ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672
5306 SJUD SB 65 - SB 93

Section 30 substitutes the state auditor for the Legislative Budget and Audit Committee. The section also requires the audit of the Alaska City Development Corporation to conform to audit standards adopted by the state auditor.

Section 31 substitutes the state auditor for the legislative audit division.

Section 32 requires the director of the office of management and budget to instruct the commissioner of administration to withhold funds to an entity that has failed to correct an audit when directed by the state auditor under Sec. 37.06.060.

Section 33 requires the annual audit of the housing assistance revolving fund in the Department of Community and Regional Affairs to conform to audit standards adopted by the state auditor.

Section 34 directs the state auditor to select an independent qualified professional to perform management and program audits of boards, commissions and authorities subject to sunset review. The audit is required to conform to audit standards adopted by the state auditor. The section also substitutes the state auditor for the legislative audit division.

Section 35 substitutes the state auditor or an independent certified public accountant selected by the auditor for the legislative audit division.

Section 36 substitutes the state auditor for the legislative audit division. The audit of the Alaska Commercial Fishing and Agriculture Bank is required to conform to audit standards adopted by the state auditor.

Section 37 substitutes the state auditor for the legislative auditor.

Section 38 requires the annual audit of the Alaska Gas Pipeline Financing Authority to conform to audit standards adopted by the state auditor. The section also substitutes the state auditor for the legislative auditor.

Section 39 requires the annual audit of the Alaska Power Authority to conform to audit standards adopted by the state

auditor. The section also substitutes the state auditor for the legislative auditor.

Section 40 requires the annual audit of the Alaska Municipal Bond Bank authority to conform to audit standards adopted by the state auditor.

Section 41 requires the annual audit of the Alaska Industrial Development Authority to conform to audit standards adopted by the state auditor. The section also substitutes the state auditor for the legislative auditor.

Section 42 substitutes the state auditor for the legislative audit division.

Section 43 provides for the transition from the legislative auditor to the state auditor.

Section 44 directs appropriate name changes to reflect the substitution of the state auditor for the legislative auditor.

Section 45 repeals various laws relating to the legislative auditor.

Section 46 makes the Act effective on the first day of the first term of the first state auditor. This means that the Act is not effective unless the constitutional amendment is approved by the voters.

TC:mkr
m9/014

Alaska MUNICIPAL League

TELEPHONE
(907) 586-1325

105 MUNICIPAL WAY, SUITE 301
JUNEAU, ALASKA 99801

February 24, 1987

MEMORANDUM

TO: Senator Jalmar Kerttula, Chairman
Members of the Senate Judiciary Committee

FROM: Scott A. Burgess, Executive Director

SUBJECT: SB 65 - Providing for a state auditor; SJR 6 - Relating to the office of state auditor

The Alaska Municipal League is opposed to the inclusion of municipalities and school districts in SB 65 and SJR 6. In summary, the bill vests significant authority in one person; is potentially very costly; and, as currently written, is unclear.

The AML Legislative Committee met and reviewed SB 65 and SJR 6 at their meeting in Juneau, January 29, 1987. The following general and specific comments (see Attachment 1) were provided to me by Barbara Steckel, Chief Fiscal Officer for the Municipality of Anchorage, and a member of the AML Legislative Subcommittee on Taxation and Finance. The comments are provided to the Committee to explain the League's opposition to SB 65 and SJR 6, as introduced:

> The power that is being provided to one person as State Auditor is significant. If the State Auditor did not like the responses provided by a local government or school district, future funds could be withheld until the Auditor is satisfied with the response. This is extremely arbitrary.
>
> This bill does not have a fiscal note attached at present and yet it appears it could have a very substantial cost. If the State Auditor is going to review all annual audits of school districts and municipalities for "accuracy, completeness, and compliance with audit standards", it is going to require substantial staffing or contractual funds to perform the work. There does not appear to be any way the review can be performed without actually reviewing the workpapers of the external auditors.
>
> This bill grants the Auditor substantial authority to have access to records at "all" times. In addition, they have access to confidential files that are subject to the audit and investigative authority of the state, even if it is not under audit.

The process set out for the Auditor to review all reports and determine whether to approve them or not and how the reports are released, and by whom raise many questions. If the local governmental body is paying for the audit, it seems they should have the prerogative to accept or reject the report, and not have to wait for the State Auditor to make a decision. The auditing firms do have ethical and professional standards to go by and it seems redundant to have the state auditor creating additional standards. There is no question that a consistent set of grant accounting and auditing standards for all state grants would be helpful, but there is no need to duplicate existing standards and guidelines for governmental accounting and auditing.

There appears to be inconsistencies between the definitions in Section 37.06.200 and the Powers and Duties in 37.06.020. The Auditor is going to review various audits under Powers and Duties and yet in definitions the audits that he is going to review are described as "post audits." What exactly is the Auditor going to do?

In a time of reduced revenues, the first thought is that an auditor might help reduce the waste and save money, but the way this bill is currently structured, it appears that it will be very costly, since the only provision for charging back is for annual audits.

SB 65 - Providing for a State Auditor

Following are comments or questions regarding this bill:

Sec. 37.06.020 (a) (2) - The audit required under Sec. 29.35.120 is an audit of accounts and financial transactions; it is not a compliance audit.

(9) - There is no objection to keeping the account showing the costs of the audit operations; however, we do question if this is going to be the basis of charges back to organizations audited under Sec. 37.06.120.

(b) (1) - The State Auditor may do a management or program audit or investigation of any matter related to State finance. Does this include any grant received by a local government; if so, what happens to the audit organizations in the various State organizations .

Sec. 37.06.030 - A CPA may be employed on a temporary basis. Does this mean firms or individuals; furthermore, does it prohibit the State Auditor from hiring accountants who are not CPA's? All staff in an audit do not have to be capable of the attest function.

Sec. 37.06.040 - Access to records and testimony. The State Auditor has access at all times, whether during working hours or not and to all confidential matters. If all employees of the State Auditor are going to have access to confidential files, especially litigation, then high ethical standards will have to be maintained to insure information harmful to local government and school districts is not released. Perhaps the employe · should be bonded in case they release information with financial impacts.

(b) - This section does not even require the matter to be under investigation or audit to have the State Auditor require someone to go under oath.

Sec. 37.06.050 - This requires the State Auditor to review all audits under Chapter 37 not prepared by the State Auditor and to determine accuracy, completeness and compliance standards. How can someone review the audit report and make a determination on accuracy or completeness without reviewing all of the work papers. This requirement could be very costly to either the State or the local government or school district if the costs for the review are passed on.

There are audit standards for governmental organizations. Even if the Auditor sets new standards, we do not know how the Auditor can determine it was not prepared in compliance with audit standards without field review.

When does this report go to the State? Before the external auditor/finance officer transmits the report to the governing body? What is the time element for the review?

(b) - Why should the State Auditor release a local government or school district audit report to the public, as they are public documents upon completion and transmission to appropriate authorities, unless the notice of approval is necessary before providing copies to the appropriate entities.

Does this section include internal audit reports prepared by a local unit in conjunction with the annual audit?

(c) - While it does not seem logical that an auditor or investigator wouldn't correct the report, there could be circumstances where an external auditor would not be willing to change his position and yet the State Auditor can still serve notice to withhold funds. External auditors are independent, putting an organization into a position of trying to pressure an auditor into changing a report, or having to deal with the possible loss of funds. This is not acceptable.

(d) - It appears that the annual report required is a make work effort and would be quite large.

Sec. 37.06.060 (a) (b) - Why should a State Auditor approve or disapprove the way a governing body of a municipality or school district implements or makes a decision not to implement the Auditor's comments. Some of the comments have no impact on funds received from the State so why is the State Auditor's approval on comments necessary? The State Auditor is not responsible for the management and operation of the organization, but the governing body is.

(c) - It appears an informal conference to resolve matters should be required before an administrative hearing can be requested. Informal conferences are generally more cost effective than an administrative hearing.

(e) - The Auditor shall release the withheld funds if the report is corrected or adequate action has been taken by the governing body. The determination of "adequate action" is very subjective.

Sec. 37.06.100 (a) (2) - It appears that the Auditor goes direct to the bank for verification without going through the unit being audited. Current practice requires a letter or form requesting verification be sent to the bank signed by an authorized official. Since fake I.D. cards are certainly available, it seems written confirmation from an authorized official of the organization would not be unreasonable and in the best interests of the Auditor.

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See use in Sec. 37.06.020 Powers and duties - Requires Auditor to "review the annual compliance audit and yet the definition above is a "post audit". Appears to be a conflict.

(5) and (6) - Describes "management audit" and "program audit" as post audits, yet Section 37.06.020 (4) has the Auditor providing for management and program audit. Again appears to be a conflict.

SB 65 should not be supported as currently written.

VERN ROBERTS
FINANCE DIRECTOR

MATANUSKA-SUSITNA BOROUGH
PALMER, ALASKA 99645

Box B
PH. 745-4801

S. B. 65 - Providing for a State Auditor

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2/17

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SB 65 should not be supported as currently written.

PEAT MARWICK

Peat, Marwick, Mitchell & Co.
Certified Public Accountants
Alaska Mutual Bank Building
601 West Fifth Avenue, Suite 700
Anchorage, Alaska 99501
907-276-7401

February 26, 1987

Senator Jalmar M. Kerttula
State of Alaska
Pouch V (Mail Stop 3100)
Juneau, Alaska 99811

MAR 3 1987

Dear Senator Kerttula:

The purpose of this letter is to provide you some general comments and observations regarding the Senate Bill establishing a State Auditor.

The accounting profession and Peat Marwick should be ecstatic over the bill. It will result in significant more audit work, more regulation, more compliance and, as a result, more fees for the profession. From a business point of view, our Firm would directly benefit. However, from a personal point of view, as a citizen of the State, I believe the Bill adds a level of bureaucracy and additional cost which the State can't even begin to measure, much less afford.

The Bill seems to ignore the Administrative Regulation establishing the State Single Audit Act. This Act provides for significant financial and compliance audit procedures with respect to any agency receiving State funds. While it has only been in effect for a year, it has had the impact of requiring recipients of State funds to better control and use those funds. It has done so, however, at some cost. We estimate that the additional compliance and audit costs are approximately ten percent of funds received. The creation of the State Auditor appears to be additional layering on top of the State Single Audit Act.

Most recipients of State funds have independent Boards of Directors to provide oversight. These boards are charged with the responsibility to determine that the agencies comply with the State Single Audit Act and to review the overall efficiency and effectiveness of the agencies' programs. The State Auditor will have the right to challenge and usurp the authority of these Boards of Directors. Yet, the State Auditor will have no responsibility. Giving authority without commensurate responsibility creates an untenable circumstance.

Finally, there are a significant number of inconsistencies in the language of the Bill. Several times the Bill refers to compliance audits in the

same context as it refers to statements of financial condition. Financial condition and compliance with State regulations are frequently mutually exclusive. The Bill indicates that the State Auditor will establish regulation standards for conducting audits consistent with generally accepted government auditing standards. If they are to be consistent with generally accepted auditing standards, why not simply use generally accepted auditing standards instead of creating a new body of standards.

The Bill does not state the reasons for the need for the creation of a State Auditor. I presume it is because some State funds fall through the "safety net" which currently exists. I would suggest that identifying a solution for those falling through the "safety net" would be a better response than creating an entire new level of State government. In that regard, I think those funds falling through the "safety net" could be identified by assembling a task force of volunteers representing the auditing profession, recipients of State funds, persons from the Office of Management and Budget, etc. Such a task force could evaluate where additional procedures and controls need to be implemented and could then provide the Senate with recommendations which will allow for direct solutions to the problem.

If you need any additional information or specific comments regarding the Senate Bill, please feel free to contact me.

Very truly yours,

PEAT, MARWICK, MITCHELL & CO.

Joseph E. Heintz
Managing Partner

JEH:AMO

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST:

Bill Version : SB 65
Publish Date : 1/19/87

Revision Date:
Title : An Act providing for a State Auditor
Sponsor : Kelly,/Abood/Sturgulewski/Falks/
Requestor : Kerttula

Agency Affected : Legislative Audit, DCRA, DEC,
BRU : DOTPF, DOL, DHSS, DOA, DOE

Components :

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

Fiscal Note is zero based upon the attached assumptions.

Prepared by : Mark Jones
Phone : 465-3830
Division : Legislative Audit
Date : 1/30/87

Approved by Commissioner :
Date :
Agency :

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

ASSUMPTIONS

1. Audit fees currently being paid by school boards, municipalities, independent State authorities, banks or quasi-corporations for mandated financial or compliance audits would not be significantly changed.

2. Due to the overlapping audit coverage, the budgets of the respective executive branch internal audit groups, and personnel monitoring grants and performing program compliance reviews, estimated at $2,200,000 and assumed adequate to meet their respective review mandates, would be transferred to the State Auditor organization.

3. The 1987 Legislative Audit Division budget of approximately $2,400,000 combined with the budgets in item (2) would be adequate to cover the costs of performing financial compliance audits and performance audits of operations in the Legislative, Executive, and Judicial branches of State government, and to fund the administrative and oversight functions of school district and local government audits.

SB

79

POSITION PAPER
CSSB 79 (HESS)

APR 2 1 1987

This bill mandates the efforts of law enforcement agencies in locating runaway minors. The revised subsection (c) now also mandates the detention of the minor if the minor is a runaway in violation of a valid court order under subsection (f) and is posing a clear and present danger to the minor's own welfare.

The revised subsection (c) is a great improvement over previous language requiring a thirty-day detention of a second-time runaway. However, the current bill could result in the detention of first-time runaways because a standard order would be issued pursuant to subsection (f) listing the consequences of violation. Thus, a finding of violation of a court order would be easily made if the minor left the placement. Many, if not most, cases would involve a finding of "clear and present danger" because most children would present a danger to themselves if not living in a safe environment.

If the primary purpose of the bill is to provide for the detention of chronic runaways, then language requiring a finding under subsection (c) that the child had exhibited previous runaway behavior would assure that detention would be used only for repeat runaways.

The Office of Public Advocacy would support CSSB 79 (HESS) if the statute expressly targeted the limited population of chronic runaways.

Brant McGee, Director
Office of Public Advocacy

Date

Commissioner Garrey Peska
Department of Administration

4/17/87
Date

1/2D1/0410-09/1

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: CS SB 79
REQUEST: Publish Date:

Revision Date: Agency Affected: Alaska Court System
Title: An act relating to runaway and missing minors BRU: Trial Courts
Sponsor: Rodey, Faiks, Fischer, ... Components:
Requestor:

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	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
REVENUE	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

FUNDING: (Thousands of Dollars)

General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

Full-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Part-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Temporary	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Karla Forsythe, General Counsel Phone: 264-8228
Division: Alaska Court System Date: 4-9-87

Approved by: Arthur H. Snowden, II, Administrative Director Date: 4-9-87
Agency: Alaska Court System

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

REQUEST:

Bill Version: CS SB No. 79
Publish Date:

Revision Date:
Title: An Act relating to runaway and missing minors.
Sponsor: Rodey, et al.
Requestor:

Agency Affected: Health and Social Services
BRU: Youth Services
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES	-0-	230.6	230.6	230.6	230.6	230.6
TRAVEL		0.5	0.5	0.5	0.6	0.6
CONTRACTUAL		18.0	19.1	20.2	21.4	22.7
SUPPLIES		12.9	13.7	14.5	15.4	16.3
EQUIPMENT		7.8	8.3	8.8	9.3	9.9
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	269.8	272.2	274.6	277.3	280.1
CAPITAL	-0-	760.0	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND		1029.8	272.2	274.6	277.3	280.1
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	1029.8	272.2	274.6	277.3	280.1

POSITIONS:

FULL-TIME	-0-	5.0	5.0	5.0	5.0	5.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: Yvonne M. Chase, Director
Division: Division of Family and Youth Services
Phone: 465-3170
Date: 4/15/87

Approved by Commissioner: Myra M. Munson, Commissioner
Agency: Department of Health and Social Services
Date: 4/15/87

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 79

In an average year, approximately 500 runaways in Anchorage, and an additional 500 runaways statewide are handled by the Division of Family and Youth Services. In addition, statewide averages indicate that approximately 900 runaways are taken into emergency custody annually. Approximately 2/3 of emergency runaways are female and 1/3 are male.

Preliminary analysis also indicates that approximately 180 (or 20%) of the runaway population placed in temporary custody by the Division of Family and Youth Services subsequently run from their temporary placement location. Of this 180, 90 generally occur in Anchorage (60 female, 30 male), and the other 90 occur statewide (again, 60 female and 30 male). Assuming all 180 runaways are eventually taken into emergency custody by police and detained for an average of 10 days, the following scenario can be constructed:

1. McLaughlin Youth Center (MYC) - 600 detention days for girls; 300 detention days for boys.

2. Fairbanks Youth Facility (FYF) - 100 detention days (includes both girls and boys).

3. Juneau Youth Facility - 45 detention days (includes both girls and boys).

ANALYSIS

Given these estimates, additional detention beds would be required as follows:

McLaughlin -

female: 60 x 10 days = 600 person days - 365 = 1.6 average daily population
male: 30 x 10 days = 300 person days - 365 = .82 average daily population

Fairbanks Youth Facility -

11 runaways total x 10 days = 110 person days - 365 = .30 average daily population

Other (Juneau Youth Facility, Nome, Bethel) -

one bed each to accommodate anticipated increase in average daily population.

CAPITAL COSTS - Given the above, a total increase of 7 new detention beds will be required. Average cost of construction per bed is $100,000 in Anchorage, Fairbanks and Juneau, and $130,000 per bed in Nome and Bethel. Total CIP cost - $760,000.

OPERATING COSTS - The Division of Family and Youth Services would realize an increased demand on PFT staff to accommodate the increase in client population. Minimal impact would be an increase in one shift and would translate into four additional Youth Counselor I positions, and one additional Youth Counselor III position. Total position costs is reflected in the personal services line item ($230.6).

Related travel, contractual, and commodities are prorated on a percentage basis of total increase in staff.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version : CSSB 79
Publish Date :

REQUEST:

Revision Date:
Title : "An Act relating to runaway and missing minors."
Sponsor : Sen. Rodey, Faikes et al.
Requestor : H&SS Committee

Agency Affected : Department of Law
BRU : Legal Services
Components : Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

Please see attached analysis.

Prepared by : Thomas A. Judson, Deputy Director
Phone : 465-3672
Division : Administrative Services
Date : April 8, 1987

Approved by Commissioner : Grace Berg Schaible, Atty. Gen. /FOR/
Date : April 8, 1987
Agency : Department of Law

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 79

An attorney will need to consult with, and represent in court, the Department of Health and Social Services in its efforts to obtain detention and civil contempt orders. The bill is also likely to result in the need for additional consultation and representation as the department will be required to assume custody of minors whose parents, based on the statutory right conferred upon them in section 1 of the bill, do not consent to the return of a minor to the home.

It is not possible to predict the level of additional activity that this will generate, but there will be some. The Department of Law is facing severe budget reductions in the coming fiscal year. To the extent that this bill results in a substantial body of new legal work, it will be necessary to seek a supplemental appropriation beginning in FY 88.

3100 Mountain View Drive
Anchorage, Alaska 99501

for Justice

BEGINNING SOLUTION TO JUVENILE CRIME

I know that the laws that we have on the books concerning juveniles were made to hopefully help kids. Years ago I would have supported these same issues. We have tried the understanding, gentle philosophy of helping kids. We have quite enforcing our trauncey laws, we have protected our youth by not allowing fingerprint records to be kept. Due to the child abuse situation we have tried to protect these youth by deinstitutionalization. In escense we have allowed them to make all of their own decisions, protecting them from any consequences. The average age of runaways is 14 1/2. Alaska has the highest number for a state its size.

