

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990  
5852 HOUSE JUDICIARY 8672

256

General security guidelines are provided for in these Federal regulations; however, they are silent on such issues as data collection standards, purging of records, and systematic audit of data integrity. The NCIC Operating Manual used by the State contains procedures to maintain the integrity of NCIC records as well as outlining security requirements for State participation.

The lack of a centralized oversight and monitoring function has resulted in the inapplicability of State statutes and regulations to Alaska's major CJIS, APSIN. This, combined with the limited scope of Federal regulations which apply to APSIN, necessitates the revision of current statutes and regulations in order to effectively govern all of Alaska's CJISs.

Alaska Statutes should be revised to reflect a decision as to oversight and monitoring responsibility and to clearly set policy for CJISs in such areas as purging of records, dissemination and use, security and privacy, and the assurance of data integrity. Definitions must be updated in order to ensure applicability to all CJISs in Alaska.

In conjunction with a decision regarding oversight of CJISs, alternatives toward making regulations more effective should be considered. Alternatives include:

1. Update current regulations to apply to all CJISs. This would require the oversight body to revise and adopt regulations which comply with updated statutory policy decisions.
2. Allow individual agencies to adopt regulations governing their own CJIS. Each agency would draft regulations and procedures to comply with statutory policy. Approval by the oversight body would be required prior to agency adoption.

The areas of oversight and regulation of CJISs within Alaska require immediate attention. Alaska's major CJIS, APSIN, upon which all law enforcement agencies statewide rely for criminal justice information, is currently not governed by statute or regulation.

#### Recommendation No. 2

A policy decision should be made regarding purging of and access to certain criminal justice information in Alaska's criminal justice information systems.

Alaska Statute 12.62.040(a)(3) provides for the removal of criminal justice information from the records based on selected factors. Under administrative regulation 6 AAC 60, Article 4 provides for the purging of criminal justice records, but only applies to criminal justice information

systems (CJISs) which are directly interconnected (theoretical AJIS). Purging is a collective term referring to both closing and expunging of records. Regulations governing purging of records have never applied to any operational CJIS in Alaska. Therefore, neither closing nor expunging of criminal justice information records as defined in the regulations has ever occurred.

As defined in 6 AAC 60.900, closing refers to the retention of criminal history record information in a CJIS subject to further restrictions on access and dissemination. Original regulations required the closing of criminal history conviction information records after a specified time period had passed without interaction between the individual and any criminal justice system. As revised in 1982, the regulations limited the closing requirement to theoretical AJIS. Criminal history records were not closed in AJIS, nor are they being closed in APSIN. The Records and Identification (R & I) Section of the Department of Public Safety will close an individual's criminal history record only in response to a court order to do so. There are no restrictions regarding access to individual criminal history records which have been inactive for the specified period of time.

As defined by regulation, expunging refers to the deletion of certain criminal justice records, specifically non-conviction arrest information. Expunging can also be ordered by the court. Court ordered expunging of criminal history data does take place in APSIN. From 1972 until 1982, the Department of Public Safety's CJIS (AJIS) was governed by regulations which excluded manual records from this purging process. Therefore the central repository of the State's criminal justice information records, R & I, retained all records in manual files, including non-conviction arrest information. However, this information was not entered into AJIS. In 1982, the regulations were amended to include manual systems in the definition of a CJIS, but restricted the purging requirement to information within theoretical AJIS.

AJIS was replaced by the new Alaska Public Safety Information Network (APSIN) in 1984. Non conviction arrest information maintained in R & I's manual files is being systematically added to the individual criminal histories within APSIN. Access to this information is restricted on-line; however, APSIN retains the information in a maintenance menu. This information (a "peanut") is disseminated to primary users in hard copy form through the mail.

Non-conviction arrest information is necessary for the effective performance of the duties of various agencies comprising the criminal justice system. Police agencies need this information during the apprehension process to

apprise them of individuals with dangerous or violent histories. This information is relevant to prosecutors in the decision to prosecute or decline a charge. Judges in the Court System require the information to assure proper sentence imposition. Cases in which this information would be relevant include prior arrests of a drug dealer which were dropped due to improper search and seizure, and the abusing spouse whose counterpart repeatedly has dropped charges because of intimidation. This information could improperly affect an individual where prior arrests were the result of prejudices against, or harassment of, groups or individuals.

Currently when primary users check APSIN for an individual's criminal history, they may or may not be notified of the existence of non-conviction arrest information. For persons with prior convictions, only conviction history will be displayed and users will not be notified that non-conviction information exists. For persons with no prior conviction, primary users are notified on-line if non-conviction information exists and are instructed to contact R & I for further information. R & I then prints the information from APSIN's database and mails it to the requester. This is costly, time-consuming and introduces weaknesses in the control over this confidential information.

A statutory policy decision regarding the retention of this type of information must be made. Federal laws regulating criminal justice information, as well as California law, do not require the expunging of non-conviction arrest data. Alaska has always been the champion of the individual's right to privacy. The privacy issue must be weighed against the advantages of having this information available for use by the Alaska criminal justice system.

If the decision is made to retain this information, then it should be made available to authorized primary users on-line. This would eliminate the unjustified distinction between on-line access to data and hard copy reports from the same system.

### Recommendation No. 3

The Department of Public Safety should review criminal justice information housed in Alaska Public Safety Information Network for accuracy and completeness. In addition, input control procedures should be instituted to provide assurance as to the integrity of the data entered.

The concern over the quality and completeness of data housed in Alaska Public Safety Information Network (APSIN) has received a lot of attention recently. It was publicized that such well-known criminals as Charles Meach could not be found in the system. While all data housed in AJIS was converted to APSIN; problems regarding missing data in AJIS records prevented some records from being displayed on APSIN.

These types of problems have been corrected. However, in a limited review of APSIN criminal history information, we discovered a number of errors currently remaining in APSIN.

The following types of errors were disclosed:

- a. Individuals with known criminal histories were not found.
- b. Criminal conviction histories were found to be incomplete.
- c. Incorrect criminal information was found due to the entering of the wrong charge.
- d. In the case of a charge reduction, both the original and the reduced charge appeared as convictions.

The majority of APSIN users surveyed expressed a general lack of confidence in the system to provide complete and accurate criminal history information.

Our review revealed a serious lack of internal control over the input process. This deficiency begins with the collection of data for input by the various criminal justice agencies and includes the lack of even the most basic controls over document flow.

The process of controlling input into APSIN is not a simple one. Documents from the Court System, Department of Corrections, and State and local police agencies are entered into APSIN. Verification of an individual's identity must be ascertained before the data is entered. Positive proof of identity requires a fingerprint match between the "10 print" which is usually obtained by Corrections, and a latent print (thumbprint) from the Court judgement.

Arrest information may be entered from a variety of sources. Alaska State Troopers and local police agencies may enter arrest data directly or may forward documents to R & I for entry. The original booking and/or entry of an individual into a correctional institution should result in a "10 print" fingerprint card which is input by R & I. Criminal convictions are entered by R & I based upon Court judgements. All documents which include fingerprints are routed through the Alaska Automated Fingerprint Identification System in Anchorage before being forwarded to R & I in Juneau. Documents are sent through the mail, neither certified nor registered, and are not counted or batched at any point for purposes of input control.

Procedures relating to the standardized collection of data for input should be established and enforced for all agencies who contribute data to APSIN. In addition, documents sent

to APSIN for input should be counted, batched, and logged at every transfer point, and APSIN itself should count documents entered by terminal and operator ID. These procedures will help to ensure that the proper data is collected for entry and that no documents have been lost between origination and entry into APSIN. Alaska Statute 12.55.147 requires that convicted felons be fingerprinted in open court at the time of sentencing. This has not been uniformly implemented in all courts; however, efforts to standardize procedures for the obtaining of fingerprints on court judgements have been underway between the Court System and the Department of Public Safety to correct this situation.

Title 28 §20.21(a) of the Federal regulations which govern LEAA-funded systems require criminal justice agencies to ensure that criminal history record information is accurate and complete. Part 2 of §20.21(a) defines accuracy and outlines procedures for accomplishing this task:

. . . to be accurate means that no record containing criminal history record information shall contain erroneous information. To accomplish this end, criminal justice agencies shall institute a process of data collection, entry, storage, and systematic audit that will minimize the possibility of recording and storing inaccurate information.

The Department of Public Safety is working toward transferring pre-APSIN non-conviction arrest information from manual files to APSIN. In addition to its ongoing "audit" process, the Department should verify APSIN criminal history records. To correct the various types of errors disclosed above, the review should trace data both from APSIN to Court System documents and from Court System documents to APSIN. This process could be accomplished in-house, or could be performed by an outside firm.

All law enforcement agencies, both State and local, within Alaska rely on APSIN for criminal history information. Because of this, the importance of ensuring complete and accurate data is increased. While APSIN is not an LEAA-funded system, procedures similar to those required by Title 28 §20 should be implemented.

#### Auditor's Comments

Several areas specific to Alaska Public Safety Information Network (APSIN) were included in our review. Our general observations and comments related to these areas follow.

##### 1. Data Quality

Data quality of criminal justice information housed in APSIN needs to be improved. As discussed in Recommendation No. 3, the Department of Public Safety should implement input and data integrity controls.

## 2. Subject Review and Challenge

Alaska Statutes 12.62.030(c) and administrative regulation 6 AAC 60.080 provide for the right of an individual to inspect criminal justice information which refers to that person. Procedures related to the review and challenge of this information by the individual are outlined by the regulation cited above. The APSIN Security Officer has disseminated logs for recording such inspections. If the individual contests the validity of recorded criminal history, AS 12.62.030(c), provides for an appeal to the Commission.

## 3. System Security

Adequate controls over computerized systems are comprised of general controls and application controls. General controls refer to those controls in a data processing environment that apply to all applications processed under that environment. They have widespread impact because they affect all applications processed by the facility. Application controls are specific controls over input, processing and output and should ensure that only authorized data is completely and accurately processed by a system.

APSIN is an application which is processed at the Anchorage Data Center (ADC). A recent review of general controls at ADC revealed several security control weaknesses. These weaknesses are sweeping in nature and would be difficult, if not impossible, to compensate for at the application level. Our review did not include a detailed study of application controls.

## 4. Dissemination and Use

In various memos, the APSIN Security Officer has outlined procedures for the dissemination and logging of criminal conviction information issued to secondary users. Lists of current secondary users are updated periodically. See Appendix B for a February 3, 1986 list of secondary users. Our concerns regarding access to and dissemination of criminal justice information to primary users are discussed in Recommendation No. 2.

## 5. Intelligence Information

Under Alaska Statute 12.62.015, law enforcement agencies in Alaska may collect and maintain intelligence information. AS 12.62.070 defines intelligence information to mean

information concerning the background, activities or associations of the individual or group collected or obtained by a law enforcement agency for preventive, precautionary or general investigative purposes not directly connected with the investigation of a specific crime . . .

The Criminal Investigation Bureau of the Alaska State Troopers maintains a procedures manual regarding intelligence information. All intelligence information is maintained manually and does not reside on any computerized information system. As our review centered on APSIN, we did not evaluate procedures governing intelligence information.

6. Recordkeeping on Juveniles

Information regarding juveniles is not maintained on APSIN. As such, recordkeeping on juveniles was excluded from the scope of our review.

7. Purging of Records

The definition of purging includes both closing and expunging of criminal history records. Under current regulations, neither of these functions are required for APSIN. See Recommendation No. 2 for a discussion of our concerns in this area.

APPENDIXES

APPENDIX A

-- Listing of Primary Users

Per 6 AAC 60.060

1. Department of Public Safety
2. Local Alaska Police Departments
3. Alaska State Court System
4. Department of Corrections
5. Alaska Board of Parole
6. Department of Law
7. Alaska Public Defender Agency
8. Child Support Enforcement Agency
9. Federal Bureau of Investigation
10. Governor's Commission of the Administration of Justice

18. Elmendorf Air Force Base Security Police
19. Federal Aviation Administration Security Division
20. Federal Bureau of Alcohol, Tobacco and Firearms
21. Federal Highway Administration
22. Federal Bureau of Land Management (U. S. Department of Interior)
23. Federal Protective Service Division (GSA)
24. Fort Richardson Security Police
25. Interstate Commerce Commission
26. National Park Service
27. National Transportation Safety Board
28. Postal Inspection Service
29. U. S. Coast Guard Intelligence and Law Enforcement Branch
30. U. S. Customs Service
31. U. S. Department of Defense Investigative Service
32. U. S. Department of Health and Human Services, Social Security Field Integrity Staff
33. U. S. Drug Enforcement Administration (DEA)
34. U. S. Environmental Protection Agency
35. U. S. Forest Service
36. U. S. Immigration and Naturalization Service
37. U. S. Office of Personnel Management, Investigations
38. U. S. Probation Office for U. S. District Courts
39. U. S. Secret Service (Department of the Treasury)
40. University of Alaska Security, Anchorage Campus
41. University of Alaska Security, Fairbanks Campus
42. Western States Information Network
43. Alaska Department of Military and Veterans Affairs, Personnel Security Section

# **CORRECTION**

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

APPENDIX A

-- Listing of Primary Users

Per 6 AAC 60.060

1. Department of Public Safety
2. Local Alaska Police Departments
3. Alaska State Court System
4. Department of Corrections
5. Alaska Board of Parole
6. Department of Law
7. Alaska Public Defender Agency
8. Child Support Enforcement Agency
9. Federal Bureau of Investigation
10. Governor's Commission of the Administration of Justice

