

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5728 HOUSE JUDICIARY

1 OF ALASKA AND HAS BEEN HERE FOR ONE YEAR, AS MY CLIENT HAD,
2 WOULD BE CONSIDERED A DOMICILIARY FOR THE PURPOSE OF IN-
3 STATE TUITION.

4 THE COURT: ~~NO~~ HUH.

5 MR. ZOBEL: THAT SAME PERSON WOULD BE DENIED A
6 LOAN BY THE DEFENDANTS. SO YOU GET A KIND OF SLIDING SCALE
7 WHERE YOU GET IN-STATE TUITION IF YOU HAVE BEEN HERE A
8 YEAR, BUT YOU DON'T GET A LOAN FROM THE SAME STATE GOVERNMENT,
9 EVEN THE SAME STATE GOVERNMENT THAT SAYS YOU LIVE HERE,
10 UNTIL YOU HAVE BEEN HERE FOR TWO YEARS.

11 THE COURT: YES.

12 MR. ZOBEL: IT MUST ALSO BE RECOGNIZED THAT THERE
13 ARE NO LAW SCHOOLS IN ALASKA, NO MEDICAL SCHOOLS. THERE ARE
14 A WHOLE HOST OF GRADUATE SCHOOL PROGRAMS, WHICH MEANS IF
15 PEOPLE LIKE MY CLIENT ARE GOING TO GET ANY ASSISTANCE FROM
16 THE STATE OF ALASKA FOR A WHOLE HOST OF PROGRAMS, THEY ARE
17 GOING TO HAVE TO GET IT THROUGH THIS PROGRAM OR NOT AT
18 ALL.

19 IT IS NOT THE SAME AS THE SCHOOL LOAN CASES. THE
20 SCHOOL LOAN CASES CUT THE OTHER WAY IN MY VIEW. I KNOW
21 THAT MR. ~~RAY~~ HAYHARD IS OF THE VIEW THAT THEY DIRECTLY APPLY
22 HERE. THERE ARE SEVERAL DISTINCTIONS, ASIDE FROM THE FACT
23 THAT THEY ALL HAVE DEALT WITH THE ONE-YEAR REQUIREMENT,
24 WHICH IS AN IMPORTANT DISTINCTION.
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THE PEOPLE THAT APPLIED FOR THESE LOANS ARE NOT

1 NECESSARILY STUDENTS. THEY ARE PEOPLE WHO LIVE IN ALASKA.
2 THEY ARE HOUSEWIVES. MY CLIENT WAS WORKING IN A LAW FIRM
3 AT THE TIME. THEY ARE PEOPLE, FISHERMEN, PEOPLE IN ALL
4 WALKS OF LIFE, AND THERE IS NO PRESUMPTION OF TRANSIENCE
5 THAT SHOULD BE APPLIED TO THOSE APPLICANTS FOR THOSE LOANS.
6 IT IS UNLIKE THE SITUATION WHERE PEOPLE COME INTO A STATE
7 TO GO TO SCHOOL AT A PARTICULAR INSTITUTION. MAYBE THIS
8 PRESUMPTION OF TRANSIENCE HAS SOME REASONABLENESS IN THAT
9 CONTEXT, BUT IT CUTS THE OTHER WAY IN THE KIND OF PROGRAM
10 THAT ALASKA HAS. SO WE DO NOT ACCEPT THE ARGUMENT OF THE
11 DEFENDANTS THAT THIS PRESUMPTION OF TRANSIENCE WOULD ALLOW
12 THEM TO IMPOSE A LONGER DURATIONAL RESIDENCY REQUIREMENT.

13 IN ADDITION, YOUR HONOR, THERE WAS NO EVIDENCE
14 IN THOSE CASES, AND IT WAS SPECIFICALLY NOTED IN STARN'S
15 AND AT LEAST A COUPLE OF THE OTHER STUDENT TUITION CASES
16 THAT THERE WAS NO EVIDENCE THAT THIS PARTICULAR ONE-YEAR
17 REQUIREMENT HAD AN EFFECT ON DURATIONAL RESIDENCY REQUIRE-
18 MENTS OR AN EFFECT ON INTERSTATE MIGRATION.

19 NOW, THE DEFENDANTS, IN WHAT I THINK IS AN
20 AMAZING TABLE -- IT IS UNUSUAL IN DURATIONAL RESIDENCY
21 LITIGATION TO HAVE THIS KIND OF TABLE -- AS EXHIBIT 5 TO THE
22 ROMESBURG DEPOSITION, AND ALSO IT IS IN THE AFFIDAVITS
23 SUBMITTED BY DR. ROMESBURG, WHO IS THE DEFENDANT IN CHARGE
24 OF COMMISSION ON POSTSECONDARY EDUCATION, WE HAVE THIS
25 TABLE 2., WHICH IS PROJECTED ALASKA STUDENT LOAN RESIDENCY

1 EFFECTS 1982-83 THROUGH 1988-89. HERE WE HAVE OFFICIALS
2 OF THE STATE OF ALASKA CALIBRATING HOW MANY APPLICANTS
3 THEY WILL GET IF THEY HAVE A TWO-YEAR REQUIREMENT, HOW
4 MANY APPLICANTS THEY WILL HAVE IF THEY HAVE A ONE-YEAR
5 REQUIREMENT, AND HOW MANY APPLICANTS THEY WILL HAVE IF THEY
6 HAVE A SIX-MONTH REQUIREMENT AND HOW MUCH MONEY WILL HAVE TO
7 BE SPENT. I SUGGEST TO THE COURT THAT THAT SHOWS AN
8 INORDINATE CONCERN WITH SIMPLY SAVING MONEY. THERE IS
9 NOTHING ON THIS TABLE THAT INDICATES THAT THERE IS A CONCERN
10 HERE WITH WHAT IS A REASONABLE TEST FOR WHETHER PEOPLE
11 TRULY HAVE MADE THEIR HOME IN ALASKA.

12 WE SEE A COMPLETE CONCENTRATION ON HOW LONG THESE
13 DURATIONAL RESIDENCY REQUIREMENTS ARE GOING TO HAVE TO BE
14 TO DISCOURAGE PEOPLE FROM APPLYING FOR A LOAN. DR. ROMESBURG
15 SAYS IN HIS AFFIDAVIT:

16 "EFFECT OF CHANGING RESIDENCY

17 "SHOULD THE TWO-YEAR RESIDENCY BE REDUCED,
18 THE NUMBER OF ELIGIBLE APPLICANTS WOULD INCREASE.
19 CERTAINLY, THE MORE THE REDUCTION THE LARGER THE
20 POOL. THERE ARE TWO FACTORS AT WORK: ONE, THOSE
21 PERSONS ALREADY LIVING IN ALASKA, BUT HAVING BEEN
22 HERE FOR LESS THAN TWO YEARS WOULD BE ADDED TO THE
23 POTENTIAL BORROWING POOL; AND TWO, AS THE
24 RESIDENCY IS REDUCED, THE DESIRABILITY OF MOVING
25 TEMPORARILY INTO THE STATE FOR THE SOLE PURPOSE OF

1 OBTAINING A STUDENT LOAN IS INCREASED."

2 WE SEE HERE THE DEFENDANTS ADMITTING THAT THIS
3 DOES HAVE AN EFFECT ON INTERSTATE MIGRATION. AND, NUMBER TWO,
4 IT EVEN HAS THE EFFECT OF ELIMINATING FROM THE POTENTIAL
5 APPLICANTS PEOPLE WHO DO ALREADY LIVE HERE. I SUGGEST THAT
6 THIS SHOWS THE PURPOSE THAT THE LEGISLATURE HAD IN MIND
7 HERE IS NOT ONE TO DETERMINE WHETHER PEOPLE TRULY LIVE IN
8 ALASKA. THE CONCERN HERE IS JUST TO CUT DOWN COSTS ON THIS
9 VERY GENEROUS PROGRAM, AND THAT IS NOT ENOUGH TO SUPPORT
10 ANY DURATIONAL RESIDENCY REQUIREMENT.

11 THE COURT: I AGREE. IF THE PRINCIPAL PURPOSE IS
12 SIMPLY TO CUT DOWN THE AMOUNT OF MONEY YOU HAVE TO PUT OUT
13 IN LOANS, THAT WOULD NOT BE A VALID REQUIREMENT. BUT --
14 WELL, ALL RIGHT.

15 MR. ZOBEL: THERE ARE ALSO A COUPLE OF THINGS, IF
16 I MAY CONTINUE, UNLESS YOU HAD A QUESTION, YOUR HONOR.

17 THE COURT: NO. GO AHEAD.

18 MR. ZOBEL: THE REQUIREMENT OF THE STATUTE IS THAT
19 YOU BE A DOMICILIARY OF ALASKA AT THE TIME YOU APPLY. WE
20 FIND IN THE ARGUMENTS OF THE DEFENDANTS ALL OF THIS
21 CONCERN ABOUT WHETHER PEOPLE ARE GOING TO RETURN TO ALASKA,
22 WHICH DOESN'T HAVE ANYTHING TO DO WITH DOMICILIARY STATUS
23 AT THE TIME YOU APPLY. SOMEONE WHO HAS BEEN HERE FOR 20
24 YEARS -- IN FACT, I WOULD SUGGEST THAT THERE ARE A LOT OF
25 YOUNG PEOPLE WHO HAVE NEVER BEEN OUT OF THE STATE, WHO MIGHT

1 APPLY FOR A LOAN, AND MAYBE THEY ARE NOT GOING TO COME BACK.
2 THERE IS NO RELATIONSHIP BETWEEN THE LENGTH OF RESIDENCY AND
3 THE KIND OF ATTACHMENT TO THE STATE THAT TELLS US ANYTHING
4 ABOUT WHETHER PEOPLE ARE GOING TO RETURN TO THE STATE.

5 THE COURT: ISN'T THERE? ISN'T THERE?

6 MR. ZOBEL: NO.

7 THE COURT: ISN'T THERE A PRESUMPTION THAT THE
8 LONGER YOU LIVE IN THE STATE, THE MORE LIKELY YOU ARE TO --
9 THE MORE USED TO IT YOU ARE, THE MORE INDICATION THAT YOU
10 LOVE IT AND THE DETERMINATION TO COME BACK HERE AND MAKE
11 YOUR LIFE HERE?

12 MR. ZOBEL: AT LEAST THAT IS NOT A MATTER OF
13 PROOF OF DOMICILE. THEY CONTEND THAT WE ARE USING THIS TWO-
14 YEAR PERIOD TO DETERMINE WHETHER PEOPLE ARE DOMICILIARIES
15 AT THE TIME THEY APPLY.

16 THE COURT: SURE, SURE.

17 MR. ZOBEL: BUT WHAT DOES THAT HAVE TO DO WITH THE
18 CONCERN WHETHER PEOPLE ARE GOING TO COME BACK TO THE STATE
19 AND CONTRIBUTE TO IT? THE STATUTE IS CONCERNED WITH
20 DOMICILE AT THE TIME THAT THEY APPLY.

21 THE COURT: WELL, HERE AGAIN DOMICILE IS A
22 COMPLETELY SUBJECTIVE MATTER. I KNOW, NOBODY EXCEPT ME
23 KNOWS RIGHT NOW WHETHER I AM A DOMICILIARY OF ALASKA. IT
24 IS IN MY OWN MIND. IT SO HAPPENS THAT I AM INTENDING TO GO
25 BACK TO LOS ANGELES WHEN I GET THROUGH HERE IN ABOUT FIVE

1 WEEKS. BUT I COULD COME UP HERE AND SAY THAT I AM A
2 PERMANENT RESIDENT. ALASKA, IT SEEMS TO ME, HAS THE RIGHT
3 TO CAUSE A PERSON TO DEMONSTRATE HIS ATTACHMENT TO ALASKA
4 BY HAVING BEEN HERE FOR A WHILE, AND THAT AMOUNT OF FOR A WHILE
5 IS WHAT WE ARE CONCERNED ABOUT.

6 MR. ZOBEL: I THINK THAT THE STATE OF ALASKA COULD
7 ASK YOU WHERE YOU HAVE A DRIVER'S LICENSE AND WHERE YOU VOTE
8 AND I SUGGEST THAT WOULD ELIMINATE, PROBABLY -- I DON'T
9 KNOW, YOUR HONOR -- BUT THAT WOULD ELIMINATE YOU FROM THE
10 POOL OF POTENTIAL APPLICANTS FOR STUDENT LOANS VERY QUICKLY.

