

ALASKA LEGISLATURE COMMITTEE FILES 1987 - 1988 8672

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3. Service requests doubled, yet there was an overall decrease in reported crime.
4. Arrests, specifically the need for arrests, decreased by 35%.
5. A significant decrease in crimes against persons resulted.
6. A significant decrease in misdemeanor crimes resulted.
7. Two deaths by fire occurred, each alcohol related, and each in the victim's own home, compared to an annual average of five.
8. A significant reduction in investigative case work occurred, allowing for a huge increase in time available for the detention program.

With a continuance of the program throughout 1978, a complete data base will be available for detailed analysis, resulting from 1976 dry (no detentions), 1977 wet (detentions) through 1978 dry (detentions). A complete three-year data base analyzing alcohol abuse as it relates to the incidence of crime will be available by January of 1979.

III
NEEDS ANALYSIS, SYSTEM OBJECTIVES,
AND APPROACH TO IMPLEMENTATION

Needs Analysis

Barrow. A city with a population of approximately 2600 has stabilized the number of personnel considered necessary for Public Safety Services at eleven officers, taking into account the seasonal peaks and declines in criminal activity, most officers had a great deal of time on their hands in which to take a more positive and preventive role in the community. Personal experience showed clearly that Barrow suffered from an abnormally high abuse of alcohol; however, there were no detailed records to back up the personal knowledge. When compared with other agency data and more especially sociological studies by the University of Alaska, Barrow was typical of native rural populations throughout the State of Alaska. When compared with the urban areas of Alaska, Barrow still displays some anomalies in the area of crime and alcohol abuse. Barrow and the North Slope Borough identified four problem areas. They were suicides, incidence of homicide, fire deaths, incidence of alcohol abuse. The Criminal Justice Planning Agency, through studies of the Uniform Crime statistics, showed a higher rate of incidence for all four areas in native rural Alaska. Barrow is considered to be typical of the norm in those statistics.

Because of its size, job availability, social and economic factors, and seasonal trade-offs in activity levels, Barrow is not representative of most other villages within the North Slope. Barrow is viewed as "the city" by such villages as Wainwright, Pt. Hope, Kaktovik, Nuiqsut, and Atkasook. These villages range in population from 150 up to 450. Barrow and these sister villages have similar problems of alcohol abuse and its results.

The North Slope Borough. Seven villages within the borough have slightly different community natures, but the problems of alcohol abuse and crime are even more accentuated in their life styles. What, in Barrow, is viewed as a minor incident will be perceived as a major problem in the village. This emphasis is the result of a lack of resources for dealing with the problem there. Hence, all the available data applicable to Barrow would be magnified in smaller communities lacking the facilities and personnel to manage them. Very little village data is available; however, personal experience again dictates that the same detention program would have an even greater effect in smaller communities. While the villages outside of Barrow are always "dry", what happens in Barrow as a direct influence on village life. A logical assumption is that the same is true of other regions of rural Alaska. The needs are interrelated and inseparable.

System Objectives

While the principle behind a drunk-detention program is simple, it must reflect specific objectives related to actual occurrences which point out the need for the program. If the objectives are not identified by detailed research it will be very difficult to attempt the introduction of the program to personnel in one's own department. Identifying specific objectives makes implementation much easier to push--both to the community at large and to the local police department. In developing these objectives, there are some hurdles to overcome that will reflect upon both the need and the methods used to implement the program. Several questions must be answered to implement the program.

Several questions must be answered to the general public's satisfaction:

1. Assuming widely accepted justification for such a program, how willing is the community to accept existing facility conditions?
2. What exactly is the objective and goal of the program? Can it be articulated clearly?
3. To what degree will the community continue to support the initial effort?
4. Should it make a difference in program implementation if the community is wet or dry?
5. If something goes wrong (such as suicide in a cell of someone detained) can the program survive criticism and continue?
6. Is there an adequate, trained staff attending the facilities? If not, are the community and the police agency willing to support training?
7. What modifications to facilities and assignment of personnel will the community support? How much will it cost?
8. Can the program demonstrate cost-effective management?

The pattern of research may be evident to the police administrator; however, it must also be shown to community leaders without bias and with a commitment of real concern over possible effects of the program.

The objectives for the Barrow drunk-detention program were identified by both the local task force and managers of the department. The "Task Force on Alcoholism Report" filed in December of 1976 identified the objectives and consolidated ideas from key agencies/personnel. They are:

- A. Death rates increase with the greatest impact on the younger people of the community.
- B. Adult and juvenile crime greatly increases.
- C. Family problems greatly increase with impact from the very young through young adults.
- D. Related medical problems greatly increase.
- E. Property damage increases.
- F. Family life structures are de...tively influenced by alcohol abuse.

Research indicated that there were four goals to establish for the program to actually demonstrate that it worked. The first was a clear reduction in suicides since all suicides in the past were directly linked to high intoxication. The second was reduction in the number of house fires and individual death rates from fires directly caused by intoxication. The third was a clear decrease in crimes (initially unspecified by type). And the fourth was to remove "the drunks from our streets" since this was seen as a very negative community image. An adjunct to these goals was the elimination of deaths by freezing in the streets and byways of Barrow proper.

The latter goal was, by far, the easiest goal to initiate since it did not reflect upon any individual's social stature or standing in the community, but was clearly life-saving activity. This single goal was clearly directed towards the officers who would be responsible for the success or failure of the program. Normally being held publicly responsible for individual protection of life, the officer was individually instructed that common occurrences of freezing deaths resulted from intoxicated and incapacitated persons walking to and from parties and/or homes. This single goal reinforced the officer's feeling of responsibility towards intoxicated persons, and, at the same time, increased his motivation to stop and detain rather than "pass by the incapacitated". As a result, not a single person died of exposure in Barrow during 1977.

Approach to Implementation

Implementation was begun by the distribution of a written policy and description of the program to all department personnel as well as all task force members. Only tenacity kept the program from suffering collapse after the first few months when alcohol-related deaths continued to occur. The initial difficulty was the failure to adequately explain it to working personnel and measure what was asked of them against their own private attitudes towards this kind of program. It must be set in the mind of the police administrator that the program will be continued for at least a full year. It can then, and only then, be adequately and intelligently analyzed for results. After the first year it will be time to determine whether or not the program is of such value as to continue it indefinitely or for another trial period.

IV

PROBLEMS, COSTS, AND EVALUATIONS

Data analysis and records kept by the department during calendar year 1977 have identified several specific problems that require not only mention but detailed explanation. They are critical to both the results and the continuance of the program. The most important problems are:

- * Officer personnel attitudes and demeanor in handling intoxicated persons.
- * Knowledge of alcohol abuse and stages of alcoholic influence.
- * Identification of procedures separating "arrest" from "detention".
- * Guarding against medical and mental problems occurring in the facility.
- * Handling suicide attempts in the facility.
- * Officer knowledge of Delerium Tremens.
- * Typical cycle of detainees' behavior and signs of critical events.
- * TV monitoring versus jail guards.
- * Present resource and emergency resource reactions.
- * Publicizing fully the operation of the program.
- * Officer risks and the use of physical restraint.
- * Length of needed detention time.

Identification of all the above areas is the result of an exhaustive study and evaluation of data, personal knowledge and observation, and feedback from both operational personnel and the community at large.

Attitudes

Critical to the program is a whole melange of psychological attitudes found in officer personnel. For many officers who have had little formal training and very negative experiences with intoxicated persons, the handling of drunks reflects the acting out of oftentimes very negative personal habits and attitudes. If an attitude is demonstrated that intoxicated people should be treated as less than normal, or as less than full human beings, the program will accentuate it. Officers will become extremely cynical, an attitude often causing verbal abuse and jeering, and frequently leading to fights between detainee and officer. Another more critical contact-related problem is lack of simple knowledge of the physical influences of alcohol on the body. This is especially important when an intoxicated person becomes combative. The restraint necessary is often very little, but only if knowledge of non-injurious methods are available; when they are not, it is quite possible to break a detainee's arm by using a come-along hold meant for sober persons--simply because the detainees ability to feel pain is extremely reduced.

Knowledge of Alcohol's Influence on Behavior

It is also important that officers be trained in understanding alcohol's effects, both physical and mental, upon the intoxicated person. It will be reflected in behavior ranging from frivolous to boisterous and extremely combative. Officers with full knowledge will immediately understand that intoxi-

criminal or the mental case in a manic state. If treated properly and carefully, with a measure of respect, the drunk will later frequently thank officers for their assistance and apologize for uncontrolled behavior. It is very important to the individual detainee that he not be treated as a child nor suffer "loss of face" or a feeling of loss of self-respect. Often, these attitudes and feelings will remain even after the alcoholic haze has completely left. Contrary to popular belief, intoxicated persons more often than not remember how they have been treated and will not likely forget mistreatment and belittlement.

Identification Procedures in Arrest Versus Detention

This problem can easily be eliminated from the very beginning if more time is spent in preparing officers and encouraging their participation in the program--assumptions at the beginning frequently turn out to be completely wrong, sometimes to a fault. This area actually represents the detailed operational processes for the program. It should be gone over with officers of the line in advance of starting the program so a clear definition and a clear distinction is made between a person who is detained in a non-criminal manner and a person who is arrested in the normal criminal process. This department, with a full year of experience, has completely overcome this initial problem; however, the experience can benefit others who may want to initiate a similar program and prevent breakdowns in the initial stages which may threaten its continuation.

Medical and Mental Problems

Both problems must be addressed in advance and very carefully if disasters are to be prevented. There must be identified resource people who are immediately available for medical treatment. Also essential is the training of line officers to insure recognition of critical clues to oncoming medical trauma. Officers must understand that at the time a detainee is originally picked up he will be at a certain stage in his consumption and intoxication. There is a clear and critical difference. That difference can frequently make the difference between life and death. Hence, the detainee, for at least the first hour or so, must be watched very carefully for signs of the following physical trauma:

1. Severe depression and suicide attempts.
2. Severe physical depression leading to slow collapse of the central nervous system, i.e., breathing and heart dysfunction.
3. Severe manic behavior that will cause self injury in almost any facility or situation.
4. Aspiration, e.g., choking on own vomit, either while awake or asleep.

Virtually all of the above represent life-threatening situations which almost any detainee can experience. A key check-point principle in observation is any sudden change in behavior. If boisterous and loud, a sudden change to very calm, quiet behavior should be immediately checked in person. It is a common signal of either mental or physical behavior changes. If a subject suddenly goes to sleep and is not checked personally by someone, he or she could aspirate without moving a visible inch, causing death unobserved and unknown to those responsible for his care. Sudden calm also reflects a signal of impending suicide attempts. Attempts are limited only by the material and resources available and sheer imagination. Imagination is never lacking in those intent upon suicide. Pain thresholds are so high as to make the inconceivable a practical reality.

Depression of the central nervous system may occur an hour or more after an intoxicated person is detained, simply because his body and system have not, at the time of interception, completely absorbed the alcohol into the body. He could conceivably die from alcohol overdose an hour after being placed in detention.

Since this area was well planned and response systems were lined up in advance, such occurrences were fully prevented with the exception of a single suicide which occurred in a cell. The suicide occurred within five minutes of the time a highly boisterous, intoxicated female suddenly quieted down-- medical aid was immediate; however, it was also too late. The system of safeguards worked fine, but was not fast enough to prevent her death.

It should be a warning, not only to this department but others who detain intoxicated persons for any reason, that constant watchfulness and knowledge of the signals is critical.

Handling Suicide Attempts in the Detention Facility

As related above, during the report period fifteen recorded attempts at suicide occurred within the detention facility. Over 600 detainees were processed prior to a single successful attempt. While the occurrence was singularly tragic in and of itself, only one other suicide occurred in the Barrow population unattended and undiscovered. The normal attempts and actual successes for the year were prevented by the program since no other influencing factor can account for such positive results. It would be logical to deduce that attempts made in detention could and probably would have occurred outside the facility with a greater chance of success and complete anonymity. As it was, fifteen attempts were attended, stopped, and provided treatment.

A system was established to identify each person who attempted suicide at any time, resulting in special attention for those detained another time. Card index files were made (commonly called Field Interview or FI cards) and green notes were attached to the FI of anyone attempting suicide so that screening against such cards alerted communications and officer personnel to pay particular attention to them. Such attention to detail in all probability saved several lives during the course of the program.

Officer Knowledge of DT's

Erratic behavior by detainees frequently demonstrated the effects of Delerium Tremens. Locally, such medical terms are labeled the "snakes"-- one manifestation of the hallucinations suffered by those going through DT's. Such erratic behavior can be very dangerous if not understood and treated by proper medical authorities. Oftentimes a demented paranoia occurs that can be transferred onto officers and/or facility personnel. This sometimes leads to attacks, escape attempts, bizarre behavior, and suicide attempts. Personnel were instructed that should any of this special type of behavior occur, the detainee was to be immediately transported to the local hospital and admitted for treatment.

Typical Behavior Cycles of Detainees

No single cycle of behavior is typical of all cases. Most often a detainee was brought in, inventory searched, identified by name only, screened against FI cards, hat coat, belt and shoes removed, and was placed in a detention cell that is always lighted, cleaned daily, and has bedding available. Requests for coffee or water were always filled, and the detainee generally

went to sleep a short time later. Sleeping is common, but also dangerous if not properly observed. A simple procedure for observation is to stand outside the cell and count respirations--it is a good indication of the physical condition in which the intoxicated person is found. This cannot be done over a television monitor. It must be done in person with full knowledge of what signs respiration signals. It demonstrates a clear airway, normal breathing and normal sleep. It will immediately show problems with breathing, airway obstructions, and pre-comatose depression.

Another observation can be made in the same manner--that of uncontrolled urination or bowel movements. Such occurrences are a clear danger signal that requires immediate response and attention.

Frequently detainees will exhibit self-destructive behavior by beating their fists, feet, or heads against the walls of the cell. When this occurred, measures for first aid were carried out and a short waiting period was initiated. If absolutely necessary, detainees were physically restrained until the behavior ended.

TV Monitoring Versus Jail Guards

TV monitoring is a static method of observation that is dangerous for several reasons. It often can create false reliance upon mechanical means of observation. It is also not sufficiently clear enough to make visual checks of critical factors. It will not show breathing difficulties, potential aspiration, pre-comatose conditions, and other signals critical to detainee medical needs. On the other hand, it does provide a safe means to observe manic and erratic behavior; it insulates the observer from becoming a source for the venting of frustrations and potential attacks. The most significant method for calming the intoxicated person is leaving him or her alone, but discreetly observed. The best solution to observation and care is a combination of both. However neither should be relied upon alone to solve the problem of observation.

Emergency Resource Reactions

The Department of Public Safety is the center for all emergency communications in Barrow and the North Slope--including direct radio alerting of medical personnel at the PHS Hospital. Such communications, in addition to direct and immediate ambulance alerts, establishes the foundation for emergency resource reactions. In addition, trained emergency medical personnel are supplemented by department personnel in line officers as well as communications personnel. The result is an almost immediate response to any medical crisis within the facility. This resource must be initially evaluated and provided before such a program of drunk detentions is initiated. It serves to protect all parties concerned. It also prevents gross mismanagement of detainees in the program.

Publicity

The department insured that, with the cooperation of the task force, the whole community was informed about the program, how it would actually work and the potential benefits and risks involved. The public's complete awareness and support of the program saved it from complete destruction when the suicide occurred in December of 1977, the last month of the community-wide effort. Weekly and monthly the public was informed about its progress with radio announcements. Virtually all feedback from the general community was of a positive nature. The program could not be accomplished without full parti-

Officer Risk

It was found that officer risk was actually very small. There was greater risk to the intoxicated person than to officers. Intoxicated persons were found to be uncoordinated and unable, for the most part, to be successful in attacks on officers. Very few attacks occurred, and all were very minor. A primary reason for this was the publicity which informed not only the general public but detainees as well. Intoxicated persons knew in advance what was going to happen, and as a result there was no fear nor mystery associated with it.

Detention Time

Detention time is defined as the length of time necessary to hold the intoxicated person until complete remission of the effects. Initially the time was set at a maximum of eight hours. While only an unproven estimate, the eight hours' maximum time proved to be sufficient. Certainly any longer period of time would have caused a strain on facilities and cost overhead. A minimum was set at four hours. This also proved to be very valuable for those less intoxicated than others. No allowance should be made for more than a twelve-hour limit. An extension of this type would cause a breakdown in operations of the facility, disruption of detainees' time, considered valuable for family and job related needs, and an unnecessary burden upon program personnel and officers. The 4 to 8 hour limit proved to be very practical as well as acceptable to officers and the general public. It also prevented any misuse of the program by unnecessary detaining. It acted as one of many checks and balances.

Program Costs

Evaluation consisted of monthly data on the number of persons detained in the program and a comparison with prior years' incidence of crimes, fire deaths, and suicides. A monthly analysis also tells the administrator whether or not modifications are needed in the program as well as performance results by line officers in developing the program objectives. This can only be accomplished if a system of monthly data reporting has already been established. The department's experience illustrates that the ceiling of detainee pickups never was reached for the year 1977, as the last month of the year was the highest. The progression of numbers will act as anchors to the evaluative picture formed after the first few months. Community feedback is also an anchor to the evaluation process, in that negative feedback will indicate changes, modifications, or failure of the program. Such feedback represents a form of reality testing critical to its continuance.

Data for the previous year must also be handy for comparison on a month-to-month basis. If it is seen as effecting the reduction of the number of necessary arrests, reduction in misdemeanor complaints filed with the local court, and an overall reduction in the number of crimes reported, the administrator may want a certain part of the program reinforced and other parts de-emphasized. If, after three or four months, there is no difference in activity levels, there will have to be a reevaluation of the program and its effectiveness.

IMPLEMENTATION STEPS

Identify and Evaluate Effects of Alcohol Abuse

It is the police administrator's role to accomplish this task through available records of police, fire, and medical activities within his own community. Screening these results through local leaders who may well be aware of the impact of alcohol abuse will result in the formulation of cooperative efforts towards implementation of a drunk-detention program. The effort at identifying effects and causes will dictate the need for the program and a group of concerned and cooperative citizens and police personnel.

Short-Term Group Organization

The organizing of a short-term group will serve to initiate the program since it cannot be developed in a vacuum. The task force may be small in number but represent a group of community leaders. It certainly will not work on a principle of "white hat missionary zeal", nor a one-man showmanship project. Several meetings in a short period of time will effectively bring out identified needs and anticipated impacts. The work of this group is to act as an advisory council to the police administrator in formulating the program and the mechanics that fit the local situation. The group will also identify what facilities are available to select from or determine that a single facility will have to be upgraded with minor additions and used regardless of its inherent faults. Such was the case with the City of Barrow--a facility obviously not designed for such a program, but the only one available, was used.

The group will also tend to establish requirements for care and resources that need to be directed at the program. Those especially important will be medical resource persons, voluntary aides, or personnel training needed prior to program initiation. In addition, all of the necessary functional parts identified in this monograph will have to be addressed in advance. At the end of the group's short life, a decision will have to be made by them and the administrator as to whether to go ahead with the program, or that it is not feasible.

Once the program is actually initiated, the need for the group's existence will diminish, and the responsibility for the program will fall upon the police administrator.

The Police Administrator Evaluates Internal Resources

It becomes incumbent upon the administrator to evaluate several aspects of his own departmental resources before deciding to go ahead. They are the following:

- * Train department personnel in advanced first aid at the least, and preferably to the EMT level.
- * Check personnel attitudes towards the program after training them in aspects of alcohol abuse and the preventative concerns of the program.
- * Evaluate, correct, or modify existing facilities for the function they will serve in the program.

- * Insure public information about the nature of the program, how it will function, and when, where and under what circumstances it will be initiated.
- * Establish close and permanent relationships with medical facilities and personnel.

After the first three or four months of careful observations any modifications needed should become evident. It is important that the commitment to the program be for at least one full year in order to provide any real and significant effects. Decisions for continuation or elimination of the program altogether will also tend to be self evident at the conclusion of a full years efforts.

Personal involvement of the police administrator during the initial stages will also be very important, simply to insure that his own information is consistent with what may be reported to him by staff and line officers. A breakdown in that information and sharing process will add great risks to the program if the administrator fails to take a personal interest in how it is initially developed. His own personal evaluation is likely to be more objective than those of line officers or staff officers, who may be the recipients of officer complaints and feel obligated to pass them on.

Program Initiated After Public is Informed

With prior public education, one of the most common results to be expected is that some of the informed public will also be those detained. Their prior knowledge of how the program works, that it is completely decriminalized and humanly safe, will prevent stiff opposition to its implementation during the first few weeks or months. There will also be feedback from those actually detained in terms of their expressed feelings about the program and how they were treated. This too, should be considered as valid as other forms of input.

VI

PROGRAM MODEL EVALUATION

Evaluative Methods and Criteria

An evaluation of the Detention Program includes a three-year data base and application of the standard scientific statistical analysis processes. Rather than applying only the "dry" statistical method the author intends to develop and use transliteration into humanistic terms to illustrate what the raw data may not clearly show. This will be accomplished using a comparative method of human activities along with controlled and uncontrolled variables. The uncontrolled variables will be identified and will include such influences as seasonal variations, seasonal community activities, employment rates, raw data on availability of increased or decreased income, and some attempts at relatively viable psychological foundations for alcohol consumption.

