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USING LAY VOLUNTEERS TO REPRESENT CHILDREN IN CHILD PROTECTION COURT PROCEEDINGS

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Abstract—Despite a widespread conviction that children ought to be independently represented in child protection court proceedings in the United States, there is little consensus as to what the role of that independent child advocate ought to be or, indeed, who should fulfill that role. This study accomplished three purposes: (1) articulated an aggressive, ambitious and continuous role for the child's representative which encompassed a broad range of the child's interests, both legal and nonlegal; (2) provided training in this role to demonstration groups of attorneys, law students and lay volunteers; and (3) compared the effectiveness of each of the three demonstration groups in representing children to one another and to a control group of attorneys who received no special training from the research team. The findings indicate that carefully selected and trained lay people representing children in child abuse and neglect legal proceedings under lawyer supervision performed similarly to trained lawyers and law students in the way they approached their duties and in case outcomes achieved and significantly different from attorneys who, consistent with the practice in nearly all the United States, received no special training in child advocacy.

Résumé—Il existe une croyance généralisée selon laquelle les enfants devraient être représentés de façon indépendante dans les audiences des tribunaux chargés de la protection de l'enfance aux Etats-Unis. Cependant personne n'est d'accord sur le rôle que doit jouer le défenseur indépendant de l'enfant dans ces tribunaux ni non plus sur la définition de la personne qui doit jouer ce rôle. L'étude présentée ici a atteint les buts suivants: (1) Elle a défini un rôle agressif, ambitieux, ininterrompu pour le representant de l'enfant, rôle tenant compte dans une large mesure des intérêts de l'enfant à la fois juridiques et non juridiques. (2) Elle a été didactique, par la création de groupes de démonstration composés d'avocats, d'étudiants en droit, et de personnes bénévoles non professionnelles. (3) Elle a permis de comparer l'efficacité de chacun des trois groupes de démonstration dans leur tentative mutuelle de représenter les enfants; un groupe de juristes qui n'avaient pas reçu une formation particulière de la part de l'équipe conduisant la recherche, a servi de groupe temoin. Il est apparu d'apres cette étude que des bénévoles bien choisis et bien entrainés chargés de représenter les intérêts des enfants dans les cas de maltraitement ou de négligence venant devant les tribunaux, à condition qu'ils soient guidés par un avocat, s'en s'ont tirés au moins aussi bien que les avocats et les étudiants en droit ayant subi une formation spéciale. Ces bénévoees ont démontré une compétence certaine dans la façon dont ils ont conçu leurs responsabilités et ils ont obtenu des résultats en audience nettement meilleurs que les avocats qui eux n'avaient reçu aucune formation dans le rôle de défenseur d'enfants. Les juristes américains sont mal préparés à assumer le rôle de représentants des enfants maltraités ou négligés devant les tribunaux.

THE PURPOSES OF THE STUDY

WHAT SHOULD BE the duties and responsibilities of the child advocate in civil child protection proceedings? Who should represent the child in such cases? How can effective representation of the child be accomplished? This study accomplished three purposes: (1)

The research reported here was awarded the 1985 Research in Advocacy Award by the National Court Appointed Special Advocate (CASA) Association.

conceptualized the role of the child's representative as aggressive, ambitious and encompassing a broad range of the child's interests—both legal and nonlegal; (2) provided training in this role to demonstration groups of attorneys, law students and lay (nonlawyer) volunteers; and (3) compared the effectiveness of each of the three demonstration groups in representing children to one another and to a control group of attorneys who received no special training from the research team.

Search for Alternative Representation for Children

Most people recognize the need for children to be independently represented in child abuse and neglect proceedings [1-4] but dissatisfaction with the representation as it is currently provided is widespread [5-10]. There is no consensus on what the role and responsibility of the child's representative ought to be and little consistency among lawyers in fulfilling this responsibility or in preparing for it [11-12]. There is little in the education and training of lawyers that necessarily enables them to properly serve the special interest of the child [13] and because law schools usually do not provide training in this nontraditional role, "many lawyers are uncomfortable with the nonlegal responsibilities they may have in abuse and neglect cases" [14]. The dissatisfaction and uncertainty about the role of the child's representative has provided an impetus for clarifying those duties and responsibilities and for searching for alternative ways to represent children.

The CASA movement. The search for ways to improve the representation of children in child abuse and neglect court proceedings has taken many forms. Communities throughout the United States have experimented with trained lay volunteers to either represent the child or to assist a lawyer in representation of the child. Seattle, Washington, began its Guardian ad Litem Program in 1977 using the title, court appointed special advocate (CASA) to designate the lay volunteer who represents children in child protection cases [12, 15]. These Seattle CASAs, who worked under the supervision of a social worker and a lawyer, were viewed as a substitute for court-appointed lawyers for children [15].

The National Council of Family and Juvenile Court Judges (NCFJCJ) has encouraged CASA program development in many ways, including sponsoring national CASA seminars and programs [16]. NCFJCJ also developed an earlier volunteer child advocate program called the Children in Placement Program (CIP), a post-disposition monitoring process in which a trained lay volunteer tracked children placed out of their homes and advocated for meaningful court review of each child's placement with a goal of returning the child to his original family as soon as possible or moving to free the child for adoption [17]. NCFJCJ, among others, has actively pressed for use of lay volunteers in foster care review boards which are active in several jurisdictions [18]. The National Council of Jewish Women, having adopted CASAs as a special community service project, developed an extensive manual for CASA programs and sponsored programs around the country [19]. Over 173 such programs now exist in 39 states [20]. An active National Association of Court Appointed Special Advocates has been organized that provides a national newsletter, an annual meeting and other services [21].

The role of CASAs and other lay volunteer child advocates varies greatly from community to community. The volunteer may operate independently or may be paired with an attorney and become the "eyes and ears" of the child's legal representative, doing separate investigations and independent advocacy for the child. Still other volunteer advocates function as assistants or adjuncts to caseworkers.

Non-lawyer representation of children. The question of whether someone other than a lawyer should represent the children has been raised in several quarters. The ABA Juvenile Justice Standards Project comments:

> While independent representation for a child may be important in protective and custodial proceedings, a representative trained wholly in law may not be the appropriate choice for this function. . . .
>
> Accordingly it would not seem irresponsible to suggest that a professional trained in psychology, psychiatry, social psychology or social welfare be assigned the initial responsibility for protecting children under these circumstances. There is, however, no evidence that this alternative is presently available, either in terms of numbers of competent personnel or in terms of occupational independence from official and interested agencies.
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> . . . until there are sufficient numbers of independent, competent personnel trained in other disciplines who will undertake to ascertain and guard the child's interests in these proceedings, continued reliance on legal representation for the child is necessary. [22, 23]

To encourage exploration and evaluation of alternative ways of providing representation to children, the National Center for Child Abuse and Neglect (NCCAN) funded 28 demonstration projects around the country since 1978 in which children are represented by volunteer lawyers, law students, multidisciplinary child advocate offices, and lay volunteers [24]. The study reported here is one of these.

ROLE DEFINITION OF THE CHILD ADVOCATES

Before addressing the question of a training curriculum for child advocates, some working assumptions about the role of that representative and about what might constitute the child's "best interests" were developed. The study began with a definition of the child advocate role that is aggressive, ambitious, continuous, and encompasses both legal and nonlegal interests of the child. That is, advocacy for a child, under this role definition, emphasized the personal interests of the child and was broadly defined to include not just courtroom advocacy but also out-of-court advocacy with agencies and other service providers and in informal meetings and telephone calls with social workers and other parties to the case. This model emphasized the interests and needs of the child beyond those typically identified by statutes and court rules.

Seeking the "Best Interests of the Child"

A major ambiguity in representing children in court stems from the admonition to represent the "best interests" of the child. But what are the child's best interests?

> Deciding what is best for a child often poses a question no less ultimate than the purposes and values of life itself. Should the decision maker be primarily concerned with the child's happiness or with the child's spiritual and religious training? Is the primary goal long-term economic productivity when the child grows up? Are the most important values of life found in warm relationships? In discipline and self-sacrifice? Are stability and security for a child more desirable than intellectual stimulation? These questions could be elaborated . . . And yet, where is one to look for the set of values that should guide decisions concerning what is best for the child? . . . [I]f one looks to our society at large, one finds neither a clear consensus as to the best child-rearing strategies, nor an appropriate hierarchy of ultimate values. [25, 26]

Thus, "best interests" is far from being an objective legal standard, but is instead a statement of a very nebulous goal. Nonetheless, even recognizing the imprecision and indeterminance of the best interests standard, the advocates were trained in identifying and pursuing goals which the research team, based on their experience, believed most likely to be "best" for most children. Public Law 96-272 (Adoption Assistance and Child Welfare Act of 1980) and its underlying rationale provided the basis of many of the sub-

jective choices as to what is likely to be in the best interests of most children. Individual judgment on behalf of specific children remained necessary however. The training received by the demonstration groups was intended to provide a basis for making their own judgments and for evaluating the judgments made by others such as social workers and court officials.

Identifying the Interest of the Child

Certain interests of the child were emphasized by the project including the importance of a careful assessment of the family situation and development of timely and specific case plans. The project emphasized that the child's interests included preserving his placement with his parent or parents, if at all possible, consistent with his well-being and safety. A "child's sense of time" [27] was discussed to demonstrate that if the child is removed from his family it should be for the shortest time possible and his placement should generally be one that is the most familiar to him (the least restrictive, most family-like setting) [28-30]. Contact with the family should ordinarily be maintained through regular visits. If services to the child or his family were needed before he could return home, the project recommended that they should be identified accurately and provided promptly.

Certainly to be protected from physical and emotional harm and to be provided minimally adequate food, clothing, shelter, guidance and supervision is in the child's "best interests." The social worker and the court generally addressed obvious deficiencies in the child's care in these areas without the need for intervention by an independent child's representative. Other interests are more subtle however, and may easily be overlooked by all but the child's representative.

The state intervention itself presents additional risks to the child for which the child advocate must be wary. The demonstration groups were advised that the interests of the individual child are not always consistent with those of the state agency. Because of high caseloads, agencies may be unwilling or unable to meet each child's individual needs, e.g., for frequent visitation. An overburdened caseworker may not be as sensitive, as careful, or as skilled in judgment as she or he would be under less taxing circumstances. Consequently, the child runs the risk of either being inappropriately separated from his familiar surroundings or of having an inadequate assessment of his home situation, so that remedies prescribed are inappropriate, inadequate or too late. If the child is removed from home, the child runs the risk of being placed in multiple foster homes, of being abused in foster care, of being placed in inappropriate institutions, and of not having visits with his parents and family often enough. Reasonable case plans may be developed by social agencies but not be implemented properly or quickly, thus adding to the length of time the child is out of his home and lessening the child's chances of ever returning home.

In coming to a "best interests" position for the child, the child's representatives were trained to ascertain the facts of the case as clearly as possible by interviewing family members, neighbors, and others as necessary. The suggestion was made that the representatives also might rely on a thorough protective services investigation in some circumstances. The child advocate was advised to meet the child client in every case even if the child was an infant, if only for the purpose of getting a feel for the child as a real person facing a serious personal problem. The goal was to personalize the child to the advocate beyond the paper work of court petitions and social work reports.

Wishes of the Child vs. Best Interests

The traditional lawyer role is to advocate for goals as defined by the client. In some cases what a child wished to see happen would, in fact, be "best" for the child in the eyes of the lawyer, but this would not always be true. If the child wanted to go home, for

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example, but the child advocate felt that the home was unsafe, there would be a conflict between the child's wishes and the representative's view of the child's best interests. In a situation where the advocate pressed for a position inconsistent with what the child wanted, the child would effectively be denied a voice in the legal proceedings.

The project responded to this ambiguity by taking a flexible, child-centered approach to representation. Advocates were expected to always meet the child and, to the extent possible, find out what the child wanted. The wishes of a child were treated with respect and, with older children, would typically guide the representative's actions. In the case of young children, those under age 9 or so, representatives considered what the child's wishes were but typically advocated what the representative identified as the client's "best interests" [26, 31-34].

Independence of the Child Advocate

The project stressed that the child's representative ought not agree with the social worker's recommendations without question. While maintaining a cooperative spirit, the representative should question the worker closely and extract the underlying basis for the caseworker's positions and recommendations. The advocate's conclusions should be reached independently. The advocate should strive to identify what the determinates of the problem are. Once the underlying determinates are identified, the advocate can help discover ways to ease them. Thus, the demonstration child advocates were encouraged to take a broad view of the child's interests, in the context of his family and to avoid a piecemeal approach to the child and his family's problems.

TRAINING PROVIDED

Identification of Needs and Interests of Children

The demonstration child advocates were given training intended to help them identify the needs and interests of their young clients. Films, lectures, discussions, and exercises reviewed the causes and dynamics of child abuse and neglect; suggested a process of investigation and assessment; identified aspects of child development most relevant to determining the child's psychological needs at various ages; and described intervention programs available locally that might assist families and their children.

The demonstration attorneys and the volunteers received four days of training from the University of Michigan Law School Child Advocacy Program between January 27 and February 11, 1982. The law students received similar training in their coursework at the Child Advocacy Law Clinic. All participants were given a copy of a book on social work with abused and neglected children that included contributions from a number of disciplines on topics such as sexual abuse and child development [36].

The importance of assessing parental conduct, appraising the risks to a child presented by environment, recognizing strengths in the parent-child relationship, and evaluating the soundness of an intervention strategy proposed by the social agency were emphasized. The representatives were taught that they must synthesize the results of the protective services investigation; the child's psychological, developmental, and physical needs; the child's articulated wishes; the representative's own assessment of the facts and of the treatment resources available.

Advocacy Training

In addition to being trained to identify the needs and interests of the child, the demon-

stration groups also were trained to advocate vigorously for those interests—both in the courtroom and within the child's family, with the court workers and the social agencies involved. They were taught that advocacy for the child ought to begin with the social agency which filed the petition. The child's representatives were advised to advocate in and out of court for careful assessment of the family situation, for adequate and specific case plans, and for timely implementation of the case plans.