An example of how these laws are working on the streets. Before Winona murdered my parents, she had talked of murder. Cordell and her both knew kids that had murdered. They also believed from their experiences in McLaughlin that the worst that would happen to them is they would be out at nineteen or twenty-one at the latest.

The messages these kids are getting is murder isn't that bad.

Winona was fourteen, and had been on the run for sometime. Her mother contacted Marge Hall, of Alaska Juvenile Crime Commission, for help to get her off the streets before something serious happened. She had been picked up seven times by McLaughlin, kept over night and returned to the streets.

Our laws protect these children to their own demise and our demise until innocent persons are hit, than we try to do something. Then it is too late!

After our tragedy, the police spent about five days fingerprinting the house. The whole family was fingerprinted. They have the most sophistiscated fingerprinting detection equipment. They then informed us that if the person was under 18 there would be no record of their fingerprints. It cost our insurance company $7,000 to clean up the mess. I later learned from Chief Otte that 80% of the Anchorage burglaries are committed by youth under 18.

Do you realize how much money we would save in the long run once we changed the present message we give to our youth.

They now know that if they run away NO ONE CAN STOP THEM.

If they rob someone there is no serious consequences. So why not have fun at the public's expence. Our laws are literally training our future seasoned criminals.

TIMS
3100 Mountain View Drive
Anchorage, Alaska 99501
for Justice

They all know their juvenile protection rights. Listening to the juvenile trial was a real eye opener. The D.A. askes the question of the juvenile do you know your rights and they answer "yes". The worst thing you can do to help a child is to tell them their rights, which often alienate the family. Some families deserve to be alienated, yet we cannot undermine the core of society.

Their names are not allowed to be published so here again is protection for them.

Many homes have deteriorated, parenting skills are non-existant. Children want someone who cares enough to stop them from their own demise. That is why children have parents. Our society permits violence in movies, videos, and phonography is equally available. A child with out a good secure home, who spends his free time feeding on television which portrays sex, murder, add the videos, and phonography so readily available. Then we top it off with no public safety laws. We try to protect these youth, while they are raping our women and children, murdering, and stealing us blind. What a young uncontrolled mind feeds on will eventually be acted out Our laws are encouraging such behaviour. We are not truely protecting these kids.

"A little leaven leaventh the whole lump." Many of these children have learned there is no consequences therfore they pass the word and some "straight" kids are being sucked in mostly due to drugs. There are many stories of parents whose family has been destroyed once the child learned of his "rights" and discovered how easy it is to run.

If we love our kids and truely want to rehabilitate them start with the early burglars, rapists etc. If we can keep their fingerprints we can trace the repeated offenders. The police say it is the same kids that repeat the same crime over and over because they are almost immediately turned lose upon arrest. These repeated offenders are our criminals of tommorow. If we can teach them respect for the law, early on, many would be stopped early.

My brother started his life of crime when he was about 14. Statistically the average age of runaways is 14 years old. This is when drugs, stealing, prostitution begins. How we handle these kids determines what they will continue to do. My brother would steal, the police showed up gave him a pep talk and off he would go and do it again. This happened and happened. He would appear before a judge and be reprimanded. His comments would always be how stupid the police were. I have seen him come to my house terrified because he had to go to court and he knew he deserved to get in trouble. He would pase the floor and wring his hands. Then he would go to the court room and come back laughing and surprised at the $35.00 fine. When he was young and just starting into

3100 Mountain View Drive
Anchorage, Alaska 99501
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drugs one scare would have deterred him. We have taken all of the deterrants out of crime and wonder why we have the highest statistics for rape, murder, teenage homicides. It is time for us to re-evaluate the constitution and present pholosopy.

Do we really care about our kids? Do we really want to help them? If we do then begin making them responsible for their actions when these actions first begin. Keep their fingerprints on file. If they commit burglaries, etc. let their names be printed. Contain them in a cell for a couple of days. These youths who come from unsupervised homes need a impactive form of punishment to deterr them. They need to know that society demands that they do not hurt other people. We need to call wrong wrong and get that message to the streets. When consequences are enforced we will deterr 50% of what is happening today. Some people can and will never be helped. When they start fitting into the "superfelon" category then contain them. This will protect the whole and also keep others from being influenced by bad choices.

My proposal to stop the runaway problem. As soon as a youth runs if there were a central clearing building where the police can take runaways. Upon receipt of these youth, the parents should be called and have one counselor available on call to immediately go to the family. Then begain the determination of abuse. The chronic runaway needs to be referred to foster or group home where the child will get guidelines and learn some job skill. I know we are trying to do this to some extent. Because our consitution does not allow us to keep a juvenile against their will, we must close our eyes while we condone their activities. Let us stop crime where it begins and see our statistics change.

The statisticians excuse for our high juvenile statistics is due to the native population. Let us start facing the problem and return to a balance of what worked in the past.

If our nation gets back to institutionalizing runaways. It may not be popular, but letting them on the streets is twice as bad for the citizens and for the youth. We are seeing what is happening with this attitude it is time to change. This law is the reason we are seeing a rise in juvenile violence. Let Alaska be one of the first states to change our juvenile statistis. Let us truely protect our kids and start putting a stop to the juvenile drug problem. Do you care. I do enough to give my life and inheritance to change the present attitudes.

Janice Lienhart

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Fall 1985 Number 34

Getting Away With Murder

Why the Juvenile Justice System Needs an Overhaul

Alfred S. Regnery

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GETTING AWAY WITH MURDER

Why the Juvenile Justice System Needs an Overhaul

ALFRED S. REGNERY

Children commit nearly one-third of serious crime in America. Our system of rendering justice for their crimes, however, is antiquated and largely incapable of dealing with the offenses they commit. Disliked by the public, by those who work in it, and even by many offenders, the juvenile justice system, which is supposed to act only in the "best interests of the child," serves neither the child, his victim, nor society. Juvenile crime rates since the 1950s have tripled, yet the theories and policies we use to deal with such crime fail to hold offenders accountable and do not deter crime. At best, they are outdated; at worst, they are a total failure, and may even abet the crimes they are supposed to prevent.

Some people still refuse to accept the fact that juveniles commit crimes. Prevailing social theory during much of the 20th century has been based on the belief that children under 18 do not have the mental capacity to distinguish between right and wrong, and thus should not be held accountable for their behavior, as are adults. Those who administer this social policy even use different language to enunciate the difference between children and adults. In the jargon of the juvenile court, children do not commit crimes, but "acts of delinquency." They are not found guilty by the court, but are "adjudicated delinquent." After adjudication, they are not punished, but are "treated." If secure confinement is necessary, it is not a jail or prison, but in a "detention center" or a "training school." When juveniles get out—usually not when they have completed a sentence, but when a social worker finds them "cured"—their records do not become part of the active police records, but are sealed to all the world.

Despite attempts by some to treat juvenile crimes as trivial indiscretions committed by misguided youth, the statistics suggest something different—a grave problem on a national scale. There are currently about 15 million Americans between 14 and 17, or about seven percent of the entire U.S. population; but about 30 percent of all people arrested for serious crimes are juveniles—a total of some 1.5 million arrests per year. (Police generally estimate that there are at least five offenses for each arrest.) The violence and intensity of these crimes is staggering. Of those arrests, 2,000 were for murder, 4,000 were for rape, and 34,000 were for aggravated assault. Despite the beliefs of certain social theorists, juveniles do commit crimes at a rate significantly higher than the rest of the population. In fact, 16-year-old boys commit crimes at a higher rate then any other single age group. These are criminals who happen to be young, not children who happen to commit crimes.

Institutional Jargon

Traditional juvenile justice policy could be said to have been inspired by Jean-Jacques Rousseau, the French philosopher who argued some 200 years ago that human beings are incapable of evil unless they are corrupted by the institutions of bourgeois society. And if society is the problem, it can also be the solution: Rousseau believed that properly structured government could inculcate goodness and virtue in man. Many juvenile justice professionals take this seriously; they believe that no matter how heinous the crimes committed by young people, no matter what pathological symptoms they demonstrate, they do not pose a threat to society; they should not be locked up but simply "brought into line" with the mainstream of society—in other words, they should be educated in civic virtue.

In a paper issued by the Carter Administration Justice Department in 1979, for example, youth crime was attributed to the effect of "large impersonal institutions—schools, juvenile justice systems, employment channels, public and private human service agencies, and others—on the development of young people, especially low income and minority youth." The paper concluded that all too often the "policies and practices of these institutions tend to inhibit the satisfactory development of young people. Many of the youth then turn to patterns of delinquency and crime."

The main solution advocated was development programs which, in the words of another Carter Administration Justice Department report, would seek the "cultivation of the three human social responses: the sense of

ALFRED S. REGNERY *is administrator of the Office of Juvenile Justice and Delinquency Prevention, the federal agency charged with reducing crime by juveniles.*

confidence, the sense of belongingness, and the sense of usefulness." The report went on to suggest that youth should be offered "mechanisms which offer them the communication, coping, and decision-making skills they need to enter the mainstream of society; value clarification experience; opportunities for artistic self-expression; meaningful work experience; and involvement in community service and community decision making."

The violence and intensity of juvenile crimes is staggering: 2,000 arrests for murder, 4,000 for rape, and 34,000 for aggravated assault.

But these buzzwords (and they are little more than that) hardly come to terms with the reality of juvenile crime. A New York policeman recently profiled for me a typical candidate for juvenile arrest. Fourteen years old, the boy has already been arrested a dozen times. He dropped out of school years ago and cannot read or write; he has no job skills nor any hope of getting them. He is most likely black, possibly Hispanic, born to an unwed teenaged mother on welfare, living in public housing or a tenement, and has more than five siblings. A series of men have lived in his mother's house; the boy has not developed a rapport with any, and has tended to be regarded as a nuisance by the adults. He has been physically abused since early childhood, and he has spent a good deal of time living on the street. His only way of getting anything of value is either by theft or by going on welfare. This boy will survive, for most of his life, at the taxpayer's expense.

The bulk of our crime—probably 75 percent of all serious offenses—is committed by someone like our profiled youngster. Known as chronic offenders, these people comprise fewer than 10 percent of the population; in the case of juveniles, probably closer to seven percent. Yet because of the high rate at which they commit felonies, sometimes as many as 100 or more a year, they are responsible for a great proportion of robberies, burglaries, muggings and aggravated assaults, car thefts, rapes, and even a significant number of murders.

A University of Pennsylvania research project found that seven percent of the juvenile population committed over 70 percent of all the serious juvenile crime. The research also revealed that there was an 80 percent certainty that boys arrested more than five times would continue to be arrested, again and again, well into their adult years.

Profiles in Carnage

Such children present problems to the juvenile justice system which evade all philosophical notions about crime. They present a problem which neither the social theorists, nor the police and prosecutors who would like to lock them up, can hope to alleviate more than temporarily. Chronic offenders pose the greatest threat to society and the greatest challenge to juvenile justice programs across the country.

Consider, for example, two typical juvenile cases, which appeared recently in Miami's juvenile courts. The first involves "Lester," a 15-year-old recently "adjudicated" by the court for burglary. Lester is black and has been arrested 12 times. His mother abandoned him at an early age, and he grew up in the streets of Miami, with occasional stops for a hot meal at a grandmother's house.

His record shows he has been placed in 20 shelter homes, and has run away from each of them. He commonly breaks into homes, steals cars, and hustles, then robs, homosexuals. He has rarely gone to school, is illiterate, and has been in and out of Florida's court system since he was 11. The first criminal charge was brought against him when he was 12. He was arrested for loitering, prowling, and finally burglary, for which he was sentenced to be "rehabilitated" in the state training school for six months. He was declared rehabilitated, but two weeks after returning to Miami, Lester was back in court for grand larceny.

Lester has been counselled, analyzed, rehabilitated, and trained. He has undergone therapy, and been placed in foster homes, state schools, socializing programs, and virtually every other sort of service available. None have made much difference. In 1981, his psychiatrist described Lester as an emotionally disturbed youngster who responded to his deficits by becoming distrustful, by decreasing verbal communication, and by increasing use of fantasy. The therapist concluded that all Lester was seeking was a warm and lasting relationship with an adult.

In 1982, a psychologist found him charming, affable, and fairly bright (he was found to have an IQ of 93) and just trying to survive. In 1983, a teacher at the state training school described him as disruptive and totally lacking in motivation.

The second Miami case involves a Hispanic male, 15 years old, recently convicted of armed robbery. Call him Marco. He has been arrested 12 times, is a member of a housing project gang, and is actively involved in drugs, burglary, and robbery. He has been described by his social workers as easygoing and with considerable potential, but is said to defy all efforts to socialization. He has also been analyzed as envisioning himself as a desperado, modeled after Al Pacino's role in *Scarface*. His father disappeared years ago, but his mother remarried, and his stepfather is presently serving a jail sentence in New Jersey for robbery. His mother is on welfare, and has seven children. Marco, who is slight for his age, cries whenever he is first locked up, but soon starts to thrive within the training school. As soon as he is released, he goes on a drug binge.

Marco has been in at least half a dozen programs, and in each case he promptly rises to a leadership position; as soon as he is released, he is back on drugs, and is shortly rearrested for breaking into a house or stealing a car. His stepfather has consistently helped Marco in his criminal undertakings, but also beats Marco unmercifully when something goes wrong. After the last beating, Marco notified the F.B.I. of his stepfather's whereabouts, resulting in his arrest and conviction.

Sadly, the juvenile justice system has shown little ability either to help such youngsters or to protect society from

their crimes. In most of our major cities (where most serious juvenile crime exists), there is virtually no chance that juveniles who are first or second offenders will be punished. The lesson that the system provides to the offender is that he can continue to commit such acts because there is no penalty. The criminal's punishment is limited to listening to the psychobabble of social workers and therapists.

Folly of Rehabilitation

Rehabilitation has been the premise of the juvenile court system throughout the 20th century, but it has failed miserably. The late Robert Martinson reviewed the results of over 200 separate efforts to measure the effects of programs designed to rehabilitate convicted adult offenders. Martinson concluded, in what has become one of the most quoted phrases in modern criminology, that "with few and isolated exceptions, the rehabilitative efforts that have been reported so far had no appreciable effect on recidivism." Martinson did his review in the late 1960s; since that time, rehabilitation has sunk further in esteem, both in the eyes of the public and the professionals. The criminal justice system has all but given up on the concept. Virtually no successful juvenile programs—those that reduce recidivism to an appreciable degree—rely on rehabilitation.

Knowing what we do about the young people who finally wind up in correctional institutions, it is little wonder that we are unable to turn them back into good little boys (which they probably never were in the first place). As Harvard professor James Q. Wilson has said:

> It requires not merely optimism but heroic assumptions about the nature of man to lead one to suppose that a person finally sentenced after (in most cases) many brushes with the law, and having devoted a good part of his youth and young adulthood to misbehavior of every sort, should, by either the solemnity of prison or the skillfulness of a counselor, come to see the error of his ways and to experience a transformation of his character. We have learned how difficult it is by governmental means to improve the educational attainments of children or to restore stability and affection to the family, and in these cases we are often working with willing subjects in moments of admitted need. Criminal rehabilitation requires producing equivalent changes in unwilling subjects under conditions of duress or indifference.

Some advocates of rehabilitation thought a better idea would be to build a society so devoid of evil that young people would not be inclined to do wrong. If crimes are committed because of societal forces beyond the control of the individual offender, the logic runs, then remove those forces and change society. What better way to do so than to use the power, and the money, of the federal government?

A report issued by the Justice Department in 1976 had several recommendations for such changes. It cited three approaches to understanding and tackling juvenile crime. First, the individual approach, which "focuses on the pathology of the individual . . . including the identification of the emotional, motivational, and attitudinal factors that could explain delinquency." The solutions recommended were "psychotherapy, social casework, individual counselling, or behavior therapy as a means by which clients would be able to resolve their personality conflicts and assume a positive orientation towards society."

Second, the environmental approach "views situational conditions as the dominant factor in stimulating and perpetuating delinquent activity." Solution? "Remodeling and reorganizing the community so that potential offenders can find positive alternatives to delinquent activity. Programs using this approach attempt to deal with significant social institutions like the school or family and illegitimate institutions like gangs, street corner groups, and pool halls."

Described as easygoing by his social workers, "Marco" has been arrested 12 times, is a member of a housing project gang, and is actively involved in drugs, burglary, and robbery.

Finally, there is the theoretical approach, which "considers most delinquency programs harmful as well as ineffective . . . fundamental to this approach is the observation that delinquents are frequently not different from nondelinquents. Virtually all youth in the community have at some time been guilty of delinquent misconduct. Singling out only some of those delinquents may contribute to their behavior, however." Recommendation: "Prevention activities must avoid the effects of labeling and should strive for a universality of application to all children." In other words, everyone is a delinquent.

Notably absent from all of this is the deterrent approach, which views punishing the criminal as the best way to prevent future violations, protect the community, and achieve justice. Such notions are anathema to the social theorists, much of whose work has been a vain search for the institution which excuses aberrant behavior by young people. Thus poverty, racism, sexism, frustration from any number of problems, failure to do well in school, learning disabilities, inability to accept love, child abuse and neglect, adverse peer pressure, and a desire to be different have been identified as causes for children going astray.

Obviously, some of these are contributory factors. But the criminal justice system, adult as well as juvenile, must realize that ultimately crime is a matter of choice. It is not always true that criminals make conscious calculations that the benefits of crime exceed the risks. Yet there is a calculus of risks and rewards in the criminal mind, evidenced by the fact that as society diminished the certainty and duration of punishment for crime in the last few decades, crime rates soared.

Value of Deterrence

What can be done to ameliorate the problem of juvenile crime? First, the deterrent approach should be the main focus of the justice system. This does not mean that we should not continue to look for rehabilitation programs that actually work, even if the record does not give us grounds for optimism. It does mean that rehabilitation should not be a substitute for justice.

For the past 85 years, the courts have been making decisions about juveniles based almost exclusively on "what is in the best interests of the child." Ironically, the remedies proposed have not measurably helped children's interests. Our juvenile courts should continue to act for the benefit of children, but they should also seek justice and consider the rights of the victims of crime.

The juvenile justice system should abandon its practice of sealing the records of young criminals when they become adults. The rationale for this practice was the idea that these youths should have "learned their lesson" by the time they turned 18, and should be permitted to begin their new life as adults without previous errors being held against them. The only problem is that the most fertile age for crime, statistics show, is between 16 and 24. Thus many juvenile criminals are just getting started on a career of crime. To seal their records is to conceal from the police and prosecutor their previous actions, and crime prevention becomes more difficult.

Nor is it obvious that sealing juvenile records helps the juveniles themselves. As Charles Murray points out in *Losing Ground:*

> By promising to make the record secret, or even more dramatically, by actually destroying the physical record, the juvenile justice system led the youth to believe that no matter what he did as a juvenile, or how often, it would be as if it had never happened once he reached his 18th birthday. Tight restrictions on access to the juvenile arrest and court records radically limited liability for exactly that behavior—chronic, violent delinquency—that the population at large was bemoaning.

So not only do police find it tougher to identify crime subjects, but juveniles enter adulthood under the illusion that they can get away with criminal behavior—get away with murder, so to speak. To their shock, many of them discover that this is not the case after age 18.

Another step that juvenile justice professionals should consider is reducing the traditional distinction between juveniles and adults. Criminals should be treated as criminals. It is true that environmental factors may contribute to some juvenile crimes, but this is also true of adult crimes. Society may wish to be lenient with first offenders, particularly for lesser crimes, but there is no reason that society should be more lenient with a 16-year-old first offender than a 30-year-old first offender. Anyone familiar with the nature of juvenile crime will not make the argument that juvenile crimes differ in their magnitude or brutality than adult crimes; in many cases the reverse is true. So the current approach, which makes a radical distinction between criminals under 18 and those over 18, is often counterproductive.

