

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672

5851 HOUSE JUDICIARY

25

Representative Navarre
May 3, 1935
Page Nine

A white offender and white victim is the next most likely combination to result in the death sentence followed by the black offender/black victim and white offender/black victim. This ordering by offender/victim combination, which is similar to the order found in Table 2, indicates that controlling for felony or nonfelony-type homicide does not account for racial bias in sentencing.

From the data analyzed, Bowers and Pierce came to the following conclusion:

The data in this section point to more than arbitrariness and discrimination in isolation. They reflect a twofold departure from even-handed justice which is consistent with a single underlying racist tenant: that white lives are worth more than black lives. From this tenant it follows that death as punishment is more appropriate for the killers of whites than for the killers of blacks and more appropriate for black than for white killers. Either discrimination by race of offender or disparities of treatment by race of victim of the magnitudes we have seen here are a direct challenge to the constitutionality of the post-Furman capital statutes. Together these elements of arbitrariness and discrimination may represent a two-edged sword of racism in capital punishment that is beyond statutory control.⁸

The United States Supreme Court in the Gregg decision affirmed the death penalty laws of several states in part because they contained rules that would guide judges and juries in deciding who would receive the death penalty and who would not. The Supreme Court's view was that these provisions would help to eliminate the arbitrary use of the death penalty. The Florida death penalty law contains a provision that allows defendants to appeal the death penalty directly to the state supreme court.

Radelet and Vandiver have studied all direct appeals made to the Florida Supreme Court between January 1, 1972 and December 31, 1981.⁹ The authors, after examination of previous studies, concluded that the death penalty in Florida is given disproportionately to black defendants. The purpose of this study, then, was to determine if the supreme court appeals procedure was helping to lessen this sentencing bias.

⁸Bedau, The Death Penalty In America, Page 215.

⁹Michael Radelet and Margaret Vandiver, The Florida Supreme Court and Death Penalty Appeals, Journal of Criminal Law and Criminology, 1983, Vol. 74, No. 3, page 913.

Representative Navarre

May 8, 1985

Page Ten

The study discovered that the Florida Supreme Court reversed nearly one-half of the death penalty cases reviewed between 1972 and 1981. The two most important factors concerning a change in sentencing were related to the legal environment. The strongest predictor of a supreme court reversal of a death sentence was a jury recommendation of life imprisonment that was ignored by the sentencing judge. The second best predictor was the number of victims; as the number of victims increases, the supreme court is less likely to change the original sentence.

Radlett and Vandiver, however, discovered three other factors that relate to nonlegal issues that impact the appeals decision of the court: defendant's race, victim's sex and the interaction between victim's sex and defendant's race. Their statistical analysis shows that white defendants are slightly more likely to receive a favorable decision than black defendants (50 percent versus 54 percent), and those with female victims are slightly more likely to have their death sentences changed than those with male victims.

However, the statistical impact of the defendant's race can be skewed by considering the victim's sex. For example, 39 percent of the black defendants with female victims had their death sentences changed compared with 61 percent of the white defendants with female victims. Of the 23 cases with a black defendant and a female victim, 20 of the victims were white. Among the cases of a black defendant and male victim, 50 percent of the sentences were changed while among the cases involving a white defendant and a male victim only 42 percent of the death sentences were changed.

Based on their statistical findings, Radlett and Vandiver conclude:

While the identification of extra-legal correlates of decisions at one point in the capital sentencing process is noteworthy, its principal importance emerges in the context of comparison with other racially biased decisions made at earlier points. That is, although the death penalty in Florida is given disproportionately to black defendants, the Florida Supreme Court is not correcting the discrepancy in its decisions on direct appeals. In fact, the relationship between the defendant's race and outcome indicates the possibility that the Supreme Court is reinforcing the biases against black defendants which may be observed at earlier stages of the criminal justice process...¹⁰

¹⁰Radlett and Vandiver, page 925.

Representative Navarre
May 8, 1985
Page Eleven

Although we contacted several reputable sources of criminal justice information including the National District Attorney Association, The Justice Center at the University of Alaska-Anchorage (and through them the Bureau of Justice Statistics), the American Bar Association and the National Conference of State Legislatures we could find no statistical studies that refute the conclusion that the application of the death penalty is racially biased. (We are still attempting to contact several sources and should these contacts provide any relevant information, we will forward it to you.)

Most of the literature in support of the death penalty concerns the issues of deterrence and the general protection of society. Although the question of deterrence is discussed extensively in the literature, it is not the major focus of this memorandum.¹¹

However, one argument made in the face of charges of discriminatory application of the death penalty is that it is impossible to enforce any law equally. This reasoning argues that penalties could never be applied if society insisted that penalties be inflicted on a guilty person only if they are inflicted on all guilty people.

Furthermore, proponents of this view contend that justice does not necessarily demand equal application to be valid. Ernest Van Den Haag notes:

The utilitarian (political) effects of unequal justice may well be detrimental to the social fabric because they outrage our passion for equality before the law. Unequal justice also is morally repellant. Nonetheless, unequal justice is still justice. The guilty do not become innocent or less deserving of punishment because others escape it. Nor does any innocent deserve punishment because others suffer it. Justice remains just, however unequal, while injustice remains unjust, however equal. While both are desired, justice and equality are not identical. Equality before the law should be extended and enforced--but not at the expense of justice.¹²

¹¹The House Research Agency has collected a variety of information on the deterrent effect of the death penalty. Also see House Research memoranda 82-161 (Capital Punishment) and 85-185 (Capital Punishment Costs and Effect on Murder Rates).

¹²Ernest Van Den Haag, In Defense of the Death Penalty: A Practical and Moral Analysis, from The Death Penalty in America, edited by Hugo Adam Bedau, Oxford University Press, 1982, page 324.

Representative Navarre
May 8, 1985
Page Twelve

Proponents of this view recognize that the death penalty may not be equally applied to all defendants. However, they maintain that no law can ever be equally applied and to apply the law unequally does not invalidate the justness of applying it to those who are guilty. Racial bias in the application of the death sentence is morally undesirable and should be eliminated, however, the existence of the bias does not necessarily argue for elimination of the death sentence.

CRIMINAL JUSTICE IN ALASKA

Since 1977, the Alaska Judicial Council has produced three reports that analyze the reasons for variations in length of sentences for felony convictions and two reports that analyze misdemeanor sentences. The first report contained information on felony convictions for the period 1974-1976, the second for the period 1976-1979 and the third for 1980. In each of the felony studies, all convictions for the study period were assigned to one of six felony classes: murder/kidnapping, violent felonies, property offenses, fraud offenses, drug offenses and morals offenses. However, the first and last classes, murder/kidnappings and morals offenses, were excluded because not enough cases were available for meaningful statistical analysis. Felonies within the remaining four categories were analyzed to isolate the factors that contributed to the length of sentence received by defendants. A similar classification scheme was used to analyze the misdemeanor sentences. The findings of these studies are summarized below.

Alaska Sentencing Felony Patterns (1974-1976)¹³

The largest single factor that affected the length of felony sentences was the type of crime that was committed. In fact, this variable explained more of the variation in sentence length than any other factor.

The defendant's criminal history also had a positive relationship on the length of the sentence for all four of the felony classes studied in depth. Having a prior felony or misdemeanor record meant a longer sentence, ranging from 38.6 months longer for violent felony to 4.4 months longer for burglary, larceny, receiving and concealing.

¹³Alaska Felony Sentencing Patterns: A Multivariate Statistical Analysis (1974-1976), Alaska Judicial Council, April 1977.

Representative Navarre
May 3, 1985
Page Thirteen

Multiple convictions also increased the sentence, particularly in cases of multiple felonies. However, in two felony classes, violent felonies and fraud felonies, the fact that there were other unrelated charges against the defendant, even though he or she had not yet been convicted, meant a longer sentence: 27.3 months for violent felonies and 7.4 months for fraud felonies.

The effect of the judge's "strictness" or "leniency" was also found to be an important variable in sentence length.¹⁴ For example, a defendant convicted of a violent felony and sentenced by a "strict" judge received a sentence estimate to be 45.6 months longer than a sentence imposed by a judge who was not "strict". In cases of drug felonies, judicial "strictness" added an estimated 22 months to the sentence. "Leniency", although affecting sentence length, did not have as great an impact as on sentence length as "strictness".

In two felony classes, violent felonies and fraud felonies, the fact that the defendant had been unemployed 18 months or more out of the two years prior to prosecution was positively related to longer sentences. For violent felony convictions, it was estimated that unemployment for the two years preceding the conviction could mean an increased sentence of up to 18.8 months. For fraud felonies, the additional sentence length caused by unemployment was estimated to be 6.9 months.

The study found that the defendant's race, age, income, education level and occupation had a significant impact on the length of sentence received for drug-related felonies and a less significant impact on other felony classifications. All of the personal characteristics mentioned above were associated with the length of sentences for drug related felonies. Defendants that were under 21 years of age received sentences that were generally 9.3 months shorter than if the defendant was older than 21 years. Being black contributed an estimated 11.9 months to the defendant's sentence. Low income meant a longer drug felony sentence (about 6.2 months) and education beyond high school meant a shorter sentence by 6.4 months. A "blue collar" worker received a sentence for conviction of a drug felony that was 7.2 months longer than a professional or individual in a supervisory position would receive.

The sentence length for other types of felony convictions also was affected by these personal characteristics. A black individual convicted of a property felony was likely to receive a sentence that was 6.5 months longer than the sentence received by all other offenders for

¹⁴"Strict", "lenient" or "other" is determined by comparing the mean sentence length of each offense class with the sentences imposed by the judge.

Representative Navarre
May 8, 1985
Page Fourteen

similar offenses. A "white collar" professional was likely to receive a sentence that was 4.6 months shorter than a "blue collar" worker for a conviction for fraud.

A defendant with a history of drug dependence was more likely to receive a longer sentence for fraud but not necessarily for violent felonies and property-related felonies.

Alaska Felony Sentences 1976-1979¹⁵

As a result of the findings of racial disparities in sentencing that surfaced during the first judicial council study, the legislature appropriated funds for a follow-up study to include all felony convictions between 1976 and 1979. This study used the same classifications of felony convictions but divided the data into urban and rural segments.

The methodology used to analyze data in this study is virtually identical to the methods used in the previous study. Within each class of felony, the most significant factors associated with the increase or decrease of a typical sentence were identified and their impact determined.

In comparing the results of the urban data with the findings of the previous study, the authors concluded that:

Analysis of our new (1976-1979) data indicates dramatic reduction in sentencing disparity by race. Racially disproportionate sentences among property and fraud offenses have completely disappeared. In addition, our analysis indicates that, other things being equal, native defendants convicted of violent felonies (class 2) actually receive a sentence less than those of either blacks or whites.¹⁶

In fact, the study found that, for violent felonies, Native defendants received sentences 15.6 months less than those imposed on blacks and whites. However, the study also found that blacks convicted of drug-related felonies in the period 1976-1979 continued to receive sentences that were approximately 11.4 months longer than those received by other defendants convicted of drug felonies. One other socio-economic factor

¹⁵Nicholas Maroules and Theresa White, Alaska Felony Sentences: 1976-1979, Alaska Judicial Council, November 1980.

¹⁶Alaska Felony Sentences 1976-1979, page 13.

was found to be significant: for fraud felonies, defendants with monthly incomes of less than \$500 received sentences that were 4.2 months less than defendants with income over \$500 per month.

It was also discovered that the type of defense attorney representing the defendant seemed to influence sentence length. Among both fraud and drug-related felonies, representation by a court-appointed attorney increased sentence length 15.4 and 11.9 months respectively. However, among drug convictions, representation by a public defender decreases the sentence length by 8.7 months.

As in the previous study, the defendant's prior record, the number of contemporaneous offenses committed and the "strictness" or "leniency" of the judge impacted the sentence length. It was also discovered that in almost all felony classes, presentence reports submitted by probation officers significantly impacted the length of the sentence. In addition, if the defendant was in jail prior to trial (did not make bail or was not released on his or her own recognizance) the sentence was substantially increased.

The analysis of 1976-1979 felony data also included sentencing patterns for rural Alaska. However, due to the small number of fraud, drug and morals cases, the only felony classes that could be analyzed for sentence length factors were violent and property felonies.

Within the category of violent felonies committed in rural Alaska, the most significant influence on length of sentence was the specific offense. Conviction for rape resulted in sentences that were 55.5 months longer than the average length of sentence for violent felonies, while sentences for manslaughter/negligent homicide convictions resulted in sentences that were 78.4 months longer than typical violent felony sentences. This contrasts with urban sentence length in which convictions for rape resulted in the greatest contribution to sentence length.

As in the data presented in the earlier study and the urban component of this study, sentence length for violent felonies was substantially increased if the defendant had a prior felony conviction. Each prior felony conviction contributed 26.9 months to sentence length. Also, the custodial status of the defendant proved to be significant. If the defendant did not make bail or was not released on his or her own recognizance, a typical sentence was increased by 24 months. An unfavorable characterization of the defendant in the presentence report increased sentence length by 16.1 months.

Two background/socio-economic factors were also found to influence sentence length. A "bad" discharge from the military was found to increase sentence length by 52.9 months while having a monthly income of less than \$500 increased sentence length by nearly 9 months.

CORRECTION

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

Representative Navarre
May 8, 1985
Page Fifteen

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Representative Navarre
May 8, 1985
Page Sixteen

The factors influencing sentencing for property felonies were similar to those influencing violent felonies with two exceptions. First, the employment status of the defendant influenced sentence length in two ways. Being employed for thirty days or more at the time of the conviction reduced sentences by 3.3 months while seasonal employment reduced a sentence by 3.9 months. Secondly, race was significantly associated with sentence length. Blacks convicted of property felonies received sentences that were 2.2 months longer than sentences received by white or Native defendants.

Alaska Felony Sentences: 1980¹⁷

Alaska Felony Sentences: 1980 is the third report in the series of statistical studies concerning felony sentencing in Alaska. This report analyzes all felonies committed in Alaska during 1980 with an emphasis on the impact of the revision of Alaska's criminal code in 1980. For the purposes of this memorandum, however, we will continue to concentrate on the personal characteristics and socio-economic factors that influence sentence length rather than structural changes in the criminal justice system.

In comparing the outcomes of the 1976-1979 study with the results of the 1980 study, the Judicial Council concluded that "the present analysis of 1980 offenses reveals that racially disproportionate sentencing outcomes have been totally eliminated."¹⁸ A second finding related to the influence of the type of attorney in sentencing outcomes. The Judicial Council reports that:

Our analysis of the felony sentencing reveals that the earlier attorney-type outcome differences have been completely eliminated. Differences in sentence outcomes according to type of defense attorney did not survive the screening in any class of offense, strongly suggesting that the Court System's response eliminated the problem.¹⁹

The 1980 study found that, in general, sentence length for all classes of felonies was influenced by one or more of the following: the specific crime committed, the record of the defendant, the number of contemporaneous convictions, the presentence report, presumptive sentencing, if the defendant was jailed at the time of conviction and the "strictness" or "leniency" of the sentencing judge.

