

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

5238 SHES SB 1

8672

SB

1

Disabled person

PHONE MEMO	TO	Senator		DATE	2-11	TIME	AM PM							
	FROM	M	John Kearney	AREA CODE	094	NUMBER	7885							
	OF	110590 Center Building, Apt. B SB-1 Eagle River 99507												
	MESSAGE	enclosed to be passed in whole Service animal separate if not passed.						SIGNED (initials)						
PHONED		<input checked="" type="checkbox"/>	CALL BACK	<input type="checkbox"/>	RETURNED CALL	<input type="checkbox"/>	WANTS TO SEE YOU	<input type="checkbox"/>	WILL CALL AGAIN	<input type="checkbox"/>	URGENT	<input type="checkbox"/>	WAS IN	<input type="checkbox"/>

MONARCH M5176

WHILE YOU WERE AWAY

FOR	PAUL		DATE	2-25	TIME	AM P.M.	
M	Jim O'milk						
OF	BLIND & DISABLED					<input checked="" type="checkbox"/>	TELEPHONED
PHONE	248-7770		AREA CODE	NUMBER	EXTENSION	<input checked="" type="checkbox"/>	RETURNED YOUR CALL
MESSAGE	WILL BLIND PEOPLE BE ON SURVS?					<input type="checkbox"/>	PLEASE CALL
SIGNED						<input type="checkbox"/>	WILL CALL AGAIN
A.S.						<input type="checkbox"/>	CAME TO SEE YOU
						<input type="checkbox"/>	WANTS TO SEE YOU
							TOPS FORM 4002

PHONE MEMO	TO	Senator		DATE	2-11	TIME	AM PM							
	FROM	M	Mr. Lawrence-Smith-Miller	AREA CODE	345	NUMBER	4263(4)							
	OF	328 Bonfave #2576 Anchorage 99504												
	MESSAGE	passing SBI please support This would be a good first step for Alaska for disabled people						SIGNED (initials)						
PHONED		<input checked="" type="checkbox"/>	CALL BACK	<input type="checkbox"/>	RETURNED CALL	<input type="checkbox"/>	WANTS TO SEE YOU	<input type="checkbox"/>	WILL CALL AGAIN	<input type="checkbox"/>	URGENT	<input type="checkbox"/>	WAS IN	<input type="checkbox"/>

MONARCH M5176

PHONE MEMO	TO	Mary / Senator		DATE	2-11	TIME	AM PM							
	FROM	M	John Ledum	AREA CODE	344	NUMBER	3622							
	OF	SPCA					EXTENSION							
	MESSAGE	SBI -> Totale for this bill and want it to pass - Service animal to be taken out and passed separately						SIGNED (initials)						
PHONED		<input type="checkbox"/>	CALL BACK	<input type="checkbox"/>	RETURNED CALL	<input type="checkbox"/>	WANTS TO SEE YOU	<input type="checkbox"/>	WILL CALL AGAIN	<input type="checkbox"/>	URGENT	<input type="checkbox"/>	WAS IN	<input type="checkbox"/>

MONARCH M5176

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 1/29/87 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: JUDICIARY
FINANCE

**FISCAL NOTE(S) ATTACHED 3 **
IN ACCORDANCE WITH AS 27.08.035
(see below)

1/19/87

DATE TURNED INTO OFFICE 3/3/87

Mr. President:

HESS

Committee considered SB 1

relating to the rights of physically and mentally disabled persons.

and recommended:

[] replace with CS SB 1 (HESS) same title
[] attached amendment(s) and [] new title

do pass

[] do not pass

[] no recommendation

[] individual recommendations

[] further referral to _____

[] letter of intent adopted and attached

** Committee attached or [] adopted fiscal note(s)
[] zero [] fiscal impact

CS -
Coming

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Signature]
[Signature]
[Signature]
[Signature]

Paul A. Fisher Do Pass
Chairman signature and recommendation

[] Committee Backup Attached

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

REQUEST: _____

Bill Version: SB - 1
Publish Date: 1-19-87

Revision Date: _____
Title: Rights of Physically and
Mentally Disabled Persons

Agency Affected: Office of the Governor
BRU: Commission, Special Issues

Sponsor: Duncan and Szymanski
Requestor: Health, Education and Social
Services; Judiciary; Finance

Components: Human Rights Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

As requested by Senator Paul Fischer

Prepared by: Michael A. Nizich, Director *MN* Phone: 465-3616
Division: Div. of Administrative Services Date: 3-6-87

Approved by Commissioner: Carol P. Kastelic *CPK* Date: 3-6-87
Agency: Exec. Assistant, Office of the Governor

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

Roxann

COMMITTEE BILL FILE WORK-UP ON:

Bill #: SB1 Rights of Blind & Disabled
Sponsor: Neenah
Room #: 2119 Phone #: 47616 4767

- 1/19 1 Receive Original Bill and Log In.
- 1/19 2 Duplicate Work Copies for Committee File and Senator's File.
- 1/19 3 File Original Bill in Special Locking File.
- 1/29 4 Set-Up Weekly Schedule of Hearings (2 Weeks in Advance if possible).
- 1/29 5 Notify Senate Secretary (5 Day Rule Applies - Allows Time to Get it Printed in Journal). A Copy of the Committee Agenda is Sufficient.
- 1/29 6 Move Work File to "Active" File Drawer.
- 7 Notify the Following Persons of the Hearing Date:

Committee Members	<u>2/5</u>	Department Liaisons	<u>Randall HESS 3030</u>	<u>1/29</u>
			<u>Paula Forsyth: Sec 264-228</u>	<u>2/17</u>
Bill Sponsor	<u>[scribble]</u>	Reg. OSSBI	<u>Ed Klein 3867</u>	<u>2/17</u>
	<u>2/4</u>	Governor	<u>Janet Bradley 130</u>	<u>2/6 2474</u>
		If Necessary	<u>Bob Evans (Judge) 130</u>	<u>3500</u>

- 1/29 8 Request Back-Up Information from Bill Sponsor As Soon As Possible.
- 1/29 9 Request Witness Roster of Persons the Sponsor Has Notified or Desires to Have Notified.
- 1/29 10 If First Committee of Referral, Request Fiscal Note from Pertinent Department Liaison(s) for each bill change (ie. SS, CS etc) - (5 Day Rule Applies).
- 11 If Necessary, Prepare or Request Sectional Analysis from Legal (3867) when pertinent for each change (ie. SS, CS etc). This is Pretty Much a Judgement Call.
- 12 Research and Prepare Back-Up Material as Necessary.
- 13 Prepare Committee Files (8 Copies: 1 ea for: Committee Members, Committee Aide, Senate Pool Secretary).
- 14 Prepare 10-15 Copies of All Documents to Hand Out to Public During the Hearing (ie. Bill, Short Synopsis, Others at Sponsor's Request). 1/31
- 1/29/1/30 15 Distribute Committee Agenda (Schedule).
- 16 If Requested, Provide Files As Soon As Possible On the Day of the Hearing. Otherwise, Provide the Files at the Beginning of the Hearing in the Committee Room.

*7/12 Court
Paula Forsyth*

1/29 Randall HESS

*586-6806 Interpreter
<Blind> Jean Henderson*

Roman w/ Duncan
4766

WITNESS ROSTER WORK SHEET

5B1 - Rights of the Blind & Disabled 2/2/87
Bill # Title Persons Date of Hearing

1. Name: X?
Address: _____ Phone #: _____
Representing: Gov's Common Handicapped Title: _____

2. Name: Christine Hagler (deaf) ^{& Gifted} X
Address: _____ Phone #: _____
Representing: X Title: _____

3. Name: Madeline Woolfe (blind)
Address: _____ Phone #: _____
Representing: X Title: _____

4. Name: Sharon Lobaugh
Address: _____ Phone #: _____
Representing: Alliance for the Mentally Title: _____

2/16/87
in town
to testify

5. Name: Janet Bradley
Address: Anchorage Phone #: 876-7474
Representing: Human Rights Commission Title: Dir.

6. Name: Wes Cozren
Address: _____ Phone #: 586-1931
Representing: _____ Title: _____

Better
than seeing Eye Dogs
Access for SLDs

Name: Bill & Wendy Norman
Address: _____ Phone #: 235-7690 until 2/22
Representing: Women Title: 235-8803 after 2/22

8. Name: _____
Address: _____ Phone #: _____
Representing: _____ Title: _____

9. Name: _____
Address: _____ Phone #: _____
Representing: _____ Title: _____

10. Name: _____
Address: _____ Phone #: _____
Representing: _____ Title: _____

11. Name: _____
Address: _____ Phone #: _____
Representing: _____ Title: _____

12. Name: _____
Address: _____ Phone #: _____
Representing: _____ Title: _____

CB/

Janet Bradley
Human Rights Commission

HB72
last year

276-7474
Tel. Dist.

Supports changes
except their resp for enforcement law for
pedestrians -

1. Access to all facil. Sec 18.82.030
Fed. on sidewalks and streets

No!

2. Final Sect. 18.82.256 pg 11
Alterations
Step backward.

Mid-March

F.N. \$56.6

Commissions Once per year together

Interpretative - Guidelines Public Hearings.
Adopt Regs.

Mike Dizick

WORK DRAFT

WORK DRAFT

WORK DRAFT

5-0193B
Hein
2/20/87

Original sponsors: Duncan, Szymanski,
Uehling and Sturgulewski

1 IN THE SENATE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2

CS FOR SENATE BILL NO. 1 (HESS)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the rights of physically and
mentally disabled persons."

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

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* Section 1. AS 09.20.010 is amended by adding new subsections to read:

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(b) A person is not disqualified from serving as a juror solely

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because of the loss of hearing or sight in any degree or a disability

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that substantially impairs or interferes with the person's mobility.

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(c) The court shall provide, and pay the cost of services of, an

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interpreter or reader when necessary to enable a person with impaired

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hearing or sight to act as a juror.

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* Sec. 2. AS 09.65 is amended by adding a new section to read:

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Sec. 09.65.150. DUTY TO DISABLED PEDESTRIANS. (a) The driver

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of a vehicle approaching a physically disabled pedestrian who is

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carrying a white or metallic-colored cane, or using special equipment

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for mobility, or using a service animal, shall take precautions neces-

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sary to avoid injury to the pedestrian or the service animal. A

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driver who fails to take necessary precautions and, as a result,

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causes injury to the pedestrian or the service animal is liable in

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damages for the injury caused.

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(b) In this section

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(1) "physically disabled pedestrian" means a person who has

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a physical condition that limits the person's ability to function as a

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pedestrian without the assistance of another person, a service animal,

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a cane, or other equipment or device;

1 (2) "service animal" means a dog guide or other animal that
2 assists a physically disabled person to function as a pedestrian.

3 * Sec. 3. AS 11.76 is amended by adding a new section to read:

4 Sec. 11.76.130. INTERFERENCE WITH RIGHTS OF DISABLED PERSON.

5 (a) A person commits the crime of interference with the rights of a
6 disabled person if the person prevents or restricts

7 (1) a physically or mentally disabled person from having
8 full and free pedestrian use of a street, highway, sidewalk, walkway,
9 or other thoroughfare, to the same extent that any other person has a
10 right to pedestrian use; or

11 (2) a physically disabled person from being accompanied or
12 assisted by a certified service animal, without an extra charge for
13 the service animal, in a common carrier, place of public accommoda-
14 tion, or other place to which the general public is invited, except as
15 provided in (b) of this section.

16 (b) A physically disabled person who is accompanied or assisted
17 by a certified service animal in a common carrier, place of public
18 accommodation, or other place to which the general public is invited,
19 is liable for property damage done by the animal.

20 (c) In this section

21 (1) "certified service animal" means an animal trained to
22 assist a physically disabled person and certified by a school or
23 training facility for service animals as having completed such train-
24 ing;

25 (2) "physically or mentally disabled" has the meaning given
26 in AS 18.80.300.

27 (d) Interference with the rights of a disabled person is a class
28 B misdemeanor.

29 * Sec. 4. AS 12.55.155(c)(22) is amended to read:

1 (22) the defendant knowingly directed the conduct consti-
2 tuting the offense at a victim because of that person's race, sex,
3 color, creed, physical or mental disability, ancestry, or national
4 origin;

5 * Sec. 5. AS 18.80.050 is amended by adding a new subsection to read:

6 (b) The commission shall adopt regulations relating to dis-
7 crimination because of physical and mental disability. The regula-
8 tions shall furnish guidance concerning the circumstances under which
9 it is necessary to make a reasonable accommodation for a physically or
10 mentally disabled person when providing employment, financing or
11 credit, public accommodations, the sale or rental of real property, or
12 other goods, services, facilities, advantages, or privileges under
13 this chapter.

14 * Sec. 6. AS 18.80.060(a) is amended to read:

15 (a) In addition to the other powers and duties prescribed by
16 this chapter the commission shall

17 (1) appoint an executive director approved by the governor;

18 (2) hire other administrative staff as may be necessary to
19 the commission's function;

20 (3) exercise general supervision and direct the activities
21 of the executive director and other administrative staff;

22 (4) accept complaints under AS 18.80.100;

23 (5) study the problems of discrimination in all or specific
24 fields of human relationships, and foster through community effort or
25 goodwill, cooperation and conciliation among the groups and elements
26 of the population of the state, and publish results of investigations
27 and research as in its judgment will tend to eliminate discrimination
28 because of race, religion, color, national ancestry, physical or
29 mental disability [HANDICAP], age, sex, marital status, changes in

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marital status, pregnancy or parenthood;

(6) make an overall assessment, at least once every three years, of the progress made toward equal employment opportunity by every department of state government; results of the assessment shall be included in the annual report made under AS 18.80.150.

* Sec. 7. AS 18.80.200 is amended to read:

Sec. 18.80.200. PURPOSE. (a) It is determined and declared as a matter of legislative finding that discrimination against an inhabitant of the state because of race, religion, color, national origin, age, sex, physical or mental disability, marital status, changes in marital status, pregnancy or parenthood is a matter of public concern and that this discrimination not only threatens the rights and privileges of the inhabitants of the state but also menaces the institutions of the state and threatens peace, order, health, safety and general welfare of the state and its inhabitants. The legislature finds that discrimination against physically and mentally disabled persons is caused in large part by ignorance or misconceptions concerning the nature and effects of physical and mental disabilities.

delete

(b) Therefore, it is the policy of the state and the purpose of this chapter to eliminate and prevent discrimination in employment, in credit and financing practices, in places of public accommodation, in the sale, lease, or rental of real property because of race, religion, color, national origin, sex, age, physical or mental disability, marital status, changes in marital status, pregnancy or parenthood. It is also the policy of the state to encourage and enable physically and mentally disabled persons to participate fully in the social and economic life of the state and to engage in remunerative employment. It is not the purpose of this chapter to supersede laws pertaining to child labor, the age of majority or other age restrictions or

1 requirements.

2 * Sec. 8. AS 18.80.210 is amended to read:

3 Sec. 18.80.210. CIVIL RIGHTS. The opportunity to obtain em-
4 ployment, credit and financing, public accommodations, housing accom-
5 modations and other property without discrimination because of sex,
6 physical or mental disability, marital status, changes in marital
7 status, pregnancy, parenthood, race, religion, color or national
8 origin is a civil right.