Local Initiatives

Various states are experimenting with innovative approaches to controlling juvenile crime. Many large cities, for example, are beginning to focus their resources on chronic offenders, who commit most violent crime. Techniques include improved record keeping, specialized crime analysis techniques, and "vertical prosecution"—where one prosecutor sticks with a case from arrest through sentencing.

The results are encouraging. In Cook County, Illinois, 400 juveniles with four arrests each for serious crimes were tried according to this approach in a 10 month period; 90 percent were convicted and sentenced. Assuming that the juveniles committed five crimes for each arrest, a conservative estimate, the 360 convicted youths had already committed 7,200 serious crimes. It's about time they were stopped.

Another promising state initiative is restitution, a program in which property offenders are required to reimburse their victims. This has the advantage of giving the community back some of the goods it loses through theft and vandalism, but it also helps teach accountability and responsibility to the offender. Prince Georges County, Maryland, collected over $750,000 for victims of juvenile offenders in the past three years, at a cost to the county of about five cents on the dollar.

The juvenile system also needs to rely more on the private sector, as well as on volunteer citizens to assist young offenders, instead of placing total reliance on government and professionals. A number of privately owned and operated correctional programs now exist, for example, usually at substantially lower costs than public institutions; these programs are often more responsive to the needs of both the offender and society, and are much more innovative than public programs. The private sector is also increasing its role in probation services, either by assisting systems, or by actually running probation on a contract basis. These programs use parents and other volunteers to work with marginally delinquent youth. Yet officials within the system, and public employee unions, often do everything in their power to torpedo such services, usually out of fear that volunteers will displace their salaried positions.

Through the Office of Juvenile Justice and Delinquency Prevention, the federal government has been encouraging these initiatives. The primary responsibility to tackle the problems of juvenile crime rests with state and local governments, though the Justice Department will continue to encourage pilot programs across the country.

But we need the help of juvenile justice professionals, state legislatures, and the public to place justice, reason, and common sense above social experimentation. If we do, the victim, society, and even the offenders themselves will benefit. If we don't, there will be more of the same.

A READER'S DIGEST REPRINT

Crime is still outrageously high, but now we have the means to reduce it

THE PROVEN KEY TO CRIME CONTROL

By Eugene H. Methvin

Hi Janice,
Thought you might find this of interest
Terry

New York City Deputy Police Inspector John J. Hill was fuming as he studied the map of his new command, a two-square-mile, 130,000-population precinct in Brooklyn. He saw hundreds of red pins, each one denoting a robbery.

In October 1981, Hill ordered 90th Precinct officers to collect photographs and records of everyone arrested in the previous two years for robbery, or any other serious felony, who was now back "on the street." To focus more effectively on these criminals, the officers divided their rogues' gallery into seven neighborhood albums and added indexes of physical characteristics, aliases and residences.

Analyzing these data, officers realized they were arresting the same offenders repeatedly, usually in the same neighborhoods. Soon robbery victims, instead of waiting days to view thousands of photos at the central police headquarters, were whisked to the 90th Precinct to study a few dozen pictures. Almost overnight, the precinct's officers were making arrests in an astounding *half* of all reported robberies, 2½ times the New York Police Department's average.

Within six months, the 90th Precinct's robberies dropped over 40 percent. The plunge has now continued for four straight years, from 2223 in 1981 to 1187 in 1985. Bur-

glaries and rapes have also declined sharply.

NATIONWIDE, America experienced an 11.5-percent drop in serious crime reported in the three years 1982–84—believed to be the largest decrease since FBI uniform crime reporting began more than 50 years ago. Several factors are involved in this decline. One is the Neighborhood Watch program in which citizens throughout the country are helping police fight crime. Another is that the crime-prone population of 15- to 19-year-olds has declined in the last decade. Most important, however, is our increasing attention to career criminals—identifying them as early as possible and locking them up. We have almost doubled our prison population in the last ten years.

But crime is still outrageously high. The rate per 100,000 people is nearly 50-percent greater than it was 20 years ago. Why? Because our legislators and law-enforcement officials have been slow to respond to new and proven methods of crime control. The nation has learned a number of strategic lessons about coping with lawlessness, and evidence suggests that we can achieve even greater reductions if we act vigorously.

Nasty, Brutal. Ten years ago, little was known about the rates at which individual criminals commit crimes. Since then, research has revealed that far more crime is committed by a smaller fraction of offenders than anyone had suspected. This knowledge has helped police, prosecutors and judges sharpen methods for nailing these violent predators.

In 1978, University of Pennsylvania criminologist Marvin Wolfgang completed a first-of-a-kind study of virtually the entire population of 9945 males born in 1945 and raised in Philadelphia. Wolfgang's findings electrified the law-enforcement world: 627 of these young men, just under seven percent of the group, had collected at least five arrests before age 18, and they accounted for nearly two-thirds of all the violent crimes committed by the "Class of '45." Worse, these hard-core criminals admitted that, for each arrest, they got away with from 8 to 11 other serious crimes. Incredibly, even the 14 murderers among them averaged only four years behind bars.

When Wolfgang repeated the study on the 13,160 Philadelphia males born in 1958, the proportion of chronic offenders was virtually the same: 982 young men, 7.5 percent, collected five or more arrests before age 18. But there was a difference. The "Class of '58" was far more violent. Compared with the Class of '45, these youths had almost double the offense rate for rape and aggravated assault, triple for murder and a whopping five-fold for robbery. They are, says Wolfgang, "a very violent criminal population of a small number of nasty, brutal offenders. They begin

early in life and should be controlled equally early."

Superfelons. It would seem simple to say, "Lock 'em up," but the fact is the nation cannot afford to put them *all* away. If the Philadelphia ratios hold for the entire nation, we would have to keep 1.23 million young men in prison—more than double the present crowded population.

But research by the Rand Corporation indicates a way out of this dilemma, by providing a further breakdown of the crime-prone minority. Of 2190 prisoners questioned by Rand researchers, nearly all admitted to many more crimes than those for which they were convicted. But a tiny fraction of these career criminals proved to be *extraordinarily* high-rate offenders—superfelons. Half the burglars averaged fewer than six burglaries a year, while ten percent committed more than 230. Half the robbers committed five robberies a year, but ten percent averaged 87. Drug dealing was the most radically skewed: half the offenders averaged 100 deals a year; the upper tenth averaged 3251.

Thus, even chronic criminals are not a homogeneous lot; locking up one high-rate burglar for a year will prevent as many crimes as locking up 40 of the intermittent burglars.

Can we tell them apart? Experts say yes. The age at which offenders enter a life of crime and their use of drugs are two keys to identifying superfelons.

Males under age 18 commit perhaps as much as half of all serious crime in the United States. Arrest-record analyses and prisoner surveys demonstrate that high-rate predators begin by age 13 and hit their peak rates as robbers and burglars around 16. To Wolfgang, the factor that jumps out is the age at which these high-rate offenders commit their second serious offense. If they do it before 15, the probability is high they will commit dozens of offenses by age 30. He concludes: "After the third conviction, serious juvenile offenders should be considered adult criminals and treated accordingly."

Add Jan and Marcia Chaiken, who researched criminal behavior for Rand, "Offenders who support $50-a-day heroin addictions or who use both alcohol and barbiturates heavily are especially likely to be persistent, serious, high-rate criminals."

Criminologists from Temple and Maryland universities agree. They found that 243 Baltimore addicts committed about half a million crimes over 11 years, averaging 2058 apiece, 187 a year.

Using the inmate responses from the Rand survey, criminologist Peter W. Greenwood has refined the superfelon profile. He believes that a convicted robber or burglar should draw long-term imprisonment if he matches any four of these seven variables: 1. Convicted prior to age 16. 2. Committed to a juvenile facility. 3. Used heroin or barbiturates

Page 5

within two years before the current arrest. 4. Used heroin or barbiturates as a juvenile. 5. Held a job less than one of the two years before his current arrest. 6. Had a prior robbery or burglary conviction. 7. Spent more than half the preceding two years in jail.

Greenwood tested the validity of his seven-point profile against the sentences judges had given the 78x convicted robbers and burglars among Rand interviewees in California. His scale miscast as high-rate offenders only four percent of the intermittent offenders (who averaged five robberies a year) and mislabeled as low-rate offenders only three percent of the superfelons (who averaged 87 robberies a year).

The judges, however, gave many more low-rate offenders long terms and superfelons short terms. Greenwood argues that his strategy of "selective incapacitation" would have allowed California in 1981 to keep 700 fewer convicted robbers behind bars, while reducing street crime by 27,150 robberies and saving $10 million.

Encouraging Results. Impressed by the Rand and Wolfgang studies, many police departments and prosecutors are intensifying their efforts to arrest and convict young "heavies" who fit the violent-predator profile. Though some are resisting the idea, legislators in 20 states and the District of Columbia have made it easier to try young criminals as adults, subjecting them to tougher prosecution and longer incarceration. The new emphasis is paying off. Consider these successes:

Washington State legislators, infuriated by cases such as the Seattle youngster released by juvenile judges 35 times after felony arrests, enacted a strict code in 1978. They ordered youngsters fingerprinted and photographed at each felony arrest, opened juvenile-arrest records to adult-court prosecutors and judges, and imposed stern sentences for repeaters. Before the 1978 reform, juveniles ran up an average of 7.5 felony arrests before incarceration. Now they go to prison after 3.5 arrests, and the number behind bars has doubled.

In 1983 the Justice Department's Office of Juvenile Justice and Delinquency Prevention (OJJDP) enlisted five police departments and 13 prosecutors in a campaign to identify and incarcerate high-rate juvenile offenders. Police interview school authorities and social workers, then consolidate police, court and probation records, and identify teen-agers who have multiple arrests but so far have managed to slip through the revolving-door juvenile-court and family-services systems. The preliminary results are encouraging.

The five police departments—ranging from Oxnard, Calif., (pop. 121,000) to Jacksonville, Fla., (pop. 578,000)—find they are repeatedly arresting a tiny minority of very active young criminals: only about 30 per 100,000 population. These individuals average just under 16

years old, generally have their first police contact at age 9, and rarely go three months without some collision with police. More than half commit violent crimes. A majority come from "crime families," in which parents and siblings have criminal records, and a large proportion are on drugs.

In Oxnard, for example, crime-analyst Lynne Thayer traced robberies, burglaries and assaults for three months on a map of a 35-block high-crime neighborhood, using orange dots to represent residences of five identified high-rate juvenile offenders. Toward the end of the period, four of the five repeaters were jailed; the fifth went to jail two months later. In the second three months, the neighborhood's robberies, burglaries and assaults plummeted from 69 to 27.

Prison Works. City College of New York sociologist Robert Martinson tracked 400,000 criminals who went through special rehabilitation programs over a 25-year period. His stunning finding: seven out of ten who are convicted and then imprisoned or put on probation will never be arrested again; but none of the rehabilitation programs themselves curbed recidivism.

A century ago, Americans sent virtually every felon to prison. Today, even with our increasing use of imprisonment, only nine out of a hundred who are caught and convicted land behind bars. Declared Martinson: "That's where we went wrong...We abandoned a largely successful system of certain punishment in favor of all kinds of happy experiments where we told ourselves we did not have to be so nasty as to punish anybody."

More and more, studies like Martinson's are showing that while prisons may not rehabilitate, they do work as a deterrent. They also reduce crime by keeping the worst criminals away from society.

Concludes Alfred Regnery, administrator of the OJJDP: "The criminologists have given us important knowledge about who commits crime. If police, prosecutors and judges put it to work, we can vastly improve the fairness and effectiveness of our criminal-justice system, ease prison crowding and enjoy safer streets and homes."

The Anchora

73rd year/44 pages MONDAY EVENING, MARCH 9, 198

Study details violent crimes

5 out of 6 12-year-olds to be victims

WASHINGTON (AP) — Although the chances of being raped, robbed or assaulted diminish with age, five out of six of today's 12-year-olds still will be the victims of violent crimes during their lifetimes at present crime rates, the Justice Department says.

The study, based on figures compiled by the government's National Crime Survey from 1975 through 1984, said at age 12, 83 percent of all Americans are likely to be hit by violent crime or an attempt at violent crime in their lifetimes.

Half of them will be victimized more than once, the report, released Sunday, said.

But with age, "the likelihood of becoming the victim of a violent crime in the remainder of one's lifetime declines," the report said.

The report said a victim's sex and race appear to have a greater effect on the likelihood of being robbed than on other crimes.

Nearly one out of 12 females will be the victim of an attempted or completed rape, the report said. For black females, the odds are 1 out of 9, according to the department's Bureau of Justice Statistics.

An estimated three in 10 people will be victims of a completed or attempted robbery during their lifetimes, with blacks almost twice as likely to be robbed as whites and males about 70 percent more likely to be robbed than females.

The report said 45 percent of black males will become victims of violent crime three or more times — almost double the possibility for black females (24 percent) and triple the likelihood for white females (13 percent). Thirty-seven percent of white males are likely to be victimized three or more time.

The report said:

- 72 percent of the nation's 20-year-olds will be victimized by violent crimes or attempted crimes;
- 53 percent of the country's 30-year-olds;
- 36 percent of 40-year-olds;
- 22 percent of 50-year-olds;
- 14 percent of 60-year-olds;
- 8 percent of 70-year-olds.

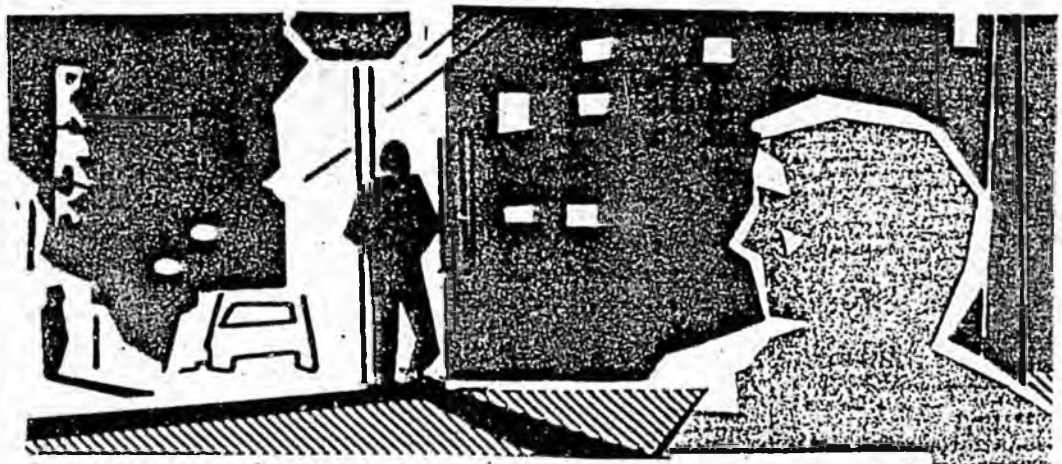
It said 89 percent of 1 old boys will face one o violent crimes or att crimes, and 73 percent girls. There were no available for children age 12.

The bureau publishes victimization rates ba twice-a-year interview 101,000 people in 49,000 holds.

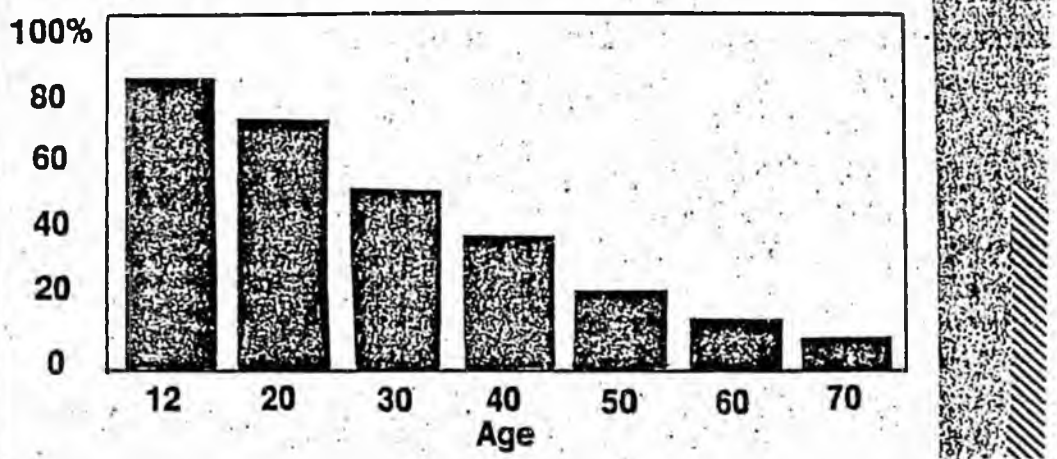
This report was draw the approximately 2 mil terviews conducted dur 10 years ending in 19

Victims of Violent Crimes

Lifetime odds fall rapidly with age.



Chance of being a victim of at least one violent crime.



Source: Bureau of Justice Statistics, Dept. of Justice AP/Nancy Carp

Alaska leads nation in homicides by teens

By Wendy Mitman
Associated Press

CONCORD, N.H. — Alaska had the highest annual rate of homicides committed by teenagers, according to a study by a University of New Hampshire researcher.

Alaska's rate was 13.2 per 100,000 residents, almost three points higher than Washington, D.C. Lowest was Minnesota with 0.86 teen murders per 100,000. New Hampshire was ranked 49th with 1.7. The study covered the years 1980 through 1984.

Researcher Murray Straus said Thursday societies that condone violence foster violence in their teen-agers.

Straus chose 12 indicators to determine which states legitimize violence. They included determining the audience for violent prime-time television shows; the readership of violent magazines; National Guard enrollment; and hunting licenses. Other factors included whether states allowed corporal and capital punishment.

States with the highest teen homicide rates were at the top end of the list of those that condoned violence, he said.

"Essentially we found that the more legitimate violence, the more criminal violence, including rape and murder," said Straus, director of the university's Family Research Laboratory.

Straus said National Guard enrollment is a valid factor because "some states put more money into it than others and it can't be because the Russians are invading Tennessee."

Straus presented his findings this week at a conference in New York.

The study revealed that teen homicide rates have declined significantly among blacks, less so among whites, Straus said. Using the federal Uniform Crime Reporting Office's Supplementary Homicide Report, Straus determined that state homicide rates among 15- to 19-years-olds parallel adult homicide rates nearly perfectly.

In an effort to determine how society has been influenced historically by violence, Straus also determined the number of lynchings per 1 million population be-

related. The more assaults, the more homicides.

"Instead of just punching someone, someone gets killed."

A major part of the problem, Straus said, is that many children learn in their homes that violence solves problems.

"Practically every [illegible] in the United States has heard the, 'Johnny, I've told you 10 times,' routine. That model says that when nothing else works, it's morally right to be violent," Straus said. Another example, he said, is the husband who beats up the man in the bar who insults his wife.

"The way to deal with this is that in every sphere of life we have to make a commitment to not use physical force to resolve differences and conflicts."

Study predicts rise in youth violence in 1990s

BY MALCOLM RITTER
The Associated Press

NEW YORK — Suicide and homicide rates among young people should remain stable into the mid-1990s, when they will start rising again, says a new study that ties such violence to pressures from growth in youth population.

Preventive steps may help head off the predicted increase in violence among people aged 15 to 24, as that population swells from the kids of Baby Boomers," said study co-author Dr. Paul Holinger said last week.

The study found historical evidence that larger the group is in terms of percentage of total population, the higher its

Year-by-year data from 1933 to 1982 were analyzed by Holinger, associate psychiatry professor at Rush-Presbyterian-St. Luke's Medical Center in Chicago, and Dr. Daniel Offer and Eric Ostrov of the Michael Reese Hospital and Medical Center in Chicago.

The population of 15- to 24-year-olds doubled between 1955 and 1980, when it reached about 42 million, Holinger said. Estimates show the population then declining to about 40 million in 1984, he said Tuesday.

