

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4584 HHS SB 2 - SB 32 (FILE 1)

Original sponsors: Abood and Szymanski

1 IN THE SENATE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2 HOUSE CS FOR SENATE BILL NO. 2 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to deadlines for action on funding
7 of public education; and providing for an effective
8 date."

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

10 * Section 1. AS 14.11.100(c) is amended to read:

11 (c) The school construction account is established. Funds to
12 carry out the provisions of this section may be appropriated annually
13 by the legislature to the account. The legislature shall make an
14 appropriation before March 16 that establishes the amount of funds
15 available to school districts under this section for the next fiscal
16 year. If amounts in the account are insufficient for the purpose of
17 providing the share to which a borough or city is entitled under this
18 section, those funds that are available shall be distributed pro rata
19 among the eligible local governments.

20 * Sec. 2. AS 14.14.060(c) is amended to read:

21 (c) The borough school board shall submit the school budget for
22 the following school year to the borough assembly by April 15 [1] for
23 approval of the total amount. Within 30 days after receipt of the
24 budget the assembly shall determine the total amount of money to be
25 made available from local sources for school purposes and shall fur-
26 nish the school board with a statement of the sum to be made avail-
27 able. If the assembly does not, within 30 days, furnish the school
28 board with a statement of the sum to be made available, the amount
29 requested in the budget is automatically approved. By May 31, the

1 assembly shall appropriate the amount to be made available from local
2 sources from money available for the purpose.

3 * Sec. 3. AS 14.17.225(b) is amended to read:

4 (b) Funds to carry out the provisions of AS 14.17.010 - 14.17.-
5 190 may be appropriated annually by the legislature into the public
6 school foundation account. The legislature shall make an appropria-
7 tion before March 16 that establishes the amount of funds for direct
8 and indirect services and other funding under this chapter for the
9 next fiscal year. If the legislature fails to make an appropriation
10 as required by this section before March 16, the previous fiscal year
11 appropriation for funding under this chapter is automatically approved
12 for the next fiscal year. If amounts in the account are insufficient
13 to meet the allocations authorized under AS 14.17.010 - 14.17.190,
14 such funds as are available shall be distributed pro rata among each
15 district based upon the district's basic need.

16 * Sec. 4. AS 37.07.030 is amended to read:

17 Sec. 37.07.030. RESPONSIBILITIES OF THE LEGISLATURE. The legis-
18 lature shall

- 19 (1) provide for a budget. rev. function;
- 20 (2) analyze the comprehensive operating and capital im-
21 provements programs and financial plans recommended by the governor;
- 22 (3) adopt legislation to authorize implementation of the
23 governor's comprehensive operating and capital improvements programs
24 and financial plans or appropriate alternatives to those plans;
- 25 (4) provide for a post-audit function, to cover financial
26 transactions, program accomplishment and compliance with legislative
27 intent;
- 28 (5) adopt or revise the estimate or receipts required to
29 balance the succeeding fiscal year's budget in order that proposed

1 expenditures do not exceed estimated receipts for that fiscal year;

2 (6) adopt, revise, or initiate revenue measures in order to
3 balance the succeeding fiscal year's budget and the capital improve-
4 ments section of the budget for the succeeding six years;

5 (7) appropriate money for public education for school
6 construction debt retirement under AS 14.11.100, public school founda-
7 tion program under AS 14.17 and for the secondary formula account,
8 pupil transportation, student lunch program, cigarette tax distribu-
9 tion, tuition students, boarding home grants, youth in detention, and
10 schools for the handicapped no later than March 16 of each year for
11 the succeeding fiscal year.

12 * Sec. 5. This Act takes effect July 1, 1987.

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: ...deadlines for action on
funding of public education...
Sponsor: Senator Abcod
Requestor: House HFSS

Agency Affected: Education
BRU: K-12, Debt Retirement
Components: _____

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
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The bill has no fiscal impact on this department.

Prepared by: Steve Hole
Division: Commissioner's Office

Phone: 465-2800
Date: December 11, 1988

Approved by Commissioner: William Denmert
Agency: Education

Date: December 11, 1988

Distribution (by preparer):

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

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

SECTIONAL ANALYSIS FOR SB 2

"An Act relating to deadlines for action on funding of public education; and providing for an effective date."

SECTION 1 - Adds language which would set a deadline, of March 16, for passage of an education budget for the next fiscal year, including funds for the school construction account.

SECTION 2 - Changes the date from April 1 to April 15 for the borough school board to submit the following fiscal year's school budget to the borough assembly.

SECTION 3 - Adds language which would set a deadline, of March 16, for passage of an education budget for the school foundation account.

SECTION 4 - Includes, as a responsibility of the legislature, the appropriation of money for public education no later than March 16 for the following fiscal year.

SECTION 5 - Effective date of July 1, 1987.

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____

Bill Version: SB-2
Publish Date: _____

Revision Date: _____
Title: ...deadlines for action on
funding of public education...
Sponsor: Senator Abood
Requestor: Senate HESS

Agency Affected: Education
BRU: K-12, Debt Retirement
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The bill has no fiscal impact on this department.

Prepared by: S. J. Holey
Division: Commissioner's Office

Phone: 465-2800
Date: January 23, 1987

Approved by Commissioner: Marshall L. Lind
Agency: Education

Date: January 23, 1987


Distribution (by preparer):

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

POSITION PAPER
FIRST SESSION
15th ALASKA LEGISLATURE

SB-2

The Department of Education supports this legislation. Its enactment will provide the school districts and municipalities with critical information for the budget planning process.



William G. Demmert
Commissioner



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

Jean Krause, President

Judy Selo
Vice-President
4510 Kenaitze Court
Kenai, Alaska 99611

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NEA Director
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Fairbanks, Alaska 99708

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Sitka, Alaska 99835

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Ketchikan, Alaska 99901

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Wasilla, Alaska 99687

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Box 343
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Box 1084
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Scammon Bay, Alaska 99662

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Box 973
Nome, Alaska 99762

Joann Walker
Region IV Director
Box 570
Kotzebue, Alaska 99752

Mary Lou Brent
Region V Director
Box 80074
Fairbanks, Alaska 99708

Carol Merritt
Region V Director
P.O. Box 60475
Fairbanks, Alaska 99706

Loretta Christle
Region VI Director
2220 Yorkshire Lane
Anchorage, Alaska 99504

Pam McCarl
Region VI Director
2115 Sorbus Way
Anchorage, Alaska 99508

Pam Reynolds
Region VI Director
8C71 Evans Circle
Anchorage, Alaska 99507

Dave Schwantes
Region VI Director
8148 E. 4th Avenue
Anchorage, Alaska 99504

Peg Stout
Region VI Director
6208 E. 34th Avenue
Anchorage, Alaska 99504

January 26, 1987

To: Senator Mitch Abood, Chair
Members, Senate State Affairs Committee

Re: Senate Bill No. 2, "An Act relating to deadlines for action on funding of public education; and providing for an effective date."

NEA-Alaska strongly supports and encourages passage of this legislation.

Because local school district budgets are so dependent on the level of state funding support, it is essential that they know as early in the budget process as possible the level of State support. Effective program planning, collective bargaining relationships, and determination of the ability of the district to meet unique needs are all directly impacted by State funding decisions.

Further, the calendar chronology relative to the submission of school district budgets to the borough assembly is adversely effected when this submission must be done absent accurate knowledge of the State funding support.

SB 2 correctly focuses on the need for earlier knowledge of these levels of support. To move any of these dates "down" the calendar delays important decision making and makes the entire planning process far less effective than it needs to be.

We encourage your support of SB 2.

Respectively Submitted

Robert Manners

Robert Manners,
Executive Secretary

BM30/dl

Municipality
of
Anchorage



P.O. BOX 6650
ANCHORAGE, ALASKA 99502-0650
(907) 264-4311

ANCHORAGE ASSEMBLY

RECEIVED
DEC 09 1986

December 4, 1986

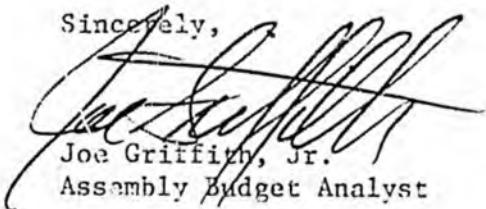
Senator Mitch Abood
Senate District G-A
1024 W. 6th Avenue
Anchorage, AK 99501

Dear Senator Abood:

It was my pleasure to work with you on the revision of Title 14. I believe the document you have drafted will do much to solve various school district's difficulties; however, it may be difficult to get it through the Legislature.

Best of luck in the upcoming session and do not hesitate to call on me if I can be of further service.

Sincerely,


Joe Griffith, Jr.
Assembly Budget Analyst

JG:jj

ASSOCIATION OF ALASKA SCHOOL BOARDS

215 W. 11th St. • Juneau, Alaska 99801-1510 • (907) 586-1083

December 2, 1986

Mitch Abood, Senator
1024 West 6th Avenue
Room 110
Anchorage, AK 99501

Dear Senator Abood:

I have received the draft legislation you sent me relative to establishing a deadline for legislative action on state funding of public education.

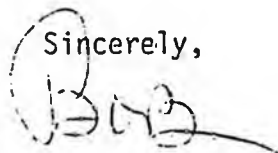
The draft looks fine to me with one apparent omission. I was under the impression that we were also going to consider moving the date contained in A.S. 14.14.060(c) to April fifteen instead of April one. I also recall that we discussed the language in that same section to read, ...for approval of the local effort. [total amount].

It was sort of my recollection that the Mat-Su folks thought that was O.K. Lee Sharp gave me that impression, anyway.

If this complicates anything, let me know.

Thank you again for your efforts.