APPENDIX B

-- Listing of Secondary Users

Per Department of Public Safety Memorandum of  
February 3, 1986

1. Alaska Alcoholic Beverage Control Board (Department of Revenue)
2. Alaska Bar Association
3. Alaska Commercial Fisheries Entry Commission
4. Alaska Department of Health and Social Services Commissioner's Office
5. Alaska Department of Labor (Unemployment Insurance Fraud Investigation Section)
6. Alaska Division of Banking and Securities (Department of Commerce and Economic Development)
7. Alaska Division of Elections (Lt. Governor's Office)
8. Alaska Division of Enforcement, Criminal Investigations (Department of Revenue)
9. Alaska Division of Family and Youth Services (Department of Health and Social Services)
10. Alaska Division of Insurance (Department of Commerce and Economic Development)
11. Alaska Division of Occupational Licensing (Department of Commerce and Economic Development)
12. Alaska Division of Parks (Department of Natural Resources)
13. Alaska Railroad (U. S. DOT)
14. Anchorage and Fairbanks International Airport Police (Alaska DOT/PF)
15. Big Brothers/Big Sisters of Juneau
16. Dr. Michael Phillips, Alaska Psychiatric Institute
17. Dr. Thomas D. Lonner, Center for Alcoholism and Addiction Studies, University of Alaska

18. Elmendorf Air Force Base Security Police
19. Federal Aviation Administration Security Division
20. Federal Bureau of Alcohol, Tobacco and Firearms
21. Federal Highway Administration
22. Federal Bureau of Land Management (U. S. Department of Interior)
23. Federal Protective Service Division (GSA)
24. Fort Richardson Security Police
25. Interstate Commerce Commission
26. National Park Service
27. National Transportation Safety Board
28. Postal Inspection Service
29. U. S. Coast Guard Intelligence and Law Enforcement Branch
30. U. S. Customs Service
31. U. S. Department of Defense Investigative Service
32. U. S. Department of Health and Human Services, Social Security Field Integrity Staff
33. U. S. Drug Enforcement Administration (DEA)
34. U. S. Environmental Protection Agency
35. U. S. Forest Service
36. U. S. Immigration and Naturalization Service
37. U. S. Office of Personnel Management, Investigations
38. U. S. Probation Office for U. S. District Courts
39. U. S. Secret Service (Department of the Treasury)
40. University of Alaska Security, Anchorage Campus
41. University of Alaska Security, Fairbanks Campus
42. Western States Information Network
43. Alaska Department of Military and Veterans Affairs, Personnel Security Section

- 44. Alaska Department of Revenue, Gaming Enforcement Unit
- 45. Alaska Judicial Council
- 46. Alaska Transportation Commission
- 47. U. S. Department of Defense, Security Division

APPENDIX C

Applicability of 6 AAC 60 by Section

<u>Section</u>	<u>Description</u>	<u>Individual CJIS</u>	<u>Theoretical AJIS</u>
.010	Scope of regulations	X	X
.015	Oversight and authority for AJIS and CJISs	X	X
.020	Categories of information allowed (includes all arrest information)	X	X
.030	Security required over automated systems	X	X
(d,e,f)	Linkages allowing access to AJIS by other agencies		X
.040	Agency security over personnel and physical plant	X	X
.050	Input and update authority by agency		X
.060	Access authority of agencies		X
.070	Restrictions on dissemination	X	X
.080	Individual's right to information	X	X
.090	Research use of information	X	X
.100	Purging of information (includes closing and expunging)		X
.110	Purging of information on persons regarding dangerous or suicidal tendencies	X	X
.120	Notification regarding information purged under section .100 purged under section .110	X	X
.130	Formulation of procedures	X	X

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

POUCH N  
JUNEAU, ALASKA 99811  
PHONE: 465-4322

May 12, 1986

Gerald L. Wilkerson, CPA  
Legislative Auditor  
Legislative Affairs Agency  
P.O. Box W  
Juneau, Alaska 99811-3300

MAY 12 1986

Dear Mr. Wilkerson:

Re: A Special Report on the Oversight of the Criminal  
Justice Information Systems in Alaska and the  
Alaska Public Safety Information Network

Thank you for the March 19, 1986 Preliminary Report  
outlining the findings and recommendations of this audit.  
That document has been treated as confidential. This  
Department's response is outlined below:

Recommendation #1:

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

Agree. Each state agency involved has responsibilities to  
oversee and review its own criminal justice information  
system. Where common problems exist, a task force approach  
designed to address and solve a specific issue holds the  
most promise of success.

While the Governor's Commission on the Administration of  
Justice is dormant, it is important to recognize that  
several of their functions are performed notwithstanding the  
Commission's present status. Some examples are:

1. Secondary user lists are issued periodically.
2. Disagreements between individuals and the  
Department of Public Safety's criminal  
history records are resolved based upon proof  
of identity and documentation of the arrest,  
charges, or dispositions in dispute. The  
judicial process allows for aggrieved  
individuals to petition for correction,  
or expungement of criminal history record  
information.

3. The "sex crimes" background check (AS 12.62.035) has been delegated to the Department of Public Safety by the Attorney General.

As of March 1986, the Department is able to automatically exchange criminal history information via the National Law Enforcement Telecommunications System (NLETS). The Department is now participating in the FBI's Interstate Identification Index (III) to a limited degree; full participation in III is planned for the future.

A. Lack of oversight and review function:

The Governor's Commission on the Administration of Justice was primarily established as the policy level oversight body for the annual funding plan required by the now defunct federal Law Enforcement Assistance Administration or LEAA. For a period of time, LEAA funded various innovative programs aimed at all levels and agencies within the criminal justice system. The Governor's Commission along with its staff was primarily involved in issues directly related to federal funding, although comprehensive planning was a related objective.

It would not be appropriate for this Department to comment on planning, design and implementation of other criminal justice information systems, but both PROMIS and OBSCIS appear to be essentially 'canned' packages which required little design work and therefore, centralized review would have been probably less useful. In any case, Public Safety was not consulted in their design or implementation. Preliminary discussion on the design of the Alaska Public Safety Information Network (APSIN) was begun while the Commission staff had an opportunity to provide input. Later, information was requested from both the Courts and the Corrections as part of 'user group' efforts in regards to the development of APSIN. Suggestions were incorporated into the system based on holistic and efficiency considerations and the feasibility of those suggestions. Further, several levels of needs, within and outside of DPS, were considered regarding APSIN design. In fact, extensive "user group" involvement (through the design, testing and implementation stages) is considered to be a key factor for the success of APSIN. As in all major management information systems, there are "trade-offs" since the design cannot accommodate all desired data fields. The purpose of the AID number was to provide a unique identification for each person in the AJIS system. This unique identification scheme (AID #) still exists in APSIN; the method of creation has been changed, but it is available to the Department of Corrections should they seriously desire access.

Placement of this oversight function in OMB does not seem appropriate since the federal National Crime Information Center (NCIC) user agreement signed by the State specifically requires that a law enforcement agency shall be responsible as the controlling agency. In fact, for APSIN to work under the computer umbrella of the Department of Administration, Department of Public Safety had to enter into a special Management Control Agreement with the former in order to be in compliance with NCIC. Some provisions of this agreement such as back-up and security control are still not fully implemented. The tentatively scheduled (for a period of one week from 09/29/86 - five member audit team) comprehensive NCIC audit of APSIN may address several such issues.

The Department of Public Safety is not opposed to abolishing the Governor's Commission and transferring its duties to the Attorney General (HB 183) or to the Information Systems Committee appointed by the Governor by expanding the Committee to include the Court System. Further, the Department of Administration now has elaborate procedures for its Information Resource Management Expenditure Approval Committee (IRMEAC). IRMEAC can be considered a functional review entity for any new data processing project and OMB is represented on IRMEAC. All such existing and ongoing procedural reviews and oversight capability should be reviewed prior to creating an additional oversight layer.

The appointment of another executive branch commission, ipso facto, will not solve the coordination and communication problems among executive branch agencies or between the court system and executive branch agencies. The same basic issues which hindered full implementation of AJIS still remain.

Full-time oversight by the former Commission was discontinued with the elimination of their federal funding. Given Gramm-Rudman funding constraints and Alaska's oil revenue shortfall, it is unlikely that additional oversight and review duties such as this will be absorbed by agencies cutting back direct public services. On the other hand, the task force nature of an informal Criminal Justice Working Group should allow it more than sufficient clout and expertise to resolve issues which arise.

B. Ineffective statutes and regulations governing CJISs:

In our opinion, Alaska Statutes need not contain CJIS policy for criminal records issues such as purging of records, dissemination and use, security and privacy, and the assurance of data integrity. We believe that

APSIN is governed by applicable federal law, National Crime Information Center (Department of Justice) mandates, and the professional judgement of criminal justice managers. The Attorney General's office is consulted about impact of day-to-day policies and procedures since officials involved are conscious of civil and criminal remedies available to aggrieved persons.

Current regulations cannot properly be updated to go beyond or supplant statutory scope. AJIS regulations require purging of criminal history information for both felony and misdemeanor convictions; the AJIS purge requirements conflict with information needs of criminal justice agencies defined as primary users as well as certain statutes (e.g. presumptive sentencing, sex crimes, etc.). Since only authorized users have access to criminal history information, purging is more a matter of data management than privacy and security. For example, dead people's files are removed from active records. Everyone should keep in mind that criminal history files are built from public records. Conviction information is often publicized by the media.

The Department rejects the notion that a central oversight agency or additional law is needed to monitor APSIN privacy and security, but is concerned about security problems at the Data Centers. Problem resolution efforts are continuing.

Furthermore, fiscal impact of new statutes or regulations is being more closely monitored now that State revenues are dwindling. Any new statute or regulation or procedure which requires increased resources to implement should receive cautious consideration. If problems do not require increased resources, but merely a minor change or emphasis in existing operations, a task force approach is more efficient.

Recommendation #2:

A policy decision should be made regarding purging of and access to certain criminal justice information in Alaska's criminal justice information systems.

Agree. Current discussion is underway to resolve purge and access issues. Background comments are appropriate.

An expungement of criminal records requires that all records covered (i.e. computer or manual files) in the court order are destroyed and eliminated with no method for retrieval. In the context of the AJIS regulations, purging means restricting access to certain data after a period of time. Expungement and purging should not be used interchangeably.

Certain criminal history records have been expunged from both AJIS computerized files and manual files in the State central repository (i.e. Records and Identification) in response to court order, but closing or purging of records from computerized AJIS files has never taken place systematically in compliance with the AJIS regulations, 6 AAC 60.100. This decision related, in part, to the difficulty of making revisions to the computer programs of AJIS. The reason for the AJIS/APSIN conversion-redesign, in part, was that routine maintenance of AJIS and minor enhancements to AJIS were time-consuming and backlogged. The Division of Motor Vehicle's computer applications took precedence because of the major direct public impact of their service requests. After the AJIS/APSIN conversion-redesign, enhancements are being made in priority order and much faster than would have been possible under AJIS. For clarification, it should be stated that the AJIS/APSIN conversion-redesign did not satisfy all outstanding user needs or wants, but only those requirements which were highest priority and could be met within available resources. One major design parameter was that future APSIN enhancements be relatively easy in absolute terms and relatively cost-efficient from a technical standpoint.

The APSIN criminal history main menu is being updated to include a message indicating that non-conviction data exists where that is the case.

Since the criminal justice community needs access to individual criminal history records without regard to the AJIS regulations' purge requirements, the Records and Identification (R&I) Section was handling these requirements separately from the computerized criminal history information. For example, arrests without convictions were not entered on AJIS, but were available in the R&I criminal history manual files. Upon request from authorized criminal justice users, a full criminal history would be provided via administrative message. Under the AJIS regulations, complete information could not be contained on computerized files subject to those regulations. Nevertheless, the criminal justice community needs for complete information still existed.

Arrest information is now being entered into APSIN by some police agencies as a suspense mechanism to insure that court judgements are received on those persons arrested. This improved linkage between arrests and dispositions enhances the completeness and accuracy of the criminal history record information maintained on APSIN. Exception or aging reports are now being produced monthly to show arrests over 90 and 120 days old that have not had dispositions recorded in APSIN.

Currently, R&I staff respond to primary user requests for a full criminal history by reviewing the manual R&I files, reviewing the APSIN submenu, and then updating the submenu and subsequently printing it out and mailing it to the requester. This process is somewhat time consuming, and does introduce the possible compromise of security via the mail system. Public Safety needs the full criminal history information as do several other authorized users.

The Attorney General, as legal advisor to the executive branch, possesses the authority and responsibility to interpret whether the AJIS statutes and regulations apply to APSIN. If the Attorney General decides that the AJIS statutes do not apply to APSIN, then the Attorney General is free to work with the Department of Public Safety from a procedural standpoint to insure that ongoing operations of APSIN do not violate any issues of federal or state law.

Recommendation #3:

The Department of Public Safety should review criminal justice information housed in the Alaska Public Safety Information Network for accuracy and completeness. In addition, input control procedures should be instituted to provide assurance as to the integrity of the data entered.

Agree. Criminal histories are reviewed for accuracy and completeness as resources permit. Further input controls will be explored. Although much has been accomplished, we recognize more needs to be done.

Computer reports show that all criminal history records in AJIS were converted to APSIN. The only processing that the conversion programs performed was to translate offense codes and check for numeric data.