The representatives were asked to play a significant role in facilitating negotiation and mediation. They were taught that swift resolution of the legal dispute which is as cooperative and as nonadversarial as possible and which provides the needed protection and services to the child is nearly always in the child's interest. The child's representatives were trained to encourage negotiation and to play the role of mediator and conciliator between the social agency and parents.

In court hearings the child's representatives were instructed to ensure that all the relevant facts were brought before the judge and to advocate for a resolution of the case most likely to achieve the identified interests of the child.

Follow-up and Continuity

After adjudication, the child's representative was to remain vigorous and active. The child advocate was asked to press and persuade the responsible social agencies for the services and attention that the child client (and perhaps his family) needed. Preferably such nudging would be done in a collegial, nonaccusatory manner but if social workers or agencies were not fulfilling their responsibility to a particular child (or to his parents), the child's representative was asked to insist on a higher standard of service either by a direct request to supervisors in the agency or by formally raising the issues before the court.

An additional concern of the project was that the child should have continuity in representation. Continuity would allow a representative to have the benefit of investigation and experience with the case over time and would result in a better-informed advocate. Additionally, the project felt that continuity would result in a better client-representative relationship, and in fewer delays in court proceedings. Consequently the representatives were taught that they were expected to serve for the duration of the case.

In summary, the training incorporated the project's concept of the proper role of the representative: a child-centered advocate who understood the social-psychological problems involved in the case, who understood the importance of the social service agencies in case resolution, and who was committed to actively guiding the case through to its end [37].

STUDY DESIGN

This study demonstrated the effects of training three different kinds of advocates for allegedly abused and neglected children in Genessee County Juvenile Court (Flint, Michigan). A goal of the study was to provide evidence as to whether some alternative to lawyer representation is both feasible and consistent with high standards of performance on behalf of the child. The demonstration groups included the following: (1) private attorneys selected at random from the court list of attorneys interested in accepting appointments in child abuse and neglect cases; (2) law students from the University of Michigan Law School Child Advocacy Law Clinic; and (3) lay volunteers under the supervision of an experienced attorney.

Under the existing system, attorneys were appointed by the court on a rotating basis to represent children. The attorneys typically were general practitioners who had no special

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training in child abuse and neglect. Additionally, the attorneys did not follow a case through the entire court process. Instead, one attorney was appointed for the preliminary hearing and another was appointed to serve at subsequent hearings.

The demonstration groups differed in three respects from the existing system. First, a number of the representatives were not attorneys, but rather lay volunteers under lawyer supervision or law students from the University of Michigan Law School Child Advocacy Law Clinic. Both non-attorney groups assumed primary responsibility for the investigation and decision making in their cases. Secondly, the research team provided the demonstration child advocates with four days of training (or its equivalent in the case of the law students) as described above. Thirdly, the demonstration child advocates served for the duration of the case.

Selecting and Supervising the Volunteers

Assisted by several community volunteer organizations, the project sought lay volunteers experienced in dealing with children, with formal social systems, and with the court, and for individuals whose attitudes toward child abuse and neglect was family-oriented, rehabilitative yet philosophically recognizing the need for a child to be removed from his family in some circumstances either temporarily or permanently. Ten persons received four days of training and began to represent children. The volunteers worked in teams of two initially and then alone. Because of time commitments and scheduling problems, five of the initial ten volunteers working alone or with a partner handled all the volunteer cases. The volunteers included a retired General Motors supervisor, a homemaker with a master's degree in education who was taking time out from the work force until her children were older, an executive director of a social services agency, a journalist, a college senior majoring in psychology, a former juvenile court caseworker, a department store employee, and a General Motors production worker.

The lay volunteers were supervised by an attorney in private practice who had training and experience in representing children and who appeared as the attorney of record. The supervising attorney conferred frequently with the lay volunteers as they were investigating and preparing their cases. Even as the lay volunteers gained experience, they continued to have questions about court procedure. He accompanied the volunteers in their first court appearances. Subsequently, however, he made a determination as to whether legal questions or taking of testimony required his presence. If not, he would allow the volunteer to appear in court without him. Volunteers appeared without the supervisor approximately 35% of the time. The court appearances without the supervising attorney increased as the volunteers gained experience. Even if the lawyer appeared, the volunteers presented their recommendations to the court and the lawyer rarely had to make any comments on the record. The lawyer dealt with legal issues or the taking of testimony in the few cases in which that was necessary. If the lawyer did not appear in court on a case, he remained on-call in his nearby office.

The lay volunteers had primary responsibility for representing the children with the lawyer acting in a supervisory and advisory capacity only. Although the supervisor responded to questions of law and procedure and discussed each case with the volunteers, he did not find it necessary to override any volunteer's assessment of a case or his/her proposed recommendations to the court. Occasionally the volunteer and supervisor differed on what course of action was best for a child, i.e., whether to keep the child in foster care or return him home. In no case, however, was the judgment of the volunteer on such nonlegal matters not accepted by the lawyer. The supervising attorney's attitude, and that espoused by the research team, was that the volunteers' judgments, given their individual backgrounds, training and personal contact with the case, were as good as, if not better than, the attorney's in the nonlegal areas.

Data Set

The control group consisted of 38 cases of alleged child abuse and neglect active between August 1, 1981 and October 31, 1981 and handled by attorneys who received no intervention from the research team. The demonstration groups included 53 cases active between February 1, 1982 and December 31, 1982: 16 cases handled by law students; 22 handled by volunteers; and 15 handled by the trained lawyers. All cases were heard by the same judge, Probate Judge Thomas L. Gadola. There were no changes in the local court processes, statutes, or rules governing child protection cases during the 18 months in which data collection for control and demonstration cases took place. Staff level and the operating budgets for the court and department of social services remained approximately the same during this period. A comparison of control and demonstration cases revealed no significant differences as to the types of abuse and severity of the types of abuse. There also were no significant differences between the demonstration and control groups on race, sex, and the mean number of children per case [38]. Thus the basis for comparing the control and demonstration groups seems reasonably strong.

Measures

Process measures and outcome measures were developed to evaluate the performance of the child advocates. To evaluate the process of representation, i.e., what the advocates actually did to advocate for their young clients, the researchers conducted a face-to-face 45-minute interview with each representative using an instrument with structured and open-ended questions for each case that was handled. Eight different measures of outcome were developed relying on the court orders and court records of each case.

MAJOR FINDINGS: PROCESS MEASURES

Information on the steps the advocates took to represent a child came from individual 45-minute interviews with each advocate on each case. Through the statistical technique of factor analysis, questions that actually were measuring the same underlying dimension of any activity or attitude were combined into one, more accurate, condensed scale. Using factor analysis, four standardized scales were developed [39]:

Factor 1, *Investigation-Interaction Scale*, a measure that combines the number of people representatives talked to, the total number of sources of factual information, the number of persons who urged the representatives to accept their recommendations (an indication of the representative's interaction with others), and the total number of hours spent on the case.

Factor 2, *Advocacy Scale*, a measure that combines the number of recommendations made by the representative, the number of services obtained and the number of people monitored by the representative after the first major disposition.

Factor 3, *Motivation Scale*, a combination measure indicating the degree to which the representatives saw their role as important, were highly interested in the case and were more likely to characterize their role at the hearings as active rather than passive or neutral.

Factor 4, *Child Scale*, a measure that combines whether or not the representative met with the child, the percent of time spent talking with the child, the rank of the child as an

important source of information, the utility of contact with the child, and the degree of consideration given to the child's wishes.

Other variables that were not related to these four scales, but were of theoretical or practical significance, were retained and examined separately. For the purpose of discussion, these other variables and the factor scales were placed in the following four broad categories of process measures:

1. Investigation/Advocacy/Mediation;
2. Representative's Attitude Toward the Role;
3. Representative's Attitude Toward the Child;
4. Representative's Attitude Toward Others.

The factor scales and variables which are in each of these four categories are listed in Table 1, and include any process measure that, when used as a basis for comparison among the three demonstration groups or of the combined demonstration group with the control group, resulted in differences that were statistically significant.

Differences Among Demonstration Groups

After comparing the three demonstration groups on process measures only a few significant differences emerged. The law students scored higher on the investigation-interaction scale than either of the other groups and tried to convince more people and took significantly more actions to attempt mediation than did the volunteers. Law students were more critical of the other actors in the process than either the trained lawyers or the volunteers. Both law students and volunteers were more likely than attorneys to feel that their activity as the child's advocate made a difference in the outcome of the case for the child.

Table 1. Four Categories of Process Measures

1. Investigation/Advocacy/Mediation
   - Investigation/Interaction Scale (Factor 1)
   - Advocacy Scale (Factor 2)
   - People Tried to Convince (the number of different persons the representative tried to convince to accept his or her recommendations)
   - Follow-up Activities (yes or no)
   - Sum of Mediation Actions (number of different actions representative took to try to get the parties to agree, for example phone calls, meetings)
   - Role in Getting Services (Did the representative play a role in getting the court to order services—yes or no)
2. Representative's Attitude Toward Role
   - Motivation Scale (Factor 3)
   - Outcome Different because of Child Advocate (Did the representative think his/her presence made a difference in outcome—yes or no)
   - Satisfaction with Outcome (Was the representative satisfied with the outcome of the case—rating on five point scale—not at all to very much).
3. Representative's Attitude Toward Child
   - Child Scale (Factor 4)
   - Purpose of Representative's Contact with Child:
     - State Recommendations (yes or no)
     - Assessment (yes or no)
4. Representative's Attitude Toward Others
   - Courtworker's Competency (rated on 5 point scale—very low to very high)
   - Prosecutor's Competency (rated on 5 point scale—very low to very high)
   - Social Service Worker's Competency (rated on 5 point scale—very low to very high)
   - Responsiveness Agency/Court Personnel (rated on 5 point scale—very low to very high)
   - Proceedings Moved too Slowly (yes or no)

Overall, these few differences were not great enough to conclude that the performance of one demonstration group was substantially different from the performance of any of the others. The lay volunteers, the law students and the trained attorneys performed similar activities while representing their child clients. Given these few differences, we felt it reasonable to combine the three demonstration groups for comparison with the control groups on the process measures.

Differences Between Demonstration Group and Controls

There were many significant differences (.05 or better) between the demonstration groups and the control group on process measures. The demonstration group spent more time on their cases. For cases dismissed at preliminary hearing, the demonstration advocates spent a mean of 5.5 hours compared to a mean of 1 hour for the control. For cases going beyond preliminary hearing, the demonstration group spent a mean of 8.5 hours vs. 5.6 for the control. The demonstration group scored higher on the Investigation-Interaction Scale (indicating that they spent more time on the case, talked to more people, relied upon more sources of information and more people urged them to accept recommendations). The demonstration groups took more steps to mediate disputes at preliminary hearings, were more critical of the other actors in the process, and were more likely to engage in follow-up activities on behalf of their young clients. On cases that went beyond preliminary hearing, the demonstration child advocates rated higher on the motivation scale (i.e., saw their role as more important), and on the advocacy scale (indicating that they made more recommendations, obtained more services for their clients and monitored more persons after the first major disposition).

In all, the demonstration child advocates' performance when contrasted with the control group was in keeping with the role of the child advocates presented by the training. Thorough investigation, active advocacy and a skeptical but active role with others in the proceedings was characteristic of the representation provided by each group of the demonstration child advocates.

MAJOR FINDINGS: OUTCOME MEASURES

Eight different measures of outcome were developed relying on the court records of each case. The outcome measures were designed to compare the actual management and resolution of the control and demonstration cases as reflected by the court's own orders. The outcome measures are

- Court Processing Time;
- Placement Orders: Home, Relative, or Other;
- Visitation Orders;
- Treatment/Assessment Orders;
- No Contest Pleas;
- Ward of Court;
- Dismissals;
- Other Procedural Orders.

In what may be the most important finding, no significant differences were found among the demonstration groups on outcome measures. That is, the case outcomes achieved by lay volunteers, lawyers and law students on behalf of their young clients were comparable. Since there were no significant differences on outcome measures

among the demonstration groups, they were combined for purposes of comparison with the control attorneys on outcome measures.

Path Analysis

There were, however, a good number of significant differences between the control group and the demonstration groups. Rather than simply comparing the demonstration and control child advocates on outcome measures in a bivariate analysis, a multifactor or multivariate path analysis was pursued to examine the causal link between the treatment given to the demonstration groups (i.e., the training) with the case outcomes. The training changed how the demonstration child advocates handled their cases and this change in advocacy, in turn, affected outcome. Multivariate techniques made it possible to estimate and evaluate the strength, direction and significance of the specific steps the child advocates took which contributed to the case outcomes [40]. To simplify analysis, the only process measures that were used for path analysis were the four factor scales: Investigation-Interaction, Advocacy, Motivation and Child [41]. Only two of these, Investigation-Interaction and Advocacy, were found to influence the outcome measures.

The effect of type of child representative (control or demonstration) and of child representation activities (process variables) on case outcome measures are presented in Figure 1. Figure 1 gives the *Beta* weights (standardized regression coefficients) for each relationship. *Beta* weights range from a high of +1 to a low of -1. An advantage of the standardized score is that the strength and direction of the relationships among all of the variables in the model can be compared easily. For example, there is a strong positive relationship between the process measure, Investigation-Interaction, and the outcome measure, Home Placement (+.3); but a relatively weak positive relationship between Investigation-Interaction and Other Placement (+.12).

The analysis showed that the demonstration representatives did have an impact on a number of aspects of case outcome. This effect was sometimes directly related to the type of representative. For example, children represented by the demonstration representatives were less likely to be made wards of the court than were the children represented by the control representatives. This may have been due to the continuity of representation provided by the demonstration representatives, to their overall activity, or to some combination of these factors.