Sincerely,



Robert C. Greene
Executive Director

Alaska State Legislature



CHAIRMAN
STATE AFFAIRS
MEMBER
BUDGET & AUDIT
TRANSPORTATION

INTERIM OFFICE
1024 WEST SIXTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 274-2843

WHILE IN SESSION
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4747

Senator Mitch Abood
SENATE DISTRICT G-A

November 20, 1986

Mr. Bob Cooksey
NEA-Alaska
147 S Franklin #407
Juneau, AK 99801

Dear Bob:

Enclosed you will find the completed draft resulting from our recent meeting to discuss the education budget timelines.

I would appreciate your reviewing the draft and responding, with a letter to my office, no later than December 15, either approving or disapproving of the language. If you detect an error or have a question, please indicate it on the draft and return it with your letter. On the other hand, if you approve of the draft, please return the draft with an okay, signature, and date. Any back-up material or position papers which you would like to include with the bill package should be included with the returned draft -- as you are well aware, any additional information that can be provided to simplify explanation of the bill is helpful.

Thank you again for your time spent working with myself and the other individuals present at the meetings. Hopefully everyone's effort will pay off with an improvement to the education budgeting process.

Kindest regards,

Mitch Abood
Mitch Abood
Senator

/ds

Enclosure (1)

Mitch the draft looks good to me. Can support it; however, if this version can't fly, hopefully we can support changes which would accomplish the same purpose as making the school financing decision easier. Thank you again for reviewing and your effort with the issue.



ANCHORAGE
SCHOOL DISTRICT

4600 DeBarr Avenue
P.O. Box 196614
Anchorage, Alaska 99519-6614
AREA CODE [907] 333-9561

SCHOOL BOARD

Jean Buchanan
President

William Frick
Vice President

Carol Stolpe
Clerk

Bettye Davis
Clerk Pro Tem
Immediate Past President

Martha Roderick
Treasurer

Darryl Jordan
Assistant Treasurer

Jim Robinson
Parliamentarian
Past President

SUPERINTENDENT

Ed (Bob) Davis, Ed.D.

December 9, 1985

The Honorable Mitch Abood
Alaska State Legislature
1024 West Sixth Avenue
Anchorage, Alaska 99501

Dear Senator Abood:

In regards to your letter of November 20 the following is suggested:

1. The community schools' funding should probably be included as revenue under Section 37.07.030.
2. Also note that the present statute states that city and borough school districts must submit their budgets not later than April 1 of each year to the local governments. At one point we discussed making that date April 15. This would allow the school districts ample time to make changes to their budgets.

Thank you for taking the lead in this particular problem. I believe it will help not only school districts but local governments and legislators. If I can be of further assistance, please contact me.

Sincerely,

L. T. Freeman
Assistant Superintendent
for Business Management



ANCHORAGE
SCHOOL DISTRICT

4600 DeBarr Avenue
P.O. Box 196614
Anchorage, Alaska 99519-6614
AREA CODE [907] 333-9561

SCHOOL BOARD

Jean Buchanan
President

William Frick
Vice President

Carol Stolpe
Clerk

Bettye Davis
Clerk Pro Tem
Immediate Past President

Martha Roderick
Treasurer

Darryl Jordan
Assistant Treasurer

Jim Robinson
Parliamentarian
Past President

SUPERINTENDENT

E. E. (Gene) Davis, Ed.D.

December 9, 1986

The Honorable Mitch Abood
Alaska State Legislature
1024 West Sixth Avenue
Anchorage, Alaska 99501

Dear Senator Abood:

Thank you for considering the Anchorage School District to assist in this much needed legislation.

I believe that the timelines of this bill will assist school districts throughout the State in arriving at their budget figures.

If there is any further information you need, please do not hesitate to call upon us.

Sincerely,

E. E. (Gene) Davis, Ed.D.
SUPERINTENDENT

c1

cc L. T. Freeman, Assistant Superintendent, Business Management

Alaska State Legislat

*Lee,
Dorothy would
like you to initial &
do you concur w/ her
statement? Return
to Dorothy.*

INTERIM OFFICE
1024 WEST SIXTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 274-2843



Senator Mitch Abood
SENATE DISTRICT G-A

WHILE IN SESSION
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4747

November 20, 1986

The Honorable Dorothy Jones
Mayor, Mat-Su Borough
P.O. Box 1608
Palmer, AK 99645

*Dorothy,
I hope you
this signature date
would be helpful
in setting up
Dorothy Jones*

Dear Ms. Jones:

Enclosed you will find the completed dra:
our recent meeting to discuss the educat:
timelines.

I would appreciate your reviewing the dra:
with a letter to my office, no later than
either approving or disapproving of the language. If you
detect an error or have a question, please indicate it on
the draft and return it with your letter. On the other
hand, if you approve of the draft, please return the draft
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as you are well aware, any additional information that can
be provided to simplify explanation of the bill is helpful.

Thank you again for your time spent working with myself and
the other individuals present at the meetings. Hopefully
everyone's effort will pay off with an improvement to the
education budgeting process.

Kindest regards,

Mitch Abood
Senator

/ds

Enclosure (1)

Municipality of Anchorage

MEMORANDUM

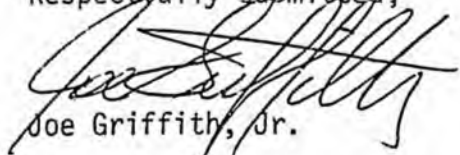
D
for
SB 2
①

DATE: January 27, 1987
TO: Senator Mitch Abood
FROM: Assembly Budget Analyst
SUBJECT: SB 2

Thank you for the opportunity to address your committee on SB 2. As we discussed during the drafting phase, I believe this relatively minor change in the law will greatly aid our school district in their budgetary process and will have little deleterious effect on the Municipality's setting of the tax levy. In short I believe this is a positive step which will make government more efficient.

I have included a copy of the chart (which we referenced early) showing the various budgetary milestones and fiscal years which are influenced by SB 2. It is apparent from the graphic presentation that any action by the legislature to make the school funding allocation decision earlier aids the whole process. Of course, the principle benefit is to the school district; however, as I mentioned earlier, the fifteen-day shift would have little impact on the Municipal government budgeting process.

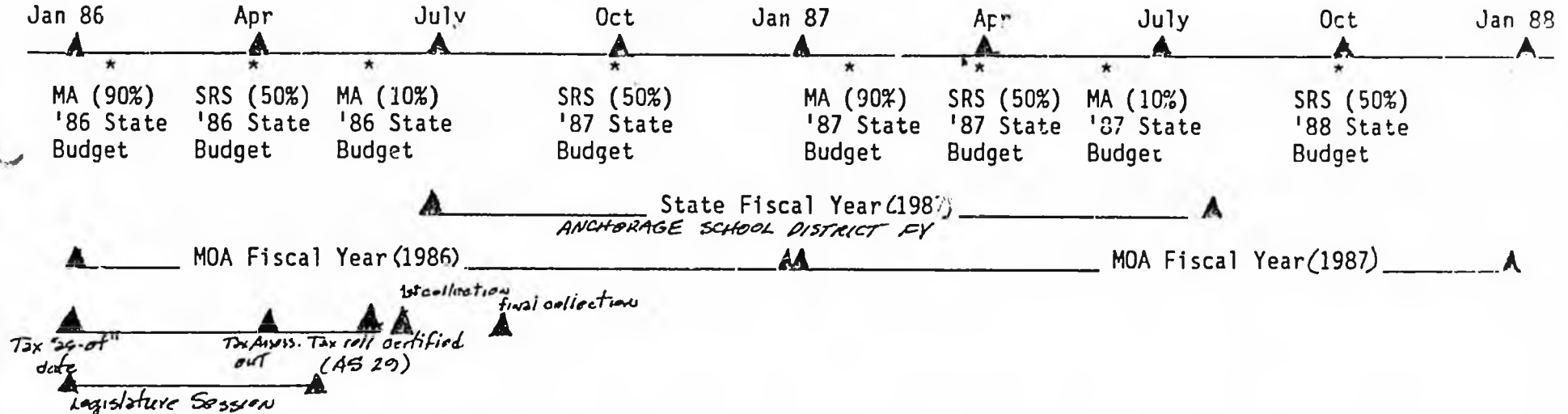
Respectfully submitted,


Joe Griffith, Jr.

1 Attachment
Graphic display of Municipal budget process.

RECEIVED
JAN 29 1986

MUNICIPAL BUDGET



Municipal Assistance (MA) payments received in February and June. MOA receives payment in the same numbered fiscal year as the State budget appropriating the funds. February payment is approximately 90% of the appropriated amount. Remainder in June subsequent to State receipt of data from all communities.

State Revenue Sharing (SRS) payments received in April and October of each year. From the State perspective, the first payment each fiscal year occurs in October and the second in April. Current State procedures (new for the State FY87 budget) evenly divides the appropriation between the two payments. Due to the overlapping fiscal years, each MOA fiscal year contains a Revenue Sharing payment from two State appropriations. The State Budget is generally passed in May.

Jan 30, 1987	Delivery of budget materials to School Board
Feb 2-6, 1987	Delivery of budget materials to: Budget Advisory Commission Schools and Departments Municipality of Anchorage Employee Bargaining Groups Libraries
Feb 3-12, 1987	Public Hearings on Preliminary Financial Plan Feb 3 (Tuesday) - 1st Hearing Feb 5 (Thursday) - 2nd Hearing Feb 10 (Tuesday) - 3rd Hearing Feb 12 (Thursday) - 4th Hearing
Feb 17, 1987	First School Board Reading (Tuesday)
Feb 24, 1987	Final Reading and Approval (Tuesday)
Feb 25-March 24	Revision of Preliminary Financial Plan (similar process to that of Jan 12 - Jan 31, 1987)
March 25-26, 1987	Printing of Proposed Financial Plan, Financial Plan Summary, and related budget materials
March 27, 1987	Delivery of Proposed Financial Plan, etc. to Municipal Assembly
April 1987	Municipal Assembly review, public hearings, and approval
May-June 1987	Revisions to Proposed Financial Plan expenditure budgets and revenue budget Preparation of Adopted Financial Plan
July-August 1987	Printing and distribution of Adopted Financial Plan

SB

19

Municipality of Anchorage



P.O. BOX 196650
ANCHORAGE, ALASKA 99519-6650
(907) 264-4111

Tom Fink
MAYOR

MUNICIPAL HEALTH & HUMAN SERVICES COMMISSION

March 9, 1988

Representative Johnny Ellis, Chair
House Health, Education and
Social Services Committee
Alaska State Legislature
POB V
Juneau, Alaska 99811

Jim/Lisa

MAR 14 1988

Dear Representative Ellis,

The Municipal Health and Human Services Commission wishes to lend their full support to the passage of SB19. Child abuse and neglect is ranked as the top mental and behavioral health problem priority in the Anchorage Health and Human Services Plan (January 1988).

