

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672

5777 HOUSE JUDICIARY

House Judiciary Committee
April 3, 1989
Page 2

Civil suits provide financial compensation to victims and can help deter unacceptable behavior. No public benefit supports a rule that shields childhood sexual abusers from the consequences of their conduct. The hope is that this legislation, in addition to providing childhood sexual abuse survivors with an opportunity to seek civil redress, will have a chilling effect on potential abusers. Legislative action is essential if the discovery rule is to be applied to childhood sexual abuse cases.

Attached you will find additional material describing the extent and nature of the problems associated with childhood sexual abuse as it pertains to this legislation.

FU/dl

1 IN THE HOUSE

BY ULMER, GOLL AND COLLINS

2

HOUSE BILL NO. 238

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act extending to three years the statute of
7 limitations for civil actions brought by victims of
8 sexual abuse, and relating to causes of action
9 brought by adult victims based on injury suffered as
10 a result of sexual abuse during childhood and the
11 statute of limitations applicable to those causes of
12 action; and providing for an effective date."

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

14 * Section 1. AS 09.10.060 is amended by adding a new subsection to
15 read:

16 (c) A person who was the victim of sexual abuse may not maintain
17 an action for recovery of damages against the perpetrator of the act
18 or acts of sexual abuse based on the perpetrator's intentional conduct
19 for an injury or condition suffered as a result of the sexual abuse
20 unless commenced within three years. In this subsection, "sexual
21 abuse" means an act committed by the defendant against the plaintiff
22 maintaining the cause of action if the defendant's conduct would have
23 violated the provisions of AS 11.41.410 - 11.41.440 or 11.41.450 -
24 11.41.455 at the time it was committed.

25 * Sec. 2. AS 09.10.140 is amended to read:

26 Sec. 09.10.140. DISABILITIES OF MINORITY AND INCOMPETENCY. If a
27 person entitled to bring an action mentioned in this chapter is at the
28 time the cause of action accrues either (1) under the age of majority,
29 or (2) incompetent by reason of mental illness, the time of the

1 maintain an action for recovery of damages against the perpetrator of
2 the act or acts of sexual abuse to a minor based on the perpetrator's
3 intentional conduct for an injury or condition suffered as a result of
4 the sexual abuse.

5 (b) If the defendant committed more than one act of sexual abuse
6 to a minor on the plaintiff, the plaintiff is not required to prove
7 which specific act caused the injury.

8 (c) In this section,

9 (1) "minor" means a person under 18 years of age;

10 (2) "sexual abuse to a minor" means an act committed by the
11 defendant against the plaintiff maintaining the cause of action if the
12 defendant's conduct would have violated the provisions of AS 11.-
13 41.434 - 11.41.440 or 11.41.450 - 11.41.455, former AS 11.15.120,
14 11.15.134, or 11.15.160, or former AS 11.40.110 at the time it was
15 committed.

16 * Sec. 5. APPLICABILITY. Sections 2 - 4 of this Act apply to all
17 actions commenced on or after the effective date of this Act, regardless of
18 when the cause of action may have arisen.

19 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

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29 or (2) incompetent by reason of mental illness, the time of the

1 disability is not a part of the time limited for the commencement of
2 the action. Except as provided in (b) of this section, the [THE]
3 period within which the action may be brought is not extended in any
4 case longer than two years after the disability ceases.

* Sec. 3. AS 09.10.140 is amended by adding a new subsection to read:

6 (b) An action based on a claim of sexual abuse under AS 09.55.-
7 650 may be brought more than three years after the plaintiff reaches
8 the age of majority if it is brought under the following circum-
9 stances:

10 (1) if the claim asserts that the defendant committed one
11 act of sexual abuse on the plaintiff, the plaintiff shall commence the
12 action within three years after the plaintiff discovered or through
13 use of reasonable diligence should have discovered that the act caused
14 the injury or condition;

15 (2) if the claim asserts that the defendant committed more
16 than one act of sexual abuse on the plaintiff, the plaintiff shall
17 commence the action within three years after the plaintiff discovered
18 or through use of reasonable diligence should have discovered the
19 effect of the injury or condition attributable to the series of acts;
20 a claim based on an assertion of more than one act of sexual abuse is
21 not limited to plaintiff's first discovery of the relationship between
22 any one of those acts and the injury or condition, but may be based on
23 plaintiff's discovery or imputed discovery of the full knowledge of
24 the effect of the series of acts.

25 * Sec. 4. AS 09.55 is amended by adding a new section to read:

26 ARTICLE 8. ACTIONS BY A VICTIM BASED ON
27 SEXUAL ABUSE AS A CHILD.

28 Sec. 09.55.650. CLAIM BASED ON SEXUAL ABUSE AS A CHILD. (a) A
29 person who, as a minor, was the victim of sexual abuse to a minor may

1 maintain an action for recovery of damages against the perpetrator of
2 the act or acts of sexual abuse to a minor based on the perpetrator's
3 intentional conduct for an injury or condition suffered as a result of
4 the sexual abuse.

5 (b) If the defendant committed more than one act of sexual abuse
6 to a minor on the plaintiff, the plaintiff is not required to prove
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FACT SHEET ON LEGISLATION
APPLYING THE DISCOVERY RULE TO CIVIL SUITS
BROUGHT BY ADULT SURVIVORS OF CHILDHOOD SEXUAL ABUSE

Childhood sexual abuse is a problem of immense proportion in the United States today. The American Psychological Association estimates that 12 million to 15 million women in the United States have suffered incestuous abuse, and that about one-half of these cases involved father-daughter or stepfather-stepdaughter incest. One expert's study estimates that over one-quarter of the population of female children have experienced sexual abuse before the age of 14, and well over one-third have had such an experience by the age of 18 years. D. Russell, Incidence and Prevalence of Sexual Abuse of Female Children, 7 Child Abuse & Neglect 133, 145 (1983). Traditionally, girls were believed to be sexually abused far more often than boys. Recently, it has emerged that boys are abused much more frequently than previously believed. Experts estimate that the average age of a victim of childhood sexual abuse is age 8; victims' ages range from birth to age 16. M. Kirkpatrick, ed., Women's Sexual Experience 133 (1982).

It is estimated that anywhere from 50% to 90% of all sexual abuse of children goes unreported. A central element of childhood sexual abuse is secrecy: childhood sexual abuse happens when the child is alone with the abuser, and the secrecy makes it clear to the child that the activity is something bad and dangerous. The fact that the abuser is often in a trusting and apparently loving position only increases the child's helplessness and powerlessness. The child faced with continuing abuse somehow must achieve a sense of control. This "accommodation syndrome" requires an internalization of the child's rage, fear, confusion, and sadness. This internalization of anger and anxiety is a survival mechanism that often leads to self-destructive and other destructive behaviors.

In accommodating to an intolerable situation, a victim of childhood sexual abuse will often repress the abuse for many years. As he or she becomes an adult, a childhood sexual abuse survivor will often begin to exhibit signs of trauma. Adult survivors of childhood sexual abuse are more likely than their non-victimized counterparts to manifest depression, self-destructive behavior, anxiety, feelings of isolation and stigma, poor self-esteem, a tendency toward re-victimization, and substance abuse. Generally, it is only when an adult survivor of childhood sexual abuse enters therapy that any meaningful understanding of his or her injuries can be developed.

The criminal justice system is largely inadequate to address the issue of childhood sexual abuse. The crime is seldom reported, and the possibility of conviction remote. Consequently, for many survivors of childhood sexual abuse, civil redress becomes the only available legal remedy. The most formidable procedural bar to such suits is the application of statutes of limitation to traditional tort claims. M. Salten, Statutes of Limitation in Civil Incest Suits: Preserving the Victim's Remedy, 7 Harv. Women's L.J. 189, 190 (1984); see also Comment, Tort Remedies for Incestuous Abuse, 13 Golden Gate U. L. Rev. 609, 628-31 (1983).

Traditionally, statutes of limitation begin to run as of the date of the wrongful act or omission which is the basis of the plaintiff's claim. In instances in which injured plaintiffs may not know or be expected to know of their injuries until after the statute of limitations period has expired, courts have fashioned the "delayed discovery" exception. The discovery rule provides that the statute of limitations does not begin to run until the plaintiff discovers or through the use of reasonable diligence should have discovered the cause of action.

The discovery rule is particularly well-suited to cases involving childhood sexual abuse. Indeed, the Surgeon General's Northwest Conference on Interpersonal Violence specifically recommended application of the discovery rule to childhood sexual abuse cases. Conference Recommendations, dated September 23-26, 1987. The Washington Supreme Court, in a 5-4 decision, recently held that the discovery rule does not apply to civil suits brought by survivors of childhood sexual abuse. Tyson v. Tyson, 107 Wn.2d 72, 727 P.2d 226 (1986). Legislative action is therefore imperative.

Application of the discovery rule would mean that the statute of limitations for adult survivors of childhood sexual abuse would not begin to run until the plaintiff's injuries and the fact that they were caused by the abuse are discovered or should have been discovered by the plaintiff. No public benefit supports a rule that shields childhood sexual abusers from the consequences of their conduct. See Comment, Adult Incest Survivors and the Statute of Limitations: The Delayed Discovery Rule and Long-Term Damages, 25 Santa Clara L. Rev. 191, 217-18 (1985). The hope is that this legislation, along with providing victims of childhood sexual abuse with a remedy, will have a chilling effect on potential abusers.

SUMMARY OF TESTIMONY

Shirley Feldman-Summers, Ph.D.

Psychologist

I am here to support a bill which extends the discovery rule cases involving childhood sexual abuse. I take that position as a substantial number of childhood victims of sexual abuse lose their recollection of what happened until after they reach adulthood. Even when they are able to recall what happened, they are often unable to recognize the link between the abuse that occurred in their childhood and their present problems. The recognition of this link frequently requires professional help. In support of this position, I want to make three points.

First, it has long been understood that people repress painful memories. This is a process that affects us all -- including those of us in this room. When we cannot cope with our emotions and memories because they are too painful, we "forget" -- i.e., we are not consciously aware of them. Repression allows us to cope with the painful experiences. Thus, it is not surprising that a substantial number of people who have been victims of childhood sexual abuse repress those events. Recent empirical evidence published in 1987 suggests that approximately 25% of adult women who were sexually abused as children had repressed the abuse and had no recollection of the molestation. As a result, those 25% are severely hampered by a rule that requires them to bring a lawsuit three years after age 18 -- regardless of whether they remember what happened to them or not.

2. My second point is this: Even if a victim remembers some or all of the abuse, we should not assume that she will automatically see the link between abuse that may have occurred 10 or 15 years ago and the psychological problems from which she is suffering today. There are two reasons for saying that. First, we have evidence that some of the problems may not emerge until well into adulthood, e.g., problems with sexual functioning in an adult relationship. Second, it is unrealistic to assume that even when an incest survivor begins to experience those problems as an adult she will recognize the link between her current adult problems and a childhood experience -- especially without professional assistance. It is the discovery of that link which constitutes the heart of most psychotherapy.

3. Finally, it may be tempting to disbelieve the report of someone who at age 28 or 30 or 40 says for the first time that she or he now remembers being abused as a child. It may be tempting to say that such a person will be very unlikely to have any evidence to support that recollection. However, we should resist both of these temptations. Clinical experience and empirical evidence has demonstrated that a substantial number of women, who recall childhood abuse after having repressed it, are in fact able to produce corroborating evidence. In the 1987 publication by Herman and Schatzow that is referred to in the memorandum to support this legislation, the investigators found that approximately three-fourths of the women in their study who had

previously repressed childhood molestation were able to produce at least one item of corroborating evidence by way of diaries, observations or statements by a sibling, admissions by the perpetrator, etc. In short, long term repression should not be seen as suggestive of fabrication or the result of suggestions on the part of other people. Instead, long term repression is simply a survival mechanism employed by many victims as a way to avoid the painfulness of thinking about what they experienced.

Let me conclude with one final remark: If our statute of limitations is not amended to accomodate the process of repression, the person who sets the process in motion -- the abuser -- will benefit. By permitting the victim to sue when he or she discovers the injury and its cause, the chances are increased that abusers will eventually have to pay for the harm that they've caused. If abusers are made to pay -- sooner or later -- for what they've done, perhaps then we will begin to see a decline in the incidence of childhood sexual abuse.

RESUME

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Educational Background

B.A. in Psychology and Philosophy, Mills College, Oakland, California, 1969.

M.A. in Psychology, Connecticut College, New London, Connecticut, 1971.

Ph.D. in Psychology, University of Kansas, Lawrence, Kansas, 1974.

Professional Experience

Faculty member, University of Washington, Seattle, Washington, 1973 to 1983.

Private practice of Psychology, Seattle, Washington, 1976 to present. (License No. 496)

Publications

Articles and essays on social justice; sex role stereotypes; conformity; psychological impacts of rape and childhood molestation; attitudes toward rape and assault victims, and related topics in various books and journals including: Journal of Personality and Social Psychology; Journal of Social Issues; Criminal Justice and Behavior; Journal of Abnormal Psychology; Psychology of Women Quarterly; Journal of Personality; Journal of Educational Psychology; Journal of Applied Psychology; Journal of Applied Social Psychology; Journal of Consulting and Clinical Psychology; Sexual Coercion & Assault. Issues: Psychology and the Problems of Today (M. Wertheimer and L. Rappoport, eds., 1978); Victims and Society (E. Viano, ed., 1979).

Lectures, Workshops and Courses Taught

Psychological aspects of human sexuality; psychological impacts of sexual coercion; social psychology; research methods in social psychology; psychology of women; and related topics.