The base-line group for all statistical and sociological evaluation will be the Barrow population figures as of July 1978. With this base-line group it will be possible to identify, within reasonable limits, the entire pathology of alcohol use in the City of Barrow for a three-year period. While some statistical charting may tend to speak for itself it does not, however, delineate precisely the extent nor the effect of the whole realm of alcohol abuse in human terms.

The social pathology of crime and its commission can be laid squarely upon alcohol abuse. No other influence, no matter how apparently valid or significant can begin to match the straight line influence of alcohol abuse and crime in Barrow. Raw data results clearly develop specific pathologies and trends in sociological terms.

Interpretation of Raw Data

Some generalizations are clear when viewing the results of the Detention Program for Barrow. The following statements are deduced from raw data as no other variable can account for the net results shown to date:

- Suicide and alcohol abuse are not only linked but pathologically related. As an axiom, suicidal behavior requires a breakdown in inhibitions against such an act and therefore, in the Barrow population at least, requires intoxication. Hence, zero success inclusive of at least twenty-five attempts in the population for a full calendar year is strong support for such a statement. To effectively support the zero suicide-success rate, it is necessary to maintain a 90 to 95% efficiency rate of detentions.
- The incidents of home fires and fire deaths are directly related to alcohol incapacitation. No other influence nor outside variable can be used to explain the zero fire-related death rate.

Interpretation of Raw Data

- Incidents of accidental death have been reduced by an actual 90%. The implications for the population of Barrow are fantastic. It has been 18 months since an accidental freezing death has occurred. The Detention Program has come very close to completely zeroing out accidental deaths.
- Crime reduction, caused by interception of alcohol abusers, is close to 60% in a two-year time frame. Only the efficiency of the program model enforcement dictates the level of crime. Therefore, crime can be, and is, controlled with an iron hand by high levels of detention efficiency. Serious crimes against persons and property have been reduced by nearly 40% in one year.

Conclusions and Implications for Rural Alaska

Since indisputable proof is now available for what was unsupported contentions of rural communities' crime and abnormally high death rates, the only serious question remaining is not if other rural communities should follow suit, but when they should begin their own detention programs. The model results coming from a detention program will no doubt come as a shock to the criminal justice system. Fighting the root cause of crime is far more profitable to communities than the actual investigation and resolution of crimes after the fact.

It is a radical departure for any police agency to examine root cause and effect relationships and decide to attack the cause and not the effect. However, for rural Alaska communities there can be no remaining doubt that attacking alcohol abuse is far more rewarding and profitable in terms of success rates than any other known approach to date. In the savings of life alone, the value of the Detention Program is unquestionable. If a police agencies highest goal is not the saving of life, it certainly ought to be in light of this programs' ability to accomplish just such a goal.

Admittedly, the approach is contrary to the TV and general publics' perception of cops and robbers. There is little glitter and glory in tangent approaches to traditional crime problems but when seen as a wholistic framework, the success can be just as rewarding in the eyes of the community. The basis for such a tangent approach is the early recognition that traditional ways of solving the crime problem do not work. It is a nonproductive exercise in futility to maintain traditional approaches with a proven failure rate. Drastic and experimental methods result in success rates far exceeding those of any known past methods when applied to today's communities.

Controlled Variables in the Detention Model

Controlled variables are those which include facets of the model design during the early stages and any modifications that were made in the process of the two-year development. Early stage controlled variables included:

- A. Detention of intoxicated persons in public places and streets.
- B. Maximum detention time of 8 hours.
- C. Some allowance for transfers of intoxicated persons to their homes and/or release to sober adult care.
- D. Minor allowance for removal and detention of those intoxicated in their own homes.
- E. Detention considered a secondary patrol strategy by managers.

The above listed variables were not rigidly enforced nor pushed by the staff responsible for patrol strategies. This slow process of enforcement continued for the first 8 months of the detention program model. Only after 8 months was a significant change initiated and added control variables considered. The information feed-back as a result of immediately visible successes resulted in added modifications and a more rigid management of the program.

Later controlled variables, initiated only after approximately 8 months of experience, resulted in the following:

- A. Maximum detention time was increased to the statutory limit of 12 hours.
- B. Transference of intoxicated persons to homes was absolutely forbidden - enforcement was specific and direct.
- C. Complaints from household members about family/relatives being intoxicated resulted in direct removal to detention facility with no exceptions.
- D. Detention considered as a primary patrol strategy by managers and adopted by line patrol officers.

Any person intoxicated, anywhere, anytime, was detained without exception and provisions for release to home and/or sober adults was discontinued. Hence, the efficiency of finding and detaining intoxicated persons drastically increase finally leveling off at approximately 90 to 95%. It soon became apparent that any person who was drunk had a 1 in 10 chance of being missed by patrol and placed in the detention program.

Uncontrolled Variables and Potential Effects

Not all uncontrolled variables can be accurately identified nor accurately measured. Among those outside influences were:

- A. High employment rate and high availability of jobs throughout 1978 due in large part to Borough construction (major) projects continuing throughout the winter with no let-up.
- B. Weir Air Alaska's half fare round trip plan between Fairbanks (the source of supply for Barrow alcohol) and Barrow. The cost of travel on weekends was cut in half. From date of initiation detentions increased by 40%.
- C. During 1978 the Whaling Controversy led to a low success rate and angry social feelings about outside restrictions resulting in higher incidents of detentions and arrests than is normally found during the whaling season (the lowest crime and drinking period in Barrow for the last three years).
- D. Seasonal variations on community activity (specifically local native subsistence, fishing, etc.) anticipated and relatively accurate. Cultural community activities cause a significant reduction in alcohol abuse and crime.
- E. Cause and effect of major social engineering resulting from massive use of apartment living for a large portion of the elderly population and the division of expanded family units into smaller disassociated ones resulted in increases of alcohol abuse in the Fall of 1978.
- F. Increased income availability due to employment opportunities resulted in more money, hence increase in alcohol consumption.
- G. Initial drive against bootlegging resulted in eight arrests during a two week period, one conviction, and seven acquittals. Barrow juries would not convict local bootleggers even with substantial proof. Those pleading guilty received meaningless sentences. Deterrence was non-existent.
- H. Intelligence collection on bootleggers indicated that a massive number of individuals found it socially acceptable to make a "little money on the side". Nearly fifty persons were identified as illegal sellers of alcohol as opposed to a relatively few individuals operating on a large scale. There are no large scale bootlegging operations in Barrow during 1978.
- I. Present data indicates that one out of every two adults in Barrow purchase and consume bootleg alcohol. Chances are two to one that a juror buys and consumes bootleg alcohol.

Averaging as a False Indicator

During calendar year 1977 the average detention counts per month was 55. However, the charting of detention incidents was highly skewed with the base line year showing a 45 degree increase throughout the year and no sign of reaching any maximum number per month. While 1978 showed a marked flattening of monthly averages (93) the same effect hold true for this recent year. End of year averages are again skewed and increasing.

When the monthly average for 1977 (at 55) is compared to the 1978 average (93) a false impression is apparently shown by the almost double monthly average. The explanation is relatively simple to understand. During 1977 the efficiency of the detention patrol strategy for the first eight months was weak. The late addition or modification of controlled variables easily accounts for this percentage discrepancy.

Averaging detentions by month for the 1978 year is also a false method of determining realistic measures since, once again, the late year increases defy the averages. Only uncontrolled variables can account for a second level increase for 1978. The author can think of only one conclusion to draw from the steady rate of increases over this two-year period.

Aside from the fact that averaging becomes a false indicator, as long as annual increases continue towards the end of each calendar year the only conclusion that can be drawn is the existence of a frighteningly steady increase of alcohol abuse throughout the entire population. The author cannot even begin to determine when and where that steady increase will stop or level off. The implications of this conclusion are terrifying to contemplate in terms of the heart and soul of the community of Barrow.

At the present time data already analysed indicates that fully one-half of the adult population is carrying the other half of the population on their collective backs. The capacity for collective community participation in any activity and/or problem-solving framework is not only hampered by this conclusion but such efforts would be crippled before they began. The problem of escalating alcohol abuse must be attacked with an all-out effort by the few who still can meet the challenge. Failure means total collapse of this communities ability to direct their own destiny.

The Social Aspects of Data Analysis

Transulating numbers into human terms the following is offered as demonstrative proof of conclusion drawn by the author:

- The approximate adult population of Barrow is 900.
- The total number of individual adults detained is 450.
- 50% of the adult population of Barrow has been detained for alcohol abuse at least once during 1978.

- The average numbers of times for an adult detention during 1978 is three.
- 131 adult females were detained for intoxication in 1978.
- 319 adult males were detained for intoxication in 1978.
- The detention of 450 individuals resulted in 1180 total detentions for 1978.
- The approximate population of Barrow is 2700. 450 separate persons detained represent 1/5th or 20% of the entire population.
- 150 days or 5 months of adult time was spent in jail for detoxification. (Based on an average of 8 hours).
- The youngest adult detained (defined by statutory law) was 19.
- The oldest adult detained was 73 years old.
- The ratio of male to female detentions is 3.38 to 1.
- In a two year time frame there were 1884 detentions.
- From examination of all data for a two-year period one can only conclude that bootlegging is a socially acceptable past-time.
- At the very least, through interpretive statistics, there is absolutely no difference between a "wet" year and a "dry" year as far as alcohol consumption is concerned.
- The only redeeming value of Barrow being "dry" as opposed to being "wet" is the reduction in juvenile alcohol abuse.
- All data strongly indicates that all money, manpower, and equipment applied to Public Safety concerns in Barrow is, in actuality, being spent (at about 80%) on alcohol abuse problems.
- Crime in Barrow is controlled at acceptable levels specifically by the control of alcohol abuse.
- Of the 450 separate people detained at least once, a total of 87 were arrested for some type of crime either before or after their detention.
- Of 131 adult females detained, 16 were arrested either before or after detention.
- Of 319 adult males detained, 71 were arrested either before or after detention.
- 68% of all detainees are between 19 and 35 years of age.

CORRECTION

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

- The average numbers of times for an adult detention during 1978 is three.
- 131 adult females were detained for intoxication in 1978.
- 319 adult males were detained for intoxication in 1978.
- The detention of 450 individuals resulted in 1180 total detentions for 1978.
- The approximate population of Barrow is 2700. 450 separate persons detained represent 1/5th or 20% of the entire population.
- 150 days or 5 months of adult time was spent in jail for detoxification. (Based on an average of 8 hours).
- The youngest adult detained (defined by statutory law) was 19.
- The oldest adult detained was 73 years old.
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- In a two year time frame there were 1884 detentions.
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- Of 131 adult females detained, 16 were arrested either before or after detention.
- Of 319 adult males detained, 71 were arrested either before or after detention.
- 68% of all detainees are between 19 and 35 years of age.

VII

CONCLUSIONS

The basis for the following conclusions are found in the raw data and analysed data preceeding this chapter. Some of the conclusions are those of the author and do not necessarily reflect specific proof through interpretation of data since all data can be interpreted in various ways. Others, with far more experience in statistical analysis may find conclusions that will be different than the author's. While continued attention to data and records will be maintained for several more years, this effort is the last that will be formally published by the North Slope Borough Department of Public Safety. Others who are interested are more than welcome to use the data and future records for definitive research.

The program approach has been one of providing data that can be used in future program developments and extensions of principles found in this research. Modifications of controlled variables may continue to be made and refined. There are, of course, some precautions that should be noted for the benefit of any other agency who may attempt this type of program in their communities.

A Word of Caution

This program could not have been as effective as it has demonstrated without complete community knowledge and support. In order to illustrate this requirement let me say that working in a vacuum of secrecy (failure to inform) and gross assumptions about community attitudes and opinions (the demigod approach) will result in disaster and grief. The program design and development began on certain assumptions that were not validated in advance but were as reasonable as could be expected with experience. From that point on, community reactions and individual concerns were foremost in determining controlled variables. If even ten individual community members had made formal, or even informal complaints about the enforcement of the program it would have been stopped.

The program began through the efforts of the Department of Public Safety and health professionals taking the risk of public outcry against such policies and lead to institutionalized programs with full community knowledge and support. The intake procedures were a one-way street in the beginning. The careful use of the word "imposed" is not without basis in fact at the start. However, shortly thereafter a complete transference occurred when efforts were made to close the program down. Public Safety no longer needs to seek and find persons intoxicated. The members of the community call and expect this type of programmed service. It is no longer a program wholly owned and claimed by Public Safety - it is now a community based and supported program that cannot be stopped with the stroke of the Director's pen upon an order.

Program Failures

The program is a major social order and maintenance tool that has some great failures (as well as successes). The policy of detention for the public inebriant and the discovery of the overwhelming degree of alcohol influence in the communities daily life only serves to illustrate the next point. The community of Barrow has been given a highly effective anesthetic that results in removing community members from harms way. The disease still remains. The problem of alcohol abuse has not been solved nor even treated. It continues to grow at an alarming rate and infects almost every household in Barrow.

With a justifiable degree of anger the author feels what has been accomplished is not enough. Not nearly enough. Now that the community is anesthetized the disease requires removal by some type of specialized surgery. Without that surgery the community (patient) can still die! The Department of Public Safety does not have the skills nor required knowledge to perform the necessary operation. The overwhelming problem of alcohol abuse has not been solved. Only the effects of the disease have been blunted and prevented.

In terms of the Barrow community as a whole, any potential for self-determination and the building of skills for directing their own destiny is being blunted and misdirected by alcohol abuse. Barrow may now be number one in crime reduction, but at the same time Barrow may also be number one in the process of self-destruction. With one-half of the adult population directly affected by alcohol who is to say that three-fourths of that same population two years from now will not also be affected. The trends that data now prove must be stopped and reversal begun. Otherwise there is no hope for the people of Barrow to ever have control over their own destiny.

The above serves to illustrate that solving the problem of the effects of alcohol abuse does not solve the real critical issue, it only makes it less painful and harder to recognize by the community.

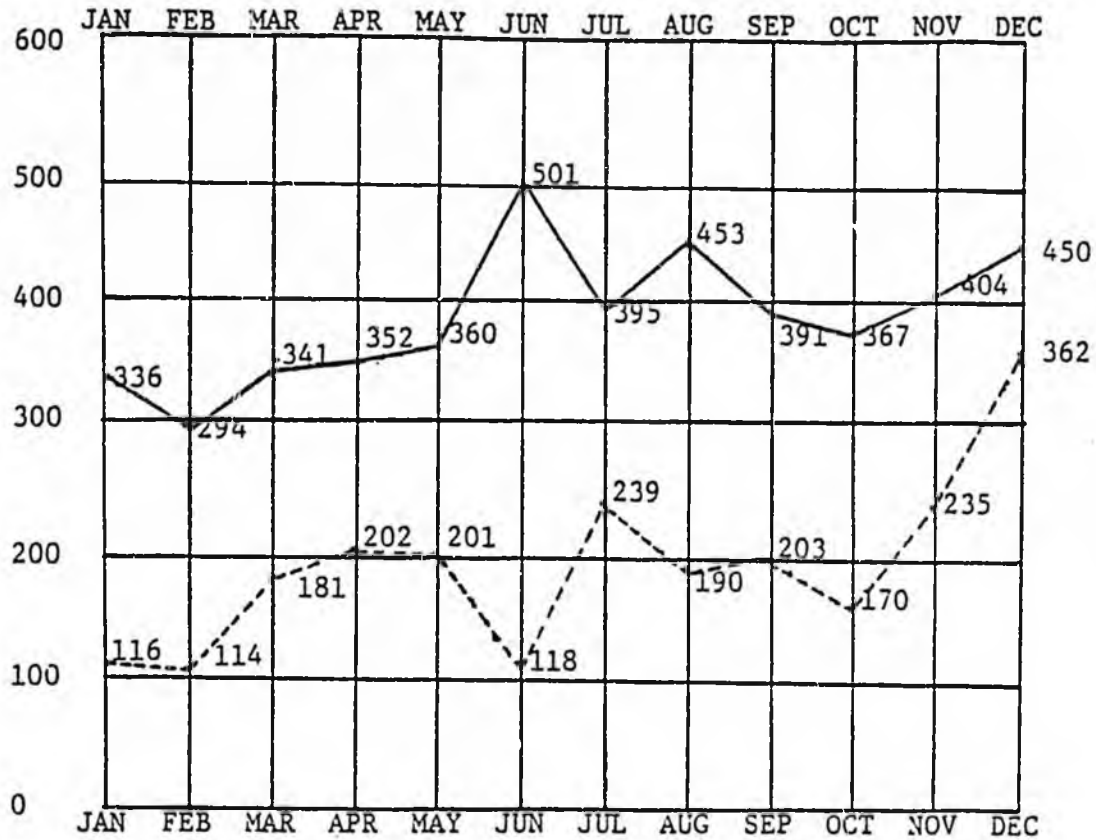
REFERENCES

1. Criminal Justice Planning Agency, 1978 Alaska Criminal Justice Plan, "Alcohol Abuse and Alcoholism", 1978, 246-256.
2. Dittman Research Associates, Public Opinions About Crime and Criminal Justice in Alaska, 1976, Ed. Criminal Justice Planning Agency.
3. Magistrate Court, Barrow Judicial Service District, Death Certificates Record, 1973-1977, Charlotte Brower, Magistrate.
4. North Slope Borough, Annual Report 1977, Department of Public Safety, Projects and Program - Statistics and Analysis, 48-68; 162-170.
5. The State of Alaska, Alaska Statutes, Title 47 Chapter 37, "Uniform Alcoholism and Intoxication Treatment Act, December 1976 Cumulative Supplement.

Appendix A

Service Request Comparison
Chart

SERVICE REQUESTS - 1976 & 1977



* Service requests indicate the number of calls received by Public Safety and responded to by Public Safety Officers.

1976 - Total Service requests = 2331 Symbol -----

1977 - Total Service Requests = 4644 Symbol _____

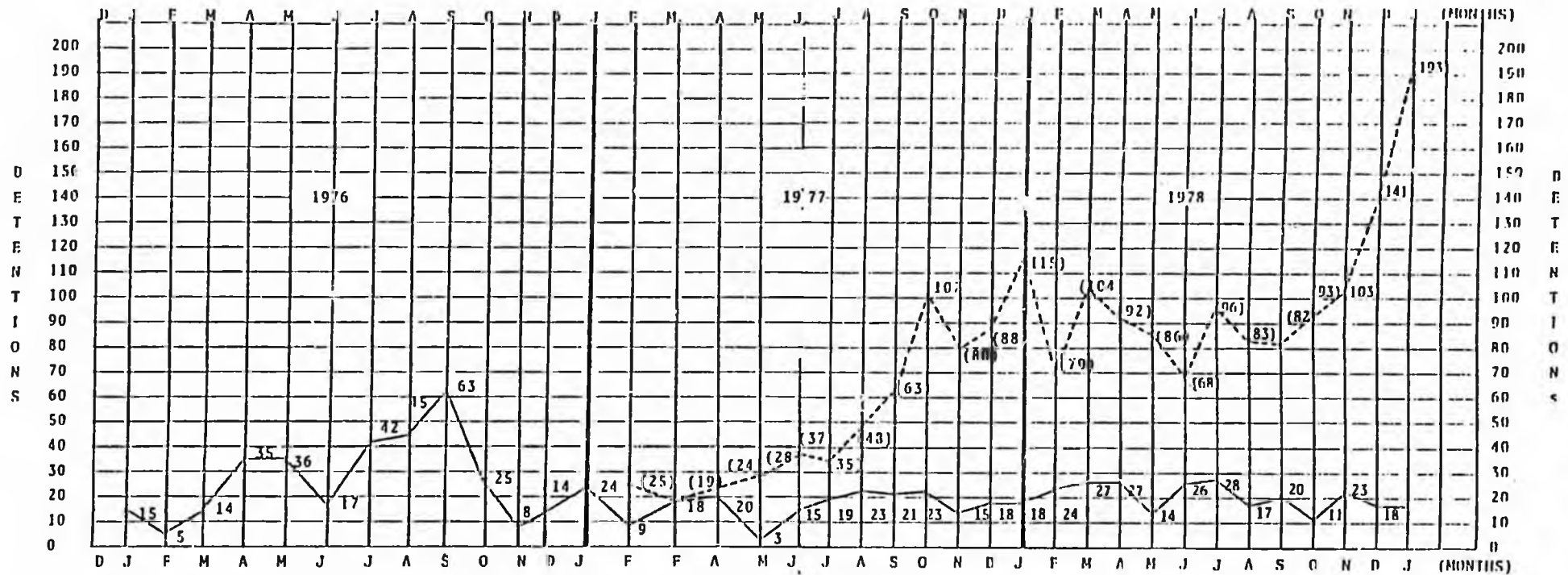
1976 - Monthly Average = 194

1977 - Monthly Average = 387

Appendix B

Annual Arrest and Detention Data 1976/77
Comparisons

DETENTIONS VS ARRESTS
-ADULTS ONLY-



Total Adult Arrests For 1976 319

Total Adult Detentions 1976 0

COMMUNITY VOTED "DRY YEAR"

Detention (Drunk) -----

Criminal Arrests -----

Total Adult Arrests For 1977 208

Total Adult Detentions 1977 664*

COMMUNITY VOTED "WET YEAR"

Total Adult Arrests For 1978 253

Total Adult Detentions 1978 1,211*

COMMUNITY VOTED "DRY YEAR"