The establishment of a trust fund for grants to community-based programs for child abuse prevention, intervention and education programs is consistent with the child abuse recommendations contained in Volume 3 of the plan, Policy Recommendations and Objectives for Anchorage's Service Delivery System. In particular, objectives #3 and #5 support the need for additional funding as follows:

3. The Municipality of Anchorage should urge the Alaska Division of Family and Youth Services (DFYS), who has the legal responsibility for child abuse services, to give more recognition to the idea that primary prevention services are an integral part of the continuum of child abuse services. The Municipality should coordinate with DFYS, United Way, and other resources providers to ensure adequate primary prevention services are available in Anchorage. As part of this, the Municipality work with other funding sources, such as United Way and DFYS, to adequately fund these primary prevention services.
5. The Municipality of Anchorage (MOA) should urge the Alaska Council on Domestic Violence and Sexual Assault (CDVSA), the Alaska Division of Mental Health and Developmental Disabilities (MHDD) and the Alaska Division of Family and Youth Services (DFYS) to determine how the state through CDVSA

March 9, 1988
Representative Johnny Ellis, Chair
Page 2

and/or MHDD and/or DFYS is going to provide adequate funds for the treatment of victims of child physical and/or psychological abuse and neglect. The MOA should coordinate with other funding providers to ensure adequate funding of treatment services for child physical and/or psychological abuse and neglect victims and their families.

Passage of SB19 would facilitate the implementation of both objectives.

I would be happy to answer any questions you might have. You can reach me at 562-2828 or our staff staff at 343-4674.

Sincerely,



Gari B. Andreini, Chair
Municipal Health and Human Services Commission

cc: House HESS Committee
Senator Kerttula, Sponsor
Anchorage Municipal Assembly
Tom Fink, Mayor
Ron Garzini, Manager, Municipality of Anchorage
Robert A. (Bert) Hall, Director, Department of Health and Human Services,
Municipality of Anchorage

SJ24/dPD20

SB

30

CSSB 30 (JUD) -- "An Act relating to termination of parental rights of perpetrators of certain sexual offenses."

FILE CONTENTS

- (1) Copy of CSSB 30 (JUD)
- (2) Memo from Legal Services regarding CSSB 30 (JUD)
- (3) Fiscal notes
- (4) Copy of CSSB 30 (HESS)
- (5) Copy of SB 30
- (6) Sectional analysis of SB 30
- (7) Fiscal notes for SB 30
- (8) Bill History
- (9) Minutes

HOUSE COMMITTEE REPORT

(7)

Date referred: 4/29/87

FURTHER REFERRALS: Judiciary

The Health, Education and Social Services Committee has considered CSSB 30 (Jud) DATE: May 17, 1987

"An Act relating to termination of parental rights of perpetrators of certain sexual offenses."

RECOMMENDS:

- replace with _____ 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:

Robert E. Kelly

John E. Kelly

Nick Korman

Max J. Stuenkel

SIGNING OTHER RECOMMENDATIONS:

Nick Korman

Chairman's signature

John E. Kelly

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 15, 1987

SUBJECT: Draft CSSB 30(Jud), relating to termination
of the parental rights of certain sexual
offenders

TO: Senator Jalmar Kerttula

FROM: George Utermohle *GU*
Legislative Counsel

The draft CSSB 30(Jud) contains amendments adding sexual assault and sexual abuse of a minor in the fourth degree to the list of grounds on which parental rights may be terminated and providing for inheritance rights unless a court terminates inheritance rights.

The draft committee substitute does not address the issue of retrospective application of SB 30. At this time it is not clear to what extent the bill should apply retrospectively. The Department of Health and Social Services has requested that I contact Andy Harrington with Alaska Legal Services in Fairbanks for information on this issue. I will contact Mr. Harrington to obtain his suggestions. However the retrospective application of civil laws may be challenged by those persons whose rights are affected by the change in the law. It is possible that the courts may strike down the retrospective aspect of SB 30 if it adversely affects the constitutional rights of a person subject to the bill.

As soon as I receive the necessary information from Mr. Harrington and conduct preliminary legal research into retrospective application of civil laws, I will prepare the necessary amendment to achieve retroactivity or a memorandum discussing why retroactivity is not appropriate.

GU:mkr
m11/024

Enclosure

N 163

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: SB 30 HESS
Publish Date: 3-21

REQUEST: _____

Revision Date: _____
Title: "An Act relating to termination
of parental rights ..."

Agency Affected: Department of Law
BRU: Legal Services

Sponsor: Senator Fischer
Requestor: Senator Fischer

Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director

Phone: 465-3672

Division: Administrative Services

Date: March 5, 1987

Approved by Commissioner: Grace Berg Schaible, Atty. Gen.

Date: March 5, 1987

Agency: Department of Law

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 30

SENATE BILL 30 - Law

This bill amends AS 47.17 by adding new sections that provide for the termination of parental rights of perpetrators of certain sexual offenses. Upon petition to the superior court, the court would be empowered to terminate the parental rights of a perpetrator to a child conceived as the result of sexual abuse of a minor or of incest, when termination is in the best interests of the child. Petition could be made by certain private party family members of the child, and this process would not involve the state, except that the Office of Public Advocate would represent indigent respondents. Consequently, this bill will not have a fiscal impact on the Department of Law. The department does note that it would probably not be able to assist petitioners, where they lack the means to petition the court, because of the severity of the department's current and projected budget constraints.

16162

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: SB 30 HESS
Publish Date: _____

REQUEST: _____
Revision Date: _____
Title: "An Act relating to termination of parental rights..."
Sponsor: Fischer
Requestor: Senate Judiciary

Agency Affected: Administration
BRU: Office of Public Advocacy
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Brant McGee, Public Advocate Phone: 274-1684
Division: Office of Public Advocacy Date: 2/22/87
Approved by Commissioner: Garrey Peska Date: 2/4/87
Agency: Department of Administration

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

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

February 24, 1987

SUBJECT: Section-by-section analysis of SB 30, An Act
Relating to Termination of Parental Rights of
Perpetrators of Certain Sexual Offenses

TO: Senator Paul Fischer

FROM: George Utermohle *GU*
Legislative Counsel

The following is the section-by-section analysis of SB 30,
requested by Jack Sanderson of your staff.

A sectional analysis or summary of a bill should not be con-
sidered an authoritative interpretation of a bill, and the
bill itself is the best statement of its contents.

Section 1. Section 1 of the bill adds a new article to
AS 47.17 providing for the termination of parental rights of
certain sexual offenders.

Sec. 47.17.180 states the purpose of the article.

Sec. 47.17.190 lists who may file a petition to terminate
the parental rights of a perpetrator of sexual abuse of a
minor or of incest to the child conceived as a consequence
of the sexual offense.

Sec. 47.17.200 sets out who must receive notice of the
action to terminate parental rights.

The biological mother of the child, the biological or
alleged biological father, and the guardian or custodian of
the child must receive notice of the petition.

If the biological father of the child is unknown or not
disclosed, the court must inquire of the biological mother
as to information about the biological father unless the
court finds that disclosure is harmful to the mother or
child.

The court shall decide what notice should be given to
unknown, undisclosed, or unlocated biological fathers.

The court may order blood tests to determine the biological father of the child and assess the costs on the parties to the petition.

If the court finds that notice given to a party to the action to terminate parental rights was not adequate the court may continue the hearing until the defect of notice is cured.

Sec. 47.17.210 sets out the powers of the court to terminate parental rights of a sexual offender.

The court shall terminate the parental rights of a biological parent of a child if the court finds by clear and convincing evidence that (1) required notice has been given or the person has relinquished parental rights, (2) the child was conceived by an act constituting sexual abuse of a minor or incest, and (3) the termination of parental rights is in the best interests of the child.

The court may order preparation of a new birth certificate for the child if the court terminates the parental rights of the biological father.

The court may order disclosure of the name of the biological parent only if disclosure is necessary for medical or extraordinary circumstances and the parties are given notice. Notice is not required if there is a medical emergency.

Sec. 47.17.220 states the legal effect of a termination of parental rights under these provisions. The order terminating parental rights voids all legal relationships between the biological parent and child and is a determination that parental rights never attached between the child and biological parent.

Sec. 47.17.230 provides that proceedings under these provisions are closed to non-essential persons and that court records are closed.

Sec. 47.17.240 provides the circumstances under which a biological parent may relinquish parental rights under these provisions.

Sec. 47.17.250 provides for the modification of the procedures in these provisions to comply with the requirements of the Indian Child Welfare Act of 1978. The most significant requirements of the Act include notice to the tribe to which the child is related and proof of facts beyond a reasonable doubt. An "Indian child" is defined as an unmarried person

under 18 years old who is either a member of an Indian tribe or is eligible for membership in a tribe and is a biological child of a member of a tribe.

Sec. 47.17.260 provides that an order terminating parental rights is final and not appealable after six months.

Sec. 47.17.270 provides that the respondent to a petition to terminate parental rights is entitled to representation by an attorney. The court may appoint an attorney to represent the respondent if the respondent cannot afford an attorney.

Sec. 47.17.280 provides that the court may award reasonable attorney fees and costs to a prevailing party.

Sec. 47.17.290 provides that an order terminating parental rights under these provisions does not affect the right of a victim of sexual abuse or of incest to recover civil damages for injuries and costs arising out of the conduct of a perpetrator of sexual abuse or incest.