However, more often this effect was indirect; that is, the demonstration representatives performed differently as measured by the process variables and this difference in representational processes resulted in a change in the outcome variables. For example, the demonstration representatives were more likely to have a high score on the Advocacy Scale and a high score on the Advocacy Scale was positively related to Treatment/Assessment orders.

Court processing time. Court processing time was influenced by the representatives' activity as measured by the Advocacy Scale. When representatives scored high on the Advocacy Scale, the number of days in the system was significantly reduced. Further, as reported above, the demonstration representatives scored significantly higher on the Advocacy Scale. In other words, while the type of representative did not directly influence court processing time, the demonstration treatment did result in more advocacy which, in turn, produced a reduction in the number of days between the filing of the petition and the first major disposition. Delays can be very harmful to children by causing longer than necessary out-of-home placement and other disruptions to the child's stability and continuity. The advocacy activities of the demonstration groups resulted in their cases pro-

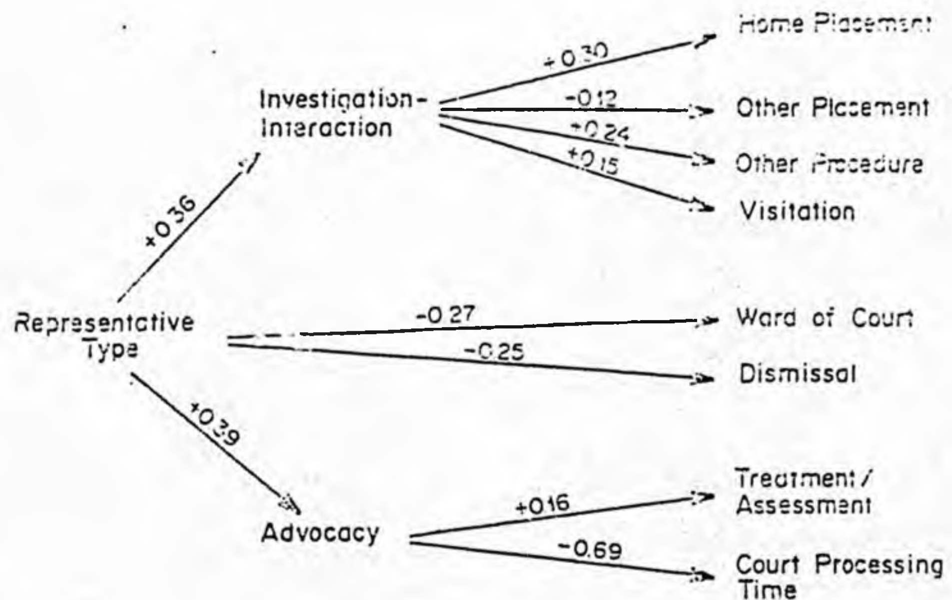

Figure 1. Path Model of the Effects of Type of Representative (Demonstration or Control) and Representative Activity (Process Measures)** on Outcome***

* All relationships in the model are expressed as standardized regression coefficients (Beta) and are significant in the 0.10 range.

** Since the Motivation Scale and the Child Scale did not influence outcome, they are omitted.

gressing more rapidly to the decision stage. On average, the demonstration cases reached the first major disposition in 37.9 days, compared with 60.6 days required by the control cases. Although this difference is statistically significant, it is important to note that the path model demonstrates that it was not representation by the demonstration representatives in itself that caused this difference, but rather the fact that demonstration representatives engaged in more advocacy activities.

Interestingly, 30% of the cases handled by the demonstration group finished the court process within four days (See Table 2). This may have been due to the continuity of representation provided by the demonstration groups. The demonstration representatives would have been able to continue to work toward a resolution of their cases whereas the responsibilities of the control representatives who served at the preliminary hearing would have ended after a single court appearance.

Placement. Home and other placement orders were also affected indirectly the the presence of the demonstration representatives. Demonstration representatives were more likely to score high on the Investigation-Interaction Scale and a high score on this scale was positively and strongly related to home placement and less strongly to other placement. Relative placements were not affected either directly or indirectly by the presence of the demonstration representatives and occurred at approximately the same rate for control and demonstration cases.

We had anticipated that the demonstration representatives' cases would be likely to have more home placements and fewer placements in foster care ordered by the court. That expectation was partially borne out in the increased number of home placement orders which seems to indicate a greater concern for stability and continuity of environment for the child and attempts to make the child safe in his own home whenever pos-

ey

Home Placement

Other Placement

Other Procedure

Visitation

Ward of Court

Dismissal

Treatment/
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Time

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Table 2. Percent of Cases by Case Type and Length of Time (in days) in Court System

	0–4 days	5–42	43 –	Total
Control	2.4%	43%	[illegible]	[illegible]
	(1)	(16)	(21)	(38)
Demonstration	30%	41%	30%	100%
	(16)	[illegible]	(16)	[illegible]

sible. A greater number of other placement orders (primarily orders for foster care) in the demonstration cases may indicate that these representatives were more concerned about the placement of the child clients and consequently were more likely to ask for a court order regarding placement whether the move was from home to foster care, from foster care to home or some other placement change.

Visitation and Treatment/Assessment. Visitation was also indirectly affected by the presence of the demonstration representatives. Orders relating to visitation were more likely when either the demonstration or control representatives had a high score on Investigation/Interaction, but the demonstration representatives were more likely to have a high score on this scale.

Orders relating to Treatment/Assessment were also indirectly affected by the representative type. Demonstration representatives were more likely to score high on the Advocacy Scale and high scores on this measure were related to more orders for treatment and assessment.

Formal court jurisdiction. Two variables reflecting formal court jurisdiction—ward of court and dismissals—were directly and strongly affected by the type of representative rather than indirectly affected through representative activity. The demonstration cases resulted in far fewer wards of the court (39% of the demonstration cases compared with 62% of the control cases). This may indicate a more rapid assessment of the cases and successful diversion of certain cases from the formal court process. None of the demonstration cases diverted from the court process had returned to the court six months later.

However, as the model shows, the demonstration cases, once made wards of the court, were also less likely to be dismissed. By the first major disposition, 37% of the demonstration group cases were dismissed compared with 56.4% of the control group ($\chi = 3.43$; $p = .06$). Orders of dismissal tended to be entered at the preliminary hearing for the demonstration group, 13 of the 21 dismissal orders (62%). Of cases not dismissed at the first major disposition, the control cases had significantly more dismissals than demonstration cases within four months after the first major disposition (Demonstration, 30%; Control, 57%), $\chi = 5.6$, $p = .01$.

Thus control cases were more likely to be made wards of the court and then dismissed, whereas demonstration cases, when dismissed, tended to be dismissed without first being made wards of the court. Although demonstration cases were more likely to be dismissed at preliminary hearing, once a case reached dispositional hearing, the demonstration cases were far less likely to be dismissed. This may be attributed to more careful assessment and screening of cases by the demonstration groups at the preliminary hearing stage and perhaps to more watchful advocacy on behalf of a child once made a ward of the court. Continuity of representation may have helped the representatives make a more accurate, earlier assessment of the need for court intervention.

Importantly, a follow up after six months showed that none of the demonstration cases which had been dismissed by the court had returned for further court action.

Impact on Case Outcome. Other procedural orders, a miscellaneous category that included such court orders as those disposing of motions and amendments to petitions, was also positively associated with high Investigation-Interaction scores, perhaps a further reflection of the increased activity of the demonstration groups.

Another example of the demonstration representatives' acceleration of the court process is the timing of no contest pleas. Although the difference in the number of no contest pleas between the two groups is not significant, no contest pleas were entered significantly earlier in the process in the demonstration cases. In 83% of the demonstration cases in which a no contest plea was entered (15 out of 17 cases), the plea was entered at preliminary hearing or at pretrial, compared to 43% of the control cases (6 of 13); in 50% of the control cases (7 of 13) no contest pleas were entered at adjudication disposition hearings, compared with 11% of demonstration cases (2 of 17) no contest pleas, $\chi^2 = 15.1$, $p = .001$.

Overall, the path analysis showed that the demonstration representatives did have an impact on case outcome. Orders of Ward of Court and Dismissal were less likely to occur in the demonstration cases. Cases in which the representatives scored high on the process measure, Advocacy, were more likely to pass quickly through the court system and to have orders related to treatment and assessment. High scores on the process measure, Investigation-Interaction, were positively related to orders of home placement and visitation.

LIMITATIONS OF THE DATA

The case outcome data does not address the question of whether particular children were better served by the court because of the efforts of their child advocates. Even if the reader shares the researcher's assumptions that the best interests of the child are generally served by timely processing of cases, frequent visitation, and diversion from the formal court process consistent with a child's safety, etc., it does not follow that these outcomes are best for each and every child in each and every case. Sometimes visitation can be harmful to a child or delay in the court proceedings can positively facilitate cooperative resolution of a family problem. Through the training, the research team attempted to instill the need for individualized judgment on behalf of the child and stressed the absence of any pat formula for resolving these troublesome dilemmas. Anecdotal information indicates that the trained advocates did, indeed, exercise individual judgment in their cases, drawing on a variety of approaches to further the interests of their young clients. The evaluation tools, however, do not make these fine distinctions. Outcome data is aggregated and only reveal general trends in case outcomes—trends that are consistent with the early assumptions as to what is "better" for most children and trends consistent with the training provided the demonstration groups. The outcome measures, however, focus on the court process and rest on certain assumptions as to what court orders indicate successful outcomes for children. The measures used do not reveal whether individual children are better off as a result of the advocacy. More empirical work on the process and effects of advocacy is necessary.

CONCLUSIONS AND POLICY IMPLICATIONS

The study demonstrates a model of representing children in which the child advocate's role is defined as continuous, aggressive and ambitious, encompassing both the legal and nonlegal interests of the child, and in which training in the role was provided. The demon-

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stration model was successful in improving the quality of representation and, as a conse-quence, better case outcomes resulted. The demonstration model appears to be a clear improvement over the prior system.

A second major conclusion can be drawn from the study. Since all three demonstration groups provided similar high quality representation, who is trained seems to be less important than that some training take place. Since the improvement in advocacy for children also saved the court resources in the number of hearings and length of time it took to bring a case to a conclusion, the training sessions are likely to be cost beneficial.

Lay persons (nonlawyers) carefully selected, trained and under lawyer supervision performed as well as lawyers and law students in representing children. They certainly performed better than lawyers without special training. Considering the high quality of representation provided by lay volunteers and considering the potential cost savings of such volunteer programs, courts should consider initiating programs relying on nonlawyer representation of children under lawyer supervision with the representation provided by carefully selected and trained volunteers, law students or perhaps social workers, psychologists or graduate students in those disciplines.

Acknowledgment—

Thanks to Sarah H. Ramsey, Associate Professor, Syracuse University College of Law, with whom the author co-authored a more extensive report on this research for law review publication. This report could not have been completed without her careful scholarship and assistance.

Thanks to the many persons who assisted in this study, especially Judge Thomas L. Gadola and Mr. Gerald Thulhammer of the Genesee County Probate Court, Attorney Patric A. Parker who helped train the volunteers and ably supervised them throughout the project; Professor Kathleen C. Faller, University of Michigan School of Social Work; Ms. Nancy Mathiowetz, statistical consultant, JoAnn Townsend and Arthur Rose, research assistants; and David M. Chambers and Robert F. Kelly for their many helpful suggestions throughout the study.

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38. In the control group there were significantly more older children (age 12 and older) than in the demonstration group and the demonstration group had a larger proportion of very young children (infant to 3 years) than did the control group. However, the mean age of children in the control group was 10.1 years compared to a mean of 7.9 years for the demonstration group, a difference that was not statistically significant. To compensate for bias that these age differences might introduce in subsequent analyses, age was used as a control variable in the early stages of all multivariate analysis and was kept in those models in which it was found to have a significant impact on outcome variables.
39. In order to enhance the interpretability of subsequent multivariate analyses, the factor scales were estimated in a manner that makes each scale statistically independent of the other (the orthogonal solution). Because the scales have been standardized, each has a mean of zero and a standard deviation of one. The factor table is available on request from the author.
40. Because the number of cases in the sample is small and because we felt that our quasi-experimental design required a more rigorous multivariate test of program impacts on the outcome variables, a more liberal inclusion level in the .10 range, rather than the traditional .05 level of statistical significance was chosen. This choice allows us to detect program effect in well-controlled models, while at the same time recognizing that the small size reduces the odds that program effects would be found at higher levels of statistical significance.
41. For control cases with more than one attorney, the performance of the attorney who represented the child at the first major disposition was used. (Demonstration cases had only one representative per case.)

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Court Appointed Special Advocate

Who speaks
for the child
in your court?

Judges in over 100 U.S. cities say Court Appointed Special Advocate (CASA) volunteers represent the child's best interests.

"I consider court appointed special advocacy an excellent way to enhance the juvenile court process and to broaden community understanding of the work of our juvenile courts. It provides a 'window into the process,' and at the same time, a contribution to the interest of children."

Justice Andrew Jackson Higgins
Chairman, Missouri Supreme Court
Task Force on Permanency Planning for
Abused and Neglected Children

What Is a CASA Program?

Court Appointed Special Advocate (CASA) programs provide trained volunteers to serve as advocates for children whose home placement is being decided by the court—usually as a result of abuse or neglect. The program goal is to ensure that a child's right to a safe, permanent home is acted on by the court in a sensitive and expedient manner.

The CASA, as a court officer, independently investigates a case by talking with the child, parents and family members, neighbors, school officials, doctors, and others, and by reviewing all records and documents pertaining to the child. The CASA then submits a formal report to the court which includes recommendations as to what placement by the court will best serve the interests of the child.

Currently, there are more than 100 CASA programs operating in 26 States. In some States these programs are known as volunteer guardian ad litem programs. Many States now mandate the appointment of a volunteer CASA or guardian ad litem by statute. In all cases, the court having jurisdiction over dependent, neglected, and abused children is supportive of the CASA's and, in fact, must make the actual appointments.