*Two-Year Combined Detentions (1977,78) 1,875

Appendix C

Uniform Crime Statistics
Comparison 1976/77

85

80

75

70

65

60

55

50

45

40

35

30

25

20

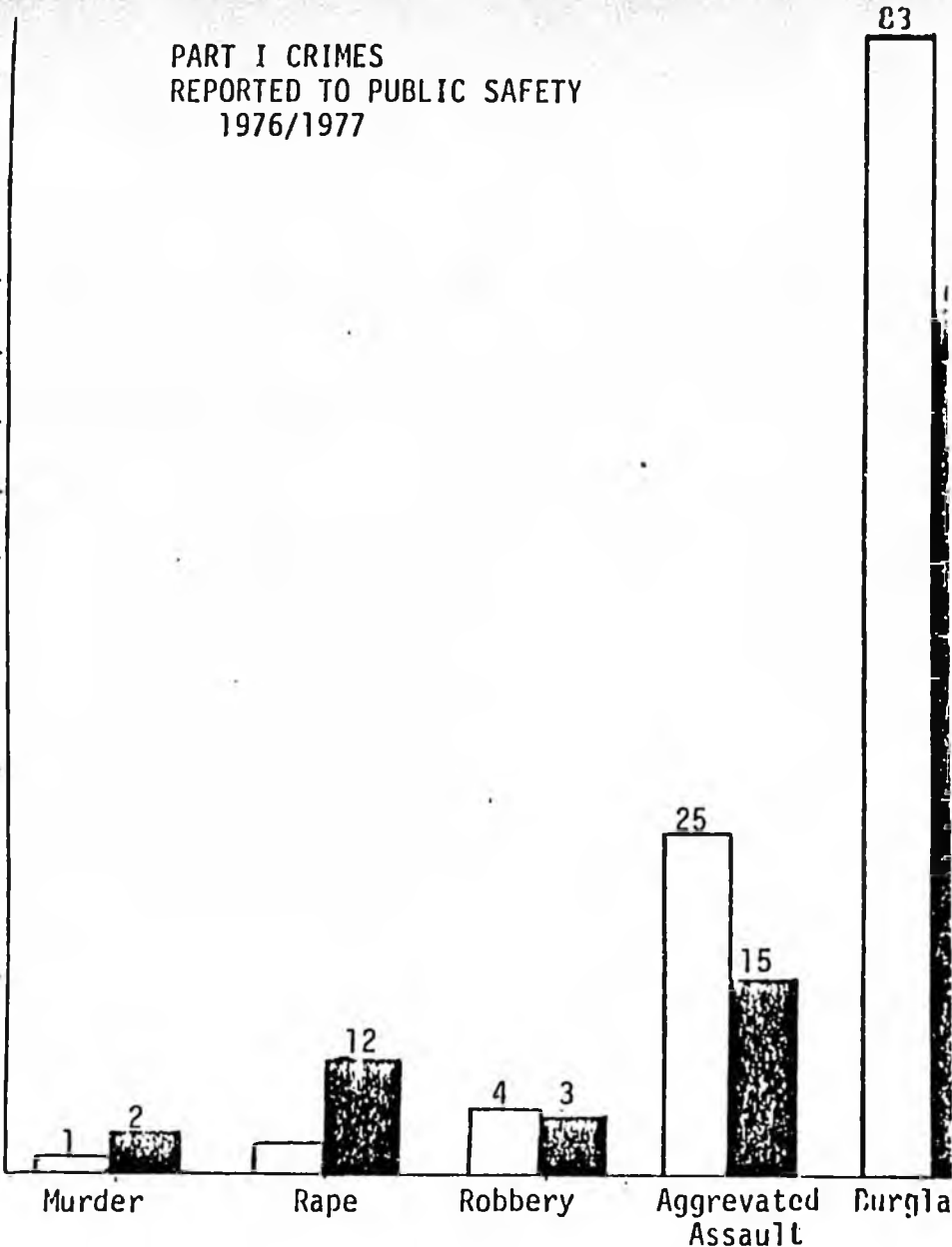
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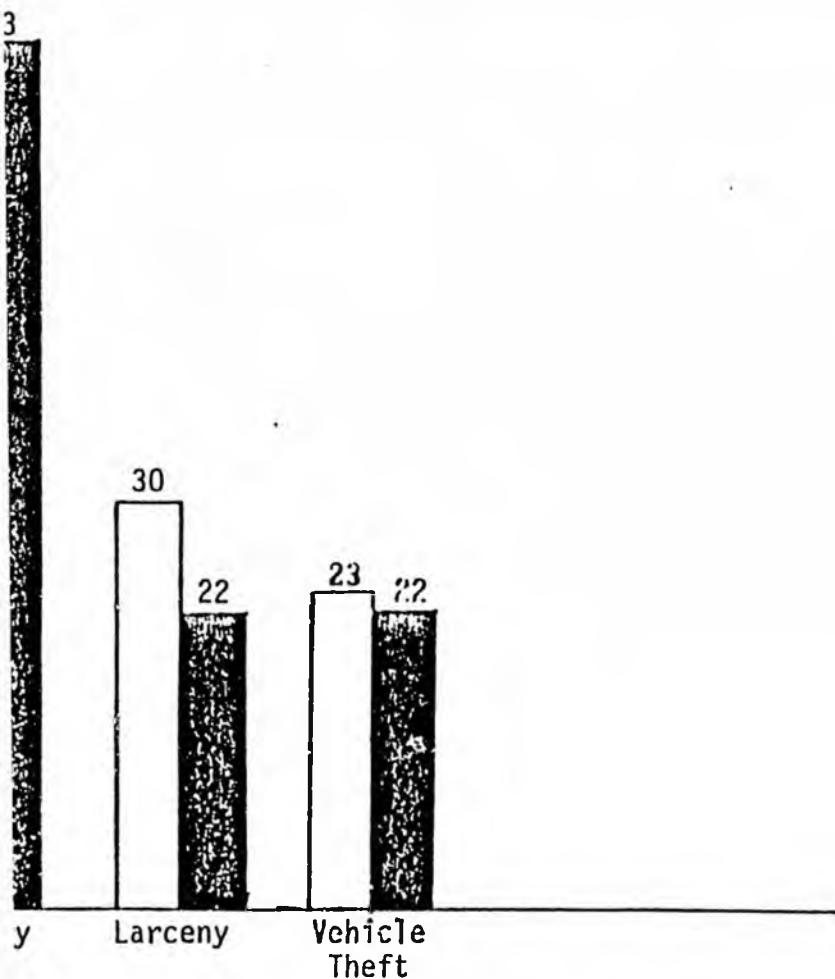
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PART I CRIMES
REPORTED TO PUBLIC SAFETY
1976/1977



PART ONE CRIMES COMPARISON

COMPARISON CHART



CHART

1976

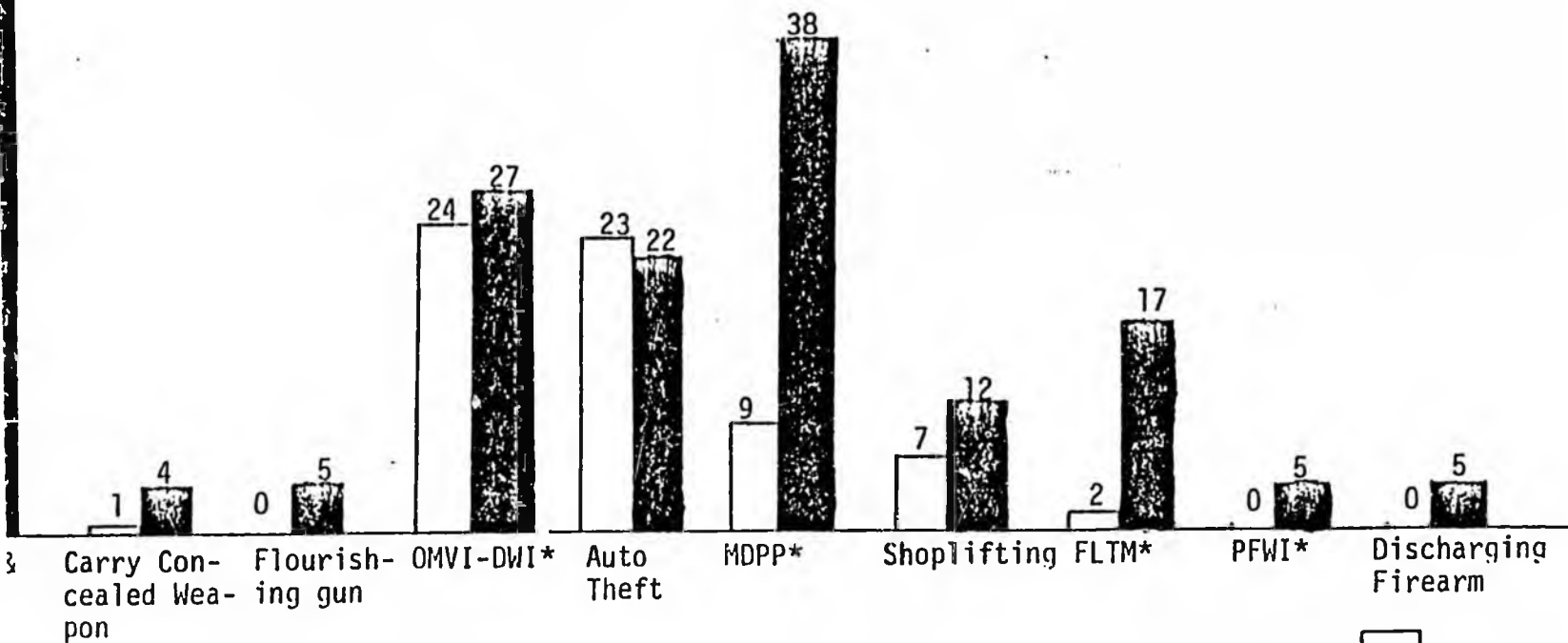


1977



PART II CRIMES
 REPORTED TO PUBLIC SAFETY
 1976/1977

COMPARISON CHART



PART TWO CRIMES COMPARISON CHART

ing Motor Vehicle
 nder Influence
 us Destruction of
 l Property
 ing Liquor to a Minor

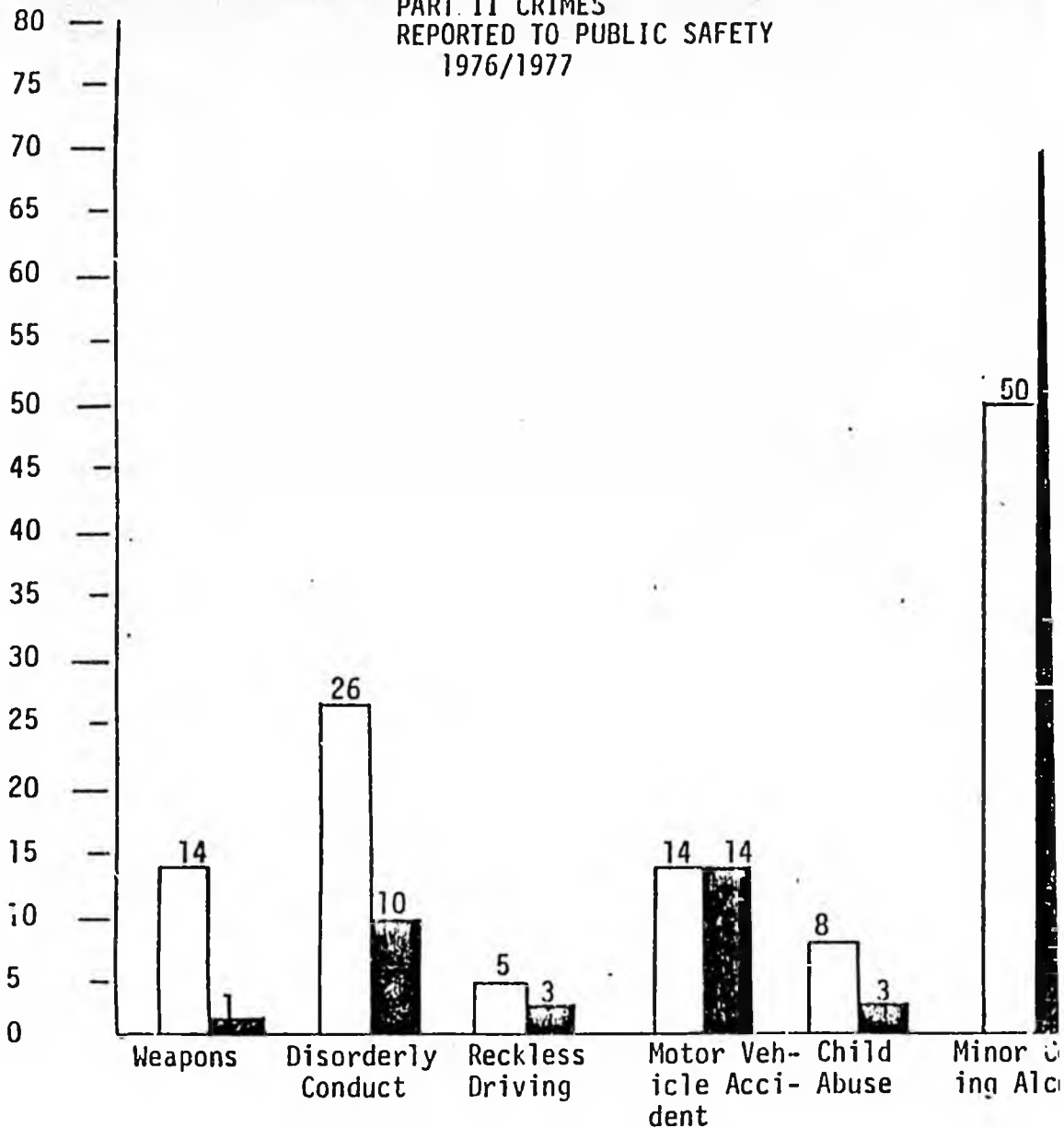
1976



1977



PART II CRIMES
 REPORTED TO PUBLIC SAFETY
 1976/1977



PART TWO CRIMES COMPARISON CHART

Appendix D

Deaths Reported to Public Safety - Barrow

1977 and 1978

Death Reports - 1977

1-11-77

Alcohol Related: Yes

Officers responded to a call of someone down and bleeding badly in Barrow. Officers arrived at scene and observed a male holding the head of a female. Victim's age 19-21. Ascertained that a snowmachine accident had occurred, that the driver had fled the scene on a black snowmachine leaving victim injured. Victim transported to hospital and pronounced dead on arrival. Both victim and driver of snowmachine had been drinking earlier. 77-0127.

1-28-77

Alcohol Related: Yes

Initial call was received from one of the doctors at the hospital stating that there was a death at the hospital under unusual circumstances. In doctor's opinion death was by aspiration. Patient admitted to hospital due to overdose of pills and alcohol. Female 30-35.

2-25-77

Alcohol Related: Yes

A fire was reported by duty officer. Fire Chief indicated that at least one person was in the building when it was fully involved in flame. The fire department removed the body of a male 25-30 years old. Investigation showed victim was highly intoxicated just prior to the fire. 77-0605

4-9-77

Alcohol Related: Yes

Female victim approximately 15 years old died of pneumonia, overdose of medication, and alcohol. 77-1095

7-5-77

Alcohol Related: Yes

Medical call revealed a female 25-30 years old had stopped breathing and mother had reported her condition. Cause of death was acute overdose of alcohol. 77-2263

8-11-77

Alcohol Related: Yes

Male 22-26 years of age reported suicide by hanging. Investigation and autopsy revealed victim extremely intoxicated at time of death. 77-2766

Death Reports - 1977 (Con't)

8-28-77

Alcohol Related: Yes

Approximately 1:30AM received information that a man was laying on the ground by the Old Post Office injured and bleeding. Officers responding found male 21 years old face up bleeding from visible chest wounds. Cousin arrested for homicide. Defendant extremely intoxicated and argued over a bottle of calverts whiskey. 77-3029

8-29-77

Alcohol Related: No

Two bodies, male and female, found at Shooting Station shot to death. Male defendant arrested, charged, and convicted of 1st degree murder. Homicide was not alcohol-related. 77-3051

8-28-77

Alcohol Related: Yes

Motor vehicle accident in 3/4 ton military pick-up fuel truck. Rnd off road and burst into flames. Driver died from result of fire and autopsy showed male victim was intoxicated at time of accident. 77-3031

9-21-77

Alcohol Related: Yes

Report of mother leaving baby on beach to die of exposure. Homicide investigation showed baby died of hypothermia. Mother was intoxicated at time of abandonment. 77-3332

10-15-77

Alcohol Related: Yes

A house fire reported at small private dwelling. Informed that there was one or more individuals in burning building. One male victim age 19 was recovered after fire. Victim's autopsy indicated he was intoxicated prior to fire. 77-3619

12-20-77

Alcohol Related: Yes

Victim, 32-38 year old female, placed in detention for acute intoxication. Victim depressed and worried about children. Hung herself in cell #1 using her t-shirt. CPR attempted, however victim was pronounced dead on arrival at the hospital.

Death Reports - 1978

1-24-78

Alcohol Related: Yes

At approximately 11:35 AM, 1/24/78, officer received information from his supervisor that he had received word that a male victim, 41 years of age, had died in Fairbanks, and that there may have been questionable circumstances surrounding his death. Victim died of hematoma, prior to death was previously admitted to the Public Health Service Hospital in Barrow appearing "beat up", and intoxicated. Subsequent investigation could reveal no foul play surrounding victim's death. 78-0074.

3-20-78

Alcohol Related: Yes

Received information of snowmachine accident at approximately 9:50 PM, 3-20-78. Two adult male victims, one fatally injured. Both had been drinking prior to accident, travelling at a faster rate of speed than was safe and hit a parked truck. 78-0967

6-4-78

Alcohol Related: Yes

Received request for ambulance 6-4-78 for a two month old infant. Infant was pronounced DOA at Public Health Service Hospital. Investigation revealed parents had been "partying" prior to infant's death. Father was convicted of manslaughter. 78-1907.

6-30-78

Alcohol Related: Yes

6-30-78 patrol observed objects lying in roadway towards Freshwater Lake. Found objects to be one adult male and a motorcycle. Victim pronounced dead 6-30-78. Hematoma was suspected cause of death. Blood alcohol content was .114%. 78-2286.

10-22-78

Alcohol Related: Yes

10-22-78 at 3:56 PM received call that there was a woman not breathing. Female, adult victim, age 47 years, was observed by responding officers lying face down on the living room floor. Victim pronounced dead at the Public Health Service Hospital at 4:20 PM. Blood alcohol content .465%. Cause of death determined to be alcohol poisoning. 78-3804.

Appendix E

Policy Guide - Drunk Release Program

MAYOR'S OFFICE
EXT. 211

ADMINISTRATION AND FINANCE
EXT. 210

PUBLIC WORKS DEPARTMENT
EXT. 249

PLANNING DEPARTMENT
EXT. 245

ACCOUNTING
EXT. 239

NORTH SLOPE BOROUGH

P. O. BOX 69

BARROW, ALASKA 99723

(907) 852-2611

DEPARTMENT OF PUBLIC SAFETY

GENERAL ORDER #2

ASSESSING
EXT. 263

TREASURY
EXT. 237

HOUSING AGENCY
EXT. 243

HEALTH AGENCY
EXT. 255

POLICY GUIDE

Operating Procedures Manual Reference: Chap. 214 and 301

A. "Drunk Release Program"

A major part of our crime-prevention program is the detention of those persons so intoxicated as to represent a definite threat to themselves and a lesser threat to others. Of the following purposes behind this program one additional feature will be added:

1. Protection of the person intoxicated.
2. Protection of others from intoxicated persons.
3. Non-criminal detention, processing, and release.

The additional feature will be an attempt to reduce "returnees" to this system by making referrals to the Barrow Council on Alcoholism for interviews, counseling, and treatment. While it is assumed that no enforcement of this diversion method can be made, there is room for a very light push in the general direction - that push being in the form of "voluntary referrals" directly from their release. These referrals will be a consistent part of this program.

The method of "voluntary referrals" will be as follows:

- A. At time of release by any officer, the person detained will receive a direct invitation (with officer assistance) to meet with personnel of the Barrow Council on Alcoholism presently located in the Youth Center. They are to be encouraged to go directly from release to BCA for initial intake.
- B. Since there is no legal provision for enforcement of referrals, a strong recommendation by the officer releasing will be encouraged.
- C. An alternative method is to call up the BCA and ask for a staff person to come to the station and make the request and invitation directly to the person released from detention.

General Order #2

B. "Diversion from Criminal Justice System"

It has been an operational policy in the past supported by a traditional approach to law enforcement, that misdemeanor cases be handled consistently in the same manner as felony cases. It is also a matter of enforcement tradition to have a rigid and sole source method of handling minor misdemeanors. That tradition acts as a plug into the criminal justice system from which no one ever escapes from at least a permanent criminal record.

Even those who are arrested for a misdemeanor, booked, fingerprinted, arraigned, and tried may find that after the courts have found them Not Guilty, there still exists a permanent record of arrest. Should they be dismissed before trial by the District Attorney, or the case dismissed for other reasons, the record of arrest remains to taint and tarnish a persons past. While other states have questioned the FBI's policy of never removing a criminal record (even of arrest when person is found not guilty) there is nothing to prevent our Department of Public Safety from initiating a clear policy that will correct an obvious injustice to an individual.