Systems analysis would reveal that the data in APSIN depends upon several issues which are not under control of the Department of Public Safety. For example, the Department of Corrections and other law enforcement agencies must insure that arrestees are properly fingerprinted, that full information is included on the fingerprint card, and that those fingerprint cards are promptly sent to the Department of Public Safety. In addition, once convicted of charges not included on the original arrest, those offenders must again be fingerprinted to insure that the convictions stemming from the original arrest are also submitted to the Department of Public Safety for inclusion in their criminal history files. Taking the example of Charles Meach, he was not shown on the APSIN main menu because his court disposition was not received by Records and Identification. When this situation was brought to the attention of Records and Identification his fingerprint card was used as a basis for going to the court to request a disposition. The court

provided the disposition which reflected Mr. Meach's conviction. The conviction was then entered into APSIN; and is now available to inquirers. In short, because of insufficient resources, the central repository must depend upon law enforcement officials in the field to point out examples of incomplete conviction information which needs to be supplemented by seeking the court disposition on that particular individual. While this situation is definitely not a frequent occurrence, at the same time, Mr. Meach is not an isolated incident which illustrates the need for continued cooperation of all criminal justice agencies with the central repository to insure the most complete data base. And, in our opinion, the various components of criminal justice group are increasingly becoming aware of this imperative and working together and better.

One of the "errors" in the auditor's very limited sample was a person whose record had been expunged in compliance with a court order. Other "errors" related to incomplete information because of backlogs. There is a backlog of about 22,000 misdemeanor judgements which have not been entered; this may be the major reason for some users perception that criminal history data is incomplete. Serious errors, where a person has incorrect arrest or conviction data recorded, are very rare and promptly corrected when discovered or reported. However, if a judgement cannot be conclusively associated with a person, the judgement is not entered. Please remember that all omissions, in this context, are not errors unless there is proof that Public Safety, through error, omitted a record. Giving the benefit of doubt to a citizen is preferable to erroneously associating that individual with a criminal record.

The Alaska Court System is responsible statewide for submitting court judgements or dispositions to the Department of Public Safety. Alaska Statute 12.55.147 also requires that convicted felons be fingerprinted in open court at the time of sentencing. Unfortunately, this law (which would identify and facilitate tracking of serious criminals), has not been uniformly implemented.

The number of criminal history errors in APSIN was not discussed in a thorough and complete manner so that conclusions could properly be drawn from the statement of findings. For example, the sample size and the nature of problems in each category should be discussed or summarized more fully. The so-called "general lack of confidence" is not supported by a discussion how that subjective statement was solicited or recorded. While realizing that the point of a legislative audit is not to discuss what is going correctly, in the particular case, it seems appropriate in order to keep this limited finding from provoking a "general lack of confidence" in the APSIN criminal history information. Such a wholesale indictment is not substantiated by the limited audit conducted and any such implication is unwarranted.

It is important to appreciate the Department's resource commitment to a system which is operated for the benefit of the entire criminal justice community with, at times, less than complete understanding from other agencies. Both the production of a revised procedural manual and additional training needs are being addressed. The Department is more than willing to accept Reimbursable Services Agreements from other criminal justice agencies to address common problems and increase the level of service provided. We will have to review how budget constraints would impact service.

Several statements in the audit regarding completeness or accuracy are correct, but require further comments.

- ° APSIN has more edits than AJIS did to help insure data validity.
- ° AJIS had read-back verification. However, it did not eliminate problems.
- ° Data entry personnel did not always proof read the entry. It is normally not a typographical error if a person puts in the charge of murder rather than manslaughter.
- ° To insure proper entry, the material should be audited. One person inputs, the second person audits the documentation and entry. We should work towards this goal.
- ° The data clerks, on occasion, are not familiar with the court terminology. Additionally, many judgements are written with poor penmanship and are confusing to decipher.
- ° At present, the court enters the judgement in their system, the District Attorneys in their system, Corrections in their system and Records & Identification in APSIN. This does create a proper breeding ground for errors.
- ° The ideal method of entry would be court input with a written judgement produced as a result of the entry. This would be reviewed and signed by the judge and all systems would be updated with the same information.

Meanwhile, until such an ideal process that is less conducive to errors of omission and commission can be implemented, the Court System will be requested to send all judgments via certified mail, return receipt requested, and to insure that each batch of judgments is numbered and contains all judgments for dates specified in their transmittal memo.

We will continue to seek perfection, however, we should remember that criminal history information systems in every state of the nation are facing such systemic problems and continuing efforts should, every time, bring us a little closer to the eluding perfection.

For example, the Department of Public Safety began a criminal history audit in conjunction with implementation of the Alaska Automated Fingerprint Identification System (AAFIS). This audit was conducted, in part, to insure that AAFIS fingerprint files contained the maximum number of computer readable fingerprints to insure the highest possible fingerprint data base quality. At the same time, criminal history information was reviewed for completeness and accuracy. The limited resources available were applied, however incomplete, to most recent and most active criminal history records.

Several enhancements to APSIN were completed since the conversion of AJIS to APSIN and many are in process. The auditor's suggestion of APSIN counting documents entered by terminal and operator ID will be explored.

Auditor's Comments:

1. Data Quality

The data quality of criminal justice information in APSIN is a major concern of the Department of Public Safety. Input and data integrity efforts will continue; however, lack of in-house controls is not the major problem with data completeness.

2. Subject Review and Challenge - No Comment

3. Systems Security

The Department of Public Safety has previously identified the problems with general controls at the Data Centers; discussions are still continuing. If these control problems are not resolved, Alaska may lose its access and use of the National Crime Information Center files and the Interstate Identification Index (III) which would require Alaska's criminal justice agencies to wait two or three weeks for mail and FBI delays rather than have the data available on-line. If NCIC and III access is terminated because of security audit problems then NLETS participation will also be terminated which will eliminate Alaska's on-line ability to gather out-of-state criminal history data, driver records, vehicle registrations, etc.

4. Dissemination and Use - No Comment
5. Intelligence Information - No Comment
6. Record Keeping on Juveniles

Records on juveniles are not kept in the central repository or in APSIN.

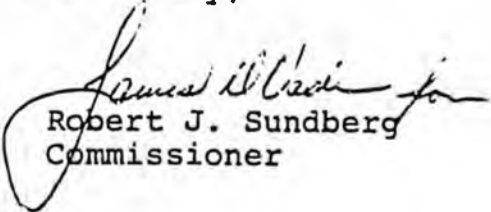
7. Purging and Expungement

The definition of purging should not confuse the difference between closing and expungement.

In summary, the Department of Public Safety is very concerned about data completeness, quality, and security of information disseminated to criminal justice agencies statewide and nationwide. Although the audit does not address significant problems such as back-up, we continue to work towards achieving the objectives listed here.

The giant leap from AJIS to APSIN is still a small step in absolute terms and continued emphasis and allocation of resources should further our objectives. Thank you for bringing these recommendations and findings to our attention.

Sincerely,

  
Robert J. Sundberg  
Commissioner

BILL SHEFFIELD, GOVERNOR

REPLY TO

**DEPARTMENT OF LAW**

CRIMINAL DIVISION

- CRIMINAL DIVISION CENTRAL OFFICE  
POUCH KC  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3428
- OFFICE OF SPECIAL PROSECUTIONS  
AND APPEALS  
1031 WEST 4TH AVENUE, SUITE 319  
ANCHORAGE, ALASKA 99501-5393  
PHONE: (907) 279-7424

April 30, 1986

MAY 1 1986

Gerald L. Wilkerson  
Legislative Auditor  
Division of Legislative Audit  
P.O. Box W  
Juneau, Alaska 99811-3300

Dear Mr. Wilkerson:

Thank you for the opportunity to respond to the preliminary audit report on criminal justice information systems.

Initially, we take exception to two separate passages in the report which seem to suggest that there is no control over APSIN because the Governor's Commission is not in operation. At page 6, it is asserted that

As new CJISSs were implemented, the regulations were not always reviewed to determine the applicability to the new system. As a result, the current regulations do not apply to APSIN, as discussed below under B.

Later, at page 9:

The lack of a centralized oversight and monitoring has resulted in the inapplicability of state statutes and regulations to Alaska's major CJIS, APSIN.

As I have pointed out to your office on other occasions, the observations quoted above are simply incorrect. There are two reasons why state laws might not apply to APSIN, neither of which has anything to do with "lack of centralized oversight." The first reason why certain laws do not apply is because they were not intended to apply. As a result of action by the Commission--rather than inaction--the administrative code was amended so as to limit the purging requirements in the regulations to interagency systems only. Thus it is incorrect to state that the regulations do not apply "as a result" of the dormancy of the Commission. If certain regulations do not

apply to individual information systems it is because of the work of the Commission--not because the Commission was dormant.

It also is not true that "as new CJISSs were implemented, the regulations were not always reviewed." To the contrary, at the last meeting of the Commission 1/ the PROMIS and OBSCIS systems were being implemented and the Commission was well aware of their existence. In fact the Commission was given an overview of the capabilities of each system and its current status. I personally gave an overview of the PROMIS system. No new federally-funded information systems have been implemented since that time.

The second reason why state laws may not apply is because that is what statutes provide and the Commission has no authority to change the statutes. If the APSIN system is not federally-funded, and is therefore not governed by state statute, then the Commission would have no say over its operation. The regulation-making authority under AS 12.62 is limited to federally-funded systems, and any regulations which attempted to expand that authority would be invalid.

Overall, I think it is unfair to suggest that the failure of state law to address certain aspects of certain information systems is because the Commission no longer operates.

My second point relates to your alternative suggestions for providing centralized oversight. Your report states that the composition of the Commission "may well be unconstitutional" (page 7) but the Legal Services Division of the Legislative Affairs Agency has recently issued a short opinion that is much more certain. In response to a request from Representative Clocksin, an opinion was rendered by Teresa Cramer, legislative attorney, that the composition definitely violates the doctrine of separation of powers. See opinion dated March 27, 1986, relating to House Bill 183.

In light of these concerns about the separation of powers, and in light of the concerns about placing oversight responsibility under the Attorney General, the Governor's Criminal Justice Work Group unanimously endorsed a proposal by former attorney general John Havelock that would create a new

---

1/ Although I neglected to mention it previously, the Commission last met in 1982--not 1981. I don't recall the exact date, but it was early in the year, shortly before the amended regulations went into effect. The effective date of those regulations is May 29, 1982.

body made up of agencies most directly affected by these information systems.

The Work Group proposed that the new body include the attorney general, the commissioners of public safety, health and social services and corrections, the public defender, the public advocate, a municipal police chief and the administrative director of courts. In addition, the proposal provided that no regulation would be binding on the executive branch unless a majority of executive branch representatives voted in favor. Similarly, no regulation would be binding on the court system unless the administrative director of courts voted in favor.

In light of the problems associated with each of the alternatives mentioned in your report, I think that the Work Group's proposal deserves mention and, if appropriate, your endorsement.

Finally, I have noticed two minor inaccuracies in Appendix C. I believe that only subsections (e) and (f) of 6 AAC 60.030 apply to "theoretical AJIS" and that the reference to subsection (d) is in error. I also believe that the requirements of 6 AAC 60.120, with respect to purging under section 110, apply to both individual system and "theoretical AJIS."

Thank you for your consideration of my comments.

Very truly yours,

HAROLD M. BROWN  
ATTORNEY GENERAL

By:

  
Dean J. Guaneli  
Assistant Attorney General

# STATE OF ALASKA

AUDIT DIVISION  
POUCH W  
JUNEAU, ALASKA 99811-3300

## THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

May 5, 1986

Members of the Legislative Budget  
and Audit Committee:

We have reviewed the Department of Law's response to our preliminary report. Our comments follow.

The Department of Law asserted on page 2, paragraph 3 that Legislative Audit was "unfair" in suggesting that the Commission's inactivity was the cause of the failure of State law to address "certain aspects of certain information systems." Legislative Audit maintains that the lack of centralized oversight was a primary cause of the fact that neither State statute nor regulation apply to a "certain information system," namely APSIN.

Prior to the last meeting of the Commission (early 1982), capital monies had been appropriated through the Department of Law and the Criminal Justice Planning Agency (ch. 82, SLA 81, p. 153, l. 17) for the upgrade from AJIS to APSIN. Those were State dollars; no Federal money was involved. This was within the timeframe when the regulations were being reviewed. While the regulations were reviewed by the Commission there apparently was no review at that time, or at any later time, of the regulations in regard to their applicability to the new, non-LEAA funded Alaska Public Safety Information Network.

The point was made by the Department of Law that the statutes do not provide for Commission oversight of non-LEAA funded systems and that the Commission does not have the authority to change statutes. This is true; however, Legislative Audit believes that it was the responsibility of the Commission to bring to the attention of the Governor and the Legislature the fact that APSIN would not be regulated by State law unless changes were made. APSIN is Alaska's major criminal justice information system. All criminal justice agencies in the State rely on APSIN for criminal history record information. It is Legislative Audit's belief that APSIN should be specifically governed by State law. This would ensure that access to information housed in APSIN is restricted by statute to law enforcement agencies.

Legislative Audit feels the proposal endorsed by the Governor's Criminal Justice Working Group for a new body to provide centralized oversight of Alaska's criminal justice information systems is a sound one. Our primary concern is that the oversight body actively provide for review and approval of regulations governing CJISs in Alaska (whether funded by LEAA monies or not) and for the monitoring of such systems for compliance with statutes and approved regulations. In addition, periodic reviews of the integrity of central criminal justice information records should be performed or commissioned by the body.

The minor inaccuracies found in Appendix C have been corrected in the final report.



Gerald L. Wilkerson, CPA  
Legislative Auditor  
Division of Legislative Audit

Item 4

# Alaska State Legislature

Chairman  
(907) 465-4523



Jan Faiks  
Post Office Box V  
Juneau, Alaska 99811

## Senate Judiciary Committee

February 23, 1989

### MEMORANDUM

TO: Representative Red Boucher, Chairman  
House State Affairs Committee

FROM: Senator Jan Faiks, Chairman  
Senate Judiciary Committee

SUBJECT: SB 23 "An Act relating to the recording and collection of crime statistics."