11 THE COURT: IF I HAD THE CYNICAL INTENTION OF
12 COMING UP HERE AND ESTABLISHING RESIDENCE, DOMICILE, IF YOU
13 PLEASE, FOR THE PURPOSE OF GETTING A LOAN, IT WOULDN'T BE
14 VERY HARD TO APPLY FOR A DRIVER'S LICENSE, WOULD IT? IT
15 WOULDN'T BE VERY HARD TO FULFILL A REQUIREMENT OF VOTING.

16 MR. ZOBEL: THERE ARE ALL KINDS OF FACTORS THAT
17 GO INTO MAKING UP DOMICILE.

18 THE COURT: YES.

19 MR. ZOBEL: THE DEFENDANTS LOOK AT THOSE FACTORS,
20 WHETHER PEOPLE HAVE MADE INCONSISTENT CLAIMS OF RESIDENCY
21 WITHIN THE RECENT PAST.

22 THE QUESTION HERE IS AT WHAT POINT DO WE START TO
23 IMPLICATE THE UNITY OF THE COUNTRY, THE RIGHT TO MIGRATE,
24 THE EQUALITY OF PEOPLE WHO HAVE TAKEN UP RESIDENCY HERE,
25 THE LONGER THIS PERIOD BECOMES. NOW, WE HAVE MADE SEPARATE

1 CLAIMS UNDER THE CITIZENSHIP CLAUSE AND PRIVILEGES AND
2 IMMUNITIES CLAUSES OF ARTICLE IV AND THE FOURTEENTH AMENDMENT

3 NOW, WHAT THE DEFENDANT SAYS ABOUT THOSE CLAIMS
4 IS, BASICALLY, WELL, THEY ARE OUTSIDE ACCEPTED CONSTITUTIONAL
5 ANALYSIS. I THINK THAT IS COMPLETELY WRONG. THEY ARE
6 OUTSIDE OF THE EQUAL PROTECTION ANALYSIS, BUT THEY ARE VERY
7 SPECIFIC AND SEPARATE CLAIMS. I THINK THE QUESTION HAS TO
8 BE APPROACHED FROM SOMETHING OTHER THAN JUST SIMPLE REASON-
9 ABLENESS WHEN WE GO TO THOSE CLAUSES OF THE CONSTITUTION.

10 IN FACT, JUSTICE WHITE, IN JONES V. HELMS, ASKED
11 THE QUESTION: WHY ARE WE RUNNING THESE RIGHT TO TRAVEL
12 QUESTIONS THROUGH THE EQUAL PROTECTION CLAUSE? WHY DON'T
13 WE JUST LOOK AT THE RIGHT THAT IS IMPLICATED AND BALANCE
14 THAT AGAINST WHATEVER THE NEEDS OF THE STATE ARE?

15 AS EARLY AS 1873 IN THE SLAUGHTER-HOUSE CASES
16 THE COURT SAID THAT A CITIZEN OF THE UNITED STATES CAN,
17 OF HIS OWN VOLITION, BECOME A CITIZEN OF ANY STATE BY A
18 BONA FIDE RESIDENCE THEREIN WITH THE SAME RIGHTS AS THE
19 OTHER CITIZENS OF THE STATE. CERTAINLY, THE SLAUGHTER-HOUSE
20 CASES ARE NOT OUTSIDE OF THE ESTABLISHED CONSTITUTIONAL
21 ANALYSIS.

22 I THINK THAT THOSE PROVISIONS OF THE CONSTITUTION
23 REQUIRE US TO USE A LESS INTRUSIVE MEANS ANALYSIS. AS SOON
24 AS WE APPLY THAT TO THIS CASE, WE HAVE TO ARRIVE AT THE
25 CONCLUSION THAT THERE ARE PLENTY OF OTHER WAYS FOR THE STATE

1 OF ALASKA TO DETERMINE THE FACT OF DOMICILE, ONES THAT DO
2 NOT HAVE SUCH AN IMPACT ON THE PEOPLE WHO HAVE COME HERE TO
3 LIVE BUT MAY HAVE BEEN HERE LESS THAN TWO YEARS.

4 JUSTICE O'CONNOR'S CONCURRING OPINION IN ZOBEL V.
5 WILLIAMS -- I THINK IT IS A PERSUASIVE OPINION --

6 THE COURT: SHE IS THE ONLY ONE THAT ADOPTED THAT
7 POSITION.

8 MR. ZOBEL: I CAN ASSURE YOU THAT ARGUMENT WAS
9 NOT MADE IN THAT CASE, AND THAT IS THE REASON WHY THE COURT
10 PROBABLY DIDN'T ADOPT IT AS ITS RATIONALE. BUT THAT DOESN'T
11 MAKE IT LESS PERSUASIVE OR LESS APPLICABLE TO THIS CASE.

12 SHE SAID IN THAT CASE IT IS DIFFICULT TO IMAGINE
13 A RIGHT MORE ESSENTIAL TO A NATION AS A WHOLE THAN THE RIGHT
14 TO ESTABLISH RESIDENCY IN A NEW STATE. JUST AS OUR FEDERAL
15 SYSTEM PERMITS THE STATE TO EXPERIMENT WITH DIFFERENT SOCIAL
16 AND ECONOMIC PROGRAMS, IT ALLOWS THE INDIVIDUAL TO SETTLE
17 IN THE STATE OFFERING THOSE PROGRAMS BEST TAILORED TO HIS
18 OR HER TASTES.

19 AS AN EARLIER ATTORNEY GENERAL'S OPINION, AT THE
20 TIME THIS WAS DISCUSSED IN THE LEGISLATURE, NOTED -- AND I
21 KNOW THAT MR. MAYNARD WILL TELL YOU THAT WASN'T A FORMAL
22 OPINION; IT WAS AN OPINION THAT CAME FROM THE ATTORNEY
23 GENERAL'S OFFICE OF ALASKA, AND IT WAS POINTED OUT THIS TWO-
24 YEAR PERIOD WAS PROBABLY UNCONSTITUTIONAL. ONE OF THE
25 REASONS IT WAS PROBABLY UNCONSTITUTIONAL IS, AS VLANDIS

1 POINTED OUT, VLANDIS V. KLINE, THERE ARE PLENTY OF OTHER
2 WAYS TO DETERMINE DOMICILIARY STATUS WITHOUT HAVING AN
3 ABSOLUTE BAR OF A TWO-YEAR PERIOD.

4 THE PRIVILEGES AND IMMUNITIES CLAUSE OF ARTICLE IV
5 REQUIRES AT LEAST MIDDLE-TIERED SCRUTINY. THE PRIVILEGES
6 AND IMMUNITIES CLAUSE OF THE FOURTEENTH AMENDMENT REQUIRES
7 AT LEAST THAT THE RIGHT THAT IS IMPLICATED BE BALANCED
8 AGAINST THE NEEDS OF THE STATE. THE NEEDS OF THE STATE IN
9 THIS INSTANCE ARE NOT VERY GREAT WHEN WE CONSIDER THAT THEY
10 HAVE ALL KINDS OF OTHER WAYS TO DETERMINE RESIDENCY, TO
11 DETERMINE THE BONA FIDES OF A RESIDENCE.

12 ALSO I THINK THE CITIZENSHIP CLAUSE LEADS US
13 TO THE CONCLUSION THAT THERE HAS TO BE SOME NECESSITY SHOWN
14 BY THE STATE BEFORE THE STATE CAN START TO LAUNCH OFF INTO
15 THESE LONGER DURATIONAL RESIDENCY REQUIREMENTS THAT CREATE
16 THE RESIDENTIAL NO MAN'S LAND THAT I TALKED ABOUT AND DO
17 CREATE A SITUATION WHERE TWO OF THE SAME PEOPLE WHO LIVE IN
18 A STATE, WHO GO TO THE UNIVERSITY OF ALASKA AND BOTH GET
19 IN-STATE TUITION, ONE GETS A STUDENT LOAN AND THE OTHER
20 DOESN'T, OR COULD DESTROY THE OPPORTUNITY THAT MY CLIENT
21 NEEDED TO FINISH HER LEGAL EDUCATION.

22 THE COURT: OR DEFER IT FOR A YEAR.

23 MR. ZOBEL: THE FACTS OF HER SITUATION ARE SHE
24 COULD NOT HAVE. SHE HAD TO RETURN TO LAW SCHOOL AT THAT
25 POINT OR SHE WAS GOING TO BE IN JEOPARDY OF LOSING IT SINCE

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SHE HAD BEEN AWAY FROM SCHOOL FOR SOME TIME.

THE COURT: ALTHOUGH YOU DID SAY THAT MANY OF THESE APPLICANTS ARE FISHERMEN AND ARTISANS OF ONE KIND THAT ARE WORKING. THE REQUIREMENT OF SIMPLY WORKING FOR ANOTHER YEAR BEFORE RESUMING THEIR SCHOLASTIC ACTIVITIES IS NOT CATAclysmic, IS IT?

MR. ZOBEL: IT CAN BE TO SOME PEOPLE, AND THERE ARE OTHER PEOPLE SIMILARLY SITUATED.

THE COURT: DO YOU THINK WE HAVE BEEN AROUND THE TRACK?

MR. ZOBEL: I THINK WE HAVE. IF I MAY JUST CONCLUDE WITH ONE COMMENT: I SUPPOSE IT IS EASY TO SAY THAT WHAT IS THE BIG DEAL HERE IF THIS IS JUST AN INCONVENIENCE AND ANNOYANCE. NOT EVERY ATTACK ON THE UNITY OF THE COUNTRY IS A SHOT AT FORT SUMTER. THE REPORTERS ARE FULL OF STATUTES THAT PROBABLY, IN THE ABSTRACT, WERE VIEWED AS LITTLE MORE THAN ANNOYANCES OR INCONVENIENCES. LOOK AT BIBB V. NAVAJO FREIGHT LINES. WHO COULD SAY THAT A DIFFERENT KIND OF MUDFLAP IN ILLINOIS IS GOING TO DESTROY THE UNION. BUT THE U. S. SUPREME COURT DID. THE REASON IS BECAUSE THE COURTS IN THIS COUNTRY KILL SEPARATISM IN ITS CRADLE. WE DON'T LET THOSE THINGS GROW. AND THEY ARE GROWING HERE. TWO YEARS THIS YEAR, AND IT WILL BE MORE NEXT YEAR. THANK YOU, YOUR HONOR.

THE COURT: THANK YOU, MR. ZOBEL.

1 MR. MAYNARD, WHAT ABOUT THAT GAP?

2 MR. MAYNARD: BETWEEN THE ONE YEAR?

3 THE COURT: YES. FOR A PERIOD OF TIME THIS LADY
4 IS NOT A DOMICILIARY OF ANY STATE AS FAR AS THE RIGHT TO GET
5 EDUCATIONAL BENEFITS IS CONCERNED.

6 MR. MAYNARD: YOUR HONOR, THAT IS ALSO TRUE TOO
7 IF THERE IS A ONE-YEAR RESIDENCY REQUIREMENT, WHICH I THINK
8 EVERYBODY WOULD AGREE WOULD BE ALLOWABLE FOR THIS PARTICULAR
9 PROGRAM.

10 I WOULD ALSO POINT OUT, YOUR HONOR, THAT ALTHOUGH
11 MR. ZOBEL RAISED THIS PROBLEM OF THE SPECTER OF NO STUDENT
12 LOANS, THAT MISS ANDRESS COULDN'T HAVE GOTTEN A STUDENT
13 LOAN, SHE WAS QUALIFIED AT THE TIME SHE BROUGHT THE LAWSUIT
14 AND AT THE TIME SHE APPLIED FOR THE ALASKA STUDENT LOAN FOR
15 THE FEDERAL GUARANTEED STUDENT LOAN HERE IN ALASKA. THAT IS
16 THE ONLY LOAN PROGRAM, GENERAL LOAN PROGRAM, AVAILABLE
17 EVERYWHERE ELSE IN THE NATION INCLUDING CALIFORNIA.

18 THE COURT: WHAT ABOUT THAT TABLE THAT YOU
19 PRESENTED THAT SHOWED THE INORDINATE AMOUNTS OF MONEY THAT
20 YOU WOULD HAVE TO PAY OUT IF THE RESIDENTAL REQUIREMENT WERE
21 LESS?

