in our view, substituted the words

of *Paroles*, 409 F.Supp. 478 (M.D.La.1976). In this case either the parole officer or prison counselor also could have imposed special conditions of parole. In view of our disposition of the claim against the Parole Board, we need not address the issue of immunity.

"policy making" for the word "discretionary," and proceeded with the essentially semantic inquiry rejected in *Abbott and Johnson*. While the employees assigned to supervise Nukapigak made decisions involving some discretion, they cannot be said to have made policy. As we have already noted, we have not interpreted AS 09.50.250 as immunizing all decisions requiring the exercise of some degree of discretion.

[13,14] The policies of the Parole Board required Nukapigak's prison counselor to formulate a parole plan for him before he was released. They also authorized both the counselor and Nukapigak's parole officer to impose special conditions of parole. Possible special conditions included requirements that Nukapigak refrain from drinking alcohol, that he participate in an alcohol rehabilitation program or marital counseling, or that his residency be set in a place (e.g., Barrow) where there were law enforcement officers and treatment programs to supervise him. Formulation of the parole plan, and selection of special conditions were not basic planning or policy making activities that would be immunized under AS 09.50.250. Instead, they implemented a policy already devised by the Parole Board. While the discretionary function exception immunizes the formulation of policy, the state may be held liable if that policy is negligently implemented. *State v. I'Anson*, 529 P.2d at 194.

Similarly, the actions of Nukapigak's parole officer in supervising him, and in deciding not to appoint a parole liaison advisor, not to inform appropriate people in the small community of Point Lay of his parole status, and not to warn his stepdaughter and other potential victims of his dangerous propensities cannot be characterized as basic policy decisions. Employees of the Division of Corrections were charged with supervising Nukapigak while he was on

20. The *White* court noted that:

While the policy embodied in the Veteran's Administration Regulations that patients should be allowed the maximum of freedom warranted by their condition is a discretionary decision, the application of that policy to

parole. Their actions in carrying out that duty took place "at the lowest, ministerial rung of official action," *Tarasoff*, 131 Cal. Rptr. at 30, 551 P.2d at 350, quoting *Johnson v. State*, 73 Cal.Rptr. at 250, 447 P.2d at 362, and cannot be immunized.

We find support for a holding rejecting immunity in several well reasoned decisions of other courts. Under circumstances comparable to those at issue here, a number of jurisdictions have refused to shield operational decisions of parole officers, probation officers, and government employed custodial officers. Thus, for example, in *Johnson v. State*, 69 Cal.2d 782, 73 Cal. Rptr. 240, 447 P.2d 352 (1968), the California Supreme Court refused to immunize a parole officer's failure to warn a juvenile parolee's foster parents of his dangerous propensities. The court acknowledged that the parole officer exercised discretion in selecting "those elements of the youth's character and background which would be most helpful to the foster parents and yet would not endanger the parole effort," *id.* 73 Cal.Rptr. at 245, 447 P.2d at 357, but concluded that such "discretion did not rise to the level of policy formation." In *Rieser v. District of Columbia*, 563 F.2d 462, the court held that the District of Columbia was not immune from suit for a parole officer's failure to warn a parolee's employer of his criminal record and to supervise him adequately. The court specifically noted that the parole officer "was not involved in the formulation of policy, but in the execution of policy as it affected an individual parolee." *Id.* at 475. See also *White v. United States*, 317 F.2d 13 (4th Cir.1963) (Veteran's Administration Hospital administrators' decision to allow mental patient privileged status not immune);²⁰ *Tarasoff*, 131 Cal.Rptr. at 22, 551 P.2d 334, (state-employed psychiatrists' decision not to warn their patient's identifiable victim not im-

an individual case is not within the category of policy decisions exempted by the [Tort Claims] statute. The application of that policy to the individual case is an administrative decision at the operational level.... 317 F.2d at 17.

mune); *Bell* (Fla.App.198 tors' decision immune).