1. INTENT OF DIVERSION

a. It is the intent of this policy to initiate a diversion from traditional procedures of arrest and criminal prosecution when and where possible.

b. It is the intent of this policy to eliminate the filing of fingerprint and arrest records on first offenders normally processed to State and Federal computerized files.

c. It is the intent of this policy to restrict the filing of criminal records on repeat offenders for minor misdemeanors primarily between the ages of 18 through 25. Local records only will be kept on most misdemeanors.

d. All first offense minor misdemeanors will be "carded" only - no fingerprints will be recorded. No photos will be taken.

2. METHOD OF DIVERSION ON CERTAIN MINOR CRIMES

a. Where crimes against property are charged, whether first offense or not, an effort by the officer investigating will be made to settle the dispute directly between the two

Page Three

General Order #2

2. a. of any criminal complaints. This is especially true of family matters.
- b. If a person who does damage to property is drunk (they almost always are) that person may be held under the provisions of Chap. 214 and this order. Upon his release (hopefully to BCA) a settlement will be worked out between the complainant and the person who could normally be charged.
- c. The alternative should be explained to the person detained - that alternative being the settlement between the parties OR, the complainant may file a citizens complaint at District Court.
- d. Where crimes against the person may be charged certain considerations must be reviewed prior to filing criminal actions:
 1. Are both parties related?
 2. Are both parties intoxicated?
 3. Are both parties friends normally?
 4. Are the parties involved total strangers to one another?

Only the last item above should be restricted to the normal arrest and criminal complaint procedures. If a simple assault and battery occurs (as opposed to Agrevated Assault or other forms) between family members and/or friends particularly between the ages of 18 and 25, then detention is to be the primary consideration and criminal complaints the last resort.

3. REDUCTION AND DIVERSION

- a. The purpose is specifically to reduce unnecessary involvement with the court system, reduce unnecessary paperwork and processing, reduce injustice to individuals having contact with Public Safety, and reduce dismissals of "petty" cases and complaints.
- b. An additional benefit will be to serve individual justice much more fairly. It serves no ones idea of justice to attach a criminal record onto a first offender who gets drunk, makes a mistake (minor misdemeanor) and must suffer permanent tarnishment on his past, most especially those between the ages of 18 and 25.

Page Four

General Order #2

- 3. c. Those whom, in the past, have had to face criminal records, the court system, and a certain type of "branding" usually results in a "set" against the standards of a community and public safety and responsibility in general. That must change with some good common sense used to discriminate between the young who test themselves against society and find themselves initiated into the adult world.

C. DIVERTING FROM ARREST AND JAIL

It does not serve the interests of the public nor Public Safety to insist that all persons who commit minor misdemeanors (those to which all of the above do not apply) must go to jail. Traditionally, those who violate traffic rules and regulations are not hauled out of vehicles, taken to jail, booked, and bailed out. Why should it be the case in most misdemeanor cases?. Henceforth, the same rule of traffic offenses will be applied to misdemeanors not included in A and B above. A SUMMONS will be used when and where practical, (in cases of continued threats to public peace or safety this does not apply). When and if practical, the officer having violator contact will fill out and give to the offender, a SUMMONS to District Court. This will include most misdemeanors.

Misdemeanor Offense -----Officer Contact -----

Determination Made -----Summons Given -----

Officer types up criminal complaint or assists citizen in doing so.-----Citizen instructed to be present at arraignment and sign complaint.

D. REPORTS BY OFFICERS

Reports will continue to remain basically the same, except that when a "DIVERSION" is successfully used, the officer will indicate it at the end of his report and indicate the type of diversion.

E. COURT RECOMMENDATIONS ON PLEA OF GUILTY TO MISDEMEANORS

Since diversion will be a major part of "prevention" in all misdemeanor cases, it is officially recommend that officers at arraignments on misdemeanors who know that it is a alcohol related offense - suggest that sentences be directed towards immediate rehabilitation by court-ordered "involuntary referrals" to Barrow Council on Alcoholism. Such sentence referrals may include up to six months of weekly counseling session at BCA.

Alaska State Legislature



POUCH V
JUNEAU, ALASKA 99801
TELEPHONE 465-4922



SENATOR
Bill Ray
CHAIRMAN

COMMITTEE ON TRANSPORTATION

Senate

March 29, 1977

Mr. Kim L. Moeller, Director
Department of Public Safety
North Slope Borough
P. O. Box 69
Barrow, Alaska 99723

Dear Mr. Moeller:

This is to acknowledge receipt of your letter concerning Senate Bill 167, the excise tax on alcohol.

Thank you for sharing with me the horrible statistics you attribute to a "wet" period in Barrow. You may be assured I will take your remarks into consideration when we are working on the Governor's alcohol package.

Sincerely,

Bill Ray

Appendix F

Correspondance 1976/77
State of Alaska
Alaska State Legislature
Senate Special Committee on Alcoholism



Matanuska-Susitna Borough

BOX B, PALMER, ALASKA 99645 • PHONE 745-9687
BOROUGH ATTORNEY'S OFFICE

April 21, 1988

Representative John Sund, Chairman
House Judiciary Committee
Alaska State Legislature
P.O. BOX V
Juneau, AK 99811

RE: Public Opinion Message

Dear Representative Sund and Judiciary Committee Members:

As the attorney for the Matanuska-Susitna Borough, I would like to express my support for CS for House Bill 406 (Hess) which provides immunity to municipalities based upon a decision of public safety personnel to take an incapacitated person into protective custody or release or fail to release a person from protective custody. As you know, a recent Alaska Supreme Court Case, Busby v. The Municipality of Anchorage, Cp. No. 3214 (August 1987) has left open the question of whether municipalities are immune from liability for the actions of their municipal safety personnel when they decide to take, fail to take, release or fail to release, a person from protective custody. If municipalities are held liable for this activity, the cost of any damages arising therefrom must be spread throughout society and borne by taxpayers. The payment of damages resulting from this activity could be raised through a tax mill levy increase or a reduction or elimination of essential services. In a time of substantially declining revenue municipalities are already struggling to provide essential services to their citizens and should not be confronted with unforeseen fiscal contingencies arising from potential Busby liability. One method to protect municipalities is to provide them with immunity from liability. CS for House Bill 406 provides this protection.

Please feel free to contact me should you have any questions relative to this matter.

Very truly yours,

A handwritten signature in cursive script that reads "Michael Gatti".

Michael Gatti
Borough Attorney

MG:mlm

(mlm:misc.0009)

cc: Representatives Fran Ulmer, Sam Cotten, Max Gruenberg, Mike Navarre and Robin Taylor

seek treatment in the same manner as he would for any other health problem or illness. The Act encourages voluntary treatment by not requiring the patient to agree to "voluntarily" commit himself for a specified length of time or to accept any of the other restrictions that apply to involuntarily committed patients. Section 11 does not require either a predetermined minimum voluntary stay or a specified number of days of notice prior to seeking discharge. Such provisions would discourage treatment and would

subject patients to restrictions that do not apply to patients with other medical problems.

Section 11 also requires the division to provide coordinated services (see also Sections 1, 8(a), and 10(e)) and to assist the patient in getting from one service to another, including the arranging of transportation if necessary. Section 11(d) expressly provides that the division must make such provision even if the patient leaves the treatment facility against medical advice.

Action in Adopting Jurisdictions

Variations from Official Text:

Alaska. Omits subsec. (d).

Colorado. In subsec. (b), omits "subject to rules adopted by the director" in second sentence.

Omits subsec. (d).

Georgia. In subsec. (a), substitutes "treatment program or facility" for "public treatment facility".

Subsec. (b) reads: "(b) A person who appears to be incapacitated by alcohol may be taken into protective custody by the police, other law enforcement officer or the emergency service patrol and forthwith brought to an approved treatment facility for emergency treatment. If no approved treatment facility is readily available, he may be taken to an emergency medical service customarily used for incapacitated persons. When no emergency medical services are available, a person who appears to be incapacitated by alcohol may be taken into protective custody for not more than 12 hours and detained in such facilities as may be available. Policemen and other law enforcement officers or the emergency service patrol, in detaining the person and in taking him to a facility approved for detention under this Chapter, is taking him into protective custody and shall make every reasonable effort to

protect his health and safety. In taking the person into protective custody, the detaining officer may take reasonable steps to protect himself. Taking into protective custody under this section is not an arrest. No other criminal record shall be made to indicate that the person has been arrested and charged with a crime. Nothing in this Chapter shall be construed to prevent the prosecution of a person for any other crime with which he may be charged."

In subsec. (c), omits "public", wherever appearing.

In subsec. (d), inserts "written" preceding "request", and omits "public", "or against" and sentence beginning "If he has no home".

Rhode Island. In subsec. (b), provides that a person so admitted may be held by the department for at least thirty (30) days and that said person shall be released at the end of thirty days upon written request to the administrator in charge of the treatment facility.

Washington. In subsecs. (a), (b), (c) and (d), substitutes "approved treatment facility" for "approved public treatment facility".

In subsec. (c), substitutes "may arrange" for "shall arrange".

In subsec. (d), substitutes "may and "less than fourteen years of age" make reasonable provisions" for for "a minor".
"shall make reasonable provisions"

Library References

Drunkards 4.

C.J.S. Drunkards § 7.

§ 12. [Treatment and Services for Intoxicated Persons and Persons Incapacitated by Alcohol]

(a) An intoxicated person may come voluntarily to an approved public treatment facility for emergency treatment. A person who appears to be intoxicated in a public place and to be in need of help, if he consents to the proffered help, may be assisted to his home, an approved public treatment facility, an approved private treatment facility, or other health facility by the police or the emergency service patrol.

(b) A person who appears to be incapacitated by alcohol shall be taken into protective custody by the police or the emergency service patrol and forthwith brought to an approved public treatment facility for emergency treatment. [If no approved public treatment facility is readily available he shall be taken to an emergency medical service customarily used for incapacitated persons.] The police or the emergency service patrol, in detaining the person and in taking him to an approved public treatment facility, is taking him into protective custody and shall make every reasonable effort to protect his health and safety. In taking the person into protective custody, the detaining officer may take reasonable steps to protect himself. A taking into protective custody under this section is not an arrest. No entry or other record shall be made to indicate that the person has been arrested or charged with a crime.

(c) A person who comes voluntarily or is brought to an approved public treatment facility shall be examined by a licensed physician as soon as possible. He may then be admitted as a patient or referred to another health facility. The referring approved public treatment facility shall arrange for his transportation.

(d) A person who by medical examination is found to be incapacitated by alcohol at the time of his admission or to have become incapacitated at any time after his admission, may not be detained at the facility (1) once he is no longer incapacitated by alcohol, or (2) if he remains incapacitated by alcohol for more than 48 hours after admission as a patient, unless he is commit-

ted under Section 13. A person may consent to remain in the facility as long as the physician in charge believes appropriate.

(e) A person who is not admitted to an approved public treatment facility, is not referred to another health facility, and has no funds, may be taken to his home, if any. If he has no home, the approved public treatment facility shall assist him in obtaining shelter.

(f) If a patient is admitted to an approved public treatment facility, his family or next of kin shall be notified as promptly as possible. If an adult patient who is not incapacitated requests that there be no notification, his request shall be respected.

(g) The police or members of the emergency service patrol who act in compliance with this section are acting in the course of their official duty and are not criminally or civilly liable therefor.

(h) If the physician in charge of the approved public treatment facility determines it is for the patient's benefit, the patient shall be encouraged to agree to further diagnosis and appropriate voluntary treatment.

Commissioners' Note

A small minority of intoxicated persons are "incapacitated" in that they are unconscious or incoherent or similarly so impaired in judgment that they cannot make a rational decision with regard to their need for treatment. Section 12(b) authorizes the police or emergency service patrol to take such individuals into protective custody and to a public treatment facility for emergency care. This is intended to assure that those most seriously in need of care will get it.

Protective custody under (b) is similar to the way in which the police provide emergency assistance to other ill people, such as those in accidents or those who have sudden heart attacks. It is a civil procedure, and no arrest record or record which implies a criminal

charge is to be made. Since the police officer may sometimes have to decide whether a man who refuses help appears to be incapacitated by alcohol or because of some other reason, Section 12(g) protects the policeman should his conclusion, made in good faith, be incorrect. It provides that he cannot be held criminally or civilly liable for false arrest or imprisonment as long as he is acting in compliance with this section. Willful malice or abuse, however, would not be considered to be in compliance with this section of the Act.

Section 12(d) provides that an incapacitated person can be held at a treatment facility without consent or further civil procedures for not longer than 48 hours. By the end of 48 hours

most persons who have been incapacitated by alcohol will be sufficiently detoxified to be able to make a rational decision about their need for further treatment. To provide for those very few individuals who may still be incapacitated (perhaps even unconscious) at the end of 48 hours, Section 12 provides for an emergency commitment procedure based on a written application and a certificate from a physician

who is not employed by the division.

Other provisions of Section 12 provide that the individual in a public treatment facility must be examined by a licensed physician as soon as possible. This is to ensure, in accordance with Section 8(b), that these facilities will provide the necessary medical services.

Action in Adopting Jurisdictions

Variations from Official Text:

Alaska. Subsec. (a) reads: "An intoxicated person may come voluntarily to an approved public treatment facility for emergency treatment. A person who appears to be intoxicated in a public place and to be in need of help or a person who appears to be intoxicated in or upon a licensed premise where intoxicating liquors are sold or consumed who refuses to leave upon being requested to leave by the owner, an employee or a peace officer may be taken into protective custody and assisted by a peace officer or a member of the emergency service patrol to his home, an approved public treatment facility, an approved private treatment facility, or another appropriate health facility. If all the preceding facilities, including the person's home, are determined to be unavailable, a person taken into protective custody and assisted under this subsection may be taken to a state or municipal detention facility in the area."

Subsec. (b) reads: "A person who appears to be incapacitated by alcohol in a public place shall be taken into protective custody by a peace officer or a member of the emergency service patrol and immediately brought to an approved public treatment facility, an approved private treatment facility, or another appropriate health facility or service for emergency medical treatment. If no treatment facility or emergency medical service is available, a person who

appears to be incapacitated by alcohol in a public place shall be taken to a state or municipal detention facility in the area. If that appears necessary for the protection of the person's health or safety."

Adds subsections (i) and (j) as follows: "(i) A person taken to a detention facility under (a) or (b) of this section may be detained only (1) until a treatment facility or emergency medical service is made available, or (2) until he is no longer intoxicated or incapacitated by alcohol, or (3) for a maximum period of 12 hours, whichever occurs first. A detaining officer or a detention facility official may release a person who is detained under (a) or (b) of this section at any time to the custody of a responsible adult. A peace officer or a member of the emergency service patrol, in detaining a person under (a) or (b) of this section and in taking him to a treatment facility, an emergency medical service or a detention facility, is taking him into protective custody and he shall make reasonable efforts to provide for and protect the health and safety of the detainee. In taking a person into protective custody under (a) and (b) of this section, a detaining officer, a member of the emergency service patrol or a detention facility official may take reasonable steps to protect himself, including a full protective search of the person of a detainee. Protective custody under (a) and (b) of this section does not constitute an arrest and

no entry or other record may be made to indicate that the person detained has been arrested or charged with a crime, except that a confidential record may be made which is necessary for the administrative purposes of the facility to which the person has been taken or which is necessary for statistical purposes where the person's name may not be disclosed.

"(j) For purposes of (b) of this section, 'incapacitated by alcohol' means a person who, as the result of consumption of alcohol, is rendered unconscious or has his judgment or physical mobility so impaired that he cannot readily recognize or extricate himself from conditions of apparent or imminent danger to his health or safety. The definition in AS 47.37.-270(S) applies to other portions of this chapter."

Colorado. Subsec. (a) reads: "When any person appears to be intoxicated or incapacitated, and in imminent danger to the health and safety of himself or others, he shall, when practicable, be taken into protective custody by law enforcement authorities and placed in an approved treatment facility. If no such facility or service is available, he may be detained in a jail or similar facility, but only for so long as may be necessary to prevent injury to himself or others or to prevent a breach of the peace. The law enforcement officer, in detaining the person, is taking him into protective custody. In so doing, the detaining officer may protect himself by reasonable methods while making every reasonable effort to protect the detainee's health and safety. A taking into protective custody under this section is not an arrest, and no entry or other record shall be made to indicate that the person has been arrested or charged with a crime. Law enforcement personnel who act in compliance with this part 3 are acting in the course of their official duty and are not criminally or civilly liable therefor. Nothing in this subsection (1) shall preclude an intoxicated or incapacitated person who is not in imminent danger to his or others' health or safety from being assisted

to an approved treatment facility, his home, or like location by the law enforcement officer."

In subsec. (b), inserts "or such other facility as may be necessary to protect his health and safety" following "emergency medical service", and inserts sentence which reads as follows: "If neither an approved public treatment facility nor an emergency medical service is available, he may be detained in a jail or similar facility, but only for so long as may be necessary to prevent injury to himself or others or to prevent a breach of the peace."

Subsec. (c) reads: "A person who comes voluntarily or is brought to an approved treatment facility shall be evaluated by the administrator thereof or by his designee as soon as possible. He may then be admitted as a patient or referred to another health facility."

In subsec. (d), substitutes "an evaluation" for "by medical examination", "one hundred twenty hours" for "48 hours" and "administrator" for "physician".

In subsec. (e), substitutes "may" for "shall" preceding "assist him".

Georgia. Omits "public" preceding "treatment" wherever appearing in section.

Subsec. (b) reads: "(b) A person who appears to be incapacitated by alcohol shall be taken into protective custody by the police, other law enforcement officer or the emergency service patrol and forthwith brought to an approved treatment facility for emergency treatment. If no approved treatment facility is readily available, he shall be taken to an emergency medical service customarily used for incapacitated persons. When no emergency medical services are available, a person who appears to be incapacitated, by alcohol may be taken into protective custody for not more than 12 hours and detained in such facilities as may be available. The policeman, other law enforcement officer, or the emergency service patrol, in detaining the person and in taking him to a facility approved for detention under this

Chapter, is taking him into protective custody and shall make every reasonable effort to protect his health and safety. In taking the person into protective custody, the detaining officer may take reasonable steps to protect himself. A taking into protective custody under this section is not an arrest. No other criminal record shall be made to indicate that the person has been arrested or charged with a crime."

In subsec. (c), provides that a person shall be examined by either a licensed physician or a trained alcohol services worker under direct medical supervision.

In subsec. (d), provides that if a person remains incapacitated by alcohol he may be detained for no longer than five days or 120 hours excluding Saturdays, Sundays and legal holidays.

In subsec. (f), omits sentence beginning "If an adult", and provides for notification by telephone if the family resides in Georgia or within 100 miles of the facility, and otherwise by mail.

In subsec. (h), substitutes "attending physician or administrator" for "physician".

Maine. In subsec. (a), omits "in a public place".

In subsec. (c), substitutes "forthwith" for "as soon as possible".

In subsec. (h), substitutes "administrator" for "physician".

Rhode Island. In subsecs. (a), (b) and (g), omits references to the emergency service patrol.

In subsec. (b), adds sentence as follows: "If it is impracticable to take a person to an approved facility, the police may take him into protective custody in the police station in suitable quarters, for a reasonable time."

In subsec. (d), substitutes "five (5) days" for "48 hours".

Washington. Subsec. (b) reads: "Except for a person who may be apprehended for possible violation of laws not relating to alcoholism or intoxication and except for a person

who may be apprehended for possible violation of laws relating to driving or being in physical control of a vehicle while intoxicated and except for a person who may wish to avail himself of the provisions of RCW 46.20.308, a person who appears to be incapacitated by alcohol and who is in a public place or who has threatened, attempted, or inflicted physical harm on another, shall be taken into protective custody by the police or the emergency service patrol and as soon as practicable, but in no event beyond eight hours brought to an approved treatment facility for treatment. If no approved treatment facility is readily available he shall be taken to an emergency medical service customarily used for incapacitated persons. The police or the emergency service patrol, in detaining the person and in taking him to an approved treatment facility, is taking him into protective custody and shall make every reasonable effort to protect his health and safety. In taking the person into protective custody, the detaining officer or member of an emergency patrol may take reasonable steps including reasonable force if necessary to protect himself or effect the custody. A taking into protective custody under this section is not an arrest. No entry or other record shall be made to indicate that the person has been arrested or charged with a crime."

Subsec. (c) reads: "A person who comes voluntarily or is brought to an approved treatment facility shall be examined by a qualified person. He may then be admitted as a patient or referred to another health facility, which provides emergency medical treatment, where it appears that such treatment may be necessary. The referring approved treatment facility shall arrange for his transportation."

In subsec. (d), substitutes "a petition is filed under RCW 70.96A.140, as now or hereafter amended; Provided, That the treatment personnel at the facility are authorized to use such reasonable physical restraint as may be necessary to retain a person incapacitated by alcohol at such fa-



Tom Fink.
Mayor

Municipality of Anchorage

Municipal Health & Human Services Commission

825 "L" Street

P.O. Box 196650 • Anchorage, Alaska 99519-6650



Telephone:
(907) 343-4674

April 13, 1988

APR 21 1988

Representative John Sund
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Representative Sund,

The Municipal Health and Human Services Commission was asked by Representatives Ellis and Boyer to review HB 406 which we understand has been referred to the House Judiciary Committee. We recently reviewed the Committee Substitute for House Bill No. 406 (HESS).