9 * Sec. 9. AS 18.80.220(a) is amended to read:

10 (a) It is unlawful for

11 (1) an employer to refuse employment to a person, or to bar
12 a person from employment, or to discriminate against a person in
13 compensation or in a term, condition, or privilege of employment
14 because of the person's race, religion, color or national origin, or
15 because of the person's age, physical or mental disability [HANDI-
16 CAP], sex, marital status, changes in marital status, pregnancy or parent-
17 hood when the reasonable demands of the position do not require dis-
18 tinction on the basis of age, physical or mental disability [HANDI-
19 CAP], sex, marital status, changes in marital status, pregnancy or
20 parenthood;

21 (2) a labor organization, because of a person's sex, mari-
22 tal status, changes in marital status, pregnancy, parenthood, age,
23 race, religion, physical or mental disability, color or national
24 origin, to exclude or to expel a person from its membership, or to
25 discriminate in any way against one of its members or an employer or
26 an employee;

27 (3) an employer or employment agency to print or circulate
28 or cause to be printed or circulated a statement, advertisement, or
29 publication, or to use a form of application for employment or to make

1 an inquiry in connection with prospective employment, which expresses,
2 directly or indirectly, a limitation, specification or discrimination
3 as to sex, physical or mental disability, marital status, changes in
4 marital status, pregnancy, parenthood, age, race, creed, color or
5 national origin, or an intent to make the limitation, unless based
6 upon a bona fide occupational qualification;

7 (4) an employer, labor organization or employment agency to
8 discharge, expel or otherwise discriminate against a person because
9 the person has opposed any practices forbidden under AS 18.80.200 -
10 18.80.280 or because the person has filed a complaint, testified or
11 assisted in a proceeding under this chapter;

12 (5) an employer to discriminate in the payment of wages as
13 between the sexes, or to employ a female in an occupation in this
14 state at a salary or wage rate less than that paid to a male employee
15 for work of comparable character or work in the same operation, busi-
16 ness or type of work in the same locality; or

17 (6) a person to print, publish, broadcast or otherwise
18 circulate a statement, inquiry or advertisement in connection with
19 prospective employment that expresses directly, a limitation, speci-
20 fication or discrimination as to sex, physical or mental disability,
21 marital status, changes in marital status, pregnancy, parenthood, age,
22 race, religion, color or national origin, unless based upon a bona
23 fide occupational qualification.

24 * Sec. 10. AS 18.80.230 is amended to read:

25 Sec. 18.80.230. UNLAWFUL PRACTICES IN PLACES OF PUBLIC ACCOMMO-
26 DATION. It is unlawful for the owner, lessee, manager, agent or
27 employee of a public accommodation

28 (1) to refuse, withhold from or deny to a person any of its
29 services, goods, facilities, advantages or privileges because of sex.

1 physical or mental disability, marital status, changes in marital
2 status, pregnancy, parenthood, race, religion, color or national
3 origin;

4 (2) to publish, circulate, issue, display, post or mail a
5 written or printed communication, notice or advertisement that states
6 or implies

7 (A) that any of the services, goods, facilities,
8 advantages or privileges of the public accommodation will be
9 refused, withheld from or denied to a person of a certain race,
10 religion, sex, physical or mental disability, marital status,
11 color or national origin or because of pregnancy, parenthood, or
12 a change in marital status, or

13 (B) that the patronage of a person belonging to a
14 particular race, creed, sex, marital status, color or national
15 origin or who, because of pregnancy, parenthood, physical or
16 mental disability, or a change in marital status, is unwelcome,
17 not desired or solicited.

18 * Sec. 11. AS 18.80.240 is amended to read:

19 Sec. 18.80.240. UNLAWFUL PRACTICES IN THE SALE OR RENTAL OF REAL
20 PROPERTY. It is unlawful for the owner, lessee, manager or other
21 person having the right to sell, lease or rent real property

22 (1) to refuse to sell, lease or rent the real property to a
23 person because of sex, marital status, changes in marital status,
24 pregnancy, race, religion, physical or mental disability, color or
25 national origin; however, nothing in this paragraph prohibits the
26 sale, lease or rental of classes of real property commonly known as
27 housing for "singles" or "married couples" only;

28 (2) to discriminate against a person because of sex, mari-
29 tal status, changes in marital status, pregnancy, race, religion,

1 physical or mental disability, color or national origin in a term,
2 condition or privilege relating to the use, sale, lease or rental of
3 real property; however, nothing in this paragraph prohibits the sale,
4 lease or rental of classes of real property commonly known as housing
5 for "singles" or "married couples" only;

6 (3) to make a written or oral inquiry or record of the sex,
7 marital status, changes in marital status, race, religion, physical or
8 mental disability, color or national origin of a person seeking to
9 buy, lease or rent real property;

10 (4) to offer, solicit, accept, use or retain a listing of
11 real property with the understanding that a person may be discrimin-
12 ated against in a real estate transaction or in the furnishing of
13 facilities or sources in connection therewith because of a person's
14 sex, marital status, changes in marital status, pregnancy, race,
15 religion, physical or mental disability, color, national origin or
16 age;

17 (5) to represent to a person that real property is not
18 available for inspection, sale, rental, or lease when in fact it is so
19 available, or to refuse to allow a person to inspect real property
20 because of the race, religion, physical or mental disability, color,
21 national origin, age, sex, marital status, change in marital status or
22 pregnancy of that person or of any person associated with that person;

23 (6) to engage in blockbusting;

24 (7) to make, print or publish, or cause to be made, printed
25 or published, any notice, statement or advertisement, with respect to
26 the sale or rental of real property that indicates any preference,
27 limitation, or discrimination based on race, color, religion, physical
28 or mental disability, sex, or national origin, or an intention to make
29 the preference, limitation or discrimination.

1 * Sec. 12. AS 18.80.250(a) is amended to read:

2 (a) It is unlawful for a financial institution or other commer-
3 cial institution extending secured or unsecured credit, upon receiving
4 an application for financial assistance or credit for the acquisition,
5 construction, rehabilitation, repair or maintenance of a housing
6 accommodation or other property or services, or the acquisition or
7 improvement of unimproved property, or upon receiving an application
8 for any sort of loan of money, to permit one of its officials or
9 employees during the execution of the official's or the employee's
10 duties

11 (1) to discriminate against the applicant because of sex,
12 physical or mental disability, marital status, changes in marital
13 status, pregnancy, parenthood, race, religion, color or national
14 origin in a term, condition or privilege relating to the obtainment or
15 use of the institution's financial assistance or credit, except to the
16 extent of a federal statute or regulation applicable to a transaction
17 of the same character;

18 (2) to make or cause to be made a written or oral inquiry
19 or record of the sex, physical or mental disability, marital status,
20 changes in marital status, pregnancy, parenthood, race, religion,
21 color or national origin of a person seeking the institution's finan-
22 cial assistance or credit, unless the inquiry is for the purpose of
23 ascertaining the creditor's rights and remedies applicable to the
24 particular extension of credit and is not made or used in order to
25 discriminate in a determination of creditworthiness;

26 (3) to refuse to extend credit, issue a credit card or make
27 a loan to a married person or a person with a physical or mental
28 disability, who is otherwise creditworthy, if so requested by the
29 person;

1 (4) to refuse to issue a credit card to a married person in
2 that person's name, if so requested by the person, provided, however,
3 that the person so requesting a card may be required to open an ac-
4 count in that name.

5 * Sec. 13. AS 18.80.255 is amended to read:

6 Sec. 18.80.255. UNLAWFUL PRACTICES BY THE STATE OR ITS POLITICAL
7 SUBDIVISIONS. It is unlawful for the state or any of its political
8 subdivisions

9 (1) to refuse, withhold from or deny to a person any local,
10 state or federal funds, services, goods, facilities, advantages or
11 privileges because of race, religion, sex, color or national origin;

12 (2) to publish, circulate, issue, display, post or mail a
13 written or printed communication, notice or advertisement that states
14 or implies that any local, state or federal funds, services, goods,
15 facilities, advantages or privileges of the office or agency will be
16 refused, withheld from or denied to a physically or mentally disabled
17 person or a person of a certain race, religion, sex, color or national
18 origin or that the patronage of a physically or mentally disabled
19 person or a person belonging to a particular race, creed, sex, color
20 or national origin is unwelcome, not desired or solicited; it is not
21 unlawful to post notice that facilities to accommodate the physically
22 or mentally disabled are not available;

23 (3) to refuse or deny to a person any local, state, or
24 federal funds, services, goods, facilities, advantages or privileges
25 because of physical or mental disability.

26 * Sec. 14. AS 18.80.300 is amended by adding new paragraphs to read:

27 (15) "major life activities" means functions such as caring
28 for one's self, performing manual tasks, walking, seeing, hearing,
29 speaking, breathing, learning, and working;

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(16) "physical or mental disability" means

(A) a physical or mental impairment that substantially limits one or more major life activities,

(B) a history of, or a misclassification as having, a mental or physical impairment that substantially limits one or more major life activities; or

(C) having

(i) a physical or mental impairment that does not substantially limit a person's major life activities but that is treated by the person as constituting such a limitation;

(ii) a physical or mental impairment that substantially limits a person's major life activities only as a result of the attitudes of others toward the impairment; or

(iii) none of the impairments defined in this paragraph but being treated by others as having such an impairment;

(D) a condition that may require the use of a prosthesis, special equipment for mobility or service animal;

(17) "physical or mental impairment" means

(A) physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory including speech organs, cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or

(B) mental or psychological disorder, including mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

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1 * Sec. 15. AS 18.06 and AS 18.80.300(11) are repealed.
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STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 16, 1987

SUBJECT: Amendments to SB 1, relating to rights of
physically and mentally disabled persons

TO: Senator Jim Duncan

FROM: Edward H. Hein *EHA*
Legislative Counsel

The enclosed amendments would remedy several problems with SB 1. First, they would eliminate a conflict between criminal penalties under AS 18.06.040 and AS 18.80.270. Both penalty sections (if the bill is passed in its unamended form) make it a misdemeanor to discriminate against a physically or mentally disabled person with regard to public accommodations. Yet, the penalty under AS 18.80 is only half the penalty provided under AS 18.06. Therefore, there is a potential for a constitutional due process violation because of the prosecutor's discretion to choose differing penalties for the same conduct.

Second, the amendments remove questions and ambiguities about the state Human Rights Commission's authority and duty to enforce provisions relating to discrimination.

Third, the amendments eliminate some very badly drafted language in AS 18.06 that makes certain provisions unenforceable criminally. For example, at page 3, lines 16 - 17 of the bill, the phrase "or otherwise interferes with the rights of a physically or mentally disabled person" is probably impermissibly vague.

Criminal provisions relating to allowing disabled persons access to sidewalks and ensuring their right to be accompanied by a service animal are placed in AS 11, the criminal code, and are rewritten for clarity. The so-called "white cane law," which imposes a special duty of care on drivers is placed in AS 09, the code of civil procedure. The remaining parts of AS 18.06 are incorporated into

Senator Duncan
February 16, 1987
Page 2

AS 18.80.200 (a policy section) or are simply eliminated because they duplicate protections provided elsewhere in the bill under AS 18.80. These amendments also incorporate the changes earlier recommended in a letter by Janet Bradley of the Human Rights Commission and prepared for you last week.

If you have any questions or comments about these amendments, feel free to contact me at your convenience.

EHH:mkr
m9/013

Enclosures

A M E N D M E N T

Offered in the SENATE

TO: SB 1

Page 1, after line 15:

Insert new bill sections to read:

"* Sec. 2. AS 09.65 is amended by adding a new section to read:

Sec. 09.65.150. DUTY TO DISABLED PEDESTRIANS. (a) The driver of a vehicle approaching a physically or mentally disabled pedestrian who is carrying a white or metallic-colored cane, or using special equipment for mobility, or using a service animal, shall take precautions necessary to avoid injury to the pedestrian or the service animal. A driver who fails to take necessary precautions and, as a result, causes injury to the pedestrian or the service animal is liable in damages for the injury caused.

(b) In this section

(1) "physically or mentally disabled" has the meaning given in AS 18.80.300;

(2) "service animal" means a guide dog or other animal that assists a physically or mentally disabled person to function as a pedestrian.

* Sec. 3. AS 11.76 is amended by adding a new section to read:

Sec. 11.76.130. INTERFERENCE WITH RIGHTS OF DISABLED PERSON.

(a) A person commits the crime of interference with the rights of a disabled person if the person prevents or restricts a physically or mentally disabled person from

(1) having full and free pedestrian use of a street, highway, sidewalk, walkway, or other thoroughfare, to the same extent that any other person has a right to pedestrian use; or

(2) being accompanied or assisted by a certified service animal, without an extra charge for the service animal, in a common carrier, place of public accommodation, or other place to which the general public is invited, except as provided in (b) of this section.

(b) A physically or mentally disabled person who is accompanied or assisted by a certified service animal in a common carrier, place of public accommodation, or other place to which the general public is invited, is liable for property damage done by the animal.

(c) In this section

(1) "certified service animal" means an animal certified by a training facility for service animals as being able to function in a public setting;

(2) "physically or mentally disabled" has the meaning given in AS 18.80.300.

(d) Interference with the rights of a disabled person is a class B misdemeanor."

Re-number following bill section accordingly.

Page 1, line 21, through page 3, line 27:

Delete all material.

Re-number following bill sections accordingly.

Page 4, line 3, following "is" through page 4, line 6:

Delete all material.

Insert "necessary to make a reasonable accommodation for a physically or mentally disabled person when providing employment, financing or credit, public accommodations, the sale or rental of real property, or other goods, services, facilities, advantages, or privileges under this chapter."

Page 5, line 9, after "inhabitants.":

Insert "The legislature finds that discrimination against physically and mentally disabled persons is caused in large part by ignorance or misconceptions concerning the nature and effects of physical and mental disabilities."

Page 5, after line 15:

Insert "It is also the policy of the state to encourage and enable physically and mentally disabled persons to participate fully in the social and economic life of the state and to engage in remunerative employment."

Page 5, lines 16 through 18:

Delete "It is also the purpose of this chapter to eliminate or prevent discrimination resulting from ignorance or misconceptions concerning the nature and effects of physical and mental disabilities."

Page 11, lines 16 through 21:

Delete all material and renumber remaining bill sections accordingly.

Page 12, line 26, before "AS 18.80.300(13)":

Insert "AS 18.06 and"

Delete "is"

Insert "are"

A M E N D M E N T

Offered in the SENATE

TO: SB 1

Page 2, after line 21

Insert "(d) This section does not limit the authority
of the Human Rights Commission under AS 18.80."

VOID

A M E N D M E N T

Offered in the SENATE

TO: SB 1

VOID

Page 3, line 13:

Delete "ENFORCEMENT AND"

Page 3, line 14:

Delete "The state Human Rights Commission shall enforce this chapter."

Page 4, line 3, following "is" through Page 4, line 6:

Delete all material.

#1 Insert "necessary to make a reasonable accommodation for a physically or mentally disabled person when providing employment, financing or credit, public accommodations, the sale or rental of real property, or other goods, services, facilities, advantages, or privileges under this chapter."

Page 5, line 9, after "inhabitants.":

#2 Insert "The legislature finds that discrimination against physically and mentally disabled persons is caused in large part by ignorance or misconceptions concerning the nature and effects of physical and mental disabilities."

Page 5, lines 16 through 18:

Delete "It is also the purpose of this chapter to eliminate or prevent

discrimination resulting from ignorance or misconceptions concerning the nature and effects of physical and mental disabilities."

Page 11, lines 16 through 21:

Delete all material and renumber remaining bill sections accordingly.

1 IN THE SENATE

BY DUNCAN AND SZYMANSKI

2

SENATE BILL NO. 1

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the rights of physically and
7 mentally disabled persons."

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

9 * Section 1. AS 09.20.010 is amended by adding new subsections to read:

10 (b) A person is not disqualified from serving as a juror solely
11 because of the loss of hearing or sight in any degree or a disability
12 that substantially impairs or interferes with the person's mobility.