The policies and the Alaska Constitutional duties of the Division and roles adequate to create independent appointing authority. Many of the decisions of some decisions.

Accordingly, the Division and their duty to supervise parolees and scrutinize negligence under the choice of the Supreme Court literal interpretation merely imply... alternatives to the resolution of negligence of the ty.

The need to consider the parolee's supervision and the protection of employees in fact decisions were fully, the staff, in retrospect, might have a not conclude,

mune); *Bellavance v. State*, 390 So.2d 422 (Fla.App.1980) (State hospital administrators' decision to release mental patient not immune).

The policies of the Division of Corrections and the Parole Board as well as the Alaska Constitution impose a body of operational duties on the Division and its personnel. These laws and policies require the Division and its personnel to supervise parolees adequately, and give them authority to create individualized plans of parole, to appoint parole advisors and otherwise to dictate terms and conditions of parole. Many of these activities require the exercise of some judgment, but none are policy decisions.

Accordingly, actions taken by personnel of the Division of Corrections to fulfill their duty to follow the policies of the Division and the Parole Board, and to supervise parolees adequately, should be scrutinized under established principles of negligence law. This analysis does not render the choices facing a parole officer irrelevant. In *Johnson v. State*, 73 Cal.Rptr. at 358, 447 P.2d at 358, the California Supreme Court noted that its rejection of a literal interpretation of "discretionary"

merely implies that the existence of some ... alternatives facing the employee does not perforce lead to a holding that the governmental unit thereby attains the status of non-liability under [the discretionary function exception]. These alternatives may well play a major part in the resolution of the substantial question of negligence; they do not, however, dispose of the threshold question of immunity.

The need to make decisions about Nukapigak's supervision in the light of competing considerations about his successful parole and the protection of the public must be considered in deciding whether state employees in fact acted negligently. If these decisions were made reasonably and carefully, the state will not be held liable even if, in retrospect, an alternative decision might have averted the murders. We cannot conclude, however, that the availability

of these choices should immunize the state entirely for its failure to use due care in supervising Nukapigak.

IV. CAUSATION

[15] The state argues that, even if it breached a duty to Neakok and is not immune from liability for that breach, its actions were not a proximate cause of the murders. It contends both that the connections between its acts and the murders were too attenuated to support a finding of proximate cause and that Nukapigak's acts were an independent intervening cause which relieved the state from liability. The question of proximate cause becomes one of the law only "where the evidence is such that reasonable minds cannot differ." *Sharp v. Fairbanks North Star Borough*, 569 P.2d 178, 183-84 (Alaska 1977). The evidence in this case does not preclude a finding of causation by a reasonable jury, and we therefore cannot hold that, as a matter of law, the state's alleged negligence did not cause the murders.

A party's negligence is a proximate cause of an injury only when the negligent act "was more likely than not a substantial factor in bringing about [the] injury." *Sharp*, 569 P.2d at 181. Normally, the substantial factor test may be satisfied only by a showing "both that the accident would not have happened 'but for' the defendant's negligence and that the negligent act was so important in bringing about the injury that reasonable men would regard it as a cause and attach responsibility to it." *Id.*, quoting *State v. Abbott*, 498 P.2d at 726-27.

The state contends that the murders would have occurred even if it had exercised due care, and that its alleged negligence is therefore not a "but for" cause of harm. We cannot say, as a matter of law, that reasonable jurors could not believe that if Nukapigak's wife had been warned that if Nukapigak's wife had been warned of the danger she would not have protected her daughter, that if the villagers had been warned they would not have helped him to obtain alcohol, that if Nukapigak had been prohibited under his conditions of parole

from drinking, he would not have become drunk, or that, if a local parole advisor had been appointed, Nukapigak's possession of firearms would have been prevented or reported. Reasonable jurors could certainly find that, without alcohol or firearms, the murders would not have happened.

