ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

5315 SJUD SB 211 - SB 273

887

It is the contention of the Citizens Coalition for Tort Reform that people who are engaging in illegal activities should not be able to sue innocent persons for their injury. Mr. Ross uses the example of a person who is jaywalking and is hit by a "drunk driver, a speeder or a bank robber fleeing the scene of his crime". The purpose of this legislation is to prevent the injured bank robber from suing someone else for his injuries while he was in the course of committing a crime. He then goes on to the cite another example of teenagers toilet-papering a house as a prank and being shot at with civil impunity. The point, I think, is clear. If the individual in this instance shot at them then certain criminal standards apply, and the appropriate punishment is criminal, not civil.

It is exceedingly important to recognize that Mr. Ross implies by innuendo that there would be no penalty to inappropriate action were criminals prevented from suing other people for their injuries. Under the present circumstance wary or unwary trespassers are permitted to sue land owners, whether or not the land owner had any knowledge of the trespassing activity. There is already the famous O'Brien case in New Jersey, in which a home owner was successfully sued because of an injury sustained by a trespasser diving into a swimming pool, in spite of adequate signs which posted the danger, and in spite of the fact that the trespasser had to climb a fence in order to get into the swimming pool. Finally, it is our opinion that a person who is injured in the commission of a felony shouldn't be allowed to recover from innocent citizens; period.

Mr. Ross goes on to criticize Section 4 of the bill, which proposes mandatory periodic payments. In our judgement the motivation was first of all not on behalf of any insurance companies but rather on behalf of the citizens who are concerned with this issue. Secondly, this does not provide for "speculation with the victim's money". We have made and continue to make the argument that future damages are not incurred until the future in fact arrives. As to the administration of the contingent fee we have already noted that in our present system somewhere between 60 and 70% of all the dollars paid in in fact end up in the hands of the attorneys. The contingent fee is a separate issue and is not addressed in this section.

There are instances, which are documented and have occurred within the State of Alaska, in which individuals who have been given lump sums for injuries find themselves without any of the money some four to five years later. These individuals have a problem as well. They ultimately do come back as a burden to the State because they still have the medical or physical problem for which they were compensated. A mandatory periodic

payment would preclude the premature depletion of their award and would reasonably compensate the individual for his future economic and non-economic losses: this is the very intent of the periodic payment. On page six Mr. Ross either is grossly mistaken or deliberately misleading in his conclusions. He says, "in fact, as written, this section would require the Court to provide for periodic payments, leaving the Court with no discretion even in cases in which the injured plaintiff has already incurred medical expenses totaling hundreds of thousands of dollars!" We can only respond that this represents a serious misunderstanding of the proposed legislation. The legislation clearly says that individuals will be compensated fully for economic losses, both present and future. It is the future losses which are to be paid periodically. It is absolutely erroneous and misleading to say further that "even the medical profession should be against this provision because it would place them in a position of trying to collect huge medical bills from people who are receiving only modest periodic payments from defendants or their insurance companies". Clearly, the legislation intends that all economic losses will be paid in full as incurred. Mr. Ross's statements are an outright distortion of the intent of the language. It is absolutely erroneous to state that "mandatory periodic payments rather than a lump-sum payment" would keep the victim "in the hole" or "on the dole", but certainly wouldn't help to "make him whole". Clearly the intent is to provide the award to the individual in a fashion similar to that in which he would have otherwise obtained economic benefit. The present system is unduly expensive and is ineffective for the many individuals who end up without resources after their lump sum is gone. It does lend itself well to the contingent fee because at least one third or more of this lump sum award goes to the plaintiff's attorney.

Section 5, page 6: If Mr. Ross's legitimate objection is that gross negligence is not defined then I suggest that we define it.

Section 6, page 6: Mr. Ross purports not to understand the meaning of the collateral source language. The bare facts of the matter are that in the present circumstance an individual is permitted to sue another individual and the jury is not permitted to hear that most if not all the medical expenses or other costs have already been paid for by another party. The attorneys argue that the individual has a right to this compensation because he or she may have already paid the premiums for the health insurance. We must understand that these are resources of society that we are considering. The only reason health insurance works is because more people stay healthy than sick at any given time. Therefore the individual only has a right to this coverage, to this utilization of

societal resources, in the event of a legitimate injury or illness. For that individual to doubly profit by the tort system and the mutual insurance mechanism of health insurance, is inefficient and inappropriate. We must rid ourselves of the concept that injury and adversity are a potential source of profit. Rather, we should continue to believe that injury and adversity are to be avoided, but in the instance in which they are unavoidable, they should be reasonably compensated. No one should expect to become wealthy as a result of adversity.

The tax implications are very important to the individual because if a periodic payment or other kind of payment is not properly structured the income tax can be burdensome. It is for this reason that the trier of fact must be made aware of the implications of their decision relative to periodic payments. Mr. Ross goes on to draw a number of erroneous conclusions relative to the collateral sources law. There is, in fact, consideration given to the idea that the victim's medical insurance is to be used up. That is precisely what the language "the Court may take into account the value of the person's rights to coverage exhausted or depleted by payments of these collateral benefits by adding back a reasonable estimate of their probable value". Clearly if the individual is no longer insurable as a result of this injury, that has a value and it can be determined with reasonable certainty. This is precisely the opposite of what Mr. Ross would have you believe. Mr. Ross then goes on to state "the bill places an unreasonable burden on the trier of fact to attempt to determine tax implications and to 'try and guess' the future medical insurance needs of an injured victim". In point of fact the jury is asked to "guess" as to the future economic and non-economic losses under the present circumstances, and further, the jury is then asked to award this in a lump sum exclusive of any other benefits which may have been obtained. It is to this that the citizens are objecting and it is not the insurance companies, as Mr. Ross would have us believe, who are raising the voice of objection.

Mr. Ross then reviews Section 7, and goes on to say, in simple language, that we should continue the doctrine of joint and several liability. He then cites an example in which an individual is not allowed to be fully compensated for loss because of the insolvency of a given tort-feasor. Mr. Ross fails to take into account a number of issues. First of all, under the present circumstance in which an individual may be made to pay the largest portion of the damage, even though his fault was the smallest, it makes risk taking impossible to predict. The Municipality of Anchorage, or any other city for that matter, really doesn't know the full extent of its liability as the result of the joint and several doctrine. We have long held that individual responsibility is to be

encouraged. Put another way, one ought to be responsible for one's actions. One should not be held liable for someone else's misconduct.

Finally, Mr. Ross purports in this instance to represent the injured, innocent victim. The difficulty is, of course, that we all know by now that only those innocent injured victims who have a deep pocket to sue will be represented by an attorney. If there is no chance of recovery because of insolvency or the inability to prove liability this injured, innocent victim will not be represented by the trial attorneys. Nevertheless, this injured innocent victim will still continue to have pain and suffering, to have medical expenses, to have the need of the services otherwise provided to citizens in our state who are subject to adversity. What provision does Mr. Ross and the present tort system make for these innocent injured victims? Suppose we consider an example of two individuals both of whom are quadriplegic. One is quadriplegic as a result of a trucking accident in which there is an insured deep pocket to sue. The other is a quadriplegic as the result of being inadvertently shot in the course of a hold-up at a grocery store. Certainly they both have pain and suffering of equal degree. Certainly they both have medical expenses and loss of economic resources to equal degree. Yet under our present system, one may well end being a millionaire and his representatives from the trial attorneys would share in that wealth. The other individual, however, will have to fall back on the resources of society. So far we haven't said it's the fault of the grocery store that they were held up and that therefore they should be held liable as a deep pocket.

We do have some compensation for victims of violent crimes, however it's clearly not to the degree that Mr. Ross would have us believe must be paid in order to "make the victim whole". Nevertheless we do provide for these victims. Nevertheless we do take care of their injuries even though we may not be compensated handsomely in the range of hundreds of thousands of dollars. We need to ask whether or not the present system compensates all victims fairly or whether in fact it compensates only the fortunate unfortunate few for whom there is a deep pocket for them and their attorneys to plunder.

As to Section 8, page 10, it appears that the definition of economic loss is adequate. However if Mr. Ross has precise terminology which would be better, I'm certain that everyone would thank him for the language. Mr. Ross continually misrepresents the difference between non-economic and economic. Throughout this analysis there are repeated references to capping awards which would not compensate individuals for their economic losses. There have been repeated allegations that a

cap on non-economic awards would completely disenfranchise old people, young people and housewives. This is absolutely ludicrous. Under the present system, the value of a housewife is indeed computed by what is required to replace the services which she provided. The same can be said for an individual who is injured in extreme youth or an individual who is injured while in the course of employment or other activities for which they are obviously over-qualified.

Mr. Ross then goes on to defend Rule 82 in his discussion of Section 9 and 11. "Such a provision helps discourage phony claims. When plaintiffs know that they may have to pay the other side's costs and attorney's fees if they lose, they may, (and do!) think twice before filing a lawsuit or pursuing unreasonable claims." The difficulty, of course, is that not all plaintiffs are able to pay anything at all. Mr. Ross argues that that is the very reason for the existence of the contingency fee. We have asked and have not yet been answered by the trial attorneys how one is compensated when he is unjustly accused by an impecunious plaintiff and then the innocent defendant asks for and is awarded attorney's fees. Who pays these attorney's fees? If Rule 82 were applied equally across the board there might be some truth to the argument that Mr. Ross advances. The difficulty, of course, is that its not applied equally across the board. It therefore functions only to inflate the award when there is a deep pocket to pay for the additional 10% requested by Rule 82. Furthermore, Rule 82 is requested even in the instance in which there is no trial. Rule 82 is requested if the attorney so much as writes a letter. The amount of effort expended is not proportionate to the fee generated by the application of Rule 82 in many instances. If there were a requirement to place a bond, to provide some evidence of the ability to pay in the event that the plaintiff was unsuccessful in their lawsuit, then Rule 82 may very well have the intent that is ascribed to it by the attorneys. Until or unless such an event occurs Rule 82 will continue to inflate the awards in Alaska. Rule 82 is unique to Alaska, and Alaskans pay a specific premium surcharge as the result of the existence of Rule 82. He then goes on to argue, "The proposed bill would allow insurance companies to wage a 'war of attrition' against an injured victim." How ridding us of Rule 82 would allow an insurance company to wage a war of attrition is beyond us. The bill does not address contingent fees, and it is the contingent fee which certainly provides the bulk of the attorney's return.

Finally, on page 12, Mr. Ross concludes: "Ralph Nader, no friend of the attorneys, (although he is one) calls tort reform a phony issue raised by the insurance companies to increase their already substantial profits." What Mr. Ross does not tell you is that at a press conference Mr. Nader was asked by Mr.

James Coyne, President of the American Tort Reform Association, to disclose his relationship with the American Trial Lawyers' Association. Mr. Nader steadfastly refused to divulge the sources of his income for the lobbying efforts that he provides on behalf of the American Trial Lawyers' Association. Mr. Coyne pressed the issue by saying, "Mr. Nader, is it not a fact that you are paid a retainer of $300,000 per year plus $5,000 per appearance by the American Trial Lawyers' Association?" Mr. Nader responded that the press conference was closed and he wasn't there to answer such questions. Mr. Nader's attorney then dismounted the platform and proceeded to assault Mr. Coyne by punching him in the eye and knocking him to the floor. To argue that Ralph Nader is an unbiased individual on this issue is completely a misrepresentation. This incident was reported on national news and was featured in Jack Anderson's column and copies of it can be provided should you be interested.

