

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672  
6312 SENATE JUDICIARY

7/6

## Cannabis: toxicological properties and epidemiological aspects\*

Gabriel G. Nahas

Cannabis preparations (marihuana, hashish) have become the most frequently used illicit drug in the United States, the Western world and Australia. Besides the chemical euphoriant delta-9-tetrahydrocannabinol (that is found in cannabis, 60 other cannabinoids have been identified as well as 360 other compounds such as sterols, terpenes, flavinoids, turan derivatives and alkaloids. The smoke of a marihuana cigarette contains, in its gas phase, carbon monoxide, acetaldehyde, acrolein, toluene, nitrosamine, and vinyl chloride and, in its particulate phase, phenol, cresol, methyl and naphthalene. It also contains twice as many carcinogens (benzanthracene and benzopyrene) as a tobacco cigarette of the same weight.<sup>1</sup>

Only longitudinal epidemiological studies of marihuana-smoking populations may document the pathological effects of long-term cannabis use. To my knowledge the literature does not contain a single autopsy report of a long-term marihuana smoker, so that the human pathology of marihuana will not be established for another two or three decades. (It took 60 years for investigators to establish the pathology of tobacco smoking.) Meanwhile, on the basis of their present short-term clinical observations and experimental studies, biologists and physicians can only make certain predictions about what this pathology might be; it is thought that it is primarily frequent (daily) consumption of cannabis that is associated with long-term pathology, as is the case for other dependence-producing drugs.

The present review attempts to summarize the toxicology and epidemiology of cannabis. The toxicological section is based on the many experimental studies and the few clinical reports that have been presented in the past 10 years, mainly at the three special

symposia of the International Union of Pharmacological Sciences. The epidemiological section reports the distribution of marihuana consumption and the prevalence of its daily use in different populations.

### Chemistry and pharmacokinetics

It is for its main psychoactive agent, delta-9-tetrahydrocannabinol (THC), that cannabis is used as an intoxicant. The concentration of THC varies according to the preparation: 1%-3% in marihuana; 3%-6% in hashish; and 30%-50% in hash oil.

Agurell and his group have established that 20% of the THC that is contained in the inhaled smoke of a cigarette will be absorbed in the blood stream.<sup>2</sup> When the drug is ingested, the bioavailability of THC is still lower — of the order of 6%. Tetrahydrocannabinol, which is a fat-soluble molecule, is taken up rapidly and distributed to fat-containing tissue where it is sequestered. It has an apparent volume of distribution of 500 to 2000 L. Tetrahydrocannabinol is biotransformed by successive hydroxylation into psychoactive and non-psychoactive metabolites. Hepatic biotransformation takes place within one liver pass and THC is slowly eliminated after this biotransformation. The half-life of THC is approximately one week, and it will take one month for its complete elimination — 80% by way of the intestine, 20% by way of the kidney. Enterohepatic recirculation delays its elimination.

Tetrahydrocannabinol accumulates in neutral fat, liver, lung, and in the spleen, where micromolar concentrations may be reached.<sup>3</sup> In brain and testis, studies on rodents indicate that after multiple administrations the concentration remains in the nanomolar range.<sup>4</sup> These same studies also indicate that, after a single injection, the brain concentration of THC is higher than is the plasma concentration. It requires only minute amounts (nanomolar to micromolar range) of THC to affect cellular and organ function.

### Acute toxicity and cellular effects

The acute toxicity of cannabis resin and of THC is low. Of all the cannabinoids, THC has the highest acute toxicity *in vivo* (LD<sub>50</sub> by the intravenous route: 28 mg/kg in rats and 125 mg/kg in rhesus monkeys). A lethal overdose with cannabis has never been

clearly documented in humans.<sup>5</sup>

Extracts and smoke condensates of cannabis are mutagenic in the *in-vitro* Ames test, whereas pure cannabinoids are not. In mice, individual cannabinoids increase the incidence of micronuclei in bone marrow and of abnormal sperm.<sup>6</sup> While cannabinoids do not act as "clastogens" and produce chromosomal breaks, they may act as "mitotic disrupters" and impair chromosomal segregation.<sup>7</sup> In tissue culture, micromolar concentrations of all pure cannabinoids and their metabolites impair the biosynthesis of protein, DNA and RNA.<sup>8</sup> Marihuana smoke is carcinogenic *in vitro*. Cannabis tar applied to the skin is carcinogenic in rats.<sup>9</sup>

### Acute effects on the brain

#### Effects on neurotransmitters and pleasure-reward brain mechanisms

The effects of THC on the brain are produced by nanomolar concentrations<sup>10</sup> (100 000 times lower than that of alcohol) and are stereospecific. Such properties are characteristic of drugs that act on or are close to a receptor site. No specific receptors for THC have been isolated, but this molecule interacts in nanomolar concentrations with several neurotransmitters (acetylcholine),<sup>11</sup> dopamine, 5-hydroxytryptamine and neuropeptides, in a fashion which has not yet been elucidated.<sup>12</sup>

In 1927, Freud stated that "intoxicating substances when present in blood or tissues, directly cause pleasurable sensations, and make one incapable of receiving unpleasurable impulses".<sup>13</sup> He was one of the first psychiatrists to hint at the existence of the specialized brain mechanisms for anxiety, pleasure, and reward which were to be described 30 years later by Heath.<sup>14</sup> The effect of cannabis, according to Heath, is exerted directly on the pleasure-reward system and is characterized by the appearance of slow-wave activity in the septal region of the limbic system, which is indicative of the specific effect of this drug on brain reinforcement mechanisms.

#### Acute adverse effects

While euphoria and relaxation are the most frequently described effects of cannabis and constitute positive reinforcement for the use of the drug, dysphoria also occurs. In some instances the subjective state fluctuates

\*Fourth article in an occasional series on the treatment of drug and alcohol dependence. This review is based on the conclusions of three scheduled symposia of the International Congresses of the International Union of Pharmacological Sciences, Helsinki, 1975: *Marihuana, chemistry, biochemistry and cellular effects* (Nahas G, ed. New York: Springer-Verlag, 1976); *Acute 1978 Marihuana: biological effects* (Nahas G, Palon WD, eds. Oxford: Pergamon Press, 1979); and *Oxford 1984 Marihuana 1984* (Markey D, ed. Oxford: IRL Press, 1985).

Department of Anesthesiology, College of Physicians and Surgeons of Columbia University, 630 West 168th Street, New York, NY 10032. Gabriel G. Nahas, MD, PhD, Professor of Anesthesiology. Reprints: Professor G.G. Nahas.

between euphoria and dysphoria and these phases are interspersed with clear intervals. There is considerable subjective change of mood over time.<sup>10</sup>

Paranoid reactions are transitory; however, the associated anxiety may occasionally deepen into a panic state, and acute episodes of delusions and hallucinations do occur and are termed acute toxic psychosis or acute brain syndrome.<sup>11</sup>

Besides giving rise to acute and transient mental disturbances such as temporal disorganization and delusional ideation,<sup>10</sup> cannabis can produce "flashbacks". Such adverse mental reactions raise the question of the long-term psychotogenic potential of the drug.<sup>11</sup>

#### Effects on cognitive function

Cannabis intoxication depresses arousal and awareness. Tetrahydrocannabinol and cannabis intoxication disrupt perceptual and psychomotor function as measured by coordination reaction time, tracking, sensory and perceptual functions.<sup>12</sup> Acute cannabis intoxication also impairs intellectual and cognitive functions as determined by tests that measure learning, memory, time sense, and oral communication. Chesher et al. studied the relative potencies of alcohol and tobacco to define a dose of THC or inhaled marijuana that would produce equivalent performance decrements.<sup>13</sup> Tetrahydrocannabinol administered by mouth was found to be about 4000 times more potent than was alcohol. It was also estimated that a dose of 1 to 2 mg of THC in marijuana that was to be smoked produced performance decrements equivalent to that produced by alcohol at a blood concentration of 0.05 g/dL. Impairment of a normal sleep electroencephalograph pattern and of psychomotor performance has also been observed.<sup>20</sup>

#### Driving impairment

Driving skills and performance are impaired by cannabis.<sup>21</sup> There is no test available to document the driving impairment that is caused by cannabis by the measurement of THC levels in plasma. The drug leaves the central compartment and reaches concentrations of a few nanograms per millilitre within an hour; this is insufficient to establish actual intoxication with certainty.

#### Effects on respiratory and cardiac function

Experimentally, marijuana smoke induces malignant transformation in lung explants and impairs the bactericidal activity of lung macrophages to a greater extent than does tobacco smoke.<sup>22</sup> Clinically, the controlled studies of Tashkin et al. have documented the damaging effect of heavy marijuana smoking (an average of five cigarettes a day) on the upper airways; a dose-related decrease in airway conductance and increased resistance to airflow was observed in a group of young volunteer subjects who were

studied in a controlled environment.<sup>23</sup> These are early symptoms of airway obstruction, which occur in spite of the acute bronchodilator effects of THC.<sup>24</sup> They were more marked than were the symptoms of a group of tobacco-cigarette smokers of the same age who were studied in parallel.

Tennant has reported the presence of squamous metaplasia (precancerous lesions) in biopsies that were taken from American soldiers stationed in Germany who had smoked hashish heavily for two years.<sup>25</sup> These findings are at variance with the conclusions of the *Gunje in Jamaica* report which claims that "heavy cannabis smoking does not adversely affect pulmonary function".<sup>26</sup> According to the World Health Organization Report of 1983 "Respiratory and pulmonary toxicity have emerged as major clinical implications of chronic cannabis smoking".<sup>27</sup> Epidemiological studies that link cannabis smoking to irreversible pulmonary pathology, similar to those that have been performed for tobacco, have not been carried out.

The tachycardia that is produced by cannabis makes its use hazardous in patients with cardiac disease.<sup>28</sup>

#### Immune system

No epidemiological studies that document an increased pathology due to decreased immune response have yet been performed among long-term users of marijuana who have an increased number of hypoploid metaphases in their lymphocytes.<sup>29</sup> However, morphological alterations of pulmonary macrophages, neutrophils and lymphocytes have been reported among chronic users of hashish.<sup>30</sup> In addition, experimental studies have consistently shown that marijuana and THC, when administered parenterally or by inhalation, induce immunological impairment. Tetrahydrocannabinol and cannabis extracts inhibit the primary immune response in rodents<sup>31</sup> and interfere with their resistance to herpes simplex virus type 2 infection.<sup>32</sup>

#### Reproductive function

In experimental animals, exposure to cannabis has been associated with disruptive effects on all phases of gonadal and reproductive function by the direct action of the drug on the hypothalamic-pituitary axis, and also on the gonads.<sup>33</sup> In men, cannabis, THC and non-psychoactive cannabinoids induce decreased testicular size and spermatogenesis and lower plasma prolactin and testosterone concentrations.<sup>34</sup> In the non-human female primate, THC inhibits acutely follicle-stimulating hormone, luteinizing hormone and prolactin production and disrupts ovarian cycles and ovulation. Tolerance to these effects develops.<sup>35</sup> In humans, marijuana smoking has also been associated with an increased prevalence of somnolent sperm cells.<sup>36</sup> The

mechanism of action of THC is thought to be due to its central hypothalamic effect which results in an interaction with the neuropeptides luteinizing hormone-releasing factor and thyrotropin-releasing factor.<sup>37</sup> As a result, the pituitary release of luteinizing hormone, follicle-stimulating hormone and prolactin, which is controlled by these neuropeptides, is disrupted. Prolactin levels are decreased significantly in the luteal phase of the menstrual cycle.

Cannabinoids cross the placental barrier and appear in maternal milk. Experimental studies indicate that the negative developmental effects that have been observed in four animal species may be caused by: preconception exposure to cannabinoids with resultant damage to the gametes (sperm or ovum); prenatal exposure with resultant damage to the embryo or fetus; and/or postnatal exposure by way of maternal milk with resultant damage to the growing offspring.

The effects of the maternal use of marijuana on fetal development in humans are difficult to evaluate as marijuana consumption is usually accompanied by the use or abuse of a number of other drugs such as alcohol, tobacco and caffeine. Most studies are epidemiological and few have attempted to separate purely cannabis-related effects from those that are produced by the combination of cannabis with other drugs. According to data that were presented by Hingson et al.,<sup>38</sup> some 10% of women of child-bearing age in the United States smoke marijuana; thus, any adverse effects on pregnancy present a major health problem. Because pregnancy is not recognized for the first few weeks, it has been suggested that the actual proportion of women who consume the drug during the first trimester may be even higher.

The most common findings of Hingson et al.'s epidemiological studies on the adverse fetal effects of the maternal use of marijuana were intrauterine growth retardation, poor weight gain, prolonged labour and behavioural abnormalities in the newborn.<sup>34</sup> However, the results were not consistent among the studies and only three studies attempted to find an independent relationship between the use of marijuana and adverse fetal development in samples of more than 1000 mother-infant pairs. Of 10 independent variables such as age, alcohol use, cigarette smoking and race, which were assessed in one study as possible causes of adverse effects, marijuana use was the most highly predictive of fetal malformations.

In another study of 1690 mother-infant pairs that was conducted at Boston City Hospital, the use of marijuana was found to be independently associated with low infant birth weight and size but was not correlated with a shorter duration of gestation, the presence of congenital malformations or lower Apgar scores. Considerable

efforts were made to isolate the effects that were caused by marijuana from those of other possible contributory factors and it was found that maternal use of marijuana was the strongest independent predictor of whether a mother delivered an infant with features that were considered to be "compatible with the fetal alcohol syndrome". It was emphasized that as many maternal behaviors such as cigarette smoking and alcohol use are strongly inter-related, some of the consequences to fetal development that were attributed previously to causes such as alcohol use may, in fact, be at least partially attributable to marijuana.

### Long-term effects on brain and behaviour

#### *Brain abnormalities and mental illness*

The only somatic alterations that were produced in the brain by long-term marijuana exposure have been reported in primates by Heath et al.<sup>27</sup> These consisted of ultrastructural synaptic alterations with clumping of synaptic vesicles and inclusion bodies in the nucleus of the cell. The clinical significance of such changes, if they occur in humans, has yet to be determined.

Exposure of experimental animals to cannabis results in symptoms of "neuro-behavioural toxicity" which is characterized by residual impairment in learning, electroencephalographic changes, biochemical alterations in brain macromolecules, and impairment in the ability to exhibit appropriate adaptive behaviour.<sup>28</sup>

The extent of the negative behavioural response to cannabis appears to be more pronounced at two critical stages of central nervous system development: in neonates who are exposed to marijuana during intra-uterine life; and during growth when neuroendocrine, cognitive and affective functions and structures of the brain are in the process of integration.<sup>29</sup> "In humans, the neurobehavioural toxicity of the long-term use of cannabis is manifested in some heavy smokers by a state of withdrawal, apathetic indifference, general mental and physical deterioration and social stagnation. This apathetic condition, described as the "amotivational syndrome",<sup>30</sup> has also been designated by US high-school students as the "burn out" syndrome. It has been reported over the centuries in India and Africa.

The increased incidence of mental illness that is caused by the use of cannabis has been reported consistently over the past 2000 years throughout the historical and medical literature.<sup>31</sup> By contrast, the use of opiate agents, including heroin, has not been associated with psychiatric syndromes. The use of cannabis may trigger an underlying psychosis such as schizophrenia.<sup>32</sup> Such episodes have occurred in subjects who had already suffered from the disease and presented in

relapse after the use of cannabis. Cannabis should not be used by those with unstable personalities, since psychotic episodes in some subjects only developed for the first time after exposure to the drug.

The question as to whether cannabis use *per se* may produce long-term psychotic episodes is still debated. The difficulties in establishing causality in the absence of a biological marker are very large.

Cannabis intoxication has the most serious adverse effects in adolescents (12-18 years old) who are attempting to structure their personalities.<sup>33</sup> The amount of evidence that is available on the negative impact of cannabis on mental health is growing and should be a matter of serious concern.

#### *Tolerance and withdrawal*

A marked and rapid tolerance to most of the physical (functional) and psychological effects of THC develops in animals and humans. A chronic user may smoke as much as 500 mg of THC equivalent a day,<sup>34</sup> which would result in a bioavailability of 100 mg.<sup>35</sup> Initially, 5 mg of inhaled THC (1 mg absorbed in the blood) will produce a marked psychoactive effect. This tolerance, which has a metabolic and a tissue component, may not develop to some of the non-specific cellular effects of the drug. Some cross-tolerance exists between delta-9-THC and ethanol, and between delta-9-THC and barbiturate agents.

Withdrawal symptoms of the autonomic type (nausea, vomiting, sweating tremors, sleep disturbances) develop after the cessation of heavy daily administration of cannabis. These symptoms are more marked after the administration of pure THC.<sup>36</sup>

#### *Drug interactions and polydrug use*

Delta-9-THC interacts with commonly used licit and illicit drugs. It increases the depressant effects of psychodepressant drugs (alcohol, sedative and opiate agents). These interactions are probably mediated centrally.<sup>37</sup> The interactions of delta-9-THC and stimulant drugs such as caffeine, nicotine, amphetamine and cocaine are complex, and additive and antagonistic effects occur depending on the dose and the time intervals between ingestion of the drugs. The daily use of cannabis has been associated statistically with the use of stronger illicit drugs. Kandel reported in a prospective study of large cohorts of high-school students that 26% of the population of marijuana smokers went on to experiment with opiate agents, barbiturate drugs or amphetamines.<sup>38</sup>

#### *Epidemiological aspects*

A knowledge of the actual rates of consumption of dependence-producing drugs in a population is most useful in order to predict the medical or social risks that are associated with their use.

The French mathematician Ledermann demonstrated that the frequency distribution

of individual consumption of alcohol in France does not follow a normal pattern but a log-normal one: the distribution curve is sharply skewed and the distribution of consumption is roughly two-thirds of the population below average and one-third above. However, the latter one-third consumes more than 60% of the total amount of alcohol that is consumed.<sup>39</sup> Ledermann also reported covariance between the average "reasonable" consumption and the excessive "unreasonable" consumption that are associated with pathology. He concluded that an increase in average consumption is associated with a rise in excessive consumption. Roughly, the proportion of persons with alcoholism in the population of alcohol consumers remains constant at around 7%-9% of the total number of consumers.

In Canada, De Lint and Schmidt reported a log-normal distribution of alcohol consumption and suggested that an increase in average alcohol consumption is associated with an increase in excessive consumption and its related pathology.<sup>40</sup>

Smart and Whitehead reported that the consumption of illicit mind-altering drugs by Canadian students presented a log-normal distribution.<sup>41</sup> Paton simplified the graphic representation of a log-normal distribution by plotting the data on logarithmic-probit coordinates.<sup>42</sup> If one plots on these coordinates the quantity (or frequency of consumption) of the drug within a given period, at a given rate or higher, a straight line is obtained if the distribution is log-normal. The intercept of the curve with a perpendicular line that passes through the point that corresponds to 50% of the population will give the median, and the slope of the curve gives the standard deviation.

I have used this method to analyse the frequency distribution of alcohol consumption that was reported by Ledermann<sup>39</sup> and by Aiken and Lance.<sup>43</sup> The fitted straight lines which are based on a coarse grouping of daily alcohol consumption are very close in both groups, and have similar slopes ( $\sigma = -0.75$  and  $-0.73$ ; Figure 1).

In another study, data that were reported by Johnston et al.<sup>44</sup> on the prevalence of marijuana use among American high-school senior students during the period between 1975 and 1981, were plotted on a probability-logarithmic scale to determine if they followed a log-normal distribution. The fit was excellent for marijuana consumers during the five years that were reported. Three of these years are represented in Figure 2. The value of the slope for the class of 1975 is  $-0.37$  and for the classes of 1978 and 1981 it is  $-0.33$ .