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of MAR. 18 1987 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: JUDICIARY

**FISCAL NOTE(S) ATTACHED 2 **
IN ACCORDANCE WITH AS 24.08.035
(see below)

3/10/87

DATE TURNED INTO OFFICE 3-23-87

Mr. President:

STATE AFFAIRS Committee considered SB 176

office of public advocacy and volunteer guardians ad litem.

and recommended:

[ ] replace with CS ____________ [] same title [] new title

[ ] attached amendment(s) and

[✓] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] further referral to ____________

[ ] letter of intent adopted and attached

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

MEMBERS SIGNING DO PASS

[signature]
[signature] (DO PASS)

OTHER RECOMMENDATIONS

[signature] fiscal note needs to be analyzed.

[signature] Do pass with fiscal analysis.

Chairman signature and recommendation

[ ] Committee Backup Attached

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"The CASA volunteers in our juvenile and family courts help keep the system responsive to the child's need for permanency. They assist the court in keeping constructive tension on the system. They constantly remind us not to substitute governmental neglect for parental or family neglect."

Judge John P. Steketee
Grand Rapids, Michigan
President, National Council of Juvenile and Family Court Judges

"The CASA program provides the best opportunity I know for the citizen volunteer to radically improve an abused or neglected child's chance for happiness."

James Wootton
Deputy Administrator
Office of Juvenile Justice and Delinquency Prevention

"It's knowing your efforts affected a child's life when he needed it the most."

Judy Sanders, CASA
Seattle, Washington

"Every family court should have a CASA program. A CASA volunteer's first responsibility is to the child—advocating for the child's best interest, whether it be temporary care, return to the birth parents, or placement in an adoptive home. The value of the program—to the child and to the court—is inestimable."

Dorcas R. Hardy
Assistant Secretary for Human Development Services
Department of Health and Human Services

The National CASA Association

The National Court Appointed Special Advocate Association, formed in 1982, seeks to enhance the degree of integrity and professionalism of its members in their responsibilities as children's advocates.

CASA volunteers are kept up to date on legislation, research, practice, program development, and case law through the association's quarterly newsletter *The CASA Connection*. The association's annual conference provides a forum in which CASA's share their experiences in all matters relating to their role as children's advocates in child abuse and neglect cases.

The CASA association also provides coordination and training for CASA/guardian ad litem programs nationwide. A CASA manual and CASA testimonial videotapes are available to introduce the concept to courts and communities interested in forming a CASA program.

Under a cooperative agreement with the National Council of Juvenile and Family Court Judges, and with funding from both the Office of Juvenile Justice in the U.S. Department of Justice and the U.S. Department of Health and Human Services, the association provides technical assistance to new or existing programs.

You Can Become a CASA

CASA, the Spanish word meaning "home," denotes a court appointed volunteer specially trained to advise the court in the best interests of a child.

If you are a mature, responsible adult who can relate to families in stressful situations, and are willing to commit your time to ensure that the existing process for placement of children works better, you may become a CASA.

You can be helpful to the child in a frightening and confusing time, explaining the court process to him or her, and interpreting the child's needs and best interests to the attorney, the social agency, the court, and others. You can provide continuity for a child since judges, caseworkers, attorneys, and foster parents change over time.

As a CASA, you attend orientation seminars before receiving any case assignment so that you are thoroughly familiar with the legal aspects of your role as a CASA, as well as with the social services being discussed in court proceedings. Ongoing training sessions also will be available to you.

You Can Start a CASA Program

The National CASA Association can help you start a program in your community.

As an initial step, the association will provide you with a CASA testimonial videotape featuring several judges who have successful CASA programs in operation. Comments from their own experiences underscore the value of these programs to children and the courts. Also presented is the role of the volunteer and his or her relationships with the legal community and social service agencies. Another videotape, providing specific information on the "how to's" of implementing a CASA program, is available also.

The National CASA Association additionally offers you a CASA manual which overviews the four primary models of a CASA program. Topics covered are funding, judicial philosophy, working with the court system, recruitment, screening, training, administration, and overcoming resistance to change.

Should your court or community need technical assistance for program planning, implementation, or ongoing consultation, it is available through the National CASA Association.

Order Form

Please send me additional information on:

☐ Starting a CASA program in my city/State

☐ Serving as a CASA volunteer

☐ Receiving technical assistance for a ☐ new or ☐ existing program

Name: ____________________

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IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: JUDICIARY

**FISCAL NOTE(S) ATTACHED 2 **
IN ACCORDANCE WITH AS 24.08.035
(see below)

3/10/87

DATE TURNED INTO OFFICE 3-23-87

Mr. President:

STATE AFFAIRS Committee considered SB 176

office of public advocacy and volunteer guardians ad litem.

and recommended:

[ ] replace with CS ______ [] same title [] new title

[ ] attached amendment(s) and

[✓] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] further referral to ______

[ ] letter of intent adopted and attached

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

MEMBERS SIGNING DO PASS

[signature]
[signature] (DO PASS)

OTHER RECOMMENDATIONS

[signature] fiscal note needs to be analyzed.

[signature] Do pass with fiscal analysis.

Chairman signature and recommendation

[ ] Committee Backup Attached

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION : SB 176
PUBLISH DATE : 3/10/87

FISCAL NOTE

REQUEST:

Revision Date: 1/20/88
Title : "An Act relating to volunteer guardian ad litem program . . ."
Sponsor : Uehling
Requestor : State Affairs, Judiciary

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES		84.5	87.9	91.4	95.1	98.9
TRAVEL		3.7	3.8	3.9	4.0	4.1
CONTRACTUAL		2.6	2.1	2.2	2.3	2.4
SUPPLIES		2.0	2.1	2.2	2.3	2.4
EQUIPMENT		11.5				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		103.7	95.9	99.7	103.7	107.8

CAPITAL						

REVENUE						

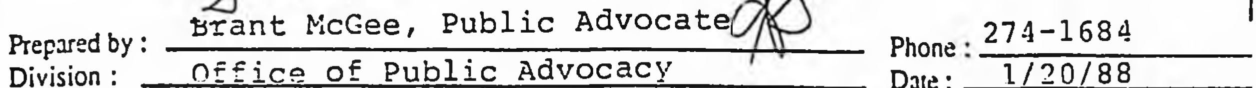
FUNDING: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
GENERAL FUND		103.7	95.9	99.7	103.7	107.8
FEDERAL FUNDS						
OTHER						
TOTAL		103.7	95.9	99.7	103.7	107.8

POSITIONS:

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
FULL-TIME		2.0	2.0	2.0	2.0	2.0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)



Prepared by : Brant McGee, Public Advocate
Phone : 274-1684
Division : Office of Public Advocacy
Date : 1/20/88

Approved by Commissioner : John Andrews
Date : 1/27/88
Agency : Department of Administration

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

page ___ of ___

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 176

This bill relates to the establishment of a volunteer guardian ad litem program within the Office of Public Advocacy. This bill would substantially improve the ability of the Office of Public Advocacy to provide guardian ad litem representation to children in abuse and neglect cases as well as contested custody cases.

BUDGET ANALYSIS

Personal Services	FY89
Associate Attorney II - Range 19/A (FY88)	55.2
Clerk Typist III - Range 08/A (FY89)	29.3
	84.5
Travel	
3 Trips to Ketchikan	3.7
3 Trips to Fairbanks	
Contractual	
Advertising	2.0
Printing Training Material	
Supplies	2.0
Equipment	
Associate Attorney II	11.5
Clerk Typist III	
TOTAL:	103.7

Position Title	Associate Attorney II	No. of Positions 1	Range/Step 19/A	Barg. Unit X
Time Status PFT	Staff Months 12	Location Anchorage-EBA		Election District 8

Type of Expenditure 1	2	Amount 3
Salary	40,236	
Benefits	14,777	
Premium Pay		
Other		
Total Personal Services		55,013
Travel		
Contractual		
Commodities		2,000
Equipment		2,000
Other		2,429
Total Cost		61,442

Funding Source for Total Cost		
Federal Receipts	1002	
G. F. Match	1003	
General Fund	1004	61,442
GF Program Receipts	1005	
Other		

Justification

An Associate Attorney II position to act as program director is essential if the CASA, volunteer guardian ad litem program is to be successfully implemented. It is not possible for present staff positions to carry a full guardian ad litem caseload and assume the duties of establishing and coordinating the volunteer program. The half-time position that is currently funded by federal and private money is inadequate and ends in February 1988. It is anticipated that the program director will coordinate recruitment, screening and training of volunteers in the Anchorage area. The program director will also be responsible for establishing similar volunteer programs in Fairbanks and Ketchikan, and will study the feasibility of establishing such a program in the rural areas of Alaska. Additionally, the position will be devoted to extensive community education and fundraising for the project.

Request For New Position

Agency Department of Administration
BRU Office of Public Advocacy
Component Office of Public Advocacy

Page of
Revised Date

FY 89

Position Title	Clerk-Typist III
Time Status	PFT
Staff Months	12

No. of Positions	Range/Step	Barg. Unit
1	08/A	G

Location	Election District
Anchorage-EBA	8

Type of Expenditure 1	2	Amount 3
Salary	19,572	
Benefits	9,742	
Premium Pay		
Other		
Total Personal Services		29,314
Travel		
Contractual		
Commodities		
Equipment		9,338
Other		
Total Cost		38,652

Funding Source for Total Cost		
Federal Receipts	1002	
G. F. Match	1003	
General Fund	1004	38,652
GF Program Receipts	1005	
Other		

Justification

A Clerk Typist III position will be needed to provide clerical support to the volunteer guardian ad litem program director. At present, Office of Public Advocacy has only three clerical support po: [illegible]ons who provide clerical support to [illegible] professional staff of twelve in the Anchorage office. It is not possible for the present secretarial positions to absorb the additional clerical support generated by the program director and the volunteer program.

Request For New Position

Agency: Department of Administration
BRU: Office of Public Advocacy
Component: Office of Public Advocacy

Page of
Revised Date

FY 89

SB
177

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CSSB 177 (Jud)
PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date: 3/25/88
Title: "An Act relating to medical expenses of prisoners."
Sponsor: Senator Fischer
Requestor: Senate Judiciary

Agency Affected: Public Safety
BRU: Alaska State Troopers
Components: Detachments & CIB

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL		-0-	-0-	-0-	-0-	-0-
REVENUE		-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS:

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
FULL-TIME		0	0	0	0	0
PART-TIME		0	0	0	0	0
TEMPORARY		0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact is anticipated.

Prepared by: Francis C. Allan/dp
Phone: 269-5691
Division: Alaska State Troopers
Date: 3/25/88

Approved by Commissioner: [signature], Dep. Comm.
Date: 3-25-88
Agency: Public Safety

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

APR 13 1988

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CS SB 177
PUBLISH DATE: (Judiciary)

FISCAL NOTE

REQUEST:

Revision Date:
Title: "An Act relating to medical expenses of prisoners."
Sponsor: Senator Fischer, Kerttula
Requestor: Binkley

Agency Affected: Department of Corrections
BRU: Statewide Operations
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES		405.7	405.7	407.7	405.7	405.7
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT		24.0				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	429.7	405.7	405.7	405.7	405.7
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
GENERAL FUND		429.7	405.7	405.7	405.7	405.7
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	429.7	405.7	405.7	405.7	405.7

POSITIONS:

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
FULL-TIME	-0-	12	12	12	12	12
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See Attached.

Susan E. Knighton

Prepared by: Susan E. Knighton, Director
Phone: 465-3376
Division: Administrative Services
Date: 4-11-88

Approved by Commissioner: Susan Humphrey-Barnett
Date: 4-11-88
Agency: Department of Corrections

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CS SB 177

ANALYSIS

This proposed legislation specifies that the Commissioner will adopt regulations establishing a graduated schedule of fees to be charged all prisoners to whom medical services are provided under AS 33.30.011(4).

In order to properly track the medical services received by the 2400 inmates under the care of the Department and assess each inmate the appropriate amount, additional positions will be required.

This reflects the addition of a Clerk III ($33,810/year) in each of 12 institutions and $2.0 equipment for each position. No inflation factor has been included in these calculations.

APR 8 1988

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CS SB 177
PUBLISH DATE:

FISCAL NOTE

REQUEST

Revision Date: 03/25/88
Title: An Act relating to medical expenses of prisoners
Sponsor: Fischer, Kerttula, Binkley
Requestor: Judiciary

Agency Affected: Revenue
BRU: Permanent Fund Dividend Division
Components: Permanent Fund Dividend Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
OPERATING						
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LANDS & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
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)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS: None required.

Prepared By: Ervin Jones
Division: Permanent Fund Dividend Division
Phone: 465-2323
Date: March 25, 1988

Approved by Commissioner:
Agency: Revenue
Date: 3/25/88

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

5-0819B
Chenoweth
3/23/88

Original sponsors: Fischer, Kerttula, Binkley, et al.

1 IN THE SENATE BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 177 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to medical expenses of prisoners."

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

8 * Section 1. AS 33.30 is amended by adding a new section to read:

9 Sec. 33.30.015. MEDICAL EXPENSES OF PRISONERS. (a) The commis-
10 sioner shall adopt regulations establishing a graduated schedule of
11 fees to be charged all prisoners to whom medical services are provided
12 under AS 33.30.011(4). The amount of the fee
13 (1) must be based upon the level of medical service pro-
14 vided; and
15 (2) may not exceed $10 per visit or appointment.
16 (b) The commissioner may assess a penalty for a prisoner's
17 wilful failure or refusal to keep a medical or health care appointment
18 that has been scheduled with the prisoner's knowledge and consent.
19 The penalty assessed equals twice the fee for the medical service
20 established under (a) of this section.
21 (c) The department may not deny necessary medical services
22 because of the inability of a prisoner to pay the established medical
23 fee or any penalty. If the commissioner determines that a prisoner
24 has insufficient funds to pay the medical fee or penalty, the commis-
25 sioner may waive or reduce the established fee or penalty, or may seek
26 reimbursement of the fee or penalty from the prisoner after the med-
27 ical service has been provided.
28
29

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: SB 177
PUBLISH DATE:

FISCAL NOTE

REQUEST

Revision Date:
Title: "An Act relating to medical expenses of prisoners."
Sponsor: Sen. Fischer
Requestor: Senate Judiciary

Agency Affected: Public Safety
BRU: Alaska State Troopers
Components: Detachments

FEB 15 1988

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY88	FY89	FY90	FY91	FY92	FY93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUNDS						
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)

No fiscal impact is anticipated.