The homicide rate in that group peaked in 1980, when it reached

See Back Page, YOUNG

A burgeoning popula-
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Juvenile criminals turn more violent

By MICHAEL SNIFFEN
The Associated Press

WASHINGTON — Since World War II, the small fraction of juveniles who commit more than half of juvenile crime has become much more violent, and has turned to crime at an earlier age and stayed with it longer, according to a study released by the Justice Department Wednesday.

A second major study released at a news conference by Alfred Regnery, the department's juvenile justice administrator, showed that these chronic juvenile offenders are more likely than not to become adult criminals.

Both studies, which were funded by federal grants, confirmed work done a decade ago which showed that fewer than eight percent of juveniles commit more than half of juvenile crime and 90 percent of serious juvenile crime.

Regnery said the work shows that "by concentrating our resources on identifying, prosecuting and sanctioning these serious, chronic offenders, we may have some impact on the amount of juvenile crime in the nation." Regnery's office has established pilot programs for this purpose in five police departments and 13 prosecutors offices around the country.

One study was conducted by the Center for Studies in Criminology and Law at the University of Pennsylvania under the direction of Marvin Wolfgang, one of the nation's foremost criminologists. It compared the criminal activities of 13,000 boys born in Philadelphia in 1958 to its earlier findings about the activites of 10,000 boys born there in 1945.

The other study was conducted by the Federation for Community Planning of Cleveland under the direction of Donna Hamparian. That study expanded the federation's earlier research on violent juvenile offenders born in Columbus, Ohio, between 1956 and 1960 into their mid-20's.

Wolfgang said the juveniles in both groups had about the same prevalence of crime; 35 percent of those born in 1945 had at least one contact with the police as juveniles, compared to 33 percent of the group born in 1958.

But he said the total rate of criminal activity had risen dramatically. The 1945 group had 1,027 crimes per 1,000 boys while the 1958 group had 1,159 per 1,000.

And the rate of violent crime soared among the second group. Wolfgang said the 1958 group was three times more likely to commit a homicide than the 1945 group; twice as likely to commit an aggravated assault; and nearly twice as likely to commit a rape.

In the more recent g... the age of first arrest drop... to 14 from 15 in the earl... group. And among the violen... juveniles in the later group... the age of first arrest was 13.

The earlier group reached its peak delinquency at age 16, but the more recent juvenile offenders were still active into their late teens.

"The majority of violent juvenile offenders become adult offenders," said Hamparian, who focused on 1,222 juveniles arrested at least once for a violent crime in Columbus. She said 59 percent of those she studied were arrested at least once for an adult offense after age 18.

Wolfgang offered the exodus of middle-class people out of the city in the 1960s and 1970s as one explanation why chronic juvenile offenders were becoming more violent and serious crimin...

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ck Page, CRIMINALS

Sunny today; high 42; wind becoming southeast 15 mph by evening. Increasing clouds tonight; low near 30. Chance of rain Tuesday; high 41.

High Sunday	46
Low Sunday morning	30
Barometer	29.82
Humidity	76%
Normal high Oct. 13	42
Normal low Oct. 13	30
Record high Oct. 13 (1969)	61
Record low Oct. 13 (1924)	7

STATE/NATIONAL FORECASTS, PAGE A-2

FOR HOME DELIVERY
CALL 563-6666
6 a.m. to 5 p.m.

Alaska farmers, too

By CHRIS GEIGER
Daily News reporter

Despite their subarctic isolation, some Alaska farmers seem to be cultivating the same crop of debts as their counterparts thousands of miles to the south.

Some of the local problems stem from the same economic pressures faced by farmers nationwide, Alaska farmers say. Some result from inexperience and overborrowing in the state's fledgling industry. And some of this year's bumper crop of farm foreclosures are really just foreclosures on land speculators, according to state agricultural officials.

The state has foreclosed on significantly more farm loans from the Agriculture Revolving Loan Fund this year, according to Dean Brown, deputy director of the state Division of Agriculture. The increase represents a "major effort to clean up the loan

See Back Page, FARMERS

Burglary up 10%

Anchorage crime rate rises by 6.5%

Jumps in arson, robberies, burglaries paved way to higher numbers

By LARRY CAMPBELL
Daily News reporter

Crime in Anchorage increased by 6.5 percent during the first six months of this year — more than twice the national average — with arsonists and thieves leading the criminal onslaught, according to figures released by the FBI.

The number of crimes of all types reported to Anchorage law enforcement agencies totaled 7,267 from January to June, compared with 6,822 for the same period last year, according to the statistics released by the federal agency last week. The FBI said that crimes reported nationwide rose by 3 percent for the same period.

At the head of the list locally, was arson, with a 23-percent increase this year over last. Robberies and burglaries both increased by 10 percent, while lesser thefts rose by 9 percent.

The only property-type crime to slacken was auto theft, which declined by nearly 7 percent.

While more property was being stolen or destroyed, violent crimes against individuals decreased, with the exception of robberies, according to the figures. There were 13 percent fewer rapes reported this year than last, and 12.8 percent fewer aggravated assaults. The decrease is a significant variance from national figures, which show all violent crimes had increased by about 4 percent.

The FBI compiles annual and semi-annual figures from statistics gathered from local law enforcement agencies, such as the Anchorage Police Department and the Alaska State Troopers.

Monday October 14, 1985

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Penn study says system is lenient with chronic juvenile delinquents

STUDY, from 1-A

leasing them repeatedly.

Among the findings:

• While only 7 percent of those followed were chronically delinquent, that minority committed 75 percent of all serious crimes committed by Philadelphia juveniles in their age group.

• In half of the cases of the chronic offenders, the criminal justice failed to provide any incarceration, counseling, probation or imposition of community service.

• It is not uncommon for a youngster to have a serious run-in with the police — about one out of three children who grew up in the late 1960s and mid-1970s were arrested or had a "major encounter" with police by the age of 18. But that rate showed no increase from the pattern found in an earlier study that tracked a smaller sample of children who came of age in the late 1950s and early 1960s.

• Males were more than 2½ times more likely than females to become delinquents, the study found. Among chronic offenders with five or more arrests, there was no difference between white and black teenagers in the percentage of those who become such offenders, Tracy said, "although a higher percentage of nonwhites are arrested for crimes."

• If a youth has three offenses by age 14, there is about a 90 percent chance that he or she will become an adult criminal.

"We know who he is by the time he is 13 or 14. And we aren't doing this kid any favor by letting him accumulate all this crime and by being lenient on him in juvenile courts — Family Court in the case of Philadelphia," said Tracy. "My idea is, let's do something about him early and not wait until he's an adult, or he's going to spend a lot of years in prison."

In following the 27,160 children, the researchers reviewed each youth's court, school, police and social-agency records for each year from age 10 to 17 for each youngster. The work was supported by a $1.5 million grant from the National Institute for Juvenile Justice and Delinquency Prevention. The third researcher was Penn criminologist Robert M. Figlio.

Philadelphia was chosen for the study because of the similar but smaller study conducted here earlier, also directed by Wolfgang, that traced the criminal history of about 10,000 males born in 1945. The recent study included both males and females.

Tracy, a former Penn criminology professor who recently moved to Northeastern University in Boston, said a key advance made in the new study was the identification of a core group of troublesome youngsters.

"Although it had long been suspected that a small group of habitual, serious offenders had skewed rates of offending, it was not known exactly how small this group actually was or how great a share of offending could be attributed to it," he said.

Robbery, aggravated assault and rape cropped up much more often in statistics for those born in 1958 than they did in the earlier group, he said.

"We think that the group who grew up in the late '60s and '70s had so much more violence at least partly because of their involvement with drugs," Wolfgang said.

"In the first study, the drug culture had not yet come to Philadelphia in the juvenile population. In the first study, out of 10,000 offenses committed, there was just a single drug arrest. In the second study, there were about 1,000 drug offenses out of about 13,000 offenses, and we have not yet examined the data for drug-related crime, such as robbery to maintain a drug habit."

Wolfgang said that about about 35 percent of 10,000 boys born in 1945 had at least one arrest or major encounter with police by the age of 18, and that the number was 34 percent in the second study.

"And the percentage of those with five or more arrests by the age of 18 were also similar — six percent in the first group, seven percent in the second," Wolfgang said.

"But the major finding was that those few, that small percentage, are committing the vast number of serious and violent offenses, including homicide, rape, robbery. In the first group, that small percentage was committing about two-thirds of the serious offenses, and that percentage went up to nearly 75 percent in the second group."

The youngsters who grew up during the first study period did so during "a very pleasant time," Tracy said. The more recent group, he said, came of age in "a society with more influences. The Vietnam War was escalating, Kent State was about to happen, drugs had become routine in American culture."

Both Wolfgang and Tracy praised District Attorney Edward G. Rendell's work in attempting to prosecute chronic juvenile offenders before they commit dozens of crimes.

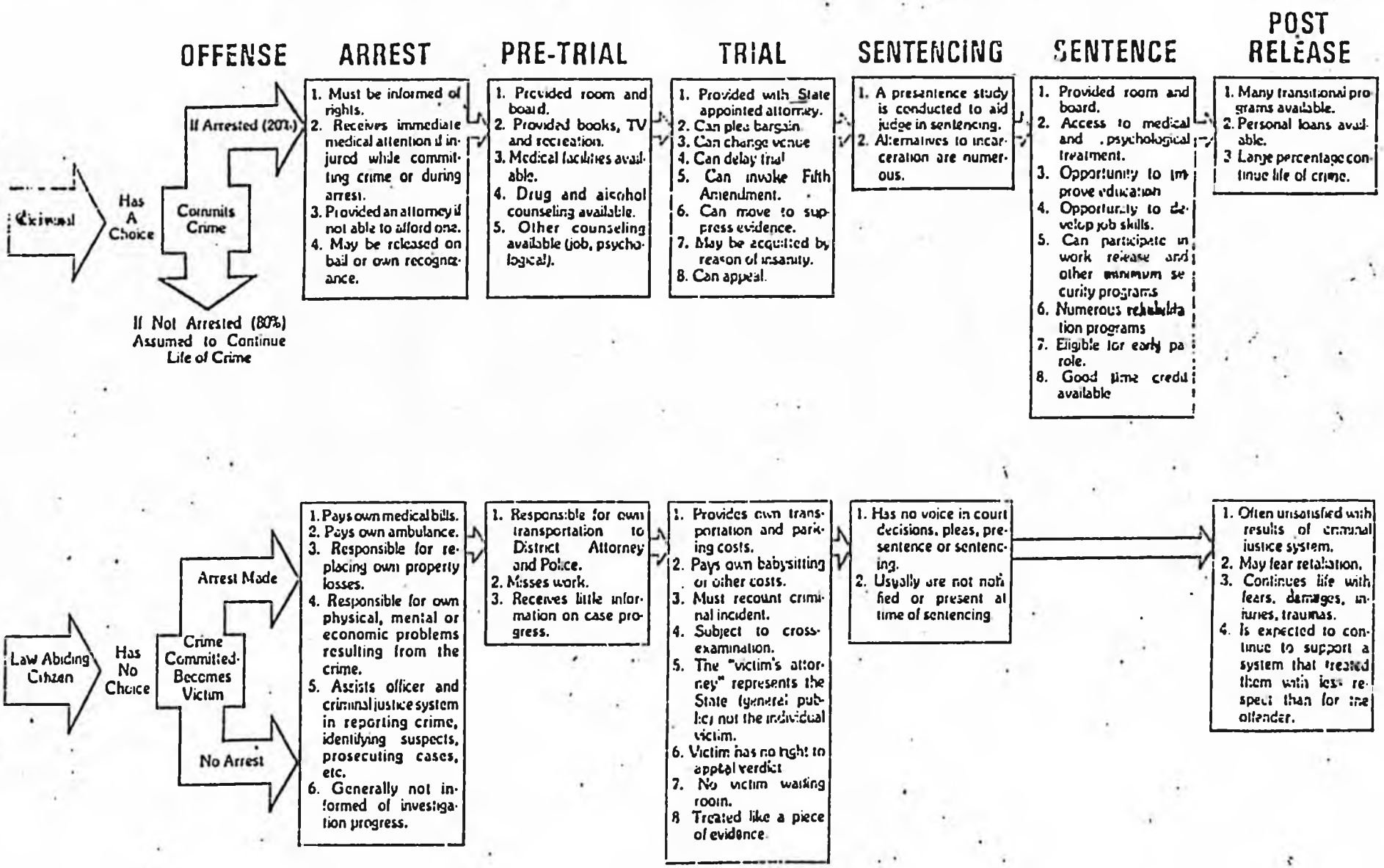
"The point is, if you let a kid do what he does with impunity, then he's going to continue to do it," said Tracy. "So my argument is that we ought to start getting tough with delinquents early."

Tracy said the researchers planned to track the same group of people into their adulthood by interviewing 2,000 of the youths in the study.

"We also want to help the justice system," Tracy said. "That kind of offender I cited, for example, when he finally gets into adult court, the court thinks he's a one-time offender, and we know he's probably committed no less than 54 crimes.

"A court, if it has the juvenile-offender records in serious cases, should treat a 54-crime offender very differently than it treats a one-time offender."

THE CRIMINAL INJUSTICE SYSTEM



"When you are dealing with children you just can't let them do whatever they want to do if that is ultimately going to hurt [them]. If [a] kid is going to run away again and again and get into a . . . mess in the Times Square area, or some other area where he

New York City

Jenny sat in the squad room of the New York Police Department (NYPD) one evening. Earlier in the day she had been arrested for "loitering for the purpose of prostitution." Although the arresting officer thought she was an adult, Jenny was 14.

Jenny ran away from her home near Minneapolis and had been on and off the street for 2 years prior to her arrest. Whenever she decided to return home, she lived with her mother. Whenever she decided to go back to the street, she lived with her pimp.

Jenny's pimp provided her with the bare necessities to keep her alive and working—food, shelter, clothing and a false identity. In return, Jenny thought of the pimp as her boyfriend. To please him, Jenny relinquished all control over her life and became a prostitute.

When arrested, Jenny did not use her false identification. For some unknown and fortunate reason, she told the arresting officer her real name, age and address. This information placed her in the NYPD Runaway Unit, but it did not necessarily ensure her safety.

In compliance with the Federal deinstitutionalization mandate, New York State law forbids authorities from holding runaways in secure facilities for more than a few hours. If attempts to reunite a runaway with his parents or guardian fail, the police have only one option: the child must be placed in a voluntary shelter.

When Jenny was sent to the Runaway Unit, Detective Warren McGinniss was assigned to her case. From his experience with runaways, McGinniss knew that it was risky to assume Jenny would voluntarily remain in a nonsecure facility overnight. He called her mother and a social service office in her hometown. Jenny was subsequently booked on a flight home that evening, courtesy of a ticket prepaid by a Minneapolis child welfare agency.

will be exploited and hurt and maybe killed, I think society has a responsibility to restrain that child even if he hasn't committed a crime."

Irving Cohen, Department of Juvenile Probation

An hour before Jenny's flight was scheduled to leave, McGinniss discovered that her ticket had not been paid. He tried to reach the welfare agency, but it had closed for the day. He called Jenny's mother, but she lacked the funds to pay for the flight. It was beginning to look as if McGinniss would have to take Jenny to a nonsecure facility and hope for the best. Jenny might have decided to stay in a voluntary shelter. Her pimp might have been willing to forget her and the $400 she earned for him every night. The pimp might not have tracked her to the shelter, though once he had followed her all the way to Minneapolis to get her back. Perhaps this time he would leave her alone.

Jenny's case was a relatively easy one for McGinniss, at least from a short-term perspective. She could have withheld her identity. She could have waited until she was dropped off at a shelter and then returned to the street. But because Jenny wanted to go home, she made things "easy" for McGinniss. Thus, after the problem with her ticket had been resolved, Jenny was returned to Minneapolis that night.

In the long term, however, Jenny could not be considered an easy case. She was a chronic runner. Her wish to return home did not mean she would want to stay once she got there. She knew she was free to do as she chose. Of particular concern to McGinniss was something Jenny said before she left New York. Even though she was anxious to get home, she refused to give up the "relationship" she had with her pimp—a man who had brutally beaten her only a few hours before.

According to McGinniss, the job of getting runaways off the street has been made "almost impossible" by current law. Some of the runaways with whom he maintained regular contact have been at large for several years. Even though he may know where they are and the dangers they face, he is virtually powerless. He may be able to take them off the street for a few hours, but he is unable to stop them when they decide to return.

McGinniss has known Linda since she first ran away from her home in Massachusetts at the age of 13. At 17, she was a seasoned prostitute. During her 4 years on the street, she was picked up several times and either sent home or placed in a variety of nonsecure facilities. She ran away each time. McGinniss described Linda as a child "as beautiful as a movie star" with "the mind and maturity of a 5-year-old." The system "had nothing to offer" Linda. "She could make as much on the street in one night as she could in a week in any normal job she was qualified for," McGinniss said. Even though her pimp only gave her subsistence money, her fantasy of great wealth was more alluring to her than the prospect of a stable home. Since the choice was Linda's, she is still on the street. Soon she will graduate to the jurisdiction of the adult criminal justice system.

Joanne's story illustrates what happens all too often to veterans of the street like Linda. The Runaway Unit first came in contact with Joanne when she was 11 years old. Her family lived in New York, but only permitted the child to come home for visits. During the next 7 years of her life, Joanne ran away from a variety of court-ordered, though voluntary, placements. Today Joanne is a legal adult, a heroin addict with a felony conviction, and a fugitive from the law.

Conclusion

An overwhelming majority of the authoritics interviewed agree that deinstitutionalization has had an adverse effect on the runaway problem.

- Sergeant Richard Ruffino, who operates a nationally recognized missing persons bureau in Bergen County, New Jersey, agrees that many runaways, even "easy" cases, are being lost due to deinstitutionalization.
- Irving Cohen, a senior official in the New York City Department of Juvenile Probation, indicates that there is general frustration over deinstitutionalization's revolving door, which encourages authorities to ignore any responsibility towards runaways.
- Father Bruce Ritter, the founder of Covenant House in New York, believes that deinstitutionalization is a "great concept *if* it is a complete concept. . . . Sometimes kids are so out of control and incapable of making an informed, mature decision in their best interest that adults have to make that decision for them. It is criminal not to."

Deinstitutionalization has emancipated children, essentially allowing them to live wherever and however they choose. It has prevented authorities from effectively controlling and protecting runaways. Deinstitutionalization has too often meant, not transferring youth from reform schools to caring environments, but releasing them to the exploitation of the streets.

Moreover, youth may be spared a criminal record for the act of running away, but life on the street often leads to the same end. Many runaways are arrested and ultimately enter the judicial system, no longer as status offenders, but as criminal offenders—facing charges for crimes committed in order to survive. In other words, deinstitutionalization may only be postponing the inevitable for many of these youth. By intervening at an earlier point, the law enforcement system could help prevent these children from subsequent criminality.

According to many of the authorities interviewed, a runaway is occasionally charged with a more serious offense in order to do the child the favor of taking him off the street. The use of such discretion by law enforcement personnel may be well-motivated, yet it fosters the very situation the Juvenile Justice and Delinquency Prevention Act was designed to correct.

By no means do all runaway and homeless children need to be confined. But some do, if only for their own protection. Unfortunately, the Federal deinstitutionalization mandate prevents the juvenile justice system from providing that which many runaways need most.

The funds OJJDP provides to States are insufficient to cover the full cost of deinstitutionalization. Thus, States are not carrying out this mandate because of Federal money, but because it is believed to be the right thing to do. Those States which have adopted the philosophy of the Act will continue to deinstitutionalize with or without Federal funding. There is no reason to assume that the States will retreat from this commitment in the absence of Federal inducement or regulation. Rather, the removal of blanket deinstitutionalization requirements will allow States the latitude to more effectively protect local runaways.

Footnotes

1. Based on estimates made by the U.S. Department of Health and Human Services, as quoted in "Runaways: The Average Age is 15 and Most Depend on Prostitution or Theft to Survive," Dotson Rader, *Parade*, February 1, 1982 (reprinted in hearing record, Senate Judiciary Committee, Subcommittee on Juvenile Justice, July 22, 1982, p. 71).