The percentage of daily users (which represents the "at risk" population) represents 12% to 18% of the total number

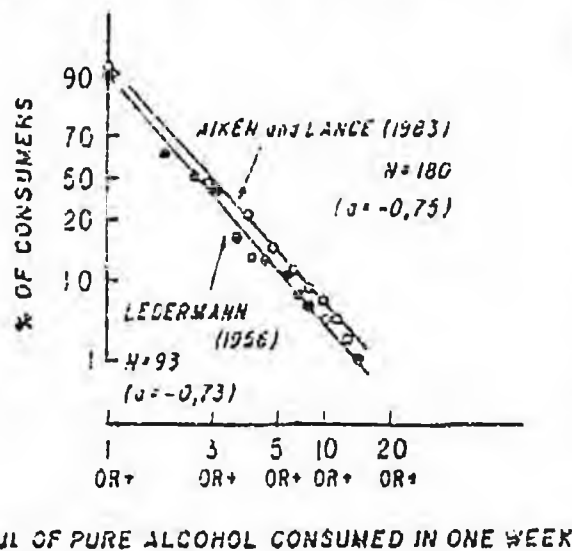


FIGURE 1: Probit-logarithmic plot of the distribution of consumption of alcohol in two populations: oil-rig workers from Scotland<sup>14</sup> and residents of Paris.<sup>15</sup> The linear plot indicates a log-normal distribution. The percentage of the consumers of alcohol is plotted on the ordinate. The quantity of alcohol consumed by different groups of consumers is plotted on the abscissa. The different groups have been assembled according to their consumption of one decilitre of alcohol or more, from 1-16 dl (100-1600 ml of pure alcohol a week). Ninety-two per cent of the consumers drank 100 ml or more alcohol a week and 2% drank 600 ml or more.

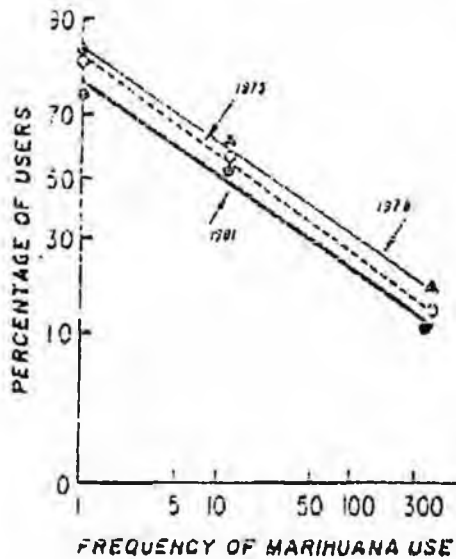


FIGURE 2: Probit-logarithmic plot of the distribution of frequency of daily marijuana use among US high school students.<sup>16</sup> The percentage of smokers of marijuana cigarettes in the population of consumers of the drug is plotted against the frequency of consumption from one to 360 times a year. Seventy-seven per cent of the consumers smoked one marijuana cigarette or more a year and 12% to 17% smoked one cigarette a day.

of users and this percentage increases with the prevalence of usage. The slope of the curve for marijuana consumption is not as steep as it is for alcohol; this indicates that there will be a greater proportion of daily use (intoxication) in relation to per capita consumption than for alcohol. (For the same population of high-school students, the proportion of daily consumers of alcohol was 7% of the total population of consumers.)

The implications of this sociometric model are clear: the availability of marijuana among adolescents is associated with a high prevalence of daily use of the drug and resulting intoxication.

Dreher reports that in Jamaica 64% of the male population of over 15 years of age who live in areas of cannabis cultivation and who smoke ganja, consume four or more "spiffs" of ganja a day; this corresponds to 5-10 g of cannabis or 100-200 mg of delta-9-THC.<sup>17</sup> On the basis of these data, it would appear that the abuse potential of

cannabis (its capacity to induce daily intoxication) may be nine times greater than that of alcohol when it is easily accessible and socially acceptable.

Epidemiological studies of cannabis users that are aimed at correlating the use of this drug with health hazards are fraught with difficulties. While there is no shortage of subjects in Western society, the major problem with this large and uncontrolled group of cannabis users is to differentiate the adverse effects that are produced by cannabis from those that are produced by other dependence-producing drugs — licit (tobacco, alcohol) or illicit (amphetamines, opiates).—Mingson et al. used regression analysis to differentiate marijuana-derived adverse effects on the fetus and concluded that the drug produced effects that are comparable to those of the fetal alcohol syndrome.<sup>18</sup> Many more similar epidemiological studies need to be conducted to define the extent of the damaging effects of cannabis on the lung, immune system and

the brain.

#### Cannabis addiction and dependence

The addictive, dependence-producing potential of cannabis is still debated, and many people readily assume that cannabis is not an addictive drug and that the question of dependence has been settled negatively.<sup>19</sup> This position should be revised in view of the older historical reports and recent scientific observations that cannabis is dependence-producing and has a significant potential for abuse. It is on the basis of such reports that cannabis was classified, by the League of Nations and the United Nations conventions of 1923 and 1960, respectively, among the dependence-producing drugs which were to be restricted to medical or scientific purposes.

Current scientific observations indicate that two features that are associated with drug dependence have been observed in cannabis users: tolerance and withdrawal symptoms. That this tolerance might be selective for the aversive effects of the drug could unmask the rewarding effects and, therefore, the probability of use. Tolerance, by leading to more frequent use and larger doses, might strengthen the cycle of reward and repetition. The cessation of cannabis use can also give rise to withdrawal symptoms which are relieved by the resumption of cannabis or THC intake.<sup>20</sup>

However, little is scientifically known about other features that characterize drug dependence, such as the relapse rate of chronic cannabis users and "saliency", that is, the precedence that is taken by drug-taking over other activities. Griffiths-Edwards states that the "amotivational syndrome might be a manifestation of cannabis saliency".<sup>21</sup> This saliency is also noticeable in epidemiological surveys of cannabis users that have been performed in Jamaica.<sup>16</sup>

In order to obtain a complete scientific picture of cannabis dependence in Western countries, one might have to wait for the commercial availability of the drug, and its social acceptance. Under conditions of free availability, statistical and quantitative evaluation of cannabis dependence may be performed in large groups of Americans or Australians as it has been for alcohol and tobacco. However, scientific evaluation of the dependence properties of these two most commonly used drugs has done little to curtail their overall consumption.

#### A pharmacological classification of cannabis

The fact that THC-containing cannabis possesses numerous pharmacological properties makes it difficult to classify in a specific class of drugs. It elicits depressant and stimulant effects on the central nervous system, and in sufficient dosage acts as an

hallucinogenic agent. Tetrahydrocannabinol and THC-like compounds should be classified in a category by themselves, among the dependence-producing drugs with an abuse potential.

The popular classification of cannabis as a "soft" drug is misleading in view of the acute and chronic adverse effects that are associated with its use. Another misleading classification describes cannabis as a substance which produces "psychic dependence" in the absence of physical dependence; this classification was formulated at one time by the Committee on Drug Dependence of the World Health Organization which was careful to emphasize that "psychic dependence was paramount in drug-seeking behavior".<sup>10</sup> The confusion that was created by this distinction was compounded by the claim that both cocaine and cannabis produced mild to marked "psychic" dependence and little, if any, "physical" dependence.

This distinction between "physical" and "psychic" dependence was interpreted subsequently by many to indicate that truly addictive drugs were those which caused a physical dependence that was characterized by withdrawal symptoms of the opiate type. This delayed the recognition of the syndromes of alcohol, tobacco, cocaine, barbiturate and amphetamine dependence. It led to the erroneous assumption that cocaine, cannabis and tobacco are not truly addictive and do not create "physical dependence" because cessation of their use is not accompanied by a full-blown withdrawal syndrome of the opiate type. One further step was to claim that the use of cannabis and cocaine may be terminated readily if the user exerts enough "psychic" resolution. Such a distinction between psychic and physical dependence illustrates the old dichotomy between mind and body which modern neurophysiology and psychopharmacology no longer preserve.

A classification of dependence-producing drugs should be based on markers which reflect the biochemical (therefore, physical) alterations that they primarily induce in the central nervous system. Therefore, I have suggested that the following four characteristics be utilized to identify addictive dependence-producing drugs:<sup>11</sup> primary pleasurable reward; reversible neuropsychological impairment; an abstinence syndrome; and tolerance. When combined, these factors lead to drug seeking behaviour and to the compulsive frequent, daily self-administration, which characterize dependence-producing drugs.

#### Treatment of cannabis dependency

As is the case for other drug dependencies, there is no pharmacological cure for cannabis dependency. Therefore, as for the treatment of any other dependency, that of cannabis

should employ methods that aim at abstinence from the drug and to foster a drug-free life. Long-term cannabis smokers are difficult to treat because of their denial of their dependency and the lack of severe physical after-effects such as those that are associated with alcohol, opiates or psychostimulant drugs. Early recognition and treatment of this dependency is (as for any other drug dependency) more likely to be effective.

#### References

- Hoffman D, Brunnemann KD, Coss GB, Winder EL. On the carcinogenicity of marijuana smoke. In: Runcieles VC, ed. Recent advances in phytochemistry. New York: Plenum, 1975: 63-81.
- Olsson A, Lindgren JE, Wahlén A, et al. Plasma delta-9-tetrahydrocannabinol concentrations and clinic effects after oral and intravenous administration and smoking. *Clin Pharmacol Ther* 1980; 28: 409-416.
- Kreit DS, Axelrod J. Delta-9-tetrahydrocannabinol: localization in body fat. *Science* 1973; 179: 191-193.
- Nahas G, Keizer C, Touque B, Hochlinger H. The kinetics of cannabinoid distribution and storage with special reference to the brain and testis. *J Clin Pharmacol* 1981; 21(suppl): 203S-214S.
- Rosenkrantz H. Cannabis, marijuana and cannabinoid toxicological manifestations in man and animal. In: Fent KO, Kilham H, eds. Cannabis and health hazards, proceedings of an ARI/WHO scientific meeting. Toronto: Addiction Research Foundation, 1982: 91-176.
- Zimmerman AM, Kay AY. Influence of cannabinoids on somatic cells in vivo. *Pharmacology* 1980; 21: 277-287.
- Heinrich RT, Nagawa T, Morishima A. In vitro induction of segregation errors of chromosomes by natural cannabinoids in normal human lymphocytes. *Environ Mutagen* 1980; 2: 139-147.
- Nahas GG, Morishima A, Desoze M. Effects of cannabinoids on macro-molecular synthesis and replication of cultured lymphocytes. *Fed Proc* 1977; 36: 1748-1752.
- Magus RD, Harris LS. Carcinogenic potential of smoke condensate. *Fed Proc* 1971; 30: 272A.
- Domino EF. Cannabinoids and the cholinergic system. *J Clin Pharmacol* 1981; 21(suppl): 249S-255S.
- Bloom A. Effects of cannabinoids on neurotransmitter receptors in the brain. In: Asareil S, Dewey WL, Willeite AE, eds. The cannabinoids: chemical, pharmacologic and therapeutic aspects. New York: Academic Press, 1984: 375-389.
- Freed S. Civilization and its discontents. New York: Norton, 1962: 25.
- Heath RG. Pleasure response of subjects to direct stimulation of the brain: physiologic and psychodynamic considerations. In: Heath RG, ed. The role of pleasure in behavior. New York: Harper & Row, Harber Medical Division, 1984: 215-243.
- Aulon SL, Goodwin FK. High frequency of dysphoric reactions to tetrahydrocannabinol among depressed patients. *Am J Psychiatry* 1971; 131: 443-453.
- Kaplan HS. Psychosis associated with marijuana. *NY State J Med* 1971; 71: 433-435.
- Melzer FT, Tankenberg JR, Hollister LE, Collespie SK. Marijuana and temporal disintegration. *Science* 1970; 6: 1113-1120.
- Stanton MB, Mintz J, Franklin RM. Drug standards: II. Some additional findings. *Int J Addict* 1975; 11: 33-69.
- Berg J, Carlson S, Alpert M. Dose effects of smoked marijuana on human cognitive and motor functions. *Psychopharmacologia* 1975; 42: 211-215.
- Chester GB, Bud KD, Stramarcos A, Nahas M. A comparative study of the dose response relationship of alcohol and cannabis on human skills performance. In: Harvey DJ, ed. Marijuana 1984. Oxford: RL Press, 1985: 621-627.
- Herning R, Jones RL, Pelzman DJ. Changes in human event-related potentials with prolonged delta-9-tetrahydrocannabinol (THC) use. *Electroencephalogr Clin Neurophysiol* 1979; 47: 526-570.
- Moskowitz H, Ziedman K, Sharma S. Visual search behavior while viewing driving scenes under the influence of alcohol and marijuana. *Hum Factors* 1976; 18: 417-432.
- Rosenkrantz H, Fleckenman RW. Effects of cannabis on lungs. In: Nahas GG, Paton WDM, eds. Marijuana, biological effects. Analysis, metabolism, cellular responses, reproduction and brain. Oxford: Pergamon Press, 1979: 279-299 (Advances in the biosciences; vols 22 and 23).
- Tashkin DP, Shapiro BJ, Kamanna L, et al. Chronic effects of heavy marijuana smoking on pulmonary function in healthy young males. In: Brauge ME, Szara S, eds. The pharmacology of marijuana. Vol 1. New York: Raven Press, 1979: 291-295.
- Tashkin DP, Calverese BM, Simmons MS, Shapiro BJ. Respiratory status of seventy-four habitual marijuana smokers. *Chest* 1980; 78: 699-706.
- Tennant FS, Guerry RL, Henderson RL. Histopathologic and clinical abnormalities of the respiratory system in chronic hashish smokers. *Substance Abuse Treatments* 1980; 1: 93-100.
- Rubin V, Comitas L. Ganja in Jamaica. The Hague: Mouton, 1975.
- World Health Organization-Addiction Research Foundation. Cannabis and Health Hazards. Proceedings of an ARI/WHO scientific meeting on adverse health and behavioral consequences of cannabis use. Toronto: Alcoholism and Drug Addiction Research Foundation, 1983.
- Pekkan R, Aronow WS, Warren WM, et al. Effects of marijuana and placebo marijuana smoking on hemodynamics in coronary disease. *Clin Pharmacol Ther* 1975; 18: 90-95.
- Morishima A, Heinrich RT, Jayaraman J, Nahas GG. Hypoploid metaphases in cultured lymphocytes of marijuana smokers. In: Nahas GG, Paton WDM, eds. Marijuana: biological effects. Analysis, metabolism, cellular responses, reproduction and brain. Oxford: Pergamon Press, 1979: 371-376 (Advances in the biosciences; vols 22 and 23).
- Isidorides MR. Observations in chronic hashish users: nuclear aberrations in blood and sperm and abnormal acrosomes in spermatozoa. In: Nahas GG, Paton WDM, eds. Marijuana, biological effects. Analysis, metabolism, cellular responses, reproduction and brain. Oxford: Pergamon Press, 1979: 377-388 (Advances in the biosciences; vols 22 and 23).
- Rosenkrantz H. The immune response and marijuana. In: Nahas GG, Paton WDM, Idanpaan-Heikkila JE, eds. Marijuana: chemistry, biochemistry and cellular effects. New York: Springer-Verlag, 1976: 441-456.
- Morshaz PS, Klykken PC, Smith SH, et al. Effects of cannabinoids on host resistance to *Listeria monocytogenes* and herpes simplex virus. *Infect Immun* 1979; 23: 670-674.
- Nahas GG. Effects of marijuana on reproductive function and development. In: Nahas GG, ed. Marijuana in science and medicine. New York: Raven Press, 1984: 139-152.
- Huang HFS, Nahas GG, Hemmery WC. Effects of marijuana inhalation on spermatogenesis of the rat. In: Nahas GG, Paton WDM, eds. Marijuana, biological effects. Analysis, metabolism, cellular responses, reproduction and brain. Oxford: Pergamon Press, 1979: 419-427 (Advances in the biosciences; vols 22 and 23).
- Smith CG, Alvarez RG, Berenberg J, et al. Tolerance develops to the disruptive effects of delta-9-tetrahydrocannabinol on primate menstrual cycle. *Science* 1983; 219: 1453-1455.
- Hemmery WC, Zeidenberg P, Nahas GG. Marijuana's effects on human gonadal function. In: Nahas GG, Paton WDM, Idanpaan-Heikkila JE, eds. Marijuana: chemistry, biochemistry and cellular effects. New York: Springer-Verlag, 1976: 521-532.
- Harclerode J, Nyquist SE, Nazar B, Lowe D. Effects of cannabis on sex hormones and testicular enzymes of the rodent. In: Nahas GG, Paton WDM, eds. Marijuana: biological effects. Analysis, metabolism, cellular responses, reproduction and brain. Oxford: Pergamon Press, 1979: 395-405 (Advances in the biosciences; vols 22 and 23).
- Haugton R, Alpert JS, Day R, et al. Effects of maternal drinking and marijuana use on fetal growth and development. *Pediatrics* 1982; 70: 519-546.
- Heath RG, Fitzpatrick AT, Galey HE, Myers WA. Chronic marijuana smoking: effects on function

- and structure of the primate brain. In: Nahas GG, Paton WDM, eds. *Marijuana: biological effects, Analysis, metabolism, cellular responses, reproduction and brain*. Oxford: Pergamon Press, 1979: 211-220. (Advances in the biosciences; vols 22 and 23.)
40. Nahas GG. Neurobehavioral toxicity of cannabis. In: Nahas GG, ed. *Marijuana in science and medicine*. New York: Raven Press, 1984: 123-133.
  41. Maddico-Thomas S, Magnon F, Grove RN, et al. Effect of chronic administration of delta-9-tetrahydrocannabinol on learning and memory in developing mice. In: Braude MC, Szara S, eds. *Pharmacology of Marijuana*. Vol 2. New York: Raven Press, 1976: 487-498.
  42. Dallero S, Barke A. Perinatal exposure to cannabinoids alters male reproductive function in mice. *Science* 1979; 205: 1426-1427.
  43. McGintinn WH, West LJ. The marijuana problem: an overview. *Am J Psychiatry* 1968; 125: 370-378.
  44. Brill H, Nahas GG. Cannabis intoxication and mental illness. In: Nahas GG, ed. *Marijuana in science and medicine*. New York: Raven Press, 1984: 357-365.
  45. Treffert DA. Marijuana use in schizophrenia: a clear hazard. *Am J Psychiatry* 1978; 135: 1213-1215.
  46. Kolansky H, Moore WT. Effects of marijuana on adolescents and young adults. *JAMA* 1971; 216: 486-492.
  47. Jones RT. Human effects: an overview. In: Petersen RC, ed. *Marijuana Research Findings 1980*. NIDA Research Monograph 31. Rockville, Maryland: Department of Health and Human Services, National Institute on Drug Abuse, 1980: 54-80.
  48. Siemens AJ, O'Neil L, Kalant H, Khanna JM. Effects of various psychoactive drugs on the metabolism of delta-9-tetrahydrocannabinol by rats in vitro and in vivo. *Eur J Pharmacol* 1975; 31: 136-147.
  49. Kandel D. Stages in adolescent involvement in drug use. *Science* 1975; 190: 912-914.
  50. Ledermann S. *Alcool, alcoolisme et alcoolisation*. Paris: Presses Universitaires de France, 1956.
  51. Schuck G, Le Lint JE. Estimating the prevalence of alcoholism from consumption and mortality data. *Q J Stud Alcohol* 1970; 31: 957-964.
  52. Smart RG, Whitbeck PC. The prevention of drug abuse by tracking per capita consumption: distribution of drug use in samples of Canadian adults and British university students. *Bull Narcotics* 1973; 25: 49-55.
  53. Paton WDM. The uses and implications of the log normal distribution of drug use. In: Connell PH, Dorn N, eds. *Cannabis and man: psychological and clinical aspects and patterns of use*. London: Churchill Livingstone, 1975: 103-111.
  54. Aiken GJM, Lance C. Alcohol consumption by offshore oil rig workers. *USV Science News* 1983; 37: 195-196.
  55. Johnston LD, Bachman JG, Malley PM. Drugs and the nation's high school students. Rockville, Maryland: National Institute on Drug Abuse, 1982.
  56. Dancer MC. Working men and ganja: marijuana use in rural Jamaica. Philadelphia: Institute for the Study of Human Issues, 1982.
  57. Griffith-Edwards G. The question of psychiatric morbidity. In: Report of the Expert Group on the Effects of Cannabis Use. London: The Advisory Council on the Misuse of Drugs (Members' letter to the Home Secretary), 1982: 400.
  58. WHO Expert Committee on Addictions-Producing Drugs: 13th report. WHO Tech Rep Ser No. 273. Geneva: WHO, 1964.
  59. Nahas GG. A pharmacological classification. *Bull Narc* 1981; 33: 2.