JNR
2/9/88

Prepared by: Francis C. Allan F.C.A.
Division: Alaska State Troopers

Phone: 269-5691
Date: 1/29/88

Approved by Commissioner: R. Arthur English R.A.E.
Agency: Public Safety

Date: 1/29/88

Distribution: (by preparer):

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

SB

178

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST:

Bill Version: SB 178
Publish Date:

Revision Date:
Title: "An Act relating to criminal fines."
Sponsor: Sen. Fischer, Kerttula, Binkley,
Requestor: Jones and Duncan

Agency Affected: Department of Corrections
BRU:

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

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

SKnighton

Prepared by: Susan Knighton, Research Analyst IV
Phone: 465-3376
Division: Administrative Services
Date: 3-12-87

Approved by Commissioner: Susan Humphrey-Barnett
Date: 3-12-87
Agency: Department of Corrections

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

page ___ of ___

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 178

ANALYSIS

In order to determine the fiscal impact of SB No. 178, the Department of Corrections has evaluated the current costs incurred to incarcerate a person serving a term of imprisonment for Driving While Intoxicated. These costs can then be converted into possible reasonable fines to be imposed by the courts.

Profile of DWI Sentences

	Time Served	Days in Institution	Days In CRC
First Offense	4 days	1	3
Second Offense	20 days	10	10
Third Offense	45 days	40	5
Fourth Offense	150 days	150	Ø

Using the average daily costs incurred by Department of Corrections of $87.56/day for institutions and $44.46/day for Community Residential Centers (CRC), the following costs for each level of offender are computed:

	Costs Incurred/Possible Fine
First Offense	$ 220
Second Offense	$ 1,321
Third Offense	$ 3,724
Fourth Offense	$13,134

Using these possible fines, an estimate can be made of the possible revenues to be collected from sentenced DWI offenders.

	# Persons	Possible Fine	Total Fines Imposed
First Offense	2312	$ 220	$ 508,640
Second Offense	748	$ 1,321	988,108
Third Offense	272	$ 3,724	1,012,928
Fourth Offense	68	$13,134	893,112
	3400		$3,402,788

The fines will be imposed and collected by the courts, so there will be no additional administrative costs for the Department of Corrections.

MAR 24 1987

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: SB178
Publish Date:

REQUEST
Revision Date:
Title: An Act relating to criminal fines.

Agency Affected: Department of Revenue
BRU: Public Services - Permanent Fund

Sponsor: Fischer, Kerttula, Binkley, et al
Requestor: Jundiciary

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	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

ANALYSIS: Attach a separate page if necessary

Prepared by: Sally Smith *Sally Smith*
Phone: 465-2392
Division: Public Services
Date: March 17, 1987

Approved by
Commissioner: *[signature]*
Date: 3/20/87
Agency: Revenue

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management & Budget
- Impacted Agency(ies)
- Senate Secretary

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: SB 178
Publish Date:

REQUEST

Revision Date:
Title: An Act relating to criminal fines
Sponsor: Fischer, Kerttula, Binkley Jones and Duncan
Requestor: Senate Judiciary Committee

Agency Affected: Revenue
BRU: Enforcement

Components: Enforcement Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

POSITIONS:

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

ANALYSIS: None required.

Prepared By: Thomas C. Williams
Phone: 465-2360
Division: Enforcement Division
Date: March 16, 1987

Approved by Commissioner:
Date: 3/17/87
Agency: Revenue

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

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: SB 178
PUBLISH DATE:

FISCAL NOTE

REQUEST

Revision Date:
Title: "An Act relating to criminal fines".

Sponsor: Sen. Fischer
Requestor: Senate Judiciary

Agency Affected: Public Safety
BRU: Alaska State Troopers

Components: Detachments

FEB 15 1988

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY88	FY89	FY90	FY91	FY92	FY93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUNDS						
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)

No fiscal impact is anticipated.

JNR 2/9/88

Prepared by: Francis C. Allan G.C.A.
Division: Alaska State Troopers

Phone: 269-5691
Date: 1/29/88

Approved by Commissioner: Arthur English
Agency: Public Safety

Date: 1/29/88

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

SB
185

3/8/88 RECVD

and non-affiliated loads were mixed and the drivers were paid only the lower, affiliated rate. Cook said, "it appears that the compensation due the owner-operator for non-affiliated LTL was denied ... and furthermore it appeared that Mukluk blatantly concealed from the owner-operator what the owner-operator was entitled to." He discovered notations on various drivers' payment sheets and on company rate worksheets instructing Mukluk employees *"not to include the freight charge computation in the record of the owner-operator settlement."* (Emphasis in original). Without a copy of the freight bill a driver is unable to determine whether his portion of the freight charges was computed correctly.

Based upon these discoveries, Cook concluded:

> I do not believe that Mukluk can, in good faith, dispute that it owes the owner-operators more than they had paid them. I have read the letter sent to the owner-operators which accompanied checks sent to them. I do not believe, based upon the law which is well known to Mukluk as well as myself, that Mukluk can claim their obligation to pay in dispute in good faith. In terms of the amount to be paid, the exact amount is nearly ascertainable though mathematical application of the correct tariff rates which is what I am currently attempting to do.

[4] We believe the drivers have presented sufficient evidence of Mukluk's bad faith to defeat Mukluk's motion for summary judgment. *See Air Van Lines*, 673 P.2d at 778 n. 2. The statements contained in the Cook affidavit raised a genuine factual dispute over whether Mukluk's refusal to pay the drivers according to published tariffs and written contracts was in good faith. If there is no good faith dispute as to the validity of the drivers' claim, there can be no accord and satisfaction. *Id. See also* 6 A. Corbin, *supra*, § 1287 at 159.

The judgment of the trial court is therefore REVERSED and the case is REMANDED for further proceedings consistent with this opinion.[2]

MOORE, J., not participating.

John W. STORRS, Appellant,

v.

MUNICIPALITY OF ANCHORAGE, a municipal corporation, Appellee.

No. S–863.

Supreme Court of Alaska.

July 11, 1986.

Rehearing Granted in Part and Opinion Amended July 29, 1986.

Discharged police officer filed suit against municipality for reinstatement and back pay, arguing he was deprived of due process because he did not receive a pretermination hearing. The Superior Court, Third Judicial District, Anchorage, Karl S. Johnstone, J., entered summary judgment for the municipality, and officer appealed. The Supreme Court, Moore, J., held that: (1) pretermination procedure followed by municipality comported with minimum federal due process requirements; (2) a posttermination adversarial hearing may satisfy requirements of Alaska's due process clause when a collective bargaining agreement waives the constitutionally mandated pretermination adversarial hearing; and (3) officer was not entitled to back pay from date of discharge to date of posttermination trial.

Affirmed.

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2. We need not reach the drivers' arguments that Mukluk's offer was ambiguous or that the trial court abused its discretion by denying their motion for relief under Civil Rule 60(b).

1. Constitutional Law ⇐277(2)

Public employees, other than those serving "at will," have a sufficient property interest in continued employment to warrant due process protection prior to termination. U.S.C.A. Const.Amend. 14.

2. Constitutional Law ⇐277(2)

City police officer had a property interest in his continued employment and could not be deprived of his job without due process of law, where a collective bargaining agreement provided that police officers could be dismissed only for just cause. U.S.C.A. Const.Amend. 14.

3. Constitutional Law ⇐278(1.1)

The root of due process is the right to a hearing before a deprivation of property. U.S.C.A. Const.Amend. 14.

4. Constitutional Law ⇐275(1)

Nature of an employee's pretermination rights varies, depending in part on nature of subsequent proceedings available; procedure should provide an initial check against a mistaken decision by employer, ensuring that there are reasonable grounds to believe the allegations against the employee are true; at a minimum, employee must receive oral or written notice of the proposed discharge, an explanation of the employer's evidence and an opportunity to present his position.

5. Constitutional Law ⇐278.4(5)

Pretermination procedure followed by municipality in discharging police officer comported with minimum federal due process requirements, where officer received notice, an explanation of evidence against him, and a sufficient opportunity to respond during course of investigation. U.S.C.A. Const.Amend. 14.

6. Constitutional Law ⇐278.4(5)

When minimal pretermination procedures are followed, federal law entitles a public employee to a formal evidentiary posttermination hearing within a reasonable time.

7. Constitutional Law ⇐278.4(5)

Delay of more than three years between city police officer's discharge and posttermination hearing in form of scheduled trial did not violate officer's due process rights, where officer never requested a prompt posttermination hearing. U.S.C.A. Const.Amend. 14.

8. Constitutional Law ⇐278.4(5)

Like the Federal Constitution, the Alaska Constitution affords pretermination due process protection to public employees who may only be terminated for just cause. Const. Art. 1, § 7.

9. Administrative Law and Procedure ⇐470

Officers and Public Employees ⇐72.16

A public employee ordinarily has the right to an adversarial hearing before he may be effectively dismissed.

10. Constitutional Law ⇐278.4(5)

A posttermination adversarial hearing may satisfy requirements of Alaska's due process clause when a collective bargaining agreement waives the constitutionally mandated pretermination adversarial hearing; substitution of a posttermination hearing for a pretermination hearing is permissible so long as the negotiated agreement provides fair, reasonable, and efficacious procedures by which employer-employee disputes may be resolved; in such a case, due process has not been offended where a discharged employee can seek posttermination judicial review of his grievance. Const. Art. 1, § 7.

11. Municipal Corporations ⇐185(4)

Discharged city police officer waived his right to a posttermination hearing by not requesting one.

12. Officers and Public Employees ⇐76

When a constitutionally unlawful dismissal is cured by a posttermination hearing, the employee is entitled [illegible] for the period between dismissal and the curative hearing.

13. Municipal Corporations ⟹186(4)

City police officer was not entitled to back pay from date of discharge to date of posttermination trial, where officer received all process due, and thus his termination was constitutionally lawful. U.S.C.A. Const.Amend. 14; Const. Art. 1, § 7.

James T. Robinson, David A. Devine, Smith, Robinson, Greuning & Brecht, Anchorage, for appellant.

Jerry Wertzbaugher, Municipal Atty., Julie Garfield, Asst. Municipal Atty., Anchorage, for appellee.

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

OPINION

MOORE, Justice.

This appeal raises the question whether a collective bargaining agreement can alter the constitutional rights of covered employees to provide for post-termination review, rather than pretermination review, of a discharge and, if so, whether a discharged employee is entitled to back pay between his dismissal and eventual post-termination review. The superior court found the officer received all process due and the officer appealed. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

John W. Storrs was a career police officer with the Municipality of Anchorage Police Department (Municipality). The Municipality claims that, while on duty, Storrs engaged in sexual activity with a woman he was driving home. Storrs denied the allegation. Following an exhaustive internal investigation, Police Chief Brian Porter fired Storrs.

Storrs is a member of a collective bargaining unit represented by the Anchorage Police Department Employees Association (APDEA). Under the collective bargaining agreement, a police officer may only be dismissed for just cause. Officers are entitled to two weeks notice or two weeks pay prior to discharge. The contract provides for arbitration of grievances only upon demand of APDEA. APDEA declined to arbitrate Storrs' dismissal.

Storrs filed suit in superior court against the Municipality for reinstatement and back pay, arguing he was deprived of due process because he did not receive a pretermination hearing. Judge Karl S. Johnstone entered summary judgment for the Municipality, concluding that Storrs was not entitled to a pretermination hearing but that he had the right to a trial on his claim that he was terminated without just cause.[1] Storrs appealed.

II. FEDERAL DUE PROCESS RIGHTS

A. Pretermination Hearing

Storrs argues that he was deprived of a constitutionally protected interest in his continued employment without due process of law because he did not receive a pretermination hearing. The Municipality contends that Storrs was not deprived of due process.

[1, 2] Public employees, other than those serving "at will," have a sufficient property interest in continued employment to warrant due process protection prior to termination. *Cleveland Board of Education v. Loudermill,* 470 U.S. ——, ——, 105 S.Ct. 1487, 1491, 84 L.Ed.2d 494, 501 (1985). The collective bargaining agreement provides that Anchorage police officers may be dismissed only for just cause. Therefore, Storrs has a property interest in his continued employment; he may not be deprived of his job without due process of law. The question remains what process is due?

1. Although a trial was scheduled for January 1985, Storrs declined the opportunity to present his case in superior court.

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[3, 4] The root of due process is the right to a hearing *before* a deprivation of property. *Loudermill*, 470 U.S. at ——, 105 S.Ct. at 1493, 84 L.Ed.2d at 503. The nature of the employee's pretermination rights varies, depending in part on the nature of subsequent proceedings available. *Loudermill*, 470 U.S. at ——, 105 S.Ct. at 1495, 84 L.Ed.2d at 506. The procedure should provide an initial check against a mistaken decision by the employer, ensuring that there are reasonable grounds to believe the allegations against the employee are true. *Id.* At a minimum, the employee must receive oral or written notice of the proposed discharge, an explanation of the employer's evidence and an opportunity to present his position. *Id.* Storrs argues that he was deprived of due process because the Municipality did not explain its evidence nor provide a meaningful opportunity to respond.