¹⁷Alaska Judicial Council, Alaska Felony Sentences: 1980, December 1982.

¹⁸Alaska Felony Sentences: 1980, page 57.

¹⁹Alaska Felony Sentences: 1980, page 59.

Representative Navarre
May 8, 1985
Page Seventeen

Alaska Misdemeanor Sentences: 1980²⁰

Alaska Misdemeanor Sentences: 1980 analyzes sentences imposed by Alaska judges and magistrates in misdemeanor cases during 1980. The study concentrated on two types of relationships: defendant characteristics and sentence length and community characteristics and sentence length. Three types of defendant characteristics influenced the length of the sentence: financial status (which was based on an index which considered type of attorney, employment status and bail or custody status at the time of sentencing), prior criminal history and history of treatment for alcohol or drug problems. The study determined that wealthy defendants tended to receive shorter sentences for vehicular and disorderly conduct convictions than nonwealthy defendants. However, the defendant's wealth did not affect sentencing for violent, property or alcohol/drug offenses.

Prior criminal history and treatment contributed more to sentence length than wealth did. Prior conviction for felony offenses added 22.4 days to violent misdemeanor convictions and 58.7 days to property offenses. Defendants who had been referred to alcohol or drug programs in the past but had not attended the program, received longer sentences than those defendants who finished these programs: 24.6 days for violent offenses, 49 days for vehicular offenses and 7 days for alcohol/drug offenses.

Community characteristics were also found to influence sentencing. Fines were required far less frequently in Nome, Bethel and Barrow than in other areas. In addition, the actual fines that were paid in these three locations tended to be less. However, defendants in Nome and Bethel were more likely to serve time in jail than defendants in other areas of the state for vehicular offenses, violent offenses, and disorderly conduct.

I hope that this information is useful. If you require additional research, please contact us.

JL

²⁰Alaska Judicial Council, Alaska Misdemeanor Sentences: 1981, December 1983.



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y. State Capitol
Juneau, Alaska 99811
(907) 465-3991

HAYDEN
re: Death Penalty

May 8, 1985

MEMORANDUM

TO: Representative Mike Navarre

ATTN: Pat Malone

FROM: Jay Livey *JL*
Legislative Analyst

RE: Racial Bias in the Application of the Death Penalty in the U.S.
and the Sentencing of Convicted Felons in Alaska
Research Request 85-292

You asked that we provide you with the following information concerning application of the death penalty in Alaska and the United States:

- the race and social class of persons currently under sentence of death in the United States;
- information concerning previous applications of the death penalty in Alaska and the United States; and
- evidence, if any, of discrimination by race or economic condition in sentencing in Alaska.

SUMMARY

Individuals Currently Under the Death Sentence. There are currently 1,470 individuals on death row in the United States: 51 percent of these individuals are white; 42 percent are black; 5.7 percent are hispanic; 1.2 percent are Native American; and .3 percent are Asian. Blacks, hispanics and Native Americans are all disproportionately represented on death row in relation to their portion of the entire United States population.

Death Penalty in the United States. A significant amount of evidence exists that the death penalty in America has been applied in an arbitrary and biased manner. Wolfgang and Riedel found that, from 1945 to 1965, black defendants convicted of rape in eleven predominantly southern states had a significantly greater chance of receiving the death penalty than white defendants convicted of the same crime (13 percent

Representative Navarre
May 8, 1985
Page Two

to 2 percent). Furthermore, they discovered that the race of the victim was critical. In cases involving a black defendant and a white victim, 36 percent of the defendants were sentenced to death while in all other cases, only 2 percent of the defendants received the death sentence.

Findings in similar studies led the Supreme Court of the United States to conclude that capital punishment was being applied in a capricious and arbitrary manner. In Furman v Georgia (1972), the court declared the capital punishment laws of most states to be unconstitutional. As a result of the Furman case, states drafted new capital punishment laws that contained sentencing guidelines and appeals procedures intended to remove discretionary application of the death penalty. In Gregg v Georgia these state laws were found to be constitutional.

Bowers and Pierce studied the effect of these new laws by examining all cases of criminal homicide in the states of Florida, Texas, Georgia and Ohio that occurred between the passage of new capital punishment laws and 1978. They concluded that the racial sentencing patterns that were observed in the pre-Furman period persisted. Generally, black defendants had a greater chance of receiving the death sentence than white defendants and killers of whites had a better chance of the death sentence than killers of blacks.

Radelet and Vandiver examined the effect of state appeals procedures in mitigating the effect of racially biased sentencing in Florida. Appeals to state supreme courts are one method recognized by the United States Supreme Court of removing arbitrary sentencing in death penalty cases. However, the authors discovered that appeal to the state supreme court did not necessarily compensate for sentencing bias, and, in fact, the decisions of the appeals court reinforced the bias of the lower courts.

We could find no statistical evidence to refute the findings that the death penalty has been discriminately applied. Most statistical evidence presented in favor of the death penalty focuses on the issue of the deterrent effect of capital punishment. However, several proponents of the death penalty, most notably Ernest Van Den Haag, argue that equality in the application of justice, although desirable, is not practical. He argues that society could enforce no law if required to assure that all guilty individuals were punished equally. Furthermore, unequal punishment does not mean that the guilty are any less guilty and deserving of punishment. Therefore, he concludes that racial bias in the application of the death penalty is morally undesirable, but does not necessarily require its abolition.

Sentencing Patterns in Alaska. The Alaska Judicial Council produced a series of reports that studied felony sentencing patterns in Alaska from 1974-1980. The first felony sentencing report which covered the

Representative Navarre
May 8, 1985
Page Three

period 1974-1976 found that sentencing in Alaska was influenced by the defendant's race, age, education, income and occupation. Black defendants received longer sentences than white defendants in drug and property-related felonies. Defendants under 21 years of age received shorter sentences for drug convictions than defendants over age 21.

Low income meant a longer drug felony sentence, while education beyond high school meant a shorter one. Professionals and individuals in supervisory positions received generally shorter sentences for a drug conviction than individuals in "blue collar" positions.

A subsequent study of sentencing for felony convictions, covering the period 1976-1979, indicated that although some of the racial bias in sentencing had disappeared, it still persisted among black defendants convicted of drug felonies. In addition, this study found that the type of defense attorney was significant in determining sentence length. Among fraud and drug-related felonies, representation by a court appointed attorney was associated with longer sentences while representation by a public defender was associated with shorter sentences.

The third felony sentencing report analyzed all felony convictions during 1980. This report concluded that the impact on sentencing caused by the type of attorney had been eliminated. Also, the report found that previous racial bias in sentencing had been eliminated.

PERSONS CURRENTLY AWAITING EXECUTION IN THE UNITED STATES

Although we could find no current information concerning the economic class of individuals currently awaiting execution, Table 1 provides a summary of the race of each of these individuals. As the table indicates, of the 1,470 condemned persons, 727 (49.2 percent) are non-white while 752 (50.8 percent) are white. According to the 1980 census, the portion of the United States population that was black, hispanic and American Indian was 12 percent, 6.43 percent and .62 percent respectively. A comparison of the racial composition of the United States population with the racial composition of death row inmates indicates that blacks, hispanics and Native Americans are all disproportionately represented within the group of prisoners under sentence of death.

TABLE 1

Race of Persons Under Sentence of Death

<u>Race</u>	<u>Number</u>	<u>Percent</u>
White	742	50.8
Black	620	42.0
Hispanic	84	5.7
Native American	18	1.2
Asian American	5	.3
Total	1,479	100

Source: American Civil Liberties Union.

* * * *

CAPITAL PUNISHMENT IN ALASKA AND THE UNITED STATES

Eight men have been executed in Alaska; all of these executions occurred between 1903 and 1950.¹ Reference has been made to a ninth execution, but our research has not confirmed this event. Of the eight men known to have been executed, two were white, three were Alaska Natives, two were black and the race of one was unknown. Although the number of executions is too small to statistically analyze for patterns of discrimination, it is evident that non-whites have been executed in Alaska in disproportionate numbers. However, without knowing the nature of the offenses for which the men were executed or the numbers and types of offenses for which other defendants were not executed, it is impossible to prove a pattern of discrimination in the application of the death sentence in Alaska.

The American Civil Liberties Union reports that since 1972, 38 individuals have been executed in the United States. Of this number, 12 (32 percent) were black. These data, combined with the information concerning death row prisoners in Table 1, indicates that a disproportionate number of black individuals have been executed or are currently

¹Correspondence between Charles Zibulka and the Alaska Historical Library, August 10, 1965.

Representative Navarre
May 8, 1985
Page Five

sentenced to death. These statistics, however, do not by themselves prove discrimination in the application of capital punishment. To prove discrimination, it is necessary to show that differences in sentencing occurred for similar crimes. Three studies that focus on this differentiation in sentencing are discussed below.

Wolfgang and Riedel studied cases of rape from the period 1945 to 1966 in eleven predominantly southern states.² Sample counties from each state were chosen and, from these counties, information concerning 3,000 rape convictions from 230 counties was collected. Because the study addressed only sentencing differences among convicted defendants, the effect of racial factors on the criminal justice process prior to sentencing were not considered.

Wolfgang and Riedel analyzed 1,265 cases from five states and found that, of the 823 cases in which blacks were convicted of rape, 110 black defendants (13 percent) were sentenced to death while among the 442 whites convicted of rape, 9 (2 percent) were sentenced to death. The authors also discovered that a disproportionate number of black defendants whose victims were white were sentenced to death. From a total of 1,238 convictions in six states, 317 involved a black defendant and a white victim and 921 involved all other combinations of defendant and victim: including black/black, white/white and white/black. Of the 317 black defendants whose victims were white, 113 or approximately 36 percent were sentenced to death while in the other 921 cases, 19 (2 percent) of the convicted defendants were sentenced to death.³

However, as mentioned previously, these statistics do not necessarily prove racial discrimination in sentencing. To examine the issue of racial discrimination, it is necessary to study the data and to determine if other variables may be present that explain the sentencing differences.

²Marvin Wolfgang and Marc Riedel, Racial Discrimination, Rape, and the Death Penalty, from Death Penalty In America edited by Hugo Adam Bedau, Oxford University Press, 1982.

³The discrepancy in the number of cases and number of Black defendants who received the death sentence occurs because data from different states was used for each analysis discussed. Although Wolfgang and Riedel collected information from eleven states, they selected seven states for further analysis. Because the data from these seven states were not uniform, the authors found it necessary to selectively use the data depending on the analysis undertaken.

Representative Navarre

May 8, 1985

Page Six

Wolfgang and Riedel studied the relationship between the imposition of the death sentence and the following nonracial variables: offender characteristics (age, marital status, prior criminal record, previous imprisonment, employment status); victim characteristics (age, marital status, dependent children, reputation); relation between victim and offender; and the circumstance of the offense (contemporaneous offense, type of entry and location of offense). After testing these nonracial variables, the authors discovered that:

Not one of these nonracial variables has withstood the test of statistical significance. That is, in none of the seven states carefully analyzed can it be said that any of the nonracial factors account for the statistically significant and disproportionate number of blacks sentenced to death for rape...⁴

After eliminating nonracial factors, Wolfgang and Riedel conclude:

It cannot be said that blacks are more frequently sentenced to death because they have a longer prior criminal record than whites, because they used more force on the victim, because they committed a robbery or burglary, because they entered premises without authorization...because they more frequently attacked persons under the age of sixteen, and so forth. All the nonracial factors "wash out", that is, they have no bearing on the imposition of the death penalty in disproportionate numbers upon blacks. The only variable of statistical significance that remains is race.⁵

The bias that Wolfgang and Riedel discovered in the application of the death sentence was the basis of the argument used in 1972 by the Supreme Court in Furman v Georgia, which set aside the death penalty in all of the states. The court ruled that, although capital punishment was not unconstitutional per se, state laws that allowed the death sentence to be used unfairly and arbitrarily violated the "cruel and unusual" punishment clause of the eighth amendment of the Constitution of the United States.

As a result of the Furman case, states drafted new capital punishment laws written to address the arbitrary application problem that the Supreme Court identified. These state laws provide sentencing guidelines to be used by judges and juries and a method of automatic appeal to state supreme courts in attempts to reduce capricious use of the death penalty. The Supreme Court reviewed these state laws in Gregg v Georgia in 1976 and found them to be constitutional.

⁴Bedau, The Death Penalty In America, page 204.

⁵Bedau, The Death Penalty In America, page 204.

Representative Navarre
May 8, 1985
Page Seven

Bowers and Pierce analyzed the application of the post-Furman capital punishment laws (that were affirmed by the Supreme Court in the Gregg case) of the states of Florida, Texas, Georgia and Ohio.⁶ The authors examined cases of criminal homicide that occurred in each state between the time that the new laws became effective and 1978. Table 2 summarizes information concerning the probability of receiving a death sentence in these states based on the race of the offender and victim.

As the table indicates, in all four of the states, black defendants whose victims were white had the highest probability of receiving the death sentence. White offenders whose victims were also white had the next highest probability of receiving the death sentence followed by black offenders/black victims and white offenders/black victims. Based on these statistics, Bowers and Pierce note that:

...Stark difference by race of both offender and victim in all four states are apparent...The racial pattern is consistent across states and similar to the experience under pre-Furman statutes. Thus, black killers and the killers of whites are substantially more likely to receive a death sentence in all four states. And, as in the pre-Furman era, race of the victim tends to overshadow race of the offender as a basis for differential treatment...⁷

Bowers and Pierce went on to question the possibility that the increased probability that blacks and killers of whites receive the death sentence more often than other homicide defendants is due to the nature of the crimes committed. The nature of the crime seems particularly relevant in the post-Furman period because many of the state laws upheld by the Supreme Court provide sentencing guidelines to judges and juries based on aggravating factors related to the crime. For example, in Florida and Georgia, if the homicide is committed during the course of another felony, such as rape or robbery, the homicide qualifies for the death sentence. To test the impact that the crime has on the chances of receiving the death penalty, the authors tested homicide data from Texas, Florida and Georgia by race of offender and victim for two separate categories: murders committed in the course of committing another felony (felony type) and murders committed in the absence of another felony (nonfelony type).

⁶William Bowers and Glenn Pierce, Racial Discrimination and Criminal Homicide Under Post-Furman Capital Statutes, from The Death Penalty In America, edited by Hugo Adam Bedau, Oxford University Press, 1982.

⁷Bedau, The Death Penalty In America, Page 209.

TABLE 2

Probability of Receiving a Death Sentence for Criminal Homicide,
 by Race of Offender and Victim for Selected States from Date of
 Enactment of Capital Punishment Law Through 1977

<u>Offender/Victim Combination</u>	<u>Estimated Number of Offenders</u>	<u>Persons Sentenced to Death</u>	<u>Overall Probability of Death Sentence</u>
Florida			
Black/White	240	53	.221
White/White	1,768	82	.046
Black/Black	1,922	12	.006
White/Black	80	0	.000
Georgia			
Black/White	258	43	.167
White/White	1,006	42	.042
Black/Black	2,458	12	.005
White/Black	71	2	.028
Texas			
Black/White	344	30	.087
White/White	3,616	56	.015
Black/Black	2,597	2	.001
White/Black	143	1	.007
Ohio			
Black/White	173	44	.254
White/White	803	37	.046
Black/Black	1,170	20	.017
White/Black	47	0	.000

Source: Bedau, The Death Penalty In America, Page 209.