In summary, it would appear that the arguments of Wayne Anthony Ross are self-serving at best. He is a trial attorney who benefits immensely from the system as it is currently structured. A simple Alaskan example may best illustrate the point. Recently in Alaska a baby was delivered. The baby suffered significant neurologic problems. The baby will never be normal. Let us assume that the obstetrician was negligent. Let us assume that the obstetrician did virtually everything wrong. The insurance company then attempts to settle the claim. The claim is then settled for $2,200.000. Two million are for actual and future damages, two hundred thousand is for the addition of Alaska Civil Rule 82. The population of Alaska at the present time numbers less than 600,000 people. If Alaskans charged themselves $1,000 per healthy delivery for insurance costs, then 2,200 babies must be delivered without a single complication of any kind in order to compensate this one child for its losses and its attorney's fees under the present tort system. Does this mean that we want every Alaskan family who has a child to pay $1,000 into a fund to provide this kind of return for a given individual? If we charge less than $1,000 per delivery obviously the number of normal deliveries that must ensue is considerably greater. The point is that the present system is in fact breaking the system, and like the physicians in Cordova, many of us will soon be without insurance at all. When that happens there will be no deep pocket at all.

Consider further the use of the contingency system. In the case previously cited, the attorney's fee will be 40%. That amounts to $880,000. That amount will be payable in a lump sum under the present tort law. That means that 880 parents will have to have 880 babies, and pay $1,000 a copy for the attorney's fees in this one single case. Please note that this is a settled case, it did not go to trial. It should be clear to all

concerned that the innocent injured victims are in fact as much a victim as anyone else in our present tort system, and that the people who argue most vociferously to maintain it are in fact its greatest benefactors.

Sincerely,

David A. McGuire, M.D.
Chairman, Legislative Committee
Citizens Coalition for Tort Reform

DM:lmf

SB
223

Alaska State Legislature

PRESIDENT

907-465-3755

JAN FAIKS
POST OFFICE BOX V
JUNEAU, ALASKA 99811

Senate

April 6, 1987

MEMORANDUM

TO: Senator Jay Kerttula, Chairman
Senate Judiciary Committee

FROM: Senator Jan Faiks
President of the Senate

SUBJECT: Background on Senate Bill 223
An Act relating to civil liability of zoos and zoo operators

Senate Bill 223 has been referred to your committee for consideration. The purpose of this bill is to limit the civil liability of zoos and zoo operators in Alaska.

SB 223 provides that a person may not recover damages for injuries sustained at a zoo as a result of an inherent risk of attendance at a zoo, provided that notice of the inherent risk was posted and the zoo operator exercised reasonable care to prevent the injury.

The bill further provides that a zoo operator shall post warning signs at prominent places within the zoo and at each entrance.

"Inherent risk of attendance" is defined as the dangers or conditions that are an integral part of the physical layout of a zoo and the physical proximity of wild animals.

I would appreciate the committee's consideration of the legislation at its earliest convenience. Should you need any additional information, please let me know.

Thank you.

OUT OF SESSION
6060 YUKON DRIVE ANCHORAGE, ALASKA 99516 907-274-6611

SB
227

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version : CS SB 227 (SA)
Publish Date : 4-1-87

REQUEST:

Revision Date:
Title : Re: Claims to Permanent Fund Dividends
Sponsor : Uehling, Faiks
Requestor : Senate State Affairs

Agency Affected : Education
BRU : Postsecondary Commission
Components : Student Loan Admin.
Student Loan Fund

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	N.A.	-0-	-0-	-0-	-0-	-0-
CAPITAL	N.A.	-------	see attach	ed-------		
REVENUE						

FUNDING: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
GENERAL FUND	N.A.	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	N.A.					

POSITIONS:

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

ANALYSIS :

(see attached page)

Prepared by : Kerry D. Romesburg, Executive Director
Division : Postsecondary Education Commission
Phone : 465-2854
Date : 4-8-87

Approved by Commissioner :
Date :
Agency :

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

es SB 227 (SA)
FISCAL IMPACT ANALYSIS

1. Operating budget: The Commission currently runs a tape match of defaulted borrowers against the permanent fund dividend file, so there would be no additional administrative expense associated with this bill.

2. Loan fund (Capital): SB 227 will produce a positive revenue source for the student loan revolving fund. Since the amount of the dividend varies, and since the number of defaulters applying will also very, it is not possible to predict the fiscal impact with any accuracy. However, if the terms of SB 227 had been in place in FY87, the impact would have been:

Default Match	Claims Filed	Dividends "missed"	Funds Not Received
2,000	800	1,200	$673,200

Hence, this bill could produce $400,000 to $800,000 annually if the application and default rate remains relatively constant.

SB
231

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: CSSB 231/HESS
Publish Date: 4-8-87

REQUEST:

Revision Date:
Title: "An Act related to sexual abuse of a minor
Sponsor: Halford, Jones, Duncan
Requestor:

Agency Affected: Dept. 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	Ø	Ø	Ø	Ø	Ø	Ø

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
CAPITAL	Ø	Ø	Ø	Ø	Ø	Ø

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
REVENUE	Ø	Ø	Ø	Ø	Ø	Ø

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS:

This legislation should have minimal impact on the Department of Corrections.

SK

Prepared by: Susan E. Knighton, Research Analyst IV
Phone: 465-3376
Division: Statewide Programs
Date: 4-21-87

Approved by Commissioner: Susan Humphrey-Barnett SH-B
Date: 4-21-87
Agency: Department of Corrections

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

CORRECTIONS

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version : CS SB 231 (HESS)
Publish Date :

REQUEST:

Revision Date:
Title : An Act relating to sexual abuse of a minor
Sponsor : Halford, Jones, etc.
Requestor : Senate HESS

Agency Affected : Public Safety
BRU : Council on Domestic Violence & Sexual Assault
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						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS

Prepared by : Barbara Miklos, Executive Director BGM
Phone : 465-4356
Division : Council on Domestic Violence & Sexual Assault
Date : 4-10-87

JNR 4/13/87

Approved by Commissioner : [signature]
Date : 4/13/87
Agency : Public Safety

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

Public Safety

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version CS SB 231(HESS)
Publish Date : 4/2/87

REQUEST:

Revision Date: 4/10/87
Title: "An Act relating to sexual abuse of a minor..."
Sponsor: Halford, Jones, et.al.
Requestor: Senate Judiciary

Agency Affected: Administration
BRU: Office of Public Advocacy

Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		0	0	0	0	0
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						
OTHER						
TOTAL		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
PART-TIME						
TEMPORARY						

ANALYSIS:

Prepared by: Brant McGee, Public Advocate
Division: Office of Public Advocacy
Phone: 274-1684
Date: 4/10/87

Approved by Commissioner: Garrey Peska
Agency: Department of Administration
Date: 4/13/87

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

Public Advocacy

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version : CS SB 231/HESS
Publish Date :

REQUEST:

Revision Date: April 10, 1987
Title: "An Act relating to sexual abuse of a minor"
Sponsor: Sen. Halford
Requestor: Senate Judiciary

Agency Affected: Department of Administrat
BRU: Public Defender Agency
Components: Third Judicial District

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						
OTHER						
TOTAL		-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-
PART-TIME						
TEMPORARY						

ANALYSIS

Prepared by: Dana Fabe, Public Defender
Division: Public Defender Agency
Phone: 279-7541
Date: April 10, 1987

Approved by Commissioner: Garrey Peska
Agency: Department of Administration
Date: 4/13/87

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

Public Defender

POSITION PAPER

SB 231

The Alaska Public Defender Agency and the Office of Public Advocacy are totally reactive agencies which provide representation to indigent persons when appointed by the court. These agencies do not make policy nor do they initiate litigation. Only proposed legislation with fiscal or program ramifications for these agencies can be said to have a direct agency impact. Thus, the Public Defender Agency and Office of Public Advocacy submit position papers for legislation which will affect these agencies fiscally or programatically or will require these agencies to litigate constitutional issues raised by the legislation.

Fiscal impact: X None — See attached fiscal note ____

Program impact: ____ None — See analysis below X

Constitutional impact: ____ None — See analysis below X

This bill is apparently designed to expand the offense of sexual abuse of a minor in the first degree to include persons who have authority over a child in the household but are not legally related to that child. Unfortunately, this bill is drafted so broadly that it could apply to a number of situations which may not merit the eight-year presumptive term for a first offender of this offense.

Specifically, the bill would allow conviction of an eighteen year old exchange student who has a romantic relationship with the seventeen year old daughter of the family with whom he is living. If sexual penetration including digital penetration were to occur, that eighteen year old would be subject to prosecution and conviction with an eight-year presumptive term. Similarly, if two adults with teenage children were to begin to live together, and the teenagers, age eighteen and seventeen were to have a romantic relationship which involved any sexual penetration, the eighteen year old could be convicted of this offense.

Since the apparent goal of this legislation is to make culpable persons in a quasi-stepparent relationship with a child victim, regardless of whether that adult is married to the victim's parent or guardian, the statute should be framed more specifically to target that population.

Based on the information above, the Alaska Public Defender Agency and the Office of Public Advocacy oppose this bill.

Dana Fabe, Director
Public Defender Agency
Date 4/10/87

Brant McGee, Director
Office of Public Advocacy
Date 4/10/87

Commissioner Garrey Peska
Department of Administration
Date 4/13/87

DEPARTMENT OF PUBLIC SAFETY

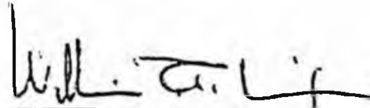
BILL NO: SB 231 DATE: April 10, 1987

TITLE: An Act relating to sexual abuse of a minor

CONTACT: Barbara Miklos
Executive Director
Council on Domestic Violence & Sexual Assault

The Council on Domestic Violence and Sexual Assault supports the concept of SB 231 which adds a provision to the sexual abuse of a minor statutes to include an offense against a victim who is residing as a member of a social unit in the same household with the offender. Such a relationship is not covered in statutes describing first and second degree sexual abuse of a minor, yet a notable number of minors are sexually assaulted by live-in partners of the parent who are recognized by the child as a parental or authoritative figure. In many instances, encouragement is given to accept live-in partners as surrogate parents and to comply with any parental authority which may be extended. In essence this "sets up" a child to yield to an adult who is not the legally-recognized custodian, but who is in a position to exert a great degree of control and influence. Therefore, the child is vulnerable to this authority and should be specifically protected in statute.

The language in Section 11.41.434(a)(2)(C) is too broad because it could include consensual sexual penetration of a 15-year-old by a 19-year-old. Also the Council feels that the word illegitimate in Section (B) should be replaced with a term with less stigma on the child. It could read "a child born out of wedlock".



William R. Nix
Acting Commissioner

Sexual Abuse of a Minor:

1st degree:

Offender's age: 16+
Victim's age: under 13
Act: sexual penetration
Relationship: N/A
Statute: 11.41.434
Unclassified offense: 8 years presumptive sentence

1st degree:

Offender's age: 18+
Victim's age: under 18
Act: sexual penetration
Relationship: offender is legal parent or cares for the child by authority of law.
Statute: 11.41.434
Unclassified offense: 8 years presumptive sentence

2nd degree:

Offender's age: 16+
Victim's age: 13-15 and three yrs younger than offender
Act: sexual penetration
Relationship: N/A
Statute: 11.41.436
Class B felony. Not presumptive until second conviction. Second conviction: 4 years presumptive

2nd degree:

Offender's age: 16+
Victim's age: under 13
Act: sexual contact
Relationship: N/A
Statute: 11.41.436
Class B felony. Not presumptive until second conviction. Second conviction: 4 years presumptive

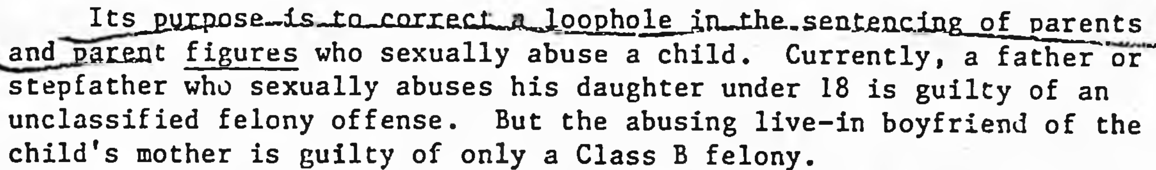
2nd degree:

Offender: 18+
Victim's age: under 18
Act: sexual contact
Relationship: legal parent or cares for the child by authority of law
Statute: 11.41.436
Class B felony. Not presumptive until second conviction. Second conviction: 4 years presumptive

SB 231 -- Sexual Abuse of a Minor

This bill was introduced at the request of STAR (Standing Together Against Rape) of Anchorage.