BACKGROUND INFORMATION
GIVING ADULT VICTIMS OF CHILD SEXUAL ABUSE THEIR DAY IN COURT

Submitted by Peggy Bateman - Alternatives to Fear 1605 17th Ave Seattle WA 98122
Legislative Hearings - 19 January 1988

Senate: 8:00 AM, Hearing Room 6, John A. Cherberg Building
House: 1:30 PM, Hearing Room A, House Office Building

FOR FURTHER INFORMATION CONTACT:

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Leslie Owen, NW Women's Law Center,
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Victim/Survivors: Patti Barton, Legal Rights for Survivors
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LEGAL RIGHTS FOR SURVIVORS
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PRESENT LAW

THE TYSON CASE

The October 30, 1986 decision of the Washington Supreme Court in the case of Tyson v. Tyson placed an insurmountable barrier in the path of adult survivors of child sexual abuse seeking to recover damages from their abusers through our civil court system. In that case, 26 year old Nancy Tyson had brought suit against her father to recover damages for injuries she alleged resulted from sexual abuse that she had not remembered until adulthood. Tyson's attorney Barbara Jo Levy maintained that the statute of limitations on the case should not begin to run until the time of discovery, i.e., Tyson's recovering her memories. Tyson maintained that the abuse she suffered between the ages of three and 11 was blocked from her memory until she began psychotherapy less than a year before she filed suit.

The Supreme Court ruled, in a 5-4 decision, that the "discovery

rule" would not apply in cases of child sexual abuse. Without the application of the "discovery rule," Tyson would have had to file her suit within three years of attaining the age of 18, according to the court decision. That is, she would have had to file by the time she reached 21.

THE RAYMOND CASE

The next year, in May, 1987, the State Court of Appeals cited the Tyson case in ruling that the discovery rule would not apply to the case of Raymond v. Ingram. Pamela Raymond had brought suit against her grandparents, alleging that her grandfather had sexually abused her when she was between the ages of four and 17, and that her grandmother had known of the abuse and neglected to prevent it.

Raymond's memories of the abuse were not blocked, nor were her memories of the stomach cramps, sleep disorder and other problems she suffered. However, she maintained that she did not realize the cause and effect relationship between the abuse and the problems until she entered into psychotherapy. The Court of Appeals supported the trial court in its application of the statute of limitations running from Raymond's age of majority.

Attorneys like Levy report that they continue to receive calls from adult survivors like Tyson and Raymond, but have had to advise them that they have no cause of action, because of the statute of limitations. Under the proposed changes, the statute of limitations would not begin to run until the victim/survivor discovered her injury.

WHAT ARE THE DAMAGES IN CHILD SEXUAL ABUSE?

Individuals vary widely in their response to the trauma of child sexual abuse. However, practitioners and researchers have been able to identify a constellation of initial and long-term effects of sexual abuse in the 12-15 million American women that the American Psychological Association estimates have suffered incestuous abuse, along with the additional millions that were victim to extra-familial sexual abuse.

INITIAL EFFECTS

Experts in the field have noted a number of the following initial effects, many of which will have consequences that are long-term:

- *Sleep and eating disturbances
- *Adolescent pregnancy--in one study 11% of the child victims became pregnant as a result of the sexual offense.
- *Fears and phobias
- *Depression
- *Guilt and shame and related lowered sense of self esteem
- *Anger and hostility resulting in behavioral disturbances within the family and at school.
- *Sexual disturbances, including open masturbation, excessive sexual curiosity, frequent exposure of genitals, and sexual aggression against other children.
- *School problems including truancy and quitting school.
- *Running away

LONG TERM EFFECTS

The long-term effects of child sexual abuse are sometimes merely a continuation of initial effects. However, recent literature has focused on describing effects that manifest themselves long after the abuse in a Post Traumatic Stress Syndrome. In cases which may be

diagnosed as PTSD symptoms may appear years later that the sufferer may not be able to connect to the original stress--sexual abuse--without professional help.

In addition, life experiences such as marriage, having children, experiencing an adult rape or rape attempt, being close to someone who suffers an adult rape or rape attempt, can bring forth symptoms that can be confusing or terrifying to a victim who thought she had put it all behind her, or one who does not remember her abuse. Some of the effects that may persist into or suddenly appear in adulthood include:

- *Depression, including that severe enough to require hospitalization.

- *Suicide attempts--A Canadian research team found that 92.9% of mental health center patients who had attempted suicide before the age of 13 were victims of child sexual abuse, as were 87.2% of those whose first attempt occurred in adolescence.

- *Nervousness and anxiety, sometimes resulting in sleep disturbance, nightmares, extreme tension and other somatic complaints.

- *Eating disorders, including anorexia and bulimia.

- *Poor self esteem--In a 1985 study women with poor self esteem were four times as likely to report a history of child sexual abuse as were other subjects.

- *Difficulties in interpersonal relations including feelings of isolation, difficulty trusting others, difficulties in parenting including abuse of their own children.

- *Vulnerability to revictimization--one study reported that former incest victims were twice as likely to be victims of rape than were those who had not been victimized in childhood. Other studies report a correlation between childhood sexual abuse and being battered in adult relationships.

- *Sexual problems ranging from an inability to relax and enjoy sex to a compulsive desire for sex, "promiscuity," and prostitution.

WHY SHOULD THE DISCOVERY RULE BE APPLIED?

There are a number of reasons that a young adult aged 18-21 may not know of the damage done by child sexual abuse. Social scientists estimate that the average age of a victim of child sexual abuse is eight years, with a reported range from birth to age 16. 50-90% of this abuse goes unreported, although reporting rates have improved recently with the introduction of education in the public schools and attention by the mass media.

Even now, though, it is very difficult for a child to report sexual abuse because of threats by the abuser of physical violence, harm to the victim's siblings or mother, threat of abandonment or separation, and other psychologically coercive tactics. In addition, many children are simply too young to be able to communicate effectively about their abuse.

Many children who do report are met with denial on the part of the adult they tell, and more frequently by the adult accused. When a child does tell about abuse and is met with denial or accusation rather than care and protection, that child, as well as the child that cannot tell, must find some way of coping with the trauma, which is often continuing.

REPRESSION OF MEMORIES

One very common way of coping--particularly effective with very young children--is to forget all or part of the abuse. In a clinical study conducted recently in Massachusetts, 64% of the patients did not have full recall of their sexual abuse, while 28% reported severe memory repression. For those suffering only partial memory loss, the amnesia is likely to cover the most severe aspects of the abuse. In

the Massachusetts study, most of the patients who recovered memories in the course of treatment were able to go back and verify those memories through the recollections of other family members and other means of verification. One woman found a detailed diary of her abuse kept by her abuser.

THE ACCOMMODATION SYNDROME

Another childhood coping response is to deny the injury caused by the abuse. Psychologist Roland Summit has described an "accommodation syndrome," in which the shame, self-blame, and secrecy associated with the abuse inhibit the victim's understanding of its effects. In this process the child assumes responsibility for the abuse and internalizes her feelings of rage and anxiety, denying the injury.

Since these and other common victim coping responses are likely to mask the effects of child sexual abuse until the victim undergoes treatment by a psychotherapist, the application of the "discovery rule" would enable them to recover damages for their injuries.

THE DISCOVERY RULE

Traditionally, statutes of limitation begin to run as of the date of the wrongful act or omission which is the basis of the plaintiff's claim. The courts have fashioned the "delayed discovery" exception which provides that the statute of limitations does not begin to run until the plaintiff should have discovered or through the use of reasonable diligence should have discovered the cause of action.

The Surgeon General's Northwest Regional Conference on Interpersonal Violence specifically recommended application of the discovery rule to childhood sexual abuse cases in its meeting in

Seattle in September 1987. And Justice Goodloe, concurring in the Tyson decision, wrote: "I believe the arguments of the dissent are most compelling; however, the end result appears to be subjective judicial policy making. This is the exclusive province of the Legislature, and the judiciary must not invade it." [Tyson vs. Tyson, 107 Wn.2d 72, 727 P.2d 226 (1986)].

Supporters of these bills ask our legislators to take Justice Goodloe's remarks as a directive and provide for the adult victim/survivors of child sexual abuse an opportunity to take their cases to court and let a jury decide the truth of their claims and the cause and extent of the damage they have suffered.

Application of the "discovery rule" will not only give victims a chance for a hearing, but may also have a chilling effect on the abuser who must then recognize that while he may be able to control a child and keep her from telling, he may have to face the consequences of his actions later when she grows up. It is ironic that it is the effects of his wrongdoing--the trauma caused by the abuse, the repression, the accommodation--that results in his victim's inability to pursue redress through the courts. The "discovery rule" can help to strip away this unfair protection for the abuser and force him to face his accuser when she is an adult and able to stand up for herself.

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MEMORANDUM IN SUPPORT OF LEGISLATION
APPLYING THE DISCOVERY RULE TO CIVIL SUITS
BROUGHT BY ADULT SURVIVORS OF CHILDHOOD SEXUAL ABUSE

I. Purpose of the Legislation

The discovery rule, which states that a statute of limitation does not begin to run until a plaintiff discovers or through the use of reasonable diligence should have discovered that she or he is injured and that the injury was caused by the defendant's misconduct, should be applied to civil suits based on intentional torts brought by adult survivors of childhood sexual abuse.¹

II. Facts

Childhood sexual abuse is a problem of immense proportion in the United States today. The American Psychological Association estimates that 12 million to 15 million women in the United States have suffered incestuous abuse, and that about one-half of these cases involved father-daughter or stepfather-stepdaughter incest. Brozan, Helping to Heal the Scars Left by Incest, NY Times, Jan. 9, 1984, at B2, col. 6. One expert's study estimates that over one-quarter of the population of female children have experienced sexual abuse before the age of 14, and well over one-third have had such an experience by the age of 18 years. D. Russell, Incidence and Prevalence of Sexual Abuse of Female Children, 7 Child Abuse & Neglect 133, 145 (1983). There is virtually unanimous agreement that sexual abuse is the fastest growing form of reported child abuse. K. MacFarlane & J. Waterman, Sexual Abuse of Young Children 5 (1986). The vast majority of investigated reports prove valid. R. Summit, The Child Sexual Abuse Accommodation Syndrome, 7 Child Abuse & Neglect 177, 178 (1983).

Experts estimate that the average age of a victim of childhood sexual abuse is age 8; victims' ages range from birth to age 16. M. Kirkpatrick, ed., Women's Sexual Experience 133 (1982). The duration of the abuse, however, may cause age estimations to be artificially high because the age listed as the age of abuse is almost always the victim's age at the time a report is made,

¹Childhood sexual abuse is defined for the purpose of this memorandum as any kind of exploitative sexual contact with persons related or unrelated by blood or marriage before the victim turned 16.

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and sexual abuse often begins long before it is reported. See K. MacFarlane & J. Waterman, supra at 7. Many experts believe that most child victims of sexual abuse were less than 8 years old at the time of initiation. See, e.g., R. Summit, supra at 178.

The abusers are usually family members, friends, and neighbors, and they are predominantly male. D. Finkelhor, Sexually Victimized Children 73-75 (1979). Traditionally, girls were believed to be sexually abused far more often than boys. S. Butler, Conspiracy of Silence: The Trauma of Incest 5 (1978) (citing V. DeFrancis, Protecting the Child Victim of Sex Crimes Committed by Adults 56, 66 (1969) (study concluding that 97% of offenders are adult males and 87% of child victims are females)). Recently, it has emerged that boys are abused much more frequently than previously believed. Surveys of child molesters (who are predominantly male) have demonstrated that as many as 85% of them were themselves abused as children. K. MacFarlane & J. Waterman, supra at 9-10.

It is estimated that anywhere from 50% to 90% of all sexual abuse of children goes unreported. S. Butler, supra at 12-13. A central element of childhood sexual abuse is secrecy: childhood sexual abuse happens when the child is alone with the abuser, and the secrecy makes it clear to the child that the activity is something bad and dangerous. R. Summit, supra at 181. Physical violence and/or the threat of physical violence, threats of harm to the victim's siblings or mother, the threat of abandonment or separation, and other psychologically coercive tactics used by the abuser result in the child becoming virtually incapable of disclosing the abuse. M. de Young, The Sexual Victimization of Children 41 (1982). Moreover, many of the victims are simply too young to be able to communicate effectively the abuse, or may be unaware that the behavior is anything unusual or inappropriate. K. MacFarlane & J. Waterman, supra at 5-7. In any event, children who do break this silence are rarely believed. M. Kirkpatrick, supra at 128-29.

The adult expectation that victims of abuse will exercise self-protection and immediately disclose the abuse ignores the inherent authority of the adult and the corresponding helplessness of the child. R. Summit, supra at 182-84. The fact that the abuser is often in a trusting and apparently loving position only increases the child's helplessness and powerlessness.²

²The normal reaction of child victims is "to 'play possum,' that is to feign sleep, to shift position, and to pull up the covers. Small creatures simply do not call on force to deal with overwhelming threat. Where there is no place to run, they have no choice but to try to hide." R. Summit, supra at 183.

"Adults must be reminded that the wordless action or gesture of a parent is an absolutely compelling force for a dependent child and the threat of loss of love or loss of family security is more frightening to the child than any threat of violence." Id. at 183.

If the child does not seek or receive immediate intervention and protection, the child's only option becomes accommodating to the reality of continuing sexual abuse. The child faced with continuing abuse somehow must achieve a sense of control. He or she cannot safely conceptualize a parent as bad because to do so is tantamount to abandonment.³ Thus, the only acceptable option for the child becomes assumption of responsibility for the abuse. R. Summit, supra at 184-86. This "accommodation syndrome" requires an internalization of the child's rage, fear, confusion, and sadness. This internalization of anger and anxiety is a survival mechanism that often leads to self-destructive and other destructive behaviors. Id. For example, a study of 195 female clients of a community mental health center found that 54.9% of the survivors of childhood sexual abuse reported previous suicide attempts, as opposed to 22.6% of nonvictims. The study further found that 92.9% of the women whose first suicide attempt occurred before age 13 were victims of childhood sexual abuse, and 87.2% of those whose first attempt was during adolescence were childhood sexual abuse victims. J. Briere & M. Runtz, Suicidal Thoughts and Behaviors in Former Sexual Abuse Victims, 18 Can. J. Behavioral Sci. 413 (1986).

In accommodating to an intolerable situation, a victim of childhood sexual abuse will often repress the abuse for many

³This process is described as a "vertical split in reality testing:"

If the very parent who abuses and is experienced as bad must be turned to for relief of the distress that the parent has caused, then the child must, out of desperate need, register the parent--delusionally--as good. Only the mental image of a good parent can help the child deal with the terrifying intensity of fear and rage which is the effect of the tormenting experiences. The alternative--the maintenance of the overwhelming stimulation and the bad parental image--means annihilation of identity, of the feeling of the self. So the bad has to be registered as the good. This is a mind-splitting or mind-fragmenting operation. R. Summit, supra at 184 (quoting Shengold, Child Abuse and Deprivation: Soul Murder, 27 J. Am. Psychoanalytic Ass'n 539 (1979) (emphasis in original)).

years. E.S. Blume, The Walking Wounded: Post-Incest Syndrome, 15 SIECUS Report 5 (1986).