13 (c) The court shall provide, and pay the cost of services of, an
14 interpreter or reader when necessary to enable a person with impaired
15 hearing or sight to act as a juror.

16 * Sec. 2. AS 12.55.155(c)(22) is amended to read:

17 (22) the defendant knowingly directed the conduct consti-
18 tuting the offense at a victim because of that person's race, sex,
19 color, creed, physical or mental disability, ancestry, or national
20 origin;

21 * Sec. 3. AS 18.06.010 is amended to read:

22 Sec. 18.06.010. STATE POLICY. It is the policy of this state to
23 encourage and enable the [BLIND, THE VISUALLY HANDICAPPED, AND THE
24 OTHERWISE] physically or mentally disabled to participate fully in the
25 social and economic life of the state and to engage in remunerative
26 employment.

27 * Sec. 4. AS 18.06.020 is amended to read:

28 Sec. 18.06.020. RIGHTS. (a) The [BLIND, THE VISUALLY HANDI-
29 CAPPED, AND THE OTHERWISE] physically or mentally disabled have the

1 same right as the able-bodied to the full and free pedestrian use of
2 the streets, highways, sidewalks, walkways, public buildings, public
3 facilities, and other public places.

4 (b) The [BLIND, THE VISUALLY HANDICAPPED, AND THE OTHERWISE]
5 physically or mentally disabled are entitled to full and equal accom-
6 modations, advantages, facilities, and privileges of all common carri-
7 ers, airplanes, motor vehicles, railroad trains, motor buses, street
8 cars, boats or any other public conveyances or modes of transporta-
9 tion, hotels, lodging places, places of public accommodation, amuse-
10 ment or resort, and other places to which the general public is invit-
11 ed, subject only to the conditions and limitations established by law
12 and applicable alike to all persons.

13 (c) Persons who are physically or mentally disabled [TOTALLY OR
14 PARTIALLY BLIND PERSONS] have the right to be accompanied or assisted
15 by a service animal that is certified by a training facility for
16 service animals as being able to function in a public setting [GUIDE
17 DOG, ESPECIALLY TRAINED FOR THE PURPOSE], in any of the places listed
18 in (b) of this section without being required to pay an extra charge
19 for the service animal [GUIDE DOG]; however, the person with ie
20 animal [GUIDE DOG] is liable for any damage done to the or
21 facilities by the animal [DOG].

*designated to
accommodate
members!*

22 * Sec. 5. AS 18.06.030 is amended to read:

23 Sec. 18.06.030. RIGHTS AS PEDESTRIANS. The driver of a motor
24 vehicle approaching a physically or mentally disabled [TOTALLY OR
25 PARTIALLY BLIND] pedestrian who is carrying a cane predominantly white
26 or metallic in color, with or without a red tip, using special equip-
27 ment for mobility, or using a service animal [GUIDE DOG] shall take
28 all necessary precautions to avoid injury to the pedestrian. A [, AND
29 A] driver who fails to take all necessary precautions and causes

1 injury to the pedestrian is liable in damages for the injury caused.
2 A physically or mentally disabled [TOTALLY BLIND OR PARTIALLY BLIND]
3 pedestrian not carrying a cane as described in this section or using
4 special equipment for mobility or a service animal [GUIDE DOG] in any
5 of the places, accommodations or conveyances set out under
6 AS 18.06.020 has all of the rights and privileges conferred by law
7 upon other persons. The [, AND THE] failure of a physically or
8 mentally disabled [TOTALLY OR PARTIALLY BLIND] pedestrian to carry a
9 cane as described in this section or to use special equipment for
10 mobility or a service animal [GUIDE DOG] is not by itself evidence of
11 [CONTRIBUTORY] negligence.

12 * Sec. 6. AS 18.06.040 is amended to read:

13 Sec. 18.06.040. ENFORCEMENT AND PENALTY [FOR DENYING RIGHTS].
14 The state Human Rights Commission shall enforce this chapter. A *delete*
15 person who denies or interferes with admittance to or enjoyment of the
16 public facilities set out in AS 18.06.020 or otherwise interferes with
17 the rights of a physically or mentally [TOTALLY OR PARTIALLY BLIND OR
18 OTHERWISE] disabled person is guilty of a class B misdemeanor [AND
19 UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE THAN \$1,000, OR BY
20 IMPRISONMENT FOR NOT MORE THAN 60 DAYS, OR BY BOTH].

21 * Sec. 7. AS 18.06.050 is amended to read:

22 Sec. 18.06.050. DEFINITIONS. In this chapter "physically or
23 mentally disabled" has the meaning given in AS 18.80.300 [TOTALLY
24 BLIND" OR "PARTIALLY BLIND" MEANS A PERSON WHOSE VISUAL ACUITY DOES
25 NOT EXCEED 20/200 IN THE BETTER EYE WITH CORRECTING LENSES OR WHOSE
26 WIDEST DIAMETER OF VISUAL FIELD SUBTENDS AN ANGLE NO GREATER THAN 20
27 DEGREES].

28 * Sec. 8. AS 18.80.050 is amended by adding a new subsection to read:

29 (b) The commission shall adopt regulations relating to

*delete
See insert
#1*

1 discrimination because of physical and mental disability. The regula-
2 tions shall furnish guidance concerning the circumstances under which
3 it is permissible, appropriate, and relevant to consider a person's
4 physical or mental disability in deciding whether to provide the
5 person with employment, credit, financing, public accommodations,
6 housing accommodations, or other goods or services under this chapter.

7 * Sec. 9. AS 18.80.060(a) is amended to read:

8 (a) In addition to the other powers and duties prescribed by
9 this chapter the commission shall

10 (1) appoint an executive director approved by the governor;

11 (2) hire other administrative staff as may be necessary to
12 the commission's function;

13 (3) exercise general supervision and direct the activities
14 of the executive director and other administrative staff;

15 (4) accept complaints under AS 18.80.100;

16 (5) study the problems of discrimination in all or specific
17 fields of human relationships, and foster through community effort or
18 goodwill, cooperation and conciliation among the groups and elements
19 of the population of the state, and publish results of investigations
20 and research as in its judgment will tend to eliminate discrimination
21 because of race, religion, color, national ancestry, physical or
22 mental disability [HANDICAP], age, sex, marital status, changes in
23 marital status, pregnancy or parenthood;

24 (6) make an overall assessment, at least once every three
25 years, of the progress made toward equal employment opportunity by
26 every department of state government; results of the assessment shall
27 be included in the annual report made under AS 18.80.150;

28 (7) enforce AS 18.06.

29 * Sec. 10. AS 18.80.200 is amended to read:

1 Sec. 18.80.200. PURPOSE. (a) It is determined and declared as
2 a matter of legislative finding that discrimination against an inhabi-
3 tant of the state because of race, religion, color, national origin,
4 age, sex, physical or mental disability, marital status, changes in
5 marital status, pregnancy or parenthood is a matter of public concern
6 and that this discrimination not only threatens the rights and privi-
7 leges of the inhabitants of the state but also menaces the institu-
8 tions of the state and threatens peace, order, health, safety and
9 general welfare of the state and its inhabitants. / *Insert #2*

10 (b) Therefore, it is the policy of the state and the purpose of
11 this chapter to eliminate and prevent discrimination in employment, in
12 credit and financing practices, in places of public accommodation, in
13 the sale, lease, or rental of real property because of race, religion,
14 color, national origin, sex, age, physical or mental disability,
15 marital status, changes in marital status, pregnancy or parenthood.
16 It is also the purpose of this chapter to eliminate or prevent dis-
17 crimination resulting from ignorance or misconceptions concerning the
18 nature and effects of physical and mental disabilities. *delito* It is not the
19 purpose of this chapter to supersede laws pertaining to child labor,
20 the age of majority or other age restrictions or requirements.

21 * Sec. 11. AS 18.80.210 is amended to read:

22 Sec. 18.80.210. CIVIL RIGHTS. The opportunity to obtain em-
23 ployment, credit and financing, public accommodations, housing accom-
24 modations and other property without discrimination because of sex,
25 physical or mental disability, marital status, changes in marital
26 status, pregnancy, parenthood, race, religion, color or national
27 origin is a civil right.

28 * Sec. 12. AS 18.80.220(a) is amended to read:

29 (a) It is unlawful for

1 (1) an employer to refuse employment to a person, or to bar
2 a person from employment, or to discriminate against a person in
3 compensation or in a term, condition, or privilege of employment
4 because of the person's race, religion, color or national origin, or
5 because of the person's age, physical or mental disability [HANDICAP],
6 sex, marital status, changes in marital status, pregnancy or parent-
7 hood when the reasonable demands of the position do not require dis-
8 tinction on the basis of age, physical or mental disability [HANDI-
9 CAP], sex, marital status, changes in marital status, pregnancy or
10 parenthood;

11 (2) a labor organization, because of a person's sex, mari-
12 tal status, changes in marital status, pregnancy, parenthood, age,
13 race, religion, physical or mental disability, color or national
14 origin, to exclude or to expel a person from its membership, or to
15 discriminate in any way against one of its members or an employer or
16 an employee;

17 (3) an employer or employment agency to print or circulate
18 or cause to be printed or circulated a statement, advertisement, or
19 publication, or to use a form of application for employment or to make
20 an inquiry in connection with prospective employment, which expresses,
21 directly or indirectly, a limitation, specification or discrimination
22 as to sex, physical or mental disability, marital status, changes in
23 marital status, pregnancy, parenthood, age, race, creed, color or
24 national origin, or an intent to make the limitation, unless based
25 upon a bona fide occupational qualification;

26 (4) an employer, labor organization or employment agency to
27 discharge, expel or otherwise discriminate against a person because
28 the person has opposed any practices forbidden under AS 18.80.200 -
29 18.80.280 or because the person [HE] has filed a complaint, testified

1 or assisted in a proceeding under this chapter;

2 (5) an employer to discriminate in the payment of wages as
3 between the sexes, or to employ a female in an occupation in this
4 state at a salary or wage rate less than that paid to a male employee
5 for work of comparable character or work in the same operation, busi-
6 ness or type of work in the same locality; or

7 (6) a person to print, publish, broadcast or otherwise
8 circulate a statement, inquiry or advertisement in connection with
9 prospective employment that expresses directly, a limitation, speci-
10 fication or discrimination as to sex, physical or mental disability,
11 marital status, changes in marital status, pregnancy, parenthood, age,
12 race, religion, color or national origin, unless based upon a bona
13 fide occupational qualification.

14 * Sec. 13. AS 18.80.230 is amended to read:

15 Sec. 18.80.230. UNLAWFUL PRACTICES IN PLACES OF PUBLIC ACCOMMO-
16 DATION. It is unlawful for the owner, lessee, manager, agent or
17 employee of a public accommodation

18 (1) to refuse, withhold from or deny to a person any of its
19 services, goods, facilities, advantages or privileges because of sex,
20 physical or mental disability, marital status, changes in marital
21 status, pregnancy, parenthood, race, religion, color or national
22 origin;

23 (2) to publish, circulate, issue, display, post or mail a
24 written or printed communication, notice or advertisement that states
25 or implies

26 (A) that any of the services, goods, facilities,
27 advantages or privileges of the public accommodation will be
28 refused, withheld from or denied to a person of a certain race,
29 religion, sex, physical or mental disability, marital status,

1 color or national origin or because of pregnancy, parenthood, or
2 a change in marital status, or

3 (B) that the patronage of a person belonging to a
4 particular race, creed, sex, marital status, color or national
5 origin or who, because of pregnancy, parenthood, physical or
6 mental disability, or a change in marital status, is unwelcome,
7 not desired or solicited.

8 * Sec. 14. AS 18.80.240 is amended to read:

9 Sec. 18.80.240. UNLAWFUL PRACTICES IN THE SALE OR RENTAL OF REAL
10 PROPERTY. It is unlawful for the owner, lessee, manager or other
11 person having the right to sell, lease or rent real property

12 (1) to refuse to sell, lease or rent the real property to a
13 person because of sex, marital status, changes in marital status,
14 pregnancy, race, religion, physical or mental disability, color or
15 national origin; however, nothing in this paragraph prohibits the
16 sale, lease or rental of classes of real property commonly known as
17 housing for "singles" or "married couples" only;

18 (2) to discriminate against a person because of sex, mari-
19 tal status, changes in marital status, pregnancy, race, religion,
20 physical or mental disability, color or national origin in a term,
21 condition or privilege relating to the use, sale, lease or rental of
22 real property; however, nothing in this paragraph prohibits the sale,
23 lease or rental of classes of real property commonly known as housing
24 for "singles" or "married couples" only;

25 (3) to make a written or oral inquiry or record of the sex,
26 marital status, changes in marital status, race, religion, physical or
27 mental disability, color or national origin of a person seeking to
28 buy, lease or rent real property;

29 (4) to offer, solicit, accept, use or retain a listing of

1 real property with the understanding that a person may be discrimi-
2 ated against in a real estate transaction or in the furnishing of
3 facilities or sources in connection therewith because of a person's
4 sex, marital status, changes in marital status, pregnancy, race,
5 religion, physical or mental disability, color, national origin or
6 age;

7 (5) to represent to a person that real property is not
8 available for inspection, sale, rental, or lease when in fact it is so
9 available, or to refuse to allow a person to inspect real property
10 because of the race, religion, physical or mental disability, color,
11 national origin, age, sex, marital status, change in marital status or
12 pregnancy of that person or of any person associated with that person;

13 (6) to engage in blockbusting:

14 (7) to make, print or publish, or cause to be made, printed
15 or published, any notice, statement or advertisement, with respect to
16 the sale or rental of real property that indicates any preference,
17 limitation, or discrimination based on race, color, religion, physical
18 or mental disability, sex, or national origin, or an intention to make
19 the preference, limitation or discrimination.

20 * Sec. 15. AS 18.80.250(a) is amended to read:

21 (a) It is unlawful for a financial institution or other commer-
22 cial institution extending secured or unsecured credit, upon receiving
23 an application for financial assistance or credit for the acquisition,
24 construction, rehabilitation, repair or maintenance of a housing
25 accommodation or other property or services, or the acquisition or
26 improvement of unimproved property, or upon receiving an application
27 for any sort of loan of money, to permit one of its officials or
28 employees during the execution of the official's or the employee's
29 duties

CORRECTION

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

1 real property with the understanding that a person may be discrimi-
2 ated against in a real estate transaction or in the furnishing of
3 facilities or sources in connection therewith because of a person's
4 sex, marital status, changes in marital status, pregnancy, race,
5 religion, physical or mental disability, color, national origin or
6 age;

7 (5) to represent to a person that real property is not
8 available for inspection, sale, rental, or lease when in fact it is so
9 available, or to refuse to allow a person to inspect real property
10 because of the race, religion, physical or mental disability, color,
11 national origin, age, sex, marital status, change in marital status or
12 pregnancy of that person or of any person associated with that person;

13 (6) to engage in blockbusting;

14 (7) to make, print or publish, or cause to be made, printed
15 or published, any notice, statement or advertisement, with respect to
16 the sale or rental of real property that indicates any preference,
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19 the preference, limitation or discrimination.