* * * *

Bowers and Pierce found that although the death penalty is much more likely to be imposed in felony-type murders, this application does not explain the racial differences observed in Table 2. In fact, in each of these three states, whether looking at felony or nonfelony-type murder, a black offender whose victim is white has a greater chance of receiving the death sentence than any other offender/victim combination.

Representative Navarre
May 3, 1935
Page Nine

A white offender and white victim is the next most likely combination to result in the death sentence followed by the black offender/black victim and white offender/black victim. This ordering by offender/victim combination, which is similar to the order found in Table 2, indicates that controlling for felony or nonfelony-type homicide does not account for racial bias in sentencing.

From the data analyzed, Bowers and Pierce came to the following conclusion:

The data in this section point to more than arbitrariness and discrimination in isolation. They reflect a twofold departure from even-handed justice which is consistent with a single underlying racist tenant: that white lives are worth more than black lives. From this tenant it follows that death as punishment is more appropriate for the killers of whites than for the killers of blacks and more appropriate for black than for white killers. Either discrimination by race of offender or disparities of treatment by race of victim of the magnitudes we have seen here are a direct challenge to the constitutionality of the post-Furman capital statutes. Together these elements of arbitrariness and discrimination may represent a two-edged sword of racism in capital punishment that is beyond statutory control.⁸

The United States Supreme Court in the Gregg decision affirmed the death penalty laws of several states in part because they contained rules that would guide judges and juries in deciding who would receive the death penalty and who would not. The Supreme Court's view was that these provisions would help to eliminate the arbitrary use of the death penalty. The Florida death penalty law contains a provision that allows defendants to appeal the death penalty directly to the state supreme court.

Radelet and Vandiver have studied all direct appeals made to the Florida Supreme Court between January 1, 1972 and December 31, 1981.⁹ The authors, after examination of previous studies, concluded that the death penalty in Florida is given disproportionately to black defendants. The purpose of this study, then, was to determine if the supreme court appeals procedure was helping to lessen this sentencing bias.

⁸Bedau, The Death Penalty In America, Page 215.

⁹Michael Radelet and Margaret Vandiver, The Florida Supreme Court and Death Penalty Appeals, Journal of Criminal Law and Criminology, 1983, Vol. 74, No. 3, page 913.

Representative Navarre

May 8, 1985

Page Ten

The study discovered that the Florida Supreme Court reversed nearly one-half of the death penalty cases reviewed between 1972 and 1981. The two most important factors concerning a change in sentencing were related to the legal environment. The strongest predictor of a supreme court reversal of a death sentence was a jury recommendation of life imprisonment that was ignored by the sentencing judge. The second best predictor was the number of victims; as the number of victims increases, the supreme court is less likely to change the original sentence.

Radlett and Vandiver, however, discovered three other factors that relate to nonlegal issues that impact the appeals decision of the court: defendant's race, victim's sex and the interaction between victim's sex and defendant's race. Their statistical analysis shows that white defendants are slightly more likely to receive a favorable decision than black defendants (50 percent versus 54 percent), and those with female victims are slightly more likely to have their death sentences changed than those with male victims.

However, the statistical impact of the defendant's race can be skewed by considering the victim's sex. For example, 39 percent of the black defendants with female victims had their death sentences changed compared with 61 percent of the white defendants with female victims. Of the 23 cases with a black defendant and a female victim, 20 of the victims were white. Among the cases of a black defendant and male victim, 50 percent of the sentences were changed while among the cases involving a white defendant and a male victim only 42 percent of the death sentences were changed.

Based on their statistical findings, Radlett and Vandiver conclude:

While the identification of extra-legal correlates of decisions at one point in the capital sentencing process is noteworthy, its principal importance emerges in the context of comparison with other racially biased decisions made at earlier points. That is, although the death penalty in Florida is given disproportionately to black defendants, the Florida Supreme Court is not correcting the discrepancy in its decisions on direct appeals. In fact, the relationship between the defendant's race and outcome indicates the possibility that the Supreme Court is reinforcing the biases against black defendants which may be observed at earlier stages of the criminal justice process...¹⁰

¹⁰Radlett and Vandiver, page 925.

Representative Navarre

May 8, 1985

Page Eleven

Although we contacted several reputable sources of criminal justice information including the National District Attorney Association, The Justice Center at the University of Alaska-Anchorage (and through them the Bureau of Justice Statistics), the American Bar Association and the National Conference of State Legislatures we could find no statistical studies that refute the conclusion that the application of the death penalty is racially biased. (We are still attempting to contact several sources and should these contacts provide any relevant information, we will forward it to you.)

Most of the literature in support of the death penalty concerns the issues of deterrence and the general protection of society. Although the question of deterrence is discussed extensively in the literature, it is not the major focus of this memorandum.¹¹

However, one argument made in the face of charges of discriminatory application of the death penalty is that it is impossible to enforce any law equally. This reasoning argues that penalties could never be applied if society insisted that penalties be inflicted on a guilty person only if they are inflicted on all guilty people.

Furthermore, proponents of this view contend that justice does not necessarily demand equal application to be valid. Ernest Van Den Haag notes:

The utilitarian (political) effects of unequal justice may well be detrimental to the social fabric because they outrage our passion for equality before the law. Unequal justice also is morally repellant. Nonetheless, unequal justice is still justice. The guilty do not become innocent or less deserving of punishment because others escape it. Nor does any innocent deserve punishment because others suffer it. Justice remains just, however unequal, while injustice remains unjust, however equal. While both are desired, justice and equality are not identical. Equality before the law should be extended and enforced--but not at the expense of justice.¹²

¹¹The House Research Agency has collected a variety of information on the deterrent effect of the death penalty. Also see House Research memoranda 82-161 (Capital Punishment) and 85-185 (Capital Punishment Costs and Effect on Murder Rates).

¹²Ernest Van Den Haag, In Defense of the Death Penalty: A Practical and Moral Analysis, from The Death Penalty in America, edited by Hugo Adam Bedau, Oxford University Press, 1982, page 324.

Representative Navarre
May 8, 1985
Page Twelve

Proponents of this view recognize that the death penalty may not be equally applied to all defendants. However, they maintain that no law can ever be equally applied and to apply the law unequally does not invalidate the justness of applying it to those who are guilty. Racial bias in the application of the death sentence is morally undesirable and should be eliminated, however, the existence of the bias does not necessarily argue for elimination of the death sentence.

CRIMINAL JUSTICE IN ALASKA

Since 1977, the Alaska Judicial Council has produced three reports that analyze the reasons for variations in length of sentences for felony convictions and two reports that analyze misdemeanor sentences. The first report contained information on felony convictions for the period 1974-1976, the second for the period 1976-1979 and the third for 1980. In each of the felony studies, all convictions for the study period were assigned to one of six felony classes: murder/kidnapping, violent felonies, property offenses, fraud offenses, drug offenses and morals offenses. However, the first and last classes, murder/kidnappings and morals offenses, were excluded because not enough cases were available for meaningful statistical analysis. Felonies within the remaining four categories were analyzed to isolate the factors that contributed to the length of sentence received by defendants. A similar classification scheme was used to analyze the misdemeanor sentences. The findings of these studies are summarized below.

Alaska Sentencing Felony Patterns (1974-1976)¹³

The largest single factor that affected the length of felony sentences was the type of crime that was committed. In fact, this variable explained more of the variation in sentence length than any other factor.

The defendant's criminal history also had a positive relationship on the length of the sentence for all four of the felony classes studied in depth. Having a prior felony or misdemeanor record meant a longer sentence, ranging from 38.6 months longer for violent felony to 4.4 months longer for burglary, larceny, receiving and concealing.

¹³Alaska Felony Sentencing Patterns: A Multivariate Statistical Analysis (1974-1976), Alaska Judicial Council, April 1977.

Representative Havarre

May 3, 1985

Page Thirteen

Multiple convictions also increased the sentence, particularly in cases of multiple felonies. However, in two felony classes, violent felonies and fraud felonies, the fact that there were other unrelated charges against the defendant, even though he or she had not yet been convicted, meant a longer sentence: 27.3 months for violent felonies and .4 months for fraud felonies.

The effect of the judge's "strictness" or "leniency" was also found to be an important variable in sentence length.¹⁴ For example, a defendant convicted of a violent felony and sentenced by a "strict" judge received a sentence estimate to be 45.6 months longer than a sentence imposed by a judge who was not "strict". In cases of drug felonies, judicial "strictness" added an estimated 22 months to the sentence. "Leniency", although affecting sentence length, did not have as great an impact as on sentence length as "strictness".

In two felony classes, violent felonies and fraud felonies, the fact that the defendant had been unemployed 18 months or more out of the two years prior to prosecution was positively related to longer sentences. For violent felony convictions, it was estimated that unemployment for the two years preceding the conviction could mean a increased sentence of up to 18.8 months. For fraud felonies, the additional sentence length caused by unemployment was estimated to be 6.9 months.

The study found that the defendant's race, age, income, education level and occupation had a significant impact on the length of sentence received for drug-related felonies and a less significant impact on other felony classifications. All of the personal characteristics mentioned above were associated with the length of sentences for drug related felonies. Defendants that were under 21 years of age received sentences that were generally 9.3 months shorter than if the defendant was older than 21 years. Being black contributed an estimated 11.9 months to the defendant's sentence. Low income meant a longer drug felony sentence (about 6.2 months) and education beyond high school meant a shorter sentence by 6.4 months. A "blue collar" worker received a sentence for conviction of a drug felony that was 7.2 months longer than a professional or individual in a supervisory position would receive.

The sentence length for other types of felony convictions also was affected by these personal characteristics. A black individual convicted of a property felony was likely to receive a sentence that was 6.5 months longer than the sentence received by all other offenders for

¹⁴"Strict", "lenient" or "other" is determined by comparing the mean sentence length of each offense class with the sentences imposed by the judge.

Representative Navarre
May 8, 1985
Page Fourteen

similar offenses. A "white collar" professional was likely to receive a sentence that was 4.6 months shorter than a "blue collar" worker for a conviction for fraud.

A defendant with a history of drug dependence was more likely to receive a longer sentence for fraud but not necessarily for violent felonies and property-related felonies.

Alaska Felony Sentences 1976-1979¹⁵

As a result of the findings of racial disparities in sentencing that surfaced during the first judicial council study, the legislature appropriated funds for a follow-up study to include all felony convictions between 1976 and 1979. This study used the same classifications of felony convictions but divided the data into urban and rural segments.

The methodology used to analyze data in this study is virtually identical to the methods used in the previous study. Within each class of felony, the most significant factors associated with the increase or decrease of a typical sentence were identified and their impact determined.

In comparing the results of the urban data with the findings of the previous study, the authors concluded that:

Analysis of our new (1976-1979) data indicates dramatic reduction in sentencing disparity by race. Racially disproportionate sentences among property and fraud offenses have completely disappeared. In addition, our analysis indicates that, other things being equal, native defendants convicted of violent felonies (class 2) actually receive a sentence less than those of either blacks or whites.¹⁶

In fact, the study found that, for violent felonies, Native defendants received sentences 15.6 months less than those imposed on blacks and whites. However, the study also found that blacks convicted of drug-related felonies in the period 1976-1979 continued to receive sentences that were approximately 11.4 months longer than those received by other defendants convicted of drug felonies. One other socio-economic factor

¹⁵Nicholas Maroules and Theresa White, Alaska Felony Sentences: 1976-1979, Alaska Judicial Council, November 1980.

¹⁶Alaska Felony Sentences 1976-1979, page 13.

Representative Navarre
May 8, 1985
Page Fifteen

was found to be significant: for fraud felonies, defendants with monthly incomes of less than \$500 received sentences that were 4.2 months less than defendants with income over \$500 per month.

It was also discovered that the type of defense attorney representing the defendant seemed to influence sentence length. Among both fraud and drug-related felonies, representation by a court-appointed attorney increased sentence length 15.4 and 11.9 months respectively. However, among drug convictions, representation by a public defender decreases the sentence length by 8.7 months.

As in the previous study, the defendant's prior record, the number of contemporaneous offenses committed and the "strictness" or "leniency" of the judge impacted the sentence length. It was also discovered that in almost all felony classes, presentence reports submitted by probation officers significantly impacted the length of the sentence. In addition, if the defendant was in jail prior to trial (did not make bail or was not released on his or her own recognizance) the sentence was substantially increased.

The analysis of 1976-1979 felony data also included sentencing patterns for rural Alaska. However, due to the small number of fraud, drug and morals cases, the only felony classes that could be analyzed for sentence length factors were violent and property felonies.

Within the category of violent felonies committed in rural Alaska, the most significant influence on length of sentence was the specific offense. Conviction for rape resulted in sentences that were 55.5 months longer than the average length of sentence for violent felonies, while sentences for manslaughter/negligent homicide convictions resulted in sentences that were 78.4 months longer than typical violent felony sentences. This contrasts with urban sentence length in which convictions for rape resulted in the greatest contribution to sentence length.

As in the data presented in the earlier study and the urban component of this study, sentence length for violent felonies was substantially increased if the defendant had a prior felony conviction. Each prior felony conviction contributed 26.9 months to sentence length. Also, the custodial status of the defendant proved to be significant. If the defendant did not make bail or was not released on his or her own recognizance, a typical sentence was increased by 24 months. An unfavorable characterization of the defendant in the presentence report increased sentence length by 16.1 months.

Two background/socio-economic factors were also found to influence sentence length. A "bad" discharge from the military was found to increase sentence length by 52.9 months while having a monthly income of less than \$500 increased sentence length by nearly 9 months.

Representative Navarre
May 8, 1985
Page Sixteen

The factors influencing sentencing for property felonies were similar to those influencing violent felonies with two exceptions. First, the employment status of the defendant influenced sentence length in two ways. Being employed for thirty days or more at the time of the conviction reduced sentences by 3.3 months while seasonal employment reduced a sentence by 3.9 months. Secondly, race was significantly associated with sentence length. Blacks convicted of property felonies received sentences that were 2.2 months longer than sentences received by white or Native defendants.

Alaska Felony Sentences: 1980¹⁷

Alaska Felony Sentences: 1980 is the third report in the series of statistical studies concerning felony sentencing in Alaska. This report analyzes all felonies committed in Alaska during 1980 with an emphasis on the impact of the revision of Alaska's criminal code in 1980. For the purposes of this memorandum, however, we will continue to concentrate on the personal characteristics and socio-economic factors that influence sentence length rather than structural changes in the criminal justice system.