Senate Bill 23 has been referred to the House State Affairs Committee for consideration. This bill proposes an amendment to AS 44.41.020, which defines the duties of the Department of Public Safety (DPS). This bill passed the Senate on February 9, 1989 by a vote of 16 - 3, along with the attached letter of intent.

At the present time, DPS collects crime data from local law enforcement agencies, processes it, and then returns it to the agencies in the form of statistical summaries of the crime situation in each community. These summaries are a part of the Alaska Uniform Crime Reports (UCR). DPS, however, has no authority to require that participating agencies submit the raw data in a uniform manner. The purpose of SB 23 is to give DPS the authority to establish and require the use of standardized methods of collecting and recording law enforcement and crime statistics by local departments.

SB 23 was introduced as a result of a recommendation contained in a 1986 Legislative Audit report on the Division of Family and Youth Services. A copy of that audit is attached. The audit was performed because of the conflict between crime statistics, which showed that juvenile crime was falling, and police officials, who said that juvenile crime was actually rising. The auditors found that flaws in the way the state

Members  
Mike Szymanski, Vice-Chairman • Rick Halford • Drue Pearce • Pat Rodey

Out of Session  
3111 C Street, Anchorage, Alaska 99503 • (907) 561-7610

collected crime data might understate the actual rate of juvenile crime.

Accordingly, the auditors recommended that DPS be given the authority to require standardized methods of recording and collecting crime statistics by local departments statewide.

The slightly different collection and classification procedures used by the more than 20 police jurisdictions in Alaska that elect to participate in the UCR can distort the statewide crime statistics for all crime, not just juvenile crime.

Most of the local police agencies that currently elect to participate in the Department's system use an incident-by-incident method of reporting all criminal calls they answer. However, the State's two largest police departments, Anchorage and Fairbanks, as well as the State Troopers, employ the summary method of data collection.

As the name implies, the incident-by-incident format requires departments to keep a log of all police calls they answer, coded in accordance with uniform standards, and submit this information to DPS monthly. DPS keypunches this raw data and produces various informational reports that are returned to the reporting localities. DPS additionally retains this information and uses it to develop an annual statewide crime report.

In the summary method, the local departments do their own processing of the raw data using slightly different classification systems, and submit the data to DPS already summarized. DPS then "fits" this information together with the incident data collected from other local agencies for the annual statewide report. This results in a distortion of statewide crime statistics.

The state participates in the FBI's Uniform Crime Reports, and provides statewide data to the FBI. The FBI recognizes the problems caused by different reporting methods, and is recommending that the incident-by-incident method be used, using standard reporting forms developed by that agency. This would be one option for standardization which SB 23 would give to DPS.

Current law does not require local communities to participate in the UCR, and this bill does not change that. It merely gives DPS the authority to require that those agencies which do elect to participate provide data in a uniform manner.

As legislators, we make important public policy decisions based upon our perception of the level and nature of crime in

our state. Without accurate data, we cannot make intelligent decisions. For this reason, I would appreciate the committee's consideration of SB 23 at its earliest convenience.

## CITATION

Honoring - A Kid's Place, Anchorage Kid's Day  
by Senators Uehling, Pourchot, Pearce, Rodey,  
Szymanski, Faiks, Sturgulewski, Karttula,  
Halford and Kelly

Senator Halford moved and asked unanimous consent that the citation be adopted. Without objection, the citation was adopted and referred to the Secretary for transmittal.

## CONSIDERATION OF THE CALENDAR cont'd

## SENATE BILLS IN THIRD READING

## SB 23

SENATE BILL NO. 23 (An Act relating to the recording and collection of crime statistics) and the motion on the adoption of the Letter of Intent were before the Senate.

Senator Faiks moved and asked unanimous consent to withdraw the motion to adopt the Letter of Intent. Without objection, it was so ordered.

A new Letter of Intent was offered by Senators Pourchot and Faiks:

Letter of Intent  
for  
Senate Bill No. 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).

Senator Faiks moved and asked unanimous consent that the Letter of Intent be adopted as a Senate Letter of Intent. Without objection, the Senate Letter of Intent was adopted.

# Alaska State Legislature

Chairman  
(907) 465-4523



Jan Faiks  
Post Office Box V  
Juneau, Alaska 99811

## Senate Judiciary Committee

April 7, 1989

### MEMORANDUM

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

FROM: Senator Jan Faiks, *Jan Faiks* Chairman  
Senate Judiciary Committee

SUBJECT: SB 23 "An Act relating to the recording and  
collection of crime statistics."

Senate Bill 23 has been referred to the House Judiciary Committee for consideration. This bill proposes an amendment to AS 44.41.020, which defines the duties of the Department of Public Safety (DPS). This bill passed the Senate on February 9, 1989 by a vote of 16 - 3, along with the attached letter of intent.

At the present time, DPS collects crime data from local law enforcement agencies, processes it, and then returns it to the agencies in the form of statistical summaries of the crime situation in each community. These summaries are a part of the Alaska Uniform Crime Reports (UCR). DPS, however, has no authority to require that participating agencies submit the raw data in a uniform manner. The purpose of SB 23 is to give DPS the authority to establish and require the use of standardized methods of collecting and recording law enforcement and crime statistics by local departments.

SB 23 was introduced as a result of a recommendation contained in a 1986 Legislative Audit report on the Division of Family and Youth Services. A copy of that audit is attached. The audit was performed because of the conflict between crime statistics, which showed that juvenile crime was falling, and police officials, who said that juvenile crime was actually rising. The auditors found that flaws in the way the state

#### Members

Mike Szymanski, Vice-Chairman • Rick Halford • Drue Pearce • Pat Rodey

#### Out of Session

3111 C Street, Anchorage, Alaska 99503 • (907) 561-7610

collected crime data might understate the actual rate of juvenile crime.

Accordingly, the auditors recommended that DPS be given the authority to require standardized methods of recording and collecting crime statistics by local departments statewide.

The slightly different collection and classification procedures used by the more than 20 police jurisdictions in Alaska that elect to participate in the UCR can distort the statewide crime statistics for all crime, not just juvenile crime.

Most of the local police agencies that currently elect to participate in the Department's system use an incident-by-incident method of reporting all criminal calls they answer. However, the State's two largest police departments, Anchorage and Fairbanks, as well as the State Troopers, employ the summary method of data collection.

As the name implies, the incident-by-incident format requires departments to keep a log of all police calls they answer, coded in accordance with uniform standards, and submit this information to DPS monthly. DPS keypunches this raw data and produces various informational reports that are returned to the reporting localities. DPS additionally retains this information and uses it to develop an annual statewide crime report.

In the summary method, the local departments do their own processing of the raw data using slightly different classification systems, and submit the data to DPS already summarized. DPS then "fits" this information together with the incident data collected from other local agencies for the annual statewide report. This results in a distortion of statewide crime statistics.

The state participates in the FBI's Uniform Crime Reports, and provides statewide data to the FBI. The FBI recognizes the problems caused by different reporting methods, and is recommending that the incident-by-incident method be used, using standard reporting forms developed by that agency. This would be one option for standardization which SB 23 would give to DPS.

Current law does not require local communities to participate in the UCR, and this bill does not change that. It merely gives DPS the authority to require that those agencies which do elect to participate provide data in a uniform manner.

As legislators, we make important public policy decisions based upon our perception of the level and nature of crime in

our state. Without accurate data, we cannot make intelligent decisions. For this reason, I urge your favorable consideration of this legislation.

## CITATION

Honoring - A Kid's Place, Anchorage Kid's Day  
by Senators Ushling, Pourchot, Pearce, Rodey,  
Szymanski, Faiks, Sturgulewski, Kerttula,  
Halford and Kelly

Senator Halford moved and asked unanimous consent that the citation be adopted. Without objection, the citation was adopted and referred to the Secretary for transmittal.

## CONSIDERATION OF THE CALENDAR cont'd

## SENATE BILLS IN THIRD READING

SB 21

SENATE BILL NO. 23 (An Act relating to the recording and collection of crime statistics) and the motion on the adoption of the Letter of Intent were before the Senate.

Senator Faiks moved and asked unanimous consent to withdraw the motion to adopt the Letter of Intent. Without objection, it was so ordered.

A new Letter of Intent was offered by Senators Pourchot and Faiks:

Letter of Intent  
for  
Senate Bill No. 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).

Senator Faiks moved and asked unanimous consent that the Letter of Intent be adopted as a Senate Letter of Intent. Without objection, the Senate Letter of Intent was adopted.

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

DEPARTMENT OF  
PUBLIC SAFETY

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.

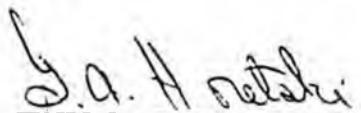
In response to the perceived need for several changes to UCR, the FBI recently completed a three-year study which recommended that all states adopt an incident-based reporting system. Adoption of the new standard would require the collection of additional data elements covering victim/offender relationships,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

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

Commissioner, Department of  
Health and Social Services

John Pugh

Deputy Commissioner, Department  
of Health and Social Services

Connie Sipe

TABLE OF CONTENTS

	<u>Page</u>
Purpose of the Report. . . . .	1
Organization and Function. . . . .	3
Auditor's Comments . . . . .	5
Findings and Recommendation. . . . .	7
Appendix:	
A - Excerpt from: Juvenile Justice in Alaska, March 19, 1985 prepared for Governor Bill Sheffield by the Division of Family and Youth Services . . . . .	13
Agency Response:	
Department of Health and Social Services . . . . .	19

# STATE OF ALASKA

AUDIT DIVISION  
POUCH W  
JUNEAU, ALASKA 99811-3300

THE LEGISLATURE  
BUDGET AND AUDIT COMMITTEE

March 27, 1986

Members of the Legislative Budget  
and Audit Committee:

In accordance with the provisions of Title 24 and a special  
request of the Legislative Budget and Audit Committee, the  
attached report is submitted for your review.

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



Gerald L. Wilkerson, CPA  
Legislative Auditor  
Division of Legislative Audit

## PURPOSE OF THE REPORT

In accordance with the provisions of Title 24 of the Alaska Statutes and a special request of the Legislative Budget and Audit Committee, we conducted a review of the statistics and analysis regarding the annual trends in juvenile crime in Alaska over the past five years (1979-1983). The review was conducted in order to reconcile the claims of law enforcement officials that juvenile crime is increasing with the statistical data that indicates the contrary.

## ORGANIZATION AND FUNCTION

Title 47 of the Alaska Statutes charges the Department of Health and Social Services with the responsibility of directly providing, or arranging through contract, a range of services designed to remedy or prevent neglect, abuse, and exploitation of children, youth, and adults. They are also responsible for providing care and protection for juveniles committed to their custody by the Superior Court.

The Division's activities are mainly conducted by three sections: Family Services, Adult Services, and Youth Services. Family Services is responsible for offering a wide range of services including, but not limited to: individual and family counseling services, child protection services including the investigation of reported incidents of abuse and neglect, arranging and supervising emergency shelter and foster home care, and licensing and monitoring private non-medical community care facilities. The section has five regional offices in Ketchikan, Anchorage, Fairbanks, Bethel, and Nome and also twenty-nine field offices.

The Adult Services section is responsible for providing services to adults exposed to abuse, neglect, or exploitation. These services would include providing support to individuals who need out-of-home care.

The Youth Services section is responsible for providing a range of diversion, intervention, and rehabilitative services to juveniles found delinquent by the courts. The section has three district offices in Juneau, Anchorage, and Fairbanks and three youth facilities; McLaughlin Youth Center, Fairbanks Youth Facility, and Nome Youth Facility.

## AUDITOR'S COMMENTS

Statistics cited by the Department of Health and Social Services, Division of Family and Youth Services (DFYS) do indicate that the rate of juvenile crime has declined during the past five years (1979-83). As presented in the following Findings and Recommendation section, we found that there may be significant factors in how the statistics are collected and reported that could understate the actual level of juvenile crime.

The juvenile crime rate is measured by the number of arrests made and reported to the Department of Public Safety (DPS), compared to the annual population statistics developed by the Department of Labor. The information used by DFYS in their analysis is supported by the available statistics, and in our opinion, DFYS draws logical public policy conclusions from the information.

It should be noted that the factors we discuss in the Findings and Recommendation section that may lead to understating juvenile arrests should not have a direct impact on serious or violent crimes. Juveniles are consistently arrested for such crimes and we could expect them to be counted consistently on a year-to-year basis. Accordingly, although there may be some merit to those who dispute the crime rate statistical evidence, we believe that their argument is less convincing in the area of serious or violent crimes. The statistical evidence of decline in the rate of serious juvenile crime is more convincing and less open to question.

## FINDINGS AND RECOMMENDATION

### Recommendation No. 1

The Legislature should consider legislation that would give the Department of Public Safety authority to require standardized recording and collection of statistics by local departments statewide.

The juvenile crime rate, as cited by Division of Family and Youth Services (DFYS), is measured by the number of arrests made and reported to the Department of Public Safety (DPS), compared to the annual population statistics developed by the Department of Labor (see Appendix A for the narrative and graphs used in DFYS's analysis). Arrest statistics have traditionally been used by social scientists and policy makers as a measure of criminal activity.