22 MR. MAYNARD: YOUR HONOR, AT THAT TIME THE
23 LEGISLATURE WAS AWARE THE SUIT HAD BEEN BROUGHT, AND THEY
24 HAD ASKED DR. ROMESBURG FOR A FISCAL IMPACT IF, IN FACT, THE
25 SUIT WOULD SUCCEED AS THE LEGISLATURE WAS COMING INTO

1 SESSION.

2 THE COURT: THAT IS NOT ONE OF THE BETTER
3 ARGUMENTS IN SUPPORT OF THAT.

4 MR. MAYNARD: THAT IS TRUE, YOUR HONOR. BUT THE
5 FACT IS THE LEGISLATURE WOULD HAVE TO LOOK AT THAT FOR ONE.

6 SECONDLY, THE MOTIVATION OF THE LEGISLATURE IN
7 PASSING THE LAW WAS NOT FISCAL IMPACT. THE LEGISLATURE THAT
8 PASSED THAT PARTICULAR LAW PASSED THAT LAW TEN YEARS AGO.
9 IT WAS NOT FISCAL IMPACT AT THAT TIME. THERE WAS A
10 CONCERN -- YOU CAN SEE IT IN THE 80'S. FOR EXAMPLE, THE
11 EARLY 80'S WHEN THEY CHANGED A PORTION OF THAT PARTICULAR
12 ONE -- THEY WERE CONCERNED WITH MAKING SURE THAT PEOPLE WERE,
13 IN FACT, BONA FIDE RESIDENTS. THERE WERE STORIES BEING
14 BROUGHT TO THE LEGISLATURE'S ATTENTION OF PEOPLE TAKING
15 ADVANTAGE OF THE PROGRAM, COMING IN, TAKING THE MONEY AND
16 LEAVING.

17 THE COURT: OF COURSE, YOU RECOGNIZE THAT MISS
18 ANDRESS IS A BONA FIDE RESIDENT.

19 MR. MAYNARD: THAT IS TRUE. IT IS ALSO TRUE THAT
20 ANY OBJECTIVE TEST OF ANY NATURE WILL TEND TO DENY BENEFITS
21 THAT THE LEGISLATURE IS REALLY INTENDING TO GIVE TO THOSE
22 TYPES OF PEOPLE.

23 FOR EXAMPLE, THERE ARE SOME 17 YEAR OLDS WHO ARE
24 QUALIFIED ENOUGH AND RESPONSIBLE ENOUGH TO VOTE. THERE ARE
25 SOME 18 YEAR OLDS WHO ARE QUALIFIED ENOUGH AND RESPONSIBLE

1 ENOUGH TO DRINK. IT IS THE NATURE OF ANY OBJECTIVE TEST TO
2 PLACE CATEGORIES, AND IT IS UNFORTUNATE SOMETIMES SOME
3 PEOPLE FALL ON ONE SIDE OF THE CATEGORY AND SOME DON'T.
4 THAT IS WHY THE EQUAL PROTECTION TEST IS NOT REQUIRED EXCEPT
5 WHERE SUSPECT CLASSIFICATIONS, FUNDAMENTAL RIGHTS OR BASIC
6 NECESSITIES OF LIFE ARE INVOLVED.

7 BUT IN THIS PARTICULAR CASE, ALTHOUGH MR. ZOBEL
8 ATTEMPTS TO FIND SOME IMPORTANT RIGHT OR SOME INTENSIFIED
9 S. RUTINY BEYOND A SIMPLE RATIONAL BASIS, I THINK THE PRESENT
10 CASE LAW IS VERY CLEAR, WHICH IS THAT THE TEST THAT IS TO BE
11 APPLIED IS THE RATIONAL BASIS TEST. THE U. S. SUPREME COURT
12 RECENTLY IN MARTINEZ V. BYNUM CLEARLY SAID THAT THE
13 DURATIONAL RESIDENCY REQUIREMENT, OR RATIONAL BASIS TEST, OR
14 ANY TEST FOR BONA FIDE RESIDENCY REQUIREMENT, THAT WAS THE
15 EXPLICIT HOLDING OF THE NEVADA DISTRICT COURT IN KUHN V.
16 VERGIELS. THAT WAS THE EXPLICIT HOLDING IN THE NINTH
17 CIRCUIT IN HAWAII BOAT ASSN. AND SULLIVAN V. BLACK.

18 THE COURT: YOUR POSITION IS THAT ALTHOUGH YOU
19 RECOGNIZE, AS DOES MR. ZOBEL, THAT THERE ARE PLENTY OF OTHER
20 WAYS IN WHICH YOU COULD DETERMINE BONA FIDE DOMICILE, IN
21 VIEW OF THE FACT THAT -- YOU DON'T HAVE TO LOOK FOR OTHER
22 WAYS BECAUSE IT HAS BEEN ESTABLISHED IF YOU CAN MAKE A PERSON
23 WAIT A YEAR, AND YOUR CONTENTION IS IT IS NOT UNREASONABLE
24 TO MAKE THEM WAIT TWO INSTEAD OF HAVING TO GO INTO ALL OF
25 THESE OTHER WAYS.

1 MR. MAYNARD: THAT IS CORRECT, YOUR HONOR. THIS
2 PARTICULAR STATUTE PICKS AS ITS PRIMARY TEST FOR DOMICILIARY
3 STATUS THE TWO-YEAR PHYSICAL PRESENCE REQUIREMENT.

4 ALTHOUGH THEY LOOK TO OTHER THINGS WHERE THERE ARE
5 QUESTIONS, THE PRIMARY TEST AND THE STATUTORY TEST IS THE
6 TWO-YEAR PHYSICAL PRESENCE FOR INTENT. THE CHOICE OF THE
7 LEGISLATURE IN MAKING THAT TEST -- THERE ARE OTHER ONES THEY
8 COULD HAVE CHOSEN. THEY COULD HAVE CHOSEN TO HAVE
9 INDIVIDUALIZED DETERMINATIONS. I DON'T THINK THE STATE IS
10 REQUIRED TO EMPLOY MASSIVE ARMIES OF BUREAUCRATS EXCEPT IN
11 THOSE CASES WHERE AN EXTREMELY IMPORTANT FUNDAMENTAL RIGHT
12 IS INVOLVED, BUT THAT IS NOT THE CASE HERE.

13 THE COURT: ALL RIGHT.

14 MR. MAYNARD: THE ONLY OTHER POINT I'D LIKE TO
15 MAKE, AGAIN, IS THAT, AGAIN, THIS IS A DIFFERENT PROGRAM
16 THAN THE IN-STATE TUITION REQUIREMENT.

17 THE COURT: I UNDERSTAND THAT THOROUGHLY.

18 MR. MAYNARD: FINALLY, YOUR HONOR, THERE IS ONE
19 THING I WOULD LIKE TO POINT OUT. WE MENTIONED THE CASE IN
20 OUR BRIEF. MR. ZOBEL KEEPS STATING THAT NO FEDERAL COURT IN
21 THE COUNTRY HAS EVER UPHELD A TWO-YEAR RESIDENCY REQUIREMENT.
22 THAT IS FALSE. WE STATED A CASE IN OUR OPENING BRIEF, A
23 CASE CALLED MENDEZ V. HELLER. IT IS A CASE OUT OF THE U. S.
24 DISTRICT COURT IN THE EASTERN DISTRICT OF NEW YORK. THE
25 CITE IS 380 F.SUPP. 935. IT WAS A THREE-JUDGE PANEL DEALING WITH

1 THE CIVIL RIGHTS VIOLATION. IT WAS A CASE BEING BROUGHT
2 TO CHALLENGE A TWO-YEAR DOMICILE REQUIREMENT IN ORDER TO
3 QUALIFY FOR A DIVORCE.

4 THE COURT: IT MUST HAVE BEEN SOME TIME AGO. IT
5 HAS BEEN SEVERAL YEARS SINCE THE DISTRICT COURT HAD THREE-
6 JUDGE PANELS TO DETERMINE THE CONSTITUTIONALITY --

7 MR. MAYNARD: IT WAS EIGHT YEARS AGO. THE THREE-
8 JUDGE PANEL UPHELD THE REQUIREMENT, AND THEY STATED IN SO
9 DOING, AT PAGE 995:

10 "IT IS NOT UNREASONABLE FOR NEW YORK TO TAKE
11 INTO ACCOUNT, PARTICULARLY SINCE SO MANY MARITAL
12 ACTIONS AGAINST NON-RESIDENT DEFENDANTS ARE UNDEFENDED
13 ACTIONS WHICH MUST ESSENTIALLY BE DECIDED EX PARTE,
14 THAT THE RISK OF FRAUDULENT IMPOSITION ON THE COURTS
15 AND ON ABSENT DEFENDANTS IS SUBSTANTIAL AND CAN BE
16 VERY MATERIALLY DIMINISHED BY IMPOSING A REQUIREMENT
17 THAT PLAINTIFF SHOW THAT ONE OF THE PARTIES HAS
18 RESIDED IN NEW YORK FOR TWO YEARS PRECEDING SUIT."

19 WHAT I WOULD LIKE TO POINT OUT ALSO, YOUR HONOR,
20 ALTHOUGH THIS IS NOT DIRECTLY ON POINT, THE PHRASE CAN BE
21 VERY MATERIALLY DIMINISHED IS VERY CLOSE TO THE PHRASE THE
22 SUPREME COURT IN VLANDIS V. KLINE SAID CONCERNING THE STATE
23 CAN HAVE A TEST TO MAKE ALMOST VIRTUALLY CERTAIN THAT A
24 PERSON BE A BONA FIDE RESIDENT TO TAKE ADVANTAGE OF THESE
25 SORTS OF PROGRAMS. SO THERE IS SOME PRECEDENCE FOR A TWO-

1 YEAR RESIDENCY REQUIREMENT.

2 THE COURT: ANYTHING FURTHER, MR. ZOBEL?

3 MR. ZOBEL: I WOULD POINT OUT I QUALIFY MY STATE-
4 MENT: A TWO-YEAR REQUIREMENT FOR ANY KIND OF GOVERNMENTAL
5 BENEFITS. THE PROBLEMS IN DIVORCE, WHICH WERE EXPLAINED IN
6 SOSNA, THE NECESSITY TO PROTECT THE JUDGMENTS THAT COME OUT
7 OF A DIVORCE COURT RAISE IMPLICATIONS THAT ARE NOT
8 NECESSARILY PRESENT IN GOVERNMENTAL BENEFITS PROGRAMS, AND
9 MY STATEMENT I HAD INTENDED TO QUALIFY IT TO THAT.

10 THE COURT: VERY WELL. WELL, GENTLEMEN, IN THE
11 FIRST PLACE, IT IS VERY DIFFICULT TO DECIDE A CASE WHEN THE
12 ADVOCACY ON EACH SIDE IS SO GOOD. I AM SURE THAT I HAVE BEEN
13 EXPOSED TO ALL THE CONSIDERATIONS THAT A COURT SHOULD TAKE
14 INTO ACCOUNT IN DETERMINING THE CONSTITUTIONALITY OF THIS
15 STATUTE.

16 BEFORE I TALK ANY FURTHER ABOUT .125, WHAT ABOUT
17 THAT OTHER STATUTE, .130, THAT TALKS ABOUT SELECTION?
18 DO I HAVE TO RESOLVE THAT?

19 MR. MAYNARD: NO, YOU DON'T. THE LAST LEGISLATURE
20 REPEALED THAT.

21 THE COURT: GOOD. BECAUSE IF I HAD BEEN CALLED
22 UPON TO DO SO, I THINK I WOULD HAVE TO DECLARE IT
23 UNCONSTITUTIONAL IN LIGHT OF THE SUPREME COURT OPINION.

24 MR. ZOBEL: I HAD INTENDED TO SUBMIT TO THE COURT,
25 AND I WILL DO THAT, THE STATUTE THAT WAS PASSED BY THE LAST

1 LEGISLATURE, WHICH DID REPEAL THE PRIORITY, AND IT ALSO
2 INCLUDES A SECTION IF A TWO-YEAR RESIDENCY REQUIREMENT
3 PROVIDED BY 14.43.125 IS DECLARED UNCONSTITUTIONAL OR OTHER-
4 WISE INVALID BY A COURT OF COMPETENT JURISDICTION, THE
5 COMMISSION ON POST SECONDARY EDUCATION SHALL ADOPT
6 REGULATIONS AND IMPOSE THE MOST STRINGENT RESIDENCY
7 REQUIREMENT ALLOWABLE UNDER THE CONSTITUTION OF THE STATE
8 OF ALASKA AND THE UNITED STATES CONSTITUTION ON SCHOLARSHIP
9 LOAN APPLICANTS.

