ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672
5338 SJUD HB 229 - HB 266

910

HB

229

STATE OF ALASKA 1988 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: ~~SB~~ HB 229 P
REQUEST: Publish Date:

Revision Date: 05/05/88
Title: An act relating to sexual abuse of children
Sponsor: Duncan
Requestor: Judiciary

Agency Affected: Alaska Court System
BRU: Trial Courts
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)						
OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
Personal Services	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Travel	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Contractual	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Supplies	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Equipment	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Land & Structures	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Grants & Claims	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
REVENUE	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
FUNDING: (Thousands of Dollars)						
General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0
POSITIONS:						
Full-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Part-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Temporary	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Jan Strandberg, General Counsel — Phone: 264-8228
Division: Alaska Court System — Date: 05/05/88

Approved by: Arthur H. Snowden, II, Administrative Director — Date: 05/05/88
Agency: Alaska Court System

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

March 24, 1988

Honorable Bill Hudson
Alaska State House
P.O. Box V (MS 3100)
Juneau, Alaska 99811

RE: CS for House Bill 229 (Judiciary)

Dear Representative Hudson:

This is in response to your request that we review and comment upon CSHB 229. From my review of the bill, it appears that the primary objective is to increase the penalty for killing children under circumstances manifesting an extreme indifference to the value of human life. I therefore suggest that the bill be drafted to more directly accomplish that result, by changing the sentencing provisions, rather than changing the definitions of crimes.

Traditionally, murder in the first degree required a premeditated intent to kill. Alaska has abolished the requirement of premeditation but still requires an intent to kill. The crimes of murder in the second degree, manslaughter and criminally negligent homicide encompass all the other acts resulting in the death of another person, but which fall short of a clear intent to kill. Since the situation you are addressing involves unintentional (although extremely indifferent) killings, it is more appropriately classified as murder in the second degree, and no statutory change to the definition of that crime is required.

You have, however, focused on one of the anomalies of Alaska's sentencing laws. Because second-degree murder is an "unclassified" felony, it is not part of the presumptive sentencing system. Therefore, in imposing sentence a judge is not legally required to take into account statutory aggravating factors, which apply only to presumptive sentences. As you know, one of those aggravating factors is that "the defendant knew or reasonably should have know that the victim of the offense was particularly vulnerable or incapable of resistance due to ...extreme youth...." AS 12.55.155(c)(5). It would be quite simple to amend AS 12.55.125(b) to provide for an increased penalty, of perhaps a ten or fifteen-year minimum, for murder in

the second degree under those circumstances.

This more direct way of accomplishing your objective has the added advantage of avoiding the extremely difficult task of proving "a pattern or practice of assault or torture", which appears in the current version of the bill. The present wording requires that the two acts of serious physical injury "results" in the death, which may be impossible to prove in most instances. The Paulo/Pinkerton case in Juneau is a good example of the difficulty faced by the prosecution. In that case there was evidence of a broken arm on one occasion and then a month later the death resulted from a hard blow to the infant's abdomen. Even assuming the broken arm is legally "serious physical injury", it could not be proven that it contributed to the death, that is, that the death "resulted" from the combination of the broken arm and the other injury that are used to establish the "pattern or practice".

Should you wish to implement this suggestion, I will be more than happy to assist your staff.

Very truly yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: Stephanie E. Joannides
Stephanie E. Joannides
Assistant Attorney General

SEJ/llm

Alaska State Legislature

REPRESENTATIVE BILL HUDSON

P.O. BOX V
Juneau, Alaska
99811
(907)465-3744 or 4991

COMMITTEES:
Transportation
HESS
Telecommunications
Fisheries
International Trade

April 28, 1988

APR 29 1988

The Honorable Jay Kerttula,
Chairman - Senate Judiciary Committee
Alaska State Legislature
Juneau, Alaska

Dear Senator Kerttula:

HB 229, "An Act amending the definition of murder in the first degree to include homicide by a pattern or practice of torture or assault of a child under the age of 16," was passed 38-0 by the House yesterday.

It is anticipated the bill will be read across in the Senate today, and be referred to the Senate Judiciary Committee.

The legislation was closely scrutinized by the House Judiciary Committee, in three formal hearings, and several informal work sessions. A committee substitute was passed out with unanimous "do pass." Additionally, the bill was further examined by the members of the House Finance Committee, and eight members recommended "do pass."

CSHB 229(Jud) is supported by the Alaska Network on Domestic Violence and Sexual Assault, the Anchorage Police Department, the Society to Prevent Exploitation of Children, the Cook Inlet Native Association, the Alaska Juvenile Crime Commission, Victims for Justice, and Justice for Children.

In addition, I have received literally hundreds of public opinion messages from across the state in support of the passage of this bill.

CSHB 229(Jud) seeks to change the definition of murder in the first degree so that people who brutally, systematically and repeatedly abuse a child to the point of death are charged with first degree murder instead of second degree murder or negligent homicide.

In light of the fact that we are rapidly approaching adjournment, I respectfully request that you schedule CSHB 229(Jud) for a hearing in the Senate Judiciary Committee as soon as possible.

Your favorable consideration, Jay, will be very much appreciated.

Respectfully,

Bill Hudson

Enclosures

ALASKA NETWORK
ON
DOMESTIC VIOLENCE
AND
SEXUAL ASSAULT

130 Seward, No. 301 • Juneau, Alaska 99801 • (907) 586-3650

HB 229

AN ACT AMENDING THE DEFINITION OF MURDER IN THE FIRST DEGREE TO INCLUDE HOMICIDE BY A PATTERN OR PRACTICE OF ASSAULT OR TORTURE OF A CHILD UNDER THE AGE OF 16.

The Alaska Network on Domestic Violence and Sexual Assault supports the concept of House Bill 229. Child abuse is a particularly heinous crime in that the offender exerts tremendous control and power over a child victim who has little or sometimes no ability to protect themself. Child abuse that results in death should be segregated out from other crimes in some manner and recognized within law for what it is: indifference to the value of human life in the utmost extreme. It is not at all the same as an isolated act of assault against an adult that results in death. It is a form of assaultive behavior against a person who is particularly incapable of defending themself that is repetitious and systematic and results in death.

Introduced: 3/30/87
Referr 1: Judiciary and
Finance

5-0977A

BY HUDSON, ULMER, LARSON, MENARD, HOFFMAN AND GOLL

IN THE HOUSE

HOUSE BILL NO. 229

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to homicide by abuse."

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

* Section 1. AS 11.41 is amended by adding a new section to read:

Sec. 11.41.105. HOMICIDE BY ABUSE. (a) A person commits the crime of homicide by abuse if, under circumstances manifesting an extreme indifference to the life of a child under 16 years of age, the person knowingly engages in a pattern or practice of assault or torture of the child that results in the death of the child.

(b) Homicide by abuse is an unclassified felony and is punishable as provided in AS 12.55.

* Sec. 2. AS 12.55.125(a) is amended to read:

(a) A defendant convicted of murder in the first degree or homicide by abuse shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years.

amend murder I
practice of assault.

5-13-87

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: HB 229
REQUEST: Publish Date:

Revision Date:
Agency Affected: Alaska Court System
Title: An act relating to homocide by abuse
BRU: Trial Courts
Sponsor: Hudson, Ulmer, Larson, ...
Components:
Requestor: House Judiciary

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
Personal Services	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Travel	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Contractual	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Supplies	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Equipment	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Land & Structures	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Grants & Claims	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
REVENUE	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Karla Forsythe, General Counsel
Phone: 264-8228
Division: Alaska Court System
Date: 5-5-87

Approved by: Stephanie J. Cole, Deputy Director
Date: 5-5-87
Agency: Alaska Court System

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

1-20-88

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 229
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: January 19, 1988
Title: "An Act relating to homicide by abuse."
Sponsor: Representative Hudson
Requestor: House Judiciary

Agency Affected: Department of Law
BRU: Prosecution
Components: ALL

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Please see attached analysis.

Richard L. Pegues

Prepared by: Richard I. Pegues, Director
Phone: 465-3672
Division: Administrative Services
Date: January 19, 1988

Grace Berg Schaible

Approved by Commissioner: Attorney General
Date: January 19, 1988
Agency: Department of Law

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 229

This bill would allow prosecution for homicide by abuse where a person engages in a pattern of assault of torture of a child under the age of 16 that results in the death of the child. Many of the cases which would be homicide by abuse under this new law are now being prosecuted as manslaughter or as criminally negligent homicide. Because the majority of these cases are already being prosecuted (although at a lower level), this bill will not have a significant fiscal impact on the department.

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 229
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to homicide by abuse
Sponsor: Hudson, Ulmer, et. al.
Requestor: House Judiciary

Agency Affected: Public Safety
BRU: Council on Domestic Violence and Sexual Assault
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

KEB JMR 1/25/88

Prepared by: Barbara Miklos, Executive Director Phone: 465-4356
Division: Council on Domestic Violence & Sexual Assault Date: 1/20/88
Approved by Commissioner: Date: 1-29-88
Agency: Public Safety

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

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 229
PUBLISH DATE: 3/30/87

FISCAL NOTE

REQUEST:

Revision Date:
Title: "An Act relating to homicide by abuse."
Sponsor: Hudson, Ulmer, Larson, et al
Requestor: Judiciary, Finance

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 39	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	0	0	0	0	0
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	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

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

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

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

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: SB 229
PUBLISH DATE: 4/1/87

FISCAL NOTE

REQUEST:

Revision Date:
Title: "An Act relating to crimes against children"
Sponsor: Senator Duncan
Requestor:

Agency Affected: Dept. of Administration
BRU: Public Derender Agency
Components: Third Judicial District

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Dana Fabe, Public Defender
Phone: 279-7541
Division: Public Defender Agency
Date: 1/25/88

Approved by Commissioner: John Andrews
Date: 2/1/88
Agency: Department of Administration

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

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: H.B. 229
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to homicide by abuse,"
Sponsor: Rep Hudson, Ulmer, Larson
Requestor: _____

Agency Affected: Department of Corrections
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

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

Prepared by: Susan E. Knighton, Director SK
Phone: 465-3376
Division: Administrative Services
Date: March 14, 1988

Approved by Commissioner: Susan Humphrey-Barnett Susan Humphrey-Barnett
Date: March 14, 1988
Agency: Department of Corrections

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

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

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

Mary Van Nimwegen

H. Judiciary May 5, 1987 1:35 PM
H. Judiciary Feb. 16 1988 ?
H. Judiciary March 10, 1988 ?

Homocide by Abuse

HOUSE BILL NO. 229, by Reps. Hudson, Ulmer, Larson, Menard, Hoffman and Goll. Amends AS 11.41 (Criminal Law. Offenses Against the Person) by adding a new section establishing the crime of homocide by abuse. A person commits the crime of homocide by abuse if, under circumstances manifesting an extreme indifference to the life of a child under 16, the person engages in a pattern or practice of assault or torture of the child that results in the death of the child. A defendant convicted of the crime of homocide by abuse would be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years (the same sentence as murder in the first degree). Does not provide for an effective date (bill becomes law 90 days after being signed by the governor). Note: also see HB 237 and SB 229, similar subject matter.

On March 30 Reps. Ellis, Davidson and Gruenberg added their names as co-sponsors. On April 1 Rep. Hanley added her name as co-sponsor. On April 3 Rep. Collins added her name as co-sponsor.

Introduced March 30 and referred to Judiciary; Finance.

Homicide (assault or torture/child)

HOUSE BILL NO. 229, (see pages 462;10061). Reported back the House March 14, 1988 by Judiciary recommending it be replaced with a Judiciary substitute and that it do pass. Concurring: Sund (Chair), Ulmer, Gruenberg, Taylor, Navarre, Cotten. To Finance.

The Judiciary substitute contains none of the original language. In the Judiciary version:

—A person could commit the crime of murder in the first degree if ". . .(2) the person knowingly engages in a pattern or practice of assault or torture of a child under the age of 16 that results in the death of the child under circumstances manifesting extreme indifference to the value of human life; for purposes of this paragraph, a person 'engages in a pattern or practice of assault or torture' if the person inflicts serious physical injury to the child in at least two separate incidents."

This type of homicide would not qualify for a "crime of passion" defense.

HB

237

STATE OF ALASKA

STEVE COWPER, GOVERNOR

PUBLIC DEFENDER AGENCY

900 W. 5TH AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 279-7541

April 9, 1987

Representative John Ellis
Representative Niilo Koponen
Co-Chairmen
Health, Education & Social Services Committee
P. O. Box V
Juneau, Alaska 99811

Dear Representatives Ellis and Koponen:

I understand that House Bill 237 has been referred to your committee for consideration. Although I certainly understand the concern of its drafters for the safety and welfare of child victims, the proposed changes contained in the bill do not appear to be necessary to vigorous prosecution and effective enforcement of laws preventing assaults on children. Many of the changes in the bill appear to be designed to overrule a variety of appellate decisions unfavorable to the state in cases involving child victims. Since some of the decisions are constitutionally based, the corresponding attempted changes appear unconstitutional. Furthermore, other provisions would substantially increase the presumptive jail term for a first incest conviction, rendering that term much more severe than the sentence required for a violent rape of an adult which results in serious physical injury.

Following is my analysis of the bill.

A. SECOND DEGREE MURDER

Section 1 proposes two changes to the second degree murder statute (AS 11.41.110(a)):

1. Neitzel change. The bill would change AS 11.41.110(a)(2) to define second degree murder as "knowingly engag[ing] in conduct [instead of: intentionally performing an act] that results in the death of another person under circumstances manifesting an extreme indifference to the value of human life." This change simply brings the language of the statute in accordance with the interpretation of the statute adopted by the Court of Appeals in Neitzel v. State, 655 P.2d 325 (Alaska App. 1982). The change does not present a problem and

could reduce confusion without substantively changing the law. Section 3 proposes a parallel change in the first degree assault statute, AS 11.41.200(a)(3), and is also not a substantive change in the law as it is presently applied.