2. Hearing record cited above, p. 71.

3. Department of Health and Human Services, Office of Inspector General (HHS-OIG), "Runaway and Homeless Youth: National Program Inspection," October 1983, p. 5.

4. Dorothy Miller et al., *Runaways—Illegal Aliens in Their Own Land*. J. F. Bergin Publishers, Inc., New York, 1980.

5. HHS-OIG, p. 5.

6. Peter A. Redpath, "Help Me! My Child is Missing! A Missing Child Handbook and Child-Saver Guide for Parents and Children." Child-Savers, New York, 1984.

7. P.L. 93-415 as amended by P.L. 94-273, P.L. 94-503, P.L. 95-115, and P.L. 96-509.

8. HHS-OIG, p. 2.

9. Sheila Rule, "Many Runaways Found to Have Tried Suicide," New York *Times*, January 22, 1984.

10. Richard J. Phelps et al., "Wisconsin Juvenile Female Offender Study Project," Youth Policy and Law Center, Inc., Madison, Wis., 1982, p. 2.

11. Normal Elliot Kent, "No Place to Turn: A Study of Runaways in America," June 1, 1984, p. 6.

12. U.S. General Accounting Office, "Sexual Exploitation of Children: A Problem of Unknown Magnitude," April 20, 1982, p. 4.

13. "Helping Runaways Find a New Life," Reno *Gazette Journal*, Saturday, Febraury 11, 1984, p. 2D.

PROPOSED SENATE JUDICIARY COMMITTEE SUBSTITUTE

FOR

CS FOR SENATE BILL NO. 79 (HESS)

* Section 1. AS 47.10.141 is amended to read:

Sec. 47.10.141. RUNAWAY AND MISSING MINORS. (a) Upon receiving a written or telephonic request to locate a minor evading the minor's legal custodian or to locate a minor otherwise missing, a law enforcement agency shall make reasonable efforts to locate the minor and shall immediately complete a missing person's report containing information necessary for the identification of the minor. As soon as practicable, but not later than 24 hours after completing the report, the agency shall transmit the report for entry into the Alaska Public Safety Information Network and the National Crime Information Center computer system. As soon as practicable, but not later than 24 hours after the agency learns that the minor has been located, it shall request that the Department of Public Safety and the Federal Bureau of Investigation remove the information from the computer systems.

(b) A peace officer shall take into protective custody a minor described in (a) of this section if the minor is not otherwise subject to arrest or detention. The peace officer shall honor the minor's preference to either (1) return the minor to the legal custodian or (2) take the minor to an office specified by the Department of Health and Social Services or a facility or contract agency of the department.

If an office specified by the department or a facility or contract agency of the department does not exist in the community, the officer shall take the minor to another suitable location and promptly notify the department. A minor under protective custody may not be housed in a jail or other detention facility. Immediately upon taking a minor into protective custody the officer shall advise the minor orally and in writing of the right to social services under AS 47.10.142(b), and, if known, the officer shall advise the legal custodian that the minor has been taken into protective custody.

* Sec. 2. AS 47.10.141 is amended by adding a new subsection to read:

(c) A minor may be taken into protective custody by a peace officer and placed into temporary detention in a juvenile detention home if there has been an order issued by a court upon a finding of probable cause that the minor is a runaway in violation of a valid court order issued under AS 47.10.142(f) and is posing a clear and present danger to the minor's own welfare. A minor detained under this subsection shall be brought before a court within 48 hours after the detention for a hearing to determine whether the minor is in civil contempt of court under AS 09.50.010(5). This subsection does not apply to a minor taken into protective custody in a community that does not have a juvenile detention home.

* Sec. 3. AS 47.10.142 is amended by adding a new subsection to read:

(f) When, under (e) of this section, a minor is committed to the custody of the department for temporary placement or returned to the custody of the parent or guardian subject to the supervision of the department, the court may require the child to remain in the home of the parent or guardian or in the placement designated by the department and may order the parents and child to take part in a treatment program. If a court order is entered under this subsection, it shall clearly state the consequences of violating the order, including the possibility of detention of a minor under AS 47.10.141(c).

SB

91

STEVE COWPER
GOVERNOR

SB91

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

The Honorable Jan Faiks
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Faiks:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to liability immunity of the state, its employees and agents, and members of the Alaska National Guard.

While training or on duty under federal mandate, the state national guards are performing a United States Government activity. Nevertheless, there have been occasions in which states, rather than the United States, have been exposed to tort liability for injuries or damage resulting from federally mandated guard activities.

In 1981, Congress amended 28 U.S.C. sec. 2671 by adding to the definition of "employees of the government" members of the National Guard training or on duty pursuant to federal order under 32 U.S.C. The effect of this amendment was to clarify that the United States considers the Guard as a federal function during 32 U.S.C. activities and that claims for injuries resulting from such activities could be pursued under the Federal Tort Claims Act, 28 U.S.C. sec. 2671 et seq. In spite of this change in the law, there are rare occasions when the state remedy is preferred by an injured third party who consequently will file a claim for damages in state court on the basis of state law. This bill will prevent suits of this nature, and assure that persons injured or property damaged as a result of federally mandated and controlled Guard activities will be required to seek damages from the United States Government. Existing worker's compensation coverage of guardsmen will not be affected by this bill.

Sincerely,

Steve Cowper
Governor

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST SB 91

Bill/Resolution No. : LL#773-87-0016
Title : Civil Liability for National Guard activities.

Sponsor : Rules Committee
Requestor : Governor
Date of Request :

FISCAL DETAIL

Agency Affected : Military & Veterans Affairs
BRU : Alaska National Guard

Components :

EXPENDITURES/REVENUES : (Thousands of Dollars)

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

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

This bill would have no known fiscal impact.

Prepared by : Richard L. Rountree
Division : Administrative & Support Services Division
Phone : 465-4600
Date : 10/07/86

Approved by Commissioner : Richard L. Rountree for MG Edward G. Pagano
Agency : Dept. of Military & Veterans Affairs
Date : 10/07/86

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

9/16/86

PUBLIC LAW 97-124 [H.R. 3799]; December 29, 1981

FEDERAL TORT CLAIMS— NATIONAL GUARD

For Legislative History of Act, see p. 2692

An Act to extend the Federal tort claims provisions of title 28, United States Code, to acts or omissions of members of the National Guard, and to provide that the remedy under those provisions shall be exclusive in medical malpractice actions involving members of the National Guard.

Federal tort claim provisions for National Guard members.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2671 of title 28, United States Code, is amended—

(1) in the second paragraph, by inserting "members of the National Guard while engaged in training or duty under section 316, 502, 503, 504, or 505 of title 32," after "naval forces of the United States,"; and

(2) in the third paragraph, by inserting "or a member of the National Guard as defined in section 101(3) of title 32" immediately after "United States".

SEC. 2. Section 1089(a) of title 10, United States Code, is amended by inserting "the National Guard while engaged in training or duty under section 316, 502, 503, 504, or 505 of title 32," after "armed forces,".

Repeal.

SEC. 3. Section 334 of title 32, United States Code, and the item relating to such section in the section analysis of chapter 3 of such title, are repealed.

10 USC 1089 note.

SEC. 4. The amendments made by this Act and the repeal made by section 3 of this Act shall apply only with respect to claims arising on or after the date of the enactment of this Act.

Approved December 29, 1981.

LEGISLATIVE HISTORY—H.R. 3799 (S. 267):

HOUSE REPORT No. 97-384, Pt. 1 (Comm. on the Judiciary).
SENATE REPORT No. 97-297 accompanying S. 267 (Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 127 (1981):
Dec. 15, considered and passed House.
Dec. 16, considered and passed Senate, in lieu of S. 267.

LEGISLATIVE HISTORY
P.L. 97-124

FEDERAL TORT CLAIMS—NATIONAL GUARD

P.L. 97-124, see page 95 Stat. 1666

House Report (Judiciary Committee) No. 97-384,
Dec. 10, 1981 [To accompany H.R. 3799]

Cong. Record Vol. 127 (1981)

2692

DATES OF CONSIDERATION AND PASSAGE

House December 15, 1981

Senate December 16, 1981

No Senate Report was submitted with this legislation.

HOUSE REPORT NO. 97-384

[page 1]

The Commission on the Judiciary, to whom was referred the bill (H.R. 3799) to amend title 28, United States Code, to provide that the Federal tort claims provisions of that title are the exclusive remedy in medical malpractice actions and proceedings resulting from federally authorized National Guard training activities, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

* * * * *

[page 2]

STATEMENT

The National Guard is a reserve component of the Armed Forces. As such it has been assigned important responsibilities as a reserve force in the event it is called upon in an emergency. To assure our national defense it must continuously engage in federally prescribed training and demonstrate a high degree of readiness. To assure this, the Federal Government provides the funds to pay for training of Guard personnel and the equipment necessary for Guard operation and training. Except when federalized, the Guard is under the direct order of State Governments. For this reason, its activities have not been covered by the Tort Claims Act even though the Army and Air National Guard have similar roles in Defense planning and training as do the Army Reserve and the Air Force Reserve. This bill amends the tort claims provisions of title 28 to provide the National Guard the same coverage under the Tort Claims Act as now exists for the Armed Forces and its other reserve components.

The bill, with the subcommittee amendments, provides for the necessary amendments to title 28 to accomplish this purpose and makes the necessary amendments to the provisions concerning medical personnel in title 10. This includes the repeal of section 334 of title 32 which presently indemnifies National Guard medical personnel for liability incident to federal training activity.

History

In the 86th Congress, the committee considered the bill H.R. 5435 which would have similarly amended the Federal tort claims provisions of title 28 to include the acts or omissions of National Guard personnel. Ultimately however, the committee adopted an amendment suggested by the Department of the Army which established administrative authority in the Department of the Army and the Air Force for the payment of claims against the National Guard arising out Federal training. That amendment became Public Law 86–740 and is popularly known as the National Guard Claims Act, 32 U.S.C. 715. The National Guard Claims Act satisfied the major concerns raised at the time. It authorized the Federal government to assume liability for damages caused by modern military weapons in use by National Guard during federal training, and avoided treating National Guard employees as Federal employees for purposes of Federal liability. As the Committee noted, "a member of the National Guard performing training or duty authorized by title 32, United States Code, who allegedly commits a tort, is not, as a matter of law, under the command of Federal military authorities". *see* H.R. Report No. 1928, 86th Congress 2d Session at 4 (National Guard Claims Act, H.R. 5435).

In the 96th Congress, the Senate held hearings on S. 1858, a bill to extend the Federal tort claims provisions to the acts or omissions of National Guard personnel. *see*, Senate Judiciary Committee Hearings No. 96–66, 96th Congress 2d Session. The Senate subsequently passed S. 1858 on May 30, 1980. Mr. Kastenmeier introduced a bill identical to S. 1858 in the 96th Congress. That bill, H.R. 7475, was not considered by the Committee.

In the 97th Congress, the Senate Armed Services Committee adopted an amendment to S. 815, the Department of Defense Authorization for

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Fiscal 1982, which established Federal liability for damages arising out of the acts or omissions of National Guard personnel during Federal training in the same manner and to the same extent that the United States would be liable in any other action brought against the United States under the Federal tort claims provisions of title 28. The Senate passed S. 815 as amended on May 14, 1981, *see*, Senate Report 97–58, 97th Congress, 1st Session at 181 and 182 (Department of Defense Authorization for Fiscal Year 1982, S. 815). The House passed bill (H.R. 3519) did not include similar provisions, and the Senate receded to the House on the issue in conference, *see*, House Conference Report No. 97–311, 97th Congress, 1st Session at 132 (Department of Defense Authorization for Fiscal Year 1982, S. 815). On July 23, 1981 the Senate Judiciary Subcommittee on Agency Administration held hearings on the National Guard tort provisions of S. 815, and on S. 267, a bill identical to S. 1858.

On June 4, 1981, Mr. Kastenmeier introduced H.R. 3799 for himself and Mr. Montgomery. The bill was referred jointly to the Committees on the Judiciary and Armed Services. On October 13, 1981 and October 29, 1981 the Subcommittee on Administrative Law and Governmental Relations of the House Judiciary Committee held hearings on H.R. 3799. On October 29, the subcommittee considered and adopted an

amendment in the nature of a substitute for H.R. 3799, and favorably recommended the bill, as amended to the Full Judiciary Committee. The Judiciary Committee reported H.R. 3799 as amended to the House by unanimous voice vote on December 8, 1981.

By letter dated November 3, 1981 to Honorable Peter W. Rodino, Jr., Chairman of the House Judiciary Committee, the Honorable Melvin Price, Chairman of the House Armed Services Committee indicated the support of the Armed Services Committee for the action of the subcommittee. The letter further expressed the intent of the Armed Services Committee not to hold hearings on the subject, and to support the bill as reported by the Judiciary Committee on the floor. The complete text of the letter is reprinted in the appendix.

Findings and Conclusions

Testimony and materials supplied to the subcommittee in the course of the hearings indicate that there is substantial risk of personal liability by National Guard personnel engaged in Federal training activity. National Guard representatives from every state except Arkansas and West Virginia reported to the National Guard Association on litigation against National Guard personnel in their states since 1960. The information supplied to the subcommittee by the National Guard Association indicates that there are 956 known instances of claims against National Guard personnel since 1960. Of those, less than 10 percent or 94 claims were actionable against the Federal Government under the current Federal tort claims provisions of title 28. In only 339, or 35 percent of the cases, were claimants reported to have filed a claim under the National Guard Claims Act. A total of 859 or 89.85 percent of reported claims involved motor vehicles. While information is not complete for the entire reporting period, all 48 reporting states included data for 1975 to present. During that period, 360 claims were reported to have been settled for an aggregate sum of

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$914,536.02. Available information from those states reporting indicates that since 1960, a total of 431 claims have been settled for an aggregated amount of $1,165,961.25.

Information supplied by the Army Claims Service indicates that between 1977 and October 1981, approximately 1,689 claims involving Army National Guard personnel have been filed under the National Guard Claims Act, and have been settled for the approximate aggregate amount of $2,807,239. Motor vehicle claims accounted for 89 percent of Army National Guard claims reported by the Army Claims Service from 19778 to October 1981. The Air Force Claims Service reports a total of 651 claims involving Air National Guard personnel from 1973 to October 1981. Of those 462 have been settled for an aggregated $3,397,555. The Air Force does not have a category for motor vehicle claims.

Though incomplete, the statistical information before the committee indicates that a substantial number of claims arise every year as a result of Federally prescribed National Guard training and that the preponderance of these claims involve motor vehicles. Moreover, as the information from the National Guard Association indicates, the individual National Guard member is subject to personal liability for damages arising out of Federal training activity.

The subcommittee also received testimony on the organizational structure and the role of the National Guard. The Department of Justice pointed out in its testimony in opposition to H.R. 3799 that Article I, Section 8, Clause 16 of the Constitution reserves to states the power to appoint officers of the militia and the authority to train the militia according to the discipline prescribed by Congress. Because the Federal government does not command the National Guard during Federal training, the Department of Justice points out that there is no basis for the vicarious liability of the Federal Government for the acts or omissions of National Guard personnel during that training. However, as was pointed out in testimony before the Subcommittee, the primary role of the modern National Guard is to provide a well trained and integral reserve force for our nation's defense, and the Federal Government does exercise a great deal of control over the Federal training activities of the National Guard.

The same Department of Defense regulations that govern Army and Air Force Reserve training activities govern the Federal training activities of the National Guard. Army and Air Force officers are assigned to each state National Guard organization. They conduct inspections, monitor and assist in training activities and approve promotion of National Guard personnel. In addition, they coordinate National Guard training with the needs of the Army and Air Force. The Federal government not only prescribes the duration and type of National Guard training, it pays National Guard personnel for Federal training, it provides workman's compensation to National Guard personnel for injuries sustained during Federal training and it provides the equipment used by National Guard personnel during training. Thus, while actual command during Federal training activities is maintained by the states as a matter of law, as a matter of policy, it is appropriate that the Federal liability for damages arising out of the acts or omissions of National Guard personnel during Federal

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training be equivalent to Federal liability for the acts or omissions of Air Force and Army Reserve personnel which arise out of their identical training.

The bill, as amended by the subcommittee, merely amends the definition of the phrases "employee of the government" and "acting within the scope of his office or employment" as they are used in the tort claims provisions of title 28 to include National Guard personnel engaged in Federal training. It is the interest of the committee that coverage under these provisions be the same for National Guard personnel as it is for members of the Army and Air Force Reserves, *see*, 43 Comp. Gen. 412, B–148324 (1963) (inactive duty training extends from the time of first muster until the end of scheduled inactive duty training for the day and does not include travel to and from home and headquarters). This decision of the Comptroller General is reprinted in the appendix below. It is well settled that claims for injuries to servicemen that "arise out of or are in the course of activity incident to service" may not be brought under the Federal Tort Claims provision of title 28, *see*, *Feres* v. *United States*, 340 U.S. 135, 71 S.Ct. 153, 95 L.Ed. 152 (1950). It is the intent of the Committee that the rule of the *Feres* case apply to the acts or omissions of National Guard personnel.

The amendments made by this bill to the Tort claims provisions of title 28, and specifically to the definitions contained in section 2671 of that title, only concern the application of the Federal tort claims provisions of that title. They do not change or modify the application of any other laws governing federal employees such as the Ethics in Government Act of 1978, as amended.[1]

Section-By-Section Analysis

Section 1 amends the definition of "Employees of the Government" and the definition of "Acting within the scope of his office or employment" in section 2671 of title 28, United States Code, to extend the scope of the Federt tort claims provisions of that title to members of the National Guard while engaged in Federal training or duty.

Section 2 amends section 1089 of title 10, United States Code, which creates an exclusive remedy against the United States in civil actions arising out of medical malpractice by certain federal employees to include actions arising out of medical malpractice by National Guard medical personnel while engaged in Federal training.

Section 3 repeals section 334 of title 32, United States Code, relating to payment of malpractice liability of National Guard medical personnel.

Section 4 provides that the amendments and the repeal made by the bill shall apply prospectively.

Conclusion

In light of the consideration and circumstances discussed in this report, it is recommended that the bill, as amended, be considered favorably.

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[1] Public Law 95-521, 92 Stat. 1824, as amended by Public Law 96-19, 93 Stat. 37-44 and Public Law 96-28, 93 Stat. 76.

* * * * *

[page 9]

Statements Under Clause 2(l)(3)(A), Clause 2(l)(3)(B), Clause 2(l)(2)(B), Clause 2(l)(3)(D), Clause 2(l)(4), and Clause 2(l)(3)(C) of Rule XI and Clause 7(a)(1) of Rule XIII of the House of Representatives

cost (rule xiii (7)(a)(1))

The Congressional Budget Office in its letter of December 10, 1981 advised the Committee that it is expected that passage of this legislation will result in additional outlays of $681,000 in Fiscal Year 82, $721,000 in Fiscal Year 83, $757,000 in Fiscal Year 84, $792,000 in Fiscal Year 85, and $823,000 in Fiscal Year 86. This estimate is based on figures provided by the United States Army and Air Force claims service as well as information from the states of New York and California.

OVERSIGHT STATEMENT (RULE XI 2(l)(3)(A))

The Subcommittee on Administrative Law and Governmental Relations of this committee exercises the commitee's oversight responsibility in accordance with rule VI(b) of the Rules of the Committee on the Judiciary with reference to the subject of tort claims. That subcommittee has recommended the amendments provided in this bill, and the Committee joins in recommending the changes made.

(RULE XI 2(l)(3)(B))

Enactment of the bill would not create any additional cost for the Government pursuant to rule XIII(7)(a)(1). The bill does not involve new budget authority nor does it require new or increased tax expenditures as contemplated by clause 2(l)(3)(B) of rule XI.