[5] We conclude that the pretermination procedure followed by the Municipality comported with minimum federal due process requirements. The Municipality undertook an investigation on November 17 after receiving the complaint against Storrs. The investigation officers took a statement from the woman and examined the scene of the reported incident, taking photographs and casts of tire tracks. They measured the time and distance of various routes from Storrs' point of origin to the woman's residence. The woman submitted to a polygraph examination. Other officers with knowledge of the events in question were interviewed.

On November 24, the investigating lieutenant interviewed Storrs about the incident. Also present were Storrs' shop steward and a police captain. The lieutenant informed Storrs he was conducting a criminal investigation and advised Storrs of his constitutional rights. Storrs agreed to a recorded interview and gave his version of the evening's events. Storrs indicated that he did not know exactly where the woman's house was and that, although she made [illegible]

On November 26, Storrs voluntarily submitted to a polygraph examination. Storrs again gave his version of the facts. The state trooper who administered the test told Storrs that he appeared to be lying about certain material facts and urged Storrs to explain what really happened. The trooper informed Storrs about the contents of the woman's statements and that her allegations were supported by mileage and time measurements, the police department radio log, and tire tracks and footprints found at the scene. Storrs was also informed that the statement of another police officer indicated Storrs knew the location of a certain street and therefore Storrs' statement that he got lost on the way was less likely to be true. The trooper again urged Storrs to tell the truth. Storrs maintained that his original version was correct.

On December 6 Police Chief Porter, Storrs and Storrs' shop steward met. Porter again gave Storrs the opportunity to explain any of the evidence gathered, but Storrs merely repeated his blanket denial and did not offer any further information. At the conclusion of the interview, Porter fired Storrs.

We conclude that Storrs received notice, an explanation of the evidence against him and a sufficient opportunity to respond during the course of the investigation. The pretermination requirements of federal due process were therefore satisfied in this case.

B. Post-termination Hearing

[6] When minimal pretermination procedures are followed, federal law entitles a public employee to a formal evidentiary post-termination hearing within a reasonable time. *Kelly v. Smith*, 764 F.2d 1412, 1415 (11th Cir.1985); *Brasslett v. Cota*, 761 F.2d 827, 836 (1st Cir.1985); *DeSarno v. Department of Commerce*, 761 F.2d 657, 660 (D.C.Cir.1985). The collective bargaining agreement provides for prompt review of grievances and binding arbitration of unresolved disputes. However, in the in- [illegible]

occurred. In Alaska, Storrs' remedy lies in the courts; he may sue the Municipality for breach of contract. *Casey v. City of Fairbanks*, 670 P.2d 1133, 1138 (Alaska 1983).

[7] Storrs was dismissed in December 1982. Trial was scheduled for January 1985. The question is whether, under the circumstances presented here, this delay is so unreasonable as to violate Storrs' due process rights.

Storrs did not file a complaint until June 1983, six months after the dismissal. The complaint did not request an immediate judicial hearing. In November 1983, the Municipality moved for partial summary judgment, claiming that Storrs' remedy was a judicial determination of the merits of the termination decision. Instead of joining in this suggestion and demanding an immediate trial, Storrs opposed it. Judge Johnstone granted partial summary judgment and set trial for January 1985. Storrs at no time requested an earlier trial date; instead he requested the court to enter final judgment against him so that he could appeal.

Under these specific circumstances, we cannot conclude that Storrs' federal due process rights were violated by the delay. The fact is that Storrs never requested a prompt post-termination hearing. When a post-termination hearing was offered, he refused it.

III. STATE DUE PROCESS RIGHTS

A. Pretermination Hearing

[8] Like the federal constitution, the Alaska constitution affords pretermination due process protection to public employees who may only be terminated for just cause. *McMillan v. Anchorage Community Hospital*, 646 P.2d 857, 864 (Alaska 1982). Again we must consider the extent of the process due.

[9] In *Nichols v. Eckert*, 504 P.2d 1359, 1365 (Alaska 1973), the court ruled that a post-termination hearing was constitutionally deficient because the discharged employee was not permitted to call witnesses on her behalf. Although a full judicial hearing is not required, the employee must be allowed to present a defense by testimonial and other evidence. *Id.* Three justices concurred in an opinion concluding that, absent extraordinary circumstances, the hearing should occur *prior* to termination. *Id.* at 1366. We therefore conclude that a public employee ordinarily has the right to an adversarial hearing before he may be effectively dismissed.

[10] In limited circumstances, however, a collective bargaining agreement may alter the pretermination rights of covered employees. We hold that a post-termination adversarial hearing may satisfy the requirements of Alaska's Due Process Clause when a collective bargaining agreement waives the constitutionally mandated pretermination adversarial hearing. Such a substitution of a post-termination hearing for a pretermination hearing is permissible "so long as the negotiated agreement provides fair, reasonable, and efficacious procedures by which employer-employee disputes may be resolved," *Gorham v. City of Kansas City*, 590 P.2d 1051, 1058 (Kan. 1979). *Accord, Antinore v. State of New York*, 49 A.D.2d 6, 371 N.Y.S.2d 213 (1975), aff'd 40 N.Y.2d 921, 389 N.Y.S.2d 576, 358 N.E.2d 268 (1976). Where, as here, a discharged employee can seek post-termination judicial review of his grievance, due process has not been offended.

B. Post-Termination Hearing

[11] The post-termination proceeding contemplated by the collective bargaining agreement did not take place in this case because the union declined to pursue the termination grievance. At that point Storrs had the right to a prompt and full post-termination hearing in the superior court. *Casey v. City of Fairbanks*, 670 P.2d 1133 (Alaska 1983). However, as we have previously explained, Storrs did not request a post-termination hearing and in fact refused one when it was offered. We therefore conclude that Storrs waived his right to a post-termination hearing by not requesting one. *See Graham v. State*, 633 P.2d 211, 216 (Alaska 1981).

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IV. STORRS' RIGHT TO INTERIM WAGES

Storrs also argues that he is entitled to back pay from the date of discharge to the scheduled trial date. The Municipality contends that Storrs would have been entitled to reinstatement and back pay only if he had demonstrated at trial that his employment was terminated without just cause.

[12, 13] When a constitutionally unlawful dismissal is cured by a post-termination hearing, the employee is entitled to be paid for the period between dismissal and the curative hearing. *Kenai Peninsula Borough Board of Education v. Brown*, 691 P.2d 1034, 1039 (Alaska 1984); *McMillan*, 646 P.2d at 867. However, in the instant case, Storrs received all process due, therefore his termination was constitutionally lawful. We therefore conclude that awarding Storrs two years of back pay under these circumstances would be an unwarranted extension of *Brown* and *McMillan*.

The decision of the superior court is AFFIRMED.

Michael F. BEIRNE, and Lake Otis Clinic, Inc., a nonprofit Alaska Corporation, Appellants/Cross Appellees,

v.

STATE of Alaska, Appellee/Cross Appellant.

Nos. S-912, S-913.

Supreme Court of Alaska.

July 11, 1986.

Before RABINOWITZ, C.J., and BURKE, MATTHEWS and MOORE, JJ.

ORDER

IT IS HEREBY ORDERED:

The judgment of the superior court is AFFIRMED by an evenly divided court.[1]

Entered by direction of the court at Anchorage, Alaska, this *11th* day of July, 1986.

COMPTON, J., not participating.

1. Rabinowitz, Chief Justice, and Matthews, Justice, would reverse the superior court's affirmance of the Department of Health and Social Services's revocation of appellants' certificate of need to build Lake Otis Hospital. In their view, appellants demonstrated good cause for their failure to complete the activities authorized by the certificate of need.

PROVIDENCE WASHINGTON INSURANCE COMPANY, Appellant,

v.

Watson BUSBY, Deceased, Louise Busby, Widow, Ruth M. Richardson, and State of Alaska (Second Injury Fund), Appellees.

No. S-1154.

Supreme Court of Alaska.

July 18, 1986.

Appeal was taken from decision of Worker's Compensation Board concerning Second Injury Fund's reimbursement of carrier. The Superior Court, Third Judicial District, Anchorage, Douglas J. Serdahely, J., affirmed, and appeal was taken. The Supreme Court held that term "compensation," as used in workers' compensation statute mandating reimbursement by Second Injury Fund of carrier for workers' compensation benefits paid, is limited to disability benefits paid to claimant and does

MAR 26 1987

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version : SB 185
Publish Date :

REQUEST:

Revision Date:
Title: "An Act relating to individual rights of peace officers."
Sponsor: Senator Rodey
Requestor: Senate Judiciary Committee

Agency Affected: Department of Law
BRU: Prosecution
Legal Services
Components: Prosecution - Admin. & Support; Legal Services - Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
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TOTAL						

POSITIONS:

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
FULL-TIME		-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Please see attached analysis.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director
Phone: 465-3672
Division: Administrative Services
Date: March 25, 1987

Richard I. Pegues /for

Approved by Commissioner: Grace Berg Schaible, Atty. Gen.
Date: March 25, 1987
Agency: Department of Law

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 185

This bill amends AS 18.65 by adding new sections that grant substantive rights to peace officers that are not usually accorded to public employees, concerning investigation of complaints against peace officers, and punitive and disciplinary actions taken as a result of such complaints. Absent outright, flagrant misconduct that occurs in plain view, few investigations, if any, would result in disciplinary action requiring the Department of Law's assistance, because of the employee rights granted by the bill. Consequently, it is doubtful that investigations could proceed to the stage where discharge, salary suspension, or other serious disciplinary actions occur. The department's civil division defends the state in suits brought by current and former Department of Public Safety employees involving disciplinary and salary matters. The department's criminal division represents the staff of the Alaska Police Standards Council in administrative revocation proceedings. The department's involvement in these matters may, in the long-term, diminish for the reasons stated above. The department currently handles about one lawsuit each year, brought as a result of a Department of Public Safety disciplinary action, and it also handles three or four revocation proceedings each year. Therefore, this bill will not have any fiscal impact on the Department of Law.

It should be noted that the bill extends these rights to peace officer employees of public agencies, which we read to include the state, boroughs, municipalities, and cities. It should also be noted that the bill does not include a definition of peace officer, and none is currently provided in Title 18. AS 11.81.900(b)(38) and AS 01.10.060(7) give differing definitions of a peace officer, and it appears that under certain circumstances these definitions may include airport security officers, park rangers, DEC inspection and enforcement employees, correctional officers, fish and game biologists, municipal harbor masters, village public safety officers, and others, in addition to police officers.

POSITION PAPER / DEPARTMENT OF PUBLIC SAFETY

BILL NO: SB 185

TITLE: "An Act relating to individual rights of Peace Officers."

DATE: 3/19/87

CONTACT: Major Walter J. Gilmour
Acting Director
Alaska State Troopers

APR 3 1987

Provides for specific treatment of investigations of conduct of Peace Officers subject to criminal liability or punitive actions.

Investigation of conduct of Peace Officer subject to criminal activity: Peace Officers now enjoy the same rights as any other citizen under the U.S. Constitution and an Alaska law reiterating these rights would be redundant.

Investigation of Peace Officer subject to punitive action: This appears to place Peace Officers in the category of receiving "special privileges or treatment" through legislation specifying how allegations of charges which may result in punitive or disciplinary action should be handled. Other categories of employees have no special legislation affecting their treatment by the employer. There have been no miscarriages of justice due to lack of this type of legislation for Peace Cfficers. Consequently, there appears to be no compelling reason to legislate "rights" covered in most bargaining unit contracts.

The Division of Alaska State Troopers opposes this legislation.

William R. Nix
Acting Commissioner

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: SB 185
Publish Date:

REQUEST
Revision Date:
Title: "An Act relating to individual rights of Peace Officers."
Sponsor: Sen. Rodey
Requestor: Sen. Judiciary

Agency Affected: Public Safety
BRU: Alaska State Troopers
Components: Detachments & CIB

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING:: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	0	0	0	0	0	0
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TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact is anticipated.

JNR 4/2/87

Prepared by: Francis C. Allan FCA
Division: Alaska State Troopers
Phone: 269-5691
Date: 3/20/87

Approved by Commissioner: William R. Nix
Agency: Public Safety
Date: 4/2/87

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

page ____ of ____

Palmer Police Department

423 SOUTH VALLEY WAY
PALMER, ALASKA 99645

PHONE: (907) 745-4811

JOHN L. McKIBBEN
CHIEF OF POLICE

Joe? Hayden? Beth

April 2, 1987

APR 6 1987

Senator Jay Kerttula
P.O. Box V
Juneau, Ak 99811

Dear Senator Kerttula,

I would like to express an opinion on Senate Bill 185, the Police Officers Rights Bill.

I feel that Police officers are already guaranteed all of the rights of other citizens in most matters.

The people of Alaska have a right to expect a high standard of conduct from their Police Officers. Internal investigations within Police Departments are very difficult investigations to conduct. It is my belief that the passage of Senate Bill 185 would make those investigations impossible to conduct.

It is my feeling that this bill would do an immense amount of harm to the police profession within Alaska and I request that you do not support this Bill.

Very truly yours,

John L. McKibben
Chief of Police

JLM/pb

KENAI POLICE DEPT.

107 SOUTH WILLOW ST., KENAI, ALASKA 99611

TELEPHONE 283-7879

March 31, 1987

State Senator Jay Kerttula
Pouch V
Juneau, AK 99811

APR 3 1987

Dear Senator Kerttula:

This letter is to request that you oppose adoption of S.B. 185, "An Act relating to individual rights of peace officers."

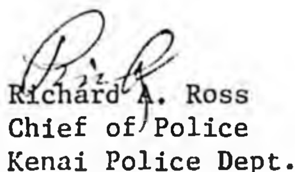
Peace officers are protected by the same basic rights as any other citizen when being investigated for, or charged with a criminal offense. There is no justifiable reason to pass special legislation for this purpose.