Many, if not most, survivors of child sexual abuse develop amnesia so complete that they simply do not remember that they were abused at all; or, if they do remember, they minimize or deny the effects of the abuse so completely that that cannot associate it with any later consequences. They are the "walking wounded," functional adults who bear, often secretly, lifelong pain and impaired emotional functioning.

Id. (emphasis in original). One study of 53 female outpatients participating in therapy groups for incest survivors determined that 64% of the patients studied did not have full recall of the sexual abuse but reported some degree of amnesia, and 28% of the women reported severe repression. J. Herman & E. Schatzow, Recovery and Verification of Memories of Childhood Sexual Trauma, 4 Psychoanalytic Psychology 1, 4 (1987). A strong association was observed between the degree of reported amnesia and the age of onset and duration of the sexual abuse. Id. For most victims, it takes years to come to terms with the emotional injuries brought on by the sexual abuse. J. Herman, Father-Daughter Incest 177 (1981).

As a victim of childhood sexual abuse becomes an adult, he or she will often begin to exhibit signs of trauma. Adult survivors of childhood sexual abuse are more likely than their nonvictimized counterparts to manifest depression, self-destructive behavior, anxiety, feelings of isolation and stigma, poor self-esteem, a tendency toward revictimization, and substance abuse. A. Browne & D. Finkelhor, Initial and Long-Term Effects: A Review of the Research in D. Finkelhor, ed., Child Sexual Abuse: New Theory and Research, 143, 152-163 (1984). Difficulty in trusting others and sexual maladjustment are additional long-term effects reported by empirical researchers. Id. A childhood sexual abuse survivor might have partially or completely repressed the memory of the abuse, but the trauma might nevertheless be reenacted in nightmares, "flashbacks," and periods of disassociation. J. Herman, D. Russell, & K. Trocki, Long-Term Effects of Incestuous Abuse in Childhood, 143 Am. J. Psychiatry 1293 (1986).

A victim of childhood sexual abuse often denies injury as a coping response, and the shame, self-blame, and secrecy associated with childhood sexual abuse often inhibit a victim's understanding of its effects. See R. Summit, supra at 186-190. The accommodation process, in which the child has assumed responsibility for the abuse and internalized his or her feelings of rage and anxiety, often make victims incapable of discovering their

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injuries for many years. A genuine understanding of the extent and cause of the injuries sustained by a survivor of childhood sexual abuse is unlikely to be developed until the survivor receives mental health treatment. J. Herman, Father-Daughter Incest, *supra* at 177-196.

III. Legal Remedies

The criminal justice system is largely inadequate to address the issue of childhood sexual abuse. The crime is seldom reported, and the possibility of conviction remote. See V. DeFrancis, *supra* at 187-191. One expert has estimated the conviction rate for childhood sexual abuse at 1% of all cases. D. Russell, The Secret Trauma 86 (1986). Consequently, for many survivors of childhood sexual abuse, civil redress becomes the only available legal remedy. The most formidable procedural bar to such suits is the application of statutes of limitation to traditional tort claims. M. Salten, Statutes of Limitation in Civil Incest Suits: Preserving the Victim's Remedy, 7 Harv. Women's L.J. 189, 190 (1984); see also Comment, Tort Remedies for Incestuous Abuse, 13 Golden Gate U. L. Rev. 609, 628-31 (1983).

The Washington Supreme Court, in a 5-4 decision, recently held that the discovery rule does not apply to civil suits brought by survivors of childhood sexual abuse. Tyson v. Tyson, 107 Wn.2d 72, 727 P.2d 226 (1986). A strong dissenting opinion by Justice Pearson discussed the necessity for application of the discovery rule in these cases. 107 Wn.2d at 80-94. The dissent pointed out that the purpose of the discovery rule is

to provide an opportunity for an adult who claims to have been sexually abused as a child to prove not only that she was abused and that the defendant was her abuser, but that her suffering was such that she did not and could not reasonably have discovered all the elements of her cause of action at an earlier time. The policy behind providing this opportunity has been demonstrated: the nature of child sexual abuse . . . is often so secretive, so humiliating, and so devastating that a victim typically represses the events until the abuse is "discovered"--often through psychotherapy, and often well into adulthood.

107 Wn.2d at 93-94 (emphasis in original). The concurring opinion to the majority's decision noted the strength of the dissent's arguments, but stated that "[t]his is the exclusive province of the legislature, and the judiciary must not invade it." *Id.* at 80. Legislative intervention is therefore appropriate and, indeed, imperative.

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IV. Application of the Discovery Rule

Traditionally, statutes of limitation begin to run as of the date of the wrongful act or omission which is the basis of the plaintiff's claim. Developments in the Law: Statutes of Limitations, 63 Harv. L. Rev. 1177, 1200-02 (1950). In instances in which injured plaintiffs may not know or be expected to know of their injuries until after the statute of limitations period has expired, courts have fashioned the "delayed discovery" exception. The discovery rule provides that the statute of limitations does not begin to run until the plaintiff discovers or through the use of reasonable diligence should have discovered the cause of action. See U.S. Oil v. Department of Ecology, 96 Wn.2d 85, 633 P.2d 1329 (1981). In determining whether to apply the discovery rule, courts traditionally have balanced the possibility of stale claims against the unfairness of precluding meritorious causes of action. 96 Wn.2d at 93. "That balancing test has dictated the application of the rule where the plaintiff lacks the means or ability to ascertain that a wrong has been committed." Id.

The discovery rule is particularly well-suited to cases involving childhood sexual abuse. Indeed, the Surgeon General's Northwest Conference on Interpersonal Violence specifically recommended application of the discovery rule to childhood sexual abuse cases. Conference Recommendations, dated September 23-26, 1987. The psychological trauma associated with childhood sexual abuse will often result in the victim lacking the means or ability to ascertain his or her injuries and their cause.

The public policy considerations underlying use of the discovery rule clearly support its application in cases involving childhood sexual abuse. The discovery rule, for example, is often applied in breach of trust cases. See, e.g., Peter v. Simmons, 87 Wn.2d 400, 552 P.2d 1053 (1976); Kittinger v. Boeing Co., 21 Wn. App. 484, 585 P.2d 812 (1978); Janisch v. Mullins, 1 Wn. App. 393, 461 P.2d 895 (1969). The same policies supporting application of the discovery rule in breach of trust cases support protection of plaintiffs' remedies in childhood sexual abuse cases: the victim of childhood sexual abuse is typically inexperienced in interpersonal relations and must rely on adults for that knowledge. Moreover, the legitimacy of a child's trust in and reliance on his or her family members historically has been recognized by the courts. See Salten, supra at 209.

Similarly, the discovery rule applies to fraud claims, see RCW 4.16.080(4), and failure by an adult to disclose to the child essential information regarding a child's rights and limitations on that adult's rights may be treated as fraud or constructive concealment. See Salten, supra at 210-11. A delayed discovery

rule is appropriate in cases involving fraudulent concealment. See, e.g., Kicklighter v. New York Life Ins. Co., 145 F.2d 548 (5th Cir. 1944). Moreover, the fact that only the defendant has had full knowledge of the wrongful acts is an important policy justification for application of the discovery rule. See U.S. Oil v. Department of Ecology, 96 Wn.2d at 93-94.

As stated more fully above, it is not unusual for a victim of childhood sexual abuse to repress all memory of the abuse. See E.S. Blume, supra at 5. In any case, most victims will be unable to connect their injuries with the abuse for many years. Id. Moreover, childhood sexual abuse related injuries often include problems in interpersonal relations, low self-esteem, feelings of isolation, and sexual dysfunction, all of which are unlikely to manifest themselves until adulthood. M. Tsai, S. Feldman-Summers & M. Edgar, Childhood Molestation: Variables Related to Differential Impacts on Psychosexual Functioning in Adult Women, 88 J. Abnormal Psych. 407, 414 (1979). Generally, it is only when an adult survivor of childhood sexual abuse enters therapy that any meaningful understanding of his or her injuries can be developed. M. Salten, supra at 202.

Discovery of the cause of a childhood sexual abuse survivor's injuries can also take years. Many victims are convinced that they are to blame for the abuse. See M. de Young, supra at 41. The concept of "blameless ignorance" historically has been a central justification for use of the discovery rule. See Urie v. Thompson, 337 U.S. 163, 170 (1949). That concept is clearly relevant in childhood sexual abuse cases. The trauma associated with sexual abuse causes a victim to be unable to connect his or her injury with the abuse. The victim thus is "blamelessly ignorant" of his or her abuse-related injuries. The abuser, on the other hand, is the direct cause of the victim's trauma, and should not be permitted to profit from the fact that discovery of the cause of a victim's injuries may occur long after the traditional statute of limitations period has elapsed.

No public benefit supports a rule that shields childhood sexual abusers from the consequences of their conduct. See Comment, Adult Incest Survivors and the Statute of Limitations: The Delayed Discovery Rule and Long-Term Damages, 25 Santa Clara L. Rev. 91, 217-18 (1985). Civil suits act as deterrents to unacceptable behavior. The hope is that this legislation, along with providing victims of childhood sexual abuse with a remedy, will have a chilling effect on potential abusers.

V. Conclusion

To apply the traditional statute of limitations "date of wrongful conduct" rule to civil suits brought by adult survivors of childhood sexual abuse is effectively to deny these plaintiffs a remedy. The discovery rule clearly is appropriate in these cases; application of the rule would mean that the statute of limitations for adult survivors of childhood sexual abuse would not begin to run until the plaintiff's injuries and the fact that they were caused by the abuse are discovered or should have been discovered by the plaintiff. The latent nature of many of the injuries and the time required to discover their cause, as well as the offender's role in coercing the child's silence, make application of the discovery rule essential in intentional tort suits alleging injuries resulting from childhood sexual abuse. Indeed, these cases are perhaps the most compelling examples of the need for the discovery rule. Legislative action is essential to provide survivors of childhood sexual abuse with a genuine and meaningful legal remedy.

Prepared by Jana Mohr, Attorney at Law
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Kittinger v. Boeing Co., 21 Wn. App. 484, 585 P.2d 812 (1978)

Peter v. Simmons, 87 Wn.2d 400, 552 P.2d 1053 (1976)

Tyson v. Tyson, 107 Wn.2d 72, 727 P.2d 226 (1986)

U.S. Oil v. Department of Ecology, 96 Wn.2d 85, 633 P.2d 1329 (1981)

Urie v. Thompson, 337 U.S. 163 (1949)

Statutes and Miscellaneous

RCW 4.16.080(4)

Surgeon General's Northwest Conference on Interpersonal Violence, Recommendations dated September 23-26, 1987

5487U

H B

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HOUSE COMMITTEE REPORT

(7)

Date Referred: March 31, 1989

FURTHER REFERRALS:

Date of Committee Action: _____

The JUDICIARY Committee considered:

HB 224

HOUSE BILL NO. 224

[STATE EMPLOYMENT VETERANS' PREFERENCE]

"An Act relating to veteran's preference in state employment."

RECOMMENDATIONS:

- be replaced with CS HB 224 (Jud) 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):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact _____
- zero fiscal note _____
- zero with analysis _____

- fiscal note(s) _____
- zero fiscal note(s) _____
- zero fn/analysis _____

SIGNING DO PASS:

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Terry Martin with sub-board.

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SIGNING:
(Check approp. column)

| | Do Not Pass | No Rec | Amend |
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Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Department of Administration
 Title: An Act relating to Veteran's BRU: Personnel
preference in State employment
 Sponsor: Cato, Grussendorf, et al. Components: Personnel
 Requestor: House Judiciary

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 91 | FY 92 | FY 93 | FY 94 | FY 95 | FY 96 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | 0 | 0 | 0 | 0 | 0 | 0 |
| TRAVEL | 0 | 0 | 0 | 0 | 0 | 0 |
| CONTRACTUAL | 0 | 0 | 0 | 0 | 0 | 0 |
| SUPPLIES | 0 | 0 | 0 | 0 | 0 | 0 |
| EQUIPMENT | 0 | 0 | 0 | 0 | 0 | 0 |
| LAND & STRUCTURES | 0 | 0 | 0 | 0 | 0 | 0 |
| GRANTS, CLAIMS | 0 | 0 | 0 | 0 | 0 | 0 |
| MISCELLANEOUS | 0 | 0 | 0 | 0 | 0 | 0 |
| TOTAL OPERATING | 0 | 0 | 0 | 0 | 0 | 0 |
| CAPITAL | 0 | 0 | 0 | 0 | 0 | 0 |
| REVENUE | 0 | 0 | 0 | 0 | 0 | 0 |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|---|---|---|---|---|---|
| GENERAL FUND | 0 | 0 | 0 | 0 | 0 | 0 |
| FEDERAL FUNDS | 0 | 0 | 0 | 0 | 0 | 0 |
| OTHER 1034 | 0 | 0 | 0 | 0 | 0 | 0 |
| 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)

This bill would not have a fiscal impact on the Division of Personnel either in Fiscal Year 90 or in subsequent years.

Prepared by: David K. F. Otto *DKFO* Phone: 465-4430
 Division: Personnel Date: 1/22/90
 Approved by Commissioner: Frank S. Baxter *Frank S. Baxter* Date: 1/23/90
 Agency: Department of Administration

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

FISCAL NOTE

REQUEST:

Revision Date: January 24, 1990
 Title: An Act relating to veterans preference
 Sponsor: Cato
 Requestor: House Judiciary Committee

Agency Affected: Military & Veterans Affairs
 BRU: _____
 Components: _____

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 |

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|---------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|---------|--|--|--|--|--|--|

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|---------|--|--|--|--|--|--|
| REVENUE | | | | | | |
|---------|--|--|--|--|--|--|

FUNDING: (Thousands of Dollars)

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|---------------|--|--|--|--|--|--|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | | | | | | |

POSITIONS:

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS : (Attach a separate page if necessary)

This bill will have no fiscal impact on DMVA.