Purpose:



Its purpose is to correct a loophole in the sentencing of parents and parent figures who sexually abuse a child. Currently, a father or stepfather who sexually abuses his daughter under 18 is guilty of an unclassified felony offense. But the abusing live-in boyfriend of the child's mother is guilty of only a Class B felony.

Frequently a child is encouraged to accept a live-in partner as a substitute parent. The child is vulnerable to the influence and control of the parent figure.

The presence or absence of a marriage certificate should not change the length of sentence for sexual assault of a minor.

Suggested added language:

At the suggestion of Public Defender Dana Fabe, I would request an addition to the bill. The bill's language states that "at the time of the offense (the minor child) is residing as a member of a social unit in the same houshold with the offender." Dana Fabe suggests adding "...and the offender has authority over the minor child." The Department of Law, which helped with technical aspects of the wording of the bill, concurs with that language.

Fiscal notes:

The bill has zero fiscal notes.

Support for the bill:

The bill with the suggested added language is supported by:

STAR
The Child Advocacy Network (81 agencies and 110 individuals statewide)
The Municipality of Anchorage Dept of Health and Human Services
The Anchorage Police Dept and APD Employees Assn legislative committee
The Alaska Association of Chiefs of Police
The Alaska Women's Lobby
The Department of Health and Social Services
The Department of Public Safety
The Alaska Network on Domestic Violence and Sexual Assault has not officially met to discuss this bill but strongly supports it in concept.

The law:

The law concerning sexual abuse of a minor differs from that concerning sexual assault. Under AS 11.41.410, it is sexual assault in the first degree to sexually penetrate another person of any age without the victim's consent.

But consent does not apply if the victim is a minor child (under the age of 18). In the case of minor children, the law looks at the age of the victim and the relationship between victim and offender.

The relationship between victim and offender: If the offender is the victim's legal parent or guardian, sexual penetration of a child under 18 (the offender's son or daughter, including an illegitimate or adopted child, or a step child) is an unclassified felony. AS 11.41.434(a) and (b).

If the offender is not the victim's legal parent (or guardian), sexual penetration of a child between the ages of 13 and 15 is a Class B felony and sexual penetration of a child 16 and 17 is not a crime at all. AS 11.41.436(a)(1).

Penalties:

Under current law, first degree sexual abuse of a minor by a legal parent is an unclassified felony. It is a presumptive sentence, with no probation. The sentence for the first conviction is 8 years. For the second conviction it is 15 years. Imprisonment cannot exceed 30 years. AS 12.55.125(i).

Under current law, sexual penetration of a child ages 13-15 by someone who is not legally the child's parent is a Class B felony. It is a presumptive sentence upon the second conviction. The presumptive sentence for a second conviction is 4 years. For a third conviction it is 6 years. Imprisonment may not exceed 10 years. AS 12.55.125(d).

SEXUAL ABUSE OF A MINOR

Victim's age:	under 13	under 18	13-15	16-17
Act:	sexual penetratn	sexual penetratn	sexual penetratn	sexual penetratn
Relationshp:	______	legal parent	______	______
Offense:	unclass-ified	unclass-ified	B felony	Not a crime
Statute:	11.41.434	11.41.434	11.41.436	

Incest as included within charge of rape, 76 ALR2d 484.

Criminal responsibility of husband for rape, or assault to commit rape, on wife, 84 ALR2d 1017.

Fraud or impersonation, rape by, 91 ALR2d 591.

Impotency as defense to charge of rape, attempt to rape, or assault with intent to commit rape, 23 ALR3d 1351.

Rape or similar offense based on intercourse with woman who is allegedly mentally deficient, 31 ALR3d 1227.

Liability of parent for injury to unemancipated child caused by parent's negligence, 41 ALR3d 904.

Seizure or detention for purpose of committing rape, robbery, or similar offense as constituting separate crime of kidnapping, 43 ALR3d 699.

Consent as defense in prosecution for sodomy, 58 ALR3d 636.

Multiple instances of forcible intercourse involving same defendant and same victim as constituting multiple crimes of rape, 81 ALR3d 1228.

What constitutes offense of "sexual battery," 87 ALR3d 1250.

Constitutionality of rape laws limited to protection of females only, 99 ALR3d 129.

Validity and construction of statute defining crime of rape to include activity traditionally punishable as sodomy or the like, 3 ALR4th 1009.

Sec. 11.41.410. Sexual assault in the first degree. (a) A person commits the crime of sexual assault in the first degree if,

(1) being any age, the defendant engages in sexual penetration with another person without consent of that person;

(2) being any age, the defendant attempts to engage in sexual penetration with another person without consent of that person and causes serious physical injury to that person;

(3) *[Repealed, § 10 ch 78 SLA 1983.]*

(4) *[Repealed, § 10 ch 78 SLA 1983.]*

(b) Sexual assault in the first degree is an unclassified felony and is punishable as provided in AS 12.55. (§ 3 ch 166 SLA 1978; am § 8 ch 102 SLA 1980; am § 6 ch 143 SLA 1982; am § 10 ch 78 SLA 1983)

Cross references. — For evidence of past sexual conduct in trials of sexual assault in any degree or attempt to commit sexual assault in any degree, see AS 12.45.045.

Effect of amendments. — The 1980 amendment inserted "or aids, induces, causes or encourages a person under 13 years of age to engage in sexual penetration with another person" near the end of paragraph (3) in subsection (a).

The 1982 amendment substituted "an unclassified felony and is punishable as provided in AS 12.55" for "a class A felony" at the end of subsection (b).

The 1983 amendment repealed paragraphs (3) and (4) of subsection (a).

Legislative history reports. — For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 28, 1980.

NOTES TO DECISIONS

I. General Consideration.
II. Former Law.
  A. Generally.
  B. Age of Consent.
  C. Procedure.

I. GENERAL CONSIDERATION.

History of first-degree sexual assault statute. — See Reynolds v. State, Ct. App. Op. No. 262 (File No. 6890), 664 P.2d 621 (1983).

Constitutionality. — In order to prove a violation of AS 11.41.410(a)(1), the state

(B) is incapacitated.

(b) Sexual assault in the second degree is a class B felony. (§ 3 ch 166 SLA 1978; am § 1 ch 78 SLA 1983)

Effect of amendments. — The 1983 amendment rewrote subsection (a).

NOTES TO DECISIONS

For cases construing former crime of rape, see notes to AS 11.41.410.

Attempted sexual assault in the first degree and sexual assault in the second degree are closely related, since sexual penetration involves sexual contact and both offenses proceed on a theory of coerced assent. Nicholson v. State, Ct. App. Op. No. 193 (File No. 6192), 656 P.2d 1209 (1982).

Constitutionality of conviction where original charge was under AS 11.41.410. — Where defendant was charged with attempted sexual assault in the first degree, he was thereby assumed to have notice that he might be convicted of second-degree sexual assault because of the similarities in the elements of the two offenses, and his conviction for the latter offense did not violate due process. Nicholson v. State, Ct. App. Op. No. 193 (File No. 6192), 656 P.2d 1209 (1982).

Evidence. — Where victim woke up in the early morning hours to find defendant in her bed and fondling her breast, and where she testified that she was temporarily in shock and afraid he would hurt her, a jury could find that victim's momentary acquiescence in defendant's fondling her breast constituted second-degree sexual assault. Nicholson v. State, Ct. App. Op. No. 193 (File No. 6192), 656 P.2d 1209 (1982).

Instructions. — The trial judge did not err in refusing to instruct on the lesser included offense of attempted sexual contact in the second degree. Johnson v. State, Ct. App. Op. No. 267 (File No. 6662), 665 P.2d 566 (1983).

Sentence upheld. — Sentence of eight years with three years suspended for sexual assault in the second degree was not clearly mistaken. Howard v. State, Ct. App. Op. No. 260 (File Nos. 6027, 6123), 664 P.2d 603 (1983).

Cited in Stores v. State, Sup. Ct. Op. No. 2252 (File No. 3595), 625 P.2d 820 (1980).

Sec. 11.41.430. [Repealed, § 10 ch 78 SLA 1983. For current law, see AS 11.41.420(a)(2).]

Sec. 11.41.434. Sexual abuse of a minor in the first degree. (a) An offender commits the crime of sexual abuse of a minor in the first degree if

(1) being 16 years of age or older, the offender engages in sexual penetration with a person who is under 13 years of age or aids, induces, causes, or encourages a person who is under 13 years of age to engage in sexual penetration with another person; or

(2) being 18 years of age or older, the offender engages in sexual penetration with a person who is under 18 years of age and who

(A) is entrusted to the offender's care by authority of law; or

(B) is the offender's son or daughter, including an illegitimate or adopted child, or a stepchild.

(b) Sexual abuse of a minor in the first degree is an unclassified felony and is punishable as provided in AS 12.55. (§ 2 ch 78 SLA 1983)

NOTES TO DECISIONS

Editor's notes. — The cases cited in the note below were decided under former AS 11.15.134 and former AS 11.41.410(a)(4).

For cases construing former rape statute, see AS 11.41.410, Notes to Decisions, analysis line II.

State's authority to control sexual conduct of children. — Although juveniles may have certain rights to sexual privacy, the state may nevertheless exercise control over the sexual conduct of children beyond the scope of its authority to control adults. Anderson v. State, Sup. Ct. Op. No. 1407 (File No. 2641), 562 P.2d 351 (1977).

Where juveniles have certain rights to privacy and to express their own autonomy, the state's interest in the well-being of its children may justify legislation that could not properly be applied to adults. Anderson v. State, Sup. Ct. Op. No. 1407 (File No. 2641), 562 P.2d 351 (1977).

As to constitutionality of former statute making lewd and lascivious acts toward children a crime, see Anderson v. State, Sup. Ct. Op. No. 1407 (File No. 2641), 562 P.2d 351 (1977).

Physical conduct punished under former statute. — See Anderson v. State, Sup. Ct. Op. No. 1407 (File No. 2641), 562 P.2d 351 (1977); Smiloff v. State, Sup. Ct. Op. No. 1637 (File No. 3006), 579 P.2d 28 (1978).

Former section prohibited fellatio. — See Anderson v. State, Sup. Ct. Op. No. 1407 (File No. 2641), 562 P.2d 351 (1977).

Consent is not at issue. — The state may forbid an adult to have fellatio with a child under the statutorily prescribed age regardless of whether the child consents to the act. Anderson v. State, Sup. Ct. Op. No. 1407 (File No. 2641), 562 P.2d 351 (1977).

Mitigating Factors. — In prosecution for first-degree sexual assault, defendant's familiarity with his victim (his 12-year old daughter) was not a mitigating factor. Hodges v. State, Ct. App. No. 233 (File No. 7330), 660 P.2d 1203 (1983).

Sentence under former AS 11.15.134 upheld. — See Noble v. State, Sup. Ct. Op. No. 1286 (File No. 2468), 552 P.2d 142 (1976); Buchanan v. State, Sup. Ct. Op. No. 1316 (File No. 2553), 554 P.2d 1153 (1976); Morgan v. State, Sup. Ct. Op. No. 1908 (File No 4187), 598 P.2d 952 (1979); Baker v. State, Sup. Ct. Op. No. 1968 (File No. 4631), 602 P.2d 797 (1979); Alvarado v. State, Sup. Ct. Op. No. 2323 (File No. 5133), 626 P.2d 582 (1981).