COMMITTEE VOTE (RULE XI 2(l)(2)(B))

On December 8, 1981, the full Committee on the Judiciary approved the bill, H.R. 3799, by voice vote.

OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE ON GOVERNMENT OPERATIONS (RULE XI 2(l)(3)(D))

No findings or recommendations of the Committee on Government Operations were received as referred to in subdivision (D) of clause 2(l)(3) of House Rule XI.

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INFLATIONARY IMPACT (RULE XI 2(l)(4))

In compliance with clause 2(l)(4) of House rule XI, it is stated that this legislation will have no inflationary impact on prices and costs on the operation of the national economy.

ESTIMATE OF THE CONGRESSIONAL BUDGET OFFICE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., December 10, 1981.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974 the Congressional Budget Office has prepared the attached cost estimate for H.R. 3799, a bill to amend title 28, United States Code, to provide that the Federal tort claims provisions of that title are the exclusive remedy in medical malpractice actions and proceedings resulting from federally authorized National Guard training activities, and for other purposes, as ordered reported on December 8, 1981.

Should the Committee so desire, we would be pleased to provide further detail on the attached cost estimate.

Sincerely,

RAYMOND C. SCHEPPACH,
(For Alice M. Rivlin, Director).

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

DECEMBER 10, 1981.

1. Bill number: H.R. 3799.

2. Bill title: A bill to amend title 28, United States Code, to provide that the Federal tort claims provisions of that title are the exclusive remedy in medical malpractice actions and proceedings resulting from federally authorized National Guard training activities, and for other purposes.

3. Bill status: As ordered reported by the Senate Committee on the Judiciary on December 8, 1981.

4. Bill purpose: The bill establishes that the United States shall have exclusive jurisdiction on claims resulting from National Guard training activities including injury or loss of property, or personal injury or death.

The United States shall also be exclusive in providing remedy to claims for damages for personal injury and death caused by any medical personnel of the armed forces and the National Guard while acting within the scope of his duties or employment.

5. Cost estimate:

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	Amount
Estimated authorization levels:	
Fiscal year:	
1982	$681,000
1983	721,000
1984	757,000
1985	792,000
1986	823,000
Estimated outlays:	
Fiscal year:	
1982	681,000
1983	721,000
1984	757,000
1985	792,000
1986	823,000

The costs of this bill fall within function 050.

6. Basis of estimate: Neither the Department of Defense, the National Guard Bureau, nor the states themselves have extensive data on National Guard related claims which would be affected by this bill. The major contributing factors to this problem are the various state remedies and procedures available to investigate and process National Guard claims. Because of these limitations, CBO is basing this estimate on the weighted average of total claims paid for three years to National Guard personnel in data provided by California and New York, two states with large National Guard forces.

Four states currently have an arrangement with the United States Army to share the amounts of claims paid equally. Approximately 11.7 percent of all National Guardsmen live in states with such an arrangement. For these states it is assumed that one half of the claims to be paid would be an additional cost to the U.S. government.

The remaining 88.3 percent of National Guardsmen live in states where the federal government has no liability for National Guard claims. For these states the adoption of this bill would shift the costs of all awarded claims applicable under the Federal tort claims provision from the states to the federal government.

7. Estimate comparison: None.
8. Previous CBO estimate: CBO provided an estimate on S. 267, ordered reported on December 8, 1981. H.R. 3799 is similar to S. 267, and the cost estimates are identical.
9. Estimate prepared by: Thomas D. Phillips.
10. Estimate approved by:

JAMES L. BLUM,
Assistant Director for Budget Analysis.

* * * * *

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APPENDIX I

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
Washington, D.C., November 3, 1981.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to H.R. 3799, a bill to amend title 28, United States Code, to provide that the Federal tort claims provisions of that title are the exclusive remedy in medical malpractice actions and proceedings resulting from federally authorized National Guard training activities. I understand that the Subcommittee on Administrative Law and Governmental Relations, chaired by Mr. Danielson, has favorably reported that bill to the full committee, and I wish to offer my support and that of the committee for its enactment.

As you will recall, the provisions of H.R. 3799 were included in S. 815, the Senate version of the fiscal year 1982 Defense authorization legislation, but not in the House amendment. We recognized immediately the jurisdictional problem involved and were successful in having the Senate recede to the House during the conference on S. 815. In that conference we noted that your committee would take early action on H.R. 3799 as indicated by Chairman Danielson, and we sincerely appreciate your leadership and that of Mr. Danielson in bringing the bill before the Judiciary Committee.

Because of the obviously thorough manner in which the Subcommittee on Administrative Law and Governmental Relations has acted on H.R. 3799, we do not plan to hold hearings on the subject although the bill was referred to this committee as well. Accordingly, I would appreciate it if you would include this letter in your record as an endorsement of the legislation and an indication of our support when the bill reaches the floor.

Mr. Chairman, may we again express our appreciation to you and Chairman Danielson for the expeditious handling of H.R. 3799 and for your cooperation with us in our successful efforts concerning the tort claims provisions in the conference on S. 815.

With best regards,
Sincerely,

MELVIN PRICE, *Chairman.*

APPENDIX II

43 Comp. Gen. 412 (1963)

[B-148324]

Military Personnel—Reservists—Death or Inquiry—Inactive Duty Training—Injury Within Scope of Duties

In view of the fact that the court refrained from formulating a rule for general application in *Meister* v. *United States*, Ct. Cl. No. 54–62, decided July 12, 1963, in which it held that a reservist ordered to perform inactive duty at a training center who while proceeding to the drill hall to report for inspection and duty slipped and fractured his ankle was "within the scope of his assigned duties when he slipped" and, therefore, within the purview of 10 U.S.C. 6148(a), and entitled to the disability benefits prescribed by that section, the *Meister* case should not be used as a precedent for favorable administrative action in similar cases, and any claim involving facts which might be viewed as coming within the purview of the *Meister* case should be forwarded to the United States General Accounting Office for direct settlement.

Military Personnel—Reservists—Death or Injury—Inactive Duty Training—Injury Within Scope of Duties

When a reservist ordered to inactive duty training suffers a physical injury during a scheduled lunch break, or while during a lull in his duties he engages in some independent activity, he is deemed to have received the injury while engaged in the inactive duty training drill within the purview of 10 U.S.C. 6148(a), and therefore, is entitled to the disability benefits prescribed by that section, the reservist having been ordered to perform inactive duty training is employed from the time he first musters in for that duty until the end of the ordered period of such duty for that day.

Military Personnel—Reservists—Death or Injury—Inactive Duty Training—Injured While Traveling

Where for the mutual convenience of a naval reservist and the Government, he is permitted to utilize Government transportation as a permissive traveler to and from a training center before or after a period of inactive duty training, the reservist while so traveling is not "employed" in inactive duty training within the meaning of 10 U.S.C. 6148(a), prescribing disability and death benefits, the travel pursuant to paragraph 6002(2) of the Joint Travel Regulations, whether accomplished by private or Government conveyance, not being part of the inactive duty training is outside the contempla-

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tion of 10 U.S.C. 6148, and the reservist, therefore, is not entitled to the disability benefits provided by section 6148(a), and permission to travel by Government transportation to the drill station during a part of the period assigned for the

performance of the drill would not increase the rights of the reservist.

To the Secretary of the Navy, October 25, 1963:

By letter dated September 4, 1963, the Under Secretary of the Navy requested decision on various questions concerning the effect of the decision of the Court of Claims in the case of *Meister* v. *United States*, Ct. Cl. No. 54–62, decided July 12, 1963, on the application of 10 U.S.C. 6148(a) to certain cases involving injuries suffered by members of the United States Naval Reserve who have been ordered to perform inactive duty training. The request for decision was assigned No. SS–N–720 by the Military Pay and Allowance Committee, Department of Defense.

Meister had been ordered by his executive officer to be at the training center no later than 7:20 p.m., on March 8, 1961. After he had parked his car at the curb, entered the training center compound and while proceeding toward the drill hall to report for inspection and duty, he slipped and fractured his ankle. The court held that the plaintiff was "within the scope of his assigned duties when he slipped" and therefore he was held to be within the purview of 10 U.S.C. 6148(a). Doubt is expressed as to the scope of the rule announced in the *Meister* case and it is stated that guidelines as to the authorized application of the *Meister* rule would be extremely helpful. The following facts of two cases are recited as illustrative of the types of cases in which question has arisen as to the applicability of 10 U.S.C. 6148(a).

In the first case, Joseph Patrick Volpe, SA, USNR–R, was ordered to perform inactive duty training at the United States Naval Reserve Training Center, McKeesport, Pennsylvania, during the week end of April 20–21, 1963. On April 21, 1963, he participated in the scheduled morning drill which was from 8 a.m. to 12 noon. A lunch break was scheduled from 12 to 1:15 p.m., and the afternoon drill session was scheduled to extend from 1:15 p.m., until 4:30 p.m. At approximately 12:50 p.m., during the scheduled lunch break, he fell while playing basketball on the grounds of the training center and sprained his hand.

In the second case, Charles A. Scott, AME3, USNR–R, was ordered to perform 2 days of inactive duty training on February 16 and 17, 1963, at the United States Naval Air Station, Alameda, California. On February 16, 1963, he reported for training at 8 a.m. From approximately 1:30 p.m., until 2 p.m., he participated with his squadron in launching a scheduled anti-submarine warfare helicopter flight. Upon completion of the launching, Scott and three other men from his squadron proceeded to the station's gymnasium to play handball while awaiting the return of the flight squadron. At approximately 2:30 p.m., while playing handball, Scott sustained a fracture of his right thumb.

The submission poses for decision the following questions:

(a) May a reservist who has been ordered to perform inactive duty training and who sustains an injury after he has reached his training center but before he has actually

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mustered for duty, as illustrated by the *Meister* case, be deemed to have received his injury while engaged in an in-

active duty training drill within the purview of 10 USC 6148(a)?

(b) May a reservist who has reported to his training center for inactive duty (and has actually mustered) and incurs an injury during a scheduled break in training drills, as illustrated by the Volpe case, be deemed to have received his injury while engaged in an inactive duty training drill within the purview of 10 USC 6148(a)?

(c) May a reservist who has reported to his training center for inactive duty and sustains an injury during the period of a scheduled training drill but as the direct result of some independent activity that is not part of his training duties, as illustrated by the Scott case, be deemed to have received his injury while engaged in an inactive duty training drill within purview of 10 USC 6148(a)?

(d) If the answer to question (a), above, is in the affirmative, would the answer be the same in a case containing factual elements such as those in the case of the U.S. Marine Corps Sergeant discussed in 38 Comp. Gen. 841?

(e) May a reservist who suffers a disabling injury while being transported (no reimbursement involved) by Government air, land or water transportation incident to the performance of ordered or authorized inactive duty training, to or from such duty, prior to muster or following the termination of such period of duty, be deemed to have received his injury while engaged in an inactive duty training drill within the purview of 10 USC 6148(a)?

(f) If the answer to question (e), above, is in the negative, would the answer be the same if the travel was authorized to be performed and was performed during the period of time assigned for the performance of the drill?

(g) If the answer to question (e), above, is in the affirmative, would the answer be the same if the reservist were to incur a disabling injury while performing travel to or from the place of performance of inactive duty training by a means other than Government air, land or water transportation, with the express authorization of his commanding officer?

Before answering the specific questions, we consider it necessary to say that we do not agree with the court's conclusion in the *Meister* case. The decision in that case is inconsistent with our view of section 1 of the act of June 20, 1949, Ch. 225, 63 Stat. 201 (now 10 U.S.C. 6148(a)) as expressed in 38 Comp. Gen. 841, that Congress intended to provide coverage for injuries suffered by inactive duty trainees only while actually performing inactive duty training. The court stated that it would not attempt to "lay down a rule of general application" and it is clear that the court limited its decision to the particular facts involved in that case. The court did not indicate the degree of physical proximity "between the employee and employer" required in such cases and it is not clear from the court's opinion what action it might take in a similar case in which some of the facts present in the *Meister*

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case are missing. While we did not recommend further action in the *Meister* case to the Department of Justice since, as a practical matter,

we doubted that any useful purpose would be served by further proceedings, it is our view that a similar case based on facts a little more favorable to the Government should be vigorously defended.

In view of the fact that the court refrained from formulating a rule for general application in the *Meister* case, it should not be used as a precedent for favorable administrative action in any similar case. Any claim involving facts which might be viewed as coming within the purview of that case should be forwarded to this Office for direct settlement. Question (a) is answered accordingly and question (d) requires no answer.

When a reservist is ordered to inactive duty training in situations similar to the *Volpe* and *Scott* cases, the period of training extends from the time the man is first mustered in until the end of his scheduled inactive duty training on that day. It cannot be said that during a scheduled lunch break (*Volpe* case) or a time when no actual duty is being performed during a drill (*Scott* case) the man reverts to his normal civilian status so as to be outside the protection of 10 U.S.C. 6148(a) during those times. In neither of the cases described had the men been released from military control at the time the injuries were sustained. While it may not be concluded that a reservist is employed on inactive duty for the entire day on which a drill or drills are performed, it is our view that, when a reservist is ordered to perform inactive training, he is so employed from the time he first musters in for that duty until the end of the ordered period of such duty for that day. Questions (b) and (c) are answered in the affirmative.

It is assumed that questions (e) through (g) are limited to situations which may raise in connection with drills or other scheduled inactive duty training at the member's Reserve component unit headquarters. Paragraph 6002(2) of the Joint Travel Regulations provides that a member is not entitled to travel or transportation allowances for any inactive duty training at the city or town in which the headquarters of his Reserve component unit is located, including travel betweeen his home and the headquarters of his Reserve unit. Tours of inactive duty training are for scheduled periods of time and, where such duty is to be performed at the headquarters of the member's Reesrve unit, do not include travel to and from his home and headquarters. Such travel, no matter whether it is accomplished by private or Government conveyance, is not a part of the inactive duty training and is outside the contemplation of 10 U.S.C. 6148. See in this connection 38 U.S.C. 106(d). It is our view that if Congress had intended to extend the benefits of 10 U.S.C. 6148 to cover a reservist while traveling in connection with inactive duty training at the location of his Reserve component unit headquarters, it doubtless would have used appropriate language to make that intention clear. Thus, where a reservist was injured while proceeding to his home 65 miles away as the driver of a Government truck after completion of a period of inactive duty training, we concluded that in the absence of a showing that such truck driving activity was a prescribed part of his inactive duty training as a reservist, he was not entitled to the benefits

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of 10 U.S.C. 3687 and 3721 which contain language similar to that found in 10 U.S.C. 6148. Accordingly, where for the mutual con-

venience of the member and the Government, a member is permitted to utilize Government transportation as a permissive passenger in traveling to or from his training center before or after a period of inactive duty training, he is not "employed" in inactive duty training within the meaning of 10 U.S.C. 6148(a) while so traveling. Question (e) is answered in the negative and question (g) requires no answer.

It is our view that the granting of permission to travel by Government transportation to the drill station during a part of the period assigned for the performance of such drill would not increase the rights of the reservist in question (e) in any way. See 32 Comp. Gen. 554, answer to question 1. Accordingly, question (f) is answered in the affirmative.

cer so detailed may accept a commission in the Army National Guard or the Air National Guard, as the case may be, terminable in the President's discretion, without prejudicing his rank and without vacating his regular appointment.

(b) The Secretary of the Army may detail enlisted members of the Regular Army for duty with the Army National Guard of each State and Territory, Puerto Rico, the Canal Zone, and the District of Columbia. The Secretary of the Air Force may detail enlisted members of the Regular Air Force for duty with the Air National Guard of each State and Territory, Puerto Rico, the Canal Zone, and the District of Columbia. Aug. 10, 1956, c. 1041, 70A Stat. 604.

Historical and Revision Notes

Revised Section	Source (U. S. Code)
315 (a)	32:68 (less 2d sentence) 32:69
315 (b)	32:68 (2d sentence)

Source (Statutes at Large)

June 3, 1916, ch. 134, § 100, 39 Stat. 208.

Explanatory Notes

In subsection (a), 32:68 (last sentence) is omitted as surplusage, since positive provisions relating to the assignment or detail of retired officers to that duty are covered by section 3504 (a) or 8504(a) of title 10. The words "of the active list", in 32:68, are omitted for the same reason. The words "so detailed" are substituted for the words "detailed under section 68 of this title", in 32:69. The words "relative or lineal", in 32:69, are omitted as surplusage.

Cross References

National Guard Bureau, assignment of regular or reserve officers of Army or Air Force, see sections 3541 and 8541 of Title 10, Armed Forces.

Reserve components, detail of members of regular and reserve components to assist, see section 715 of Title 10.

§ 316. Detail of members of Army National Guard for rifle instruction of civilians

The President may detail officers and noncommissioned officers of the Army National Guard to duty as instructors at rifle ranges for the training of civilians in the use of military arms. Aug. 10, 1956, c. 1041, 70A Stat. 605.

Historical and Revision Notes

Revised Section	Source (U. S. Code)
316	32:183

Source (Statutes at Large)

June 3, 1916, ch. 134, § 113 (3d sentence), 39 Stat. 211.

Explanatory Notes

The word "civilians" is substituted for the word "citizenry". The word "capable" is omitted as surplusage.

Notes of Decisions

1. Fines

Under McClain's Code, Iowa, § 1572, providing that the discipline of the state national guard shall conform to the regulations for the government of the army of the United States, except as otherwise provided; and section 1585, providing that every soldier absent without leave from encampment shall be fined two dollars for each day of absence, suit for the collection of the fines to be brought in the name of the state for the uses of his company—the fine is not to be imposed by a militia officer, but by the court before which the action is brought; and the soldier may prove before the court that he had a sufficient excuse for not attending encampment. State v. Ryan, 1897, 69 N.W. 1125, 101 Iowa 18.

§ 502. Required drills and field exercises

(a) Under regulations to be prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be, each company, battery, squadron, and detachment of the National Guard, unless excused by the Secretary concerned, shall—

(1) assemble for drill and instruction, including indoor target practice, at least 48 times each year; and

(2) participate in training at encampments, maneuvers, outdoor target practice, or other exercises, at least 15 days each year.

(b) An assembly for drill and instruction may consist of a single ordered formation of a company, battery, squadron, or detachment, or, when authorized by the Secretary concerned, a series of ordered formations of parts of those organizations. However, to have a series of formations credited as an assembly for drill and instruction, all parts of the unit must be included in the series within seven consecutive days of the same calendar month.

(c) The total attendance at the series of formations constituting an assembly shall be counted as the attendance at that assembly for the required period. No member may be counted more than once or receive credit for more than one required period of attendance, regardless of the number of formations that he attends during the series constituting the assembly for the required period.

(d) No organization may receive credit for an assembly for drill or indoor target practice unless—

(1) the number of members present equals or exceeds the minimum number prescribed by the President;

(2) the period of military duty or instruction for which a member is credited is at least one and one-half hours; and

(3) the training is of the type prescribed by the Secretary concerned.

(e) An appropriately rated member of the National Guard who performs an aerial flight under competent orders may receive credit for attending drill for the purposes of this section, if the flight prevented him from attending a regularly scheduled drill. Aug. 10, 1956, c. 1041, 70A Stat. 610.

Historical and Revision Notes

Revised Section	Source (U. S. Code)
502 (a)	32:02 (1st sentence, less proviso)
502 (b)	32:02 (proviso of 1st sentence)
502 (c)	32:02 (last sentence, less 1st, 2d, and 3d provisos)
502 (d)	32:02 (1st proviso of last sentence)
502 (e)	32:02 (2d and 3d provisos of last sentence)

Source (Statutes at Large)

June 3, 1916, ch. 134, § 02; restated June 3, 1924, ch. 244, § 2; restated Oct. 14, 1940, ch. 873, § 2, 54 Stat. 1135; Mar. 25, 1948, ch. 157, § 5(a), 62 Stat. 90.