Administrative investigations that could result in punitive actions are subject to the personnel regulations of the agency and governing body involved. This is further regulated by case law and subject to judicial review. Unions and bargaining associations are also often involved in these processes. This is true for all employees of a governmental group. This legislation attempts to set up the procedural rules to be applied in administrative investigations, as well as regulate the results of those investigations. There is no justification for this type of special legislation that pre-empts the local governing bodies personnel system. Local governments would then be faced with two different personnel procedures -- a statuatory one for peace officers and a local ordinance for all other employees. This is neither workable nor appropriate.

The Alaska State Constitution has very strong guarantees for all its citizens. State courts have not hesitated to review personnel actions of State and Local governments. The only purpose this type of legislation would serve is to establish peace officers as a separate class of employee, and establish into statute provisions that Unions had been unable to obtain through collective bargaining. These matters are better left to the local governments, personnel review boards, and the courts.

I appreciate your consideration of the request that you oppose this Bill and would appreciate your response and position on this subject.

Sincerely,



Richard A. Ross
Chief of Police
Kenai Police Dept.

RAR:lh

Soldotna Police Department

P.O. Box 2499
Soldotna - Alaska 99669

APR 2 1987

Duane Udland
Chief of Police

sb185 - police

March 27, 1987

Senator Jalmar Kerttula
Pouch V
Juneau, AK 99811

Dear Senator Kerttulla,

I want to take a moment and express my opinion about Senate Bill No. 185 which deals with the rights of peace officers. This is similar to another bill that was introduced into the legislature about four years ago. I opposed it then and I oppose it now.

The City of Soldotna has an excellent internal system for handling investigations concerning police officers. We are careful to protect the rights of our officers and at the same time balance them with the rights of the public. We have never had any problem with our procedure nor, has there ever been any complaint from the officers about the way we have conducted the investigations.

I do not think that it is necessary for the state to impose standards on municipalities such as those contained in SB 185. The procedures a municipality uses should be a matter of local choice, so long as those procedures do not violate existing state and federal rights.

I agree with the concept that a police officer has rights that must be protected. However, I think, SB 185 goes to far and it is tantamount to discouraging citizen complaints and subsequent investigation. The whole concept of SB 185 concerning the answering of questions and searches of an officers work space all work against a thorough investigation. It is also illogical to remove from an officers personnel file all material relating to an investigation after one year, regardless of the reason for the investigation in the first place.

I urge you to use your power and influence to do away with this bill. As now written, SB 185 would serve neither the public or good law enforcement. Thank you for your consideration.

Sincerely,

Duane S. Udland

Duane S. Udland
Chief of Police

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: SB 185
PUBLISH DATE: ______

FISCAL NOTE

REQUEST:

Revision Date: March 7, 1987
Title: "An Act relating to individual rights of peace officers."
Sponsor: Senator Rodey
Requestor: Senate Judiciary

Agency Affected: Department of Law
BRU: Prosecution
Legal Services
Components: Prosc.- Crim. Just. Litigation; Legal Svcs. - Operations

MAR 7 1988

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Please see attached analysis.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director
Division: Administrative Services
Phone: 465-3672
Date: March 7, 1988

Richard I. Pegues

Approved by Commissioner: Grace Berg Schaible, Atty. Gen.
Date: March 7, 1988
Agency: Department of Law

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 185

This bill amends AS 18.65 by adding new sections that grant substantive rights to peace officers that are not usually accorded to public employees, concerning investigation of complaints against peace officers, and punitive and disciplinary actions taken as a result of such complaints. Absent outright, flagrant misconduct that occurs in plain view, few investigations, if any, would result in disciplinary action requiring the Department of Law's assistance, because of the employee rights granted by the bill. Consequently, it is doubtful that investigations could proceed to the stage where discharge, salary suspension, or other serious disciplinary actions occur. The department's civil division defends the state in suits brought by current and former Department of Public Safety employees involving disciplinary and salary matters. The department's criminal division represents the staff of the Alaska Police Standards Council in administrative revocation proceedings. The department's involvement in these matters may, in the long-term, diminish for the reasons stated above. The department currently handles about one lawsuit each year, brought as a result of a Department of Public Safety disciplinary action, and it also handles three or four revocation proceedings each year. Therefore, this bill will not have any fiscal impact on the Department of Law.

It should be noted that the bill extends these rights to peace officer employees of public agencies, which we read to include the state, boroughs, municipalities, and cities. It should also be noted that the bill does not include a definition of peace officer, and none is currently provided in Title 18. AS 11.81.900(b)(38) and AS 01.10.060(7) give differing definitions of a peace officer, and it appears that under certain circumstances these definitions may include airport security officers, park rangers, DEC inspection and enforcement employees, correctional officers, fish and game biologists, municipal harbor masters, village public safety officers, and others, in addition to police officers.

PUBLIC OPINION MESSAGE

DEAR: SENATOR KERTTULA

MAR 7 1988

NAME: PATRICK J. PAUL SR. & LAWRENCE PAUL
TITLE:
ADDRESS: 705 SIRSTAD ST.
CITY: SITKA ZIP: 99835
PHONE: 747-3710
BILL NO: SB 185
SUBJECT: RIGHTS OF PEACE OFFICERS
MESSAGE: THESE RIGHTS ARE ALL ALREADY GUARANTEED BY THE DUE PROCESS CLAUSE OF THE STATE CONSTITUTION. THEY ARE AVAILABLE TO ALL PERSONS AND REQUIRED BY THE ALASKA SUPREME COURT TO BE PROTECTED BY MALLOT RULE. THE POLICE SHOULD ONLY HAVE THE SAME RIGHTS THAT THEY RECOGNIZE FOR OTHER PERSONS. EQUAL JUSTICE TO ALL.

POMID: 12133446
DATE: 03/04/88
TIME: 13:34:46
LIONAME: SITKA LIO

COPIES: SENATORS

FAIKS
JOSEPHSON
RODEY
STURGULEWSKI

SB

188

THANK YOU, MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE FOR HAVING THIS HEARING ON SB 188.

AT THE OUTSET, I WANT TO SAY THAT I INTRODUCED THIS BILL NOT BECAUSE OF ANY PARTICULAR DISSATISFACTION WITH THE CURRENT BOARD OF FISHERIES OR INDIVIDUAL MEMBERS OF THE BOARD. RATHER, IT IS TO RAISE WHAT I BELIEVE IS A SUBSTANTIAL QUESTION OF THE ABILITY OF THE BOARD SYSTEM TO ADEQUATELY MANAGE INCREASINGLY VALUABLE RESOURCES. THIS LAST LEGISLATIVE SESSION IT SEEMED THAT EVERYONE WAS SEARCHING FOR DIFFERENT WAYS TO ENHANCE ALASKA'S PRIVATE SECTOR TO HELP OFFSET THE EFFECTS OF FALLING OIL PRICES.

TO ME, IT SEEMED THAT TO ACCOMPLISH ANY NEAR TERM SUCCESS, ONE HAS TO LOOK AT WHAT PRIVATE SECTOR IS ALREADY DOING, AND THAT, IN LARGE PART IS THE UTILIZATION OF OUR FISHERY RESOURCE. IT PROVIDES:

1. In excess of 1 billion dollars of wholesale value annually;
2. Our primary export commodity;
3. The largest participation of Alaskan population and their individual investment, and;
4. Growth

MY QUESTION IS WHAT PERCENTAGE OF THIS WORTH DO WE CAPTURE AND WHAT CAN WE ACHIEVE WITH MORE DELIBERATE MANAGEMENT ATTENTION?

THE bOARD SYSTEM OF ALLOCATION IN RECENT YEARS HAS BEEN OVERLOADED. MEETINGS ARE LONG, CONTENTIOUS AND OFTEN CONTROVERSIAL. MANY PROPOSALS ARE LEFT UNADDRESSED OR POSTPONED. THE GROWTH IN THE COMPLEXITY OF FISHERY ISSUES AND VALUE OF THE RESOURCE PROMISES TO FURTHER REDUCE THE BOARD'S DECISION-MAKING ABILITY.

IT SEEMS TO ME THAT THE ONLY WAY TO GIVE THE TIME AND ATTENTION REQUIRED TO RESOLVING ISSUES AND PROVIDES THE BEST MANAGEMENT DECISIONS FOR THE LONG TERM INTERESTS OF RESOURCE HARVESTERS AND THE STATE IS A FULL TIME COMMISSION. THE GROWTH, COMPEXITY, COMPETITION AND VALUE IS JUST TOO LARGE FOR A PART TIME PROCESS.

Alaska State Senate

P.O. Box V
Juneau, AK 99811
Phone: (907) 465-2444
465-3862/465-4923

P.O. Box 1069
Kotzebue, Alaska 99752
(907) 442-2494

William L. Hensley

Senate Finance Committee
State Affairs Committee
Vice-Chair, Rules Committee
Chair, Administrative Regulation Review

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

P.O. BOX 3-2000
JUNEAU, ALASKA 99802-2000
PHONE: (907) 465-4100

RAPIFAX TRANSMITTAL SHEET

To: Beckie Oliva
Game Division

Date: 12/18/87

No. Pages (following this page) 0

From: Diana Davidson
C.O.

Message: (Per our conversation - thx again!)

Holiday Inn
Ketchikan Room
10:00 AM
Attn: Senator Hensley
or Dave Gray

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

P.O. BOX 3-2000
JUNEAU, ALASKA 99802-2000
PHONE: (907) 465-4100

December 18, 1987

The Honorable William Hensley
Alaska State Legislature
P.O. Box 710
Kotzebue, AK 99752

Dear Senator Hensley:

Thank you for your letter of December 14 requesting our position on SB 188 dealing with the creation of an Alaska Fisheries Commission. I understand that you have also contacted the Board of Fisheries directly to solicit their position on the bill.

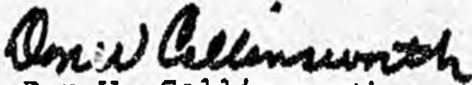
Department staff has reviewed the Senate Advisory Council report on fisheries management alternatives. The report does a good job of addressing the strengths and weaknesses of the current system. As you are aware, Sam Stoker of the Governor's Office is currently leading a task force to review the board process, procedures, and systems. I understand that report will be available in February. John Halterman of the Governor's Office will be available at the hearing to discuss the progress the task force has made thus far.

It would be premature for this department to take a position on SB 188 or any legislation that deals with the board or the way it does business. Our proper role is to review alternatives to determine whether our ability to provide the necessary information concerning the conservation and management of our fisheries resources to the board is enhanced or compromised. As the Senate Advisory Council report points out, our main role is to ensure that the fish[illegible]ies resources are conserved and managed in the best interest of the citizens of the state and that the board is responsible for the allocation of the harvestable surpluses. The board's allocation r[illegible] is difficult and controversial and the public pol[illegible]cy choices are outside the purview of this agency. The same situation does not apply t[illegible] the Board of Fisheries and I believe that it is important that you get their perspective on any legislative changes to the current system.

11-K2LH

The administration will be developing recommendations based on the task force report being prepared. At that time, we will be able to respond to your request for a position on SB 188.

Sincerely,



Don W. Collinsworth
Commissioner

cc: John Halterman

Alaska State Senate

P.O. Box V
Juneau, AK 99811
Phone: (907) 465-2444
465-3862/465-4923

Senate Finance Committee
State Affairs Committee
Vice-Chair, Rules Committee
Chair, Administrative Regulation Review

William L. Hensley

SECTIONAL ANALYSIS OF

SENATE BILL NO. 186

Section 1, page 1: Purpose of the legislation.

Section 2, pages 1 & 2: Establishes a five member Fisheries Management Commission. Appointed by the Governor and confirmed by the Legislature, members serve four year terms. The terms are staggered. Membership qualifications are broadly constructed to having had some previous experience in utilizing, developing, or managing the state's fishery resources. Members can not have a personal vested interest in the commercial aspects of fishery resources while serving in office.

Section 3, page 3: Members salaries are set at a range 26 level, currently in the neighborhood of $68,000 per annum. The Department of Law specifically is the Commission's legal council. While the Department of Fish and Game provides staff support, the commission may employ its own staff.

Section 76, page 25: Repeals the Board of Fisheries establishment.

All other sections are technical changes whereby the "Fisheries Management Commission" is effectively substituted for the "Board of Fisheries." Thereby the commission assumes all powers, duties and responsibilities conferred to the Board of Fisheries by current statutes.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

OFFICE OF THE GOVERNOR

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JUNEAU, ALASKA 99811-0199
PHONE: (907) 465-3568

OFFICE OF MANAGEMENT AND BUDGET
DIVISION OF AUDIT & MANAGEMENT SERVICES

December 30, 1987

Senator Jay Kerttula
Chairman
Senate Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

Beth pud file on Hensly Bill in Comm

Dear Senator Kerttula:

Please find enclosed copies of the draft report prepared by the Governor's Board of Fisheries Review Committee. The Committee plans to reconvene in Juneau during the first week of February to complete its work.

In general the testimony heard by the Committee was consistent with that received by your Committee during the hearing of December 18th. Citizens are interested in the Board of Fisheries becoming more active in resolving conflicts, through greater participation of board staff in developing management plans and using the advisory committee structure. Implicit in the development of such plans is the creation of a fisheries policy to help guide Board decisions. The Committee has also made recommendations regarding Board member remuneration, scheduling of regulatory proposals, exparte' communication, as well as a number of other areas.

I hope this draft report is useful. When the Committee has completed its work the final document will be forwarded to you as quickly as possible.