In comparing the outcomes of the 1976-1979 study with the results of the 1980 study, the Judicial Council concluded that "the present analysis of 1980 offenses reveals that racially disproportionate sentencing outcomes have been totally eliminated."¹⁸ A second finding related to the influence of the type of attorney in sentencing outcomes. The Judicial Council reports that:

Our analysis of the felony sentencing reveals that the earlier attorney-type outcome differences have been completely eliminated. Differences in sentence outcomes according to type of defense attorney did not survive the screening in any class of offense, strongly suggesting that the Court System's response eliminated the problem.¹⁹

The 1980 study found that, in general, sentence length for all classes of felonies was influenced by one or more of the following: the specific crime committed, the record of the defendant, the number of contemporaneous convictions, the presentence report, presumptive sentencing, if the defendant was jailed at the time of conviction and the "strictness" or "leniency" of the sentencing judge.

¹⁷Alaska Judicial Council, Alaska Felony Sentences: 1980, December 1982.

¹⁸Alaska Felony Sentences: 1980, page 57.

¹⁹Alaska Felony Sentences: 1980, page 59.

Representative Navarre
May 8, 1985
Page Seventeen

Alaska Misdemeanor Sentences: 1980²⁰

Alaska Misdemeanor Sentences: 1980 analyzes sentences imposed by Alaska judges and magistrates in misdemeanor cases during 1980. The study concentrated on two types of relationships: defendant characteristics and sentence length and community characteristics and sentence length. Three types of defendant characteristics influenced the length of the sentence: financial status (which was based on an index which considered type of attorney, employment status and bail or custody status at the time of sentencing), prior criminal history and history of treatment for alcohol or drug problems. The study determined that wealthy defendants tended to receive shorter sentences for vehicular and disorderly conduct convictions than nonwealthy defendants. However, the defendant's wealth did not affect sentencing for violent, property or alcohol/drug offenses.

Prior criminal history and treatment contributed more to sentence length than wealth did. Prior conviction for felony offenses added 22.4 days to violent misdemeanor convictions and 58.7 days to property offenses. Defendants who had been referred to alcohol or drug programs in the past, but had not attended the program, received longer sentences than those defendants who finished these programs: 24.6 days for violent offenses, 49 days for vehicular offenses and 7 days for alcohol/drug offenses.

Community characteristics were also found to influence sentencing. Fines were required far less frequently in Nome, Bethel and Barrow than in other areas. In addition, the actual fines that were paid in these three locations tended to be less. However, defendants in Nome and Bethel were more likely to serve time in jail than defendants in other areas of the state for vehicular offenses, violent offenses, and disorderly conduct.

I hope that this information is useful. If you require additional research, please contact us.

JL

²⁰Alaska Judicial Council, Alaska Misdemeanor Sentences: 1981, December 1983.

S B

19

HOUSE COMMITTEE REPORT

4/20

(7)

Date Referred: March 22, 1990

FURTHER REFERRALS:

JUDICIARY
FINANCE

Date of Committee Action: 4/20/90

The HESS Committee considered:

CSSSSB 19(RLS) (LM)

CS SS SB NO. 19 (Rls) am FORFEITURES IN ALCOHOL OR DRUG CASES

"An Act relating to seizure and forfeiture of property in cases involving alcoholic beverages, controlled substances, and imitation controlled substances."

RECOMMENDATIONS:

- be replaced with _____ 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): (Dept) APPROVES PREVIOUS: (Date/Dept)

- fiscal impact _____ generate fiscal note(s) _____ Pub Safety 3/20/90
- zero fiscal note _____ 5 zero fiscal note(s) _____ Admin (Gen)
- zero with analysis _____ zero fn/analysis _____ Admin (Gen) in comm

SIGNING DO PASS:

J. Ellis ELLIS

Mark Boyer BOYER

SIGNING: (Check approp. column)

Signature	Do Not Pass	No Rec	Amend
<u>W. Chamberlain</u> CHAMBERLAIN			
<u>Cheri Davis</u> DAVIS			
<u>Jacko</u> JACKO			✓

J. Ellis
Chairman's Signature

Senate Letter of Intent

for

CS FOR SS FOR SB 19 (Rules) AM

It is the intent of the legislature that the Office of Public Advocacy and the Public Defender make an annual report to the legislature stating the number of cases and attorney hours spend on cases as a result of SENATE BILL NO. 19.

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Public Safety
 Title: Forfeitures in alcohol or
drug cases BRU: _____
 Sponsor: Senator Sturgulewski Component: _____
 Requestor: Senate Judiciary

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

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

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Changes in CSSSB 19 (Rules) have no fiscal impact. This fiscal note is appropriate. Projections of no fiscal impact would continue through 1996.

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)

By improving the procedures under which property used to commit drug offenses can be forfeited, this bill could result in an increase of funds and property forfeited to the State. It is impossible to estimate the amount of this increase, however, especially as some of the forfeited assets may be passed on to municipalities that assist in these investigations.

Prepared by: Lt. Thomas Stearns Phone: 269-5620
 Division: Alaska State Troopers Date: 2/09/90

Approved by Commissioner: Arthur English Date: 2-9-90
 Agency: Department of Public Safety Page 1 of 1

Handwritten: 2/9/90

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Administration
 Title: An Act relating to seizure and BRU: Central Admin. Svcs.
forfeiture of property . . . substances.
 Sponsor: Sen. Sturgelewski et al. Components: Finance
 Requestor: _____

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
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REVENUE	0	0	0	0	0	0
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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)

The only noted impact of this bill is in amended section 12.35.330(d). This section deals with the sale of forfeited property and accounting for the proceeds. This is not expected to have a fiscal impact.

Prepared by: ^{for} Keith Busch, Director *John Thomas* Phone: 465-2240
 Division: Finance *Frank Baxter* Date: _____

Approved by Commissioner: Frank S. Baxter Date: 1/31/90
 Agency: Department of Administration

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

Changes in CSSB 19 (Rules) have no fiscal impact. This fiscal note is appropriate. Projections of no fiscal impact would continue through 1996.

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Administration
 Title: An Act relating to seizure and BRU: General Services and Supply
forfeiture of property
 Sponsor: Sturgulewski Components: Property Management
 Requestor: _____

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	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) The fiscal impact for the current fiscal year and future fiscal years on the sales/disposal function of property management will be negligible. Since the sales can be held concurrent with routine disposal sales, negligible impacts on the sales are anticipated. This fiscal note applies only to property management and disposal and does not cover the expenses for forfeiture proceedings, or seizure custody, or court costs.

Prepared by: Robert J. Link *Robert J. Link* Phone: 465-2250
 Division: General Services and Supply Date: 1/30/90
 Approved by Commissioner: Frank S. Baxter *Frank S. Baxter* Date: 1/31/90
 Agency: Department of Administration

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

Changes in CS SSSB 19 (Rubs)
 have no fiscal impact. This
 fiscal note is appropriate.
 Projections of no fiscal impact
 would continue through 1996.

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Seizure & forfeiture of property in alcohol & drug cases
 Sponsor: Sturgulewski, et al
 Requestor: _____

Agency Affected: Administration
 BRU: Public Defender Agency
 Components: Third Judicial District

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL	0	0	0	0	0	0
----------------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
----------------	---	---	---	---	---	---

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)

Prepared by: Senator Rick Uehling, Co-chairman
 Division: Senate Finance Committee

Phone: 465-4821
 Date: 2/27/90

Approved by Commissioner: _____
 Agency: _____

Date: _____

Distribution (by preparer):

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

*Changes in CS SSB 19 Rules
 have no fiscal impact.
 This fiscal note is
 appropriate.*

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Seizure & forfeiture of
property in alcohol & drug cases
 Sponsor: Sturgulewski, et al
 Requestor: _____

Agency Affected: Administration
 BRU: Office of Public Advocacy
 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

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

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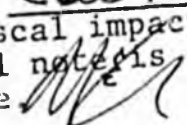
FUNDING: (Thousands of Dollars)

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)

Changes in CSSTS 19 (Rules)
 have no fiscal impact.
 This fiscal note is
 appropriate 

Prepared by: Senator Rick Uehling, Co-chairman Phone: 465-4821
 Division: Senate Finance Committee Date: 2/27/90

Approved by Commissioner: _____ Date: _____
 Agency: _____

Distribution (by preparer):

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

Alaska State Legislature



Senate

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SENATOR
ARLISS STURGULEWSKI
Senate President Pro Tempore
Chairman, Senate Rules Committee

MEMORANDUM

19 March 1990

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

FROM: Senator Arliss Sturgulewski *(Signature)*

RE: Senate Bill 19

I respectfully request your scheduling of Senate Bill 19 for a hearing before the House Judiciary Committee. This legislation amends current seizure and forfeiture laws as they pertain to drugs and bootleg alcohol.

The major change to current procedures is a new chapter in Title 12 outlining seizure and forfeiture proceedings. That new chapter clarifies current procedures and adds an administrative proceeding to the current methods by which property can be declared forfeit.

The major policy changes addressed by the bill include

1. Applying these seizure and forfeiture provisions to violations of alcohol laws.
2. Adding real property to the list of items subject to seizure in felony cases.
3. Adding to the ways in which persons may obtain relief from seizure and forfeiture provisions. This is accomplished by a new section that exempts persons who provide for than half the support of a minor child in that persons household. This relief is the same as that listed in the Alaska Exemptions Act (from bankruptcy).

This legislation is needed in order to bring our state's forfeiture and

seizure laws more closely in line with the federal model forfeiture act and with constitutional standards set by the courts since the current law was enacted.

Because of the backlog in the federal courts, there is a possibility that states with seizure laws will have to start processing drug cases through their own courts. The cases currently processed through federal courts cost us 20% of any proceeds realized.

As you know, this bill was introduced into the 15th Legislature as well. There have been numerous discussions with the administration in development of this legislation. The administration supports Senate Bill 19.

This is good legislation that gives our law enforcement agencies better tools with which to work and at the same time protects the rights of our citizenry.

Attached is a sectional analysis of the Senate Rules Committee Substitute.

Please contact me or Melissa Fouse of my staff if you have any questions.

SECTIONAL ANALYSIS
SS SENATE BILL 19
Rules Committee Substitute
19 March 1990

SECTION 1:

This section repeals and reenacts current law regarding seizure and forfeiture of property for violation of bootlegging statutes.

Subsection (a) outlines the conditions under which alcoholic beverages are subject to forfeiture.

Subsection (b) lists the conditions under which property is subject to seizure and forfeiture.

*Change from current law is the addition of a provision allowing property traceable to or derived from the illegal activity to be subject to forfeiture.

Subsection (c) lists the property that is subject to forfeiture.

*change from current law adds items in subsections (1), (2), (3), (4), and (6).

Subsection (d) is new language that allows a peace officer to immediately destroy alcoholic beverages if the alcoholic beverages are in a prohibited area or are being consumed illegally.

Subsection (e) requires that seized alcoholic beverages be destroyed.

SECTION 2:

This is a new chapter in Title 12, the Code of Criminal Procedure. It sets out procedures to be followed to declare seized property forfeit.

Sec.12.38.010 states that these procedures apply to property seized under the controlled substances and bootlegging statutes.

Sec.12.38.020 (a) lists the conditions under which property may be seized with and without a court order.

Subsection (b) describes how constructive seizure may take place.

Sec. 12.38.030 (a) requires the agency with custody of the property to give notice of the seizure to interested parties within 30 days.

Subsection (b) authorizes the seizing agency to keep the property or, in its discretion, release the property to an appropriate person.

Subsection (c) directs the department of public safety to inventory the seized property and estimate its value. The inventory and estimate is to be sent to the attorney general.

Subsection (d) gives the attorney general authority to decide whether or not to pursue forfeiture proceedings on seized property. If forfeiture proceedings are not pursued, the seized property must be returned.

Subsection (e) exempts controlled substances, imitation controlled substances, bootleg alcohol, and property ordered forfeit by a court from the provisions of this section.

Sec. 12.38.040 (a) allows the court to issue orders or prescribe requirements to ensure the availability of seized property.

Subsection (b) authorizes the state to request sale or other disposition of the property. A person claiming an interest in the property may also request a sale or other disposition if the conditions in subsections 1-5 are met.

Subsection (c) makes the proceeds from the sale of the seized property, plus interest, subject to the forfeiture action.

Sec. 12.38.050 (a) sets out the conditions under which a forfeiture proceeding may begin:

- (1) by the state's filing a motion in a civil or criminal proceeding
- (2) by the state's filing a complaint in a separate in rem proceeding
- (3) by publication of a notice by the commissioner of public safety that the state intends to seek administrative forfeiture.

Subsection (b) requires that within 30 days after initiation of a forfeiture proceeding persons with an interest in the property must be served with notice and public notice of the proceeding must be started. This subsection sets out the items required in the public notice.

Subsection (c) exempts public notice requirements for those items subject to automatic forfeiture.

Subsection (d) requires the state to prove in court by a preponderance of the evidence that the property is subject to forfeiture. Subsection (d) states that it is prima facie evidence that the defendant has been convicted of the conduct making the property subject to forfeiture or that a grand jury has returned an indictment specifying that the property is subject to forfeiture.

Subsection (e) outlines court procedures in forfeiture cases.

Subsection (f) allows the state to request that forfeiture proceedings be delayed until the conclusion of a pending criminal action relating to the conduct that made the property subject to forfeiture.

Subsection (g) asserts that it is not a defense in a forfeiture proceeding that a criminal violation has not been prosecuted, or has resulted in a conviction of a different offense or in an acquittal.

Sec. 12.38.060 (a) allows seized property with a value of less than \$100,000, or is not real property, to be ordered forfeit to the state administratively following the procedures outlined in this chapter. ✓

Subsection (b) directs the commissioner of public safety to end an administrative forfeiture proceeding if a timely claim and appropriate security is filed by a person with an interest in the seized property.

Sec. 12.38.070 (a) sets out the conditions under which a claim may be filed.

Subsection (b) sets out where the claim is to be filed and what information it must contain.

Subsection (c) authorizes property to be forfeited to the state without further proceedings if the claim is not timely filed.

Sec. 12.38.080 (a) allows the court to order property forfeit to the state.

Subsection (b) states that an order of judicial or administrative forfeiture provides clear title to the property to the state. States that an order on behalf of party subject to relief from the order of forfeiture (see Sec.12.38.090) clears any cloud on the title to the property resulting from the forfeiture proceeding.

Subsection (c) orders costs of maintenance, storage, disposal, attorney's fees, to be paid by the person who causes property to be subject to forfeiture.

Subsection (d) allows a court to order other assets to be forfeited if the property subject to forfeiture is hard to reach.

Subsection (e) allows an order of forfeiture to be made regardless of the location of the property.

Subsection (f) creates a perfected priority lien to the state over property ordered forfeited. That lien has priority over all unsecured and all unperfected secured debts associated with the property.**

** This is in response to an Alaska Supreme Court ruling that unrecorded, unsecured, creditors can file claims for remission of forfeitable property. According to the Department of Law this is a serious potential problem since it would require the state to give the property to an associate of the defendant unless it could be proven that the transaction was a sham. The supreme court (according to the Department of Law) hinted at a possible way of correcting this problem, which would be to create a lien in favor of the state that has priority over the "creditor's" unrecorded lien. This subsection was drafted to correct this problem.