10 THE COURT: ALL RIGHT. I COULD TAKE THIS UNDER
11 SUBMISSION AND UNDERTAKE TO WRITE AN ESOTERIC OPINION, BUT
12 I HAVE AN IDEA THIS WILL GO TO THE COURT OF APPEALS IN ANY
13 EVENT, AND I THINK I MIGHT JUST AS WELL GRASP THE METAL
14 AND EXPRESS THIS COURT'S VIEWS.

15 I AM NOT ABLE TO FIND THE STATUTE UNCONSTITUTIONAL.
16 AS I SAID AT THE OUTSET, THE PURPOSE OF THE STATUTE IS NOT
17 TO DETER IMMIGRATION OR PREVENT TRAVEL. THE PURPOSE OF
18 THIS STATUTE IS TO MAKE SURE THAT THIS RATHER GENEROUS LOAN
19 GOES ONLY TO A PERSON WHO HAS DEMONSTRATED HIS DOMICILIARY
20 STATUS. ONCE WE ACKNOWLEDGE THAT THE SUPREME COURT HAS
21 SAID THAT A YEAR CONTINUOUS RESIDENCE OR RESIDENCE
22 REQUIREMENT IS VALID IN DETERMINING DOMICILE, I AM NOT
23 PREPARED TO SAY THAT TWO YEARS IS UNREASONABLE.

24 I AM GLAD I WASN'T ASKED TO DECIDE THREE, FOUR,
25 FIVE OR SIX YEARS. IT SEEMS TO ME IN VIEW OF THE VALID

1 PURPOSE OF THE STATUTE, WE HAVE TO GIVE A CERTAIN AMOUNT OF
2 RESPECT TO THE DETERMINATION OF THE LEGISLATURE THAT TWO
3 YEARS IS A REASONABLE PERIOD.

4 I COULD BE TROUBLED ABOUT THE GAP TO WHICH WE
5 REFERRED, BUT IT IS TRUE THAT NO MATTER HOW LONG MISS ANDRESS
6 WAS HERE OR HOW SHORT A PERIOD, SCHOLARSHIPS ARE AVAILABLE.

7 I DO THINK THE STATE OF ALASKA HAS A RIGHT TO PUT
8 THE REQUIREMENT THAT IS IN THE STATUTE UPON A PERSON WHO IS
9 SUBJECTIVELY A DOMICILIARY BEFORE RECEIVING THOSE LOAN
10 BENEFITS.

11 I KNOW THAT VALID ARGUMENTS CAN BE MADE BOTH
12 WAYS. VALID ARGUMENTS HAVE BEEN MADE BOTH WAYS. I DON'T
13 THINK IT NECESSARY FOR ME TO AVERT TO EACH OF THEM. BUT THE
14 GOVERNMENT OR THE STATE'S MOTION FOR SUMMARY JUDGMENT
15 WILL BE GRANTED, AND THE PLAINTIFF'S MOTION WILL BE DENIED.

16 MR. MAYNARD, WILL YOU PREPARE APPROPRIATE FINDINGS
17 AND CONCLUSIONS, IF YOU PLEASE.

18 MR. MAYNARD: YES.

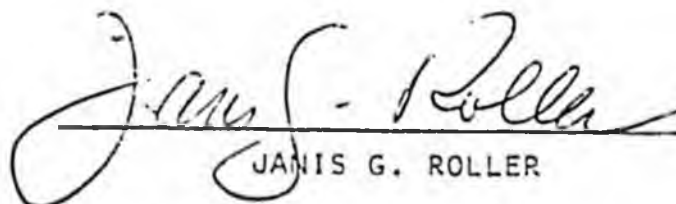
19 THE COURT: GET MR. ZOBEL'S APPROVAL AS TO FORM
20 IF YOU CAN, AND TRY TO GET THEM IN BEFORE I LEAVE SOMETIME
21 AFTER THE END OF THE MONTH.

22 (WHEREUPON, HEARING IN THE ABOVE-ENTITLED MATTER
23 WAS ADJOURNED AT 9:58 A.M.)
24
25

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL REPORTER OF THE
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA,
DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, PAGES NUMBERED 1
THROUGH 31 INCLUSIVE, CONSTITUTES A TRUE, FULL AND
CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS SUCH
OFFICIAL REPORTER OF THE PROCEEDINGS HEREINBEFORE ENTITLED,
AND REDUCED TO TYPEWRITING TO THE BEST OF MY ABILITY.


JANIS G. ROLLER

6-0107J
Cook
3/6/89

Original sponsors: Donley, Boucher,
Boyer, et al.

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 34 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to durational residency requirements
7 for certain state benefit programs; and providing for
8 an effective date."

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

10 * Section 1. FINDINGS. (a) The legislature finds with respect to the
11 permanent fund dividend program that

12 (1) Alaska has one of the highest percentages of transients
13 compared to permanent residents in the nation;

14 (2) a significant portion of Alaska's population comes to the
15 state to work in temporary or seasonal jobs or on short-term projects;

16 (3) because of the large number of transients it is very diffi-
17 cult for the state to determine whether a person is actually a resident
18 with the intent to remain in the state;

19 (4) the permanent fund dividend program is unique to the state
20 and provides generous benefits;

21 (5) the generous nature of this benefit program creates an
22 inducement for people to claim residency inaccurately;

23 (6) a two-year residency requirement is a reasonable way to
24 determine bona fide residency for the purposes of eligibility for this
25 benefit program;

26 (7) a two-year residency requirement will not discourage mi-
27 gration to the state or otherwise interfere with interstate travel;

28 (8) this program does not involve a basic right under the state
29 or federal constitutions or a basic necessity of life;

1 (9) a two-year residency requirement will more accurately indi-
2 cate actual domicile and the intent to remain a resident than the require-
3 ment under current law; and

4 (10) the interest of the state in determining bona fide residence
5 for purposes of this program is at least equal to the interest recognized
6 in *Andress v. Baxter*, U.S. District Court for the District of Alaska, No.
7 A82-307 Civ., September 8, 1983.

8 (b) The legislature finds with respect to the longevity bonus program
9 that

10 (1) the longevity bonus is immediately payable to an applicant
11 upon acceptance into the program;

12 (2) acceptance into the program is primarily based on a state-
13 ment from the applicant that the applicant is a resident for the purposes
14 of eligibility for this benefit program and that the applicant intends to
15 remain a resident of the state;

16 (3) a two-year residency requirement will more accurately indi-
17 cate actual domicile and the intent to remain a resident than the require-
18 ment under current law;

19 (4) the longevity bonus program is unique to the state and
20 provides generous benefits;

21 (5) the generous nature of this benefit program creates an
22 inducement for people to claim residency inaccurately;

23 (6) a two-year residency requirement is a reasonable way to
24 determine bona fide residency for the purposes of eligibility for this
25 benefit program;

26 (7) the two-year residency requirement will not discourage
27 migration to the state or otherwise interfere with interstate travel;

28 (8) this program does not involve a basic right under the state
29 or federal constitutions or a basic necessity of life; and

1 (9) the interest of the state in determining bona fide residence
2 for purposes of this program is at least equal to the interest recognized
3 in Andress v. Baxter, U.S. District Court for the District of Alaska, No.
4 A82-307 Civ., September 8, 1983.

5 * Sec. 2. AS 43.23.005(a) is amended to read:

6 (a) An individual is eligible to receive one permanent fund
7 dividend each year in an amount to be determined under AS 43.23.025 if
8 the individual applies to the department, and if

9 (1) on the date of application the individual is a state
10 resident;

11 (2) the individual was a state resident for a period of at
12 least 24 [SIX] consecutive months immediately preceding April 1 of the
13 current dividend year; and

14 (3) the individual has been physically present in the state
15 at some time during the period beginning July 1 two years before the
16 date of application and ending on the date of application.

17 * Sec. 3. AS 43.23.005 is amended by adding a new subsection to read:

18 (e) If a court finds the durational residency requirement under
19 (a)(2) of this section is invalid and no appeal is pending, the resi-
20 dency requirement is one year. If a court finds the one year resi-
21 dency requirement is invalid and no appeal is pending, the residency
22 requirement is the longest duration permitted by law. The department
23 shall change the statement of eligibility under AS 43.23.015(b) as
24 necessary to conform to this subsection.

25 * Sec. 4. AS 43.23.015(b) is amended to read:

26 (b) The department shall prescribe and furnish an application
27 form for claiming a permanent fund dividend. The application must
28 contain a statement of eligibility and a certification of residency in
29 substantially the following form:

1 I certify that

2 () I am a state resident on the date of this application, I have
3 been a state resident for at least 24 [SIX] months immediately preced-
4 ing April 1 of the current dividend year, and I have been physically
5 present in the State of Alaska at some time during the period begin-
6 ning July 1 two years before the date of application and ending on the
7 date of this application; or

8 () (name), the individual on whose behalf I am applying, is a
9 state resident on the date of this application, has been a state
10 resident for at least 24 [SIX] months immediately preceding April 1 of
11 the current dividend year, and has been physically present in the
12 State of Alaska at some time during the period beginning July 1 two
13 years before the date of application and ending on the date of this
14 application.

15 I understand that a false claim of eligibility to obtain a perma-
16 nent fund dividend for myself or for another is a criminal offense,
17 that if convicted I will forfeit future dividends, and that I must
18 repay all dividends that have been paid to me. I understand that if I
19 wilfully misrepresent, exercise gross negligence, or recklessly disre-
20 gard a material fact regarding my eligibility for a permanent fund
21 dividend I will forfeit the dividend, be subject to a civil fine of up
22 to \$5,000, and lose my eligibility for the next five dividends. I
23 understand that these penalties are in addition to any criminal pen-
24 alties imposed.

25 _____
26 (signature of individual,
27 parent, guardian, or other
28 authorized representative)

29 * Sec. 5. AS 47.45.010(a) is amended to read:

1 (a) A person who is 65 years of age or over, who resides in the
2 state for at least two years [ONE YEAR] immediately preceding applica-
3 tion for a longevity bonus under this chapter may apply to the commis-
4 sioner of administration for qualification to receive a monthly bonus
5 of \$250.

6 * Sec. 6. AS 47.45.010 is amended by adding a new subsection to read:

7 (d) If a court finds the durational residency requirement under
8 (a) of this section is invalid and no appeal is pending, the residency
9 requirement is one year. If a court finds the one year residency
10 requirement is invalid and no appeal is pending, the residency
11 requirement is the longest duration permitted by law.

12 * Sec. 7. Notwithstanding the amendments to AS 43.23 made by secs. 2 -
13 4 of this Act, if an individual received a permanent fund dividend for
14 1990 the individual's eligibility to receive a dividend for 1991 shall be
15 determined under the law as it existed before those amendments.

16 * Sec. 8. Notwithstanding the amendment to AS 47.45 made by secs. 5 and
17 6 of this Act, an individual who qualified to receive a longevity bonus
18 payment for any month during 1990 may qualify to receive bonus payments
19 during 1991 under the law as it existed before that amendment.

20 * Sec. 9. This Act takes effect January 1, 1991.
21
22
23
24
25
26
27
28
29

6-0107H
Cook
2/22/89

Original sponsors: Donley, Boucher,
Boyer, et al.

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 34 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to durational residency requirements
7 for certain state benefit programs; and providing for
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9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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11 permanent fund dividend program that

12 (1) Alaska has one of the highest percentages of transients
13 compared to permanent residents in the nation;

14 (2) a significant portion of Alaska's population comes to the
15 state to work in temporary jobs or on short-term projects;

16 (3) because of the large number of transients it is very dif-
17 cult for the state to determine whether a person is actually a resident
18 with the intent to remain in the state;

19 (4) the permanent fund dividend program is unique to the state
20 and provides generous benefits;

21 (5) the generous nature of this benefit program creates an
22 inducement for people to claim residency inaccurately;

23 (6) a two-year residency requirement is the most reasonable way
24 to determine bona fide residency for the purposes of eligibility for this
25 benefit program;

26 (7) the two-year residency requirement will not discourage
27 migration to the state or otherwise interfere with interstate travel;

28 (8) this program does not involve a basic right under the state
29 or federal constitutions or a basic necessity of life;

1 (9) a two-year residency requirement will more appropriately
2 document actual domicile and the intent to remain a resident; and

3 (10) the interest of the state in determining bona fide residence
4 for purposes of this program is at least equal to the interest recognized
5 in *Andress v. Baxter*, U.S. District Court for the District of Alaska, No.
6 A82-307 Civ., September 8, 1983.