Prepared by: Jeff Morrison, Director
 Division: Administrative & Support Services, DMVA
 Approved by Commissioner: John Schaeffer
 Agency: Department of Military & Veterans Affairs

Phone: 465-4600
 Date: January 24, 1990
 Date: January 24, 1990

Distribution (by preparer):

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

Original sponsor(s): REP. CATO, Grussendorf, Menard, Hudson, Zawacki,
Boucher, Kubina

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 224 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act creating preferences in state employment for
7 prisoners of war and for certain rehabilitated veter-
8 ans and prisoners of war; and allowing repeated use
9 of the state employment preference by certain veter-
10 ans and prisoners of war for applications for nonper-
11 manent positions."

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

13 * Section 1. AS 39.25.150(19) is repealed and reenacted to read:

14 (19) the granting of employment preference rights, not
15 within the area of promotion, to a veteran or prisoner of war under
16 (b) - (d) of this section;

17 * Sec. 2. AS 39.25.150 is amended by adding new subsections to read:

18 (b) A veteran or prisoner of war who possesses the necessary
19 qualifications for a job classification applied for under this chapter
20 is entitled to a preference under this subsection. In an examination
21 to determine the qualification of applicants for the classified ser-
22 vice under merit system examination, five points shall be added to the
23 passing grade of a veteran, 10 points shall be added to the passing
24 grade of a disabled veteran, or 10 points shall be added to the pass-
25 ing grade of a prisoner of war. A person may receive preference
26 points under only one of these categories. A person who has not
27 received an appointment to a permanent position using a preference
28 under this subsection may use the preference for applications to
29 nonpermanent positions without limitation. Except as provided in (c)

1 of this section, a person who has been appointed, after receiving
2 preference points under this subsection, to a permanent position in
3 the classified service is not entitled to a further hiring preference
4 under this subsection. If a position in the classified service is
5 eliminated, employees shall be released in accordance with rules that
6 give due effect to all factors. If all job qualifications are equal,
7 a veteran or prisoner of war shall be given preference over a person
8 who was not a veteran or prisoner of war and the veteran or prisoner
9 of war shall be kept on the job. This subsection may not be inter-
10 preted to amend the terms of a collective bargaining agreement.

11 (c) A veteran or prisoner of war, who terminated from a position
12 in the classified service because of a service-connected disability,
13 and who has not worked in a permanent position in the classified
14 service for at least two years since the employment ended, and who has
15 been certified by a physician or psychologist, as appropriate, as
16 having suffered from a service-connected disability during the previ-
17 ous state employment and as able to return to work, is entitled to
18 receive a preference under (b) of this section until the person is
19 appointed to a permanent position in the classified service.

20 (d) In this section

21 (1) "disabled veteran" means a veteran who is entitled to
22 compensation under laws administered by the United States Department
23 of Veterans Affairs, or a person who was honorably discharged or
24 released from active duty because of a service-connected disability;

25 (2) "prisoner of war" means a person who has been a prison-
26 er of war during a declared war or other conflict as determined by the
27 Department of Defense under federal regulations;

28 (3) "veteran" means a person with 181 days or more active
29 service in the armed forces of the United States who has been

1 honorably discharged after having served during any period

2 (A) between April 6, 1917, and December 1, 1919,
3 between September 16, 1940, and December 31, 1947, or between
4 June 27, 1950, and October 14, 1976; or

5 (B) in which the person was awarded a campaign badge,
6 expedition medal, the Purple Heart, or an award or decoration for
7 heroism or gallantry in action.

H B

2 5 5

(7)

Date Referred: April 29, 1989

FURTHER REFERRALS: FINANCE

Date of Committee Action: 3-5-90

The JUDICIARY Committee considered:

HB 255

HOUSE BILL NO. 255

[PF DIVIDENDS/INCARCERATED FELONS]

"An Act relating to permanent fund dividends for certain incarcerated individuals; and providing for an effective date."

RECOMMENDATIONS:

- be replaced with CS HB 255 Jud 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):

APPROVES PREVIOUS:

- 3cc. fiscal impact ^(Dept) Corrections Revenue, H?SS
- zero fiscal note _____
- zero with analysis _____

- fiscal note(s) _____ (Date/Dept)
- zero fiscal note(s) _____
- zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

| | Do Not Pass | No Rec | Amend |
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| <u>Mike Hill</u> | | <input checked="" type="checkbox"/> | |
| <u>Terry Hunter</u> | | <input checked="" type="checkbox"/> | |
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W. Shanley Pete Jace
 Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act relating to permanent
 fund dividends..."
 Sponsor: _____
 Requestor: _____

Agency Affected: Department of Corrections
 BRU: Administration and Support

Components: Administrative Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 91 | FY 92 | FY 93 | FY 94 | FY 95 | FY 96 |
|------------------------|--------------|--------------|--------------|--------------|--------------|--------------|
| PERSONAL SERVICES | 123.3 | 123.3 | 123.3 | 123.3 | 123.3 | 123.3 |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | 6.0 | 6.0 | 6.0 | 6.0 | 6.0 | 6.0 |
| EQUIPMENT | 47.8 | -0- | -0- | -0- | -0- | -0- |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 177.1 | 129.3 | 129.3 | 129.3 | 129.3 | 129.3 |

| | | | | | | |
|---------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|---------|--|--|--|--|--|--|

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|---------|--|--|--|--|--|--|
| REVENUE | | | | | | |
|---------|--|--|--|--|--|--|

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|--------------|--------------|--------------|--------------|--------------|--------------|
| GENERAL FUND | 892.7 | 129.3 | 129.3 | 129.3 | 129.3 | 129.3 |
| FEDERAL FUNDS | | | | | | |
| OTHER | -763.4 | | | | | |
| TOTAL | 129.3 | 129.3 | 129.3 | 129.3 | 129.3 | 129.3 |

POSITIONS:

| | | | | | | |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 3 | 3 | 3 | 3 | 3 | 3 |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS : (Attach a separate page if necessary)

An Analyst Programmer III, Statistical Technician II and Accounting Technician II would be added to handle the 2500 felon and 2000 misdemeanor trust accounts. A computer and trust accounting software will also be acquired to handle all transactions against the accounts and appropriate distribution of the monies.

Prepared by: Susan E. Knighton, Director

Phone: 465-3376

Division: Administrative Services

Date: 03/02/90

Approved by: Susan Humphrey-Barnett
 Agency: Department of Corrections

Date: 03/02/90

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 PFDs for certain incarcerated individuals
Sponsor: Boyer
Requestor: _____

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

| | FY 90 | FY 91 | FY 92 | FY 93 | FY 94 | FY 95 |
|------------------------|------------|------------|------------|------------|------------|------------|
| OPERATING | | | | | | |
| PERSONAL SERVICES | 2.3 | 1.2 | 1.2 | 1.2 | 1.2 | 1.2 |
| TRAVEL | -0- | -0- | -0- | -0- | -0- | -0- |
| CONTRACTUAL | 1.0 | 0.5 | 0.5 | 0.5 | 0.5 | 0.5 |
| SUPPLIES | -0- | -0- | -0- | -0- | -0- | -0- |
| EQUIPMENT | -0- | -0- | -0- | -0- | -0- | -0- |
| LANDS & STRUCTURES | -0- | -0- | -0- | -0- | -0- | -0- |
| GRANTS, CLAIMS | -0- | -0- | -0- | -0- | -0- | -0- |
| MISCELLANEOUS | -0- | -0- | -0- | -0- | -0- | -0- |
| TOTAL OPERATING | 3.3 | 1.7 | 1.7 | 1.7 | 1.7 | 1.7 |
| CAPITAL | -0- | -0- | -0- | -0- | -0- | -0- |
| REVENUE | -0- | -0- | -0- | -0- | -0- | -0- |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|------------|------------|------------|------------|------------|------------|
| GENERAL FUND | -0- | -0- | -0- | -0- | -0- | -0- |
| FEDERAL FUNDS | -0- | -0- | -0- | -0- | -0- | -0- |
| OTHER | 3.3 | 1.7 | 1.7 | 1.7 | 1.7 | 1.7 |
| TOTAL | 3.3 | 1.7 | 1.7 | 1.7 | 1.7 | 1.7 |

POSITIONS:

| | | | | | | |
|-----------|-----|-----|-----|-----|-----|-----|
| FULL-TIME | -0- | -0- | -0- | -0- | -0- | -0- |
| PART-TIME | 1 | 1 | 1 | 1 | 1 | 1 |
| TEMPORARY | -0- | -0- | -0- | -0- | -0- | -0- |

ANALYSIS: See attached.

Prepared By: Ervin Jones Phone: 465-2323
Division: Permanent Fund Dividend Division Date: January 16, 1990

Approved by Commissioner: Hugh Malone Date: 1/17/90
Agency: Revenue

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

Department of Revenue
Permanent Fund Dividend Division
Fiscal Note Analysis
CS HB 255 (SA)
January 16, 1990

Assumptions:

1. With an immediate effective date, this bill is intended to go in effect for the 1990 Dividend program, even though the application period (April 1-June 30) will be half over by the time this bill could become law.
2. The Department of Corrections will file an application for every incarcerated individual who was incarcerated on April 1 and who the Commissioner of Corrections believes to be an otherwise eligible resident. The Department of Corrections will file for such eligible incarcerated individuals, even if they are no longer incarcerated individuals at the time of filing.
3. The Department of Corrections will provide a list of all incarcerated individuals who were incarcerated on April 1. This list will contain full name, birthdate and social security number. The Department of Revenue will deny all applications by such individuals which were not signed by the Commissioner of Corrections or the Commissioner's designee.
4. Dividends will be paid to the Commissioner of Corrections on a weekly basis as the applications are approved for payment, starting in October.
5. All requests for additional information, denials and appeal notices will be sent to the Department of Corrections.
6. With the sudden repeal of AS 43.23.005(d), 43.23.025(b), 43.23.055(5) and 43.23.055(6), the Department of Revenue will be required to contact all felons who would have been ineligible under the repealed sections, and offer them the opportunity to file. The Department of Revenue will probably have to offer them a 90 day filing period, probably May 15-August 15. This, of course, is contingent upon the outcome of the 1989 Supreme Court appeal over AS 43.23.005(d).

Program Summary:

The Department of Revenue will use the list provided in assumption 3 to match against the PFD file. Any person who files an application on their own and who appears on that list will be denied their dividend. A denial notice will be sent to the applicant, with notice of right to appeal. If appeals are forthcoming, the Permanent Fund Dividend Division will hold informal conferences, and where requested by the applicant, the Commissioner will hold formal hearings and represent the Department in court. This is expected to generate approximately 500 additional denials in the first year, with a decreasing number in subsequent years, as felons realize that they may not file for the dividend without the participation of the Department of Corrections.

The Department of Revenue will include in the dividend calculation the total number of incarcerated felons for whom the Department of Corrections files.

Department of Revenue
 Permanent Fund Dividend Division
 Fiscal Note Analysis
 CS HB 255 (SA)
 January 16, 1990

| | <u>FY 90</u> | <u>FY 91</u> |
|---|--------------|--------------|
| 1. <u>Positions:</u> | | |
| 1 PPT Document Processor I, R7, @ \$2319.66/mo. including salary and benefits for 1 month = | \$2.3 | \$1.2 |
| This position will assist in the determination of filings by felons and in the processing and mailing of denial notices, appeals, and correspondence. Reduced by half in second and subsequent years. | | |
| 2. <u>Other Expenditures:</u> | | |
| a. <u>Travel:</u> None. | | |
| b. <u>Contractual:</u> | | |
| Printing costs and postage for 500 additional denial notices, appeal forms and envelopes, plus special notice of law change. Reduced by half in second and subsequent years. = | 1.0 | 0.5 |
| c. <u>Supplies:</u> None. | | |
| d. <u>Equipment:</u> Use existing. | | |
| TOTAL COST | <u>\$3.3</u> | <u>\$1.7</u> |

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Relating to PFD for individuals incarcerated
 Sponsor: Boyer
 Requestor: _____

Agency Affected: Health & Social Services
 BRU: Assistance Payments BRU
 Components: AFDC

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 91 | FY 92 | FY 93 | FY 94 | FY 95 | FY 96 |
|------------------------|------------|------------|------------|------------|------------|------------|
| PERSONAL SERVICES | -0- | -0- | -0- | -0- | -0- | -0- |
| TRAVEL | -0- | -0- | -0- | -0- | -0- | -0- |
| CONTRACTUAL | -0- | -0- | -0- | -0- | -0- | -0- |
| SUPPLIES | -0- | -0- | -0- | -0- | -0- | -0- |
| EQUIPMENT | -0- | -0- | -0- | -0- | -0- | -0- |
| LAND & STRUCTURES | -0- | -0- | -0- | -0- | -0- | -0- |
| GRANTS, CLAIMS | -0- | -0- | -0- | -0- | -0- | -0- |
| MISCELLANEOUS | -0- | -0- | -0- | -0- | -0- | -0- |
| TOTAL OPERATING | -0- | -0- | -0- | -0- | -0- | -0- |

| | | | | | | |
|---------|-----|-----|-----|-----|-----|-----|
| CAPITAL | -0- | -0- | -0- | -0- | -0- | -0- |
|---------|-----|-----|-----|-----|-----|-----|

| | | | | | | |
|---------|-------|-------|-------|-------|-------|-------|
| REVENUE | 260.0 | 260.0 | 260.0 | 260.0 | 260.0 | 260.0 |
|---------|-------|-------|-------|-------|-------|-------|

FUNDING: (Thousands of Dollars)

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

POSITIONS:

| | | | | | | |
|-----------|-----|-----|-----|-----|-----|-----|
| 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)

| | | | | | | |
|------------------|---------|---------|---------|---------|---------|---------|
| GFM | (260.0) | (260.0) | (260.0) | (260.0) | (260.0) | (260.0) |
| GF/Prgm Receipts | 260.0 | 260.0 | 260.0 | 260.0 | 260.0 | 260.0 |

SEE ATTACHED ANALYSIS

Prepared by: John R. Taber, Director *John R. Taber* Phone: 465-3347
 Division: Public Assistance Date: 1/16/90

Approved by Commissioner: Mike M. Munn *Mike M. Munn* Date: 1/16/90
 Agency: Health and Social Services

Distribution (by preparer):

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

Department of Health and Social Services
 Division of Public Assistance

This legislation allows the Department of Corrections to receive the PFD on behalf of incarcerated individuals. This will impact the level of Child Support Enforcement Division (CSED) claims against these dividends in cases with outstanding child support obligations. An AFDC case involving a living absent parent is potentially a child support enforcement case as well. Collection from the absent parent by the CSED reduces the net cost of welfare to the state.