# Making Mothers-to-Be Abstain

*As Drug Risks to the Fetus Become Clear, Can Mothers' Rights Be Threatened?*

By Robin Marantz Henig

Special to The Washington Post

**B**renda Vaughan, 29, pleaded guilty this summer to second-degree theft, a misdemeanor usually punishable by probation. But the judge sentenced her to 180 days in the D.C. Jail because Vaughan was pregnant and tested positive for cocaine use. He said he would consider early release once Vaughan's baby was born. Because of the way the courts count jail time, her sentence is up this week and Vaughan is leaving her cell to await her Sept. 15 due date in freedom.

"When a convicted robber is sentenced, a judge must consider the possibility the defendant may rob again—the judge never knows if or when or who," wrote Superior Court Judge Peter H. Wolf in an Aug. 23 memorandum explaining his decision. "In Vaughan's case, however, there was no 'if' or 'when' or 'who.' She had continued to abuse cocaine, did it while she was pregnant, [and] stood a substantial chance of harming a society's most precious resource—a helpless child-to-be."

Although the degree of risk varies from drug to drug, and with when a drug is used and how much, doctors agree that drug use increases a fetus's risk for a variety of health problems. Recent medical evidence shows that if Vaughan was indeed still using cocaine, her baby was at risk of a range of possible complications both before and after birth: prenatal stroke, prematurity, excess

limb rigidity, neurological damage and sudden infant death.

"Does a woman have a moral obligation to protect her fetus from harm?" asked Dr. Norman Fost, professor of pediatrics and director of the program in medical ethics at the University of Wisconsin. "And if she does, the second question is whether that moral obligation should be transformed into a legal obligation."

Speaking at a conference in Bethesda last week on "Prenatal Abuse of Licit and Illicit Drugs" sponsored by the New York Academy of Sciences, Fost outlined the ethical requirements for determining whether Judge Wolf and others in similar positions are justified in forcing a woman to stop using drugs for the sake of her fetus's health.

As Fost described it, the issue throws into stark confrontation two of America's most dearly held values: the sanctity of individual freedom versus the goal of protecting vulnerable children. He said four conditions must exist before a mother is morally obliged to accept a medical recommendation on her fetus's behalf—be it drug abstinence, cessation of smoking or drinking, fetal surgery or a forced Cesarean section. There must be a high risk of serious permanent harm to the baby, a low risk of serious permanent harm to the mother, a clear benefit from the recommended course of action and the fetus's viability at the time the question arose.

The fourth condition, the fetus's viability, is necessary to establish without debate the

"personhood" of the fetus—and to allow for consistency with the Supreme Court's 1973 *Roe v. Wade* decision on abortion. In effect, the condition restricts all such discussion to the last trimester of pregnancy. Before then, the fetus is not viable outside the womb. "If all these conditions are met, a mother might legitimately be compelled to abstain from harmful behaviors or to undergo intrusive procedures," Fost said.

But in the third trimester, it may already be too late to benefit the fetus by restricting the use of alcohol, cigarettes, cocaine, heroine or other drugs—although some evidence suggests that even stopping these drugs late in pregnancy is better than not stopping at all. Fost's conclusion: Because abstention in the third trimester is not of clear benefit to the fetus, society has no ethical stand from which to force abstention on a pregnant woman.

Physicians might be able to use some methods short of outright coercion, though, to urge pregnant patients to give up drugs, noted Dr. Ira Chasnoff, director of the Perinatal Center for Chemical Dependence at Northwestern University in Chicago. But they miss their chance because they don't even bring up the subject. "If an obstetrician asks about drugs at all, he'll say something like, 'You don't do drugs, do you?'" Chasnoff said. "There's a science to getting an honest answer about drug use, and that's not the way to do it."

Chasnoff said physicians and medical students, some of whom use recreational drugs themselves, must be taught to conduct a thorough drug history on every patient; particularly every pregnant patient.

One of the most difficult aspects of conducting research on prenatal drug exposure is that most women who abuse drugs take more than one at a time. Of 42 pregnant women on methadone maintenance on Chicago's South

Side, for example, "virtually all" also smoked cigarettes and marijuana, reported Dr. Sydney Hans of the University of Chicago. She said about half also used heroin "periodically," and many "drank a little alcohol, used a little cocaine, and a number took [Valium]."

Hans found more birth complications, lower birth weight, excess limb rigidity and increased crib deaths in the babies of methadone mothers, compared to the babies of non-drug-using mothers of similar backgrounds. She could not be sure how many of the differences were caused by the methadone exposure and how many were caused by exposure to cigarettes, marijuana, alcohol, cocaine or Valium.

**A**nother "mixed effect" of drugs on the fetus, said Dr. Donald Hutchings of the New York State Psychiatric Institute, is genetic. "These mothers are more likely to have minimal brain dysfunction, attention deficit disorder and personality problems—that's what got them into drugs in the first place," he said. "Just by having mothers with these problems, these babies were already at higher risk for having these problems, too."

Chasnoff said the problem of prenatal drug exposure is greater than anyone realizes. A preliminary study he conducted of 36 hospitals around the country showed that 11 percent of pregnant women—no matter what their income or place of residence—had used illicit drugs during pregnancy. Alcohol use was not included.

The true percentage may be even higher, he said. "In hospitals with a written protocol to determine drug use history in all women who came to them for delivery," said Chasnoff, "we found that 15.7 percent of women had taken drugs."

and Vaughan is leaving her cell to await her Sept. 15 due date in freedom.

"When a convicted robber is sentenced, a judge must consider the possibility the defendant may rob again—the judge never knows if or when or who," wrote Superior Court Judge Peter H. Wolf in an Aug. 23 memorandum explaining his decision. "In Vaughan's case, however, there was no 'if' or 'when' or 'who.' She had continued to abuse cocaine, did it while she was pregnant, [and] stood a substantial chance of harming a society's most precious resource—a helpless child-to-be."

Although the degree of risk varies from drug to drug, and with when a drug is used and how much, doctors agree that drug use increases a fetus's risk for a variety of health problems. Recent medical evidence shows that if Vaughan was indeed still using cocaine, her baby was at risk of a range of possible complications both before and after birth: prenatal stroke, prematurity, excess

on a pregnant woman. Physicians might be able to use some methods short of outright coercion, though, to urge pregnant patients to give up drugs, noted Dr. Ira Chasnoff, director of the Perinatal Center for Chemical Dependence at Northwestern University in Chicago. But they miss their chance because they don't even bring up the subject. "If an obstetrician asks about drugs at all, he'll say something like, 'You don't do drugs, do you?'" Chasnoff said. "There's a science to getting an honest answer about drug use, and that's not the way to do it."

As Foster described it, the issue throws into stark confrontation two of America's most dearly held values: the sanctity of individual freedom versus the goal of protecting vulnerable children. He said four conditions must exist before a mother is morally obliged to accept a medical recommendation on her fetus's behalf—be it drug abstinence, cessation of smoking or drinking, fetal surgery or a forced Cesarean section. There must be a high risk of serious permanent harm to the baby, a low risk of serious permanent harm to the mother, a clear benefit from the recommended course of action and the fetus's viability at the time the question arose.

The fourth condition, the fetus's viability, is necessary to establish without debate the

on a pregnant woman.

Psychiatric Institute, is genetic. "These mothers are more likely to have minimal brain dysfunction, attention deficit disorder and personality problems—that's what got them into drugs in the first place," he said. "Just by having mothers with these problems, these babies were already at higher risk for having these problems, too."

Chasnoff said the problem of prenatal drug exposure is greater than anyone realizes. A preliminary study he conducted of 36 hospitals around the country showed that 11 percent of pregnant women—no matter what their income or place of residence—had used illicit drugs during pregnancy. Alcohol use was not included.

The true percentage may be even higher, he said. "In hospitals with a written protocol to determine drug use history in all women who came to them for delivery," said Chasnoff, "we found that 15.7 percent of women had taken drugs."

## Drugs Pose a Variety of Risks to the Fetus

Scientific studies of offspring of addicted mothers have been scanty, with only a handful of long-term results. But evidence suggests that taking drugs during pregnancy is bad for the baby, and the negative consequences can last far beyond the first weeks of life.

Some infants appear unaffected, and the extent of damage depends on timing and dose. But it is becoming clear, according to doctors at last week's conference on "Prenatal Abuse of Licit and Illicit Drugs," that the following drugs raise the risk of a number of complications.

### Alcohol

- Poor sucking at birth
- Inability to settle self
- Deficits in mental and motor development
- Lower IQ at ages 4 and 7
- Poor fine motor control, balance, response speed
- Short attention span, hyperactivity, learning disabilities

### Marijuana

- Increased tremors
- Exaggerated startle reflex

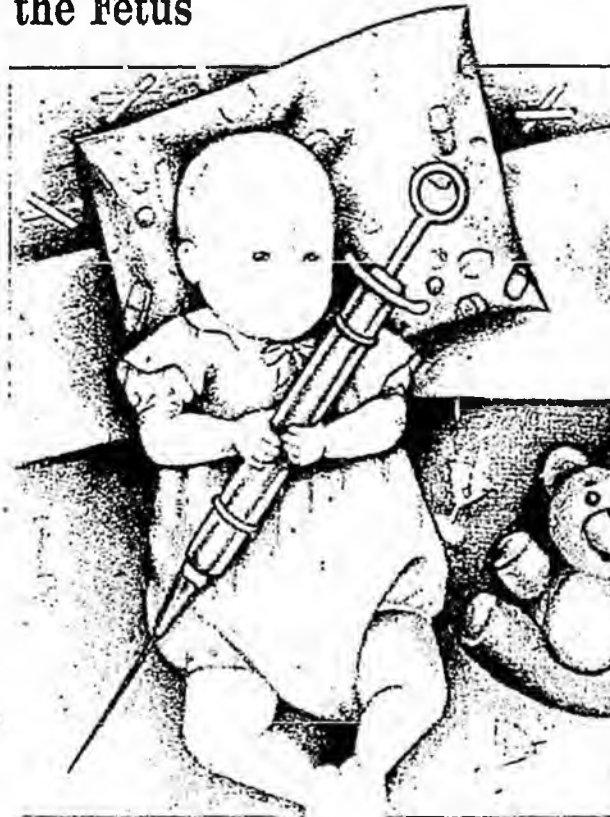


ILLUSTRATION BY JUNE HONG—INX

- Poor habituation to visual stimuli
- Exaggerated motor reflexes
- "Negative trend" in language and cognition seen at age 3

### Heroin

- Withdrawal at birth (neonatal abstinence syndrome), tremors, extreme irritability, limb rigidity

### Methadone

- Withdrawal at birth (neonatal abstinence syndrome), tremors, extreme irritability, rigid limbs
- More birth complications
- Higher risk of sudden infant death syndrome (SIDS)
- Short attention span
- Hyperactivity

### Cocaine

- Higher risk of prematurity or stillbirth
- Prenatal stroke
- Small heads and brains
- Risk of birth defects of the urogenital system
- Higher risk of sudden infant death syndrome (SIDS)

— Robin Marantz Henig

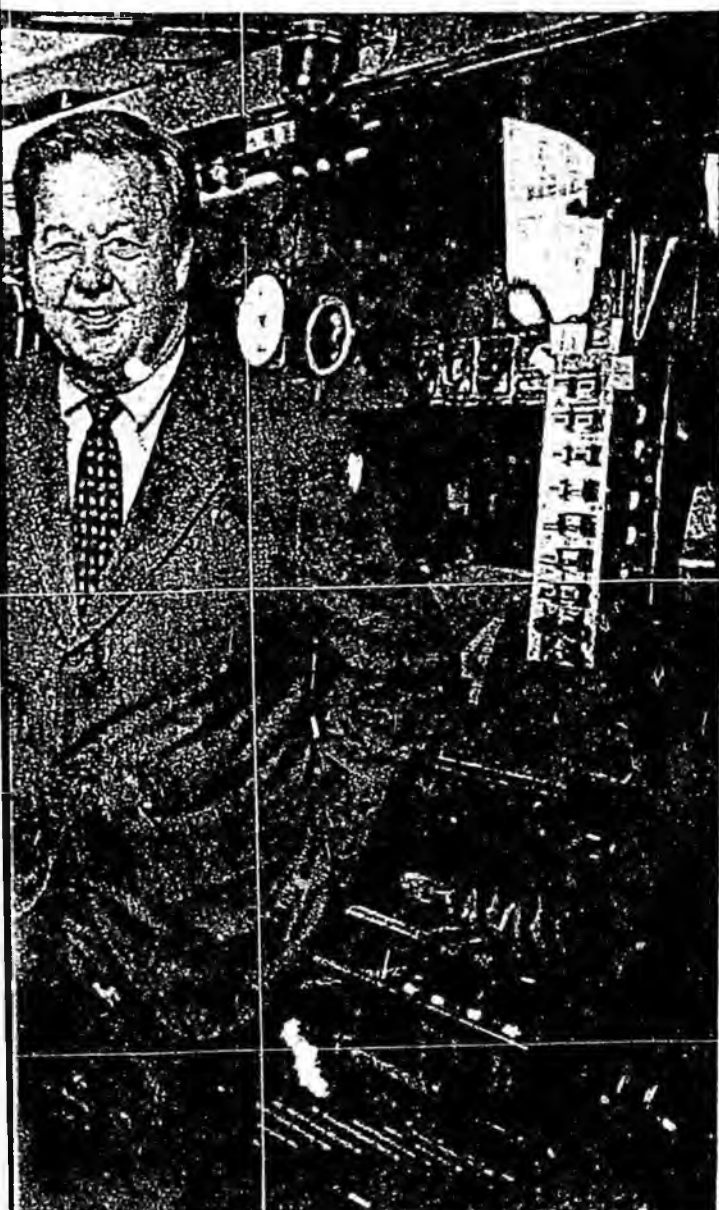
\*\*\*\*\*5-DIGIT 11912-5\*\*\*\*\*  
 270792 VER 0417402 28A 282022  
 1990 1983 1986  
 10866 10866

# THE NEW YORK JOURNAL

©1989 The New York Law Publishing Company

The Weekly Newspaper for the Profession

MONDAY, OCTOBER 16, 1989



Clark Thomas

ame a his firm, King & Bellow, represents the manage-  
 s. Now ments of 300 dallies.

## WISHERS' VISION

& newspapers, a union buster. By  
 ts Tom Humphrey. Page 27.

## Keeping Babies Free of Drugs

Pregnant substance abusers face prosecutions and loss of custody.

BY RORIE SHERMAN  
 National Law Journal Staff Reporter

AN EXPONENTIAL increase this year in the prosecutions of pregnant women who abuse substances and risk harming their fetuses has called attention to a national health crisis. But recent studies indicate the legal system is doing a patchwork job on a deep social problem.

At least 10 women this year in California, Florida, Illinois, Massachusetts and South Carolina have faced criminal prosecutions — and one has been convicted — stemming from their use of cocaine, heroin or alcohol while pregnant.

The convicted woman, Jennifer Johnson, 23, of Florida was sentenced Aug. 25 to 14 years probation during which time she must report any pregnancies to law enforcement authorities and receive court-approval for her prenatal care program.

These figures and measures represent a dramatic increase in the amount of pressure prosecutors are exerting in the hopes of sending a message that all women must protect their fetuses or face the consequences.

At the same time, these numbers don't begin to tell about what health care workers and civil liberties lawyers say is a much more pervasive but largely unseen story unfolding behind the closed doors of the nation's family courts. Women are losing custody — their children are sent into foster care systems for months immediately after birth — when a single drug test indicates the presence of illegal substances in the newborn. (NLJ, 10-3-88.)

"The sense of hysteria and concern about drug abuse has only been increasing since the time of the Pamela Rae Stewart case," says Lynn Paltrow, staff attorney with the Reproductive Rights Project at the New York-based American Civil Liberties Union. In 1986, Ms. Stewart of San Diego became the first woman in the nation criminally charged with failing to provide her fetus with necessary medical care. A trial court found state law imposed no duty to care

"The sense of hysteria and concern about drug abuse has only been increasing."

Continued on page 28

## Marcos Bequeaths a Legal Tangle

ANDREW BLUM  
 Law Journal Staff Reporter

AY BE ONLY fitting that the late  
 one leader

Philippine President Corazon C. Aquino. When he arrived in Hawaii, Mr. Marcos' health deteriorated and almost everything connected with him wound up in litigation — including \$8.2 million in property

allments, Mr. Marcos died in Honolulu Sept. 28 at the age of 72. Most attorneys in the litigation say his death should not affect most of the pending cases. Because of his ill health, Mr. Marcos

# Prosecutions Aim to Protect Fetuses From Drugs

Continued from page 1

for a fetus on a pregnant woman.

But while the legal system has been trying to fix a serious problem with the only tools it has available — criminal prosecutions and custody removals — civil libertarians say these actions violate women's constitutional rights. Such claims seem to be buttressed by the results of two new studies.

One, released Sept. 18, found that nearly 15 percent of all women — rich and poor, black and white — may be abusing drugs while pregnant. The white woman is more likely to be using marijuana and the black woman cocaine. However, both pose significant health risks for fetuses. And the black woman is 10 times more likely to get reported to government authorities.

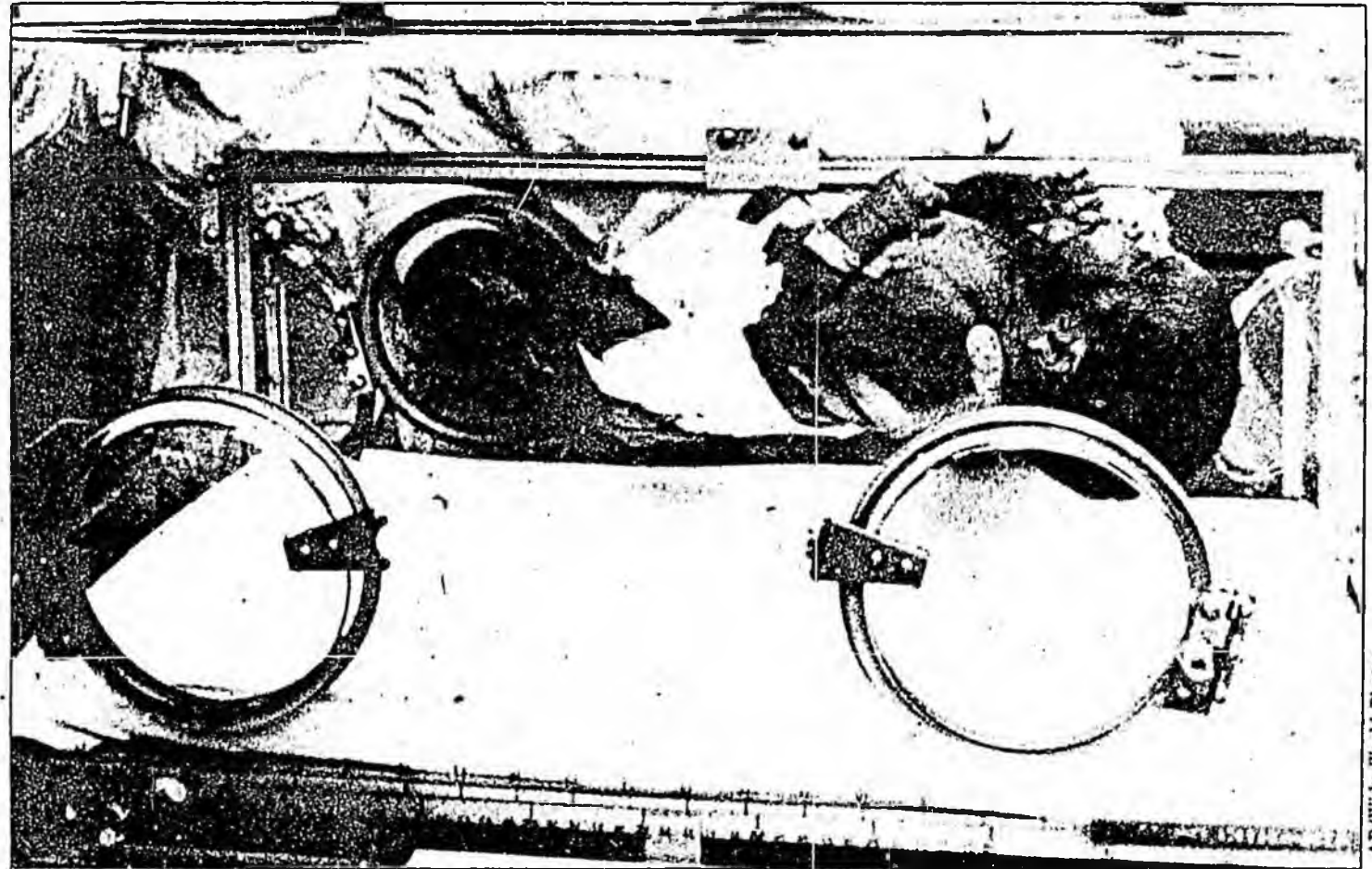
Another recent study has found that the doors to drug treatment programs are shut to most pregnant women — especially poor women on crack.