DPS gathers information and reports on arrest statistics annually. DPS develops their statistics based on reports from over 20 police jurisdictions throughout the State. These various jurisdictions report to DPS in two different ways:

1. On an incident-by-incident format.
2. In a summary format.

Most of the local police departments that elect to participate in the DPS system use the incident format. As the name implies, these departments keep a log of all police calls they answer, coded in accordance with uniform standards, and submit this information to DPS monthly. DPS keypunches this raw data and produces various informational reports that are returned to the reporting police localities. Additionally, DPS maintains the information on their computer files and uses it to develop an annual statewide crime report.

The State's two largest police departments, Anchorage and Fairbanks, along with the Alaska State Troopers submit their arrest information in a summary format. These agencies do their own processing of incident data, using slightly different definitions or classifications systems, and submit the data to DPS already summarized. DPS then "fits" this information together with the incident format data and prepares their annual publication Crime In Alaska.

Due to the size of the jurisdiction, procedures and methodologies used in Anchorage, in the collection and classification of juvenile arrests, could distort the statewide crime statistics.

Given the impact on public policy issues of these possible inconsistencies in the classification and reporting of arrest data between local jurisdictions in the State, the Legislature may wish to consider legislation that would give DPS authority to establish a uniform system of recording and classifying collection of arrest data information.

# **CORRECTION**

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

## FINDINGS AND RECOMMENDATION

### Recommendation No. 1

The Legislature should consider legislation that would give the Department of Public Safety authority to require standardized recording and collection of statistics by local departments statewide.

The juvenile crime rate, as cited by Division of Family and Youth Services (DFYS), is measured by the number of arrests made and reported to the Department of Public Safety (DPS), compared to the annual population statistics developed by the Department of Labor (see Appendix A for the narrative and graphs used in DFYS's analysis). Arrest statistics have traditionally been used by social scientists and policy makers as a measure of criminal activity.

DPS gathers information and reports on arrest statistics annually. DPS develops their statistics based on reports from over 20 police jurisdictions throughout the State. These various jurisdictions report to DPS in two different ways:

1. On an incident-by-incident format.
2. In a summary format.

Most of the local police departments that elect to participate in the DPS system use the incident format. As the name implies, these departments keep a log of all police calls they answer, coded in accordance with uniform standards, and submit this information to DPS monthly. DPS keypunches this raw data and produces various informational reports that are returned to the reporting police localities. Additionally, DPS maintains the information on their computer files and uses it to develop an annual statewide crime report.

The State's two largest police departments, Anchorage and Fairbanks, along with the Alaska State Troopers submit their arrest information in a summary format. These agencies do their own processing of incident data, using slightly different definitions or classifications systems, and submit the data to DPS already summarized. DPS then "fits" this information together with the incident format data and prepares their annual publication Crime In Alaska.

Due to the size of the jurisdiction, procedures and methodologies used in Anchorage, in the collection and classification of juvenile arrests, could distort the statewide crime statistics.

We contacted the Anchorage Police Department (APD) and interviewed two officers regarding the department's policies and recordkeeping procedures. Besides minor differences in how crimes are logged and counted, we also identified two other more policy type reasons why arrest statistics, as recorded and compiled by APD, may not necessarily reflect the level of juvenile "crime":

1. Juveniles are dealt with more informally, without arrest. With the exception of the more serious crimes, juveniles are generally not formally arrested by APD. Often, unless a juvenile is spotted in the act of committing a crime, APD does not usually actively pursue or arrest juveniles.

This attitude, according to APD personnel we spoke with, is brought on in large part by the way DFYS handles juveniles brought to them at McLaughlin Youth Center (MYC). Due to the crowded conditions at MYC, unless a juvenile was arrested for a major offense, they are either placed in a non-secured shelter on a temporary basis, or are placed with relatives or other adult. This perceived "revolving door" at MYC creates an indifferent attitude on the part of many officers, resulting in fewer juvenile arrests.

2. Runaways and Status Offenders. A lot of juveniles that cause problems, perhaps harass the public and are visible on the streets, are runaways. Their status as runaways is really not a violation of law, but they often cause a lot of problems. Status offenses are generally not counted as arrests in Anchorage, but usually are by other jurisdictions that report on an incident-by-incident basis. Status offenses are such things as minor consuming, curfew violation, etc. - petty crimes that are offenses only because of an individual's age or "status."

These factors represent some possible explanations why law enforcement officials in the State dispute DFYS's assertion that the juvenile crime rate is declining. Certainly, the statistics, as reported and analyzed by DFYS, support the agency's claim.

Currently DPS acts as the primary collector and reporter of arrest data for Alaska, for the Federal Bureau of Investigation under the terms, definitions, procedures, and requirements of the Uniform Criminal Reporting code. DPS inherited this function from the now defunct Criminal Justice Planning Agency and does not have statutory authority to require how arrest information will be classified and reported.

Given the impact on public policy issues of these possible inconsistencies in the classification and reporting of arrest data between local jurisdictions in the State, the Legislature may wish to consider legislation that would give DPS authority to establish a uniform system of recording and classifying collection of arrest data information.

APPENDIX

APPENDIX A

JUVENILE JUSTICE IN ALASKA  
a report to  
THE HONORABLE BILL SHEFFIELD  
GOVERNOR  
STATE OF ALASKA  
from the  
DIVISION OF FAMILY & YOUTH SERVICES  
March 19, 1985

John R. Pugh  
Commissioner  
Department of Health & Social Services

Michael L. Price  
Director  
Division of Family & Youth Services

## DESCRIPTIVE ANALYSIS OF JUVENILE CRIME IN ALASKA

Certain misperceptions about juveniles and crime are widely accepted by the public and many policy makers and have influenced public policy relating to juvenile justice. These misperceptions are enforced periodically by sensational news reports and the entertainment media. It is important to consider these persistent perceptions in light of available facts if significant policy decisions are to be made wisely.

### Incidence of Juvenile Crime

The most widely accepted belief about juvenile crime is that it is widespread and increasing - that there is a juvenile crime wave far out of proportion with the number of juveniles and beyond the level of adult crime. Available facts, however, do not support this belief.

Conservative estimates of population growth indicate that the population of youth in Alaska (those 0 - 18 years of age) increased by approximately 15% from 1979 to 1983. As Chart 1 indicates this represents an increase of 19,000 juveniles from 134,000 to 153,000. The adult population is believed to have grown at about the same rate and to be slightly more than twice the size as the juvenile population - approximately 320,000 persons.

Despite the significant population increase juvenile crime as measured by arrests declined slightly. Chart 2 shows that juvenile arrests have remained relatively stable between 1979 and 1983, declining slightly - about 6%. In contrast adult arrests have shown a marked increase after 1980 and an overall increase during the five year period of about 13%. Juveniles arrests have declined despite population growth while increases in arrests of adults have essentially paralleled population growth.

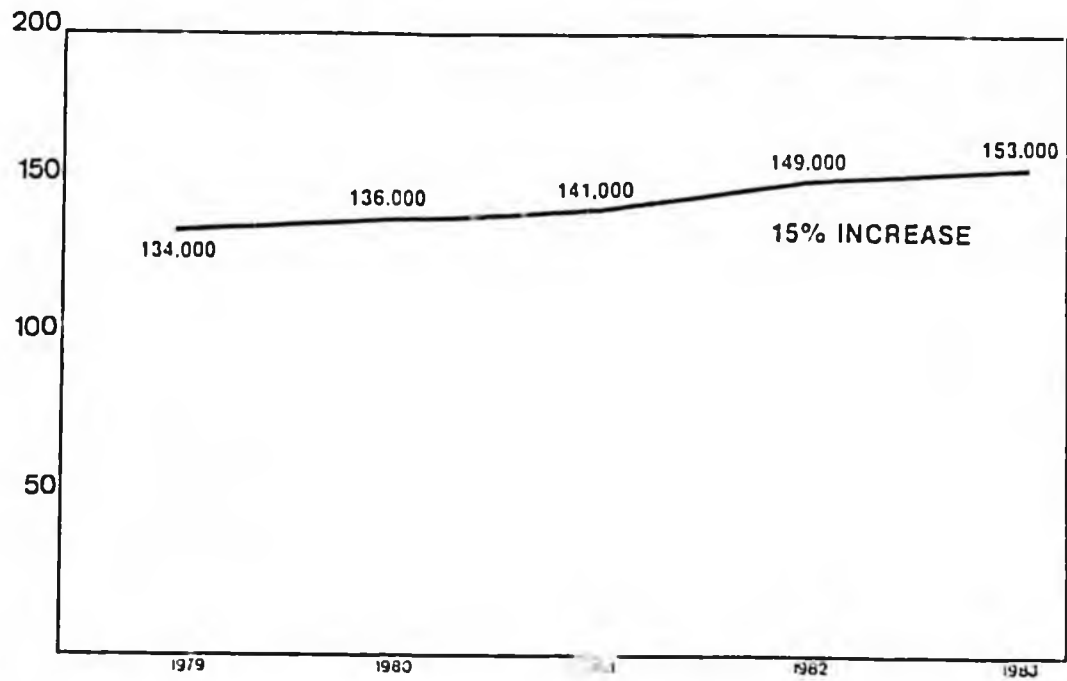
Chart 3 illustrates another important measure of crime, the rate of arrest. The rate of juvenile arrests (arrests per 1000 persons) was relatively stable until 1982 when it declined sharply. This decline continued in 1983 resulting in an overall decline of 24% during the period 1979 - 1983. This decline follows a national trend of decreasing juvenile arrest rates. However, Alaska's juvenile arrest rate, 32.24 per 1000, is less than one half the most recently calculated national rate. (1) In contrast Alaska's adult arrest rate does not show a similar trend although the 1983 level was slightly (8%) below the 1979 high of 46.56 arrests per 1000 persons.

In summary, juvenile arrests in Alaska are declining despite significant population increases and the rate of juvenile arrest has declined substantially. Alaska's juvenile arrest rate is far below the national juvenile rate and 25% lower than Alaska's adult arrest rate.

(1) Report to the Nation on Crime and Justice: The Data, U.S. Department of Justice, Bureau of Justice Statistics, 1983.

APPENDIX A

## ALASKA YOUTH POPULATION (0 to 18 Years)

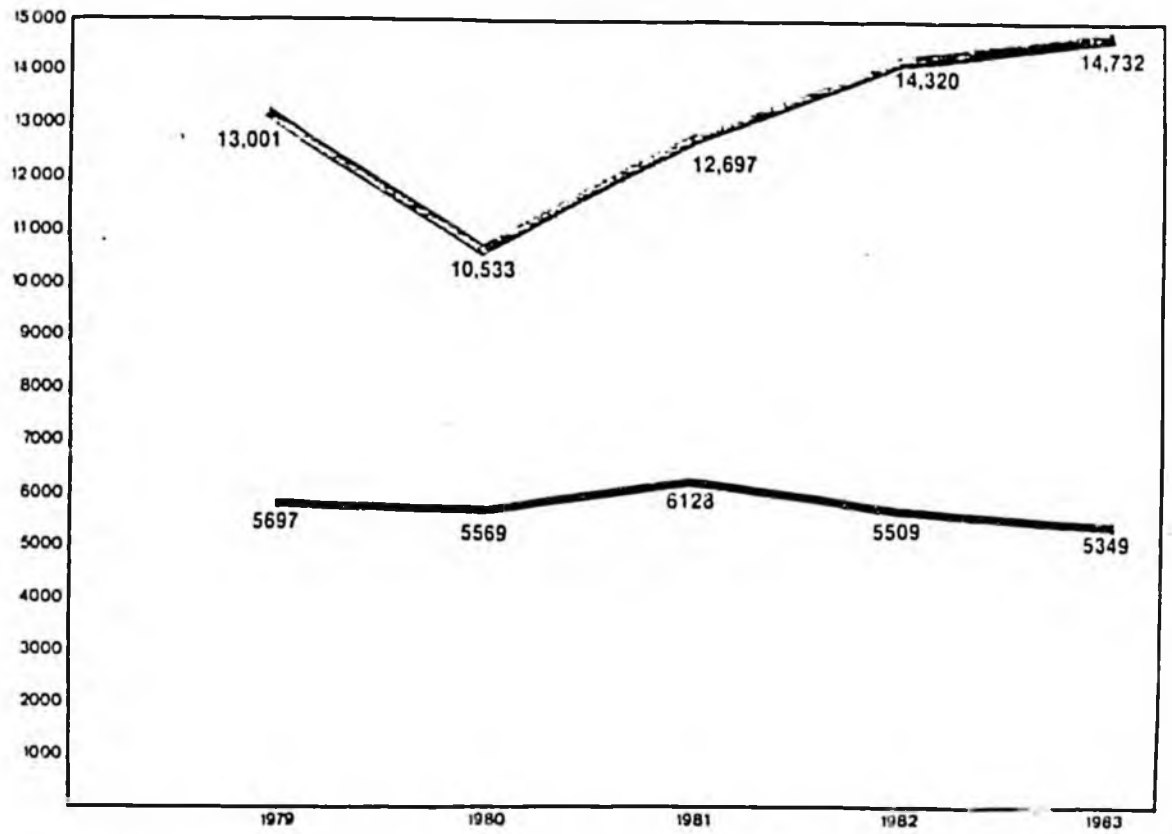


Source Data: Alaska Population Overview - 1981  
Alaska Department of Labor  
U.S. Bureau of Census 1980

CHART 1

APPENDIX A

# ARRESTS IN ALASKA



Source: Crime in Alaska 1979-1983, Department of Law  
Department of Public Safety