[16] The state also contends that Nukapigak's acts themselves were a superseding cause of Neakok's injury and that the state should therefore be relieved from liability for its own alleged negligence. The Restatement (Second) of Torts Section 440 (1965) suggests several factors which may be considered in establishing the existence of a superseding cause of an injury which will relieve a negligent actor from liability. These standards include: (1) the fact that the intervention brings about harm different in kind from that which would otherwise have resulted from the actor's negligence; (2) the fact that the result appears highly extraordinary after the event; (3) the fact that the intervening force operates independently of the actor's negligence; (4) the fact that the operation of the force is due to a third party's acts, especially if that act is wrongful; and (5) the degree of culpability of the third person's acts. These standards do not support a conclusion that Nukapigak's acts were a superseding cause of Neakok's injury. The state's duty to supervise Nukapigak adequately and to impose special conditions of parole on him was intended, in part, to protect the public and to prevent Nukapigak from committing new crimes. Indeed, if the state owed any duty to Neakok, it was to use reasonable care to prevent Nu-

kapigak from committing new crimes. Nukapigak's actions, although highly culpable, were not unforeseeable or independent of the state's negligence.²¹ Under these circumstances Nukapigak's acts cannot be viewed as a superseding cause of Neakok's injury. Cf. *Morris v. Farley Enterprises, Inc.*, 661 P.2d 167 (Alaska 1983).²²

V. CONCLUSION

In bringing this action, the survivors of Nukapigak's victims have claimed that the state's negligent supervision and treatment of a dangerous parolee allowed that parolee to commit three foreseeable and avoidable murders. By its motion for summary judgment, the state contends that, even if it was negligent, it cannot be held liable for its negligence because it had no duty to protect the parolee's eventual victims, because its negligent actions were discretionary, or because its negligence could not have caused the murders. We reach no conclusions as to the reasonableness in fact of the state's treatment or supervision of Nukapigak. We hold, however, that the state had a duty to supervise him carefully, that this duty extended to anyone foreseeably endangered by him, and that the sovereign immunity statute will not shield the state from the consequences of its breach of that duty. We conclude that Neakok has submitted enough evidence of the state's negligence, and of the foreseeability and preventability of Nukapigak's actions to merit denial of the state's summary judgment motion. Accordingly, except insofar as it subjects the state to liability for its negligence in treating Nukapigak in

21. Neither the intentional character of Nukapigak's acts nor their culpability can relieve the state of liability where, as here, the state owed a duty of due care to prevent Nukapigak's intentional, culpable acts. See *Decker v. Gibson Products Co. of Albany*, 679 F.2d 212 (11th Cir. 1982).

22. In *Morris*, we held that a liquor store that sold alcohol to a minor could be held liable for deaths caused by an ensuing automobile accident, despite the wrongfulness of the minor's conduct in purchasing the liquor and sharing it with the driver of a car.

The state also argues that its actions were not "so important in bringing about the injury that reasonable men would regard [them] as a cause." It contends that Nukapigak's actions were so much more important as causes of the injury that the state's alleged negligence must be seen as, at most, an attenuated cause of the murders. Again, if the state was negligent at all, it was negligent in failing to use due care to prevent circumstances which would make Nukapigak likely to be violent. Nukapigak's violent acts cannot therefore be viewed as a cause of the injuries independent of the state's negligence.

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prison, and subjects the Alaska Parole Board to liability, we affirm the judgment of the superior court.

AFFIRMED in part, REVERSED in part, and REMANDED.

MOORE, J., not participating.

MATTHEWS, Justice, joined by RABINOWITZ, Chief Justice, dissenting.