Sentence for assault upheld. — In prosecution of defendant with no prior criminal record on two counts of first-degree sexual assault of his 12-year old daughter, sentence of two consecutive eight-year terms with five years suspended was not excessive. Hodges v. State, Ct. App. Op. No. 233 (File No. 7330), 660 P.2d 1203 (1983).

In light of the substantial duration of defendant's sexual abuse of his stepdaughter (three years), his failure to learn from the earlier discovery of his prior offenses, his disregard of a court order that he avoid contact with the victim, and his total failure to take any meaningful step toward rehabilitation, 10-year sentence with four years suspended was not excessive for conviction of first-degree sexual assault. Langton v. State, Ct. App. Op. No. 236 (File Nos. 7188, 6247, 7114), 662 P.2d 954 (1983).

Sentence under AS 11.15.134 held excessive. — See Qualle v. State, Ct. App. Op. No. 138 (File No. 5666), 652 P.2d 481 (1982).

Sentence for assault held excessive. — Sentence of 20 years imprisonment for first-degree sexual assault of two-year old child was excessive and case was remanded for resentencing not to exceed 120 years. Langton v. State, Ct. App. Op. No. 236 (File Nos. 7188, 6247, 7114), 662 P.2d 954 (1983).

Sentence for assault held too lenient. — Suspended five-year sentence for first-degree sexual assault of defendant's four-year old son was disapproved as too lenient, with a 90-day to three-year sentence suggested. Langton v. State, Ct. App. Op. No. 236 (File Nos. 7188, 6247, 7114), 662 P.2d 954 (1983).

Applied in Seymore v. State, Ct. App. Op. No. 196 (File No 6995), 655 P.2d 786 (1982).

Sec. 11.41.436. Sexual abuse of a minor in the second degree. (a) An offender commits the crime of sexual abuse of a minor in the second degree if

(1) being 16 years of age or older, the offender engages in sexual penetration with a person who is 13, 14, or 15 years of age and at least three years younger than the offender, or aids, induces, causes or encourages a person who is 13, 14, or 15 years of age and at least three years younger than the offender to engage in sexual penetration with another person;

(2) being 16 years of age or older, the offender engages in sexual contact with a person who is under 13 years of age or aids, induces, causes, or encourages a person under 13 years of age to engage in sexual contact with another person;

(3) being 18 years of age or older, the offender engages in sexual contact with a person who is under 18 years of age and who

(A) is entrusted to the offender's care by authority of law; or

(B) is the offender's son or daughter, including an illegitimate or adopted child, or a stepchild; or

(4) being 16 years of age or older, the offender aids, induces, causes, or encourages a person who is under 16 years of age to engage in conduct described in AS 11.41.455(a)(2) — (6).

(b) Sexual abuse of a minor in the second degree is a class B felony. (§ 2 ch 78 SLA 1983)

NOTES TO DECISIONS

Prior law. — For cases decided under prior law, see notes to AS 11.41.434, Notes to Decisions.

Sec. 11.41.438. Sexual abuse of a minor in the third degree. (a) An offender commits the crime of sexual abuse of a minor in the third degree if, being 16 years of age or older, the offender engages in sexual contact with a person who is 13, 14, or 15 years of age and at least three years younger than the offender.

(b) Sexual abuse of a minor in the third degree is a class C felony. (§ 2 ch 78 SLA 1983)

NOTES TO DECISIONS

Prior law. — For cases decided under prior law, see notes to AS 11.41.434, Notes to Decisions.

Sec. 11.41.440. Sexual abuse of a minor in the fourth degree. (a) An offender commits the crime of sexual abuse of a minor in the fourth degree if, being under 16 years of age, the offender engages in sexual penetration or sexual contact with a person who is under 13 years of age and at least three years younger than the offender.

3691), 578 P.2d 971 (1978); Putnam v. State, Sup. Ct. Op. No. 2251 (File No. 3475), 629 P.2d 35 (1980); State v. Brinkley, Ct. App. Op. No. 361 (File No. A-164), P.2d (1984); Cleary v. State, Sup. Ct. Op. No. 1257 (File No. 2623), 548 P.2d 952 (1976); Salazar v. State, Sup. Ct. Op. No. 1404 (File No. 2567), 562 P.2d 694 (1977); Cleary v. State, Sup. Ct. Op. No. 1431 (File No. 3059), 564 P.2d 374 (1977); Amidon v. State, Sup. Ct. Op. No. 1434 (File Nos. 2511, 2512), 565 P.2d 1248 (1977); Black v. State, Sup. Ct. Op. No. 1506 (File No. 3327), 569 P.2d 804 (1977); Sumabat v. State, Sup. Ct. Op. No. 1648 (File No. 3739), 580 P.2d 323 (1978); Hansen v. State, Sup. Ct. Op. No. 1689 (File No. 3412), 582 P.2d 1041 (1978); Kanipe v. State, Sup. Ct. Op. No. 2242 (File No. 4993), 620 P.2d 678 (1980); Hintz v. State, Sup. Ct. Op. No. 2334 (File No. 3541), 627 P.2d 207 (1981).

Inclusion of improper reference to unverified police contacts did not require remand for resentencing before different judge. — See Parks v. State, Sup. Ct. Op. No. 1529 (File No. 3209), 571 P.2d 1003 (1977).

Reference to unverified police contacts in a presentence report does not require a remand for resentencing where the record indicates that the sentencing judge was not unduly or improperly influenced by reference to the unverified police contacts. Pascoe v. State, Sup. Ct. Op. No. 2249 (File No. 4290), 628 P.2d 547 (1980).

Case remanded for resentencing. — See Neal v. State, Sup. Ct. Op. No. 2341 (File No. 4787), 628 P.2d 19 (1981).

Case remanded for sentence review. — Although a sentence of 15 years' imprisonment with eligibility for parole at the discretion of the parole board upon conviction of manslaughter was not excessive, since the trial court had sentenced defendant as if his conviction had been obtained within one year of the crime and therefore substantially ignored his subsequent history of steady employment, his meritorious service in the army, and his lack of involvement in any criminal activity other than a few traffic offenses in the 12 years since the commission of the crime, the case was remanded for the purpose of permitting the trial court to review the sentence it imposed, in light of all available information concerning defendant without excluding the time period commencing one year from the time of the killing until the present. Padie v. State, Sup. Ct. Op. No. 1843 (File No. 3564), 594 P.2d 50 (1979).

Sec. 12.55.125. Sentences of imprisonment for felonies. (a) A defendant convicted of murder in the first degree shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years.

(b) A defendant convicted of murder in the second degree, kidnapping, or misconduct involving a controlled substance in the first degree shall be sentenced to a definite term of imprisonment of at least five years but not more than 99 years.

(c) A defendant convicted of a class A felony may be sentenced to a definite term of imprisonment of not more than 20 years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (2) of this subsection, five years;

(2) if the offense is a first felony conviction, other than for manslaughter, and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, or knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, fire fighter, correctional officer, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense, seven years;

(3) if the offense is a second felony conviction, 10 years;

(4) if the offense is a third felony conviction, 15 years.

(d) A defendant convicted of a class B felony may be sentenced to a definite term of imprisonment of not more than 10 years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

(1) if the offense is a second felony conviction, four years;

(2) if the offense is a third felony conviction, six years;

(3) if the offense is a first felony conviction, and the defendant knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, fire fighter, correctional officer, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense, two years.

(e) A defendant convicted of a class C felony may be sentenced to a definite term of imprisonment of not more than five years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

(1) if the offense is a second felony conviction, two years;

(2) if the offense is a third felony conviction, three years;

(3) if the offense is a first felony conviction, and the defendant knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, fire fighter, correctional officer, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense, one year.

(f) If a defendant is sentenced under (a) or (b) of this section,

(1) imprisonment for the prescribed minimum term may not be suspended under AS 12.55.080;

(2) imposition of sentence may not be suspended under AS 12.55.085;

(3) imprisonment for the prescribed minimum term may not be otherwise reduced.

(g) If a defendant is sentenced under (c), (d)(1), (d)(2), (e)(1), (e)(2), or (i) of this section, except to the extent permitted under AS 12.55.155 — 12.55.175,

(1) imprisonment may not be suspended under AS 12.55.080;

(2) imposition of sentence may not be suspended under AS 12.55.085;

(3) terms of imprisonment may not be otherwise reduced.

(h) Nothing in this section or AS 12.55.135 limits the discretion of the sentencing judge except as specifically provided.

(i) A defendant convicted of sexual assault in the first degree or sexual abuse of a minor in the first degree may be sentenced to a definite term of imprisonment of not more than 30 years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (2) of this subsection, eight years;

(2) if the offense is a first felony conviction, and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 10 years;

(3) if the offense is a second felony conviction, 15 years;

(4) if the offense is a third felony conviction, 25 years. (§ 12 ch 166 SLA 1978; am § 18 ch 45 SLA 1982; am §§ 28-30 ch 143 SLA 1982; am § 8 ch 78 SLA 1983; am §§ 1-3 ch 92 SLA 1983)

Cross references. — For classification of felonies and misdemeanors, see AS 11.81.250; for authorized fines, see AS 12.55.035; for reduction of sentence for good behavior, see AS 33.20.010.

Effect of amendments. — The first 1982 amendment in subsection (b), deleted "or" preceding "kidnapping" and inserted "or misconduct involving a controlled substance in the first degree."

The second 1982 amendment in subsection (c), redesignated former paragraphs (1)-(3) as present paragraphs (2)-(4), added present paragraph (1), and substituted "possessed a firearm, used a dangerous instrument" for "possessed or used a firearm" and "seven years" for "six years" in present paragraph (2). The amendment also substituted "under (c), (d)(1), (d)(2), (e)(1), (e)(2), or (i) of this section" for "under (c)(1), (c)(2), (c)(3), (d)(1), (d)(2), (e)(1), or (e)(2) of this section" in the introductory language of subsection (g), corrected the section number set out in paragraphs (1) and (2) of subsection (g), and added subsection (i).

The first 1983 amendment inserted "or sexual abuse of a minor in the first degree" in the introductory language of subsection (i).

The second 1983 amendment in (c)(2) added "or knowingly directed . . . at the time of the offense," added paragraph (3) of subsection (d), added paragraph (3) of subsection (e), and made other minor punctuation changes.

Editor's notes. — For declaration of legislative purpose, see § 1, ch. 45, SLA 1982 in the 1982 Temporary and Special Acts and Resolves.

NOTES TO DECISIONS

I. General Consideration.
II. Presumptive Sentencing.

I. GENERAL CONSIDERATION.

Limited use of both suspended jail time and probation is permitted under AS 12.55.155. Lacquement v. State, Ct. App. Op. No. 85 (File No. 5741), 644 P.2d 856 (1982). See also Friedberg v. State, Ct. App. Op. No. 258 (File No. 7015), 663 P.2d 558 (1983).

Probationary sentences. — Although a probationary sentence may properly be used when a first offender is convicted of a class C felony involving sexual abuse of a child, such a sentence will be appropriate only if mitigating circumstances exist and the offender is a promising candidate for rehabilitation through probationary supervision. State v. Coats, Ct. App. Op. No. 291 (File No. 7102), 669 P.2d 1329 (1983).

Under former law where statutory mitigating factors warrant a sentence of 90 days to three years, extraordinary circumstances might justify a sentence of straight probation. State v. Brinkley, Ct. App. Op. No. 361 (File No. A-164), P.2d (1984).

Placement of offenders. — It is within the sentencing judge's authority to make a recommendation to the commissioner regarding the appropriate placement of the offender. Under AS 33.30.100, the commissioner has the power to effectuate such a recommendation by placing the offender in the appropriate facility, and although the commissioner is not bound by the sentencing court's recommendation, a demonstrated failure to provide an appropriate rehabilitation program or to further the purposes of the sentence may justify judicial intervention. Nell v. State, Ct. App. Op. No. 77 (File No 5565), 642 P.2d 1361 (1982).