2. Extreme indifference to the welfare of a child under 16. Proposed AS 11.41.110(a)(4) creates a new subsection of second degree murder, defined as "under circumstances manifesting an extreme indifference to the welfare of a child under 16, the person engages in a pattern or practice of abuse of that child that results in the death of the child." Abuse is defined in section 2 to include bodily impact, restraint, and confinement. "Pattern or practice" is defined in section 8 (proposed AS 11.41.610(2)) to mean "three or more incidents of the prohibited conduct."

It is not clear to me what the purpose of this section is. It appears to be unnecessary since if a person's conduct, even once, displays manifest indifference to the value of a child's life, and the child dies, that is unambiguously included in AS 11.41.110(a)(2). Requiring a "pattern or practice of abuse" might be interpreted to exclude murder prosecutions under AS 11.41.110(a)(2) when the person has only abused the child once or twice.

If the point of the new section is to insure that evidence of any pattern or practice of abuse will always be admissible, the statute is still unnecessary. Existing case law establishes that a history of abuse will ordinarily be admissible. E.g., Garner v. State, 711 P.2d 1191 (Alaska App. 1983); see also Abruska v. State, 705 P.2d 1261, 1264 & n.1 (Alaska App. 1985).

B. FIRST DEGREE ASSAULT

Section 3 creates a new category of first degree assault for any person who engages in a pattern of abuse which results in serious physical injury to a child under 16.

The proposed new assault provision is unnecessary. Given the broad definition of "dangerous instrument" adopted in Wettanen v. State, 656 P.2d 1213 (Alaska App. 1983), many assaults on a child would fit under existing AS 11.41.200(a)(1) (recklessly causes serious injury with a dangerous instrument). Many other assaults, particularly those as part of a pattern of abuse, would fit under AS 11.41.200(a)(3) (the Neitzel-type assault statute). Further, a prosecution under AS 11.41.200(a)(3) would be more likely than a charge under the new offense to open the door to evidence of assaults on other victims; evidence of such other assaults would not be relevant under proposed AS 11.41.200(a)(4) and the current rules of evidence, but such evidence could often be relevant to establish extreme indifference to the value of

life by showing that the defendant knew the likely consequences of his actions.

Further, AS 11.41.200(a)(4) could be read dangerously broadly. A parent who three times "confined" his child to his room for reasonable discipline could be liable under this class A felony if, one time, the child hurt himself seriously while in his room.

C. REPEATED SEXUAL ABUSE OF A MINOR

Sections 5-8 create a new set of offenses titled Repeated Sexual Abuse of a Minor (RSAM) in the First, Second, and Third Degree. "Repeated" is given meaning in section 8 as "pattern or practice," defined as three or more incidents. Section 13 provides penalties for RSAM in the First Degree, an unclassified felony, setting a presumptive term for first offenders of 13 years (and 25 and 35 years, respectively, for second and third offenders), with a maximum of 50 years. RSAM in the Second Degree is an A felony, with a presumptive five-year term for a first offender.

Effectively, the proposed offense of RSAM in the first degree declares that all family sexual abuse cases will be treated far more harshly than violent rape of a stranger. As the Court of Appeals has noted, virtually all family sexual abuse cases involve repeated abuse. State v. Andrews, 707 P.2d 900, 908-09 (Alaska App. 1985), aff'd, 723 P.2d 85 (Alaska 1986); see Benboe v. State, 698 P.2d 1230, 1232 (Alaska App. 1985) (single incident of abuse may make crime among least serious in its class). To penalize the family offender more harshly than the bike-path rapist is an illogical and unfair result. The typical defendant charged under RSAM will be a middle-aged man who has abused his step-daughter on a number of occasions. He will have no criminal record of any sort and will be an upstanding member of the community in all other respects than his sexual offense. Yet, he will face a presumptive term of 13 years. If he had a prior felony conviction as a young adult, perhaps for a property crime such as theft, he would face a presumptive term of 25 years.

By contrast, the bike-path rapist, who is convicted of one sexual assault and has a misdemeanor record, a serious alcohol problem, or a sociopathic personality which makes him predictably dangerous, faces a presumptive term of only 8 years for his first offense and 15 years for his second violent rape.

RSAM in the second degree parallels the first degree offense and covers any pattern of sexual contact with a child under 16 or of sexual penetration with a child aged 13-15 who is at least 3 years younger than the defendant. This is made a class A felony, in contrast to the present statute, which treats basically the same conduct as a class B felony. See AS 11.41.436. The father

who fondles his 12-year-old on a few occasions would now face a presumptive term of 8 years in prison; the bike-path assailant who grabs and fondles a child once would face no presumptive term.

Increasing the presumptive terms for sexual offenses will undoubtedly increase the number of cases going to trial. While the present 8-year presumptive term for first degree sexual abuse of a minor is certainly long, more defendants will plead guilty to an 8-year term than a 13-year term. Similarly, although the present sanctions for sexual contact with a minor are stiff (0-10 years), there is no presumptive term applicable to first offenders. Clearly more people will plead guilty to class B charges than to the new class A charge. Any increase in the number of trials will mean increased costs for the prosecutors, court system, and Public Defender Agency. Every time the number of trials increases, appeals increase, too, with corresponding extra burdens on the appellate courts, Office of Special Prosecutions & Appeals and the Public Defender appellate case load.

The proposed new statutes are not necessary. If the state can prove three incidents of sexual abuse, the state is presently free to file three charges of sexual abuse of a minor in the first degree. Although the convicted defendant would face a presumptive term of 8 years, rather than 13, Andrews v. State establishes that consecutive terms can be imposed, and the possible maximum term would be 90 years. Thus, the defendant whose pattern of abuse deserves more serious punishment than 8 years can be sentenced more severely by imposition of consecutive terms.

The problems with the proposed RSAM crimes are compounded when considered in the light of other provisions in the bill. All of the repeated sexual abuse of a minor crimes described above include as an element that the defendant "hav[e] authority over a child under the age of 16." "Having authority over a child" is defined in section 8, proposed AS 11.41.610(1), to mean:

> (a) the child is entrusted to the defendant's care by authority of law [e.g., foster parents];
>
> (b) the child is the defendant's son or daughter, including adopted children and step-children;
>
> (c) the child resides as a member of a social unit in the same household as the child; or

(d) the child has been temporarily entrusted to the defendant's care [e.g., babysitter, older sibling, day care worker].

These definitions, particularly (c) and (d), are so broad that virtually every sexual abuse of a minor case would involve a person having authority over a child. The definition of "having authority over a child" is so far reaching that a 16-year-old boy who, on several occasions has consensual sexual foreplay involving digital penetration with his new step-sister just prior to her 13th birthday, would be exposed to the 13-year presumptive term should he be waived into adult court. An 18-year-old involved with a 15-year-old step-sister under similar circumstances could be prosecuted for RSAM in the second degree with a presumptive 8-year term on the first offense.

D. PRIOR INCONSISTENT STATEMENTS AS SOLE EVIDENCE AT TRIAL

Section 11, proposed AS 12.845.025, is an attempt to overrule Brower v. State, 728 P.2d 645 (Alaska App. 1986). This proposal states that in a prosecution for any offense, evidence of a prior inconsistent statement is sufficient to support a conviction despite a complete dearth of corroborating evidence.

The question whether an uncorroborated prior inconsistent statement is sufficient to support a conviction is a uniquely judicial determination, not one susceptible to legislative fiat. The federal constitution prohibits conviction except upon proof beyond a reasonable doubt. In re Winship, 397 U.S. 358. A court's holding on a question of the sufficiency of certain evidence is an interpretation of the constitutional requirement of proof beyond a reasonable doubt. Thus, the Court of Appeals' decision in Brower took no radical or novel position; the Brower holding is consistent with all other courts which have considered this question. The constitutional minimal standard for the proof required for a conviction cannot be reduced by legislative action. Section 11 is, therefore, unconstitutional.

E. NONUNANIMOUS JURY VERDICTS

Section 8, proposed AS 11.41.600, provides that in the statutes requiring a "pattern or practice," each juror must be convinced beyond a reasonable doubt that at least three incidents of the prohibited conduct occurred, but the jury need not be unanimous as to any particular incident. This provision is an attempt to overrule Covington v. State, 703 P.2d 436, opin. on reh., 711 P.2d 1183 (Alaska App. 1985).

Covington requires that, where a defendant is charged with one count of criminal conduct, in order to convict the defendant,

jurors must unanimously agree that the same criminal act has been proved beyond a reasonable doubt. The Covington holding is based upon the defendant's constitutional right to a unanimous verdict. Johnson v. Louisiana, 406 U.S. 356, 362 (1972). No state has reached a contrary result. The legislature cannot overrule Covington. Proposed AS 11.41.600(2) is unconstitutional.

F. CHANGES TO EVIDENCE RULE 404

Section 14 proposes a new subsection to Evidence Rule 404. The proposed new section states that, notwithstanding A.R.E. 404(b), in a prosecution for physical or sexual assault on a child, evidence of prior acts by the defendant involving the same or another victim is admissible to show the defendant's disposition to commit the offense.

This is arguably not constitutional. In a very long line of cases, the Alaska appellate courts have held that evidence of prior bad acts by a defendant are not admissible to prove the defendant's propensity to commit crimes. E.g., Eubanks v. State, 516 P.2d 726 (Alaska 1973); Oksoktaruk v. State, 611 P.2d 521 (Alaska 1980); Lerchenstein v. State, 697 P.2d 312 (Alaska App. 1985), aff'd, 726 P.2d 546 (Alaska 1986). The rationale for these cases is rooted in the constitutional guarantee of due process and the requirement of proof beyond a reasonable doubt. U.S. Const., amend. VI; Alaska Const., art. I, § 7. When evidence of a defendant's character, as shown through prior bad acts, is admitted to show his propensity to commit a crime, there is a grave likelihood that the jury will convict the defendant because he appears to be a bad person, not because the evidence proves beyond a reasonable doubt that he committed the crime with which he was charged. Michaelson v. United States, 335 U.S. 469 (1948).

Prior bad acts, relevant to show only disposition, are also excluded because admitting such evidence prolongs trials, causing added expense to all parties and the court system. Rather than have a five-day trial focused on the criminal act alleged in the indictment, if prior bad acts were invariably admissible, trials could take two to three times as long, as witnesses are called by both sides to establish and refute incidents entirely collateral to the real issues at trial. Longer trials also mean longer transcripts; increasing the cost of appeals means more defendants would need public defenders.

The existing Rules of Evidence, as interpreted by the Alaska courts, broadly open the doors to evidence of prior bad acts when such evidence is probative of something other than criminal disposition. E.g., Coleman v. State, 621 P.2d 869 (Alaska 1980); Adkinson v. State, 611 P.2d 528 (Alaska 1980); Oswald v. State, 715 P.2d 276 (Alaska App. 1976). Further, the Alaska courts

already recognize and have recently expanded an exception to Evidence Rule 404(b) for cases where the defendant is charged with sexual misconduct and the state wishes to offer evidence of prior misconduct with the same victim or another victim having highly relevant common characteristics (e.g., another child in the same family), particularly where the evidence of misconduct with the other[s] approaches being evidence of a habit. Burke v. State, 624 P.2d 1240 (Alaska 1980); Soper v. State, Op. No. 675 (Alaska App., Jan. 23, 1987), pet. hearing denied (April 3, 1987). Thus, the state is currently able to introduce evidence of prior bad acts in child sexual assault cases when it is probative.

Please let me know if I can provide you with any further information on this or any other proposed legislation. I appreciate this opportunity for input.

Very truly yours,

Dana Fabe
Public Defender

DF:rjb

The Fairbanks Child Sexual Abuse Task Force

1423 Peger Road
Fairbanks AK 99709

APR 29 1988

April 21, 1988

Senate Judiciary Committee Members:
Senators Kerttula, Sturgulewski, Josephson, Faiks and Rodey
Interior Delegation Members:
Representatives Boyer, Davis, Frank, Koponen, Miller, Shultz
Senators Coghill, Fahrenkamp, and Fanning
P.O. Box V
Juneau, AK 99811

Re: House Bill 237

Dear Legislators,

We are writing on behalf of the Fairbanks Child Sexual Abuse Task Force, a coalition of agencies, organizations and associations involved in prevention and treatment of child sexual abuse.

The CSATF wants to express its support for the current version of HB 237, the "omnibus" child sexual abuse bill. It appears to us that a great deal of effort has gone into formulating and revising this bill, which strikes an appropriate balance between the rights of criminal defendants and the need for our society to protect itself and its children from child sexual abuse.

We would urge that the bill be enacted into law. Thank you for your consideration.

Sincerely,

Theresa Tanoury
Coordinator

Ruth Lister
Chair

Chair
V. Chair-Judiciary
Telecommunications
Special Ethics
Legislative Council
Finance Subcommittee
for the University of Alaska
Joint Committee
on Economic Recovery

P.O. Box V
Juneau, Alaska 99811
(907) 465-4947

REPRESENTATIVE FRAN ULMER

M E M O R A N D U M

APR 15 1988

April 15, 1988

TO: Senator Jalmar Kerttula, Chair
Senate Judiciary Committee

FROM: Representative Fran Ulmer

SUBJECT: House Bill 237, "An Act relating to murder, assault, and the physical and sexual abuse of children; the admissibility of certain evidence in criminal prosecutions; amending Rule 404 of the Alaska Rules of Evidence; and providing for an effective date

I respectfully request a hearing on House Bill 237. As you know, HB 237 was heard in Senate HESS and is now in your committee.