The Commission understands that CS for HB No. 406 provides immunity from prosecution for peace officers and emergency service patrols in all cases involving intoxicated or incapacitated persons except in cases of malice. The Commission is very concerned about this committee substitute and urges you to oppose it. We believe it will, even under the best circumstances, be to the detriment of the intoxicated or incapacitated person as well as the entire community.

Sincerely,

Linda Langston
Chair

cc: Representative Ulmer
Representative Barnes
Representative Boyer
Representative Cotten
Representative Ellis
Representative Gruenberg
Representative Navarre
Representative Robin Taylor
Anchorage Assembly
Mayor Tom Fink
Ron Garzini, Municipal Manager
Bert Hall, DHHS Director

LL6/dPD21

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE SUND

NAME: OLIVER BURRIS
TITLE:
ADDRESS: 2108 TALKEETNA
CITY: FAIRBANKS
PHONE: 474-0437
BILL NO: SB 397
SUBJECT: OBSTRUCTING OR HINDERING HUNTING/FISHING
MESSAGE: THE TANANA VALLEY SPORTSMEN'S ASSOC WOULD LIKE TO SEE SB 397, THE ANTI-HARASSMENT BILL, PASS THE HOUSE AND BE SIGNED INTO LAW BY THE GOVERNOR.
EOM-FZ

ZIP: 99709

POMID: 07152523
DATE: 04/07/88
TIME: 15:25:23
LIONAME: FAIRBANKS LIO

COPIES: REPRESENTATIVES REPRESENTATIVES

ADAMS	BARNES
BOUCHER	BOYER
BROWN	CATO
COLLINS	COTTEN
DAVIDSON	DAVIS
DONLEY	ELLIS
FRANK	FURNACE
GOLL	GRUENBERG
GRUSSENDORF	HANLEY
HERRMANN	HOFFMAN
HUDSON	KCPONEN
LARSON	MARTIN
MENARD	MILLER
NAVARRE	PEARCE
PETTYJOHN	PHILLIPS
POURCHOT	RIEGER
SHULTZ	SPRINGER
SWACKHAMMER	TAYLOR
ULMER	WALLIS
ZAWACKI	

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE SUND

NAME: VALERIE THERRIEN
TITLE: ~~BOROUGH~~ ASSEMBLY WOMAN
ADDRESS: 779 8TH AVE.
CITY: FAIRBANKS
PHONE: 452-6194
BILL NO: HB 406
SUBJECT: CARE OF PERSONS IN PROTECTIVE CUSTODY
MESSAGE: PLEASE REFER THIS BILL OUT OF YOUR COMMITTEE FOR A HOUSE VOTE. IT IS VERY IMPORTANT THAT THIS BILL RECEIVE A DECISION THIS YEAR. AS A MEMEBER OF THE BOROUGH ASSEMBLY IN FAIRBANKS AND A MEMBER OF THE ALASKA MUNICIPAL LEAGUE, I BELIEVE THE NEED FOR IMMUNITY FOR POLICE IS VERY IMPORTANT.
EOM-FZ

ZIP: 99701

POMID: 07161341
DATE: 04/07/88
TIME: 16:13:41
LIONAME: FAIRBANKS LIO

COPIES: REPRESENTATIVES

BARNES
COTTEN
GRUENBERG
NAVARRE
TAYLOR
ULMER

H3406

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

TELECOPY COVER SHEET

KENAI PENINSULA INFORMATION OFFICE

(SOLDOTNA)

TO: HJUD FOR: _____ PHONE: _____

FROM: Tim Rogers City of Kenai PHONE: 283-3441

ADDITIONAL INSTRUCTIONS: Please deliver to HJUD per the u request from 4/22 - HJUD TC on H3406

DATE/TIME SENT: _____ PLEASE ACKNOWLEDGE RECEIPT: _____

DISPOSAL OF ORIGINAL: _____ THROW AWAY

_____ HOLD FOR PICK UP

NUMBER OF PAGES: 13 (NOT COUNTING COVER SHEET)

BY: Arlene Murphy 262-9364

B. RULE 12(b)(6) AND THE LAW OF IMMUNITY FOR PUBLIC OFFICIALS

Again, a motion to dismiss for failure to state a claim upon which relief can be granted, tests the legal sufficiency of the complaint's allegations. *Dworkin*.

In this case, the complaint is not legally sufficient as to Richard Ross, because it names him as an individual party

①

defendant. The complaint prays for judgment against Richard Ross as an individual, complaint at 5 ("1. Judgment against defendants in an amount to be proven at trial;").

The law of official immunity in Alaska precludes an official from being named in their personal capacity in an instance as alleged in the complaint. When an affirmative defense such as immunity appears on the face of the complaint, the pleading is subject to dismissal under Rule 12(b)(6). *Aspen Exploration Corp. v. Sheffield*, 739 P.2d 150 (Alaska 1987).

Aspen Exploration provides an extensive discussion on the law of immunity for public officials. The case suggests that traditionally the common law did not distinguish between public officials and private individuals for purposes of personal tort liability. The trend is toward immunity. *Aspen Exploration* at 157. The case discusses qualified immunity and absolute immunity and decides that the appropriate standard to be adopted in Alaska involves a sliding scale between absolute and qualified.

Under an absolute immunity theory, the public official is immune from any prosecution for whatever reason. It is an all or nothing situation. As the *Aspen Exploration* court suggested, however, "we perceive no logical or compelling reason why a public official should always be entitled to absolute immunity." The Court went on to leave open the possibility that at times an official can claim absolute immunity.

Under a rule of qualified immunity, the public official faces liability only when committing "discretionary acts within the scope of the officials authority and when the acts are done in good faith and are not malicious or corrupt." *Aspen Exploration* at 158, citing *Trimble v. City and County of Denver*, 697 P.2d 716, 729 (Colorado 1985). Malicious or bad-faith or a corrupt motive acts to transform an otherwise immune act into an act to which liability may attach.

In order to determine which theory, absolute or qualified, to follow in this case, the Court needs to follow the objective test set out in *Aspen Exploration*. The test suggests that the Court first needs to consider various factors:

"1. The nature and importance of the function that the officer performed to the administration of government (i.e., the importance to the public that this function be performed; that it be performed correctly; that it be performed according to the best judgment of the officer unimpaired by extraneous matters);

2. The likelihood that the officer will be subjected to frequent accusations of wrongful motives and how easily the officer can defend against these allegations; and

3. The availability to the injured party of other remedies or other forms of relief (i.e. whether the injured party can obtain some other kind of judicial review of the correctness or validity of the officer's action)." *Aspen Exploration* at 160.

The *Aspen Exploration* case then goes on to suggest that when applying the objective test to the facts of a particular case, no one factor controls. Rather, any decision must be grounded upon a balanced consideration of all the factors. If the trial court determines that immunity should be absolute, then allegations of improper motive become irrelevant and the case should be properly dismissed under Rule 12(b)(6).

C. DISCUSSION

In the instant case, this Court should adopt the standard of absolute immunity. In this case, the nature and importance of the function the officer performed (i.e., hiring a dispatcher), plays one of the most important functions to the public by a police force. The dispatcher is in charge of properly directing rescue vehicles, fire services, and the police themselves to

protect the public. Hiring is a basic function of government and the dispatcher is the key to its performance. Because this is an important function, it should be weighted as a factor in favor of absolute immunity.

If the officer is not given absolute immunity in this case, the officer could be subject to frequent accusations of wrongful motive every time he hires an employee. Defending against these allegations is no easy task. This factor also militates in favor of absolute immunity.

Finally, the plaintiff has other forms of relief available to her, i.e. she can sue the City itself. When all three of the factors enunciated by the *Aspen Exploration* court are taken into account, the balance tips in favor of an absolute immunity for the official in this case. Accordingly, Richard Ross should be dismissed as a party defendant.


If this Court is however inclined to rule that defendant Ross is only entitled to qualified immunity, the case should still be dismissed. For the complaint to be sufficient under a qualified immunity theory, there would have to be allegations of improper motive. Nowhere in the complaint are there any allegations of improper motive and accordingly, the complaint does not state a claim for relief. Dismissal is appropriate.

D. CONCLUSION

Under the test enunciated in *Aspen Exploration* the hiring of a dispatcher is an extremely sensitive matter and combined with the other factors, tilts the balance in favor of absolute immunity. Given the affirmative defense of absolute immunity, Rule 12(b)(6) requires a dismissal. If the Court rejects the absolute immunity argument of the City, then the defendant would be entitled to qualified immunity. However, the complaint nowhere alleges improper motive and accordingly, the complaint is deficient. The case should be dismissed as to Richard Ross.

DATED: This ____ day of April, 1988.

CITY OF KENAI



By: Timothy J. Rogers
City Attorney

6

ASPEN EXPLORATION CORPORATION and R.V. Bailey, Appellants,

v.
BILL SHEFFIELD, Appellee.

No. 8-1277.

Supreme Court of Alaska.

June 19, 1987.

Rejected applicant for offshore prospecting permits sued governor, alleged he had wrongfully interfered with its prospective economic advantage, with its prospective and existing contractual relations, and with government process and had defamed it. Governor moved to dismiss. The Superior Court, Third Judicial District, Anchorage, Karen L. Hunt, J., granted motion. On appeal, the Supreme Court. Burke, J. held that: (1) doctrine of official immunity was applicable, as governor's actions were within scope of his authority and were discretionary in nature, and (2) under balanced consideration of relevant factors, governor was absolutely immune from wrongful interference claim but was only entitled to qualified immunity for his allegedly defamatory statements.

Affirmed in part, reversed in part, and remanded.

1. Pretrial Procedure ¶561

Complaint which sufficiently states claim is nonetheless subject to dismissal when affirmative defense appears clearly on face of pleading. Rules Civ.Proc., Rule 8, 12(b)(6).

2. Officers and Public Employees ¶114

In determining whether public official is entitled to official immunity, applicability of that doctrine to alleged conduct must first be determined and scope of immunity, if doctrine is applicable, must then be ascertained; determination of whether official is entitled to absolute or qualified immunity focuses on particular conduct and circumstances that gave rise to claim of liability.

3. Statutes ¶79

For purposes of determining applicability of doctrine of official immunity, governor's ordering of Commissioner of Department of Natural Resources to reject applications for offshore prospecting permits and making of allegedly defamatory statements concerning development of state's natural resources through its offshore mining programs were within scope of his authority and were discretionary in nature. Const. Art. 3, §§ 1, 24; AS 44.17.005(10), 46.40.010 et seq.

4. Municipal Corporations ¶778

Officers and Public Employees ¶114
Standards for determining what constitutes "discretionary function" for purposes of sovereign immunity and for purposes of official immunity are not the same; planning-operational test determines what type of actions are discretionary for purposes of former, whereas discretionary acts for purposes of official immunity involve those requiring personal deliberation, decision, and judgment.

See publication Words and Phrases for other judicial constructions and definitions.

5. Officers and Public Employees ¶114

In determining scope of public official's immunity, best approach is to balance public's interest in efficient, unflinching leadership and interests of maliciously injured parties, with focus upon particular circumstances and conduct giving rise to claim of liability and careful consideration of nature and importance of function performed in administration of government. Likelihood that performing officer will be subjected to frequent accusations of wrongful motives and ease with which officer can defend against those allegations, and availability to injured party of other remedies or other forms of relief; if immunity should be absolute then allegations of improper motive become irrelevant, whereas if qualified immunity is appropriate then properly pled allegations of malice or corruption will generally be sufficient to withstand dismissal. Rules Civ.Proc., Rule 12(b)(6).

(Case No. 729 P.2d 150 (Alaska, 1987))

6. Statutes ¶79

Governor was absolutely immune from claims by rejected applicant for offshore prospecting permits for wrongful interference with prospective economic advantage, prospective and existing contractual relations, and government process, but was only entitled to qualified immunity from applicant's defamation claim. AS 38.05.035(e), 38.05.250.

Harris Saxon, Mark E. Wilkerson, Gucas & Ruhl, Anchorage, for appellants.

Theodora Accinelli, Olof K. Hellen, Helena, Partnow & Condon, Anchorage, for appellee.

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

OPINION

BURKE, Justice.

Aspen Exploration Corporation and its president, R.V. Bailey (hereinafter collectively referred to as Aspen), challenge the dismissal of their complaint against former Governor Bill Sheffield. Aspen contends that the trial court erred in three respects: first, by misapplying the standard for determining the sufficiency of its complaint; second, by holding that the doctrine of executive immunity justified dismissal of its action; and third, by awarding Governor Sheffield attorney's fees.

We conclude that the trial court applied the correct standard in determining the sufficiency of Aspen's complaint and correctly dismissed Aspen's four claims for "wrongful interference." As to these, Sheffield was absolutely immune. We further conclude, however, that Aspen's defamation claim was improperly dismissed. As to this cause of action, Sheffield is only entitled to qualified immunity. Thus, Aspen must be allowed the opportunity to prove its claim.

1. Aspen had inferentially requested that it be ad-

In June 1985 Aspen filed suit against Governor Sheffield in the latter's "individual capacity," seeking injunctive relief and \$15 million in damages. Aspen's complaint alleged five separate causes of action, each one a common law tort:

- (1) wrongful interference with prospective economic advantage;
- (2) wrongful interference with prospective contractual relations;
- (3) wrongful interference with existing contracts between the state and Aspen;
- (4) wrongful interference with government process; and
- (5) defamation.

The crux of Aspen's complaint was that Governor Sheffield was personally liable for these alleged torts, because he had acted outside the scope of his official duties and authority as governor, by "knowingly, intentionally and maliciously" ordering the Commissioner of the Department of Natural Resources (DNR) to reject Aspen's application for offshore prospecting permits (permit applications), and by intentionally defaming its business reputation.

Pursuant to Civil Rule 12(b)(6) Sheffield moved to dismiss Aspen's complaint on the grounds that actions for damages against the governor, personally, are barred by the doctrine of official immunity (referred to by the parties as executive immunity). Superior court judge Karen L. Hunt granted Sheffield's motion, overruling Aspen's complaint dismissed with prejudice. In her oral findings, Judge Hunt found, as a matter of law, that Governor Sheffield's alleged actions were within the scope of the governor's authority and discretionary in nature. Based upon these determinations she held that the governor was immune from "personal suit seeking personal compensation."

Subsequently, Aspen filed a motion for reconsideration, to determine whether the trial court's decision was based on a defect in the complaint or why upon the doctrine of official immunity. Aspen also requested leave to amend its complaint.¹ The trial

leave to amend its complaint at the hearing on

court denied Aspen's motion without comment. Later, Governor Sheffield filed a motion for attorney's fees and costs, and the trial court awarded him costs and \$12,232 for his attorney's fees. This appeal followed.

II

[1] Aspen first contends that the trial court misapplied the standard for determining the sufficiency of its complaint. Aspen argues that under Alaska's rule of permissive pleading their complaint is sufficient to state a claim.

Under the now well established standards for determining the sufficiency of a complaint,² it does not appear beyond doubt that the Aspen could prove no set of facts that would entitle it to relief.³ Thus, its complaint should not, as Aspen contends, have been dismissed for insufficiency. Our reading of the trial court's decision, however convinces us that Aspen's complaint was not dismissed for this reason. Instead, the court dismissed Aspen's entire cause of action because it believed the action was barred by the affirmative defense of official immunity.

We have recognized that a complaint is subject to dismissal under Rule 12(b)(6) when an affirmative defense appears clearly on the face of the pleading. *Morris v. Moss*, 602 P.2d 421, 428 (Alaska 1979) (statute of frauds); *Nixiacis v. Curington*, 517 P.2d 754, 767 n. 6 (Alaska 1974) (absolute privilege for defamatory testimony by a witness in a judicial proceeding). Accord *Sturson v. City of Anchorage*, 429 P.2d 17, 20 n. 10 (Alaska 1967) (Rabi-

nowitz, J. concurring). In its motion for reconsideration, Aspen set forth its proposed amendments.

2. See Alaska R.C.V.P. 8; *Knight v. American Guard & Mart*, 714 P.2d 788, 791 (Alaska 1986); *Morris v. Moss*, 602 P.2d 421, 427 (Alaska 1979); *Scoville v. Fairbanks Medical & Surgical Clinic*, 531 P.2d 1252, 1255-57 (Alaska 1975); *Dworkin v. First National Bank of Fairbanks*, 444 P.2d 777, 779 (Alaska 1968). See generally 5 C. Wright & A. Miller, *Federal Practice and Procedure* § 837 (1969) (hereinafter *Wright & Miller*); 2A J. Moore & J. Lucas, *Moore's Federal Practice*, §12.87 [3-5] (2d ed. 1985).

nowitz, J. concurring) (dismissal under Rule 12(b)(6) permitted where plaintiff makes allegations which show on the face of the complaint an insuperable bar to relief). In such situations, "the claim is unavailingly stated, but in addition to the claim the complaint includes matters of averment that effectively vitiate the plaintiff's ability to recover on the claim." 5 C. Wright & A. Miller, *Federal Practice and Procedure* § 1367, at 606 (1969). In other words, the complaint has a built-in defense.

Aspen used the Governor of Alaska for action taken under the color of office merely because Governor Sheffield was sued in his individual capacity does not change the fact that he was acting as a state official when he engaged in the acts for which Aspen seeks relief. The trial court dismissed Aspen's complaint based upon its interpretation of this built-in defense. Consequently, resolution of the case is not found within the confines of Rule 12(b)(6) but rather is an analysis of the doctrine of official immunity.⁴

III

The trial court held that Governor Sheffield's actions were within the scope of his authority as governor and were discretionary in nature. Thus, it concluded that he was immune from personal tort liability. Aspen argues that the court's decision has two major flaws. First, Aspen contends that the doctrine of official immunity is not applicable, because Governor Sheffield's actions were beyond his authority as governor and were not discretionary in nature. Second, Aspen asserts that our prior de-

3. This is true with or without Aspen's proposed amendments. Consequently, we need not determine whether the trial court erred by not allowing Aspen to amend its complaint.

4. Aspen argues that merely alleging that Sheffield's actions were not discretionary acts within the scope of his authority is sufficient to prevent its complaint from being dismissed. This argument is wholly without merit. Such allegations are mere conclusions of law, not factual allegations involving a Rule 12(b)(6) motion. *Deming*, 4-4 P.2d at 779. Thus, the trial court properly made its own determination as a matter of law on these questions.

not establish a rule of qualified, rather than absolute, immunity.

The ruling below was grounded upon the trial court's reading of our decisions in *Earthmovers of Fairbanks v. State*, 693 P.2d 281 (Alaska 1984); *State v. Stanley*, 506 P.2d 1294 (Alaska 1973); and *Bridges v. Alaska Housing Authority*, 375 P.2d 694 (Alaska 1962).⁵

In *Bridges*, we held that the officers of the Alaska Housing Authority were immune from personal liability for the destruction of the plaintiff's building under an illegal declaration of taking, because they were acting within the scope of their official duties and merely made a mistake in the exercise of a discretionary function. 375 P.2d at 702. We observed:

[The Housing Authority officers] are immune from civil liability for this action under the well recognized rule that affords such protection to a public officer, acting within the scope of his official duties, for damages caused by a mistake by him in the exercise of judgment or discretion, or because of an erroneous interpretation and application of the law.

M

Eleven years later in *State v. Stanley*, 506 P.2d at 1292, we held that an official of the Alaska Department of Fish and Game was not immune from personal liability for the negligent performance of a ministerial act. The *Stanley* court reasoned:

While a public employee ... may not be held liable for acts done in line of official duty involving a mistake in judgment or discretion, or because of erroneous inter-

5. We also considered the doctrine of official immunity in *State v. Haley*, 687 P.2d 305, 315-18 (Alaska 1984). In that case, however, we dealt only with the immunity of public officials for ministerial acts, holding that two state officials were immune from liability for firing a state employee in violation of her constitutional rights. *Id.* at 315-18. Applying federal law, we affirmed that the officials were entitled to assert the defense of qualified immunity for the constitutional tort because they had acted in good faith in the performance of a discretionary duty. *Id.* at 316-17. Aspen raises no allegations of constitutional deprivations, thus *Haley* is inapposite here.

6. Justice Rabinowitz noted:

pretation and application of law, it is well established that the immunity from suit does not apply to the negligent performance of acts not involving such discretionary judgment-policy decisions.

Id. at 1292 (emphasis added) (footnotes omitted).

Finally, in *Earthmovers*, we held that a state trooper who ordered the speed limit reduced on a road under construction, because of perceived hazardous conditions, was immune from personal liability. 691 P.2d at 283-84. Although *Earthmovers* refers to both statutory and common law immunity, a close reading of the case shows that we applied statutory (sovereign) immunity to the claims against the state, and common law (official) immunity to the claims against the individual officer. *Id.* at 285 (Rabinowitz, J. concurring).⁶

[2] In this appeal both sides argue that *Bridges*, *Stanley*, and *Earthmovers* establish a clear cut test for official immunity in Alaska. They differ, however, on what the test is. Aspen contends that in order to be entitled to immunity, a public official's actions must be (1) within the scope of his authority; (2) discretionary in nature; and (3) done in good faith. Governor Sheffield, on the other hand, argues that the governor is entitled to immunity if his actions (1) were not beyond the outer perimeter of his authority; and (2) involved an exercise of discretion. Motive, Governor Sheffield asserts, is totally irrelevant. We cannot agree with either party's position.⁷

We said in *Stanley* that State employees are immune, under the common law, for ministerial "discretionary judgment-policy decisions." ... Holding [the Trooper] personally liable ... would be inconsistent with *Stanley*. *Earthmovers*, at 285. (Rabinowitz, J. concurring) (emphasis added) (citations omitted).