Sec. 12.38.090 (a) allows a person to obtain relief by filing a timely claim and proving by a preponderance of the evidence that

the person has a valid right to the property

the person did not knowingly participate in or facilitate the conduct that resulted in the property being subject to forfeiture, and

did not know, or have reason to believe, that a person might engage in the conduct that resulted in the property being subject in the property being subject to forfeiture.

or

that the person provides more than half the support of a minor dependent living in the persons household and is claiming exemptions from the forfeiture under the Alaska Exemptions Act (AS 09.38.010 - 09.38.090). This exemption does not apply to limited entry permits or liquor licenses.

Subsection (b) allows a person with a partial interest in the property to choose to receive the partial value, or after paying the difference, the entire property. Disposition of multiple claims is to be proportional based on the priority and value of each person's respective interest, or is to be otherwise allocated by the court in the interests of justice.

Sec. 12.38.100 (a) directs that property be transferred to the commissioner of administration for disposal and sets out methods by which property may be disposed of.

Subsection (b) directs the commissioner of administration to separately account for the proceeds from the sale of forfeited property. Allows for these funds to be appropriated for the furtherance of the administration of justice.

SECTION 3:

This section repeals and reenacts the seizure and forfeiture provisions in Title 17 having to do with violations of the controlled substances and imitation controlled substances laws.

Sec.17.30.110 sets out the list of property subject to forfeiture. The major change from current law is the addition of real property. This conforms to the federal model forfeiture act, except that in this bill we have made real property subject to forfeiture only in cases of a felony offense.

SECTION 4:

This is current law with the addition of a statutory reference to the forfeiture procedures under AS 12.38.

SECTION 5:

Repeals current forfeiture provisions in Title 11 (Criminal Law) and Title 17 (Controlled Substances).

CURRENT LAW

Sec.04.16.220 Alcoholic Beverages-Forfeitures

Sec. 04.16.220. Forfeitures. (a) The following are subject to forfeiture:
(1) alcoholic beverages manufactured, sold, offered for sale or possessed for sale, bartered or exchanged for goods and services in this state in violation of AS 04.11.010; alcoholic beverages stocked, warehoused, or otherwise stored in violation of AS 04.21.060; alcoholic beverages possessed, sold or offered for sale in an area where the results of a local option election have, under AS 04.11.490 - 04.11.500, prohibited the possession of alcoholic beverages or prohibited the board from issuing, renewing, or transferring one or more licenses or permits under this title in the area; alcoholic beverages transported into the state and sold to persons not licensed under this chapter in violation of AS 04.16.170(b);

Original sponsor(s): SEN. STURGULEWSKI, Kelly, Kerttula, Pearce, Rodey, Binkley, Uehling

1 IN THE SENATE BY THE RULES COMMITTEE
2 CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 19 (Rules) am
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 seizure and forfeiture of property
7 in cases involving alcoholic beverages, controlled
8 substances, and imitation controlled substances."
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
10 * Section 1. AS 04.16.220 is repealed and reenacted to read:
11 Sec. 04.16.220. PROPERTY SUBJECT TO FORFEITURE. (a) Under the
12 procedures set out in AS 12.38, alcoholic beverages are subject to
13 forfeiture to the state if
14 (1) manufactured, delivered, distributed, possessed, concealed,
15 stored, acquired, sold, exchanged, offered for sale or exchange,
16 or transported, or one of these acts is attempted or solicited, in violation of a criminal law under this title;
17 (2) unlawfully possessed in an area where the results of a
18 local election under AS 04.11.498 have prohibited possession of alcoholic beverages; or
19 (3) found on licensed premises without excise stamps required by federal law.
20
21 (b) The property listed in (c) of this section is subject to
22 forfeiture, under the procedures set out in AS 12.38, if
23 (1) except for liquor licenses forfeited under AS 04.16.-
24 180, the property is used, or intended to be used, to commit or facilitate an offense under AS 04.11.010, AS 04.16.175, AS 04.21.060, an
25 offense relating to alcoholic beverages on licensed premises without
26 excise stamps required by federal law, or an offense relating to
27
28
29

CURRENT LAW

Sec.04.16.220 Alcoholic Beverages-Forfeitures

(2) materials and equipment used in the manufacture, sale, offering for sale, possession for sale, barter or exchange of alcoholic beverages for goods and services in this state in violation of AS 04.11.010; materials and equipment used in the stocking, warehousing, or storage of alcoholic beverages in violation of AS 04.21.060; materials and equipment used in the sale or offering for sale of an alcoholic beverage in an area where the results of a local option election have, under AS 04.11.490 - 04.11.500, prohibited the board from issuing, renewing, or transferring one or more licenses or permits under this title in the area;

(3) aircraft, vehicles, or vessels used to transport, or facilitate the transportation of

(A) alcoholic beverages manufactured, sold, offered for sale or possessed for sale, bartered or exchanged for goods and services in this state in violation of AS 04.11.010;

(B) property stocked, warehoused, or otherwise stored in violation of AS 04.21.060;

(C) alcoholic beverages imported into a municipality or established village in violation of AS 04.11.496.

(4) alcoholic beverages found on licensed premises that do not bear federal excise stamps if excise stamps are required under federal law;

(5) alcoholic beverages, materials, or equipment used in violation of AS 04.16.175.

Sec.04.16.220 Alcoholic Beverages-Forfeitures

(b) Alcoholic beverages forfeited under (d) of this section shall be placed in the custody of a peace officer of the state and destroyed no earlier than 30 days after forfeiture. All other property forfeited under this section shall be placed in the custody of the commissioner of public safety for disposition according to an order entered by the court. The court shall order destroyed any property forfeited under this section that is harmful to the public. Other property shall be ordered sold and the proceeds used for payment of expenses of the proceedings for forfeiture and sale, including expenses of seizure, custody and court costs. The remainder of the proceeds shall be deposited in the general fund.

1 conduct made criminal because of the results of a local election under
2 AS 04.11.490 - 04.11.500; or

3 (2) the property is used, or intended to be used, in a
4 direct or indirect exchange for an alcoholic beverage in violation of
5 AS 04.11.010, or is traceable to or derived from the exchange.

6 (c) The following property is subject to forfeiture under (b) of
7 this section:

8 (1) firearms, explosives, and weapons;

9 (2) money, securities, negotiable instruments, and anything
10 of value, whether tangible or intangible, secured or unsecured;

11 (3) raw materials, chemicals, pharmaceuticals, and any-
12 thing, including plants or other living organisms, from which alco-
13 holic beverages might be derived;

14 (4) books, records, tapes, formulas, research papers, and
15 equipment, including data processing equipment and electronic equip-
16 ment used in surveillance or countersurveillance efforts;

17 (5) aircraft, vehicles, vessels, and conveyances; and

18 (6) a right, title, or interest in real property, and any
19 improvements or appurtenances, if the offense making the property
20 subject to forfeiture is a felony offense.

21 (d) Notwithstanding any other provisions of AS 12.38, alcoholic
22 beverages seized under AS 12.38.020 are automatically forfeited to the
23 state and subject to immediate destruction by a peace officer if

24 (1) unlawfully possessed in an area where the results of a
25 local election under AS 04.11.498 have prohibited possession of alco-
26 holic beverages; or

27 (2) in the process of being consumed or in a container that
28 has been opened or the seal of which has been broken.

29 (e) Except as provided in (d) of this section, alcoholic

CURRENT LAW

Sec.04.16.220 Alcoholic Beverages-Forfeitures

(b) Property subject to forfeiture under this section may be actually or constructively seized under an order issued by the superior court upon a showing of probable cause that the property is subject to forfeiture under this section. Constructive seizure is effected upon posting a signed notice of seizure on the item to be forfeited, stating the violation and the date and place of seizure. Seizure without a court order may be made if

(1) the seizure is incident to a valid arrest or search;

(2) the property subject to seizure is the subject of a prior judgment in favor of the state; or

(3) there is probable cause to believe that the property is subject to forfeiture under (a) of this section; except for alcoholic beverages possessed in violation of AS 04.11.498 or an ordinance adopted under AS 04.11.498, property seized under this paragraph may not be held over 48 hours or until an order of forfeiture is issued by the court, whichever is earlier.

Sec.17.30.114-Controlled Substances

Sec. 17.30.114. Seizure and custody of property. (a) Property listed in AS 17.30.110 may be seized by a peace officer upon an order issued by a court having jurisdiction over the property upon a showing of probable cause that the property may be forfeited under AS 17.30.110. Seizure without a court order may be made if

(1) the seizure is incident to a valid arrest or a search under a valid search warrant;

(2) the property subject to seizure has been the subject of an earlier judgment in favor of the state in a criminal proceeding or civil proceeding in rem under this chapter or AS 11.71; or

(3) there is probable cause that the property was used, is being used, or is intended for use, in violation of this chapter or AS 11.71 and the property is easily movable; property seized under this paragraph may not be held for more than 48 hours without a court order obtained to continue its detention.

(b) Property taken or detained under (a) of this section shall be held in the custody of either the commissioner of public safety or a municipal law enforcement agency authorized by the commissioner of public safety to retain custody of property listed in AS 17.30.110 subject only to the orders and decrees of the court having jurisdiction over any forfeiture proceedings. If property is seized under this chapter, the commissioner of public safety or an authorized municipal law enforcement agency may

(1) place the property under seal;

(2) remove the property to a place designated by the court; or

(3) take custody of the property and remove it to an appropriate location for disposition in accordance with law.

1 beverages forfeited to the state shall be destroyed by the law
2 enforcement agency with custody of the property under procedures
3 prescribed by the commissioner of public safety.

4 * Sec. 2. AS 12 is amended by adding a new chapter to read:

5 CHAPTER 38. FORFEITURE OF PROPERTY.

6 Sec. 12.38.010. APPLICABILITY. This chapter applies to property
7 subject to forfeiture under AS 04.16.220 and AS 17.30.110.

8 Sec. 12.38.020. SEIZURE OF PROPERTY SUBJECT TO FORFEITURE. (a)
9 Property subject to forfeiture may be seized by a peace officer

10 (1) under an order issued by a court in an ex parte pro-
11 ceeding upon a showing

12 (A) of probable cause that the property is subject to
13 forfeiture; or

14 (B) that a grand jury has returned an indictment
15 finding that the evidence, if unexplained or uncontradicted,
16 would warrant a court's conclusion that the property specifically
17 identified in the indictment is subject to forfeiture; or

18 (2) without a court order if

19 (A) constitutionally permissible or otherwise au-
20 thorized by law;

21 (B) the property has been the subject of a judgment in
22 favor of the state in a forfeiture proceeding; or

23 (C) there is probable cause to believe that the prop-
24 erty is subject to forfeiture and is easily movable; except for
25 alcoholic beverages, controlled substances, or imitation con-
26 trolled substances, property seized solely under this subpara-
27 graph may not be held for more than 48 hours without a court
28 order under (1) of this subsection.

29 (b) Property that cannot with reasonable effort be taken into

Sec.04.16.220 Alcoholic Beverages-

(c) Within 30 days of a seizure under this section the Department of Public Safety shall make reasonable efforts to ascertain the identity and whereabouts of any person holding an interest or an assignee of a person holding an interest in the property seized, including a right to possession, a lien, mortgage, or conditional sales contract. The Department of Public Safety shall notify the person ascertained to have an interest in property seized of the impending forfeiture, and before forfeiture the Department of Law shall publish, once a week for four consecutive calendar weeks, a notice of the impending forfeiture in a newspaper of general circulation in the judicial district in which the seizure was made, or if no newspaper is published in that judicial district, in a newspaper published in the state and distributed in that judicial district.

Sec.17.30.116-Controlled Substances

Sec. 17.30.116. Procedure for forfeiture action. (a) Within 20 days after a seizure under AS 17.30.110 — 17.30.126, the commissioner of public safety shall, by certified mail, notify any person known to have an interest in an item with an appraised value of \$500 or more, or who is ascertainable from official registration numbers, licenses, or other state, federal or municipal numbers on the item, of the pending forfeiture action. Additionally, the commissioner of public safety shall publish notice of forfeiture action of an item valued at \$500 or more in a newspaper of general circulation in the judicial district in which the seizure was made, or if no newspaper is published in that judicial district, in a newspaper published in the state and distributed in that judicial district. The notice shall be published once each week during four consecutive calendar weeks. The requirements of this subsection do not apply to the forfeiture of controlled substances which have been manufactured, distributed, dispensed, or possessed in violation of this chapter or AS 11.71, regardless of their value.

Sec.17.30.114-Controlled Substances

(c) Within 10 days after a seizure under AS 17.30.110 — 17.30.126, the commissioner of public safety shall make an inventory of any property seized, including controlled substances, and shall appraise the value of any items seized other than controlled substances. (§ 4 ch 45 SLA 1982)

1 physical custody may be constructively seized by posting a written
2 notice of the seizure in a conspicuous place on the property. This
3 subsection does not prohibit other reasonable methods of constructive
4 seizure.

5 Sec. 12.38.030. NOTICE OF SEIZURE; CUSTODY OF SEIZED PROPERTY;
6 INVENTORY AND APPRAISAL. (a) Within 30 days after a seizure under
7 AS 12.38.020, the law enforcement agency responsible for custody of
8 the property shall give notice by certified mail of the seizure to
9 persons known to have a financial interest in an item with an estimat-
10 ed value more than \$1,000, or whose interest in the property is ascer-
11 tainable from official tax rolls, registration numbers, licenses, or
12 other state, federal, or municipal identification numbers affixed to
13 the property.

14 (b) Subject to the order of the court, property seized under
15 AS 12.38.020 remains in the legal custody of the Department of Public
16 Safety or a municipal law enforcement agency authorized by the commis-
17 sioner of public safety to retain custody. The agency responsible for
18 custody may, in its discretion, release the property to another appro-
19 priate person.

20 (c) Within 10 days after a seizure under AS 12.38.020, the law
21 enforcement agency responsible for custody of the property shall
22 estimate the value, make an inventory of the property, and send the
23 inventory and estimate to the attorney general.

24 (d) If the attorney general determines that a forfeiture pro-
25 ceeding cannot be sustained or as a matter of discretion will not be
26 instituted, a written report of that decision shall be sent to the
27 agency responsible for custody of the property and the property must
28 be returned to the person from whom it was obtained.

29 (e) This section does not apply to property that is subject to

CURRENT LAW

Sec.17.30.118-Controlled Substances

Sec. 17.30.118. Petition for release of seized items. (a) A claimant under AS 17.30.116(b) may at any time petition for release of a seized item as follows:

- (1) to a court in which a warrant for seizure has been issued;
- (2) to a court in which a criminal or civil action alleging forfeiture of the item has been filed; or
- (3) before an action is filed, or if no seizure warrant was issued, to a court in the judicial district in which the violation took place.