SB
246

303

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: SB 246
Publish Date: ~~4/9/87~~ 7/30

REQUEST:

Revision Date:
Title: Relating to employment protection for jurors
Sponsor: Senate Judiciary
Requestor: Senate State Affairs

Agency Affected: Alaska Court System
BRU: Trial Courts

Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Karla Forsythe
Division: Staff Counsel
Phone: 264-8228
Date: 4/29/87

Approved by Commissioner: [signature]
Date: 4/29/87
Agency: Alaska Court System

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

SB
247

5-1044B
Ford
5/12/87

Original sponsor: Judiciary Committee

1 IN THE SENATE BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 247 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to citations for certain offenses;
7 and providing for an effective date."

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

9 * Section 1. AS 12.25.190(c) is amended to read:

10 (c) The person cited for the crime shall give a written promise
11 to appear in court by signing at least one copy of the written cita-
12 tion prepared by the peace officer and the officer shall deliver a
13 copy of the citation to the person. The written promise requirement
14 of this subsection does not apply to motor vehicle and traffic cita-
15 tions <u>for which a bail or fine schedule has been established</u> under
16 AS 28.05.151, fish and game citations for which a bail schedule has
17 been established under AS 16.05.165, citations issued under AS 18.-
18 35.341, <u>or</u> [AND] citations issued in state park and recreational
19 facilities under AS 41.21.960.

20 * Sec. 2. AS 12.25 is amended by adding a new section to read:

21 Sec. 12.25.195. DISPOSITION OF SCHEDULED OFFENSES. (a) A
22 person cited for an offense for which a scheduled amount of bail or a
23 fine has been established may mail or personally deliver to the clerk
24 of the court with appropriate jurisdiction if a bailable offense, or
25 to the clerk of the municipality that issued the citation if a sched-
26 uled municipal fine, the amount of the bail or fine indicated on the
27 citation for the offense together with a copy of the citation signed
28 by the person indicating the person's waiver of court appearance,
29 entry of plea of no contest, and forfeiture of bail or fine. A motor

1 vehicle or traffic citation may be mailed or personally delivered
2 within five days of the date of the citation. A citation for a sched-
3 uled offense other than a motor vehicle or traffic citation may be
4 mailed or personally delivered within 15 days of the date of the
5 citation.
6 (b) When bail or a fine is forfeited under this section, a
7 judgment of conviction shall be entered. The bail or fine paid is
8 complete satisfaction for the offense.
9 * Sec. 3. AS 12.25.200 is amended by adding a new subsection to read:
10 (b) A citation issued under AS 12.25.180 must indicate the
11 amount of bail or fine applicable to the offense, the procedure a
12 person must follow in responding to the citation, and that if the
13 person fails to pay the bail or fine the person must appear in court.
14 In addition, a citation must indicate that the person has a right to
15 (1) a trial;
16 (2) engage counsel;
17 (3) confront and question witnesses;
18 (4) testify; and
19 (5) subpoena witnesses on the person's behalf.
20 * Sec. 4. AS 12.25.210(a) is amended to read:
21 (a) A peace officer, upon issuing a citation to an alleged
22 violator under AS 12.25.180, shall deposit the original or a copy of
23 the citation with a court having jurisdiction over the alleged of-
24 fense. <u>If the citation charges an offense under a municipal ordinance</u>
25 <u>for which a scheduled fine has been established, the peace officer</u>
26 <u>shall deposit the original or a copy of the citation with the clerk of</u>
27 <u>the municipality that issued the citation, unless otherwise provided</u>
28 <u>under rule adopted by the supreme court.</u>
29 * Sec. 5. AS 12.25.230 is amended to read:

1 Sec. 12.25.230. FAILURE TO OBEY CITATION. Except as provided in
2 (b) of this section, a [A] person who fails to appear in court to
3 answer the citation, regardless of the disposition of the charge for
4 which the citation was issued, is guilty of a misdemeanor and upon
5 conviction is punishable by a fine of not more than $1,000, or by
6 imprisonment for not more than one year, or by both.
7 * Sec. 6. AS 12.25.230 is amended by adding new subsections to read:
8 (b) If a person is cited for an offense for which an amount of
9 scheduled bail or fine is established and fails to pay the bail or
10 fine, or appear in court, the citation shall be considered a summons
11 for a misdemeanor.
12 (c) If a person cited for an offense for which an amount of
13 scheduled bail or fine has been established appears in court and is
14 found guilty, the penalty imposed for the offense may not exceed the
15 bail or fine established for the offense.
16 * Sec. 7. AS 28.05.041(a) is amended to read:
17 (a) The commissioner shall prescribe and provide suitable appli-
18 cation forms, certificates of title and registration, driver's li-
19 censes and all other forms necessary to carry out the provisions of
20 this title and regulations adopted under this title, the adminis-
21 tration of which is vested in the department, including a standard
22 citation form which meets the requirements of AS 12.25.200 [AS 28.05.-
23 151] and which is in a form necessary to identify the offender and the
24 offense and otherwise necessary to meet the needs of the public safety
25 and the administration of justice as required under that section.
26 * Sec. 8. AS 28.05.151 is repealed and reenacted to read:
27 Sec. 28.05.151. CITATIONS FOR SCHEDULED VEHICLE AND TRAFFIC
28 OFFENSES. The supreme court shall determine by rule or order those
29 motor vehicle and traffic offenses, except for offenses subject to a

1 scheduled municipal fine, that are amenable to disposition without
2 court appearance and shall establish a scheduled amount of bail, not
3 to exceed fines prescribed by law, for each offense. A municipality
4 shall determine by ordinance the municipal motor vehicle and traffic
5 offenses that may be disposed without court appearance and shall
6 establish a fine schedule for each offense.
7 * Sec. 9. AS 28.15.191 is amended by adding a new subsection to read:
8 (f) A municipality that accepts a fine payment after a plea of
9 no contest to a charge of a violation of a municipal ordinance for
10 which a scheduled fine has been established shall forward a record of
11 the payment to the department; however, a conviction for a standing or
12 parking offense need not be reported.
13 * Sec. 10. AS 29.25.070(a) is amended to read:
14 (a) For the violation of an ordinance, a municipality may by
15 ordinance prescribe a penalty not to exceed a fine of $1,000 and
16 imprisonment for 90 days. <u>For a violation that cannot result in</u>
17 <u>incarceration or the loss of a valuable license, a municipality may</u>
18 <u>allow disposition of the violation without court appearance and estab-</u>
19 <u>lish a schedule of fine amounts for each offense.</u>
20 * Sec. 11. This Act takes effect January 1, 1988.
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STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: SB 247
Publish Date:

REQUEST
Revision Date:
Title: "An Act relating to citations for vehicle and traffic offenses."
Sponsor: Judiciary Committee
Requestor: Senate State Affairs

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
CAPITAL						
REVENUE						

FUNDING:: (Thousands of Dollars)

GENERAL FUNDS		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS:

No fiscal impact is anticipated.

JVR 4/15/87

Prepared by: Francis C. Allan F.C.A.
Phone: 269-5691
Division: Alaska State Troopers
Date: 4/15/87

Approved by Commissioner: [signature]
Date: 4/16/87
Agency: Public Safety

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

BILL NO: SB 247

DATE: 4/21/87

TITLE: "An Act relating to citations for vehicle and traffic offenses."

CONTACT: James D. Vaden
Deputy Commissioner

DEPARTMENT OF PUBLIC SAFETY

Provides uniformity of procedures involving disposition of vehicle or traffic offenses issued under municipal ordinances.

This proposed legislation will not affect the Division of Alaska State Troopers since municipal ordinances are not enforced by A.S.T.

The Division of Alaska State Troopers is neutral on this legislation.

Arthur English
Commissioner

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: SB 247
Publish Date:
Agency Affected: Public Safety
BRU: Alaska State Troopers
Components: Detachments & CIB

REQUEST
Revision Date:
Title: "An Act relating to citations for vehicle and traffic offenses."
Sponsor: Judiciary Committee
Requestor: Senate State Affairs

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING:: (Thousands of Dollars)

GENERAL FUNDS		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact is anticipated.

JR 4/16/87

Prepared by: Francis C. Allan F.C.A.
Phone: 269-5691
Division: Alaska State Troopers
Date: 4/15/87

Approved by Commissioner: [signature]
Date: 4/16/87
Agency: Public Safety

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

page ____ of ____

SB
250

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date :

REQUEST

Bill/Resolution No. : SB 250

Title : An Act giving effect to declaration of qualified patient during pregnancy.

Sponsor : Eliason

Requestor :

Date of Request : 4/9/87

FISCAL DETAIL

Agency Affected : none

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						
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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 : Attach a separate page if necessary

Prepared by : Hayden Kaden — Phone : 465-3717

Division : Senate Judiciary Committee — Date : 4/10/87

Approved by Commissioner : Senator Jay Kerttula — Date : 4/14/87

Agency : Senate Judiciary Committee

Distribution (by Agency preparing fiscal note) :

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

page ___ of ___

9/16/86

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

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

Re: CCS SB 140 -- rights of the terminally ill

Dear Senator Bennett:

I have today signed CCS SB 140, on the rights of the terminally ill. I have signed it because I believe that the bill, based on the Uniform Rights of the Terminally Ill Act, as promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL), is a significant and worthwhile step in preserving an individual's right to die with dignity and to refuse life-sustaining treatment that would only prolong the agony of dying. The bill provides for what has been called a "living will."

However, during the Alaska Legislature's consideration of this bill, proposed AS 18.12.040(c) was amended to deny this right to a pregnant woman. By deleting the clause that appeared in the original version and in the Uniform Act as promulgated by the NCCUSL -- "unless the declaration provides otherwise" -- the Alaska Legislature has probably rendered the provision unconstitutional. I am advised, however, by the Department of Law that the provision is probably severable from the rest of the bill, so that if it is held invalid, the benefits provided by the rest of the bill could still be given effect.

I firmly support the general concept of this bill, and therefore, have signed it into law.

Sincerely,

Bill Sheffield
Governor

NATIONAL ORGANIZATION FOR WOMEN
STATE OF ALASKA

200 W. 34TH AVENUE, SUITE 844
ANCHORAGE, ALASKA 99503
(907) 562-3081, Ext. 844

February 21, 1987

The Honorable Steve Cowper
Governor of Alaska
Pouch A
Juneau, Alaska 99801

Dear Legislator:

I am writing you to ask for your support in the repeal of a provision in a bill that was passed last year: SB 140 - the Living Will bill. The legislation's intended purpose was to allow patients' legal rights to die (as specified in a prepared will) when natural death is imminent and only extra-ordinary life sustaining procedures would prolong existence. The provision needing repeal (now Alaska Statute 18.12.040 (c) pertains to a limitation on the right of a terminally ill pregnant woman to refuse life sustaining procedures. Since Article One, Sections One and Three upholds equal rights for all Alaskans, pregnant or not. This provision is most evidentally unconstitutional.

Governor Sheffield signed this bill into law last year with the promise that he would ask for a repeal of this section; attorneys in the Department of Law had advised the governor that the provision probably could not withstand a constitutionality challenge. We are hoping that the legislature will be wise enough to remove this odious clause and avoid any costly litigation on the matter.

In further explanation, what Section C does is to state that a pregnant woman does not have the right to die as do other people nor does she have the right to designate within her declaration a choice regarding the condition of pregnancy and how it will affect her living will. It suggests that in the event of impending natural death, a pregnant woman must first undergo an abortion in order to die. This asburdity piled on top of absurdity. This provision was added to the legislation last year at the suggestion of extremist Right to Life lobbyist who have been promoting other similar crazy initiatives such as funerals for fetuses.