7. As used here, the term "public officials" is meant to refer only to administrative officials (i.e. members of the executive branch of government or members of bodies which do not belong strictly to any of the three traditional branches of government). It does not include judicial officers or legislators. For discussion of the immunity of these public servants, see *Shump v. Sparrow*, 435 U.S. 349, 98 S.Ct. 1099, 55 L.Ed.2d 331 (1978) (judicial immunity);

We believe that the following two-step analysis is appropriate. First, it must be determined whether or not the doctrine of official immunity applies to the defendant's alleged conduct. If it does, the scope of that immunity must then be ascertained. That is, we must determine whether the official should be entitled to absolute or only qualified immunity. This requires us to focus on the particular conduct and circumstances that give rise to the claim of liability.⁹

The applicability and scope of official immunity raise only questions of law. Thus, in applying the above analysis we are free to substitute our own judgment for that of the trial court. With this in mind, we turn to the case at bar.

A

[2.1] The trial court determined, as a matter of law, that Governor Sheffield was acting within the scope of his authority as governor. Aspen contests this determination. In effect, Aspen argues that any intentional, malicious act is *ipso facto* beyond the scope of the governor's authority. Therefore, Aspen contends, since its complaint alleged that Governor Sheffield's actions were "intentionally and maliciously" done by him, then, acted beyond the scope of his authority. We disagree.

The flaw in Aspen's argument is that it proves too much. As the United States Supreme Court has noted:

it can be argued that official powers, since they exist only for the public good, never cover occasions where the public good is not their aim, and hence that to exercise a power dishonestly is necessarily to overstep its bounds. A moment's reflection shows, however, that that cannot be the meaning of the limitation without defeating the whole doctrine. What

Kerouac v. Aboud, 626 P.2d 1197 (Alaska 1984) (legislative immunity); *State v. Davilovitch*, 672 P.2d 140 (Alaska App. 1983) (legislative immunity); see generally J. Block, *Souper v. Spawson and the History of Judicial Immunity Under L.J. 879 (1780); R. Gray, Private Wrongs of Public Servants*, 47 *Calif.L.Rev.* 303, 315-22 (1959) (hereinafter *Gray, Private Wrongs*).

is meant by saying that the officer must be acting within his power cannot be more than that the occasion must be such as would have justified the act, if he had been using his power for any of the purposes on whose account it was vested in him.

Barr v. Matten, 360 U.S. 564, 572, 79 S.Ct. 1826, 1840, 3 L.Ed.2d 1434, 1441-42 (1962) (quoting *Gregoire v. Bihalil*, 177 F.2d 679, 681 (2d Cir.1949), cert. denied, 339 U.S. 949, 70 S.Ct. 803, 84 L.Ed. 1363 (1960)). Otherwise stated, as long as Governor Sheffield's actions were, on their face, within the scope of his authority, the fact that Aspen alleges that they were performed with unlawful intent is irrelevant to this part of our analysis.⁹

We know of few, if any, government officials who are authorized to commit torts as a part of their line of duty. But to separate the activity that constitutes the wrong from its surrounding context—an otherwise proper exercise of authority—would effectively emasculate the immunity defense. Once tortious acts are excluded from an exercise of authority, only innocuous activity remains to which immunity would be available. Thus, the defense would apply only to conduct for which it would not be needed.

Viewed in this light, it is clear that Sheffield's actions were within the scope of his authority as governor. The governor is the supervisor of all state executive departments. Alaska Const. art. III, § 24. The DNR is a department of the executive branch. AS 44.17.006(10). Thus, it naturally follows that the DNR and its department head, the Commissioner, are under the direct supervision of the governor. The governor is also empowered by statute and regulation to take an active role in

9. The trial court appears to have assumed that merely because it found that Governor Sheffield had acted within the scope of his authority in the performance of a discretionary function that immunity naturally followed.

10. Sheffield's intent becomes relevant only when determining the scope of the immunity, and even then, only under a rule of qualified immunity.

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matters relating to the disposal of state lands and resources. See AS 64.0; 6 AAC 60.09-190. Consequently, it was well within the governor's supervisory authority for him to order his subordinates to reject Aspen's permit applications.

The same is true as to the allegedly defamatory statements made by Governor Sheffield. The governor is the chief executive officer of the state in whom the Alaska Constitution vests all executive powers. Alaska Const. art. III, § 1. Without doubt, the authority to speak out on matters of public interest or concern is part and parcel of his broad power. The development of Alaska's natural resources through the state's offshore mining program is a matter of considerable public interest. The economic, environmental and social impacts of allowing offshore prospecting in Cook Inlet was and continues to be a matter of great public debate.¹⁰ We believe it would be a unduly restrictive view of the governor's scope of authority to hold that a statement in respect to a matter of such public interest and debate is not action in the line of duty. The critical inquiry is not whether the governor is authorized to make defamatory remarks, but whether he has the authority to engage in the underlying conduct out of which the alleged defamation arises. Such authority, without question, exists here.¹¹

B

Aspen also contests the trial court's determination that Governor Sheffield's actions were discretionary in nature. Essentially Aspen argues that Governor Sheffield's actions were not basic policy formulation but only the execution or implementation of a policy decision, and thus the actions are not immune.

Aspen's interpretation of what constitutes a discretionary function for the purpose of official immunity is too broad. Essentially, Aspen's position is that what

10. Aspen's complaint itself points out that in 1980 alone, there were eight public hearings held on the proposed offshore prospecting permit in the Cook Inlet.

constitutes a discretionary function for the purposes of sovereign immunity also constitutes a discretionary function for the purposes of official immunity. The two standards, however, are not the same.

We have adopted a "planning operational" test for determining what type of actions are discretionary for the purposes of the sovereign immunity provisions of AS 09.50.250. *Division of Corrections v. Neatok*, 781 P.2d 1121, 1132-33 (Alaska 1986); *Japan Air Lines v. State*, 628 P.2d 934, 937 (Alaska 1981). Under this test, "only decisions that rise to the level of basic planning or policy formulation will be considered discretionary." *Neatok*, 781 P.2d at 1132. See also *Johnson v. State*, 636 P.2d 47, 64 (Alaska 1981); *State v. L'Anson*, 625 P.2d 188, 193 (Alaska 1974); *State v. Abbott*, 498 P.2d 712, 717-22 (Alaska 1972).

When discussing official immunity, however, we have not relied upon this "operational-planning" distinction. Instead, we have spoken of discretionary acts as those involving a mistake in "judgment or discretion, or because of an erroneous interpretation and application of the law." *Bridges*, 376 P.2d at 702, or "discretionary judgment-policy decisions." *Stanley*, 606 P.2d at 1292. See also *Earlsmover*, 691 P.2d at 285 (Rabinowitz, J. concurring). Moreover, in *Holey* we defined discretionary acts as "those requiring 'personal deliberation, decision and judgment,'" while ministerial acts were described as acts amounting to "only to obedience of orders, or the performance of a duty in which the officer is left with no choice of his own." 687 P.2d 385, 316 (Alaska 1984) (quoting W. Prosser, *Handbook of The Law of Torts*, § 152 at 308-89 (4th ed. 1971)).

The difference is more than mere semantics; it reflects the differing policy considerations which underlie the two forms of immunity.¹²

11. This is not to say that such remarks do not constitute an abuse of authority. However, an abuse of authority is not synonymous with a lack of authority.

12. As we have observed on prior occasions:

At issue here are two actions taken by Governor Sheffield, his ordering the rejection of Aspen's permits and the making of allegedly defamatory statements. While the trial court appears to have treated these actions collectively, we believe each must be examined in its own right.

The first action which Aspen contends was not discretionary in nature is Governor Sheffield's order that Aspen's permit applications be rejected. Aspen argues that "a specific decision rejecting [permit applications] is not a policy or discretionary action but a nondiscretionary action which must be implemented in accordance with the standards contained in the statutes and regulations."

Aspen mischaracterizes the action which is the actual subject of our inquiry: the issue to be determined here is not whether Aspen's permit applications were improperly rejected, but whether Governor Sheffield's actions in ordering their rejection was an act requiring "personal deliberation, decision and judgment." We conclude that it was.

The governor, as chief executive officer of the state, is vested with broad powers. With this power comes a wide array of responsibilities and duties. And, the "broader the range of responsibilities and duties ... the wider the scope of discretion it entails." *Barr*, 368 U.S. at 873, 79 S.Ct. at 1340, 3 L.Ed.2d at 1442. In ordering the rejection of Aspen's permit applications, Sheffield was engaged in an exercise of "supervisory authority" over his subordinates. When and whether to supervise

We have declined to use a mechanical or semantic test in determining whether a particular function or duty is discretionary; instead we must weigh the policy considerations behind the holding.

Adams v. State, 355 P.2d 235, 243 (Alaska 1974) (quoting *Adams*). See also *Urutomo Specialties v. City of Valdez*, 620 P.2d 681, 688 (Alaska 1980) (quoting *Adams*).

13. We are not unmindful of our decision in *Urutomo Specialties v. City of Valdez*, 620 P.2d 681 (Alaska 1980). In that case we held that, for the purposes of sovereign immunity, the decision by a city manager to issue an allegedly defamatory press release was an exercise of a discretionary function. *Id.* at 688. We further concluded, however, that:

subordinates, and how much supervision is required, are fundamental policy determinations that must be made by any governor. The exercise of such authority, by its very nature, involves personal deliberation and judgment. [I]t is, therefore, discretionary in nature.

Aspen also contends that a defamatory statement can "at least [in] some instances ... be considered nondiscretionary action[.]" It fails to specify, however, whether Governor Sheffield's remarks in this case constitute one of those instances. In fact, Aspen's entire argument on this question consists of a two sentence paragraph without reference to authority of any kind.

We have made it clear that arguments given no more than cursory treatment in the brief will not be considered on appeal. See *Craig Taylor Equipment v. Pettibone Corp.*, 459 P.2d 594, 596 n. 1 (Alaska 1983); *State v. O'Neill Investigations*, 689 P.2d 520, 528 (Alaska 1984); *Leola v. State*, 468 P.2d 689, 691-92 n. 2 (Alaska 1970); *Padersee v. State*, 428 P.2d 327, 332 n. 5 (Alaska 1966). Consequently, because we find no per se error in the trial court's determination, we decline to address this issue.¹³

In sum, we conclude that the trial court's determinations that Governor Sheffield's actions were within the scope of his authority and discretionary in nature are correct. Thus, the doctrine of official immunity is applicable to the facts of this case. Our analysis does not end here, however. We must now determine what the scope of

[T]he timing of any particular release, the content of any particular release, and the manner in which a release is made constitute the implementation of the policy, more properly described as the operational aspect of the policy, and are not entitled to the protection of the discretionary statute.

Id. at 689 (quoting *Tomay v. State*, 54 Cal.App.3d 779, 783, 126 Cal.Rptr. 809, 878 (Cal.App.1978)). Because of the different policy considerations underlying sovereign and official immunity, in the absence of any persuasive argument or compelling reason to the contrary, we are not inclined to extend the *Urutomo Specialties* rationale to cover statements made by the state's chief executive officers.

immunity to be afforded Governor Sheffield should be. This, as previously noted is an issue we have not fully considered in any of our prior decisions.

IV

16] The immunity of public officials is a relatively recent phenomenon. Traditionally, the common law did not distinguish between public officials and private individuals for purposes of personal tort liability.¹⁴ 6 P. Harper, P. James & D. Gray, *The Law of Torts* § 28 at 653-64 (2d ed. 1969) (hereinafter 5 Harper, James & Gray). In fact, courts often imposed a stricter standard of care on public officials, holding them personally liable not only for intentional torts but even for the consequences of simple non-negligent mistakes. See e.g. *Miller v. Horton*, 162 Mass. 60, 28 N.E. 100 (1881). See generally 5 Harper, James & Gray, § 29B at 654-65 & n. 4; E. Keefe, *Personal Tort Liability of Administrative Officials*, 13 Fordham L.Rev. 100, 132-34 (1943) (hereinafter Keefe, *Administrative Officials*) and cases cited therein.

Beginning with *Spalding v. Files*, 16 U.S. 483, 16 S.Ct. 671, 40 L.Ed. 789 (1856), however, the federal courts began to afford absolute immunity from civil liability to public officials acting within the scope of their legal authority. See, e.g., *Cooper v.*

O'Connor, 99 F.2d 135 (D.C.Ct.), cert. denied, 306 U.S. 642, 58 S.Ct. 14, 83 L.Ed. 414 (1938). See generally *Gay*, *Private Wrongs*, at 337 & nn. 21-22 and cited therein. At first limited only to high ranking officers, absolute immunity was subsequently expanded to cover the discretionary acts of lower echelon officials and assorted bureaucrats. See, e.g., *Barr*, 360 U.S. at 872 & n. 9, 79 S.Ct. at 1340, 3 L.Ed.2d at 1442 & n. 9 (1959) *Griffin*, 177 F.2d at 681.

The federal court's abrogation of the traditional common law rule was grounded in considerations of public policy. For reasons not all together clear it has been generally recognized that public officials would be unduly harassed, deterred and intimidated in the discharge of their duties if not protected from private liability. See generally *Prosser*, § 132 at 587; 63A Am.Jur.2d, § 368 at 924-75. Accordingly, the primary rationale for the rule of absolute immunity is "the promotion of fearless, vigorous and effective administration of government."¹⁵ *E.g.*, *Barr*, 360 U.S. at 671, 79 S.Ct. at 1339, 3 L.Ed.2d at 1441.

Thus, today the general rule in the federal courts, and a minority of states, is that a public official is absolutely immune from common law tort liability¹⁶ for any discre-

14. This rule had its origin in the Anglo-American common law principle that "no man is above the law." At the eminent British constitutional scholar, A.V. Dicey bellowed "with it as every official from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen." A.V. Dicey, *The Law of the Constitution*, 103 (10th ed. 1959).

15. Other policy considerations variously identified as justifying absolute immunity include (1) the injustice of subjecting to liability an officer who is required by the legal obligations of his position to exercise discretion; (2) the deterrent effect which the threat of personal liability might have on those who are considering entering public service; (3) the drain on valuable time caused by such actions; (4) the feeling that the tort and removal procedures are more appropriate methods of dealing with misconduct in public office. See *Blatt v. District of Columbia*, 420 U.S. 308, 320, 15 S.Ct. 952 954, 43 L.Ed.2d 214 (1975); *Schum v. Rhodes*, 315 U.S. 232, 240, 94 S.Ct. 1483, 1484, 41 L.Ed.2d 94.

16. This rule pertains only to immunity from common law torts. The general rule for both federal and state officials as to non-tortious torts is qualified immunity. See e.g., *Blaylock*, 677 F.2d at 315-18 (discussing federal use of immunity as applied to constitutional torts). See generally *Comment*, Immunity: Eliminating an Subjective Element from the Qualified Immunity Standard in Actions Brought Against Government Officials, 22 *Washington L.Rev.* 577 (1982).

tionary act done within the scope of the official's authority without regard to motive. See, e.g., *Wallen v. Damon*, 704 P.2d 124, 126 (40 Cir.1985); *Lawrence v. Lucas*, 645 P.2d 183, 1825 (11 Cir.1981). In other words, immunity applies whether the allegedly tortious conduct was done maliciously, corruptly or in bad faith." *Id.* See also *Fitz v. Economics*, 428 U.S. 478, 495, 98 S.Ct. 2834, 2945, 57 L.Ed.2d 836, 908-09 (1971); *Barr*, 360 U.S. at 57, 79 S.Ct. at 1341 3 L.Ed.2d at 1443; *Spaffing*, 161 U.S. at 88, 16 S.Ct. at 637, 40 L.Ed. at 785-86; *Groves*, 177 F.2d at 681. See generally 6A Am.Jur.2d, § 290, at 926; Restatement (Second) of Torts, § 395D (1979). Courts applying this rule have determined that the proper and effective administration of public affairs simply outweighs redress of the occasional wrong caused by an official during activity otherwise within the official's authority.

Following the lead of the federal courts, state courts also began to recognize common law immunity for public officials. See, e.g., *Wadsworth v. Town of Middletown*, 94 Conn. 416, 109 A. 246, 248 (1920); *Hedgpeth v. Shearson*, 223 N.C. 441, 27 S.E.2d 122, 123 (1943). See generally Gray, *Private Wrongs at 342-61*. However, in sharp contrast to the federal courts, the overwhelming majority of states adopted a rule of qualified immunity. See generally Gray, *Private Wrongs*, at 342 & n. 246 citing 29 state cases adopting a rule of qualified immunity. This rule

remains the majority view among the states today.¹⁴

Under a rub of qualified immunity, a public official is shielded from liability only when discretionary acts within the scope of the official's authority are done in good faith and are not malicious or corrupt. E.g., *Trimble v. City and County of Denver*, 697 P.2d 718, 728 (Colo.1985). In other words, "malice, bad faith or corrupt motive transform an otherwise immune act into one from which liability may ensue."¹⁵ *Shellbucke, Inc. v. Roberts*, 238 A.2d 331, 333 (Del.1968). Courts applying this rule reason that:

qualified [immunity] is sufficient to protect the honest officer who tries to do his duty ... official immunity should not become a cloak for malicious, corrupt, and otherwise outrageous conduct on the part of those guilty of intentional abuse of power with which they are entrusted by the people; and that the burden and inconvenience to the officer of an inquiry into his motives is far outweighed by the possible evils of the deliberate misconduct.

Prosser, § 182 at 989. See also *Griffin v. Arizona, Board of Pardons and Paroles*, 116 Ariz. 260, 564 P.2d 1227, 1231-33 (1977); *Medeiros v. Kowala*, 56 Hawaii 499, 522 P.2d 1289, 1271 (1974).

The split of authority among the various jurisdictions can be largely attributed to the conflicting policy considerations inherent in the doctrine.¹⁶ On the one hand,

Commonwealth, 973 A.2d 291, 293-96 (Pa.1978); *Shack v. City of Sioux Falls*, 297 N.W.2d 454 458-59 (S.D.1980); *Olson v. GARC*, 20 Wash.App. 691, 582 P.2d 505, 557-58 (1978); *Lister v. Board of Regents of University of Wisconsin System*, 72 Wis.2d 282, 240 N.W.2d 619 at 620-22.

14. Thus, qualified immunity is said to extend "only to immunity from damages not from suit." 6A Am.Jur.2d § 348, at 926.

15. Official immunity stands at the crossroads of private and public law and thus requires the reconciliation of two separate legal traditions. For a discussion of the theoretical difficulties inherent in courts' attempts to reconcile these two legal traditions, see R. Epstein, *Private Law Models For Official Immunity*, 42 Law & Contemp. Prob. 53 (1976).

courts have recognized that the threat of personal liability may make public officials unduly fearful in exercising their authority and thus discourage them from taking the prompt, decisive action required for the public good.¹⁷ On the other hand, there is a strong public policy of protecting citizens from oppressive and malicious acts.¹⁸ The myriad of cases and commentaries on this subject indicate that whether a court adopts a rule of absolute or qualified immunity has depended primarily on which of these two conflicting policies it deemed worthy of the greater weight. See Restatement (Second) of Torts, Ch. 45A Immunities, introductory note at 384-85 (1979) (courts today regard the issue of immunity "not so much in terms of its historical background as in terms of a reasoned approach to the policies involved"). Whichever course is taken, however, most courts have adopted an all or nothing approach. They either recognize a general rule of absolute immunity or a general rule of qualified immunity for all officials for all torts.

As our prior decisions in this area indicate, we are of the opinion that some form of immunity for public officials is necessary simply to insure that government continues to function. Every day, public officials in this state make decisions which may adversely affect hundreds, even thousands, of people. Many of these decisions will be wrong, but "it is not a tort for government to govern." *Dalziel v. United States*, 146 U.S. 16 57, 73 S.Ct. 956, 979, 37 L.Ed. 127, 1452 (1968) (Jackson, J., dissenting). Thus, we believe that enlightened public policy must ensure that public officials be free to fulfill their responsibilities with independence, vigor and a wide margin for error. Yet, we also agree with Justice Brennan that in a society as com-

16. See generally G. Brennan, *Integrating Governmental and Official Tort Liability*, 77 Colum. L.Rev. 1176, 1178-79 (1977) (hereinafter Brennan, *Official Tort Liability*); M. Fox, *The King Must Do No Wrong: A Critique of the Current Status of Sovereign and Official Immunity*, 25 Wayne L.Rev. 177, 171-81 (1979) (hereinafter Fox, *No Wrong*); R. Cox, *Damages Suits Against Public Officers*, 129 UPa.L.Rev. 1190, 1119-25 (1981).

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plex as ours, where we have seen burglary, eavesdropping, bribery and perjury committed at the highest levels, that:

[C]ourts should be wary of any argument based on the fear that subjecting government officers to the nuisance of litigation and the uncertainties of its outcome may put an undue burden on the conduct of the public business. Such a burden is hardly one peculiar to public officers; citizens generally go through life subject to the risk that they may, though in the right, be subject to litigation and the possibilities of a miscarriage of justice ... [Absolute immunity can have] too much of a flavor of throwing out the baby with the bath.

Barr, 360 U.S. at 58-59, 79 S.Ct. at 1348-49, 3 L.Ed.2d at 1451 (Brennan, J., dissenting).