HB 237 was introduced to make it easier to obtain successful convictions in child abuse and child sexual assault cases. My goal in introducing this bill is to pass legislation that will assure that the criminal justice system is able to fully and fairly prosecute those individuals who repeatedly engage in abusive behavior against children. Recent court of appeals decisions have narrowly restricted the admission of evidence of an offender's patterns of behavior, and prevented the joinder of related cases. These restrictions have resulted in fewer cases being charged, cases being charge-reduced, and others being brought and lost.

HB 237 tightens the prosecution for these offenses. It allows related cases to be tried together, includes an aggravating factor for repeated sexual misconduct toward minors, and includes babysitters and live-in boyfriends in the class of person covered in the first degree sexual abuse of a minor definition, clarifies the legislature's preference for consecutive sentencing for multiple offenders, and expands the admissibility of evidence of similar abusive behavior.

I have attached a copy of a letter from the Child Advocacy Network in support of House Bill 237, as well as a page from the Child Sexual Abuse Working Group Report regarding this bill.

Thank you for your prompt consideration of this request.

Attachments

Child Advocacy Network

c/o MOA, Abuse Prevention Unit, P.O. Box 196650, Anchorage, AK 99519-6650

343-6533

April 11, 1988

Senate Health and Social Services Committee
P.O. Box V
Juneau, Alaska 99811

RE: Letter of Support for HB 237

Dear Senator Paul Fischer, Chairman;
Senator Joe Josephson, Vice-Chairman;
Senator Lloyd Jones,
Senator Jay Kerttula,
Senator Rick Halford:

The Child Advocacy Network is an organization whose primary interest is the care and welfare of children in the state. As professionals who work with children, we would like to share our knowledge and expertise. Our opinions on selected legislation, relating to children, are in the enclosed pamphlet.

Although our position for support on HB 237 is included in this pamphlet, its pending status in the Senate HESS Committee has prompted this letter. The bill proposes amendments to criminal law and Rules of Procedure and Evidence. If passed, the bill would enhance existing child protection laws and lessen the prospect of child victimization in the courtroom.

We support HB 237 and urge its passage from your Committee. Our specific comments on the merits of HB 237 are outlined in the pamphlet. Your consideration in reading over these comments would be greatly appreciated. Call upon us to answer questions or concerns related to our position.

Sincerely,

Elizabeth Kennedy
President
Child Advocacy Network

Enclosure

EK/sjj

V. LEGISLATIVE ISSUES

The Child Sexual Abuse Working Group discussed proposed legislation and areas needing legislative change. While concluding that it would not be appropriate to comment on all proposed legislation affecting child sexual abuse, the group felt that it was important to mention two pieces of pending legislation.

HB 237 is the most important piece of legislation proposed in 1988 to protect child victims. This bill, as revised by House Judiciary, should be actively supported.

HB 405, introduced at the request of the Governor, is very important, particularly its provisions to allow for victim input before modification of sentences and clemency decisions.

Other needed legislation includes:

(1) Mandating personal safety curricula in schools.

(2) Allowing an advocate, relative or friend to accompany a child witness in grand jury proceedings. This procedure should be automatic for all children 13 years old or younger. This could also be accomplished through change of court rules.

(3) Increasing the maximum period of probation that may be imposed on child sexual abuse offenders to seven years.

#B 237

MEMORANDUM State of Alaska

TO: Rep. Fran Ulmer
State Capitol
Juneau

DATE: 15 April 1988

FILE NO: APR 1 1 1988

TELEPHONE NO:

THRU: Larry R. Weeks
Dir. of Criminal Prosecutions
CDCO - Juneau

SUBJECT: Update to My Memo of April 12th ref: Burden of Proving Othe Crimes under Evidence Rule 404(b)

FROM: David Mannheimer
Asst. Attorney General
OSPA - Anchorage

The United States Supreme Court recently heard oral argument in Huddleston v United States, a case which presents the question of what level of proof must be adduced to support the admission of evidence that a criminal defendant committed another crime under Federal Evidence Rule 404(b). I have attached the Criminal Law Reporter's summary of that argument.

As you can see, the defendant conceded -- on the basis of Bourjaily v United States, ___ U.S. ___, 107 S.Ct. 2775 at 2778-2779 (1987) -- that the proper burden of proof was "preponderance of the evidence", even though several circuit courts of appeal had previously ruled that the burden was "clear and convincing evidence". The government took the position described in my previous memo as "theory (1)" -- that admissibility of this evidence is governed by Evidence Rule 104(b), and that the other crime evid e should be admitted whenever there is sufficient evid support a reasonable inference that the defendant C e other crime.

Caldwell claim is barred because of failure to exhaust, procedural default or otherwise."

The standard under which we consider motions to vacate stays of execution is deferential, and properly so. Only when the lower Courts have clearly abused their discretion in granting a stay should we take the extraordinary step of overturning such a decision. In the present case, however, there is no evident legal basis whatsoever for a stay. The State has presented an apparently meritorious argument that Johnson's attempt to raise a Caldwell claim at this time is an abuse of the writ, and Johnson's suggestion that his previous abandonment of the claim was a "concession of defeat on the merits," rather than a "conscious abandonment" seems altogether specious. If the District Court refused to consider the State's apparently meritorious argument, that was certainly an abuse of discretion. If the District Court considered the argument but deemed it too insubstantial to require any comment, that too must be considered an abuse of discretion unless and until we are informed of reasons that would justify the implicit rejection of the State's position. The Eleventh Circuit articulated no such reasons, and in fact appeared to indicate that it knew of none.

The Eleventh Circuit seems to have thought that the proper course was to leave the stay in effect, but to indicate that the State was free to return to the District Court and repeat the argument it had sought to present earlier. I disagree. When a stay of execution has been granted without an apparent legal basis, and the Court of Appeals cannot articulate a reason for leaving the stay in effect, the proper course is to vacate the stay. Because neither the District Court nor the Court of Appeals has articulated an adequate legal basis for entering a stay in this case, I would grant the State's application to vacate. Johnson would, of course, remain free to return to the District Court and seek a stay based on adequate legal grounds, if there are any.

The majority of this Court has previously expressed its disapproval of the litigation tactics that seem to have been employed in this case:

> "This is another capital case in which a last-minute application for a stay of execution and a new petition for habeas corpus relief have been filed with no explanation as to why the claims were not raised earlier or why they were not all raised in one petition. It is another example of abuse of the writ." Woodward v. Hutchins, 464 U.S. 377, 377-378 (1984) (Powell, J., joined by Burger, C.J., and Blackmun, Rehnquist, and O'Connor, JJ., concurring).

While the details of this case are somewhat different, we are faced once again with a last-minute effort to obtain a stay of execution on the basis of a claim that appears to be procedurally barred. Allowing this stay to remain in effect creates incentives that will almost surely lead to similar problems in the future:

> "If this Court defers only to grants of stays, while giving searching review to every denial of a stay, the lower federal courts may in time come to issue stays routinely. In that event, Barefoot v. Estelle's statement that stays of execution are not automatic in capital cases, 463 U.S., at 895, would effectively be overruled." Wainwright v. Booker, 473 U.S. 935, 936, n.3 (1985) (Powell, J., concurring).

Accordingly, I respectfully dissent from the Court's denial of the State's application in this case.

ARGUMENTS HEARD

SIMILAR ACTS EVIDENCE — STANDARD OF PROOF

Huddleston v. U.S., No. 87-6; argued 3/23/88.

The Supreme Court heard oral arguments recently concerning the standard of proof governing the admissibility of evidence of prior bad acts. Defense counsel, forced by an intervening decision to scale down the claim he made in his certiorari petition and brief, argued that such evidence is admissible only when the government demonstrates by a preponderance of the evidence that the defendant committed the act. The government contended it is admissible as long as there is a basis for finding that the defendant committed the act. The government views similar acts evidence as no different from other evidence, whereas the defendant argues that because the degree of prejudice is comparable to that of a confession, the same standard and procedure should apply to its admissibility.

At the defendant's trial for possessing and selling stolen blank videotapes, the government moved in limine to introduce evidence of both prior and subsequent similar acts. The prior act evidence showed that, a month before the tape sales, the defendant sold 40 12-inch black and white television sets to a particular witness for $28 each. Defense counsel told the trial court that the defense would consist of claiming lack of knowledge that the tapes were stolen, whereupon the court ruled that the evidence concerning the television sets was relevant and therefore admissible. After two days of deliberations, the jury convicted the defendant of possessing 500 stolen tapes over a three-day time span but acquitted him of selling 4,000 tapes on an earlier date.

The U.S. Court of Appeals for the Sixth Circuit, reasoning that the evidence concerning the television sets failed to meet the "clear and convincing" standard and that the erroneous admission of the evidence was not harmless, reversed the conviction, 802 F2d 874 (1986). But on rehearing it vacated its earlier ruling and reinstated the conviction, this time deciding that the preponderance standard applied and holding that the government had met that standard, 40 CrL 2450 (1986).

PREPONDERANCE STANDARD APPLIES

Don Ferris, of Ann Arbor, Mich., counsel for the defendant, told the justices that the Seventh, Eighth, Ninth, and D.C. Circuits have adopted the "clear and convincing" standard, whereas six others have adopted the "preponderance of the evidence" standard. Counsel's brief asked the court to use the higher standard, but at oral argument he said that the preponderance test is the correct one. For this position he cited Fed.R.Ev. 104(a) and (b), and also *Bourjaily v. U.S.*, 41 CrL 3351 (US SupCt 1987), which held that the preponderance test applies in determining, for purposes of the coconspirator exception to the hearsay rule, whether the conspiracy exists and whether the nonoffering party was involved in it. This concession did not leave defense counsel and the government in agreement, however, for the government would have the court admit prior bad acts evidence when there is a basis for finding that the defendant did the act. There is no basis for this standard, Ferris maintained.

Chief Justice William H. Rehnquist said there was common-law support for the government's argument.

"Rules 104(a) and (b) stand as a sentinel," Ferris continued; 104(a) says that preliminary questions on

admissibility of evidence are to be decided by the court subject to (b), and (b) deals with conditional relevancy.

Rehnquist said Rule 104 doesn't even deal with the standard of proof, but Ferris said the Sixth Circuit held that it does.

The language of the rule doesn't require a preponderance, Justice Antonin Scalia said; it supports the government's standard—"sufficient to support a finding."

But Ferris characterized other crimes evidence as "fraught with prejudice" and "evidence that has always been disfavored." "Unless there is a 51% certainty that it occurred, it shouldn't go to the jury," he contended.

You're saying it's the same as a confession where the judge decides whether it's voluntary before letting the jury hear it, Justice Anthony M. Kennedy observed. He sought to clarify whether counsel arrived at this conclusion from the nature of the evidence or the rule.

Ferris responded that Professor Charles Alan Wright gets it from Rule 104(a) and (b), read as a whole, but Rehnquist again said it wasn't there. Other circuits also equate the rule with the preponderance standard, Ferris added.

I thought you argued for a clear and convincing standard, Justice Sandra Day O'Connor told counsel. Your argument is so different from what we thought we were to decide here.

Counsel explained that his petition for certiorari was in the mail when *Bourjaily* was decided.

O'Connor noted that the Sixth Circuit applied the preponderance test, which counsel asserts is the correct standard. But Ferris reminded her that he was also arguing that the standard was not applied correctly. He explained that he was continuing to argue concerning the standard of proof because the government is arguing for a more lenient standard.

Doesn't Rule 403 require the court to determine whether the probative value outweighs the prejudicial effect? O'Connor asked. You didn't raise the improper application of Rule 403 in your petition, she pointed out. Should the strength of the evidence be considered by the court in its Rule 403 balancing? she wanted to know.

Ferris indicated that the balancing shouldn't occur until after the court has decided whether the evidence meets the preponderance standard.

Justice John Paul Stevens turned the questioning to the evidence at the issue in the case—the television sets. Ferris said the only thing the government knew about the television sets was that they were sold for $28 from a store owned by a lawyer. It knew nothing about their origin.

Ferris estimated that the question in this case comes up in only about 20% of other acts cases because the government can usually satisfy the preponderance test.

HARMLESS ERROR STANDARD

Turning to the question of what harmless error standard applies to the erroneous admission of similar acts evidence, Ferris conceded that the standard set forth in *Chapman v. California*, 386 U.S. 18 (1967)—harmless beyond a reasonable doubt—has been applied only to constitutional error. He noted that the Sixth Circuit applied both the Chapman standard and a plain error standard. His position, he said, is that the plain error standard applies; that is, the test set forth in *Kotteakos v. U.S.*, 328 U.S. 750 (1946)—whether the error affected substantial rights. The defendant's case was close as evidenced by his acquittal for the earlier sale of tapes and the fact that the jury was out two days, Ferris reminded the court.

ADMISSIBLE IF RELEVANT

William C. Bryson, Deputy Solicitor General, characterized the government's argument as "simple." Rule 404(b) does only one thing, he said: prohibit the admission of similar acts to show propensity. Once the judge decides that the evidence doesn't show propensity, it becomes like any other evidence and is admissible if it is relevant (Rule 401) and not too prejudicial (Rule 403).

Does the strength of the evidence have to be considered in the Rule 403 balancing? O'Connor repeated.

Yes, Bryson answered.

Might the court have had trouble with the balancing question given the slender nature of the evidence in this case? O'Connor asked. When Bryson responded that there was enough evidence, O'Connor asked him to "run through that with us."

