

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4651 HJUD HB 53 - HB 55

223

Additional Revenues:

The increased revenues are projected upon increases in penalties as follows:

Type of of Violation	<u>FY 87</u> Violations/Penalties		<u>FY 88</u> Violations/Penalties		<u>FY 89</u> Violations/Penalties		<u>FY 90</u> Violations/Penalties	
Repeat	30	\$10,700	20	\$142,800	10	\$71,400	5	\$35,700
Serious	250	45,000	190	684,000	125	450,000	100	360,000
Failure to Abate	1	300	2	6,000	0	0	0	0
Willful	<u>0</u>	<u>0</u>	<u>1</u>	<u>30,000</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Proposed Penalties		\$56,000		\$862,800		\$521,400		(\$395,700)
Less penalty reduction as a result of negotiated settlements and uncollect- ible penalties		(\$18,480)		(\$302,000)		(\$182,500)		(\$138,500)
less Current Revenues		(37,520)		(37,520)		(37,520)		(37,520)
Additional Revenues		0		\$523,280		\$301,380		\$219,680

STATE OF ALASKA 1987 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CSHB 53 (HESS)
 Title : Relating to penalties for violation of workplace safety laws

Sponsor : Koronen, Coll. Davis
 Requestor : House Judiciary Committee
 Date of Request : 2/6/87

FISCAL DETAIL

Agency Affected : Alaska Court System
 BRU : Trial Courts

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	0

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

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

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

Workload impact will be minimal, and can be absorbed without additional resources.

Prepared by : Karla Forsythe, General Counsel

Division : Alaska Court System

Phone : 264-8228

Date : 2/9/87

Approved by Commissioner : Stephanie Cole for Act Snowden

Agency : Alaska Court System

Date : 2-9-87

Distribution (by Agency preparing fiscal note) :

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



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

KARLA L. FORBYTHE
STAFF COUNSEL

303 K Street
Anchorage, Alaska 99501

(907) 264-0228

February 9, 1987

Representative John Sund
Chair, House Judiciary Committee
P. O. Box V
Juneau, Alaska 99811

Dear Representative Sund:

You asked the Alaska Court System to indicate its position regarding CS for House Bill Number 53, an act relating to penalties for violation of workplace safety laws.

This measure would appear to impact the courts in two ways. In general, this bill substantially increases both the civil and criminal penalties for OSHA violations. Citations which subject offenders to a civil penalty are initially processed through the department, but ultimately can be appealed to the courts for administrative review. According to information provided by the Department of Labor, very few cases are appealed, and those that are appealed generally are remanded for further action. Even with the substantial increase in the penalty, the workload for the courts should not increase to the point that additional judicial or clerical resources would be required to process these cases.

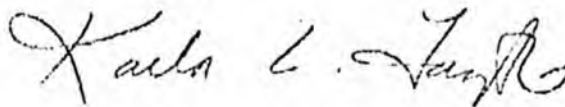
The second area of impact appears in Sections 5 and 6, which substantially increase criminal fines for willful or repeated OSHA violations. Again, the Department of Labor indicates that action is rarely brought against offenders under these sections. It appears that any additional workload impact on the court could also be absorbed.

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Representative John Sund
February 9, 1987
Page Two

I hope this information is helpful to the committee. Please let me know if you have any questions.

Sincerely,



Karla L. Forsythe
Staff Counsel

KLF:bs

cc: Representative Nillo Koponen
Representative Peter Goll
Representative Mike Davis
Arthur H. Snowden, II, Administrative Director

2/9/87-1

2

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

REQUEST: _____

Bill Version: HB 53
Publish Date: _____

Revision Date: _____
Title: "An Act relating to penalties
for violation of workplace safety laws"
Sponsor: Kodonen and Coll
Requestor: House HESS

Agency Affected: Labor
BRU: Occupational Safety and
Health
Components: Occupational Safety and
Health

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL		3.2	1.7			
CONTRACTUAL		60.0	27.5			
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	63.2	29.2	0	0	0

CAPITAL						
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REVENUE	0	523.3	301.4	219.7	219.7	219.7
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FUNDING: (Thousands of Dollars)

GENERAL FUND		31.6	14.6			
FEDERAL FUNDS		31.5	14.6			
OTHER						
TOTAL	0	63.2	29.2	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

(see attached)

Prepared by: Tom Stuart, Director Phone: 465-4870
Division: Labor Standards and Safety Date: 1/26/87

Approved by Commissioner: Jim Sampson Date: 1/26/87
Agency: Labor

Distribution (by preparer):

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

PACIFIC SEAFOOD PROCESSORS ASSOCIATION

P.O. BOX 1625 • JUNEAU, ALASKA 99802 • (907) 586-6366

February 17, 1987

FEB 17 1987

Hon. John Sund, Chairman
House Judiciary Committee
Pouch V
Juneau, Alaska 99811

RE: HB 53 Penalties for Safety Violations

Dear John:

I am concerned that this bill will work an unnecessary hardship on employers. The reduction of the maximum penalty to \$10,000., for a so called serious violation, is still too high. That coupled with the minimum penalty of \$1,000. is clearly excessive and sure to force the employer to appeal almost every penalty. The appeal process will be very costly and probably prohibitive to a small business.

It doesn't seem that the seafood processing industry is such a safety hazard that large fines are being imposed. The maximum penalty imposed on a seafood processor in the past 15 months was \$560.00, and that was for failure to post a safety poster. In fact, during the past 15 months there have been only 31 safety violations where a civil penalty was imposed on a seafood processor. Of the many hundreds of seafood processing plants in Alaska only 13 were cited for any violation during that time. Considering that our industry is the largest private employer in this state I don't think that is a poor record.

As the bill now reads a fine of \$500. would jump to over \$5,000. and it would not be unusual for a plant to have violations of several regulations during one inspection. If you failed to display a poster, one employee took out their ear plugs and another walked into a hardhat area not wearing it (even though the employer provided them) the penalty would be close to \$20,000. That seems excessive.

Sincerely,



Richard B. Lauber
Vice President and
Alaska Manager

H353

TERMS OF IMPRISONMENT AND AUTHORIZED FINES IN REVISED CRIMINAL CODE

	FIRST FELONY	SECOND FELONY	THIRD FELONY
Sexual Assault in the First Degree; Sexual Abuse of a Minor in the First Degree	4-[8]-30 5-[10]*-30	7½-[15]-30	12½-[25]-30
"A" Felony	2½-[5]-20 3½-[7]**-20	5-[10]-20	7½-[15]-20
"B" Felony	0-10***	0-[4]-10	3-[6]-10
"C" Felony	0-5***	0-[2]-5	0-[3]-5

MAXIMUM FINES - PERSONS

Murder, Kidnapping,
Sexual Assault I,
Misconduct Invol-
ving Controlled
Substance I - \$75,000
A, B, or C Felony - \$50,000
A misdemeanor - \$ 5,000
B misdemeanor - \$ 1,000
Violation - \$ 300

MAXIMUM FINES - ORGANIZATIONS

All offenses - \$100,000 or
3 X pecuniary gain -
whichever is greater

MAXIMUM TERM OF IMPRISONMENT FOR MISDEMEANORS

A misdemeanor - 1 year
B misdemeanor - 90 days

SENTENCES FOR UNCLASSIFIED FELONIES

Murder I: 20-99 years
Murder II, Kidnapping,
Misconduct Invol-
ving Controlled
Substance I: 5-99 years

KEY

Number in bracket is presumptive sentence. Number to left is lowest mitigated sentence. Number to right is highest aggravated sentence.

- * Ten year presumptive term applies if defendant possessed a firearm, used a dangerous instrument or caused serious physical injury.
- ** Seven year presumptive term applies if first A felony conviction, other than manslaughter, and defendant possessed a firearm, used a dangerous instrument or caused serious physical injury or directed offense at peace officer or other emergency responder.
- *** Presumptive sentencing may apply if offense directed at peace officer or other emergency responder.

MISDEMEANORS AND VIOLATIONS

A	B	C
Concealment of Merchandise \$50-\$500 AS 11.46.220(c) (2)	Issuing a Bad Check less than \$50 AS 11.46.280	
Removal of Identification Marks \$50-\$500 AS 11.46.260(b) (2)	Fraudulent Use of a Credit Card less than \$50 AS 11.46.285(b) (3)	
Unlawful Possession (of Altered Property). \$50-\$500 AS 11.46.270(b) (2)	Criminal Trespass II AS 11.46.330	
Issuing a Bad Check, \$50-\$500 AS 11.46.280(d) (3)	Criminal Mischief IV AS 11.46.486	
Fraudulent Use of Credit Card, \$50-\$500 AS 11.46.295(b) (2)	Criminal Simulation, less than \$50 AS 11.46.530(b) (3)	
Obtaining a Credit Card by Fraudulent Means AS 11.46.290(a) (3)	Unlawful Evasion II AS 11.56.350	
Criminal Trespass I AS 11.46.320	Hindering Prosecution II AS 11.56.780	
Criminally Negligent Burning AS 11.46.430	Impersonating a Public Servant AS 11.56.830	
Failure to Control or Report a Dangerous Fire AS 11.46.450	Disorderly Conduct AS 11.61.110 (10 day maximum)	
Criminal Mischief III AS 11.46.494	Harassment AS 11.61.120	
Forgery III AS 11.46.510	Promoting an Exhibition of Fighting Animals (Second Offense) AS 11.61.145	
Criminal Simulation, \$50-\$500 AS 11.46.530(b) (2)	Obstruction of Highways AS 11.61.150	
Obtaining a Signature by Deception AS 11.46.540	Misconduct Involving Weapons III AS 11.61.220	
Criminal Impersonation AS 11.46.570	Criminal Possession of Explosives with Intent to Commit A or B Misdemeanor AS 11.61.240(b) (5)	
Misapplication of Property less than \$500 AS 11.46.620	Prostitution AS 11.56.100	
Deceptive Business Practices AS 11.46.710	Misconduct Involving Controlled Substances VI AS 11.71.060	
Misrepresentation of Use of a Propelled Vehicle AS 11.46.720		

Method of Penalty Adjustment

I. Non-Serious and Serious Violations

- A. Adjustment for gravity of violation¹ The Gravity Based Penalty results from an up to 90% reduction of starting penalty calculated using the following formula:

$$\% \text{ Reduction} = \left[\frac{\text{Severity Factor} + \text{Probability Factor}}{2} \right] \times 10 = 0-90\%$$

Gravity Based Penalty = % reduction x starting penalty of \$10,000
or
\$ 5,000

Gravity Based Penalty for a Serious Violation = \$1,000-\$10,000

Gravity Based Penalty for a Non-Serious Violation = \$ 500-\$ 5,000

- B. The Gravity Based Penalty is then reduced by as much as 80% for:

1. Size of business (# of employees) = up to 40% reduction
2. Good Faith = up to 30% reduction
3. No Prior History of Violations = up to 10% reduction

Range of Final Adjusted Penalty for Serious = \$1,000-\$10,000
Non-Serious = \$ 100-\$ 5,000

¹ Severity Factor: The severity of the injury or illness that could result from the hazard on a scale of 1-10.

1 - 3 Injury or illness not resulting in hospitalization or temporary reversible illness requiring minor treatment.

7 - 10 Injuries including permanent disability or chronic, irreversible illness or death.

Probability Factor: The probability that the injury or illness would occur due to the hazard on a scale of 1-10 taking into consideration number of workers exposed, frequency or duration or exposure, employee proximity, working conditions such as lighting.

II. Failure to Abate

Gravity Based Penalty = \$1,000-\$10,000

Maximum adjustment for: size 40%
good faith 30%
history 10%
\$ 200-\$2,000/per day

No adjustment for: size
good faith
History
\$1,000-\$10,000/per day

III. Posting Violations

Current penalties for posting set by Federal OSHA by policy x 5

Posters [\$ 60-\$100] x 5 = \$300-\$500

Injury/Illness
List for that Worksite [\$100-\$200] x 5 = \$500-\$1,000

Failure to Post
A Citation [\$250-\$500] x 5 = \$1,250-\$2,500
Issued by DOL

*is this subject
to gravity adjustment*

IV. Repeated Violations

Original Serious : \$1,000-\$10,000 x 2 First Repeat \$ 2,000-\$20,000
Violations x 4 Second Repeat \$ 4,000-\$25,000
x 10 Third Repeat \$10,000-\$25,000

V. Willful Violations: Penalty for willful violations = Gravity Based
Penalty x 10

\$1,000-\$10,000 x 10 = \$10,000-\$25,000

EXAMPLES OF VIOLATIONS

1. Serious Violation: Unguarded saw used once a month
- | | <u>INITIAL AND
ADJUSTED PENALTY</u> |
|--|---|
| Initial Penalty | \$10,000 |
| Gravity Based Penalty reduced 90% for low probability/severity | \$ <u>9,000-</u> |
| Final Penalty | \$ 1,000 |
2. Serious Violation: Trench not shored in unstable ground
- | | |
|--|-----------------|
| Initial Penalty | \$10,000 |
| No Reduction for Gravity Based Penalty | |
| Probability of collapse high, 0% adjustment | |
| Severity is high = death | |
| Final Penalty | <u>\$10,000</u> |
| <u>Minimum adjustment for size, good faith, & history = 0%</u> | \$10,000 |
| >100 employees = 0% reduction for size | |
| Poor overall safety of worksite = 0% for good faith | |
| History of multiple, previous, uncorrected violations = 0% for history | |
| Final Penalty | <u>\$10,000</u> |
| <u>Maximum adjustment for size, good faith & history = 80%</u> | \$ 2,000- |
| <10 employees | |
| Overall safety conditions of the rest of the worksite is good | |
| No previous history of violation | |
3. Non-Serious Violation: failure to monitor asbestos level in air
- | | |
|---|---------------|
| Initial Penalty | \$ 5,000 |
| Gravity Based Penalty = 90% reduction | 500 |
| (does not directly cause death, injury or illness) | |
| <10 employees = | 40% reduction |
| Overall safety conditions = (inadequate effort to protect/incorrect respirators in use) | 30% reduction |
| New employer, no previous violations = | 10% reduction |
| | 80% reduction |
|
 | |
| \$500 x .80 = \$400 | |
| \$500 - \$400 = \$100 Final Penalty | |
4. Repeated Violations
- | | | | |
|-----------------------------|----------------------|---------------|-------------------|
| Original Serious Violations | \$1,000-\$10,000 x 2 | First Repeat | \$ 2,000-\$20,000 |
| | x 4 | Second Repeat | \$ 4,000-\$25,000 |
| | x 10 | Third Repeat | \$10,000-\$25,000 |
5. Willful Violations: Penalty for willful violations = Gravity Based Penalty x 10 \$1,000-\$10,000 x 10 = \$10,000-\$25,000

Sample of Penalty Structure

Other-than-Serious:¹

Number of Employees ²	Present Penalty	Penalty under CSHB 53
3	\$60	\$300
50	\$240	\$1,200
200	\$300	\$1,500

Serious:

Number of Employees	Present Penalty	Penalty under CSHB 53
3	\$60	\$1,000
13	\$240	\$2,400
65	\$450	\$4,500
300	\$550	\$5,500

Repeated Violations:³

Number of Employees	Present Penalty	Penalty under CSHB 53
3	\$120	\$1,200
13	\$480	\$4,800
65	\$900	\$9,000
200	\$1,100	\$11,000

Willful Violations:

Number of Employees	Present Penalty	Penalty under CSHB 53
3	\$1,800	\$18,000
50	\$2,400	\$24,000
100	\$5,000	\$25,000

¹It is the department's current policy not to assess a penalty for "other" violations unless 10 or more violations are found at the worksite.

²Each example for a certain number of employees is assuming a different set of circumstances from actual case files.

³If the violation is repeated a second time, the original penalty is multiplied by four and if it is repeated a third time the original penalty is multiplied by 10.

Failure to Abate Violation:⁴

Number of Employees	Present Penalty	Penalty under CSHB 53
3	\$450	\$4,500
13	\$750	\$7,500
65	\$1,050	\$10,500
300	\$1,350	\$13,500

Posting Violations:

	Present Penalty	Penalty under CSHE 53
Failure to post the "Safety and Health Protection on the Job" poster	\$60-\$100	\$300-\$500
Failure to post the "Annual Summary of Occupational Injuries and Illnesses" form	\$100-\$200	\$500-\$1000
Failure to post a citation issued by the Department of Labor	\$250-\$500	\$1,250-\$2,500
Failure to post the "Right-to-Know" poster	\$60-\$100	\$300-\$500

Criminal Willful:⁵

Present Penalty	Penalty under HB 53
\$10,000	\$150,000

⁴Note the maximum penalty under HB 53 for each day a violation is uncorrected is \$10,000. In calculating these penalties it is assumed that the violation was uncorrected for 5 days.

⁵The department has never issued a criminal willful violation; however, if such a violation was found, the department would ask for the maximum penalty allowed under the law.

TERMS OF IMPRISONMENT AND AUTHORIZED FINES IN REVISED CRIMINAL CODE

	FIRST FELONY	SECOND FELONY	THIRD FELONY
Sexual Assault in the First Degree; Sexual Abuse of a Minor in the First Degree	4-[8]-30 5-[10]*-30	7½-[15]-30	12½-[25]-30
"A" Felony	2½-[5]-20 3½-[7]**-20	5-[10]-20	7½-[15]-20
"B" Felony	0-10***	0-[4]-10	3-[6]-10
"C" Felony	0-5***	0-[2]-5	0-[3]-5

MAXIMUM FINES - PERSONS

Murder, Kidnapping,
Sexual Assault I,
Misconduct Invol-
ving Controlled
Substance I - \$75,000
A, B, or C Felony - \$50,000
A misdemeanor - \$ 5,000
B misdemeanor - \$ 1,000
Violation - \$ 300

MAXIMUM FINES - ORGANIZATIONS

All offenses - \$100,000 or
3 X pecuniary gain -
whichever is greater

MAXIMUM TERM OF IMPRISONMENT
FOR MISDEMEANORS

A misdemeanor - 1 year
B misdemeanor - 90 days

SENTENCES FOR
UNCLASSIFIED FELONIES

Murder I: 20-99 years
Murder II, Kidnapping,
Misconduct Invol-
ving Controlled
Substance I: 5-99 years

KEY

Number in bracket is presumptive sentence. Number to left is lowest mitigated sentence. Number to right is highest aggravated sentence.

- * Ten year presumptive term applies if defendant possessed a firearm, used a dangerous instrument or caused serious physical injury.
- ** Seven year presumptive term applies if first A felony conviction, other than manslaughter, and defendant possessed a firearm, used a dangerous instrument or caused serious physical injury or directed offense at peace officer or other emergency responder.
- *** Presumptive sentencing may apply if offense directed at peace officer or other emergency responder.

5-1

MISDEMEANORS AND VIOLATIONS

A	B	C
Concealment of Merchandise \$50-\$500 AS 11.46.270 (c) (2)	Issuing a Bad Check less than \$50 AS 11.46.280	
Removal of Identification Marks \$50-\$500 AS 11.46.260 (b) (2)	Fraudulent Use of a Credit Card less than \$50 AS 11.46.285 (b) (3)	
Unlawful Possession (of Altered Property), \$50-\$500 AS 11.46.270 (b) (2)	Criminal Trespass II AS 11.46.330	
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Misapplication of Property less than \$500 AS 11.46.620	Prostitution AS 11.56.100	
Deceptive Business Practices AS 11.46.710	Misconduct Involving Controlled Substances VI AS 11.71.060	
Misrepresentation of Use of a Propelled Vehicle AS 11.46.720		

MISDEMEANORS AND VIOLATIONS

A	B	C
Defrauding Creditors, \$500 or less AS 11.46.730		
Criminal Nonsupport AS 11.51.120		
Contributing to the Delin- quency of a Minor AS 11.51.130		
Unlawful Marrying AS 11.51.140		
Receiving Unlawful Gratu- ities AS 11.56.120		
Unsworn Falsification AS 11.56.210		
Escape IV AS 11.56.330		
Unlawful Evasion I AS 11.56.340		
Promoting Contraband II AS 11.56.380		
Tampering with a Witness II AS 11.56.545		
Simulating Legal Process AS 11.56.520		
Resisting or Interfering with Arrest AS 11.56.700		
Harming a Police Dog II AS 11.56.710		
Compounding AS 11.56.790		
Making a False Report AS 11.56.800		
Tampering with Public Records AS 11.56.820		
Official Misconduct AS 11.56.850		
Misuse of Confidential Information AS 11.56.860		
Misconduct Involving a Corpse AS 11.61.130		
Cruelty to Animals AS 11.61.140		

MEMORANDUM

State of Alaska

TO: Richard Arab, Deputy Director
Labor Standards & Safety
Department of Labor - Juneau

DATE: February 3, 1987

FILE NO:


TELEPHONE NO:

276-3550

FROM: Grace Berg Schaible
Attorney General

SUBJECT: Amending AS 18.60.095(e)

By:

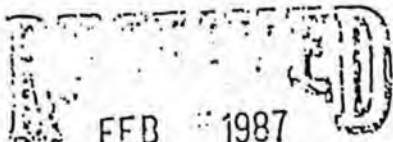

Jan Hart DeYoung
Assistant Attorney General

I spoke with Dean Guanelli about whether Title 11 could cover the conduct prohibited in AS 18.60.095(e). No existing statute in the criminal code covers the kind of conduct that our statute, AS 18.60.095, covers. AS 11.41.130, criminally negligent homicide, and AS 11.41.200-.220, assault, could work in appropriate circumstances. The problem with the criminal code is that the defense of contributory negligence probably applies. For example, in the Wiker case, the defense would be that the danger was so obvious that the worker should have perceived the risk and that this negligence was a cause contributing to his death. AS 18.60.095(e), on the other hand, is an effort to transfer responsibility for worker safety to the employer and this kind of defense should not be appropriate.

Dean Guanelli's preference is to work with AS 18.60.095, rather than rely on the criminal code. He has reservations about the mental state in AS 18.60.095, willful or repeated, and would like to see this amended. He is more comfortable with the mental states set forth in the criminal code. For example, recklessness might be appropriate--awareness of the risk and conscious disregard of it. He is also concerned about his lack of familiarity with OSHA and the possibility that a body of case law exists interpreting the language of AS 18.60.095 that could respond to his concerns. Dean was aware that a bill was pending that would change the penalties. He passed on to Gayle Horetski of the criminal division his concerns on this subject. If Representative Gruenberg wants more information, he may want to contact Gayle (465-3460).

I would like to be kept advised of any amendments.