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23 an application for financial assistance or credit for the acquisition,
24 construction, rehabilitation, repair or maintenance of a housing
25 accommodation or other property or services, or the acquisition or
26 improvement of unimproved property, or upon receiving an application
27 for any sort of loan of money, to permit one of its officials or
28 employees during the execution of the official's or the employee's
29 duties

1 (1) to discriminate against the applicant because of sex,
2 physical or mental disability, marital status, changes in marital
3 status, pregnancy, parenthood, race, religion, color or national
4 origin in a term, condition or privilege relating to the obtainment or
5 use of the institution's financial assistance or credit, except to the
6 extent of a federal statute or regulation applicable to a transaction
7 of the same character;

8 (2) to make or cause to be made a written or oral inquiry
9 or record of the sex, physical or mental disability, marital status,
10 changes in marital status, pregnancy, parenthood, race, religion,
11 color or national origin of a person seeking the institution's finan-
12 cial assistance or credit, unless the inquiry is for the purpose of
13 ascertaining the creditor's rights and remedies applicable to the
14 particular extension of credit and is not made or used in order to
15 discriminate in a determination of creditworthiness;

16 (3) to refuse to extend credit, issue a credit card or make
17 a loan to a married person or a person with a physical or mental
18 disability, who is otherwise creditworthy, if so requested by the
19 person;

20 (4) to refuse to issue a credit card to a married person in
21 that person's name, if so requested by the person, provided, however,
22 that the person so requesting a card may be required to open an ac-
23 count in that name.

24 * Sec. 16. AS 18.80.255 is amended to read:

25 Sec. 18.80.255. UNLAWFUL PRACTICES BY THE STATE OR ITS POLITICAL
26 SUBDIVISIONS. It is unlawful for the state or any of its political
27 subdivisions

28 (1) to refuse, withhold from or deny to a person any local,
29 state or federal funds, services, goods, facilities, advantages or

1 privileges because of race, religion, sex, color or national origin;

2 (2) to publish, circulate, issue, display, post or mail a
3 written or printed communication, notice or advertisement that states
4 or implies that any local, state or federal funds, services, goods,
5 facilities, advantages or privileges of the office or agency will be
6 refused, withheld from or denied to a physically or mentally disabled
7 person or a person of a certain race, religion, sex, color or national
8 origin or that the patronage of a physically or mentally disabled
9 person or a person belonging to a particular race, creed, sex, color
10 or national origin is unwelcome, not desired or solicited; it is not
11 unlawful to post notice that facilities to accommodate the physically
12 or mentally disabled are not available;

13 (3) to refuse or deny to a person any local, state, or
14 federal funds, services, goods, facilities, advantages or privileges
15 because of physical or mental disability.

delete

16 * Sec. 17. AS 18.80 is amended by adding a new section to read:
17 Sec. 18.80.256. ALTERATIONS NOT REQUIRED. This chapter may not
18 be construed to require, or affect other laws that require or provide
19 for, the alteration or remodeling of buildings, facilities, or vehi-
20 cles in order to provide access to or accommodate the needs of a
21 person with a physical disability.

22 * Sec. ¹⁸₁₇. AS 18.80.300 is amended by adding new paragraphs to read:

23 (15) "major life activities" means functions such as caring
24 for one's self, performing manual tasks, walking, seeing, hearing,
25 speaking, breathing, learning, and working;

26 (16) "physical or mental disability" means

27 (A) a physical or mental impairment that substantially
28 limits one or more major life activities,

29 (B) a history of, or a misclassification as having, a

1 mental or physical impairment that substantially limits one or
2 more major life activities; or

3 (C) having

4 (i) a physical or mental impairment that does not
5 substantially limit a person's major life activities but
6 that is treated by the person as constituting such a limita-
7 tion;

8 (ii) a physical or mental impairment that sub-
9 stantially limits a person's major life activities only as a
10 result of the attitudes of others toward the impairment; or

11 (iii) none of the impairments defined in this
12 paragraph but being treated by others as having such an
13 impairment;

14 (D) a condition that may require the use of a prosthe-
15 sis, special equipment for mobility or service animal;

16 (17) "physical or mental impairment" means

17 (A) physiological disorder or condition, cosmetic
18 disfigurement, or anatomical loss affecting one or more of the
19 following body systems: neurological, musculoskeletal, special
20 sense organs, respiratory including speech organs, cardiovascu-
21 lar, reproductive, digestive, genito-urinary, hemic and lymph-
22 atic, skin, and endocrine; or

23 (B) mental or psychological disorder, including mental
24 retardation, organic brain syndrome, emotional or mental illness,
25 and specific learning disabilities.

26 * Sec. ~~19~~. AS 18.80.300(13) is repealed.

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 23, 1987

SUBJECT: Deaf and blind jurors (CSSB 1 (HESS))

TO: Senator Paul Fischer
Chairman, Senate HESS Committee

FROM: Edward H. Hein *EHA*
Legislative Counsel

You have asked that I address certain problems that you perceive with Section 1 of CSSB 1 (HESS), which provides that a person is not automatically disqualified from serving on a jury just because the person has impaired hearing or vision or mobility. The section also requires the court system to provide and pay for interpreters and readers for deaf and blind jurors.

I take no position with respect to the merits of this provision of the bill. I will simply relay to you information and opinions I have obtained over the past few days regarding deaf and blind persons serving as jurors.

I spoke with an attorney from the National Center for Law and the Deaf in Washington, D.C. on February 19. The attorney indicated that he was aware of at least five states that have laws similar to the provision embodied in Section 1 of the bill: California, Michigan, Connecticut, Illinois, and Louisiana. Several other states have interpreted their laws to allow deaf persons to sit as jurors, he said.

There have been many favorable comments about deaf persons serving as jurors, he said. Among these are comments by judges that when a deaf person is on a jury, the parties, lawyers, and witnesses in the trial tend to be more courteous, less likely to speak simultaneously, and more careful to be certain they can be heard. In particular, it was found that deaf jurors frequently remembered testimony better than other jurors, sometimes being able to repeat testimony verbatim.

I spoke with two persons about blind jurors. Oral Miller is with the American council of the Blind in Washington, D.C. He stated that the Virginia legislature is currently considering legislation to allow blind persons to serve on juries. Mr. Miller said there have been many instances during the past two-to-three years in which blind persons have served on juries in both state and federal courts. I asked him whether blind persons are less qualified to judge the demeanor and credibility of witnesses. He said that there are a lot of myths about how jurors judge a witness's credibility. Tests and experiments have shown that good listening skills allow blind persons to perform as well as or better than other jurors, he said. I asked him whether blind persons were at a disadvantage when it came to inspecting visual evidence or visiting crime scenes. He said that even in these situations, there is so much verbal comment describing what jurors are being shown that the inability to see the evidence is frequently not as much of a problem as people assume.

I also spoke to James Omvig, a blind attorney who is director of the Center for Blind and Deaf Adults, in Anchorage. He stated that in his opinion, readers did not need to be provided for blind jurors, as the bill provides in subsection (b). He said that few if any attorneys would give written material to jurors to read on their own; the attorneys would read it themselves or have someone else read it, and would comment on the material. With regard to interpreters having too much influence on a deaf juror, Mr. Omvig stated that professional court interpreters operate under strict ethical standards to translate only what has been said, not to add to it or editorialize on it. He admits, however, that interpretation for the deaf is not an exact translation, just as foreign language interpretation is not always perfect.

I recall speaking a few years ago with the jury commissioner for Los Angeles County about how well California's law was working. He said that the most significant change brought about by the law was that jury boxes were made accessible to persons in wheel chairs. He stated that a large percentage of blind and deaf persons called to jury service preferred not to serve.

I am expecting to receive copies of articles and court cases involving deaf and blind jurors. I do not know whether these will be available in time for your committee hearing on SB

Senator Fischer
February 23, 1987
Page 3

1, February 25. I will provide these to you as soon as I receive them.

If I may be of further assistance, feel free to contact me at your convenience.

EHH:csh
c7/067

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 23, 1987

SUBJECT: Comparative analysis of CSSB 1 (HESS)
and SB 1

TO: Senator Paul Fischer
Chairman, Senate HESS Committee

FROM: Edward H. Hein *EHA*
Legislative Counsel

CSSB 1 (HESS) (2/20/87 draft) would remedy several problems with SB 1. First, it would eliminate a conflict between criminal penalties under AS 18.06.040 and AS 18.80.270. Both penalty sections (if the bill is passed in its unamended form) make it a misdemeanor to discriminate against a physically or mentally disabled person with regard to public accommodations. Yet, the penalty under AS 18.80 is only half the penalty provided under AS 18.06. Therefore, there is a potential for a constitutional due process violation because of the prosecutor's discretion to choose differing penalties for the same conduct.

Second, the CS removes questions and ambiguities about the state Human Rights Commission's authority and duty to enforce provisions relating to discrimination.

Third, the CS eliminates some very badly drafted language in AS 18.06 that makes certain provisions unenforceable criminally. For example, at page 3, lines 16 - 17 of the bill, the phrase "or otherwise interferes with the rights of a physically or mentally disabled person" is probably impermissibly vague.

Section 1 is identical in both versions.

Sec. 2 is the so-called "white cane" law that imposes on motor vehicle drivers a higher duty of care with respect to pedestrians who are physically disabled and identifiable because they are using a white or metallic cane, a wheel chair, crutches or other mobility equipment, or a service

animal, such as a dog guide. This provision has been placed in AS 09, the Code of Civil Procedure, because it relates to civil liability. In SB 1, the white cane law appears in Sec. 5. In the CS, the mentally disabled are omitted from this section because they do not use white canes, mobility equipment, or service animals, and are not readily identifiable by motorists. Definitions are inserted for "physically disabled pedestrian" and "service animal". Language in SB 1 at page 3, lines 2 - 11, was deleted. The language there relating to rights of disabled in accommodations is covered under Sec. 10 of the CS; the language providing that failure to carry a cane is not evidence of contributory negligence is obsolete because Alaska now recognizes comparative negligence, not contributory negligence.

Sec. 3 establishes the crime of interference with the rights of a disabled person. This provides that it is a class B misdemeanor to prevent or restrict a physically or mentally disabled person from using streets, sidewalks, and walkways to the same extent as any other pedestrian. It is also a class B misdemeanor under this section to refuse to allow a physically disabled person to bring his or her service animal into a common carrier or other place open to the public. The service animal must be certified as having completed a training course, and the disabled person is liable for any damage the animal does to the property. In SB 1, these criminal provisions appeared in Secs. 4 and 6.

Sec. 4 is identical to Sec. 2 of SB 1.

Sec. 5 in the CS is an amended version of Sec. 8 of SB 1. Sec. 5 directs the state Human Rights Commission to adopt regulations about when reasonable accommodations must be made for disabled persons in employment, financing, credit, public accommodations, housing, and government of services. Sec. 8 of SB 1 required the commission to adopt regulations specifying when it would be permissible to consider a person's disability. In conjunction with this change, Sec. 17 of SB 1 was deleted. Sec. 17 provided that AS 18.80 does not require any alterations or remodeling of buildings or vehicles. Under Sec. 5 of the CS, the commission would have the authority to adopt regulations requiring some alteration necessary to make reasonable accommodation for a disabled person.

Senator Fischer
February 23, 1987
Page 3

Sec. 6 of the CS was Sec. 9 of SB 1. The CS deletes paragraph (7), which would have required the state Human Rights Commission to enforce AS 18.06.

Sec. 7 of the CS was Sec. 10 of SB 1. The new language at page 4, lines 15 - 18 of the CS was moved from page 5, lines 16 - 18 of SB 1. This change made this provision a finding rather than policy to avoid the implication that the state Human Rights Commission was being required to develop and implement public education programs about physical and mental disabilities. At page 4, lines 25 - 27 of the CS, new policy language appears. This language was transferred from Sec. 3 of SB 1.

Secs. 8 - 13 of the CS are identical to Secs. 11 - 16 of SB 1.

Sec. 14 of the CS is a definitions section and is identical to Sec. 18 of SB 1.

Sec. 15 repeals AS 18.06. The provisions of that chapter have been transferred to AS 09, AS 11, and AS 18.80. Sec. 15 also repeals AS 18.80.300(11), which is the definition of "physical handicap" for purposes of AS 18.80.

EHH:csh
c7/066

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 2, 1987

SUBJECT: Sectional analysis of SB 1 -- rights of
physically and mentally disabled persons

TO: Senator Jim Duncan

FROM: Edward H. Hein *EHA*
Legislative Counsel

→ Section 1 adds two new subsections to AS 09.20.010, relating to qualifications of jurors. Subsection (b) provides that persons who suffer from loss of hearing, sight, or mobility are not automatically disqualified from jury service. Subsection (c) requires the court system to provide and pay for interpreters and readers for deaf and blind jurors.

Sec. 2 amends the criminal presumptive sentencing provisions by making it an aggravating factor to commit certain felonies against a physically or mentally disabled person because of the person's disability. The finding of an aggravating factor allows the court to increase what would otherwise be the presumptive sentence.

Sec. 3 amends the statement of state policy in AS 18.06 to say that it is the state's policy to encourage and enable mentally disabled persons, as well as physically disabled persons, to participate fully in the social and economic life of the state and to be employed.

Sec. 4 guarantees the right of mentally disabled persons to the full and free pedestrian use of public streets, sidewalks, buildings, and places, to the same extent that able-bodied persons have that right. Physically disabled persons already have this right. This section also provides that mentally disabled persons, as well as physically disabled persons, have the right to full and equal access to public accommodations and transportation. Physically and mentally disabled persons are given the right be accompanied by a

certified service animal, such as a guide dog or monkey, into public accommodations and on public transportation.

Sec. 5 requires motor vehicle drivers to take special precautions when approaching a physically or mentally disabled pedestrian who is carrying a cane, using wheel chair or other special mobility equipment, or is accompanied by a service animal. The failure of a disabled person to use these devices or animals is not of itself evidence of negligence.

Sec. 6 requires the State Human Rights Commission to enforce the provisions of AS 18.06; expands AS 18.06.040 to include mentally disabled persons; and increases (from 60 days to 90 days) the maximum sentence of imprisonment for a person convicted of interfering with the rights of a physically or mentally disabled person.

Sec. 7 deletes a definition of "totally or partially blind" and inserts a definition of "physically or mentally disabled", using the definition provided in AS 18.80.300.

Sec. 8 requires the State Human Rights Commission to adopt regulations relating to discrimination against the physically and mentally disabled. The regulations must give guidance about when it is allowable to consider a person's disability in deciding whether to provide the person with employment, credit, financing, public accommodation, housing, or other goods or services covered under AS 18.80.

Secs. 9 - 16 amend various sections of AS 18.80 to ensure that those sections cover physically and mentally disabled persons. The amended sections require the State Human Rights Commission to study problems of discrimination. The sections amended also make certain discriminatory practices unlawful. These include discrimination in housing, employment, public accommodation, sale and rental of real property, lending, and the provision of state or federal funds, services, goods, facilities, advantages, and privileges. Sec. 16 also provides that it is not unlawful to post notice that facilities to accommodate the physically or mentally disabled are not available.

Sec. 17 states that AS 18.80 may not be construed to require, or affect other laws that require, the alteration or remodeling of buildings, facilities, or vehicles to provide access to or accommodate the needs of physically disabled persons.

Senator Duncan
February 2, 1987
Page 3

Sec. 18 adds new definitions to AS 18.80 in order to incorporate federal definitions of "physical and mental disability".

Duncan
Sec. 19 is intended to repeal the current definition of "physical handicap" in AS 18.80.300. The citation at page 12, line 26, of the bill is incorrect. It should read "AS 18.80.300(11) is repealed."

EHH:csh
c7/037

FEB 24 '87 15:30 ACA 2ND JUD DIST FAX276-6342

ALASKA COURT SYSTEM
FISCAL OPERATIONS

Sen. Fischer

TELEFACSIMILE TRANSMITTAL SHEET

TO: MARGARET LEAVITT

DATE: 2/24/87

FROM: BOB FISHER

TOTAL NUMBER OF PAGES: 2
(Not including cover sheet)

MESSAGE: PLEASE DELIVER TO MARGARET IN
SENATOR FISHER'S OFFICE.