Of the total CSED collections for Alaska welfare cases, 50 percent (less CSED incentive retention) is returned to the federal government as its share of the AFDC benefits paid out, the remaining 50 percent represents restricted GF/program receipts supporting AFDC formula program expenditures.

The impact of this proposed bill will increase CSED collections with some portion of the recovery used to reimburse AFDC entitlement expenditures. The Department of Revenue, CSED estimates the total collections for AFDC cases will be roughly \$520,000 (600 cases at \$800 collected from the Dividend). Of this total \$260,000 would be returned to the federal government and \$260,000 would be transferred to the Department of Health and Social Services to serve as AFDC GF/program receipts. These GF/program receipts supplant general fund match needed to fund the 50 percent state share of AFDC program expenditures. This legislation would potentially make available through CSED collections additional GF/program receipts.

Assuming the enhanced CSED collections result in an additional \$260,000 GF/program receipts the likely revised funding sources with this legislation are as follows:

| | <u>TOTAL</u> | <u>FED</u> | <u>(GF) GFM</u> | <u>I/A</u> | <u>(GF) CSED</u> |
|----------------------------|--------------|------------|---------------------|------------|----------------------|
| FY91 Governor | | | | | |
| AFDC Budget | 72608.7 | 33215.2 | 30409.2 | 6178.3 | 2806.0 |
| Impact of Proposed Bill | <u>-0-</u> | <u>-0-</u> | <u>(260.0)</u> | <u>-0-</u> | <u>260.0</u> |
| FY91 REVISED | 72608.7 | 33215.2 | 30149.2 | 6178.3 | 3066.0 |

The proposed legislation does not change the projected total AFDC program expenditure of 72608.7 or the total general fund need of 33215.2 (30409.2 + 2806.0). The only change is the mix of general fund sources between general fund match and GF/program receipts.

As mentioned above, enhanced CSED collections do represent additional and available revenue to the State which have a positive fiscal impact. However, we indicate a zero general fund impact supporting AFDC program expenditures because we do not make a distinction between general fund match and GF/program receipts since they both represent the state financial share of AFDC entitlement.

It is our understanding that for fiscal not purposes both sources are "general fund."

HOUSE COMMITTEE ON STATE AFFAIRS

RECAP OF
HB 255

PF Dividends/Incarcerated Felons

Received March 29, 1989
by Rep. Boyer

Heard April 19, 1989
Heard April 20, 1989
Heard April 25, 1989

Committee Substitute adopted April 25, 1989

Passed Out of Committee April 25, 1989
2 Do Pass
3 Do Not Pass
2 No Recommendation

TABLE OF CONTENTS

HB 255: PF Dividends/Incarcerated Felons

- Item 1: HB 255 by Boyer
CS HB 255 (SA)
- Item 2: Fiscal Notes and Analyses by Health & Social
Services and Department of Revenue
- Item 3: Memorandum from Rep. Boyer, April 13, 1989
- Item 4: Memorandum from Sen. Pourchot, April 8, 1989
- Item 5: Position Paper from Department of Revenue
- Item 6: Position Paper from Department of Public Safety,
Violent Crimes Compensation Board
- Item 7: Letter from Alaska Court System, April 17, 1989

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 29, 1989

FURTHER REFERRALS: JUDICIARY
FINANCE

Date of Committee Action: _____

The STATE AFFAIRS Committee considered:

HB 255

HOUSE BILL NO. 255 [PF DIVIDENDS/INCARCERATED FELONS]
"An Act relating to permanent fund dividends for certain incarcerated individuals; and providing for an effective date."

RECOMMENDATIONS:

- be replaced with CS HB 255 (SA) 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):
(Dept)

APPROVES PREVIOUS: (Date/Dept)

- 2 fiscal impact DOR/HESS
- zero fiscal note _____
- zero with analysis _____

- fiscal note(s) _____
- zero fiscal note(s) _____
- zero fn/analysis _____

SIGNING DO PASS:

Grant Mendenhall
Eileen P. Medson

SIGNING:
(Check approp. column)

| | Do Not Pass | No Rec | Amend |
|--------------------------|-------------------------------------|-------------------------------------|--------------------------|
| <u>David Douley</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <u>Raymond [unclear]</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <u>[unclear]</u> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <u>Jim [unclear]</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <u>[unclear]</u> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

[Signature]
 Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Relating to PFD for individuals
incarcerated
 Sponsor: Bover
 Requestor: _____

Agency Affected: Health & Social Services
 BRU: Assistance Payments BRU
 Components: AFDC

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

| | | | | | | |
|----------------|-----|-----|-----|-----|-----|-----|
| CAPITAL | -0- | -0- | -0- | -0- | -0- | -0- |
|----------------|-----|-----|-----|-----|-----|-----|

| | | | | | | |
|----------------|-----|-------|-------|-------|-------|-------|
| REVENUE | -0- | 260.0 | 260.0 | 260.0 | 260.0 | 260.0 |
|----------------|-----|-------|-------|-------|-------|-------|

FUNDING: (Thousands of Dollars)

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

POSITIONS:

| | | | | | | |
|-----------|-----|-----|-----|-----|-----|-----|
| 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)

| | | | | | |
|---------------------|---------|---------|---------|---------|---------|
| GFM | (260.0) | (260.0) | (260.0) | (260.0) | (260.0) |
| GF/Program Receipts | 260.0 | 260.0 | 260.0 | 260.0 | 260.0 |

SEE ATTACHED ANALYSIS

Prepared by: John R. Tubor; Director
 Division: Public Assistance

Phone: 465-3347
 Date: 4/1/90

Approved by Commissioner: Maria M. Johnson
 Agency: Health & Social Services

Date: 4-10-89

Distribution (by preparer):

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

Department of Health and Social Services
 Division of Public Assistance

This legislation allows the Department of Corrections to receive the PFD on behalf of incarcerated individuals. This will impact the level of Child Support Enforcement Division (CSED) claims against these dividends in cases with outstanding child support obligations. An AFDC case involving a living absent parent is potentially a child support enforcement case as well. Collection from the absent parent by the CSED reduces the net cost of welfare to the state.

Of the total CSED collections for Alaska welfare cases, 50% (less CSED incentive retention) is returned to the federal government as its share of the AFDC benefit paid out, the remaining 50% represents restricted GF/program receipts supporting AFDC formula program expenditures.

The impact of this proposed bill will increase CSED collections with some portion of the recovery used to reimburse AFDC entitlement expenditures. The Department of Revenue, CSED estimates the total collections for AFDC cases will be roughly \$520,000 (600 cases at \$800 collected from the Dividend). Of this total \$260,000 would be returned to the federal government and \$260,000 would be transferred to the Department of Health and Social Services to serve as AFDC GF/program receipts. These GF/program receipts supplant general fund match needed to fund the 50% state share of AFDC program expenditures. This legislation would potentially make available through CSED collections additional GF/program receipts.

Assuming the enhanced CSED collections result in an additional \$260,000 GF/program receipts the likely revised funding sources with this legislation are as follows:

| | <u>TOTAL</u> | <u>FED</u> | (GF) <u>GFM</u> | <u>I/A</u> | (GF) <u>CSED</u> |
|------------------------------|--------------|------------|--------------------|------------|---------------------|
| FY90 Governor AFDC Budget | 67322.0 | 30794.0 | 28094.0 | 5734.0 | 2700.0 |
| Impact of Proposed Bill | <u>-0-</u> | <u>-0-</u> | <u>(260.0)</u> | <u>-0-</u> | <u>260.0</u> |
| FY90 REVISED | 67322.0 | 30794.0 | 27834.0 | 5734.0 | 2960.0 |

The proposed legislation does not change the projected total AFDC program expenditure of 67322.0 or the total general fund need of 30794.0 (28094.0 + 2700.0). The only change is the mix of general fund sources between general fund match and GF/program receipts.

As mentioned above, enhanced CSED collections do represent additional and available revenue to the State which have a positive fiscal impact. However, we indicate a zero general fund impact supporting AFDC program expenditures because we do not make a distinction between general fund match and GF/program receipts since they both represent the state financial share of AFDC entitlement.

It is our understanding that for fiscal note purposes both sources are

FISCAL NOTE

REQUEST

Revision Date: _____
Title: An Act relating to PFDs for certain incarcerated individuals
Sponsor: Boyer
Requestor: _____

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

| | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 | FY 94 |
|------------------------|------------|------------|------------|------------|------------|------------|
| OPERATING | | | | | | |
| PERSONAL SERVICES | 2.3 | 1.2 | 1.2 | 1.2 | 1.2 | 1.2 |
| TRAVEL | -0- | -0- | -0- | -0- | -0- | -0- |
| CONTRACTUAL | 1.0 | 0.5 | 0.5 | 0.5 | 0.5 | 0.5 |
| SUPPLIES | -0- | -0- | -0- | -0- | -0- | -0- |
| EQUIPMENT | -0- | -0- | -0- | -0- | -0- | -0- |
| LANDS & STRUCTURES | -0- | -0- | -0- | -0- | -0- | -0- |
| GRANTS, CLAIMS | -0- | -0- | -0- | -0- | -0- | -0- |
| MISCELLANEOUS | -0- | -0- | -0- | -0- | -0- | -0- |
| TOTAL OPERATING | 3.3 | 1.7 | 1.7 | 1.7 | 1.7 | 1.7 |
| CAPITAL | -0- | -0- | -0- | -0- | -0- | -0- |
| REVENUE | -0- | -0- | -0- | -0- | -0- | -0- |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|------------|------------|------------|------------|------------|------------|
| GENERAL FUND | -0- | -0- | -0- | -0- | -0- | -0- |
| FEDERAL FUNDS | -0- | -0- | -0- | -0- | -0- | -0- |
| OTHER | 3.3 | 1.7 | 1.7 | 1.7 | 1.7 | 1.7 |
| TOTAL | 3.3 | 1.7 | 1.7 | 1.7 | 1.7 | 1.7 |

POSITIONS:

| | | | | | | |
|-----------|-----|-----|-----|-----|-----|-----|
| FULL-TIME | -0- | -0- | -0- | -0- | -0- | -0- |
| PART-TIME | 1 | 1 | 1 | 1 | 1 | 1 |
| TEMPORARY | -0- | -0- | -0- | -0- | -0- | -0- |

ANALYSIS: See attached.

Prepared By: Ervin Jones
Division: Permanent Fund Dividend Division

Phone: 465-2323
Date: April 12, 1989

Approved by Commissioner: [Signature]
Agency: Revenue

Date: 4/13/89

Distribution (by preparer):

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

Department of Revenue
Permanent Fund Dividend Division
Fiscal Note Analysis
HB 255
April 12, 1989

Assumptions:

1. With an immediate effective date, this bill is intended to go in effect for the 1989 Dividend program, even though the application period (April 1-June 30) will be half over by the time this bill could become law.
2. The Department of Corrections will file an application for every incarcerated individual who was incarcerated on April 1 and who the Commissioner of Corrections believes to be an otherwise eligible resident. The Department of Corrections will file for such eligible incarcerated individuals, even if they are no longer incarcerated individuals at the time of filing.
3. The Department of Corrections will provide a list of all incarcerated individuals who were incarcerated on April 1. This list will contain full name, birthdate and social security number. The Department of Revenue will deny all applications by such individuals which were not signed by the Commissioner of Corrections or the Commissioner's designee.
4. Dividends will be paid to the Commissioner of Corrections on a weekly basis as the applications are approved for payment, starting in October.
5. All requests for additional information, denials and appeal notices will be sent to the Department of Corrections.
6. With the sudden repeal of AS 43.23.005(d), 43.23.025(b), 43.23.055(5) and 43.23.055(6), the Department of Revenue will be required to contact all felons who would have been ineligible under the repealed sections, and offer them the opportunity to file. The Department of Revenue will probably have to offer them a 90 day filing period, probably May 15-August 15.

Program Summary:

The Department of Revenue will use the list provided in assumption 3 to match against the PFD file. Any person who files an application on their own and who appears on that list will be denied their dividend. A denial notice will be sent to the applicant, with notice of right to appeal. If appeals are forthcoming, the Permanent Fund Dividend Division will hold informal conferences, and where requested by the applicant, the Commissioner will hold formal hearings and represent the Department in court. This is expected to generate approximately 500 additional denials in the first year, with a decreasing number in subsequent years, as felons realize that they may not file for the dividend without the participation of the Department of Corrections.

The Department of Revenue will include in the dividend calculation the total number of incarcerated felons for whom the Department of Corrections files.

Department of Revenue
 Permanent Fund Dividend Division
 Fiscal Note Analysis
 HB 255
 April 12, 1989

| | <u>FY 89</u> | <u>FY 90</u> |
|---|--------------|--------------|
| 1. <u>Positions:</u> | | |
| 1 PPT Document Processor I, R7, @ \$2319.66/mo. including salary and benefits for 1 month = | \$2.3 | \$1.2 |
| This position will assist in the determination of filings by felons and in the processing and mailing of denial notices, appeals, and correspondence. Reduced by half in second and subsequent years. | | |
| 2. <u>Other Expenditures:</u> | | |
| a. <u>Travel:</u> None. | | |
| b. <u>Contractual:</u> | | |
| Printing costs and postage for 500 additional denial notices, appeal forms and envelopes, plus special notice of law change. Reduced by half in second and subsequent years. = | 1.0 | 0.5 |
| c. <u>Supplies:</u> None. | | |
| d. <u>Equipment:</u> Use existing. | <u>-0-</u> | <u>-0-</u> |
| TOTAL COST | <u>\$3.3</u> | <u>\$1.7</u> |

Items

Alaska State Legislature

FAIRBANKS

1098 LAKEVIEW TERRACE
FAIRBANKS, ALASKA 99701
(907) 456-6473

JUNEAU

P.O. BOX V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3466

REPRESENTATIVE
MARK BOYER

VICE-CHAIRMAN, HOUSE
HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

MEMBER, HOUSE LABOR AND
COMMERCE COMMITTEE

CHAIR, CHILDREN'S CAUCUS



House of Representatives

MEMORANDUM

TO: Representative Red Boucher
Chair, House State Affairs Committee

FROM: Representative Mark Boyer

DATE: April 13, 1989

SUBJECT: Explanation of HB 255 - "An Act relating to permanent fund dividends for certain incarcerated individuals and providing for an effective date."