JHD:jg


FEB 1987

DEPT. OF LABOR

CHAPTER VI

PENALTIES

A. Civil Penalties.

1. Type of Violation as a Factor. In proposing civil penalties for violations, a distinction is made between serious violations and all other violations. There is no statutory requirement that a penalty be proposed when the violation is not serious; but a penalty must be proposed when the violation is serious. The maximum penalty that may be proposed for a serious or an other than serious violation is \$1,000. In the case of willful or repeated violations, a civil penalty of up to \$10,000 may be proposed. For other specific violations of AS 18.60.010--.105, civil penalties of up to \$1,000 may be proposed. Penalties for failure to abate a violation may be up to \$1,000 for each calendar day that the violation continues beyond the stated abatement date.
2. Serious and Other than Serious Violations. AS 18.60.095(b) provides that any employer who has received a citation for an alleged violation of the Statute which is determined to be of a serious nature shall be assessed a civil penalty of up to \$1,000 for each violation. (See DOSH PD 86-10 for current congressional exemptions and limitations placed on penalties.) AS 18.60.098(c) provides that, when the violation is specifically determined not to be of a serious nature, a proposed civil penalty of up to \$1,000 may be assessed for each violation. AS 18.60.095(g) provides that, when a violation of a posting requirement is cited, a civil penalty of up to \$1,000 shall be assessed.
 - a. Penalty Factors. AS 18.60.095(h) provides that penalties shall be assessed on the basis of four factors.
 - (1) The gravity of the violation,
 - (2) The size of the business,
 - (3) The good faith of the employer, and
 - (4) The employer's history of previous violations.
 - b. Amount of Penalty. Using procedures for calculating penalties as outlined in this chapter, gravity-based penalties for violations shall range from \$100 to \$1,000 for each violation. (See the DOSH PD 86-10 for current congressional exemptions and limitations placed on penalties.)
 - c. Minimum Penalty. The following guidelines apply:

- (1) When the adjusted proposed penalty for a serious violation is calculated, it shall not be less than \$60.
- (2) When the adjusted proposed penalty for an other-than-serious violation (citation item) would amount to less than \$60, no penalty shall be proposed for that violation.
- (3) When, however, there is a citation item for a posting violation, this minimum penalty amount does not apply with respect to that item since penalties for such items are mandatory under the Statutes.

d. Gravity of Violation. The gravity of the violation is the primary factor in determining penalty amounts. It shall be the basis for calculating the basic penalty for both serious and other violations.

- (1) To determine the gravity of a violation the following two factors shall be considered:
 - (a) The severity of the injury or illness which could result from the alleged violation.
 - (b) The probability that an injury or illness could occur as a result of the alleged violation.
- (2) The size of the business, the good faith of the employer and the history of previous violations shall be taken into account in deciding whether the gravity-based penalty shall be reduced.

e. Severity Factor. The classification of the alleged violations as serious or other than serious, in accordance with the instructions in Chapter IV of the Compliance Manual, is based on the severity of the injury or illness which could result from the violation. This classification constitutes the first step in determining the gravity of the violation. The most serious type of injury or illness which is reasonably predictable as a result of the type of accident or health hazard exposure shall be assigned a severity factor in accordance with the following:

<u>Injury/Illness</u>	<u>Severity</u>
Category I--Other than serious violations.	0
Category II--Injuries/illnesses not resulting in hospitalization or temporary, reversible illnesses requiring minor supportive treatment.	1-3

(Table Continued)

Category III--Injury/illnesses resulting in hospitalization or temporary, reversible illnesses with a variable but limited period of disability. 4-6

Category IV--Injuries involving permanent disability or chronic, irreversible illnesses or death. 7-10

NOTE: Categories II, III, and IV apply to serious violations. The penalty for other than serious violations shall be calculated in accordance with A.2.h., using 0 as the severity factor.

f. Probability Assessment--Safety. The probability of the occurrence of an accident has no role in determining the classification of a violation. Probability does affect the amount of the penalty to be proposed and shall be estimated by considering five probability factors to which an appropriate numerical value shall be assigned in accordance with the relative contribution of each as follows:

(1) Number of workers exposed:

Each worker up to 10 1-10

(2) Frequency of exposure:

Any exposure up to once a week 1-3
More than once a week up to a daily exposure 4-6
Continuous daily exposure 7-10

(3) Employee proximity:

Fringe of danger zone 1-3
Near Danger zone 4-6
At the point of danger 7-10

(4) Working conditions including environmental and other factors (e.g., speed of operations, lighting, temperature, weather conditions, noise, housekeeping, etc.) which may influence the likelihood of an accident resulting in injury:

Low stress/good conditions 1-3
Medium stress/fair conditions 4-6
High stress/poor conditions 7-10

(5) Other factors which may affect significantly the probability of an accident:

- (a) If there are mitigating circumstances such as specific safety instructions, evidence of correction underway, warning signs, mandated use of protective gear, or mandatory controls providing some, though less than full protection, assign a low number of points to lower the probability.
 - (b) If there are additional contributing factors such as inappropriate safety instructions, faulty equipment, etc., assign an appropriately higher number of points.
- (6) If, in the opinion of the CO or IH, any of the above factors do not significantly influence the probability of an injury-causing accident, that factor shall not be considered in the probability calculation.
 - (7) If, on the other hand, use of a factor would tend to dilute the penalty excessively, that factor shall not be entered into the penalty calculation. For example, in a particularly dangerous trenching situation, when only one or two employees are exposed, it may not be appropriate to average in factor (1), number of employees exposed.
 - (8) To determine overall probability, the factors used must be averaged. Total the points assigned for each factor and divide by the number of factors used. Any fractions shall be disregarded. The resulting number is called the "probability quotient".
 - (9) When strict adherence to the probability assessment procedures would result in an unreasonably high or low probability/severity quotient [See A.2.h.(c).], the CO or IH may use professional judgement to adjust the probability quotient accordingly. Such decisions shall be adequately documented.
- g. Probability Assessment--Health. To determine the probability that an illness could result from an overexposure to a health hazard, the CO or IH shall consider the number of workers exposed, the duration of exposure, the use of personal protective equipment and the results of medical testing as noted below:

- (1) Number of workers exposed:

Each worker up to 10	1-10
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- (2) Duration of exposure:

1 to 8 hours per week	1-3
Over 8 hours per week but not continuous daily exposure	4-8

(TABLE CONTINUED)

- Continuous daily exposure 9-10
- (3) Use of appropriate personal protective equipment:
- Personal protective equipment utilized by all exposed employees, and a good program is in effect 1-2
 - Personal protective equipment utilized by some of the exposed employees but with minor deficiencies in the program 3-6
 - Personal protective equipment not utilized by any of the exposed employees 7-10
- (4) Evaluation of the medical surveillance program: (If there is no applicable surveillance program, this category shall not be considered).
- The medical surveillance program effectively protects the employee 1-2
 - The medical surveillance program partially protects the employee 3-6
 - No medical surveillance program is in effect, or the medical program does not effectively protect the employee 7-10
- (5) Other factors which may significantly affect the degree of probability of an illness:
- (a) If there are mitigating circumstances, such as good training, warning signs and labels or special procedures, assign a low point total.
 - (b) Similarly, assign an appropriately higher point count if there are additional contributing circumstances.
- (6) If, in the opinion of the CO or IH, any of the above factors do not significantly influence the probability of an illness-producing accident, that factor shall not be considered in the probability calculation.
- (7) If, on the other hand, use of a factor would tend to dilute the penalty excessively, that factor shall not be entered into the penalty calculation. For example, in a confined space where there is insufficient oxygen to support life, even when only one or two employees are exposed, it would not be appropriate to average in factor (1), number of employees exposed.

- (8) To determine overall probability, the factors used must be averaged. Total the number of points for each factor and divide by the number of factors used. Any fraction shall be disregarded. This is the "probability quotient".
- (9) When strict adherence to the probability assessment procedures would result in an unreasonably high or low probability/severity quotient [See A.2 h.(1).], the CO or IH may use professional judgement to adjust the probability quotient accordingly. Such decisions shall be adequately documented.
- h. Gravity-based Penalty. The gravity-based penalty is the unadjusted penalty and is calculated in accordance with the following procedures:
- (1) The gravity-based penalty for each violation is determined by averaging the severity factor and the probability quotient. The sum is divided by two and results in the probability/severity quotient. Any fractions shall be disregarded.
- (2) The probability/severity (P/S) quotient is then used to determine the gravity-based penalty (GBP) by consulting the penalty table. The penalty is found in the column marked GBP opposite the numerical P/S quotient which has been assigned to the specific violation and will not be less than \$100.

PENALTY TABLE A -- SERIOUS VIOLATIONS

<u>P/S</u> <u>Quotient</u>	<u>Percent Reduction</u>								
	<u>GBP</u>	<u>10</u>	<u>20</u>	<u>30</u>	<u>40</u>	<u>50</u>	<u>60</u>	<u>70</u>	<u>80</u>
1	100	90	80	70	60				
2	200	180	160	140	120	100	80	60	
3	300	270	240	210	180	150	120	90	60
4	400	360	320	280	240	200	160	120	80
5	500	450	400	350	300	250	200	150	100
6	600	540	480	420	360	300	240	180	120
7	700	630	560	490	420	350	280	210	140
8	800	720	640						
9	900	810							
10	1000								

PENALTY TABLE B -- OTHER THAN SERIOUS VIOLATIONS

<u>P/S</u> <u>Quotient</u>	<u>GBP</u>	<u>Percent Reduction</u>							
		<u>10</u>	<u>20</u>	<u>30</u>	<u>40</u>	<u>50</u>	<u>60</u>	<u>70</u>	<u>80</u>
1									
2									
3									
4									
5	300	270	240	210	180	150	120	90	60

i. Gravity Calculations for Combined or Grouped Violations.
The guidelines for calculating penalties given in A.2.e. through h. generally apply to combined and grouped violations except as indicated in the following sections.

(1) The severity and probability factors for combined violations shall be based on the instance with the highest P/S quotient. It is not necessary to complete the penalty calculations for each instance or subitem of a combined or grouped violation if it is clear which instance has the highest P/S quotient.

(2) For grouped violations the following special guidelines shall be adhered to:

(a) Severity Factor. There are two considerations to be kept in mind in calculating the severity of grouped violations.

1 The severity assigned to the grouped violation shall be no less than the severity of the most serious reasonably predictable injury or illness that could result from the violation of any single item.

2 If a more serious injury or illness is reasonably predictable from the grouped items than from any single violation item, the more serious injury or illness shall serve as the basis for the calculation of the severity factor of the grouped violation.

(b) Probability Factors. There are three considerations to be kept in mind in calculating the probability of grouped violations.

1 The probability assigned to the grouped violation shall be no less than the probability of the item which is most likely to result in an injury or illness.

- 2 If the overall probability of injury or illness is greater with the grouped violation than with any single violation item, the greater probability of injury or illness shall serve as the basis for calculation of the probability assessment of the grouped violation.
- 3 Some individual probability factors may be increased by grouping and others may not. The increased values shall be used in the probability calculation, if, in the professional judgment of the CO or IH, a more appropriate probability assessment will result. For example, the number of employees exposed may be increased while the proximity factor may not.

(c) Gravity-based Penalty. A single P/S quotient for the combined or grouped violation will result from the foregoing considerations. That result shall be the basis for selecting an appropriate GBP for the violation item according to the guidelines in A.2.f. The penalty shall be entered in the penalty column of the DOSH-2 across from the first item of the violation.

- (3) Combined and grouped violations shall normally be considered as one violation for penalty purposes, and in such cases the guidelines for calculating penalties given in A.2.e. through h. shall apply.
- (4) In egregious cases; i.e., willful, repeated and high gravity serious citations and failures to abate, an additional factor of up to the number of violation instances may be applied to the gravity-based penalty calculated in accordance with A.2.i.(2)(c) or the regulatory penalty assigned in accordance with A.8.b. and c. and adjusted in accordance with A.2.j., A.5., A.6., A.7., and A.8., as described in the following subsections. Penalties calculated with this additional factor shall not be proposed without the concurrence of the commissioner.

j. Penalty Adjustment Factors. The gravity-based penalty may be adjusted downward as much as 80 percent depending upon the employer's "good faith", "size of business", and "history of previous violations". Up to 40 percent reduction will be permitted for size, 30 percent for good faith, and 10 percent for history.

- (1) Since these rates are based on the general character of a business and its safety and health performance, the rates shall generally be calculated only once for each employer. This shall be done after the classification and probability ratings have been determined for each violation and the

general character of the employer's performance will be apparent.

- (2) Limits to the rate of penalty reduction for good faith, size and history of previous violations in the case of certain high probability, serious violations may necessitate lower reductions for such violations in some instances. (See A.2.j.(5)(a)3 and (d).)
- (3) If a serious violation is classified as repeated, a penalty reduction for good faith and history shall not ordinarily be given since the employer has exhibited a lack of good faith and reflected a poor history by repeating a previously cited violation. A reduction for good faith and history may be applied to a repeated violation only when the violation is other than serious or, when serious, if it occurs in spite of the employer's efforts to control it, as when employees have disobeyed the employer's orders.
- (4) For willful violations, although consideration shall be given to the penalty adjustment factors, there will normally be no penalty reduction due to the egregious nature of such violations.
- (5) The rate of penalty reduction for size of business, employer's good faith and employer's history of previous violations shall be calculated on the basis of the criteria described in the following paragraphs:
 - (a) Size. A maximum penalty reduction of 40 percent is permitted for small businesses. "Size of business" shall be measured on the basis of the number of employees employed by an employer in all workplaces. Information on the total number of an employer's employees can generally be obtained at the inspected worksite. However, on occasion it may be necessary to obtain or confirm the information from the employer's headquarters.

1 The rates of reduction to be applied are as follows:

<u>Employees</u>	<u>Percent reduction</u>
10 or fewer	40
11 to 25	30
26 to 60	20
61 to 100	10
More than 100	None

2 An employer's ability to pay a penalty shall not normally be investigated or considered in determining the penalty reduction for size of business. However, if an employer presents convincing evidence of an inability to pay a penalty because of the financial difficulties of the business at an informal conference, the Chief may determine that a penalty reduction is appropriate: such a determination shall be documented in the case file.

3 When a small business has one or more serious violations of very high probability (8-10) or a significant number of moderate probability (4-7) which indicates a notable lack of concern for employee safety and health, the Chief may determine that only a partial reduction in penalty shall be permitted for size of business.

(b) Good Faith. A maximum penalty reduction of 30 percent is permitted in recognition of an employer's "good faith". Good faith is measured in terms of the following criteria.

1 Evidence of genuine and effective safety and health efforts prior to the inspection. Such efforts need not involve a formalized program, especially for small businesses which frequently lack the resources to operate such a program. Factors which shall be considered in evaluating safety and health efforts, whether or not the business has a formal program, include:

a The information describing the employer's safety and health program collected during the inspection and noted in the case file.

b The overall condition of the workplace as reflected by the control or elimination of hazards, especially hazards of high gravity.

c The extent to which control of or protection against cited hazards was attempted, even though inadequately; such attempts may include incomplete efforts to identify and implement feasible engineering and/or administrative controls for toxic substances and harmful physical agents.

d The extent to which more serious injuries and illnesses have been investigated and steps taken to prevent their recurrence.

- e The presence of effective monitoring of health-hazard exposures.
 - f The degree to which the employer, employees and their supervisors show knowledge and concern about safety and health in their actions-- including effective training and supervision of employees regarding good work practices.
 - g Up-to-date maintenance and review of injury/illness records.
 - h Specific actions to prevent recurrence of recorded injuries and illnesses.
 - i The extent to which violations observed and injuries and illnesses which have occurred relate to hazards involving difficult, expensive and not widely known controls.
- 2 Evidence of a desire to comply with the statutes during and after an inspection. Primary factors demonstrating such a desire are the speed and willingness with which the employer initiates correction of hazards noted during an inspection.
- 3 Reductions shall, in general, be made as follows:
- a 30-percent. For generally thorough and effective safety and health efforts and prompt and aggressive initiation of abatement of cited violations during the inspection or (by commitment) as soon as is practical reflected by:
 - + Absence of most violations, including all willful, repeated and serious of moderate or high gravity.
 - + Absence of most serious injuries and illnesses.
 - b 20-percent. For moderately thorough and effective safety and health efforts with a few deficiencies and slightly reluctant initiation of abatement reflected by:
 - + Absence of all willful violations, repeated violations of a serious nature, and serious violations of moderate or high gravity.
 - + Absence of most serious injuries and illnesses.

c 10-percent. For fairly thorough and effective safety and health effort with a number of deficiencies and initiation of abatement with barely acceptable promptness or with some reluctance reflected by:

- + Absence of all willful violations, repeated violations of a moderate or high gravity and high gravity serious violations.
- + Absence of easily controlled serious injuries and illnesses.

d No reduction. For little safety and health effort with minimal effectiveness and for obvious reluctance to initiate correction of violation with indications that complete correction may not be made reflected by:

- + Presence of willful or repeated or high gravity serious violations.
- + Presence of easily controlled serious injuries or illnesses.

4 Since many employers will not fit exactly these general criteria for specific rates of reduction, professional judgement will be required to balance the important factors in determining an appropriate rate for a particular employer.

(c) History. A reduction of 10-percent is permitted in recognition of an employer's lack of a significant history of previous violations. The evaluation of an employer's history shall be based on whether there have been serious, repeated, or willful violations or a large number of other than serious violations of moderate or high gravity in previous OSH inspections and whether the current inspection shows a continuing poor performance. The 10-percent reduction in relation to history of previous violations shall be given when:

1 No previous OSH inspections and no OSH-funded consultation visits have been conducted.

2 There has been previous OSH inspection or consultation activity and there are:

a No new serious violations of moderate or high gravity (4-10);

- b No willful violations and no repeated violations of a serious nature; or
- c Few serious violations of low gravity or repeated violations of a nonserious nature and few other-than-serious violations of a moderate or high gravity.

3 Otherwise, there is no reduction allowed.

(d) Total. The total reduction will normally be the sum of the reductions for each of the adjustment factors. For serious violations with a severity/probability quotient of 8 or more, the combined rate of penalty reduction for size, good faith and history of previous violations shall be limited. Where the S/P quotient for a specific, high-gravity, serious violation is as follows, the maximum penalty reduction for all adjustment factors combined shall be lowered as indicated in the following chart:

S/P Quotient	Maximum Penalty Reduction
8	20%
9	10%
10	0 %

3. Imminent Danger Situations. Detailed instructions and procedures for handling allegations of imminent danger situations are contained in Chapter VII. Penalties shall be assessed in accordance with the following:
 - a. Classifications. An imminent danger situation will normally involve a serious, willful or repeated violation.
 - b. Proposed Penalties. Penalties shall be proposed in cases where citations are issued in imminent danger situations even though, after being informed by the CO or IH, the employer immediately eliminates the imminence of the danger and initiates steps to abate the hazard. The procedures given in this chapter for calculating and assessing proposed penalties shall be applied in the case of imminent danger situations, as appropriate.

4. Effect on Penalties If Employer Immediately Corrects or Initiates Corrective Action. Appropriate penalties will be proposed with respect to an alleged violation even though, after being informed of such alleged violation by the CO or IH, the employer immediately corrects or initiates steps to correct the hazard. These actions shall be favorably considered when figuring the penalty adjustment factor for good faith credit.

5. Failure to Abate. AS 18.60.095(d) provides criteria for assessing civil penalties for failure to abate a violation. A penalty of not more than \$1,000 may be assessed for each day the violation continues past the final abatement date.
- a. Application. A Notification of Failure to Abate Alleged Violation (DOSH-2F) shall be issued in cases where violations have not been corrected as required.
- (1) Failure to abate penalties shall be applied when an employer has not corrected a violation which was cited previously when the previous citation has become a final order of the Board.
 - (2) A good faith but unsuccessful effort to abate the violation shall be taken into consideration when determining the appropriate penalty amount as indicated in f. of this subsection.
- b. No Employer Contest. If a timely notice of contest has not been filed, the citation and proposed penalties shall be deemed to be a final order of the Review Board upon the expiration of the contest period. Penalties for failure to abate shall be applied where abatement has not been accomplished.
- c. Employer Contests Alleged Violation(s). If an employer contests one or more of the alleged violations, the period for abatement does not begin to run, as to those items contested, until the day following the entry of the final order by the Review Board affirming the citation.
- (1) If the employer contests only the amount of the proposed penalty, the employer must correct the alleged violation within the prescribed abatement period.
 - (2) If an employer contests an abatement date in good faith, a Failure to Abate Notice shall not be issued for the item contested until a final order affirming a date is entered, the new abatement period, if any, has been completed, and the employer has still failed to abate.
- d. Calculation of Additional Penalties. A gravity-based penalty for unabated violations is to be calculated for failure to abate a serious or other than serious violation on the basis of the facts noted upon reinspection. This recalculated gravity-based penalty, however, shall not be less than that proposed for the item when originally cited, except as provided in A.5.e.
- (1) In those instances where no penalty was initially proposed, an appropriate penalty shall be determined after consulting with the supervisor. In no case shall the penalty be less

than \$100. Adjustment factors shall then be applied to arrive at the daily proposed penalty.

- (2) Adjustment factors for size, good faith and history shall be applied based upon the circumstances noted during the inspection.
- (3) The daily proposed penalty shall be multiplied by the number of calendar days that the violation continued unabated. The number of days unabated will be counted from the day following the abatement date specified in the citation or in the final order. It will include all calendar days between that date and the date of re-inspection, excluding the date of reinspection. Normally the total proposed penalty for failure to abate a particular violation shall not exceed 10 times the amount of daily proposed penalty.
- (4) In unusual circumstances, such as where the gravity of the violation is especially high or the employer has willfully failed to abate the violation, higher penalties shall be proposed. In such situations the proposed penalty and factors involved shall be approved by the Deputy Director.

e. Partial Abatement. When a citation has been only partially abated the daily proposed penalty shall take this into consideration.

- (1) When a violation consists of a number of instances and the follow-up inspection reveals that only some instances of the violation have been corrected, the additional daily proposed penalty shall take into consideration the extent that the violation has been abated. For example, where 3 out of 5 instances have been corrected, the daily proposed penalty (calculated as outlined in A.5.d without regard to any partial abatement) may be reduced by 60 percent.
- (2) In multi-step correction items, only the failure to comply with substantive (rather than procedural) requirements shall generally incur a full failure to abate penalty. On rare occasions, when the Chief decides to issue a Failure to Abate Notice for failure to comply with procedural requirements, the calculation of the daily proposed penalty shall consider the extent to which a violation has been substantially abated with the daily proposed penalty (calculated as outlined in A.5.d without regard to any partial abatement) reduced accordingly.

f. Good Faith Effort to Abate. When the CO or IH believes that the employer has made good faith efforts to correct the violation and had good reason to believe that it was fully abated,

the Chief may reduce or eliminate the daily proposed penalty that would otherwise be justified.