Bryson said the initial contact concerning the sale of television sets was made in a bar; the defendant announced he had a "truckload"; his asking price of $28 and the price he had paid, about $13-$16 per set, were extremely low; and in other instances in which the defendant was dealing with the same people, he admitted to an FBI agent that the goods were "hot."

You say that if the evidence is relevant it comes in without any other finding by the judge, Justice Byron R. White observed. Then you have no business arguing sufficiency of the evidence, he told counsel.

The judge may have to make a finding under Rule 104(b) if there is conditional relevance, Bryson responded.

But Rehnquist asserted that "that's not what the rule means at all. Judges don't make findings of fact as the trial goes along under Rule 104(b); 104(b) covers the situation when an attorney wants to excuse a witness and asks a question not yet connected up. Rule 104(b) simply articulates a basic principle of relevancy."

Bryson attempted to clarify his answer. The judge doesn't make a finding of fact; rather, the judge looks at the evidence and decides, as he or she does with every piece of evidence, whether the jury *could* find the television sets were stolen, he said.

Why are they relevant even if they're not stolen? Stevens inquired.

They show that he's much more involved than he claimed, Bryson explained. The jury could infer that his defense didn't wash. Bryson said he thinks this is so powerful an inference that the second theory of relevancy propounded by the government—that there was sufficient evidence for a jury to find they were stolen—is not necessary.

Bryson submitted that there are two types of preponderance test. In one, the judge has to find a preponderance before the evidence is admitted; in the other, the

judge admits the evidence on the ground that a jury could find by a preponderance that it is true.

Bryson maintained that the issue is purely a question of relevancy; accordingly, Rule 104(b), not 104(a), applies. He said only the Seventh Circuit has adopted the defendant's view that 104(a) applies, and this view rests on the assumption that the clear and convincing test applies.

REBUTTAL

Ferris said the government admits that Rule 104(b) comes into play. Although he continued to maintain that 104(a) applies, he noted that six circuits have said that 104(b) means a preponderance standard must be met. Ferris reiterated that it is the judge who must first find a preponderance because of the prejudicial nature of the evidence.

SUMMARIES OF DOCKETED CASES

87-1363 KELLY v. WILKINSON

Search and seizure — Frisks of persons attending public meetings.

Ruling below (*Wilkinson v. Forst*, CA 2, 832 F2d 1330, 42 CrL 2162 (1987)):

Indiscriminate weapon frisks of attendees at Ku Klux Klan rallies, conducted without individualized suspicion under auspices of injunctions banning carrying of weapons, were impermissible; police may frisk attendee only if less intrusive magnetometer search first detects presence of metal and situation cannot be resolved by other means, such as attendee's departure from site.

Question presented: Are pat-down searches for weapons conducted on all persons entering public forum reasonable under Fourth Amendment where searches (1) are authorized by neutral and detached magistrate, (2) have public safety and non-investigatory purpose, (3) afford subject opportunity to decline to enter area, (4) are supported by evidence establishing substantial likelihood that persons in attendance will be armed and dangerous, and (5) protect exercise of First Amendment rights?

Petition for certiorari filed 2/8/88, by John M. Massameno, Senior App. Atty., Office of Chief State's Atty. for Wallingford, Conn.

87-1373 BOWERS v. U.S.

Electronic surveillance — Application for wiretaps — Bias of judge.

Ruling below (CA 6, 9/17/87):

Claims that judge who authorized wiretap of defendant's telephone lacked required neutrality and detachment because of his supervision, as result of civil litigation, of municipal department with whom defendant contracted were properly rejected, in view of facts that judge had neither pecuniary interest in operation of department nor links to prosecution that would constitute "prosecutorial involvement," that authorization of wiretaps predated his involvement in department's affairs, and that ample evidence of probable cause for wiretap existed.

Question presented: Can federal district judge who, through supervision of pending litigation, has in effect been serving as "receiver" of municipal department and has become intimately involved through that supervision in department's affairs, serve as neutral and detached magistrate required by Fourth Amendment when wiretap applications seeking to investigate allegations of corruption within that department are presented to him?

Petition for certiorari filed 1/29/88, by N.C. Deday LaRene and Kenneth M. Mogill, both of Detroit, Mich.

87-1403 FREEMAN v. GEORGIA

Double jeopardy — Due process — Theft — Violation of oath of office — Sufficiency of evidence.

Ruling below (Ga CtApp, 10/16/87):

Although prosecution for violation of oath by public officer and theft by taking may involve overlapping proof, in that violation of oath may be proven by taking of funds belonging to county, essential elements for each offense are nonetheless different, since former requires state to prove that public officer violated oath by taking more than lawful fees, whereas latter requires proof that defendant unlawfully appropriated county funds with intent to deprive county of said funds; evidence showing that amounts equal to payments from certain sources were diverted from county and that defendant, as sheriff, received and was responsible for all checks delivered to his department was sufficient proof of corpus delicti, which does not require that stolen property be recovered; state provided sufficient evidence from which jury could infer defendant's intent.

Questions presented: (1) Do defendant's convictions and cumulative punishments for violation of oath of office and multiple theft by taking violate double jeopardy and due process guarantees of Fifth Amendment as interpreted in *Blockburger v. U.S.*, 284 U.S. 296 (1931), and its progeny? (2) Did prosecution for crimes in which neither corpus delicti nor intent was proved, looking at facts in light most favorable to state, violate Due Process Clause?

Petition for certiorari filed 2/13/88, by Virgil L. Brown, of Zebulon, Ga., Bentley C. Adams III, of Thomaston, Ga., and Tamara Jacobs, of Barnesville, Ga.

87-1405 GONZALES v. LEAL

Civil rights action — Police officers — Arrest — Standard of conduct.

Ruling below (CA 5, 10/7/87, unpublished):

Evidence supports findings of trial judge in 42 USC 1983 action, arising from injuries plaintiff received while resisting being handcuffed by arresting police officer, that, under analysis set forth in *Schillingford v. Holmes*, 634 F2d 263 (CA 5 1981), force used by officer was necessary and plaintiff failed to prove that officer acted with malice or used grossly disproportionate force.

Question presented: What standard of conduct is applied under 42 USC 1983 to arresting officer to determine whether arrestee has suffered violation of his constitutional rights?

Petition for certiorari filed 1/1/88, by James A. Kosub, of San Antonio, Texas.

87-1410 BANKS v. MISSISSIPPI

Other crimes evidence — Prejudice — Effective assistance of counsel.

Ruling below (Miss SupCt, 12/16/87, unpublished):

Record supporting defendant's conviction of aggravated assault reveals no error, and conviction is affirmed.

Questions presented: (1) Did trial court violate Fifth, Sixth and Fourteenth Amendments by admitting evidence of other crimes for which defendant had not been convicted, evidence to which defense counsel was not given prior access, and statement that was highly prejudicial and inflammatory? (2) Did defendant receive effective assistance of counsel at trial and appellate levels?

Petition for certiorari filed 2/22/88, by Samuel H. Wilkins, of Jackson, Miss.

87-1412 DAVIDSON v. ILLINOIS

Double jeopardy — State's midtrial appeal of evidentiary rulings — Court rules.

Ruling below (Ill AppCt, 5thDist, 9/9/87):

Defendant's contention that Illinois Supreme Court Rule 604(a)(1), which allows state to appeal order or judgment

0011-1341/88/$00.50

ANCHORAGE TASK FORCE ON SEXUAL ASSAULT
LEGISLATIVE COMMITTEE

c/o S.T.A.R., 3925 Reka Dr., Anchorage, AK 99508 (907) 276-7279

April 25, 1988

Senate
Judiciary Committee
P.O. Box V
Juneau, AK 99811

RE: Letter of support for HB 237

Dear Senator Jay Kerttula, Chairman;
Senator Arliss Sturguleweski, Vice-chairwoman;
Senator Joe Josephson;
Senator Rick Halford;
Senator Pat Rodey:

The Anchorage Task Force on Sexual Assault (ATFSA) is comprised of thirty individuals from the State Departments' of Law, Health and Social Services, and Corrrections, the Anchorage Police Department, Association of Stranded Rural Alaskans in Anchorage, Standing Together Against Rape (STAR), local hospitals, private mental health institutions, and concerned professionals. The purpose of the ATFSA is to heighten community awareness, enhance inter-agency communication and cooperation, identify resources for victims, and advocate for policies affecting sexual assault victims and their families.

The ATFSA legislative committee strongly supports HB 237 and urges the expeditious passage of the bill from Committee. The bill addresses flaws in our statutory fabric which fails to apprehend the needs of child sexual assault victims in the criminal justice system.

For instance, present law for sexual abuse of a minor, under AS 11.41.434 and AS 11.41.436, is based on the traditional family structure---adults and children living together who have a blood or custodial relationship. However, increasing reports of child sexual abuse by adults living in the home, who have no legal relationship, necessitates a change in the law. Section 2 and 3 of the bill proposes the change by definitively including, in sexual abuse of a minor in the first and second degree, non-legally related adults who live in the home and who have authority over the child.

Section 5 and 6 of the bill clarifies the terms for consecutive sentencing for felonious sexual assault offenses. This provision is clearly in stride with the state's existing strong sanctions against sexual assault of children and adults.

Section 7 is of the utmost importance in considering past assaults against a child by the defendant. Because children are not always able to remember specific times, dates, and places of reoccurring abuse, the opportunity to allow evidence indicating prior instances, without specifics, allows for a more equitable balance in child abuse cases. This is particularly true in cases where the trauma of the assault inhibits a clear recollection (i.e.,time and date), but where the assault is associated with a holiday, birthday, or other important event in the child's life. And the ability to recall abusive episodes, under this allowance, would be more age appropriate. The evidence would also have to be clear and convincing, if allowed under the aggravating factors.

Sections 8 and 9 of the bill are also of extreme importance. Section 8 allows for trial cases to be joined together whenever appropriate. This would avoid the revictimization of children involved in testifying in more than one trial to recant the same assault. Section 9 allows the admissibility of past similar conduct of a defendant in cases involving physical or sexual assault or abuse of a minor. Research indicates some sexual assault crimes correlate with behavior patterns which are prone to repeated behaviors. Child sexual abuse cases are among the most well documented of this type of repeated behavior.

In entirety HB 237 is one of the most comprehensive legislative documents filed this session which would effect sensitive and fair laws for those injured through sexual assault and child physical and sexual abuse. The ATFSA legislative committee forwards its highest regards for the documents well aimed objectives. We urge the Committee to give this bill its deserved passage. And we commend you in advance for taking this action.

Sincerely,

Richard Brodsky, M.D.
Co-Chair
ATFSA Legislative Committee

HB 235

MEMORANDUM State of Alaska

TO: Rep. Fran Ulmer
State Capitol
Juneau

DATE: 12 April 1988

FILE NO:

TELEPHONE NO:

THRU: Larry R. Weeks
Dir. of Criminal Prosecutions
CDCO - Juneau

SUBJECT: Burden of Proving Other Crimes under Evidence Rule 404(b)

FROM: David Mannheimer
Asst. Attorney General
OSPA - Anchorage

You have asked whether Alaska law defines the level of proof that must be adduced to support the admission of evidence under Evidence Rule 404(b) that a criminal defendant committed another crime. To my knowledge, the Alaska appellate courts have never defined that burden of proof.

Wigmore on Evidence (Chadbourn rev'n, 1979), Vol. III, § 307, n.5 on page 264, as supplemented in the 1987 pocket part, and McCormick on Evidence (3rd ed.), § 190, n.46 on page 564, as supplemented in the 1987 pocket part, list cases that have adopted three different tests:

> (1) Some courts view the matter as governed by Evidence Rule 104(b): "When the relevancy of evidence depends upon the fulfillment of a condition of fact [here, the fact that the defendant committed the other crime], the court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition." Under this view, the trial judge's only role is to determine whether there is sufficient evidence to support a reasonable inference that the defendant committed the other crime. If so, then the evidence is admitted for whatever weight the jury decides to give it.
>
> (2) Other courts take the view that the question is to be decided by the trial judge under Evidence Rule 104(a): "Preliminary questions concerning ... the admissibility of evidence shall be determined by the court, subject to the provisions of [Rule 104](b)." That is, the proponent of the evidence must convince the trial judge that the defendant committed the crime before the evidence is given to the jury. Of these courts, some hold that

(a) the defendant's commission of the other crime must be proved by a preponderance of the evidence (in plain English, "more likely than not");

while others hold that

(b) the defendant's commission of the other crime must be proved by "clear and convincing" evidence -- which is a higher standard of proof than "preponderance of the evidence", but less exacting than proof "beyond a reasonable doubt".

No court requires proof beyond a reasonable doubt; this burden of proof is reserved for the elements of the crime actually charged against the defendant in the indictment or complaint. Some courts use a combination of 2(a) and 2(b): they apply the higher "clear and convincing evidence" burden of proof when the evidence of the other crime is being admitted to prove identity, or intent, or motive, while using the lower "preponderance of the evidence" burden of proof when the evidence of the other crime is being admitted for other purposes.

Prof. Stephen Saltzburg was the consultant employed by the Alaska supreme court when the court revised the Alaska Rules of Evidence. In his text, Federal Rules of Evidence Manual (4th ed.), at page 185, Prof. Saltzburg states that the admissibility of other crimes evidence should be dealt with under the first test discussed above -- that the evidence should be admitted if a reasonable person could be convinced that the defendant committed the other crime. Prof. Saltzburg notes that the jury, not the trial judge, is the body generally entrusted with resolving questions regarding the credibility of witnesses and the weight to be given to evidence. Since a test such as "clear and convincing evidence", or "preponderance of the evidence", clearly requires someone to reach conclusions about credibility and weight, that someone should be the jury, Prof. Saltzburg argues. Thus, if the trial judge is convinced that a reasonable fact-finder could conclude that the defendant had committed the other crime, then the evidence should be admitted at trial.