Responding to the deepening sense of crisis about drug use in general and substance abuse by pregnant women in particular, Congress has begun to hold hearings about addicted women, their babies, and programs that might help them. And the U.S. Public Health Service, a federal panel of experts, recently said that more prenatal care for all women with high-risk pregnancies, including those who abuse substances, is needed. Already, the federal office of substance abuse prevention has targeted \$4.5 million for model projects intended to aid pregnant alcohol- and drug-dependent women.

On the state level, California also seems poised to take some immediate action. A bill that would begin a \$3.2 million model program of services for chemically dependent women is waiting for the governor's signature.

## Not Enough?

But health care advocates say that — given the dimensions of the problem



**YOUNG ADDICT:** Women who take heroin and other drugs with various abnormalities. This 2-day-old baby, which will while pregnant risk giving birth to babies low in weight and have to live in an incubator, was born addicted to heroin.

was much talk of criminal charges, although no formal action, against a Butte County woman who admitted to hospital authorities that she had used heroin while carrying her baby to term. The woman had tried to get help, driving 120 miles a day for several months to the nearest methadone program. The local prosecutor's threats of criminal charges sparked a letter-writing campaign of protest as well as local health officials' efforts to provide treatment programs for pregnant wo-

men into labor, he says, adding that another actually left the hospital during labor to do cocaine.

All the South Carolina women were discovered to have done drugs because they gave birth in hospitals where their newborn's urine was tested.

Prosecutorial action has not been confined to drug abusers. In Massachusetts, the Middlesex prosecutor charged Beth Levey, 29, with vehicular homicide because she "killed" her fetus by getting into a car accident while allegedly driving while drunk. Levey

was charged with vehicular homicide because she "killed" her fetus by getting into a car accident while allegedly driving while drunk. Levey's care, according to her attorney, Lucy Quacinnella, senior attorney at the Legal Services of Northern California in Chico.

No national study has been conducted to assess how widespread such immediate removals are, but both the Nassau County, N.Y., and Los Angeles County, Calif., children protection services immediately seek to remove newborns with positive drug tests. And women's advocates claim such removals are being carried out across the

action. A bill that would begin a \$3.2 million model program of services for chemically dependent women is waiting for the governor's signature.

### Not Enough?

But health care advocates say that — given the dimensions of the problem — such tentative first steps are not nearly enough.

If the federal office for substance abuse prevention funded all the programs it approved, about \$30 million — not \$4.5 million — would be needed, says Susan Galbraith, assistant Washington, D.C., representative for the National Council on Alcoholism.

And such experiments as California's will barely begin to fill the enormous and very pressing need, according to Judith C. Rosen, sole practitioner in San Diego, who represented Pamela Rae Stewart and a member of the organization, California Advocates for Pregnant Women, that was formed in the wake of the Stewart case.

Into the void left by the health care system and lawmakers, some prosecutors have been stepping — much to the dismay of civil liberties lawyers who claim a whole new and unique set of crimes and punishments are being developed that apply only to women.

In Illinois, a 24-year-old alleged cocaine user was charged with manslaughter and delivery of a controlled substance to a minor when her daughter died two days after birth. A Winnebago County grand jury refused to indict her because it failed to find a connection between the child's death and possible cocaine use.

Such cases disturb women's rights advocates who note that men are not being criminally charged for taking drugs that may harm their genes, sperm and, possibly, children.

However, it is the women who come into contact with the law enforcement system when they give birth in hospitals. And women's groups are arguing that criminal prosecutions of substance abusers will only teach addicts to avoid the doctors their children so desperately need.

In rural northern California, there

term. The woman had tried to get help, driving 120 miles a day for several months to the nearest methadone program. The local prosecutor's threats of criminal charges sparked a letter-writing campaign of protest as well as local health officials' efforts to provide treatment programs for pregnant women.

Elsewhere, threats of criminal charges are materializing into indictments and one conviction.

In Florida, because Ms. Johnson passed cocaine to her fetus through the umbilical cord that connected them, she was found guilty of delivering a controlled substance to a minor. Ms. Johnson was sentenced to one year in a rehabilitation program as well as the 14 years probation. *State v. Johnson*, 89-890CFA (Cir. Ct. Seminole Co.).

"It's very nice that since she came to the attention of the authorities, she has had access to a rehabilitation program," says one of Ms. Johnson's attorneys, Marjorie M. Smith of the ACLU. But, Ms. Smith adds, the conviction is being appealed because Ms. Johnson's constitutional rights have been violated.

### 'De-Emphasizing' Punishment

While women's groups protest prosecutors' tactics, law enforcers say they are simply trying to ensure children's safety.

In Greenville, S.C., county prosecutor Joseph J. Watson insists that he is not looking to lock women up for taking drugs while pregnant. "We are de-emphasizing the punitive nature of charging these mothers... We don't want to drive mothers away from hospitals."

At the same time, he does want to send a message that it is not all right to do drugs while carrying a fetus. So, this past month, he charged six women who took drugs while pregnant with criminal child neglect.

"There are no written criteria or guidelines as to when we will charge," says Mr. Watson. "A pregnant woman walked into the police department asking for help and certainly that's not the type of person we would charge criminally."

But one of the women Mr. Watson did charge took drugs just before going

they gave birth in hospitals where their newborn's urine was tested.

Prosecutorial action has not been confined to drug abusers. In Massachusetts, the Middlesex prosecutor charged Beth Levey, 29, with vehicular homicide because she "killed" her fetus by getting into a car accident while allegedly driving while drunk. Ms. Levey was nine months pregnant; she now faces up to 15 years in prison.

"It's preposterous," says Ms. Levey's lawyer, Nancy Gertner of Boston's Silverplate, Gertner, Fine & Good. "It is conceptually splitting a woman in half by saying that she is not only doing [something harmful] against herself but that she's also [willfully] doing it against another."

### Losing Custody

While national attention is focused on the prosecutions, many more women who take drugs or abuse alcohol while pregnant are experiencing a punishment of another sort. In some jurisdictions, women whose newborns' urine tests positive for drugs immediately lose custody for months until they can prove to a court that they are fit mothers.

Social service agents say that it is their obligation to intervene immediately whenever there is such a strong indication that a child has already been harmed and may face more risk.

However, women's rights advocates vigorously object to what they say is such a shortsighted and problem-ridden reaction to an indication that there may be trouble in the family unit.

One positive test "is only a snapshot at one point in time," says San Diego's Ms. Rosen. It "doesn't indicate her ability to parent, the extent of her drug abuse or the extent of her motivation to rehabilitate if she is an addict." But it does condemn a child to the faulty care of the overburdened and inept foster care system during the first critical months of life, she adds.

While the Butte County woman was not criminally charged, she did immediately lose custody of the child she gave birth to Nov. 27. Still involved in hearings to determine whether she will get the child, there is no evidence she abuses her other child, now 8 and in

ed to assess how widespread such immediate removals are, but both the Nassau County, N.Y., and Los Angeles County, Calif., children protection services immediately seek to remove newborns with positive drug tests. And women's advocates claim such removals are being carried out across the country and mostly in the cases of poor, black addicts who are the most likely to get reported to the authorities.

Such treatment violates women's constitutional right to due process, they claim, and its uneven application among the races — like that of the criminal prosecutions — raises constitutional problems of discrimination.

### Whites, Too

Heartrending pictures of black crack babies, shriveled bodies pinned to incubators by tubes almost as big as they, have been appearing in the national press with ever greater frequency.

Yet a recent study conducted in Pinellas County, Fla., found that 15 percent of white children as well as black are likely to suffer now because their mothers abused alcohol, marijuana, cocaine and/or opiates during pregnancy.

"This is the first comprehensive population-based study of substance abuse during pregnancy," notes Dr. Ira J. Chasnoff, director of the Chicago-based National Association of Perinatal Education Programs. "Because of the county's demographics, it could represent a microcosm of many other communities across the United States."

The study examined women upon their first visit for prenatal care at both public health clinics and private doctors. The rate of positive drug tests among white women was 15.4 percent; among black women, 14.1 percent. All women were more likely to be using marijuana. Black women, however, showed a much higher rate of cocaine use, 7.5 percent to 1.8 percent.

Florida, like many other states, has a statewide policy requiring hospitals to notify local health departments when an infant is born with drugs in its system or the mother is an addict. However, the Pinellas County study

*Continued on following page*

Continued from page 27

I knew about was having babies." He talked it over with Mr. King, already a practicing attorney, and decided to enroll instead in the night law school.

He made many contacts in the newspaper business outside of Nashville by serving in such posts as president of the Southern Circulation Managers Association and chairman of the Southern Newspaper Publishers Association Executives' Clinic.

As an attorney, he initially dabbled in domestic relations but developed a distaste for divorce work after finding "I'd get too emotionally involved."

He decided then to concentrate on newspapers and let that intent be known among "a lot of very dear friends in the newspaper business."

His first legal success came in negotiating a contract for the News-Star World in Monroe, La., and, as word spread, the clients began to multiply, he says.

"I knew the lingo and the questions to ask," he says, adding that today lawyers newly hired by the firm are given media training in advance. Now, he adds, clients "don't have to spend three days with you explaining what a press run is or what a web press is."

He went into his first courtroom encounter, in Texas, with some misgiving about his ability in a faceoff with a battery of attorneys with credentials more outwardly impressive than his diploma from a little-known night law school.

"When I got in there, I found out they hadn't read the cases," he says. "After that, I never worried about my credentials."

**K**ING & BALLOW distributes a monthly publication, "Comment," reporting on legal developments in employee relations and related topics with an emphasis on media angles.

It also has two other publications, "Comment: First Amendment Quarterly," devoted to the media issues of press freedom, libel and such; and "Comment: Entertainment Law Quarterly," which deals with developments

in entertainment and copyright law.

The publications, Mr. Ballow says, have stirred considerable interest among potential clients. He says the firm has enough potential business to probably put another 10 lawyers to work, but he has difficulty recruiting lawyers of the quality — and orientation to hard work — the firm demands.

Says the Daily News' Mr. Gold, "Bob could get twice as much work as he has, but what Bob is more concerned with is the quality of his work and service to his clients. They are a 24-hour law firm. They are there on Saturdays and Sundays. I never feel alone."

"I don't want to get melodramatic, but I've dealt with a lot of law firms and very few will take the heat," Mr. Gold continues. King & Ballow, on the other hand, "will stand with me right or wrong."

Says former Tennessee Attorney General William M. Leech, now with Nashville's Manler, Herod, Hollabaugh & Smith, "Bob Ballow has built up a reputation for hard work. He keeps his people hopping."

Away from the job, Mr. Ballow's interests include his family (a son, Robert Brent Ballow, works with the firm), lifelong membership in the Baptist Church and being active in civic organizations. He was a founder of the conservative Tennessee Business Roundtable.

Otherwise, though, his work is his primary interest. "I don't have any hobbies I enjoy. I don't have a need for that," Mr. Ballow says. "I enjoy hiring lawyers and working with lawyers."

He also professes to like dealing with business people. "I've found that the higher you get in an organization, the nicer the people are," he says. "They didn't get there by not being pretty nice people."

Mr. Ballow also likes to proselytize for his latest profession, encouraging others to buck the naysayers, and, perhaps, to undergo midlife changes similar to his own.

Mr. Gold is among those who can testify to this. "Bob Ballow convinced me to go back to law school," he says. He's now enrolled at Pace University School of Law.

## Women's Rights Violated?

Continued from preceding page

also found that black women were 9.58 times more likely to be reported for their substance abuse even though white women were 1.09 times more likely to have abused a substance just prior to their first prenatal care visit.

At the same time that doctors are trying to calculate how many women are actually doing drugs while pregnant, some also have been trying to document what kind of help is available to pregnant addicts. The answer Dr. Wendy Chavkin, associate professor at Columbia University School of Public Health and Department of Obstetrics, found was: Pregnant women, especially if they are poor and addicted to cocaine, can expect little to no help from the health care system.

Health advocates say Dr. Chavkin's is the first survey of drug treatment

availability for pregnant women. And, although limited in scope, they say it accurately portrays what is happening around the country.

Dr. Chavkin surveyed 78 drug treatment programs in New York City. Fifty-four percent of the treatment programs categorically excluded pregnant women, 67 percent excluded pregnant women who are on Medicaid, and 87 percent excluded pregnant women on Medicaid who also are addicted to crack.

Dr. Chavkin is currently working on developing a program for cocaine-addicted pregnant women.

"The first thing we need to do," says Dr. Chavkin, "is talk to both addicted women and drug treatment providers about what they think works and doesn't work so that we can learn from all that experience as quickly and intelligently as possible."

- Drafting Pleadings
- Conducting Discovery

November 16 and

Association of the Bar of the City of

### FACULTY

Chairman:

**JEFFREY GLEKEL**  
Skodden, Arps, Slate, Meagher & Flom  
New York City

Special Guest Speaker:

**HONORABLE JOHN M. WALKER, JR.**  
Judge, United States District Court  
Southern District of New York

**DENISE COTE**  
Kaye, Scholer, Fierman, Hayes & Handler  
New York City

**FREDERICK T. DAVIS**  
Patterson, Belknap, Webb & Tyler  
New York City

**CONSTANCE S. HUTTNER**  
Skodden, Arps, Slate, Meagher & Flom  
New York City

### PROGRAM SCHEDULE

**FIRST DAY (November 16): 9:30 A.M. to 12:00 P.M.**  
Morning Session: 9:30 A.M. to 12:00 P.M.

Tips from the Judiciary Concerning Effective Litigation  
The Art of Drafting Pleadings (Rokoff)  
Drafting Dispositive Motions (Cote)

**Afternoon Session: 2:00 P.M. to 5:00 P.M.**  
Drafting Interlocutory Motions (Huttner)  
Attorney-Client and Work Product Privileges (Cote)  
Drafting and Responding to Discovery Requests (Cote)

**SECOND DAY (November 17): 9:30 A.M. to 12:00 P.M.**  
Morning Session: 9:30 A.M. to 12:00 P.M.

Drafting and Responding to Discovery Requests (Cote)  
Litigation Strategy (Jassen/Weinberg)

**Afternoon Session: 2:00 P.M. to 5:00 P.M.**  
Depositions  
Preparing for and Taking Depositions (Joseph)  
Defense of Depositions; Preparation of Witnesses  
Question and Answer Period

Subscriptions and cancellations:  
Subscriptions may be made at any time. Cash of letters are accepted and registration fees refunded (less a \$15 cancellation fee) if notice is received by S.F.P. (New York News) on November 14. No refunds will be granted after this time. All registration fees must be paid before the first session.

### REGISTRATION FORM

Return Registration Form with Payment to:

LAW JOURNAL SEMINARS PRESS, 111 Eighth Avenue, Suite 905, New York, N.Y. 10013

SEMINAR REGISTRATION

YES, Please register me for THE EIGHTH ANNUAL CIVIL JUSTICE SEMINAR, Association of the Bar, 8918A1

Registration fee, including course materials, \$350  
Each additional registrant from the same firm, \$300

Special to Government Law Departments, Legal Aid and Non-Profit

All fees are payable upon receipt of invoice unless payment arrangement be made at any time. See information packet for cancellation policy.

I cannot attend the seminar, but please send me a copy of the CD (to be shipped after the seminar). Save 10% by enclosing payment.

REGISTER EARLY SPACE IS LIMITED

Make checks payable to Law Journal Seminars Press

Check enclosed for \$  Bill me

Name \_\_\_\_\_

Title \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_

Telephone Number: ( ) \_\_\_\_\_

Please indicate additional names on your firm's stationery.

"All the News  
That's Fit to Print"

# The New York

VOL. CXXXVII . . . No. 47,613 Copyright © 1983 The New York Times

NEW YORK, TUESDAY, AUGUST 30, 1983

## Widespread Abuse of Drugs By Pregnant Women Is Found

By JANE E. BRODY

A frighteningly high number of babies are being exposed to cocaine or other illegal drugs in the womb, according to data from 36 hospitals around the country. The findings, described yesterday at a news conference, were gathered from hospitals in both urban and suburban areas, serving patients from all socioeconomic groups.

The survey found that at least 11 percent of women in the hospitals studied had used illegal drugs in pregnancy. Experts said the data suggested that 375,000 newborns a year nationwide faced the possibility of health damage from their mothers' drug abuse.

### 'Generation of Addicts'

The survey did not deal with alcohol use in pregnancy, although experts describe it as a serious problem.

While the findings do not necessarily represent drug abuse rates in all hospitals throughout the country, experts said they indicated that the problem was much more widespread than had previously been thought.

Dr. Elaine M. Johnson, director of the Federal Office of Substance Abuse Prevention, said drug use in pregnancy "cuts across racial and socioeconomic lines and maternal age groups, especially since cocaine has become so popular."

"It's not just a minority problem, and it's not just an inner-city problem," Dr. Johnson told a con-

ference on drugs and pregnancy in New York on Sunday. "Currently, most cases of drug abuse among pregnant women go undetected and untreated." Of the affected babies, she said, "We are producing a new generation of innocent addicts."

Yet, according to Dr. Janet Chandler, coordinator of Chemical Dependency Services at Northwestern's Perinatal Center for Chemical Dependence, pregnant women are often discriminated against by addiction treatment programs. "Most centers worry about the liability, so as soon as they discover a woman is pregnant, they refuse her or throw her out of the program," she said. "Even emergency detoxification programs don't want pregnant women."

### Hospital Selection Criteria

The survey was compiled by the National Association for Perinatal Addiction Research and Education. The findings were released at the news conference yesterday after being presented to the association's national training conference on drugs, alcohol, pregnancy and parenting at the Waldorf-Astoria Hotel.

Dr. Ira J. Chasnoff, president of the fledgling association and director of the new survey, said in an interview that he believed the findings significantly underesti-

*Continued on Page C13, Column 1*

## CUOMO THREATENS YONKERS OFFICIALS FOR DEFYING COURT

HE MAY SEEK TO REMOVE 4

The Move Is His First Toward  
Resolving Stalemate Over  
Desegregation Plan

By ELIZABETH KOLBERT

Special to The New York Times

ALBANY, Aug. 29 — Governor Cuomo said today that he would act to remove from office four Yonkers City Councilmen who have blocked a court-ordered housing desegregation plan unless the United States Supreme Court indicates that it will hear their appeal of a contempt order.

Mr. Cuomo's statement was his first outlining steps he planned to take to resolve the emotional dispute over Yonkers' defiance of the housing plan. Any action by him would be delayed if the Supreme Court agreed to review a contempt order against the Councilmen that was prompted by their defiance. Last week, however, a Federal appeals court unanimously upheld the order, and earlier this year the Supreme Court refused to hear an appeal of the discrimination ruling against Yonkers that the housing plan is designed to remedy.

If Mr. Cuomo were to remove the Councilmen, it would be only the second time in this century that a New York Governor has removed an elected official, aides to Mr. Cuomo said.

### As Early as Next Week

The Governor said the removal process, which entitles the Councilmen to a hearing, could begin as early as next week if they continue to block the housing plan and if the Supreme Court denies their request for a continued suspension of contempt-of-court fines imposed on them. The fines against the Councilmen have been suspended for the last three weeks.



Amiena Mohammed and  
massacre at Sheeb, Ethi

## Dukakis, Stung by G.O.P. Attack, Urges Debate on Campaign Issues

By ROBERT TONER

Special to The New York Times

WEST SPRINGFIELD, MASS., Aug.

Vice President Bush charged that Michael S. Dukakis would endanger arms negotiations by making "unilateral" concessions to the Soviet

## After Rebel Vents Its

NAGLA, Ethiopia — The

# Wide Abuse of Drugs Is Found in Pregnancy

Continued From Page A1

estimated the extent of the problem, since physicians rarely questioned private obstetrical patients about drug use or tested their urine for drugs.

To conduct the survey, Dr. Chasnoff selected 40 hospitals around the country that he said represented institutions of varying sizes serving patients from varied socioeconomic levels. Thirty-six had gathered data on pregnant women or newborns that permitted analysis of drug-abuse rates.