6. Repeated Violations. AS 18.60.095(a) provides that, for a repeated violation of the Act, an employer may be assessed a civil penalty of not more than \$10,000 for each violation.
 - a. Gravity and Penalty Factors. Each violation shall be classified as serious or other-than-serious. A gravity-based penalty shall then be calculated for repeated violations based on facts noted during the current inspection. Appropriate adjustment factors based upon the re-inspection shall be applied.
 - b. Penalty Increase Factors. Generally, once the gravity-based penalty is determined, it shall be doubled for the first repeated violation and quadrupled if the violation has been cited twice before. If a third repetition of a violation has occurred, the gravity-based penalty shall be multiplied by 10. For any further repetition, the Deputy Director shall be consulted.
 - c. No Gravity-Based Penalty. In those instances where a gravity-based penalty does not result from the calculation based on current facts, an appropriate gravity-based penalty shall be determined following consultation with the supervisor. In no event shall the penalty be less than \$100.

7. Willful Violations. AS 18.60.095(a) provides that, for a willful violation of the Alaska Occupational Safety and Health laws, an employer may be assessed a civil penalty of not more than \$10,000 for each violation.
 - a. Gravity and Penalty Factors. Each violation shall be classified as serious or other than serious. After determining the gravity of the violation, a gravity-based penalty shall be determined based on the facts noted during the inspection. There will normally be no reduction based on adjustment factors. The gravity-based penalty is multiplied by 10 to arrive at the proposed penalty.
 - b. No Gravity-Based Penalty. In those instances where a gravity-based penalty does not result from the calculation based on current facts, an appropriate gravity-based penalty shall be determined following consultation with the supervisor. In no event shall the penalty be less than \$100.
 - c. Mixed Violations. Repeated violations for which there is evidence of willfulness shall be cited as repeated with the penalty calculated as if they were willful when it appears that OSH would have difficulty proving the element of willfulness. In such cases the Chief shall consult with the Deputy Director before issuing the citation.

8. Violation of 8 AAC 60.010-80.010 Regulatory Requirements. AS 18.60.095(g) provides that an employer who violates any of the posting or recordkeeping requirements shall be assessed a civil penalty of up to \$1,000 for each violation. For egregious violations, an additional factor may be applied in accordance with A.2.I.(4).
- a. General Application. The procedures that follow shall be used in determining proposed penalties for violations of 8AAC 61.225 and .230 regulatory requirements only when the employer has received a copy of the "Recordkeeping Requirements" booklet or had knowledge of the requirements.
- (1) If the employer has not received the booklet and did not have knowledge, citations without proposed penalties will be issued.
 - (2) All penalties for regulatory violations shall have the adjustment factors applied in determining the proposed penalty.
- b. Posting Requirements. Penalties for violation of posting requirements shall be proposed as follows:
- (1) OSH Notice. If the employer has not displayed (posted) the notice furnished by the Occupational Safety and Health Section as prescribed in 8 AAC 61.450, an other than serious citation shall normally be issued. The unadjusted penalty for this alleged violation shall be \$100.
 - (2) Annual Summary. If an employer fails to post the summary portion of the DOSH-200 Form during the month of February, as required by 8AAC 61.240, an other than-serious citation shall be issued with a proposed, unadjusted penalty of \$200.
 - (3) Citation. If an employer received a citation which has not been posted as prescribed in AS 18.60.091(b), an other-than-serious citation shall normally be issued. An unadjusted penalty of \$500 shall be proposed.
 - (4) Right-to-Know. If an employer is covered by AS 18.60.068, he is required to display a poster and Material Safety Data Sheets (or a list of chemicals) to inform employees of toxic and hazardous substances. If such an employer fails to meet this posting requirement, an unadjusted penalty of \$100 will be proposed.
- c. Reporting and Recordkeeping Requirements. AS 18.60.095(g) provides that violations of the recordkeeping and reporting requirements may be assessed civil penalties of up to \$1,000 for each violation.

- (1) DOSH-200 and DOSH-101 Forms. If the employer does not maintain the "Log and Summary of Occupational Injuries and Illnesses", DOSH-200 Form, and the "Supplementary Record", DOSH-101 Form (or equivalent), as prescribed in 8 AAC 61.240, an other than serious citation shall be issued. There shall be an unadjusted penalty of \$100 for each OSH form not maintained. When no recordable injuries or illnesses have occurred, these forms will be considered as being maintained, even though no entries appear in them.
 - (2) Reporting. Employers are required to report either orally or in writing to the nearest OSH office within 24 hours, any occurrence of an employment accident which is fatal to one or more employees or which results in the overnight hospitalization of one or more employees. An other than serious citation shall be issued for failure to report such an occurrence. The unadjusted penalty shall be \$400.
- d. Grouping. Violations of the posting and recordkeeping requirements which involve the same document (e.g., summary portion of the DOSH-200 Form was neither posted nor maintained) shall be grouped as an other than serious violation for penalty purposes. The unadjusted penalty for the grouped violations would then take on the highest dollar value of the individual items; e.g., the unadjusted penalty for not posting the DOSH-200 Form is \$200 and \$100 for not maintaining the DOSH-200 Form. The group unadjusted penalty would be \$200 rather than \$300.
 - e. Access to Records. If the employer fails upon request to provide records required in Sections 8 AAC 61.260 and 61.270 for inspection and copying by any authorized representative of the Commissioner of Labor or by any employee, former employee, or authorized representative of employees, a citation for violation of 8 AAC 61.270 shall normally be issued. The unadjusted penalty shall be \$100 for each form not made available. Thus, if the OSH-200 for the three preceding years is not made available, the unadjusted penalty would be \$300. If the employer is to be cited for failure to maintain these records, no citation of 8 AAC 61.270 shall be issued.
 - f. Notification Requirements. When an employer has received advance notice of an inspection and fails to notify the authorized employee representative as required by 8 AAC 61.040, an other than serious citation shall be issued with an unadjusted penalty of \$200.

B. Criminal Penalties.

1. AS 18.60.010--18.60.105 provide for criminal penalties in the following cases:

- a. Willful violations causing death
 - b. Giving unauthorized advance notice
 - c. Giving false information
 - d. Killing--assaulting or hampering the work of a CO or IH
2. Criminal penalties are imposed by the courts after trials and not by the Occupational Safety and Health Section or the Occupational Safety and Health Review Board.

C. Handling Monies Received from Employers.

The Alaska Department of Labor's Fiscal Policies and Procedures Manual will be followed for billing and handling penalty monies received from employers.

D. Collection of Penalties. The Chief shall be guided by the following with regard to penalty collection:

- a. Time Allowed for Payment of Penalties. The date when penalties become due and payable depends on whether or not the employer contests.
 - (1) Uncontested Penalties. When citations and/or proposed penalties become uncontested, the penalties are due and payable 15 working days following the employer's receipt of the Citation and Notification of Penalty, or in the case of Informal Settlement Agreements, the execution of the agreement unless otherwise agreed upon in the settlement. (See Chapter V, G.2.)
 - (2) Follow-up Procedures. If payment is not received in 15 working days, a dunning letter (signed by the Commissioner) will be sent requesting payment. If no payment is received after 30 calendar days of the dunning letter the penalty will be referred to the legal counsel for court action. The Administrative Assistant shall follow up on a quarterly basis to ensure prompt notification of disposition.
 - (3) Contested Penalties. When citations and/or proposed penalties are contested, the penalties are due and payable 30 calendar days after the issuance of a final order by the Review Board. If the Board order is appealed to a Superior Court, the penalties are due and payable 30 calendar days after the issuance of the court's judgment, provided that further review by the Supreme Court has not been sought.
 - (4) Partially Contested Penalties. When only part of a citation and/or a proposed penalty is contested, the due date for payment as expressed in D.2.a.(1) will be used for the

uncontested items and the due date expressed in D.2.a.(2) for the contested items.

NOTE: For collection purposes partially contested cases are to be treated as contested cases.

- E. Contest Penalties. On receipt of an employer's notice of intent to contest a proposed penalty, the Chief shall forward the notice and a copy of the case file to the legal counsel with a transmittal letter informing the legal counsel that penalty payment resulting from the litigation must be directed to the Department of Labor's Fiscal Section and requesting that the case file be returned promptly after settlement.
- a. Follow-up Procedures. While the case files are in the hands of the legal counsel, the Chief shall follow up on a quarterly basis to determine the disposition of the case and to ensure prompt notification of disposition.

- Senate - passed unanimously

SB 4721

WISHA

I. Bill addresses department's enforcement of WISHA

Would change 2 major areas:

1. Duration of redetermination period
2. Amount of penalties for safety violations

II. REDETERMINATION

- If director decides to reassume jurisdiction proposal would extend amount of time allowed to complete redetermination from 15 days to 30 days
- Number of requests for reassumption have increased dramatically
 - 1982 -- 590 appeals
 - 1985 -- 1688 appeals
- Director's new emphasis to resolve appeals administratively
- Additional time is needed to allow for proper preparation and consideration of the appeal

III. PENALTIES INCREASED

A. Why?

1. Publicity about recent industrial accidents
 - Public concern about amount of WISHA fines

- Column in P-I
- "Safety Watchdog Has Itty Bitty Teeth"
- a. 32 ton crane with operator fell 25 floors
 - Onto Pike Street in front of Metro bus
 - Operator survived
 - Firm fined \$350 ^{1,700}
- b. Construction Company
 - Worker died when trench wall collapsed
 - Company had 2 previous serious violations
 - Sharing equipment available on site but company was in a hurry
 - Fined \$30,000 ^{\$150,000}
 - Obviously, amount of potential fine not enough to deter unsafe conduct
- 2. Director ordered a study of situation
 - a. Penalties not increased since enactment in 1973
 - b. Latest statistics show 12% increase in construction industry accident rate
 - c. Current penalties are so minimal that they are absorbed as a cost of doing business
 - Cheaper to pay penalty than to be safe

3. Preferable to increase penalties as a deterrent rather than hire additional staff for enforcement

B. Result

1. Significant increase in maximum penalties will result in increase in actual penalties but very rarely reaching maximum amount

*- # of affected employees
- gravity of violation
- employer size
- history of previous violations*

- Department uses formula to determine actual penalty
- Factors for formula are set out in statute
- Support use of formula:
 - Avoid heavy handed inspector
 - Helps tailor penalty to situation
- Department has no interest in levying maximum fines
- We want to encourage abatement and correction rather than being punitive

2. Increased penalties will be greater deterrent
3. Higher penalties will help reduce unfair competition from businesses that cut corners or safety to reduce costs

C. Summary

- Reaffirm legislative intent of WISHA
- Encourage accident prevention without being excessively punitive

WISHA PENALTIES (RCW 49.17.180)

Rational:

- Reaffirm legislative intent regarding a public policy of Safety and Health in the work place.
- Inflation adjustment factors since 1973. (No increase since passage of the act.)
- Eliminate unfair competition factors in the market place.
Current penalties are often perceived as a cost of doing business vs. consequence of failure to provide a safe workplace and correct safety hazards.
- Deterrent effects vs. increased staffing requirements.
- Fees collected are not operating budget \$ - rather \$ go into Supplemental Pension Fund (i.e. widows and orphans).
- Current penalty structure does not factor in employer's accident record - rather citation record.
- Currently the only significant economic deterrent is the industrial insurance rate - this is always after injury/fatality - the driver needs to be accident prevention.
- Penalty structure is consistent with public outcry for accountability in enforcement agencies. (John Marshall - P.I. 10/24/85)

12% INCREASE CONSTRUCTION ACCID

PENALTY COMPARISONS (samples)

- as of 1983 -

• Dept. of Ecology:

- 1.) Improper disposal of hazardous wastes, Ch. 70.105 RCW
\$10,000/day and gross misdemeanor.
- 2.) Willful pollution of state waters, Ch. 90.48 RCW
\$10,000 and 1 year gross misdemeanor
plus: \$5,000/day and liability for damages.
- 3.) Pollution of watershed - \$500 misdemeanor.

• Littering: Ch. 70.93 RCW

Littering highways: \$50 - \$1,000 and 90 days misdemeanor.

• Clean Air Act: Ch. 70.94 RCW (automobile exhaust)

\$200 misdemeanor plus: \$250/day additional.

• Pirated Recordings: Ch. 19.25 RCW (black market records and tapes)

\$1,000 and 1 year gross misdemeanor.

Game Commission: game and gamefish

- 1.) Seizure of game and devices (truck, gun ...), Ch. 77.12 RCW.
- 2.) \$250 - 1,000 and 1 year gross misdemeanor, Ch. 77.21 RCW.
- 3.) Reimburse state for loss \$500 - \$1,000, Ch. 77.21 RCW.

Improper Collection Activities: Ch. 19.16 RCW

- 1.) Failure to license, \$1,000 civil penalty.
- 2.) Improper activities, \$25,000 civil penalty.

* * *

Criminal Penalties, Ch. 9A.20 RCW (standard ranges):

Gross Misdemeanor: \$5,000 and 1 year max.

Misdemeanor: \$1,000 and 90 days max.

Safety watchdog has itty bitty teeth

Strange but true tales from Washington state government, where a watchdog agency seems to have more bark than bite:

□ A 32-ton construction crane falls 25 stories and crashes onto Fourth Avenue in Seattle. The crane operator survives with slight injuries, but no one else is hurt, miraculously, because the crane happens to fall on a Saturday morning.

The state Department of Labor and Industries investigates the accident. It finds that Mobil Crane of Seattle did not follow recommended procedures in raising the crane boom. The department cites the company for a safety violation.

Labor and Industries imposes this fine: \$350.

□ A Japanese dancer falls to his death during a performance while suspended from a rope hanging from a building in Pioneer Square. Labor and Industries investigates the accident. It finds that the rope was worn and should have been destroyed; it also finds that rope was not of the thickness required by law.

The department cites On the Boards, a Seattle arts group that was sponsoring the dancers' appearance in Seattle, for the two safety violations (a decision which On the



JOHN MARSHALL

Boards will appeal). The department also cites the New York producers of the dancer company's tour.

On each of the two groups, Labor and Industries imposes this fine: \$600.

How can safety violations that presumably led to a man's death result in only a \$600 fine? How can a safety violation that sent a 32-ton crane crashing down on Seattle streets result in only a \$350 fine? Are such fines supposed to be any sort of penalty or punishment? If this is enforcement, then it seems to be enforcement with itty bitty baby teeth.

That's exactly what Richard Davis, the new director of Labor and Industries, thought when he took over the job eight months ago in the Gardner administration. The longtime executive at Pacific Northwest Bell saw such small fines being

assessed and immediately wondered, "Where do we get these amounts?"

Thus did Davis embark on a journey down the rabbit hole of state law and state bureaucracy, to a place where such fines for safety violations are set according to a complicated three-page formula, a formula that doesn't even take into account whether a death has resulted from the safety violations.

What matters to Labor and Industries and determines its fines, according to state law, is whether such safety violations are "willful" and "repeated." If so, then the maximum fine is \$10,000.

But if safety violations are "serious" but are not part of a repeated pattern, accidents such as those involving the Seattle crane or the Japanese dancer, then the maximum fine is only \$1,000. And the complex formula used means that the \$1,000 fine is rarely assessed.

The result of Davis' journey is that Labor and Industries plans to ask the Legislature to raise the \$1,000 maximum fine, in effect since 1973, to \$5,000. The department also is conducting an examination of the fines and procedures used by other states and the federal government to see if changes in state law are warranted.

But Davis emphasizes that his department remains much more interested in making sure that safety violations don't happen again than in punishing past violations. Especially when even Davis admits that the low fines allowed by law can be seen as nothing more than "nuisance fines."

"We have life-threatening situations out in the workplace where we have fining authority," Davis says. "But we'd rather have a firm spend its money resolving safety problems than us go around fining people. The whole key is making sure there are no repeat violations."

Labor and Industries' philosophy in this may make some sense. But it does not diminish the sense of outrage that results when a worn rope sends a man to the most horrible of public deaths, and the state's response is a \$600 wrist slap.

Perhaps justice and punishment are the courts' concerns. But it still says something very sad about a society when safety violations can end a life and the only penalty imposed by the state is a few hundred bucks.

□ P-I staff columnist John Marshall appears here Tuesday, Thursday and Saturday.

SENATE BILL NO. 4721

State of Washington 49th Legislature 1986 Regular Session
by Senators Warnke, Newhouse, Vognild and Bauer

Read first time 1/21/86 and referred to Committee on Commerce & Labor.

1 AN ACT Relating to the Washington industrial safety and health
2 act: amending RCW 49.17.140, 49.17.180, and 49.17.190; and
3 prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON.

5 Sec. 1. Section 14, chapter 80, Laws of 1973 and RCW 49.17.140
6 are each amended to read as follows:

7 (1) If after an inspection or investigation the director or his
8 authorized representative issues a citation under the authority of
9 RCW 49.17.120 or 49.17.130, the department, within a reasonable time
10 after the termination of such inspection or investigation, shall
11 notify the employer by certified mail of the penalty to be assessed
12 under the authority of RCW 49.17.180 and shall state that the
13 employer has fifteen working days within which to notify the director
14 that he wishes to appeal the citation or assessment of penalty. If,
15 within fifteen working days from the communication of the notice
16 issued by the director the employer fails to notify the director that
17 he intends to appeal the citation or assessment penalty, and no
18 notice is filed by any employee or representative of employees under
19 subsection (3) of this section within such time, the citation and the
20 assessment shall be deemed a final order of the department and not
21 subject to review by any court or agency.

22 (2) If the director has reason to believe that an employer has
23 failed to correct a violation for which a citation has been issued
24 within the period permitted in the citation for its correction, which
25 period shall not begin to run until the entry of a final order in the
26 case of any appeal proceedings under this section initiated by the
27 employer in good faith and not solely for delay or avoidance of
28 penalties, the director shall notify the employer by certified mail
29 of such failure to correct the violation and of the penalty to be

1 assessed under RCW 49.17.180 by reason of such failure, and shall
 2 state that the employer has fifteen working days from the
 3 communication of such notification and assessment of penalty to
 4 notify the director that he wishes to appeal the director's
 5 notification of the assessment of penalty. If, within fifteen
 6 working days from the receipt of notification issued by the director
 7 the employer fails to notify the director that he intends to appeal
 8 the notification of assessment of penalty, the notification and
 9 assessment of penalty shall be deemed a final order of the department
 10 and not subject to review by any court or agency.

11 (3) If any employer notifies the director that he intends to
 12 appeal the citation issued under either RCW 49.17.120 or 49.17.130 or
 13 notification of the assessment of a penalty issued under subsections
 14 (1) or (2) of this section, or if, within fifteen working days from
 15 the issuance of a citation under either RCW 49.17.120 or 49.17.130
 16 any employee or representative of employees files a notice with the
 17 director alleging that the period of time fixed in the citation for
 18 the abatement of the violation is unreasonable, the director may
 19 reassume jurisdiction over the entire matter, or any portion thereof
 20 upon which notice of intention to appeal has been filed with the
 21 director pursuant to this subsection. If the director reassumes
 22 jurisdiction of all or any portion of the matter upon which notice of
 23 appeal has been filed with the director, any redetermination shall be
 24 completed and corrective notices of assessment of penalty, citations,
 25 or revised periods of abatement completed within a period of
 26 ~~((fifteen))~~ thirty working days, which redetermination shall then
 27 become final subject to direct appeal to the board of industrial
 28 insurance appeals within fifteen working days of such redetermination
 29 with service of notice of appeal upon the director. In the event
 30 that the director does not reassume jurisdiction as provided in this
 31 subsection, he shall promptly notify the state board of industrial
 32 insurance appeals of all notifications of intention to appeal any
 33 such citations, any such notices of assessment of penalty and any
 34 employee or representative of employees notice of intention to appeal
 35 the period of time fixed for abatement of a violation and in addition
 36 certify a full copy of the record in such appeal matters to the

1 board. The director shall adopt rules of procedure for the
 2 reassumption of jurisdiction under this subsection affording
 3 employers, employees, and employee representatives notice of the
 4 reassumption of jurisdiction by the director, and an opportunity to
 5 object or support the reassumption of jurisdiction, either in writing
 6 or orally at an informal conference to be held prior to the
 7 expiration of the ~~((fifteen))~~ thirty-day period. A notice of appeal
 8 filed under this section shall stay the effectiveness of any citation
 9 or notice of the assessment of a penalty pending review by the board
 10 of industrial insurance appeals, but such appeal shall not stay the
 11 effectiveness of any order of immediate restraint issued by the
 12 director under the authority of RCW 49.17.130. The board of
 13 industrial insurance appeals shall afford an opportunity for a
 14 hearing in the case of each such appellant and the department shall
 15 be represented in such hearing by the attorney general and the board
 16 shall in addition provide affected employees or authorized
 17 representatives of affected employees an opportunity to participate
 18 as parties to hearings under this subsection. The board shall
 19 thereafter make disposition of the issues in accordance with
 20 procedures relative to contested cases appealed to the state board of
 21 industrial insurance appeals.

22 Upon application by an employer showing that a good faith effort
 23 to comply with the abatement requirements of a citation has been made
 24 and that the abatement has not been completed because of factors
 25 beyond his control, the director after affording an opportunity for a
 26 hearing shall issue an order affirming or modifying the abatement
 27 requirements in such citation.

28 Sec. 2. Section 18, chapter 80, Laws of 1973 and RCW 49.17.180
 29 are each amended to read as follows:

30 (1) Any employer who willfully or repeatedly violates the
 31 requirements of RCW 49.17.060, ~~((er))~~ of any safety ~~((and))~~ or health
 32 standard promulgated under the authority of this chapter, of any
 33 existing rule or regulation governing the conditions of employment
 34 promulgated by the department, or of any order issued granting a
 35 variance under RCW 49.17.080 or 49.17.090 may be assessed a civil
 36 penalty not to exceed ~~((ten))~~ fifty thousand dollars for each

1 violation.

2 (2) Any employer who has received a citation for a serious
3 violation of the requirements of RCW 49.17.060, of any safety or
4 health standard promulgated under the authority of this chapter, of
5 any existing rule or regulation governing the conditions of
6 employment promulgated by the department, or of any order issued
7 granting a variance under RCW 49.17.080 or 49.17.090 as determined in
8 accordance with subsection (6) of this section, shall be assessed a
9 civil penalty not to exceed ~~((one))~~ five thousand dollars for each
10 such violation.