(b) An item may not be released by the court under (a) of this section unless the claimant gives adequate assurance that the item will remain subject to the court's jurisdiction and

- (1) the court finds that the release is in the best interests of the state; or
- (2) the claimant provides a bond or other valid and equivalent security equal to twice the assessed value of the item. (§ 4 ch 45 SLA 1982)

Sec.17.30.120-Controlled Substances

Sec. 17.30.120. Petition for sale of seized item. A claimant may petition the court for sale of an item before final disposition of court proceedings. The court shall grant a petition for sale upon a finding that the sale is in the best interests of the state and the preservation and maintenance of the item seized. Proceeds from the sale plus interest to the date of final disposition of the court proceedings become the subject of the forfeiture action. (§ 4 ch 45 SLA 1982)

1 automatic forfeiture under AS 04.16.220(d) or AS 17.30.110(c), or to
2 property seized under AS 12.38.020(a)(2)(B).

3 Sec. 12.38.040. PRESERVATION OR DISPOSAL OF PROPERTY BEFORE
4 ORDER OF FORFEITURE. (a) A court may issue an appropriate temporary
5 or other order, require execution of a satisfactory performance bond
6 to the state, or take other action to preserve the availability or
7 value of property seized under AS 12.38.020.

8 (b) The state may, at any time before an order of forfeiture is
9 issued, request the sale or other disposition of property seized under
10 AS 12.38.020. A person claiming an interest in the property may also
11 request sale or other disposition before an order of forfeiture is
12 issued if the person proves by a preponderance of the evidence that

13 (1) the person has filed a timely claim under AS 12.38.070
14 or, before the initiation of a forfeiture proceeding, has sent a
15 notice of claim to the commissioner of public safety in conformance
16 with the requirements of AS 12.38.070(b);

17 (2) the property is not likely to be used as evidence in a
18 judicial or administrative proceeding;

19 (3) the person has given adequate assurance that the prop-
20 erty or its proceeds will remain subject to the court's jurisdiction;

21 (4) the sale or other disposition is in the best interests
22 of the state and will provide for protection of the value of the
23 property; and

24 (5) the person provides a bond or other equivalent security
25 equal to twice the estimated value of the property.

26 (c) Proceeds from the sale of property, plus interest earned on
27 the proceeds to the date of termination of the proceedings, become the
28 subject of the forfeiture action in the same manner as the property
29 itself.

Sec.04.16.220 Alcoholic Beverages-Forfeitures

(d) Property subject to forfeiture under (a) of this section may be forfeited

(1) upon conviction of a person under AS 04.11.010, 04.11.496(b), or AS 04.21.060 or upon entry of judgment under AS 04.11.498 or an ordinance adopted under AS 04.11.498;

(2) upon judgment by the superior court in a proceeding in rem that the property was used in a manner subjecting it to forfeiture under (a) of this section.

Sec.17.30.112-Controlled Substances

Sec. 17.30.112. Proceedings resulting in forfeiture. (a) Property listed in AS 17.30.110 may be forfeited to the state either upon conviction of the defendant of a violation of this chapter or AS 11.71, or upon judgment of a court in a separate civil proceeding in rem. The court may order a forfeiture in the in rem proceeding if it finds that an item specified in AS 17.30.110 was used during or in aid of a violation of this chapter or AS 11.71.

1 Sec. 12.38.050. FORFEITURE PROCEEDINGS; NOTICE; BURDEN OF PROOF;
2 DEFENSES EXEMPTED. (a) A forfeiture proceeding

3 (1) may be initiated by the state filing a motion to for-
4 feited in a criminal or civil proceeding relating to the conduct that
5 makes the property subject to forfeiture;

6 (2) may be initiated by the state filing a complaint in a
7 separate in rem proceeding; or

8 (3) under AS 12.38.060 may be initiated by the commissioner
9 of public safety directing that publication under (b) of this section
10 be made of the state's intent to seek forfeiture of property adminis-
11 tratively.

12 (b) Within 30 days after a forfeiture proceeding has been initi-
13 ated as provided in (a) of this section,

14 (1) persons required to be notified under AS 12.38.030
15 shall be served with a copy of the motion, complaint, or other notice
16 in a manner authorized for service of process under the rules of civil
17 procedure; and

18 (2) the law enforcement agency with custody of the property
19 shall begin to publish notice of the forfeiture proceeding in the
20 manner provided for service by publication under the rules of civil
21 procedure; the notice must include

22 (A) a list of property with an estimated value of more
23 than \$1,000, with a description of the property, including motor
24 vehicle or other registration numbers;

25 (B) the approximate value of the property;

26 (C) the date and place of seizure;

27 (D) the reason the property is subject to forfeiture;

28 (E) a citation to this chapter, and a citation to the
29 court docket number relating to a judicial forfeiture proceeding;

Sec.17.30.116-Controlled Substances

(c) Questions of fact or law raised by a notice of forfeiture action and answer of a claimant in an action commenced under this section must be determined by the court sitting without a jury. This proceeding may be held in abeyance until conclusion of any pending criminal charges

Sec.04.16.220 Alcoholic Beverages-Forfeitures

(g) It is no defense in an in rem forfeiture proceeding brought under (d)(2) of this section that a criminal proceeding is pending or has resulted in conviction or acquittal of a person charged with violating AS 04.11.010, 04.11.496(b), or AS 04.21.060.

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and

(F) notice that the property will be forfeited to the state if a timely claim is not filed under this chapter.

(c) The notice requirements of (b) of this section do not apply to property that is subject to automatic forfeiture under AS 04.16.220(d) or AS 17.30.110(c).

(d) In a forfeiture proceeding other than a summary administrative proceeding under AS 12.38.060, the state must prove by a preponderance of the evidence that the property is subject to forfeiture. It is prima facie evidence, sufficient to support an order of forfeiture, that a defendant has been convicted of conduct making the property subject to forfeiture, or that a grand jury has returned an indictment finding that the evidence, if unexplained or uncontradicted, would warrant a court to conclude that the property specifically identified in the indictment is subject to forfeiture.

(e) In a forfeiture proceeding other than a summary administrative proceeding under AS 12.38.060, questions of fact or law shall be determined by the court, sitting without a jury. A person claiming an interest in the property under AS 12.38.070 and 12.38.090 may testify, present evidence and witnesses, and cross-examine witnesses presented by other parties. In addition to other testimony and evidence presented, the court may consider the relevant portions of the record of a related criminal action.

(f) Except for proceedings under AS 12.38.090(a)(2) to permit use of exempted property, at the request of the state a forfeiture proceeding, including discovery, shall be held in abeyance until the conclusion of a pending criminal action relating to the conduct making the property subject to forfeiture.

(g) It is not a defense to a forfeiture proceeding that a

Sec.17.30.112-Controlled Substances

(b) It is not a defense in an in rem proceeding brought under this section that a criminal proceeding has resulted in a conviction or conviction of a lesser offense for a violation of this chapter or AS 11.71. (§ 4 ch 45 SLA 1982)

Sec.17.30.116-Controlled Substances

(b) Upon service or publication of notice of commencement of a forfeiture action under this section, a person claiming interest in the property shall file within 30 days after the service or publication, a notice of claim setting out the nature of the interest, the date it was acquired, the consideration paid, and an answer to the state's allegations. If a claim and answer is not filed within the time specified, the property described in the state's allegation must be ordered forfeited to the state without further proceedings or showings.

1 criminal offense has not been prosecuted, or has resulted in a
2 conviction of a different offense or an acquittal.

3 Sec. 12.38.060. SUMMARY ADMINISTRATIVE FORFEITURE PROCEDURES.
4 (a) If the value of the property seized under AS 12.38.020 does not
5 exceed \$100,000 and is not real property, the commissioner of public
6 safety may order administrative forfeiture of the property under this
7 chapter. The Administrative Procedure Act (AS 44.62) does not apply
8 to an administrative forfeiture.

9 (b) The commissioner of public safety shall terminate the admin-
10 istrative forfeiture proceeding and refer the matter to the attorney
11 general for initiation of a judicial forfeiture proceeding if a person
12 files a timely claim under AS 12.38.070 and deposits with the commis-
13 sioner, in cash or bond approved by the commissioner, 25 percent of
14 the appraised value of the property, but not less than \$1,000. The
15 deposit is conditioned to secure the payment of all reasonable costs
16 and expenses of the judicial forfeiture proceeding, including attorney
17 fees, if the state is the prevailing party.

18 Sec. 12.38.070. PROCEDURE FOR CLAIMANTS. (a) A person claiming
19 an interest in property that is the subject of a forfeiture proceed-
20 ing, including persons who claim an exemption under AS 12.38.-
21 090(a)(2), shall file a claim

22 (1) in a judicial forfeiture proceeding, within the time
23 permitted under applicable court rules; or

24 (2) in an administrative forfeiture proceeding under
25 AS 12.38.060, within 20 days of the date of the final publication
26 under AS 12.38.050(b)(2).

27 (b) The claim must

28 (1) be filed with the court in judicial forfeiture proceed-
29 ings, or with the commissioner of public safety in administrative

1 forfeiture proceedings under AS 12.38.060;
2 (2) be sworn under oath; and
3 (3) set out with specificity the reasons why the property
4 is not subject to forfeiture or why the person is entitled to relief
5 under AS 12.38.090, the nature of the person's right, title, or inter-
6 est in the property, the time and circumstances of the person's acqui-
7 sition, the consideration paid, and additional facts supporting the
8 claim.
9 (c) If a claim is not timely filed, the property shall be for-
10 feited to the state without further proceedings.
11 Sec. 12.38.080. ORDER OF FORFEITURE; LIEN IN FAVOR OF THE STATE.
12 (a) If the state proves that property is subject to forfeiture, the
13 property may be ordered forfeited to the state, except as provided in
14 AS 12.38.090.
15 (b) An order of judicial or administrative forfeiture, or an
16 order granting relief under AS 12.38.090, removes all liens, encum-
17 brances, or other clouds on the title resulting from the forfeiture
18 proceeding.
19 (c) A person whose conduct causes property to be subject to
20 forfeiture shall pay the reasonable cost of maintenance, storage,
21 disposal, or other expense of the forfeiture proceeding, including
22 attorney fees, either as part of a sentence, a condition of probation
23 or suspended imposition of sentence, or as a mandatory assessment of
24 costs in a forfeiture proceeding.
25 (d) A judicial order of forfeiture shall forfeit to the state
26 any other assets of the person who caused the property to be subject
27 to forfeiture, up to the value of any property subject to forfeiture,
28 if the property subject to forfeiture has been
29 (1) commingled with other property and cannot be separated

Sec.04.16.220 Alcoholic Beverages-Forfeitures

(e) The owner of property subject to forfeiture under (a) of this section is entitled to relief from the forfeiture in the nature of remission of the forfeiture if in an action under (d) of this section the owner shows that the owner was not a party to the violation and had no actual knowledge that the property was used or was to be used in violation of the law.

(f) A person other than the owner holding, or the assignee of, a lien, mortgage, conditional sales contract on, or the right to possession to property subject to forfeiture under (a) of this section is entitled to relief from the forfeiture in the nature of remission of the forfeiture if in an action under (d) of this section the person shows that the person was not a party to the violation subjecting the property to forfeiture and had no actual knowledge that the property was used or was to be used in violation of the law.

1 without difficulty;
2 (2) transferred to, sold to, or deposited with a third
3 party, placed beyond the jurisdiction of the court, or removed so it
4 cannot be located;
5 (3) substantially diminished in value by an act or omission
6 of the person who caused the property to be subject to forfeiture; or
7 (4) ordered returned to an innocent party under AS 12.38.-
8 090(a)(1).
9 (e) An order of forfeiture issued under this section may be made
10 regardless of the location of the property that might be subject to
11 forfeiture or that has been ordered forfeited.
12 (f) A perfected priority lien on property that has been ordered
13 forfeited is created in favor of the state up to an amount that is the
14 sum of the expenses of investigation, prosecution, and forfeiture
15 arising out of the conduct making the property subject to forfeiture.
16 In calculating the amount of the lien, expenses of all state, federal,
17 or local agencies are to be included. The lien has priority over all
18 unsecured and all unperfected secured debts associated with the prop-
19 erty.
20 Sec. 12.38.090. RELIEF FROM FORFEITURE. (a) A person who has
21 filed a timely claim under AS 12.38.070 may obtain relief from the
22 forfeiture upon proof by a preponderance of the evidence
23 (1) that the person
24 (A) has a valid right, title, or interest in the
25 property, acquired in good faith, which takes priority over a
26 lien in favor of the state under AS 12.38.080(f);
27 (B) did not knowingly participate in or facilitate the
28 conduct that resulted in the property being subject to forfei-
29 ture; and

Sec.17.30.122-Controlled Substances

Sec. 17.30.122. State disposal of forfeited property. Property forfeited under AS 17.30.110 — 17.30.126 other than controlled substances shall be disposed of by the commissioner of administration in accordance with applicable law. The commissioner of administration may

- (1) destroy property harmful to the public;
- (2) sell the property and use the proceeds for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, custody, and court costs;

1 (C) did not know or have reasonable cause to believe
2 that a person might engage in the conduct that resulted in the
3 property being subject to forfeiture; or

4 (2) that the person provides more than half the support of
5 a minor dependent living in the person's household, in which case the
6 person may claim exemptions from the forfeiture to the extent permit-
7 ted under AS 09.38.010 - 09.38.090; however, an exemption may not be
8 permitted for a liquor license granted under AS 04.

9 (b) If the person claiming an interest in the property is found
10 to be entitled to less than the total value of the property, the
11 person may choose to receive either the proportional value of the
12 partial interest that is realized upon disposition of the property or,
13 upon payment of the difference in value, the entire property. In
14 cases of multiple claims, the return of the property is to be based on
15 the value and priority of each person's respective interest, or is to
16 be otherwise allocated by the court in the interests of justice.

17 Sec. 12.38.100. STATE DISPOSAL OF FORFEITED PROPERTY. (a) For-
18 feited property, other than property summarily forfeited under AS 04.-
19 16.220(d) or AS 17.30.110(c), shall be transferred to the commissioner
20 of administration for disposition in accordance with applicable law.
21 The commissioner of administration may

- 22 (1) destroy property harmful to the public;
- 23 (2) sell the property and, subject to appropriations for
24 that purpose, use the proceeds to pay the expenses of the proceedings
25 of forfeiture and sale, including expenses of seizure, custody, and
26 court costs;
- 27 (3) transfer the property to another agency of the state or
28 a political subdivision of the state for use in the furtherance of the
29 administration of justice;

CURRENT LAW

Sec.17.30.122-Controlled Substances

(3) take custody of the property and authorize its use in the enforcement of this chapter or AS 11.71, or transfer it to another agency of the state or a political subdivision of the state for a use in furtherance of the administration of justice;

(4) take custody of the property and remove it for disposition in accordance with law;

(5) forward it to the Drug Enforcement Administration of the United States Department of Justice for disposition; or

(6) transfer ownership of an aircraft to the Alaska Wing, Civil Air Patrol. (§ 4 ch 45 SLA 1982; am § 2 ch 18 SLA 1983)

1 (4) transfer the property to the United States Department
2 of Justice for disposition;

3 (5) transfer ownership of an aircraft to the Alaska Wing,
4 Civil Air Patrol;

5 (6) at the direction of the commissioner of public safety,
6 transfer up to 90 percent of the net value of forfeited property to
7 one or more political subdivisions of the state; in directing this
8 transfer, the commissioner of public safety may take into account an
9 equitable allocation based on the amount of the contribution made by
10 each agency to the investigation of the conduct making the property
11 subject to forfeiture, or any agreements as to the sharing of assets;
12 or

13 (7) otherwise dispose of the property in accordance with
14 the law.