7 (b) The legislature finds with respect to the longevity bonus program
8 that

9 (1) Alaska has one of the highest percentages of transients
10 compared to permanent residents in the nation;

11 (2) because of the large number of transients it is very diffi-
12 cult for the state to determine whether a person is actually a resident
13 with the intent to remain in the state;

14 (3) seniors, because they are generally retired, have a greater
15 opportunity to travel and are more likely to be transient than people with
16 permanent employment;

17 (4) because seniors are less likely to be employed, their resi-
18 dency status is more difficult to determine;

19 (5) the longevity bonus program is unique to the state and
20 provides generous benefits;

21 (6) the generous nature of this benefit program creates an
22 inducement for people to claim residency inaccurately;

23 (7) a two-year residency requirement is the most reasonable way
24 to determine bona fide residency for the purposes of eligibility for this
25 benefit program;

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27 migration to the state or otherwise interfere with interstate travel;

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10 the individual applies to the department, and if

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12 resident;

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14 least 24 [SIX] consecutive months immediately preceding April 1 of the
15 current dividend year; and

16 (3) the individual has been physically present in the state
17 at some time during the period beginning July 1 two years before the
18 date of application and ending on the date of application.

19 * Sec. 3. AS 43.23.005 is amended by adding a new subsection to read:

20 (e) If a court finds the durational residency requirement under
21 (a)(2) of this section is invalid, the residency requirement is 18
22 months. If a court finds the 18-month residency requirement is in-
23 valid, the residency requirement is one year. If the court finds the
24 one year residency requirement is invalid, the residency requirement
25 is the longest duration permitted by law. The department shall change
26 the statement of eligibility under AS 43.23.015(b) as necessary to
27 conform to this subsection.

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29 (b) The department shall prescribe and furnish an application

1 form for claiming a permanent fund dividend. The application must
2 contain a statement of eligibility and a certification of residency in
3 substantially the following form:

4 I certify that

5 () I am a state resident on the date of this application, I have
6 been a state resident for at least 24 [SIX] months immediately preced-
7 ing April 1 of the current dividend year, and I have been physically
8 present in the State of Alaska at some time during the period begin-
9 ning July 1 two years before the date of application and ending on the
10 date of this application; or

11 () (name), the individual on whose behalf I am applying, is a
12 state resident on the date of this application, has been a state
13 resident for at least 24 [SIX] months immediately preceding April 1 of
14 the current dividend year, and has been physically present in the
15 State of Alaska at some time during the period beginning July 1 two
16 years before the date of application and ending on the date of this
17 application.

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19 nent fund dividend for myself or for another is a criminal offense,
20 that if convicted I will forfeit future dividends, and that I must
21 repay all dividends that have been paid to me. I understand that if I
22 wilfully misrepresent, exercise gross negligence, or recklessly disre-
23 gard a material fact regarding my eligibility for a permanent fund
24 dividend I will forfeit the dividend, be subject to a civil fine of up
25 to \$5,000, and lose my eligibility for the next five dividends. I
26 understand that these penalties are in addition to any criminal pen-
27 alties imposed.

28 _____
29 (signature of individual,

1 parent, guardian, or other
2 authorized representative)

3 * Sec. 5. AS 47.45.010(a) is amended to read:

4 (a) A person who is 65 years of age or over, who resides in the
5 state for at least two years [ONE YEAR] immediately preceding applica-
6 tion for a longevity bonus under this chapter may apply to the commis-
7 sioner of administration for qualification to receive a monthly bonus
8 of \$250.

9 * Sec. 6. AS 47.45.010 is amended by adding a new subsection to read:

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11 (a) of this section is invalid, the residency requirement is 18
12 months. If a court finds the 18-month residency requirement is in-
13 valid, the residency requirement is one year. If the court finds the
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15 is the longest duration permitted by law.

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17 4 of this Act, an individual who qualified to receive a permanent fund
18 dividend for 1990 may qualify to receive a dividend for 1991 under the law
19 as it existed before those amendments.

20 * Sec. 8. Notwithstanding the amendment to AS 47.45 made by secs. 5 and
21 6 of this Act, an individual who qualified to receive a longevity bonus
22 payment for any month during 1990 may qualify to receive bonus payments
23 during 1991 under the law as it existed before that amendment.

24 * Sec. 9. This Act takes effect January 1, 1991.
25
26
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H B

3 5

STATE OF ALASKA
THE LEGISLATURE

POUCHY - 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

HB 35

H. HESS

2/11/89

HOUSE COMMITTEE REPORT

(7)

Date Referred: January 9, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 4/19/89

The HEALTH, EDUCATION & SOCIAL SERVICES Committee recommends that:

HOUSE BILL NO. 35 [ACCESS TO LICENSED PREMISES BY MINORS]
"An Act relating to entry of persons under age 21 to licensed premises."

be replaced with CSHB 35 (HESS) the same title
 have attached amendment(s) a new title

do pass
 do not pass
 no recommendation
 individual recommendations
 additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

fiscal impact
 zero fiscal note DHS
 zero with analysis LAW

APPROVES PREVIOUS:

fiscal note(s) published:

 zero fiscal notes(s) published:

SIGNING DO PASS:

SIGNING OTHER THAN DO PASS:
(Do Not Pass, No Recommendation, Amend)

John M. E.
Chairman
Mark Kennedy

J. Ellis no rec

J. Ellis
Chairman's signature

POSITION PAPER

ON

HOUSE BILL NO. 35

"An Act relating to entry of persons under age 21 to licensed premises"

The Department of Health and Social Services is highly supportive of HB 35. Further limitations on entry of persons under age 21 to licensed premises is an idea often supported by public safety officers, educators, health and social services personnel, and parent groups. At the June 1986 meeting of the Review Board on Alcoholism, the following action was recorded in the minutes of the meeting:

Whereas, persons under the legal drinking age are allowed to accompany their parents into facilities where alcoholic beverages are sold or dispensed;

Be it resolved that no one under the legal drinking age be allowed to accompany their parents into facilities where alcoholic beverages are sold or dispensed unless such facilities have dining facilities."

PASSED, 1 Opposed
1 Abstention

Sociological studies show drinking attitude and habits are formed early in childhood through observation of significant adults in a child's life. Research has also demonstrated that drinking practices are firmly developed in the teen years and continue into adulthood.

Alaskans drink nearly four (4) gallons of absolute (pure) alcohol per capita. This makes Alaska one of the highest per capita consuming states. The heavy drinking in Alaska contributes to a variety of health and social problems. The attitude and experiences of young Alaskans will greatly determine if this devastation continues into the next generation. This legislation may serve notice to adult drinkers that young Alaskans need not be put at risk.

Recommended by:

Matthew C. Felix

Matthew C. Felix
Coordinator
Office of Alcoholism & Drug Abuse

3/6/89
Date

Approved by:

Myra M. Munson

Myra M. Munson
Commissioner
Department of Health & Social Ser

3/13/89
Date

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to entry of persons under age 21 to licensed premises"
Sponsor: Hudson
Requestor: _____

Agency Affected: Health & Social Services
BRU: Alcohol & Drug Abuse Services
Components: Administration

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	2	0	0	0	0

CAPITAL	0	0	?	0	0	0
----------------	----------	----------	----------	----------	----------	----------

REVENUE	0	0	0	2	0	0
----------------	----------	----------	----------	----------	----------	----------

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	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Matthew C. Felix
Division: Office of Alcoholism & Drug Abuse

Phone: 586-6201
Date: 3/5/89

Approved by Commissioner: Hyra M. Hanson
Agency: Department of Health & Social Services

Date: 3/13/89

Distribution (by preparer):

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

FISCAL NOTE

REQUEST: _____

Revision Date: _____ Agency Affected: Department of Law
 Title: "An Act relating to entry of persons under age 21 to licensed premises." BRU: Prosecution
 Sponsor: Repr. Hudson Components: All
 Requestor: House HESS

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
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 the attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services 7 Date: March 14, 1989
 Approved by Commissioner: Douglas B. Bailly, Attorney Gen. Date: March 14, 1989
 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 35

This bill would amend AS 04.16.049(2) so that a person under the age of 21 years may no longer enter or remain in a licensed premises when accompanied by a parent or a guardian. Heretofore, such entry has been permitted. Although there may be a small number of violations, until this change is fully understood, it is not expected that the bill will have a fiscal impact on the Department of Law.



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

February 9, 1987

MEMORANDUM

TO: Representative Bill Hudson

ATTN: Landa Holton

FROM: Karla Hart *KH*
Legislative Analyst

RE: Children Allowed in Bars
Research Request 87.120

You requested information on the number of states that do not allow children (anyone under 21 years of age) in bars. The National Alcohol Beverage Control Association recently completed a state-by-state study of alcohol control laws but did not address this question. After speaking with you, I contacted California, Montana, Oregon and Washington.

California does not allow minors under the age of 21 in bars, except persons 18-21 may be employed as musicians for entertainment purposes only. They are restricted by statute (attached).

Montana has no regulations concerning minors in bars. Diana Coon, with the Montana State Liquor Division, said anyone of any age can enter a bar, children do not need to be accompanied at all, unless the bar owner chooses to restrict them. She explained that Montana is a rural state and in many communities the bar is the only place people can go for entertainment. The drinking age is 19 years and employees who serve alcohol must be 18 years old.

Oregon statute does not allow minors (under the age of 21) in bars, except a minor spouse may enter a bar if accompanied by a legal-aged spouse. The minor spouse may not possess or consume alcoholic beverages according to Mr. Rogers with the Oregon Liquor Control Commission.

Washington does not allow minors in bars except "professional minor musicians" and others over 18 years of age performing services as outlined in the statutes (attached).

If you require additional information, please call.

KH

Attachments

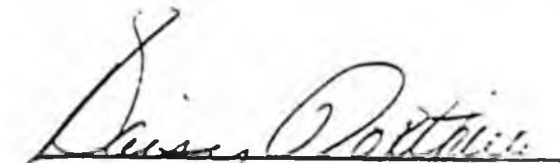
TANANA CHIEFS CONFERENCE, INC.
Board of Directors
Resolution No. 99-116

MINORS IN BARS

- WHEREAS, attitudes about alcohol and alcoholic behavior patterns at a very early age; and
- WHEREAS, it is not healthy for children to be in places where alcohol consumption is the primary activity; and
- WHEREAS, there are a variety of circumstances in rural Alaska when an adult may need to enter a bar for a variety of reasons other than to drink.
- NOW THEREFORE BE IT RESOLVED that the Tanana Chiefs Conference Board of Directors support legislation making it illegal for adults to bring children into bars while those same adults are drinking alcoholic beverages.

CERTIFICATION

I hereby certify that this resolution was duly passed by the Tanana Chiefs Conference, Inc. Board of Directors on March 16, 1989 at Fairbanks, Alaska and a quorum was duly established.