PLEASE PROVIDE COPY TO ROXANNE
IN SENATOR DUNCAN'S OFFICE

THANKS

If you do not receive the above document(s), please call 264-8215.
Alaska Court System telecopier phone number 276-6342.

ALASKA COURT SYSTEM
SB 1 - RIGHTS OF PHYSICALLY AND MENTALLY
AND DISABLED PERSONS

FISCAL IMPACT

This legislation allows physically and mentally disabled individuals to serve on juries. Additionally, interpreters are provided for deaf persons while on jury duty. Providing interpreters for deaf persons will impact the Court's contractual budget. The other aspects of the legislation will not impact the Court.

Historically, six to eight percent of all eligible persons are required to perform jury duty. The Center for Deaf Adults estimates that between 250 and 300 deaf individuals would be eligible for jury duty. The Center estimates that 200 are located in Anchorage, 10 are in Juneau, and 10 are in Fairbanks. The remainder live outside urban areas. To be eligible for jury service, the deaf juror would have to be proficient in the use of sign language. Each deaf juror would require an interpreter for all activities in the court.

Based on past experience, it is estimated that approximately fourteen deaf individuals could be called for service in a year. Based on probabilities of jury service for 1986, it is projected that thirteen of the jurors would be called for service in Anchorage and the other juror would be called in either Fairbanks or Juneau. Qualified interpreters are available in these locations.

Interpreter fees are estimated to cost \$4,600 per year.

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

Bill Version: SB 1
Publish Date:

REQUEST:

Revision Date:
Title: Rights of physically and mentally disabled persons
Sponsor: Duncan & Fischer
Requestor:

Agency Affected: Alaska Court System
BRU: Trial Courts

Components:

EXPENDITURES/REVENUES:		(Thousands of Dollars)					
	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92	
OPERATING							
Personal Services	
Travel	
Contractual	4.6	4.6	4.6	4.6	4.6	
Supplies	
Equipment	
Land & Structures	
Grants & Claims	
TOTAL OPERATING	0.0	4.6	4.6	4.6	4.6	4.6	
CAPITAL	
REVENUE	

FUNDING:		(Thousands of Dollars)					
General Funds	0.0	4.6	4.6	4.6	4.6	4.6	
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	4.6	4.6	4.6	4.6	4.6	

POSITIONS:							
Full-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Part-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Temporary	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: Robert G. Fisher, Fiscal Officer
Division: Alaska Court System

Phone: 264-8215
Date: 2-24-87

Approved by: *Stephanie J. Cole*
Stephanie J. Cole, Deputy Director
Agency: Alaska Court System

Date: 2-24-87

Distribution (by preparer):

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

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

Bill Version: S.B. 1
Publish Date: _____

REQUEST: _____

Revision Date: _____
Title: An Act Relating To The Rights Of
Physically & mentally disabled persons.
Sponsor: Duncan
Requestor: _____

Agency Affected: Health & Social Services
BRU: Community Mental Health
and Developmental Disabilities
Components: Developmental Disabilities

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Christine L. Hagmeier Phone: 465-3370
Division: Mental Health and Developmental Disabilities Date: 1/22/87

Approved by Commissioner: *Kan Pedue* Date: 1/30/87
Agency: Health and Social Services

Distribution (by preparer):

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

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

REQUEST: _____

Bill Version: SB-1
Publish Date: 1-19-87

Revision Date: _____
Title: Rights of Physically and
Mentally Disabled Persons

Agency Affected: Office of the Governor
BRU: Commissions/Special Offices

Sponsor: Duncan and Szymanski
Requestor: Health, Education and Social
Services, Judiciary & Finance

Components: Human Rights Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		46.9	46.9	46.9	46.5	
TRAVEL		10.5	10.5	10.5	10.5	
CONTRACTUAL						
SUPPLIES						
EQUIPMENT		.5	.5	.5	.5	
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		57.9	57.9	57.9	57.9	

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND		57.9	57.9	57.9	57.9	
FEDERAL FUNDS						
OTHER						
TOTAL		57.9	57.9	57.9	57.9	

POSITIONS:

FULL-TIME		1.0	1.0	1.0	1.0	
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Establish (1) PFT position HRFR III to handle the increased caseload (intake and processing) of complaints anticipated to be filed by disabled persons due to SB-1.

Prepared by: Michael A. Nizich, Director *Man*
Division: Administrative Services

Phone: 465-3616
Date: Feb. 2., 1987

Approved by Commissioner: Carol P. Kastelic *CPK*
Agency: Exec. Assistant, Office of the Governor

Date: Feb. 2, 1987

Distribution (by preparer):

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

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

March 3, 1987

Honorable Paul Fischer
Chair
Health, Education & Social
Services Committee
Alaska State Senate
P.O. Box V
Juneau, AK 99811

MAR 3 1987

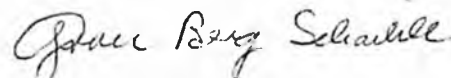
Re: SB 1 (disabled persons)

Dear Senator Fischer:

Yesterday, your assistant, Margaret Leavitt, called Assistant Attorney General Art Peterson, to ask for this department's "position" on sec. 1 of SB 1. Essentially, that section provides for blind and deaf people to serve on juries.

This department has no position on that proposal. I understand that Assistant Attorney General Gayle Horetski testified before your committee on February 25 concerning the issues raised by sec. 1. While we certainly support the idea of removing as many barriers as possible for people with various types of disabilities, the issues mentioned by Gayle, including constitutional ones, are significant. Similarly, we have no position on the remainder of the bill.

Yours truly,



Grace Berg Schaible
Attorney General

GBS:AHP:md

cc: Hon. Jim Duncan
Alaska State Senate

George Sullivan
Legislative Liaison
Governor's Office

POSITION PAPER

SENATE BILL 1

"An Act relating to the rights of physically and mentally disabled persons."

EFFECT OF SENATE BILL 1

A.S. 09.20.010(b) is amended to prohibit the disqualification of persons from serving as jurors solely on the basis of their visual, hearing or mobility impairments.

A.S. 09.20.010(c) is added to require the court system to pay for the costs of interpreters or readers when a hearing or visually impaired person requires such services while serving as a juror.

A.S. 12.55.155(c)(22) is amended to include physically and mentally disabled persons among the protected class of individuals to be considered under this statute.

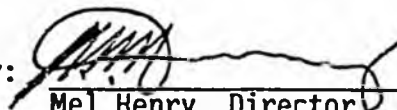
A.S. 18.060 is amended to include physically and mentally disabled persons among the protected class of individuals who are entitled to full and equal access to public accommodations, services, employment, credit and financing, housing, and other property.

A.S. 18.060 also entitles physically and mentally disabled persons to be accompanied or assisted by service animals when accessing any of the locations or services listed in this section.

RECOMMENDATION

The Department of Health and Social Services supports the passage of Senate Bill 1.

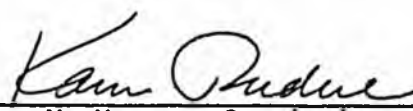
Recommended by:


Mel Henry, Director

Date:

1-30-87

Approved by:


Myra M. Munson, Commissioner

Date:

1-30-87



PEOPLE - ANIMAL - CONNECTION

February 11, 1987

Dear Senator Fischer:

I am president of People-Animal-Connection/Delta Society. This letter is in support of SB1. We are the group which in conjunction with Alaska SPCA train the service animals for the physically/mentally disabled individual. Alaska is the only state in the USA which does not have legislation regarding service animals.

We presently have 20 service animals in Alaska with requests for many more, but need the legislation before we can place these animals.

We define a service animal as an animal which is trained as a hearing/blind guide animal or as a support animal for a person who has physical disabilities such as stroke or accident patient. *WHO MAY BE CONFINED TO BED OR WHEELCHAIR*

Our trainer is a certified obedience trainer who has trained with numerous other institutions that train and place service animals. Our main facility is at the training center of the Alaska SPCA and our trainers home kennel as well as field work areas.

These animals pass a vigorous physical/temperment test and upon completion of their training are certified by a committee ~~from~~ the PAC/Delta Society.

These animals are then provided with the proper ID colored collar/harness and the owner is given a certified card which states the animal to be a certified service animal. Our animals have been placed in Anchorage, Valdez, Palmer, and Fairbanks.

The animals provide a vital function for many people in our state. They provide physical support, mental support and love to persons who otherwise may not have any support network. These service dogs and their owners need this legislation as protection for their rights and abilities to work together and live together as a team.

If SB1 cannot find support for its passage then I encourage the HESS committee to take the service animal portion out of SB1 and introduce it as a separate bill. Originally, the service animal bill was separate legislation but in the last 2 years it has become "hung up" with other legislation. I urge strongly either the passage of SB1 or separate legislation for the service animal. Many people in Alaska are concerned with this and I hope they will be contacting the committee members over the next few days.

I would be willing to answer any questions regarding my letter or support of legislation for the service animal. *WE DO HAVE MODEL LEGISLATION FROM OTHER STATES & ORGANIZATIONS WHICH WE WOULD BE HAPPY TO PROVIDE*
Thank you very much.

Sincerely,

Joyce M. Murphy
Joyce M. Murphy, D. M.

TELECOPY COVER SHEET
ANCHORAGE INFORMATION OFFICE

TO: ~~Sen [REDACTED]~~ *Attn Margaret* PHONE: _____

FROM: *De Joyce Murphy* PHONE: _____

ADDITIONAL INSTRUCTIONS: _____

DATE/TIME SENT: *2-11-87* PLEASE ACK. RECEIPT: _____

DISPOSAL OF ORIGINAL: _____ THROW AWAY

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BY: *M. [unclear]*

*FOR an afternoon
& leaving*

xerox copies

- to:*
- Sen Duncan*
- Sen. Heford*
- Sen. Kerttala*
- Sen. Josephson*
- Sen. Jones*



THE ALASKA ALLIANCE FOR THE MENTALLY ILL

"An affiliate of the National Alliance for the Mentally Ill"

February 7, 1987
Box 211247
Auke Bay, 99801

Senator Jim Duncan
Alaska State Senate
Juneau, Alaska, 99801

Dear Senator Duncan and Members of
the Senate Health and Social Services
Committee:

The Alaska State Alliance for the Mentally Ill endorses Senate Bill 1 as introduced this year. We believe the draft as presented offers substantial gains in equity for disabled persons in Alaska. By including the disabled populations in this Statute, discrimination is prohibited in many significant areas. Since this law is parallel to Federal legislation, the disabled have long been denied equal protection under the law.

In particular, we wish to commend you on solving some of the more difficult problems with the bill that were advanced last session. The decision to submit to the regulation process those details which caused concern to the banking and housing industries is a much fairer way to address the issue. To what extent and under what circumstances an employer, a lender, or landlord has a right to know of a persons disability, whether or not it is physical or mental, must be carefully determined on the greater need and we believe the Civil Rights Commission has the expertise to make that determination.

One of the most controversial parts of the bill last year was whether or not to include the mentally ill among the disabled population. We would like to advance the following supportive information on this issue:

* The mentally ill are no more "dangerous" than the general population, and courts are now supporting the civil rights of the mentally ill in cases involving zoning laws restricting group homes.

* Those with long time or serious mental illness are among the minority of those who have had mental illness. For example in the State of Alaska, of the 8,000 cases treated by the Community Mental Health Centers, only 613 of these have serious mental illness. Should those who just have one episode or who have a situational distress which causes them to receive treatment be required for the rest of their lives to disclose that treatment? Among those with even the most serious mental illness schizophrenia, about 1/3 of the cases recover after only one episode.

* The mentally ill are the most stigmatized of any subgroup in the United States. Last year our members reported several incidents of discrimination. One of them involved a person having to disclose being under treatment for mental illness on their drivers license and another was denied general health insurance because of a nervous breakdown. In both cases, the question was not related to the request. Being a safe driver does not necessarily relate to having had an incidence of mental illness whereas perhaps a more appropriate question would be " Are you under medication which would make you drowsy ?" Why should someone be a greater risk of breaking a leg or contracting cancer simply because they have experienced mental illness? We know of no research which supports this. Certainly having cancer would be of concern to lenders but there is no requirement for persons with illnesses which might be considered "terminal" to have to disclose their condition.

This is not to say that the mentally ill are all worthy of extended credit, every individual in our State must qualify according to the rules of the lending agency providing assurances of their assets etc. Decisions must be made on a case by case basis. However, to the extent that they are functioning members of society the mentally ill should have the same rights to seek employment, have access to public facilities and other rights afforded citizens of the State of Alaska.

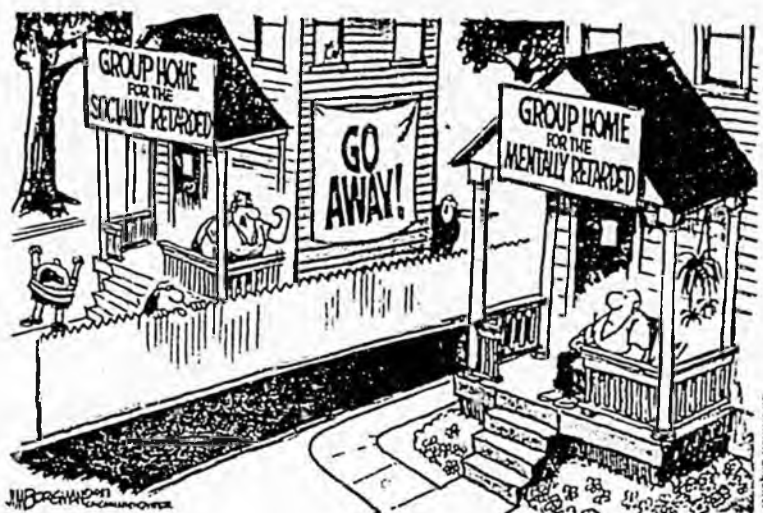
Sincerely,

Sharron Lobaugh
Pres. Alaska Alliance
for the Mentally Ill

Mainstreaming Group Homes

By Daniel Lauber

A recent U.S. Supreme Court decision put some new twists on zoning for group homes. Here, questions and answers about how to adapt to the changes.



Zoning made it to the U.S. Supreme Court this year in the form of a case regarding group homes for developmentally disabled adults. The result was a landmark decision that should change the way most zoning ordinances treat group homes. Further, the decision will force local officials to confront the popular misconceptions about group homes and their residents that so frequently lead to stiff neighborhood opposition.

Group homes pose a zoning challenge that nearly every community in the country eventually will face. Over the past decade, the number of group homes increased from 700 to over 6,000. There's no end in sight because the need for them remains so great. The disabled are living longer, thanks to better health care and increasing deinstitutionalization.

Local officials often are at a loss when it comes to zoning for group homes. Most zoning ordinances fail to provide for them, as cities typically (and improperly) treat group homes as hospitals for the insane or feeble-minded. In other places, ordinances contain exclusionary provisions that keep group homes out of the very residential districts in which they function best.

Here are answers to some of the most frequent questions local officials and planners ask about zoning for group homes, particularly in light of the Supreme Court's latest edict on this type of zoning provision.

What are they?

Q Before we go any further, what are group homes and who lives in them?

A A group home usually houses individuals who are mentally ill or developmentally disabled. Congress defines "developmental disability" as a severe, chronic, and permanent disability due to a mental and/or physical impairment, manifested before age 22, that results in substantial functional limitations in at least three of the following major life activities: self-care, language, learning, mobility, capacity for independent living, economic self-sufficiency, and self-direction.