Sincerely,

John Halterman

John Halterman
Director

Enclosure

cc: Senator Arliss Sturgulewski w/enclosure

DRAFT

DRAFT

BOARD OF FISHERIES REVIEW COMMITTEE
December, 1987

1. EXECUTIVE SUMMARY

Throughout its history, the people of Alaska have had a close relationship with natural resources. In aboriginal times, existence itself was dependent on hunting and fishing, and for many it still is. At times, mining or oil have become temporarily more important, but fisheries still remain the mother industry of Alaska. This, combined with the legacy, from territorial days, of federal mismanagement has created an abiding distrust of regulatory institutions which do not include free and open public participation. To quote from the recent report of the Senate Advisory Council (1987):

> "It is difficult to emphasize just how strongly many believe that 'participatory democracy' is the essence of Alaska's fisheries management regime. They speak very critically of other systems, such as Canada's Department of Fisheries and Oceans of the management agencies in California and Washington as bureaucracies which limit or essentially exclude public involvement. The legacy of territorial days during which Congress and federal regulators routinely ignored the concerns of local fishermen is strong.:

The present committee wholeheartedly endorses this democratic principle, but with the recognition that as times change the interaction between the public and the regulatory agencies may require re-adjustment to match new situations. There is, for instance, widespread concern that the virtually unlimited access to the Fisheries Board enjoyed by Alaskans has, in recent years, created an almost impossible working situation for the Board. Again quoting from the 1987 Senate Advisory Council report:

> "On the other hand, many fishermen, past and present board members, and others expressed the conviction that some action to either control the agenda or to enhance the ability to cope with the workload was necessary. They referred to the present system as verging on chaos

and contributing to the length, emotional pitch, and concentration of pressure which have hamstrung the board's efforts to rationally and quickly consider relevant and timely management proposals."

In general, the following recommendations of the review committee address increasing the efficiency of the present system and structuring the proposal process rather than limiting public access and participation.

The cornerstone of any regulatory proposal is the biological basis of the resource, overlain by socio-economic considerations and constraints. In consideration of this the committee is recommending an expanded professional staff to assist the lay board in its deliberations and thus increase its efficiency, and urges the board, the Department of Fish and Game, the local advisory committees and the regional councils to coordinate efforts for the formulation of up-to-date resource assessment documents and area management plans.

The following recommendations and report concerning the Board of Fisheries is the result of a recent public teleconference and subsequent deliberations by a committee appointed by the Governor for that purpose. The teleconference and committee review were held in Anchorage from November 6 to 13, 1987. The review committee, as finally approved and appointed by the Governor, consisted of:

Ole Mathisen (Chair)	Pete Schaeffer
John Garner	Larry Edfelt
John White	Hank Pennington
Cheryl Sutton	Don Mitchell
Dick Jacobson	

Staff Assistance and support from the Office of the Governor was provided by John Halterman and Sam Stoker.

The content of these hearings and deliberations are summarized in the following report. The Governor's charge to the committee was as follows:

1.1 <u>Guidelines To The Review Committee</u>

a. Generally, is the present system of fisheries regulations well suited to meet the challenges posed by an increasing complex utilization of valuable resources?

b. Is the current Board of Fisheries regulatory process fair, efficient, and responsive? If not, what changes should be made to make it so?

c. Does the current process integrate all available data, including the most recent biological information, economic considerations, and state fisheries policy, in considering regulatory decisions? If not, what changes are required?

d. How should board members be selected? Should they represent different gear groups, geographic areas, or knowledge and expertise? What other qualifications should be considered? Should membership to the board require divestiture of a personal economic interest in fisheries regulations? Should membership be a full-time paid occupation?

e. Does the current process provide for sufficient input from all user groups and regions without discrimination or bias, and does the process promote orderly and efficient review of regulatory proposals? If not, what improvements can be made?

2. IDENTIFICATION OF PROBLEMS

The number and diversity of problems, real or perceived, which have been attributed to the board and its processes over the years are myriad and nearly all-inclusive. Many such criticisms are inevitable, at least until such time as we are able to construct a perfect system which is all-knowledgeable and absolutely fair.

Many of the present problems with the board derive direction from the increased and increasing value of the resource at stake, consequent competition for that resource, acknowledgement of and definition of competitive user-groups relying on the resource, and better organization and lobbying pressure on the regulatory agency from these user groups.

The following outline of problems and suggestions relating to the board is summarized from written comments received by the Governor's Office, a recent public teleconference in Anchorage, deliberations of this committee, and recent reports from the Board of Fisheries and the Senate Advisory Council.

a. Structure of and appointment to the board:
   - Full-time "professional" versus part-time "lay" board concept.
   - Creation of regional boards.
   - Division of boards by resource category.
   - Process of and criteria for appointment to the board.
   - Conflict of interest and special interest bias by board members.
     (1) divestiture of financial interests
     (2) disclosure of financial and other interests

b. Function of the board.

- o Relationship of the board to relevant agencies.
  - (1) ADF&G
  - (2) Local advisory committees and regional councils
- o Accountability and documentation.
- o Criteria and guidelines for regulatory decisions.
- o Reliability, applicability and consistency of information supplied to the board.
- o Inadequacy of statewide fisheries policy, resource assessment documents and area management plans for use by the board.

c. Staff support for the board.

d. Proposal submittal and review.

- o Length of board meeting.
- o Criteria for submittal and screening of proposals.
- o Role of advisory committees and regional councils.
- o Public access to the regulatory process.
- o Level of autonomy and authority of advisory committees and regional councils.

3. RECOMMENDATIONS OF THE COMMITTEE

The following were approved by the committee as formal recommendations to the Governor. Most of these recommendations, if accepted and implemented, will by necessity also apply to or affect the Board of Game.

3.1 Appointment, Structure and Mandate of the Board:

(a) The Governor shall continue to appoint persons to the Board who have a philosophy consistent with the administrations fishery policy. Such persons are expected to be knowledgeable and experienced concerning aquatic renewable resources and their uses in Alaska.

(b) Appointments to the Board shall be from a list of candidates submitted by the Governor's staff.

(c) The present process followed by the board of Fisheries for disclosure of interest, economic or otherwise, and abstention from voting on or discussing issues related to such interests shall be continued.

(d) Appointment to the Board shall not require divestiture of financial interests in fisheries or fishery-related businesses. Board members, however, shall not hold concurrent positions as officers, paid or unpaid, of professional fisheries organizations.

(e) Members of the Board of Fisheries may not have exparte communication relating to regulatory proposals during meetings of the local advisory committees, regional councils, or board of fisheries which they are attending, including periods of recess. Board members have the obligation to inform parties of this ruling if improperly approached, and to disclose such approaches during the next meeting of the board, council or committee. Failure to do so will be considered grounds for removal of the board member.

(f) Any member of the Board of Fisheries

convicted of a willful violation of fish and game regulations shall be subject to removal.

(g) The Board of Fisheries appointment shall be salaried, part-time positions within the state employee system.

(h) The Board shall prepare and submit its own budget to the Governor for staffing and annual expenses.

(i) Policy objectives of the board shall be to develop, in cooperation with staff of the Department of Fish and Game, resource assessment documents (RADS) and area management plans (MPs) for geographic areas which represent ecological systems or entities in so far as such can be defined by available data. Such documents shall be updated on a biannual basis to incorporate new information, and shall be made available to all segments of the regulatory system. Management plans shall be promulgated for the purpose of developing both short-term and long-term sustained harvest and allocation policy addressing subsistence, commercial, sport and personal use needs as well as incidental catch.

(j) The Board shall provide written documentation in the administrative record which identifies sources relied upon by the board in arriving at particular decisions. This administrative record shall also include a summary, by the Board, of reasons for such decisions along with the voting record of Board members on each decision.

3.2 Support Staff

(a) The executive director of the Board of Fisheries shall be a partially exempt position, and shall be hired and fired by mutual consent of the joint boards and the commissioner of the Department of Fish and Game.

(b) A professional board staff, serving exclusively the board, shall be hired and fired by the executive director of the board and shall be partially exempt positions within the state employee system.

(c) Staff needs of the Board of Fisheries, as determined by its executive director, shall be consistent with the recommendations of this report and the statutory duties of the board. The committee recognizes the need for both full and part-time staff to provide biological, socioeconomic and legal advice as required.

(d) In addition to salaried staff, there shall be established a non-salaried review panel representing relevant areas of expertise. This panel shall be appointed by the executive director of the board from a list of candidates provided by the Governor's staff. Funding for travel and expenses shall be provided as necessary by the Board of Fisheries.

3.3 Regulatory Process

(a) The committee supports the Board's recommendation to return to a two-year cycle for proposal submittal and review, by alternate area, except as otherwise provided for.

(b) The Board shall address each section of the regulations as advertised, and shall provide timely and public notification in the event of reconsideration or change of schedule.

(c) The location of board meetings shall be determined by the board, based upon considerations of cost and efficiency, with the provision that adequate and timely notification of such decisions be made public.

(d) In addition to the biannual cycle for proposals by area, as recommended in 3.1 above, all regulatory proposals shall be submitted sufficiently in

advance of board meetings to accommodate adequate review according to the following schedules:

Finfish

January 1 -	deadline for submittal of proposals	- May 1
March 1 -	deadline for submittal of comments relating to proposals by the board staff, Department staff, or other parties	- June 1
April 1 -	advisory committee meetings to discuss proposals and comments	- Sept. 1
May 1 -	regional council meetings for debate and comment on proposals	- Oct. 1
Sept. 1	regional council meetings to review proposals for which new information has been acquired with participation by the board and Department staff	- Nov. 1
October 1 -	deadline for submittal of recommendations by the regional councils	- Feb. 1
November 1 -	Board meeting	- March 1

(e) The Board shall regulate personal use, subsistence, sport and commercial fisheries for long-term sustained utilization and with sufficient regulatory stability to facilitate efficient management and fair and reasonable utilization of such resources. In this context it is recognized that changes in biological, ecological, social and economic conditions may necessitate corresponding changes in the allocation of fisheries resources among the various user groups. In order to facilitate rational decisions by the Board affecting such allocation, it is recommended that the Board adopt the following policy and criteria:

1. It is the policy of the Board that management plans and regulations adopted, amended or repealed for allocation of fishery resources among personal use, sport and commercial interests shall:

- o Be based on the best information available addressing biological and ecological concerns and be reasonably calculated to achieve conservation of the resource addressed,
- o Be designed to achieve fair and reasonable opportunities for the taking of fishery resources by user groups addressed in the plan or regulation, based on the best information available regarding social and economic concerns and consistent with long-term sustained yield management and subsistence priorities as established by the legislature. Such plans or regulations shall provide for the probability of short-term and seasonal fluctuations in standing stock or availability of the resource and shall,

- Be reasonably enforceable.

2. If the Board of Fisheries determines that it is necessary to establish regulations restricting opportunities for the taking of fisheries resources, decisions shall be based upon the following factors as appropriate to each particular decision:

(a) Ecological considerations, including:

- The biological stock description of the resource addressed and,
- The carrying capacity of region or area for the resource addressed.

(b) The economic impact of the proposed regulation on affected users, including:

- Losses or benefits which may occur to relevant user groups,
- An assessment of the dependency of affected users on the resource for their livelihood,
- Alternative fishery resources available to affected users, and the cost to the affected user for switching to the alternative resource,
- The importance of the affected fishery to state, local and regional economies.

(c) Social impact, including:

- The history of the affected fishery, including historic levels of utilization by various user groups,
- The capacity of the area in terms of physical facilities available to resource users,
- The importance of the fishery for personal use by local residents,

- The importance and capacity of the affected fishery for providing recreational opportunities to residents and non-residents.

4. HISTORY AND BACKGROUND OF THE BOARD

The first Alaska Fisheries Board was created in 1949 by the Territorial Legislature as part of the Alaska Department of Fisheries. Board members were appointed by the Governor and confirmed by the legislature to serve staggered five-year terms. Membership consisted of one commercial fisherman from each of three regions, a processor, and one member at large. The Board appointed its own executive director and was empowered to:

> determine and promulgate reasonable rules and regulations not in derogation of restrictions imposed by the U.S. Fish and Wildlife Service...
> police the fisheries and investigate matters pertaining to the fisheries for fact-finding purposes...
> maintain, improve and extend the fisheries resources of alaska in the interest of the economy and general well-being of Alaska (Ch 68, SLA 1949).

In 1957, preparatory to statehood, the legislature created the Alaska Department of Fish and Game and the Alaska Fish and Game Commission. This commission consisted of seven members, including three commercial fisherman, a sport fisherman, a fish processor, a hunter, and a trapper, appointed by the Governor and confirmed by the legislature. Appointments were for staggered terms of seven years. The mandate to this commission was "... to supervise the department in maintaining, improving, and extending the fish and game resources of Alaska". After Statehood, in 1959, the new State Legislature created the Alaska Board of Fish and Game to replace the Commission.

The present Board of Fisheries was created by the state legislature in 1975, along with its counterpart the Board of Game. As defined in AS 16.05.221, "For purposes of the conservation and development of the fishery resources of the state, there is created the Board of Fisheries composed of seven members appointed by the governor, subject to confirmation by a majority of the members of the legislature

in joint session. The appointed members shall be residents of the state and shall be appointed without regard to political affiliation or geographical location of residence...". In effect, however, appointments to the board have continued to be made along lines of both regional and industry or user group representation, as provided for in the original territorial Fisheries Board.

The procedural process for selection of board members has varied from administration to administration, though it is always a political process. In all cases, a pool of potential candidates has been developed by the governor's staff, from which membership is selected. Board members are at present appointed for three year staggered terms. Members may be removed from the board, by the governor, for inefficiency, neglect of duty, or misconduct in office.

Board staff includes an executive director appointed by the commissioner of the Department of Fish and Game, an assistant executive director, six regulatory specialists, and a clerk typist.

Duties and authority of the board are established in the Administrative Procedure Act and AS 16.05.251. Duties include establishing seasons and areas, quotas and bag limits, and ways and means of taking fish. The board is also charged with classification of species as commercial, sport or predator for management purposes, promulgation of regulations regarding fisheries management, regulation of entrance into research agreements, regulations regarding harvest of aquatic plants, and regulation of licensing activities. Additionally AS 16.05.251 mandates that the board shall establish criteria for the allocation of fishery resources among personal use, sport, and commercial fisheries along guidelines provided in the statute.

The present advisory committee system was established under AS 16.05.260, and regional councils under the Alaska National Interest Lands Conservation Act (ANILCA), section 805. In addition, AS 16.05.300 requires that the board