Explanatory Notes

In subsection (a), the words "including target practice" and "such company, troop, battery, or detachment shall have been . . . from participation in any part thereof" are omitted as surplusage.

In subsections (a) and (b), the word "troop" is omitted as obsolete.

In subsection (b), the words "parts of those organizations" are substituted for the words "subdivisions or parts thereof". The words "but in the latter case", "of subdivisions or groups", "comprehend", and "the time limit of" are omitted as surplusage.

In subsection (c), the word "member" is substituted for the words "officer, warrant officer, or enlisted man". The words "series of formations" are substituted for the words "separate consecutive formations announced". The words "regardless of the number of formations that he attends during the series" are substituted for the words "even though he may have attended more than one of the formations". The words "sum", "actual military", and "of time" are omitted as surplusage. 32:02 (4th proviso of last sentence) is omitted as superseded by section 687 of title 10. 32:02 (last proviso of last sentence) is omitted as superseded by section 501(b) of the Career Compensation Act of 1949, 63 Stat. 826 (37 U.S.C 301(b)).

In subsection (d), the word "members" is substituted for the words "officers and enlisted men". The words "for which a member is credited" are substituted for the words "participated in by each officer and enlisted man at each assembly at which he shall be credited as having been present". The words "for duty at such assembly", "actual", and "character of" are omitted as surplusage.

In subsection (e), the word "member" is substituted for the words "officer or enlisted man". The words "Air Corps . . . assigned to an Air Corps unit thereof, or . . . an officer or enlisted man of the Medical Department of the said National Guard regularly attached to an Air Corps unit of the National Guard by appropriate authority" are omitted, since the revised subsection applies only to members who perform flights under competent orders and who are thereby prevented from attending a regular drill.

Cross References

Appropriations for pay, disbursement and accounting, see section 695a of Title 31, Money and Finance.

Compensation for disablement during training, see section 318 of this title.

Compensation for disablement during training when not covered by section 318 of this title, see section 319 of this title.

Credit for service as members of Army National Guard or Air National Guard of members of Army National Guard of United States or Air National Guard of United States, see sections 3688 and 8688 of Title 10, Armed Forces.

Death gratuity, see section 321 of this title.

Hospitalization, when Secretary may require, see section 320 of this title.

Inactive duty training, duty (other than full-tim see section 101(23) of Title 38, Veterans' Benefits.

Pay grades of National Guard personnel on act Title 37, Pay and Allowances.

Rank, commissioned officers on active duty, see se Armed Forces.

Training duty compensation of members of N of Title 37, Pay and Allowances.

§ 503. Participation in field exercis

(a) Under such regulations as the Pre Secretary of the Army and the Secretary case may be, may provide for the participa in encampments, maneuvers, outdoor targ cises for field or coast-defense instructio conjunction with the Army or the Air For

(b) Amounts necessary for the pay, su and other proper expenses of any part of State or Territory, Puerto Rico, the Cana Columbia participating in an exercise unc set aside from funds allocated to it fro or coast-defense instruction.

(c) Members of the National Guard pa under subsection (a) may, after being mu riod beginning with the date of leaving l date of return, as determined in advance. a payment passes to the credit of the di 1956, c. 1041, 70A Stat. 610.

Historical and Revisio

Revised Section	Source (U. S. Code)
503 (a)	32:03 (1st 56 words)
503 (b)	32:03 (less 1st 56 words)
503 (c)	32:158

Source (Statutes at Large)

June 3, 1916, ch. 134, §§ 94 (less last 43 words after semicolon), 98, 39 Stat. 206, 207.

Explanatory Notes

In subsection (a), the words "the whole or any part" and "any part of" are omitted as surplusage. The word "Army" is substituted for the words "Regular Army", since the Army is the category that participates in the exercises, and the Regular Army is a personnel category only. Similarly, the words "Air Force" are used instead of the words "Regular Air Force".

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Inactive duty training, duty (other than full-time duty) under this section as, see section 101(23) of Title 38, Veterans' Benefits.

Pay grades of National Guard personnel on active duty, see section 232(d) of Title 37, Pay and Allowances.

Rank, commissioned officers on active duty, see sections 3571 and 8571 of Title 10, Armed Forces.

Training duty compensation of members of National Guard, see section 301 of Title 37, Pay and Allowances.

§ 503. Participation in field exercises

(a) Under such regulations as the President may prescribe, the Secretary of the Army and the Secretary of the Air Force, as the case may be, may provide for the participation of the National Guard in encampments, maneuvers, outdoor target practice, or other exercises for field or coast-defense instruction, independently of or in conjunction with the Army or the Air Force, or both.

(b) Amounts necessary for the pay, subsistence, transportation, and other proper expenses of any part of the National Guard of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia participating in an exercise under subsection (a) may be set aside from funds allocated to it from appropriations for field or coast-defense instruction.

(c) Members of the National Guard participating in an exercise under subsection (a) may, after being mustered, be paid for the period beginning with the date of leaving home and ending with the date of return, as determined in advance. If otherwise correct, such a payment passes to the credit of the disbursing officer. Aug. 10, 1956, c. 1041, 70A Stat. 610.

Historical and Revision Notes

Revised Section	Source (U. S. Code)
503 (a)	32:63 (1st 56 words)
503 (b)	32:63 (less 1st 56 words)
503 (c)	32:158

Source (Statutes at Large)

June 3, 1916, ch. 134, §§ 94 (less last 43 words after semicolon), 98, 39 Stat. 206, 207.

Explanatory Notes

In subsection (a), the words "the whole or any part" and "any part of" are omitted as surplusage. The word "Army" is substituted for the words "Regular Army", since the Army is the category that participates in the exercises, and the Regular Army is a personnel category only. Similarly, the words "Air Force" are used instead of the words "Regular Air Force".

In subsection (b), the words "Amounts necessary" are substituted for the words "such portion of said funds as may be necessary". The words "participating in an exercise under subsection (a)" are substituted for the words "as shall participate in such encampments, maneuvers, or other exercises, including outdoor target practice, for field and coast-defense instruction". The words "allocated to it from appropriations for field or coast-defense instruction" are substituted for the words "appropriated for that purpose and allocated to any State, Territory, or the District of Columbia".

In subsection (c), the words "Members of the National Guard participating in an exercise under subsection (a)" are substituted for the words "When any portion of the National Guard shall participate in encampments, maneuvers, or other exercises, including outdoor tar-

get practice, for field or coast-defense instruction, under the provisions of this title". The words "duly", "at any time", "rendezvous", "both dates inclusive", and "making the same" are omitted as surplusage.

Cross References

Compensation for disablement during training, see section 318 of this title.

Compensation for disablement during traning when not covered by section 318 of this title, see section 319 of this title.

Credit for service as members of Army National Guard or Air National Guard of members of Army National Guard of United States or Air National Guard of United States, see sections 3686 and 8686 of Title 10, Armed Forces.

Death gratuity, see section 321 of this title.

Death incident to service under this section, headstones for unmarked graves, see section 279a of Title 24, Hospitals, Asylums, and Cemeteries.

Hospitalization, when Secretary may require, see section 320 of this title.

Inactive duty training, duty (other than full-time duty) under this section as, see section 101(23) of Title 38, Veterans' Benefits.

Pay grades of National Guard personnel on active duty, see section 232(d) of Title 37, Pay and Allowances.

Rank, commissioned officers on active duty, see sections 3371 and 8371 of Title 10, Armed Forces.

Notes of Decisions

Generally 1
Employee of state 4
Land grant fares 2
Training as service 3

1. Generally

The Secretary of War was authorized to provide for participation by the organized militia in the encampment, maneuvers, and field instructions of any part of the regular army, on request of the Governor of the state concerned, and the terms of the statute were complied with in the particular case. Alabama Great Southern R. Co. v. U. S., 1914, 49 Ct.Cl. 522.

2. Land grant fares

Members of National Guard organizations ordered to encampment for training purposes in accordance with former sections 62 to 64 of this title were not, while traveling to and from camps of instruction, troops of the United States within the meaning of former section 1376 of Title 10, and were not entitled to land grant fares. Northern Pac. Ry. Co. v. U. S., 1926, 61 Ct.Cl. 733. See, also, Oregon-Washington R. R. & Navigation Co. v. U. S., 1925, 60 Ct.Cl. 458.

3. Training as service

An enlisted member of the National Guard when called for training by Governor through order of Adjutant General under former section 63 of this title was, during his period of service in service of the state. Lind v. Nebraska National Guard, 1914, 12 N.W.2d 652, 144 Neb. 122, 150 A.L.R. 1449.

4. Employee of state

A member of Nebraska National Guard, during his period of service, was not an "employee" of state or any agency created by it within meaning of Workmen's Compensation Law, Comp.St.1929, § 48-106, Comp.St.1929 and Supp.1941, § 55-101 et seq., since member when on duty was engaged in performance of the duty which citizen owes to sovereign. Lind v. Nebraska National Guard, 1914, 12 N.W. 2d 652, 144 Neb. 122, 150 A.L.R. 1449.

§ 504. National Guard schools and small arms competitions

(a) Under such regulations as the President may prescribe, the Secretary of the Army may provide for assemblies of members of the Army National Guard—

(1) to attend schools conducted by commissioned officers of the Regular Army detailed by the Secretary; or

(2) to participate in small arms comp

Similarly, the Secretary of the Air Force ma
of members of the Air National Guard—

(1) to attend schools conducted by
the Regular Air Force detailed by the S

(2) to participate in small arms com

(b) Assemblies under subsection (a) for
Guard of a State or Territory, Puerto Rico
District of Columbia may be held inside o
Aug. 10, 1956, c. 1041, 70A Stat. 611.

Historical and Revision

Revised Section	Source (U. S. Code)
[illegible]	32:64 (1st sentence)
[illegible]	32:64 (less 1st sentence)

Source (Statutes at Large)

June 3, 1916, ch. 134, § 97 (less last sentence); restated May 28, 1920, ch. 417, § 2 (less last sentence), 41 Stat. 631.

Explanatory Notes

In subsection (a), the word "members" is substituted for the words "officers, warrant officers, and enlisted men". The words "for purpose" a

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Cross References

Compensation for disablement during training, see s
Compensation for disablement during traning when
Title, see section 319 of this title.
Credit for service as members of Army Natio al G
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Death gratuity, see section 321 of this title.
Death incident to service under this section, headst
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10, Armed Forces.

§ 505. Army and Air Force schools

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(2) to participate in small arms competitions.

Similarly, the Secretary of the Air Force may provide for assemblies of members of the Air National Guard—

(1) to attend schools conducted by commissioned officers of the Regular Air Force detailed by the Secretary; or

(2) to participate in small arms competition.

(b) Assemblies under subsection (a) for members of the National Guard of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia may be held inside or outside its boundaries. Aug. 10, 1956, c. 1041, 70A Stat. 611.

Historical and Revision Notes

Revised Section	Source (U. S. Code)
505 (a)	32:64 (1st sentence)
505 (b)	32:64 (less 1st sentence)

Source (Statutes at Large)

June 3, 1916, ch. 134, § 97 (less last sentence); restated May 28, 1920, ch. 417, § 2 (less last sentence), 41 Stat. 674.

Explanatory Notes

In subsection (a), the word "members" is substituted for the words "officers, warrant officers, and enlisted men". The words "for the purpose" and "for that purpose" are omitted as surplusage.

In subsection (b), the words "Assemblies under subsection (a)" are substituted for the words "such assemblages". The words "for members of the National Guard of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia . . . inside or outside of its boundaries" are substituted for the words "either within or without the State, Territory, or District of Columbia, to which the members of the National Guard designated to attend them shall belong".

Cross References

Compensation for disablement during training, see section 318 of this title.

Compensation for disablement during traiung when not covered by section 318 of this title, see section 319 of this title.

Credit for service as members of Army National Guard or Air National Guard of members of Army National Guard of United States or Air National Guard of United States, see sections 3686 and 8686 of Title 10, Armed Forces.

Death gratuity, see section 321 of this title.

Death incident to service under this section, headstones for unmarked graves, see section 279a of Title 24, Hospitals, Asylums, and Cemeteries.

Hospitalization, when Secretary may require, see section 320 of this title.

Inactive duty training, duty (other than full-time duty) under this section as, see section 101(23) of Title 38, Veterans' Benefits.

Pay grades of National Guard personnel on active duty, see section 232(d) of Title 37, Pay and Allowances.

Rank, commissioned officers on active duty, see sections 3571 and 8571 of Title 10, Armed Forces.

§ 505. Army and Air Force schools and field exercises

Under such regulations as the President may prescribe and upon the recommendation of the governor of any State or Territory, Puerto Rico, or the Canal Zone, or of the commanding general of the National Guard of the District of Columbia, the Secretary of the Army

may authorize a limited number of members of its Army National Guard to—

(1) attend any service school except the United States Military Academy, and to pursue a regular course of study at the school; or

(2) be attached to an organization of the branch of the Army corresponding to the organization of the Army National Guard to which the member belongs, for routine practical instruction at or near an Army post during field training or other outdoor exercise.

Similarly, the Secretary of the Air Force may authorize a limited number of members of the Air National Guard to—

(1) attend any service school except the United States Air Force Academy, and to pursue a regular course of study at the school; or

(2) be attached to an organization of the Air Force corresponding to the organization of the Air National Guard to which the member belongs, for routine practical instruction at an air base during field training or other outdoor exercise. Aug. 10, 1956, c. 1041, 70A Stat. 611.

Historical and Revision Notes

Revised Section	Source (U. S. Code)
505	32:05

Source (Statutes at Large)

June 3, 1916, ch. 134, § 99 (1st 133 words); restated Sept. 22, 1922, ch. 423, § 5 (1st 129 words); restated May 28, 1926, ch. 417, § 3 (1st 133 words), 44 Stat. 674.

Explanatory Notes

The words "branch of the Army corresponding" are substituted for the words "same arm, corps, or department", to conform to sections 3063 and 8061 of title 10. In the second sentence, the words "organization of the Air Force corresponding" are substituted for the words "same arm, corps, or department", since the Air Force is not organized by statute into branches, arms, corps or departments. The word "members" is substituted for the words "officers, warrant officers, and enlisted men". The words "service school" are substituted for the words "military-service school of the United States". Reference to the United States Air Force Academy is inserted to reflect its establishment by the Air Force Academy Act (63 Stat. 47).

Cross References

Compensation for disablement during training, see section 318 of this title.

Compensation for disablement during training when not covered by section 318 of this title, see section 319 of this title.

Credit for service as member of Army National Guard or Air National Guard of members of Army National Guard of United States or Air National Guard of United States, see sections 3686 and 8686 of Title 10, Armed Forces.

Death gratuity, see section 321 of this title.

Death incident t service under this section, headstones for unmarked graves, see section 279a of Title 24, Hospitals, Asylums and Cemeteries.

Hospitalization, when Secretary may require, see section 320 of this title.

duty training, duty (other than full-time duty) ... (23) of Title 29, Veterans' Benefits.

Pay grades of National Guard personnel on active duty, ... Pay and Allowances.

... commissioned officers on active duty, see section ... Forces.

§ 506. Assignment and detail of memb... or Regular Air Force for ins... Guard

(a) The President shall assign for instru... Guard such members of the Regular Army or ... as he considers necessary.

(b) The Secretary of the Army may detail m... Army to attend an encampment, maneuver, ... field or coast-defense instruction of the Army ... Jarly, the Secretary of the Air Force may ... Regular Air Force to attend exercises for ... instruction of the Air National Guard. Mem... instruct the members of the National Guar... directed by the Secretary concerned, or as req... or commanding officer of the National Guard t... 10, 1956, c. 1041, 70A Stat. 611.

Historical and Revision N...

Revised Section	Source (U. S. Code)
506 (a)	32:60
506 (b)	32:67

Source (Statutes at Large)

June 3, 1916, ch. 134, § 81 (1st sentence of 2d par., less 1st 7 words); added June 4, 1920, ch. 227, subch. I, § 44 (2d sentence, less 1st 6 words); restated Sept. 22, 1922, ch. 423, § 4 (6th sentence, less 1st 6 words); restated Feb. 28, 1925, ch. 371, § 3 (6th sentence, less 1st 6 words); restated June 15, 1933, ch. 87, § 10 (1st sentence of 2d par., ... 160.

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Cross References

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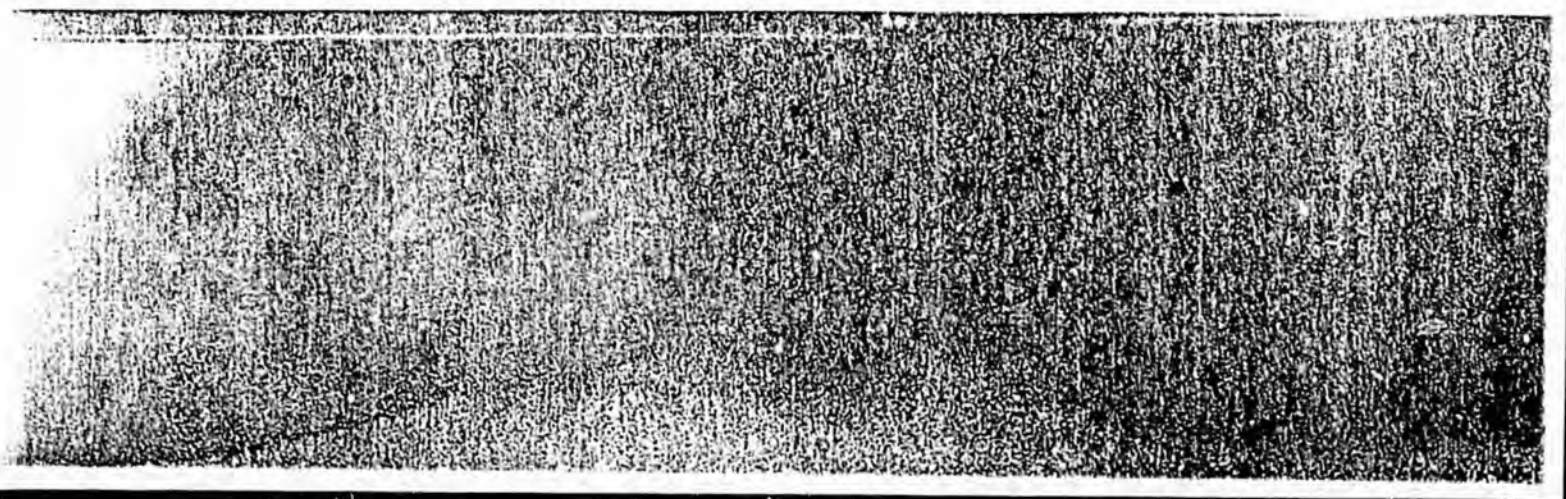
§ 507. Instruction in firing; supply o...

Ammunition for instruction in firing and f... be furnished, in such amounts as may be pres...



"(4) that in order to insure that such medical personnel will continue to be available to the National Guard, it is necessary for the Federal Government to assume responsibility for the payment of malpractice claims made against such personnel arising out of actions or omissions on the part of such personnel while they are performing certain training exercises."

[§ 335. Repealed. Pub.L. 98–525, Title IV, § 414(b)(2)(A), Oct. 19, 1984, 98 Stat. 2519]

Section, added Pub.L. 98–94, Title V, § 504(b)(1), Sept. 24, 1983, 97 Stat. 632, related to status of certain members performing full-time duty. See section 101(19) of this title.

CHAPTER 5—TRAINING

§ 502. Required drills and field exercises

(a) Under regulations to be prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be, each company, battery, squadron, and detachment of the National Guard, unless excused by the Secretary concerned, shall—

(1) assemble for drill and instruction, including indoor target practice, at least 48 times each year; and

(2) participate in training at encampments, maneuvers, outdoor target practice, or other exercises, at least 15 days each year.