Traditionally, these special, "service-dependent" individuals were warehoused in large institutions. But as the professionals who work with these special populations came to understand them, they realized that large institutions hindered the recovery of the mentally ill and the progress of the developmentally disabled. If they are ever to overcome or cope with their conditions, these people need to live in a relatively normal, household environment in the community.

The group home provides that setting. Depending on the size of the house, anywhere from two to about 15 service-dependent people live in the group home with professional staff, who function as surrogate parents. Residents and staff seek to emulate a traditional family. The group

home constitutes a single housekeeping unit in which residents share responsibilities, meals, and recreation.

The group home's primary purpose is to provide supervision and support, in a family-like setting, for persons unable to live independently in the community. It is not a clinic or hospital, where treatment is the principal or essential service. While a treatment regime may be incorporated into the daily routine of handicapped persons wherever they live—whether with their own families, in an institution, or in a group home—treatment is merely incidental to the group home's primary purpose of helping residents adjust to community living, and in many cases, to live on their own in the community.

Q Then why are group homes a zoning problem?

A Many zoning ordinances simply don't provide for group homes. When a group home sponsor seeks to open a group home under such an ordinance, city officials often stretch their imaginations to fit the proposed group home under the zoning definition of some other use. Most often, they'll call the group home a nursing home or hospital for the insane or feeble-minded.

Q We have to do that all the time with uses that didn't exist when our zoning ordinances were written. What's so bad about that?

A Group homes are not nursing homes

Photographs by Michael Portney



An ordinary dinner table? That's exactly the point for group home residents functioning as a family.

or hospitals. A group home is a residential place—a place where inhabitants live as a family, albeit a generic family, as one court put it. In contrast, nursing homes and hospitals are primarily medical institutions that provide no education or simulated family setting for patients. Group homes are most appropriate in residential areas, while nursing homes and hospitals belong in commercial areas.

Q Didn't the U.S. Supreme Court case deal with a Texas city that treated group homes for the developmentally disabled as a hospital for the feeble-minded?

A Yes, the zoning ordinance for Cleburne, Texas, didn't provide for group homes. So city officials decided that the Cleburne Living Center's proposed group home for 13 developmentally disabled adults would be treated as a "hospital for the insane or feeble-minded."

Q How did that decision lead all the way to the Supreme Court?

A Cleburne's zoning ordinance allows all hospitals, except those for the "insane or feeble-minded or alcoholics or drug addicts," as permitted uses in the R-3 residential zone where the Cleburne Living Center (CLC) sought to locate its group home. It also allows apartments, boarding and lodging houses, and fraternities, sororities, and dormitories as of right in that zone.

Although the proposed group home complied with all federal and state licens-

ing regulations that ensured the house itself would be adequate to house the 13 mentally retarded residents plus staff, Cleburne denied the special use permit application. CLC sued. While the federal district court found that the city's denial "was motivated primarily by the fact that the residents of the homes would be persons who are mentally retarded," it held that no fundamental rights had been violated and that the ordinance, as written and applied, was rationally related to the city's legitimate interests in "the legal responsibility of CLC and its residents, . . . the safety and fears of residents in the adjoining neighborhood," and the number of people to be housed in the home.

After the Fifth Circuit U.S. Court of Appeals reversed in favor of CLC, the city appealed to the U.S. Supreme Court. The Court unanimously invalidated the zoning ordinance as applied to CLC (although three justices would have invalidated the ordinance on its face) in *City of Cleburne v. Cleburne Living Center*, 105 S.Ct. 3249 (1985).

The Court speaks

Q Why is this decision so important?

A The Court put cities on notice that they need a clear, rational reason if they want to treat group homes for the developmentally disabled (and probably for other service-dependent populations as

well) differently from other residential uses. The Court started its analysis by noting that the equal protection clause of the Fourteenth Amendment essentially requires that "all persons similarly situated should be treated alike."

Cleburne, though, had created a classification in which a group home for the mentally retarded must obtain a special use permit in an R-3 zone even though apartment houses, boarding and lodging houses, fraternity and sorority houses, nursing homes for the aged, and other specific uses were allowed as of right. Although a city's zoning ordinance is presumed valid, the classifications it creates must be "rationally related to a legitimate state interest" to be upheld.

The Court noted that while the "mentally retarded as a group are indeed different from others" who don't share "their misfortune" and are allowed to locate in an R-3 zone without a special use permit, "this difference is largely irrelevant unless the [group] home and those who would occupy it would threaten legitimate interests of the city in a way that other permitted uses such as boarding houses and hospitals would not." The Court searched the trial record and could find no rational basis to believe that the group home "would pose any threat to the city's legitimate interests."

Q You mean that none of the city's reasons for denying the special use permit were legitimate?

Open house at the Cleburne group home.



A Right. Opposition from neighbors, based on unsubstantiated fears, continues to be the major reason that cities deny special use permits for group homes. But the Court confirmed a long line of rulings that "mere negative attitudes, or fear, unsubstantiated by factors which are properly cognizable in a zoning proceeding, are not permissible bases for treating a home for the mentally retarded differently from apartment houses, multiple dwellings, and the like." While neighbors may have biases against group home residents, "the law cannot, directly or indirectly, give them effect."

The Court rejected all of the city's reasons for denying the permit. The city council had doubts about who had legal responsibility for the actions of the mentally retarded group home residents. But the Court found that the council had no concern about the legal responsibility for other uses permitted in the zoning district, such as boarding houses and fraternities. The Court could not see how the group home would present a hazard different from these other uses. Nor could the Court understand how the city could object to the location of the group home because it was on a 500-year floodplain, yet not be concerned about other uses located on the floodplain.

Q Given the Court's decision, for what reasons can a city deny a special use permit for a group home?

A Remember that the Court said the denial was based on prejudices and unsubstantiated fears. The most common fears are that group home residents will engage in criminal behavior, that the home will be poorly maintained, and that the mere presence of the home will depress property values in the neighborhood. If true, these are legitimate reasons to deny a special-use permit.

Q Can any of these fears be substantiated?

A So far, fairly extensive research says, "Not at all!" A large body of research shows that the mentally ill are no more criminally prone than the rest of us. And 66 years of studies have found the developmentally disabled to be harmless. The most pertinent study covered the state of Virginia. *The Report on the Incidence of Client Crime Within Community-Based Programming* (1979) found a crime rate of 0.8 percent among the developmentally disabled who lived in group homes, as compared to a four- to six percent crime rate among the general population.

Q But what about property maintenance and property values?

A Every one of the 20 or so studies on this topic has found that group homes simply do not affect the selling prices of neighboring properties or the turnover rate of properties. The studies uniformly report that group homes are invariably well-maintained—often better maintained than

neighboring private homes. The few studies that have inquired have found that group homes are so inconspicuous that barely half the people on the same block know they exist, fewer than half on the next block know of them, and fewer than 30 percent of the residents three blocks away are aware of them. Small wonder that group homes have virtually no effect on property value.

Q If group homes are so innocuous, why regulate them at all?

A One study did find that five group homes on the same block might, in fact, have an adverse effect on the neighborhood. Further, if large numbers of group homes cluster on the same block or in the same neighborhood, they could undermine a basic premise of group homes—namely that, to be effective, they must locate in "normal" residential neighborhoods where able-bodied neighbors can serve as role models for the disabled or mentally ill.

At some indeterminate point, the capacity of the neighborhood to absorb service-dependent people could be exceeded, and the proportion of service-dependent persons in the neighborhood could become so great as to recreate the institutional atmosphere from which the group home is supposed to provide an escape. So there is a need to ensure that group homes do not cluster on the same block and that they are spread throughout



People who might once have been institutionalized receive closer attention in group homes. Below, a visiting nurse in a Detroit-area group home.



the safe neighborhoods of a city.

For a variety of reasons, however, group homes frequently have been forced to cluster. As a 1983 study by the U.S. General Accounting Office reported, more than a third of the group homes for developmentally disabled persons were located within two blocks of another group home or an institution. A disproportionately high number of group homes locate in poor neighborhoods because political opposition to them is weak there and because they are excluded from better neighborhoods due to well-organized and politically powerful community opposition or exclusionary zoning.

To protect the welfare of group home residents, it is essential to ensure that group home operators comply with state or local licensing requirements. A zoning ordinance should not allow a group home to open unless it is licensed or will be licensed by the proper authority.

The bottom line

Q Given the *Cleburne* ruling, what's the bottom line? How should my city or county zone for group homes?

A In a word, rationally. The *Cleburne* decision is a bit deceptive. While the Court says it is applying the standard "rational relationship" test, its inquiry into *Cleburne's* reasons for denying the special use permit is really an example of the sort of heightened judicial scrutiny

usually reserved for cases of discrimination based on sex, race, or religion. The lesson of *Cleburne* is that the zoning provisions for group homes must be based on the sound planning principles that call for zoning provisions grounded in an understanding of what group homes are, what their impacts are, and the types of neighborhoods in which they function best.

Q What are these sound principles on which we should base our zoning provisions for group homes?

A There are four. By following them, you'll be able to write zoning provisions that should withstand even the Supreme Court's new version of the rational relationship test.

- Group homes, being residential in nature, are appropriate uses in all residential zoning districts.

- Group home residents are service-dependent persons who require special protection to ensure their safety in the home. Those protections—that the group home meet adequate safety, sanitation, and program standards—form the subject matter of licensing requirements.

However, the zoning ordinance is not the place to specify licensing criteria—that's the business of the licensing agency. One of the simplest ways to require licensing is to include the licensing requirement in your ordinance's definition of a group home.

- Controls are needed to prevent concentrations of group homes. Two types of controls will prevent clustering and ensure dispersal throughout a community. The first is a spacing requirement by which the zoning ordinance imposes a minimum distance between group homes and between group homes and institutions.

It is vital, however, that there be some rational basis for this distance. According to one widely accepted theory, the most elementary form of social impact is the degree to which neighborhood residents become aware of a change. Because the research shows that few residents living three blocks from a group home even know it exists it seems appropriate to establish a spacing requirement equal to at least three city blocks so that each group home will be beyond the "impact area" of any other group home or institution.

However, the ability of a neighborhood to absorb service-dependent residents is thought to vary with density. Presumably, higher-density neighborhoods have a higher absorption level that would warrant a shorter spacing requirement than lower-density neighborhoods.

The Westchester County Planning Department has suggested spacing requirements of 1,000 to 1,500 feet for urban areas where the population density is less than 1,000 persons per square mile, 1,500 to 2,000 feet for densities of 1,000 to 2,500, 2,000 to 3,000 feet for den-

Teaching residents to function in the community is an important aspect of group homes.



sities of 5,000 to 9,999; and 800 to 400 feet for densities over 10,000 persons per square mile. In contrast, Evanston, Illinois, has arbitrarily established an unusually high 2,500-foot spacing requirement between group homes. With no rational reason for that great a distance in an inner-ring suburb like Evanston, *Cleburne*-style judicial review could invalidate Evanston's requirement.

The second control is a dispersal or density requirement that establishes a cap on the total population permitted to live in group homes and institutions in a designated geographic area. Ideally, this figure should approximate the proportion of service-dependent individuals a neighborhood can absorb. For example, if three percent of a state's population is service-dependent, the proportion of service-dependent population per census tract could be limited to three percent.

- Zoning should recognize that group homes come in different sizes. The smaller home, for six or fewer residents, is roughly the size of a large family. There is no sound planning reason not to allow such "family homes" in all residential zoning districts as of right as long as they obtain or prove they are eligible for a license, meet the specified spacing and density requirements, and obtain an administrative occupancy permit.

This permit is needed to ensure that the home complies with these requirements and to provide a record for the planning

agency so it can enforce spacing and density requirements. The ordinance should provide a special use permit process to allow for circumstances that might justify exceptions to the spacing and dispersal requirements for family homes. These should be similar to those suggested below for larger group homes.

Because group homes for seven to 15 persons exceed the size of all but the very largest families, municipalities should subject proposals for these "family group homes" to somewhat greater scrutiny than the smaller family homes. Family group homes, however, should be allowed in all residential districts as special uses. There's no sound planning principle for excluding family group homes from even the largest-lot single-family district. In fact, when the sponsoring agency can afford the cost, the larger houses in lowest-density districts offer excellent sites.

However, to minimize subjectivity and lessen the influence of fear, prejudice, and political pressure on decisions about group homes, the zoning ordinance should state reasonably objective relevant standards by which the special use permit application is to be evaluated. Appropriate standards should require the applicant to: obtain a license or evidence of eligibility for a license from the appropriate agency; meet specified spacing and density requirements; register with the municipality's planning department; submit a statement of the

exact nature of the home planned, the qualifications of the home operator, the type and number of personnel, and the number of residents; conform to the general zoning requirements for the residential district, with the exception of the number of unrelated individuals permitted and the off-street parking requirements; and conform, to the extent possible, to the type and outward appearance of the residences in the area.

The ordinance should allow for a waiver of the spacing and dispersal requirements under certain conditions. Primarily, the decision-making body must find that the cumulative effect of allowing the group home (in addition to existing group homes and institutions for service-dependent populations) will not alter the residential character of the neighborhood, create an institutional setting, nor exceed the capacities of existing community recreational and social service facilities.

Daniel Lauber, APA President, is a planning consultant and attorney who has been involved in zoning for group homes since 1974. His recent draft paper, *Toward a Sound Zoning Treatment of Group Homes for the Developmentally Disabled*, includes model definitions for a group home provision in a zoning ordinance. It is available for \$15 prepared from Planning Communications, 2105 180th St., Evanston, IL 60202.

Dear Senator Fisher,

My husband and I are in the process of setting up a training facility for hearing ear dogs in Homer. So we are concerned about Senate Bill 1060, which provides equal access for guide dogs. We have identified five short comings of in the bill as it is now written.

First of all, the definition of a service animal needs to be clarified. Dogs are being trained to aid people in the major life activities of seeing, hearing, and mobility. We favor limiting the definition of service animals to dogs only.

Secondly, the bill needs to clarify just what a training facility is. Both John Leedum (who trains support dogs in Anchorage) and I have studied under one of the original hearing dog trainers, Donald P. MacMunn. The American Humane Society in Denver, Colorado has a listing of hearing ear dog training

- 1) Define "Service Animals"
- 2) Clarify "Training Facility"
- 3) Method to identify "Support Dog"
- 4) The Law should give a Statutory Title making it easily recognizable as granting equal access.
- 5) Grant support dog equal access when accompanied by trainer.

facilities throughout the United States.

Third, the bill should include some way in which a support dog can be identified. A number of different systems exist now in other states. Bright yellow or orange harnesses are used, as well as brass name plates on plain harnesses. Photo identification cards which picture the dog and the dog's owner or trainer are widely used. The identification card also lists the training facility and cites the law which gives the dog equal access. We recommend that because there is no standardized identification among states, that all the above listed be allowed until support dog programs of the country recommend standardization.

Fourth, because the identification card cites the law which gives the support dog equal access, the law should have a statutory title which makes it easily recognized as a law that grants equal access to support dogs.

Lastly, the bill should also grant the support dog equal access when it is accompanied by its trainer. It is important that while in training the dog be taught how to behave in public buildings.

We would appreciate your support in passing this bill, and your consideration of these recommendations, as there will be increasing numbers of dogs assisting physically handicapped people.

Sincerely,
Wendy Akornak

P.S. If you have any questions, please feel free to contact me at 235-7690.