In my view, the state is not subject to liability in tort for failing to impose conditions of parole, either at the parole board or the parole officer level. Such decisions are akin to decisions which a sentencing judge must make in deciding on the terms of a sentence of probation and are plainly discretionary.¹ The fact that such decisions may be made by parole officers does not make them different in the degree or type of discretion involved from those made by the parole board.²

With respect to the question of whether a parole officer, and the state, may be liable for negligently supervising a parolee, I believe that there may be liability should a parole officer fail to respond appropriately upon receiving notice of a parole violation having potentially serious implications.³ I would not take the next step and hold that there can be liability for an alleged failure to seek out parole violations. Such a ruling would interfere with decisions which are necessarily discretionary, involving a balancing of the sometimes competing goals of obtaining the maximum degree of rehabilitation while avoiding unnecessary interference with the parolee, protecting the public, and maximizing the effective allocation of available resources.

Concerning the failure to warn claim, in my view the state was entitled to summary

judgment that as a matter of law there was no duty to warn. The only events from which one might conclude that Nukapigak was dangerous occurred before he was imprisoned. His wife, his step-daughter, and the inhabitants of Point Lay in general knew of these acts. Nukapigak did not develop any mental illness in jail nor did he make any threats while he was there. The state knew nothing significant about Nukapigak that was not generally appreciated in Point Lay.

Imposing a duty to warn is appropriate only where there is superior knowledge. Thus the California Supreme Court in the leading case of *Tarasoff v. Regents of the University of California*, 17 Cal.3d 425, 131 Cal.Rptr. 14, 27, 551 P.2d 334, 347 (1976) stressed the danger that might result from "a concealed knowledge of the therapist that his patient was lethal." The requirement of superior knowledge is consistent with the duty to warn as it exists generally in the law of torts. A manufacturer need only warn of substantial hazards inherent in his product which are not readily recognized by the ordinary consumer, *Prince v. Parachutes, Inc.*, 685 P.2d 83 (Alaska 1984) and the owner of land need not warn of obvious dangers, W. Prosser, *Handbook of the Law of Torts* § 61 at 394 (4th ed. 1971). Since the state did not have superior knowledge of Nukapigak's dangerous propensities no duty to warn arose.

With respect to the claim that the state should be liable for failing to provide Nukapigak effective therapy in jail, I agree with the majority's conclusion that reversal is warranted. In plaintiffs' statement of genuine issues submitted in opposition to the state's motion for summary judgment, no

1. Cf. *State v. Chaney*, 477 P.2d 441, 443-44 (Alaska 1970) (sentencing is a discretionary judicial function which involves the judicious balancing of the many and oftentimes competing factors encompassed within the constitutional touchstones of reformation and protection of the public).

2. "[I]t is the nature of the conduct, rather than the status of the actor that governs whether the discretionary function exception applies in a given case." *United States v. Varig Airlines*, 467

U.S. 797, 813, 104 S.Ct. 2755, 2765, 81 L.Ed.2d 660, 674 (1984). See also *Earthmovers of Fairbanks, Inc. v. State*, 691 P.2d 281 (Alaska 1984) (police officer's decision to reduce speed limit is discretionary).

3. See *City of Kotzebue v. McLean*, 702 P.2d 1309 (Alaska 1985) (police officer has duty to respond upon receiving notice of a life-threatening situation).

such contention was raised. Thus, the state was entitled to summary judgment on the counts relating to this claim.

For these reasons I would reverse the decision of the superior court and remand this case with directions to enter judgment for the state.



John RATLIFF, Appellant,

v.

ALASKA WORKERS' COMPENSATION BOARD, Wright Schuchart Harbor/ASAG (Employer), and Wausau Insurance Companies (Insurer), Appellees.

No. 1126.

Supreme Court of Alaska.

July 3, 1986.

Claimant appealed from decision of the Superior Court, Fourth Judicial District, Fairbanks, Gerald J. Van Hoomissen, J., affirming decision of the Workers' Compensation Board holding that claimant was entitled only to permanent partial benefits for a scheduled injury. The Supreme Court, Rabinowitz, C.J., held that claimant suffered only a single injury, and so was not entitled to concurrent award of both scheduled and unscheduled benefits.

Affirmed.