Sec. 47.17.300 provides that a proceeding to terminate parental rights under these provisions is a child custody proceeding subject to AS 25.30.

Sec. 47.17.310 defines "child", "court", "incest", and "sexual abuse of a minor."

Section 2. Section 2 of the bill amends AS 25.23.050(a) to include references to AS 47.17.210 and 47.17.240.

Section 3. Section 3 of the bill amends AS 44.21.410(a) to allow the office of public advocacy to represent indigent respondents in proceedings to terminate parental rights under this bill.

Section 4. Section 4 of the bill amends AS 47.10.010(a), relating to a "child in need of aid," to include a reference to AS 47.17.210.

GU:mkr
m9/049

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

Bill Version: SB 30
Publish Date: _____

REQUEST: _____

Revision Date: _____
Title: "An Act relating to termination
of parental rights ..."

Agency Affected: Department of Law
BRU: Legal Services

Sponsor: Senator Fischer
Requestor: Senator Fischer

Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: March 5, 1987
 Approved by Commissioner: Richard I. Pegues / For
 Agency: Department of Law Grace Berg Schaible, Atty. Gen Date: March 5, 1987

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 30

SENATE BILL 30

This bill amends AS 47.17 by adding new sections that provide for the termination of parental rights of perpetrators of certain sexual offenses. Upon petition to the superior court, the court would be empowered to terminate the parental rights of a perpetrator to a child conceived as the result of sexual abuse of a minor or of incest, when termination is in the best interests of the child. Petition could be made by certain private party family members of the child, and this process would not involve the state, except that the Office of Public Advocate would represent indigent respondents. Consequently, this bill will not have a fiscal impact on the Department of Law. The department does note that it would probably not be able to assist petitioners, where they lack the means to petition the court, because of the severity of the department's current and projected budget constraints.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: SB 30

Publish Date: _____

Revision Date: _____

Agency Affected: Administration

Title: "An Act relating to termination of parental rights..."

BRU: Office of Public Advocacy

Sponsor: Fischer

Components: _____

Requestor: Senate Judiciary

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Brant McGee, Public Advocate

Phone: 274-1684

Division: Office of Public Advocacy

Date: 2/22/87

Approved by Commissioner: Garrey Peska

Date: 2/10/87

Agency: Department of Administration

Distribution (by preparer):

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

POSITION PAPER

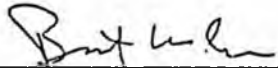
SB30

"An Act relating to termination of parental rights to perpetrators of certain sexual offenses"

This Bill allows the parental rights of a perpetrator of sexual abuse to be terminated if necessary to protect the best interests of the child.

The Bill is unlikely to generate an increase in the number of Child In Need of Aid actions because such cases are almost always the subject of such proceedings under current law. However, the Bill does mandate the appointment of an attorney from the Office of Public Advocacy where current law mandates that such appointments be from the Alaska Public Defender Agency. Because OPA now almost invariably acts as guardian ad litem for the child victim, the appointment of OPA will necessitate costly contracts with private attorneys to provide this representation.

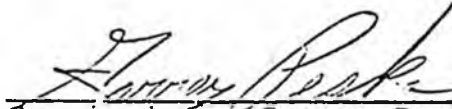
The Office of Public Advocacy supports this legislation but opposes the provisions mandating OPA appointment to represent alleged perpetrators as unnecessarily costly.



Brant McGee, Public Advocate
Office of Public Advocacy

2/22/87

Date



Commissioner Garrey Peska
Department of Administration

2/14/87

Date



STATE OF ALASKA
OFFICE OF THE GOVERNOR
BILL ANALYSIS

DEPARTMENT Health & Soc Services	DIVISION Family & Youth Services	BILL NUMBER SB 30	SPONSOR Senator Paul Fisher
DEPARTMENT POSITION Qualified support (please see analysis below)			
PREPARED BY Myra Munson	DATE 3/13/87	COMMISSIONER'S SIGNATURE <i>Myra M. Munson</i>	DATE 3/13/87

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Department of Law, Alaska Court System	CONSTITUENT GROUP(S) AFFECTED BY BILL Victims of incest, perpetrators of incest
ORGANIZATIONAL SUPPORT FOR BILL	ORGANIZATIONAL OPPOSITION TO BILL

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

In order to protect the child conceived as the result of sexual abuse of a minor or of incest, the court may terminate the parental rights of the perpetrator to the child when the termination is in the best interests of the child.

ANALYSIS OF BILL/PROGRAM EFFECTS

The Department of Health and Social Services supports the objectives of SB 30. This bill would allow termination of the parental rights of a biological parent who conceives a child as a result of sexual abuse of a minor or incest. The department believes this objective can be better accomplished, however, by amendments to AS 25.23, which relates to adoptions. This is preferable to amending AS 47.17, which relates primarily to child abuse and neglect reporting.

AMENDMENTS PROPOSED

Please see attached memo from Alaska Legal Services attorney Andrew Harrington to Randall Burns, Special Assistant, Department of Health and Social Services.

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

To: Randall Burns
From: Andy Harrington
Re: SB 30
Dated: 3/11/87 Wed

In response to your request, I am sending along suggestions for how the substance of SB 30 can be accomplished by amending existing statutes rather than creating a separate chapter of statutes.

This focuses on AS 25.23.180, which already contains several of the provisions regarding termination of parental rights. This is contained in the adoption chapter.

There are two substantive matters I'd like to bring to your attention: first, inserting the the private cause of action into AS 25.23.180 will make it possible for a private individual to terminate parental rights based on the child sexual abuse/incest ground; it will enable a private individual to terminate another's parental rights if that private individual can make the same showings the State makes in terminating parental rights in child-in-need cases. (It may be that private individuals can already do so; as far as I know, the State Supreme Court hasn't ruled on that.)

Second, I noted that, in the draft of the bill I received, parental rights can be terminated based on violations of Sexual Abuse of a Child in the First, Second, and Fourth Degrees, but not in the Third (AS 11.41.434, 11.41.436, 11.41.440, but not 11.41.438). I assume this was an oversight. Sexual Abuse of a Minor in the Fourth Degree is an A Misdemeanor, committed by offenders under sixteen against children at least three years younger; Sexual Abuse of a Minor in the Third Degree is a C felony, committed by offenders over sixteen against children at least three years younger. I'm assuming the bill was meant to include SAM 3d and exclude SAM 4th, and have drafted my suggestion accordingly.

I've tried to underline new material and bracket old material being eliminated, but I don't guarantee the accuracy of that.

After the proposed changes, I've listed the sections of the current bill and how that provision is incorporated.

AS 25.23.030: Jurisdiction and venue.

(a) Proceedings for adoption shall be brought in the superior court for the district in which, at the time of filing or granting the petition, the petitioner or the person to be adopted resides or is in military service, or in which the agency having the care, custody or control of the minor is located. Proceedings for non-adoptive termination of parental rights shall be brought in the superior court in which the minor child resides.

(b) [same as original]

(c) For jurisdictional purposes, a proceeding under this chapter is a child custody proceeding subject to the Uniform Child Custody Jurisdiction Act, AS 25.30.020.

AS 25.23.050: Persons as to whom consent and notice not required.

(a) Consent to adoption is not required of

(1) [same as original]

(2) [same as original]

(3) [same as original]

(4) [same as original]

(5) a parent whose parental rights have been terminated by order of the court under AS 47.10.080(c)(3) or under AS 25.23.180:

(6) [same as original]

(7) [same as original]

(8) [same as original]

(9) [same as original]

(b) [same as original]

AS 25.23.140: Appeal and Validation of [Adoption] Decree

(a) [same as original]

(b) [same as original]

(c) Subject to the disposition of an appeal, upon the expiration of one year after a decree of non-adoptive termination of parental rights is issued, the order may not be challenged on any ground, including fraud, misrepresentation, failure to give notice, or lack of jurisdiction of the parties or of the subject matter.

AS 25.23.150: Confidential nature of hearings and records in adoption and non-adoptive termination proceedings.

(a) [same as original]

(b) All papers and records pertaining to [an adoption] proceedings under this chapter that are a part of the permanent record of a court of are subject to inspection only upon consent of the court. The papers and records relating to [an adoption] such proceedings on file with the department, an agency, or an individual are subject to inspection only with consent of all interested persons or by order of a court for good cause shown. Except as provided in this section, adoption records of the Bureau of Vital Statistics are subject to inspection under the provisions of AS 18.50.

(c) Except as authorized by law, or as authorized in writing by the adopted child, if 14 or more years of age, or by the adoptive parent, or upon order of the court for good cause shown, a person may not disclose the identity or address of [either] an

adoptive parent or an adopted child or any party to an adoption or non-adoptive termination case.

(d) The court may order the disclosure of a natural parent's identity or address only if

(1) the court makes an express finding that the disclosure is required because of a medical necessity or other extraordinary circumstance; and

(2) the natural parent, the [adopted] child, the child's other natural parent (unless that parent's rights have been terminated), and the adoptive parents are afforded proper notice and a hearing; the court may waive the hearing and notice requirement if it finds there is a medical necessity that poses an immediate risk to life.

AS 25.23.170: Applications for birth certificates.

Within 30 days after an adoption decree becomes final, the clerk of court shall, if requested by the adoptive parents, prepare an application for a birth certificate in the name of the adopted person. Upon a non-adoptive termination of parental rights under section 180 of this chapter, the court may order the preparation of an application for a birth certificate in the name of the child without reference to the parent whose rights have been terminated. Such applications shall be forwarded

(1) [same as original]

(2) [same as original]

AS 25.23.180: Relinquishment and termination of parent and child relationships.

(a) [same as original]

(b) [same as original]

(c) The relationship of parent a child may be terminated by a court order issued in connection with an adoption proceeding under this chapter, an independent proceeding under this section, or a proceeding under AS 47.10 on any of the following grounds:

(1) on the grounds specified in AS 47.10.080(c)(3);

(2) on the grounds that a parent who does not have custody is withholding consent to adoption, contrary to the best interests of the minor child; or

(3) on the grounds that (a) the child was conceived by an act constituting sexual abuse of a minor or incest under the laws of this state, or by a comparable offense under the laws of the jurisdiction where the act occurred; and (b) termination of the parental rights of the biological parent is in the best interests of the child.