Thus, we are not inclined to adopt an all or nothing approach. We perceive no logical or compelling reason why a public official should always be entitled to absolute immunity. Conversely, there are times when a rule of qualified immunity will simply not protect public interests worthy of protection. Consequently, we believe that the best approach is to strike a balance between the public's interest in efficient, unflinching leadership and the interests of maliciously injured parties.

In order to achieve this balance, we need to focus upon the particular circumstances and conduct that give rise to the claim of liability, with careful consideration being given to each of the following factors:

(1) The nature and importance of the function that the officer performed to the administration of government (i.e. the importance to the public that this function be performed; that it be performed correctly; that it be performed

21. As one commentator has noted: [W]rongdoing events worth deterring or punishing whenever the wrongdoer happens to wear. Moreover, there is something anomalous about denying relief to a tort victim simply because he had the added misfortune of being injured by a public official rather than a private citizen.

Brennan, *Official Tort Liability*, at 1121.

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according to the best judgment of the officer unimpaired by extraneous matters);

(2) The likelihood that the officer will be subjected to frequent accusations of wrongful motives and how easily the officer can defend against these allegations; and

(3) The availability to the injured party of other remedies or other forms of relief (i.e. whether the injured party can obtain some other kind of judicial review of the correctness or validity of the officer's action).

When applying this objective test to the facts of any particular case no one factor is controlling. Any decision must be grounded upon a balanced consideration of all the factors.²³ If, as a matter of law, the court determines that immunity should be absolute, then allegations of improper motive become irrelevant and the case should properly be dismissed under Rule 12(b)(6). If, on the other hand, the court determines that based on these factors that qualified immunity is appropriate, inquiry into motive becomes relevant. In such situations properly pled allegations of malice or corruption should generally be sufficient to withstand a motion to dismiss for failure to state a claim.²⁴ With this in mind, we turn to the case at bar.

A

[6] The first factor we consider is the nature and importance of the function performed by the defendant to the administration of government.

It is undeniably of great importance that the governor engage in the supervision of his subordinates. The power of unclerked administrators and bureaucrats is ever increasing. The governor and lieutenant governor are the only elected members of the executive branch. For the most part, it

23. Our opinion is limited solely to situations where a plaintiff's common law rights are involved. We express no opinion as to situations where a public official violates clearly established statutory or constitutional rights. See *Hartley v. Fitzgerald*, 457 U.S. 800, 802 S.Ct. 772, 73 L.Ed.2d 396 (1982).

is the governor who must heed popular sentiment and public opinion in the making of government policy, since it is the governor who will pay the political price if his or her administration is unresponsive to the people's needs. Thus, while engaged in the supervision of cabinet and sub-cabinet officers, the governor must feel unimpaired to direct them in the way he determines best, since he is ultimately responsible for the actions of those he appoints.

This is particularly true where the state's natural resources are concerned. The importance of Alaska's natural resources to the health and welfare of its people is self-evident. To allow the governor's motives to be questioned at every turn, by every disappointed applicant for a mining lease, or a land grant, or oil rights, would effectively undermine the governor's ability to govern. It is to guard against this possibility that a rule of absolute immunity is designed.

The same is not true, however, for the allegedly defamatory statements made by Sheffield. Undoubtedly, the governor must feel free to speak out on matters of public interest without the apprehension of being unduly constrained or fettered in informing the people of his views. The importance to the public in allowing the governor carte blanche to intentionally defame a person or business cannot, however, be said to rise to the same level of importance as the exercise of supervisory authority over the development and exploitation of the state's natural resources.

Moreover, it does not appear that the effective administration of government would be unnecessarily impaired by holding the governor personally liable for intentionally or maliciously defaming citizens. Otherwise stated, holding the governor to a standard of good faith in his public statements more than adequately protects the

24. Of course, the plaintiff must still prove that the public official's actions were, in fact, done maliciously or corruptly. Moreover, although the existence or absence of malice is generally a question of fact for the jury, when this question has been removed from the case by uncontroverted affidavits and/or depositions, summary judgment may be granted.

public interest in undeterred leadership without exposing the governor to any particularly onerous burdens.

B

The likelihood that the officer will be subjected to frequent accusations and the ease with which the officer can defend against those accusations is the next factor we must consider.

The governor is, without question, the most visible and identifiable political figure in Alaska. Thus, it would seem that the very nature of this high office would make the governor a ready target for numerous lawsuits. History, however, does not bear out this assumption. The present appeal is the first case to reach this court in which the governor has been sued for personal tort liability. Neither party points to any trend, past or present, indicating that governors in general have been the target of a disproportionate number of lawsuits and/or own research fails to denote any such phenomena. Furthermore, there is no evidence in the record to suggest that governors in jurisdictions that follow a rule of qualified immunity are any more subject to suit than their counterparts in states where absolute immunity is the rule.

The ease with which the officer can defend against the accusations, however, presents a different problem. The state of mind of a defendant is generally a question of fact for the jury. Thus, in most instances, allowing an inquiry into motive will require that a trial be held. The nature and complexity of such a trial will necessarily affect the public official's ability to meet the accusation of wrongful motive. The crucial inquiry for us then, is whether allowing an examination into motive would be more costly to the public good than the possibility of actual malice or wrongful motive on the part of the public official.

As to Aspen's four claims of wrongful interference we believe that it would. If

25. The actual rejection of Aspen's permit applications was done by the Commissioner pursuant to a February 8, 1985 Commissioner's Decision on the Issuance of Offshore Prospecting Permits in Cook Inlet. In this decision, the Commis-

sioner rejected all permit applications in Cook Inlet based on her finding that there was inadequate information to make a best interests determination.

inquiry into Governor Sheffield's motives in ordering the rejection of Aspen's permit applications were allowed, it is a near certainty that Governor Sheffield would have to testify, and probably a host of other public officials as well. Moreover, the complexity of Aspen's wrongful interference claims would undoubtedly require a lengthy trial, with a high likelihood that the court and jury would be asked to review what were essentially policy determinations for the executive branch. We perceive no good reason for requiring a governor to defend in a public trial his motivations for acts of the sort alleged here. To hold otherwise would subject every decision of a public official to post-hoc scrutiny by lay persons often not versed in the ways of government.

C

The final factor we take into consideration is the availability of other remedies or other forms of relief. Where there is an adequate alternative remedy the need for common law tort liability as a remedy is reduced.

As to the rejection of Aspen's permits, an alternative remedy is readily available. As Aspen is well aware, a decision by the Commissioner of the DNR²⁵ granting or denying of offshore prospecting permit applications is "a final administrative order,"

subject to review by means of an administrative appeal to the superior court. See AS 44.62.500. In fact, Aspen availed itself of this remedy, even before filing the present suit.²⁶ The availability of this alternative weighs heavily in favor of granting absolute immunity, a conclusion bolstered by the fact that Aspen had no vested right to receipt of any permit in the first place.²⁷ At most, Aspen was entitled to a fair determination of their permit applications. Any wrongdoing that may have occurred during the course of this determination, we believe, is adequately redressed through the administrative appeals process.

No such alternative exists, however, for harm caused by the defendant's allegedly defamatory statements. The only means Aspen has to vindicate its rights in prosecution of this suit. To adopt a rule of absolute immunity would, therefore, leave Aspen without a remedy.

Were we to adopt a rule of absolute immunity for defamatory statements made by public officials, we would, in effect, sanction the ability of those officials to libel or slander at will. We believe that this possibility poses a much more serious danger than the possibility that an official might occasionally be called upon to defend his or her actions and respond in damages for a malicious defamation.

In sum, applying the balancing test we adopt today, we hold that Governor Sheffield is entitled to absolute immunity for

26. Aspen appealed the Commissioner's decision rejecting all permits in Court in fact to the superior court in March of 1982. We take judicial notice that since that time, the permit application decision has been remanded back to the DNR for reconsideration. The current status of the DNR's reconsideration is unknown.

27. AS 38.05.250 provides that the right to prospect for minerals in tide or submerged lands may be granted by permit. This statute is clearly permissive rather than mandatory in nature and in no way requires the state to grant such privileges. Moreover, when and if the state determines that such permits should be granted they can only be granted "in the best interests of the state." AS 38.05.034(c). With no vested right or interest in the permit, Aspen cannot complain of the deprivation of any substantive property right.

28. This rule is limited only to public statements made by public officials. Internal government-

the four alleged wrongful interference torts arising out of his order that Aspen's permit applications be rejected. However, we further hold that Governor Sheffield is only entitled to qualified immunity for his allegedly defamatory statements.²⁸ Under a rule of qualified immunity, Aspen's allegation of defamation should not have been dismissed. Thus, the trial court's judgment on this issue must be reversed.²⁹

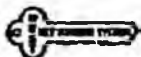
V

The trial court awarded Sheffield \$12,232 in attorney's fees. This was approximately 80% of the fees actually incurred. Aspen contends that this award is erroneous.

Because the trial court erred in dismissing Aspen's claim of damages for defamation, its award of attorney's fees must be vacated pending resolution of this issue. We, of course, express no opinion at this time on the merits of this issue.

VI

For the reasons set forth above, the trial court's judgment is AFFIRMED in part, REVERSED in part and REMANDED for further proceedings not inconsistent with this opinion.



all communications remain subject to the general rule.

29. Sheffield's argument that he is entitled to immunity under AS 69.50.250(f) is totally without merit. That statute applies only to claims against the state. It provides no immunity for public officials. See *Earl Sowers*, 691 P.2d at 285 (Rabinowitz, J., concurring); *Ross v. Andrews*, 527 P.2d 783, 785 (Alaska 1974) (no-qualified immunity immunizes the state as opposed to individuals); *Brundage v. Prince George's County*, 284 Md. 294, 304 A.2d 255, 261 (1977) ("Immunity of such officers ... rests upon wholly different grounds from that of the State" (quoting *Elfraso v. Ford*, 233 Md. 351, 194 A.2d 887 (1964))). See generally 61A *Am.Jur.2d*, § 359 at 923-26; *Prosser*, § 132. There is also no merit to Sheffield's argument that the separation of powers doctrine mandates absolute immunity.

Monte D. MILLER

v.

Karel T. MILLER

No. S-1-

Supreme Court

June 26,

Husband appealed Superior Court, Third Judicial County, Charles K. Fishback child custody, child support, and division of marital property, and division of marital property. Supreme Court, Moore, child support award was court erroneously included permanent settlement as base subject to division, but was substitute for post and (3) court's valuation \$18,000, based on wife's error.

Affirmed in part and

1. Divorce 4-293, 301

Trial court is divorce not required to make find best interests of children, sons for denying shared band, and could award "in tion rights without specification schedule, where court disputes and husband did custody; moreover, court allow parties to develop vi independently. AS 25.20.1

2. Divorce 4-208

Husband's child support \$800 per month was not some, where husband testified receiving net disability be per month.

3. Divorce 4-247

Since rehabilitative aliminate only when it is de developing a source of income be awarded to a spouse wh it for its intended purpose

H B

4 12

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY
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May, 1988

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

Mary Van Nimwegen

House Judiciary:

3-17-88

3-22-88

3-30-88

POSITION PAPER

HOUSE BILL NO. 412

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

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

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

Needs Addressed by HB 412

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

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

DEPARTMENT POSITION

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

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

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

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

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

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

DATE: 2/17/88

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

DATE: 2/17/88

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

Date referred: 2/22/88

FURTHER REFERRALS:

DATE: March 30, 1988

The Judiciary Committee has considered HB 412

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

RECOMMENDS:

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

File Note FIN?

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

- fiscal impact same as previous fiscal note published 2/22/88
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

[Handwritten signatures]

SIGNING OTHER RECOMMENDATIONS:

[Handwritten signature]

 Chairman's signature

MAR 24 1988

Angela Salerno
1727 Talkeetna St.
Anchorage, AK 99508
March 21, 1988

Representative John Sund, Chair
House Judiciary Committee
Pouch V
Juneau, AK 99811

Re: HB 412- Pre-emancipation Services for Certain Minors

Dear Representative Sund,

I write this letter to strongly urge you to endorse HB 412 which would enable DFYS to extend supervision of a minor in order to provide pre-emancipation services, services which have as their goal independent and productive living.

The bill addresses the special needs of adolescents in State custody who will not or cannot return to their birth family, and for whom traditional services have been unsuccessful. These are youth who have been in the child protection system a long time, in detention or in a series of foster homes, (and data gathered by DFYS in 1985 reveal adolescents do poorly in foster care and thus have multiple placements, but still over half of all children in placement in Alaska are teens) or who enter the system as runaways or castaways. This group can profit from transitional living services designed to teach the adult skills they may have never learned in McLaughlin or in a neglectful or abusive home.

To endorse this bill is to recognize the State's duty to provide additional services to this special population. Moreover, this bill addresses the overall mission of the Governor's Interim Commission on Children and Youth, economic self-sufficiency for Alaska's young people, and would as well implement one of the Commission's specific recommendations, legislation which would allow for placement of youth in supervised independent living programs. Pre-emancipation services could be the last State intervention needed by certain troubled youth, prevention measures you must endorse by support of this bill.

As a student intern with the office of Rep. Johnny Ellis I had the opportunity to work closely with the House HESS Committee during the research and drafting of HB 412. Should you or your staff have need for further information concerning the provisions of this bill, or if I can answer any questions, please feel free to contact me.

Sincerely,

Angela Salerno

Angela Salerno

representing Carter's former wife -- the aggrieved party in the underlying civil case. Carter appeals, contending that the trial court erred in requiring him to testify and in applying the preponderance of the evidence standard to determine his guilt. Carter also contends that the trial court erred in directing that the case be prosecuted by the opposing party in the underlying civil case. We reverse.

Whether a contempt action is civil or criminal in nature depends upon the character and purpose of the proceeding. Johansen v. State, 491 P.2d 759, 763-65 (Alaska 1971). Civil contempt proceedings are by nature remedial: their goal is to coerce litigants to comply with the lawful orders of the court in order to remedy harm occasioned to other litigants by the noncompliance. Id.; Gwynn v. Gwynn, 530 P.2d 1311 (Alaska 1975). Persons incarcerated for civil contempt are not sentenced to definite terms of imprisonment. Rather, they "carry the keys of their prison in their own pockets." In re Nevitt, 117 F. 448, 461 (8th Cir. 1902). By agreeing to comply with the court's order, they may purge themselves of contempt and be released. Johansen, 491 P.2d at 766.

In contrast, criminal contempt proceedings seek to punish violations that have already occurred. Id. They are in essence punitive and not remedial. Gwynn, 530 P.2d at 1312-13; L.A.M. v. State, 547 P.2d 827, 831 (Alaska 1977). Because a criminal contempt proceeding seeks to punish past disobedience, future compliance will not purge the contempt. See Webber v. Webber, 706 P.2d 329 (Alaska App. 1985). Thus, a characteristic feature of a criminal contempt proceeding is that it is punishable by a definite term of imprisonment. Johansen, 491 P.2d at 764-66. "[C]riminal contempt [is] a crime in every fundamental respect because it 'is a violation of the law, a public wrong which is punishable by

fine or imprisonment or both." State v. Browder, 486 P.2d 925, 934 (Alaska 1971) (quoting Bloom v. Illinois, 391 U.S. 194, 201 (1968)).

A contempt that occurs outside the presence of the court is said to be indirect; one occurring in the court's presence is a direct contempt. See West v. District Court, 575 P.2d 797 (Alaska 1978). Under the Alaska Constitution, however, little distinction is drawn between direct and indirect criminal contempt. A person charged with either direct or indirect criminal contempt is entitled to the same procedural rights that exist in other classes of criminal prosecution. Browder, 486 P.2d at 939-40. See also Bloom v. Illinois, 391 U.S. at 201. Every element of a criminal contempt must be proved beyond a reasonable doubt, and the accused cannot be compelled to render testimony that might be self-incriminatory. Gompers v. Buck's Stove & Range Co., 221 U.S. 418, 420 (1911); Continental Insurance Cos. v. Bayless & Roberts, Inc., 548 P.2d 398, 407 (Alaska 1976).

In the present case, there is little question that Carter was convicted of criminal contempt: the purpose of the proceedings below was to punish him for his past failure to comply with a visitation order, and, upon finding Carter guilty, the superior court imposed a definite term of imprisonment. Despite the criminal nature of the proceedings, the superior court applied the preponderance of the evidence standard in determining Carter's guilt. The court also required Carter to testify as the prosecution's chief witness, thereby depriving him of his right against self-incrimination. In so doing, the court relied on Johansen v. State, 491 P.2d 759 (Alaska 1971). Its reliance on Johansen was mistaken.

While Johansen was a contempt proceeding for nonpayment of child support, the case dealt exclusively with what has been traditionally

regarded as civil contempt -- a contempt proceeding whose purpose was to coerce future payment rather than to punish for past failure to pay. 491 P.2d at 766. The court in Johansen noted some potential difficulties in treating civil contempt cases for failure to pay support as entirely noncriminal for procedural purposes. Accordingly, the court struck a balance, conferring some, but not all of the benefits of a formal criminal proceeding upon individuals charged with civil contempt in such cases. Id. at 766-67. The court in Johansen expressly recognized, however, that when a nonpayment of support case is prosecuted as a criminal contempt, "the defendant would have to be afforded full procedural safeguards." Id. at 766 n.27.

Because the present case was prosecuted as a criminal contempt, we conclude that the superior court erred in depriving Carter of his right against self-incrimination and in applying the preponderance of the evidence standard to his case. We further conclude that these errors require reversal of Carter's conviction. See Delaware v. VanArsdell, ___ U.S. ___, 106 S.Ct. 1431, 1437 (1986).

Carter has also argued that the trial court erred in permitting the contempt action to be prosecuted by the attorney who represented his former wife. Carter relies on the United States Supreme Court's recent ruling in Young v. United States ex rel. Vuitton Et Fils S.A., ___ U.S. ___, 107 S.Ct. 2124 (1987).

In Rollins v. State of Alaska ex rel. Municipality of Anchorage, ___ P.2d ___, Op. No. 769 (Alaska App., January 13, 1988), this court, in light of Young, expressed concern about the wisdom of routinely appointing, as prosecutor in a criminal contempt action, counsel for the aggrieved party in the underlying civil litigation. We nevertheless

declined to apply Young to the circumstances in Rollins, because the party appointed to prosecute that case was not a private party, but, rather, was the Municipality of Anchorage, a governmental body that was duly authorized to and, in fact, regularly did perform the functions of a public prosecutor.

This case, in contrast, presents a far more difficult issue, because it involves a prosecution by a private party. However, Carter did not object below to the superior court's order appointing his former wife's counsel to prosecute the case, and the superior court did not have the opportunity to consider its appointment in light of the Supreme Court's decision in Young. Because Carter's conviction must be reversed on other grounds, we believe it preferable to allow the superior court an opportunity to consider in the first instance the conflict issue raised by Young. In the event of a retrial, the superior court should give due consideration to Young and Rollins in resolving the question of appointing a prosecutor for this case.

The conviction is REVERSED.



Alaska State Legislature

Please enter into the record my testimony to the House Judiciary
committee name

committee on HB 412, dated March 22, 1988
bill/subject

The Alaska Chapter of National Association of Social Workers supports HB 412 and encourages its passage into law.

Signed: Theresa Tanony
Yvanka Schneider, Executive Director

Testifier

NASW

Representing (Optional)

PO Box 10430 Fairbanks 99710

Address

457-5914

Phone No.

Stepping Out of Foster Care Into Independent Living

15(2)

by Eileen Mayers Pasztor, Jean Clarren, Elizabeth M. Timberlake and Linda Bayless

Although the overall foster care population continues to decrease, the proportion of adolescents in foster care has increased to the point that adolescents now comprise nearly half of the foster care population as compared to 20 percent a decade ago. Moreover, a large number of youths are remaining in the foster care system until the legal age for emancipation.¹

To address the needs of older youths in foster care, the Children's Bureau,ACYF, funded a project in 1983 designed to prepare older adolescents to move out of foster care into responsible living. The project, entitled "Stepping Out Of Foster Care Into A More Self-Sufficient Independent Living Network," was conducted by the Baltimore County Department of Social Services.¹ In addition to accomplishing its primary objective, the research and demonstration project realized three secondary objectives: It combined resources from the public social service, the business and the academic sectors to meet local needs and reduce a potential drain on community resources; it integrated aspects of the model into agency policy and service delivery to youth and families; and it assessed the replicability of the model by other agencies and communities. In addition

to the authors, core project staff included three child welfare associates from the National Catholic School of Social Service, Deborah Brittain, Jane Park Cutler, D.S.W., and Judith Sheagren.

Project Stepping Out focused on increasing adolescents' competence in performing daily life management tasks, using resources to achieve economic self-sufficiency, improving social skills and developing psychosocial coping strengths. Based on an understanding of late adolescence as a transition period, the project sought to enhance the fit between the youths and their future social environment. Project social workers emphasized strengths and needs and provided "thinking," "feeling" and "doing" opportunities with respect to adult role functioning and social networking.

For adolescents who had experienced stressful life situations, uprooting and developmental difficulties, the project forged social support networks, which functioned as sources of support and encouraged the sharing of goods and services. Through these networks, the youths learned survival strategies, values and skills necessary for accomplishing developmental tasks.

Target Population

Project Stepping Out provided services to 31 adolescents in family foster

homes and group homes. The youths ranged in age from 15 to 20, with an average of 17.1 years. There were slightly more females (54.8 percent) than males, and two-thirds of the youths were white and the remainder black. Academically, 45.2 percent were performing at a below average level, 35.5 percent at an average level and 19.4 percent, above average. Ninety percent were attending school, with 38.7 percent in the 11th or 12th grades. Three-quarters of the youths said they had previous work experience, but only a little more than a quarter had held a part-time job over four months.