15 (b) The commissioner of administration shall separately account
16 for the proceeds from the sale of forfeited property under (a) of this
17 section that the commissioner deposits in the general fund. The
18 annual estimated balance in the account may be used by the legislature
19 to make appropriations to the Department of Public Safety for use in
20 the administration of justice.

21 * Sec. 3. AS 17.30.110 is repealed and reenacted to read:

22 Sec. 17.30.110. PROPERTY SUBJECT TO FORFEITURE. (a) Under the
23 procedures set out in AS 12.33, the property listed in (b) of this
24 section is subject to forfeiture to the state if

25 (1) manufactured, delivered, dispensed, distributed, pos-
26 sessed, concealed, stored, acquired, or transported in violation of
27 AS 11.71 or AS 11.73;

28 (2) used, or intended to be used, to accomplish or facili-
29 tate the manufacture, delivery, dispensing, distribution, possession,

CURRENT LAW

Sec.17.30.110-Controlled Substances

Sec. 17.30.110. Items subject to forfeiture. The following may be forfeited to the state:

(1) a controlled substance which has been manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter or AS 11.71;

(2) raw materials, products, and equipment which are used or intended for use in manufacturing, distributing, compounding, processing, delivering, importing, or exporting a controlled substance which is a felony under this chapter or AS 11.71;

(3) property which is used or intended for use as a container for property described in (1) or (2) of this section;

(4) a conveyance, including but not limited to aircraft, vehicles or vessels, which has been used or is intended for use in transporting or in any manner in facilitating the transportation, sale, receipt, possession, or concealment of property described in (1) or (2) of this section in violation of a felony offense under this chapter or AS 11.71; however,

(A) a conveyance may not be forfeited under this paragraph if the owner of the conveyance establishes, by a preponderance of the evidence, at a hearing before the court as the trier of fact, that use of the conveyance in violation of this chapter or AS 11.71 was committed by another person and that the owner was neither a consenting party nor privy to the violation;

(B) a forfeiture of a conveyance encumbered by a valid security interest at the time of seizure is subject to the interest of the secured party if the secured party establishes, by a preponderance of the evidence, at a hearing before the court as the trier of fact, that use of the conveyance in violation of this chapter or AS 11.71 was committed by another person and that the secured party was neither a consenting party nor privy to the violation;

(5) books, records, and research products and materials, including formulas, microfilm, tapes, and data, which are used in violation of this chapter or AS 11.71;

(6) money, securities, negotiable instruments, or other things of value used in financial transactions derived from activity prohibited by this chapter or AS 11.71; and

(7) a firearm which is visible, carried during, or used in furtherance of a violation of this chapter or AS 11.71. (§ 4 ch 45 SLA 1982)

1 concealment, storage, acquiring, or transportation of a controlled
2 substance or imitation controlled substance in violation of AS 11.71
3 or AS 11.73; or

4 (3) used, or intended to be used, in a direct or indirect
5 exchange for a controlled substance or imitation controlled substance
6 in violation of AS 11.71 or AS 11.73, or if traceable to or derived
7 from such an exchange.

8 (b) The following property is subject to forfeiture under (a) of
9 this section:

10 (1) firearms, explosives, or weapons;

11 (2) money, securities, negotiable instruments, or anything
12 of value, whether tangible or intangible, secured or unsecured;

13 (3) raw materials, chemicals, pharmaceuticals, or anything,
14 including plants or other living organisms, from which controlled
15 substances might be derived;

16 (4) books, records, tapes, formulas, research papers, and
17 equipment, including data processing and electronic equipment used in
18 surveillance or counter-surveillance efforts;

19 (5) aircraft, vehicles, vessels, and conveyances, if the
20 offense making the property subject to forfeiture is a felony offense;
21 and

22 (6) a right, title, or interest in real property, and any
23 improvements and appurtenances, if the offense making the property
24 subject to forfeiture is a felony offense.

25 (c) Notwithstanding the provisions of AS 12.38, a controlled
26 substance or imitation controlled substance, and plants grown in the
27 wild from which controlled substances or imitation controlled sub-
28 stances are derived, seized under AS 12.38.020, are automatically
29 forfeited to the state. The law enforcement agency with custody of

CURRENT LAW

Sec.17.30.126-Controlled Substances

Sec. 17.30.126. Forfeiture of controlled substances. (a) A controlled substance manufactured, possessed, transferred, sold, or offered for sale in violation of this chapter or AS 11.71 is contraband and must be seized and summarily forfeited to the state. The commissioner of public safety or the commissioner's designee, including a municipal law enforcement agency authorized under AS 17.30.114(b) of this section to retain custody of controlled substances, is responsible for the disposal of controlled substances which have been forfeited. The controlled substances shall be disposed of in accordance with procedures and requirements prescribed by the commissioner.

(b) Plants from which controlled substances may be derived and which have been planted or cultivated in violation of this chapter or AS 11.71, or which are grown in the wild, may be seized and summarily forfeited to the state. (§ 4 ch 45 SLA 1982)

1 property described in this subsection shall dispose of it under proce-
2 dures prescribed by the commissioner of public safety.

3 (d) In this section, "violation of AS 11.71 or AS 11.73" in-
4 cludes an attempt or solicitation under AS 11.31 to violate AS 11.71
5 or AS 11.73.

6 * Sec. 4. AS 18.60.148(a) is amended to read:

7 (a) A transfer to the Alaska Wing, Civil Air Patrol, of a for-
8 feited aircraft under AS 12.38, AS 16.05.195(f), [AS 17.30.122,] or
9 another state law or regulation, is subject to the following condi-
10 tions:

11 (1) the transfer shall be made without cost to the Civil
12 Air Patrol;

13 (2) the aircraft becomes a corporate Civil Air Patrol
14 aircraft;

15 (3) the aircraft may only be used for Civil Air Patrol
16 search and rescue, civil defense, and training purposes;

17 (4) the aircraft may not be transferred to another wing of
18 the Civil Air Patrol unless

19 (A) the aircraft has been corporate aircraft of the
20 Alaska Wing, Civil Air Patrol for at least 36 months after the
21 date of transfer to the Alaska Wing; or

22 (B) the aircraft is being exchanged for another Civil
23 Air Patrol corporate aircraft of equivalent or greater value;

24 (5) if the Civil Air Patrol determines that the aircraft
25 should be disposed of as surplus property, the disposition shall first
26 be approved by the Department of Administration.

27 * Sec. 5. AS 11.73.060; AS 17.30.112, 17.30.114, 17.30.116, 17.30.118,
28 17.30.120, 17.30.122, 17.30.124, and 17.30.126 are repealed.

S B

2 3

HOUSE COMMITTEE ON STATE AFFAIRS

RECAP OF
SB 23

DPS Authority/Crime Statistics Collection

Received February 13, 1989
by Sens. Faiks and Sturgulewski

Heard March 21, 1989
Heard March 22, 1989

Passed Out of Committee March 22, 1989
5 Do Pass

TABLE OF CONTENTS

SB 23: DPS Authority/Crime Statistics Collection

- Item 1: SB 23 by Faiks and Sturgulewski
- Item 2: Fiscal Note
- Item 3: Letter of Intent for SB 23, February 9, 1989
- Item 4: Memorandum from Senate Judiciary Committee
February 23, 1989
- Item 5: A Report on the Department of Health and Social
Services Division of Family and Youth Services
Juvenile Crime Statistics, March 25, 1986
(Audit Control Number 06-4251-86-S)
- Item 6: Position Paper from the Department of
Public Safety
February 1, 1989

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 13, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: _____

The STATE AFFAIRS Committee considered:

SB 23

SENATE BILL NO. 23 [DPS AUTHORITY/CRIME STATISTICS COLLECTION]
"An Act relating to the recording and collection of crime statistics."

RECOMMENDS:

- [] replacing with _____ [] the same title
[] a new title
[] the attached amendment(s)
[X] do pass
[] do not pass
[] no recommendation
[] individual recommendations
[] additional referral to the _____ Committee

ADOPTS: Senate letter of intent

ATTACHES NEW FISCAL NOTE(S):

- [] fiscal impact
[] zero fiscal note
[] zero with analysis

APPROVES PREVIOUS:

- [] fiscal note(s) published:
[X] zero fiscal notes(s) published:
2/1/89 DPS

SIGNING DO PASS:

Handwritten signatures of committee members on the left side.

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

Blank lines for signatures on the right side.

Chairman's signature: O.A. Barber

Item 1

1 IN THE SENATE

BY FAIKS AND
STURGULEWSKI

2

SENATE BILL NO. 23

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the recording and collection of
7 crime statistics."

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

9 * Section 1. AS 44.41.020 is amended by adding a new subsection to
10 read:

11 (c) The department shall establish, and may require state and
12 local law enforcement agencies to use, standardized methods of col-
13 lecting and recording law enforcement and crime statistics.

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SB 23
PUBLISH DATE: 7/7/89

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: The recording and collection
of crime statistics
Sponsor: Sen. Faiks, Sturgulewski
Requestor: Senate State Affairs

Agency Affected: Public Safety
BRU: DPS Administration
Component: Data & Word Processing

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

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

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

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Because the Department of Public Safety (DPS) is presently compiling the data now submitted by local departments, no fiscal impact on DPS is anticipated.

Prepared by: Kenneth E. Bischoff, Director
Division: Administrative Services

Phone: 465-4322
Date: 1/30/89

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

Date: 1/30/89

Letter of Intent
for
SB 23

It is the intent of the Senate that the Department of Public Safety (DPS) work with local police departments statewide in order to develop methods of implementing SB 23 over time in a manner that have negligible financial impact on those departments and which do not create disincentives to participate in the collection of data for the Uniform Crime Reports (UCR).

Dist by Senators Pourchet + Faiks

Senate adopted 2/9/89

STATE OF ALASKA

PUBLIC DEFENDER AGENCY

STEVE COWPER, GOVERNOR

900 W 5TH AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-2000
PHONE: (907) 279-7541

May 5, 1989

Representative Peter Goll
Representative Max Gruenberg
Co-Chairmen
House Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

RE: CS SB 23 (Judiciary)

Dear Representatives Goll and Gruenberg:

This letter is in response to your request for comment concerning the above-referenced bill. Your concern centers around the need to preserve confidentiality as to juvenile offenders.

I have reviewed the Committee Substitute which adds an entire section to Chapter 44. That section, entitled CRIME STATISTICS INVOLVING JUVENILES (44.41.027) dictates how juvenile crime statistics are to be kept. See Section (a). The requirement of confidentiality is addressed in Section (b) of the proposed bill which states:

(b) information and records obtained under this subsection are confidential and are not public records, and may be disclosed under regulations established by the department only for the purpose of compiling statistics and only to a person doing research or maintaining statistics who has assured the anonymity of the juvenile offenders. (Emphasis added).

I am uncomfortable with statutory language which allows the release of juvenile crime statistics and then relies on the individual to whom those statistics were released to maintain the confidentiality of the identity of the juvenile offender. This language relinquishes the responsibility of the Department of Public Safety and confers it to an individual over whom the Department may have no control or authority.

I have been asked to review substitute language which in some manner cures this problem. It reads as follows.

- (b) Information and records obtained under this subsection:
- (1) are confidential and are not public records,
 - (2) may be disclosed only under regulations established by the department,

(3) may be disclosed only for the purpose of compiling statistics,

(4) may be disclosed only to a person doing research or maintaining statistics, and

(5) and may be disclosed only in a manner assuring the anonymity of the juvenile offenders.

Subsection (5) of this proposed language is preferable to the provisions previously discussed. Nevertheless, I believe the proscription against disclosure of the names of juvenile offenders should be framed even more strongly. It is my suggestion that the following language be substituted for Subsection (5):

(5) and may be disclosed only in a manner which does not reveal the identity of the juvenile offenders.

Such a provision would place the duty squarely on the Department of Public Safety to ensure anonymity before juvenile crime statistics are revealed to individuals doing research or otherwise in need of this information. This language is more precise and ensures that the identity of the juvenile offender does not go beyond the record keeping system of the Department. Additionally, such language would ensure consistency with the record keeping provisions of Title 47 and the Alaska Rules of Court. This is not to suggest that the other language proposed is contradictory to present law, statute, or rules.

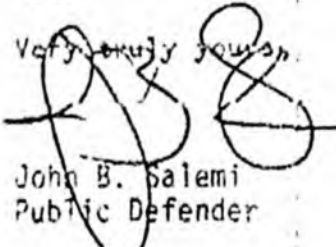
I have one additional comment regarding proposed A.S. 44.41.027 which is separate from the issue of confidentiality. This section states that the juvenile records compiled:

shall include the name of the juvenile admitted, the juvenile's date of birth, the reason for admission, the time admitted, the time released, the sex of the juvenile admitted, the ethnic origin of the juvenile admitted, and other information required by federal law or state statute or regulation. The record shall be prepared at the time of admission from information provided by the juvenile. (Emphasis added).

While I believe it is acceptable practice for law enforcement personnel to request certain biographical data of an offender, whether adult or juvenile, inquiring of a juvenile suspect "the reason for admission" would potentially violate the individual's fifth amendment right under the federal constitution and parallel state constitutional rights. I believe it is best that much of the information which will be gathered under this section be compiled from a source other than the juvenile.

Thank you for this opportunity to comment on the proposed legislation. Do not hesitate to contact me if you require further information.

Very truly yours,



John B. Salemi
Public Defender

JBS:sh

DEPARTMENT OF
PUBLIC SAFETY

BILL NO: SB 23

DATE: March 20, 1989

TITLE: "An Act relating to the recording and collection of crime statistics."

CONTACT: Kenneth E. Bischoff, Director
Administrative Services
465-4336

The Alaska Department of Public Safety collects statewide crime offense data needed by the Federal Bureau of Investigation (FBI) to produce its annual, national Uniform Crime Report (UCR). The Alaska UCR program uses procedures developed by the FBI. At the present time, 24 police agencies and the Alaska State Troopers participate by voluntarily submitting UCR data. This compiled data is published annually by the Department as "Crime in Alaska".

The Department supports SB 23 which would require DPS to establish a standard method of "collecting and recording law enforcement and crime statistics." If this legislation were enacted, DPS would adopt federal UCR procedures and continue reporting to the federal government on a voluntary basis. Police agencies would continue to participate in UCR voluntarily. Although SB 23 would give DPS the authority to require local law enforcement agencies to submit crime data, the Department does not intend to do so now, or in the foreseeable future. Mandatory local participation in UCR would have a fiscal impact at both the state and local levels.