HB

247

Alaska State Legislature

Representative Mike Davis District 19

P.O. Box V
Juneau, Alaska 99811
(907) 456-4930/4941

Interim Office:
P.O. Box 81435
Fairbanks, Alaska 99708
(907) 456-8161

TO: Senate State Affairs Committee
FROM: Rep. Mike Davis
DATE: February 18, 1988
RE: CSHB 247 (Jud)

The goal of HB 247 is to ensure that ballot propositions and election pamphlet summaries are clear, concise, and easily readable.

In the past, ballot propositions have frequently been written in college level English. In addition the wording of propositions has sometimes made it difficult to understand whether a "yes" vote supports or opposes the action under consideration.

HB 247 requires that each ballot proposition and election pamphlet neutral summary be scored under the reading level formula in section 4, subsection (c). The legislation states that it is the policy of the state to prepare propositions and summaries that score at approximately 65. HB 247 does not influence the content of the actual referendum, initiative, or constitutional amendment. It affects only the abbreviated form appearing on the ballot and the neutral summary in the election pamphlet.

The reading level formula contained in this bill is the Flesch test. This test is used by several states with insurance policy readability laws, and in Maine's election statute. A Flesch score of 65 approximately corresponds to an eighth grade reading level. As the Flesch score increases, the difficulty of the reading material decreases.

HB 247 further requires that each ballot proposition contain language stating that a "yes" vote is a vote in favor of the initiative, referendum, or constitutional amendment under consideration. This provision is intended to prevent a situation in which a "yes" vote would be required to maintain the status quo.

Finally, HB 247 states that a court may not enjoin the conduct or results of an election for failing to comply with the legislation. The bill would not increase the risk of suits against the state. It will, however, encourage participation in elections and assist informed decision making by voters.

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CSHB 247
PUBLISH DATE: 4/30/87

FISCAL NOTE

REQUEST:

Revision Date: 1/29/88
Title: An Act relating to the readability of certain election materials.
Sponsor: DAVIS
Requestor: Senate State Affairs

Agency Affected:
BRU:
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Linda Edgeworth
Phone: 465-4611
Division: Division of Elections
Date:

Approved by Commissioner:
Date: 2/1/88
Agency: Office of the Governor

Distribution (by preparer): 2/1/88
Legislative Finance
Legislative Sponsor

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version : HB 247
Publish Date : HOUSE 4/6/87

REQUEST:

Revision Date: 4/13/87
Title : An Act relating to the readability of certain election materials.
Sponsor : Davis and Koponen
Requestor : Representative Mike Davis

Agency Affected : Legislative Affairs Agency
BRU : Legislative Council

Components : Legal Services

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	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

No fiscal impact.

Pamela A. Stoops

Prepared by : Pamela A. Stoops, Manager
Phone : 465-3850
Division : Administrative Services
Date : 4/13/87

Warren W. Endicott

Approved by: Warren W. Endicott, Executive Director
Date : 4/13/87
Agency : Legislative Affairs Agency

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

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version : HB 247
Publish Date :

REQUEST:

Revision Date:
Title : "An Act relating to certain election materials."
Sponsor : Representative Davis
Requestor : House State Affairs

Agency Affected : Department of Law
BRU : Legal Services

Components : Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND		-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)

Please see attached analysis.

Richard L. Pegues

Prepared by : Richard I. Pegues, Director
Phone : 465-3672
Division : Administrative Services
Date : April 13, 1987

Richard L. Pegues /FOR/
Approved by Commissioner : Grace Berg Schaible, Atty. Gen.
Date : April 13, 1987
Agency : Department of Law

Distribution (by preparer) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 247

This bill amends AS 15.58 by adding a new section that provides a scoring methodology for the readability of the neutral summaries of ballot propositions that appear in the voter's pamphlet. Division of Elections and Department of Law staff responsible for preparing these summaries may have to hone their writing skills, but they will not require additional resources to implement this bill.

FLESCH FORMULA

The Flesch formula is based to compute scores for "reading ease" and "human interest". Although this method has been criticized, no better system seems to have been developed to this time for quick evaluation of adult reading materials. Flesch has a chart inside the cover of his book, The Art of Readable Writing, which is a short-cut to determining readability and will eliminate the need to compute the formula. This chart can be used in place of steps 6 and 7 in the procedure outlined below. For those who do not have access to his book, the procedure he follows to determine readability is:

1. Count the words in the article (mark each 50th word).
2. Count the sentences.
3. Count the syllables in the article.
4. Divide the number of words by the number of sentences to obtain the average sentence length.
5. Divide the number of syllables by the number of words and multiply by 100 to obtain the average number of syllables per 100 words.
6. Multiply the average sentence length in words by 1.015.
7. Multiply the average number of syllables per 100 words by .846, then add the totals of steps 6 and 7, then subtract the total from 206.835 to obtain the readability score for the article.
8. Convert the readability score to reading ability level given below to determine usability.

Description of Style	*Average Sentence Length*	*Average No. of Syll. per 100 Wds.*	*Reading Ease Score*	*Estimated Reading Grade*
Very Easy	8 or less	123 or less	90 to 100	5th grade
Easy	11	131	80 to 90	6th grade
Fairly Easy	14	139	70 to 80	7th grade
Standard	17	147	60 to 70	8th and 9th grade
Fairly Difficult	21	155	50 to 60	10th to 12th grade (high school)
Difficult	25	167	30 to 50	13th to 16th grade (college)
Very Difficult	29 or more	192 or more	0 to 30	college graduate

BALLOT MEASURE NO. 3

Advisory Vote on Longevity Bonus Annuity Program
Ch. 99 SLA 85 (SB56)

BALLOT LANGUAGE
(As it will appear on the November 4, 1986, General Election Ballot)

The Fourteenth Alaska State Legislature considered two alternatives to the present longevity bonus program. Both were adopted into law, but neither will take effect unless the legislature chooses one of them. The legislature has asked for an advisory vote of the public on the annuity option which is described below.

The annuity option provides that every individual who reaches age 65 by January 1, 1988, including those already receiving the bonus, would receive a longevity bonus payment of $250 per month. In addition, a person under age 65 on January 1, 1988, could participate in an optional annuity program by depositing all or part of his or her permanent fund dividends in an account held by the state. Upon reaching age 65, a person would receive a monthly payment in an amount determined by how much was contributed to the account. The annuity payments would be supplemented with declining longevity bonus payments paid for with general funds until the annuity accounts were large enough to provide monthly payments of $250 a month.

The second option provides that every individual who is 65 years old by January 1, 1988, including those already receiving the bonus, will receive a longevity bonus payment of $250 per month, but that anybody younger than age 65 by January 1, 1988, would not be eligible for benefits.

Should the legislature adopt the annuity option?

YES ☐
NO ☐

This proposition scored 30.3 under the formula contained in HB 247.

Procedures:

(1) disregarded numbers
(2) counted 8 sentences and 205 words
average sentence length, 25.6 words
25.6 X 1.015 = 26.00
(3) counted 365 syllables in 205 words
365/205 = 178/100
178 X .846 = 150.58

LEGISLATIVE AFFAIRS AGENCY SUMMARY
(Ch. 9 SLA 85 CCSSB 56)

This question is advisory to the legislature as to whether an annuity program should be adopted to replace the longevity bonus program.

Under the proposed program, a person could elect to receive his or her permanent fund dividend in cash, as a credit in an annuity account, or a combination of the two. A person who is 65 years old on or before January 1, 1988, or persons with certain debts could only receive the dividend in cash.

Upon reaching the age of 65, a person with credit in an annuity account would receive an annuity in the form of a monthly payment based upon the principal and accrued interest in the person's annuity account. If a person dies before age 65, a lump sum payment could be made to a designated beneficiary or to the decendent's estate.

Persons 65 years of age on or before January 1, 1988, who otherwise qualify would continue to receive a monthly longevity bonus payment of $250. Otherwise, the monthly longevity bonus payment would be equal to $250 minus the maximum possible straight life annuity for a person 65 years of age under the annuity program.

If the annuity program is rejected, the legislature will consider limiting the existing longevity bonus program to people who are 65 years of age on or before January 1, 1988.

VOTES CAST BY MEMBERS OF THE 14TH ALASKA LEGISLATURE ON FINAL PASSAGE

House:	Yeas	30
	Nays	10
	Absent or Not Voting	0
Senate:	Yeas	19
	Nays	0
	Absent or Not Voting	1

Rep. Davis

RE-WRITE OF BALLOT MEASURE NO.3

Advisory Vote on Longevity Bonus Annuity Program
Ch. 99 SLA 85 (SB56)

BALLOT LANGUAGE
(As it will appear on the November 4, 1986, General Election Ballot)

The State Legislature has asked for voters' advice on alternatives to the current longevity bonus program.

Two options are being considered. Both options provide $250 per month to persons who have turned 65 by Jan. 1, 1988. The two proposals differ for younger people.

The first option sets up an annuity program for persons under 65 on Jan. 1, 1988. Persons could chose to deposit all or part of their permanent fund dividends in an account held by the state. Starting at age 65, a person would receive a monthly payment determined by how much he or she had put in the account. These annuity payments would be supplemented with money from the state's general fund. The state would add in enough money so people who had contributed all their dividends would receive $250 a month.

The second option does not provide payments for persons who are younger than 65 on Jan. 1, 1988.

Should the legislature adopt the annuity option? YES ☐
NO ☐

This re-write scored 65.5 under the formula contained in HB 247.

Procedures:

(1) disregarded numbers
(2) counted 10 sentences and 142 words. average sentence length, 14.2 words.
14.2 X 1.015 = 14.413.
(3) counted 213 syllables in 142 words. 213/142 = 150/100.
150 X .846 = 126.9
(4) 14.413 + 126.9 = 141.313. 206.835 - 141.313 = 65.522

STEPHEN McALPINE
LIEUTENANT GOVERNOR

STATE OF ALASKA
P O BOX AA
JUNEAU 99811
(907) 465-3520

MEMORANDUM

OFFICE OF THE LIEUTENANT GOVERNOR

TO: Grace Schaible
Attorney General
Department of Law

FROM: Stephen McAlpine
Lieutenant Governor

DATE: March 4, 1987

SUBJECT: Attached Proposed Legislation

Attached please find information given to me by the League of Women Voters. I am in favor of legislation similar to this and would appreciate your review of their proposal. It is my understanding that this legislation will be introduced this session. However, if it is not introduced or does not pass the Legislature, I would like to see this become the policy for ballot propositions, etc. for the Division of Elections.

Attachment

cc: Sandi Stout, Division of Elections

April 1987

Representatives Mike Davis and Niilo Koponen have introduced House Bill 247 which would require ballot propositions and neutral summaries in voter's pamphlets to be worded on an eighth grade reading level or lower.

The Fairbanks League of Women Voters and the Literacy Council have been working for about three years on trying to ensure that these propositions and summaries are easier to read. Currently there are no standards for readability being used by the state, with the result that ballot propositions and neutral summaries are usually worded on a 12th grade through college graduate level.

According to the Literacy Council only 62% of the population can read at the 11th grade level. For many Alaskans English is a second language.

The standard proposed in HB 247 has been adopted in many states. It would require little extra staff time, and the result is that people would understand exactly what they were voting on.

The League of Women Voters of Alaska is pleased that the Fairbanks representatives have taken this step to ensure an informed voting population. We urge you to vote in favor of this bill which is so important to maintenance of a truly democratic process.

February 19,1988
Senate State Affairs Committee
The Alaska Legislature

CSHB 247 An Act relating to the preparation of election propositions and materials.

Mister Chairman, Members of the Committee:

I am Eve Reckley. I represent the League of Women Voters of Alaska. The League supports passage of the Committee Substitute for House Bill 247 to ensure that ballot propositions and election pamphlet information can be easily read and understood. It establishes as policy within the election law, that ballot propositions be written in a way "that is clear, concise, and easily readable." The bill sets a standard for readable language. It establishes a formula for measuring readability by the average word and sentence length of an article. An unbiased test of readability would apply to all ballot propositions.

The bill also requires a "yes" vote for approval of a proposed law. This is a vital provision. It would avoid much of the confusion surrounding ballot propositions of the past. By requiring a yes vote, it would remove the question of whether obscure or negative language was intentionally drafted to mislead and thus defeat a ballot proposition. We believe this provision would greatly improve voter confidence in the integrity of the election system.

The League believes election laws should encourage maximum interest and participation in the electoral process. They should be simple and efficient to administer, and should aid in preventing fraudulent voting practices. The bill before you would strengthen the election process and bring better informed voters into the system.

CSHB 247 might well have far greater significance than its sponsors ever hoped. If enacted, it could help voters understand for the first time some of the ballot propositions put before them. This bill could be the "sleeper" of the session in terms of its importance to the election process. A friend I used to lobby with in Washington, D. C. would call this a "Mother-pie" issue, short for apple pie and Motherhood.

In this election year, we anticipate that there will be a number of important ballot propositions before voters, including an advisory vote on the proposed amendment to the Constitution of Alaska mandating that meetings of legislative bodies be open to the public; possibly another on tort reform. The League believes that these an all other issues must be placed on the ballot in clear language.

We urge your approval of this legislation. Thank you for this opportunity to present our views.