(d) An order terminating parental rights issued by a court of competent jurisdiction in this or any other state voids all legal relationships between the child and the biological parent so that the child is a stranger to the biological parent, and to the relatives of the biological parent, for all purposes including but not limited to, inheritance, unless the decree specifically provides for continuation of inheritance rights; and including the interpretation or construction of documents, statutes, and instruments, whether executed before or after the termination is

decreed, which do not expressly include the person by name or by some designation not based on a parent and child or blood relationship; and including dispensing with the required

(1) consent by that parent to an adoption of that child; and
(2) notice of a proceeding to that parent unless otherwise required by this section.

(e) A petition for termination of the relationship of parent and child, whether or not made in connection with an adoption proceeding, may be made by

(1) either parent if termination of the relationship is sought with respect to the other parent;

(2) the petitioner for adoption, the guardian of the person, the legal custodian of the child, or the individual standing in parental relationship to the child;

(3) an agency; or

(4) any other person having a legitimate interest in the matter.

(f) [same as original]

(g) [same as original]

(h) Proceedings under this section are to be governed, where applicable, by the provision of the Indian Child Welfare Act, 25 U.S.C. 1901 et seq.

(i) The respondent to a petition filed for adoption or non-adoptive termination of parental rights is entitled to representation by an attorney in the proceedings. If the respondent is financially unable to employ an attorney, the court shall appoint the Office of Public Advocacy to represent the respondent.

(j) Proceedings under this section do not affect the right of a victim of sexual abuse or incest to obtain legal and equitable civil remedies for all injuries and damages arising out of the perpetrator's conduct.

AS 25.23.240 Definitions.

In this chapter, unless the context otherwise requires,

(1) [same as original]

(2) [same as original]

(3) [same as original]

(4) [same as original]

(5) "court" means the superior court of this state, and, when the context requires, the court of any other state empowered to grant petitions for adoption or terminate parental rights:

(6) [same as original]

(7) [same as original]

(8) "incest" means a sexual offense defined in AS 11.41.450:

(9) "sexual abuse of a minor" means a sexual offense defined in AS 11.41.434, 11.41.436, or 11.41.438:

(10) [renumbered subsection 8 of original]

(11) [renumbered subsection 9 of original]

AS 44.21.410 Powers and Duties of Public Advocacy Office.

(a) The office of public advocacy shall

(1) [same as original]

(2) [same as original]

(3) [same as original]

(4) provide legal representation in guardianship proceedings to respondents who are financially unable to employ attorneys under AS 13.26.106(b), to indigent parties in cases involving child custody in which the opposing party is represented by counsel provided by a public agency, to indigent respondents who are financially unable to employ attorneys in non-adoptive termination cases under AS 25.23.180, and to indigent parents or guardians of a minor respondent in a commitment proceeding concerning the minor under AS 47.30.775;

(5) provide legal representation and guardian ad litem services under AS 25.24.310; in cases arising under the Uniform Interstate Compact on Juveniles (AS 47.15); in cases involving petitions to adopt a minor under AS 25.23.125(b) or petitions for non-adoptive termination of parental rights under AS 25.23.180; in cases involving petitions to remove the disabilities of a minor under AS 09.55.590; in children's proceedings under AS 47.10.050(a); and in cases involving indigent persons who are entitled to representation under AS 18.85.100 and who cannot be represented by the public defender agency because of a conflict of interests.

The following list points out where the provision of the former bill are dealt with in the above version.

AS 47.17.180: can probably be eliminated, as the purpose of the statute seems self-evident.

AS 47.17.190: 25.23.180(e) lists the people who can bring the action and seems broad enough to include the people listed.

AS 47.17.200: AS 25.23.180(f) requires notice.

AS 47.17.210: the new grounds can be listed in an addition to AS 25.23.180(c).

AS 47.17.220: 25.23.180(d) specifies the effect of a termination decree.

AS 47.17.230: AS 25.23.150 provides for confidentiality; a small amendment can specify that this applies to non-adoptive termination cases.

AS 47.17.240: 25.23.180(a) covers relinquishments.

AS 47.17.250: A sentence added to section 180 can specify that ICWA controls where applicable.

AS 47.17.260: The finality provision can be inserted into AS 25.23.140 which deals with finality of adoptions.

AS 47.17.270: The availability of an appointed attorney can be added as a subsection to 25.23.180.

AS 47.17.280: The ability to get costs and fees need not be stated as Rule 82 would apply.

AS 47.17.290: The preservation of other victims' rights can be added as a subsection to AS 25.23.180.

AS 47.17.300: Since this clarifies that the UCCJA applies, it would be better to add this as a separate provision applicable to adoptions as well as non-adoptive terminations. I'd put it in AS 25.23.030 and re-label that section "jurisdiction and venue."

The Fairbanks Child Sexual Abuse Task Force

1550 Gillam Way
Fairbanks, AK 99701

APR 21 1987

April 14, 1987

Members of the Alaska Interior Delegation
Pouch V
Juneau, AK 99811

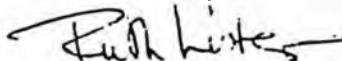
Dear Members of the Interior Delegation,

I am writing on behalf of the Fairbanks Child Sex Abuse Task Force, a coalition of agencies, counselors and attorneys in Fairbanks focussing on sexual abuse of children.

We'd like to offer the following comments on SB 30. The bill seems to overrule the Supreme Court's ruling in S.J. v. L.T., 727 P.2d 789 (Alaska 1986). That ruling seems to us to represent a windfall for child sexual abusers and an unconscionable imposition on the rights of child sexual abuse victims, as well as the rights of offspring conceived as a result of the child sexual abuse. The Court's opinion invited legislative action, and we are in agreement. Unless the case is overturned, the unfortunate tendency of child sexual abuse to propagate itself inter-generationally will be enhanced. We urge that legislation overturning the case be enacted.

We would appreciate your passing our views on to the appropriate committee members.

Sincerely,



Ruth Lister
Chair

STATE OF ALASKA THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY LEGISLATIVE REFERENCE LIBRARY

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

SENATE HESS	3-25-87	3:30 p.m.
SENATE JUD	4-14-87	1:30 p.m.
SENATE JUD	4-16-87	1:30 p.m.
SENATE RULES	4-23-87	1:15 p.m.

SB

32

file 1

The Basics

Introductory, Hearing Setup,
& Followup

CSSB 32 (HESS) -- "An Act relating to marijuana, and providing for an effective date."

FILE CONTENTS

- 1) List of Invited Expert Speakers
- 2) Structure for Hearings on CSSB 32 (HESS)
- 3) Copy of CSSB 32 (HESS)
- 4) Sectional analysis of CSSB 32 (HESS)
- 5) Fiscal note from the Department of Law
- 6) Fiscal note from the Department of Corrections
- 7) Fiscal note from the Department of Public Safety
- 8) Fiscal note from the Public Defender Agency
- 9) Fiscal note from the Office of Public Advocacy
- 10) Fiscal note from Alaska Court System
- 11) Fiscal note from Department of Health and Social Services
- 12) Copy of Article I of the Alaska State Constitution
- 13) Memorandum from Legal Services - "Constitutionality of 'criminalizing' possession of marijuana (CSSB 32 (HESS))"
- 14) Memorandum from House Research - "Findings on Marijuana (§§ 32) and Comparison with Alcohol and Tobacco"
- 15) Memorandum from Legal Services - "Criminal penalties related to marijuana"
- 16) Memorandum from Senator Fischer to Senator Kerttula
- 17) List of Studies and Materials available in Senator Fischer's office
- 18) List of Materials available through the House HESS Committee
- 19) Memorandum from Senators Josephson, Fahrenkamp and Fanning to the House of Representatives regarding recriminalization of marijuana
- 20) Copy of minutes from Senate HESS Committee hearings regarding SE 32.

- 21) Copy of the Alaska State Supreme Court decision, Ravis vs. State.
- 22) Copy of "Adolescent Drug-Taking Behavior Follow-Up Study", prepared by Bernard Segal, The Center for Alcohol and Addiction Studies, UAA
- 23) Copy of the executive summary of "Patterns of Drug Use: School Survey", prepared by Bernard Segal, et al., The Center for Alcohol and Addiction Studies, UAA
- 24) Copy of Marijuana and Health, prepared by Institute of Medicine
- 25) Copy of article, "Alaska's Right to Privacy Ten Years after Ravin vs. State: Developing a Jurisprudence of Privacy", Alaska Law Review
- 26) Copy of article, "Identifying the Marihuana User", by Forest Tennant, Jr.



Alaska State Legislature

House of Representatives

COMMITTEE ON HEALTH, EDUCATION
AND SOCIAL SERVICES

OFFICIAL BUSINESS

April 6, 1988

POUCH V
JUNEAU, AK 99811
465-3759

Proposed Structure for Hearings on CSSB 32 (HESS)

There is considerable statewide interest, both pro and con, in CSSB 32 (HESS), which proposes to criminalize the possession of small amounts of marijuana by adults in the home. The House HESS Committee will have three consecutive hearings on this bill. The medical findings are complex, and there are many legal and constitutional questions. In order for the Committee to adequately assess this legislation and make informed decisions, it is necessary to structure the hearings so that informed witnesses have the opportunity to testify on specific aspects of the bill.

What follows is the proposed structure for the hearings. Generally, the two morning sessions will be for testimony by expert witnesses, although others are encouraged to listen in. The one evening session will be for general public testimony. All meetings will take place in the Butrovich Room of the Capitol Building, and will be widely teleconferenced to Legislative Information Offices.

Wednesday, April 13, 8:30-10:00 a.m.