Their time in foster care ranged from two months to 20 years, with an average of 6.5 years in care and 2.4 placements. Sixty-one percent were initially placed during adolescence, usually between the ages of 14 to 16 years. At the time of the project, the youths had established few bonds with their birth families. Half saw their birth mothers less than several times a month, and almost half had no contact with their fathers. Although the majority had birth siblings, only one-quarter lived in a foster care situation with a sibling.

Almost half (48.4 percent) of the youths remained in care because of behavioral, health or intellectual problems related to the child. The majority, however, remained in care because of such family-related reasons as abandonment, family inability to plan and follow through, danger of abuse or neglect, financial or housing problems and a parent who was under arrest or who had a physical or mental illness.

Service Delivery

Six service components were used to meet the project's objectives:

Project social workers. Three graduate students and three agency child welfare workers were assigned to Project Stepping Out on a part-time basis. They provided each young person with regular agency social work services as well as the project's special intervention services. Prior to the project's imple-

mentation, the service providers participated in a 28-hour training program presented by Nova University's Institute for Social Services to Families, and they received ongoing training, supervision and consultation from a field instructor provided by Catholic University's National Catholic School of Social Service.

Strengths/Needs Assessments. Adolescents' strengths and needs were explored in the areas of special interests, social and personal assets, education and employment, support systems of family and friends, values and attitudes, physical and mental health, and emancipation plan.

One assessment tool used by the adolescent and social worker was the life space diagram, which uses symbols to create a picture of the young person's experiences and feelings (in the diagram, a circle symbolizes a person, a square indicates a place and a triangle represents a situation).

For example, Jack—who had been suspended from school for fighting—drew a life space diagram that contained circles representing himself, his classmate-sparring opponent and his teacher; a triangle symbolizing the problem of suspension for fighting, and a square signifying school. In the process of drawing the diagram with his social worker, Jack was able to perceive how his anger concerning the fight that led to his suspension was related to the underlying problem of conflicts with his brother, which he viewed as the cause of his own placement in foster care. Jack realized then that his angry feelings and striking out at friends represented "baggage" from the past that he carried in the present.

By contrast, another assessment tool, the life history chart, provided an opportunity for the adolescents to probe earlier experiences with their birth families, reasons why they had entered and remained in foster care and their experiences in care.

Together, these tools enabled the youths to review the past, examine the

present and plan for the future.

Task Groups. These groups, co-led by project and agency staff, included six to 12 young people who identified, discussed and practiced skills for independent living. In a session on goal identification and planning, for example, youths discussed preparation for such occupations as veterinarian, beautician and construction worker. Activities in related sessions focusing on job search, career development and maintaining employment included resume writing, practice in asking a work supervisor for assistance and discussion of how to dress appropriately for work.

A session on daily living skills stressed practice in renting an apartment, writing checks and grocery shopping, while another on social networking centered on enhancing the youths' skills in meeting and keeping friends, living with roommates, reconnecting with birth parents and siblings and maintaining ties with foster families.

One-Day Workshop. The workshop, conducted by project and agency staff, was designed to compress the knowledge and skills learned in the task groups into an extensive examination of three primary topics: housing, vocational skills and independent living skills. The youths divided into small groups that rotated among the three discussion topics, and afterwards, they prepared and shared a meal—which, participants agreed, was a highlight of the day.

Volunteers. Adults to act as role models or mentors were recruited from local civic clubs and businesses to work with adolescents who needed a one-to-one relationship with a mature, responsible adult. Volunteers completed a 4-hour training program—conducted by the Baltimore County Department of Social Service's volunteer coordinator, the National Catholic School of Social Service's volunteer trainer and a Nova University Institute for Social Services to Families trainer—to prepare them to support the adolescent's growth toward autonomy and to teach remedial skills in selected areas.

One young person in residential care

was able to be discharged into family foster care because a volunteer provided transportation for the youth to out-patient treatment. Another adolescent, who found a job in a bakery, practiced making change with his volunteer while a third youth worked with her volunteer to make a new dress.

Apprenticeships. Community leaders were asked to approach potential apprenticeship providers on behalf of the project in general as well as individual youth. Profiles that included information about the young person's interests, strengths and needs regarding employment were shared with potential employers. The project was able to generate six additional apprenticeships apart from fast food services and the usual community summer employment, but only two-thirds of the youths who wanted jobs were able to obtain them. Two of the youths were placed in jobs through existing community projects.

Implementing the Project

During the 9-month period of service delivery, each of the 31 adolescents participated in an average of three of the six service components. To assess the impact of these services, researchers from the National Catholic School of Social

Eileen Mayers Pasztor, who was co-director and trainer for Project Stepping Out under the auspices of the National Catholic School of Social Service, Catholic University of America, and Nova University's Institute for Social Services to Families, is currently a Child Welfare Associate with the Child Welfare Institute, Atlanta. Jean Clarren, the project's principal investigator, is Assistant Director for Child Welfare, Baltimore County Department of Social Services, Towson, Md. Elizabeth M. Timberlake, D.S.W., the project's principal researcher and program consultant, is Associate Professor, National Catholic School of Social Service, Washington, D.C., and Linda Bayless, Ph.D., the project's curriculum developer and trainer, is Assistant Director, Institute for Social Services to Families, Nova University, Fort Lauderdale, Fla.

Service compared the project participants with a control group of 29 adolescents who were also in the foster care program of the Baltimore County Department of Social Services but were not receiving project services. To control for the influence of possible differences between the two groups, a pre- and post-test design was used. The experimental group's growth was measured by a psychosocial functioning scale and an emancipation social functioning scale.¹

On the emancipation social functioning scale, the difference between the experimental and control groups was substantial. Adolescents receiving project services achieved significantly more growth in the social functioning skills needed for emancipation, as measured by their total score in the areas of independent living, employment and social network skills, than did those adolescents who received no project services.

On the other hand, the percent of difference between the two groups on the psychosocial functioning scale was not significant. Adolescents participating in project services did not grow significantly in psychosocial functioning as measured by eight indicators: self-image, peer relationships, adult relationships, self-control, motivation, handling the learning demands of school and home, learning style and expression of feelings.

Impact on Adolescents

That the experimental group achieved substantially more positive changes than the control group in social functioning was not surprising for a variety of reasons. Five of the services focused primarily on the knowledge, values and skills basic to social functioning after emancipation. Since the social functioning tasks and skills necessary for working out early career interests, functioning well on the job and handling day-to-day experiences are

concrete, they are probably learned and incorporated early.

Experiences dealing with employment skills and issues are also likely to capture the young person's interest, since jobs and spending money are considered both current and future needs. Nur should satisfaction derived from the immediate monetary rewards of the job be overlooked. While their actual skill development in the areas of employment, independent living and social networking may have been slight, these youths perceived themselves as having grown in their ability to step out of foster care into independent living.

The lack of significant, positive changes in the general level of psychosocial functioning was disappointing but not surprising, since only the social work service component addressed psychosocial issues as well as issues related to social functioning and coping with independent living. The foremost reason for this lack, however, was that the project was designed to meet the short-term goal of preparing adolescents for independent living rather than addressing their residual developmental conflicts and problems. Given the youths' vulnerability, the psychosocial developmental tasks inherent in the transition from foster care to independent living take on special significance for them and require more than short-term social work remediation and personal growth.

Impact on the Agency

The six service components have been integrated into agency policy, programs and practices to varying degrees. The need for a core unit of social workers with specialized training to provide individualized services and mobilize supplementary resources for older youths in foster care has been clearly identified, and Baltimore County has an established Specialized Adolescent Program Unit which provides most of the Stepping Out service components. For agency staff with clients not served by the Specialized Unit, the project offered some exposure to the knowledge, values and skills basic to competence-oriented emancipation services. Thus,

all adolescents aged to or strengthened actual action

Although the adolescents responded well to the task groups, this component is difficult to incorporate into standard agency service delivery because of scheduling and transportation problems. While it is also difficult to coordinate transportation for youths who participated in the one-day workshop in independent living skills, agency staff members felt that evaluations from the workshop were positive enough to replicate this service periodically.

Although there were fewer volunteers than desired, agency staff believed the volunteers were positive role models for the youths and, as a result, the agency volunteer coordinator is establishing a volunteer mentorship program for adolescents in foster care. As with the volunteers, there was a scarcity of apprenticeships. Because time constraints hampered the project's community liaison efforts to set up apprenticeship opportunities, most jobs came from an established county program for youths with special needs.

Replication

Although the project's combination of resources was quite effective in meeting the needs of the target population, there were organizational, scheduling and transportation problems that developed when service providers were brought in from the outside. Overcoming these obstacles required great expenditure of time and effort that is cause for concern in setting up future service delivery programs. While the project's emancipation services achieved positive results, the age-old child welfare dilemma of time, cost and staff remains to inhibit replication.

Recommendations

Both the positive outcomes and barriers encountered in service delivery have implications for future foster care policies, programs and practices.

These implications are the basis for the following recommendations:

- To help move youths in foster care into independent living, agencies need to provide the six service components of Project Stepping Out: Agency social workers, for example, need specialized caseloads and training to provide individualized services and mobilize resources for older youths in foster care. Instead of focusing on problem-oriented assessment and intervention, the emphasis should be on each adolescent's strengths and needs. To make task groups and workshops accessible as well as available, agencies need to develop support systems to solve scheduling and transportation problems. Agency staff should also invest time and energy in community development, education and liaison activities to mobilize apprenticeship and volunteer resources.

- Agencies need to create training programs for foster parents that would provide information about the developmental needs of older adolescents in foster care and the goals of independent living. Such programs have to teach skills that would prepare foster parents to support adolescents' growth toward self-sufficiency, as well as skills for working with volunteers and other community resources available to youths in foster care.

- Since service providers have been sensitized to issues of separation and loss, and identity development and emancipation, by their own experiences, approaches should be developed to facilitate service providers' self-awareness and help them keep their own issues distinct from those of the youths with whom they work.

- Agencies need to begin to work with youths toward the goal of emancipation at a much earlier point in their foster care experience. Adolescents in foster care need help to resolve residual developmental conflicts and problems as well as current problems in making the transition into independent living.

- For clarity in planning, service delivery has to be divided into three phases: intake, continuing service and termination. Many service structures

and technologies are common to all three phases and yet have different emphases or uses in each phase.

- Support and rehabilitative services for birth families are crucial to achieve permanency planning goals and to develop their ability to serve as support networks when their adolescents move out of foster care into independent living.

- Finally, agencies have to approach the goal of emancipation not simply as movement from one place to another but as a multidimensional process designed to enhance the young person's growth toward autonomy and mastery of life experiences. Transitional funding must be provided for older youths in foster care to meet basic needs and enable them to build resources toward the goal of full emancipation.

Conclusion

Without an explicit policy commitment to individualized service planning for older youths in foster care, agency programs and social work practice will not meet their critical needs. Without clearly defined federal, state and local foster care policies and allocation of funds, it is difficult for agencies to establish or sustain programs and resources. It is only with such programs as Project Stepping Out that social work staff can create and use appropriate intervention techniques to help older adolescents move out of foster care into responsible living. ■

¹See R. Hubbell, *Foster Care and Families* (Philadelphia: Temple Press, 1981); E. Tomberlake, J. Cutler and J. Strohman, *A Study of the Children in Foster Care in One County Department of Social Services* (Washington, D.C.: National Catholic School of Social Service, 1980); A. Gruber, *Children in Foster Care* (New York: Human Sciences Press, 1978); A. Shyne and A. Schoeder, *A National Study of Social Services to Children and Their Families* (Washington, D.C.: National Center for Child Advocacy, Westat, 1978).

²Baltimore County Department of Social Services, National Catholic School of Social Service, Institute for Social Services in Families, *Final Report: Project Stepping Out of Foster Care Into A More Self-Sufficient Independent Living Network* (DHHS, OHS, ACYF Children's Bureau Grant 90-CO-0223-01, 1985).

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IN THEIR OWN

periment by Brian Simonitch and James L. Anderson

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to support themselves. By the end of the two years, if not before, their need for support from the program should have ended; at that time, they are fully independent and have attained adult status. If wardship still exists, the Children's Services Division requests the court to vacate it, so that all trappings of dependency are dropped.

Filling a Service Gap

Before the program began in Oregon, caseworkers had few choices in providing services to older teenagers nearing emancipation who were not succeeding in or were completing a substitute placement. Many of these young people were essentially homeless. They may have lived in several foster homes and perhaps in a group home or institution. The only option continued to be the same round of foster home-group home-institution, all of which had already been demonstrated to be inadequate for them. So these youngsters moved through one failed placement after another and, on reaching 18, were turned loose in society, ill-equipped to cope with independence responsibly.

Often these adolescents had suffered disastrous relationships with their parents. They had rarely stuck with any task or maintained a relationship with anyone for any length of time. They were untrained in the common social amenities. Although in some respects

they seemed older than their years, they were still immature and liable to be victimized by the unscrupulous. They did not know how to manage money, to cook or clean house, to avoid being cheated, to find and keep a job, to study and learn. They needed the chance to learn these things if they were to become truly independent.

It was for young people in this limbo between childhood and adulthood that we developed the Independent Living Subsidy Program. As far as we know, it is the only program in the country to receive legislative funding to make payments directly to a minor in the custody of a child welfare agency, although caseworkers throughout the country regularly make informal arrangements to achieve the same goals for their youngsters. Originally funded as a small demonstration program at \$50,000 for a 2-year period, the program now operates statewide in Oregon with a \$270,899 legislative appropriation.

Obtaining funding for the program was difficult. Legislators were concerned that the Children's Services Division (CSD) had no legal authority to make payments directly to a minor. They questioned our theory that we could promote maturity among adolescents by reducing rather than intensifying controls and they argued about the justice of rewarding youngsters for failing in their foster home or institutional placements.

The merits of our proposal could only be proven once the project was put into operation and it was the successful demonstration project that persuaded the

legislature to fund it as a regular program.

At a legislative hearing in 1975, Marcia, one of its graduates, described the program and her life before she entered it.

Marcia's parents were dead and she had run away from relatives and foster homes. When she entered the program she was a part-time prostitute, living on the street, telling dupe and stealing.

"How long have you been in the program?" a Senator asked.

Marcia: I've been in the program about a year, and there wasn't any place to put me. . . . I was on my own and I had to quit school to support myself because the program wasn't off the ground yet. Since then I've completed my high school, got my diploma. I'm going to business school right now and I hope real soon to find a job to get off the program.

Senator P: What did you mean when you said you were on your own before that?

Marcia: Well, I'd been in foster homes and I really didn't need the structure of the foster home so I left home and got out of that. I was still a ward of the Court but.

Senator R: And you've had a lot of contact with Children's Services and the juvenile program. How many times have you been moved from one place to another?

Marcia: About four or five times.

Senator R: That was in how many years? A couple?

Marcia: The last two years.

Senator R: Could you talk a little bit about your background, what kind of placements you had and how you would compare this program with those placements?

Marcia: I feel I'm more responsible now. I'm taking care of myself, and when I was in the homes I wasn't very responsible.

Senator P: You're 18 years old now and you've finished high school. How

much high school had you had—you've been in this program for a little over a year.

Marcia: I wasn't going to public high school. I went through the high school completion program at Portland Community College. After my foster homes and my sister's home, I thought about it and saw I wasn't getting anywhere, so I decided to go back and finish up.

Senator P: What do you think would have happened to you if you hadn't been in the program?

Marcia: I'd have been in jail.

Selecting Participants

Some participants, like Marcia, enter the program because other placements have not worked. For others, foster care seems inappropriate, as in the case of a 17-year-old whose foster parents called CSI one day to inform the caseworker that they were moving from the county in one month and would be unable to provide for her beyond that time. The young woman had been in two previous foster homes and had not lived in her own home since she was 13 years old. She was very distressed by this turn of events and resisted the idea of yet another foster home. She had no record of delinquency. From the caseworker's point of view it seemed unfair to expect her to adjust to a new foster home when she was only a year away from completing high school and needed to concentrate on the problem of emancipation.

Still other participants have successfully completed foster or institutional care but cannot return home and need some training before being completely on their own.

Ann, now 22, is a graduate of the program. Her worker sees her frequently

at his neighborhood grocery store where she is a full-time check-out clerk. When the worker first knew her, Ann was 16 years old and in detention for drug abuse and theft. After about 10 months in a group home, where she learned to live without drugs, returned to school and earned money at part-time work, Ann became a participant in our program. At 17, she was too old for foster care, her home was not a feasible resource, and the only other alternative was to leave her in the group home, which was very expensive and would not train her for independence. Under the Independent Living Subsidy Program, Ann attended community college to get her high school diploma and began work in the grocery store.

All participants must pass a screening process prior to acceptance in the program. A screening committee composed of four or five caseworkers and administrative staff members meets to hear an applicant state his or her case for admission. The committee also receives a recommendation from the client's caseworker, but the applicant must take major responsibility for planning his or her budget and educational and work

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Photos: Brian Simonitch



Two participants in the Independent Living Subsidy Program enjoy their new apartments.



CORRECTION

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

Service compared the project participants with a control group of 29 adolescents who were also in the foster care program of the Baltimore County Department of Social Services but were not receiving project services. To control for the influence of possible differences between the two groups, a pre- and post-test design was used. The experimental group's growth was measured by a psychosocial functioning scale and an emancipation social functioning scale.¹

On the emancipation social functioning scale, the difference between the experimental and control groups was substantial. Adolescents receiving project services achieved significantly more growth in the social functioning skills needed for emancipation, as measured by their total score in the areas of independent living, employment and social network skills, than did those adolescents who received no project services.

On the other hand, the percent of difference between the two groups on the psychosocial functioning scale was not significant. Adolescents participating in project services did not grow significantly in psychosocial functioning as measured by eight indicators: self-image, peer relationships, adult relationships, self-control, motivation, handling the learning demands of school and home, learning style and expression of feelings.

Impact on Adolescents

That the experimental group achieved substantially more positive changes than the control group in social functioning was not surprising for a variety of reasons. Five of the services focused primarily on the knowledge, values and skills basic to social functioning after emancipation. Since the social functioning tasks and skills necessary for working out early career interests, functioning well on the job and handling day-to-day experiences are

concrete, they are probably learned and incorporated early.

Experiences dealing with employment skills and issues are also likely to capture the young person's interest, since jobs and spending money are considered both current and future needs. Nur should satisfaction derived from the immediate monetary rewards of the job be overlooked. While their actual skill development in the areas of employment, independent living and social networking may have been slight, these youths perceived themselves as having grown in their ability to step out of foster care into independent living.

The lack of significant, positive changes in the general level of psychosocial functioning was disappointing but not surprising, since only the social work service component addressed psychosocial issues as well as issues related to social functioning and coping with independent living. The foremost reason for this lack, however, was that the project was designed to meet the short-term goal of preparing adolescents for independent living rather than addressing their residual developmental conflicts and problems. Given the youths' vulnerability, the psychosocial developmental tasks inherent in the transition from foster care to independent living take on special significance for them and require more than short-term social work remediation and personal growth.

Impact on the Agency

The six service components have been integrated into agency policy, programs and practices to varying degrees. The need for a core unit of social workers with specialized training to provide individualized services and mobilize supplementary resources for older youths in foster care has been clearly identified, and Baltimore County has an established Specialized Adolescent Program Unit which provides most of the Stepping Out service components. For agency staff with clients not served by the Specialized Unit, the project offered some exposure to the knowledge, values and skills basic to competence-oriented emancipation services. Thus,

all adolescents are encouraged to strengthen their social functioning skills.

Although the adolescents responded well to the task groups, this component is difficult to incorporate into standard agency service delivery because of scheduling and transportation problems. While it is also difficult to coordinate transportation for youths who participated in the one-day workshop in independent living skills, agency staff members felt that evaluations from the workshop were positive enough to replicate this service periodically.

Although there were fewer volunteers than desired, agency staff believed the volunteers were positive role models for the youths and, as a result, the agency volunteer coordinator is establishing a volunteer mentorship program for adolescents in foster care. As with the volunteers, there was a scarcity of apprenticeships. Because time constraints hampered the project's community liaison efforts to set up apprenticeship opportunities, most jobs came from an established county program for youths with special needs.

Replication

Although the project's combination of resources was quite effective in meeting the needs of the target population, there were organizational, scheduling and transportation problems that developed when service providers were brought in from the outside. Overcoming these obstacles required great expenditure of time and effort that is cause for concern in setting up future service delivery programs. While the project's emancipation services achieved positive results, the age-old child welfare dilemma of time, cost and staff remains to inhibit replication.

Recommendations

Both the positive outcomes and barriers encountered in service delivery have implications for future foster care policies, programs and practices.

These implications are the basis for the following recommendations:

- To help move youths in foster care into independent living, agencies need to provide the six service components of Project Stepping Out: Agency social workers, for example, need specialized caseloads and training to provide individualized services and mobilize resources for older youths in foster care. Instead of focusing on problem-oriented assessment and intervention, the emphasis should be on each adolescent's strengths and needs. To make task groups and workshops accessible as well as available, agencies need to develop support systems to solve scheduling and transportation problems. Agency staff should also invest time and energy in community development, education and liaison activities to mobilize apprenticeship and volunteer resources.

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Conclusion

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