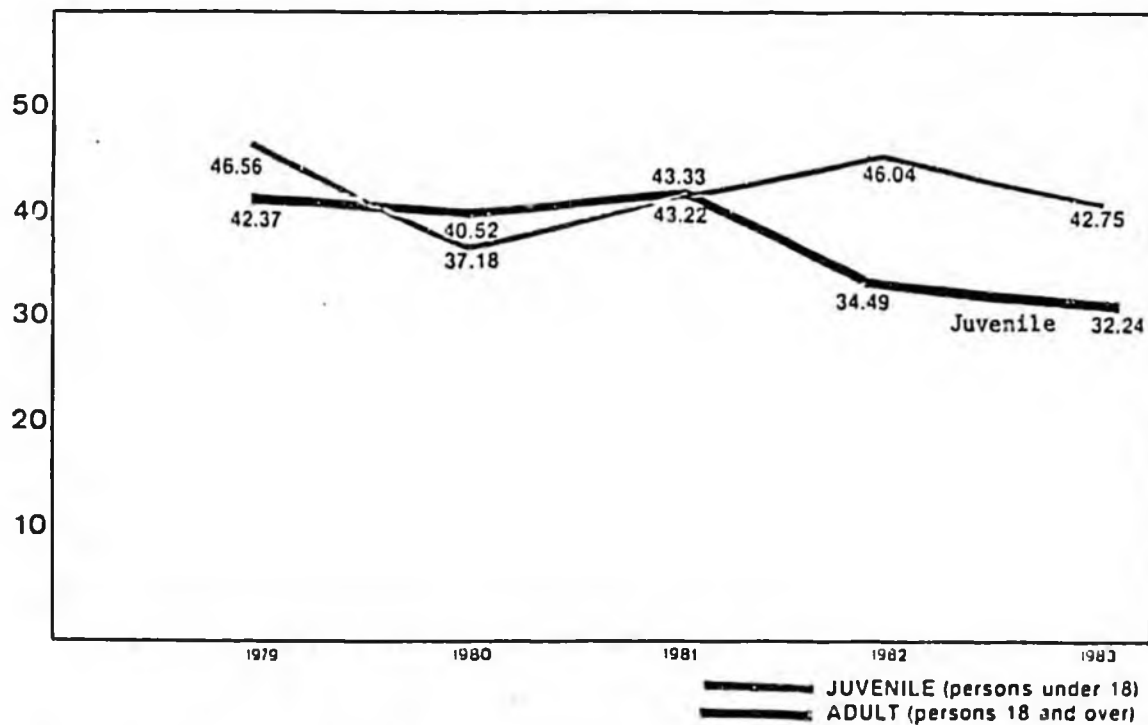
— JUVENILE (persons under 18)  
— ADULT (persons 18 and over)

CHART 2

APPENDIX A

# ALASKA ARREST RATES

ARRESTS  
PER 1000  
PERSONS



Data Sources: Arrest data: *Crime in Alaska - 1983* Alaska Department of Public Safety  
Alaska Population Overview - 1983 Alaska Department of Labor

CHART 3

**DEPT. OF HEALTH AND SOCIAL SERVICES**

***D. OFFICE OF THE COMMISSIONER***

POUCH H 01  
JUNEAU, ALASKA 99811  
PHONE: 465-3030

May 9, 1986

Mr. Gerald L. Wilkerson  
Legislative Auditor  
Division of Legislative Audit  
Pouch W  
Juneau, AK 99811

MAY - 9 1986

Dear Mr. Wilkerson:

Concerning the preliminary audit report entitled "A Report on the Department of Health and Social Services, Division of Family and Youth Services, Juvenile Crimes Statistics, March 25th, 1986", our perspective does not differ greatly from that expressed by auditors. We agree with auditors that the conclusions we have drawn from available information on juvenile crime in Alaska are logical and appropriate. We believe also that our report on juvenile justice presented the best information from the most authoritative sources available. Similarly, we believe that the methodologies employed in our analysis of the information, though limited in level of sophistication by time and staff resources, were scientifically correct and defensible.

As the report pointed out there are minor differences in the collection and reporting techniques employed by Alaskan police agencies in compiling crime and arrest data. We believe, however, that the effect of these differences on the validity of the data is relatively insignificant. The FBI Uniform Crime Reporting System, used by the Department of Public Safety in compiling information for the report Crime in Alaska, was designed for use nationwide and to accommodate such differences among police agencies and jurisdictions. In any event, the effect of these differences would apply equally to both adult and juvenile crime data and would not affect the relative levels of juvenile and adult crime or trends reflected by the data.

Similarly, we believe the validity of the data used in our report clearly withstands anecdotal criticism of the two Anchorage police officers noted in the audit report. Though we recognize the value of practitioner experience in testing or confirming policies or practices in any field, we believe the limitations of individual experience and anecdote must be weighted carefully against other information when the sample of practitioners is small. In this instance we believe the assertions of the two officers are more representative of their personal philosophies, attitudes, and dissatisfaction with Alaska law regarding detention of juveniles than of policy or practice of the Anchorage Police Department or police agencies in general.

Though the audit report does not discuss official APD policy concerning response to reported juvenile crime or arrest of juvenile suspects, we are certain that APD policy neither endorses nor permits the practice of ignoring reported or witnessed crime simply because the alleged

perpetrator is a juvenile. Nor do we believe APD policy encourages officers to arrest juveniles only when the offense involved is of the most serious nature. Even if these approaches were sanctioned by policy APD's statistical reports clearly show they are not practiced.

The assertion that juveniles are not usually arrested in Anchorage except for serious crimes is convincingly disproven by APD's own arrest reports. These show that arrests of juveniles for less serious offenses (such as thefts, liquor law violations, vandalism, and status offenses) comprise the vast majority of juvenile arrests in Anchorage. Arrests for violent crimes accounted for an average of only 1.6% of juvenile arrests in Anchorage from 1977 through 1984. In fact, the number of curfew arrests alone averaged more than three times the number of violent crime arrests from 1977 through 1983.

In practice, then, Anchorage police (and police statewide) do routinely arrest juveniles for petty offenses and report status offense arrests. And, though police certainly exercise discretion in making arrest decisions, this occurs with adults as well as juveniles and informal police action affects arrest data for both groups. In fact, contrary to conventional wisdom, national studies indicate that police may be less inclined to deal informally with juveniles than with adults who have committed the same or similar offenses. Other studies show that juveniles are probably more likely to be apprehended than adults because of the types of offenses they most commonly commit and their generally lower level of experience or sophistication in criminal activity. These studies seem to indicate that the upper limits of juvenile crime may be more accurately reflected by arrest data than is true for adult crime.

We support the recommendation that consideration be given to empowering the Department of Public Safety to require uniform collection and reporting of crime data by all Alaska police agencies. Uniformity in data collection and reporting would be beneficial to the planning efforts of all criminal justice agencies and to policy makers by ensuring comparability, reliability and continuity in data. Standardization in the measurement and reporting of crime and the results of police activity would seem to be complementary to establishment of standards for the qualification and training of police personnel (recognized as an important need by the legislature in creation of the Alaska Police Standards Council.)

We could not, of course, comment definitively on the costs involved or the problems which may be encountered by individual police agencies in implementing a standardized reporting system. However, since most of Alaska's police agencies already participate in the FBI's Uniform Crime Reporting system, it seems likely that implementation of a mandatory system would not be overly burdensome.

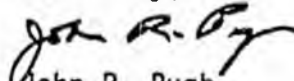
May 9, 1986

In summary, we believe that, though there are minor differences in the collection and reporting techniques among police agencies, these are insignificant in their effect on the validity of reported arrest data.

Further, we believe that the attitudes expressed in interviews with two Anchorage police officers, though they may be strongly held, are not reflective of Anchorage Police Department policy or the actual practice of the majority of Anchorage police officers as it relates to the arrest of juvenile offenders.

Most importantly, we agree with auditors that despite whatever limitations may exist in arrest data, it represents one of the best available measures of the level of criminal activity and has almost universal acceptance among social scientists and policy makers as a primary source for use in making significant public policy decisions. We also agree with auditors that empowering the Department of Public Safety to establish uniform standards for the collection and reporting of arrest data should be considered by the legislature. With standardization, reliability and validity could be increased and important public policy decisions based on arrest data could be more confidently made.

Sincerely,

  
John R. Pugh  
Commissioner

# STATE OF ALASKA



## Executive Proclamation by Steve Cowper, Governor

Confining children in adult jails is not in the best interest of Alaska's children or the public. In 1986 as many as 427 children were detained in adult jails and lockups throughout the state. Alaska statutes prohibit confinement of children in adult jails and lockups unless they are assigned to separate quarters so that they not view or communicate with adult prisoners.

The practice of jailing children with adults often leads to depression or suicide attempts. The risk of those children experiencing emotional, physical and sexual abuse is also increased.

The federal Juvenile Justice Delinquency Prevention Act mandates that states improve their juvenile justice systems by:

1. eliminating the practice of detaining children charged with status offenses;
2. separating children from adults by sight and sound when both are detained in the same jail, lockup, or other correctional facility;
3. identifying and monitoring all facilities which detain children;
4. eliminating the practice of detaining children in any adult jail, lockup, or correctional facility.

NOW, THEREFORE, I, Steve Cowper, Governor of the State of Alaska, do hereby proclaim my support for the Department of Health and Social Services to work with the Departments of Corrections and Public Safety, the public, and municipalities to develop regulations which reduce detention of children in adult facilities, ensure safe and appropriate conditions for children who are detained, and provide for collection and maintenance of accurate records on each youth admitted, detained and released.

DATED: April 14, 1989

Done by —

A handwritten signature in cursive script, reading "Steve Cowper".

Steve Cowper, Governor,  
who has also authorized  
the seal of the State of  
Alaska to be affixed to  
this proclamation.



Originals sponsors: Faiks and Sturgulewski

?  
Empirical  
exposural  
etc

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR SENATE BILL NO. 23 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to 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.

14 \* Sec. 2. AS 44.41 is amended by adding a new section to read:

15 Sec. 44.41.027. CRIME STATISTICS INVOLVING JUVENILES. (a) In  
16 order to collect and record statistics on juvenile offenses and of-  
17 fenders, the Department of Public Safety shall establish and require  
18 state and local law enforcement agencies to use a standardized form to  
19 keep a record of each juvenile offender admitted to a jail or juvenile  
20 detention facility. The record shall include the name of the juvenile  
21 admitted, the juvenile's date of birth, the reason for admission, the  
22 time admitted, the time released, the sex of the juvenile admitted,  
23 the ethnic origin of the juvenile admitted, and other information  
24 required by federal law or state statute or regulation. The record  
25 shall be prepared at the time of admission from information provided  
26 by the juvenile. If the information cannot be obtained from the  
27 juvenile, the person responsible for preparation of the information  
shall obtain it from a relative of the juvenile or from another source  
who has the information. The name and address of the person providing

1 the information must be made part of the record.

2 (b) Information and records obtained under this subsection are  
3 confidential and are not public records, and may be disclosed under  
4 regulations established by the department only for the purpose of  
5 compiling statistics and only to a person doing research or main-  
6 taining statistics who has assured the anonymity of the juvenile  
7 offenders.

*Andy see  
p 2*

Originals sponsors: Faiks and Sturgulewski

*CS Incorporating  
Legislative Amend*

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR SENATE BILL NO. 23 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to 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.

14 \* Sec. 2. AS 44.41 is amended by adding a new section to read:

15 Sec. 44.41.027. CRIME STATISTICS INVOLVING JUVENILES. (a) In  
16 order to collect and record statistics on juvenile offenses and of-  
17 fenders, the Department of Public Safety shall establish and require  
18 state and local law enforcement agencies to use a standardized form to  
19 keep a record of each juvenile offender admitted to a jail or juvenile  
20 detention facility. The record shall include the name of the juvenile  
21 admitted, the juvenile's date of birth, the reason for admission, the  
22 time admitted, the time released, the sex of the juvenile admitted,  
23 the ethnic origin of the juvenile admitted, and other information  
24 required by federal law or state statute or regulation. The record  
25 shall be prepared at the time of admission from information provided  
26 by the juvenile. If the information cannot be obtained from the  
27 juvenile, the person responsible for preparation of the information  
shall obtain it from a relative of the juvenile or from another source  
who has the information. The name and address of the person providing

1 the information must be made part of the record.

2 (b) Information and records obtained under this subsection<sup>PCD</sup> are  
3 confidential and are not public records, <sup>PC(2)</sup> and may be disclosed <sup>only</sup> under  
4 regulations established by the department, <sup>PC(2) may be disclosed</sup> only for the purpose of  
5 compiling statistics <sup>PC(4) may be disclosed</sup> and only to a person doing research or main-  
6 taining statistics, <sup>PC(2) and (4) may be disclosed only in a manner assuring</sup> who ~~has~~ assured the anonymity of <sup>the</sup> juvenile  
7 offenders.

S B

2 5

# HOUSE COMMITTEE REPORT

(7)

Date Referred: March 6, 1989

FURTHER REFERRALS: JUDICIARY  
FINANCE

4/29

Date of Committee Action: 4-28-89

The LABOR & COMMERCE Committee considered:

CSSB 25(L&C)

CS FOR SENATE BILL NO. 25 (L&C)

[COMMON INTEREST COMMUNITY MANAGERS]

"An Act relating to common interest community managers."