- * teleconference to those sites requested
- * testimony primarily from invited experts
- * public testimony pertaining to the aspect at hand, if time permits, otherwise listen only

- 1) Background information.
 - a) statement by Committee Co-Chairs
 - b) statement by bill sponsor
 - c) explanation of current laws regarding marijuana
 - d) legislative history and context for the Ravin decision in 1975
- 2) Ravin v. State - explanation of the Supreme Court decision.
- 3) Penalties section (sec. 2) of CSHB 32 (HESS).
 - a) explanation of penalties
 - b) questions of constitutionality
 - c) questions of the deterrent effect
 - d) questions of enforcement, selective enforcement
 - e) questions of severity and appropriateness to the crime

Proposed schedule

Wednesday, April 13, 7:00-9:00 p.m.

- * statewide teleconference to all LIOs
- * general public testimony, limited to 3 minutes per individual and 5 minutes per representative of a group

Thursday, April 14, 8:30-10:00 a.m.

- * teleconference to those sites requested
- * testimony primarily from invited experts
- * public testimony pertaining to the aspect at hand, if time permits, otherwise listen only

- 4) Findings section (sec. 1) of CSHB 32 (HESS).
 - a) discussion of marijuana pharmacology: physical and psychological effects; chemical content of the drug
 - b) discussion of marijuana usage: patterns, availability and social effects
 - c) marijuana and health in the context of alcohol and tobacco
- 5) Fiscal impact of CSHB 32 (HESS). (note - this aspect may be carried over to April 15, depending on time constraints)
 - a) Dept. of Corrections
 - b) Dept. of Health and Social Services
 - c) Dept. of Law
 - d) Court System
 - e) Dept. of Public Safety
 - f) Public Defender Agency
 - g) Office of Public Advocacy

On the days immediately preceding and following the hearings on CSHB 32 (HESS), April 12 and 15, the Committee will be hearing several other bills related to substances and substance abuse. Particular attention will be paid to those measures which prevent and treat substance abuse by young people. Both days will be teleconferenced statewide, and public participation is welcome.

HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

WEDNESDAY, APRIL 13, 1988

EXPERTS INVITED TO TESTIFY REGARDING BACKGROUND INFORMATION,
RAVIN VS. STATE AND PENALTIES ASSOCIATED WITH CSSB 32 (HESS)

Background Information

- 1) Senator Paul Fischer
Sponsor of SB 32
- 2) Representative Alyce Hanley
- 3) Stephanie Joannides
Department of Law
- 4) Dwayne Otis
U.S. Customs
- 5) David Teal, Director
House Research Agency

Ravin vs. State

- 1) Robert Wagstaff
Defending Attorney: Ravin vs. State
- 2) William Bittner
Prosecuting Attorney: Ravin vs. State
- 3) Irwin Ravin
Defendent: Ravin vs. State

Penalties

- 1) Stephanie Joannides
Department of Law
- 2) Don Clocksin
Alaska Civil Liberties Union
- 3) Jack Chenoweth
Legislative Legal Counsel
- 4) Dr. Arnold Trebach
Dept. of Justice
American University, Washington D.C.
- 5) Michael Spaan
U.S. District Attorney, Anchorage
- 6) Jon Gettman, Director
National Organization for the Reform of Marijuana Laws

HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

THURSDAY, APRIL 14, 1988

EXPERTS INVITED TO TESTIFY ON THE FINDINGS SECTION OF
CSSB 32 (HESS)

- 1) Dr. Norman Zinberg, M.D.
School of Psychiatry
Harvard Medical School
- 2) Dr. Robert Gilkeson, M.D.
Adolescent Neuropsychiatrist, Pediatrician
- 3) Dr. John Morgan, M.D.
Director of Pharmacology
City University of New York
- 4) Dr. Jean Bonner, M.D.
Endocrinologist, private practice
Anchorage
- 5) Dr. Lester Grispoon, M.D.
Massachusetts Mental Health Center
Editor, "Harvard Mental Health Letter"
- 6) Dr. Bernard Segal
Center for Alcohol and Addiction Studies
University of Alaska Anchorage
- 7) Dr. Arthur McBay, M.D.
Chief Medical Examiner
State of North Carolina
- 8) Dr. Forrest Tennant Jr., M.D., DR. PH.
UCLA School of Public Health
- 9) Dr. Arnold Relman, M.D.
Editor, "The New England Journal of Medicine"
Report Chairman -- Marijuana and Health
- 10) Otto Moulton, Director
Committees of Correspondence
Danvers, Massachusetts
- 11) George Taft
Scientific Crime Detection Lab
Department of Public Safety

CORRECTION

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

HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

THURSDAY, APRIL 14, 1988

EXPERTS INVITED TO TESTIFY ON THE FINDINGS SECTION OF
CSSB 32 (HESS)

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Scientific Crime Detection Lab
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STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 3, 1987

SUBJECT: Sectional analysis of CSSB 32(HESS),
relating to marijuana

TO: Senator Paul Fischer
Chairman, HESS Committee

FROM: Keith B. Levy *KBL*
Legislative Counsel

You have requested a sectional analysis of CSSB 32(HESS). As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 sets out legislative findings related to marijuana, including the finding that the state has a compelling interest in regulating even small amounts of marijuana.

Section 2 amends existing law to make the possession of up to one-half pound of a "schedule VIA controlled substance," i.e., marijuana, a class B misdemeanor (AS 11.71.060(a)).

Section 3 repeals AS 11.71.070, because that section applies to amounts of marijuana that would be covered by AS 11.71.060, as amended by section 2 of the bill.

Under current law, it is already a class B misdemeanor:

(1) to use or display any amount of marijuana in public (AS 11.71.060(a)(1));

(2) to possess any amount of marijuana in a propelled vehicle (AS 11.71.060(a)(2));

(3) for a person under 19 years of age to possess less than four ounces of marijuana (AS 11.71.060(a)(3)); or

Senator Fischer
Page 2
April 3, 1987

(4) for anyone to possess four ounces of marijuana or more anywhere (AS 11.71.060(a)(4)).

It is a class A misdemeanor under current law to manufacture or deliver one-half ounce or more of marijuana (AS 11.71.050(a)(1)) or to possess a half-pound or more of marijuana (AS 11.71.050(a)(3)). It is a class C felony under current law to manufacture or deliver one ounce or more of marijuana (AS 11.71.040(a)(2)) or to possess any amount of marijuana on school grounds if the person is 18 years of age or older (AS 11.71.040(a)(4)). And it is a class B felony to deliver any amount of marijuana to a person under 19 years of age if the person is at least three years younger than the person delivering the marijuana. Thus, the use, possession, or sale of marijuana is already a crime under existing law except for the possession of under four ounces of marijuana by an adult in the home. The bill adds this narrow area to the criminal law. As discussed in the memorandum dated October 29, 1986, it is this narrow area of marijuana possession that presents constitutional problems under the ruling of the Alaska Supreme Court in Ravin v. State, 537 P.2d 494 (Alaska 1975).

If I may be of further assistance, please advise.

KBL:mkr
m10/100

Revised

HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

THURSDAY, APRIL 14, 1988

EXPERTS INVITED TO TESTIFY ON THE FINDINGS SECTION OF
CSSB 32 (HESS)

- 1) Michael Spaan
U.S. District Attorney, Anchorage
- 2) Dr. Norman Zinberg, M.D.
School of Psychiatry
Harvard Medical School
- 3) Dr. Edward Jacobs
School of Medicine
University of Southern California
- 4) Dr. John Morgan, M.D.
Director of Pharmacology
City University of New York
- 5) Dr. Jean Bonner, M.D.
Endocrinologist, private practice
Anchorage
- 6) Dr. Lester Grispoon, M.D.
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Committees of Correspondence
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- 11) George Taft
Scientific Crime Detection Lab
Department of Public Safety
- 12) Chip Ames
Drug Counselor
Ketchikan



Chief Justice
WARREN W. MATTHEWS

303 K STREET
ANCHORAGE ALASKA 99501
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Justices
JAY A. RABINOWITZ
EDMOND W. BURKE
ALLEN T. COMPTON
DANIEL A. MOORE

Supreme Court
State of Alaska

April 8, 1988

Representative Niilo Koponen
Representative Johnny Ellis
Co-Chairpersons House HESS Committee
P.O. Box V
Juneau, Alaska 99811

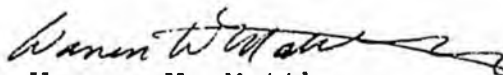
Dear Representatives Koponen and Ellis:

I must respectfully decline the committee's request that a justice answer questions about the opinion in Ravin v. State, 537 P.2d 494. There are two reasons for this.

First, a published judicial opinion must speak for itself. No justice, or group of justices, can authoritatively interpret an opinion or explain its ambiguities, if any, except in the context of a subsequent opinion.

Second, when a judge testifies before a legislative committee concerning the law, his testimony is, directly or indirectly, in the nature of legal advice. Legal advice, especially legal advice on controversial subjects, is often quickly tested in litigation. When this happens, the judge who has testified is apt to find himself in the position of having to rule on the validity of the advice that he has earlier given. This, of course, results in at least an appearance of partiality. For this reason, judicial testimony before legislative committees should be limited to subjects concerning the legal system and the administration of justice. If the law, other than subjects concerning the legal system or the administration of justice, is to be discussed, the subject at issue must not be one which is likely to result in litigation. I am sure that you will agree that the subject in question does not meet that criterion.

Very truly yours,


Warren W. Matthews
Chief Justice

cc: Representative Max Gruenberg
Representative Dave Donley
Representative Bill Hudson
Representative Randy Phillips
Representative Alyce Hanley

WWM:pz

STATE OF ALASKA
THE LEGISLATURE

POUCHY STATE CAPITOL
JUNEAU ALASKA 99801
907 465 3600

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 10, 1988

SUBJECT: Criminal penalties related to marijuana
(Work order 5-2053)

TO: Representative Johnny Ellis

FROM: Jack Chenoweth
Legislative Counsel

Marijuana, as your request notes, is classified as a schedule VIA controlled substance. (AS 11.71.190(b)).