Alaska State Legislature

Representative Mike Davis District 19

P.O. Box V
Juneau, Alaska 99811
(907) 456-4930/4941

Interim Office:
P.O. Box 81435
Fairbanks, Alaska 99708
(907) 456-8161

FEB 23 1988

TO: Sen. Jalmar Kerttula
Chairman, Senate Judiciary Committee
FROM: Rep. Mike Davis
DATE: February 22, 1988
RE: HB 247, HB 327

Last Friday HB 247 passed out of the Senate State Affairs Committee to the Senate Judiciary Committee. The goal of the bill is to ensure that ballot propositions and election pamphlet summaries are clear, concise, and easily readable. Attached is a memo further explaining the legislation, and a packet for your committee files.

Also in the Senate Judiciary Committee is HB 327, relating to penalties for violating the Alaska Historic Preservation Act.

I would appreciate the committee hearing these two bills at your earliest convenience.

Offered: 2/23/88
Referred: Judiciary

5-0743N

Original sponsors: Davis, Koponen and Boucher

IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 247 (State Affairs)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the preparation of election propositions and materials; and providing for an effective date."

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

* Section 1. AS 15.45.180 is amended by adding a new subsection to read:

(b) The proposition prepared under (a) of this section shall comply with AS 15.60.005 and shall be worded so that a "Yes" vote on the proposition is a vote to enact the proposed law.

* Sec. 2. AS 15.45.410 is amended by adding a new subsection to read:

(b) The proposition prepared under (a) of this section shall comply with AS 15.60.005 and shall be worded so that a "Yes" vote on the proposition is a vote to reject the act referred.

* Sec. 3. AS 15.50.010 is amended by adding a new subsection to read:

(b) The proposition prepared under (a) of this section shall comply with AS 15.60.005 and shall be worded so that a "Yes" vote on the proposition is a vote to adopt the proposed constitutional amendment.

* Sec. 4. AS 15.60 is amended by adding a new section to read:

Sec. 15.60.005. READABILITY OF CERTAIN ELECTION MATERIALS. (a) The policy of the state is to prepare a ballot proposition that is clear, concise, and easily readable. The form of each ballot proposition shall be scored under (c) of this section. The policy of the state is to prepare a ballot proposition that is scored at

approximately 65.

(b) Each neutral summary prepared for the voter's pamphlet shall be scored under (c) of this section. The policy of the state is to prepare a neutral summary that is scored at approximately 65.

(c) A ballot proposition or neutral summary shall be scored using the following procedures:

(1) disregard numbers;

(2) multiply the average sentence length in words by 1.015;

(3) multiply the average number of syllables for each 100 words by .846;

(4) subtract the total of (2) and (3) from 206.835.

(d) A court may not enjoin the conduct or results of an election for a failure to comply with (a) or (b) of this section.

* Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

Alaska State Legislature

Representative Mike Davis District 19

P.O. Box V
Juneau, Alaska 99811
(907) 456-4930/4941

Interim Office:
P.O. Box 81435
Fairbanks, Alaska 99708
(907) 456-8161

TO: Sen. Jalmar Kerttula
Chairman, Senate Judiciary Committee
FROM: Rep. Mike Davis
DATE: February 22, 1988
RE: SCSHB 247 (State Affairs)

The goal of HB 247 is to ensure that ballot propositions and election pamphlet summaries are clear, concise, and easily readable.

In the past, ballot propositions have frequently been written in college level English. In addition the wording of propositions has sometimes made it difficult to understand whether a "yes" vote supports or opposes the action under consideration.

HB 247 requires that each ballot proposition and election pamphlet neutral summary be scored under the reading level formula in section 4, subsection (c). The legislation states that it is the policy of the state to prepare propositions and summaries that score at approximately 65. HB 247 does not influence the content of the actual referendum, initiative, or constitutional amendment. It affects only the abbreviated form appearing on the ballot and the neutral summary in the election pamphlet.

The reading level formula contained in this bill is the Flesch test. This test is used by several states with insurance policy readability laws, and in Maine's election statute. A Flesch score of 65 approximately corresponds to an eighth grade reading level. As the Flesch score increases, the difficulty of the reading material decreases.

HB 247 further requires that each ballot proposition contain language stating that a "yes" vote is a vote in favor of the initiative, referendum, or constitutional amendment under consideration. This provision is intended to prevent a situation in which a "yes" vote would be required to maintain the status quo.

Finally, HB 247 states that a court may not enjoin the conduct or results of an election for failing to comply with the legislation. The bill would not increase the risk of suits against the state. It will, however, encourage participation in elections and assist informed decision making by voters.

FLESCH FORMULA

The Flesch formula is based to compute scores for "reading ease" and "human interest". Although this method has been criticized, no better system seems to have been developed to this time for quick evaluation of adult reading materials. Flesch has a chart inside the cover of his book, The Art of Readable Writing, which is a short-cut to determining readability and will eliminate the need to compute the formula. This chart can be used in place of steps 6 and 7 in the procedure outlined below. For those who do not have access to his book, the procedure he follows to determine readability is:

1. Count the words in the article (mark each 50th word).
2. Count the sentences.
3. Count the syllables in the article.
4. Divide the number of words by the number of sentences to obtain the average sentence length.
5. Divide the number of syllables by the number of words and multiply by 100 to obtain the average number of syllables per 100 words.
6. Multiply the average sentence length in words by 1.015.
7. Multiply the average number of syllables per 100 words by .846, then add the totals of steps 6 and 7, then subtract the total from 206.835 to obtain the readability score for the article.
8. Convert the readability score to reading ability level given below to determine usability.

Description of Style	*Average Sentence Length*	*Average No. of Syll. per 100 Wds.*	*Reading Ease Score*	*Estimated Reading Grade*
Very Easy	8 or less	123 or less	90 to 100	5th grade
Easy	11	131	80 to 90	6th grade
Fairly Easy	14	139	70 to 80	7th grade
Standard	17	147	60 to 70	8th and 9th grade
Fairly Difficult	21	155	50 to 60	10th to 12th grade (high school)
Difficult	25	167	30 to 50	13th to 16th grade (college)
Very Difficult	29 or more	192 or more	0 to 30	college graduate

BALLOT MEASURE NO. 3

Advisory Vote on Longevity Bonus Annuity Program
Ch. 99 SLA 85 (SB56)

BALLOT LANGUAGE
(As it will appear on the November 4, 1986, General Election Ballot)

The Fourteenth Alaska State Legislature considered two alternatives to the present longevity bonus program. Both were adopted into law, but neither will take effect unless the legislature chooses one of them. The legislature has asked for an advisory vote of the public on the annuity option which is described below.

The annuity option provides that every individual who reaches age 65 by January 1, 1988, including those already receiving the bonus, would receive a longevity bonus payment of $250 per month. In addition, a person under age 65 on January 1, 1988, could participate in an optional annuity program by depositing all or part of his or her permanent fund dividends in an account held by the state. Upon reaching age 65, a person would receive a monthly payment in an amount determined by how much was contributed to the account. The annuity payments would be supplemented with declining longevity bonus payments paid for with general funds until the annuity accounts were large enough to provide monthly payments of $250 a month.

The second option provides that every individual who is 65 years old by January 1, 1988, including those already receiving the bonus, will receive a longevity bonus payment of $250 per month, but that anybody younger than age 65 by January 1, 1988, would not be eligible for benefits.

Should the legislature adopt the annuity option? YES ☐ NO ☐

This proposition scored 30.3 under the formula contained in HB 247.

Procedures:

(1) disregarded numbers
(2) counted 8 sentences and 205 words
average sentence length, 25.6 words
25.6 X 1.015 = 26.00
(3) counted 365 syllables in 205 words
365/205 = 178/100
178 X .846 = 150.58
(4) 26 + 150.58 = 176.58
206.835 - 176.58 = 30.25

LEGISLATIVE AFFAIRS AGENCY SUMMARY
(Ch. 9 SLA 85 CCSSB 56)

This question is advisory to the legislature as to whether an annuity program should be adopted to replace the longevity bonus program.

Under the proposed program, a person could elect to receive his or her permanent fund dividend in cash, as a credit in an annuity account, or a combination of the two. A person who is 65 years old on or before January 1, 1988, or persons with certain debts could only receive the dividend in cash.

Upon reaching the age of 65, a person with credit in an annuity account would receive an annuity in the form of a monthly payment based upon the principal and accrued interest in the person's annuity account. If a person dies before age 65, a lump sum payment could be made to a designated beneficiary or to the decendent's estate.

Persons 65 years of age on or before January 1, 1988, who otherwise qualify would continue to receive a monthly longevity bonus payment of $250. Otherwise, the monthly longevity bonus payment would be equal to $250 minus the maximum possible straight life annuity for a person 65 years of age under the annuity program.

If the annuity program is rejected, the legislature will consider limiting the existing longevity bonus program to people who are 65 years of age on or before January 1, 1988.

VOTES CAST BY MEMBERS OF THE 14TH ALASKA LEGISLATURE ON FINAL PASSAGE

House:	Yeas	30
	Nays	10
	Absent or Not Voting	0
Senate:	Yeas	19
	Nays	0
	Absent or Not Voting	1

Rep. Davis

RE-WRITE OF BALLOT MEASURE NO.3

Advisory Vote on Longevity Bonus Annuity Program
Ch. 99 SLA 85 (SB56)

BALLOT LANGUAGE
(As it will appear on the November 4, 1986, General Election Ballot)

The State Legislature has asked for voters' advice on alternatives to the current longevity bonus program.

Two options are being considered. Both options provide $250 per month to persons who have turned 65 by Jan. 1, 1988. The two proposals differ for younger people.

The first option sets up an annuity program for persons under 65 on Jan. 1, 1988. Persons could chose to deposit all or part of their permanent fund dividends in an account held by the state. Starting at age 65, a person would receive a monthly payment determined by how much he or she had put in the account. These annuity payments would be supplemented with money from the state's general fund. The state would add in enough money so people who had contributed all their dividends would receive $250 a month.

The second option does not provide payments for persons who are younger than 65 on Jan. 1, 1988.

Should the legislature adopt the annuity option? YES ☐
NO ☐

This re-write scored 65.5 under the formula contained in HB 247.

Procedures:

(1) disregarded numbers
(2) counted 10 sentences and 142 words. average sentence length, 14.2 words.
14.2 X 1.015 = 14.413.
(3) counted 213 syllables in 142 words. 213/142 = 150/100.
150 X .846 = 126.9
(4) 14.413 + 126.9 = 141.313. 206.835 - 141.313 = 65.522

STEPHEN McALPINE
LIEUTENANT GOVERNOR

STATE OF ALASKA
P O BOX AA
JUNEAU 99811
(907) 465-3520

MEMORANDUM

OFFICE OF THE LIEUTENANT GOVERNOR

TO: Grace Schaible
Attorney General
Department of Law

FROM: Stephen McAlpine
Lieutenant Governor

DATE: March 4, 1987

SUBJECT: Attached Proposed Legislation

Attached please find information given to me by the League of Women Voters. I am in favor of legislation similar to this and would appreciate your review of their proposal. It is my understanding that this legislation will be introduced this session. However, if it is not introduced or does not pass the Legislature, I would like to see this become the policy for ballot propositions, etc. for the Division of Elections.

Attachment

cc: Sandi Stout, Division of Elections

February 19,1988
Senate State Affairs Committee
The Alaska Legislature

CSHB 247 An Act relating to the preparation of election propositions and materials.

Mister Chairman, Members of the Committee:

I am Eve Reckley. I represent the League of Women Voters of Alaska. The League supports passage of the Committee Substitute for House Bill 247 to ensure that ballot propositions and election pamphlet information can be easily read and understood. It establishes as policy within the election law, that ballot propositions be written in a way "that is clear, concise, and easily readable." The bill sets a standard for readable language. It establishes a formula for measuring readability by the average word and sentence length of an article. An unbiased test of readability would apply to all ballot propositions.

The bill also requires a "yes" vote for approval of a proposed law. This is a vital provision. It would avoid much of the confusion surrounding ballot propositions of the past. By requiring a yes vote, it would remove the question of whether obscure or negative language was intentionally drafted to mislead and thus defeat a ballot proposition. We believe this provision would greatly improve voter confidence in the integrity of the election system.

The League believes election laws should encourage maximum interest and participation in the electoral process. They should be simple and efficient to administer, and should aid in preventing fraudulent voting practices. The bill before you would strengthen the election process and bring better informed voters into the system.

CSHB 247 might well have far greater significance than its sponsors ever hoped. If enacted, it could help voters understand for the first time some of the ballot propositions put before them. This bill could be the "sleeper" of the session in terms of its importance to the election process. A friend I used to lobby with in Washington, D. C. would call this a "Mother-pie" issue, short for apple pie and Motherhood.

In this election year, we anticipate that there will be a number of important ballot propositions before voters, including an advisory vote on the proposed amendment to the Constitution of Alaska mandating that meetings of legislative bodies be open to the public; possibly another on tort reform. The League believes that these an all other issues must be placed on the ballot in clear language.

We urge your approval of this legislation. Thank you for this opportunity to present our views.

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CSHB 247
PUBLISH DATE: 4/30/87

FISCAL NOTE

REQUEST:

Revision Date: 1/29/88
Title: An Act relating to the readability of certain election materials.
Sponsor: DAVIS
Requestor: Senate State Affairs

Agency Affected:
BRU:
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Linda Edgeworth
Phone: 465-4611
Division: Division of Elections
Date:

Approved by Commissioner:
Date: 2/1/88
Agency: Office of the Governor

Distribution (by preparer): 2/1/88
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version : HB 247
Publish Date :

REQUEST:

Revision Date:
Title : "An Act relating to certain election materials."
Sponsor : Representative Davis
Requestor : House State Affairs

Agency Affected : Department of Law
BRU : Legal Services

Components : Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND		-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)

Please see attached analysis.