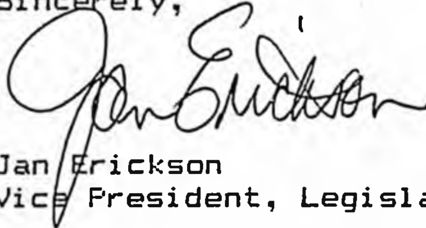
The situation of a terminally ill pregnant woman is undoubtedly rare, however, there have been several infamous cases recently in other states which brought national publicity. The remoteness of the possibility should not constrain legislators from acting on a repeal. Passage of unconstitutional provisions have caused unecessary confusion and expenditure of many public dollars in

futile legal defenses.

We would request that you both sponsor and vote for a repeal of AS 18.12.040 (c). Support of this position was taken by our state executive board at the State Annual Convention in July. If you need additional information, please do not hesitate to write me at the above address.

With best regards, I remain,

Sincerely,



Jan Erickson
Vice President, Legislation

523 Harris St.
Juneau, Alaska 99801

May 6, 1986

Members of the SB 140 Conference Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99801

Dear Senators and Representatives:

I have already spoken with each of you at some length. The intent of this letter is to submit the attached information in support of my opinion that SB 140 and the HB amendment regarding the pregnant patient's right (non-right) to die is unacceptable. I have done extensive research into the evolution of this bill and specifically the amendment (section 18.12.040 c). I have sought legal and other counsel on several levels that overwhelming support this opinion.

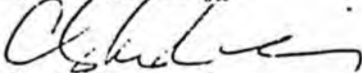
There is sufficient evidence to warrant reassessment of this amendment as to define its validity and purpose. In lieu of the original intent of the bill which I felt to be the right of an individual to determine their own dignity in death, my concerns are founded on both legal and ethical grounds. First of all it appears that the present amendments violate basic rights provided by both the Federal and State Constitutions. Discussions to support this statement would be great in length and I wish to remain concise. None-the-less, constitutional validity of this amendment is questionable. Attached information can substantiate this argument.

The individual's right to die with dignity is personal and should be respected. So perhaps the true issue at hand is basically a question of judging that dignity. It seems to me as the present amendment would suggest is that it is not the dignity of the individual that has been considered but the judgment of 'potential indignity' of their choice. If this bill is truly a call for dignity in death, then we indeed need to redefine dignity itself, and to whom in the throes of death, that dignity belongs. I believe it belongs to the dying individual. To deny this is to refute the ideal for which this bill stands.

In conclusion a woman patient has equal rights to die with dignity as should be guaranteed by this bill. For if we are to maintain the intended integrity of Right-To-Die legislation this will be so. I trust these ideas will be thoughtfully considered and acted upon. At this date I am asking for deletion of this amendment.

Thank you for your attention.

Most Sincerely,



Christina Loris
Concerned Citizen

REPRODUCTIVE FREEDOM PROJECT

132 West 43 Street
New York, NY 10036
(212) 944-9800

Janet Benshoof
DIRECTOR

Suzanne Lynn
Nan D. Hunter
STAFF COUNSEL

Lourdes Soto
PARALEGAL/
PUBLIC EDUCATION

Norman Dorsen
PRESIDENT

Ira Glasser
EXECUTIVE DIRECTOR

Burt Neuborne
LEGAL DIRECTOR

April 22, 1986

Maryanne Butcher
Executive Director
Alaska Civil Liberties Union
P.O. Box 201844
Anchorage, Alaska 99520-1844

Dear Ms. Butcher:

I am writing with regard to the pending "right to die" legislation which we spoke about earlier this week. There are strong arguments that the proposed amendment, which would preclude a pregnant woman from declining certain medical treatment so long as the fetus is alive, is unconstitutional.

The only conceivable rationale for the amendment is a desire on the part of the legislature to protect and preserve the potential life of the fetus. In Roe v. Wade, 410 U.S. 113 (1973), the United States Supreme Court clearly held that such a state interest simply is not a compelling basis for state regulation before the point of fetal viability, that is, in the first or second trimester of pregnancy. Thus, to the extent that an individual's decision to decline life-prolonging medical measures is a constitutionally protected one, state restriction of that right in furtherance of the preservaton of potential human life is impermissible. A woman could not, under such circumstances, be compelled to prolong her own life solely for the purpose of carrying the fetus to term or to the point of viability.

Although the United States Supreme Court has never ruled on the question, numerous state courts have found the right to refuse life sustaining treatment to be constitutionally protected. See Foody v. Manchester Memorial Hospital, 40 Conn. Supp. 127, 482 A.2d 713, 717 (Sup. Ct. 1984); In re L.H.R., 253 Ga. 439, 321 SE.2d 716, 722 (Sup. Ct. 1984); In re Torres, 357 NW.2d 332, 339 (Minn. Sup. Ct. 1984); In re Colyer, 99 Wash.2d 114, 660 P.2d 738, 742-43 (Sup. Ct. 1983), overruled in part on other grounds, In re Guardianship of Hamlin, 102 Wash.2d 810, 689 P.2d 1372 (Sup. Ct. 1984); Severns v. Wilmington Medical Center,

Inc., 421 A.2d 1334 (Del. Sup. Ct. 1980); Satz v. Perlmutter, 362 So.2d 160, 162 (Fla. Dist. of App. 1978), aff'd, 379 So.2d. 359, 360 (Sup. Ct. 1980); Belchertown State School v. Saikewicz, 373 Mass. 728, 738-40, 370 NE.2d. 417, 424 (Sup. Ct. 1977); In re Quinlan, 70 NJ. 10, 355 A.2d 647, 663 (Sup. Ct. 1976); Bartling v. Superior Court, 163 Cal. App.3d 186, 209 Cal. Reptr. 220, 225 (1984); Leach v. Akron Medical Center, 68 Ohio Misc. 1, 426, A.2d 809, 814 (Comm. Pleas. 1980); In re Yetter, 62 D. & C.2d 619, 623 (Penn. Cty. Ct. Northampton Cty. 1972).* In addition one federal court has found the right to refuse treatment to be constitutionally protected in a federal hospital facility. See Tune v. Walter Reed Army Medical Hospital, 602 F.Supp. 1452, 1454-56 (D.D.C. 1985)(relying in part on state cases cited above).

The argument that the right to refuse life sustaining treatment is a constitutional one, rests upon several lines of clear federal constitutional precedent. First, in Roe v. Wade, the Court "proceeded upon the premise that [the right to privacy gives] a competent adult ...[the] paramount right to control the disposition to be made of his or her own body, absent a compelling countervailing governmental interest..." Tune, 602 F.Supp. at 1454. Second, several Supreme Court cases in other contexts have noted the fundamental constitutional importance of "liberty from bodily restraint," Youngberg v. Romeo, 457 U.S. 307, 316 (1982), freedom from "unjustified intrusion on personal security," Vitek v. Jones, 445 U.S. 480, 492 (1980)(quotation omitted) and the right not to be subjected to invasive medical procedures in search of evidence in a criminal case absent a compelling state reason, see Winston v. Lee, 470 U.S. _____, 84 L.Ed.2d 662 (1985).

Finally, several courts have found that mental patients have a constitutional right to refuse antipsychotic drugs on these and other grounds. See, e.g., Rogers v. Okin, 634 F.2d 650 (1st Cir. 1980), vacated and remanded on other grounds sub. nom., Mills v. Rogers, 457 U.S. 291 (1982), on remand, 738 F.2d 1 (1st Cir. 1984); Rennie v. Klein, 653 F.2d 836, vacated and remanded for further consideration, 458 U.S. 1119 (1982), on remand, 720 F.2d 266 (3d Cir. 1983)(en banc); Bee v. Greaves, 744 F.2d 1387 (10th Cir. 1984).

In sum, there are strong arguments that the right to refuse life sustaining treatment is constitutionally protected against governmental intrusion and that it may not be infringed by state legislation absent a compelling state interest, which the previability preservation of potential life clearly is not under Roe v. Wade.

Furthermore, even in the absence of heightened consti-

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* These cases appear to rely on federal constitutional law with the exception of Bartling and Colyer which rely on both federal and state constitutions.

tutional protection, an argument can be made that in light of Roe v. Wade the proposed amendment is irrational in many situations. In Alaska and elsewhere, a woman has a constitutional right to decide to terminate her pregnancy at any time prior to the point of fetal viability as well as to do so post-viability if it would preserve her life or health. Thus in many situations, pregnant women in Alaska will have a constitutional right to decide to terminate fetal life entirely by aborting but a statutory prohibition against jeopardizing fetal life by declining certain medical care.

In these circumstances, only the fortuitous absence of the woman's competence to give informed consent will preclude her from circumventing the Alaska amendment by obtaining an abortion. In short, a comatose woman in her first or second trimester of pregnancy could be compelled to endure painful life prolonging treatment despite her "living will" to the contrary, solely to perpetuate the life of her fetus. This would be so even though any mentally competent woman similarly situated would have a constitutional right to abort first, thereby enabling her to choose not to endure the pain, discomfort, and degradation of such treatment. If a pregnant woman's right of personal choice regarding her body supercedes a state's interest in potential life pre-viability, then it should do so in all circumstances. The state's interest in fetal life should not become more important simply because the pregnant woman is terminally ill.

As to the application of the proposed amendment in the third trimester context, although the pregnant woman may have no right to abort, she may retain her right of bodily integrity so as to permit her to resist invasive and perhaps even non-invasive medical treatment even though the state's interest in protecting fetal life may then be compelling. No court has passed upon this question.

I hope I have been of some help. Keep us posted.

Sincerely yours,

Rachael Pine

Rachael Pine
Staff Attorney

ALASKA WOMEN'S LOBBY

POST OFFICE BOX 10-1571, ANCHORAGE, ALASKA 99510

March 18, 1986

Senator Richard Eliason
Alaska State Senate
P.O. Box V
Juneau, Alaska 99811

Dear Senator Eliason:

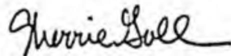
The Alaska Women's Lobby would like to thank you for the introduction of SB 140. We support this important piece of legislation which is intended to allow persons in this state the right to make decisions regarding their own death should they become terminally ill.

We are very much opposed, however, to sec.18.12.040(c) which was amended on the House floor to invalidate the declaration of a qualified patient if that patient is found to be pregnant and the fetus is alive. We believe this amendment causes equal protection problems as the declarations of women will be treated differently than those of men.

Since a conference committee has been called on SB 140 we thought this would be an appropriate time to express our objection to the House amended language. We would strongly support the deletion of sec. 18.12.040(c).

Thank you for your consideration.

Sincerely,



Sherrie Goll
Alaska Women's Lobby

American Association of University Women
Alaska State Division

Susan R. Clark
Chair, Committee on Women
1109 C Street
Juneau, AK 99801

Members of the Conference
Committee for SB 140
Alaska State Legislature
Pouch V
Juneau, AK 99811

May 4, 1986

Dear Committee Members,

The Alaska Division of AAUW believes in a woman's right of individual choice in the determination of her reproductive life. Ammendments that have been added to SB 140 take away that freedom of choice, and mandate that all pregnancies in women impacted under this bill must be carried to term. We believe that a woman should be given the opportunity, when filling out the right-to-die form, to specify her intent should she be pregnant at the time her declaration is considered.

Sincerely,

Susan R. Clark
Chair, Committee on Women
Alaska Division of AAUW

SB
252

N/0 290

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 4-27-87

REQUEST

Bill/Resolution No.: SB 252
Title: Client - Psychologist Confidentiality

Sponsor: Jospephson
Requestor:
Date of Request:

FISCAL DETAIL

Agency Affected:
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
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:

Prepared by: Senate HESS [signature]
Division:
Phone: 465 - 3791
Date: 4/25/87

Approved by Commissioner:
Date:
Agency:

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

page 1 of 1

SB
267

5-1082B
Hein
4/30/87

Original sponsors: Binkley, Hensley and Zharoff

1 IN THE SENATE BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 267 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the transfer of limited entry
7 permits upon the death of the permit holder."