STATE OF ALASKA

HUMAN RIGHTS COMMISSION

STEVE COWPER, GOVERNOR

FEB 5 1987

February 2, 1987

The Honorable Paul Fischer
Chairman, Senate HESS
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Fischer:

I regret that our travel budget does not permit me to present testimony at this afternoon's hearing on SB No. 1 "an act relating to the right of physically and mentally disabled persons" before the Senate Health, Education and Social Services Committee. The commissioners considered similar proposals on this matter last session and the following written testimony represents the commission's position on this expansion of our jurisdiction.

The commission supports the redefinition of the protected class as proposed in SB No. 1 prohibiting discrimination because of physical or mental disability.

The commission supports the broadening of its present jurisdiction over physical handicap in employment to the full protections afforded to other protected classes: housing, credit and financial practices, public accommodations, and practices by the state or its political subdivision. The commission believes we must guarantee the rights of the disabled to participate in Alaskan life, free from discrimination. We anticipate that one additional investigator will be needed to process the complaints filed under this new jurisdiction.

The commission opposes, however, the extension of its jurisdiction as provided in Section 18.06.040, to enforce rights of the disabled as pedestrians. These areas fall outside the parameters of the agency's expertise and are not compatible with our program. Furthermore, the commission's efforts to remedy discrimination are directed at relief to the complainant (the next available job, housing, back pay, the benefits or services denied, and so forth). The commission requires the party found in violation of the law to make the complainant "whole" and to pledge future compliance with the law. Normally, the commission does not seek to punish violations by imposing criminal sanctions. The commission recommends it should not be given authority to enforce this chapter.

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The commission is willing to accept the responsibility for adopting regulations furnishing guidance to those who must comply with this new jurisdiction. The commission recommends the following amendments to the language of Section 8 AS 18.80.050: "The regulations shall furnish guidance concerning the circumstances under which it is necessary to make a reasonable accommodation to the physical and mentally disabled in employment, financing and credit, public accommodations, the sale or rental of real property or other goods, services, facilities, advantages or privileges under this chapter." The commission anticipates calling upon the constituent disabled communities in Alaska and on employers, landlords, the banking and business communities and other governmental agencies for assistance in developing these regulation. Based on its own expertise and knowledge of case law and jurisprudence, the commission believes that adopting regulations will be an opportunity to educate Alaskans about the law and a step toward assuring compliance with the law in a reasoned and orderly fashion. The fiscal note includes one additional commission meeting which will be necessary to conduct hearings on these proposed regulations.

The commission recommends the deletion of the new language in Section 18.80.220(b) stating that "it is the purpose of this chapter to eliminate or prevent discrimination resulting from ignorance or misconceptions concerning the nature and effects of physical and mental disabilities." The commission, under AS 18.80.060(a)(5), is given responsibility to eliminate and prevent discrimination because of physical or mental disability. The commission is able to undertake this responsibility; however, the new language in Section 18.80.220(b) appears to give the commission the responsibility to educate the public about the nature and effects of physical and mental disabilities. The commission is not qualified in this area and in fact, will be required to obtain testimony from expert witnesses about the nature and effects of physical and mental disabilities in order to investigate complaints in this subject area. Adding this public education responsibility would have an enormous fiscal impact on the agency. This responsibility, which we believe is incompatible with our current program, is not included in our fiscal note.

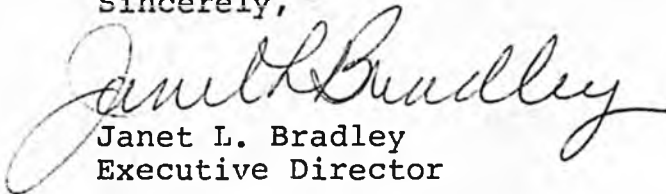
Finally and most important, the commission opposes Section AS 18.80.256 and recommends deletion of this section altogether. We understand the purpose of this section is to maintain the present requirements to alter or remodel facilities to provide access to the disabled. We further understand the desire to avoid any additional costs associated with retrofitting buildings. However, this section eliminates the commission's exercise of its present authority on behalf of the physically handicapped in employment. The commission presently requires employers to make reasonable accommodation to enable the physically handicapped to be gainfully employed. In imposing this requirement, the commission considers evidence presented by the employer that

Fischer
Page 2
February 2, 1987

accommodation is prevented by business necessity--including the prohibitive costs of the proposed accommodation. Section AS 18.80.256 would eliminate the present requirement for many Alaskan employers to make reasonable accommodation to employ the disabled. Clearly, this is not progress toward employment of disabled Alaskans. Therefore, we urge you to delete this section and authorize the commission to deal with this concern as part of its regulations required to be adopted under Section 8 AS 18.80.050 using the amended language we propose.

The commission offers this testimony in a spirit of cooperation with the legislature's desire to protect and promote the rights of the disabled and welcomes another opportunity to work toward passage of a disabled bill of rights.

Sincerely,



Janet L. Bradley
Executive Director

JLB/b

c: Senator Jim Duncan

TELECOPY COVER SHEET
ANCHORAGE INFORMATION OFFICE

TO: SWU FOR: Sen Fischer
Sen Duncan PHONE: _____

FROM: Janet Bradley, Human Rights Commission PHONE: 276-7474

ADDITIONAL INSTRUCTIONS: deliver ASAP for SHESSmtg 4^{PM} today

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BY: lanm

JURIES, BLINDNESS, AND THE JUROR FUNCTION

D. NOLAN KAISER*

Come now, with all your powers discern how each thing manifests itself, trusting no more to sight than to hearing, and no more to the echoing ear than to the tongue's taste: rejecting none of the body's parts that might be a means to knowledge, but attending to each particular manifestation.

—Empedocles of Agrigentum (484-424 B.C.)

Jury service is a duty for most, but privilege for a few. This fact escapes lawyer and laity alike, for they conceive it as a duty; the language of street and statute confirms this fact, as it is universally spoken of as "jury duty." Yet, there are those who because they are denied the opportunity to discharge this civic duty perceive it as a privilege.

In this paper I critically examine the confused legal practice of excluding blind persons from jury service. Historically, blind persons do not appear among any set of "twelve good men of the neighborhood called to jury," nor, are they considered "peers" within the meaning of that term as contained in the prevailing interpretation of the sixth amendment jury guarantee. Since I accept as a given the moral and legal validity of using lay persons to find the facts of a case, I seek to provide criteria for the concept "peer" which will include blind persons. Proposing blindness as a quality exempting jury service, I contend that a blind person should be able to claim or waive this right at choice. He can assess the credibility of testimony without seeing facial expressions, gestures, and other body language signs. He can receive and reasonably weigh material evidence including documents, signatures, photographs, and maps. The perfectly autonomous juror who receives all the admitted evidence, rationally weighs it according to instructions and arrives at verdict is not just mythic, he is not even an ideal which our system of justice prizes. Many of the standard powers and functions of the judge plainly show juror and metajuror features. When these features are conjoined with bench trial, and are seen against the sociological reality that some judges, like some lawyers, are blind, the continued legal practice of disqualifying blind persons from jury service is logically inconsistent.

* Professor of Philosophy, Central Michigan University. Professor Kaiser is blind, and was recently excluded from jury service for "cause" due to his blindness. This article was written after that exclusion. Recently, in March, 1984, Professor Kaiser was finally allowed to sit on a jury.

ity. In this way it is believed that a jury so empaneled will likely be neutral and offer no clear advantage to one side or the other.

The criminal defendant has the right to trial by jury of his peers. This very feature of "trial by peers" suggests a mistrust of a professional cadre who is expert in the law and experienced at fitting fact to law. Since defendants ordinarily come from the people, it is the system's preference for the people to render judgment on one of their own.² In the past, the intimacy of communities made it impossible to discover persons who did not know the defendant or the facts of the case. Hence virtue was made of necessity, and jurors were expected to know the person and character of the defendant and facts of the case.³ This built-in partiality was moderated by a selection of good men whose steadfastness as citizens could be presumed to preserve as much objectivity as their first-hand knowledge would permit. In a word, the system's aim was to procure good character and credible witness. By the reign of Henry VI (1422-1471) the much prized petit jury replaced the earlier modes of trial; petit jurors began to receive testimony from witnesses though they continued to supply evidence of their own knowledge.⁴ This development at law was powerfully reinforced by political and social forces already afoot in the land.

In the late 13th Century the movement toward enclosure of land was given statutory recognition. From these beginnings it gained legislative and social momentum, culminating in the Great Enclosure Act of 1801. Whole populations were put on the road and all roads led to the city. The expansion of mercantilism and later, manufactory, gave the swelling urban population an economic base for survival.

With increased numbers came anonymity. No longer was it necessary to acquire evidence at the expense of impartiality; both were now possible. Witnesses continued to provide evidence; jurors continued to provide verdicts, but these different functions were now performed by different persons. As the legal system evolved into its present manifestation, the juror became the deliberative decisionmaker with which we are familiar. The juror's decision-making role involves a fundamental

2. The law of evidence is a body of exclusionary rules designed to control the entrance of evidence on fact at issue in a trial. That the judge can exclude evidence from the jury on grounds of prejudice or confusion shows a countervailing bias against the objectivity and rationality of persons of the jury.

3. In the 11th Century A.D., the Norman practice of relying upon persons of the neighborhood to make accusation was imported into England. The early juror was accuser and witness against the defendant, though the verdict in the baronial courts was rendered, not by a juror, but by ordeal or combat. See L. CLARK, *THE GRAND JURY* 7-9 (1975).

4. See generally A. VANDERBILT, *JUDGES AND JURORS* 51 (1956).

process of perceiving the courtroom events of a trial. But there is nothing which requires that this perception be, among other things, visual. The real issue is whether a blind juror can perform this process of perception effectively.

II. "OF ONE'S PEERS"—THE BLIND JUROR AS JUROR

In the sixth amendment of the Constitution persons accused of a crime are entitled to speedy and public trial by jury. Constitutional interpretation has firmed; it was thought that juries ought properly to reflect the multifarious classes and subclasses in the wider society despite the rampant prejudices of these classes. Such defects were moderated by the fact that membership in such classes was neither fixed nor exclusive. Since the accused has been charged with the commission of a crime against the laws, a jury which is a reasonable facsimile of the society at once meets the needs of society and of the defendant. Thus, the right to a trial by a jury of one's peers can be understood as a right to a jury selected from a pool of citizens which is a microcosm of the important classes and subclasses which constitute the society.

If today, disabled persons are systematically excluded from juries as women and blacks were in the past, on the footing they impede or defeat the fair and efficient administration of justice,⁵ then all defendants, including defendants from these groups, are denied their right to a trial by jury of their peers. The disabled person is a peer within the intent of "a jury of one's peers" in a way that the automotive engineer is not. The criteria for carving out peer groups from among all groups in society minimally requires the group: (a) have an involuntary mem-

5. Referring to a blind prospective juror, Justice Christ writes in *Lewinson v. Crews*, 28 A.D.2d 111, 282 N.Y.S.2d 83 (1967), *aff'd.*, 21 N.Y.2d 898, 289 N.Y.S.2d 619, 236 N.E.2d 853 (1968):

In requiring "natural faculties" as a qualification for service on a jury the Legislature may have considered not only the function of a juror, but also the effect his disability would have on the orderly and practical operation of the court's processes. While this factor alone would not support the construction we make, it is a pertinent consideration.

Id. at 114, 282 N.Y.S.2d at 86.

Surely the ordinary blind person may be forgiven if he thinks the court's "pertinent consideration" is a piece of impertinence. Courtroom operations are dramatically influenced by the personality and work habits of the presiding officer. At times they leave the visitor with the impression of a personal preserve and not a public place. The combination of judicial privilege and social deference has produced a staggering number of cases awaiting disposition. When the "time awaiting trial" is credited against the sentence of a person convicted of a crime, a person acquitted of such charge has in actuality served some part of a sentence never imposed. The response of plea-bargaining to clogged court dockets is a further affront to justice and a necessary expedient to prevent the "orderly and practical operation of the court processes" from collapsing. Though our administration of justice may be threatened, it is not threatened by the special assistance which a blind juror will occasionally need.

proceedings where the governing conventions tailor interest to fact according to some finer sense of justice?

Lewinson v. Crews And Credible Testimony

If we take blindness as an exemption from jury service, the blind prospective juror is no longer disqualified on the motion of others; he is exempt from such duty on his own motion, for the exemption of blindness becomes a personal privilege to be claimed or waived by him whose privilege it is.⁸ On W. N. Hohfeld's analysis reducing all legal relations to one among a set of four rights and their reciprocals,⁹ blindness as an exemption from jury duty becomes a privileged right whose reciprocal is such that neither party nor court has the right to demand that it be claimed or waived. It is also clear that the status of jury service on this showing is a right for the blind and a duty for persons with their natural faculties. We thus avoid confusing rights and duties.¹⁰

Does affording blindness exemption status infringe upon a party's right to fair trial? Referring to blindness as a personal privilege which if waived cannot be cause for challenge after waiver, Justice Christ in *Lewinson v. Crews* declares, "It is not an adequate protection to say that he [a party] may challenge the blind juror on the *voir dire* for if we hold blindness not to be a disqualification under the statute, a challenge for cause will not be available thereafter on that account. A peremptory challenge would be still available but these are limited in number and they are an important right possessed by a litigant; he should not be made to resort to such challenges in order to preserve his right to fair trial."¹¹ It is only unfair for a litigant to be constrained to

8. "[Juror's] exemption is a personal privilege, with which parties to the cause have no concern, and which furnishes them no cause of challenge. . . . [a] Juror may assert or waive his privilege of exemption. If he assert [sic] it, the court would of course excuse him, and if he waive [sic] it, the parties have no ground of complaint." *State v. Albert*, 125 Me. 305, 133 A. 693-94 (1926).

9. W. Hohfeld, *Some Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 23 *VALE L.J.* 16 (1913).

10. Commonly when jurists and lawyers discuss blind persons and jury duty as a constitutional issue the talk turns to the constitutional right to do one's duty. "The statute must be considered in the light of the constitutional purpose to diffuse the right and duty of jury service throughout the whole citizenry." *Lewinson v. Crews*, 28 A.D.2d 111, 115, 282 N.Y.S.2d 83, 87 (1967) (Hopkins J., dissenting). It is the merit of making blindness an exemption to jury service that we avoid such category mistakes.

11. *Lewinson v. Crews*, 28 A.D.2d 111, 115, 282 N.Y.S.2d 83, 86 (1967) *aff'd*, 21 N.Y.2d 898, 289 N.Y.S.2d 619, 236 N.E.2d 853 (1968). It seems apparent that the statutory construction by Justice Christ is a correct reading of the legislative intent. It is equally apparent the Appellate Court's construction exhibits that same blindness about blindness so rampant in society. In this case it is more difficult to uncover as it is glossed by an authentic concern for litigant's right to fair trial.

use his peremptory challenge against a blind juror for cause of blindness if it can be independently established that the full power and completeness of a party's case cannot be adequately appreciated by a blind juror because of his blindness.

The court, seeing the need to justify this claim of "unfairness to parties," states that

[a] litigant who comes before the Bar of Justice, whether in a criminal case or in civil litigation, wishes to have the impact of his evidence fall with its full weight upon the jury, if there be a jury trial. If his evidence or exhibits are not understood or the force of his interrogation of witnesses is lost, he will not have been afforded his full rights.¹²

In a preliminary way, it should be noted that if by the use of the term "force" Justice Christ meant "logical force," then the force of an interrogation has little if anything to do with the body language responses of witnesses; it has everything to do with the selection of questions and their collective logical relationship to crucial aspects of the case. This is the most natural way to read this term given Justice Christ's antecedent claim that evidence or exhibits not understood fail to function as premises to a desired conclusion. If the juror gives careful and intelligent hearing to the thrust of the interrogation, the absence of visual signs can remove sources of distractions to understanding and objectivity.