1. Workers' Compensation §876

Finding by the Workers' Compensation Board that effect of claimant's knee injury did not extend to other parts of his body constituted finding that claimant did not suffer unscheduled injury and that statutory schedule applied exclusively, so that claimant was limited in his recovery to benefits provided for in schedule even were he

to suffer economic disability, despite allegation by claimant that the Board's finding merely constituted a finding that claim was not governed by statute providing for scheduled award for loss of use of body part not otherwise provided for in schedule. AS 23.30.190(a)(19)(B), (a)(20).

2. Workers' Compensation §876

Despite workers' compensation claimant's allegation that fact that knee injury disabled him from working constituted a separate "injury" from knee injury, claimant suffered only a single injury, and so was not entitled to concurrent award of both scheduled and unscheduled benefits. AS 23.30.190(a)(20).

3. Workers' Compensation §877

Under statute providing that workers' compensation shall be paid "as follows" and that unscheduled benefits apply in all other cases, scheduled permanent partial disability benefits for claimant's knee injury were the exclusive benefits that claimant could recover. AS 23.30.190, 23.30.190(a)(2, 20).

4. Workers' Compensation §876

Scheduled workers' compensation benefits are not exclusive as to a claimant who is found to be permanently totally disabled. AS 23.30.180, 23.30.190(a)(21).

5. Workers' Compensation §1846

Claimant did not raise issue of whether he was fully disabled before the Workers' Compensation Board and expressly disavowed total disability as an issue, and thus, argument that claimant was permanently totally disabled would not be considered for first time on appeal.

Arthur Lyle Robson, Fairbanks, for appellant.

Ralph R. Beistline, Ann E. Stoloff, Hughes, Thorsness, Gantz, Powell & Brundin, Anchorage, for appellees.

Before RABINOWITZ, C.J., and BURKE, MATTHEWS, COMPTON and MOORE, JJ.

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[444 US 277]

GEORGE MARTINEZ et al., Appellants,

v

STATE OF CALIFORNIA et al.

444 US 277, 62 L Ed 2d 481, 100 S Ct 553, reh den 445 US 920, 63 L Ed 2d 606, 100 S Ct 1285

[No. 78-1268]

Argued November 5, 1979. Decided January 15, 1980.

Decision: State statute immunizing parole officials from injuries resulting from parole decisions, held not violative of due process; suit against officials under 42 USCS § 1983 by survivors of parolee's murder victim, held not actionable.

SUMMARY

The survivors of a 15-year-old girl who had been murdered by a parolee five months after his parole brought an action for damages under state law and 42 USCS § 1983 in the Superior Court of San Diego County, California, against those state officials who were responsible for the parole release decision. It was alleged that the state officials' conduct in releasing the parolee (a mentally disturbed, convicted sex offender, who had been imprisoned without recommendation for parole) had deprived the victim of her life without due process of law. It was further argued that a California statute which granted the officials absolute immunity from liability for any injury resulting from a parole release decision violated the due process clause of the Fourteenth Amendment to the Federal Constitution. The trial court sustained a demurrer to the complaint, and the Court of Appeal of California, Fourth Appellate District, affirmed, ruling that the California immunity statute provided the state officials with a complete defense to the state law claims, and that the officials were immune from suit under § 1983 because they were performing a quasi-judicial function in making parole determinations (85 Cal App 3d 430, 149 Cal Rptr 519).

On appeal, the United States Supreme Court affirmed. In an opinion by STEVENS, J., expressing the unanimous view of the court, it was held that (1) the California immunity statute was not unconstitutional under the Fourteenth Amendment when applied to defeat the tort claim arising under

Briefs of Counsel, p 849, *infra*.

state law, such statute not having deprived the murder victim of due process of law by condoning a parole decision leading indirectly to the individual's death, and not having brought about an invalid deprivation of property, even assuming the immunity defense could be construed as depriving the victim's survivors of their "property" interest in a cause of action for wrongful death, and (2) the survivors of the murder victim had not alleged a claim for relief under 42 USCS § 1983 against the state officials by claiming that the officials subjected the victim to a deprivation of her life without due process of law since (a) the action of the parolee was not state action for purposes of the Fourteenth Amendment, (b) the officials did not "deprive" the victim of life within the meaning of the Fourteenth Amendment regardless of whether, as a matter of state tort law, the parole board had a "duty" to avoid harm to the victim, or proximately caused the death, and (c) the death was too remote a consequence of the officials' action to hold them responsible under § 1983.