11 (3) Any employer who has received a citation for a violation of
12 the requirements of RCW 49.17.060, of any safety ~~((and))~~ or health
13 standard promulgated under this chapter, ~~((or))~~ of any existing rule
14 or regulation governing the conditions of employment promulgated by
15 the department, or of any order issued granting a variance under RCW
16 49.17.080 or 49.17.090, where such violation is specifically
17 determined not to be of a serious nature as provided in subsection
18 (6) of this section, may be assessed a civil penalty not to exceed
19 ~~((one))~~ three thousand dollars for each such violation, unless such
20 violation is determined to be de minimis.

21 (4) Any employer who fails to correct a violation for which a
22 citation has been issued under RCW 49.17.120 or 49.17.130 within the
23 period permitted for its correction, which period shall not begin to
24 run until the date of the final order of the board of industrial
25 insurance appeals in the case of any review proceedings under this
26 chapter initiated by the employer in good faith and not solely for
27 delay or avoidance of penalties, may be assessed a civil penalty of
28 not more than ~~((one))~~ five thousand dollars for each day during which
29 such failure or violation continues.

30 (5) Any employer who violates any of the posting requirements of
31 this chapter, or any of the posting requirements of rules promulgated
32 by the department pursuant to this chapter related to employee or
33 employee representative's rights to notice, including but not limited
34 to those employee rights to notice set forth in RCW 49.17.080,
35 49.17.090, 49.17.120, 49.17.130, 49.17.220(1) and 49.17.240(2), shall
36 be assessed a penalty ~~((ef))~~ not to exceed ~~((one))~~ three thousand

1 dollars for each such violation. Any employer who violates any of
2 the posting requirements for the posting of informational,
3 educational, or training materials under the authority of RCW
4 49.17.050(7), may be assessed a penalty ~~((ef))~~ not to exceed one
5 thousand five hundred dollars for each such violation.

6 (6) For the purposes of this section, a serious violation shall
7 be deemed to exist in a work place if there is a substantial
8 probability that death or serious physical harm could result from a
9 condition which exists, or from one or more practices, means,
10 methods, operations, or processes which have been adopted or are in
11 use in such work place, unless the employer did not, and could not
12 with the exercise of reasonable diligence, know of the presence of
13 the violation.

14 (7) The director, or his authorized representatives, shall have
15 authority to assess all civil penalties provided in this section,
16 giving due consideration to the appropriateness of the penalty with
17 respect to the number of affected employees of the employer being
18 charged, the gravity of the violation, the size of the employer's
19 business, the good faith of the employer, and the history of previous
20 violations.

21 (8) Civil penalties imposed under this chapter shall be paid to
22 the director for deposit in the supplemental pension fund established
23 by RCW 51.41.033. Civil penalties may be recovered in a civil action
24 in the name of the department brought in the superior court of the
25 county where the violation is alleged to have occurred, or the
26 department may utilize the procedures for collection of civil
27 penalties as set forth in RCW 51.48.120 through 51.48.150.

28 Sec. 3. Section 19, chapter 80, Laws of 1973 and RCW 49.17.190
29 are each amended to read as follows:

30 (1) Any person who gives advance notice of any inspection to be
31 conducted under the authority of this chapter, without the consent of
32 the director or his authorized representative, shall, upon conviction
33 be guilty of a gross misdemeanor and be punished by a fine of not
34 more than one thousand dollars or by imprisonment for not more than
35 six months, or by both.

36 (2) Whoever knowingly makes any false statement, representation

1 or certification in any application, record, report, plan, or other
2 document filed or required to be maintained pursuant to this chapter
3 shall, upon conviction be guilty of a gross misdemeanor and be
4 punished by a fine of not more than ten thousand dollars, or by
5 imprisonment for not more than six months or by both.

6 (3) Any employer who wilfully and knowingly violates the
7 requirements of RCW 49.17.060, any safety ~~((and))~~ or health standard
8 promulgated under this chapter, any existing rule or regulation
9 governing the safety ~~((and))~~ or health conditions of employment and
10 adopted by the director, or any order issued granting a variance
11 under RCW 49.17.080 or 49.17.090 and that violation caused death to
12 any employee shall, upon conviction be guilty of a gross misdemeanor
13 and be punished by a fine of not more than ~~((ten))~~ one hundred
14 thousand dollars or by imprisonment for not more than six months or
15 by both; except, that if the conviction is for a violation committed
16 after a first conviction of such person, punishment shall be a fine
17 of not more than ~~((twenty))~~ two hundred thousand dollars or by
18 imprisonment for not more than one year, or by both.

19 (4) Any employer who has been issued an order immediately
20 restraining a condition, practice, method, process, or means in the
21 work place, pursuant to RCW 49.17.130 or 49.17.170, and who
22 nevertheless continues such condition, practice, method, process, or
23 means, or who continues to use a machine or equipment or part thereof
24 to which a notice prohibiting such use has been attached, shall be
25 guilty of a gross misdemeanor, and upon conviction shall be punished
26 by a fine of not more than ~~((one))~~ ten thousand dollars or by
27 imprisonment for not more than six months, or by both.

28 (5) Any employer who shall knowingly remove, displace, damage, or
29 destroy, or cause to be removed, displaced, damaged, or destroyed any
30 safety device or safeguard required to be present and maintained by
31 any safety or health standard, rule, or order promulgated pursuant to
32 this chapter, or pursuant to the authority vested in the director
33 under RCW 43.22.050 shall, upon conviction, be guilty of a
34 misdemeanor and be punished by a fine of not more than ~~((two-hundred~~
35 ~~fifty))~~ one thousand dollars or by imprisonment for not more than
36 ninety days, or by both.

1 (6) Whenever the director has reasonable cause to believe that
2 any provision of this section defining a crime has been violated by
3 an employer, the director shall cause a record of such alleged
4 violation to be prepared, a copy of which shall be referred to the
5 prosecuting attorney of the county wherein such alleged violation
6 occurred, and the prosecuting attorney of such county shall in
7 writing advise the director of the disposition he shall make of the
8 alleged violation.

Alaska State Legislature
Representative Niilo Kaponen

Pouch V
Juneau, Alaska 99811
(907) 465-4992

542 4th Avenue, Suite C
Fairbanks, Alaska 99701
(907) 456-3181

POSITION PAPER

HB 53 - "AN ACT RELATING TO PENALTIES FOR VIOLATIONS TO
WORK-PLACE SAFETY LAWS"

This legislation would reinforce the legislative intent in AS 18.60.010, which states that the legislature finds that "...personal injuries and illnesses arising out of work situations impose a substantial burden upon, and are a hindrance to, the people of the state in terms of loss of production, wage loss, medical expenses and disability compensation payments." The health and safety of every Alaskan worker should be a first priority in any work-place.

Alaska has continued to have one of the highest occupational injury and illness rates in the country. It is therefore necessary to undertake a program to reduce the incidence of work-related accidents and health hazards in the state. My decision to strengthen the work-place safety laws resulted from past discussions with laborers, and research into case examples of the asbestos problems and other work-place accidents that have occurred within Alaska. These incidents include the Clear A.F.B. case, where avoidable microwave exposure causing severe injury to six workers resulted in an approximately \$400 fine.

This legislation parallels actions taken by the Washington State Legislature last year (1986) by increasing penalties for serious work-place violations. For example, under current Alaska Statute the penalty for a serious work-place safety violation is a maximum fine of \$1,000. This penalty is then adjusted downward by the Occupational Safety and Health Administration (OSHA), taking into consideration factors such as the size of the employee's business, good faith of the employer and any previous history of violations. The adjusted average fine for a serious violation is \$175.00. This penalty structure, which has not been adjusted for the past 17 years, is not an effective deterrent to serious hazards.

HB 53 would increase the maximum fine to \$25,000. With the application of the adjustment formula this is expected to increase the average fine to \$4,375. The possibility of more severe fines should encourage companies to pay more attention to worker safety. In Washington, an equivalent violation now carries a maximum fine of \$50,000.

There is no reason why an employer can not abide by the standards that the federal and state statutes have established. There is a

common-law duty to provide a safe work-site that affects whomever supplies and controls that work-site. This duty protects all people on the site and not just the employees. (AS18.60.075.)

HB 53 is a deterrent intended to encourage businesses to conform to work-place safety laws and regulations. The main purpose of this legislation is to remind employers of their responsibility to prevent accidents. An increase in fines is one way of making sure that safety in the work-place is a top priority. Employees and the public need this protection. If an employer complies with required statutes and standards, then there should be no worry of being fined. Small fines are not effective enough to make changes occur.

It is the sponsor's earnest hope that greater compliance will result in a decrease in the number of fines levied. Collected fines levied will be deposited into the general fund which can be used to offset the temporary administrative costs that the Department of Labor will have until the new fines are promulgated.

CORRECTION

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

common-law duty to provide a safe work-site that affects whomever supplies and controls that work-site. This duty protects all people on the site and not just the employees. (AS18.60.075.)

HB 53 is a deterrent intended to encourage businesses to conform to work-place safety laws and regulations. The main purpose of this legislation is to remind employers of their responsibility to prevent accidents. An increase in fines is one way of making sure that safety in the work-place is a top priority. Employees and the public need this protection. If an employer complies with required statutes and standards, then there should be no worry of being fined. Small fines are not effective enough to make changes occur.

It is the sponsor's earnest hope that greater compliance will result in a decrease in the number of fines levied. Collected fines levied will be deposited into the general fund which can be used to offset the temporary administrative costs that the Department of Labor will have until the new fines are promulgated.

Bill No.

Committee Substitute for
House Bill No. 53 (HESS)

Date

February 3, 1987

Title

"An Act relating to penalties for
violation of workplace safety laws."

Contact:

Eileen Plate
465-2700

Richard Arab
465-4856

Under Committee Substitute for House Bill 53, the penalties assessed by the Department of Labor for violations of Alaska's Occupational Safety and Health law and regulations would be increased.

Specifically, the provisions of this bill:

- (1) increase the maximum penalty for a willful or repeat violation from \$10,000 to \$25,000;
- (2) establish a \$1000 minimum penalty for a serious violation; and increase the maximum penalty for a serious or failure to abate violation from \$1,000 to \$10,000;
- (3) increase the maximum penalty for a non-serious violation from \$1,000 to \$5,000;
- (4) increase the maximum penalty for a willful or repeat violation which results in the death of a worker from \$10,000 to \$150,000; and increase from \$20,000 to \$500,000 the maximum penalty for a second conviction of a willful or repeat violation causing death;
- (5) increase from \$10,000 to \$25,000 the maximum penalty for falsifying or otherwise misrepresenting occupational safety and health records or documents; and
- (6) increase the maximum penalty for a violation of occupational safety and health posting requirements from \$1,000 to \$5,000.

The penalties in effect have not been increased since Alaska's occupational safety and health law was initially enacted in 1973.

More important than providing for an overdue inflationary increase in the penalty system, however, the increased penalties would serve as an effective deterrent to workplace safety and health violations. This, of course, will translate into safer workplaces, and a reduced risk of injury and illness to Alaska's workers.

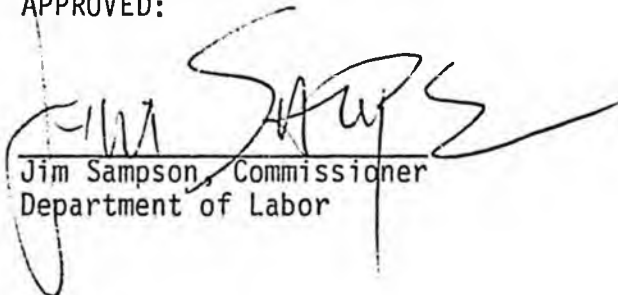
An increased emphasis on worker safety and health is particularly important in times of economic decline, such as are presently being experienced. When cost-saving measures are implemented by employers during recessionary periods, equipment maintenance and replacement are diminished, and the need to increase worker productivity often results in unsafe "shortcuts" that would not be

POSITION PAPER/Department of Labor

taken or even considered in more prosperous times. The deterrent effect of increased penalties would, therefore, assure that implementation of cost-saving measures by Alaska business is not at the expense of or to the detriment of the safety and health of Alaska's workers.

The Department of Labor supports the increased penalties for violations of Alaska's occupational safety and health law and regulations as provided in this bill.

APPROVED:



Jim Sampson, Commissioner
Department of Labor

Relation w/ HB 22

Dept of Labor supports bill

5-0251B

Offered: 1/30/87
Referred: Judiciary and
Finance

Original sponsors: Koponen, Goll
and Davis

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

1 IN THE HOUSE

2

CS FOR HOUSE BILL NO. 53 (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 ^{violations} ~~penalties~~ for violations of work-
place safety laws."

8

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

9

* Section 1. AS 18.60.095(a) ^{knowingly} is amended to read:

10

(a) An employer who wilfully or repeatedly violates a provision
of AS 18.60.010 - 18.60.105 that is applicable to the employer or a
standard or regulation adopted under AS 18.60.010 - 18.60.105 may be
assessed by the commissioner a civil penalty of not more than \$25,000
[\$10,000] for each violation.

11

12

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15

* Sec. 2. AS 18.60.095(b) is amended to read:

16

(b) An employer who receives a citation for a serious violation
of a provision of AS 18.60.010 - 18.60.105 that is applicable to the
employer or of a standard or regulation adopted under AS 18.60.010 -
18.60.105 shall be assessed by the commissioner a civil penalty of not
less than [UP TO] \$1,000 and not more than \$10,000 for each violation.

17

18

19

20

21

For purposes of this subsection, a serious violation is considered to
exist if the violation creates in the place of employment a
substantial probability of death or serious physical harm. However, a
serious violation is not considered to exist if the employer did not,
and could not with the exercise of reasonable diligence, know of the
presence of the violation.

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* Sec. 3. AS 18.60.095(c) is amended to read:

23

(c) An employer who receives a citation for a violation of a
provision of AS 18.60.010 - 18.60.105 that is applicable to the

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HB0053B

-1-

CSHB 53(HESS)

what is a
serious violation

minimum fine

Def serious
violation

Hess amended
25,000

3,000
1 chapter shall be assessed by the commissioner a civil penalty of up to
2 \$5,000 [\$1,000] for each violation.
3 * Sec. 8. The amendments made by this Act apply to violations that
4 occur on or after the effective date of this Act.

The Sacramento Bee • Tuesday, July 2, 1985

25-year sentences for execs in job-related death



Associated Press

By SHARON COHEN

MAYWOOD, Ill. (AP) — Three former executives of a silver-recycling plant were sentenced Monday to 25 years each in prison and fined \$10,000 each for their landmark murder convictions in the job-related cyanide death of a worker.

Cook County Circuit Judge Ronald J.P. Banks compared the actions of the three officials of defunct Film Recovery Systems Inc. to someone who would leave "a time bomb ... ticking off" in an airplane.

"What happened is a gross injustice," Banks said. "A man is dead."

Sentenced were Steven J. O'Neil, former president of Film Recovery Systems; Charles Kirschbaum, plant manager, and Daniel Rodriguez, a foreman. Banks revoked their bonds of \$2,500 each and ordered them taken into custody.

Banks found the three men guilty June 14 of murder and reckless conduct after an eight-week, non-jury trial.

The murder convictions were believed to be the first in the nation of corporate officials in a job-related death. They stemmed from the Feb. 10, 1983, death of Stefan Golab, a 61-year-old Polish immigrant who died after inhaling cyanide fumes at the plant in suburban Elk Grove Village. Cyanide was used to recover silver from used X-ray film.

Banks said at the sentencing that the defendants were clearly aware of hazardous plant conditions and didn't have appropriate warning signs for the workers, many of whom were illegal aliens and couldn't speak English.

He said it was as if someone would "take a bomb and put in an airline (and run away while) ... the time bomb is ticking off. Every day people worked there, it kept ticking. It kept ticking."

"All of the defendants are going to pay for it harshly," he said.

In arguments Monday, Tom Tucker, assistant state's attorney, said plant workers regularly suffered from nausea, headaches and vomiting.

"They (the defendants) had knowledge of the workers becoming ill on a daily basis," he said. "They were motivated by greed, and greed

alone."

Defense attorneys contended the defendants had been unaware of dangerous conditions at the plant and had worked there themselves.

Banks also sentenced the defendants to 364 days in jail for each of 14 counts of reckless conduct. Those sentences were ordered served concurrently.

Banks revoked their bonds of \$2,500 each and ordered them taken into custody, but an appeals court restored the original bonds within hours.

The convictions were expected to be appealed.

Banks also fined Film Recovery and another corporation, Metallic Marketing, \$10,000 each on involuntary manslaughter convictions in Golab's death. In addition, the companies were fined \$1,000 for each of 14 counts of reckless conduct.

Chief prosecutor Jay Magnuson said he was satisfied with the sentences which could have been as high as 40 years.

The defendants must serve half of their sentences, minus 90 days for good behavior, before being eligible for parole, said Terry Levia, spokesman for the state's attorney's office.

Defense attorney Elliot Samuels, who represented Kirschbaum, compared the trial to a "witch hunt." He refused to propose a sentence for his client, saying he was confident the appellate court would correct the "grave injustice."

In May, a fourth defendant, former plant manager and vice president Gerald Pett, was acquitted on the murder charge.

A fifth company official, Michael MacKay of Salt Lake City, has twice avoided extradition to Illinois, but prosecutors are expected to make a third attempt.

The plant closed after Golab's death.

Chicago Tribune 5/9/85

Plant played down cyanide, inspector says

A federal safety official who inspected an Elk Grove Village factory after a worker died allegedly from inhaling cyanide fumes testified Wednesday that the firm's president told him that employees would be "scared away" if they knew the hazardous chemical was being used.

Michael Selway, an industrial hygienist for the Occupational Safety and Health Administration, testified at the trial of four officials of Film Recovery Systems Inc., charged with murder in the death of Stefan Golab.

Selway said Steven J. O'Neil, company president, made the statement during Selway's three-day inspection after Golab's death Feb. 10, 1983.

Selway said O'Neil told him that "he didn't want to overemphasize the hazards associated with the operation because it would scare away the employees." They were talking about the lack of employee training at the plant, Selway said.

At a recess in the Cook County Circuit Court trial, O'Neil denied making the statement.

Also on trial are Gerald Pett, a vice president; Charles Kirschbaum, a plant manager; and Daniel Rodriguez, a plant foreman.

Selway said the hydrogen cyanide level recorded in the plant

Selway said he didn't cite the company for violating the air standards because he wasn't able to monitor the air quality on a normal workday.

But the company was fined \$2,425 for several violations, including not providing employees proper safety masks, gloves, training and an antedote for

According to Selway, a safety inspector visited the firm in November, 1982, and reviewed the firm's records on employee injuries but didn't inspect the plant because the company had an excellent record.

A medical supply saleswoman also testified Wednesday that her company sold a used, stocked medical cabinet to the firm for a yacht, but Film Recovery rejected offers to contract for safety

Feb. 22 was 50 percent higher than federal standards allow, and the plant wasn't operating at full capacity that day.

But he said the 15 parts per million concentration of cyanide he recorded was well below the 50

mu

Eileen (see other side too)

Occ. Health

18 CHICAGO SUN-TIMES, Sunday, June 23, 1985



SUN-TIMES/AL POGORIS

Former workers at Chicago Magnet Wire Corp. stand in front of the northwest suburban plant where the bosses now face criminal charges after some workers suffered ailments they say were caused

by working conditions. From left are Roberto Ponce, Enrique Ibaceta, Eredio Estevez, Juan Molina, Leonel Chavarria, Antoni Morales and Inocencio Alejandre.

2nd firm's bosses head for trial on toxic danger

By Debbe Nelson

More than 125 employees at Chicago Magnet Wire Corp. left the company over a two-year period, diagnosed with ailments ranging from temporary respiratory problems to permanent brain damage.

The workers blamed toxic chemical fumes at the Elk Grove Village wire factory for their ills. Now their bosses face criminal charges for their injuries.

The case, scheduled for trial in the fall, will be the second attempt by the Cook County state's attorney's office to make unhealthy working conditions a crime.

On June 14, county prosecutors established national precedent by winning the conviction of three officials from Film Recovery Systems Inc., another Elk Grove Village factory, on charges of murder. A worker, Stefan Golab, died Feb. 10, 1983, at the silver recovery plant after he was overcame by cyanide fumes.

Buoyed by that landmark

victory, prosecutors now are turning their attention to Magnet Wire. There, five top company executives are charged with 41 counts of aggravated battery, 40 counts of reckless conduct and one count of conspiracy.

Just as Film Recovery represented the first time in legal history that corporate officers were charged with murder for a job-related death, the Magnet Wire case is believed to be the nation's first effort to convict management of aggravated battery for job-related injuries.

"What will be significant," said Assistant State's Attorney Lynn Worley, "is that this will show that Illinois criminal law can be used to protect all of the citizens of Illinois, no matter where they are harmed."

One doctor who examined numerous employees described the environment at Magnet Wire as "a toxic cocktail" of dangerous chemicals.

The company is located

at 901 Chase in the huge industrial park that comprises half of northwest suburban Elk Grove Village. In dozens of three-story ovens, wire is coated and baked using a variety of solvents and enamels.

Employees told of dizziness, fainting and coughing as they worked in rooms where temperatures climbed to 150 degrees and fumes flowed from open vats of hot enamel.

The workers claim their bosses told them the chemicals were safe. Gary Olson, the company's former safety director and a key prosecution witness, supports the workers' contentions. He said he was told to keep quiet about the dangers.

Company officials have refused to comment on the charges made by workers or prosecutors, except through court documents denying that unsafe conditions existed at the plant or caused any worker illness.

In fact, the U.S. Occupational Safety and Health Administration visited the plant in 1983 and found

only one instance of chemical fumes at a dangerous level. The company was fined for improper storage of chemicals and failing to provide adequate protective equipment to employees.

But State's Attorney Richard M. Daley said his office's investigation found serious safety hazards at Magnet Wire and a conscious effort by management to hide the dangers from workers. As a result, he said, "dozens of workers are now seriously ill and some are disabled and unable to support their families."

Dr. Mark Round of Barrington, who has examined more than 100 of the employees, said nearly all suffered temporary respiratory illnesses such as bronchitis or chemical pneumonia, 80 percent suffer from liver or kidney damage, 25 percent from loss of mental ability and 70 percent from impotence.

Most have improved in the one to two years since they left their jobs, Round said, but not before mount-

ing an average \$8,000 hospital and medical bill that remain unpaid pending resolution of multimillion-dollar civil litigation.

Nearly all of those who took sick leave from Magnet Wire have been fired after a company doctor declared them healthy and fit for work.

"People are afraid to get involved with anybody who works at Chicago Magnet Wire," said Peter Stankovic, 30, of Hanover Park, who has been looking for work since 1983. "They are afraid you're going to cause trouble for them or die on the spot."

Enrique Ibaceta, 27, of Des Plaines, finally found a job last week to support himself and his family. He is not making as much as he did at Magnet Wire, but he does not regret his decision to leave the company.