Daisy Northway
Secretary-Treasurer
Tanana Chiefs Conference, Inc

Submitted by: Alcohol Workshop

TANANA CHIEFS CONFERENCE, INC.
Board of Directors
Resolution No. 89-1

SUPPORTING NATIVE ELDERS IN THEIR FIGHT AGAINST ALCOHOL AND DRUGS

- WHEREAS, there are many problems which threaten our survival as a people, but none have such a devastating impact on our villages and families as does the problem of alcohol and drug abuse;
- WHEREAS, the use of alcohol and drugs offers nothing to our villages but broken spirits, broken families, pain, suffering and death; and
- WHEREAS, the use of alcohol and drugs never has been and never will be of any value to our Native culture and Native people; and
- WHEREAS, since its introduction from other cultures, Native elders have warned their villages that alcohol and drugs are the greatest threat to health, life and cultural values; and
- WHEREAS, as the keepers and teachers of Native culture, the elders today speak stronger than ever against alcohol and drugs and have committed themselves to bring their message against alcohol and drugs to their villages; and
- NOW THEREFORE BE IT RESOLVED that the Tanana Chiefs Conference Board of Directors request that Governor Steve Cowper and every Alaska State legislature and member of Alaska's delegation in Congress support the efforts of the Interior villages in their fight against alcohol and drug abuse; and
- BE IT FURTHER RESOLVED that the Tanana Chiefs Conference Board of Directors direct TCC to pursue state, federal, local, and private sector funding to institute comprehensive region wide alcohol and drug prevention programs utilizing elders, concerned village volunteers, village councils and youth in each village and that these concerned village teams be afforded training and ongoing support; and
- BE IT FURTHER RESOLVED that the Village Councils and village courts pass ordinances against alcohol and drugs and strictly enforce these ordinances through their village courts; and
- BE IT FURTHER RESOLVED to protect our children and families, Village Councils and courts strongly consider the use of traditional Native justice mechanisms and banish bootleggers and drug pushers from our village; and
- BE IT FURTHER RESOLVED each school in each village includes a comprehensive drug prevention to their curriculum and actively implements preventive education at every grade level; and
- BE IT FURTHER RESOLVED as an example to our children and to each other alcohol to be served at any TCC function from this day forward; and

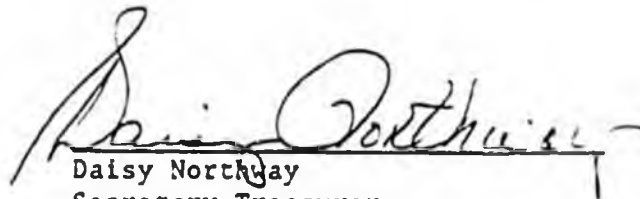
BE IT FURTHER RESOLVED any TCC employee determined to have a drug or
problem be given the option to receive treatment or be
ately terminated from employment; and

BE IT FURTHER RESOLVED each Native person of strong body and mind lend
hand to help their elders and village leaders in this
most serious task; and

BE IT FURTHER RESOLVED for the spiritual well being of our children
families and for the survival and strengthening of our village
from this day forward, let it be known that the elders of the
Athabaskan Nation have declared war on all those who
associated with alcohol and drug abuse.

C E R T I F I C A T I O N

I hereby certify that this resolution was duly passed by the Tanana Chiefs
Conference, Inc. Board of Directors on March 16, 1989 at Fairbanks, Alaska and
a quorum was duly established.



Daisy Northway
Secretary-Treasurer
Tanana Chiefs Conference, Inc

Submitted by: Executive Board

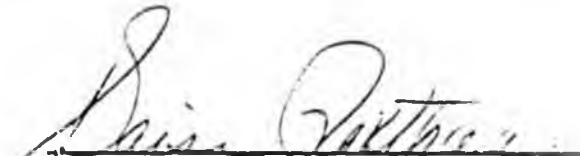
TANANA CHIEFS CONFERENCE, INC.
Board of Directors
Resolution No. 89-104

EDUCATION ABOUT ALCOHOL AND DRUGS

- WHEREAS, the Elders of the Tanana Chiefs region have declared war on alcohol and drugs; and
- WHEREAS, education is an important element in solving the problems of alcohol and drug abuse in Alaska; and
- WHEREAS, education about alcoholism and drug abuse must begin at an early age and continue through adolescence to be as effective as it can be in preventing alcohol and drug abuse.
- NOW THEREFORE BE IT RESOLVED that the Tanana Chiefs Conference Board of Directors support legislation that directs and requires the Department of Education to begin alcohol and drug abuse education in kindergarten and continue through high school.

C E R T I F I C A T I O N

I hereby certify that this resolution was duly passed by the Tanana Chiefs Conference, Inc. Board of Directors on March 16, 1989 at Fairbanks, Alaska and a quorum was duly established.


Caisy Northway
Secretary-Treasurer
Tanana Chiefs Conference, Inc.

Submitted by: Alcohol Workshop

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: An Act relating to entry of persons under age 21 to licensed
 Sponsor: Representative Hudson
 Requestor: House Judiciary

Agency Affected: Health & Social Services
 BRU: Alcohol & Drug Abuse Services
 Components: Administration

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
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-
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FUNDING: (Thousands of Dollars)

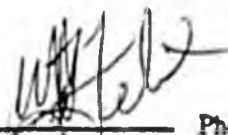
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

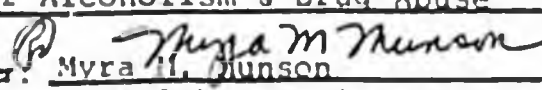
POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

FY 90 Fiscal Impact is "0."

Prepared by: Mathew Felix, Coordinator  Phone: 536-6201
 Division: Office of Alcoholism & Drug Abuse Date: _____

Approved by Commissioner: Myra M. Munson  Date: 1-22-90
 Agency: Department of Health & Social Services

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

FISCAL NOTE

REQUEST:

Revision Date: January 17, 1990
Title: "An Act relating to entry of persons under age 21 to licensed premises."
Sponsor: House HESS
Requestor: House Judiciary

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
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 the attached analysis.

Prepared by: Richard I. Peques, Director Phone: 465-3672
 Division: Administrative Services Date: January 17, 1990
 Approved by Commissioner: Douglas R. Bally, Attorney General Date: January 17, 1990
 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. CSHB 35 (HESS)

This bill would amend AS 04.16.049(a) so that a person under the age of 21 could no longer enter or remain in most licensed premises that serve and sell alcoholic beverages when accompanied by a parent or guardian. The bill provides that a person under 21 years of age may enter and remain on certain premises if:

- (1) the person is at least 16 years of age, the premises are designated as a restaurant, and the person enters and remains only for dining and;
- (2) the person is under the age of 16 years, is accompanied by a person who is 21 years of age or older, the parent or guardian of the underaged person consents, the premises are designated by the board as a restaurant, and the person enters and remains only for dining.

The bill does provide that, when accompanied by a parent or guardian 21 years of age or older, a person under 21 years of age may enter and remain in premises that are:

- (1) licensed as a club under AS 04.11.110, the club does not discriminate on the basis of race or sex, and the person under the age of 21 years enters and remains only during club functions appropriate for persons under 21 years of age;
- (2) licensed as a package store under AS 04.11.150;
- (3) licensed as a common carrier dispensary under AS 04.11.180; and
- (4) entered for the purpose of touring a bottling works, winery, brewery, wholesale warehouse, or distillery.

Lastly, the bill also provides that a person under 21 years of age may not knowingly enter and remain in premises licensed under Title 04, unless accompanied by a parent or guardian who is 21 years of age or older and the parent or guardian is licensed to sell or serve alcoholic beverages for consumption on the licensed premises.

Heretofore, entry of minors, on all licensed premises, while accompanied by a parent or guardian, has been permitted. Although some small number of violations will undoubtedly occur, until this change is finally understood by the public, it is not expected that the bill will have a fiscal impact on the Department of Law.

B

HOUSE COMMITTEE REPORT

4/20
JUDICIARY

(7)
Date Referred: January 9, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 4/19/89

The HEALTH, EDUCATION & SOCIAL SERVICES Committee recommends that: **HB 35**

HOUSE BILL NO. 35 [ACCESS TO LICENSED PREMISES BY MINORS]
"An Act relating to entry of persons under age 21 to licensed premises."

be replaced with CSAB 35 (HESS) the same title
 a new title

have attached amendment(s)

- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

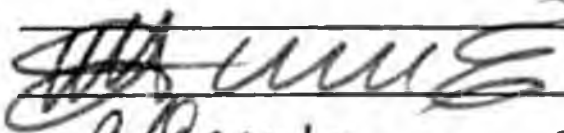
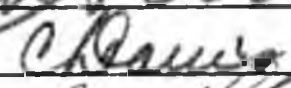
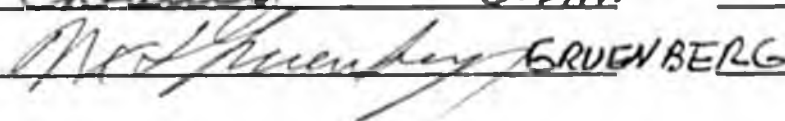
- fiscal impact
- zero fiscal note DH35
- zero with analysis LAW

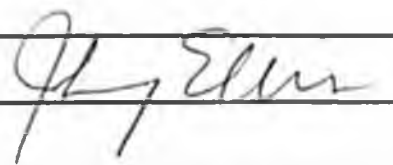
APPROVES PREVIOUS:

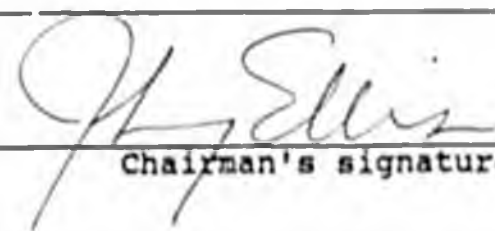
- fiscal note(s) published: _____
- zero fiscal notes(s) published: _____

SIGNING DO PASS:

SIGNING OTHER THAN DO PASS:
(Do Not Pass, No Recommendation, Amend)

 FURNACE
 C. DAVIS
 GRUENBERG

 no rec ELLIS


 Chairman's signature

HB

36

*
* DELIVER TO: LIOCLON *
*
* ORIGINAL *
* SENT: 01/18/89 TIME: 13:25 *
* FROM: LTCCANC *
*
* PRINT DATE: 01/18/89 TIME: 13:25 *
*

*** ANCHORAGE PARTICIPANT LIST ***

TO: ALL TELECONFERENCE SITES
FROM: INEZ ---> ANCHORAGE

SUBJECT: HB 36 - RIGHTS OF CRIME VICTIMS

DATE: JANUARY 18, 1989-----

TO TESTIFY:

- 1.) JANICE LIENHART HB 36 AND HB 57
- 2.)



Official Business

COMMITTEE:

HOUSE JUDICIARY

DATE:

SIGN-IN

Subject of meeting:

11B36

11B57

NAME

ADDRESS FULL ADDRESS PLEASE !

PHONE

REPRESENTING

**DO YOU WANT
TO TESTIFY?
WHICH BILL?**

NAME	ADDRESS FULL ADDRESS PLEASE !	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY? WHICH BILL?
Michael Wood	Rep Donley's			
BILL PARKER	CORRECTIONS			
Sam Lott	Corrections			
Jay Lewis	DHSS			
Doug Rickard	Rt 1 Box 1 Juneau 99811		Grossedorf	
Larry Brunner			Larson	
JIM MORNING				

FISCAL NOTE

REQUEST:

Revision Date: February 16, 1989 Agency Affected: Department of Law
 Title: "An Act relating to the rights of victims of crimes..." BRU: Prosecution
 Sponsor: House Judiciary Components: Third Judicial District
 Requestor: House Judiciary Fourth Judicial District

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES		144.4	144.4	144.4	144.4	144.4
TRAVEL		5.6	7.0	9.1	12.6	9.8
CONTRACTUAL		46.6	47.5	55.9	69.3	59.3
SUPPLIES		10.0	7.6	8.2	8.8	8.8
EQUIPMENT		31.5	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	238.1	206.5	217.6	235.1	222.3

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	238.1	206.5	217.6	235.1	222.3
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	4.0	4.0	4.0	4.0	4.0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director Phone: 465-3672

Division: Administrative Services Division Date: February 16, 1989

Approved by Commissioner: Richard I. Pegues / FOR
Douglas B. Bailly, Atty. Gen. Date: February 16, 1989

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. CSHB 36(Jud)

The committee substitute for HB 36 makes changes to the bill, requiring revision of the Department of Law's fiscal note, which was originally submitted on November 10, 1988.

Section 9 of the bill adds a new subsection to AS 12.61 that requires that upon request of the victim of a felony, or a domestic violence assault, the prosecuting attorney shall: (1) confer with the victim about the victim's testimony before the trial of the defendant; (2) give prompt actual notice to the victim of the defendant's conviction and the crimes of which the defendant was convicted, including advising the victim of his or her right to make a written or oral statement for use in preparation of the defendant's presentence report, and including advising the victim of his or her right to appear personally at the defendant's sentencing hearing to present a written or oral statement, and advising of the address and telephone number of the office that will prepare the presentence report, advising of the time and place of the sentencing proceeding, and advising of the types of information that a victim may include in a statement a victim provides for a presentence report or a sentencing hearing.

This section would also require that the prosecuting attorney notify the victim in writing of the final disposition of the case within 30 days after final disposition of the case. It appears that notification of final disposition would be required at both the trial and appellate levels. Similarly, a preceding section grants the right to victims to be informed by the prosecuting attorney at any time after the defendant's conviction of the record of all the defendant's convictions.