HEADNOTES

Classified to U. S. Supreme Court Digest, Lawyers' Edition

Constitutional Law § 782 — parole officials — state immunity statute — due process of law — wrongful death

1a, 1b. A state law granting public officials immunity from liability for any injury resulting from a parole release determination is not violative of the due process clause of the Fourteenth Amendment as applied to defeat a tort claim arising under state law for the wrongful death of a girl who had been murdered by a parolee after he had been released from prison by state officials despite his history as a mentally disturbed sex offender; such law, which merely provides a defense to potential state tort law liability, has not deprived the decedent

TOTAL CLIENT-SERVICE LIBRARY REFERENCES

15 Am Jur 2d, Civil Rights §§ 16-20; 16A Am Jur 2d, Constitutional Law § 816; 63 Am Jur 2d, Public Officers and Employees § 304

42 USCS § 1983; Constitution, 14th Amendment

US L Ed Digest, Civil Rights § 12.5; Constitutional Law §§ 520, 782, 848

L Ed Index to Annos, Civil Rights; Due Process of Law; States

ALR Quick Index, Discrimination; Due Process of Law; Privileges and Immunities

Federal Quick Index, Civil Rights; Due Process of Law; Privileges and Immunities

ANNOTATION REFERENCE

Supreme Court's construction of Civil Rights Act of 1871 (42 USCS § 1983) providing private right of action for violation of federal right. 43 L Ed 2d 933.

MARTINEZ v CALIFORNIA

444 US 277, 52 L Ed 2d 481, 100 S Ct 553

of her life without due process of law because it condoned a parole decision that led indirectly to her death, since the law does not authorize nor immunize the deliberate killing of any human being and is not the equivalent of a death penalty statute which expressly authorizes state agents to take a person's life after prescribed procedures have been observed, and neither can the law be characterized as an invalid deprivation of property violative of the due process clause—even assuming the immunity defense could be construed as depriving the victim's survivors of a "property" interest in a cause of action for wrongful death—since a rational relationship exists between the state's purpose in enacting the statute and the statute itself.

Civil Rights § 12.5; Constitutional Law §§ 520, 848 — murder by parolee — parole officials' liability — due process

2a, 2b. The survivors of an individual murdered by a parolee who had been released from prison despite his history as a mentally disturbed sex offender do not allege a claim for relief under 42 USC § 1983 in a state court action against state officials responsible for parole release determinations by claiming that the officials subjected the victim to a deprivation of life without due process of law, since (1) although the decision to release the parolee from prison constitutes action by the state, the action of the parolee in committing the murder does not amount to state action for purposes of the Fourteenth Amendment, (2) the officials did not "deprive" the victim of life within the meaning of the Fourteenth Amendment regardless of whether, as a matter of state tort law, they had a "duty" to avoid harm to the victim, or proximately caused the death, and (3) the death is too remote a consequence of the parole officials' actions to hold them responsible under § 1983, given the facts that the murder occurred 5 months after the parolee's release and that the officials were not aware that the decedent, as distinguished from the public at large, faced any danger.

Appeal and Error §§ 1088, 1123 — state immunity statute — equal protection challenge — Supreme Court consideration

3a, 3b. The United States Supreme Court will not consider a challenge under the equal protection clause of the Federal Constitution to a state law granting public officials immunity from liability for any injury resulting from a parole release determination where the challenge is presented only in the jurisdictional statement, but is not briefed in the Supreme Court and is neither raised nor treated by the lower courts.