The following sets out the criminal penalties involving possession or sale of marijuana where the possession or sale of that controlled substance is specified.

*

I. MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE IN THE THIRD DEGREE (AS 11.71.030):

The following constitutes misconduct involving a controlled substance in the third degree:

-- The delivery of any amount of a schedule VIA controlled substance to a person under 19 years of age by a person who is at least three years younger than the person delivering the substance.

Misconduct involving a controlled substance in the third degree is a class B felony. Misconduct involving a controlled substance in the third degree is punishable by

-- a fine of not more than \$50,000 (AS 12.55.-035(b)(2)); and

-- imprisonment for not more than ten years (AS 12.55.-125(d)).

*

II. MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE IN THE FOURTH DEGREE (AS 11.71.040):

Each of the following constitutes misconduct involving a controlled substance in the fourth degree:

-- The manufacture or delivery, or possession with the intent to manufacture or deliver, of one or more preparations, compounds, mixtures, or substances of an aggregate weight of one ounce or more containing a schedule VIA controlled substance;

-- The possession of one or more preparations, compounds, mixtures, or substances of an aggregate weight of one pound or more containing a schedule VIA controlled substance;

-- The possession by a person who is 18 years of age or older of a schedule VIA controlled substance within the grounds of or on a parking lot immediately adjacent to a public or private preschool, elementary, junior high, or secondary school.

Misconduct involving a controlled substance in the fourth degree is a class C felony. Misconduct involving a controlled substance in the fourth degree is punishable by

-- a fine of not more than \$50,000 (AS 12.55.-035(b)(2)); and

-- imprisonment for a term of not more than five years (AS 12.55.125(e)).

*

III. MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE IN THE FIFTH DEGREE (AS 11.71.050):

Each of the following constitutes misconduct involving a controlled substance in the fifth degree:

-- The manufacture or delivery, or possession with the intent to manufacture or deliver, of one or more preparations, compounds, mixtures, or substances of an aggregate weight of one-half ounce or more containing a schedule VIA controlled substance;

-- The manufacture or delivery, or possession with the intent to manufacture or deliver, of one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than one-half ounce containing a schedule VIA controlled substance, for remuneration;

-- The possession of one or more preparations, compounds, mixtures, or substances of an aggregate weight of one-half pound or more containing a schedule VIA controlled substance.

Misconduct involving a controlled substance in the fifth degree is a class A misdemeanor. Misconduct involving a controlled substance in the fifth degree is punishable by

-- a fine of not more than \$5,000 (AS 12.55.035(b)(3));
and

-- imprisonment for not more than one year (AS 12.55.-135(a)).

*

IV. MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE IN THE SIXTH DEGREE (AS 11.71.060):

Each of the following constitutes misconduct involving a controlled substance in the sixth degree:

-- The use or display of any amount of a schedule VIA controlled substance, or the possession of one or more preparations, compounds, mixtures, or substances of an aggregate weight of one ounce or more containing a schedule VIA controlled substance, on a public street or sidewalk, on the premises of a public carrier or business establishment, or in any other public place;

-- The knowing possession of any amount of a schedule VIA controlled substance within the immediate control of that person while operating a propelled vehicle;

-- The possession by a person under 19 years of age of one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than four ounces containing a schedule VIA controlled substance;

Representative Johnny Ellis

Page 4

March 10, 1988

-- The possession of one or more preparations, compounds, mixtures, or substances of an aggregate weight of four ounces or more containing a schedule VIA controlled substance.

Misconduct involving a controlled substance in the sixth degree is a class B misdemeanor. Misconduct involving a controlled substance in the sixth degree is punishable by

-- a fine of not more than \$1,000 (AS 12.55.035(b)(4));
and

-- imprisonment for a term of not more than 90 days (AS 12.55.135(b)).

*

V. MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE IN THE SEVENTH DEGREE (AS 11.71.070):

Each of the following constitutes misconduct involving a controlled substance in the seventh degree:

-- The manufacture or delivery, or possession with the intent to manufacture or deliver, of one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than one-half ounce of a schedule VIA controlled substance;

-- The possession of one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than one ounce containing a schedule VIA controlled substance on a public street or sidewalk or on the premises of a public carrier or business establishment or in any other public place.

Misconduct involving a controlled substance in the seventh degree is a violation. Misconduct involving a controlled substance is punishable only by imposition of a fine, as authorized in AS 12.55, but the fine may not exceed \$100.

*

In addition to the preceding, operating a motor vehicle, aircraft, or watercraft while under the influence of a controlled substance, including marijuana, is a class A misdemeanor. AS 28.35.030(a)(1); AS 28.35.030(b).

JBC:bb

b3/097

RECEIVED FEB 16 1988

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
207 465 2800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 16, 1988

SUBJECT: Constitutionality of "criminalizing"
 possession of marijuana (CSSB 32 (HESS))

TO: Representative Max Gruenberg

FROM: Jack Chenoweth
 Legislative Council

You have asked whether the legislature may constitutionally make possession of any amount of marijuana illegal.

In a memorandum accompanying the original version of SB 32, the drafter, Keith Levy, wrote:

. . . This draft makes the possession of any amount of marijuana illegal. The proposed amendment to AS 11.71.060(a) specifically concerns possession of any amount less than one-half pound and makes it a misdemeanor.

This provision conflicts with the right to privacy under Art. 1, sec. 22 of the Alaska Constitution. In the case of Ravin v. State, 537 P.2d 494 [(1975)], the Alaska Supreme Court ruled that this right to privacy within the home prevailed over an inadequately compelling governmental interest in preventing marijuana possession and use by adults in the home. The policy arguments made in the bill are not, in my opinion, sufficiently weighty to overcome the constitutional protection recognized in the Ravin decision.

Since then, as you know, the findings provisions of the original bill have been amended and extended and incorporated into the version that is the Senate HESS Committee Substitute. The committee substitute makes no change in the operative text of the bill.

It is the constitutionality of that committee substitute as to which you inquire.

*

In Ravin, the court acknowledged that the right of privacy is limited by the "legitimate needs of the State to protect the health and safety of its citizens." 537 P.2d 494, at 501. Responding to the evidence marshalled by the state in defense of its prosecution, the court determined that

. . . It appears that effects of marijuana on the individual are not serious enough to justify widespread concern, at least as compared with the far more dangerous effects of alcohol, barbiturates, and amphetamines. Moreover, the current patterns of use in the United States are not such as would warrant concern that in the future consumption patterns are likely to change.

Ravin, supra., at 509 - 510. The court did not close the door to debate or to the adoption of legislation that would survive constitutional scrutiny:

Research is continuing extensively. Scientific doubts persist, however, and that fact has significance for our application of the law. It is a long-standing rule of law that statutes designed to protect the public health will receive a liberal construction. . . . There is a presumption in favor of public health measures; when there is substantial doubt as to the safety of a given substance or situation for the public health, controls intended to obviate the danger will usually be upheld.

Ravin, supra., at 510. But, the court concluded:

. . . no adequate justification for the state's intrusion into the citizen's right to privacy by its prohibition of possession of marijuana by an adult for personal consumption in the home has been shown. The privacy of the individual's home cannot be breached absent a persuasive showing of a close and substantial relationship of the intrusion to a legitimate governmental interest. Here, mere scientific doubts will not suffice. The state must demonstrate a need based on proof that the public health or welfare will

Representative Max Gruenberg

Page 3

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in fact suffer if the controls are not applied.
[Emphasis added]

Ravin, supra. at 511.

In an inquiry as to constitutionality of legislation setting controls on possession of marijuana in the home, the burden is on the state to "demonstrate a need based on proof that the public health or welfare will in fact suffer if controls are not applied."

Under scrutiny, would CSSB 32 (HESS) meet the burden laid down in the Ravin decision?

Assuming CSSB 32 (HESS) is passed and becomes law, in a prosecution under it, applying the Ravin test, a court is not constrained to look only at the legislative findings to ascertain whether there is "demonstrated . . . need based on proof" that public health or welfare will be affected by the criminal re-regulation of the possession of the plant. The court may also conduct an analysis beyond the findings cited by the legislature in its consideration of the bill, Gray v. State, 525 P.2d 524 (Alaska, 1974), and rely on other relevant evidence and arguments "including matters which have never been presented to or considered by the legislature in its deliberations." Gray, supra., note 15 at 528. 1/

What is in balance is, as the court has said

. . . the general proposition that the authority of the state to exert control over the individual extends only to activities of the individual which affect others or the public at large as it relates to matters of public health or safety, or to provide for the general welfare. . . . The state cannot impose its own notions of morality, propriety, or fashion on individuals when the public has no legitimate interest in the affairs of those individuals. . . .

Ravin, supra., at 509.

The "findings"--bill section 1 identifies them as such--purport to set out factual conclusions from which the legislature has decided to proceed to "recriminalize" marijuana. 2/ As I've reviewed the recitations, I've found that many of the statements are general and speculation, or

Representative Max Gruenberg
Page 4
February 16, 1988

have relatively little to do with concerns of public health, safety, and welfare that affect significant numbers of Alaskans. 3/

More to the point, however, is my belief that the Senate committee did not establish a record in hearings that would verify the recitations set out in the findings sufficient to meet the Ravin burden. A comparative examination of the findings to the court's analysis in Ravin leads me to conclude that much of the material set out as findings is little more than conclusions that have already received some attention by the court in the initial decision. 4/ Virtually all of the findings in section 1(a) of the bill have a counterpart in the extended discussion of the physiological and psychological effects of the drug undertaken by the court in its decision. Almost everything that the Senate committee substitute reports as "fact" or offers as conclusion is addressed in the earlier opinion. (So, for example, where the committee substitute asserts that the "THC content of commonly obtainable marijuana has increased from less than one percent 10 years ago to as high as 10 percent today" (finding 6), the Ravin decision seemingly anticipates the finding by reporting--and subsequently dismissing--the claim that "most of the [physiological] damage suggested by [the] studies [reviewed and relied on by the court] comes in the context of intensive use of concentrated forms of THC." Ravin, supra., at 506, Emphasis added. And, where the committee substitute recites that "other psychological reactions to marijuana include loss of memory, anxiety, panic, paranoia, psychosis, psychological dependence, and impairment in thinking, reading comprehension, verbal and arithmetic problem solving, and perception of distance and time" (finding 12), the litany appears to have been taken almost intact from similar observations made in the Ravin decision at pp. 506-507.)