"I'm feeling much better now. I'm feeling optimistic about what happened to the other company [Film Recovery], and now I have a job," he said. "Now I just want to see justice done."

H B

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LEVANT: Most Los Angeles gang members are involved in drug trafficking outside of Los Angeles. They have been arrested for narcotics violations as far away as Kentucky, Texas, New York, Louisiana, Illinois, Washington, D.C., and Washington state, Oregon, Arizona and Nevada.

USA TODAY: Are the Midwest and smaller towns easy targets for these gangs?

“
People are
fed up to the
gills with drugs
and gangs in
their neighbor-
hoods.
”

LEVANT: The demand is there consistently throughout the whole country. I wish people would believe that. There is no part of this country that doesn't have a horrible narcotics problem. We work closely with other police departments. If someone is arriving in town with a load of co-

caine, they're met by the local police and arrested. If someone is coming back to Los Angeles with money from narcotics sales, they're arrested. We use all the laws that are at our disposal.

USA TODAY: What are the gangs doing with the money they make from selling drugs?

LEVANT: Street gangs are a bunch of thugs. The profits they're getting from the drug trade are being used to get very dangerous automatic, semi-automatic assault rifles, semi-automatic pistols, silent submachine guns, all kinds of sophisticated weaponry.

USA TODAY: What does this mean for the future?

LEVANT: Now that they're becoming so rich, the danger is they're going to make a metamorphosis from clubs into highly sophisticated criminal organizations capable of doing a lot of damage to the general public.

USA TODAY: Why has it taken so long for the police to fight back against these gangs?

LEVANT: What has always been our posture is to react to a crime after the crime is committed. We're always playing catch-up. Now, what we've been doing for the past several months is getting the kind of support we need to put these thugs away for a long time.

USA TODAY: Would you call this an all-out war?

LEVANT: Exactly. We have city and state governments, the Drug Enforcement Administration, the FBI and the alcohol and firearms people, customs, and IRS people all on board. Drug dealing is non-controversial criminal activity. By using drug laws, we are able to take these crooks off the streets and put them away for long periods, using the appropriate state or federal laws.

USA TODAY: What does it matter if suspected drug dealers are back on the street in a few days?

LEVANT: That's really counterproductive because it gives stature to the thugs when you arrest them on a Friday and they're back out on Sunday or Monday. They're back in their neighborhood strutting around.

USA TODAY: How are you countering that?

LEVANT: What we have arranged are bail deviations with the district attorney's office so that when we make arrests for narcotics violations and we have the criminal history of the suspects and the evidence to prosecute cases successfully, they go to jail. The bail is enhanced so that it's very difficult for them to make bail. When they go to court, we have a 99% conviction rate with these cases.

USA TODAY: What difference do you expect that to make?

LEVANT: When you have a guy who is arrested who's previously been driving a flashy car with fancy clothes — a negative role model for the kids in the neighborhood — all of a sudden he's gone. Maybe he won't come back for years. That makes a statement, much better than pushing him from one neighborhood to another neigh-

INQUIRY

Topic: DRUGS & GANGS

Glenn Levant, 46, is the deputy chief of the Los Angeles Police Department. He is the commanding officer of the Bureau of Special Investigation, a new post created to fight increasing street-gang activity and drug dealing. Levant has been a police officer for 25 years. He was interviewed by free-lance journalist Mary-Ann Bendel.



Glenn Levant

We're going to put these thugs away

USA TODAY: In the first two months of this year, 50 people were killed in gang-related murders in Los Angeles and at least that many bystanders were killed or wounded. The LA police department has been cracking down with massive arrests the last three weekends. Is it working?

LEVANT: I certainly hope so. We have been arresting 400 gang members each weekend for everything from jaywalking to murder. Those convicted of the sale of narcotics will be getting between one and 40 years in prison.

USA TODAY: Last week, for the first time in several years, the police used the battering ram to break into houses where drugs were being prepared. When it was first used, there was a hue and cry against it, but now many people are supporting its use. Why the change?

LEVANT: People are fed up to the gills with drugs and gangs in their neighborhoods. The last seven times we used the ram, people have applauded. This last week, people were waking their children up and taking them out in their nightclothes and clapping. People were coming up and asking Chief Darryl Gates and the ram operators for their autographs like we were celebrities.

USA TODAY: Is the problem of drug gangs confined

neighborhood.

USA TODAY: How does the public view these dealers?

LEVANT: There is the real problem: the demand for drugs. I wish people realized that every time they buy dope, they're contributing to murder and mayhem.

USA TODAY: So you don't think there's any such thing as a "recreational" drug?

LEVANT: That's a contradiction in terms. There is no such thing. The money is going right back into buying guns to kill people with. Who knows who's next?

USA TODAY: What kinds of young people join these gangs?

LEVANT: These are morons, out-and-out hoods. I can't say anything good about them. I don't think they can read — which is another problem, the dropout rate in this country. But our message is this: if you use drugs, you'd better be prepared to pay the consequences, because you're going to go away for a long time — and we're going to take away everything that you ever bought with a drug dollar.

USA TODAY: Does that include cars and other property?

LEVANT: We'll take their shoes away from them, if we have to. We take clothes, jewelry, houses, cars, real property. Anything that they own that they bought with drug money, we're going to strip away, and we use that money we get from them to fight the war against other people like that. Just prosecute them to death.

USA TODAY: What about those who are buying the drugs? How do you deal with them?

LEVANT: If we see someone who is a buyer of drugs and he happens to be driving — and in Los Angeles, everyone has a car — he walks home after he gets out of jail. We keep the car, using the federal civil forfeiture laws. We've done that since October, and that makes a pretty good statement. We've taken everything from a '52 pickup truck to a brand-new Porsche.

USA TODAY: Are the cars returned?

LEVANT: They don't get them back. If you use any kind of conveyance — such as a car — to transport any kind of narcotics, that car is gone.

USA TODAY: How do you stop the flow of drugs to

Feds target drug gangs across USA

The FBI and the Drug Enforcement Administration have entered into a joint drug-fighting effort in six major cities in the USA: New York, Miami, Chicago, Houston, Los Angeles and San Diego.

Sue Schnitzer, FBI spokeswoman, explains the operation:

"We are investigating the ma-

for drug cartels and looking at drugs as a business. We are focusing our resources on those criminal enterprises such as we have done in the investigations of organized crime.

"We consider drugs a serious problem and are focusing a good deal of manpower on this problem. We will be using a variety of

investigative techniques, such as court-authorized electronic surveillance."

Gang operations involving drug dealing also have been reported in Boston, Cleveland, Dallas, Denver, Fort Lauderdale, Fla., Hartford, Conn., Kansas City, Philadelphia, Washington, D.C., and Toronto.

these gangs from such places as Mexico or Panama? Economic sanctions?

LEVANT: Just recently, narcotics detectives in Los Angeles raided a chemical lab that had American-manufactured chemicals readily available for sale for legitimate purposes. But in combination, you can make all kinds of drugs. They got enough chemicals in this one clandestine lab to make about 500 pounds of "speed."

USA TODAY: So the problem isn't just cocaine and marijuana from the Latin American countries?

LEVANT: If there's a demand, people are going to supply the drugs. If it's not cocaine that's popular this week, LSD will come back, which you can make very easily. Or meth, or speed. This is a very abusive society we've got here. We've got 25 million people in this country who use narcotics on a fairly regular basis.

USA TODAY: What does this mean for the USA's young people? Are we in danger of losing a whole generation to drugs?

LEVANT: We have a head start toward saving a generation of kids because in 1983 we started something called the DARE program, which stands for Drug Abuse Resistance Education — an elementary-school, officer-led educational program that's designed to educate children into basically how to resist the peer pressure.

USA TODAY: Is it working?

LEVANT: Absolutely. We've been testing it for seven years. It's now been adopted in 34 states. The Department of Defense has picked it up for all the overseas schools.

USA TODAY: The peer pressure seems to be so great to join a gang. How can a police program counter that?

LEVANT: It's the same kind of peer pressure to stay out of drugs as is involved in staying out of gangs. As a matter of fact, the DARE program has a couple of lessons in it that are designed to help kids get through that. Unfortunately, in some parts of this county, there are places where parents are reluctant to let their kids play in the neighborhoods or even go to school unattended because of the gang involvement. We intend to get rid of these heavy negative role models in the community so there's no one to look up to.

USA TODAY: Why not legalize cocaine and marijuana? Wouldn't that eliminate the profits?

LEVANT: Why hasn't any country in the world that has ever had legal narcotics ever stuck with it? All that does is it exacerbate the problem. Look at the history of a country like China. People forget the British were the biggest dope pushers in history, when they used opium to keep the Chinese population subjected. Now, it's a death penalty in China. It's illegal in the countries that export narcotics to the United States.

USA TODAY: So legalization doesn't work?

LEVANT: England had a horrible social experiment in the '60s when they used to say, "Poor heroin addicts, they're just sick people. Why don't we give them free heroin?" What resulted was that more and more people who were not addicted becoming addicted to heroin, so they abandoned that project. No place in the world that has ever experimented with legalizing narcotics has done it successfully.

The question: Recriminalized?

long-awaited blow to organized crime.
— Patrick Doyle

Use revenues for benefit of the people

the pipeline boom, the state always astute in their search for revenue, legalized a future rich marijuana. I'm sure there are other alternatives for the state government so. I resent being told what is good. I side with the government, for I do know what is best for the people. I would vote to recriminalize providing the revenue is used for the people's benefit, for those who will be paying the price.

— Paul S. McGiboney

Home-grown products keep money in state

hypocritical to criminally punish marijuana while legally sanctioning alcohol. Alcohol creates more social problems than marijuana. The marijuana law was issued by the people; so it's always being repealed. People are realizing that fighting a losing battle. It seems like the state is spending a lot on its hysterical anti-drug message.

They point to advantages for the crowd. Alaska, a state without manufacturing or agriculture, exports its smaller number resources to bring in revenue. Home-grown products — even marijuana — keep money from leaving the state.

— Michael Hootch
Palmer Correctional Center

Changing law won't stop flow of drugs

Do not believe that after all the legal changes for the present law, someone will spend more money to change them. A known fact that the government gets 10 percent of the drugs coming into the state. So changing the law won't stop the money on education. Young people use marijuana, which leads to harder drugs. But taking away alcohol can lead to alcoholism. No one can take away liquor stores how much one can buy.

Alaska for the great outdoors and its policy on marijuana. If it offends the state has an open policy for it. I suggest you find a state that does not.

— David W. Konselman

Police should concentrate on important things

I am a contributing member of society. I have a decent job and work hard. I donate blood. I know first aid and am planning on taking a CPR course. I have helped strangers get stuck. I think I am more of a help than a hindrance.

Would I go to jail because I like to drink beer from work and take a couple of dollars? How long will it be before they are taking people for the beer in their police departments of Alaska more concerned with thieves, burglars and leave people like me



(Two-thirds of the offenders in Alaska's jails are there for alcohol related crimes.) If legislators need something to do may I suggest something be done to alleviate our obvious problems rather than restrict what we can do within our own homes.

— Dave Lloyd

A. Industry should be regulated like any another

Recriminalization sounds simple enough, doesn't it. But let's look at some of the ramifications.

Fact: At the present time, it is unlawful for any juvenile to possess or in any way be associated with marijuana. This is reasonable; minors are also prohibited by law from association with alcohol or tobacco. Recriminalization of marijuana would in no way alter the situation vis-a-vis our youth.

Fact: At least part of the attraction to youngsters of marijuana is its illegality. Can anyone imagine that making marijuana "more" illegal will reduce this appeal?

Fact: The 18th Amendment to the U.S. Constitution criminalized the use and possession of intoxicating alcohol. This law did not stop people from drinking. It did cause many deaths from poisonous, home-made "bath-tub gin," and made the Mafia into the very powerful criminal organization that it remains today.

Fact: With all the federal, state and local money, material and energy already being used to combat the cultivation, importation, and distribution and consumption of marijuana, it remains a billion-dollar industry, not one penny of which goes to government revenues.

I suggest the state government decriminalize marijuana completely and regulate it like any other industry: business licenses, quality control, import fees, etc. And best of all, tax the hell out of it. We could probably straighten out our current fiscal mess in six months or less.

— Ken Landfield
Homer

A. Alcohol is a much more

Abuse, Dr. Max Fink reported new evidence failed to show any signs of brain damage or other significant differences between users and non-users. "The evidence is fairly clear that chronic cannabis use is not accompanied by the things written in the medical literature in the 1930's and 1940's."

Another scientist on the panel, Dr. Thomas Bryan, president of the private Drug Abuse Council in Washington, said decriminalization "makes sense on the basis of the evidence that's in."

Dr. Robert DuPont, head of the National Institute on Drug Abuse, reported, "There is no question that alcohol and tobacco are causing more health problems than marijuana," and that marijuana "lacks the 'side effects' of either alcohol or tobacco."

People supporting recriminalization should rethink their antiquated concepts before passing a bill that would have such detrimental consequences and concentrate on real killers, like alcohol. But oh, I forgot... some of you are "social drinkers," aren't you?

— S. Nilsson

A. A tax should be placed on marijuana

In light of the current economic downturn trend of the state of Alaska, falling oil prices, massive budget cuts, etc., pot should not only not be recriminalized, it should be legalized and taxed — just like cigarettes and liquor in the Lower 48.

— Cynthia Rohrer

A. Legislators have no business changing court decisions

So certain members of our legislature have seized upon the issue of marijuana recriminalization once again.

Never mind the fact that it is not in the scope of their duties to change judicial findings. Never mind that it will cost in excess of \$1 million to prosecute a minimum caseload over five years. Never mind that despite Mr. Martin's and Mr. Fischer's claims, no new evidence of harmful side effects have

More readers reply to the question: Should marijuana be recriminalized?

A. Law didn't work before, and it won't work now

If recriminalization ever occurs, as it might next year when election year politics forces our political heroes to grasp any stance that could get them elected, the real effect will be minimal. It should be obvious that a law that did not work 10 years ago certainly will not work any better now.

Using even the federal government's sadly erroneous statistics, the number of people who smoke marijuana at a minimum equals the number it took to elect Ronald Reagan. There is a force at work here that will not simply disappear under a new law.

We do need a new marijuana law, one that recognizes the existing realities and doesn't cater to the media hysteria usually supported by politicians.

The advantages to legal marijuana are overwhelming. If such a law was passed we would finally have the necessary instrument to bring the drug under control. Being able to license, tax, collect, inspect and create regulations preventing the sale to minors are all easily possible once the initial step is taken.

Since it is nearly impossible to believe such a drastic revision in thinking will take place, one can only assume that the people of this state are in for a lot of tedious and ultimately unsuccessful debate on this issue.

The status quo is infinitely preferable to a return of a law that never worked. Until we finally realize the time has come to stop enforcing hypocritical laws, the best advice we can follow is this: If you think smoking marijuana is bad for you, then don't use it. If you are concerned that drugs are a problem with your children, concentrate your efforts on getting them to stop.

— Mark Phillip Archer

A. People aren't getting the truth about marijuana

The past and present attitudes about marijuana are based on ignorance and fear caused by misleading government reports that are so exaggerated that they are almost outright lies. It is incredible that our government can get away with deceiving the people like that.

Also from the people I have talked to, the police realize that alcohol causes many, many more problems and dangerous situations than pot. I believe that if people knew the truth about the drug, they would not be afraid to support our right to use it.

— David Wheeler

A. Use should be a matter of personal choice

One of the primary motivations in recriminalizing marijuana appears to be a concern for youth. This seems to suggest that some parents, who've no control over their youngsters, expect the state to assume responsibility for raising their children.

Consumption of alcohol by an adult, in a responsible manner, is nearly universally accepted. Irresponsible consumption, without regard for the relevant laws, creates a problem which concerns and affects the society.

Private cultivation and use of marijuana, when practiced as intended by the state, should not be a problem for or a concern of the society. Legal use currently is, as it should be, a personal choice made by an informed adult.

All young people are exposed to substances and practices which are illegal for them. Most do not acquire tastes for these merely through exposure.

An educated, aware youngster who has

will give a long-awaited blow to organized crime overall.

— Patrick Doyle

A. Use revenues for benefit of the people

During the pipeline boom, the state government, always astute in their search for possible future revenue, legalized a future rich harvest: marijuana. I'm sure there are other rich future pastures for the state government to graze in also.

Most people resent being told what is good for them, but I side with the government, for indeed, they do know what is best for the people. I would vote to recriminalize marijuana, providing the revenue is used conspicuously for the people's benefit, for they are the ones who will be paying the fines.

— Paul S. McGiboney

A. Home-grown products keep money in state

No! It is hypocritical to criminally punish users of marijuana while legally sanctioning the use of alcohol. Alcohol creates more social and medical problems than marijuana.

In Alaska the marijuana law was issued by the courts, not the people; so it's always being fought. People are realizing that fighting marijuana is a losing battle. It seems like the government is spending a lot on its hysterical anti-marijuana message.

Factors may point to advantages for the pro-cannabis crowd. Alaska, a state without significant manufacturing or agriculture, depends on the exports of its smaller number of natural resources to bring in revenue. Home-grown products — even marijuana — keep vital money from leaving the state.

— Michael Hootch
Palmer Correctional Center

A. Changing law won't stop flow of drugs

It's hard to believe that after all the legal battles fought for the present law, someone wants to spend more money to change them. It's a well known fact that the government seizes only 10 percent of the drugs coming into the country, so changing the law won't stop the flow! Spend the money on education.

True, many young people use marijuana, and it is a door to harder drugs. But taking that first drink can lead to alcoholism. No one is telling the liquor stores how much one can buy.

I came to Alaska for the great doors and it's privacy policy on marijuana. It offends someone that the state has an open policy for privacy then I suggest you find a state that has a closed one.

— David W. Konselman

A. Police should concentrate on important things

I feel like I am a contributing member of the community. I have a decent job and work with the public. I donate blood. I know first aid and am planning on taking a CPR course. Twice this year I have helped strangers get their cars unstuck. I think I am more of a help than a threat.

Why should I go to jail because I like to come home from work and take a couple of bong hits? How long will it be before they start busting people for the beer in their fridge? The police departments of Alaska should be more concerned with thieves,



(Two-thirds of the offenders in Alaska are there for alcohol related crimes. Legislators need something to do may I suggest something be done to alleviate our problems rather than restrict what we do within our own homes.)

— Dave

A. Industry should be regulated like any another

Recriminalization sounds simple and doesn't it. But let's look at some ramifications.

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Fact: With all the federal, state and money, material and energy already used to combat the cultivation, importation and distribution and consumption of marijuana, it remains a billion-dollar industry, not one penny of which goes to government revenues.

I suggest the state government decriminalize marijuana completely and regulate it like any other industry: business licenses, quality control, import fees, etc. The best of all, tax the hell out of it. We probably straighten out our current mess in six months or less.

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A. Alcohol is

caused by misleading government reports that are so exaggerated that they are almost outright lies. It is incredible that our government can get away with deceiving the people like that.

Also from the people I have talked to, the police realize that alcohol causes many, many more problems and dangerous situations than pot. I believe that if people knew the truth about the drug, they would not be afraid to support our right to use it.

— David Wheeler

A. Use should be a matter of personal choice

One of the primary motivations in recriminalizing marijuana appears to be a concern for youth. This seems to suggest that some parents, who've no control over their youngsters, expect the state to assume responsibility for raising their children.

Consumption of alcohol by an adult, in a responsible manner, is nearly universally accepted. Irresponsible consumption, without regard for the relevant laws, creates a problem which concerns and affects the society.

Private cultivation and use of marijuana, when practiced as intended by the state, should not be a problem for or a concern of the society. Legal use currently is, as it should be, a personal choice made by an informed adult.

All young people are exposed to substances and practices which are illegal for them. Most do not acquire tastes for these merely through exposure.

An educated, aware youngster who has been trusted to take responsibility for his or her actions will develop the self-esteem necessary to say no to illicit substances.

Perhaps parents should expend less effort lobbying against recriminalization and more nurturing a love of life and reality in their children. The resulting adult will be responsible, reliable and fully capable of making informed choices.

— K. J. Ferencak

A. All drugs should be made legal

The Drug Enforcement Administration suspects that more than \$110 billion in drug money is spent each year. This money goes directly to underworld coffers to propagate further crime. Since the Constitution guarantees the pursuit of happiness, it seems that all drugs could be legalized, their price doubled and a fraction of the proceeds, say \$30 billion, spent on enforcement and rehabilitation. The remainder could pay off the deficit or provide free medical treatment for all Americans.

Rampant drug abuse is already being addressed by employers in the form of drug tests. These tests may become more effective as the hysteria of "getting caught" is replaced with the prospect of effective, well-funded treatment. Furthermore, repeal of drug laws would enable users to discuss their problem openly with friends and family whose participation in therapy proves invaluable. Emphasis will shift from fear of retribution to an easily cultivated desire to be of sound mind and body.

The most important element of this agenda, in my mind, is that a tremendous amount of money will be redirected from destructive fugitives to constructive social programs. This

A. Won't stop flow of drugs

It's hard to believe that after all the legal battles fought for the present law, someone wants to spend more money to change them. It's a well known fact that the government seizes only 10 percent of the drugs coming into the country, so changing the law won't stop the flow! Spend the money on education.

True, many young people use marijuana, and it is a door to harder drugs. But taking that first drink can lead to alcoholism. No one is telling the liquor stores how much one can buy.

I came to Alaska for the great outdoors and it's privacy policy on marijuana. If it offends someone that the state has an open policy for privacy then I suggest you find a state that has a closed one.

— David W. Konselman

A. Police should concentrate on important things

I feel like I am a contributing member of the community. I have a decent job and work with the public. I donate blood. I know first aid and am planning on taking a CPR course. Twice this year I have helped strangers get their cars unstuck. I think I am more of a help than a threat.

Why should I go to jail because I like to come home from work and take a couple of bong hits? How long will it be before they start busting people for the beer in their fridge? The police departments of Alaska should be more concerned with thieves, killers, and rapists and leave people like me alone.

— Michael S. Cheatham

A. Inside one's home should be private

When the Alaska Senate starts making the payments on my home, then they might be able to tell me what I can and cannot do in the privacy of my own home!

Alaska should legalize marijuana and use the taxes on it to balance the state's budget. They would reap more benefits that way, more than raising fines and imposing jail sentences. The jails are overcrowded now!

You get more flies with honey!

— Brenda Hixson

A. Alaskans not ready to give up freedoms

The state Senate should leave the marijuana law as it stands. Although a native Alaskan myself I can empathize with the folks who moved up from the Lower 48 because they were tired of bureaucratic encroachment upon their constitutional rights by unfair marijuana laws.