I have sponsored this bill not to benefit felons but to benefit approximately 1600 children who are denied much needed child support because one of their parents is in jail because they have been convicted of a felony.

Last year when the legislature repealed the ability of convicted felons to receive permanent fund dividends, I think we forgot the effect that this action would have on their children and the victims of their crimes.

House Bill 255 is drafted so that the state can take 100% of the felon's dividend: first, for child support; second, for court ordered restitution payable to the victims of their crimes; and third, for court ordered fines which are deposited in the general fund. Any remaining money, and I doubt there will be, would be held in trust and used for gate money.

If you have any questions, please contact me or my staff, Nancy Groszek, at 465-3466. Attached is a copy of the bill and a position paper from the Department of Revenue.

MB/NJG/bhn

Attachments

cc: House State Affairs Committee Members

Alaska State Legislature

Item 4

Sen. Pat Pourchot, Chairman

Sen. Jan Felks, Vice Chairman
Sen. Al Adams
Sen. Tim Kelly
Sen. Rick Uehling



P.O. Box V
State Capitol
Juneau, Alaska 99811

907-485-3712

Senate State Affairs Committee

MEMORANDUM

TO: Senate State Affairs Committee Members
FROM: Senator Pat Pourchot, Chairman
RE: Permanent Fund Dividends for Felons
DATE: April 8, 1989

During consideration of HB 57, relating to the Violent Crimes Compensation Board, reference was made to litigation over the provision in current statute (AS 43.23.005(d)) which prohibits convicted felons from receiving Permanent Fund Dividends. At the request of the committee, staff spoke with Marilyn May of the Attorney General's Office in Anchorage and received the following report.

Two lawsuits were filed in 1987. They are being tried in the Palmer court under Judge Cutler.

Smith v. State argues that the prohibition violates the ex post facto provision of the state and federal constitutions, which, simply put, protects against an act becoming a crime after it was committed. Smith argues that at the time he committed his crime, he didn't know that his action would result in not receiving the dividend.

Anthony v. State argues that the prohibition violates the constitutional provisions of equal protection (by treating felons differently than others similarly situated), due process (by enactment without input from felons), ex post facto, and Section 1983, which deals with civil rights.

Since these suits were filed, 15 other felons have joined Anthony v. State. A motion to establish a class action suit is pending before the court.

The plaintiffs were to have filed summary judgment with the court by April 1, 1989 with the state responding by May 1. However, an extension of the April filing deadline is currently before the court so it is hard to predict when a final decision might occur. Ms. May assumes early fall as the judge has indicated her desire to rule prior to the distribution of Permanent Fund Dividends in October. Ms. May thinks that the decision will be appealed regardless of who wins.

Felons' PFDs
April 8, 1989
Page 2

Smith has requested an injunction against state expenditure of the felons' PFDs prior to a ruling in the lawsuit. Ms. May thinks it unlikely that the court will grant an injunction. Should the state spend the PFDs and lose the lawsuit, the state will likely have to repay the felons.

The Governor's FY 90 budget proposes appropriation of an anticipated \$1.5 million in felons' PFDs. Each of the following proposals represents an increase to the FY 89 funding level:

| | |
|--------|---|
| 201.0 | Violent Crimes Compensation Board |
| 1073.5 | Dept. Corrections rehabilitation programs |
| 200.0 | vocational/postsecondary education |
| 200.0 | substance abuse treatment |
| 123.5 | sex offender treatment |
| 150.0 | anger management |
| 400.0 | forensic halfway house |
| 225.0 | Dept. Corrections gate money |

Based on the number of incarcerated felons, the Department of Revenue estimated that their PFDs would total \$2 million. OMB chose to program only \$1.5 million, anticipating that not all felons would apply for the PFD and that not all who applied would be eligible. The Governor's budget reduction plan, presented to the Budget Summit on April 4, deleted the increments in the rehabilitation programs and used the PFD money to fund existing sex offender and alcohol treatment programs.

A copy of the law prohibiting felons from receiving Permanent Fund Dividends is attached. Section 5 contains legislative intent providing for an amount equal to the felons' PFDs to be annually appropriated from the dividend fund to the Violent Crimes Compensation Board.

cc: Senator Uehling
 Senator Binkley
 Senator Frank

Chapter 53

Chapter 54

for the interest deposited in
The annual estimated balance
the legislature to the public

ly under AS 01.10.03(c).

AN ACT

Relating to permanent fund dividends for individuals
incarcerated after conviction for a felony; and pro-
viding for an effective date.

* Section 1. AS 43.23.005 is amended by adding a new subsection to
read:

(d) Notwithstanding the provisions of (a) - (c) of this section,
an individual who has been convicted of a felony is not eligible for a
permanent fund dividend for a year when, during all or part of the
fiscal year ending June 30 of the current year, as a result of the
conviction the individual is incarcerated. This subsection applies
whether or not the individual has applied for the dividend.

43.23.005(d)

* Sec. 2. AS 43.23.025 is amended by adding a new subsection to read:

(b) For the purpose of calculating the amount of a permanent
fund dividend under (a) of this section, an individual who is ineli-
gible to receive a dividend under AS 43.23.005(d) is counted as an
eligible individual whether or not the individual has applied for the
dividend.

43.23.025(b)

* Sec. 3. AS 43.23.055 is amended to read:

Sec. 43.23.055. DUTIES OF THE DEPARTMENT. The department shall
(1) annually pay permanent fund dividends from the dividend
funds;
(2) adopt regulations under the Administrative Procedure
Act (AS 44.62) that establish procedures and time limits for claiming

43.23.055

Chapter 54

1 a permanent fund dividend; the department shall set the time limit for
2 applications for permanent fund dividends so that the number of eli-
3 gible applicants is determined by October 1 of the year for which the
4 dividend is declared and permanent fund dividends for a year are paid
5 before April 30 of the year following that year;

6 (3) adopt regulations under the Administrative Procedure
7 Act (AS 44.62) that establish procedures and time limits for an indi-
8 vidual upon emancipation or upon reaching majority to apply for perma-
9 nent fund dividends not received during minority because the parent,
10 guardian, or other authorized representative did not apply on behalf
11 of the individual; (AND)

12 (4) assist residents of the state, particularly in rural
13 areas, who because of language, disability, or inaccessibility to
14 public transportation need assistance to establish eligibility and to
15 apply for permanent fund dividends;

16 (5) annually determine, in cooperation with the Department
17 of Corrections, the number and identity of individuals ineligible for
18 a permanent fund dividend under AS 43.23.005(d); and

19 (6) adopt regulations that are necessary to implement
20 AS 43.23.005(d).

21 * Sec. 4. This Act applies only to eligibility for permanent fund
22 dividends for years after 1988.

23 * Sec. 5. It is the intent of the legislature that an amount approxi-
24 mately equal to the money that would otherwise be paid as permanent fund
25 dividends to individuals determined to be ineligible under AS 43.23.005(d),
26 as enacted by sec. 1 of this Act, be appropriated annually from the divi-
27 dend fund to the crime victim compensation fund (AS 18.67.162) to carry out
28 the purposes of AS 18.67.

29 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).
30 (CSHA 245rJud)

Eff. 5/26/88

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the commissioner may, after opportunity for hearing, discontinue the individual's annuity account if it is not properly credited. If the individual, the guardian of the individual, the parent of the individual, or the individual within 10 years of the date of the state, the debt shall be paid within three years." *Amendments.* — The 1988 amendment, effective January 1, 1989, added subsection (d).

and fund is established and the dividend fund shall be invested by the commissioner in AS 37.10.070. At the end of each year the commissioner shall invest 10 percent of the amount of the dividend for distribution.

In this act, the unexpired portion of the fiscal year for determining the dividend shall be the fiscal year ending on the date of the 1989 SLA 1985;

added subsection

the department shall invest the dividend fund; the Administrative Procedure Act (AS 44.62) providing a permit for application of eligible individuals for the dividend shall be paid

Administrative Procedure Act (AS 44.62) for an individual

upon emancipation or upon reaching majority to apply for permanent fund dividends not received during minority because the parent, guardian, or other authorized representative did not apply on behalf of the individual;

(4) assist residents of the state, particularly in rural areas, who because of language, disability, or inaccessibility to public transportation need assistance to establish eligibility and to apply for permanent fund dividends;

(5) annually determine, in cooperation with the Department of Corrections, the number and identity of individuals ineligible for a permanent fund dividend under AS 43.23.005(d); and

(6) adopt regulations that are necessary to implement AS 43.23.005(d). (§ 1 ch 102 SLA 1982; am § 2 ch 55 SLA 1983; am § 3 ch 43 SLA 1984; am § 3 ch 54 SLA 1988)

Revisor's notes. — Section 11, ch. 99, SLA 1985, amends this section. The amendment is effective if § 1, ch. 99, SLA 1985 is repealed (see § 25, ch. 99, SLA 1985). If the amendment becomes law, the section will read: "The department shall

"(1) annually make payments to individuals who elect to receive cash under AS 43.23.005(d);

"(2) adopt regulations under the Administrative Procedure Act (AS 44.62) that establish procedures and time limits for claiming a permanent fund dividend or for electing an annuity credit; the department shall set the time limit for applications for permanent fund dividends so that the number of eligible applicants is determined by October 1 of the year for which the dividend is declared and permanent fund dividends for a year are paid before April 30 of the year following that year;

"(3) adopt regulations under the Administrative Procedure Act (AS 44.62) that establish procedures and time limits for an individual upon emancipation or upon reaching majority to apply for permanent fund dividends not credited or received

during minority because the parent, guardian, or other authorized representative did not apply on behalf of the individual;

"(4) assist residents of the state, particularly in rural areas, who because of language, disability, or inaccessibility to public transportation need assistance to establish eligibility and to apply for permanent fund dividends; and

"(5) provide the commissioner of administration with information necessary to maintain individual annuity account records and administer the annuity program."

Effect of amendments. — The 1984 amendment substituted "October" for "December" in paragraph (2).

The 1988 amendment, effective May 26, 1988, deleted "and" at the end of paragraph (3), and added paragraphs (5) and (6).

Editor's notes. — Section 4, ch. 54, SLA 1988 provides that the amendments made to this section by ch. 54, SLA 1988 apply "only to eligibility for permanent fund dividends for years after 1988."

Sec. 43.23.065. Exemption of permanent fund dividends.

(a) Except as provided in (b) of this section, 50 percent of the annual permanent fund dividend payable to an individual is exempt from levy, execution, garnishment, attachment, or any other remedy for the collection of debt. This exemption applies to an eligible individual's permanent fund dividend both before and after payment is made to the individual.

(b) An exemption is not available under this section for permanent fund dividends taken to satisfy

(1) child support obligations required by court order or decision of the child support enforcement agency under AS 47.23.140 — 47.23.220;

(2) court ordered restitution under AS 12.55.045 — 12.55.051 or 12.55.100;

(3) a court ordered probation fee under AS 12.55.105; or

(4) a debt owed by an eligible individual to an agency of the state, unless the debt is contested and an appeal is pending, or the time limit for filing an appeal has not expired.

(c) Claims listed in (b) of this section have priority in the order listed over other claims on a permanent fund dividend. (§ 1 ch 102 SLA 1982; am § 1 ch 157 SLA 1984; am § 1 ch 57 SLA 1985; am § 67 ch 138 SLA 1986)

Revisor's notes. — Sections 12 and 13, ch. 99, SLA 1985, amend this section and add new (b) and (c). The amendments are effective if § 1, ch. 99, SLA 1985 is repealed (see § 25, ch. 99, SLA 1985). If the amendments become law, the section will read: "(a) Fifty percent of a cash permanent fund dividend payment is exempt from levy, execution, garnishment, attachment, or any other remedy for the collection of debt. This exemption applies to an eligible individual's permanent fund dividend both before and after payment is made to the individual. An exemption is not available under this section for cash permanent fund dividend payments taken to satisfy (1) child support obligations required by court order or decision of the child support enforcement agency under AS 47.23.140 — 47.23.220; (2) a debt owed by an eligible individual to an agency of the state, unless the debt is contested and an appeal is pending, or the time limit for filing an appeal has not expired; or (3) court ordered restitution under AS 12.55.045 — 12.55.051 or 12.55.100. A child support obligation under (1) of this section has priority over a debt owed to an agency of the state, and a permanent fund dividend may not be taken to satisfy a debt under (2) of this section until any portion of the dividend necessary to satisfy a child support obligation has been taken.

"(b) The department shall require an in-

dividual to take 100 percent of the permanent fund dividend in cash if the department receives a levy, execution, garnishment, attachment or other legal remedy for the collection of a past due debt described in (a)(1) or (2) of this section.

"(c) The courts of this state may, as a condition of any civil judgment or restitution order under AS 12.55.045 — 12.55.051 or 12.55.100, require the defendant to take the defendant's permanent fund dividend in cash."

Effect of amendments. — The 1984 amendment added the last sentence and, in the next-to-last sentence, substituted "An exemption is not" for "No exemption is," inserted "(1)," and added the language beginning with "(2) a debt" at the end of the sentence. Section 2, ch. 157, SLA 1984 limits the application of the 1984 amendment to dividends issued for 1984 and subsequent years.

The first 1985 amendment added "or (3) court ordered restitution under AS 12.55.045 — 12.55.051 or 12.55.100" at the end of the next-to-last sentence and in the last sentence inserted "or court ordered restitution" and "and court ordered restitution."