Recitations of findings unsupported by significant evidence--or at least significant new evidence--makes it less likely that the court would sustain the enactment against a constitutional challenge.

Even at that, the emphasis in section 1(a) of the committee substitute is overwhelmingly on the purported effect of marijuana on the individual. By itself, that is probably not enough, as Keith Levy has claimed, to meet the test of Ravin, i.e., that the record show that the legislature's

Representative Max Gruenberg
Page 5
February 16, 1988

deliberations found "a close and substantial relationship of the intrusion to a legitimate governmental interest." The opinion makes it quite clear that government may not "simply decide what is in a person's best interest and then compel it." The burden, the court has made clear, is on the government to demonstrate that "the public health or welfare will in fact suffer if the controls are not applied."

I am not prepared to speculate on how the court would rule on this bill. In candor, however, like Keith Levy, I have serious reservations. This office has previously addressed the question of the constitutionality of this and similar legislation (HB 698, 13th Legislature; SB 163, 14th Legislature), and our conclusions have been consistent. Now, despite the Senate HESS committee's revision of the findings as it produced the committee substitute, I cannot conclude that the HESS committee substitute meets the Ravin tests. Suffice to say that, without reviewing the specific testimony that the senate committee received last year as it considered the bill, it should be clear that bill findings that are unsupported by rigorous examination by the legislative committee that authored them would surely be insufficient to meet the burden of the Ravin test. But even if the underlying evidence is sufficient in that regard, it is far from clear to me that the evidence offered compels the conclusion the state may now act to prohibit possession of marijuana for a reason related to the public health or public welfare.

Thank you for the opportunity to comment.

1/ In its decision, the Ravin court wrestled with the adequacy of the record. In the absence of a legislative record, it undertook its own examination, an extensive review of pertinent evidence that, in the decision, the court summarized as follows:

[W]e conclude that citizens of the State of Alaska have a basic right to privacy in their homes under Alaska's constitution. This right to privacy would encompass the possession and ingestion of substances such as marijuana in a purely personal, non-commercial context in the home unless the state can meet its substantial burden and show that proscription of possession of marijuana in the home is supportable by achievement of a legitimate state interest.

This leads us to the second facet of our inquiry, namely, whether the State has demonstrated sufficient justification for the prohibition of possession of marijuana in general in the interest of public welfare; and further, whether the State has met the greater burden of showing a close and substantial relationship between the public welfare and control of ingestion or possession of marijuana in the home for person use.

The evidence which was presented at the hearing before the district court consisted primarily of several expert witnesses familiar with various medical and social aspects of marijuana use. Numerous written reports and books were also introduced into evidence.

. . .

The justification offered by the State to uphold AS 17.12.010 are generally that marijuana is a psychoactive drug; that it is not a harmless substance; that heavy use has concomitant risk; that it is capable of precipitating a psychotic reaction in at least individuals who are predisposed towards such reaction; and that its use adversely affects the user's ability to operate an automobile. The State relies upon a number of medical researchers who have raised questions as to the substance's effect on the body's immune system, on chromosomal structure, and on the functioning of the brain. On the other hand, in almost

every instance of reports of potential danger arising from marijuana use, reports can be found reaching contradictory results. It appears that there is no firm evidence that marijuana, as presently used in this country, is generally a danger to the user or to others. But neither is there conclusive evidence to the effect that it is harmless. . . .

Possibly implicit in the State's catalogue of possible dangers of marijuana use is the assumption that the State has the authority to protect the individual from his own folly, that is, that the State can control activities which present no harm to anyone except those enjoying them. Although some courts have found the "public interest" to be broad enough to justify protecting the individual against himself, most have found inherent limitations on the police power of the state. An apposite example is the litigation regarding the constitutionality of laws requiring motorcyclists to wear helmets. Most of the courts addressing the issue, including this one, have resolved it by finding a connection between the helmet requirement and the safety of other motorists, but a significant number of courts have explicitly rejected such restrictive measures as beyond the police power of the state because they do not benefit the public. Typical of the logic of these latter cases is the dissent of Justice Abe in State v. Lee, [465 P2d. 573 (1975)] in which the Hawaii Supreme Court upheld a motorcycle helmet requirement despite finding no clear link between lack of the requirement by the motorcyclist and injury to others. The court reasoned that where a person's conduct is so reckless and the resulting injury and death are so widespread as to be of concern to the public, then the conduct affects the public interest and is within the scope of the police power. Justice Abe dissented, citing a general right to be left alone or liberty to do as you please. There has to be a genuine harm to others, he wrote, to justify such controls; a state cannot simply decide what is in a person's best interest and compel it.

Ravin, supra., at 504-509. (Footnotes omitted.)

After finding, on the basis of the evidence offered and considered, a "need for control of drivers under the influence of marijuana," the court concluded:

[G]iven the relative insignificance of marijuana consumption as a health problem in our society at present, we do not believe that the potential harm generated by drivers under the influence of marijuana, standing alone, creates a close and substantial relationship between the public welfare and control of ingestion of marijuana or possession of it in the home for personal use. Thus we conclude that no adequate justification for the state's intrusion into the citizen's right to privacy by its prohibition of possession of marijuana by an adult for personal consumption in the home has been shown. The privacy of the individual's home cannot be breached absent a persuasive showing of a close and substantial relationship of the intrusion to a legitimate governmental interest. Here, mere scientific doubts will not suffice. The state must demonstrate a need based on proof that the public health or welfare will in fact suffer if the controls are not applied.

Ravin, supra., at 511 (Footnotes omitted.)

2/ The language and content of the proposed findings that support subsection 1(a) of CSSB 32 appear to derive from related material and proposed findings incorporated into CSHB 698 of the 13th Legislature. A document in our records recites that the findings used in CSHB 698 "are taken from the testimony in several [House] Judiciary Committee hearings, including (but not limited to)" testimony or material submitted by

Dr. Reese T. Jones, clinical psychiatrist,
University of California, San Francisco; and
Dr. Gabriel G. Nahas, Columbia University, New
York City, re: the psychological effects and the
biological effects, respectively, of the use of
marijuana.

There is an additional sheet reciting other proposed conclusions, some of which appear to have been incorporated into the findings in the earlier bill (and carried forward into this bill), but the source of the information is not noted or disclosed.

3/ The tendency of the findings set out in section 1 of CSSB 32 to generalize and to speculate as to the personal and public health consequences of use of small amounts of

the drug may be illustrated by the "tentativeness" of some of the principal findings set out in subsection (a) of the committee substitute:

-- the findings recite the buildup of tetrahydrocannabinol (THC) in the tissues of the body, but conclude only that "repeated administration of even small doses may lead to an accumulation" of the drug at cumulatively higher levels (finding 3) and that the buildup "may result in loss of sleep, appetite, and initiative . . ." (finding 4);

-- the findings note that "marijuana may cause schizophrenia, illusions, and hallucinations . . ." (finding 8); that use of the drug "may result in deformed or undersized offspring" (finding 10); and that its use "may [hasten the onset of] lung cancer" (finding 9).

That the findings rely on national studies and have little direct relevance to data based on studies involving or affecting Alaskans seems self-evident.

As to the assertions made in subsection (b) of the committee substitute, the subsection in which the legislature makes direct reference to the public health and welfare of the people of the state, I question whether the committee has a basis for the proposed conclusions. There is nothing in the drafting file to indicate the source of these specific statistics and conclusions.

4/ In its opinion, the Ravin court reported at length on its conclusions concerning the physiological and psychological effects of the use of the drug:

The short-term physiological effects are relatively undisputed. An immediate slight increase in the pulse, decrease in salivation, and a slight reddening of the eyes are usually noted. There is also impairment of psychomotor control. These effects generally end within two to three hours of the end of smoking.

Long-term physiological effects raise more controversy among the experts. The National Commission on Marihuana and Drug Abuse reported that among users "no significant physical, biochemical, or mental abnormalities could be attributed solely to their marijuana smoking." Certain researchers have pointed to possible deleterious effects on the body's immune

defenses, on the chromosomal structures of users, and on testosterone levels in the body. The methodology of certain of these studies has been extensively criticized by other qualified medical scientists, however. These studies cannot be ignored. It should be noted that most of the damage suggested by these studies becomes in the context of intensive use of concentrated forms of THC. It appears that the use of marijuana, as it is presently used in the United States today, does not constitute a public health problem of any significant dimensions. It is, for instance, far more innocuous in terms of physiological and social damage than alcohol or tobacco. But the studies suggesting dangers in intensive cannabis use do raise valid doubts which cannot be dismissed or discounted.

The immediate psychological effects of marijuana are typically a mild euphoria and a relaxed feeling of well-being. The user may feel a heightened sensitivity to taste and to visual and aural sensations, and his perception of time intervals may be distorted. A desire to become high can lead to a greater high; fear of becoming high or general nervousness can cause the user to fail to experience any high at all. In rare cases, excessive nervousness or fear of the drug can even precipitate a panic reaction. Occasionally a user will experience a negative reaction such as anxiety or depression, particularly when he takes in more of the substance than needed to achieve the desired high. However, in smoking marijuana, the user can selftitrate, or control the amount taken in, since the effect builds up gradually.

Additional short-term effects are an impairment of immediate-past-memory facility and impairment in performing psycho-motor tasks. Experienced users seem less impaired in this regard than naive users.

In extreme rare instances, use of marijuana has been known to precipitate psychotic episodes; however, the consensus of the experts seems to be that the potential for precipitating psychotic episodes exists only for a limited number of prepsychotic persons who could be pushed into psychosis by any number of drug or non-drug-related influences.