Now, after having become used to the relative freedom of choice provided by being legally allowed to grow and use pot in our own homes, our legislators suppose we are prepared to give it up? Get real! A majority of us have tried pot or continue to enjoy a puff now and then so our legislators shouldn't forget who gave them their authority in the first place!

Marijuana use is a rather benign vice compared to the legal drug alcohol.

Recriminalization sounds doesn't it. But let's look at the ramifications.

Fact: At the present time, many juveniles possess or are associated with marijuana. The minors are also prohibited from association with alcohol. Recriminalization of marijuana will alter the situation vis-a-vis.

Fact: At least part of the reason the youngsters of marijuana is its association with alcohol. "more" illegal will reduce this.

Fact: The 18th Amendment to the Constitution criminalized possession of intoxicating alcohol. It did not stop people from drinking because many deaths from home-made "bath-tub gin," were caused by the Mafia into the very powerful organization that it remains today.

Fact: With all the federal money, material and energy used to combat the cultivation and distribution and control of marijuana, it remains a profitable industry, not one penny of government revenues.

I suggest the state decriminalize marijuana to regulate it like any other industry, quality control, import best of all, tax the hell out of it, probably straighten out our mess in six months or less.

A. Alcohol is a much more deadly drug

It's time to get out of the Stone Age (the pun) and recognize and prescribe marijuana to alleviate cancer patients going through chemotherapy. It relieves pressure on the eyes, suffers and psychologists and have also used it as an aid in the treatment of chronic pain.

During a New York Academic Conference on Chronic Pain sponsored by the National Institute on Drug Abuse,

you tell 'em

Q.

In responding to the Tower Report on the Iran-contra affair, Reagan admitted the Iran arms sale was a mistake. The president took credit for the actions of his subordinates in the diversion of arms sale to the Contras, but he said the diversion was without his knowledge.

As evidence that he's learned his lesson and is ready to move on, Mr. Reagan's recent staff changes and announcements to bring covert operations under review.

His supporters say the president and new staff will restore his credibility and influence.

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A. Be regulated like any another

Recriminalization sounds simple enough, doesn't it. But let's look at some of the ramifications.

Fact: At the present time, it is unlawful for any juvenile to possess or in any way be associated with marijuana. This is reasonable; minors are also prohibited by law from association with alcohol or tobacco. Recriminalization of marijuana would in no way alter the situation vis-a-vis our youth.

Fact: At least part of the attraction to youngsters of marijuana is its illegality. Can anyone imagine that making marijuana "more" illegal will reduce this appeal?

Fact: The 18th Amendment to the U.S. Constitution criminalized the use and possession of intoxicating alcohol. This law did not stop people from drinking. It did cause many deaths from poisonous, home-made "bath-tub gin," and made the Mafia into the very powerful criminal organization that it remains today.

Fact: With all the federal, state and local money, material and energy already being used to combat the cultivation, importation, and distribution and consumption of marijuana, it remains a billion-dollar industry, not one penny of which goes to government revenues.

I suggest the state government decriminalize marijuana completely and regulate it like any other industry: business licenses, quality control, import fees, etc. And best of all, tax the hell out of it. We could probably straighten out our current fiscal mess in six months or less.

— Ken Landfield
Homer

A. Alcohol is a much more deadly drug

It's time to get out of the Stone Age (pardon the pun) and recognize reality. Doctors prescribe marijuana to alleviate pain for cancer patients going through chemotherapy. It relieves pressure on the eyes of glaucoma sufferers and psychologists and psychiatrists have also used it as an aid in therapy.

During a New York Academy of Science Conference on Chronic Cannabis Use, sponsored by the National Institute on Drug

you tell 'em

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Are you satisfied with the president's response to the Tower Commission Report?

In responding to the Tower Commission Report on the Iran-contra affair, President Reagan admitted the Iran arms deals were a mistake. The president took responsibility for the actions of his subordinates, including the diversion of arms sale profits to the contras, but he said the diversion occurred without his knowledge.

As evidence that he's learned his lesson and is ready to move on, Mr. Reagan cited recent staff changes and announced several steps to bring covert operations under tighter review.

His supporters say the president's speech and new staff will restore his credibility and influence.

Council in Washington, said decriminalization "makes sense on the basis of the evidence that's in."

Dr. Robert DuPont, head of the National Institute on Drug Abuse, reported, "There is no question that alcohol and tobacco are causing us far more health problems than marijuana does," and that marijuana "lacks the 'lethal effects' of either alcohol or tobacco."

People supporting recriminalization should rethink their antiquated concepts before passing a bill that would have such detrimental consequences and concentrate on real killers, like alcohol. But oh, I forgot ... some of you are "social drinkers," aren't you?

— S. Nilsson

A. A tax should be placed on marijuana

In light of the current economic downturn trend of the state of Alaska, falling oil prices, massive budget cuts, etc., pot should not only not be recriminalized, it should be legalized and taxed — just like cigarettes and liquor in the Lower 48.

— Cynthia Rohrer

A. Legislators have no business changing court decisions

So certain members of our legislature have seized upon the issue of marijuana recriminalization once again.

Never mind the fact that it is not in the scope of their duties to change judicial findings. Never mind that it will cost in excess of \$1 million to prosecute a minimum caseload over five years. Never mind that despite Mr. Martin's and Mr. Fischer's claims, no new evidence of harmful side effects have been discovered — a fact recognized by our own drug and alcohol abuse division. Never mind that the real drug problem in Alaska is alcohol. Never mind that tens of thousands of responsible adults will become criminals.

Let's face it, what we really have here is the posturing of some politicians to join this year's fad issue, drug abuse. If you thought the prospects of ABC's telemovie "Amerika" alarming, wait til you see Mr. Martin and Mr. Fischer's version of "Alaska."

— Danny Stone

Send comments to PEOPLE'S FORUM, the Daily News, Box 14-9001, Anchorage, 99514-9001. LETTERS MUST BE RECEIVED BY NOON THURSDAY. Limit letters to 200 words and include a daytime phone number.

Q.

Should marijuana be recr

A. Making it against the law won't work

I have a question for all of the adults of Alaska: everyone, politicians, priests, police officers, lawyers, judges, teachers, businessmen, doctors. Would you be willing to give up that beer after work, sacrifice the wine at dinner or forego your martini lunch to help save some poor alcoholic from getting a drink?

Prohibition never worked, and never will. Recriminalizing marijuana won't work either. If you drink or smoke cigarettes and are in favor of recriminalizing marijuana, then you are a hypocrite and need to take a moment to think about what your real objectives are.

— Rick Kinsey

A. There are other ways to fight abuse

Sen. Fischer's proposal to recriminalize marijuana reminds me of a dog, nailed in the face by a porcupine, that keeps going back for more. Are we so blind to the history of prohibition? Anti-drug laws have failed universally to discourage abuse and succeeded in making organized crime rich and powerful beyond belief.

Chemical dependency and abuse can be fought responsibly through education and supportive behavior towards young people. Over regulating every aspect of life conveys the message to our youth that individual responsibility is not respected by our leaders.

From an economic standpoint, anti-drug laws keep the rewards of the trade so high that traditional enforcement techniques are doomed to failure from the start. The taxpaying citizen then foots the bill for enforcement, the judiciary and incarceration — and as victim, for the big bucks to support a habit must come from somewhere.

— Richard Tandlich

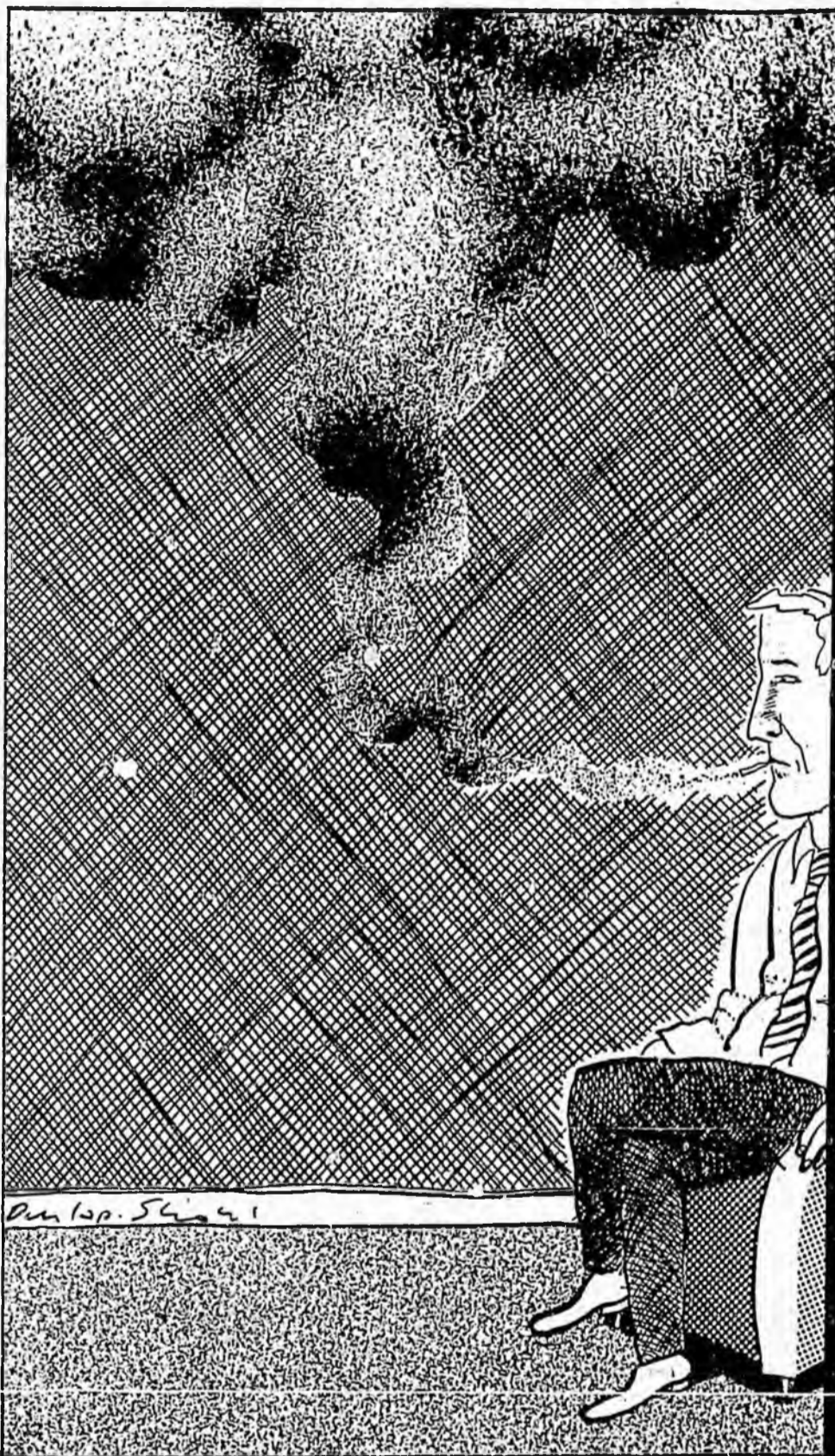
A. Smokers and dopers should be segregated

Recriminalize marijuana for condo and apartment dwellers and their children. All apartments should be either for smokers or for non-smokers in an area. Those who do not smoke anything have the right not to be force fed.

A lady of the evening moved in under me, chain smoked cigarettes and used pot. My circulation was so impaired from what came up around kitchen and bathroom pipes, I was hospitalized. If my window was open and she opened hers, her poisons were dumped up into my apartment, depriving me of having fresh air in my own home. It would be better for clean apartment dwellers if their neighbors just boozed it up, and left the nicotine and pot alone.

I want my rights to privacy of smoke and pot free air in my home. That privacy has again been intruded upon for the first time in about four years. My health had improved so much in four years. Now within six months my circulation has decreased. I have developed sinusitis, bronchitis, dulled thinking, poor circulation, sleeping problems, loss of energy — all because new tenants who use nicotine and pot moved under me again. They invade the privacy of my home with their addictions and I have no way of escape. I want a law that causes dopers to stop dumping their dope into my home.

— Elizabeth Montgomery



that take away our right to privacy. But the right of a mature individual to exercise free choice is one thing . . . and a law that puts pot in the hands of 9-year-olds is another.

As an Alaskan, I'll be pleased when we change our drug law. If our choice is between a dubious argument that we endanger certain privacy rights on the one hand, or the well-being of Alaska's youth on the other, I don't think there's a choice at all.

I know that young Alaskans have recognized the double standard. Last October, the executive board of the Alaska Association of School Governments — made up of students from all over Alaska — unanimously adopted a resolution calling for the recriminalization of marijuana. They felt that the state's marijuana law was making the fight against drug abuse in their schools more difficult.

We need to listen to the voices of young Alaskans.

— Frank H. Murkowski
United States Senator

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— Richard D

A. No amount in the home should be illegal

I do not smoke, drink or use. However, what one does in his or her house is his or her business. Is being private legal? Alcohol does far more physically, environmentally, and socially. No amount of marijuana possession in a home should be illegal. The last cop in Anchorage was killed by an drunk. The latest murder trial involved a killing committed by two drunks in. Need I say more?

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A. THC least harmful of intoxicants

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— Paul Purtle

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For too long people have falsely believed that marijuana was a rung on the ladder to heroin use and nowadays to cocaine addiction and that by eliminating this rung we could save people from addiction. But in reality those people will become addicted anyway. So long as mind-numbing substances such as heroin and cocaine are available and so long as our society continues to abuse so many of its citizens, some will seek to escape their pain in this way!

For too long we have heard how we should "ask not what your country can do for you, ask what can you do for your country" and not enough about what is America doing for its growing multitudes of poor, homeless, and hopeless citizens. If America is so great why are so many Americans so damn unhappy!

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A. Others issues facing us are more pressing

A bill to recriminalize the possession of marijuana in one's own home should not be passed. To do so would put many otherwise law-abiding citizens in a position contrary to the law.

When legislation was passed to decriminalize the possession of marijuana in the privacy of one's home, it reflected the pioneer spirit of Alaskans, and showed respect for the privacy and independent judgment of the individual.

Those who argue that marijuana in the home may adversely influence children may be right. If a parent is irresponsible enough to abuse such a substance in the company of a child, it could be considered a form of child abuse. But there is just as much of a potential for the abuse of many things in the home, from aspirin to alcohol.

In light of the state's current fiscal predicament, and considering a limited legislative session, I think our lawmakers would do well concentrating on the more pressing issues facing Alaska rather than squelching the independence of its citizens.

— Chas Jones

A. Alaska's youth appear to back recriminalization

I recently advised the state legislature what Public Safety Commissioner Bob Sundberg said at my Senate hearing last year:

"Only in Alaska can one sit at home and smoke marijuana secure in the knowledge that you are breaking federal law with the blessing of the State Supreme Court."

No one wants to see changes in our laws

that take away our right to privacy. But the right of a mature individual to exercise free choice is one thing . . . and a law that puts pot in the hands of 9-year-olds is another.

As an Alaskan, I'll be pleased when we change our drug law. If our choice is between a dubious argument that we endanger certain privacy rights on the one hand, or the well-being of Alaska's youth on the other, I don't think there's a choice at all.

I know that young Alaskans have recognized the double standard. Last October, the executive board of the Alaska Association of School Governments — made up of students from all over Alaska — unanimously adopted a resolution calling for the recriminalization of marijuana. They felt that the state's marijuana law was making the fight against drug abuse in their schools more difficult.

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A. THC least harmful of intoxicants

Of all the intoxicants that are legal in our society, (such as alcohol and nicotine), THC, the active ingredient in marijuana, is the least harmful. Rarely does violence occur with its use, and physical dependence has yet to be proved.

A totally drug-free society is without doubt the ideal, but in reality I doubt this will happen. Society would be a lot better off to totally legalize marijuana and recriminalize alcohol but then the lesson of America's criminalization of alcohol should apply to the recriminalization of marijuana.

— John Byrd

A. Legalizing marijuana was a mistake

Yes, marijuana should be recriminalized without delay. Marijuana is one more ill that is sinking our nation.

Debate this with any doper and you'll get the same argument every time: "It's no worse than alcohol." That may be true, and while we need to work harder on all forms of alcohol abuse, two wrongs don't make a right. Why add to our problems? Besides, alcohol is sold by legal, licensed and monitored stores.

"I can do what I want in the privacy of my home." OK, but how does most marijuana get there? Not by home-grown plant — but by drug dealers. By allowing marijuana in homes, we're creating a large market for drug dealers to get rich. These nice people don't just sell marijuana, but other more deadly drugs that people are willing to kill or steal to get.

At a time when most people are trying to get the message out that drugs kill, our

legislators need to do their part the mistake that was made in marijuana. Do it for our children's society. Recriminalize now!

— Rich

A. No amount in the home should be illegal

I do not smoke, drink or however, what one does in his house is his or her business. Is private legal? Alcohol does far more physically, environmentally, and pot. No amount of marijuana in home should be illegal. The last case in Anchorage was killed by a drunk. The latest murder trial killing committed by two drunks. Need I say more?

A. Making it illegal is unenforceable

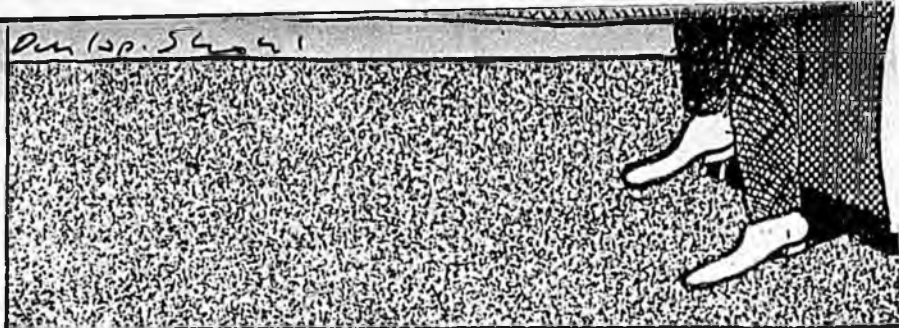
If a person engages in an activity that does not harm another person government have the right to prohibit activity? This is the fragile corner society: not our representative government, but our freedom. Harm to society from smoking is not substantiated and is exaggerated, exploiting our emotional reaction information we do receive.

Making an activity illegal necessarily stop a person from that activity. A person will choose smoking marijuana in private if unpleasant consequences outweigh pleasure it provides and if the consequences are relatively certain.

In fact, there is no way to stop from smoking marijuana in private an unacceptable intrusion of privacy extremely expensive. It really doesn't matter whether our legislators "recriminalize" possession of marijuana or not, the law is unenforceable here as it is anywhere in the U.S.A.

A. Marijuana not a 'rung' on the ladder to addiction

Have I missed a large crime committed by the cursed potheads concocted a new reason to overcrowd already over-capacity jails? We have resources to attack the enormity of their numbers have reached many. Besides, most of the crime associated with marijuana use is the result of trying



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— Paul Purtle

A. Making it illegal is unenforceable

If a person engages in an activity in private that does not harm another person, should the government have the right to prohibit that activity? This is the fragile cornerstone of our society: not our representative form of government, but our freedom. The alleged harm to society from smoking marijuana is not substantiated and is exaggerated by exploiting our emotional reactions to the information we do receive.

Making an activity illegal will not necessarily stop a person from engaging in that activity. A person will choose to stop smoking marijuana in private only if the unpleasant consequences outweigh the pleasure it provides and if the consequences are relatively certain.

In fact, there is no way to stop a person from smoking marijuana in private that is not an unacceptable intrusion of privacy and extremely expensive. It really doesn't matter whether our legislators "recriminalize" the possession of marijuana or not, the law is just as unenforceable here as it is anywhere else in the U.S.A.

— Ann Riley

A. Marijuana not a 'rung' on the ladder to addiction

Have I missed a large crime wave committed by the cursed potheads or have we concocted a new reason to overcrowd our already over-capacity jails? We haven't the resources to attack the enormity of users as their numbers have reached many millions. Besides, most of the crime associated with marijuana use is the result of trying to obtain

it. If it was legal and sold under regulations like alcohol and other controlled substances for a fair market price the large profit motive would be eliminated and with it the host of greedy vampires who control the market now.

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— Gerald Hudspeth

A. Other more harmful things remain legal

Why shouldn't the legislature take away the right to smoke cigarettes and have drinks in one's own home, to buy our own toilet paper and food while they're at it? Communists see life much the same way.

If marijuana is a health issue, shouldn't premarital sex be outlawed? It's a health hazard now.

Marijuana is not addictive like alcohol, coffee, and cigarettes, which are legal!

If a person 21 and over is legally responsible for their own actions, does the legislature have the right to tell them what they can smoke? They've already told us where we can or cannot smoke, now it's what we can or cannot smoke! How petty!

The law won't stop people from smoking it, it will only crowd the already overcrowded jails and cost taxpayers more in drug enforcement.

Not that it's OK to smoke and drive or perform any other public service. It should be punished just as severely as drunk drivers.

But to grow small amounts at home for personal use, who is it really affecting? The people or the legislature because they can't use it for a scapegoat for other more serious issues at hand?

— Chris Hayden

More responses next Saturday

Next Saturday's People's Forum page will carry additional responses to the question: "Should marijuana be recriminalized?"

Legislators' anti-marijuana case full of smoke

By ROBERT WAGSTAFF

In 1975, the Supreme Court of Alaska found that naturally growing marijuana "does not constitute a public health problem with any significant dimensions. It is, for instance, far more innocuous in terms of psychological and social damage than alcohol or tobacco. ... It appears that effects of marijuana on an individual are not serious enough to justify wide-spread concern, at least as compared with the far more dangerous effects of alcohol, barbiturates, and amphetamines."

The Alaska Supreme Court found that the state failed to meet its substantial burden to show that the prohibition of the possession of marijuana in the home was supported by a legitimate state interest. Eloquently writing for a unanimous Court, Chief Justice Rabinowitz:

"Our territory and now state has traditionally been the home of people who prize their individuality and who have chosen to settle or to continue living here in order to achieve a measure of control over their own lifestyles which is now virtually unattainable in many of our sister states."

The nationally renowned *Ravin* decision was based upon an exhaustive trial record where all of the best-known experts testified. All studies and claims were examined. The ultimate conclusion was that none justified making the possession and use of marijuana by adults in private a crime.

This has not stopped the Alaska Legislature. The Alaska Legislature is a peculiar body. It is knowingly attempting to pass a patently unconstitutional bill because it



thinks the politics of an election year justifies it and attention can be diverted thereby from its fiscal mismanagement.