This is an important and little appreciated point. The sighted community categorizes persons in accordance with views and values which if their basis were clearly understood then most sighted jurors would be dismissed in *voir dire* on grounds of bias or prejudice. Sighted jurors develop beliefs about defendants by observing their deportment and dress on and off the stand.¹³ They reinforce preconceived ideas by studying the family and associates of the defendant. They weigh testimony by watching the judge's facial expressions. In all of these instances, that which proves to be a channel of information facilitating understanding concurrently poses a clear threat to the objectivity of the information so acquired. On the other hand, what the

12. 28 A.D.2d at 113-14, 282 N.Y.S.2d at 86.

13. [Theodore Koskoff]. . . president of the Association of Trial Lawyers of America, said he "philosophically supports" the idea of handicapped jurors but thinks they have little chance of getting past *voir dire*. Koskoff said the blind . . . cannot detect subtle, but often highly significant nuances in a witness' or defendant's . . . posture, dress or other behavior.

Winter, *supra* note 7, at 133. The fact the blind juror does not see how a defendant is dressed does not jeopardize that defendant's right to fair trial; it does jeopardize the defense counsel's effort to package his product for the jury. The confusion in the heads of the legal community could scarcely be made clearer.

not commonly noticed, audible responses of jurors to various pieces of testimony, documents, and other evidentiary exhibits.¹⁴

The Autonomous vs. The Actual Juror—The Blind Juror as Decision Maker

The ideally autonomous juror who receives, weighs and judges the evidence independently of every other juror is a standard of performance which ignores the setting in which proofs are offered, the purpose of sequestering jurors, and the rough balance in the strength of cases which go to trial. Juries are treated by legal practice as deliberative bodies. The jurors are isolated from everyone and shielded from every influence except one another. The jury which is seriously divided and reports as much to the court is commonly ordered back to the jury room to continue deliberations in hopes of arriving at the required unanimity or near unanimity for verdict. The court recognizes and encourages debate and persuasion as appropriate to consensus. If perfect autonomy were the juror ideal, it would remain so after the jury is instructed. And we would speak not about "jury deliberations" but about "juror reflections." As it is, jurors are real, and the law is realistic.

In many jurisdictions, documents or relevant passages are read aloud by the offering party. Occasionally such pieces of evidence are passed among jurors. Of course the blind juror, like all the jurors, will have heard what his fellow jurors are now permitted to see. Should the jurisdiction follow the custom of permitting opposing counsel to view the document though it is not read aloud, what is inaccessible to the blind juror in open court becomes accessible upon request during deliberations. Such pieces of evidence are given to the custody of the jury, and reading can be provided by fellow jurors or a court official directed to do so.

Two persons may be presented with the same visual and auditory evidence and both may arrive at the same conclusion, which upon the evidence selected, has the same probability of truth. Yet each emphasizes or attends to different pieces of evidence. The result is the same and the probability of truth comparable. This can and presumably does happen among sighted jurors.

The blind juror will likely emphasize and attend to different pieces

14. Gestures of astonishment, approval, or revulsion all have their auditory correlates. The visually informative facial expression extends into other sensory realms—even a smile may be heard.

of evidence from those of his fellow jurors. It does not follow on this count that his conclusions are less sound or probable than the conclusions of his fellow jurors, some of whom will concur and others of whom will contest his findings.

Where we have "still photographs . . . moving pictures . . . mechanical objects which demonstrate working parts . . . enlarged fingerprints . . . diagrams upon a blackboard,"¹⁵ all apparently irreducible visual evidence, there is an alternative mode by which the truth of a belief so immediately visually supported may be mediately supported by a series of beliefs and inferences from beliefs. It is this mode of evidence acquisition and pattern of reasoning which may bring the blind juror to a tentative verdict absent jury room deliberations. When arrived at in the jury room, the shared inspection of evidence, the interpersonally influenced weighting of the evidence and the rational and critical exchange of beliefs among jurors may bring each of the jurors, including the blind juror, to a verdict on the evidence.

III. JUROR ASPECTS OF JUDGESHIP IN NON-JURY TRIALS

The nonjury trial is not a nonjuror trial. The judicial juror manages the pleadings, declares the law, and renders verdict. The trier of law and the trier of fact have merged in one person. Historically, our jurisprudence has distinguished these different juror functions. This difference has been progressively exaggerated by the increasing sophistication demanded of the judge and the ignorance of law demanded of the juror. It is obvious that he who manages the pleadings ought to know the law. It is less obvious why he who finds on the facts ought not. Still, we need not search far to uncover plausible reasons. Since jurors are drawn from a randomly chosen cross section of the people, the juror trained in law is familiar with the personal and political motivations given play in and about a trial. He has the training to persuade most juries and the temperament to hang the remainder. There is a better than even chance that the jury's verdict would be the legal juror's verdict. Traditionally, the lawyer as juror is believed to pose a real threat to the unbiased and thoughtful search after justice as determined by persons who are presumed the equals of one another. Here "equals" means "persons equally ignorant of the law." The actual inequalities among jurors in the way of experience, education and character are presumed to weight and counterweight one another in such

15. *Lewinson v. Crews*, 28 A.D.2d 111, 113, 282 N.Y.S.2d 8., 85 (1967), *aff'd*, 21 N.Y.2d 898, 289 N.Y.S.2d 619, 236 N.E.2d 853 (1968).

he gives the same judgment on the grounds that the jury's verdict was excessive, contravening the most elementary standards of justice, he reasons and acts as a juror. The logic of judgment is such that when the judge reviews the evidence and sustains the jury's verdict, he acts like the thirteenth juror.

Judge as Juror and the Blind Judge

In our legal system a defendant has the privilege of waiving his right to jury trial. When he does, separate functions of separate judicial organs expressly unite under the jurisdiction of the judge. In jury trials judges will occasionally reserve ruling on motion to admit evidence awaiting a clear indication of the propriety of its use. In the nonjury trial the incentive to reserve ruling is aggravated by the additional responsibility on the judge to render verdict and the appellate practice of sustaining judge rendered verdicts in the face of erroneously admitted evidence. In this case the appellate court reasons that if the admissible evidence which is admitted is sufficient to sustain the judge's verdict, then the erroneously admitted piece of evidence or any evidence upon which ruling is reserved does not appear in the judge's reasoning to verdict. In this matter the appellate court too finds itself called upon to reason like a juror, or more exactly, a metajuro.

Regarding the erroneously admitted piece of evidence, it is judged by the standard of "harmless error." It is "harmless" to the defendant's right to a fair trial and verdict based upon the evidence if all the evidence, absent the tainted piece of evidence, will nevertheless sustain the verdict. It would be an extravagant expenditure of social resources to declare a mistrial and so require a new trial to accomplish the old result. Curiously, an appellate court might invoke the same reasoning and policy considerations to sustain the verdict in a jury trial under identical circumstances. Surely this discrepancy in legal practice cannot be sustained on the footing that when tainted evidence is admitted, the judicial juror, unlike the lay juror, will not render a verdict which relies upon that tainted evidence. It is folly to believe that he who creates the taint by erroneously adjudging it admissible for purposes of verdict eschews its use in the verdict he renders.

One commonly recognized avenue of career advancement in the legal profession is from bar to bench. Since judges are drawn from among lawyers, some of whom are blind, it cannot be reason for astonishment that some of our judges are blind. As we have learned, judges are called on occasion to reason and act like jurors. It follows that the

blind judge in acquitting his duties as judge will on occasion be called on to reason and act like a juror. Since no prima facie case is made out against the blind judge presiding over a jury or a nonjury trial by virtue of his blindness, the legal custom of accepting the prima facie case against the blind juror by virtue of his blindness is utterly without merit.

CONCLUSION

The institutional bias of the law is transparent. The exclusionary rules of evidence rest squarely upon a well developed, if not well articulated, mistrust of the jury. The judge can prevent or reverse the jury's verdict. The judicial juror's verdict is given preferential treatment by the appellate court under select conditions. The pantheon of values clustered behind the various legal structures and practices described makes plain that the judge as judicial juror is sovereign and the lay juror suspect. As for the blind juror, the law espouses beliefs about the blind person as juror which are unwarranted and inconsistent with existing legal practices. It would be an act of enlightenment for the legal community and the several state jurisdictions to rethink their opposition to the blind juror.

NY Times - Sunday Feb. 22, 1987

share of all... cases with undetermined causes may have spread through heterosexual intercourse as well.

Part of the mystery and fear about AIDS arises from the fact that many carriers of the virus are not aware of it. The virus can lurk in the body without causing disease and, among those who develop AIDS, the average time between infection and diagnosis of AIDS may be five years or more.

While much remains to be learned about AIDS, scientists assert with confidence that studies of victims and disease patterns have provided a clear picture of how the virus has spread in this country, and how it has not.

Q. How does AIDS spread?

Many studies have documented the spread of the AIDS virus to an uninfected person through anal or vaginal

cause anal sex often involves breaks in rectal tissues, thus allowing easier entry of the virus into the bloodstream. Studies suggest that the receptive partner in anal sex is at greater risk. One study has suggested that the virus may be able to directly infect cells in the colon.

Q. Can the virus spread from an infected person in vaginal intercourse?

believe the virus may also enter through mucous membranes or other soft tissues in the genital areas. No one knows if the virus can penetrate the lining of the male urethra, the tubelike passage through which urine flows.

Q. What is the risk of getting the virus from a single act of vaginal intercourse with an infected person?

Precise data are lacking. From indirect evidence, Federal scientists judge the risk of transmission in a single encounter to be low. Quantification is complex: Some infected people have said they had only a single exposure, while other people who have had hundreds of exposures have escaped infection. Still, several studies have shown that with repeated intercourse, as many as half the sexual partners of infected men or women become infected.

In Africa, where vaginal intercourse is believed to be the major means of spreading AIDS, studies suggest that the virus may pass more easily among people who have had gonorrhea, genital herpes or other sexually transmitted diseases, perhaps as a result of open sores in the skin of the genital area and the presence there of larger than usual numbers of the types of white blood cells that the virus invades.

Q. Can the virus spread through oral sex?

high degree of protection. However, condoms are not foolproof: They may tear, slip or be misused, and in one study two cases were documented in which the virus passed between partners who used condoms in intercourse over an extended period. Because the virus may be present in men's pre-ejaculation emissions and in vaginal secretions, experts recommend that

Bishops Say Condoms May Not Prevent AIDS

DALLAS, Feb. 14 (AP) — More than 150 Roman Catholic bishops meeting here have concluded that abstinence and marital fidelity are better weapons to fight AIDS than are condoms, which they believe create a false sense of security, a bishop said Friday.

The group determined that health officials, in promoting condoms, might be misleading the public since condoms do not always prevent transmission of the disease, said Bishop Leroy Matthisen of Amarillo. The Catholic church has long opposed artificial birth control.

Catholic bishops from the United States, Mexico and Central America took part in the conference this week on medical research. The group plans to develop an educational program emphasizing abstinence for single people and fidelity for married couples, the Bishop said.

At the conference, Dr. Lamber M. King of St. Vincent's Hospital in New York presented a paper citing studies that showed condoms offered 70 percent protection from acquired immune deficiency syndrome.

If condom advertisements are put on television, "it's going to boomerang with people who do not listen carefully," Bishop Matthisen said.

Msgr. William B. Smith, professor of moral theology at St. Joseph Seminary in New York, outlined an ethical pastoral approach for the bishops.

Bishop Matthisen said the monsignor's theme was that the bishops should be kind when dealing with AIDS victims. The Bishop said: "The way he phrased it is that is we don't condone sin, but neither do we condone self-righteousness, judging people. There's a natural temptation to do that."

"We want to have a strong emphasis on marital fidelity," he said, adding that the threat of AIDS was a new argument in support of fidelity. "And for those who are not married," he added, "we are going to emphasize celibacy."

Deaf Woman Sues Over Jury

PITTSBURGH, Feb. 14 (AP) — A woman barred from serving on a jury because she is deaf has sued the Blair County judge who dismissed her, alleging she was a victim of discrimination.

The woman, JoAnn DeLong, alleged in her suit that the judge, R. Bruce Brunbaugh, violated a Federal act that prohibits discrimination against the handicapped in any activity in which Federal funds are used when he dismissed her in October.

The lawsuit, filed Wednesday in Federal District Court, is intended to establish that Federal funds help finance county court operations, her lawyer, Robert W. Lape, said Thursday.

Ms. DeLong is seeking no financial damages, only a court order to permit the disabled to participate on juries.

Judge Brunbaugh did not return telephone calls made to his office.

Ms. DeLong was called as a potential juror for a civil case, but Judge Brunbaugh rejected her before lawyers for either side questioned her, Mr. Lape said.

Ms. DeLong had full hearing until the age of 7 and "can speak amazingly well," he said. An illness left her without any hearing.

She uses an interpreter who translates word by word under the Signed English system, Mr. Lape said. Under another system, American Sign Language, translators skip some words in favor of concepts, he said.

In dismissing Ms. DeLong, Judge Brunbaugh cited a Pennsylvania case in which a criminal defendant received a new trial after it was learned that one juror's hearing was impaired.

A general argument against seating deaf jurors is that jurors often must weigh the credibility of witnesses by subtle aspects of the way they answer questions.

"That's probably the major argument," Mr. Lape said. "We say the deaf are used to judging from facial expressions and other nonverbal demeanor. Deaf people may even be more perceptive visually."

Hearing impairment probably not discovered until after trial.

SUPREME COURT OF THE STATE OF NEW YORK

NEW YORK COUNTY : PART 88

-----X
THE PEOPLE OF THE STATE OF NEW YORK : Indictment No.
- against - : 7213/84
HERBERTO GUZMAN :
Defendant. :
-----X

B. GOODMAN, J.:

Defense Counsel moved to challenge Alec Naiman, a prospective juror, for cause on the grounds that his client will be denied a fair trial under the Sixth Amendment to the United State Constitution, if Mr. Naiman is allowed to sit as a juror.

Defendant, Herberto Guzman, is charged with Criminal Sale of a Controlled Substance in the third degree. He speaks no English and is assisted by a court appointed Spanish Language interpreter, who is herself blind.

message and passes it on. It does not translate. Another way to look at the signer who uses signed English is as an input/output buffer. This device allows one electronic device to "talk" to another. It is called a buffer because one computer sends at a slightly different rate than the other receives. Again, it is the same language, merely a different form. It is clear that in order for a deaf person to meet the statutory language requirement for jury service that person must understand and communicate in English using either signed English, or lip reading, or finger-spelling or any combination thereof as the mode of communication. There are those in the deaf community who know only American Sign Language and do not know English. These people would not meet the statutory English requirement any more than would any other non-English speaking person. Alec Naiman, however, meets that requirement.

The court, the Assistant District Attorney, and defense counsel had an opportunity to question both Mr. Naiman and the court appointed interpreter. The interpreter was questioned and found qualified by the court, sworn and instructed as to her function in the proceedings. The District Attorney found no reason to challenge Mr. Naiman. However, defense counsel at the conclusion of his voir dire, moved to challenge him for cause.

The issue before the court is whether an otherwise qualified deaf person may be challenged for cause in a criminal trial solely on the basis of his deafness.

Section 510 of the Judiciary Law was enacted on September 1, 1983. Prior to that date the law read, in pertinent part, "In order to be qualified to serve as a juror a person must: ... (4.) Be in the possession of his natural faculties and not infirm or decrepit."⁴

The result, under that language, was the disqualification of the sensorally impaired.⁵ The Legislature amended the statute to read: "In order to qualify as a juror a person must: 3. Not have a mental