However, no member of such unit who has served on active duty for one year or longer shall he required to participate in such training if the first day of such training period falls during the last one hundred and twenty days of his required membership in the National Guard.

(b) An assembly for drill and instruction may consist of a single ordered formation of a company, battery, squadron, or detachment, or, when authorized by the Secretary concerned, a series of ordered formations of parts of those organizations. However, to have a series of formations credited as an assembly for drill and instruction, all parts of the unit must be included in the series within 30 consecutive days.

[See main volume for text of (c) to (e)]

(f) Under regulations to be prescribed by the Secretary of the Army or Secretary of the Air Force, as the case may be, a member of the National Guard may—

(1) without his consent, but with the pay and allowances provided by law; or

(2) with his consent, either with or without pay and allowances;

be ordered to perform training or other duty in addition to that prescribed under subsection (a). Duty without pay shall be considered for all purposes as if it were duty with pay.

(As amended Oct. 3, 1964, Pub.L. 88–621, § 1(1), 78 Stat. 999; Dec. 1, 1967, Pub.L. 90–168, § 4, 81 Stat. 526; Nov. 17, 1971, Pub.L. 92–156, Title III, § 303(b), 85 Stat. 425.)

1971 Amendment. Subsec. (a). Pub.L. 92–156 inserted exception to training requirements where member served on active duty for one year or more if the training period falls during last one hundred and twenty days of required membership in National Guard.

1967 Amendment. Subsec. (b). Pub.L. 90–168 substituted 30 consecutive days for seven consecutive days of the same calendar month as the time within which all parts of the unit must be included in a series of formations in order to be credited as an assembly for drill and instruction.

1964 Amendment. Subsec. (f). Pub.L. 88–621 added subsec. (f).

Effective Date of 1967 Amendment. Amendment by Pub.L. 90–168 effective on the first day of the first calendar month following the date of enactment of Pub.L. 90–168, which was approved Dec. 1, 1967, see section 7 of Pub.L. 90–168, set out as a note under section 136 of Title 10, Armed Forces.

Legislative History: For legislative history and purpose of Pub.L. 88–621, see 1964 U.S.Code Cong. and Adm.News, p. 3800. See, also, Pub.L. 90–168, 1967 U.S.Code Cong. and Adm.News, p. 2033.

Cross References

Reemployment benefits, full-time training or duty performed by member of National Guard under this section considered active duty for training, see section 459(g)(5) and (6) of Appendix to Title 50, War and National Defense.

Reemployment benefits, inactive duty training performed by member of National Guard under this section considered inactive duty training, see section 454(g)(5) of Appendix to Title 50, War and National Defense.

Restoration of government employees to previous position after being ordered to active duty or to duty under this section, see section 3551 of Title 5, Government Organization and Employees.

West's Federal Practice Manual

Federal employees—

Status as, see § 1995.

Suits against individuals, see § 2002 et seq.

Code of Federal Regulations

Medical attendance and burial and claims for damages, procedures governing, see 32 CFR 564.37 et seq.

Participation in Reserve training programs, criteria and requirements for, see 32 CFR 101.1 et seq.

§ 503. Participation in field exercises

Cross References

Reemployment benefits, full-time training or duty performed by member of National Guard under this section considered active duty for training, see section 459(g)(5) and (6) of Appendix to Title 50, War and National Defense.

Restoration of government employees to previous position after being ordered to active duty or to duty under this section, see section 3551 of Title 5, Government Organization and Employees.

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Medical attendance and burial and claims for damages, procedures governing, see 32 CFR 564.37 et seq.

Notes of Decisions

Construction with other laws ½
Employees of federal government 5

½. Construction with other laws

For purpose of civil immunity for liability of national guardsman, there is no distinction between personnel ordered to active duty by the governor or personnel ordered to duty by the adjutant general with approval of governor or by federal authority; all of these statutes are part of

Library References

Militia ⇐14.

C.J.S. Militia § 1

Note

1. Military service

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§ 504. National Guard schools and small arms competit

(a) Under regulations to be prescribed by the Secretary o

of the Air Force, as the case may be, members of the

(1) attend schools conducted by the Army or the Ai

(2) conduct or attend schools conducted by the Nati

(3) participate in small arms competitions.

(b) Activities authorized under subsection (a) for member

of a State or territory, Puerto Rico, the Canal Zone, or the I

be held inside or outside its boundaries.

(As amended Oct. 3, 1964, Pub.L. 88–621, § 1(2), 78 Stat. 999.)

1964 Amendment. Pub.L. 88–621 substituted provisions authorizing the Secretaries of the Army and of the Air F

provisions authoriz

Restoration of government employees to previous position after being ordered to active duty or to duty under this section, see section 3551 of Title 5, Government Organization and Employees.

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Federal employees—

Status as, see § 1995.

Suits against individuals, see § 2002 et seq.

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Participation in Reserve training programs, criteria and requirements for, see 32 CFR 101.1 et seq.

Library References

Militia ⇐14.

C.J.S. Militia § 19.

Notes of Decisions

1. Military service

Inactive training duty performed by members of the Army National Guard and Air National Guard comes within the term "service" in section 2732 of Title 10 so that claims of Air National Guard members for personal property lost or damaged while on training or other duty under this section may be settled under section 2732 of Title 10. 1960, 40 Comp.Gen. 31.

§ 503. Participation in field exercises

Cross References

Reemployment benefits, full-time training or duty performed by member of National Guard under this section considered active duty for training, see section 459(g)(5) and (6) of Appendix to Title 50, War and National Defense.

Restoration of government employees to previous position after being ordered to active duty or to duty under this section, see section 3551 of Title 5, Government Organization and Employees.

West's Federal Practice Manual

Federal employees—

Status as, see § 1995.

Suits against individuals, see § 2002 et seq.

Code of Federal Regulations

Medical attendance and burial and claims for damages, procedures governing, see 32 CFR 564.37 et seq.

Notes of Decisions

Construction with other laws ½

Employees of federal government 5

½. Construction with other laws

For purpose of civil immunity for liability of national guardsman, there is no distinction between personnel ordered to active duty by the governor or personnel ordered to duty by the adjutant general with approval of governor or by federal authority; all of these statutes are part of the same act which must be construed together giving effect of manifest legislative intent and giving meaning to each provision if possible. Johnson v. State, By and Through Nat. Guard, 1977, 564 P.2d 714, 29 Or.App. 477.

5. Employees of federal government

In action for injuries sustained by tripping over a rope while attending an open house review of the National Guard where the unit was participating in training under the National Guard regulations and in accordance with the directive of the State Governor and the unit was not in active federal service and the place of accident was under exclusive control of the unit, persons engaged in the review were not employees of the federal government acting within scope of their employment so as to authorize the plaintiff to maintain a suit against the federal government under Federal Tort Claims Act, sections 1346, 2671 et seq. of Title 28. Gross v. U.S., D.C.N.Y.1959, 177 F.Supp. 766.

Fact that annual encampment of state National Guard is funded and mandated by federal law does not strip guardsman of his state status while participating in training, in that encampment is actually carried out by state military personnel under authority of the governor who is constitutionally and statutorily charged with the obligation of training the guardsmen. Greenwood v. Com., Dept. of Military Affairs, 1983, 468 A.2d 866, 78 Pa.Cmwlth. 480.

§ 501. National Guard schools and small arms competitions

(a) Under regulations to be prescribed by the Secretary of the Army or Secretary of the Air Force, as the case may be, members of the National Guard may—

(1) attend schools conducted by the Army or the Air Force, as appropriate;

(2) conduct or attend schools conducted by the National Guard; or

(3) participate in small arms competitions.

(b) Activities authorized under subsection (a) for members of the National Guard of a State or territory, Puerto Rico, the Canal Zone, or the District of Columbia may be held inside or outside its boundaries.

(As amended Oct. 3, 1964, Pub.L. 88-621, § 1(2), 78 Stat. 999.)

1964 Amendment. Pub.L. 88-621 substituted provisions authorizing the Secretaries of the Army and of the Air Force to issue regulations, for provisions authorizing the President to issue regu-

lations, and provided that members of the National Guard may conduct or attend schools conducted by the National Guard.

Legislative History: For legislative history and purpose of Pub.L. 88-621, see 1964 U.S.Code Cong. and Adm.News, p. 3800.

Cross References

Reemployment benefits, full-time training or duty performed by member of National Guard under this section considered active duty for training, see section 459(g)(5) and (6) of Appendix to Title 50, War and National Defense.

Restoration of government employees to previous position after being ordered to active duty or to duty under this section, see section 3551 of Title 5, Government Organization and Employees.

West's Federal Practice Manual

Federal employees—
Status as, see § 1995.
Suits against individuals, see § 2002 et seq.

Code of Federal Regulations

Medical attendance and burial and claims for damages, procedures governing, see 32 CFR 564.37 et seq.

Library References

Militia ⇐14.
C.J.S. Militia § 19.

§ 505. Army and Air Force schools and field exercises

Cross References

Reemployment benefits, full-time training or duty performed by member of National Guard under this section considered active duty for training, see section 459(g)(5) and (6) of Appendix to Title 50, War and National Defense.

Restoration of government employees to previous position after being ordered to active duty or to duty under this section, see section 3551 of Title 5, Government Organization and Employees.

West's Federal Practice Manual

Federal employees—
Status as, see § 1995.
Suits against individuals, see § 2002 et seq.

Code of Federal Regulations

Medical attendance and burial and claims for damages, procedures governing, see 32 CFR 564.37 et seq.

Notes of Decisions

1. Military service

Inactive training duty performed by members of the Army National Guard and Air National Guard comes within the term "service" in section 2732 of Title 10 so that claims of Air National Guard members for personal property lost or damaged while on training or other duty under this section may be settled under section 2732 of Title 10. 1960, 40 Comp.Gen. 31.

§ 506. Assignment and detail of members of Regular Army or Regular Air Force for instruction of National Guard

Cross References

Reemployment benefits, full-time training or duty performed by member of National Guard under this section considered active duty for training, see section 459(g)(5) and (6) of Appendix to Title 50, War and National Defense.

CHAPTER 7—SERVICE, SUPPLY, AND PROCUREMENT

1985 Amendment. Pub.L. 99-224, § 3(b), Dec. 28, 1985, 99 Stat. 1742, substituted "and" for "other than" in item 716.

1980 Amendment. Pub.L. 96-328, § 1(b)(2), Aug. 8, 1980, 94 Stat. 1027, substituted in item 710 "Accountability for property issued to the National Guard" for "Reports of survey".

1972 Amendment. Pub.L. 92-453, § 2(2), Oct. 1, 1972, 86 Stat. 759, added item 716.

1968 Amendment. Pub.L. 90-486, § 2(2), Aug. 13, 1968, 82 Stat. 756, substituted in item 709 "Technicians: employment, use, status" for "caretakers and clerks."

1960 Amendment. Pub.L. 86-740, § 1(2), Sept. 13, 1960, 74 Stat. 879, added item 715.

708. Property and fiscal officers

[See main volume for text of (a)]

(b) Each property and fiscal officer shall—

(1) receipt and account for all funds and property of possession of the National Guard for which he is proper

(2) make returns and reports concerning those fun required by the Secretary concerned.

[(3) Redesignated (2)]

(c) When he ceases to hold that assignment, a property a his status as an officer of the National Guard.

(d) The Secretaries shall prescribe a maximum grade, functions and responsibilities of the office, but not above and fiscal officer of the United States for the National Territory, Puerto Rico, the Canal Zone, and the District of

(e) The Secretary of the Army and the Secretary of the joint regulations necessary to carry out subsections (a)-(d).

(f) A property and fiscal officer may intrust money to a Guard to make disbursements as his agent. Both the off intrusted, and the property and disbursing officer intrustin pecuniarily responsible for that money to the United State subject, for misconduct as an agent, to the liabilities and per in like cases for the property and fiscal officer for whom h

[(g) Redesignated (f)]

(As amended June 6, 1972, Pub.L. 92-310, Title II, § 207, 86 Stat. 95-79, Title VIII, § 804(b), 91 Stat. 333; Dec. 12, 1980, Pub.L. 96-513 2937.)

1980 Amendment. Subsec. (b). Pub.L. 96-513 redesignated former cls. (2) and (3) as (1) and (2), respectively.

1977 Amendment. Subsec. (d). Pub.L. 95-79, § 804(b)(1), (2), redesignated former subsec. (e) as (d). Former subsec. (d), which authorized inspections at least once a year by Inspectors General of the departments concerned, was struck out.

Subsec. (e). Pub.L. 95-79, § 804(b)(2), (3), redesignated former subsec. (f) as (e) and, as so redesignated substituted "(d)" for "(e)". Former subsec. (e) was redesignated as (d).

Subsec. (f), (g). Pub.L. 95-79, § 804(b)(2), redesignated former subsecs. (f) and (g) as (e) and (f), respectively.

1972 Amendment. Subsec. (b)(1). Pub.L. 92-310 repealed provisions which related to the bond required of property and fiscal officers.

Effective Date of 1980 Amendment. Amendment by Pub.L. 96-513 effective Dec. 12, 1980, see section 701(b)(3) of Pub.L. 96-513, set out as a note under section 101 of Title 10, Armed Forces.

Legislative History. For legislative history and purpose of Pub.L. 92-310, see 1972 U.S.Code Cong. and Adm.News, p. 2364. See, also, Pub.L. 95-79, 1977 U.S. Code Cong. and Adm.News, p. 537; Pub.L. 96-513, 1980 U.S.Code Cong. and Adm.News, p. 6333.

Notes of Decisions

Constitutionality 1
Equitable relief 4
Judicial review 3
Notice and hearing requirements 2

2. Notice and heari

State governor he nominate, not appoi serve as United State but even if there was no power in goverr appointment, officer cer subject to preside ported removal by itself, and it did not tary regulations impe and-hearing requiren D.C.Ark.1984, 584 F.

3. Judicial review

Judicial review of volving removal of a from position of Unite officer was warranted moval without notice applicable military re severe consequences of in nature of duty assig ed subject from posit Shaw v. Gwatney, D 1357.

4. Equitable relief

Grant of reinstateme considered "equitable r er relief for district co that national guard pro denied his right to pre the officer initially as which was denied, and quently sought only th pay, and no compens Gwatney, D.C.Ark.198

SB
93

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 2-19-87 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

**FISCAL NOTE(S) ATTACHED X **
IN ACCORDANCE WITH AS 24.08.035
(see below)

FURTHER: JUDICIARY
FINANCE

1/30/87 DATE TURNED INTO OFFICE 2/26/87

Mr. President:

LABOR & COMMERCE Committee considered SB 93

relating to investments by financial institutions."

and recommended:

[ ] replace with CS _____ [ ] same title
[ ] new title
[X] majority attached amendment(s) and

[ ] do pass

[ ] do not pass

[ ] no recommendation

[X] individual recommendations

[ ] further referral to _____

[ ] letter of intent adopted and attached

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

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Mike Szymanski - No Rec.

Tim Kelly - Do Pass
Chairman signature and recommendation

[X] Committee Backup Attached

SENATE AMENDMENT

BY: Labor & Commerce Committee

TO: _____ SENATE BILL NO. 93

TO: _____ HOUSE BILL NO. _____

On page 2, line 29, following "government," ,

Insert: "with the approval of the trustor,".

(TURN IN ORIGINAL AMENDMENT TO SENATE SECRETARY'S OFFICE.
THE AMENDMENT WILL BE NUMBERED, COPIED AND DISTRIBUTED.)

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST:

Bill Version : SB 93
Publish Date :

Revision Date:
Title : Investments by Financial Institutions
Sponsor :
Requestor :

Agency Affected : Comm. & Econ. Dev.
BRU : Banking, Securities & Corp.
Components :

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by : Willis F. Kirkpatrick, Director
Division : Banking, Securities & Corporations
Phone : 465-2521
Date :

Approved by Commissioner : J. Anthony Smith, Commissioner
Agency : Department of Commerce and Economic Development
Date :

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

0201k22587c

Department of Commerce & Economic Development / POSITION PAPER

SB 93: "An Act relating to investments by financial institutions."

The Department of Commerce and Economic Development supports this bill if amended in the following manner. Page 2 line 29 after government insert "with approval of the trustor(s), ..."

Section 1 of the bill allows a trustee of a bank to invest in a mutual fund made up of government securities when the trust customer of the bank grants authority for the trustee to invest in government securities. This provision expands the trust power beyond that of the trustee agreement without allowing the trustor to make the determination as to whether this investment accords with the trustors' wishes. If the bank's trust customer gives the bank fiduciary freedom to invest in government securities the trustee of the trust should do just that. As SB 93 is now written, if the bank customer did not want government securities in the form of shares in a mutual fund the trust agreement would have to so state. There are a number of reasons why a trustor might choose not to have the trustee invest in mutual funds, one of which is that the trustor ends up paying double fees for the investment, one for the trustee administration cost and another for mutual fund management fees.

The department favors Section 2 of the bill as written. This section allows bank management to invest, as part of the bank's investment portfolio, mutual funds as long as the mutual fund limits its portfolio to legal investments. This allows a small financial institution the ability to have greater use of expertise of the mutual fund's managers, thus, diversifying some market risk.

This bill will have no affect on the program of regulating financial institutions nor will it have a fiscal impact.

J. Anthony Smith, Commissioner

DATE: 2/25/87

WFK/wfs5390W
22587c

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J. Anthony Smith, Commissioner

DATE: 2/25/87

WFK/wfs5390W
22587c

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version : SB 93
Publish Date : _____

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Title : Investments by Financial Institutions
Sponsor : _____
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BRU : Banking, Securities & Corp.
_____
Components : _____
_____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by : Willis F. Kirkpatrick, Director
Division : Banking, Securities & Corporations
Phone : 465-2521
Date : _____

Approved by Commissioner : J. Anthony Smith, Commissioner
Agency : Department of Commerce and Economic Development
Date : _____

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

0201k22587c

T. Duncan

Senate Bill 93 proposes two statutory amendments to Alaska banking laws.

Amendment to AS 06.05.180.

The proposed amendment to AS 06.05.180(10) provides that where an Alaska domiciled bank or national bank holds assets under a trust agreement, that said assets can be invested in shares of a "money market mutual fund" limited to short term U.S. Treasury obligations.

Reason for Amendment.

In the course of its examination of national banks and trust departments, the U.S. Office of the Comptroller of the Currency has construed trust instruments that permit or require investments in U.S. Obligations not to authorize investments in money market funds limited to short term U.S. Treasury Obligations. The regulations of the Office of Comptroller of the Currency applicable to fiduciary activities provides that funds held by a national bank, in a fiduciary capacity, shall be invested in accordance with the instrument establishing the fiduciary relationship and local law. In making their own interpretation of state law, the Office of Comptroller of the Currency has consistently rejected contray views of local bank counsel and has required national banks in some states to remove their assets from the money market mutual funds, with a subsequent loss to the bank's underlying account of the cost-effectiveness, convenience and liquidity afforded by the trust. The Office of the Comptroller of the Currency nonetheless has said that it will yield on the issue in the event of appropriate state legislation action. The decision of the Office of the Comptroller to yield to clarifying legislation has prompted introduction of legislation similar to the proposed amendment to AS 06.05.180(10) in many states.

Similar legislation has now been adopted by twenty (20) states: Alabama, California, Connecticut, Florida, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Minnesota, Missouri, New Jersey, New York North Carolina, Oklahoma, Ohio, Texas & Virginia.

Amendment to AS 06.05.270.

The proposed amendment to AS 06.05.270(a)(1) formalizes the position taken by the Director of Banking for the State of Alaska which allows Alaska domiciled banks to invest their own assets in money market mutual funds which are limited to short term U.S. Treasury Obligations.

Reason for Amendment, Senate Bill 93.

1) Formalizes statutory amendment, the practice currently authorized by the State of Alaska's Director of Banking and 2) clarifies existing law.