### RECOMMENDATIONS:

- [ ] be replaced with \_\_\_\_\_ [ ] the same title
- [ ] be replaced with \_\_\_\_\_ [ ] a new title
- [ ] have attached amendment(s)
- [  ] do pass
- [ ] do not pass
- [ ] no recommendation
- [ ] individual recommendations
- [ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(S):  
(Dept)

APPROVES PREVIOUS:

(Date, Dept)

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

- [  ] Senate fiscal note(s) CEO 2/3/89
- [ ] zero fiscal note(s) \_\_\_\_\_
- [ ] zero fn/analysis \_\_\_\_\_

SIGNING DO PASS:

SIGNING:

(Check approp. column)

David Donley DONLEY

John C. Boucher BOUCHER

Greg A. Lemaw LEMAN

Cliff Finkelstein FINKELSTEIN

Max Grederberg GREDERBERG

Ernesta Kolis KOLIS

Do Not Pass	No Rec	Amend

David Donley

Chairman's signature

# Alaska State Legislature

Chairman  
(907) 465-4523



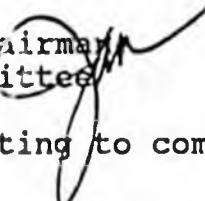
Jan Faiks  
Post Office Box V  
Juneau, Alaska 99811

## Senate Judiciary Committee

April 29, 1989

### MEMORANDUM

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

FROM: Senator Jan Faiks, Chairman  
Senate Judiciary Committee 

SUBJECT: SB 25 "An Act relating to common interest community managers."

CSSB 25 (L&C) has been referred to the House Judiciary Committee for consideration. This bill adds a new chapter to Title 8 of the Alaska Statutes, requiring the licensing of common interest community managers.

Common interest communities are regulated in AS 34.07 (horizontal property regimes) and 34.08 (common interest communities). These communities include properties in which the owners of individual units in a building or other real property jointly own the common areas. The most common example is the condominium.

Common interest communities frequently employ a professional manager to handle the affairs of the community association, and various businesses bid to obtain these contracts. As you know, AS 34.07 and 34.08 are complex, and impose many legal requirements on the operation of common interest communities. Unfortunately, at the present time only a small percentage of persons working as professional managers are really qualified to do so.

Moreover, managers frequently have sole-signature authority over the reserve accounts of community associations. In Alaska, these accounts can total several hundred thousand dollars. There have already been cases of managers embezzling significant sums from local community associations.

#### Members

Mike Szymanski, Vice-Chairman • Rick Halford • Drue Pearce • Pat Rodey

#### Out of Session

3111 C Street, Anchorage, Alaska 99503 • (907) 561-7610

To make certain that those who act as professional managers possess the minimum necessary level of knowledge, and to ensure that certain standards of integrity are maintained, I believe that the professional managers of community associations should be licensed by the state. CSSB 25 (L&C) accomplishes these goals.

Following are some commonly asked questions about this legislation, and the answers to them:

1. What does a common interest community manager do?

The manager is responsible for the day-to-day operation of the association. This includes collecting dues, dealing with mortgagors, arranging for maintenance and repair on the common areas, perfecting liens, and keeping the books.

2. Is an independent board created to regulate managers?

No, the Department of Commerce and Economic Development is given this authority.

3. Do all persons who manage community associations have to be licensed?

No, only persons who contract with community associations to act as professional managers. Smaller associations which are managed in-house by officers or board members of the association are unaffected by this bill, since those persons are exempted from licensure.

4. How many people does this bill effect?

At the present time, it is estimated that approximately 50 persons are acting as the professional managers of community associations in Alaska.

5. Are persons currently acting as managers required to take classes in the law of common interest communities before receiving their initial license?

No. Since no classes are yet approved by the department, it is impossible to require this. Education is only required for renewal of the the initial license. The department has the discretion, however, to require first-time licensees to take classes in the future, when this becomes practical.

Specifically, the bill makes the following changes and additions to current law:

Section 1        Makes AS 08.01, relating to centralized licensing, applicable to common interest community managers.

Section 2 Gives the Department of Commerce and Economic Development the authority to perform all necessary administrative duties with respect to the licensing of managers.

Section 3 Adds a new chapter to AS 08:

Sec. 08.15.010 (a) An individual, 18 years of age or older, shall be licensed by the department on payment of a fee, on proof that the individual has not engaged in conduct that is grounds for imposing disciplinary sanctions under AS 08.15.040, and on meeting any additional requirements established by the department.

(b) An individual licensed under (a) may renew the license if the person takes 12 hours per year of approved classes in the law of common interest communities or in business or accounting.

Sec. 08.15.020 Exempts certain persons from licensing requirements, including (a) officers or employees of AHFC or of a bank or other financial institution; (b) an attorney licensed in the state; (c) an officer or member of the board of a common interest community who is managing that community; or (d) an employee of a common interest community other than the manager.

Sec. 08.15.030 Authorizes the department to set licensing fees.

Sec. 08.15.040 Specifies grounds for imposing disciplinary sanctions on a manager.

Sec. 08.15.050 Specifies the types of sanctions which may be imposed for committing an act under .040.

Sec. 08.15.060 Prohibits persons who are not licensed or exempted from licensure from managing a common interest community.

Sec. 08.15.070 Makes violations of 08.15.060 a class B misdemeanor.

Sec. 08.15.080 Authorizes the department to adopt regulations to implement this chapter.

Sec. 08.15.100 Defines "department" as the Department of Commerce and Economic Development.

Section 4 Makes a technical change to AS 34.08.490(b),.

Please contact my office if you have any questions or comments.

Thank you.

community beyond the number stated in the original declaration under AS 34.08.130(a)(4). (§ 1 ch 95 SLA 1985)

### Article 3. Management of the Common Interest Community.

Section	Section
310. Organization of unit owners' association	400. Quorums
320. Powers of unit owners' association	410. Voting and proxies
330. Executive board members and officers	420. Tort and contract liability
340. Transfer of association control	430. Conveyance or encumbrance of common elements
350. Transfer of special declarant rights	440. Insurance
360. Termination of contracts and leases of declarant	450. Surplus funds
370. Bylaws	460. Assessments for common expenses
380. Upkeep of common interest community	470. Lien for assessments
390. Meetings	480. Other liens
	490. Association records
	500. Association as trustee

---

Effective date of article. — Section 4, ch. 95, SLA 1985 provides: "This Act takes effect January 1, 1986."

---

**Sec. 34.08.310. Organization of unit owners' association.** An association of unit owners must be organized no later than the date on which the first unit in the common interest community is conveyed. The membership of the association at all times consists exclusively of all unit owners or, following termination of the common interest community, of all former unit owners entitled to distributions of proceeds under AS 34.08.260 or their heirs, successors, or assigns. The association must be organized as a profit or nonprofit corporation, trust, or partnership. (§ 1 ch 95 SLA 1985)

**Sec. 34.08.320. Powers of unit owners' association.** (a) Except as provided in (b) of this section and subject to the provisions of the declaration, the association may:

- (1) adopt and amend bylaws and rules and regulations;
- (2) adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners;
- (3) hire and discharge managing agents and other employees, agents, and independent contractors;
- (4) institute, defend, or intervene in litigation or administrative proceedings or seek injunctive relief for violations of its declaration, bylaws or rules in its own name on behalf of itself or two or more unit owners on matters affecting the common interest community;

- (5) make contracts and incur liabilities;
  - (6) regulate the use, maintenance, repair, replacement, and modification of common elements;
  - (7) cause additional improvements to be made as a part of the common elements;
  - (8) acquire, hold, encumber, and convey in its own name any right, title, or interest to real estate or personal property, except that
    - (A) common elements in a condominium or planned community may be conveyed or subjected to a security interest only under AS 34.08.430; and
    - (B) part of a cooperative may be conveyed or all or part of a cooperative may be subjected to a security interest only under AS 34.08.430;
  - (9) grant easements, leases, licenses, and concessions through or over the common elements;
  - (10) impose and receive a payment, fee, or charge for the use, rental, or operation of the common elements, other than limited common elements described in AS 34.08.100(2) and (4), and for services provided to unit owners;
  - (11) impose a reasonable charge for late payment of assessments and, after notice and an opportunity to be heard, levy a reasonable fine for a violation of the declaration, bylaws, rules, and regulations of the association;
  - (12) impose a reasonable charge for the preparation and recording of an amendment to the declaration, resale certificate required by AS 34.08.590, or a statement of unpaid assessments;
  - (13) provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance;
  - (14) assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration expressly permits the assignment;
  - (15) exercise any other powers conferred by the declaration or bylaws;
  - (16) exercise any other power that may be exercised in the state by a legal entity of the same type as the association; and
  - (17) exercise any other power necessary and proper for the governance and operation of the association.
- (b) The declaration may not impose limitations on the power of the association to deal with the declarant that are more restrictive than the limitations imposed on the power of the association to deal with other persons. (S 1 ch 95 SLA 1985)

Sec. 34.08.330. Executive board members and officers. (a) Except as provided in the declaration, the bylaws, (b) of this section, or other provisions of this chapter, the executive board may act in all instances on behalf of the association. In the performance of their duties, the officers and members of the executive board are required to exercise the care required of fiduciaries of the unit owners.

(b) The executive board may not act on behalf of the association to amend the declaration, to terminate the common interest community, or to elect members of the executive board or determine the qualifications, powers and duties, or terms of office of executive board members, but the executive board may fill vacancies in its membership for an unexpired portion of a term.

(c) Within 30 days after adoption of a proposed budget for the common interest community, the executive board shall provide a summary of the budget to each unit owner, and shall set a date for a meeting of the unit owners to consider ratification of the budget not less than 14 nor more than 30 days after mailing of the summary. Unless at that meeting a majority of all unit owners or any larger vote specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the unit owners continues until the unit owners ratify a budget proposed by the executive board.

(d) Subject to (e) of this section, the declaration may provide for a period of declarant control of the association, during which a declarant or persons designated by the declarant may appoint and remove the officers and members of the executive board. Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of: (1) 60 days after conveyance of 75 percent of the units that may be created to unit owners other than a declarant; (2) two years after all declarants have ceased to offer units for sale in the ordinary course of business; or (3) two years after any right to add new units was last exercised. A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of the periods established in this subsection, but in that event the declarant may require, for the duration of the period of declarant control, that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

(e) Not later than 60 days after conveyance of 25 percent of the units that may be created to unit owners other than a declarant, at least one member and not less than 25 percent of the members of the executive board must be elected by unit owners other than the declarant. Not later than 60 days after conveyance of 50 percent of the units that may be created to unit owners other than a declarant, not less than 33 $\frac{1}{3}$  percent of the members of the executive board must be elected by unit owners other than the declarant.

(f) Except as otherwise provided in AS 34.08.280(e), not later than the termination of any period of declarant control, the unit owners shall elect an executive board. The executive board consists of at least three members, except that if there are fewer than 12 units in the common interest community, the declaration may provide for an executive board with one or two members. At least a majority of the members of the executive board must be unit owners. The executive board shall elect the officers. The executive board members and officers take office upon election.

(g) Notwithstanding any provision of the declaration or bylaws to the contrary, following notice under AS 34.08.390, the unit owners, by a two-thirds vote of all persons present and entitled to vote at a meeting of the unit owners at which a quorum is present, may remove a member of the executive board with or without cause, other than a member appointed by the declarant. (§ 1 ch 95 SLA 1985)

**Sec. 34.08.340. Transfer of association control.** (a) Before or not more than 60 days after the termination of declarant control, the declarant shall relinquish control of the common interest community and the unit owners shall accept control. At the same time, the declarant shall deliver to the common interest community all property of the unit owners and of the common interest community held or controlled by the declarant including, but not limited to

(1) the original or a photocopy of the recorded declaration and each amendment to the declaration; if a photocopy is provided, it shall be certified by affidavit of the declarant, or an officer or agent of the declarant, as being a complete copy of the actual recorded declaration;

(2) a certified copy of the common interest community articles of incorporation, trust or partnership agreement;

(3) a copy of the bylaws;

(4) the minute books, including all minutes, and other books and records of the common interest community;

(5) any rules and regulations that have been adopted;

(6) resignations of officers and members of the executive board who are required to resign because the declarant is required to relinquish control of the common interest community;

(7) the financial records, including financial statements of the common interest community, and source documents since the incorporation of the common interest community through the date of turnover;

(8) common interest community funds or control of the funds of the common interest community;

(9) all tangible personal property that is property of the common interest community, represented by the declarant to be the property of the association or ostensibly the property of the association and an inventory of the property;

(10) a copy of the plans and specifications utilized in the construction or remodeling of improvements and the supplying of equipment to the common interest community and in the construction and installation of all mechanical components serving the improvements and the site, with a certificate in affidavit form of the declarant or an architect or engineer authorized to practice in the state that the plans and specifications represent, to the best of their knowledge and belief, the actual plans and specifications utilized in the construction and improvement of the common interest community property and for the construction and installation of the mechanical components serving the improvements;

(11) insurance policies;

(12) copies of any certificates of occupancy that may have been issued for the common interest community property;

(13) any other permits issued by governmental bodies applicable to the common interest community property in force or issued within one year before the date the unit owners other than the declarant take control of the common interest community;

(14) all written warranties of the contractor, subcontractors, suppliers, and manufacturer, if any, that are still effective;

(15) a roster of unit owners and their addresses and telephone numbers, if known, as shown on the declarant's records;

(16) leases of the common elements and other leases to which the association is a party;

(17) employment contracts or service contracts in which the common interest community is one of the contracting parties or service contracts in which the common interest community or the unit owners have an obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the person performing the service;

(18) all other contracts to which the common interest community is a party.

(b) The records shall be reviewed by an independent certified public accountant. The minimum report required shall be a review in accordance with generally accepted accounting standards as defined by regulation by the Board of Public Accountancy. The accountant performing the review shall examine to the extent necessary supporting documents and records, including the cash disbursements and related paid invoices to determine if expenditures were for the common interest community purposes and the billings, cash receipts, and related records to determine that the declarant was charged and paid the proper amounts of assessments.