Until recently, police agencies have been very cooperative in voluntarily providing their statistical information to the state and ultimately the federal UCR program. However, in this era of declining revenues, all law enforcement agencies are looking for functions that can be reduced or deleted. Further, the development of locally controlled computer systems has made it possible for certain police departments to obtain current, custom reports which make it a duplication of effort for them to separately input UCR data unless some automated or summary-based interface can be developed. Acute staff shortages in the Department's Administrative Services Division, stemming in part from the budget cuts in past years, have prevented DPS staff from following up with local police departments to develop such interfaces. DPS has only part of one position to compile UCR data, follow up problems, report to the FBI, and prepare the annual "Crime in Alaska" report.

This past year three communities, Ketchikan, Dillingham and Klawock, have stopped submitting UCR data; Sitka stopped submitting UCR data as of 1987. Crimes committed in those communities will not be included in the 1988 "Crime in Alaska" report. On the plus side of the ledger, Valdez has begun UCR participation as of 1989.

Crime data is now submitted in either an incident-based format, where each offense committed during a criminal incident is reported, or a summary-based format, where only the most severe offense that occurred is reported. The larger police agencies, i.e. the Alaska State Troopers, Anchorage Police Department, and Fairbanks Police Department, use the summary-based system. The smaller agencies generally use the incident-based reporting format, but if they have computer terminals, they can input their data directly into the Alaska Public Safety Information Network (APSIN) if they chose to do so. Reports are provided to contributing agencies to summarize their crime offense data.

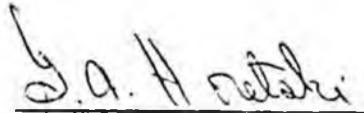
In response to the perceived need for several changes to UCR, the FBI recently completed a three-year study which recommended that all states adopt an incident-based reporting system. Adoption of the new standard would require the collection of additional data elements covering victim/offender relationships, drugs, weapons, and vehicles. These new data elements would make enhanced analysis of crime data possible.

At this time the Department has determined that the existing UCR program needs to be consolidated and strengthened before considering adoption of the new standard. The existing UCR system will still be supported by the FBI for the foreseeable future.

Any future decision to adopt the incident-based standard should take into account the input of the participating agencies. At the March 1989 meeting of the Alaska Chiefs of Police Association a dialog was begun with the chiefs of local departments on means of reducing the impact of UCR data collection on the contributors, and ways of encouraging voluntary participation in the UCR program.

SB 23 does not require local police departments to submit crime data. However, under SB 23, DPS must establish a standardized system and could require that crime data be provided in a standard format. In conjunction with computerization at the local level, DPS will be working more closely with police departments to develop low-cost, workable solutions to the UCR data collection problem. It is in the state's best interests to collect and compile statewide crime offense data and publish it for use by policy makers.

In summary, the DPS supports SB 23. The Department will continue to work with other law enforcement agencies in Alaska to gather crime data in Alaska in the most accurate, cost-efficient way possible.


for Arthur English
Commissioner

on
my
desk

A SPECIAL REPORT ON THE
OVERSIGHT OF CRIMINAL JUSTICE INFORMATION SYSTEMS
IN ALASKA AND THE
ALASKA PUBLIC SAFETY INFORMATION NETWORK

March 19, 1986

Audit Control Number

12-4247-86-S

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THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

April 8, 1986

Members of the Legislative Budget
and Audit Committee:

In accordance with the provision of Title 24 of the Alaska
Statutes and your special request, the attached report is
presented for your review:

A SPECIAL REPORT ON THE
OVERSIGHT OF CRIMINAL JUSTICE INFORMATION SYSTEMS
IN ALASKA AND THE
ALASKA PUBLIC SAFETY INFORMATION NETWORK

March 19, 1986

Audit Control Number

12-4247-86-S



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TABLE OF CONTENTS

	<u>Page</u>
Purpose and Scope of the Report	1
Overview of Alaska's Criminal Justice Information Systems	3
Findings and Recommendations.	5
Appendixes:	
A. Listing of Primary Users.	19
B. Listing of Secondary Users.	20
C. Applicability of 6 AAC 60 by Section.	23
Agency Responses:	
Department of Public Safety	25
Department of Law	35
Legislative Audit's Additional Comments	39

PURPOSE AND SCOPE OF THE REPORT

In accordance with a Legislative Budget and Audit Committee special request and Title 24 of the Alaska Statutes, we conducted a review of Alaska's criminal justice information systems, with specific emphasis on the Alaska Public Safety Information Network (APSIN). Our scope included the following:

1. Responsibility for oversight and review of Alaska's criminal justice information systems.
2. An overview of APSIN criminal justice information, to include:
 - a. Data quality.
 - b. Record review and challenge (individual's right to information).
 - c. System security.
 - d. Dissemination and use of criminal history information.
 - e. Gathering of intelligence information.
 - f. Recordkeeping on juveniles.
 - g. Purging of information.

Scope Restraints

The Department of Public Safety replaced their Alaska Justice Information System (AJIS) with APSIN in 1984. Because the 1981 security and privacy audit conducted by SRI International of California focused on AJIS, the majority of observations and recommendations are not relevant to APSIN. For this reason, an extensive follow-up to SRI's audit was not conducted. Any continuing concerns are addressed in our review of the oversight function of criminal justice information systems and the investigation of specific areas relevant to APSIN outlined above.

OVERVIEW OF ALASKA'S CRIMINAL JUSTICE INFORMATION SYSTEMS

In 1970, the State accepted funding from the Law Enforcement Assistance Administration (LEAA) to create a five year master plan for the development of an automated, statewide criminal justice information system. The plan that resulted envisioned phases to develop subsystems to meet the operational and management needs of the various criminal justice agencies in the State.

The result of this plan was the Alaska Justice Information System (AJIS). While a few other criminal justice agencies such as the courts and local police utilized AJIS for operational and management needs, most used it for information retrieval only. AJIS was run by the Department of Public Safety and, for all purposes, it became their system.

In 1972, the Legislature enacted AS 12.62, which required the Governor's Commission on the Administration of Justice to adopt the appropriate regulations to provide for security and privacy of criminal justice information housed in criminal justice information systems. These regulations (6 AAC 60) took effect in late 1972 and were amended in July of 1982. The amended regulations introduced the "Alaska Justice Information System" and defined it as an electronically linked network of criminal justice information systems in the various criminal justice agencies (theoretical AJIS). Public Safety's AJIS did not meet the definition of "AJIS" in the regulations.

In 1984, the Department of Public Safety converted from AJIS to the Alaska Public Safety Information Network (APSIN). The conversion process involved upgrading to new hardware and software. APSIN is processed at the Anchorage Data Center and utilizes modern database technology. The APSIN database was built from AJIS records.

Other criminal justice agencies have developed systems to meet their specific management and operational needs.

In 1983, the Department of Law completed implementation of Alaska's Prosecutor's Management Information System (PROMIS). PROMIS maintains prosecutor case information including prosecuting attorney, defendant, crime type, charge and disposition. PROMIS does not interface with APSIN.

In the fall of 1983, the Offender Based State Correctional Information System (OBSCIS), was implemented by the Department of Corrections to provide for management and tracking of offenders in Alaska's correctional institutions. OBSCIS provides information on bookings, inmate information, location and statistics. OBSCIS does not interface with APSIN.

The Alaska Court System has two computerized systems which are used for case tracking and court calendaring. Anchorage utilizes a Microdata System, while 13 other cities, including Kenai, Ketchikan, Cordova and Sitka utilize a mini-computer system. Fairbanks, Juneau, and some small courts use manual systems. The two computerized systems are not compatible and do not interface with APSIN.

The Public Defender Agency does not have a computerized system for management, operational or statistical purposes. The Agency utilizes a manual system for case management and defendant information.

The above mentioned agencies are some of the "primary users" of APSIN criminal justice information. As such, they have access on-line to a variety of criminal justice information, while secondary users are limited to receiving printouts of criminal conviction information from primary users. See Appendix A for full listing of primary users and Appendix B for a secondary user listing.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

Alaska needs an effective criminal justice information system oversight and review function.

Alaska Statute 44.19.110-.122 establishes the Governor's Commission on the Administration of Justice. Under AS 12.62 the Commission is charged with a variety of oversight functions related to the regulation of criminal justice information systems (CJISs), to include:

1. Adoption of regulations (AS 12.62).
2. Receipt of annual report from each law enforcement agency in the State certifying compliance with regulations (AS 12.62.017).
3. Determination of non-law enforcement agency eligibility to receive criminal justice information (secondary user status) (AS 12.62.030(a)).
4. Arbitration of disagreements between individuals and law enforcement agencies regarding individual's personal criminal history record (AS 12.62.030(c)).
5. Review of listings of criminal justice information dissemination by law enforcement agencies (AS 12.62.030(d)).
6. Authorization for disclosure of convictions involving contributing to the delinquency of minors or sex crimes for individuals holding or applying for positions involving the supervision of a minor (AS 12.62.035).
7. Approval of operating procedures involving security, update, and purging of criminal justice information (AS 12.62.040).
8. Regulation of participation by criminal justice agencies in interstate exchange of criminal justice information (AS 12.62.050).

The Commission has not met since 1981. The Attorney General, as ex-officio chair, provides legal advice to the criminal justice community and grants secondary user status to requesting agencies as appropriate. The Department of Public Safety has been performing the "sex crimes" background checks and as of March 1986 is participating in interstate exchange of criminal justice information through the Interstate Identification Index. There has been no further oversight or review since the Commission became dormant, resulting in the absence of centralized administrative control and regulation of Alaska's CJISs.

A. Lack of oversight and review function.

The Governor's Commission was established to oversee the privacy and security of CJISs and access to criminal justice information. This oversight function, as delineated in AS 12.62, has not been performed for the past several years. Several new CJISs have been implemented since 1981 when the Commission last met. These CJISs include Prosecutor's Management Information System (PROMIS), Offender-Based State Correctional Information System (OBSCIS), and Alaska Public Safety Information Network (APSIN). These CJISs were designed and implemented without the benefit of centralized planning. Coordinated planning between agencies to determine common fields for reference and interagency data needs did not take place. For example, when the Department of Public Safety upgraded from the Alaska Justice Information System (AJIS) to APSIN, the Alaska Identification number (AID) was deleted in the conversion process. The AID number was used by the Department of Corrections in both the organization of its manual files and as a key field in OBSCIS. This resulted in the inability to cross reference individuals in the two systems.

Because oversight functions are not being performed, procedures for individual CJISs have not been reviewed nor has compliance with statutes and regulations been monitored. As new CJISs were implemented, the regulations were not always reviewed to determine applicability to the new system. As a result, the current regulations do not apply to APSIN, as discussed below under B.

In light of the inactivity of the Governor's Commission and the critical need for CJIS oversight and review, the Legislature should consider the following alternatives:

1. Transfer responsibilities of the Governor's Commission on the Administration of Justice to the Attorney General.

This is the solution proposed by House Bill No. 183. An advantage to this alternative is that it would place responsibility under one person and would therefore increase efficiency. In a letter commenting on this bill, the Alaska Court System objected to giving the Attorney General control over the Court's CJISs on the grounds of separation of powers. In addition, only one agency within the criminal justice system would be represented. During our survey process, most criminal justice agency personnel interviewed objected to Attorney General oversight based upon a concern that decision processes may be biased toward the prosecution's viewpoint.

2. Reappoint the Governor's Commission on the Administration of Justice.

The major advantage to this alternative is that all agencies within the criminal justice system in Alaska would be represented. Oversight by a commission was preferred over Attorney General oversight by most individuals surveyed. However, this composition may well be unconstitutional, both as a violation of the doctrine of separation of powers and as a violation of the prohibitions against dual office holding by Supreme Court Justices and by legislators. In addition, the reappointment process is time-consuming and the operation of commissions is costly and often ineffective.

3. Place responsibility for oversight and review of CJISs in the Office of the Governor.

This alternative eliminates the Commission's constitutional problem of dual office holding, but may result in a question regarding separation of powers as it would require executive branch oversight of the Court's information systems. In addition, the Federal National Crime Information Center (NCIC) user agreement signed by the State stipulates that a law enforcement agency be responsible as controlling agency. The Office of the Governor is not a "law enforcement agency," per se; however, the definition of a law enforcement agency per Title 28 of the Federal Regulations includes "subunits of non-criminal justice agencies performing a function of the administration of criminal justice pursuant to Federal or State statute or executive order." State statutes granting the Office of the Governor such authority should remove any conflict with NCIC requirements. Placing oversight responsibility outside the criminal justice system itself should result in increased objectivity. The informal Criminal Justice Working Group as it currently exists could continue to provide coordination for planning and budgetary issues.

The Office of the Governor maintains a central staff of management analysts and information system auditors. The overview of CJISs statewide seems to appropriately fall within the purview of this agency.

Regardless of where the oversight function is placed, it should include review and approval of regulations governing CJISs and monitoring for compliance with statutes and approved regulations. In addition, periodic reviews for the integrity of central criminal justice information records should be performed or commissioned by the oversight body.

B. Ineffective statutes and regulations governing CJISs.

The Law Enforcement Assistance Agency (LEAA) was a Federal agency which funded computerized criminal history information systems in the late 1960s and early 1970s. One of the results of Alaska's LEAA funding was a plan for a statewide CJIS which included subsystems to meet the operational and management needs of the various criminal justice agencies in the State. This "Alaska Justice Information System" (theoretical AJIS) would result in the sharing of criminal justice information via electronic connections of agency subsystems. The CJIS which actually developed from this plan was the Department of Public Safety's portion of the statewide system. It was called the Alaska Justice Information System (AJIS).

While a few other criminal justice agencies utilized AJIS for operational and/or management needs, most used it for information retrieval only. AJIS was run by the Department of Public Safety and for all purposes it became their system. LEAA funds were also used in the implementation of Alaska's PROMIS and OBSCIS systems and to purchase hardware and software for other criminal justice agencies in the State. Theoretical AJIS never materialized because these systems are self-contained and do not electronically interface.

In 1972, the vision of a network of interconnecting CJISs, combined with the then current fear of privacy invasion through the use of computerized information systems, led to the development of statutes and regulations governing CJISs. The statutes and original regulations were written specifically relating to computerized LEAA-funded systems with oversight to be provided by the Governor's Commission on the Administration of Justice. In 1982 the regulations were amended and additional restrictions were included which relate only to the theoretical AJIS; the remaining portions of the current regulations apply to individual LEAA-funded CJISs, both manual and computerized (see Appendix C). This presents a problem in that APSIN was funded with State and not LEAA money, and as such is not covered by current State statutes and regulations.

Subpart C of Title 28 contains regulations applying to the use of the Federal Department of Justice criminal history record information systems. Alaska, through APSIN, links to NCIC to obtain Federal criminal history information. Although out-of-state offenses are not entered into APSIN, at some time in the past such offenses may have been incorporated in AJIS records, from which the APSIN database was built. Although out-of-state records constitute a very small percentage of APSIN's database, subpart C may govern not only our use of current NCIC information from the Federal Computerized Criminal History file, but also APSIN criminal histories.