Constitutional Law § 520 — due process — legislative decision — state action

4. A legislative decision that has an incremental impact on the probability that death will result in any given situation, such as setting the speed limit at 55 miles-per-hour instead of 45 miles-per-hour, cannot be characterized as state action depriving a person of life in violation of the due process clause of the Fourteenth Amendment just because it may set in motion a chain of events that ultimately leads to the random death of an innocent bystander.

States § 33.5 — rules of tort law — relation to federal interests

5. A state's interest in fashioning its own rules of tort law is paramount to any discernible federal interest, except perhaps an interest in protecting the individual citizen from state action that is wholly arbitrary or irrational.

Courts § 103.5 — state statute — due process challenge — wisdom of legislature

6. In assessing the validity under the due process clause of the Fourteenth Amendment of a state statute providing absolute immunity to parole officials as to their parole decisions, federal courts have no authority to pass judgment on the wisdom of a legislative policy determination made by reasonable lawmakers which underlies the enactment of the statute.

Courts § 781 — federal law — state court enforcement

7a, 7b. Where an Act of Congress gives a penalty to an aggrieved party without specifying a remedy for its enforcement, the Act may be enforced by a proper action in a state court provided no Act of Congress provides otherwise; furthermore, where the same type of claim would be enforced in the state court if arising under state law, the state courts are generally not free to refuse enforcement of the federal claim.

Civil Rights § 12.5 — state immunity statute — liability of state officials

8a, 8b. A state statute which grants public officials immunity from liability for any injury resulting from a parole release determination does not control a claim asserted in a state court under 42 USC § 1983 against state officials by the survivors of an individual who was murdered by a parolee, such claim alleging that the officials, by their actions in releasing the parolee, had subjected the decedent to a deprivation of life without

due process of law; conduct by persons acting under color of state law which is wrongful under 42 USCS § 1983 or 42 USCS § 1985(3) cannot be immunized by state law.

Civil Rights § 12.5 — action — initial inquiry

9. In a suit under 42 USCS § 1983 the first inquiry is whether the plaintiff has been deprived, within the meaning of § 1983, of a right secured by the Constitution and laws of the United States.

Constitutional Law §§ 513, 529 — due process rights — erroneous state decision

10a, 10b. An individual's right to due process guaranteed by the Federal Constitution is not necessarily violated by a state's decision depriving that individual of life or property, even if that decision is erroneous.

Civil Rights § 12.5 — action — injury involving state officials

11. Not every injury in which a state official has played some part is actionable under 42 USCS § 1983.

SYLLABUS BY REPORTER OF DECISIONS

Appellants' decedent, a 15-year-old girl, was murdered by a parolee five months after he was released from prison despite his history as a sex offender. Appellants brought an action in a California court under state law and 42 USC § 1983 [42 USCS § 1983], claiming that appellee state officials, by their action in releasing the parolee, subjected the decedent to a deprivation of her life without due process of law and were therefore liable in damages for the harm caused by the parolee. The trial court sustained a demurrer to the complaint. The California Court of Appeal affirmed, holding that a California statute granting public employees absolute immunity from liability for any injury resulting from parole-release determinations provided appellees with a complete defense to appellants' state-law claims, and that appellees enjoyed quasi-judicial immu-

nity from liability under the 42 USC § 1983 [42 USCS § 1983].

Held:

1. The California immunity statute is not unconstitutional when applied to defeat a tort claim arising under state law.

(a) The statute, which merely provides a defense to potential state tort-law liability, did not deprive appellants' decedent of her life without due process of law because it condoned a parole decision that led indirectly to her death. A legislative decision that has an incremental impact on the probability that death will result in any given situation cannot be characterized as state action depriving a person of life just because it may set in motion a chain of events that ultimately leads to the random death of an innocent bystander.

(b) Even if the statute can be characterized as a deprivation of property, the State's interest in fashioning its own