Dr. Chasnoff is an associate professor of pediatrics and psychiatry at Northwestern University Medical School and director of the Perinatal Center for Chemical Dependence at Northwestern Memorial Hospital in Chicago. The study was financed by grants from the Office of Substance

and tested their urine. The hospital reported that 17 percent of the women had used cocaine and 27 had smoked marijuana in pregnancy. At the University of California's Davis Hospital in Sacramento, 25 percent of 800 women whose urine was tested during labor and delivery had evidence of cocaine, amphetamines or heroin use. At Harlem Hospital in New York, urine tests on 3,000 newborn babies showed that 15 percent had been exposed to cocaine prenatally. And at Christiana Hospital in Newark, Del., evidence of drug abuse was found in 24 percent of pregnant women whose urine was tested at the first prenatal visit.

## Similarities in Rates

Dr. Chasnoff concluded: "The high rate of pregnancies or births in which drugs are present is not confined to the largest urban areas. The rate is similar in hospitals across the country."

As for the health consequences of prenatal cocaine exposure, Dr. Chasnoff told the conference that damage to the baby could include prenatal strokes and lasting brain damage, seizures after birth, premature birth, retarded fetal growth, breathing lapses, absence of part of the gut and structural abnormalities in genital and urinary organs. Even when the woman stops using cocaine in the first three months of pregnancy, the baby is at risk of malformations, strokes and behavioral abnormalities, Dr. Chasnoff's studies have shown.

Marijuana, too, can have untoward effects on the fetus. Dr. Barry Zuckerman, a professor of pediatrics at Boston University's School of Medicine and director of developmental and behavioral pediatrics at Boston City Hospital, reported that babies exposed to marijuana were likely to be born smaller than normal and to show such neurological difficulties as an abnormal startle reflex, an increase in tremors and an inability to shut out disturbing stimuli.

Although it was not included in the new survey, experts consider alcohol use by pregnant women to be an even greater problem than the abuse of illegal drugs. At high levels of use, alcohol can cause serious malformation. Even at moderate levels, alcohol use is associated with an increased risk of mental or physical damage to the newborn.

**'We are producing a new generation of innocent addicts.'**

Abuse Prevention and the March of Dimes Birth Defects Foundation.

The substances included in the survey were cocaine, marijuana, heroin and methadone, amphetamines and PCP. The study showed a range of substance abuse in pregnancy of four-tenths of 1 percent to 27 percent from one hospital to another.

Dr. Chasnoff said the differences were mainly a result of how carefully the hospitals looked for the problem. Hospitals with an established protocol for determining drug abuse among pregnant patients found three to five times as much as hospitals with little or no systematic monitoring.

Furthermore, when hospitals were categorized and grouped together by percentage of patients receiving public aid, a similar incidence of substance abuse in pregnancy was found in all categories. Thus, when drug abuse rates from the three hospitals with fewer than one-quarter indigent patients were averaged together, 11 percent of the pregnant women were reported as being involved with drugs. Likewise, when rates from the 24 hospitals with more than 50 percent indigent patients were averaged, 11.3 percent had drug involvement.

At Boston City Hospital, for example, the records of 1,600 women showed staff members asked the women whether they had taken drugs

Don't overlook the special International Report every Monday In Business Day



## ids

# move up

**IBM® Personal System/2™ Model 25**

- 8086-8Mhz
- 512k RAM • 3.5" Drive
- Parallel/Serial/ Mouse Ports
- Monochrome Monitor

**\$969**

With 2 Drives **\$CALL**

With 20Mb Hard Disk **\$1349**

**Model 30**

- 8086-8Mhz • 640k RAM
- 2 3.5" Drives

**CALL**

With 20 Mb 35 ms H.D. **\$1549\***

\*With Monitor Purchase

**IBM® Personal System/2™ Model 60**

- 80286-10Mhz
- 1.44 Drive
- 20Mb Hard Disk

**50Z IN STOCK**

**IBM® Personal System/2™ Model 60**

- 80286 • 10 Mhz
- 44Mb H.D.

**\$3195\***

**AST Premium™ /286**

- 80286 Processor
- 10/8/6Mhz
- True O Wait State
- 512k Fast RAM Exp. to 8Mb
- 1.2Mb Drive
- Serial/Parallel/Clock Ports
- 7 Expansion Slots
- MS-DOS 3.3

With 20Mb H.D. **\$1895\***

With 40Mb H.D. **\$2095\***

**Premium/386**

- 80386 Processor
- 20Mhz
- O Wait State
- 1Mb RAM
- 1.2Mb Drive
- 40Mb Hard Disk
- MS-DOS 3.3

**NEW! LOW PRICE**

**\$3495\***

\*Monitor Extra

**IBM® Port...**

- 12 Mhz-80286
- Gas Plasma Screen
- 640k RAM • 1:2
- 20 Mb Hard Disk
- With 40 Mb Hard Disk

Type	h.c.
Width	80
CPS	24
Price	\$34

**IBM® Z-184** **\$115**

- Outstanding 10" Bar
- Dual Speed Process
- 640k RAM
- 2-720k Drives
- Battery or A.C. Pow

**Z-184-20** **\$24**

- With 20Mb Hard Disk

# ids computer c

## interdynamics data system

369 Lexington Ave. (at 41st Street) N.Y. 10017

\* Prices Subject to Change \*\* Prices Based on Payment by Cash

Our memory doesn't fail

**S B**

**19**

# Alaska State Legislature



## Senate

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

2957 SHELDON JACKSON STREET  
ANCHORAGE, ALASKA 99508

While in Juneau  
P.O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-3818

M E M O R A N D U M

08 February 1990

TO: Senate Judiciary Committee

FROM: Senator Arliss Sturgulewski *AS*

The Senate Judiciary Committee Substitute for Senate Bill 19 addresses the committee's concerns as follows:

1. Sec. 12.38.090 allows a person to obtain relief under the Alaska Exemptions Act during the forfeiture process by filing a timely claim and proving that the person provides for than half the support of a minor dependent living in the person's household.

2. Real property is now exempted from the administrative forfeiture procedure and is subject instead only to court proceedings. The bill also now says the court may order property forfeited, rather than shall.

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY


M E M O R A N D U M

January 22, 1990

SUBJECT: SSSB 19 - sectional analysis of version to be introduced

TO: Senator Arliss Sturgulewski  
ATTN: Melissa A. Fouse

FROM: Jack Chenoweth  
Legislative Counsel



The Sponsor Substitute for Senate Bill 19 combines in one place the seizure and forfeiture provisions applicable to property used in violation of the criminal laws of the state governing alcoholic beverages (AS 04) and controlled substances (AS 11.71 and 17.30) and imitation controlled substances (AS 11.73). It replaces the seizure and forfeiture provisions separately applicable to these chapters with a single set of procedures applicable to the taking of property used in violation of state law applicable to alcoholic beverages, controlled substances, and imitation controlled substances.

In essence, bill section 1 of the sponsor substitute establishes the procedures, while the remainder of the bill defines the applicability of those procedures in relationship to the specific statutes in which forfeiture of property is currently authorized under the various separate titles, and makes other necessary changes.

This version of the sponsor substitute does not address seizure and forfeiture of property in the following subject matter areas:

- property used in violation of guide licensing laws;
- property used to violate criminal laws relating to illegal use of animals;
- property used to violate state gaming laws; and

-- property used in violation of state fish and game statutes and regulations.

These topics continue to be covered by their own provisions.

The procedures defined in the proposed sponsor substitute are made part of Title 12, the Code of Criminal Procedure. While seizure and forfeiture is a civil process, its actual use relates so closely to criminal conduct that it seemed to me best to place the material in the part of the statutes (AS 12.35, relating to search and seizure) to which the subject matter of the legislation most logically relates.

\*

Bill section 1 restates the general provisions applicable to all seizures and forfeitures. In summary:

Proposed AS 12.35.200 [Applicability] identifies as the property subject to forfeiture under the procedure established property subject to forfeiture under the alcoholic beverage control laws (AS 04) and property covered by the controlled substance (AS 17.30) and imitation controlled substances laws (AS 11.73).

Proposed AS 12.35.210 [Seizure] authorizes, in the alternative, actual seizure of "property subject to forfeiture" under a warrant or court order, constructive seizure of that property under a warrant or court order, and actual or constructive seizure of that property without a warrant if made incident to a valid arrest, if subject to prior judgment in a criminal proceeding, or under probable cause. The section also briefly describes how a constructive seizure of the property may be made.

Proposed AS 12.35.220 [Custody] directs the commissioner of public safety (or, by definition, the commissioner's designee) to take custody of seized property, and the alternatives available to that officer in the performance of that duty.

Proposed AS 12.35.230 [Duration] sets limits on the duration of the holding of seized property. As a general rule, the period of holding is limited to the earlier of securing an order of forfeiture from a court or 48 hours. The rule is subject to exceptions that permit a longer holding of certain illicitly-held alcoholic beverages and to controlled

substances, nor does the duration apply to property whose forfeiture is pursued in conjunction with a criminal prosecution.

As to the seized property, proposed AS 12.35.240 [Inventory and valuation] outlines minimal inventory and valuation procedures that the commissioner must follow after obtaining custody of the seized property. The commissioner is to inform the attorney general who, after determining whether or not a successful forfeiture proceeding may be maintained, may order return of the seized property (excepting only illicit controlled substances).

\*

The forfeiture procedures commence with proposed AS 12.-35.250 [Proceedings] and 12.35.260 [Notice].

Forfeiture is predicated upon the reasonable efforts of the commissioner of public safety to determine the identity of the owner of the seized property and any other persons who may hold an interest in the property. Three alternative proceedings are identified. Foreclosure may occur (1) in conjunction with a criminal proceeding, under a forfeiture motion; (2) through the summary administrative proceeding process outlined in the bill; and (3) by commencement of an in rem civil proceeding under the process outlined in the bill. An exception from these requirements is made for property seized under a court order forfeiting the property to the state. Within the 20 day period following the property's seizure, the commissioner of public safety is to give actual and publication notice to the parties indicated in the manner prescribed.

Proposed AS 12.35.270 [Administrative forfeiture] establishes a summary administrative forfeiture process applicable to seized property of a value of not more than \$100,000 or of seized property that is a conveyance. This is a concept new to current law, and the procedures applicable are outlined in a fair measure of detail. If the commissioner elects (there is no obligation to use the process) to use the summary administrative process, the commissioner must give the notice required by subsection (b). A person having an interest is to submit a claim and a bond, cash, or certified check. If the claim and the bond or deposit are not found satisfactory, the commissioner may allow limited additional time for the claimant to make the claim satisfactory. If found

satisfactory, the commissioner must promptly commence a civil proceeding in rem. If found not satisfactory within the time allowed, the commissioner may order the property forfeited.

The in rem forfeiture proceeding, set out in proposed AS 12.-35.280 [In rem forfeiture], is the usual or normal process applicable to the forfeiture of seized property. The process essentially involves court examination of the state's claim to forfeiture of the subject property, with the property itself as the focal point of the inquiry. The section outlines applicable notice provisions, to be followed if there are no comparable applicable provisions adopted in the state's rules of civil procedure. A principal purpose of the notice is to give a person claiming an interest in the property to file an answer and claim with the court. Unless disposed of in another manner, or summarily in the absence of any answer and claim, the court is to consider and determine any claim and answer. Subsection (g) of AS 12.35.280 specifically provides that an in rem proceeding may be held in abeyance while criminal proceedings are undertaken against a property claimant.

AS 12.35.290 [Limitation of defense] relates to the preceding section. By denying a party the defenses specified in it, proposed AS 12.35.290 is intended to affirm that the in rem proceeding and the associated criminal prosecution are separate proceedings.

\*

When forfeiture proceedings are completed, the court enters a forfeiture order. Under AS 12.35.300 [Status of property], the order establishes a lien on the property in favor of the state. That lien takes precedence over an unperfected security interest (i.e. a "naked" third party claim). The inclusion of this provision is intended to respond to concerns expressed by the Department of Law as to the status of claimants under the decision in Fehir v. State, 755 P.2d 1107 (Alaska 1988).

Proposed AS 12.35.310 [Remission] is concerned with the property rights and interests of "innocent" owners of seized property and of "innocent" third parties having a valid security or similar interest in seized property subject to forfeiture. The section outlines how those parties may exercise their rights and secure return of the property.

Property of an innocent owner may not be forfeited if the owner, in an administrative or an in rem proceeding, meets the burden of proof prescribed in subsection (a) (preponderance of the evidence), while property in which an innocent third party has an interest may not be forfeited in one of those proceedings if the party having the interest meets the burden of proof prescribed in subsection (b) (preponderance of the evidence).

As an alternative, if a party has a claim on seized property, the party may petition the court for the property's sale. The procedures for sale of the property in response to petition are set out in AS 12.35.320 [Sale of seized item]. The court may allow that sale if the court makes the findings specifically required by subsection (b). If sale is allowed and occurs, the proceeds of the property's sale are substituted for the property itself as the object of the forfeiture action.

\*

Proposed AS 12.35.330 [Disposal upon forfeiture] outlines the manner of disposition of seized property. Forfeited alcoholic beverages are to be transferred to a state peace officer and destroyed. Other forfeited property is to be returned to the custody of the commissioner of public safety, who may thereafter order the property to be used in law enforcement activities, transferred, or sold, with the proceeds of the sale (subject to legislative appropriation) made available to cover expenses of the applicable seizure and forfeiture proceedings, or deposited into the state general fund. A key addition is the proposed "transfer to a political subdivision" formula, page 10, lines 10 - 22.

Proposed AS 12.399 [Definitions] sets out applicable definitions used in the preceding sections.

\* \* \*

The next six bill sections apply the seizure and forfeiture procedures to specific types of property to which state law currently specifically authorizes a seizure and forfeiture provision:

- Bill sections 2 and 3 -- Alcoholic beverages and related property
- Bill section 4 -- Property used in violation of laws

Senator Arliss Sturgulewski

Page 6

January 22, 1990

applicable to imitation controlled substances  
Bill sections 5 - 7 -- Property used in violation of  
state laws governing controlled substances

The approach generally used with respect to these substantive criminal provisions is to (1) identify the specific property that may be seized and (2) authorize that property's seizure and forfeiture by cross-reference to the procedural provisions of AS 12.35.200 - 12.35.399.

Please note these distinctions: Summary forfeiture of certain plants grown in violation of AS 11.71 and AS 17.30 may be required under AS 17.30.115(c). Controlled substances held or possessed in violation of AS 11.71 or AS 17.30 must be seized and summarily forfeited to the state, to be disposed of. Under proposed AS 17.30.115(b), holding and disposition of controlled substances by a local government is not authorized.

\*

Bill section 8 makes a technical amendment applicable to the disposition of forfeited property to the Alaska Wing of the Civil Air Patrol.

Provisions of current law that conflict with, or are invalidated by, the changes made in the bill are repealed by bill section 9.

JC:lmb  
L9/067

STATE OF ALASKA  
THE LEGISLATURE

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


LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

January 24, 1990

SUBJECT: Comparison between SSSB 19 and SB 367

TO: Senator Arliss Sturgulewski  
ATTN: Melissa A. Fouse

FROM: Jack Chenoweth  
Legislative Counsel 

This memorandum highlights the principal similarities and differences between Sponsor Substitute for Senate Bill 19, your measure proposing additions and amendments to the laws applicable to seizure and forfeiture, and Senate Bill 367, the governor's bill on substantially the same subject.

This memo keys to the bill order set out in SSSB 19 and cross-references from that measure to the related provisions of the administration's bill.

SCOPE OF SUBJECT MATTER COVERED IN MEASURES:

SSSB 19 brings together seizure and forfeiture provisions applicable to property used in violation of the criminal laws of the state governing

- alcoholic beverages (AS 04);
- controlled substances (AS 11.71 and 17.30); and
- imitation controlled substances (AS 11.73).

If enacted, the legislation would replace seizure and forfeiture provisions separately applicable to these chapters with a single set of procedures applicable to the taking of property used in violation of state law applicable to alcoholic beverages, controlled substances, and imitation controlled substances. The procedures defined in the sponsor substitute are made part of Title 12, the Code of Criminal Procedure. (While forfeiture is a civil process, its actual use relates so closely to criminal conduct that it seemed to me best to place the material in the part of the statutes--

AS 12.35, relating to search and seizure--to which the subject matter of the legislation most logically relates.) \*/  
Additionally, SSSB 19 is, in my view, a more "process"-sensitive approach in that it is organized in a manner that more nearly approximates the chronology that the owner or claimant of seized property, or that party's legal counsel, would likely encounter in dealing with questions of seizure and forfeiture of property.

SB 367, the administrative measure, omits reference to alcoholic beverages, limiting the changes proposed to state laws applicable to controlled substances and imitation controlled substances. Consequently, the administration seeks to achieve its objective through a revision of current seizure and forfeiture laws in existing AS 17.30.100 and the sections that follow.

---

\*/ Initially, the drafting strategy for what eventually became Senate Bill 19 involved consolidating in one place seizure and forfeiture provisions applicable to property involving any criminal violation so that one set of procedures and standards would govern throughout state law. Following discussion with the administration representatives, you asked me to omit from the draft of SB 19 the provisions governing each of the following, as to each of which explicit seizure and forfeiture provisions may be found in the respective titles and chapters elsewhere in the body of state law:

-- property used in violation of guide licensing laws;

-- property used to violate criminal laws relating to illegal use of animals;

-- property used to violate state gaming laws; and

-- property used in violation of state fish and game statutes and regulations.

Each of these topics continues to be covered by its own separate statutory foreclosure provisions.

Committees considering the legislation should determine the scope of the subject matter to be addressed in this legislation: if limited to controlled substances/imitation controlled substances, placement of the subject material in AS 17.30 is proper; if broadened to include other subjects, use of AS 12 5 seems a better choice.

\*

SSSB 19 is, in some respects, a more traditional approach. Under it, seizure and foreclosure responsibilities devolve on one executive branch agency--the Department of Public Safety--and, in contested foreclosures, the judicial branch has the exclusive role.

SB 367 introduces some additional players--while public safety has a role in the seizure and custody, the commissioner of administration figures prominently in the administrative and property disposition process--and, indeed, the Department of Administration has a larger role in contested summary administrative hearings.

Committees considering the legislation should also determine whether and to what extent the role of executive agencies in the consideration and disposition of forfeiture actions should be enlarged.

DRAFTING NOTES:

SSSB 19's bill section 1 establishes the procedures applicable to seizure and forfeiture, while the remainder of the bill (sections 2 - 8) define the applicability of those procedures in relationship to the specific statutes in which forfeiture of property is currently authorized under the various separate titles, and makes other necessary changes.

The principal operative provision of SB 367, also its bill section 1, inserts into AS 17.30 a sequence of new sections in place of materials proposed to be repealed. The remaining few sections of the bill make technical conforming amendments.

Both bills incorporate necessary repealers.

\*

January 24, 1990

APPLICABILITY:

An "Applicability" section appears only in SSSB 19; there is no directly comparable provision in the administration bill. Proposed AS 12.35.200 [Applicability] of SSSB 19 identifies in general or collective terms property subject to forfeiture under the alcoholic beverage control laws (AS 04) and property covered by the controlled substance (AS 17.30) and imitation controlled substances laws (AS 11.73).

SEIZURE:

Proposed AS 12.35.210 [Seizure] of SSSB 19 authorizes, in the alternative,

- actual seizure of "property subject to forfeiture" under a warrant or court order;
- constructive seizure of that property under a warrant or court order; or
- actual or constructive seizure of that property without a warrant
  - if made incident to a valid arrest;
  - if subject to prior judgment in a criminal proceeding; or
  - under a showing of probable cause.

In its AS 17.30.105(a) [page 2, line 11 and following], SB 367, the administration measure, likewise authorizes seizure either under court order or without court order and sets out relevant standards to guide those property seizures. As the transmittal letter accompanying SB 367 notes, the administration measure incorporates seizure authority "if otherwise constitutionally permissible," in order to take advantage of the constitutionally-authorized exceptions to the warrant requirement, and authorizes seizure on the basis of a grand jury finding that the property is subject to forfeiture. These additional circumstances are not explicitly incorporated into the legislation you have introduced.

Proposed AS 12.35.210 in SSSB 19 also briefly describes how a constructive seizure of the property may be made. The administration measure makes no provision for a constructive seizure.

**CUSTODY OF SEIZED PROPERTY:**

In SSSB 19, proposed AS 12.35.220 [Custody] directs the commissioner of public safety (or, by definition, the commissioner's designee) to take custody of seized property, and sets out the alternatives available to that officer in the performance of that duty.