The second 1985 amendment, effective if § 1, ch. 99, SLA 1985 is repealed, rewrote subsection (a) and added subsections (b) and (c).

The 1986 amendment rewrote this section.

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

Item 5

STEVE COWPER, GOVERNOR

P.O. BOX 5
JUNEAU, ALASKA 99811-0400
PHONE: (907) 465-2300
TELEFAX: (907) 465-2389

POSITION PAPER ON HB 255

The Department of Revenue supports this legislation. This bill will insure that the Permanent Fund Dividends of incarcerated convicted felons will be available for the support of their children.

Without this legislation, more than 600 children will lose the Permanent Fund Dividends they are due from their parents in prison. In addition, the state will need to provide additional public assistance to another 1,000 children on public assistance who will also lose the child support formerly available from the Permanent Fund Dividends of their imprisoned parents.

The law passed in the 1988 session to make incarcerated convicted felons ineligible for Permanent Fund Dividends hits hard at the felons. That is understandable. This law hits hard as well at their children. That is wrong.

The felons are criminals who deserve punishment. Their children are victims who deserve our help.

In many cases the children are literally the victims of their fathers' physical or sexual abuse. In all cases the children have at least one parent in jail, and in many other cases the other parent is a poor provider.

The children of prisoners are among the neediest of those receiving child support. The Permanent Fund Dividend is about the only source of child support available from incarcerated felons.

Much of the support for the passage of the law last year came from the belief that convicted felons in prison should not be able to spend Permanent Fund Dividends. This is obviously sensible, and House Bill 255 would make it a crime for a convicted incarcerated felon to apply for a Dividend without the sponsorship of the Department of Corrections.

HB 255 protects the rights of the felons' children to child support and the rights of other creditors to repayment of the felons' debts. The legislation provides that the Department of Corrections will hold the felon's Permanent Fund Dividend until the felon is released. By law child support will have first call on the Dividend above other creditors. This will also provide every opportunity for other claims to be satisfied -- including restitution for victims, court fines and the like.

We urge the legislature to enact HB 255. It will protect the rights of society without stepping on any of our weakest members.

BILL NO: HB 255

DATE: 04/17/89

TITLE: An Act relating to permanent fund dividends for certain incarcerated individuals; and providing for an effective date.

CONTACT: Nola K. Capp
465-3040

DEPARTMENT OF
PUBLIC SAFETY

The Violent Crimes Compensation Board opposes this bill.

HB 255 would repeal existing law under which incarcerated felons lose the right to apply for their permanent fund dividend checks. The monies which would have been paid to the felons are available for appropriation to a "crime victim compensation fund", and may be used to pay compensation to innocent victims of violent crimes. The Board strongly endorses the concept that criminal offenders should pay for victim compensation; there would be no need for a compensation program if there were no offenders.

Approximately 40 other states fund their victim compensation programs by fines and penalties assessed against convicted criminals. Alaska's present law is based on the policy that offenders should be held responsible for the injuries they have caused, and help pay for damages suffered by innocent victims. This existing law should not be changed.

Millard Ingraham
Millard Ingraham, Chairman
Violent Crimes Compensation Board



Dem7



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

JANALEE R. STRANDBERG
Staff Counsel

303 K Street
Anchorage, AK 99501
(907) 264-0228

April 17, 1989

Representative Mark Boyer
House of Representatives
P. O. Box V
Juneau, AK 99811

Re: HB 255 An act relating to permanent fund dividends for certain incarcerated individuals; and providing for an effective date.

Dear Representative Boyer:

Although the Court System does not collect statistics on the number of court-ordered fines and orders of restitution, generally in felony cases the trial courts do order that the defendant pay fines and, in appropriate cases, restitution. These monies go into the general fund in the cases of fines and to the victims in the case of restitution.

If I can provide further information to you or answer any questions, please let me know.

Sincerely,


Jan Strandberg
Staff Counsel

JS:gb



Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

TO: Committee Staff

FROM: Dennis J. Burns, Aide
House State Affairs Committee

DATE: April 28, 1989

RE: CSHB 255(SA)

The CS for HB 255 passed out of the State Affairs Committee will need further work. My instructions were to include amendments offered by Representative's Boyer and Donely - I was further instructed by Representative's Donely and Boucher to delete language in the State Affairs CS which they felt was necessary for consistency. Tam Cook, however, indicated a need to further clarify the changes - I was given no instructions to proceed further.

Please note the attached memorandum from Tam Cook.

STATE OF ALASKA
THE LEGISLATURE

BOUCHER STATE CAPITOL
JUDICIAL ALASKA BUILDING
207 465 1100

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 28, 1989

SUBJECT: Permanent Fund Dividends
(CSHB 255(L&C))

TO: Representative H.A."Red" Boucher, Chairman
House State Affairs Committee

FROM: Tamara Brandt Cook *TBC*
Director
Division of Legal Services

Here is the change to the committee substitute requested by Mr. Dennis Burns. I was directed to make no drafting changes as a result of this request, so I must alert you to the fact that the change garbles the effect of AS 43.23.065 by eliminating the distinction between subsection (a) type claims and subsection (b) type claims. The entire section needs to be redrafted for clarity.

TBC:lmb
L7/077

Enclosure

Alaska State Legislature

REPRESENTATIVE
MARK BOYER

VICE-CHAIRMAN, HOUSE
HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

MEMBER, HOUSE LABOR AND
COMMERCE COMMITTEE

CHAIR, CHILDREN'S CAUCUS



FAIRBANKS

1098 LAKEVIEW TERRACE
FAIRBANKS, ALASKA 99701
(907) 456-6473

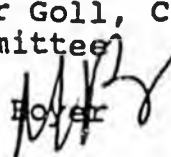
JUNEAU

P.O. BOX V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3466

House of Representatives

M E M O R A N D U M

TO: Representative Max Gruenberg, Co-Chair
Representative Peter Goll, Co-Chair
House Judiciary Committee

FROM: Representative Mark Boyer 

DATE: May 3, 1989

SUBJECT: Scheduling for hearing in House Judiciary - CSHB 255
(State Affairs), "An Act relating to permanent fund
dividends for certain individuals convicted of crimes
and to the exemption for permanent fund dividends from
remedies for the collection of debt."

This is a formal request asking you to schedule CSHB 255 (State Affairs) for a hearing during your interim work schedule. I am concerned that not unlike other victims, the group we are trying to assist may be the least vocal about how they are affected absent a real effort to reach them. I introduced this bill to correct an injustice which denies approximately 700 children of felons their right to child support. This bill would also insure that the Violent Crimes Compensation Fund is funded for victims by the perpetrators of these crimes.

Committee Substitute for House Bill 255 accomplishes two goals. First, it exempts \$50.00 of each recipient's permanent fund dividend (PFD) check from attachment by the child support enforcement agency (CSED), court ordered restitution or a debt owed to a state agency. This is intended to act as an incentive for convicted felons and all other PFD recipients to apply for a PFD regardless of potential attachments. CSED states that approximately 15% of those who owe child support do not apply for the dividend. Second, the bill makes incarcerated individuals eligible for permanent fund dividends so that the state can collect child support, court ordered restitution which goes directly to victims, or if there is any remainder and the felon has been convicted of a crime listed under AS 18.67.101, it will be deposited in the Violent Crimes Compensation Fund. Again \$50.00 is exempted and would be deposited in a trust fund to be given to the felon as gate money.

Thank you in advance for your prompt consideration of this matter.

MB/NJG/bhn

FAIRBANKS 20B

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX 5
JUNEAU, ALASKA 99811-0400
PHONE: (907) 465-2300
TELEFAX: (907) 465-2389

February 5, 1990

The Honorable Dave Donley
Alaska State House
P.O. Box V
Juneau, AK 99811

RECEIVED FEB 7 1990

Dear Representative Donley:

I am sending you this letter as promised during our telephone conversation of January 24, 1990.

After consideration, I decided not to place any discussion of the 1989 deductions in the 1990 dividend application booklet.

My main reasons for the conclusion are that, first, the 1990 dividend booklet should focus on the changes in the eligibility law, mainly the new two year residency requirement, which people need to understand. My second main reason is that dragging up old information from 1989 will only confuse people even more, since people may believe that now we are talking about repeating the 1989 deductions again in 1990. If people get that notion, things would be even more confusing. In fact, I would recommend against trying to explain 1989, and concentrate on avoiding this type of situation happening again.

The information on the check stubs accurately reflected the amounts that the legislature appropriated from the dividend fund. The two new appropriations were shown as a deduction per check.

This is the same way that the law requires the cost of the dividend program and the hold harmless program to be shown. The description of the uses of the money was taken directly from the Legislative Finance Division "short-form" publication of the state operating budget.

I believe that this did give Alaskans adequate information on where their dividend money was going. I believe the phone calls that you received were from people who knew where their money was going, but did not want the Legislature to use their dividend money for these programs -- at least, that is what the Commission of the Future of the Permanent Fund heard during a dozen hearings this year.

I am sure that you agree with me that Alaskans do have a right to know where their dividend money is going.

The Honorable Dave Donley
February 5, 1990
Page 2

On a positive note, I commend your efforts and those of your colleagues in remedying the problem through the adoption of HB 255. HB 255 will solve the problem. Early action on HB 255 will mean that the dividend of felons could be used to pay proper costs instead of paying them over to the felons, while making sure that other peoples' dividends are not affected.

Sincerely,



Hugh Malone
Commissioner

HM:m11

Enclosures: Donley Letter of 1/19/90 and 1989 PFD check stub

90-14

cc: Governor Cowper
Bob Evans
Garrey Peska
All Legislators

REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE
DISTRICT ELEVEN • SPENARD
SEAT A

3111 "C" STREET, SUITE 450
ANCHORAGE, ALASKA 99503
(907) 561-7629 (FAX) 562-4376



CHAIRMAN
LABOR AND COMMERCE COMMITTEE

VICE CHAIRMAN
ANCHORAGE CAUCUS

MEMBER
RULES COMMITTEE
STATE AFFAIRS COMMITTEE

January 19, 1990

Commissioner Hugh Malone
Department of Revenue
P.O. Box S (MS0400)
Juneau, Alaska 99811

Malone

Dear Commissioner Malone:

As a followup to our conversation in December, I am writing to request a written response outlining the Department's position on my request that a full explanation of the "deductions" listed on the 1989 dividend check stubs be printed on the front page of the 1990 dividend application form.

This year Legislative offices received hundreds of phone calls from irate constituents who had first become aware of "deductions" from their dividend check through the listing on the check stub. This listing did not adequately explain the "deductions", nor did it indicate that two of them had been with the program virtually since its inception. Instead, Alaskans were left with the impression that the legislature took some devious action last session that reduced the amount of their dividend checks.

This impression could have been avoided had Alaskans been given adequate information with their dividend checks about these "deductions". The best way to provide this information now is for the Department to instruct the Division to provide this information on the 1990 dividend application form. I hope legislation will not be needed to ensure this action.

Please respond indicating whether the Department will implement this suggestion or, if not, your reasons for declining to do so. In either case, your written response should be received in my office no later than February 7 so that I can pursue any necessary legislation in a timely manner.

I look forward to your earliest possible response.

Sincerely,

Representative Dave Donley

cc: Governor Cowper
Bob Evans
Gary Peska
All Legislators

dd/qbs90
c/pfd

ALASKA DEPARTMENT OF REVENUE
JAN 21 1990
COMMISSIONER'S OFFICE



NON NEGOTIABLE

No. 5248293

PAYER'S NAME STATE OF ALASKA 1989 PERMANENT FUND DIVIDEND \$ 873.16
FEDERAL ID NO. 92-6001185

DATE 10/05/89 BATCH 00016
VOUCHER 476776 DLN 90002861 WARRANT AMOUNT \$ 873.16

APPLICANT'S SSN 574-16-9170

APPLICANT'S NAME AND ADDRESS

JAMES H MALONE
2517 DAVID STREET
JUNEAU AK 99801

REDUCTIONS PER DIVIDEND CHECK:
COSTS OF ADMINISTERING DIVIDEND PROGRAM \$ 6.83 (DEPT. OF REVENUE)
HOLD HARMLESS FOR LOST FEDERAL BENEFITS \$22.72 (DEPT. OF H&SS)
GATE MONEY AND SEX OFFENDER TREATMENT \$ 1.47 (DEPT. OF CORRECTIONS)
VIOLENT CRIMES COMPENSATION BOARD \$ 1.42 (DEPT. OF PUBLIC SAFETY)

IMPORTANT - This stub contains important tax and other information (see back).

Donald W.Y. Kilbuck
Wildwood Pre-trial Facility
1st Street, Building #5
Kenai, Alaska 99611

January 20, 1990

Rep. Mark Boyer
P.O. Box V
Juneau, Ak 99811

Dear Mr. Boyer: Thank you for restoring the Permanent Fund Dividend for the first time felons, for especially the children, and it is right to make right with the victim (s) , with restitution. I am planning on using my dividend to make my final payment to make good for the apartment damage at the Sandrik apartments in Fairbanks, Alaska. Then I will able to put some energy into making my freedom a lot easier with the local canneries on the Prince William Sound, or the Kodiak, area and come my release I have now been recovered from the alcoholic lifestyle. Now I am in God's hand and living sober is not bad at all. Especially for the pocket book. This summer I got released on May 31, 1989 to do some cannery work down Valdez, and Exxon sponcered ferry ticket to the Village of Cordova, Alaska. I paid my way up to Fairbanks, Alaska and because the Parole Board had dreamed up some travel plans for me and court hearings. Which delayed most of my good summer what I had left., for work. All this due to my victim, my former alcohol ic brother-in-law, that forwarded my assault to stabbing him. Which made me a fellow felon in the State of Alaska. I worked a lot on the pipeline, and the fund money will help a lot in the future. But that it should be to the benefit for the children with the insurance that the schools, and other maintenance be supported with the PF and also be put in a interest bearing trust fund or a earning stocks, or bonds. Maybe the fund money could keep us felons, even on a good standing with Rep. Remonia Burnse. Will take life easy, and not to get all worked up over little things like the PF.

Thanks for the restoring the fund money and support.

2.

I will remember you in the prayers and that may God save the dinner bell hellraisers!

Down there in the city of Juneau, Alaska.