Richard L. Peques

Prepared by : Richard I. Peques, Director
Phone : 465-3672
Division : Administrative Services
Date : April 13, 1987

Richard L. Peques /FOR/
Approved by Commissioner : Grace Berg Schaible, Atty. Gen.
Date : April 13, 1987
Agency : Department of Law

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 247

This bill amends AS 15.58 by adding a new section that provides a scoring methodology for the readability of the neutral summaries of ballot propositions that appear in the voter's pamphlet. Division of Elections and Department of Law staff responsible for preparing these summaries may have to hone their writing skills, but they will not require additional resources to implement this bill.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST:

Bill Version : HB 247
Publish Date : HOUSE 4/6/87

Revision Date: 4/13/87
Title : An Act relating to the readability of certain election materials.
Sponsor : Davis and Koponen
Requestor : Representative Mike Davis

Agency Affected : Legislative Affairs Agency
BRU : Legislative Council

Components : Legal Services

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	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

No fiscal impact.

Pamela A. Stoops

Prepared by : Pamela A. Stoops, Manager
Phone : 465-3850
Division : Administrative Services
Date : 4/13/87

Warren W. Endicott

Approved by: Warren W. Endicott, Executive Director
Date : 4/13/87
Agency : Legislative Affairs Agency

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

APR 18 1988

SCSCS HB 247 (SA)

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 247
PUBLISH DATE:

FISCAL NOTE

REQUEST:

REVISION DATE:
TITLE: An Act relating to the readibility of certain election materials.
SPONSOR: Representative Davis
REQUESTOR: Senate Judiciary

AGENCY AFFECTED: Legislative Affairs Agency
BRU: Legislative Council
COMPONENTS: Legal Services

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

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

FUNDING: (THOUSANDS OF DOLLARS)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

NO FISCAL IMPACT.

PREPARED BY: PAMELA STOOPS, MANAGER — Pamela Stoops — PHONE: 465-3850
DIVISION: ADMINISTRATIVE SERVICES — DATE: April 18, 1988

okayed by Pam Stoops 4/18

APPROVED BY: WARREN ENDICOTT, EXECUTIVE DIRECTOR — Warren W Endicott
AGENCY: LEGISLATIVE AFFAIRS AGENCY — DATE: April 18, 1988

DISTRIBUTION (BY PREPARER)
LEGISLATIVE FINANCE
LEGISLATOR SPONSOR
REQUESTOR ✓
OFFICE OF MANAGEMENT AND BUDGET
IMPACTED AGENCY (IES)

HB

261

State of Alaska

House Majority Leader

COMMITTEES

HOUSE HEALTH, EDUCATION
AND SOCIAL SERVICES
HOUSE JUDICIARY
HOUSE RULES

Representative Max F. Gruenberg, Jr.
District 11
Spenard, Upper Midtown Anchorage

P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3718
465-1968/4986

914 CLAY COURT
ANCHORAGE, ALASKA 99503
(907) 276-6844

M E M O R A N D U M

TO: Senator Jay Kerrtula, Chair
Senate Judiciary Committee

FROM: Max F. Gruenberg, Jr.

DATE: May 6, 1988

RE: CSHB 261, (Judiciary) "An Act relating to ignition interlock devices."

I would very much appreciate it if you would waive CSHB 261 through Senate Finance as soon as it is possible.

CSHB261 has a zero fiscal note from the Department of Corrections. The bill would not have a fiscal impact on any other state agency.

This bill had a thorough hearing in the Senate State Affairs Committee as well as the House HESS, Judiciary, and Finance Committees.

As explained in the enclosed Time Magazine article, HB 261 will allow judges to require persons convicted of alcohol-related offenses to install, at their expense, an "ignition interlock device" on their motor vehicles. This "mini-breathalizer" prevents the car from starting unless the driver "blows clean."

Courts around the country have started to require these devices. Twenty-two other state legislatures are presently considering ignition interlock legislation. Five states have already enacted laws establishing an interlock program. Four states have started ignition interlock programs through their

court systems without statutes and two states have passed resolutions to start study programs.

Nationwide studies show that multiple DWI offenders sentenced to an ignition interlock program are three times less likely to be reconvicted than are those sentenced under conventional DWI sentencing practices. Moreover, a survey of offenders who have installed the device shows that most believe this is an effective method of preventing DWI's.

The cost to the defendant is about $500.00 per year for installation and maintenance of the interlock device. The judge may deduct this cost from the defendant's fine.

CSHB 261 passed the House unanimously. It has the emphatic support of both Anchorage C.H.A.R. and Anchorage M.A.D.D. If we can keep persons with known alcohol-related problems from driving while intoxicated, we can save many lives. I hope you will support the bill.

Thank you very much.

Enclosure

State of Alaska

House Majority Leader

COMMITTEES

HOUSE HEALTH, EDUCATION
AND SOCIAL SERVICES
HOUSE JUDICIARY
HOUSE RULES

Representative Max F. Gruenberg, Jr.
District 11
Spenard, Upper Midtown Anchorage

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JUNEAU, ALASKA 99811
(907) 465-3718
465-4968/4986

914 CLAY COURT
ANCHORAGE, ALASKA 99503
(907) 276-6844

M E M O R A N D U M

TO: Senator Jay Kerttula, Chair
Senate Judiciary Committee

FROM: Max F. Gruenberg, Jr.

DATE: May 6, 1988

RE: Sectional Analysis for CSHB 261 (Judiciary) "An Act relating to ignition interlock devices."

Section 1
AS.09.50.250 (4) Provides the state with immunity in civil actions arising from the use of an ignition interlock system which has been certified by the Department of Corrections.

Section 2
AS 11.76.130 Makes it a violation to tamper with an ignition interlock system or rent or loan a motor vehicle with the knowledge that to do so would help someone violate their probation.

Section 3
AS 12.55.102 (a) Allows the court to require, as a condition of probation, that a person convicted of any alcohol-related offense, only drive a vehicle equipped with a certified ignition interlock system.

AS 12.55.102 (b) Allows the court to permit a limited exemption for a person to drive their employer's vehicle on the job.

AS 12.55.102 (c) Requires the surrender of the driver's license and the issuing of a special driver's certificate or a

copy of the defendant's judgment of a conviction while the ignition interlock driving restriction applies. The defendant must bear all costs of installing and maintaining the device.

AS 12.55.120 (c) Defines ignition interlock device as a device certified by the Commissioner of Corrections that will prevent a motor vehicle from starting if the driver has consumed alcohol.

AS 12.55.120 (d) Allows a court to deduct the cost of an ignition interlock device as part of the fine imposed against the defendant.

Section 4
AS 28. 35.030 Amends the DWI statute to allow the imposition of an ignition interlock restriction as a condition of probation.

Section 5
AS 28.35.030 (h) Amends the statute that sets minimum fines for a DWI conviction in order to allow the court to deduct the cost of an ignition interlock device from the fine imposed.

Section 6
AS 28.35.032 (g) Amends the statute that sets minimum fines for refusal to submit to a chemical test to allow the imposition of an ignition interlock restriction as a condition of probation.

Section 7
AS 28.35.032 (k) Amends the statute that sets the minimum fines for refusal to submit to a chemical test in order to allow the court to deduct the cost of an ignition interlock device from the fine imposed.

Section 8
AS 33.05.020 (c) Requires the Commissioner of Corrections to adopt regulations for the certification, maintenance, and monitoring of ignition interlock devices. Requires the manufacturer of the interlock device to bear the cost of the certification.

AS 33.05.020 (d) Requires that a warning label that states the penalties for circumventing or tampering with an ignition interlock device be affixed to the device as a condition of certification.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST:

Bill Version: HB 261
Publish Date: 4-8-87

Revision Date:
Title: "An Act relating to ignition interlock devices
Sponsor: Dept Gruenberg, Barnes,
Requestor: Donley

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
CAPITAL	Ø	Ø	Ø	Ø	Ø	Ø
REVENUE	Ø	Ø	Ø	Ø	Ø	Ø

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	Ø	Ø	Ø	Ø	Ø	Ø

POSITIONS:

FULL-TIME	Ø	Ø	Ø	Ø	Ø	Ø
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The Department of Corrections will be able to perform the responsibilities described in this Bill and supports its concept.

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

Approved by Commissioner: Susan Humphrey-Barnett
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

American Notes

Mayor Washington at a rally with senior citizens

The doomed Atlas-Centaur

If she had one for the road, her car won't start

CRIME

Etta Smith's Fatal Vision

For Etta Louise Smith, the nightmare began shortly before Christmas 1980, when she claims to have had a vision of something white, covered by brush. A Lockheed aerospace worker in Burbank, Calif., Smith does not consider herself a psychic. Yet after she heard radio reports about Nurse Melanie Uribe, 31, who had vanished on her way to work, Smith was convinced she knew where the body could be found. She took her information to the police, who put her off.

Smith then organized a search with two of her young children and a 20-year-old niece. In remote Lopez Canyon, 18 miles north of Los Angeles, her daughter spotted a white heap that turned out to be Uribe—robbed, raped and beaten to death. Smith told police of her discovery and was arrested for the murder.

While she was held in jail for four days, the killers—three men with prior arrest records—turned up. Smith, 39, filed a suit for false arrest. Last week Los Angeles County Superior Court Judge Joel Rudof ruled that despite Smith's detailed account of the murder of a woman she never knew or saw, police did not have probable cause to lock her up. Smith's attorney has asked for $750,000 in damages; the jury's verdict is expected this week.

SPACE

A Bolt In the Blue

Atlas-Centaur rockets have been launching U.S. satellites into orbit for the past 25 years, but last week the sturdy workhorse suffered a rare failure. Less than a minute after liftoff from Pad 36B at Cape Canaveral in threatening weather, a $78 million, 137-ft. rocket disappeared into rain-swollen thunderheads and went out of control. A range safety officer hit the destruct button, and the rocket exploded along with its payload, an $83 million communications satellite. For NASA, struggling to recover from the loss of the *Challenger* shuttle 14 months ago, the aborted flight broke a string of seven successful launches since September. The cause was not immediately known, although a leading suspect was lightning.

INVENTIONS

Drunkproofing Automobiles

The crusade against drunk driving has gained an ingenious new weapon: the breath-test ignition lock. The auto's ignition is linked to a breath-alcohol measuring device, and it becomes impossible to start a car unless the driver is sober. Already used in some states, including Ohio, Maryland and Michigan, and pending in a dozen or so others, the locks will undergo their first systematic trial in California by summer.

Intended as an alternative to jail terms and suspended licenses for drunk drivers, the locks have mouthpieces into which drivers must exhale to measure their breath-alcohol level. The manufacturers, Guardian Interlock Systems of Denver and Safety Interlock of Carmel, Calif., claim that built-in safeguards make it difficult for drivers to use compressed air or borrow a breath of fresh air from a friend. One unsolved problem: how to prevent a tipsy driver from borrowing a car that has not been drunkproofed.

CALIFORNIA

What's Yours Is Mine

Mount Pico Blanco near Big Sur contains 600 million tons of limestone, one of the largest deposits in the U.S. The Granite Rock Co. wants to quarry the scenic mountain, which is on federal land, while the California coastal commission wants to protect it. Last week the Supreme Court ruled 5 to 4 for the coastal commission, upholding the right of states to enforce environmental requirements even on federal property. California can require the mining company to obtain a state permit, even though it had received a federal go-ahead. Fully 19 states, along with the National Governors' Association, had filed briefs as friends of the court on behalf of the coastal commission.

CHICAGO

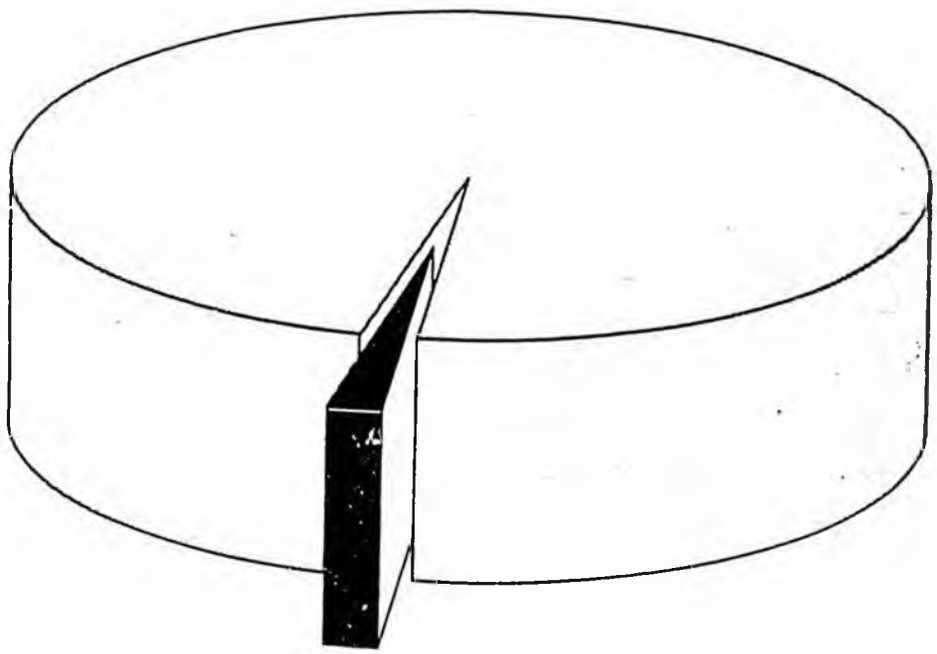
Dishonorable Opponents

Chicago has never been known for civics-textbook politics, but this year's mayoral race amounts to a demolition derby. After winning February's Democratic primary, black Mayor Harold Washington has been challenged by two white opponents from his own party for the April 7 election, although both are running under minor-party labels. Yet Cook County Tax Assessor Thomas Hynes and Alderman Edward Vrdolyak are spending most of their time attacking each other.