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

9 * Section 1. AS 16.43.150(h) is repealed and reenacted to read:

10 (h) Unless an entry permit holder has expressed a contrary
11 intent in a will that is probated, the commission shall, upon the
12 death of the permit holder, transfer the permanent permit by right of
13 survivorship directly to the surviving spouse or, if no spouse sur-
14 vives, to a natural person designated by the permit holder on the
15 reverse of the permit certificate issued by the commission. If no
16 spouse survives and if the person designated on the certificate, if
17 any, does not survive, the rights of the decedent pass as part of the
18 decedent's estate. A designation under this subsection must be made
19 under oath or affirmation before a person authorized to administer an
20 oath under AS 09.63.010 and must be witnessed by two persons who are
21 qualified under AS 13.11.170 to witness the will of the permit holder.
22 Except as provided in AS 16.10.333 - 16.10.337, AS 44.81.210, and
23 44.81.230 - 44.81.250, the permit is exempt from the claims of credi-
24 tors of the estate.

25

26

27

28

29

SB
273

Alaska State Legislature

SENATOR BETTYE FAHRENKAMP
CHAIRMAN, LEGISLATIVE COUNCIL
CHAIRMAN, OIL AND GAS COMMITTEE
515 7TH AVENUE, SUITE 130
FAIRBANKS, ALASKA 99701
OFFICE (907) 452-4882
HOME (907) 456-2899

WHILE IN JUNEAU
P.O. BOX V
JUNEAU, ALASKA 99811
CAPITOL ROOM 125
OFFICE (907) 465-3834
HOME (907) 780-6027

Senate

MEMORANDUM

TO: Senator Mitch Abood, Chairman
Senate State Affairs Committee

FROM: Senator Bettye Fahrenkamp

DATE: March 24, 1988

RE: SB 273 An Act authorizing gambling enterprises; and providing for an effective date.

What the bill does

SB 273 would authorize casino style gambling on a limited basis in municipalities (with local voter approval), unincorporated areas, and on the Alaska Marine Highway and tour ships.

Background

I introduced this bill because I believe gambling enterprises will make a contribution to the prosperity of the state in a time of declining and uncertain state revenue. It would enhance Alaska as a tourist destination and create jobs. We already allow forms of gambling such as bingo, Monte Carlo nights, and pool classics, and it's no secret that other forms of gambling take place right now.

Limited Gambling Authorized by the bill

SB 273 authorizes limited casino style gambling. I believe that once made legal, these gambling enterprises can be conducted honestly, free from criminal and corrupt persons and practices. I do not believe it will engender the high roller style gambling found amongst the glitz and glitter of Las Vegas.

Gambling under SB 273 is limited in the following ways:

* Municipalities must adopt an ordinance regulating gambling and have it ratified by a majority of voters within its boundary.

* Only card, dice, and number wheels would be allowed, the kinds of games played at the turn of the century in Alaska. No slot machines would be allowed by this measure.

* A gambling enterprise within a municipality must enhance the historic character of the municipality. No glitz and glitter, no chrome and glass.

* Gambling enterprises may not extend credit to its patrons. Large cash or credit transactions provide an opportunity for loan sharks and quick buck artists.

Revenue Distribution

Municipalities may decide to run gambling operations themselves, or license the operation, and must pay three and one half percent of gross revenues to the Department of Revenue.

Licensed operators in unincorporated areas must pay fifty percent of the net proceeds to the department.

All of the revenue derived from gambling on ferries would be deposited in the general fund.

In recognition that a small percentage of gamblers can become compulsive, one half a percent of state income from gambling may be appropriated by the legislature for treatment and counseling.

Sectional Analysis

See attached.

MAR 2 1 1988

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

M E M O R A N D U M March 21, 1988

SUBJECT: Section-by-Section Summary of SB 273, An Act authorizing gambling enterprises

TO: Senator Bettye Fahrenkamp

FROM: George Utermohle
Legislative Counsel

This memorandum is a section-by-section summary of SB 273 as requested by Tom Moyer of your staff.

A section-by-section summary of a bill should not be considered an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

Section 1 of the bill states the policy which the Legislature seeks to implement by enacting this bill.

Section 2 of the bill amends AS 05 by adding a new chapter.

CHAPTER 16. LEGALIZED GAMBLING.

Sec. 05.16.010 establishes the conditions under which gambling is permitted.

A person under 21 years of age may not gamble. Only card and dice games and numbers wheels are permitted. A person who operates a gambling enterprise, or an employee of a gambling enterprise may not extend credit to a patron of a gambling enterprise. A person may not receive a permit to operate a gambling enterprise or be employed by a gambling enterprise if the person has been convicted of a state or federal felony or gambling offense. Only a person who has completed classes on gambling at a school in a state where gambling is legal may be employed by a gambling enterprise. An employee of a gambling enterprise may not gamble while on duty for the gambling enterprise.

Within municipalities, the municipal government regulates gambling enterprises. Outside of municipalities, the Department of Revenue regulates gambling enterprises.

Sec. 05.16.020 authorizes the Department of Revenue to regulate gambling enterprises outside of municipalities, on state ferries, and on tour ships. Gambling may be conducted at the place and under the terms established in the license.

Municipalities within 10 miles of the location of a proposed gambling enterprise and law enforcement agencies must receive notice of and may comment on applications for a license for a gambling enterprise. Public hearings must be held in the vicinity of the proposed gambling enterprise before the license is issued. The department shall consider comments received on an application for a license. The department shall also consider the economic impact of a proposed gambling enterprise on gambling enterprises licensed by municipalities when it reviews applications for a gambling enterprise outside of a municipality.

The department may attach conditions to a license that limit the games that may be played, the hours of operation, and the availability of alcoholic beverages.

Sec. 05.16.030 provides that the Department of Revenue may adopt regulations necessary to implement AS 05.16. Among the regulations which the department may adopt are regulations relating to issuance renewal, suspension, and revocation of licenses, financial records of gambling enterprises, investigations of licensees and their employees, exclusion of certain persons from a gambling enterprise, conduct of gambling, accounting procedures, license fees, amounts of wagers, disclosures of financial interests in gambling enterprises, rates of return, dispute resolution procedures, bonds, and reports by municipalities.

Sec. 05.16.040 provides that the Department of Revenue may audit the records of gambling enterprises.

Sec. 05.16.050 requires that licensees provide monthly reports to the Department of Revenue.

Sec. 05.16.060 provides for the distribution of the net proceeds of a gambling enterprise. Half of the net proceeds of a gambling enterprise shall be paid to the Department of Revenue. Money received by the department shall be placed

into the general fund. This money may be appropriated to the department for implementation of this chapter, except that one-half percent may be used for treatment and counseling of compulsive gamblers.

Sec. 05.16.070 requires the Department of Revenue to issue a license for a gambling enterprise on state ferry vessels, if the commissioner of transportation and public facilities requests a license. The proceeds of a gambling enterprise on a state ferry may be used to fund the operations of the Alaska Marine Highway System.

Sec. 05.16.080 requires the Department of Revenue to cooperate with municipalities in the regulation and administration of gambling within municipalities.

Sec. 05.16.090 requires the Department of Revenue to make a report to the Governor and the Legislature by March 1 of each year.

Sec. 05.16.900 defines "department", "gambling", "gambling enterprise", and "tour ship".

Section 3 of the bill amends the definition of gambling in the criminal code so that it does not include gambling conducted under a license issued to a gambling enterprise by the state or a municipality.

Section 4 of the bill amends the definition of gambling enterprise in the criminal code so that it does not include a gambling enterprise licensed by the state or a municipality.

Section 5 of the bill adds regulation of gambling to the list of limitations on powers of home rule municipalities under AS 29.10.200.

Section 6 of the bill amends AS 29.35 by adding new sections related to the regulation of gambling enterprises within municipalities.

Sec. 29.35.600 authorizes a municipality to operate or license a person to operate a gambling enterprise within the municipality if the gambling enterprise enhances the historic character of the municipality, the municipality adopts an ordinance regulating gambling enterprises, and the ordinance is ratified by the voters of the municipality.

Sec. 29.35.610 establishes the requirements for a municipality that regulates gambling.

The municipality must adopt an ordinance regulating gambling. The ordinance must establish a commission responsible for licensing and regulating gambling enterprises, establish qualifications for members of the commission, provide for issuance, renewal, suspension, and revocation of licenses for gambling enterprises, establish the terms and conditions under which gambling is permitted, provide for distribution of the proceeds of a gambling enterprise, require disclosure of persons having a financial interest in a gambling enterprise, and require detailed records.

Gambling within a municipality is limited to card and dice games and numbers wheels. The municipality may regulate the availability of alcoholic beverages at a gambling enterprise. Members and employees of the municipal gambling commission may not participate in or have a financial interest in a gambling enterprise.

A municipality that regulates gambling must submit a report each year to the Department of Revenue.

Sec. 29.35.620 provides for the distribution of proceeds of gambling enterprise licensed by a municipality. Three and one-half percent of the gross proceeds of a gambling enterprise shall be paid to the Department of Revenue for deposit into the general fund. The municipality shall receive all of the proceeds of a municipally operated gambling enterprise less the 3½ percent paid to the Department of Revenue. The municipality shall receive that portion of the proceeds of a gambling enterprise licensed by the municipality and operated by someone other than the municipality, that the municipality and the licensee may agree upon, provided that 3½ percent of the gross receipts is paid to the Department of Revenue.

Sec. 29.35.630 provides that a municipality may dedicate the revenue derived from a gambling enterprise to a public purpose.

Sec. 29.35.640 provides that AS 29.35.600 - 29.35.690 apply to home rule and general law municipalities.

Sec. 29.35.690 defines the terms "gambling" and "gambling enterprise".

Section 7 of the bill provides that the bill takes effect immediately.

GU:bb
b4/027

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: SB 273
PUBLISH DATE: 4/23/87

FISCAL NOTE

REQUEST:

Revision Date:
Title: "An Act authorizing gambling enterprises..."
Sponsor: Fahrenkamp
Requestor: State Affairs

Agency Affected: Revenue
BRU: Income and Excise Audit Division
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
OPERATING						
PERSONAL SERVICES		247.2	247.2	247.2	247.2	247.2
TRAVEL		6.0	6.0	6.0	6.0	6.0
CONTRACTUAL		32.0	14.5	14.5	14.5	14.5
SUPPLIES		5.0	5.0	5.0	5.0	5.0
EQUIPMENT						
LANDS & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		290.2	272.7	272.7	272.7	272.7
CAPITAL						
REVENUE			250.0	500.0	750.0	1000.0

FUNDING: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
GENERAL FUND		290.2	272.7	272.7	272.7	272.7
FEDERAL FUNDS						
OTHER						
TOTAL		290.2	272.7	272.7	272.7	272.7

POSITIONS:

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
FULL-TIME		5.0	5.0	5.0	5.0	5.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)
See Attached

Prepared By: Steven E. Kettel
Division: Income and Excise Audit Division
Phone: (907) 465-2320
Date: March 24, 1988

Approved by Commissioner: Hugh Malone
Agency: Department of Revenue
Date: 3/24/88

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

page ____of____

Prepared By: Steven E. Kettel
Income and Excise Audit Division
March 24, 1988

SB 273 ANALYSIS

Personal Services

Position	Range/Step		FY 89 Budget
Clerk III	8A		$29.4
Tax Examiner II	12A		$34.0
Revenue Auditor IV	20A		$55.9
Revenue Auditor IV	20A		$55.9
Revenue Audit Supervisor I	24A		$72.0
(Chief of Gaming)		TOTAL:	$247.2

Travel

Associated travel to conduct hearings, audits, and/or investigations		$6.0

Contractual

Training		$8.0
Telephone		$2.5
Printing		$4.0
Chairs		$5.0
Modular Offices		$9.0
5.drawer Legal Files		$3.5
	TOTAL:	$32.0

Supplies

Office Supplies	TOTAL:	$5.0

Prepared By: Steven E. Kettel
Income and Excise Audit Division
March 24, 1988

SB 273 ANALYSIS

The Department of Revenue believes its primary responsibility is to collect, invest, and share state revenues. Although we do have several programs in the department which are indirectly related to that program, the administration of gambling contemplated by this bill would be difficult to accomplish with our present expertise. We would suggest perhaps a Gaming Commission be established or locate the administration of this program in another department, such as Commerce. Based on the bill as currently drafted we have prepared the fiscal note with the administration being accomplished by creating a gaming unit in our Income and Excise Audit Division.