In fact, Senate Judiciary Chairman Jay Kerttula has himself said that the findings of harm listed in the bill won't convince a court to overturn the *Ravin* decision stating, "the findings in this bill are overstated and in some cases wrong." Nonetheless, Kerttula voted for the bill.

Indeed, the Alaska Legislature is a strange body. It is sworn to uphold the Constitution of Alaska, yet it is now hysterically stampeding to violate that very document. The supposed justification is a politically created report on marijuana whose author explains:

"As you requested, I have not included any research which disputes the findings set out in the bill."

The teaching of history is that marijuana is innocuous. Marijuana has been used throughout the world in various forms, concentrations and quantities for thousands of years. Nothing bad has happened yet.

In fact, there are no new marijuana studies or new findings of any significance. Only the old timeworn arguments of the 1930s have been dusted off and recovered.

The findings of the bill proclaim, for example, that THC, the psychoactive ingredient in marijuana, is stored in the body for

up to 30 days causing the user to smoke more, resulting in alteration of basic psychology. This statement is simply and inarguably medically untrue. The psychoactive part of THC, in fact, is broken down by the body soon after ingestion. Some residual metabolites stay in the body longer but significantly these are non-psychoactive and have no effect.

The bill also announces that it is possible to overdose on marijuana because it increases the effects of alcohol. God forbid that it interfere with the legislator's drug of choice!

In the history of the world no one has ever died from an overdose of marijuana. It is one of the least toxic drugs known to man. Laboratory experiments have shown that a potentially lethal dose is 40 thousand times the actual intoxicating dose. Marijuana has much less cross reaction with alcohol than barbiturates or tranquilizers such as Valium.

The bill also proclaims that marijuana is 10 times more powerful today than it was 10 years ago. There is no evidence such is the case. As with all of the supposed claims, the origins are obscure, the allegations unsupported. This is not surprising as the "public hearings" were as carefully orchestrated as the research report.

As to potency, The New York Times has reported an actual decrease in the strength of available marijuana between 1980 and 1986. As with alcohol, consumers compensate for higher potency by consuming smaller doses.

The bill asserts that marijuana causes schizophrenia and a dulling of the senses creating the possibility that the user is

'It (the legislature) is sworn to uphold the Constitution of Alaska, yet it is now hysterically stampeding to violate that very document.'

unable to respond to body signals. There is absolutely no credible clinical evidence that marijuana causes schizophrenia or any other psychiatric clinical effects. These findings are simply made up.

Finally, and predictably, the bill says that marijuana affects fetal development, sperm eggs and sexual hormones. There is no documented case of marijuana causing any genetic deformity. In fact, the National Academy of Sciences affirms that marijuana use has no effect on chromosomes or fertility.

If you are unhappy with the Alaska legislature, please let it know how you feel. The spotlight has been on the legislature because of its past mismanagements. The legislature is now attempting to escape this unwelcome attention by attacking traditional scapegoats.

Robert Wagstaff is an Anchorage attorney.

PORTAGE: Firm to tour lake

Continued from Page C-5

state's largest package tour operator through its cruise ships, railcars and Gray Line motorcoaches. It also owns Westmark Hotels, a chain of 17 Alaska and Canadian hotels.

Through Westours Inc., the corporation controls at least 60 percent of the state's expanding package tour trade, and a share of at least another 20 percent, according to James Needham, an Arthur Young & Co. manager who serves as a tourism trade consultant.

Broderick said that Gray Line, as required by a Forest Service stipulation, will reserve at least 60 percent of each Portage boat trip for over-the-counter sales. The rest may be booked by tour companies.

Gray Line also will foot the bill for a new Forest Service ranger who will ride with the boat and explain the glaciology of the lake area. About 25 minutes of the hour-long trip will be spent close to the glacier front, Broderick said.

Glacier calving occasionally causes chunks of ice to crash into the lake, but Forest Service officials are convinced that the boat can safely operate near the glacier. Similar tour boats now cruise in front of the Columbia Glacier, Du Lac said. However high winds, which often howl

through the lake area, may shut down operations about 12 days each season.

Holland America hopes to start lake-development construction this summer, and will bid all contracts with local companies, Broderick said.

Trump aims to buy landmark New York hotel

The Associated Press

NEW YORK — Developer Donald Trump has a handshake agreement to buy the landmark Plaza Hotel for about \$450 million, according to a report published Friday.

The Plaza's owners have agreed on basic terms with Trump on acquiring the

hotel and they are expected to sign a binding contract next week, according to sources quoted in The Wall Street Journal. One source said the agreement so far is based on a handshake.

A spokeswoman for Trump and a spokesman at Howard Rubenstein Associates, which represents Trump, did not

immediately return telephone calls seeking confirmation.

Another source quoted by the Journal said last month that Trump was the preferred bidder because it was felt that he was most likely to restore the hotel's lost luster.

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Connie & Otto Moulton

SYNOPSIS OF MARIJUANA

George Blernson and Otto Moulton

Superficially, marijuana appears to be mild and relatively harmless, but it is actually extremely dangerous and insidious, because:

1. Marijuana is strongly fat soluble, and so is stored for months in the fatty tissues of the body. These tissues act like time-release capsules, steadily feeding marijuana into the blood, and keeping the regular marijuana smoker in continual sedation.
2. An appreciable amount of marijuana is stored directly in the brain, which is 1/3 fat tissue. Since marijuana is continually present, it steadily damages the brain cells.
3. The severe effect of marijuana on the brain was demonstrated in experiments on monkeys performed by Dr. Robert Heath of Tulane Medical School, who is world-renowned for his brain research. The greatest damage occurred in the limbic region, deep in the brain, which is the center of motivation. The monkeys smoked two monkey-sized joints of marijuana per day, five days a week, for six months. After two months, brain waves from probes in the limbic region became severely distorted, and remained distorted six months after smoking had stopped. Then, the brain cells were examined under the electron microscope. Abnormalities were so great the brain appeared to be senile.
4. Marijuana is often claimed to be non-addictive, because physical withdrawal symptoms are mild after one stops smoking it. However, the reason for this is that marijuana cannot be withdrawn rapidly; the body has its own supply. It takes one week for the stored marijuana to drop to 1/2, two weeks to drop to 1/4, three weeks to 1/8, etc.
5. Regular marijuana smoking produces a drug-dependent personality, and generally leads to escalated use of many drugs, because:
 - a. As marijuana builds up in the body, it gradually drags the smoker into continual sedation, separating him from reality and forcing him into a dream world of drugs.
 - b. Marijuana weakens the center of motivation of the brain, and in time permanently damages it. Hence, prolonged marijuana smoking destroys normal motivational reflexes, so that the smoker experiences great difficulty living a drug-free existence.
 - c. Since marijuana inhibits nausea, people with marijuana stored in their bodies can drink alcohol very heavily without getting sick. Consequently, marijuana has caused an epidemic of alcohol abuse, drunk driving, and death from alcohol overdose.



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Connie & Otto Moulton

SUMMARY OF THE BIOLOGICAL EFFECTS OF MARIJUANA

by George Biernson and Otto Moulton

Marijuana, known scientifically as *cannabis sativa* and popularly as pot, contains 61 chemicals, called cannabinoids, which are found nowhere else. Its primary psychoactive ingredient is delta-9-tetrahydrocannabinol or delta-9-THC. Three other cannabinoids are known to be psychoactive, but occur in much lower concentration. Many of the cannabinoids probably contribute to the damage of marijuana to the body. However, the evidence against delta-9-THC is sufficient to brand it, by itself, an extremely dangerous drug. Often delta-9-THC is shortened to THC.

Storage of THC in the Body

THC is strongly fat soluble, and so is stored in the fatty tissues of the body for months. The fatty tissues act like time-release capsules, which steadily release THC into the blood, keeping the regular marijuana smoker in continual sedation. The THC molecules are very sticky, and so THC is very difficult to measure quantitatively; it sticks to the sides of test tubes and other equipment. The storage of THC in the body is discussed in detail in Ref. [1].

THC is called lipophilic, meaning "fat-loving". Its fat-storage properties are quite similar to those of the banned insecticide DDT. That lipophilic insecticide was thought to be harmless to vertebrates, until we discovered, to our dismay, that it was accumulating in the bodies of animals, and so was destroying our environment.

The brain is isolated from the main blood supply by the blood-brain barrier, which is a protective sieve of capillary walls and membranes that shields the brain against toxic substances. Lipophilic THC molecules stick to this sieve, and so the flow of THC to the brain is slow.

As THC is absorbed into the blood, most of it leaves very rapidly, to be stored in different physiological processes, which later feed THC back into the blood. As blood passes through the liver, part of the THC is metabolized to form other chemicals called metabolites, which are eventually excreted from the body. Unmetabolized THC is not excreted.

Because of these storage processes, the concentration of THC in the blood drops to a few percent of the initial level by the time the THC

molecules have worked their way through the blood-brain barrier. Hence, only a small amount of the THC entering the body contributes to the "high" sensation. In a light marijuana smoker, the concentration of THC in the brain blood that produces a strong "high" is about 10 micrograms (10 millionths of a gram) distributed throughout the total blood supply of the body.

Thus, THC is an extremely potent drug. It appears to be mild because its high fat solubility makes it slow acting. With this slow action, serious physical trauma from marijuana overdose is rare. On the other hand, being lipophilic makes marijuana very dangerous and insidious when used regularly.

There are four different types of THC storage processes in the body, which feed THC back into the blood at different rates: (1) fast storage, predominating in the first 10 minutes, (2) medium storage, predominating in the first hour, (3) slow storage, predominating in the first 12 hours, and (4) very slow storage, which controls THC blood concentration after one day. Very slow storage is caused by THC absorbed into fatty tissues. About 1/3 of the THC entering the body is absorbed into the fat tissues, which release it with a half life of approximately one week. Hence, it takes one week after marijuana smoking has ceased for THC stored in the fat to drop to 1/2, 2 weeks to drop to 1/4, 3 weeks to 1/8, etc.

All of the marijuana joints smoked over the past month contribute significantly to the THC in the fatty tissues, which is steadily released into the blood. The THC blood concentration from this steady release is low. Nevertheless, for a regular marijuana smoker, it is sufficient to cause sedation, because (1) THC is released so slowly it passes unimpeded through the blood-brain barrier, and (2) THC is extremely potent.

One third of the brain is fat tissue, and so an appreciable amount of THC is stored directly in the brain. Although the blood-brain barrier reduces THC flow to the brain, about half of the THC stored in the fat arrives so slowly it passes unimpeded through the blood-brain barrier. Hence, THC concentration in brain fat tissue should be about half of that in general body fat. (This slowly arriving THC comes partly from THC originally stored in the fat, which is recycled back into the fat, and partly from the slow storage process, described earlier.)

Effect of THC on the Brain

What is the effect of THC stored in brain cells? Dr. Robert Gilkeson [2] explains that the membranes of nerve cells are fat (or "lipid") tissue, and so are sites for storing THC molecules. The nerve cell membrane is crucially important because: (1) nutrients and waste products for the cell must pass across the cell membrane, and (2) this membrane is the primary source of neural electrical activity. When sticky THC molecules are stored in the nerve cell membrane, they degrade cell nutrition, and suppress electrical activity.

Hence, one would expect that long-term use of marijuana should cause serious brain damage. That this is so was demonstrated by experiments performed on the monkey by Dr. Robert Heath of Tulane Medical School, who is world renowned for his research on the brain [3] (pp 713-730). Clear, detailed descriptions of this work are given by Peggy Mann in [4, 5].

The following experiment was performed several times. For 6 months a monkey smoked the equivalent of 2 joints of marijuana per day, 5 days per week, using monkey-sized joints. After recovering for 6 months, the monkey was sacrificed and its brain cells examined under the electron microscope. EEG brain waves were measured from electrodes imbedded in the brain. The EEG waves became severely distorted after 2 months of smoking, and remained severely distorted 6 months after smoking had stopped.

The brain cells showed serious damage, particularly those in a deep part of the brain called the limbic system, which is the center of motivation. For example, over 30% of the limbic brain-cell nuclei had inclusion bodies, which are clots in the nuclei. In normal brains, less than 0.5% of brain-cell nuclei have inclusion bodies. The incidence is much higher in old brains, particularly those of senile patients, but even then is much less than was observed in the brains of these young monkeys. When the researchers first observed the enormous brain-cell damage, they were shocked at what they saw.

Dosage. This research by Heath is often dismissed with the argument that the monkeys were "chain-smoking" marijuana, using huge doses. This is not true. Early in this experiment the smoking apparatus was very inefficient, and little of the THC was absorbed into the monkey's body. This problem was corrected by developing a respirator that forced the monkeys to smoke in a human-like pattern.

With this respirator, a monkey weighing 11 pounds smoked a 0.25-gram joint of marijuana, containing 2.5-3% THC. (A normal marijuana joint is 1 gram, and good street pot today is usually 3.5-4% THC.) This dosage produces the same THC blood concentration, 10 minutes after smoking, as a human smoking a 1-gram joint.

If we scale the monkey's dose by weight, 0.25 gram of marijuana for an 11-pound monkey would be equivalent to 3 grams (or 3 joints) for a 132-pound teenager. However, equivalent drug dosages for different species are not scaled by weight. Extensive studies of drug equivalency have been made for cancer chemotherapy. As shown in [6], for the many drugs evaluated, the maximum tolerable dose for man, per pound of body weight, is approximately 1/3 of that for the monkey. When this factor 1/3 is included, the 0.25-gram monkey-sized joint is equivalent to a 1-gram joint for the 132 pound teenager.

To bury this dosage argument completely, let us ignore this 1/3 factor and assume, very optimistically, that dosage is scaled directly with body weight. Since the monkey smoked 10 times per week, this very optimistic assumption would yield 30 joints per week for the teenager, or 4.3 joints per day. In 1979 the National High-School Senior Survey showed that 10% of U.S. high-school seniors smoked marijuana daily, and the average consumption for the daily marijuana smokers was 3.5 joints per day. This average is very close to the very optimistic 4.3 joints per day corresponding to the monkey experiment, a smoking level that produced serious brain damage after 6 months of smoking.

Clearly, this experiment by Heath is crucially important to our youngsters. Yet, very few have received a reliable account of it in their drug education classes, even though its results were published in 1979. As Peggy Mann reported in the Nov. 1987 Reader's Digest, "We are teaching

our kids to use drugs" in drug education. The misinformation presented in most drug education programs is atrocious.

In 1981 the National Institute on Drug Abuse (NIDA) discontinued funding of this research by Dr. Heath, which is by far the most important research on marijuana ever performed anywhere in the world. This action was preceded in 1980 with the following derogatory evaluation by NIDA of Heath's work [7]:

"A researcher who used electrodes implanted deep within the brains of monkeys, instead of the more conventional scalp recording techniques, has found persistent changes related to chronic use. This same investigator has reported that rhesus monkeys administered marijuana smoke from one joint daily for five days per week for six months show persistent microscopic changes in brain cellular structure following this treatment. While these experiments demonstrate the possibility that more subtle changes in brain functioning or structure may occur as a result of marijuana smoking in animals, the implications of these changes for subsequent human or animal behavior is at present unknown. Other studies, using more conventional EEG techniques to measure brain electrical activity, have found changes temporarily associated with acute use, but no evidence of persistently abnormal EEG findings related to chronic cannabis use."

In EEG (electro-encephalogram) tests on man, the electrodes are almost always placed on the scalp, because it is dangerous to insert them into the brain. Only under extreme conditions, associated with brain surgery, has it been possible to place EEG electrodes inside the human brain. It is well known that EEG scalp records give an extremely limited measure of brain electrical activity. Doctors use the scalp EEG because it is the best that they can get, not because it is "conventional".

With NIDA's unscientific approach to research, is it any wonder that we have a drug epidemic?

The strong brain-wave distortions found by Heath on monkeys were detected only from electrodes implanted within the brain, and were not observed from those placed on the scalp. Hence one would not expect EEG scalp recordings of humans to show strong brain-wave distortion.

On the other hand, psychiatrist Dr. Robert Gilkeson has observed more subtle brain-wave changes from the scalp EEG [8] (p 20). Gilkeson has developed EEG techniques to pinpoint learning disabilities, which he applied to 50 youngsters, ages 13-18, who had used pot at least twice a week for 4 months. They abstained from pot for 2 days preceding the test.

Gilkeson found that all of these EEG records were "markedly immature for age", and had an abnormal amount of slow theta rhythms, "sufficient to be diagnostic of diffuse brain impairment. In the EEG section of academic tasks, none of these youngsters could speed up when challenged. Their brain waves failed to respond to these stimuli in the usual way." These subtle distortions of scalp EEG signals disappeared after the youngsters abstained from pot for 3 months. On the other hand, the severe distortions observed by Heath from deep-brain recordings persisted after 6 months of abstinence.

Effect on the Immune System: Relation to AIDS

In 1973, Dr. Akira Morishima of Columbia University examined, from healthy pot-smoking young men, the chromosomes of T-lymphocytes, which are important cells of the immune system. The men had smoked marijuana for an average of 4 years, and did not take other illegal drugs. For those smoking 2 joints per week, about 1/3 of the T-lymphocyte cells had about half the normal number of chromosomes (46). For the daily marijuana smokers, cell damage was greater, with some cells containing only 5 to 10 chromosomes. This study has been verified by many other researchers. [4] (p 113)

This has strong implications relative to the AIDS epidemic, because T-lymphocytes are a prime target for the AIDS virus. Many people who have been infected with AIDS do not have active symptoms. This study indicates that any use of marijuana may have a serious effect on the development of the disease. AIDS researchers should start correlating marijuana use with the progression of the AIDS symptoms.

Effect on Reproduction

The damage to chromosomes caused by marijuana can produce serious birth defects, which are transmitted through many generations. In experiments by Dr. Susan Dalterio, male mice were given a human equivalency dose of 1 to 3 joints of THC, 3 times per week, for 5 weeks. These mice were mated for a month with normal females. Twenty percent of the females either did not conceive, or had babies that were born dead or died soon after birth.

The resultant sons that matured were not exposed to any drugs and were mated with normal females. About 25% of these female mice did not achieve a normal pregnancy. The resultant grandsons of the THC-dosed mice that matured were not exposed to drugs and were mated with normal females. Many of their offspring showed severe abnormalities, including intestines outside the bodies, and exposed brains and spinal cords. Many of the sons and grandsons showed severe chromosome defects. [8] (p 12)

Effect on the Sex Drive

When mice or monkeys are exposed to marijuana, they have little sex drive: it is difficult to get them to mate. Similar results are observed in humans. A high incidence of impotence has been reported among men in Jamaica who smoked marijuana for 5 years. Dr. Ingrid Lantner, who has discussed marijuana on many radio call-in shows, reports: "Chronic pot smokers often tell me they are impotent, but this doesn't bother them --- since they no longer feel sexual desires." [8] (p 13)

Effect on the Lungs

Marijuana causes serious lung damage, particularly when cigarettes are also smoked. In 1971, studies were performed by Dr. Forrest Tennant on U.S. soldiers in Germany who smoked hashish daily, equivalent to 1-5 joints of marijuana. He found that 1/3 of the cigarette smokers had squamous metaplasia, a dangerous precancerous condition of the lungs; while 91% of those using hashish plus cigarettes had it. [4] (p 70)

Marijuana as Medicine

Since marijuana contains many different chemicals, marijuana itself is not appropriate for medicine. The only verified medical application of a drug derived from marijuana is the use of THC to combat nausea in cancer patients undergoing chemotherapy. THC is very effective in reducing nausea.

On the other hand, as explained earlier, THC attacks the immune defenses of the body. This is very serious for patients undergoing chemotherapy, because chemotherapy also weakens the immune system, making the patient very susceptible to infectious disease. Obviously, when THC is taken to combat nausea in chemotherapy patients, it must be carefully controlled and used sparingly.

Addiction and Drug Dependence

Marijuana is often claimed to be physically non-addictive because the user does not experience strong physical withdrawal symptoms when he stops smoking it. However, the reason for this is that THC cannot be withdrawn rapidly; the body has its own supply. It takes one week for the THC stored in the fat to drop to 50%, and one month to drop to 5%.

Actually, marijuana probably produces stronger physical drug dependence than any other drug. It generates a "pot personality" and often leads to escalated use of many drugs, because:

- (1) As marijuana builds up in the body, it gradually drags the smoker into continual sedation, separating him from reality and forcing him into a dream world of drugs.
- (2) As demonstrated by Heath's experiments on the monkey, marijuana weakens the center of motivation of the brain, and in time permanently damages it. Clinical experience has shown that prolonged marijuana smoking destroys normal motivational reflexes, so that the smoker experiences great difficulty living a drug-free existence.
- (3) Since marijuana is present in the body all the time, the body rapidly builds up tolerance to it, and the smoker must steadily escalate its use to achieve the same "high". Eventually, the kick from marijuana is not satisfying, and so he reaches for other drugs.
- (4) Since marijuana inhibits nausea, people with marijuana stored in their bodies can drink alcohol very heavily without getting sick. Consequently, marijuana has caused an epidemic of alcohol abuse, drunk driving, and death from alcohol overdose. Teenage death from alcohol overdose used to be very rare; without marijuana in the system, the body protects itself by vomiting. [4] (p 51)

Marijuana is often called a "stepping stone" or "gateway drug" because it leads to drugs giving a stronger kick. However, these terms are misleading: they imply that the primary damage of marijuana comes from drugs evolving from its use. Marijuana's dangers are deceptive because its main action is slow and delayed, and so it is difficult for the user to relate cause and effect.

Remember that THC is extremely potent and is stored for months in the body, causing serious damage to the brain, to chromosomes, and to the immune system. THC appears to be mild because it acts slowly. Hence, marijuana is at least as harmful as cocaine and heroin, but is really more dangerous because it is so insidious. In societies where marijuana is readily available, and heroin and cocaine are not, the smoker usually sticks to marijuana, until it destroys him. For example, in Morocco and Jamaica, marijuana-induced insanity is common. [9] (p. 76)

Survey after survey have shown that essentially all users of other illegal drugs started with marijuana, and most continue to use marijuana along with the other drugs. The great reluctance of a heroin addict to stop may be due more to the marijuana he has taken than the heroin.

Many surveys of this sort were available in the early 1970's, when the myth of marijuana's harmlessness was spread across the U.S. For example, the U.S. Commission on Marijuana and Drug Abuse stated in its 1972 report to Congress that "80% of the [San Diego High School] students who had used marijuana weekly or more often had used other illegal drugs, and 50% of this group had used LSD" [10] (p 56). Similarly, Psychology Today (April 1970) found from a survey of its readers that 58% of those who smoked marijuana weekly had taken LSD, while at least 99% of those who drank alcohol but did not use marijuana had not taken LSD. Yet LSD is probably the most harmful psychoactive drug used by man, and its dangers had been well publicized at that time. It produces an hallucinogenic state akin to schizophrenia, and is a common cause of insanity. (Use of LSD and similar hallucinogenic drugs is widespread today: a 1983 survey shows that 21% of young adults have taken them.) [11] (p 364)

These studies were glibly dismissed as being irrelevant. They were buried by using the fallacious argument: "Since marijuana is not addictive, it cannot by itself lead to other drugs; hence these correlations cannot be the result of cause-and-effect relationships."