Custody is briefly addressed in AS 17.30.105(b) of the administration measure. The task is assigned to the commissioner of public safety or a municipal law enforcement agent whom the commissioner authorizes.

**DURATION OF CUSTODY OF SEIZED PROPERTY:**

In SSSB 19, proposed AS 12.35.230 [Duration] sets limits on the duration of the holding of seized property. As a general rule, as to property used or intended for use in a crime that is movable, the period of holding is limited to the earlier of the securing of an order of forfeiture from a court or 48 hours. The holding rule is subject to exceptions that permit longer retention of certain illicitly-held alcoholic beverages and controlled substances, nor does the holding limitation apply to property whose forfeiture is pursued in conjunction with a criminal prosecution.

In the administration measure, SB 367, a 48 hour holding period is likewise set (see AS 17.30.105(a)(2)(C)) for property of this type.

**RESPONSIBILITY TO INVENTORY AND VALUE SEIZED PROPERTY:**

As to the seized property, SSSB 19's proposed AS 12.35.240 [Inventory and valuation] outlines minimal inventory and valuation procedures that the commissioner must follow after obtaining custody of the seized property. Inventory and valuation must occur within 10 days. The commissioner is to inform the attorney general who, after determining whether or not a successful forfeiture proceeding may be maintained, may order return of the seized property (excepting only illicit controlled substances).

Substantially the same process is to be followed in the inventory and valuation provisions of the administration's measure, SB 367. The same time limit applies. See AS 17.-30.105(b) and (c).

In SSSB 19, the forfeiture procedure itself commences with proposed AS 12.35.250 [Proceedings] and 12.35.260 [Notice].

FORFEITURE ALTERNATIVES:

Three alternative forfeiture methods are identified. Foreclosure may occur:

- in conjunction with a criminal proceeding, under a jeopardy forfeiture motion;
- through the summary administrative proceeding process outlined in the bill; and
- by commencement of an in rem civil proceeding under the process outlined in the bill.

An exception from these requirements is made for property seized under a court order explicitly forfeiting the property to the state.

The comparable provision in SB 367 is AS 17.30.115(a). The administration's alternatives include "filing a motion to forfeit in a . . . civil proceeding," an alternative not set out in SSSB 19.

NOTICE:

In SSSB 19, forfeiture is predicated upon the reasonable efforts of the commissioner of public safety, once having valued the property seized, to determine the identity of the owner of the seized property and any other persons who may hold interest in the property. Within the 20 day period following the property's seizure, the commissioner of public safety is to give actual and publication notice to the parties indicated in the manner prescribed.

In SB 367, the comparable provision is AS 17.30.111. The administration extends the notice window to 30 days after seizure, and establishes a minimum value of the property for which the notice of seizure and forfeiture must be given at \$500. As with SSSB 19, actual notice that is in compliance with applicable rules of civil procedure is authorized. However, a different requirement for publication notice attaches. In SSSB 19, the manner of publication notice depends on the method of forfeiture selected.

ADMINISTRATIVE FORFEITURE:

Both measures authorize administrative or summary forfeiture. This is, as Governor Cowper's transmittal letter declares, a concept new to current Alaska law. The procedures applicable are outlined in a fair measure of detail, especially in SSSB 19. The scope of permissible use of administrative forfeiture and the procedures applicable differ between the two bills.

In SSSB 19, proposed AS 12.35.270 [Administrative forfeiture] establishes a summary administrative forfeiture process applicable to

-- seized property of a value of not more than \$100,000; or

-- seized property that is a conveyance.

Under your bill, there is no obligation to use the administrative or summary process. The decision as to use rests with the commissioner of public safety (who has at least nominal custody of the seized item(s)). If the commissioner elects to use the summary administrative process, the commissioner must give the publication notice in the manner required by AS 12.35.270(b). Thereafter, a person having an interest must submit a claim and a bond, cash, or certified check. If the claim and the bond or deposit are not found satisfactory, the commissioner may allow limited additional time for the claimant to make the claim satisfactory. If found satisfactory, the commissioner must promptly commence a civil proceeding in rem, looking to the courts to order final disposition of the seized property. If found not satisfactory within the time allowed, the commissioner may, at the conclusion of the administrative proceeding, order the property forfeited. Thus, administrative proceedings are available for what the administration has described as "uncontested" foreclosure proceedings only, that is, when no claim against the property is forthcoming. "Contested" claims would be referred to the judiciary.

The administration's approach, set out in AS 17.30.117 of SB 367, differs. Use of summary administrative forfeiture is limited to property of less than \$100,000 value; there is no separate exception for conveyances. The alternative remains discretionary, but under the administration's approach, the discretion (and the process) become the responsibility of

the commissioner of administration. SB 367 does not incorporate a bond requirement, and authorizes the commissioner (through a hearing officer) to make final disposition of the seized property in all cases, contested or uncontested.

IN REM FORFEITURE:

In rem is the usual or normal process applicable to the forfeiture of seized property. Don't be put off by the term. "In rem" is Latin shorthand for "[a civil action against] the thing," meaning an action against, in the context of a forfeiture action, the object(s) whose ownership is to be determined.

In SSSB 19, the in rem forfeiture proceeding is set out in proposed AS 12.35.280 [In rem forfeiture]. The process essentially involves court examination of the state's claim to forfeiture of the subject property, with the property itself as the focal point of the inquiry.

The section outlines applicable notice provisions, to be followed if there are no comparable applicable provisions adopted in the state's rules of civil procedure. A principal purpose of the notice is to give a person claiming an interest in the property opportunity to file an answer and claim with the court. Unless disposed of in another manner, or summarily in the absence of any answer and claim, the court is to consider and determine any claim and answer. Subsection (g) of AS 12.35.280 specifically provides that an in rem proceeding may be held in abeyance while criminal proceedings are undertaken against a property claimant.

In SB 367, the in rem process is not described in the same order within one section. For example, the notice provision (comparable to SSSB's AS 12.35.280(b)) relies on the general notice provision of AS 17.30.111(b) and applicable civil rule, and the claim provision (comparable to SSSB 19's AS 12.35.280(d) - (f)) is set out in proposed AS 17.30.113. On the other hand, as will be noted later in this memo, SB 367 provides more detail with respect to other aspects of forfeiture proceedings, especially as regards standard and burden of proof and the scope of a claimant's ability to participate in the foreclosure proceedings.

LIMITATION OF CRIMINAL PROCEEDING AS A DEFENSE:

Each bill incorporates as a "defense" a roughly similar provision that, while acknowledging the interrelationship be-

tween the in rem proceeding and an associated criminal prosecution, is intended to affirm that the proceedings are separate, and that the criminal proceeding or prosecution, or its outcome, is not dispositive in the in rem proceeding. (A "defense" is evidentiary matter interposed by the defendant that must be met and disproved by the prosecution beyond a reasonable doubt.) In SSSB 19, that provision is AS 12.35.290 [Limitation of defense]. In SB 367, the provision is AS 17.30.115(e). The language differs--indeed, the administration's language covers all proceedings while SSSB 19's applies, by its terms, only in in rem proceedings. But, since, under SSSB 19, in rem proceedings are used in all contested proceedings, the difference may be one more of form than of substance.

\* \* \*

When forfeiture proceedings are completed, the court enters a forfeiture order.

STATUS OF PROPERTY ORDERED FORFEITED:

The administration has advised you, and in his transmittal letter Governor Cowper noted to the legislature, that it would be well to have a provision that

. . . gives the state a lien creditor preference over persons who claim an unperfected security interest in property . . . . [Such a provision would be] in response to the Alaska Supreme Court's opinion in Fehir v. State, 755 P.2d 1107 (Alaska 1988), which allows persons with unperfected security interests to file a claim for forfeited property. Drug traffickers are often adept at hiding assets or otherwise thwarting forfeitures by transferring assets . . . . Therefore, it is appropriate to give the state priority over these unknown (i.e. unrecorded) claimants to the property, at least to the extent that the state is able to recoup its expenses.

The language used differs--indeed, the provision of your bill is a little tighter than that proposed by the governor--but SSSB 19's AS 12.35.300 and SB 367's AS 17.30.119(f) are intended to address this concern.

REMISSION OR RELIEF:

Recent incidents involving criminal activities aboard vessels without knowledge of the vessel owners prompts inclusion of a remission provision in both bills.

In SSSB 19, proposed AS 12.35.310 [Remission] is concerned with the property rights and interests of "innocent" owners of seized property and of "innocent" third parties having a valid security or similar interest in seized property subject to forfeiture. The section outlines how those parties may exercise their rights and secure return of the property. Property of an innocent owner may not be forfeited if the owner, in an administrative or an in rem proceeding, meets the burden of proof prescribed in subsection (a) (preponderance of the evidence), while property in which an innocent third party has an interest may not be forfeited in one of those proceedings if the party having the interest meets the burden of proof prescribed in subsection (b) (preponderance of the evidence). The approach taken is one of interposing a prohibition against forfeiture in those situations.

The comparable provision in the administration's measure appears as AS 17.30.121. The administration's approach is one of authorizing remission if the claimant meets the standards established, and requiring the claimant to file an answer in a foreclosure proceeding. (SSSB 19 does not explicitly indicate how the owner or claimant is to indicate an interest in the property; filing of a claim or answer is presumed, not stated.) The administration's measure also makes provision for remission claims based on partial value and remission claims involving multiple claimants; these are not addressed in SSSB 19.

SALE OF SEIZED PROPERTY:

In SSSB 19, as an alternative to availing oneself of the remission claim process, if a party has a claim on seized property, the party may petition the court for the property's sale. The procedures for sale of the property in response to petition are set out in AS 12.35.320 [Sale of seized item]. The court may allow that sale if the court makes the findings specifically required by subsection (b). If sale is allowed and occurs, the proceeds of the property's sale are substituted for the property itself as the object of the forfeiture action.

On the subject of sale, the administration's measure provides more detail. AS 17.30.109(b) and (c) authorize sale and substitution of the sale proceeds in further foreclosure proceedings. In the administration's measure, the state (as well as any claimant) may seek sale, and both parties may seek a release of the property. The requirements that must be met and the standards that the court must apply in considering a petition for sale or release are more explicit; all five requirements and standards must be met, including the submission of a bond.

DISPOSITION FOLLOWING FORFEITURE:

In SSSB 19, proposed AS 12.35.330 [Disposal upon forfeiture] outlines the manner of disposition of seized property. Forfeited alcoholic beverages are to be transferred to a state peace officer and destroyed. SSSB 19 makes provision for the summary forfeiture of certain plants grown in violation of AS 11.71 and AS 17.30. See AS 17.30.115(b), added by bill section 6. The holding and disposition by a local government of controlled substances that are seized would not be authorized.

Except for the handling of alcoholic beverages and controlled substances, under AS 12.35.330, other forfeited property is to be returned to the custody of the commissioner of public safety, who may thereafter order the property to be used in law enforcement activities, transferred, or sold, with the proceeds of the sale (subject to legislative appropriation) made available to cover expenses of the applicable seizure and forfeiture proceedings, or deposited into the state general fund. A key addition is the proposed "transfer to a political subdivision" formula, page 10, lines 10 - 22.

In SB 367, the disposal provisions are set out in AS 17.30.-107 and 17.30.123. The provisions are not dissimilar. The administration bill requires seizure, summary forfeiture, and disposal of controlled substances and imitation controlled substances by the state. All other forfeited property is transferable to the commissioner of administration for use or sale across a comparable range of options.

\* \* \*

SB 367 incorporates additional provisions or adds detail as to some aspects of the seizure and forfeiture process, not

included in SSSB 19. Among the chief provisions set out in SB 367 that are not directly replicated in SSSB 19:

-- an equitable relief provision, AS 17.30.109(a), authorizing a court (or a hearing officer in an administrative proceeding) to provide for issuance of restraining orders and injunctions, principally to protect property that may be subject to foreclosure;

-- explicit provisions, set out in AS 17.30.115(b), describing the burden of proof that the state must bear in trying to secure a forfeiture order, and establishing the means by which a prima facie case may be made (shifting the burden of proof to any claimants) based on a criminal conviction or grand jury indictment;

-- more specific direction, given by AS 17.30.119(a), that mandates forfeiture (subject to remission) and specifies what must be contained within a forfeiture order;

-- authority, under AS 17.30.119(b), to claim exemptions from the forfeiture order under the state's Exemptions Act;

-- a duty, imposed by AS 17.30.119(c), on a person "who causes property to be subject to forfeiture" to pay certain expenses related to the property;

-- a provision, AS 17.30.119(d), spelling out what must be incorporated into the forfeiture order; and

-- authority, given by AS 17.30.105(d), for a person claiming an exemption under AS 17.30.119(b) to petition for court for use of the exempted property while forfeiture procedures are pending.

Some or all of these might be considered for inclusion in SSSB 19.

\* \* \*

The subject remaining to be discussed involves the respective approaches taken to identify property subject to seizure and forfeiture.

In SSSB 19, bill section 5, an amendment of AS 17.30.110, identifies controlled substance-related property that may be forfeited. In SB 367, that list appears in proposed AS 17.-30.103. The list in SB 367 is more encompassing; it also authorizes, as Governor Cowper's transmittal letter notes, forfeiture of property "traceable" to illegal activity. Briefly:

-- In SSSB 19, the controlled substances are forfeitable. In SB 367, AS 17.30.107 makes controlled substances summarily forfeitable.

-- In SSSB 19, "property," including raw materials incorporated into controlled substances, used in conjunction with illicit activity involving the controlled substance if that illicit activity is a felony is forfeitable. In SB 367, while there is a reference to forfeiture of raw materials, there is no directly parallel provision, but the general reference to "property" set out in proposed AS 17.30.103(b) might be read to embrace the same items.

-- SSSB 19 authorizes forfeiture of containers for drugs; SB 367 has no directly parallel provision, but, again, the general provision applicable to "property" in AS 17.30.103(b) would appear to apply.

-- Both bills make provision for forfeiture of conveyances or vehicles used in felony offenses.

-- Both incorporate reference to forfeiture of books, records, equipment, and data.

-- Both make provision for forfeiture of money, securities, and negotiable instruments.

-- Both bills authorize forfeiture of firearms (SSSB 19 retains a concealed weapon requirement; SB 367 eliminates that contingency); only SB 367 explicitly authorizes forfeiture of explosives and weapons.

-- SSSB 19 specifically identifies as forfeitable any real property that is involved in the commission of a felony offense; SB 367 does not enumerate this, and the governor's transmittal letter specifically notes its omission.

Senator Arliss Sturgulewski  
Page 14  
January 24, 1990

In SSSB 19, six bill sections apply the seizure and forfeiture procedures to specific types of property to which state law currently specifically authorizes a seizure and forfeiture provision:

Bill sections 2 and 3 treat with alcoholic beverages and related property, a subject not covered in SB 367.

Bill sections 4 - 7 identify forfeitable property used in violation of laws applicable to controlled substances and imitation controlled substances, for which there are related provisions in SB 367.

JC:gc  
G13/063

## NOTES TO DECISIONS

The common-law cause of action for breach of a vendor's duty to exercise reasonable care when dispensing alcohol is limited to cases arising before the legislature amended this section in 1980. *Nazareno v. Urie*, Sup. Ct. Op. No. 2456 (File No. 4807), 638 P.2d 671 (1981).

Civil liability under former law. —

Former AS 04.15.020(a) established a minimum standard of conduct for vendors of alcoholic beverages and failure to adhere to that standard constituted negligence per se. *Nazareno v. Urie*, Sup. Ct. Op. No. 2456 (File No. 4807), 638 P.2d 671 (1981).

**Sec. 04.16.220. Forfeitures.** (a) The following are subject to forfeiture:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) A person other than the owner holding, or the assignee of, a lien, mortgage, conditional sales contract on, or the right to possession to property subject to forfeiture under (a) of this section is entitled to

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

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

(h) Alcoholic beverages forfeited under (d) of this section shall be placed in the custody of a peace officer of the state and destroyed no earlier than 30 days after forfeiture. All other property forfeited under this section shall be placed in the custody of the commissioner of public safety for disposition according to an order entered by the court. The court shall order destroyed any property forfeited under this section that is harmful to the public. Other property shall be ordered sold and the proceeds used for payment of expenses of the proceedings for forfeiture and sale, including expenses of seizure, custody and court costs. The remainder of the proceeds shall be deposited in the general fund. (§ 3 ch 131 SLA 1980; am §§ 5 — 8 ch 80 SLA 1986)

**Effect of amendments.** — The 1986 amendment in subsection (a) in paragraph (1) inserted "possessed," and "possession of alcoholic beverages or prohibited the," in paragraph (4) substituted "that" for "which," and in paragraph (5) inserted a comma following "materials"; in subsection (b) in paragraph (3) inserted "except for alcoholic beverages possessed

in violation of AS 04.11.498 or an ordinance adopted under AS 04.11.498,"; in subsection (c) in paragraph (1) added the language beginning "or upon entry"; and in subsection (h) added the first sentence, in the second sentence substituted "All other property" for "Property," and in the third sentence substituted "that" for "which."

#### NOTES TO DECISIONS

**Former law construed.** — See *Territory of Alaska v. 188 Cases of Mixed Intoxicating Liquors*, 10 Alaska 414 (1944).

---

**Collateral references.** — 45 Am. Jur. 2d. Intoxicating Liquors, §§ 486-532. 4SA C.J.S. Intoxicating Liquors, §§ 365-397.

Revisor's notes. — AS 17.30.110(b) — (q) were renumbered as AS 17.30.112 — 17.30.126 in 1983.

#### NOTES TO DECISIONS

Former forfeiture statute construed. 1265 (1977), decided under former AS — See *One Cocktail Glass v. State*, Sup. 17.12.130. Ct. Op. No. 1437 (File No. 2729), 565 P.2d

Collateral references. — Forfeiture of personal property used in illegal manufacture, processing, or sale of controlled substances under § 511 of Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 USCS § 881), 59 ALR Fed. 765.

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

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

Revisor's notes. — Formerly AS 17.30.110(b) and (c). Renumbered in 1983.

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

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

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

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

(b) Property taken or detained under (a) of this section shall be held in the custody of either the commissioner of public safety or a munic-

ipal law enforcement agency authorized by the commissioner of public safety to retain custody of property listed in AS 17.30.110 subject only to the orders and decrees of the court having jurisdiction over any forfeiture proceedings. If property is seized under this chapter, the commissioner of public safety or an authorized municipal law enforcement agency may

- (1) place the property under seal;
- (2) remove the property to a place designated by the court; or
- (3) take custody of the property and remove it to an appropriate location for disposition in accordance with law.

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

Revisor's notes. — Formerly AS 17.30.110(d) — (f). Renumbered in 1983.

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

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

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

against the claimant under this chapter or AS 11.71. (§ 4 ch 45 SLA 1982)

**Revisor's notes.** — Formerly AS 17.30.110(g) — (i). Renumbered in 1983. **Cross references.** — For penalty for failure to furnish notification required under this chapter, see AS 11.71.050(a)(4).

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

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

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

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

**Revisor's notes.** — Formerly AS 17.30.110(j) and (k). Renumbered in 1983.

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

**Revisor's notes.** — Formerly AS 17.30.110(l). Renumbered in 1983.

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

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

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

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

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

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

Revisor's notes. — Formerly AS 17.30.110(m). Renumbered in 1983.

Effect of amendments. — The 1983 amendment added paragraph (6).

**Sec. 17.30.124. Remittance to claimant.** (a) Upon a showing that a claimant is entitled to remittance under AS 17.30.110 — 17.30.126, the court shall order that

(1) if the claimant is entitled to the item, it shall be delivered to the claimant immediately;

(2) if the claimant is entitled to remittance of some value less than the total value of the item, the claimant is entitled, at the claimant's choice, to receive either the value of the claimant's interest or, upon receipt of payment of the difference in value by the claimant, the entire item.

(b) An offender who used an item subject to remission in violation of this chapter or AS 11.71 shall be assessed a fine which may not be less than the cost of any lien payment or remittance made by the state plus the reasonable costs of the seizure. (§ 4 ch 45 SLA 1982)

Revisor's notes. — Formerly AS 17.30.110(n) and (o). Renumbered in 1983.

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

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

**Sec. 17.30.116. Procedure for forfeiture action.****NOTES TO DECISIONS**

Cited in *Resek v. State*, 706 P.2d 288  
(Alaska 1985).