After Vrdolyak accused Hynes of using his office as county tax assessor to gain more business for his law firm, Hynes was quoted in the Chicago *Sun Times* suggesting that Vrdolyak had met with a Mafia boss. Vrdolyak sued for libel and accused Hynes of being a "liar and a sleaze." Even Washington, who leads Hynes by 35% and Vrdolyak by 39%, could not resist stooping for a shot at his longtime enemy Vrdolyak. Said the mayor: "He's slime."

RESULTS

Guardian Interlock Responsible Driver Program℠ significantly reduces risk of repeat drunken driving



GUARDIAN INTERLOCK RESPONSIBLE DRIVER PROGRAM SAMPLE POPULATION OVER 12 MONTH PERIOD

REARREST RATE 4.6%

A STATISTICAL ANALYSIS OF DUI/DWI* offenders in the Guardian Interlock Responsible Driver Program℠ shows that only 4.6% were rearrested for drunken driving within the 12 months ending December, 1987.

In comparison, many jurisdictions nationwide report that approximately 15% of multiple DUI/DWI offenders subject to only conventional sentencing are rearrested within one year.

The statistics indicate that court officials who sentence offenders to the Responsible Driver Program are three times more likely to reduce the number of repeat drunken driving offenses in their jurisdictions than those who do not use the program.

The analysis involved a sample population of mostly multiple offenders sentenced for at least one year to the program typically as a condition of probation for drunken driving.

THE RESPONSIBLE DRIVER PROGRAM provides for installation of the Guardian Interlock™ in an offender's vehicle and monitors his or her use of the computerized device. Guardian Technologies, Inc., manufacturer of the device, reports the results of these monitoring checks to the court every 60 days.

More than 100 courts in eight states are including the program in their sentencing of offenders to deter further drunken driving offenses. The program can be used as an alternative to traditional sentencing or to supplement and enhance such measures as alcohol treatment.

The Guardian Interlock, which requires a breath test before a vehicle will start, is tamper-resistant. As an added safeguard, it features technology which can detect attempted tampering and circumvention.

For more information on the Guardian Interlock Responsible Driver Program, call toll-free (800) 457-0001; In Colorado, call (303) 831-6333. Or write: Program Development, Guardian Technologies, Inc., 1009 Grant Street, Denver, CO 80203. Results on the program will be updated periodically.

*Driving Under the Influence/Driving While Intoxicated

GUARDIAN TECHNOLOGIES, INC.

HB

266

Original sponsor: Ulmer

IN THE HOUSE BY THE JUDICIARY COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 266 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the recording of documents."

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

* Section 1. LEGISLATIVE FINDINGS. The legislature finds that the

(1) recording of legal documents of the kind customarily recorded throughout the United States is an essential state function;

(2) time and place of the recording of a document can be more important than the underlying legal sufficiency of the document;

(3) recording offices exist primarily for the benefit and convenience of the general public;

(4) business community, commercial institutions including banks, and private individuals cannot function effectively without the public notice protection afforded by recording their documents; and

(5) policy of the state is to maintain a convenient means of regularly recording legal documents relating to property and obtaining information concerning existing recorded documents.

* Sec. 2. AS 34.15 is amended by adding a new section to read:

Sec. 34.15.343. RECORDING CRITERIA. When determining whether a document may be recorded, the recorder

(1) may not consider whether the contents of the document are legally sufficient to achieve the purposes of the document;

(2) may not reject a document because the document

(A) does not satisfy the current requirements for recording, if the document satisfied the requirements for recording that existed at the time the document was executed;

(B) serves more than one purpose;

(C) does not state the name of the recording district, if the name is given to the recorder at the time the document is offered for recording, or if the name is contained in a cover letter accompanying the document;

(D) references an attached exhibit that is not labelled;

(E) is a certified copy of an official document that creates an interest in real property and that is from a governmental office in this or another state; or

(3) may not require that a document that serves more than one purpose be recorded separately for each of the purposes; this paragraph does not prevent the multiple recording of the document if the person offering the document requests that the document be recorded for more than one of its purposes.

* Sec. 3. AS 44.37.025(a) is amended to read:

(a) The Department of Natural Resources shall adopt regulations [,] establishing, modifying, or discontinuing recording districts or precincts and prescribing the records to be maintained and the instruments to be recorded. A regulation may not impose a restriction on document recording unless the restriction is required by statute or furthers a legitimate administrative need of the recorder; a "legitimate administrative need" includes ensuring the legibility of the documents and identifying the parties, the capacity of each party, and the affected property.

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ALASKA STATE HOUSE

OFFICE OF MAJORITY WHIP

CO-CHAIR
HEALTH, EDUCATION & SOCIAL SERVICES

LABOR & COMMERCE
SUBCOMMITTEE ON FOREIGN TRADE

REPRESENTATIVE JOHNNY ELLIS

M E M O R A N D U M

TO: The Honorable Jalmar Kertulla — MAY 2 1988
Chair, Senate Judiciary Committee

FROM: Rep. Johnny Ellis JE

RE: HB 491; "Statutory Form Power of Attorney"

DATE; May 2, 1988

I respectfully request that you schedule a hearing on HB 491 as soon as possible.

This bill creates a power of attorney form and sets into statute the description of powers authorized. My staff developed the legislation with the assistance of the Older Alaskans Commission, the probate section of the Alaska Bar Association, and Alaska Legal Services.

The need for this legislation is based upon problems associated with the broadness of Alaska's existing power of attorney statutes. Because the existing statute is so broad, powers of attorney drafted by its authority lack uniformity. This is confusing to the people who need a power of attorney and to the third party who is supposed to honor the power.

A critical secondary need for this legislation is based upon the necessity of an increasing number of Alaskan Seniors to designate in advance the people they wish to manage their affairs should a temporary or permanent disability occur. The form created by this statute contains a check off section for designating the effectiveness of the power in case of incapacitation.

I have enclosed some back up for your convenience and would be more than happy to supply more information at your request.

Thank you for considering this request.

enclosures

JUNEAU REPORT

Power of attorney bill: 'Senior-friendly'

by Rebecca Goodman

A "much improved" durable power of attorney bill — CS HB491 — emerged from the House Health, Education and Social Services committee in late April following some technical changes suggested by the Older Alaskans Commission and several health/ legal specialists.

At *Senior Voice* press time the bill also had passed House Judiciary and was poised for a House floor vote April 26 or 27.

The bill, co-sponsored by Reps. Johnny Ellis (D-Anchorage) and Max Gruenberg (D-Anchorage), would clarify existing statutes and provide an approved form for consumers to use in drawing up a durable power of attorney.

A durable power of attorney permits an individual to give another individual the authority to act on their behalf to do a variety of everyday legal matters.

Unlike the simple power of attorney which becomes ineffective upon incapacitation of the individual, a "durable" power of attorney becomes effective either at the start of a disability of the individual, or it starts prior to the disability and remains in effect throughout it.

"This bill is much improved," Ellis told committee members. "It clears up language in key sections and addresses concerns with reference to seniors' benefits and with reference to the existing Living Will statutes."

Ellis said the bill shortens the time required and reduces the expenses involved in putting a power of attorney into place.

A durable power of attorney permits an individual to give another individual the authority to act on their behalf to do a variety of everyday legal matters.

Connie Sipe, executive director of the Older Alaskans Commission, told lawmakers, "we're very supportive of this bill."

The new streamlined form in the measure would make the creation of a power of attorney more understandable to consumers, yet not affect their legal rights in any way, Sipe said.

A recent workshop on guardianship issues illustrated the need for clearer statutes on powers of attorney, she added.

Most of the nearly 100 health/ legal specialists who attended the Anchorage workshop agreed durable power of attorney could help seniors avoid wasting their time and money in planning "advance directives," or measures that spell out an individual's wishes in the event of incapacitation.

Most health care providers strongly support this legislation as a means to avoid the turmoil of court-appointed guardianships, Sipe said.

Rep. Bill Hudson (R-Juneau) said he could see the logic behind the bill.

"Having a mother-in-law who is now widowed and 75 years old, I can really see the need to have these forms available and in terms people can understand.

"It seems a good idea to distribute this information around to the various senior centers so seniors could make these choices," Hudson suggested.

The amended version of the bill is now in House Judiciary. Aides to Ellis said although "time's running out" for the bill this session, the "groundwork for a good piece of legislation" had been established for introduction in a new legislative session.

"If it doesn't pass this time around, it doesn't mean we've lost the issue," one aide noted.

Come Celebrate!

OPAG's 20th birthday party is planned for May 12

SENIOR BILL DIGEST

SCSCS HB 36 — Grussendorf (D-Sitka).Car insurance rate break for seniors.
Allows reduced auto insurance rates for persons 55 and older who undergo approved driver training courses. Governor signed into law March 1988. Chapter 9 SLA 88.

HB 159 — Governor by Request. Income-based senior property tax exemption.
Would tie senior homeowners' and disabled veterans' property tax exemptions to income level on sliding-scale basis. Bill "shelved" February 10, 1988, by House Community and Regional Affairs Committee.

SSHB 346 — Adams (D-Kotzebue). Fishing areas for seniors.
Would authorize Board of Fisheries to establish

JUNEAU REPORT

Bill redefines power of attorney laws

by Rebecca Goodman

When Louise Black's 80-year-old mother had a massive, debilitating stroke in Anchorage last year, the last thing Black expected she'd have to do was go to court to gain financial control of her mother's assets just so she could pay for her mother's expensive and necessary nursing care.

The process was not simple.

Black said she spent "several exhausting weeks" and "several thousand dollars on attorney and court fees" trying to arrange to have herself appointed conservator of her mother's assets.

"Mother does have a will and I figured that would take care of all the legal details we'd ever run into," Black said. "I never dreamed she'd end up like this unable to run her own affairs."

If Black and her mother had known about a legal device known as a durable power of attorney, they might have been able to save themselves some expense and delay.

A durable power of attorney should not be confused with a general, nondurable power of attorney.

A general, nondurable power of attorney permits an individual (such as Black's mother) to give another person (such as Black) the authority to act on their behalf to do things such as receive and deposit assets; sign contracts; spend income from trusts; and act on a variety of everyday legal matters.

This kind of power of attorney is limited because it's effective only as long as the person who gave the power of attorney, the "principal," remains mentally competent.

For Black's mother, disabled by stroke, a general, nondurable power of attorney would have become ineffective just at the moment when she most needed someone such as her daughter to act in her behalf.

A durable power of attorney goes beyond a general power of attorney in that it becomes effective either at the start of the disability of the "principal," or it starts prior to the disability and remains in effect throughout it.

'Mother does have a will and I figured that would take care of all the legal details . . . I never dreamed she'd end up like this unable to run her own affairs.'

-Louise Black

Durable power of attorney authorizations can save time, money and frustrations. So why don't more Alaskans take advantage of them?

The problem, said Rep. Johnny Ellis (D-Anchorage), is in Alaska's existing statutes.

"The first concern is the vagueness of the existing statutes. Because the existing statute does not explicity describe the powers which the principal may delegate, many institutions (such as banks, health facilities, etc.) do not honor powers of attorney drafted under the statute," Ellis said.

To clear up the problem, Ellis has sponsored HB 491 to set into statute the actual form an individual may use in the event of disability.

Among other things, HB 491 would:

- spell out in detail the specific powers which may be exercised under a power of attorney;
- provide for a simple method to determine "disability," without requiring a judicial determination; and
- provide an approved form for use to save time and expense in the drawing up of a power of attorney.

During a mid-March teleconference on HB 491 in the House Health, Education and Social Services Committee, several attorneys and seniors signaled their support for the measure.

Speaking for the Older Alaskans Commission, project coordinator Fran Toland told lawmakers the commission "strongly supports" the bill but would like to see some minor amendments.

One of the suggested amendments would tie together the power of attorney measure and the Living Will statute which went into effect two years ago.

Toland and others said the health care provisions in the power of attorney measure should dovetail with the Living Will statutes to prevent conflicts.

Alaska Legal Services attorney Colleen DuFour echoed those suggestions.

"We need clarifications on what an attorney could do. If a person executes a separate Living Will, that individual should be able to empower their legal agent to see that the will is carried out. We need clear signals to enforce a validly executed Living Will form," DuFour said.

Ellis said suggested amendments to streamline and clarify HB 491 would be addressed soon.

At *Senior Voice* press time another hearing on the measure was expected.

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REPRESENTATIVE JOHNNY ELLIS

HB 491: CREATING A STATUTORY FORM POWER OF ATTORNEY

1) IS THERE A NEED FOR THIS LEGISLATION?

Yes. There is a need because the existing power of attorney statute is too broad. The broadness of the existing statute results in a lack of uniformity which is confusing to the people who need a power of attorney and to the third party who is supposed to honor the power. The current process for drafting a power of attorney is time-consuming and expensive.

2) WHO WILL BENEFIT BY THIS LEGISLATION?

All Alaskans interested in creating a power of attorney in any form will benefit by passage of this bill because the statutory form:

a. will require less attorney time and, as a result will be less costly to produce

b. carries with it an enforcement provision warning third parties of possible penalties for refusing to honor the powers granted

c. will increase awareness of the ability and need to designate an agent <u>before</u> incapacitation

d. contains provisions which will allow family members to take care of an individual who is no longer able to make rational decisions

3) HOW DOES THE "DURABILITY CLAUSE" WORK?

If an individual chooses the durability option set out on page 3 of the form, that individual will have the advantage of choosing <u>ahead of time</u> the person who will manage his or her affairs in the event of a disabling illness or accident.