We hear of statistical studies everywhere we turn. Elections are predicted with remarkable accuracy from them. Our knowledge of the dangers of tobacco is largely the result of statistical evidence. Most of the decisions in modern medicine concerning medical procedures are based strongly on statistical data. Yet, strangely, statistical studies relating marijuana to other drugs, or to crime, suicide, and insanity, are considered to be irrelevant.

Note that the violent crime rate has increased tremendously since the early 1960's, directly paralleling the use of marijuana. It rose from 1.62 per 1000 of population in 1962 to 5.81 in 1980, which is a factor of 3.6. [11] (p 370)

Conclusion

The scientific evidence is more than sufficient to brand marijuana an extremely dangerous drug, yet few youngsters are aware of this. They smoke marijuana because it is there, and they believe it is no more harmful than alcohol. The only way they learn otherwise is to see their classmates being destroyed by it. However, for this mechanism to operate, many young lives must be sacrificed. It is about time that science provided a better learning mechanism.

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NOTES:

References [7] and [10] contain serious misinformation.

References [1] and [2] are available from Committees of Correspondence for \$1.00 each prepaid.

References [4], [5], and [9] are available from PRIDE, 100 Edgewood Ave. NE, Suite 1002, Atlanta, GA 30303.



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STORAGE OF MARIJUANA IN THE BODY

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The Lipophilic Property of THC

During World-War II, a wonder insecticide was developed: DDT. It killed the insects, and was completely harmless to man and other vertebrates --- or so we thought. We eventually banned DDT when we realized it was destroying our environment.

The problem is that DDT is strongly fat soluble, and so is absorbed in fat tissue, where it is stored for months. DDT is called "lipophilic", meaning "fat-loving".

Today we have another popular lipophilic chemical: THC, or tetra-hydro-cannabinol. This wonder substance is the psychoactive ingredient in marijuana. Like DDT, THC is also stored in the body for months. It has been found in the milk of mothers who quit smoking marijuana three months before their babies were born.

THC is a very potent drug, but appears to be mild because its high fat solubility makes it act slowly. With this slow action, serious physical trauma from marijuana overdose is rare. On the other hand, being lipophilic makes marijuana very dangerous and insidious when used regularly. This article explains the processes of THC storage in the body resulting from its lipophilic property.

The THC Model

Probably the best data on the storage of THC in the body are provided by pharmaco-kinetic experiments performed on the dog by Garrett and Hunt (Ref. [1]). The concentration of THC in the blood was repeatedly measured over an extended period, following an injection of THC. To achieve high accuracy, radioactive labeled THC was used. Since the level of radiation was quite high, comparable tests cannot be performed on humans. However, this experiment involves basic physiological processes, and so its results should apply approximately to man.

The lipophilic THC molecules are very sticky. Consequently, THC is very difficult to measure quantitatively, because it sticks to the sides of test tubes and other equipment.

Figure 1 shows a model of THC storage in the body, which I derived from the Garrett and Hunt data. The model is implied in their results, but a significant amount of theoretical and computer analysis (Ref. [2]) was required to calculate the model parameters. As a parent, I wanted precise drug information, and so I applied my engineering training to the problem.

As shown in Fig. 1, THC leaves the blood in five different ways: it is metabolized into other chemicals (called "metabolites") as it passes through the liver; and it is stored in four different kinds of "compartments", which act like time-release capsules, feeding the THC back into the blood at different rates. These four storage compartments are different physiological processes, which provide fast, medium, slow, and very-slow storage of THC.

The very-slow storage is due to absorption of THC into the fat tissues of the body, but the three other storage processes have not been identified. Since THC molecules are very sticky, one of the storage processes may be due to sticking of THC molecules to the sides of blood vessels.

The metabolized THC is eventually excreted from the body, but unmetabolized THC is not. A complex array of different metabolites of THC is formed in the body, and there may be several parallel paths, involving different chemical reactions, between THC metabolism and excretion.

The rate of conversion of THC in the blood to metabolites corresponds to a half life of 6.7 minutes. Hence if THC remained in the blood, the THC in the body would drop to half every 6.7 minutes. However, THC is metabolized much more slowly than this, because it is removed from the blood and sequestered in the four compartments.

The numbers in Fig. 1 give the relative rates of THC transfer into, and out of, the storage compartments. These are normalized in terms of the rate at which THC is converted to metabolites (shown as 1.0 in the figure). For example, the arrow leading from the blood to the medium storage compartment (2) has a rate parameter of 2.1. This means that the THC molecules flow into this compartment 2.1 times faster than they are metabolized by the liver.

The rate of THC flow into a compartment is proportional to the amount of THC in the blood. The rate of THC flow from a compartment back into the blood is proportional to the amount of THC in the compartment. For the medium storage compartment (2), the rate parameter 2.1 for flow into the compartment is 10 times the rate parameter 0.21 for flow back into the blood. Therefore, the THC in this compartment eventually reaches a steady level that is 10 times the THC in the blood. At that time, THC flows back into the blood at the same rate that it flows into the compartment.

Figure 2 shows how the THC in the blood varies during the first three hours after an injection. Curve (1) is the response (to 30 minutes) relative to the minute scale, and curve (2) is the response (to 3 hours) relative to the hour scale.

As shown by curve (1), initially THC in the blood decreases very

rapidly. It drops to 50% in one minute, and to 10% in 5 minutes. During this initial transient, 15% of the THC leaving the blood is metabolized, and the other 85% is sequestered in the four storage compartments. The compartments soon begin to feed appreciable amounts of THC back into the blood, and so the rate of THC decay decreases. THC in the blood drops to 5% in 12 minutes, but takes nearly 2 hours to reach 1%.

After 1 day, the process enters the "terminal phase", in which the fast, medium, and slow compartments are nearly at steady-state conditions, and THC in the blood is controlled by the slow return of THC from the very-slow storage compartment (4), which is the body fat. The flow rate from the fat is equal to the THC stored in the fat multiplied by the rate parameter 0.0009. In the terminal phase, this flow rate is equal to the rate at which THC is metabolized, plus the rate at which THC flows back into the fat. Hence, it is equal to $(1.0 + 0.55)$ times the amount of THC in the blood. This indicates that the ratio of THC stored in the fat, to THC in the blood, is equal to

$$\text{Ratio} = (1.00 + 0.55)/0.0009 = 1700$$

Thus, during the terminal phase, there is 1700 times as much THC in the fat as is carried in the blood.

Since the fat-to-blood rate parameter is 0.0009, the half life corresponding to the release of THC from fat to blood is

$$\text{Fat-to-Blood Half-Life} = (6.7 \text{ min})/0.0009 = 5.17 \text{ days}$$

Remember that the metabolization half life is 6.7 minutes, which corresponds to a rate parameter of unity. As THC is released from fat to blood, 0.55 nanogram is reabsorbed back into the fat for every 1.0 nanogram that is metabolized. Hence the half life for elimination of THC is 1.55 times greater than this fat-to-blood half life, and so is

$$\text{Elimination Half-Life} = 1.55(5.17 \text{ days}) = 8.0 \text{ days}$$

This shows that it takes 8 days for the THC in the fat to decay to 1/2, 16 days to decay to 1/4, 24 days to 1/8, etc.

Related to the "half-life", there is another useful parameter called the "time constant", defined as 1.44 times the half life. The time constant for elimination of THC from the fat is

$$\text{Time Constant} = 1.44(8.0 \text{ days}) = 11.5 \text{ days}$$

When a person smokes marijuana regularly, the THC contributions from successive marijuana joints accumulate in the fat. The THC stored in the fat reaches a steady level equivalent to the number of marijuana joints smoked during an 11.5-day time constant. For example, a person smoking one joint of marijuana per day carries in his fat a steady THC level equivalent to 11.5 joints of marijuana.

The fraction of the THC entering the body that is absorbed into the fat is approximately equal to

$$0.55/(1.00 + 0.55) = 0.35$$

The quantity 0.55 is the rate parameter for flow into the fat, and 1.00 is the rate parameter for metabolization. Thus, 35% of the THC that enters the body is absorbed into the fat.

In the terminal phase, there is 1700 times as much THC in the fat as in the blood, and so the fraction of the THC from one marijuana joint carried in the blood is

$$0.35/1700 = 0.000206 = 0.0206\%$$

If a person smokes one joint per day, the THC accumulated in his fat is equivalent to 11.5 joints. Hence, the steady level of THC in his blood, due to release of THC from the fat, is 11.5 times 0.0206%, which is

$$\text{Steady THC Blood Level} = 11.5(0.0206\%) = 0.24\%$$

This indicates that a person who regularly smokes one marijuana joint per day carries a continual THC level in his blood equal to 0.24% (or about 1/4 of 1%) of the THC absorbed from a single joint. This might seem quite small. However, as we will see, it is enough to produce appreciable sedation --- sedation that occurs continually.

The Blood-Brain Barrier

The brain is isolated from the main blood supply by the blood-brain barrier. This is a protective sieve, made of capillary walls and cell membranes, which helps to protect the brain from toxic substances. The lipophilic THC molecules tend to stick to the blood-brain barrier. Hence this sieve greatly reduces the amount of THC that enters the brain by slowing the flow of THC molecules.

Figure 3 gives data from tests made by Lemburger, et. al. (Ref. [3]), following an injection of THC. The lower plot shows the heart rate, and the upper two plots show results from psychological tests. Each point is the mean value obtained from six subjects.

The heart rate changes very quickly after the THC injection, but the upper plots indicate a lag of about 15 minutes before full psychological symptoms are experienced. This delay is caused by the blood-brain barrier, which slows the flow of sticky THC molecules to the brain. Figure 2 shows that at 15 minutes (point A) the THC in the blood is 4.2% of the injected dose.

The psychological responses in Fig. 3 stay close to maximum until 45 minutes after the injection. At 45 minutes, Fig. 2 shows (point B) a THC blood level of 1.9%. At 2 hours, the psychological measures of "high" and "symptom score" in Fig. 3 are about 50% of the maximum values. At that time, Fig. 2 shows (point C) a THC blood level somewhat less than 1%.

Since the blood-brain barrier slows the transfer of THC to the brain, the THC concentration in the brain blood is much less than in the heart blood during the early part of the transient. However, as time passes, the rate of change of THC in the blood decreases, and so the effect of the blood-brain barrier diminishes. Eventually, equilibrium should exist across the barrier, and the THC concentration in the brain blood should be approximately equal to that in the heart blood.

In the terminal phase, the blood-brain barrier should have essentially no effect on the THC blood concentration in the brain. How much effect this barrier has at 2 hours is not clear. However, let us assume conservatively that the blood-brain barrier is also in equilibrium at that time, so that THC concentration in the brain blood is the same as in the heart blood.

With this assumption, we conclude that a brain-blood THC level of 1% produces 50% of maximum "high". This is only 4 times greater than the steady THC blood level, 1/4 of 1%, in the brain of an individual who smokes one marijuana joint per day. Therefore, this steady THC level should be sufficient to produce appreciable sedation, keeping the daily marijuana smoker in a continually numbed state.

Storage of THC in the Brain

The brain weighs about 3 lbs, and 1/3 of this is fat tissue. Hence, a significant amount of the THC sequestered in the fat is stored directly in the brain. Since the blood-brain barrier strongly limits the flow of THC into the brain, the THC concentration in brain fat is lower than in general body fat. But how much lower?

The slow storage compartment (3) releases THC so slowly it should pass essentially unimpeded through the blood-brain barrier. In Figure 1, the rate parameter for release of THC from compartment (3) is 0.017. This corresponds to a half life of $(6.7 \text{ min})/0.017$, which is 6.6 hours. For this half life, the THC level drops only 10% per hour.

It can be shown that the peak THC level in compartment (3) is 39% of the injected THC. When this THC is released into the blood, 35% of it is stored in the fat. Hence, the THC in the fat that comes from compartment (3) is

$$0.39(35\%) = 14\%$$

The total THC in the fat is 35% of the injected dose. The ratio 14%/35% is equal to 0.40. Hence, 40% of the THC stored in the fat comes from the slow storage compartment, released so slowly it passes unimpeded through the blood-brain barrier.

As THC is released from the fat to the blood, 35% of it is recycled back into the fat. Consequently, 35% of the steady THC level in the fat of a regular marijuana smoker is recycled THC, which enters the fat so slowly it is unimpeded by the blood-brain barrier. Of the remaining 65%, which enters the fat directly, 40% comes from compartment (3), and only 60% arrives at a fast rate. Hence, the fraction of the steady THC level in the fat that enters at a fast rate is

$$0.60(65\%) = 39\%$$

The rest of the steady THC level (61%) enters the fat so slowly it passes unimpeded through the blood-brain barrier.

This analysis shows that the steady THC concentration in brain fat tissue should be at least 61% of that in the general body fat. Therefore, an appreciable amount of THC is stored in the brain of a regular

marijuana smoker.

What is the effect of THC stored in the brain cells? Dr. Robert C. Gilkeson has devoted considerable research to this issue. He explains that the membranes of nerve cells are fat (or "lipid") tissue, and so are sites for storage of THC molecules. The nerve cell membrane is crucially important because: (1) nutrients and waste products for the cell must pass across the cell membrane, and (2) this membrane is the primary source of neural electrical activity. When sticky THC molecules are stored in the nerve cell membrane, they degrade cell nutrition, and suppress electrical activity.

Hence, one would expect that long-term use of marijuana should cause serious brain damage. That this is so was demonstrated by experiments performed on the monkey by Dr. Robert Heath and his colleagues at Tulane Medical School (Ref. [4], pp 713-730). Clear and detailed descriptions of this work have been given by Peggy Mann in Refs. [5, 6].

The following experiment was performed several times. For 6 months a monkey smoked the equivalent of 10 to 15 joints of marijuana per week, using monkey-sized joints. After recovering for 6 months, the monkey was sacrificed and its brain cells were examined under the electron microscope. Brain waves were measured from probes imbedded deep in the skull. These signals became severely distorted after 2 months of smoking, and remained distorted 6 months after smoking had stopped.

The brain cells showed severe damage, particularly those in a deep part of the brain called the limbic system, which is the center of motivation. For example, over 30% of the limbic brain cell nuclei had inclusion bodies, which are clots in the nuclei. In normal brains, less than 0.5% of brain cell nuclei have inclusion bodies. The incidence is much higher in old brains, particularly those of senile patients, but even then is much less than was observed in the brains of these young monkeys. When the researchers first observed the enormous brain-cell damage, they were shocked at what they saw.

Historical Evidence

That marijuana is stored in the body, producing continual sedation, is not a new discovery. As explained by historian Franz Lowenthal, Professor of Near Eastern Literature at Yale University (Ref. [4], pp. 739-745), marijuana is an old problem to Arab society. The Arabs have struggled for centuries against the devastating effects of marijuana (or in their words "hashish"). A thirteenth century religious leader, Sheikh Ali al-Hariri, gave the following advice:

"He has to give it up for forty days, until his body is free from it, and forty more days until he has rested from it after becoming free."

This conclusion by Sheikh al-Hariri, made 700 years ago, is remarkably consistent with our THC model.

What was obvious to Sheikh al-Hariri should also be obvious to people today. Why have we not drawn the same conclusion? Maybe we don't want to know the truth.

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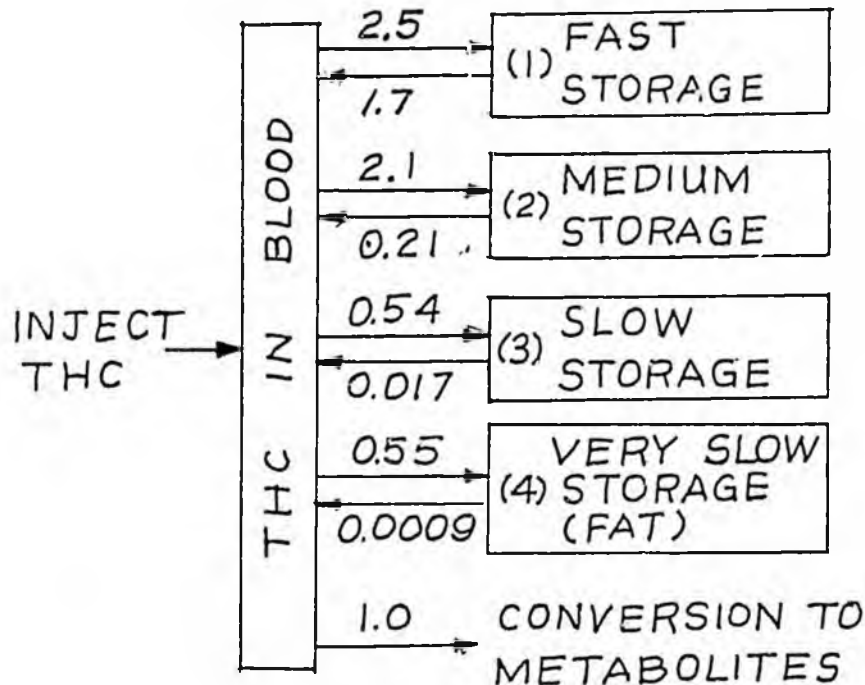


FIGURE 1: MODEL OF THC STORAGE IN THE BODY

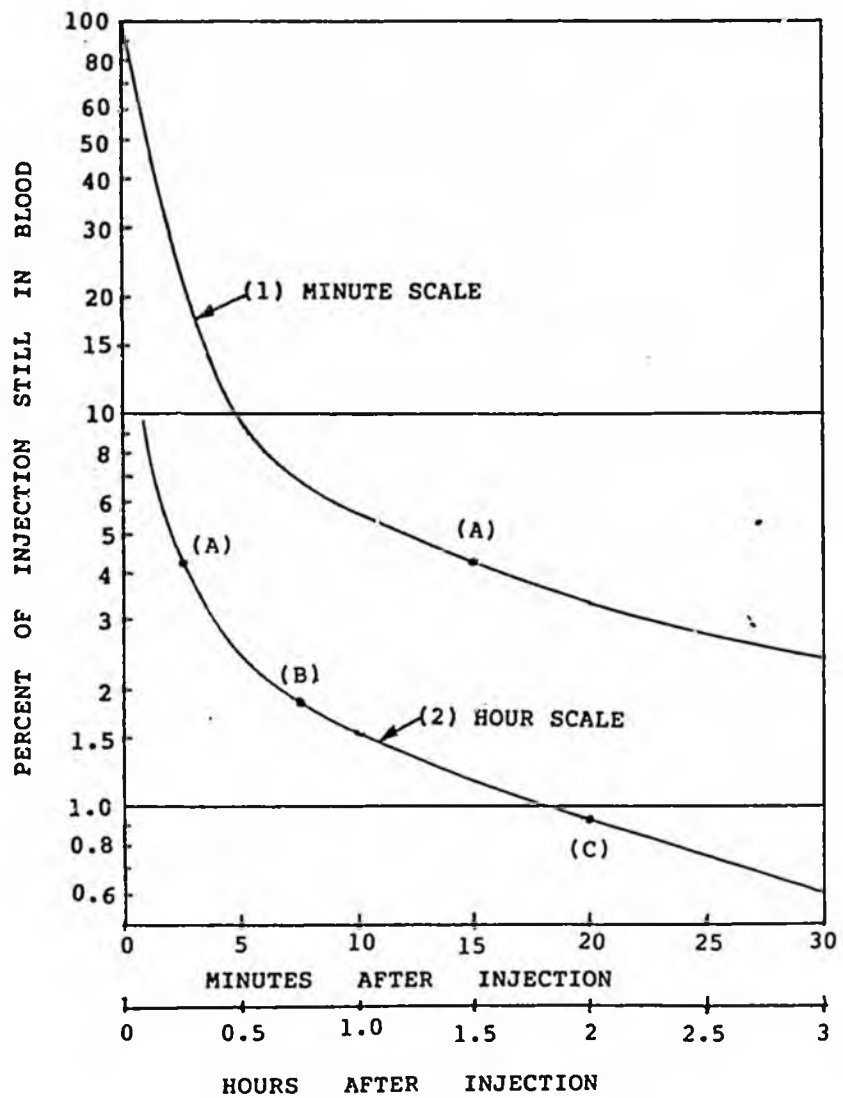


FIGURE 2: VARIATION OF THC BLOOD LEVEL WITH TIME

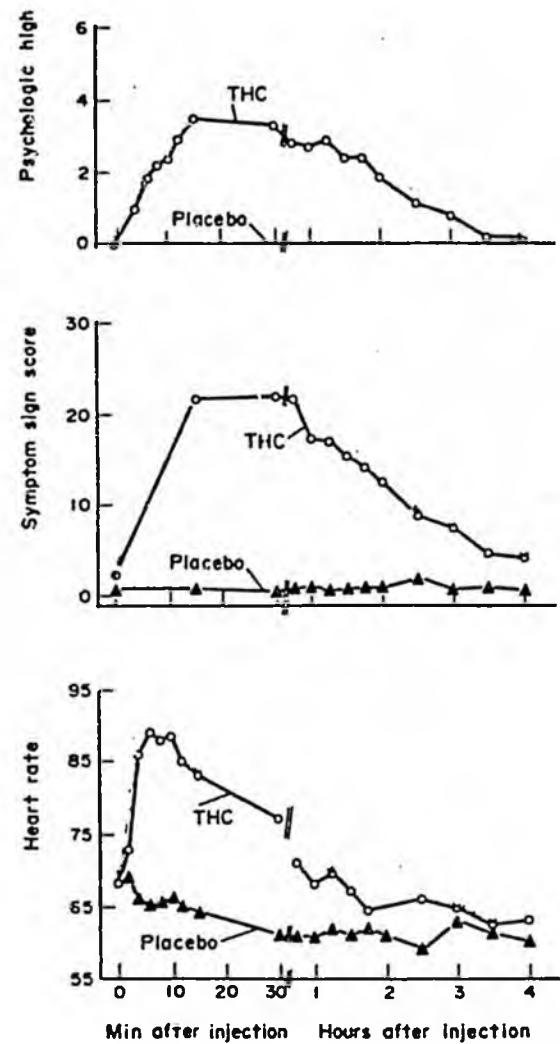


FIGURE 3: EFFECT OF THC INJECTION ON HEART RATE AND PSYCHOLOGICAL RESPONSES