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

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

**Editor's notes.** — This section is set out to incorporate editorial changes made by the Revisor of Statutes

*Sec. 17.30.130. Judicial review. [Repealed, § 22 ch 146 SLA 1986.]*

**Article 4. General Provisions.**

Section	Section
150. Reliance on Drug Enforcement Administration	900. Definitions
155. Confidentiality of certain information	

**Sec. 17.30.150. Reliance on Drug Enforcement Administration.** Results, information, and evidence received from the Drug Enforcement Administration of the United States Department of Justice relating to the enforcement functions of this chapter, including results of inspections conducted by it, may be relied on and acted on by the Department of Public Safety in the exercise of its enforcement functions under this chapter. (§ 4 ch 45 SLA 1982; am § 20 ch 146 SLA 1986)

**Effect of amendments.** — The 1986 amendment substituted "enforcement" for "regulatory" in two places and substituted "Department of Public Safety" for "board."

# Alaska State Legislature



2957 SHELDON JACKSON STREET  
ANCHORAGE, ALASKA 99508

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

While in Juneau  
P.O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-3818

## Senate

M E M O R A N D U M

31 January 1990

TO: Senator Jan Faiks  
Chair, Senate Rules Committee

FROM: Senator Arliss Sturgulewski *AS*

RE: SS Senate Bill 19

I appreciate your scheduling Senate Bill 19 for a hearing in the Senate Judiciary Committee. As you know, this bill was introduced into the Fifteenth Legislature as Senate Bill 462, passed the Senate with a vote of 20-0, and died in the House Judiciary Committee.

A member of the Anchorage Police Department approached me in 1987 and asked me to introduce legislation on the subject of seizure and forfeiture that would incorporate an administrative forfeiture process into it. That process would allow for speedier disposition of seized property in uncontested cases.

The bill also added real property to the list of items subject to forfeiture to bring it into conformance with the federal model forfeiture act. SB 462 would have allowed municipalities to retain possession of seized property and conduct administrative forfeiture proceedings as well.

SB 462 was heard in the Senate State Affairs Committee, the Senate Judiciary Committee, and the Senate Finance Committee. There were changes in all the committees. The major changes were suggestions by the Department of Public Safety in the Senate Judiciary Committee and the addition of applicability to alcohol in the Senate Finance Committee.

Sponsor Substitute for Senate Bill 19 was drafted to incorporate the revisions made to Senate Bill 462 during the hearing process as well as suggestions made by the Departments of Law and Public Safety in discussions last spring.

You have a sectional analysis of Senate Bill 19 prepared by our legal service division as well as a comparison with Senate Bill 367.

It is my hope that the committee will address what I perceive to be the major policy differences between the two bills. These are:

1. The applicability of the seizure and forfeiture provisions to alcohol violations.

2. The inclusion of real property as an item subject to forfeiture.

3. The applicability of bankruptcy exemptions made in SB 367 that would allow a violator of Title 17 or Title 4 to retain funds under AS 09.38.010 - 09.38.090.

# Alaska State Legislature



2957 SHELDON JACKSON STREET  
ANCHORAGE, ALASKA 99508

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

While in Juneau  
P.O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-3818

## Senate

M E M O R A N D U M

08 February 1990

TO: Senate Judiciary Committee

FROM: Senator Arliss Sturgulewski 

The Senate Judiciary Committee Substitute for Senate Bill 19 addresses the committee's concerns as follows:

1. Sec. 12.38.090 allows a person to obtain relief under the Alaska Exemptions Act during the forfeiture process by filing a timely claim and proving that the person provides for than half the support of a minor dependent living in the person's household.

2. Real property is now exempted from the administrative forfeiture procedure and is subject instead only to court proceedings. The bill also now says the court may order property forfeited, rather than shall.

SECTIONAL ANALYSIS  
SS SENATE BILL 19  
Proposed Judiciary Committee Substitute

SECTION 1:

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

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

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

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

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

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

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

Subsection (e) requires that seized alcoholic beverages be destroyed

Subsection (f) defines "offense" to include attempted offenses.

SECTION 2:

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

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

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

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

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

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

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

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

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

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

Subsection (b) authorizes the state to request the action taken under subsection (a).

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

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

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

(1) by the state's filing a motion in a civil or criminal proceeding

(2) by the state's filing a complaint in a separate in rem proceeding

(3) by publication of a notice by the commissioner of public safety that the state intends to seek administrative forfeiture.

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

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

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

Subsection (e) outlines court procedures in forfeiture cases.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the person has a valid right to the property

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

did not know, or have reason to believe, that the property was or might be subject to forfeiture.

or

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

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

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

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

#### SECTION 3:

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

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

#### SECTION 4:

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

#### SECTION 5:

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

STATE OF ALASKA  
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 8, 1990

SUBJECT: Draft CSSB 19 (Judiciary)

TO: Senator Jan Faiks, Chair  
Senate Judiciary Committee

FROM: Jack Chenoweth  
Legislative Counsel

A further question with respect to the enclosed draft: Does the last sentence of AS 12.38.050(e), directing a court conducting a forfeiture proceeding to "consider the relevant portions of the record of a related criminal action," raise a possible due process problem? To the extent that a person claiming an interest in the property was not a party to the related criminal action, the person would not have had the opportunity to present evidence or examine witnesses in that action. Now, in the subsequent foreclosure proceeding, the record of the earlier criminal action and the evidence presented may be adverse to the claim of the person.

If this is a problem, substituting "may" for "shall" in the sentence suggests an expeditious resolution.

JBC:pl  
WKP2/014

6-0144D ✓  
Chenoweth  
2/8/90

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

1 IN THE SENATE BY THE JUDICIARY COMMITTEE  
2 CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 19 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to seizure and forfeiture of proper  
7 ty in cases involving alcoholic beverages, controlled  
8 substances, and imitation controlled substances; and  
9 amending Rules 16, 16.1, 40(e), 65(b), and 77(a),  
10 Alaska Rules of Civil Procedure."

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

12 \* Section 1. AS 04.16.220 is repealed and reenacted to read:

13 Sec. 04.16.220. PROPERTY SUBJECT TO FORFEITURE. (a) Under the  
14 procedures set out in AS 12.38, alcoholic beverages are subject to  
15 forfeiture to the state if

16 (1) manufactured, delivered, distributed, possessed, con-  
17 cealed, stored, acquired, sold, exchanged, offered for sale or ex-  
18 change, or transported, or one of these acts is attempted or soli-  
19 cited, in violation of a criminal law under this title;

20 (2) unlawfully possessed in an area where the results of a  
21 local election under AS 04.11.498 have prohibited possession of alco-  
22 holic beverages; or

23 (3) found on licensed premises without excise stamps re-  
24 quired by federal law.

25 (b) The property listed in (c) of this section is subject to  
26 forfeiture, under the procedures set out in AS 12.38, if

27 (1) except for liquor licenses forfeited under AS 04.16.-  
28 180, the property is used, or intended to be used, to commit or facil-  
29 itate an offense under AS 04.11.010, AS 04.16.175, AS 04.21.060, an

1 offense relating to alcoholic beverages on licensed premises without  
2 excise stamps required by federal law, or an offense relating to  
3 conduct made criminal because of the results of a local election under  
4 AS 04.11.490 - 04.11.500; or

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

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

10 (1) firearms, explosives, and weapons;

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

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

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

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

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

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

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

29 (2) in the process of being consumed or in a container that

1 has been opened or the seal of which has been broken.

2 (e) Except as provided in (d) of this section, alcoholic beverages  
3 forfeited to the state shall be destroyed by the law enforcement  
4 agency with custody of the property under procedures prescribed by the  
5 commissioner of public safety.

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

7 CHAPTER 38. FORFEITURE OF PROPERTY.

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

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

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

14 (A) of probable cause that the property is subject to  
15 forfeiture; or

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

20 (2) without a court order if

21 (A) constitutionally permissible or otherwise au-  
22 thorized by law;

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

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

1 order under (1) of this subsection.

2 (b) Property that cannot with reasonable effort be taken into  
3 physical custody may be constructively seized by posting a written  
4 notice of the seizure in a conspicuous place on the property. This  
5 subsection does not prohibit other reasonable methods of constructive  
6 seizure.

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

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

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

26 (d) If the attorney general determines that a forfeiture pro-  
27 ceeding cannot be sustained or as a matter of discretion will not be  
28 instituted, a written report of that decision shall be sent to the  
29 agency responsible for custody of the property and the property must

1 be returned to the person from whom it was obtained.

2 (e) This section does not apply to property that is subject to  
3 automatic forfeiture under AS 04.16.220(d) or AS 17.30.110(c), or to  
4 property seized under AS 12.38.020(a)(2)(B).

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

10 (b) Action by the court under (a) of this section may be taken  
11 upon ex parte application of the state if there is reason to believe  
12 that notice would jeopardize the availability or value of the property  
13 for forfeiture.

14 (c) The state may, at any time before an order of forfeiture is  
15 issued, request the sale or other disposition of property seized under  
16 AS 12.38.020. A person claiming an interest in the property may also  
17 request sale or other disposition before an order of forfeiture is  
18 issued if the person proves by a preponderance of the evidence that

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

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

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

27 (4) the sale or other disposition is in the best interests  
28 of the state and will provide for protection of the value of the  
29 property; and

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

3 (d) Proceeds from the sale of property, plus interest earned on  
4 the proceeds to the date of termination of the proceedings, become the  
5 subject of the forfeiture action in the same manner as the property  
6 itself.

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

9 (1) may be initiated by the state filing a motion to for-  
10 feit in a criminal or civil proceeding relating to the conduct that  
11 makes the property subject to forfeiture;

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

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

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

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

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

28 (A) a list of property with an estimated value of more  
29 than \$1,000, with a description of the property, including motor

1 vehicle or other registration numbers;

2 (B) the approximate value of the property;

3 (C) the date and place of seizure;

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

5 (E) a citation to this chapter, and a citation to the  
6 court docket number relating to a judicial forfeiture proceeding;  
7 and

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

10 (c) The notice requirements of (b) of this section do not apply  
11 to property that is subject to automatic forfeiture under AS 04.16.-  
12 220(d) or AS 17.30.110(c).

13 (d) In a forfeiture proceeding other than a summary administra-  
14 tive proceeding under AS 12.38.060, the state must prove by a prepon-  
15 derance of the evidence that the property is subject to forfeiture.  
16 It is prima facie evidence, sufficient to support an order of forfei-  
17 ture, that a defendant has been convicted of conduct making the prop-  
18 erty subject to forfeiture, or that a grand jury has returned an  
19 indictment finding that the evidence, if unexplained or uncontradict-  
20 ed, would warrant a court to conclude that the property specifically  
21 identified in the indictment is subject to forfeiture.

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

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

6 (g) It is not a defense to a forfeiture proceeding that a crimi-  
7 nal offense has not been prosecuted, or has resulted in a conviction  
8 of a different offense or an acquittal.

9 Sec. 12.38.060. SUMMARY ADMINISTRATIVE FORFEITURE PROCEDURES.

10 (a) If the value of the property seized under AS 12.38.020 does not  
11 exceed \$100,000 and is not real property, the commissioner of public  
12 safety may order administrative forfeiture of the property under this  
13 chapter. The Administrative Procedure Act (AS 44.62) does not apply  
14 to an administrative forfeiture.

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

24 Sec. 12.38.070. PROCEDURE FOR CLAIMANTS. (a) A person claiming  
25 an interest in property that is the subject of a forfeiture proceed-  
26 ing, including persons who claim an exemption under AS 12.38.-  
27 090(a)(2), shall file a claim

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

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

4 (b) The claim must

5 (1) be filed with the court in judicial forfeiture proceed-  
6 ings, or with the commissioner of public safety in administrative  
7 forfeiture proceedings under AS 12.38.060;

8 (2) be sworn under oath; and

9 (3) set out with specificity the reasons why the property  
10 is not subject to forfeiture or why the person is entitled to relief  
11 under AS 12.38.090, the nature of the person's right, title, or inter-  
12 est in the property, the time and circumstances of the person's acqui-  
13 sition, the consideration paid, and additional facts supporting the  
14 claim.

15 (c) If a claim is not timely filed, the property shall be for-  
16 feited to the state without further proceedings.

17 Sec. 12.38.080. ORDER OF FORFEITURE; LIEN IN FAVOR OF THE STATE.

18 (a) If the state proves that property is subject to forfeiture, the  
19 property may be ordered forfeited to the state, except as provided in  
20 AS 12.38.090.

21 (b) An order of judicial or administrative forfeiture, or an  
22 order granting relief under AS 12.38.090, removes all liens, encum-  
23 brances, or other clouds on the title resulting from the forfeiture  
24 proceeding.

25 (c) A person whose conduct causes property to be subject to  
26 forfeiture shall pay the reasonable cost of maintenance, storage,  
27 disposal, or other expenses of the forfeiture proceeding, including  
28 attorney fees, either as part of a sentence, a condition of probation  
29 or suspended imposition of sentence, or as a mandatory assessment of

1 costs in a forfeiture proceeding.

2 (d) A judicial order of forfeiture shall forfeit to the state  
3 any other assets of the person who caused the property to be subject  
4 to forfeiture, up to the value of any property subject to forfeiture,  
5 if the property subject to forfeiture has been

6 (1) commingled with other property and cannot be separated  
7 without difficulty;

8 (2) transferred to, sold to, or deposited with a third  
9 party, placed beyond the jurisdiction of the court, or removed so it  
10 cannot be located;

11 (3) substantially diminished in value by an act or omission  
12 of the person who caused the property to be subject to forfeiture; or

13 (4) ordered returned to an innocent party under AS 12.38.-  
14 090(a)(1).

15 (e) An order of forfeiture issued under this section may be made  
16 regardless of the location of the property that might be subject to  
17 forfeiture or that has been ordered forfeited.

18 (f) A perfected priority lien on property that has been ordered  
19 forfeited is created in favor of the state up to an amount that is the  
20 sum of the expenses of investigation, prosecution, and forfeiture  
21 arising out of the conduct making the property subject to forfeiture.  
22 In calculating the amount of the lien, expenses of all state, federal,  
23 or local agencies are to be included. The lien has priority over all  
24 unsecured and all unperfected secured debts associated with the prop-  
25 erty.

26 Sec. 12.38.090. RELIEF FROM FORFEITURE. (a) A person who has  
27 filed a timely claim under AS 12.38.070 may obtain relief from the  
28 forfeiture upon proof by a preponderance of the evidence

29 (1) that the person

1 (A) has a valid right, title, or interest in the  
2 property, acquired in good faith, which takes priority over a  
3 lien in favor of the state under AS 12.38.080(f);

4 (B) did not knowingly participate in or facilitate the  
5 conduct that resulted in the property being subject to forfei-  
6 ture; and

7 (C) at no time knew, or had reasonable cause to be-  
8 lieve, that the property was or might be subject to forfeiture;  
9 or

10 (2) that the person provides more than half the support of  
11 a minor dependent living in the person's household, in which case the  
12 person may claim exemptions from the forfeiture to the extent permit-  
13 ted under AS 09.38.010 - 09.38.090; however, an exemption may not be  
14 permitted for a liquor license granted under AS 04 or a limited entry  
15 permit granted under AS 16.43.

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

24 Sec. 12.38.100. STATE DISPOSAL OF FORFEITED PROPERTY. (a) For-  
25 feited property, other than property summarily forfeited under AS 04.-  
26 16.220(d) or AS 17.30.110(c), shall be transferred to the commissioner  
27 of administration for disposition in accordance with applicable law.  
28 The commissioner of administration may

29 (1) destroy property harmful to the public;

1 (2) sell the property and, subject to appropriations for  
2 that purpose, use the proceeds to pay the expenses of the proceedings  
3 of forfeiture and sale, including expenses of seizure, custody, and  
4 court costs;

5 (3) transfer the property to another agency of the state or  
6 a political subdivision of the state for use in the furtherance of the  
7 administration of justice;

8 (4) transfer the property to the United States Department  
9 of Justice for disposition;

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

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

20 (7) otherwise dispose of the property in accordance with  
21 the law.

22 (b) The commissioner of administration shall separately account  
23 for the proceeds from the sale of forfeited property under (a) of this  
24 section that the commissioner deposits in the general fund. The  
25 annual estimated balance in the account may be used by the legislature  
26 to make appropriations to the Department of Public Safety for use in  
27 the administration of justice.

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

29 Sec. 17.30.110. PROPERTY SUBJECT TO FORFEITURE. (a) Under the

1 procedures set out in AS 12.38, the property listed in (b) of this  
2 section is subject to forfeiture to the state if

3 (1) manufactured, delivered, dispensed, distributed, pos-  
4 sessed, concealed, stored, acquired, or transported in violation of  
5 AS 11.71 or AS 11.73;

6 (2) used, or intended to be used, to accomplish or facili-  
7 tate the manufacture, delivery, dispensing, distribution, possession,  
8 concealment, storage, acquiring, or transportation of a controlled  
9 substance or imitation controlled substance in violation of AS 11.71  
10 or AS 11.73; or

11 (3) used, or intended to be used, in a direct or indirect  
12 exchange for a controlled substance or imitation controlled substance  
13 in violation of AS 11.71 or AS 11.73, or if traceable to or derived  
14 from such an exchange.

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

17 (1) firearms, explosives, or weapons;

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

20 (3) raw materials, chemicals, pharmaceuticals, or anything,  
21 including plants or other living organisms, from which controlled  
22 substances might be derived;

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

26 (5) aircraft, vehicles, vessels, and conveyances, if the  
27 offense making the property subject to forfeiture is a felony offense;  
28 and

29 (6) real property, and its improvements and appurtenances,

1 if the offense making the property subject to forfeiture is a felony  
2 offense.

3 (c) Notwithstanding the provisions of AS 12.38, a controlled  
4 substance or imitation controlled substance, and plants grown in the  
5 wild from which controlled substances or imitation controlled sub-  
6 stances are derived, seized under AS 12.38.020, are automatically  
7 forfeited to the state. The law enforcement agency with custody of  
8 property described in this subsection shall dispose of it under proce-  
9 dures prescribed by the commissioner of public safety.

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

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

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

18 (1) the transfer shall be made without cost to the Civil  
19 Air Patrol;

20 (2) the aircraft becomes a corporate Civil Air Patrol  
21 aircraft;

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

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

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

29 (B) the aircraft is being exchanged for another Civil

1 Air Patrol corporate aircraft of equivalent or greater value;

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

5 \* Sec. 5. AS 12.38.040(b), added by sec. 2 of this Act, has the effect  
6 of amending Rule 65(b), Alaska Rules of Civil Procedure, by permitting  
7 issuance of appropriate temporary orders, which may include temporary  
8 restraining orders, relating to preservation of seized property without  
9 notice to a party on grounds other than those identified in the rule, and  
10 has the effect of amending Rule 77(a), Alaska Rules of Civil Procedure, by  
11 authorizing state application for an order relating to seized property  
12 without service of notice on an adverse party.

13 \* Sec. 6. AS 12.38.050(f), added by sec. 2 of this Act, has the effect  
14 of amending Rule 16.1, Alaska Rules of Civil Procedure, by excepting from  
15 the special procedures for reducing delay in civil litigation outlined in  
16 that section a forfeiture proceeding held in abeyance until conclusion of a  
17 related pending criminal action, and Rules 16 and 40(e), Alaska Rules of  
18 Civil Procedure, by requiring a judge to hold proceedings in abeyance until  
19 conclusion of a related pending criminal action.

20 \* Sec. 7. AS 11.73.060; AS 17.30.112, 17.30.114, 17.30.116, 17.30.118,  
21 17.30.120, 17.30.122, 17.30.124, and 17.30.126 are repealed.  
22  
23  
24  
25  
26  
27  
28  
29

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 6, 1990

SUBJECT: Draft CSSSSB 19 (Judiciary), relating to seizure and forfeiture

TO: Senator Jan Faiks, Chair  
Senate Judiciary Committee  
ATTN: Chris Christensen

FROM: Jack Chenoweth  
Legislative Counsel

I received this 13-page draft in mid-afternoon of Monday, with instructions to have a clean draft prepared for the Judiciary Committee hearing this afternoon. I also learned that, independently of our efforts, Melissa Fouse of the bill sponsor's office was preparing a sectional analysis for the committee substitute, and the analysis would be keyed to the draft as presented. Melissa indicated that the office should make no changes in the draft submitted. This office thus treated this as no more than a typing assignment and did not make changes in the material presented.