Currently, about 18,000 new criminal matters are referred to the department's criminal division each year. It is estimated that of this number, about 2,000 are felony cases covered by this bill. Furthermore, many felony cases have multiple victims. Although the department does not keep separate statistics for misdemeanor domestic violence assaults, it is believed that there are about 300 of these offenses, each year. Consequently, this bill has the potential for generating a substantial body of new work at all of the department's prosecution offices. Most of this required work would be handled by paralegals and legal secretaries. The requirement for prosecutors to confer with victims before the trial of the defendant in felony and domestic violence assault cases, is generally already being met.

The majority of the new work, however, will occur at Anchorage and Fairbanks because of the higher number of covered crimes at those locations. It will therefore be necessary to add a leg. secretary at both Anchorage and Fairbanks to handle the additional workload that will be caused by this section of the bill, at a start up cost of \$95,300, and recurring annual costs of \$80,600, thereafter.

Section 24 of the bill would amend AS 44.23.020(b) to establish and maintain an assistance program, within the Department of

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 36(Jud)

Law, to ensure that crime victims receive information about the rights, entitlements, and services that are provided by law. It is anticipated that the department would employ a full-time senior paraprofessional, together with a full-time clerk typist, to develop and operate a citizen volunteer victim assistance program. The paraprofessional would be responsible for recruiting, organizing, and guiding volunteers throughout the state to provide information and assistance to victims of crimes.

During the first year, staff work will be devoted to developing and establishing the program at five locations having superior courts. Initially, volunteers will be recruited and trained at Anchorage, Bethel, Fairbanks, Juneau and Nome. Each year thereafter, three or more new sites will be added, until volunteer groups are established in all 15 locations where felony trials are regularly held. Fiscal note costs for the volunteer program include 5.0 for start up training at each location, except for Anchorage where 10.0 will be required. Annual recurrent training will cost 2.5 for each site. Travel costs include two onsite visitations by the victim assistance coordinator during the first year's operation at each site, dropping to one onsite visitation per location, after the first year. Other costs include printing, mailing, communications, and word processing. This is an important element because of the necessity to keep volunteers fully updated and informed. Costs will be about 0.5 per location. In addition to the efforts the department makes, the success or failure of the volunteer program will be determined, in large part, by the efforts of individual volunteers. Although the department cannot assure the success of a volunteer program, it will certainly attempt to accomplish this goal. It should also be pointed out that the state will be financially liable for any claims that result from the operation of a state sponsored volunteer assistance program. Lastly, the estimated annual operating cost for the volunteer assistance program will be \$142,800.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 36

Fiscal Summary - CSHB 36

	<u>Prosecutor Responsibilities</u>		<u>Volunteer Programs</u>		<u>TOTAL</u>
	<u>Leg Sec I(Anc)</u>	<u>Leg Sec I(Fai)</u>	<u>Assoc Atty. I(Anc)</u>	<u>Clerk Typist(Anc)</u>	
Per Svcs	32.3	34.2	48.0	29.9	144.4
Travel	-0-	-0-	5.6	-0-	5.6
Contractual	4.1	4.1	35.1	3.3	46.6
Supplies	1.8	1.8	3.7	2.7	10.0
Equipment	8.5	8.5	6.0	8.5	31.5
TOTAL	<u>46.7</u>	<u>48.6</u>	<u>98.4</u>	<u>44.4</u>	<u>238.1</u>

Position Title Legal Secretary I		No. of Positions 1	Range/Step JOB	Borg. Unit GCU
Time Status PFT	Staff Months 12	Location Anchorage		Election District 8/9/10/11/12/13
Type of Expenditure		Amount		
1		2		
3		4		
Salary		22,020		
Benefits		10,256		
Premium Pay				
Other				
Total Personal Services		32,276		
Travel		-0-		
Contractual		4,100		
Commodities		1,800		
Equipment		8,500		
Other				
Total Cost		46,676		
Funding Source for Total Cost				
Federal Receipts 1002				
G. P. Match 1003				
General Fund 1004		46,676		
I-A Receipts 1006				
CIP Receipts 1061				
Other				

Justification

This full-time position is needed to provide for the victim notification and liaison requirements of the proposed victims' rights bill. The granting of rights to victims to be informed of the dates of all criminal proceedings involving the defendant relating to the case in which the victim is involved, to provide oral and written statements in respect to presentence reports, and notice of final disposition in several thousand criminal trials, will cause a substantial additional workload for the state's prosecution support staff.

Allocation to the Legal Secretary I class is recommended because of the large amount of written notice to be handled, and the need to provide accurate, timely case scheduling, and victim's rights information to victims.

**Request For
New Position**

Agency Department of Law
 DRU Prosecution
 Component Third Judicial District

Page 1 of 4
 Revised Date

FY 90

Position Title Legal Secretary I			No. of Positions 1	Range/Step 10B	Hrg. Unit GGU
Time Status PFT	Staff Months 12		Location Fairbanks		Election District 19/20A/21
Type of Expenditure			Amount		
1			2		
3					
Salary			23,628		
Benefits			10,615		
Premium Pay					
Other					
Total Personal Services			34,243		
Travel			-0-		
Contractual			4,100		
Commodities			1,800		
Equipment			8,500		
Other					
Total Cost			48,643		
Funding Source for Total Cost					
Federal Receipts 1002					
G. P. Match 1003					
General Fund 1004			48,643		
I-A Receipts 1006					
CIP Receipts 1061					
Other					

Justification

This full-time position is needed to provide for the victim notification and liaison requirements of the proposed victims' rights bill. The granting of rights to victims to be informed of the dates of all criminal proceedings involving the defendant relating to the case in which the victim is involved, to provide oral and written statements in respect to presentence reports, and notice of final disposition in several thousand criminal trials, will cause a substantial additional workload for the state's prosecution support staff.

Allocation to the Legal Secretary I class is recommended because of the large amount of written notice to be handled, and the need to provide accurate, timely case scheduling and victim's rights information to victims.

**Request For
New Position**

Agency Department of Law
 BRU Prosecution
 Component Fourth Judicial District.

Page 2 of 4
 Revised Date

FY 90

Position Title Associate Attorney I		No. of Positions 1	Range/Step 17A	Harg. Unit PX	
Time Status PFT	Staff Months 12	Location Anchorage		Election District 8/9/10/11/12/13	
Type of Expenditure		Justification			
Amount		<p>This senior paraprofessional position is needed to coordinate and guide victim assistance volunteers throughout the state. Starting with five locations in FY 1990, the position will be responsible for recruiting volunteers who will provide information and assistance to victims of crime. The position will be responsible for establishing and developing the program on a statewide basis. Volunteer groups will eventually be located in 15 communities. The position will develop and maintain operating manuals and victims' rights information brochures and pamphlets.</p>			
1	2				3
Salary	34,920				
Benefits	13,045				
Premium Pay					
Other					
Total Personal Services					47,965
Travel					5,600
Contractual					35,100
Commodities					3,700
Equipment		6,000			
Other					
Total Cost		98,365			
Funds ; Source for Total Cost					
Federal Receipts	1002				
G. J. Match	1003				
General Fund	1004	98,365			
I-A Receipts	1006				
CIP Receipts	1061				
Other					

**Request For
New Position**

Agency Department of Law
 BRU Prosecution
 Component Third Judicial District

Page 3 of 4
 Revised Date

FY 90

Position Title Clerk Typist III		No. of Positions 1	Range/Step 8B	Barg. Unit GGU	
Time Status PFT	Staff Months 12	Location Anchorage		Election District 8/9/10/11/12/13	
Type of Expenditure		Justification			
Amount		<p>This position is needed to handle typing, filing and communications for the volunteer victim assistance coordinator and the volunteers at various volunteer sites throughout the state. Timely updating and transmittal of operating, policy, and training guides is an ongoing process, which will be very important to the operation of a volunteer program. This position will be responsible for all of the clerical tasks associated with the program.</p>			
1	2				3
Salary	20,136				
Benefits	9,768				
Premium Pay					
Other					
Total Personal Services					29,904
Travel					-0-
Contractual					3,300
Commodities					2,700
Equipment		8,500			
Other					
Total Cost		44,404			
Funding Source for Total Cost					
Federal Receipts	1002				
G. F. Match	1003				
General Fund	1004	44,404			
I-A Receipts	1006				
CIP Receipts	1061				
Other					

**Request For
New Position**

Agency Department of Law
 BRU Prosecution
 Component Third Judicial District

Page 4 of 4
 Revised Date

FY 90

STATE OF ALASKA 1989 EXECUTIVE BUDGET
FISCAL YEAR

REQUEST: Bill Version: CS 2B 35
 Public Law: 2/15/89

Revision Date: 2/15/89 Agency Affected: Alaska Court Syst
 Title: ...victims of crime, claims by TRS: Trial Courts
 ... and services of process
 Sponsor: Denney, Strandberg, Boucher... Components:
 Requestor:

EXPENDITURES/REVENUES:		(Thousands of Dollars)					
OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94	
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: 261-933
 Division: Alaska Court System Date: 02/16/89

Approved by: Arthur H. Snowden, III, Administrative Director Date: 02/16/89
 Agency: Alaska Court System

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

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: An Act relating to victims of crime....
 Sponsor: Donley, Gruenberg, et al.
 Requestor: _____

Agency Affected: Health & Social Services
 BRU: Youth Services
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

This bill has no fiscal impact on the agency.

Prepared by: *Yvonne M. Chase*
 Yvonne M. Chase, Director
 Division: Family & Youth Services
 Phone: 465-3170
 Date: 2/14/89

Approved by Commissioner: *M. A. Hanson*
 M. A. Hanson
 Agency: Department of Health & Social Services
 Date: 2/16/89

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

RECEIVED
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JAN 31 1989

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSHB 36 (Jud)
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: 1/18/89
Title: "An Act relating to victims of
crime, claims by victims of crime..."
Sponsor: Rep. Donley, et al.
Requestor: House Judiciary

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

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
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-
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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	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

The Judiciary committee substitute establishes a "victim and survivor assistance program" in the Department of Law rather than in the Department of Public Safety. The revised bill is not expected to have a fiscal impact on the Department of Public Safety.

Prepared by: Gayle A. Horetski
Division: Office of the Commissioner

Phone: 465-4322
Date: 1/18/89

Approved by Commissioner: Arthur English
Agency: Department of Public Safety

Date: 1/28/89

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act relating to victims of crime."
 Sponsor: Reps. Donley, Gruenberg
 Requestor: _____

Agency Affected: Department of Corrections
 BRU: Administration & Support
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	109.6	109.6	109.6	109.6	109.6	109.6
TRAVEL	3.4	3.4	3.4	3.4	3.4	3.4
CONTRACTUAL	6.3	6.3	6.3	6.3	6.3	6.3
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	119.3	119.3	119.3	119.3	119.3	119.3

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	119.3	119.3	119.3	119.3	119.3	119.3
FEDERAL FUNDS						
OTHER						
TOTAL	119.3	119.3	119.3	119.3	119.3	119.3

POSITIONS:

FULL-TIME	2	2	2	2	2	2
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See Attached.

Susan E. Knighton
 Susan E. Knighton, Director

Prepared by: _____

Phone: 465-3376

Division: Administrative Services

Date: 1-18-89

Approved by Commissioner: _____

Date: 1-18-89

Agency: Corrections

Distribution (by preparer):

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

FISCAL NOTE
House Bill 36
Page 2

The Department of Corrections would experience fiscal impact due to longer parole hearings that would be necessary. The increases are in per diem and daily fees paid to board members and overtime for correctional officers providing security. (Sec. 13)

Additional costs will be required to accomplish the service of process on prisoners (Sec. 2) and to accomplish notifying victims of motions to reduce sentences (Sec. 8). This fiscal note proposes to set up a centralized victims' right unit consisting of two experienced probation officers. (\$54.0 X 2 = \$108.0)

Sec. 13. Per Diem	+ 3.4
Board Member Compensation	+ 6.3
Correctional Officer OT	+ 1.6
	<u>\$ 11.3</u>
Sec. 2 & Sec. 8. 2 Probation Officers	\$108.0

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: An Act relating to victims of crime....
 Sponsor: Donlev, Gruenberg, et al.
 Requestor: _____

Agency Affected: Health & Social Services
 BRU: Youth Services
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

This bill has no fiscal impact on the agency.