Personal Services

Under the bill "strict" regulation and control would be required to accomplish this in conjunction with Public Safety. The Department of Revenue would be responsible for licensing, auditing, collecting tax and generally administering the gaming laws. The department would be required to conduct public hearings on each gaming enterprise license, do investigations, conduct audits and review financial reports of the gaming enterprise.

This activity would require the department to create a gaming unit, comprising of a chief to supervise the gaming unit and act as lead auditor during audits and/or investigations. Two auditors would be required to do the auditing of financial statements, conduct investigations of personnel and review the methods and manners of the enterprises accounting system for receipts and disbursements. A tax examiner would be required to process returns, issue licenses and provide assistance to the public. A clerk typist would be utilized by all positions in the unit.

Revenue

This revenue estimate is at best a guess. It is assumed that the earliest the gaming enterprises could operate is during FY 90. Based on the proposed bill, 50% of net proceeds of all operations outside municipalities would be collected by the department on a monthly return. The department believes a net proceeds tax filed on a monthly basis would be very difficult to prepare and a burden to the gaming enterprise. Revenue would also be received from gaming activities on state ferries. Additionally, gaming enterprises within municipalities would pay 3.5% of gross proceeds to the department. It is very difficult to estimate what the actual revenue would be. Many factors are involved. Currently, as we understand it, three municipalities: Fairbanks, Nome, and Skagway, have expressed their desire to have these activities in their communities. In order to do a more comprehensive revenue projection, specific details would be required, such as how many and what type of games would be on the marine Highway System.

TESTIMONY ON SB 273
AUTHORIZING GAMBLING ENTERPRISES
FOR THE SENATE STATE AFFAIRS COMMITTEE
March 25, 1988
Fairbanks Legislative Information Office

WITNESS REGISTER

Alan M. Armbruster
P. O. Box 58509
Fairbanks, Alaska 99711

Charles R. Johnson
Box 1341
Fairbanks, Alaska 99707

Pam McLaughlin
5550 Steese Highway
Fairbanks, Alaska 99712

Susan Knapman
1215 Choctow Road
Fairbanks, Alaska 99705

Lloyd Yunker
864 Grubstake Road
Fairbanks, Alaska 99712

PREVIOUS SENATE COMMITTEE ACTION

There was no previous Senate Committee action on this bill.

Due to the cancellation of the Senate State Affairs Committee's teleconference for this date, Senator Fahrenkamp, prime sponsor of the bill, took the following testimony to be included in the public record.

Alan Armbruster

Alan Armbruster commented that he has reviewed the bill and supports it, although he felt it should include slot machines. In response to his questions, Tom Moyer, Aide to Senator Fahrenkamp said research was done on the turn of the century period and the games allowed under the legislation were the types of games commonly played at that time; the slots were not here then. Mr. Armbruster felt that in order to capture the tourist trade, slot machines should be available as the world traveller is more accustomed to this type of gambling.

Senator Fahrenkamp asked if he were suggesting an amendment to that section; Mr. Armbruster said "yes" for the simple fact that slot machines are available in Las Vegas, Reno, and Atlantic City, and the 25 cent machines seem to be the most popular.

Mr. Armbruster also felt the percentage of the net proceeds (50%) to be paid to the Department was high. Senator Fahrenkamp responded that the percentage level applied to

unincorporated areas of the state where there is no local government benefiting from the income; the incorporated areas will pay 3.5% of the gross.

Susan Knapman

Susan Knapman was next to comment on the bill. She is speaking on behalf of herself and as Marketing Specialist for Arctic Circle Hot Springs. They support the bill, and their concern was that they thought you had to be in an incorporated area to participate. Senator Fahrenkamp clarified the misunderstanding that they could participate; however, there are different guidelines for unincorporated areas (see above).

Charles Johnson

Charles Johnson was next to come to the table. He and his wife favor the bill. They live in the historic area of Fairbanks and felt it would be a strong attraction for tourists and a good source of revenue. He also supports the inclusion of slot machines, although he understands the bill may be more palatable to some of the people who oppose gambling if slot machines were not included.

Lloyd Yunker

Lloyd Yunker, a fund-raising consultant, resides in Fairbanks and for the past two years has represented about a dozen organizations which used the pull-tabs to generate income. He has read the bill and supports it. He thinks it has been clearly demonstrated in the limited gaming we have had that it is attractive and does generate new dollars. Further it has increased employment and economic benefit to the community. It would be highly attractive for the tourists. He has two concerns regarding the method the proceeds are handled: (1) recommends language directing the funds for the preservation and restoration, etc., of historic sites. If we left something completely up to the discretion of the municipality (such as the Fairbanks North Star Borough or City of Fairbanks), it might somehow preclude funds derived from this source from being able to support Alaskaland, for example. (2) With regards to an unincorporated area or private operator where they own a historic site, it is unclear how these funds might be directed into maintaining or enhancing the site as a part of the historic vestige of Alaska.

Senator Fahrenkamp said they worked with the Department of Revenue on this matter. In those instances where it would occur in the borough areas, they would need to have ordinances approved by the voting public within the municipalities or boroughs. The Department's regulations will control what happens outside those areas. Further, the

Legislature can't dedicate funds, so all funds have to go to the general fund, but there could be intent language or something to indicate a certain percentage go towards historic preservation. Hearings would also be held at the time the regulations are promulgated, and it would be appropriate to have it added at that time.

Mr. Yunker added he hoped it would not negatively impact the non-profit organizations' opportunity to use pull-tabs to raise income. He thought it would only enhance the activities.

Pam McLaughlin

Pam McLaughlin commented on behalf of herself and her husband, Larry, who own the old F. E. Company Gold Camp, Chatanika, which is a historic town officially recognized by the federal government, and has been an unincorporated town since 1807. They support the bill. She has done extensive research since 1983, and has made a picture catalogue of clippings on gambling. She has also solicited signatures in this regard and she has over 300 signatures that she acquired within a three month period last year in support of historic gambling. The petition was only circulated at the Gold Camp, not statewide. The language, in part, said the enterprises shall be located only in historic districts or parks established to preserve or to recreate the historic character of the municipality, and the economy of the municipality must depend substantially on tourism.

She works closely with the non-profit organizations that use pull-tabs and one of the complaints she has heard from the Department of Revenue was, it does not have the financing or help to assist the organizations. She felt if the bill was passed, more revenue would be generated so the Department would be able to provide more help in this area, and it would benefit the municipalities, also.

She displayed some clippings which represented how the city of Dawson has improved its image, with the help of gambling. In addressing the slot machines, the Dawson City Manager indicated the maintenance cost is high, and it increases the probability of "machine bandits" (experts who know how to steal from the machines). They felt by limiting the types of games of chance in historic areas, they had less theft and lower maintenance. They did not think they would be able to take on that type of challenge. Since 1952, the Klondike Visitors Association, which runs the gambling in Dawson, was originally promoted by Father Bob, a Catholic Priest who believed in God helps those who help themselves, who initiated many fine goals illustrated in the pictorials.

She recited the benefits to Dawson as: restoration funds have been distributed among the local businesses in grant form which, in turn, has dropped local unemployment to less than 1%, and school funding derives 50% of its budget from historic gambling. There is no local land taxation, and there has been no increase in the crime rate per capita. Due to a generous supplement to the retirement center and the retirement home, they have shown an increase in the longevity of residents of early pioneers. She reiterated that this program started in 1952, so the results did not come overnight.

Mrs. McLaughlin continued that people don't go to the establishments just for gambling, but the excellent plays and musicals, etc. There is a great deal of Alaskan money in Dawson and she would like to see that money invested in our own state. She had warned people years ago that when the oil money stopped coming, we would need something to replace the lost revenues. With the focus on tourism, we need to provide more attractions to keep them here longer. She provided Senator Fahrenkamp a draft, prepared by a student from the University, which could be used to send to local people about historic gambling.

She felt the opponents of the bill were opposed to gambling, not historic gambling. She commented on the numerous articles in her book. Glenn Miller, Editor of Gambling Times magazine does surveys and work on historic gambling. He shows where the small municipalities definitely derive a benefit from it locally. Chuck Holloway, City Manager of Dawson, said if Alaska gets historic gambling, they will be worried as it will hamper their chances of getting the tourists' money.

Funds that were available for historic projects when Governor Sheffield was in office, are no long available. There is no source of revenue other than the federal government, and that has been drastically reduced. She would like to see the availability of funding, through grants, on a matching basis of some sort.

Senator Fahrenkamp thanked all the participants for coming and Tom Moyer added that Chairman Abood had rescheduled the hearing on the bill for March 30, 1987.

CITY OF FAIRBANKS
Office of City Manager
410 CUSHMAN STREET
FAIRBANKS, ALASKA 99701
907-452-1881

January 19, 1987

Mr. Tom Moyer
c/o Senator Fahrenkamp
P.O. Box V
Juneau, Alaska 99811

Dear Tom:

Please find enclosed the News-Miner article pertaining to our historic gambling work session. The City Clerk's Office is preparing the final minutes of that meeting and will forward same to you upon completion. Thank you for providing us with the opportunity for this input, and we will stay in touch. Best wishes to you and Senator Fahrenkamp in the 15th Session.

Very truly yours,

Brian C. Phillips

BRIAN C. PHILLIPS
City Manager

BCP/jlj

cc: City Clerk

BOOSTING GAMBLING—Gambling in historic districts will mean jobs, a boost in tourism and related spending here and in local revenue, Pam McLaughlin tells the Fairbanks City Council Tuesday. Gambling is part of Alaska's history, she said, and "Alaskans are still gamblers at heart." *Randy Delinsky/News-Miner*

The subject is gambling and they all have their own views

By **SUSAN FISHER**
Staff Writer

Finding community consensus in backing a state bill to allow gambling in Fairbanks may be a tougher task than advocates figured, if debate Tuesday was any indication.

A Fairbanks City Council work session on the subject of gambling in historic districts drew nearly 20 citizens Tuesday afternoon, and there were diverse views.

Mayor Bill Walley told the audience the council has talked about the gambling issue, but has taken no positions. It was also indicated that Rep. Mark Boyer, D-Fairbanks, is awaiting the council's decision before he introduces a bill.

Sen. Bettye Fahrenkamp, D-Fairbanks, introduced a bill in 1985 that would have allowed gambling in historic districts, if approved by a vote of the local community. Essentially the bill would have benefitted Fairbanks and Skagway. It died last year when a senator refused to allow it out of committee.

With declining revenue for state and local governments and concern over operating costs of the city's Alaskaland theme park, the interest in gambling, particularly during the tourism season, has gained a base of support locally.

But not everyone agrees that gambling is a good idea, or that Alaskaland should be the place for it. Among questions raised Monday was whether alcohol would be served at the gambling place, what kinds of gaming would be allowed, whether gambling would be restricted to only one establishment, and what are the social costs tied to gambling.

Pam McLaughlin's testimony dominated the meeting. McLaughlin, an operator of the historic Old F.E. Co. Camp in Chatanika, has promoted historic gambling the past four years. She visited Dawson City, Canada, a community that attracts tourists to its casino, and did her own research of Dawson's efforts.

Dawson City organized a commission that oversaw the gambling

(See GAMBLING, Back Page)