I incorporated Dean Guaneli's amendments, received at 9:45 this morning.

Had we the opportunity, the office would have questioned or suggested the following:

Page 1, lines 16 and 17: ". . . or an attempt or solicitation to commit one of these acts, . . .": Something is missing. Should it not read: ". . . is made to commit one of these acts"? Should it incorporate a cross-reference to "under AS 11.31"? Is this language even necessary in light of AS 04.16.220(f) [page 3, lines 6 and 7]?

Page 1, line 25 - page 2, line 2: What does this say? Specifically, in lines 28 and 29, what does "relating to" refer back to? A court would struggle to make sense of this.

Page 2, line 13: Is the "plants or other living organisms" clause necessary in the context of alcoholic beverages?

Page 4, lines 6 and 7: Isn't all we're really saying is that the order may be obtained under (a)(1)?

Page 4, lines 26, 27: For purpose of release of property from custody, who is "another appropriate person"? Who makes the decision as to appropriateness?

Page 5, lines 3 - 7: Who makes the report required by subsection (d), and in what time frame must it be provided?

Page 5, lines 12 and 13: An "appropriate temporary or other order. . ." Is something missing?

Page 6, lines 4 - 6: Why should the person claiming the interest have to prove that the sale or other disposition would be "in the best interests of the state"? Shouldn't it be enough that the state's interest in the value of the property were protected?

Page 6, lines 9, 10: ". . . interest earned on the proceeds . . ." How is interest earned? What authorizes its payment?

Page 8: AS 12.38.060, relating to administrative forfeiture: What procedures apply? Is the commissioner to establish procedures by regulation? Is the commissioner to be guided by procedures applicable to forfeitures handled by the court? Does AS 12.38.050, the immediately preceding section, apply?

Page 9: AS 12.38.080(b): If "an order of . . . forfeiture provides clear title to the state," why wouldn't "an order of forfeiture subject to relief under AS 12.38.090" provide clear title to the state subject to the interests of the person entitled to relief, who would take clear of any liens, encumbrances, etc. The way this is put together doesn't seem to fit together quite right.

Page 10, line 4: "A person who causes property to be subject to forfeiture . . ." I think I know what is intended, but should it not rather read: "A person whose conduct makes property subject to forfeiture . . ." or something comparable?

Senator Jan Faiks  
Page 3  
February 6, 1990

Page 13: AS 17.30.110(a)(1): "sold" and "offered for sale" do not appear in the litany (as they do in AS 04.16.-220(a)(1) earlier in the bill). Is their omission intentional? Or is "sold" and "offered for sale" subsumed in the "exchange" provision of paragraph (3)?

In addition to a number of editorial and stylistic changes, we would switch all of the "pursuant to" phrases to read "under"; change "must" to "shall" in many places; eliminate some of the "which"es in favor of "that", and change the "such"es to "the"; replace "any" by "a," "an," or "the," as applicable; and otherwise try to make the changes that would conform the bill to the Manual of Legislative Drafting.

JBC:lmb  
L9/099

Enclosure

6-0144D  
Chenoweth  
2/6/90

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

1 IN THE SENATE BY THE JUDICIARY COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 19 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to seizure and forfeiture of proper-  
7 ty in cases involving alcoholic beverages, controlled  
8 substances, and imitation controlled substances."

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

10 \* Section 1. AS 04.16.220 is repealed and reenacted to read:

11 Sec. 04.16.220. PROPERTY SUBJECT TO FORFEITURE. (a) Pursuant  
12 to the procedures set out in AS 12.38, alcoholic beverages are subject  
13 to forfeiture to the state if

14 (1) manufactured, delivered, distributed, possessed, con-  
15 cealed, stored, acquired, sold, exchanged, or offered for sale or  
16 exchange, or transported, or an attempt or solicitation to commit one  
17 of these acts, in violation of a criminal law under AS 04;

18 (2) unlawfully possessed in an area where the results of a  
19 local election under AS 04.11.498 have prohibited possession of alco-  
20 holic beverages; or

21 (3) found on licensed premises without excise stamps re-  
22 quired by federal law.

23 (b) The property listed in (c) of this section is subject to  
24 forfeiture, pursuant to the procedures set out in AS 12.38, if

25 (1) except for liquor licenses forfeited under AS 04.16.-  
26 180, the property is used, or intended to be used, to commit or facil-  
27 itate an offense under AS 04.11.010, AS 04.16.175, AS 04.21.060,  
28 relating to alcoholic beverages on licensed premises without excise  
29 stamps required by federal law, or relating to conduct made criminal

1 because of the results of a local election under AS 04.11.490 - 04.-  
2 11.500; or

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

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

9 (1) firearms, explosives, or weapons of any type;

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

12 (3) raw materials, chemicals, pharmaceuticals, or anything,  
13 including plants or other living organisms, from which alcoholic  
14 beverages might be derived;

15 (4) books, records, tapes, formulas, research papers, and  
16 equipment of any type, including data processing equipment and elec-  
17 tronic equipment used in surveillance or countersurveillance efforts;

18 (5) aircraft, vehicles, vessels, and conveyances of any  
19 type; and

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

23 (d) Notwithstanding any other provisions of AS 12.38, alcoholic  
24 beverages seized pursuant to AS 12.38.020 are forfeit and subject to  
25 immediate destruction by a peace officer if

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

29 (2) in the process of being consumed or the container of

1 the alcoholic beverage has been opened or the seal on the container  
2 has been broken.

3 (e) Except as provided in (d) of this section, alcoholic bever-  
4 ages forfeited to the state shall be destroyed by the law enforcement  
5 agency with custody of the property in accordance with procedures  
6 prescribed by the commissioner of public safety.

7 (f) As used in this section, "offense" includes an attempt or  
8 solicitation to commit an offense.

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

10 CHAPTER 38. FORFEITURE OF PROPERTY.

11 Sec. 12.38.010. APPLICABILITY. The provisions of this chapter  
12 apply to property subject to forfeiture under

13 (1) AS 04.16.220; and

14 (2) AS 17.30.110.

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

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

19 (A) of probable cause that the property is subject to  
20 forfeiture; or

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

25 (2) without a court order if

26 (A) constitutionally permissible or otherwise au-  
27 thorized by law;

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

1 (C) there is probable cause to believe that the prop-  
2 erty is subject to forfeiture and is easily movable; except for  
3 alcoholic beverages, controlled substances, or imitation con-  
4 trolled substances, property seized solely under this subpara-  
5 graph may not be held for more than 48 hours without a court  
6 order, which may be obtained as described in (a)(1) of this  
7 section.

8 (b) Property which cannot, with reasonable effort, be taken into  
9 physical custody may be constructively seized by posting a written  
10 notice of the seizure in a conspicuous place on the property. This  
11 paragraph does not prohibit other reasonable methods of constructive  
12 seizure.

13 Sec. 12.38.030. NOTICE OF SEIZURE; CUSTODY OF SEIZED PROPERTY;  
14 INVENTORY AND APPRAISAL. (a) Within 30 days after a seizure under  
15 AS 12.38.020, the law enforcement agency responsible for custody of  
16 the property shall, by certified mail, give notice of the seizure to  
17 persons known to have a financial interest in an item with an estimat-  
18 ed value more than \$1,000, or whose interest in such property is  
19 ascertainable from official tax rolls, registration numbers, licenses,  
20 or other state, federal, or municipal identification numbers affixed  
21 to the property.

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

28 (c) Within 10 days after a seizure under AS 12.38.020, the law  
29 enforcement agency responsible for custody of the property shall

1 estimate the value and make an inventory of the property. The inven-  
2 tory and estimate must be sent to the attorney general.

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

8 (e) This section does not apply to property that is subject to  
9 automatic forfeiture under AS 04.16.220(d) or AS 17.30.110(c), or to  
10 property seized pursuant to AS 12.38.020(a)(2)(B).

11 Sec. 12.38.040. PRESERVATION OR DISPOSAL OF PROPERTY BEFCRE  
12 ORDER OF FORFEITURE. (a) A court may issue an appropriate temporary  
13 or other order, require execution of a satisfactory performance bond  
14 to the state, or take other action to preserve the availability or  
15 value of property seized under AS 12.38.020.

16 (b) Action by the court under (a) of this section may be taken  
17 upon ex parte application of the state if there is reason to believe  
18 that notice would jeopardize the availability or value of the property  
19 for forfeiture.

20 (c) The state may, at any time before an order of forfeiture is  
21 issued, request the sale or other disposition of property seized under  
22 AS 12.38.020. A person claiming an interest in the property may also  
23 request sale or other disposition before an order of forfeiture is  
24 issued if the person proves that

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

29 (2) the property is not likely to be used as evidence in a

1 judicial or administrative proceeding;

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

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

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

9 (d) Proceeds from any sale of property, plus interest earned on  
10 the proceeds to the date of termination of the proceedings, become the  
11 subject of the forfeiture action in the same manner as the property  
12 itself.

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

15 (1) may be initiated by the state filing a motion to for-  
16 feit in a criminal or civil proceeding relating to the conduct that  
17 makes the property subject to forfeiture;

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

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

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

26 (1) persons required to be notified under AS 12.38.030 must  
27 be served with a copy of the motion, complaint, or other notice in any  
28 manner authorized for service of process under the rules of civil  
29 procedure; and

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

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

8 (B) the approximate value of the property;

9 (C) the date and place of seizure;

10 (D) the reason why the property is subject to forfei-  
11 ture;

12 (E) provide a citation to this chapter, and a citation  
13 to the court docket number relating to any judicial forfeiture  
14 proceeding; and

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

17 (c) The notice requirements of (b) of this section do not apply  
18 to property that is subject to automatic forfeiture under AS 04.16.-  
19 220(d) or AS 17.30.110(c).

20 (d) In a forfeiture proceeding other than a summary administra-  
21 tive proceeding under AS 12.38.060, the state must prove by a prepon-  
22 derance of the evidence that the property is subject to forfeiture.  
23 It is prima facie evidence, sufficient to support an order of forfei-  
24 ture, that a defendant has been convicted of conduct making the prop-  
25 erty subject to forfeiture, or that a grand jury has returned an  
26 indictment finding that the evidence, if unexplained or uncontradict-  
27 ed, would warrant a court to conclude that the property specifically  
28 identified in the indictment is subject to forfeiture.

29 (e) Questions of fact or law in a forfeiture proceeding must be

1 determined by the court, sitting without a jury. A person claiming an  
2 interest in the property under AS 12.38.070 and 12.38.090 may testify,  
3 present evidence and witnesses, and cross-examine witnesses presented  
4 by other parties. In addition to other testimony and evidence pre-  
5 sented, the court shall consider the relevant portions of the record  
6 of any related criminal action.

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

12 (g) It is not a defense to a forfeiture proceeding that a crimi-  
13 nal offense has not been prosecuted, or has resulted in a conviction  
14 of a different offense or an acquittal.

15 Sec. 12.38.060. SUMMARY ADMINISTRATIVE FORFEITURE PROCEDURES.

16 (a) If the value of the property seized under AS 12.38.020 does not  
17 exceed \$100,000 and is not real property, the commissioner of public  
18 safety may order forfeiture of the property administratively. The  
19 administrative process is governed by this chapter, and not by the  
20 Administrative Procedure Act (AS 44.62).

21 (b) The commissioner of public safety shall terminate the admin-  
22 istrative forfeiture proceeding, and refer the matter to the attorney  
23 general for initiation of a judicial forfeiture proceeding, if a  
24 person files a timely claim under AS 12.38.070 and at the same time  
25 deposits with the commissioner, in cash or by way of a bond approved  
26 by the commissioner, 25 percent of the appraised value of the prop-  
27 erty, but not less than \$1,000. The deposit is conditioned to secure  
28 the payment of all reasonable costs and expenses of the judicial  
29 forfeiture proceeding, including attorney fees, if the state is the

1 prevailing party.

2       Sec. 12.38.070. PROCEDURE FOR CLAIMANTS. (a) A person claiming  
3 an interest in property that is the subject of a forfeiture proceed-  
4 ing, including persons who claim an exemption under AS 12.38.-  
5 090(a)(2), shall file a claim

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

8           (2) in an administrative forfeiture proceeding under  
9 AS 12.38.060, within 20 days of the date of the final publication  
10 under AS 12.38.050(b)(2).

11       (b) The claim must be

12           (1) filed with the court in judicial forfeiture proceed-  
13 ings, or with the commissioner of public safety in administrative  
14 forfeiture proceedings under AS 12.38.060;

15           (2) sworn under oath; and

16           (3) set out with specificity the reasons why the property  
17 is not subject to forfeiture or why the person is entitled to relief  
18 under AS 12.38.090, the nature of the person's right, title, or inter-  
19 est in the property, the time and circumstances of the person's acqui-  
20 sition, the consideration paid, and any additional facts supporting  
21 the claim.

22       (c) If a claim is not timely filed, the property shall be for-  
23 feited to the state without further proceedings.

24       Sec. 12.38.080. ORDER OF FORFEITURE; LIEN IN FAVOR OF THE STATE.

25       (a) If the state proves that property is subject to forfeiture, the  
26 property may be ordered forfeited to the state, subject to proof that  
27 a person is entitled to relief under AS 12.38.090.

28       (b) An order of judicial or administrative forfeiture provides  
29 clear title to the state. An order of forfeiture subject to relief

1 under AS 12.38.090 clears, in favor of the person entitled to the  
2 property, all liens, encumbrances, or other clouds on the title re-  
3 sulting from the forfeiture proceeding.

4 (c) A person who causes property to be subject to forfeiture  
5 shall pay the reasonable cost of maintenance, storage, disposal, or  
6 other expenses of the forfeiture proceeding, including attorney fees,  
7 either as part of a sentence, a condition of probation or suspended  
8 imposition of sentence, or as a mandatory assessment of costs in a  
9 forfeiture proceeding.

10 (d) A judicial order of forfeiture shall forfeit to the state  
11 any other assets of the person who caused the property to be subject  
12 to forfeiture, up to the value of any property subject to forfeiture  
13 which has been

14 (1) commingled with other property and cannot be separated  
15 without difficulty;

16 (2) transferred to, sold to, or deposited with a third  
17 party, placed beyond the jurisdiction of the court, or removed so it  
18 cannot be located;

19 (3) substantially diminished in value by any act or omis-  
20 sion of the person who caused the property to be subject to forfei-  
21 ture; or

22 (4) ordered returned to an innocent party under AS 12.38.-  
23 090(a)(1).

24 (e) An order of forfeiture issued under this section may be made  
25 regardless of the location of any property that might be subject to  
26 forfeiture or that has been ordered forfeited.

27 (f) A perfected priority lien over property that has been order-  
28 ed forfeited is created in favor of the state up to an amount that is  
29 the sum of the expenses of investigation, prosecution, and forfeiture

1 arising out of the conduct making the property subject to forfeiture.  
2 In calculating the amount of the lien, expenses of all state, federal,  
3 or local agencies are to be included. The lien has priority over all  
4 unsecured and all unperfected secured debts associated with the prop-  
5 erty.

6 Sec. 12.38.090. RELIEF FROM FORFEITURE. (a) A person who has  
7 filed a timely claim under AS 12.38.070 may obtain relief from the  
8 forfeiture upon proof by a preponderance of the evidence

9 (1) that the person

10 (A) has a valid right, title, or interest in the  
11 property, acquired in good faith, which takes priority over a  
12 lien in favor of the state under AS 12.38.080(f);

13 (B) did not knowingly participate in or facilitate the  
14 conduct that resulted in the property being subject to forfei-  
15 ture; and

16 (C) at no time knew, or had reasonable cause to be-  
17 lieve, that the property was or might be subject to forfeiture;  
18 or

19 (2) that the person provides more than half the support of  
20 a minor dependent living in the person's household, in which case the  
21 person may claim exemptions from the forfeiture to the extent permit-  
22 ted under AS 09.38.010 - 09.38.090 of the Alaska Exemptions Act;  
23 however, an exemption may not be permitted for a liquor license gran-  
24 ted under AS 04 or a limited entry permit granted under AS 16.43.

25 (b) If the person claiming an interest in the property is found  
26 to be entitled to less than the total value of the property, the  
27 person may choose to receive either the proportional value of the  
28 partial interest that is realized upon disposition of the property or,  
29 upon payment of the difference in value, the entire property. In

1 cases of multiple claims, the return of the property is to be based on  
2 the value and priority of each person's respective interest, or is to  
3 be otherwise allocated by the court in the interests of justice.

4 Sec. 12.38.100. STATE DISPOSAL OF FORFEITED PROPERTY. (a) For-  
5 feited property, other than property summarily forfeited under AS 04.-  
6 16.220(c) or AS 17.30.110(c), must be transferred to the commissioner  
7 of administration for disposition in accordance with applicable law.  
8 The commissioner of administration may

9 (1) destroy property harmful to the public;

10 (2) sell the property and, subject to appropriations for  
11 that purpose, use the proceeds to pay the expenses of the proceedings  
12 of forfeiture and sale, including expenses of seizure, custody, and  
13 court costs;

14 (3) transfer the property to another agency of the state or  
15 a political subdivision of the state for use in the furtherance of the  
16 administration of justice;

17 (4) transfer the property to the United States Department  
18 of Justice for disposition;

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

21 (6) at the direction of the commissioner of public safety,  
22 transfer up to 90 percent of the net value of forfeited property to  
23 one or more political subdivisions of the state; in directing this  
24 transfer, the commissioner of public safety may take into account an  
25 equitable allocation based on the amount of the contribution made by  
26 each agency to the investigation of the conduct making the property  
27 subject to forfeiture, or any agreements as to the sharing of assets;  
28 or

29 (7) otherwise dispose of the property in accordance with

1 the law.

2 (b) The commissioner of administration shall separately account  
3 for the proceeds from the sale of forfeited property under (a) of this  
4 section which the commissioner deposits in the general fund. The  
5 annual estimated balance in the account may be used by the legislature  
6 to make appropriations to the Department of Public Safety for use in  
7 the administration of justice.

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

9 Sec. 17.30.110. PROPERTY SUBJECT TO FORFEITURE. (a) Pursuant  
10 to the procedures set out in AS 12.38, the property listed in (b) of  
11 this section is subject to forfeiture to the state if

12 (1) manufactured, delivered, dispensed, distributed, pos-  
13 sessed, concealed, stored, acquired, or transported in violation of  
14 AS 11.71 or AS 11.73;

15 (2) used, or intended to be used, to accomplish or facili-  
16 tate the manufacture, delivery, dispensing, distribution, possession,  
17 concealment, storage, acquiring, or transportation of a controlled  
18 substance or imitation controlled substance in violation of AS 11.71  
19 or AS 11.73; or

20 (3) used, or intended to be used, in a direct or indirect  
21 exchange for a controlled substance or imitation controlled substance  
22 in violation of AS 11.71 or AS 11.73, or if traceable to or derived  
23 from such an exchange.

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

26 (1) firearms, explosives, or weapons of any type;

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

29 (3) raw materials, chemicals, pharmaceuticals, or anything,

1 including plants or other living organisms, from which controlled  
2 substances might be derived;

3 (4) books, records, tapes, formulas, research papers, and  
4 equipment of any type, including data processing and electronic equip-  
5 ment used in surveillance or counter-surveillance efforts;

6 (5) aircraft, vehicles, vessels, and conveyances of any  
7 type, if the offense making the property subject to forfeiture is a  
8 felony offense; and

9 (6) real property, and any improvements and appurtenances,  
10 if the offense making the property subject to forfeiture is a felony  
11 offense.

12 (c) Notwithstanding the provisions of AS 12.38, a controlled  
13 substance or imitation controlled substance, or plants grown in the  
14 wild from which controlled substances or imitation controlled sub-  
15 stances are derived, seized pursuant to AS 12.38.020, is automatically  
16 forfeited to the state. The law enforcement agency with custody of  
17 such property shall dispose of it in accordance with procedures pre-  
18 scribed by the commissioner of public safety.

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

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

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

27 (1) the transfer shall be made without cost to the Civil  
28 Air Patrol;

29 (2) the aircraft becomes a corporate Civil Air Patrol

1 aircraft;

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

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

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

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

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

14 \* Sec. 5. AS 11.73.060; AS 17.30.112, 17.30.114, 17.30.116, 17.30.118,  
15 17.30.120, 17.30.122, 17.30.124, and 17.30.126 are repealed.  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29