Prepared by: Yvonne M. Chase ^{*DMC*} Director Phone: 465-3170
 Division: Family & Youth Services Date: _____

Approved by Commissioner: Myra M. Munson ^{*Myra M. Munson*} Commissioner Date: Jan 17, 1989
 Agency: Department of Health and Social Services

Distribution (by preparer):

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

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to victims of crimes..."
Sponsor: Rep. Donley
Requestor: Rep. Donley

Agency Affected: Department of Law
BRU: Prosecution
Components: Third Judicial District,
Fourth Judicial District

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES		67.3	69.3	71.4	73.5	75.7
TRAVEL		-0-	-0-	-0-	-0-	-0-
CONTRACTUAL		8.2	8.4	8.7	9.0	9.3
SUPPLIES		3.6	3.7	3.8	3.9	4.0
EQUIPMENT		16.0	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		95.1	81.4	83.9	86.4	89.0

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

REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND		95.1	81.4	83.9	86.4	89.0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		2	2	2	2	2
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Richard I. Pegues

Prepared by: Richard I. Pegues, Law Phone: 465-3672
Division: Administrative Services Date: January 17, 1989
Richard I. Pegues / FIR /
Approved by Commissioner: Grace Berg Schaible, Attorney Gen. Date: January 17, 1989
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 36

Section 12 of HB 36 adds new sections to AS 12.61 that require that upon request of the victim of a felony crime, the prosecuting attorney shall: (1) confer with the victim about the victim's testimony before the selection of the jury and the trial of the defendant; (2) give prompt actual notice to the victim of the defendant's conviction and the crimes for which the defendant was convicted, including advising the victim of his or her right to make a written or oral statement for use in preparation of the defendant's presentence report, and including advising the victim of his or her right to appear personally at the defendant's sentencing hearing to present a written or oral statement, and advising of the address and telephone number of the office that will prepare the presentence report, and advising of the time and place of the sentencing proceeding.

Section 12 would also require that the prosecuting attorney notify the victim in writing of the final disposition of the case within 30 days after final disposition of the case. It appears that notification of final disposition would be required at both the trial and appellate levels. Similarly, Section 11 grants the right to victims to obtain from the prosecuting attorney at any time after the defendant's conviction a copy of the record of all the defendant's convictions.

Currently, about 18,000 new criminal matters are referred to the department's criminal division each year. It is estimated that of this number about 2,000 felony cases that the department prosecutes involve crimes having a victim that is a natural person. Many felony cases have multiple victims. Moreover, in cases where the victim has died, is a minor, or is incapacitated, the term victim includes a spouse, parent, child, brother, sister, aunt, uncle, parent-in-law, brother-in-law, sister-in-law, or legal guardian of the victim. Consequently, this bill has the potential for generating a substantial body of new work at all of the department's prosecution offices. Most of this required work would be handled by paralegals and legal secretaries. The requirement for prosecutors to confer with victims before the selection of the jury and the trial of the defendant is generally already being met.

The majority of the new work, however, will occur at Anchorage and Fairbanks because of the higher number of felony crimes at those locations. It will therefore be necessary to add a legal secretary at both Anchorage and Fairbanks to handle the increased volume of paperwork that the bill will cause.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 36

Fiscal Summary - HB 36

	<u>Pers. Svcs.</u>	<u>Contractual</u>	<u>Supplies</u>	<u>Equip.</u>	<u>Total</u>
Anchorage					
Legal Secretary I	33.1	4.1	1.8	8.0	47.0
PFT					
Fairbanks					
Legal Secretary I	34.2	4.1	1.8	8.0	48.1
PFT					
	———	———	———	———	———
Total	67.3	8.2	3.6	16.0	95.1

Costs beyond FY 90 include a 3 percent annual inflation factor, less one-time costs.

Position Title Legal Secretary I		No. of Positions 1	Range/Step 10B	Barg. Unit GGU
Time Status PFT	Staff Months 12	Location Anchorage		Election District 8/9/10/11/12/13
Type of Expenditure		Amount		
1	2	3		
Salary	22,716			
Benefits	10,412			
Premium Pay				
Other				
Total Personal Services		33,128		
Travel		-0-		
Contractual		4,100		
Commodities		1,800		
Equipment		8,000		
Other				
Total Cost		47,028		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	47,028		
I-A Receipts	1006			
CIP Receipts	1061			
Other				

Justification
This full-time position is needed to provide for the victim notification and liaison requirements of HB 36. The granting of rights to victims to be informed of the dates of all criminal proceedings involving the defendant relating to the case in which the victim is involved, to provide oral and written statements in respect to presentence reports, and notice of final disposition in several thousand criminal trials, will cause a substantial additional workload for the state's prosecution support staff.

Allocation to the Legal Secretary I class is recommended because of the large amount of written notice to be handled, and the need to provide accurate, timely case scheduling information to victims.

**Request For
New Position**

Agency Department of Law
BRU Prosecution
Component Third Judicial District

Page 1 of 2
Revised Date

FY 90

Position Title Legal Secretary I		No. of Positions 1	Range/Step 10B	Barg. Unit CGU
Time Status PFT	Staff Months 12	Location Fairbanks		Election District 19/20A/21
Justification				
Type of Expenditure			Amount	
1	2	3		
Salary	23,628			
Benefits	10,615			
Premium Pay				
Other				
Total Personal Services		34,243		
Travel		-0-		
Contractual		4,100		
Commodities		1,800		
Equipment		8,000		
Other				
Total Cost		48,143		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	48,143		
I-A Receipts	1006			
CIP Receipts	1061			
Other				
<p>This full-time position is needed to provide for the victim notification and liaison requirements of HB 36. The granting of rights to victims to be informed of the dates of all criminal proceedings involving the defendant relating to the case in which the victim is involved, to provide oral and written statements in respect to presentence reports, and notice of final disposition in several thousand criminal trials, will cause a substantial additional workload for the state's prosecution support staff.</p> <p>Allocation to the Legal Secretary I class is recommended because of the large amount of written notice to be handled, and the need to provide accurate, timely case scheduling information to victims.</p>				

**Request For
New Position**

Agency Department of Law
 BRU Prosecution
 Component Fourth Judicial District

Page 2 of 2
 Revised Date

FY 90

STATE OF ALASKA 1989 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: HB 36
Publish Date:

REQUEST:

Revision Date:
Title: ...victims of crime, claims by
victims..., and service of process
Sponsor: Donley, Gruenberg, Boucher...
Requestor:

Agency Affected: Alaska Court System
BRU: Trial Courts

Components:

EXPENDITURES/REVENUES:		(Thousands of Dollars)				
OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
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*
Jan Strandberg, General Counsel
Division: Alaska Court System

Phone: 264-8228
Date: 01/17/89

Approved by: *Arthur H. Snowden, II*
Arthur H. Snowden, II, Administrative Director
Agency: Alaska Court System

Date: 01/17/89

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

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An act relating to victims of crime, claims by victims of crime"
Sponsor: Donley, Gruenberg, et al.
Requestor: Judiciary

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

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES		66.6	66.6	66.6	66.6	66.6
TRAVEL		9.0	15.0	18.0	18.0	18.0
CONTRACTUAL		35.0	53.0	71.0	89.0	95.0
SUPPLIES		1.0	1.0	1.0	1.0	1.0
EQUIPMENT		6.4				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		118.0	135.6	156.6	174.6	180.6

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND		118.0	135.6	156.6	174.6	180.6
FEDERAL FUNDS						
OTHER						
TOTAL		118.0	135.6	156.6	174.6	180.6

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Section 19 establishes a victim assistance program in the Department of Public Safety. This program is to consist of a victim assistance supervisor and volunteers.

The first year will be devoted to developing and establishing the victim assistance program. Volunteers are to be recruited for five Superior Courts in the first year: Anchorage, Juneau, Nome, Fairbanks and Bethel. Personnel consists of an Associate Coordinator (Range 18, at 52.8) and a half-time Clerk/Typist III (Range 8, at 13.8). Travel funds are for the Victim Assistance Supervisor to make two trips to each site. Contractual

Prepared by: Barbara Miklos
Division: Council on Domestic Violence and Sexual Assault

Phone: 465-4356
Date: 1/12/89

Approved by Commissioner: Arthur English
Agency: Department of Public Safety

Date: 1-12-89

Includes 30.0 for training of volunteers. Training will be on-site at each of the five sites. Other contractual costs are telephone, printing of brochures and other materials, etc. (5 0). Supply money is for the purchase of program and office supplies. Equipment funds will be used to purchase a computer to keep track of volunteers and word processing.

In future years, training costs will increase as new sites are added. There are fifteen communities with a Superior and/or District Court. It is anticipated that three sites could be added each year. Training is projected at 6.0 per site. Also, staff travel costs will increase as sites increase.

BRIEF SECTIONAL ANALYSIS OF HB 36 "Victims of Crime"

Sec. 1. provides a short title.

Sec. 2. allows for service of process on the commissioner of corrections on behalf of a prisoner; provides that the commissioner must give the prisoner a copy of the summons within 10 days; provides for an affidavit showing that the commissioner did so; allows the court to extend time to give the prisoner an opportunity to defend himself; and holds the state not liable for the failure of the commissioner to comply with the section.

Sec. 3. provides exemptions to the Alaska Exemptions Act (exempting property from civil levies). This change would give a creditor access to all property of a felon except for \$1500 in personal goods, clothing, books, musical instruments and family heirlooms, and another \$1400 in professional instruments and tools.

Sec. 4. delineates how a claim against property covered in section 3 is to proceed.

Sec. 5. further provides procedure for levying a claim.

Sec. 6. amends "Insanity and Competency to Stand Trial" statutes to require notice to the victim, guardian or survivors if the status of the offender is going to change, provided the victim has asked for notice and maintains a current address of record with the commissioner.

Sec. 7. amends "Sentencing and Probation" statutes by adding two new provisions to the "Victims Impact Statement", that the victim can give a statement to the presentence investigator, and that a written statement may be included in the report.

Sec. 8. amends "Modification of Sentence" statutes to require the court to notify Dept. of Corrections if an offender files a motion to reduce sentence. Corrections must then notify the victim, if the victim has requested to be notified, so that the victim may comment on motion. The court then must give a copy of the victim's comments to the offender, and must then consider both the victim's comments and the offender's response to them. The victim is responsible to keep on file with Corrections a current address, which Corrections must keep confidential.

Sec. 9. amends the definition of "victim" to include aunts, uncles and in-laws.

Sec. 10. ties the definition of "crimes against a person" to that in AS 33.30.901 [SEE ATTACHED].

Sec. 11. adds to the list of victim's rights the right to make comment for presentence report, and the right to obtain a record of all the defendant's convictions.

Sec. 12. requires the prosecuting attorney to confer with the victim before jury selection, and before presentencing. Also requires him to notify victim at time of convictions, and of final disposition. Subsection (b) requires that notice that the victim can provide a statement must inform the victim that the statement can include explanations of physical, emotional and psychological harm, economic loss, property damage, need for restitution or compensation and a recommendation for appropriate sentence.

Sec. 12. further prohibits interference by a victim's employer in the victim's attendance in court, and provides penalties if a violation of the section occurs.

Sec. 13. amends the right of a victim to participate in parole board hearings.

Sec. 14. amends a requirement of the parole board to notify a victim regarding the disposition of a request for parole. Changes "before release date" to "as soon as practicable."

Sec. 15. requires the commissioner to provide to the victim the address of a parolee, if the victim asks for it, and if the victim needs it for a civil action.

Sec. 16. makes a technical change necessitated by section 17.

Sec. 17. requires the parole board to send a copy of an application for executive clemency to a victim if the victim requests it, and keeps a current address on file.

Sec. 18. requires the commissioner to notify the victim if the offender gets out of jail through escape, furlough, restitution center or early release program.

Sec. 19. amends the powers and duties of the commissioner of Public Safety to set up a victim assistance program, with one department employee and a staff of volunteers, and further delineates what the victim assistance supervisor would do.

Sec. 20. gives a victim of an offense committed by a minor the right to ask the court to attend hearings. Also requires the Department of Health and Social Services to assist the victim in preparing the request.

Sec. 21. amends Rule 32(d)(1) of the Alaska Rules of Criminal Procedure regarding presentence report. Previously the report was not submitted to the court until the accused was found guilty, or pleaded guilty or nolo contendere. Under this change, the report is available to the court, regardless of plea.

Sec. 22. amends Rule 35 to accomodate changes made in statute relating to modification of sentence.

Sec. 23. provides that changes made in the bill do not apply to crimes committed before the effective date of the Act.