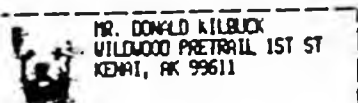
Say hello to all.

Sincerely.

Donald Kilbuck

Donald Kilbuck

P.S. I don't think building a brewer for the Fink administration in the Ship Creek area - because the brewery will bring forth employment and cash flow the worst dream shouldn't be pushed into the blueprint environment of the Alaska Highways, and streets. There is already drunk drivers, and crime on the streets to make a small flame - a large scale nightmare.



RECEIVED
DEPT. OF REVENUE
CSED-ADMIN. DIV.

OCT 23 10 53 AM '89

Lori L. Pond
3817 Autumn Ct.
Juneau, AK 99801

October 17, 1989

Janell L. Briggs
Operations Manager
State of Alaska
Department of Revenue
Child Support Enforcement Division
550 West 7th
Team # 3
4th Floor
Anchorage, Ak 99501-6699

Case # 1JU-77666

Dear Ms Briggs,

This letter is in response to a letter sent to CSED by my ex-husband Thomas G. Mullin dated 9/25/89.

There are several untrue statements made in his letter that I wish to comment on. I will address them in the order in which they appear.

His first statement claims "I want very much to pay all my child support due." The current principal balance on this account is \$13,364.00. The monthly obligation is \$100.00 a month. Tom has NEVER willingly made a payment. All payments have been through garnishments from CSED. He has also refused to file his Permanent Fund Dividend because it would go to CSED. A person does not get this far in debt over a 12 year period at \$100.00 a month if they honestly want to pay. I do not believe Tom has ever wanted to pay child support.

Secondly, he states: "I testified that over \$6000.00 of my back child support is interest charges alone." The current balance on this account is \$15,689.00 of which \$2325.00 is interest and \$13,364.00 is principal. I do not wish to waive any of this interest.

Third, he states: "I know that some of my back bill is to repay AFDC (welfare for my ex-wife)" I have NEVER been on welfare in my entire life including AFDC.

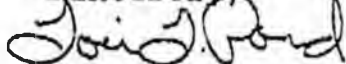
Fourth, he states: "Even though I am at the indigent level I have been denied by the court to have counsel appointed to help me with child support matters" and that his "ex-wife seems to get all sorts of FREE State assistance in this case." I have not had any legal counsel nor have I needed any.

Jeremiah (our son) is almost 14 years old and is very athletic, he plays basketball, football, baseball and skis. I have always made sure he was provided for with all the essential gear, camps and entry fees for these activities. I have always made sure Jer had everything he needed. This has not always been easy. Tom's current monthly obligation is \$100.00 a month which doesn't even cover 1/3 of the monthly support for Jer. In the divorce decree Tom was suppose to pay all medical and dental bills also. To date he has not paid any of them, which meant I was left to pay them. These bills were also very expensive. Although I'm sure it is not easy for an ex-offender to find a job, I do not feel he is doing the best he can. Besides the job at On the Go Video Tom is also working under the table. Over the years Tom has worked at many jobs under the table making it almost impossible to get any child support. Some of these jobs paid very well. I do feel 55% of a persons paycheck is a lot to garnish, but both myself and CSED have tried working with Tom on this many times. He submits false documents and does not live up to his agreements.

In closing, I would like to state I would like my ex-husbands re-entry back into society to be successful, especially for Jeremiah's sake. I feel Tom needs to start trying to help himself before expecting others to help him. He should also get his facts straight before testifying on them or putting them in writting.

I would like to thank CSED for all the time and effort they have put into this case over the last 12 years. If it wasn't for them I would never recieved any child support.

Sincerely,



Lori L. Pond

cc: Thomas G. Mullin
Linda Langston
Dads Against Discrimination
Royce Weller
Senator Rick Uehling
Representative Johnny Ellis
Representative Max Gruenberg
Representative Mike Miller

KEY FEATURES OF CS HB 255 (JUD)
2/28/90 version

- An expanded class of offenders is covered. This version covers incarcerated convicted offenders, both felons and misdemeanants. Current law only covers felons. This version covers inmates in correctional facilities, in community residential centers as a condition of probation or parole, in correctional restitutional centers and on furlough.
- Offenders cannot apply for a PFD while in jail without the Department of Corrections co-signing. Incarcerated offenders may not spend PFDs while in prison.
- PFDs of incarcerated offenders can be seized to pay debts owed to judgement creditors including child support, court-ordered restitution to victims, court fines, court-appointed attorneys and debts owed to state agencies.
- The money that remains in the account of an individual after all debts are paid is given to the offender when they leave prison.
- Excludes a PFD from the liquid assets exemption.

SECTIONAL ANALYSIS
CS HB 255 (JUD) 2/28/90 version

Sec. 1

Allows for exemption from levy that portion of a dividend that is exempted under AS 43.23.065(a) (Sec. 6)

Sec. 2

Allows for taking of a dividend to satisfy a defaulted loan. The change in subsection here is due to a renumbering in Sec. 7.

Sec. 3

This is a new section which mandates that individuals who are incarcerated at the time of application for a dividend must apply through the DOC. Anyone who receives a dividend while incarcerated must deliver the dividend to the DOC. Administrative controls are relied on to insure all individuals subject to this section are included. This section also defines incarcerated.

Sec. 4

Sets Department of Corrections type claims aside from the general rule of how they shall be held in trust by a public agency.

Sec. 5

Requires DOC to disclose the amount of the dividend and the amount by which each dividend has been reduced in order to pay the hold harmless costs and costs of administering the program. Cost for administering CS HB 255 (JUD) are allocated from the general fund, not the PFD fund.

Sec. 6

A 50% exemption is exempt from levy except for dividends taken to satisfy debts listed under section 7.

Sec. 7

100% of a dividend can be taken to satisfy court ordered child support obligations, court ordered restitution, court ordered fines or debts to an agency of the state. This section also prioritizes these debts.

Sec. 8

Excludes a PFD from the liquid assets exemption.

Sec. 9

Repeals ineligibility of felons; calculation of the PFD with regard to their ineligibility; and determining those ineligible in cooperation with DOC and adoption of regulations needed to implement this.

Sec. 10

Repeals Section 5, ch. 54, SLA 1988 which made felons ineligible.

Sec. 11

Immediate effective date.

Original sponsor(s): REP. BOYER

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 255 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to permanent fund dividends for
7 certain individuals convicted of crimes, to costs of
8 administering the dividend program, to the exemption
9 for permanent fund dividends, to remedies for the
10 collection of debts involving dividends, and to the
11 priority of claims on a dividend; and providing for
12 an effective date."

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

14 * Section 1. AS 09.38.015(a) is amended to read:

15 (a) An individual is entitled to exemption of the following
16 property:

17 (1) a burial plot for the individual and the individual's
18 family;

19 (2) health aids reasonably necessary to enable the indi-
20 vidual or a dependent to work or to sustain health;

21 (3) benefits paid or payable for medical, surgical, or
22 hospital care to the extent they are or will be used to pay for the
23 care;

24 (4) an award under AS 18.67 (Violent Crimes Compensation
25 Board) or a crime victim's reparations act of another jurisdiction;

26 (5) benefits paid or payable as a longevity bonus under
27 AS 47.45;

28 (6) compensation or benefits paid or payable and exempt
29 under federal law;

- 1 (7) liquor licenses granted under AS 04;
2 (8) limited entry permits granted under AS 16.43, except as
3 provided in that chapter;
4 (9) that portion of a permanent fund dividend exempted
5 under AS 43.23.065(a).

6 * Sec. 2. AS 14.43.120(i) is amended to read:

7 (i) If a loan is in default, the commission shall notify the
8 borrower that repayment of the remaining balance is accelerated and
9 due by sending the borrower a notice by registered or certified mail.
10 The permanent fund dividend of a borrower may be taken under AS 43.-
11 23.065(b(4)) [AS 43.23.065(b)(3)] to satisfy the balance due on the
12 defaulted loan.

13 * Sec. 3. AS 43.23 is amended by adding a new section to read:

14 Sec. 43.23.007. DIVIDENDS OF INCARCERATED INDIVIDUALS. (a)
15 Notwithstanding the application requirements of AS 43.23.005, only the
16 Department of Corrections may apply during a year for a dividend for
17 an individual who was incarcerated at the time of application. An
18 application under this subsection must be signed by the individual and
19 the commissioner of corrections or an employee of the Department of
20 Corrections authorized by the commissioner to sign applications. An
21 individual who receives a dividend while incarcerated shall deliver
22 the dividend to the Department of Corrections.

23 (b) The Department of Corrections shall notify each individual
24 subject to the requirements of this section of those requirements and
25 shall apply for a permanent fund dividend for each of those indivi-
26 duals who qualifies for a dividend and agrees to sign the application.

27 (c) The Department of Corrections shall, by August 1 of each
28 dividend year, provide the Department of Revenue with a list of all
29 individuals for whom the Department of Corrections has applied for a

1 dividend under this section and all individuals who were incarcerated
2 at some time during the three-month period beginning April 1 of the
3 dividend year for whom the department has not applied for a dividend.
4 The Department of Revenue shall pay a dividend to the Department of
5 Corrections for each individual who is eligible for a dividend and on
6 whose behalf a timely application was filed by the Department of
7 Corrections. The Department of Corrections shall hold in trust each
8 permanent fund dividend it receives from the Department of Revenue or
9 from an incarcerated individual and shall pay the amount held in trust
10 to the individual upon the individual's release from incarceration or
11 upon receipt of the dividend, whichever is later.

12 (d) In this section, "incarcerated" means incarcerated as a
13 result of conviction of a misdemeanor or felony

14 (1) in a correctional facility;

15 (2) on furlough under AS 33.30.101 - 33.30.131;

16 (3) in a community residential center as a condition of
17 probation or parole; or

18 (4) in a correctional restitution center under AS 33.30.-
19 151 - 33.30.181.

20 * Sec. 4. AS 43.23.015(e) is amended to read:

21 (e) Except as provided in AS 43.23.007, if [IF] a public agency
22 claims a permanent fund dividend on behalf of an individual, the
23 public agency shall hold the dividend in trust for the individual.
24 Money held in trust under this subsection shall be invested by the
25 commissioner in accordance with AS 37.10.070.

26 * Sec. 5. AS 43.23.025(a) is amended to read:

27 (a) By October 1 of each year the commissioner shall give public
28 notice of the value of each permanent fund dividend for that year.
29 The public notice shall contain a statement disclosing the amount by

1 which each individual dividend has been reduced in order to pay the
2 costs of [ADMINISTERING THE PROGRAM AND] the hold harmless provisions
3 of AS 43.23.075 and the costs of administering the dividend program,
4 other than costs of administering AS 43.23.007. The commissioner
5 shall also include the statement on the stub attached to each indi-
6 vidual dividend check. The commissioner shall determine the value of
7 a permanent fund dividend by

8 (1) determining the total amount available for dividend
9 payments, which equals

10 (A) the amount of income of the Alaska permanent fund
11 transferred to the dividend fund under AS 43.23.045(b) during the
12 current year;

13 (B) plus the unexpended and unobligated balances of
14 prior fiscal year appropriations that lapse into the dividend
15 fund under AS 43.23.045(d);

16 (C) less the amount necessary to pay dividends from
17 the dividend fund in the current year under AS 43.23.055(3);

18 (D) less the amount necessary to pay dividends from
19 the dividend fund due to eligible applicants who, as determined
20 by the department, filed for a previous year's dividend by the
21 filing deadline but who were not included in a previous year's
22 dividend computation;

23 (E) less the costs of the hold harmless provisions of
24 AS 43.23.075 and the costs of administering the dividend program,
25 other than costs of administering AS 43.23.007;

26 (2) determining the number of individuals eligible to
27 receive a dividend payment for the current year; and

28 (3) dividing the amount determined under (1) of this sec-
29 tion by the amount determined under (2) of this section.

1 * Sec. 6. AS 43.23.065(a) is amended to read:

2 (a) Except as provided in (b) of this section, 50 percent of the
3 annual permanent fund dividend payable to an individual or to the
4 Department of Corrections under AS 43.23.007 is exempt from levy,
5 execution, garnishment, attachment, or any other remedy for the col-
6 lection of debt. This exemption applies to an eligible individual's
7 permanent fund dividend both before and after payment is made to the
8 individual. No other exemption applies to a dividend. If the divi-
9 dend is levied upon while in the possession of the Department of
10 Revenue or the Department of Corrections, the department shall with-
11 hold from the creditor the amount of the dividend that is exempt.

12 * Sec. 7. AS 43.23.065(b) is amended to read:

13 (b) An exemption is not available under this section for perma-
14 nent fund dividends taken to satisfy

15 (1) child support obligations required by court order or
16 decision of the child support enforcement agency under AS 47.23.140 -
17 47.23.220;

18 (2) court ordered restitution under AS 12.55.045 - 12.55.-
19 051 or 12.55.100; [OR]

20 (3) court ordered fines; or

21 (4) a debt owed by an eligible individual to an agency of
22 the state, unless the debt is contested and an appeal is pending, or
23 the time limit for filing an appeal has not expired.

24 * Sec. 8. AS 43.23.065 is amended by adding a new subsection to read:

25 (d) AS 09.38.080(c) and 09.38.085 do not apply to a levy on a
26 permanent fund dividend. The department shall include the case name
27 and number with a dividend or portion of a dividend delivered to the
28 court in response to a writ of execution. At the time payment is made
29 to the court, the department shall send to the individual at the

1 address provided in the individual's dividend application a notice
2 that contains

3 (1) notice that all or part of the individual's dividend
4 has been seized under a writ of execution;

5 (2) the name and address of the court that issued the writ;

6 (3) the case name and number for which the writ was issued;

7 (4) the amount seized; and

8 (5) notice that the individual has 30 days from the date
9 the notice is mailed in which to file with the court an objection to
10 the seizure if a mistake has been made.

11 * Sec. 9. AS 43.23.005(d), 43.23.025(b), 43.23.055(5), and 43.23.055(6)
12 are repealed.

13 * Sec. 10. Section 5, ch. 54, SLA 1988 is repealed.

14 * Sec. 11. This Act takes effect immediately under AS 01.10.070(c).