(c) Before the transfer of control from the declarant to the association, an inspection of the common areas and limited common areas subject to the association's control shall be completed by

(1) an independent registered engineer, architect, or land surveyor;

(2) an appraiser with the designation of Senior Residential Appraiser, Senior Real Property Appraiser or Senior Real Estate Analyst of the Society of Real Estate Appraisers;

(3) a Residential Member or Member, Appraisal Institute, of the American Institute of Real Estate Appraisers; or

(4) an individual with a designation established by regulation of the Alaska Housing Finance Corporation for fee appraisers who certify the completion of construction.

(d) A report shall be prepared indicating the incomplete work and repairs needed and the method of completing the work and making the repairs. The transfer of control to the association shall be based upon the declarant's obligation to complete all repairs and finish all incomplete work within a reasonable time after transfer of control under representations in the public offering statement. (§ 1 ch 95 SLA 1985)

**Sec. 34.08.350. Transfer of special declarant rights.** (a) A special declarant right created or reserved under this chapter may be transferred only by an instrument evidencing the transfer that has been recorded in each recording district in which any portion of the common interest community is located. The instrument is not effective unless executed by the transferee.

(b) Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

(1) a transferor is not relieved of an obligation or liability arising before the transfer and remains liable for warranty obligations imposed by this chapter; lack of privity does not deprive a unit owner of standing to maintain an action to enforce an obligation of the transferor;

(2) if a successor to a special declarant right is an affiliate of a declarant, the transferor is jointly and severally liable with the successor for an obligation or liability of the successor relating to the common interest community;

(3) if a transferor retains a special declarant right but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for an obligation or liability imposed on a declarant by this chapter or by the declaration relating to the retained special declarant right and arising after the transfer;

(4) a transferor is not liable for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

(c) Unless otherwise provided in a mortgage instrument, deed of trust, or other agreement creating a security interest, on the foreclosure of a security interest, sale by a trustee under an

agreement creating a security interest, tax sale, judicial sale, or sale under Bankruptcy Act or receivership proceedings of a unit owned by a declarant or of real estate in a common interest community subject to development rights, the person acquiring title to the property being foreclosed or sold, but only upon the request of the person, succeeds either (1) to the special declarant rights related to the property held by the declarant, or (2) only to any rights reserved in the declaration under AS 34.08.230 and held by that declarant to maintain models, sales offices, and signs. The judgment or instrument conveying title must provide for transfer of only the special declarant rights requested.

(d) Upon foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under Bankruptcy Act or receivership proceedings, of the interests in a common interest community owned by a declarant:

- (1) the declarant ceases to have special declarant rights, and
- (2) the period of declarant control terminates unless the judgment or instrument conveying title provides for transfer of the special declarant rights held by the declarant to a successor declarant.

(e) The liabilities and obligations of a person who succeeds to special declarant rights are as follows:

(1) a successor to any special declarant right who is an affiliate of a declarant is subject to the obligations and liabilities imposed on the transferor by this chapter or by the declaration:

(2) a successor to any special declarant right, other than a successor described in (3) or (4) of this subsection or a successor who is an affiliate of a declarant, is subject to the obligations and liabilities imposed by this chapter or the declaration

(A) on a declarant that relate to the successor's exercise or nonexercise of special declarant rights; or

(B) on the transferor, other than:

(i) misrepresentations by a previous declarant;

(ii) warranty obligations on improvements made by a previous declarant or made before the common interest community was created;

(iii) breach of a fiduciary obligation by a previous declarant or the appointees of a previous declarant to the executive board; or

(iv) a liability or obligation imposed on the transferor as a result of the acts or omissions of the transferor after the transfer;

(3) a successor to a right reserved in the declaration only to maintain models, sales offices, and signs may not exercise any other special declarant right and is not subject to liability or obligation as a declarant except the obligation to provide a public offering statement, and any liability arising as a result of the statement;

(4) a successor to the special declarant rights held by a transferor who succeeded to the rights under a deed or other instrument of

conveyance in lieu of foreclosure or under a judgment or instrument conveying title under (c) of this section may declare in a recorded instrument, including one conveying title under (c) of this section

(A) an intention to hold the rights solely for transfer to another person; or

(B) an intention to hold the rights for transfer to another person after making, finishing, or completing improvements in conformity with the declaration, consistent with the public offering statement, plans, and overall development scheme of the common interest community for purposes of preserving or improving the common interest community.

(f) Until transferring the special declarant rights to a person acquiring title to a unit or real estate subject to the development rights owned by the successor, or until recording an instrument permitting exercise of all those rights, the successor may not exercise any of the rights other than those specified in (e)(4)(B) of this section and the right held by the transferor of the successor to control the executive board under AS 34.08.330(d) for the duration of any period of declarant control and an attempted exercise of rights is void.

(g) So long as a successor declarant may not exercise special declarant rights under (e) of this section, and for purposes of (e)(4)(B) of this section so long as the successor declarant transfers within the time period specified in (h) of this section the rights to a subsequent successor declarant who will assume liability for the improvements made by the successor declarant, the successor declarant is not subject to liability or obligation as a declarant other than liability for acts and omissions under AS 34.08.330(d).

(h) If a lender fails to transfer special declarant rights to a successor declarant within one year of the date of recording an instrument under (e)(4)(B) of this section, then the lender becomes subject to the obligations and liabilities imposed by this chapter or the declaration as specified in (e)(2) of this section.

(i) Nothing in this section subjects a successor to a special declarant right to a claim against or other obligation of a transferor declarant, other than a claim or obligation arising under this chapter or the declaration. (§ 1 ch 95 SLA 1985)

**Sec. 34.08.360. Termination of contracts and leases of declarant.** (a) If entered into before the executive board elected by the unit

owners under AS 34.08.330(f) takes office (1) a management contract, employment contract, or lease of recreational or parking areas or facilities; (2) a contract or lease between the association and a declarant or an affiliate of a declarant; or (3) a contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing may be terminated without penalty by the association at any time after the executive board elected by the unit owners under AS 34.08.330(f) takes office upon not less than 90 days' notice to the other party.

(b) This section does not apply to

(1) a lease if a termination of the lease would terminate the common interest community or reduce its size, unless the real estate subject to the lease was included in the common interest community for the purpose of avoiding the right of the association to terminate a lease under this section; or

(2) a proprietary lease. (§ 1 ch 95 SLA 1985)

**Sec. 34.08.370. Bylaws.** (a) The bylaws of the association must provide

(1) for the number of the members of the executive board and for the titles of the officers of the association;

(2) for the election by the executive board of a president, treasurer, secretary, and other officers of the association specified by the bylaws;

(3) for the qualifications, powers and duties, terms of office, and manner of electing and removing executive board members and officers and filling vacancies;

(4) which, if any, of its powers the executive board or officers may delegate to other persons or to a managing agent;

(5) which of its officers may prepare, execute, certify, and record amendments to the declaration on behalf of the association; and

(6) for a method of amending the bylaws.

(b) Subject to the provisions of the declaration, the bylaws may provide for any other matters the association considers necessary and appropriate. (§ 1 ch 95 SLA 1985)

**Sec. 34.08.380. Upkeep of common interest community.** (a) Except to the extent provided by the declaration, by (b) of this section, or by AS 34.08.440(h), the association is responsible for the maintenance, repair, and replacement of the common elements, and each unit owner is responsible for the maintenance, repair, and replacement of the unit. Each unit owner shall afford to the association, the other unit owners, and to their agents or employees, access through the unit that is reasonably necessary for maintenance and repair of the unit. If damage is inflicted on the common elements or on any unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible, is liable for the prompt repair of the damage.

(b) In addition to the liability that a declarant as a unit owner has under this chapter, a declarant is solely liable for the expenses in connection with real estate subject to development rights. No other unit owner and no other portion of the common interest community is subject to a claim for payment of expenses in connection with development rights. Unless the declaration provides otherwise, the income and proceeds from real estate subject to development rights inures to the declarant.

(c) In a planned community, when all development rights have expired with respect to real estate, the declarant remains liable for the expenses of the real estate unless, upon expiration, the declaration provides that the real estate becomes common elements or units. (§ 1 ch 95 SLA 1985)

**Sec. 34.08.390. Meetings.** A meeting of the association must be held at least once each year. A special meeting of the association may be called by the president, by a majority of the members of the executive board, or by unit owners comprising either 20 percent or a lower percentage specified in the bylaws of the votes in the association. Not less than 10 percent nor more than 60 days in advance of a meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to the mailing address designated in writing by the unit owner. The notice of a meeting must state the time and place of the meeting and the items on the agenda, including the general nature of a proposed amendment to the declaration or bylaws, budget changes, and a proposal to remove an officer or member of the executive board. (§ 1 ch 95 SLA 1985)

**Sec. 34.08.400. Quorums.** (a) Unless the bylaws provide otherwise, a quorum is present throughout a meeting of the association if persons entitled to cast 20 percent of the votes that may be cast for election of the executive board are present in person or by proxy at the beginning of the meeting.

(b) Unless the bylaws specify a larger percentage, a quorum is considered present throughout a meeting of the executive board if persons entitled to cast 50 percent of the votes on the board are present at the beginning of the meeting. (§ 1 ch 95 SLA 1985)

**Sec. 34.08.410. Voting and proxies.** (a) If only one of several owners of a unit is present at a meeting of the association, the owner present is entitled to cast all the votes allocated to the unit. If more than one of the owners are present, the votes allocated to the unit may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the owners casts the votes allocated to the unit without protest being made promptly to the person presiding over the meeting by another owner of the unit.

(b) Votes allocated to a unit may be cast under a proxy duly executed by a unit owner. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. A unit owner may revoke a proxy given under this section only by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one year after its date, unless it specifies a shorter term.

(c) If the declaration requires that votes on specified matters affecting the common interest community be cast by lessees rather than unit owners of leased units: (1) the provisions of (a) and (b) of this section apply to lessees as if they were unit owners; (2) unit owners who have leased their units to other persons may not cast votes on the specified matters; and (3) lessees are entitled to notice of meetings, access to records, and other rights respecting the matters as if they were unit owners. Unit owners must also be given notice under AS 34.08.390, of all meetings at which lessees are entitled to vote.

(d) Votes allocated to a unit owned by the association may not be cast. (§ 1 ch 95 SLA 1985)

**Sec. 34.08.420. Tort and contract liability.** Neither the association nor any unit owner except the declarant is liable for the torts of the declarant in connection with any part of the common interest community that the declarant has the responsibility to maintain. An action alleging a wrong done by the association must be brought against the association and not against a unit owner. If the wrong occurred during a period of declarant control and the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to a unit owner for (1) tort losses not covered by insurance suffered by the association or the unit owner, and (2) each cost that the association would not have incurred but for a breach of contract or other wrongful act or omission. If the declarant is liable to the association under this section, the declarant is liable for the expenses of litigation incurred by the association. A statute of limitation affecting the right of action of the association under this section is tolled until the period of declarant control terminates. A unit owner is not precluded from maintaining an action under this section because the person is a unit owner or a member or officer of the association. A lien resulting from a judgment against the association is governed by AS 34.08.480. (§ 1 ch 95 SLA 1985)

**Sec. 34.08.430. Conveyance or encumbrance of common elements.** (a) In a condominium or planned community, portions of the common elements may be conveyed or subjected to a security interest by the association if persons entitled to cast at least 80 percent of the votes in the association, including 80 percent of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to the action, but each owner of a unit to which a limited common element is allocated must agree in order to convey the limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if each of the units is restricted exclusively to nonresidential uses. The proceeds of the sale and proceeds of a loan secured by encumbering a common area are an asset of the association.

(b) Part of a cooperative may be conveyed and all or part of a cooperative may be subjected to a security interest by the association if persons entitled to cast at least 80 percent of the votes in the association, including 80 percent of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to the action, but, if fewer than all of the units or limited common elements are to be conveyed or subjected to a security interest, then each unit owner of the units to which the limited common elements are allocated must agree in order to convey the

units or limited common elements or subject them to a security interest. The declaration may specify a smaller percentage only if each of the units is restricted exclusively to nonresidential uses. The proceeds of the sale and proceeds of a loan secured by encumbering a common area are an asset of the association. A purported conveyance or other voluntary transfer of an entire cooperative, unless made under AS 34.08.260, is void.

(c) An agreement to convey common elements in a condominium or planned community or to subject the common elements to a security interest and an agreement to convey any part of a cooperative or subject the cooperative to a security interest must be evidenced by the execution of an agreement, or ratifications of the agreement, in the same manner as a deed by the requisite number of unit owners. The agreement must specify a date after which the agreement will be void unless recorded before the date. The agreement and each ratification of the agreement must be recorded in each recording district in which a portion of the common interest community is situated and is effective only upon recording.

(d) The association on behalf of the unit owners may contract to convey an interest in common interest community under (a) of this section, but the contract is not enforceable against the association until approved under (a)—(c) of this section. After approval under (a)—(c) of this section, the association has the powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute a deed or other instrument.

(e) Unless made under this section, a purported conveyance, encumbrance, judicial sale, or other voluntary transfer of common elements or of any other part of a cooperative is void.

(f) A conveyance or encumbrance of common elements or of a cooperative under this section does not deprive a unit of its rights of access and support.

(g) Unless the declaration provides otherwise, a conveyance or encumbrance of common elements under this section does not affect the priority or validity of preexisting encumbrances.

(h) In a cooperative, the association may acquire, hold, encumber, or convey a proprietary lease without complying with this section. (§ 1 ch 95 SLA 1985)

**Sec. 34.08.440. Insurance.** (a) Commencing not later than the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available: