

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672

6868 HOUSE HEALTH EDUCATION & SOCIAL SERVICES

Category	\$th FY92 Auth.	\$th FY93 Gov Req.	\$th FY93 Reduced Budget	\$th FY93 Loss	# Perm. Program	# Temp. Staff	# Perm. Staff
TOTAL	84920.4	86008.1	77598.5	(8409.6)	(95)	(27)	(67)
Instruction	27331.9	27946.3	25213.8	(2732.5)	(11)	(1)	(42)
Intercol. Athletics	818.5	818.5	738.5	(80.5)	0	(1)	0
Academic Support	5349.9	5349.9	4826.8	(523.1)	(6)	(5)	(4)
Institutional Support	8716.9	8716.9	7864.6	(852.3)	(15)	(8)	(1)
Physical Plant	12771.2	12771.2	11522.5	(1248.7)	(28)	(3)	0
Debt Service	1232.1	1231.1	1111.6	(120.5)	0	0	0
Student Services	3993.3	4024.5	3631.0	(393.5)	(9)	0	0
Library Services	4748.2	4966.5	4480.9	(485.6)	(5)	(2)	(5)
Public Service	5107.6	5107.6	4608.2	(499.4)	(4)	(4)	(4)
Scholar- ships	283.2	283.2	255.5	(27.2)	0	0	0
Research	14567.6	14791.4	13345.2	(1446.2)	(18)	(3)	(11)

Credit hours/course sections lost --> (33,418hr) (557 sec)

Impact:

- A. INSTRUCTION -- Students will be faced with closed classes; a total of 557 course sections will be eliminated. Some undergraduate majors will be terminated, including some in science, liberal arts and engineering. Eliminating specialized programs, including some vocational-technical, two-year programs and graduate degrees, will severely harm site-bound Alaskans. Elimination of special services such as the Writing Center will impair UAF efforts to improve student communication skills and make UAF graduates less competitive in the workplace. Certain extension sites will be closed and thereby eliminating information that assists in economic development.

B. STUDENT SERVICES -- Publications and other forms of communication will be reduced, including fewer class schedules, giving students less timely information. One athletic program will be cut at UAF, jeopardizing NCAA standing, affecting community-campus interaction, and having an undetermined impact on UAA. Responses to prospective students and notification of financial aid will be slower, meaning students may choose another school in the meantime. The reduction to the Adjunct Faculty labor pool will impact at least 150 graduate students who would have been hired as graduate assistants; this loss of income may seriously impair their ability to complete their education. Also the reductions to the staff labor pools will seriously impact student employee hiring.

C. LIBRARY SERVICES -- The library will reduce the purchase of books and periodicals, and will reduce its hours of operation, severely limiting its use by students and researchers. The reduction would equate to an effective ten percent reduction of staffing availability to students or a reduction to acquisition purchasing power of sixty percent. Inflation since FY90 has reduced library purchasing power by over thirty-five percent which has resulted in an inability to maintain current periodicals, subscriptions and reference books and materials, and provide even minimum basic reference materials for new programs.

D. OTHER SERVICES

Academic Support -- The major academic computer, which provides instructional and research support and electronic mail, will be shut down. Computer classes using the VAX will be disrupted, and all external communications depending on the VAX will be interrupted. Cancelling software support contracts will affect speed and accuracy of purchasing, budget, physical plant and grants and contracts. The more than 4,000 students and faculty users of the Fairbanks computing facility will be left without consultant and training services with little or no support for some areas such as microcomputers and statistical software. Staff cuts will force elimination of the PC purchase program, which has saved thousands of dollars for university employees and students.

Research - Statewide and Local Economic Impact -- Parts of research programs and facilities in Fairbanks and throughout the state will close eliminating local jobs. UAF's capacity to train and keep Alaskans in state, and our ability to better manage our resources and develop new technologies that create jobs will be jeopardized. If the state's investment is lost or reduced, funding agencies will become cautious of awarding grants to UAF, the \$50 million of "new" money brought into the Alaska economy each year because of UAF's research efforts will decline.

Institutional Support -- Administrative costs will be cut first and deepest. Eliminating evening and weekend

information/switchboard services will disadvantage tourists and students. Elimination of the summer shuttle bus service will impact summer programs. Increased ticket prices for cultural events and for conferences will limit access to a portion of the public unable to pay. Building safety checks will be curtailed by the public safety office; increasing the possibility of costly vandalism and theft. Many other hardships will result as well as undesirable spinoffs on special projects, for example reduced support will jeopardize the fund raising campaign momentum which led to UAF's recent success in securing a \$1 million endowment. In short, as we disappoint students and faculty who expect quality services from UAF, we will at the same time be removing the base of support that allows us to generate alternative sources of revenue, including grants and contracts and private funds.

Physical Plant -- The budget does not provide for fixed cost increases in utilities and other non-discretionary items; building maintenance and renewal/replacement dollars will have to be used for these purposes. This only increases future maintenance costs.

University of Alaska FY93
University of Alaska Southeast

Category	\$th FY92 Auth.	\$th FY93 Gov Req.	\$th FY93 Reduced Budget	\$th FY93 Loss	# Perm. Program	# Temp. Staff	# Perm. Staff
TOTAL	13181.2	13464.5	12148.5	(1316.5)	(17)	(4)	(8)
Instruction	5077.7	5148.1	4644.7	(503.4)	(2)	(1)	(6)
Intercol. Athletics	0	0	0	0	0	0	0
Academic Support	1087.8	1155.8	1042.8	(113.0)	(1)	0	(1)
Institutional Support	2330.0	2330.0	2102.2	(227.8)	(5)	0	0
Physical Plant	2430.7	2430.7	2193.0	(237.7)	(5)	(1)	0
Debt Service	0	0	0	0	0	0	0
Student Services	1154.9	1266.7	1142.8	(123.9)	(3)	(1)	0
Library							

Services	1077.0	1110.0	1001.5	(108.5)	(1)	0	(1)
Public Service	5.0	5.0	4.5	(0.5)	0	0	0
Scholarships	18.2	18.2	16.4	(1.8)	0	0	0
Research	0	0	0	0	0	0	0

Credit hours/course sections lost---> (7,885hrs) (131sec)

Impact:

- A. INSTRUCTION -- Forced program elimination or reduction in FY93 will result in the loss of approximately 11 FTE faculty positions, 78 courses, and 3,510 credit hours. In FY94, required additional reductions will result in the additional approximately loss of 12 FTE faculty, 76 courses, and approximately 4,020 credit hours. The anticipated loss of tuition funding as part of these program eliminations will range from \$197.5 to \$315.9.

UAS programs require a majority of faculty to teach across programs, across disciplines and across degree levels within a program. Therefore, specific program eliminations and reductions will result in course and enrollment losses in other programs, or extension of the time it takes students to complete a degree program. Substitution of adjunct faculty may not resolve all concerns as sufficiently qualified adjunct faculty may not exist in the community, or those which do may not be relied on for consistent service, or meet continued compliance with academic quality standards. As a consequence, anticipated additional losses from this include 12 courses, and 540 credit hours with an effective additional loss of tuition and fee revenues of \$30.0.

On the Juneau Campus, any and all instructional program reductions or eliminations will be predicated on minimizing loss of degree-seeking students. Due to the differences of their missions, program reductions within the Sitka and Ketchikan campuses are more difficult to ascertain. Reductions are anticipated to include all instructional levels, including developmental and bridging programs as well as degree programs.

- B. LIBRARY SERVICES -- Reduction to Library Services is anticipated to not exceed 7.0-8.5% of the proposed reduction. This would equate to an effective 10.0% reduction of staff availability to students or a reduction to acquisition purchasing power of 60.0%. Inflation since FY90 has reduced library purchasing power by over 35.0% which has resulted in an inability to maintain current periodicals, subscriptions and reference books and materials, and an inability to provide even minimum basic reference materials for the new programs.

C. STUDENT SERVICES -- No reductions are possible to academic-related student service support functions within the Juneau Campus. These support functions are already inadequately staffed to provide required student processing, assistance and records management functions. Any single reduction to staff dedicated to counseling, recruitment and retention of students will effect a 40.0% loss in the region's ability to recruit and retain freshmen students from the region and improve retention of existing students through their course of study to graduation. Adequate resources for recruitment and retention are critical concerns in meeting mission goals, accreditation standards requirements and federally sponsored program requirements, particularly those related to financial aid programs. Due to the lack of regulatory governances and compliance, the student life, health and activities components of the Juneau Campus are the only remaining areas in student services where reductions can be accomplished. However, the anticipated reduction could impact accreditation compliance standards required for a "resident" campus. The Ketchikan and Sitka campuses have no flexibility to reduce staffing in this area, as any reduction would totally eliminate student services at these sites.

D. OTHER SERVICES --

Academic Support -- No further reductions to those made during the restructuring of 1987 can be made in academic support. Since that restructuring, the Juneau Campus has reduced its academic administrative positions by 30%, while expanding its responsibilities to include two external campuses. Any further consolidation or combining of schools under fewer Deans would jeopardize their ability to continuously review, enhance, modify or develop necessary curriculum or programs, direct resources to ensure optimum course and program offerings, ensure that financial resources are allocated to each program efficiently, and to provide optimum leadership for all faculty and staff. The Ketchikan and Sitka campuses have no flexibility to reduce staffing in this area, as any reduction would eliminate required functional activities.

Institutional Support -- No further reductions to those made subsequent to the restructuring of the 1987 can be made in institutional support without the elimination of a functional area. Since the restructuring, the Juneau Campus has reduced its institutional administrative positions by 71%, while expanding its responsibilities to include two external campuses. The majority of institutional support funding resides within the business and personnel service departments. Permanent staffing is no more than one deep in any accounting, business or personnel function, and in a majority of the staffing, two functions are covered within each position. The Ketchikan and Sitka campuses have no flexibility to reduce staffing in this area, as any reduction would eliminate required functional responsibilities.

Physical Plant -- Because the size of the non-personal services budget in Physical Plant greatly exceeds that of all other NCHEM components and provides greater funding flexibility, the physical plant is the only available source for the balance of the reduction as well as any required transitional funding needed to supplement program reductions. These reductions could double our current deferred maintenance levels, result in closure of ancillary facilities, and impact health, safety and code compliance.

University of Alaska FY93
Statewide Programs & Services

Category	\$th FY92 Auth.	\$th FY93 Gov Req.	\$th FY93 Reduced Budget	\$th FY93 Loss	# Perm. Program	# Temp. Staff	Staff
TOTAL	12703.5	12905.0	11643.2	(1261.8)	(26)	(3)	
Instruction	0	0	0	0	0	0	
Intercol. Athletics	0	0	0	0	0	0	
Academic Support	2340.0	2541.5	2293.0	(248.5)	(6)	(1)	
Institutional Support	9696.1	9696.1	8748.1	(948.0)	(20)	(2)	
Physical Plant	245.0	245.0	221.0	(24.0)	0	(0)	
Debt Service	442.4	442.4	381.1	(41.3)	0	0	
Student Services	0	0	0	0	0	0	
Library Services	0	0	0	0	0	0	
Public Service	0	0	0	0	0	0	
Scholar- ships	0	0	0	0	0	0	
Research	0	0	0	0	0	0	
Impact:							

ACADEMIC AND INSTITUTIONAL SUPPORT -- Statewide functions such as accounting, payroll and benefits, university computing network, legal services, capital project management, and so on, are operational in nature and if discontinued at Statewide, considerable economies of scale would be lost by their dispersion to the academic units. Statewide is funding the first phase of a systemwide management study which is presently analyzing the relationship and distribution of functions between the campuses and Statewide to determine if any further realignment has cost savings potential.

The "discretionary" services in Statewide which might yield savings to the university system are more limited than first appears. Budget reductions of the magnitude suggested will require nearly complete termination of all administrative systems computing development, resulting in an inability to achieve the savings associated with enhanced electronic data management and communications. Baseline support for lower-cost distance education development and telecommunications services, which are less expensive and time-consuming than direct travel, would be curtailed or eliminated. The Advance College Tuition program, which provides a direct service (and cost savings) to future generations of Alaskans through the Permanent Fund Dividend program may be discontinued because it will be several years, if ever, before the program is self-supporting. Critical academic, voc/tech, human resource, affirmative action, legal, and finance support functions will be curtailed or eliminated.

Statewide is pursuing an aggressive land management strategy that, over time, should result in additional revenue streams. However, those revenues do not exist today to offset reductions. We are also trying to enhance our private fund raising program. Unfortunately, this area has never been adequately funded, and like land management, currently needs more "seed" money, not less, to eventually achieve any significant increase in private donations. Statewide also has been directly affected by the national recession and low interest rates. In the past, interest earnings on our cash balances were a major revenue source and were used to subsidize the academic units by reducing risk management charge-backs. For FY92, interest earnings projections indicate the possibility of insufficient earnings to meet Statewide's own revenue needs greatly increasing the probability that no reductions to chargebacks can be made in FY92 or FY93.

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

FISCAL NOTE

**STATE OF ALASKA
1992 LEGISLATIVE SESSION**

No. 1
Bill Version: HB 549
(H) Publish Date: 2/19/92

Revision Date:
Title: Exempt U of A from Admin. Procedures Act

Department Affected: University of Alaska
BRU:
Component:

Sponsor: Governor
Requestor: University of Alaska

Component Serial No.

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY93	FY94	FY95	FY96	FY97	FY98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUNDING: (Thousands of Dollars)						
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:						
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

There is no cost associated with passage of this legislation. However, if this legislation fails to pass, the cost to the University to administer faculty/staff and student grievances, could add tens of thousands of dollars in litigation costs each year.

Prepared by: Wendy Redman
Division: Statewide Administration

Approved by: Brian Rogers, Vice President for Finance
Agency: University of Alaska

Phone: 474-7582
Date: 12/23/91

Date: 12/23/91

Date of Committee Action: 4/10/92

The HEALTH EDUCATION AND SOCIAL SERVICES Committee considered: HB 549

HOUSE BILL NO. 549 EXEMPT U OF AK FROM APA PROCEDURES

"An Act exempting the University of Alaska from the administrative adjudication provisions of the Administrative Procedure Act; and providing for an effective date."

RECOMMENDATIONS: the same title
be replaced with _____ a new title

- have attached amendments(s)
- do pass
- do not pass
- no recommendations
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dept/Date)

- fiscal impact _____ fiscal note(s) _____
- zero fiscal note U. of A. 2/19/92 zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
		<i>[Signature]</i>	<input checked="" type="checkbox"/>		
		<i>[Signature]</i>	<input checked="" type="checkbox"/>		
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>	<input checked="" type="checkbox"/>		
<i>[Signature]</i>	<input checked="" type="checkbox"/>				
<i>[Signature]</i>	<input checked="" type="checkbox"/>				

[Signature]
CD - CHAIRMAN'S SIGNATURE

THE FOLLOWING DOCUMENTS MAY NOT FILM
LEGIBLY BECAUSE OF THE POOR QUALITY OF
THE ORIGINAL

UNIVERSITY OF ALASKA FAIRBANKS



Governance Office
Fairbanks, Alaska 99775-0680
(907) 474-7964 • FAX: (907) 474-8213

MEMORANDUM

TO: Pat Carney
Georgianna Lincoln
Bettye Davis
Cheri Davis
John Gonzales
Mark Hanley
Mike Miller
Health, Education and Social Services

FROM: Lois Hildenbrand, President
UAF Staff Council

DATE: April 8, 1992

SUBJECT: Administrative Procedures Act

Attached is a resolution regarding the Administrative Procedures Act passed by the UAF Staff Council today. Staff Council is in favor of House Bill 549. If you would like to discuss this matter further, do not hesitate to contact me at 747-7043.

LH/kam

Attachment

cc Tom Moyer

The UAF Staff Council approved the following at its meeting #43 on April 8, 1992:

RESOLUTION PASSED (2 nays and 1 abstention)

=====

WHEREAS, The Alaska Administrative Procedures Act (APA) adjudication procedures apply to boards and commissions listed in Sec. 44.62.330, in third party actions dealing with the granting or denying "...a right, authority, license, or privilege..." and

WHEREAS, AS 14.40 gives the Board of Regents the right to "...adopt reasonable rules, orders, and plans for the good government of the University," and

WHEREAS, Title 14, Article VII, Section 3 of the Alaska Constitution, indicates that the Board has plenary authority to govern and manage the University, and

WHEREAS, Transcripts of the legislative history of the APA statute reveal that the legislators had no intention that the quasi-judicial proceedings included in the APA be used for employee or student grievances, but rather for what are essentially licensing decisions and disputes involving state boards and commissions, and

WHEREAS, The APA grievance procedures do not apply to any other employee group in the state, and

WHEREAS, The majority of University grievances, traditionally built around a process of peer review and consideration with appeal rights at several levels all the way to the President, are resolved at an early stage of review and are done so at little or no cost to the grievant or to the University, and

WHEREAS, APA requirements will increase cost, complexity, and formality of grievance procedures and are therefore contradictory to the resolution of student and employee grievances, and

WHEREAS, If HB 549/SB441 is not passed, it is anticipated that the University will have to pay approximately \$200,000 per year for hearing officers, and associated costs involved with this complex process, now

THEREFORE BE IT RESOLVED, That the UAF Staff Council supports the passage of HB 549/SB441 to exempt UA grievance from APA.

 4/8/92
President, UAF Staff Council Date

Anchorage Alaska
April 6, 1992

House Health, Education and Social Services
Co-Chairman Pat Carney
Co-Chairman Georgianna Lincoln
Vice-Chairman Bettye Davis
Members Cheri Davis, John Gonzales, Mark Hanely, M.A. Miller

We the undersigned are all former faculty members of Anchorage Community College and current faculty members of the University of Alaska Anchorage. We wish to indicate our strong support for House Concurrent Resolution No. 55 and our strong opposition to House Bill No. 549 exempting the University of Alaska from the Administrative Procedures Act.

Ray Noble *Ray Noble*

Paul Alexander *Paul D. Alexander*

Brian Williams *Brian Williams*

John Mears *John Mears*

Vince Claydon *Vince Claydon*

Emil Remus *Emil Remus*

Frank Gross *Frank Gross*

Mike Buesseler *Mike Buesseler*

IN THE LEGISLATURE OF THE STATE OF ALASKA

S. B. 441

H. B. 549

We the undersigned oppose "An Act exempting the University of Alaska from the administrative provisions of the Administrative Procedure act, and providing for an effective date."

Nuke Andrews

J. C. Winfield

Don K. Swanner

John F. Allen
William Lewis

Joe J. Thomas

Walt Behr

Richard Leonard

IN THE LEGISLATURE OF THE STATE OF ALASKA

S.B. 441

HB. 549

We the undersigned oppose "An Act exempting the University of Alaska from the administrative adjudication provisions of the Administrative Procedure act. and providing for an effective date.

Walt Peterson Instructor 4-4-92

Larry Ann Layell Assoc. Prof- 4-4-92

Paul H. Esob. 4/3/92

4/3/92

Paul Gimmell

4-3-92

John DeLoe

4-3-92

*File
opposition*

H B 579 004

IN THE LEGISLATURE OF THE STATE OF ALASKA

S. B. 441
H. B. 549

We the undersigned oppose "An Act exempting the University of Alaska from the administrative provisions of the Administrative Procedure act. and providing for an effective date."

<i>Brigid Cammack</i>	<i>3040 Riverview Dr Jks. AK 99709</i>
<i>Michael R. Byrson</i>	<i>2249 King Rd. FBES AK 99709</i>
<i>Eugene [Signature]</i>	<i>Box 22067 FAIR. 99707</i>
<i>Cindy [Signature]</i>	<i>P.O. Box 81453 Fairbanks 99708</i>
<i>And. D. [Signature]</i>	<i>4578 DRAKE STREET, FAIRBANKS, AK 99709</i>

ALASKA STATE AFL-CIO

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Anchorage, Alaska 99501
(907) 258-6284



519 1st Ave.
Fairbanks, Alaska 99701
(907) 456-2030

MANO FREY
Executive President

GARY BROOKS
Secretary / Treasurer

To: Paul Fuhs: Office of the Governor
From: Laura Kelley, AFL-CIO Vice President (907-786 1645)
733 West 4th #883
Achorage, Alaska 99501

Re: Proposed Legislation exempting the University of Alaska from the Alaska Administrative Procedures Act.

We understand that the University of Alaska has requested the Administration introduce a bill exempting the University of Alaska from the Alaska Administrative Procedures Act. This is not good legislation and it has a long and expensive history.

The University of Alaska was sued by a Professor named Aden, the gist of the suit revolved around the fact that Ms. Aden was denied tenure—she grieved the issue; however the grievance procedure in place did not afford Ms. Aden basic protections which are required under the Alaska Administrative Procedures Act and available to all other State Employees. The court ruled the Administrative Procedure Act should have applied to the Aden grievance. Soon thereafter, and following the 1987 absorption of the community college teachers into the university, the university:

1. unilaterally repudiated the existing collective bargaining agreement between the University of Alaska and the Alaska Community Colleges Federation of Teachers 2404 (the union for the community college teachers). This union contract contained a grievance procedure which paralleled the Administrative Procedures Act.

2. Merged the 300 community college teachers into the university personnel procedures and grievance policy while simultaneously denying 130 of them tenure and/or proper placement into the university job title grids.

The ACCFT 2404 filed a grievance on behalf of its 130 injured members. Naturally, the University refused to recognize the

Ralph McGRATH and Don
Mohr, Appellants,

v.

UNIVERSITY OF ALASKA, Appellee.

No. S-3418.

Supreme Court of Alaska.

June 21, 1991.

Following merger of state community college system into state university system, professors filed grievance regarding tenure status. The Superior Court, Third Judicial District, Anchorage, Brian C. Shortell, J., affirmed university's determination that Administrative Procedure Act was not applicable to grievance, and appeal was taken. The Supreme Court, Rabinowitz, C.J., held that Alaska Administrative Procedure Act was applicable to University of Alaska employee grievance proceedings.

Reversed and remanded.

1. Administrative Law and Procedure
⊕5

Colleges and Universities ⊕8(1)

Alaska Administrative Procedure Act was applicable to University of Alaska employee grievance proceedings; Act procedures were not inconsistent with authority of Regents to manage University. AS 44.62.330-44.62.650.

2. Administrative Law and Procedure
⊕441

Claims involving legislative as opposed to adjudicative facts, are not controlled by adjudicative provisions of Administrative Procedure Act. AS 44.62.330-44.62.650.

Robert A. Royce, Jermain, Dunnagan & Owens, Anchorage for appellants.

Thomas P. Owens, Jr. and C. Ann Courtney, Owens & Turner, P.C., Anchorage, William R. Kauffman, Fairbanks, for appellee.

Before RABINOWITZ, C.J., and
BURKE, MATTHEWS, COMPTON and
MOORE, JJ.

OPINION

RABINOWITZ, Chief Justice.

I. FACTS AND PROCEEDINGS

The University of Alaska ("University") is a statewide institution which operates both four-year universities and community colleges. In 1987, the University undertook a system-wide restructuring and eliminated the separate administration of the community colleges. Previously, the faculty at the community colleges had been represented by the Alaska Community Colleges' Federation of Teachers, Local 2404, and covered by a collective bargaining agreement. This agreement had no rank or tenure provisions. After the restructuring, the community colleges' faculty was offered an opportunity to transfer to the combined faculty of the University of Alaska. In the combined faculty, the community college faculty would not have union representation and the employees would be subject to the same rank and tenure system as their colleagues at the University of Alaska.

All members of the community colleges' faculty were offered an opportunity to transfer to the combined faculty, and all but one accepted. The University's Board of Regents adopted a policy "to provide the guidelines for faculty appointment, tenure, academic ranks, and salary for faculty in the transition." The policy provided that former full-time community college faculty with seven full years of service were eligible to receive tenure; those with four to six years were eligible to receive two-year contracts; and those with fewer years of service were eligible to receive one-year contracts. No former community college faculty member was offered a full-professorship; the highest rank offered was associate professor.

Many community college faculty members were dissatisfied with their rank and tenure assignments. Associate Professor Don Mohr, as a representative of the com-

CORRECTION

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

ALASKA STATE AFL-CIO

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Anchorage, Alaska 99501
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MANO FREY
Executive President

GARY BROOKS
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To: Paul Fuhs: Office of the Governor
From: Laura Kelley, AFL-CIO Vice President (907-786 1645)
733 West 4th #883
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The University of Alaska was sued by a Professor named Aden, the gist of the suit revolved around the fact that Ms. Aden was denied tenure—she grieved the issue; however the grievance procedure in place did not afford Ms. Aden basic protections which are required under the Alaska Administrative Procedures Act and available to all other State Employees. The court ruled the Administrative Procedure Act should have applied to the Aden grievance. Soon thereafter, and following the 1987 absorption of the community college teachers into the university, the university:

1. unilaterally repudiated the existing collective bargaining agreement between the University of Alaska and the Alaska Community Colleges Federation of Teachers 2404 (the union for the community college teachers). This union contract contained a grievance procedure which paralleled the Administrative Procedures Act.
2. Merged the 300 community college teachers into the university personnel procedures and grievance policy while simultaneously denying 130 of them tenure and/or proper placement into the university job title grids.

The ACCFT 2404 filed a grievance on behalf of its 130 injured members. Naturally, the University refused to recognize the

grievance procedure in the union contract--so the grievance was filed under the university grievance policy.

Since the final determinator of the university's grievance procedure is the President of the University--the same person who remanded the 300 community college teachers to the university personnel procedures and the inappropriate job title grids--a university grievance committee recommended to the then President of the University Donald O'Dowd--that the existing grievance procedure was inadequate and the Administrative Procedures Act should apply. Donald O'Dowd rejected the recommendation of the committee and denied the grievance.

The ACCFT 2404 filed litigation--which ultimately went to the Alaska Supreme Court. On 6/26/91 in a 5-0 decision the Court ruled that the Administrative Procedures act must apply to the University of Alaska grievance procedure. (see attached)

The proposed legislation is not about student's and their complaints about grades, cafeteria food and the like. The proposed legislation is an attempt on the part of the University to deny all of its 3500 employees the protections that all other State employees have.

The university lost in Court and is ^{Now} not attempting to subvert the law through this legislation. Outside legal counsel, Tom Owens so far has been paid \$88641.70 to represent the University in this matter and lost.

Ralph McGRATH and Don
Mohr, Appellants,

v.

UNIVERSITY OF ALASKA, Appellee.

No. S-3418.

Supreme Court of Alaska.

June 21, 1991.

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Colleges and Universities ↔8(1)

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Claims involving legislative as opposed to adjudicative facts, are not controlled by adjudicative provisions of Administrative Procedure Act. AS 44.62.330-44.62.650.

Robert A. Royce, Jermain, Dunnagan & Owens, Anchorage for appellants.

Thomas P. Owens, Jr. and C. Ann Courtney, Owens & Turner, P.C., Anchorage, William R. Kauffman, Fairbanks, for appellee.

Before RABINOWITZ, C.J., and
BURKE, MATTHEWS, COMPTON and
MOORE, JJ.

OPINION

RABINOWITZ, Chief Justice.

I. FACTS AND PROCEEDINGS

The University of Alaska ("University") is a statewide institution which operates both four-year universities and community colleges. In 1987, the University undertook a system-wide restructuring and eliminated the separate administration of the community colleges. Previously, the faculty at the community colleges had been represented by the Alaska Community Colleges' Federation of Teachers, Local 2404, and covered by a collective bargaining agreement. This agreement had no rank or tenure provisions. After the restructuring, the community colleges' faculty was offered an opportunity to transfer to the combined faculty of the University of Alaska. In the combined faculty, the community college faculty would not have union representation and the employees would be subject to the same rank and tenure system as their colleagues at the University of Alaska.

All members of the community colleges' faculty were offered an opportunity to transfer to the combined faculty, and all but one accepted. The University's Board of Regents adopted a policy "to provide the guidelines for faculty appointment, tenure, academic ranks, and salary for faculty in the transition." The policy provided that former full-time community college faculty with seven full years of service were eligible to receive tenure; those with four to six years were eligible to receive two-year contracts; and those with fewer years of service were eligible to receive one-year contracts. No former community college faculty member was offered a full-professorship; the highest rank offered was associate professor.

Many community college faculty members were dissatisfied with their rank and tenure assignments. Associate Professor Don Mohr, as a representative of the com-

munity colleges' faculty union, filed an informal grievance on behalf of faculty members who claimed that they were wrongly denied tenure. Similarly, Associate Professor Ralph McGrath requested a change in the rank assignments. Thereafter, the two professors filed a formal grievance on behalf of themselves and seventy-three other former community college faculty members.

At the time Mohr and McGrath filed their initial complaints, the University of Alaska's administration had not yet established grievance procedures for the newly integrated institution. The Anchorage campus chancellor adopted an interim grievance procedure, which mirrored the procedures previously used by the Anchorage campus. The chancellor then appointed an interim grievance council ("council") to implement the interim procedures.

The council conducted a preliminary investigation and determined that a grievance hearing should proceed. Additionally, the council recommended that the University hold this formal grievance hearing in accordance with the provisions of Alaska's Administrative Procedure Act ("APA"), AS 44.62.330-.650.

However, the president of the University rejected the council's recommendation that the grievance be processed in accordance with the APA. Instead, it was determined that the grievance would be processed under the Board of Regents' Policy, *see* 04-04.01 (June 4, 1987), and the interim grievance procedures. Under the Board of Regents' policy, the council was required to recommend dismissal or hold a hearing on the grievance within thirty days of its filing, and then forward a recommendation to the chancellor for decision. The chancellor's decision was then appealable to the president.

1. Summary judgment was granted in this case on the basis of stipulated facts and exhibits. *De novo* review is the applicable standard of review on an appeal from a grant of summary judgment. *Kollodge v. State*, 757 P.2d 1028, 1032 (Alaska 1988). There is no genuine issue of material fact; rather, this appeal concerns statutory interpretation, which involves our own in-

The council notified McGrath and Mohr that it was ready to go forward with the hearing and that procedures would not be governed by the APA. Rather than proceeding with the hearing before the council, McGrath and Mohr then filed a complaint in superior court, seeking a declaratory judgment and mandatory injunction to require the University to conduct the grievance hearing under the APA. They contended that the APA procedures were required and that the contemplated grievance procedures denied them due process.

Thereafter, the plaintiffs and the University filed motions for summary judgment. The superior court held that the APA did not apply to the grievance proceedings in the instant case.¹

II. DISCUSSION

A. *Do the provisions of the APA govern the grievance proceedings in this case?*

Article 8 of the APA deals with administrative adjudication. AS 44.62.330(a) provides, in part, that "[t]he procedure of the state boards, commissions, and officers listed in this subsection . . . shall be conducted under AS 44.62.330-44.62.630. This procedure, including, but not limited to . . . conduct of hearings . . . shall be governed by this chapter. . . ." AS 44.62.330(a)(45) lists the University of Alaska as a covered entity, with the proviso "except to the extent that its inclusion is inconsistent with the provisions of AS 14.40."

McGrath and Mohr argue that AS 44.62-330(a)(45) mandates that their grievances be processed in accordance with procedures called for by the APA. The University advances numerous arguments in support of the superior court's grant of summary judgment and its holding that the APA is inapplicable to the proceedings in question.²

dependent judgment. *Waller v. Richardson*, 757 P.2d 1036, 1039 n. 4 (Alaska 1988).

2. The University emphasizes that the superior court reasoned, in part, as follows in reaching its decision:

(1) AS 44.62.330(a)(45) requires the University to comply with the procedural require-

More particularly, the University contends that the legislative history of AS 44.62-330(a) demonstrates that the legislature never intended to interfere with the Board of Regents' independent power to manage and govern the internal affairs of the University; that the University's grievance procedures are reasonable; that application of the APA to the University's grievance proceedings would be inconsistent with AS 14.40; that the APA by its very nature does not apply in the circumstances of this case; that grievance procedures are not "procedures" within AS 44.62.330; that the APA only applies to "adjudicative facts" not to "legislative facts;" and that the statutory framework governing personnel matters for state agencies and other public employees shows that the APA does not apply to the University's grievance procedures.

We have reviewed all of the University's contentions listed above and conclude that they should be rejected. Therefore, the APA's procedures must govern any grievance hearings in the case at bar.

(i) Applicability of the APA

[1] As noted at the outset, AS 44.62-330-630 governs the adjudicative procedures of the University "except to the extent that its inclusion is inconsistent with the provisions of AS 14.40." AS 44.62-330(a)(45). The University notes that under AS 14.40.170(b)(1), the Board of Regents may "adopt reasonable rules, orders and plans ... for the good government of the university...." The University then argues that since its rules governing grievance procedures are reasonable, an application of the APA procedures to its grievance proceedings would be inconsistent with the authority of the Board to manage the Uni-

ments of the APA "except to the extent that [the APA's] inclusion is inconsistent with the provisions of AS 14.40;" (2) AS 14.40 specifically authorizes the Board to "adopt reasonable rules, orders and plans ... for the good government of the University;" (3) the Alaska Legislature did not intend the University to be required by law to conduct the APA grievance procedures if the University were to adopt valid, adequate, and fair grievance procedures of its own; (4) under AS 14.40.170(b)(1),

grievance procedures adopted by the Board need only be "reasonable," and the procedures instituted by the University meet this test of reasonableness; and (5) to the extent that the APA would require the University to hold substantially more extensive, time consuming, and expensive procedures than would be required under the validly adopted and reasonable University grievance procedures, application of the APA would be inconsistent with AS 14.40.170(b)(1).

versity. More specifically, the University contends that the APA procedures are inconsistent with AS 14.40 because they are more extensive and costly than its own reasonable grievance procedures, and therefore they are precluded under AS 44-62.330(a)(45).

We think these contentions are adequately and correctly answered by Judge Serdahely's opinion *Aden v. University of Alaska*, No. 3AN-85-17179 Civil (Alaska Super., Feb. 2, 1987). In rejecting contentions similar to those advanced by the University in the instant case, Judge Serdahely held the following:

The Court concludes that AS 44.62.330 *et seq.* does apply to Defendant University of Alaska and that Defendant's grievance proceedings must comply with the provisions of such Act.

In so ruling, the Court notes that on its face, the APA applies to Defendant University of Alaska. AS 44.62.330(45) [sic] expressly provides that the provisions of the Act apply to the "University of Alaska, except to the extent that its inclusion is inconsistent with the provisions of AS 14.40." Having reviewed the provisions of AS 14.40, particularly including the powers and duties of the University President as defined in AS 14.40-210-220, the Court concludes that there is nothing inconsistent between such provisions and the APA. Clearly, the President's power to appoint professors and assistants, and to define and supervise the duties of such persons, are not inconsistent with the APA hearing procedure which is designed to guarantee due process to persons adversely affected by administrative action, such as adverse employment or personnel action.

grievance procedures adopted by the Board need only be "reasonable," and the procedures instituted by the University meet this test of reasonableness; and (5) to the extent that the APA would require the University to hold substantially more extensive, time consuming, and expensive procedures than would be required under the validly adopted and reasonable University grievance procedures, application of the APA would be inconsistent with AS 14.40.170(b)(1).

- (ii) Does the APA govern intra-agency adjudications, such as employee grievance hearings?

Three arguments advanced by the University of Alaska converge here. The University contends that the statutory framework governing personnel matters for state agencies and public employees shows that the APA does not apply to University grievance proceedings; that grievance procedures are not procedures within AS 44.62.330; and that the APA applies only to adjudicative facts, not legislative facts.

The University correctly observes that the State Personnel Act, AS 39.25.010-.220, "governs personnel matters for all state employees in non-exempt service positions." AS 39.25.090. Neither those state employees in non-exempt service positions nor state employees covered by the Public Employment Relations Act ("PERA"), AS 23.40.070-.260, are covered by the APA procedures when grievance proceedings are implicated.³ Therefore, the University concludes that the "the Legislature intended University employees to have only the same rights as state and other public employees in personnel matters...."

University employees, however, are exempt from the State Personnel Act. AS 39.25.110(5). Thus, they do not receive the protection of grievance rules promulgated by the Director of Personnel under AS 39.25.150(16). Consequently, the exclusion of other state personnel from the APA does not, in our view, conclusively demonstrate that University personnel should be similarly excluded.

3. The personnel division of the Department of Administration administers the State Personnel Act. AS 39.25.030. The labor relations agency administers PERA. AS 23.40.090; AS 23.40.170. Neither of these agencies are enumerated under the APA. AS 44.62.330(a). However, hearings conducted pursuant to either of these statutes contain considerable procedural protections. See AS 39.25.170-.176; 2 AAC 10.400-.440. PERA applies to the University when the University has a collective bargaining agreement. See *Alaska Community Colleges' Fed'n of Teachers v. University of Alaska*, 669 P.2d 1299 (Alaska 1983). Hearings conducted under that agreement would be conducted pursuant to 2 AAC 10.400-.440. The University concludes that where no collective bargaining agreement ex-

The University relies on two statutes in support of its argument that intra-agency grievance proceedings are not the type of proceedings meant to be included within AS 44.62.330. First, the APA's definition of "regulation" excludes anything which "relates only to the internal management of a state agency." AS 44.62.640(a)(3). Second, the State Personnel Act establishes procedures for amendment of personnel rules affecting non-exempt state employees. AS 39.25.140. Subsection (e) of this section states, "[t]he rules adopted under this chapter relate to the internal management of state agencies and their adoption is not subject to the Administrative Procedure Act." While the State Personnel Act does not apply to University employees, the University argues, by analogy, that a blanket legislative intent exists not to have the APA apply to employment matters.

We believe these arguments are fundamentally flawed. Both statutes refer to the application of the APA to an agency's rulemaking authority, i.e. the adoption of rules. Neither statute applies to an agency's adjudicatory functions. If adjudication and rulemaking were coextensive, these statutes would be controlling here. However, the two functions differ significantly. Rulemaking procedures are designed to ensure a fair and open adoption of policy; adjudication procedures are intended to ensure a fair application of policy to parties.⁴ Thus, the fact that rulemaking procedures do not apply to internal personnel rules does not indicate that the protections of the APA's adjudicatory procedures

ists, hearings should be conducted pursuant to internal policy. We think a more logical conclusion is that where no collective bargaining agreement exists, hearings should be conducted pursuant to the APA.

4. See *Wickersham v. State, Commercial Fisheries Entry Comm'n*, 680 P.2d 1135, 1139, 1143-44 (Alaska 1984). See also R. Cass & C. Diver, *Administrative Law* 325 (1987) ("There is no doubt, however, that the procedures requisite for decisions addressing many members of an affected class on grounds generally applicable classwide are minimal in comparison to the procedures constitutionally required for individualized determinations.").

are inapplicable to individual personnel decisions.

The APA outlines the manner in which a hearing "to determine whether a right, authority, license or privilege should be revoked, suspended, limited, or conditioned" is initiated. AS 44.62.360. It similarly informs as to how a hearing "to determine whether a right, authority, license or privilege should be granted, issued or renewed" is initiated. AS 44.62.370. From these provisions, the University concludes that the APA only covers hearings which concern rights, authorities, licenses, and privileges, and that this does not include "intra-agency personnel matters." In support of this argument, the University cites cases from other jurisdictions, holding that their respective administrative procedure acts are inapplicable to agency personnel decisions.⁵

The University further contends that the APA adjudication procedures are inapplicable because McGrath is not grieving "adju-

dicative facts," but rather "legislative facts." As one court explained, "agencies employ rulemaking procedures to resolve broad policy questions affecting many parties and turning on issues of 'legislative fact.' Adjudicatory hearing procedures are used in individual cases where the outcome is dependent on the resolution of particular 'adjudicative facts.'" *Independent Bankers Ass'n of Georgia v. Board of Governors of Fed. Reserve Sys.*, 516 F.2d 1206, 1215 (D.C.Cir.1975).⁶

The limitation of administrative adjudicatory hearings to adjudicatory facts is not made explicit in the APA.⁷ Nevertheless, the distinction has been recognized. See *Wickersham v. State, Commercial Fisheries Entry Comm'n*, 680 P.2d 1135, 1143-47 (Alaska 1984) (refusing to apply the more relaxed public notice requirements of rulemaking procedures to adjudicatory procedures which involve individual rights). The structure of the APA, which establishes separate procedures for rulemaking and

5. In *Abramson v. Board of Regents, Univ. of Hawaii*, 548 P.2d 253 (Hawaii 1976), the plaintiff who was denied tenure and sued asserted, in part, a denial of her rights under the Hawaii APA. *Id.* at 255. This portion of her claim was rejected because the coverage of that act was limited to "a proceeding in which the legal rights, duties or privileges of specific parties are required by law to be determined after an opportunity for agency hearing." *Id.* at 263. *Accord Klein v. State Bd. of Educ.*, 547 So.2d 549, 551-52 (Ala.Civ.App.1988), cert. quashed by *Ex parte Klein* 547 So.2d 554 (Ala.1989). However, Alaska's APA has no such limitation. Therefore, this authority is not on point here.

The University of Alaska interprets *McCarrey v. Commissioner of Natural Resources*, 526 P.2d 1353 (Alaska 1974), as holding that "the APA applies only where a particular agency statute provides for a hearing and adjudication." This, however, overstates the holding. The APA's adjudicatory chapter only includes the "Division of Lands under Alaska Land Act where applicable." AS 44.62.330(a)(9) (emphasis added). The land act gave the commissioner discretion to terminate grazing leases; hence, we held that application of the APA was not required. *McCarrey*, 526 P.2d at 1356. Where not similarly limited, however, the APA would apply across the board. *McCarrey* quotes from the federal APA, which, like the Hawaii APA, is limited to cases where "adjudication [is] required by statute to be determined on the record after opportunity for an agency hearing." 526 P.2d at 1356 n. 17 (quoting 5 U.S.C.A. § 554 (1967)). Alaska's APA as it applies to the University has no such limitation;

indeed, it specifically applies "notwithstanding similar provisions in the statutes dealing with the state boards, commissions, and officers listed." AS 44.62.330(a). Thus, the fact that the adjudicatory provisions of the APA do not apply to termination of a grazing lease does not dictate that they are inapplicable to University of Alaska grievance procedures.

6. In *Independent Bankers*, the United States Court of Appeals for the District of Columbia Circuit adopted the following distinction:

Adjudicative facts are the facts about the parties and their activities, businesses, and properties. Adjudicative facts usually answer the questions of who did what, where, when, how, why, with what motive or intent; adjudicative facts are roughly the kind of facts that go to a jury in a jury case. Legislative facts do not usually concern the immediate parties but are general facts which help the tribunal decide questions of law and policy and discretion.

516 F.2d at 1215 n. 26 (quoting 1 K. Davis, *Administrative Law Treatise* § 7.02 at 413 (1958)).

7. Cf. California Code, Government Code §§ 11000-11529 at § 11500(f) (West 1980), which defines "adjudicatory hearing" to mean "a state agency hearing which involves the personal or property rights of an individual, the granting or revocation of an individual's license, or the resolution of an issue pertaining to an individual...."

adjudications, suggests that Alaska has implicitly limited adjudicative functions to adjudicatory facts and rulemaking functions to legislative facts. Compare AS 44.62-010-.320 with AS 44.62.330-.630. See also AS 44.62.640(a)(3) (defining regulation). Further, the distinction is one which must be made in order to determine whether an administrative entity has made an adjudicatory decision for purposes of Appellate Rule 602(a)(2). See *Kollodge v. State*, 757 P.2d 1028, 1033 (Alaska 1988); *Ballard v. Stich*, 628 P.2d 918, 920 (Alaska 1981). Finally, the bifurcation of administrative functions along the legislative/adjudicative facts distinction is recognized in both federal and other state courts.⁸

The formal grievance complaint filed by both McGrath and Mohr does not explicitly distinguish between legislative facts and administrative facts. The grievance complaint alleges "[i]nappropriate placement of former community college faculty in rank.... Inappropriate denial of tenure for certain former community college faculty.... Discriminatory treatment by UA administration against grievants."

[2] Upon remand, it will be left to the parties and the grievance council to identify any claims of McGrath and Mohr involving legislative facts, as such issues are not controlled by the adjudicative provisions of the APA.

B. *Does application of the APA to University of Alaska's grievance proceedings impermissibly circumscribe explicit and implicit constitutional and statutory grants of power to the University in the area of personnel management?*

As to this issue, we again refer to and adopt the reasoning of Judge Serdahely in

8. See 1 K. Davis, *Administrative Law Treatise* § 7.06 (1958) and cases cited therein. *Ballard* defined the test for determining when an agency is engaging in adjudication as "functional." 628 P.2d at 920. "Whenever an entity which normally acts as a legislative body applies policy to particular persons in their private capacities, instead of passing on general policy or the rights of individuals in the abstract, it is functioning as an administrative agency within the meaning of Appellate Rule [602(a)(2)]." *Id.*; *Kollodge*, 757 P.2d at 1033.

Aden v. University of Alaska. In rejecting the same argument as the University makes in the case at bar, Judge Serdahely stated,

Nor does the Court find that the application of the APA to Defendant's grievance procedure violates provisions of Alaska's Constitution establishing the University of Alaska and its Board of Regents. Likewise, the Court is unpersuaded that requiring Defendant to comply with the APA in connection with its grievance procedure constitutes unconstitutional or impermissible interference with the internal affairs or academic freedom of the University. In this Court's view, the University's academic freedom is strengthened, rather than undermined, by the existence of a grievance procedure for adverse employment decisions which comports with the basic requirements of the APA and due process. *Ultimately, if Defendant seeks to be exempted from the workings of the APA, it must seek such remedy from the Legislature, not this Court.*

(Emphasis added).

III. CONCLUSION

The judgment of the superior court is REVERSED and the matter is REMANDED for further proceedings consistent with this opinion.⁹



9. Our resolution of the appeal has made it unnecessary to address any of the other issues and arguments raised by the parties.

On remand, we suggest that it would not be inappropriate for the grievance council to integrate the adjudicatory provisions of the APA into its grievance procedures by following the hearing procedures outlined by Judge Serdahely in his August 25, 1987 "Order Regarding Administrative Hearing," which was entered in the *Aden* case.

METRO

WEDNESDAY

SECTION B June 26, 1991

Anchorage Daily News

Wednesday, June 26, 1991

B3

Faculty wins hearing in tenure case

Court finds teachers denied forum for complaints during merger with UAA



Chief Justice Rabinowitz

By PETER BLUMBERG
Daily News reporter

Former Anchorage Community College faculty members absorbed into the University of Alaska in a 1987 merger have won their case before the state Supreme Court in a longstanding controversy over academic rank and tenure.

The high court, in reversing a 1988 Superior Court ruling, asserts that about 73 faculty members were deprived of a proper forum for airing complaints that the merger unfairly denied them

tenure when they gave up their community college positions.

The university offered to address the complaint under its own grievance procedures, but refused to honor the faculty members' request for a formal hearing governed by Alaska's Administrative Procedure Act, according to court documents.

Two faculty members, Ralph McGrath and Don Mohr, then asked the court to order an administrative hearing, but their case was

dismissed by Superior Court Judge Brian Shortell.

The Supreme Court, in a 5-0 opinion written by Chief Justice Jay Rabinowitz, said McGrath, Mohr and all other former community college instructors denied tenure are entitled to an impartial hearing under the Administrative Procedure Act.

In that hearing, the instructors will be guaranteed the right to be represented by lawyers, as well as the right to use documents and

Please see Page B-3, TENURE

TENURE: Staff victory

Continued from Page B-1

witnesses to make their case before a hearing officer, said Robert Royce, the attorney for McGrath and Mohr.

"It comes down to basic fairness in the procedures," Royce said. "They will now have a better chance and will be better protected."

No hearing date has been scheduled. McGrath, president of the community college faculty members' union, said he is unsure how many of the 73 instructors who initially complained about the tenure process are still employed by the university.

In the merger, all community college instructors were allowed to keep their jobs, but only those with seven years of employment were offered tenure, and none was offered full professorship, according to court papers.

HBS49

1992 LEGISLATIVE PROPOSAL FORM**DEPARTMENT:** The University of Alaska**SUBJECT OF PROPOSED BILL:** Exempt University of Alaska Grievance Policy from the Quasi-judicial proceedings of Administrative Procedures Act**SUMMARY OF INTENT:** Include what the problem is, how this proposal solves it, and how many incidents have occurred which necessitate this change.

In May 1988, Ralph McGrath and Don Mohr filed a class-action type grievance on their own behalf and that of a number of other former community college faculty members who are now on the UAA faculty. The grievants specifically requested that the matter be heard pursuant to the Alaska Administrative Procedures Act (AAPA). The UAA Grievance Council denied that request, and in September 1988 Mr. McGrath, et al, filed a complaint against the University for declaratory judgment and injunctive relief ordering the University to conduct the grievance hearing in accordance with the AAPA. Following thorough briefings by both parties, Judge Brian Shortell issued an order in March 1989 holding that the University is not required to conform its grievance hearings with the procedural requirements of the AAPA. Plaintiffs appealed this decision to the Alaska supreme court, and in June 1990, the Supreme Court overturned the earlier decision opining that since the University was not specifically excluded from the requirements of the AAPA, it was, therefore, required to implement grievance procedures pursuant to the AAPA.

The University is seeking a clear exemption from the requirements in AS 44.62.330 (a)(45). The AAPA grievance procedures do not apply to any employee group in the state, and there is a substantial body of evidence from legislative hearings that there was no intent that the AAPA be applied to University grievance procedures. The quasi-judicial proceedings included in the AAPA are not intended for employee or student grievances, but rather for citizen grievances against state boards and commissions. Employee and student grievance procedures are traditionally built around a process of peer review and consideration with appeal rights at several levels all the way to the President. The majority of University grievances are resolved at an early stage of review, and are done so at little or no cost to the grievant or to the University. The imposition of the AAPA procedures, however, will now impose a quasi-judicial proceeding on all university grievances, including the utilization of a formal hearing officer. The additional cost, complexity and formality of the AAPA requirements are contradictory to the resolution of student and employee grievances, and are contradictory to the collegial approach that characterizes a university setting.

ESTIMATED FISCAL IMPACT:

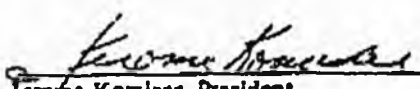
Operating: Without Legislation -- \$200,000/year

Capital: None

WHAT OTHER DEPARTMENTS WILL BE AFFECTED BY THIS PROPOSAL: None**WHO WILL SUPPORT THIS BILL:** University faculty, staff and students**WHO WILL OPPOSE THIS BILL:** Possible: Alaska Community College Federation of Teachers (ACCFT). (The ACCFT is a collective bargaining unit that represented faculty assigned to the states' community colleges. They currently represent the 9 faculty at Prince William Sound Community College)**BRIEFLY OUTLINE ANY PRECEDENTS FOR THIS PROPOSAL IN ALASKA OR OTHER STATES.** As stated above, there is no employee group in the state that uses the AAPA model for grievance procedures. The quasi-judicial proceedings are expensive, cumbersome, and ill-suited to employee dispute resolution.**IF A SUBSTANTIALLY SIMILAR BILL HAS BEEN DRAFTED AND NOT INTRODUCED, OR INTRODUCED AND NOT PASSED, PLEASE GIVE LAWLOG OR BILL NUMBER:**

Date

Sept 20, 1991


 Jerome Komisar, President
 University of Alaska Statewide System

Governor's Office Notes:

HB

554



U. S. Department of Justice

sjb

United States Attorney

FEB 24 REC'D

District of Alaska at Anchorage

February 18, 1992

*Federal Building & U.S. Courthouse
222 West 7th Avenue, #9, Room 253
Anchorage, Alaska 99513-7567*

*FTS-868-5071
Commercial: (907) 271-5071
Fax Number: (907) 271-3224*

The Honorable Georgianna Lincoln
House of Representatives
Alaska State Legislature

Re: State Conspiracy Laws
Violent Crime, Drugs, Guns and Fraud
Law Enforcement Coordinating Committee

Dear Ms. Lincoln:

It is important that the Legislature enact conspiracy laws to address violent crime, drugs, guns and fraud. This is an area of criminal law that has been neglected by the State for too long. Organized crime in Alaska must be adequately addressed.

Enclosed for your review is my article that was published in "The Anchorage Times" this past Saturday. The article sets forth my position on the need for State conspiracy laws.

It is vitally important for the welfare of the citizens of this State and local law enforcement that conspiracy laws are enacted this session. The laws should adequately address Alaska's growing organized complex criminal element.

Please do not hesitate to contact me if I may be of assistance. I will be happy to meet with you. Your assistance and support is greatly appreciated by law enforcement and all concerned Alaska citizens.

Best Wishes.

Yours Very Truly,

WEVLEY WILLIAM SHEA
United States Attorney

WWS:kjm

Enclosure

cc: Chuck Farmer, Coordinator
Law Enforcement Coordinating Committee

letters of support

OPINION

TAKING A STAND

Without conspiracy laws Alaska easy target for organized crime

Alaska is unique. Approximately 60 percent of our population resides in the Anchorage area. Much of Alaska's remaining population is isolated. This isolation and lack of a transportation infrastructure places a substantial burden on state and local law enforcement.

Crime in Alaska is complex and organized in the areas of illicit drugs, fraud, corruption and violent crime. Federal law enforcement agencies work closely with state and local agencies in combating crime. This is a federal, state and local "team approach" with communication, coordination and cooperation to attack state-wide crime.

Federal conspiracy laws assist federal law enforcement in effectively addressing criminal organizations. A conspiracy is an agreement between two or more persons to commit a crime or accomplish a legal purpose through illegal action. Alaska does not have state conspiracy laws. Virtually all other states do.

Local law enforcement is the first line of defense for crime involving drugs, guns and violence. The Alaska State Troopers and Anchorage Police Department, as well as state prosecutors, are severely restricted without state conspiracy laws. As the complexity of criminal organizations has increased, the burden placed upon state law enforcement has increased.

State prosecutors should have the basic "tools" to attack crime. It is a tremen-



Wewley William Shea

dous handicap not to have state conspiracy laws to address criminal organizations. The public should demand and have adequate protection.

Anchorage over the past few years has become a base or transshipment point for complex criminal organizations. In the last eight months, the United States Attorney for Alaska has initiated prosecution of the following criminal organizations:

• **MEXICAN MARIJUANA/COCAINE CONSPIRACY**

The Anchorage area was the site of numerous, very high quality marijuana "indoor grows." The marijuana was exported to the Lower 48 in exchange for cocaine and cash. The U.S. Attorney's Organized Crime and Drug Enforcement

State prosecutors cannot prosecute criminal organizations without conspiracy laws. Alaska's problem is complex due to the previous state 'legalization' of marijuana. Alaska is looked upon as a haven for drug traffickers.

Task Force led by the Drug Enforcement Administration and composed of federal, state and local law enforcement investigated and prosecuted the case. The conspiracy investigation involved the U.S. Attorney for the Eastern District of Washington.

• **NIGERIAN HEROIN CONSPIRACY**

Nigerian heroin traffickers established a smuggling conspiracy utilizing Anchorage International Airport as a transshipment point to the Lower 48. United States Customs has intercepted over 60 pounds of pure China-white heroin with a street value of \$1 million per pound. The heroin conspiracy operated primarily in New York, Florida and Texas. The heroin originated in Thailand and was shipped to Anchorage via Japan and the Philippines. The conspiracy investigation involved the U.S. Attorney Offices in Texas, Hawaii, Washington, New York and Florida.

• **MUSLIM CRIPS CRACK-COCAINE CONSPIRACY**

The Muslim Crips gang of Los Angeles has attempted to make inroads in the crack cocaine distribution in Anchorage. Recently Crips were arrested in Anchorage on drug and gun charges. The investigation involved the U.S. Attorney for the Central District of California.

State prosecutors cannot prosecute criminal organizations without conspiracy laws. Alaska's problem is complex due to the previous state "legalization" of marijuana. Alaska is looked upon as a haven for drug traffickers. In addition, individuals who conspire to manufacture, transport and distribute drugs look upon Alaska as a "permissive" environment since Alaska has no conspiracy laws. Virtually all other states have conspiracy laws.

Over the past 16 years, state and local law enforcement, as well as concerned citizen organizations, such as the Anchorage Chamber of Commerce, have stressed the importance of the Alaska state Legislature enacting conspiracy laws to address criminal organizations.

However, the Legislature has failed to act or the governor has not supported the conspiracy legislation.

The U.S. Attorney's Law Enforcement Coordinating Committee comprised of federal, state and local law enforcement agencies recognizes that Alaska laws are not adequate to address the criminal organizations in Alaska. This is especially true in the area of drugs, guns and violence. More cases are prosecuted federally due to inadequate state laws.

The Federal Court System in Alaska is not adequate to handle the drastically increasing criminal element in Alaska that thrives on drugs, guns, fraud and corruption. Alaska Attorney General Charles Cole, as well as local district attorneys, support enacting adequate state conspiracy laws to address the criminal environment in Alaska.

The Anchorage Chamber of Commerce anticipates that Gov. Walter Hickel and concerned legislators will again be addressing Alaska's need for conspiracy laws. The Anchorage Chamber of Commerce urges all Alaska citizens to support the enactment of conspiracy laws necessary to address an increasing criminal element in Alaska.

Wewley William Shea is U.S. Attorney for the district of Alaska. Opinions expressed in Taking a Stand do not necessarily reflect the editorial position of The Anchorage Times.



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 24, 1992

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Speaker Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to various criminal offenses. This bill will give the state much-needed tools to prosecute serious criminals fairly and effectively.

Sections 1 and 2 make it a crime to conspire to commit murder, kidnapping, or a felony drug offense. This type of law has provided a useful tool in the federal war on drugs and it could prove effective in Alaska, as well.

Section 3 makes it a class A felony to engage in a continuing criminal enterprise involving three or more drug offenses committed with two or more other people. Existing law makes it an unclassified felony offense to engage in this type of conspiracy when it involves five or more drug offenses committed with five or more additional people. Creating this lesser offense when fewer people and transactions are involved will give the state greater flexibility in dealing with small drug rings.

Section 3 also elevates the manufacture or delivery of cocaine, or the possession of cocaine with the intent to manufacture or deliver, from a class B to a class A felony offense when the quantity involved exceeds 500 grams. It also makes it a class A felony to manufacture or deliver, or possess with the intent to manufacture or deliver, five grams or more of a substance containing "crack."

Section 4 elevates the manufacture or delivery of marijuana, or the possession of marijuana with the intent to manufacture or deliver, from a class C to a class B felony offense when the quantity involved exceeds 10 kilograms.

Section 5 creates the crime of money laundering, making it a felony to take, give, transport, or conduct a financial transaction involving money or other intangible property known to be derived from drug violations. Advocates of money laundering statutes maintain that this hits drug traffickers where it hurts -- in the pocketbook. If drug dealers cannot find anyone who will take their money because of the risk of criminal prosecution and forfeiture of assets, their enterprises will become far less profitable and less desirable.

COMMITTEE COPY

GOV'S Transmittal Letter

170554

The Honorable Ben Grussendorf
February 24, 1992
Page 2

Section 6 defines "cocaine base," used in sec. 3, as including "crack." It also defines "possession" for drug offenses so that persons who have ingested drugs are subject to prosecution to the same extent as those who are found with drugs in the pockets of their clothing or at their house. This will have the effect of reversing a recent court of appeals decision, which held that a person cannot be prosecuted for "possession by consumption." State v. Thronsen, 809 P.2d 941 (Alaska App. 1991). As the Legislative Affairs Agency has noted in its recent report to you, "it seems illogical to punish a person possessing a drug for personal use before it is used, but not to punish that person when he or she has just used it." Legislative Affairs Agency Report to the Seventeenth State Legislature (October 1991) at p. 17.

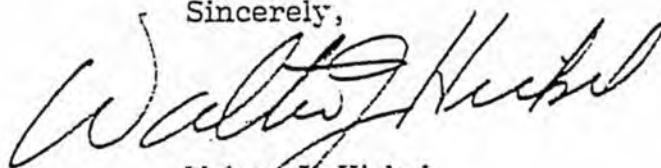
Section 7 strengthens the state's existing "Imitation Controlled Substance Act" by providing that it is not a defense to possessing or distributing illegal imitation drugs that the person believes the imitations are the real thing. There is no reason for a person who has one type of illegal substance to be immune from prosecution because he or she thought it was a different illegal substance.

Section 8 makes a technical amendment to the criminal statutes to ensure that a person prosecuted for distributing or possessing less than a certain weight of a substance containing a controlled substance cannot escape conviction by proving that the weight was more than that alleged.

This bill has been designed to create tough new laws to combat drugs and violent crime. If enacted, it will give the state the tools it needs to prosecute serious criminals fairly and effectively.

I urge your favorable action on this bill.

Sincerely,



Walter J. Hickel
Governor

MAR 16 REC'D

825 N. Park #4
Anchorage, AK 99508

March 11, 1992

Representative Dave Donley
Chairman, House Judiciary Committee
Room 122, Capitol
P.O. Box V
Juneau, AK 99811

RE: DRUG CONSPIRACY LAWS

Dear Representative Donley:

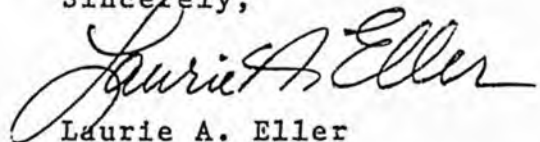
Why is it that Alaska is the only state in America that doesn't make it a crime to conspire to distripute crack?? What is it going to take to get the Alaska Legislature to be serious about drugs??

Drug conspiracy laws are one of the most basic and fundamental tools available to fight the war on drugs. Yet for too long now the Alaska Legislature has made our police fight the crack dealers with one hand tied behind their backs. It's time for a change. It is time to fix this situation.

I invite you to personally visit my neighborhood--Mountain View--and see just how these crack sellers are threatening our neighborhood, our children, and all of our futures. And then you should give the citizens and police of Alaska the drug conspiracy laws we need in order to fight back.

For many years now the Senate Judiciary Committee has voted to give Alaska the drug conspiracy laws we need to stop these criminals. But consistently, year after year, these Bills have been stopped cold in the House. As Chairman, you can change that. We need your help. I urge you to support HB 554 and HB 555 immediately. Get them out of the Health Committee--and through your Committee--NOW!

Sincerely,


Laurie A. Eller

cc: Rep. Part Carney
Chairman, House HESS Committee

Rep. Georgianna Lincoln

Senator Rick Halford

March 23, 1991

Rep. Georgianna Lincoln, Co-Chairman
Health, Education and Social Services Comm.

Room 112
State Capito Bldg.
P.O Box V
Juneau, AK. 99811

Dear Rep. Lincoln:

Public Safety and Public Health are the basic responsibilities of government. Where they are joined the issue is of the utmost importance.

The responsibility of all members of the State Legislature is to ensure the strength and integrity of State Health and Safety programs. Without vigilance to meet the current challenges and to strengthen the State's resolve to protect present and future generations from Crime and Disease, all else fails. .

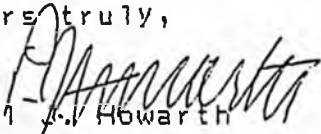
Communications keeps us abreast of progress made throughout the country. Recent legal progress has added to the arsenal aligned against Drug pushers and distribution.

Every city and town in Alaska is effected and every other State in the Union makes it a crime to conspire to distribute unregistered drugs.

There can be no excuse for inaction on HB 544 and HB 555. There is no more urgent issue before our neighborhoods, parents, and our school districts than creating the Legal environment to move aggressively against the drug cartels.

Use your position to move these bills through the present Legislature with your DO PASS, as promptly as possible Anticipate and prevent delays.

Yours truly,


Phil A. Howarth
Box 140309
Anchorage, AK 99514

AN OVERVIEW OF HB 554 AND 555—THE GOVERNOR'S CRIME BILLS

HB 554 will provide important tools in the war against drugs.

The bill

creates a new crime of conspiracy for murder, kidnapping and felony drug offenses. Conspiracy has been a useful tool in the federal war on drugs and it could prove effective in Alaska, as well. (Sections 1 and 2)

creates a new crime targeting small drug rings, by making it a class A felony to be involved in three or more drug offenses committed with two or more other people under your direction. In other words, this makes it a crime to be the leader of a three-person drug ring. Much of the drug activity in Alaska is conducted by these small rings. Existing law only deals with larger drug rings involving five or more drug offenses committed with five or more additional people. Creating this lesser offense will give the state greater flexibility in dealing with small drug rings. (Section 3)

provides increased penalties in cases of large amounts of drugs. The bill raises the penalty for sale of cocaine (and related offenses) from a class B to a class A felony offense when the quantity exceeds 500 grams (over one pound). It also makes it a class A felony to deliver five grams (about 40 dosage units) or more of "crack." (Section 3) The bill also raises the penalty for sale of marijuana (and related offenses) from a class C to a class B felony offense when the quantity exceeds 10 kilograms (over 20 pounds). (Section 4) These types of quantity-specific offenses are used successfully in federal prosecutions.

creates a new crime of money laundering, making it a felony to deal with money known to be derived from drug violations. This hits drug traffickers where it hurts—in the pocketbook. If drug dealers cannot find anyone who will take their money, because of the risk of criminal prosecution and forfeiture of assets, their enterprises will become far less profitable and less desirable. (Section 5)

prohibits possession of drugs by consumption, by defining "possession" ~~for~~ so that a person who has ingested drugs is subject to prosecution to the same extent as those who are found with drugs in their pockets, cars or at their house. This will have the effect of reversing a court of appeals decision, which held that a person cannot be prosecuted for "possession by consumption." As the Legislative Affairs Agency has noted, "it seems illogical to punish a person possessing a drug for personal use before it is used, but not to punish that person when he or she has just used it." *Legislative Affairs Agency Report to the Seventeenth State Legislature (October 1991)*. (Section 6)

Wednesday
8:30 a.m.
House HESS (Room 106)

Schleuss & McComas

ATTORNEYS AT LAW
500 L STREET, SUITE 300
ANCHORAGE, ALASKA 99501

(907) 258-7807
FAX (907) 276-1158

May 1, 1992

Representative Georgianna Lincoln
Co-Chairman Health, Education and Social
Services Committee
House of Representative
Alaska State Legislature
State Capitol, Room 112
Juneau, Alaska 99801-1182

Representative Pat Carney
Co-Chairman Health, Education and Social
Services Committee
House of Representatives
State Capitol, Room 104
Juneau, Alaska 99801-1182

RE: House Bill 554 and 555

Dear Representatives Carney and Lincoln:

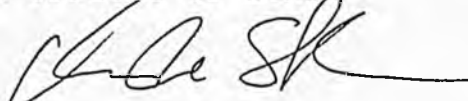
I am writing on behalf of the Alaska Action Trust. We strongly oppose HB 554 and 555, Governor Hickel's first and second crime bills. We believe the bills are detrimental to the well being of the people of this state and should not be adopted by the legislature. On behalf of the Trust it is my request that you kindly consider and distribute to all members of your committee the enclosed Position Papers prepared by the Criminal Section of the Alaska Action Trust.

In addition, the Trust requests that these two bills be scheduled for additional hearings in front of the Committee and that a member of the Trust be given an opportunity to testify in detail regarding the Trust's positions on the bills.

Thank you for considering the matters raised in this letter. I would much appreciate it if a member of one of your staffs could contact me at the above number to arrange a time for a member of the Trust to testify. Thank you for your consideration.

Sincerely yours,

LAW OFFICES OF SCHLEUSS & MCCOMAS



Christine S. Schleuss



Alaska Action Trust

P.O. Box 102323 • Anchorage, Alaska 99510
Office: 540 L Street, Suite 104 • Anchorage
(907) 258-4040

POSITION PAPER

HOUSE BILL NO. 554

(Governor Hickel's Crime Bill No. 1)

The Alaska Action Trust strongly opposes House Bill No. 554 and urges that it not be adopted by the legislature.

SECTION 1: This Section creates a new state conspiracy crime applicable to murder offenses, kidnapping offenses, and all felony drug offenses. Alaska should not adopt a conspiracy law. It is unneeded. Present law enables the state to prosecute those who help individuals commit crimes (accomplice liability), those who attempt to commit crimes (attempt liability), and those who seek to have others commit crimes (solicitation). Every act which should be subject to criminal prosecution can effectively be prosecuted under the accomplice, attempt, and solicitation statutes. See AS 11.31.110(a), AS 11.31.110(2)(b). Under these statutes, law enforcement offices already have the tools available to them to intervene in ongoing criminal activity, stop it, and prosecute it even if the target crime has not been completed. These act as a very effective punishment against group criminal activity.

There can be absolutely no doubt that adding the crime of conspiracy will greatly increase the number of individuals being prosecuted and will inevitably increase the costs of prosecution and defense. Conspiracy investigations, and inevitably, conspiracy trials, are much more time-consuming and more complicated than trials on the underlying offenses. It is wrong to claim that conspiracy charges will consolidate into a single trial a number of drug charges. Under the Bruton decision anytime any defendant gives a statement to the police, that defendant's trial must be severed from the other pending trials. That rule will not change because of a conspiracy law, because statements to police and other individuals not part of the conspiracy are not within the co-conspirators exception to the hearsay rule. Thus, they would not be admissible at any joint trial. For example, the Gustafson/Cheely cases ongoing in Federal Court will not be tried as a single consolidated case. Each defendant who gave a statement to the police will likely have his or her case severed from the others.

Under the changes to Criminal Rules 12 and 16, and to Evidence Rule 404(b), the legislature has already made provision to join together as many charges and cases against a particular defendant as is constitutionally permitted. No further consolidation of charges or co-defendants will be accomplished by a conspiracy law. Instead, all trials will become far more expensive, because they will be far longer and more complicated.

Moreover, the proposed conspiracy language will include defendants who should not appropriately be prosecuted for crimes. For example, under the proposed law, if two nineteen year olds agreed to purchase some marijuana, and one of them made a telephone call to someone he thought might sell him some marijuana, but no one answered the phone, the crime would be a completed felony drug conspiracy. This minor conduct, where society is not harmed, should not be criminally prosecuted. Instead, the law should remain as it is, and a person must engage in a "substantial step" toward commission of an offense before he can be prosecuted for attempting to commit the offense.

Unfortunately, conspiracy laws are often cruelly used to prosecute family members of individuals suspected of drug offenses. The prosecution can then very effectively pressure the family to cause some individuals to plead guilty in exchange for dismissing charges against other family members. Alaska should not allow its laws to be so turned against innocent family members. The fact that some members of the family may be suspected drug dealers is no justification for destroying the lives of innocent family members by accusing them of being part of some fabricated conspiracy.

SECTION 2: This Section implements Section 1. Because Section 1 should be rejected, this Section should also be rejected.

SECTION 3: The proposed increases in penalties for various cocaine and "crack" cocaine offenses are unnecessary. The

one proposal arguably justified is the increase in penalty for manufacture, delivery, or possession with intention to delivery 500 or more grams of cocaine. Increasing the penalty for possession of over a pound of cocaine from a Class B felony to a Class A felony, may be appropriate because this would focus on punishing major cocaine dealers.

The proposed changes making it a Class A felony to manufacture, deliver, or possess with intent to deliver five grams of "crack" cocaine should be rejected. Other than to unfairly target minorities and poor people, there is no justification for making it a Class A felony to deliver five grams of "crack" cocaine at the same time that delivery of cocaine only becomes a Class A felony when the amount involved is 500 grams. Those who sell small amounts of "crack" cocaine are most likely addicts themselves selling small amounts of drugs to pay for their drug habits. For these individuals, convicted of their first felony drug offense, efforts to rehabilitate them should be of greater focus than efforts to isolate them. Implementation of this proposed Section will cause substantial, absolutely unnecessary and counterproductive overcrowding of Alaska's prison system.

Recently the Minnesota Supreme Court ruled unconstitutional on equal protection grounds a statute which equated 3 grams of "crack" cocaine with ten grams of regular cocaine. The court ruled that this disparate treatment violated equal protection. The court recognized that the statute had an unfair impact on minori-

ties. In Minnesota 97% of the defendants charged with possession of "crack" cocaine are black, whereas 80% of those charged with possession of regular cocaine are white. The court held that there was no justification for this disparate treatment which would inevitably have an unfair racial impact. State v. Russell, ___ N.W.2d ___ (Minn. 1991).

Certainly sale of "crack" cocaine is very serious. However, 5 grams of "crack" cocaine is little more than an individual might use personally and as noted, is likely the amount that an addict would sell to support his own habit. First offenders possessing this small amount should not be given mandatory sentences, but should be allowed the potential for rehabilitative sentence available when the offense is prosecuted as a Class B felony.

The same is true of efforts to lessen the elements for proof of continuing criminal enterprise so that all that would now be required are three or more drug offenses where the defendant acted in concert with at least two other people. This section would make defendants involved in minor drug sales, most likely those addicted to drugs, who are selling small amounts to support their personal consumption, guilty of Class A felonies. Again, this conduct, while certainly deserving of felony punishment, should not be subject to the harsh presumptive penalties reserved for the most serious offenders under the penalty provisions allocated for those who commit Class A felonies.

In addition to unnecessarily increasing the penalties for offenders who should still be considered potential subjects for rehabilitation, these sections will result in tremendous expense for the state. Because the penalties are so great, inevitably defendants will be unwilling to plead guilty to the charges but will fight them. There will be more trials, longer trials, and much more vigorous defenses.

SECTION 4: Possession with intent to deliver marijuana should remain a Class C felony. Given the studies that show that marijuana has a less harmful effect on society than other drugs, its possession should certainly be a felony, but it should remain a Class C felony and not a Class B felony.

SECTION 5: This Section creates the crime of money laundering and makes it a felony to receive, acquire, or conduct any transaction involving proceeds which an individual knows come from drug violations. (Knowledge includes awareness of a substantial probability that a fact exists. AS 11.81.900(a)(2))

This proposal contains very broad language that likely will not survive a constitutional due process challenge. It is very poorly drafted. The broad criminal liability imposed by this statute will make it much less likely that private attorneys will be willing to represent an individual charged with the crime because of the risk that funds allocated for attorney's fees will be confiscated and the risk that the attorney might also be criminally prosecuted. The result will be that the defense of a

large number of cases presently being handled by the private bar will be thrown on public agencies. The inevitable expense to the state of paying for these increased defenses will be enormous.

In addition, as was noted above in connection with the potential abuse of conspiracy laws, law enforcement has frequently, cruelly, and unfairly, used money laundering statutes to prosecute innocent family members whose only act was to assist a family member in obtaining representation by taking funds to an attorney to pay for the representation.

In addition to being used against family members, attorneys, and other defense experts who are paid as part of a defense team for someone who retains private counsel, this law will also impose criminal liability on other individuals, such as bankers, if there is a "substantial probability" that the money came from an illegal source. Anyone who accepts money as part of his day-to-day business transactions will be at risk of prosecution, and the risk of prosecution is unfair and unnecessary.

SECTION 6: This bill overrules State v. Thronson, 809 P.2d 941 (Alaska App. 1991). An apparent misreading of the actual holding of the Thronson decision may be what has caused the Governor to propose this Section and caused other similar proposed amendments to the law defining possession of drugs. Thronson was charged with possession of cocaine in his body because he tested positive for cocaine during a urine test. The court ruled that a defendant could not be convicted for possession of cocaine in his

body on grounds that a person who has cocaine in his body has no control over the cocaine and could not meet the legal definition of possession. The court also explained that Thronson could have been convicted for possession of cocaine at the time he actually ingested the cocaine which caused him to have the positive urinalysis. However, mistakenly the state did not charge him with that offense.

Thus, as it stands, an individual can be charged with possession of cocaine at the time that he ingested the cocaine. A subsequent urine test would certainly be admissible evidence of guilt. Therefore, the proposed changes should be rejected as unnecessary. They will be used to prosecute poor people and minorities, those who most often take drugs when not in the privacy of their own homes.

In addition, this bill will discourage anyone who has used a controlled substance and needs medical attention from obtaining medical help. A person will be afraid that the medical attention will result in a drug test and in a criminal prosecution. The same will be true of anyone suffering from a drug addiction who might have sought treatment. Such treatment almost always includes urinalysis. A person will not seek the treatment he needs when he knows the treatment will include tests which could result in a criminally prosecution. The Trust is aware of no other state with a broad "internal possession" drug law like that proposed here.

Implementing this offense will result in a host of new criminal prosecutions. Everytime someone on probation tests positive for drugs, a new criminal charge will be brought against him. These individuals are already subject to a probation revocation proceeding and can be summarily returned to jail if that is necessary to protect the public. Sometimes it is more appropriate to continue with more intensive treatment, which is a far less expensive remedy and can sometimes effectively result in the person being rehabilitated into a non-criminal. A new criminal charge will only result in tremendous overcrowding of jails, more expense to the state, and virtually no deterrent to drugusers. The only deterrent will be to those who might otherwise seek help for their drug problems.

SECTION 7: The Alaska Action Trust has no position on the amendments proposed in Section 7.

SECTIONS 8: The Alaska Action Trust has no position on the amendments proposed in Sections 8.

SECTIONS 9 THROUGH 17: The Alaska Action Trust vigorously opposes these sections. They create new provisions for wiretapping and bugging of private communications. The practical effect of these sections is to allow the secret listening and recording of the conversations of a "target" with anyone with whom a "target" communicates, even though that person is completely innocent and unconnected with any illegal doings. Everyone in this state will be subject to having their privacy invaded and recorded,

even when he or she no idea that his or her friend, associate, or acquaintance is a "target". The bill will also allow the state to break into private premises, including homes and offices, as often as they need to, to install and remove bugging equipment. Alaska has been proud of and has traditionally protected the constitutional guaranty of all Alaskans to their right to privacy. These proposed sections would violate the Alaska constitutional right to privacy. It would violate the ruling of Glass v. State, 583 P.2d 872, r'hq 596 P.2d 10 (Alaska 1978), as follows:

Alaska's Constitution mandates that its people be free from invasions of privacy by means of surreptitious monitoring of conversations.

This proposal is a bad idea and should be rejected.

FISCAL NOTE

No. 5
 Bill Version: HB 554
 (H) Publish Date: 2-24-92

STATE OF ALASKA
 1992 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Public Safety
 Title: Criminal Justice Reform BRU: Alaska State Troopers
 Component: Criminal Investigations Bureau

Sponsor: Rules
 Requestor: Governor COMPONENT SERIAL NO.

	8	3	0
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EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

No substantial fiscal impact upon the Alaska State Troopers is anticipated.

Prepared By: Gayle A. Horetski Phone: 465-4322
 Division: Commissioner's Office Date: 2/18/92
 Approved by Commissioner: *Gayle A. Horetski* Richard L. Burton
 Agency: Department of Public Safety Date: 2/18/92

**STATE OF ALASKA
1992 LEGISLATIVE SESSION**

Revision Date: _____

Department Affected: Administration

Title: 'An Act relating to murder . . . creating the crime of conspiracy.'

BRU: Public Defender Agency

Sponsor: _____

Component: Public Defender Agency

Requestor: _____

COMPONENT SERIAL NO.

1	6	3	1
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	129.0	132.9	136.9	141.0	145.2	149.6
TRAVEL	5.0	5.2	5.4	5.6	5.8	6.0
CONTRACTUAL	13.5	13.9	14.3	14.7	15.1	15.5
SUPPLIES	2.0	2.1	2.2	2.3	2.4	2.5
EQUIPMENT	3.0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	152.5	154.1	158.8	163.6	168.5	173.6

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	152.5	154.1	158.8	163.6	168.5	173.6
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	152.5	154.1	158.8	163.6	168.5	173.6

POSITIONS:

FULL-TIME	2.0	2.0	2.0	2.0	2.0	2.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)
See attached.

Prepared by: John B. Salem, Public Defender
Division: Public Defender Agency

Phone: 279-7541
Date: January 31, 1992

Approved by Commissioner: Nancy Bear Usura
Agency: Administration

Date: 2/4/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

Public Defender
FN 152.5 Admin.

1
HB 554
2-24-92

FISCAL ANALYSIS - LAW LOG 92-0039

TITLE: "An Act relating to murder ... creating the crime of conspiracy."

This document is not intended as an analysis of the proposed legislation. It only discusses the fiscal impact passage of this bill would have on the Public Defender Agency.

Sections 1 and 2 - These sections create the new crime of conspiracy wherein two or more people involved in a homicide, kidnapping or felony drug offense are subject to prosecution separately under conspiracy theory. A conspiracy statute considerably broadens the pool of prospective criminal defendants as concerns a criminal enterprise. Typically conspiracy charges involve, from a defense perspective, considerable pretrial motion work, pretrial hearings and ultimately a lengthy trial. In most instances where individuals are charged in a conspiracy the Public Defender Agency will only represent one alleged co-conspirator. Because of conflict of interest other individuals charged will be referred to the Office of Public Advocacy. Based on testimony before certain legislative committees it is anticipated that law enforcement and the prosecution will make significant use of a new conspiracy law. While there have been no figures provided from the Department of Law regarding conspiracy case projections this agency anticipates some impact on its caseload and a significant impact on the amount of work an attorney would invest in a conspiracy case.

Section 3 - This section allows the Department of Law to charge individuals in a "continuing criminal enterprise" using a lesser number of offenses than is currently prescribed by current law. Furthermore the number of individuals involved under the new proposal is also set at a lower threshold number. The law is apparently directed toward individuals involved in small drug distribution schemes. The Department of Law concedes that "creating this lesser offense when fewer people and transactions are involved will give the state greater flexibility in small drug rings." The end result will be the making of more cases.

The impact such a change in the law will have on the Public Defender Agency is similar to that described above as relates to conspiracy. Both of these changes in the law will increase the number of cases in that a new crime is being added to the books and a current criminal description is being given wider application. In order to meet the additional workload the Public Defender Agency requests one attorney with felony level experience and one paralegal to undertake representation of clients who would be charged under these new statutes. As most conspiracy cases will emanate from urban areas the attorney would likely be sited in Anchorage. Some travel might be involved to handle conspiracy-type cases in other locations in the state. A contractual budget is also being requested in that these cases will be litigated in Superior Court.

Section 4. This section, along with certain parts of Section 3 above, restructures certain of the drug offenses in terms of the potential penalty. Certain offenses are given a higher sanction. Fiscal impact is unknown.

Section 5. This section establishes a new crime which can best be described as "money laundering". It is unknown to what extent the Department of Law will rely upon this new offense to make cases. Fiscal impact unknown.

Section 6. This section of the bill permits prosecution of individuals for "internal possession of drugs". Depending upon the policy of the Department of Law this proposal could have a tremendous impact on the Public Defender Agency. A significant percentage of individuals on felony probation are required to undergo drug screening through urinalysis. Sadly, many of them "come up dirty" (test positively for the presence of controlled substances in their blood/urine). If each of these were prosecuted as new felony crimes caseloads, especially in urban areas, would significantly rise. Defending these cases would be very expensive in that hearings would have to be conducted challenging the accuracy of the test results, the methodology, the scientific theory underlying drug screens etc. Trials would not be uncommon in that many of these individuals would have prior felony convictions and thus would be facing mandatory prison terms. When the stakes get higher more trials are likely.

In summary this bill will undoubtedly have some fiscal impact on the Public Defender Agency. Depending on the approach taken by the Department of Law the impact could be dramatic. In that the Public Defender Agency is already operating above maximum capacity in terms of its caseload any further increase in its workload must be accompanied by additional resources.

BUDGET ANALYSIS

100: Attorney III (Anchorage)	76.7	
Paralegal II (Anchorage)	52.3	
		129.0
200: Travel		5.0
300: Contractual (Office space experts, communications)		13.5
400: Supplies		2.0
500: Equipment (one-time)		<u>3.0</u>
		152.5

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: _____
Title: An Act relating to murder, . . . creating the crime of conspiracy . . .
Sponsor: Governor
Requestor: Rules Committee

Department Affected: Administration
BRU: Office of Public Advocacy
Component: Office of Public Advocacy

COMPONENT SERIAL NO.

		4	3
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	123.7	128.6	133.7	139.0	144.6	150.4
TRAVEL						
CONTRACTUAL	381.1	391.1	406.7	423.0	439.9	457.5
SUPPLIES	2.0	2.1	2.2	2.3	2.4	2.5
EQUIPMENT	11.0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	517.8	521.8	542.6	564.3	586.9	610.4

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	517.8	521.8	542.6	564.3	586.9	610.4
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	517.8	521.8	542.6	564.3	586.9	610.4

POSITIONS:

FULL-TIME	2.0	2.0	2.0	2.0	2.0	2.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: None.

ANALYSIS: (Attach a separate page if necessary.)
See attached.

Prepared by: Brant McGee, Public Advocacy
Division: Office of Public Advocacy

Phone: 274-1684
Date: January 21, 1992

Approved by Commissioner: Nancy Bear Userra
Agency: Administration

Date: 1/27/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

Public Advocacy
FN 517.8 Admin

FISCAL NOTE

#2

STATE OF ALASKA 1992 LEGISLATIVE SESSION

BILL NO. 554

ANALYSIS: (continued)

This omnibus criminal justice reform bill, requested by the Department of Law, creates several new offenses whose prosecution will have a dramatic fiscal impact on the Office of Public Advocacy. The following analysis will deal solely with the fiscal ramifications of the adoption of the individual sections of the proposed bill.

Sections 1 and 2 create a new crime on "conspiracy" under which two or more people involved in a homicide, kidnapping, or felony drug offense would be prosecutable for this separate crime. The purpose of the bill is to create another crime under which persons not currently prosecutable can be prosecuted. Further, and most importantly from the fiscal perspective of this agency, these new defendants will be tried together in a single trial. Such charge will inevitably give rise to conflicts of interests among defendants which mandate the legal representation of each defendant by a single attorney agency.

The Office of Public Advocacy (OPA) is responsible for providing representation for those with whom the Alaska Public Defender Agency has a conflict of interest. The great majority of defendants prosecuted under conspiracy laws will be found by the court to be indigent and qualified for Public Defender and OPA services. By definition, because the statute is designed to prosecute two or more people, the Office of Public Advocacy will be responsible for providing representation to one or more alleged co-conspirators in the great majority of the cases prosecuted under this new section. For example, if the Alaska Public Defender Agency is appointed to represent defendant number one in a conspiracy case, OPA will be appointed to provide representation, probably by a staff attorney, to defendant number two, and through contract counsel, to all other codefendants in a particular case.

Section 3 of the proposed bill is also intended to allow for the prosecution of multiple codefendants. This section will make it easier for the Department of Law to charge individuals engaging in a "continuing criminal enterprise" by lowering the number of offenses and the number of the individuals involved from that now specified in current law. The Department of Law states, "Creating this lesser offense when fewer people and transactions are involved will give the State greater flexibility in small drug rings." This new law will, in addition to the conspiracy law described above, allow prosecutors to make more criminal charges against more defendants who are alleged to be involved in a particular series of events. In short, on the same facts the Department of Law will be able to charge more people with more crimes.

Most drug rings are "small." Drug dealers typically know only those from whom they purchase the drugs and to whom they sell the drugs. For example, the street dealer does not know the importer. Because this law only involves the requirement that a defendant engage with two or more people, rather than the five individuals specified in current law, the facts from which the Department of Law can prosecute for a "continuing criminal enterprise" will arise more frequently.

The same fiscal analysis provided in relation to the new conspiracy law applies with equal force to this new crime. Cases filed under conspiracy statutes at the federal level and in other states routinely involve substantial attorney time, particularly for the preparation of pretrial motions. Due to the fact that the Department of Law investigation activity will probably focus on urban areas, the Office of Public Advocacy is requesting one experienced attorney and legal secretary in Anchorage to handle representation of clients charged under the bill. Because the staff attorney can represent but one codefendant in a given case, the Office of Public Advocacy must contract with private counsel for the representation of all other codefendants determined to be indigent to the court.

It is anticipated that the complexity of this litigation will dictate high contract costs, which are estimated at \$15,000 per defendant. The Department of Law has not estimated the number of prosecutions it will initiate during FY 93 or subsequent years under either the new conspiracy statute or new continuing criminal enterprise statute. The projected \$375,000 in contract costs is thus based on the assumption that the Office of Public Advocacy will only be responsible for 25 codefendants charged under these statutes for which it cannot provide staff representation during the coming fiscal year.

It should be noted that conspiracy prosecutions are far more expensive to defend than to prosecute. The nature of the allegation means that two, and usually more, defendants—each represented by separate counsel—will be prosecuted by one or two Assistant District Attorneys. For example, in a typical conspiracy prosecution, the Department of Law and the Public Defender Agency will each be paying for one attorney, while the Office of Public Advocacy will be responsible for providing counsel to all of the remaining codefendants.

The latter portion of Section 3 and Section 4 reclassify certain drug offenses to the next higher category of offenses, thus making the defendants eligible for higher penalties. While the higher penalties may influence the defendant's decision to insist upon a jury trial, it is not possible to quantify the extent

FISCAL NOTE

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STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. 554

to which such a trend would impose additional costs on this agency.

Section 5 creates the new crime of "money laundering" and makes it a felony to take, give, transport, or conduct a financial transaction involving money for other property known to be derived from the drug violations. The section is drafted with extraordinarily broad language and could be used to prosecute the spouses and children of drug dealers, as well as anyone who provides a service or sells an item to a known drug dealer. Given the broad sweep of the language of this section, the number of people prosecuted under it will depend upon policy determinations of the Department of Law that have not yet been announced.

Section 6 of the bill redefines the crime of possession of drugs in an apparent effort to allow prosecution of persons who ingest drugs within their body. Whether this will result in additional new felony cases in which OPA will be obliged to provide defense services will also depend on policy determinations by the Department of Law. It is now quite common for individuals on felony probation to be subjected to petitions to revoke their probation based on the positive results of a drug test. Typically, the filing of such petitions to revoke probation do not also involve prosecution for possession of drugs. If the Department of Law chose to prosecute such cases as new crimes, the impact on caseloads could be quite dramatic. However, without knowing the extent to which probation violators and others might be subjected to new prosecutions for possession, it is not possible to accurately estimate the fiscal impact of this provision of OPA.

Sections 7 and 8 could have no conceivable fiscal impact on the operations of the Office of Public Advocacy.

Position Title Attorney IV		No. of Positions 1	Range / Step 24/A	Barg. Unit PX
Time Status PFT	Staff Months 12.0	Location Anchorage-EBA		Election District 8
TYPE OF EXPENDITURE		AMOUNT		
Salary		61.0		
Benefits		22.6		
Premium Pay				
Other				
Total Personal Services		86.6		
Travel				
Contractual		3.4		
Commodities		1.0		
Equipment		3.6		
Other				
Total Cost		94.6		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004	94.6		
I-A Receipts	1007			
CIP Receipts	1061			
Other				
Justification The Anchorage Office of Public Advocacy presently has four attorney positions devoted to criminal defense. These attorneys are also handling several major cases outside the Anchorage area as staff coverage and travel is more cost effective than contracting major cases to private attorneys in rural areas. Current caseloads indicate that these four attorneys cannot absorb the additional cases which would result from this legislation. It is necessary that an additional attorney be added to the Anchorage staff to cover the resultant increased caseload.				

/02209.wp/1

Request For New Position

AGENCY ADMINISTRATION
 BRU Office of Public Advocacy
 COMPONENT Office of Public Advocacy

FY 93

Page 4 of 5
Revised Date:

#2
554

Position Title Legal Secretary I		No. of Positions 1	Range / Step 10/A	Barg. Unit GG
Time Status PFT	Staff Months 12.0	Location Anchorage-EBA		Election District 8
TYPE OF EXPENDITURE		AMOUNT		
Salary		25.1		
Benefits		12.0		
Premium Pay				
Other				
Total Personal Services		37.1		
Travel				
Contractual (Office Space)		2.7		
Commodities		1.0		
Equipment		7.4		
Other				
Total Cost		48.2		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts 1002				
G.F. Match 1003				
General Fund 1004		48.2		
I-A Receipts 1007				
CIP Receipts 1061				
Other				
Justification The Anchorage Office of Public Advocacy presently has three legal secretary positions providing clerical support, 15 professional positions, six VISTA volunteers, and the VGAL program. The addition of an attorney with a full caseload necessitates the addition of another secretary. The clerical workload generated by an additional attorney cannot be absorbed by the current clerical staff.				

6/1/02209.wp/2

**Request For
New Position**

AGENCY ADMINISTRATION
 BRU Office of Public Advocacy
 COMPONENT Office of Public Advocacy

FY 93

Page 5 of 5
 Revised Date:

HSS 554

FISCAL NOTE

No. 3
 Bill Version: HB 554
 (H) Publish Date: 2-24-92

STATE OF ALASKA
 1992 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Department of Corrections
 Title: "An Act relating to murder, kid- BRU: Statewide Programs
napping, and controlled substances." Component: Various

Sponsor: _____
 Requestor: Governor

COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	525.6	525.6	1,018.4	1,180.4	1,180.4	1,180.4
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	525.6	525.6	1,018.4	1,180.4	1,180.4	1,180.4

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	525.6	525.6	1,018.4	1,180.4	1,180.4	1,180.4
FEDERAL FUNDS						
OTHER						
FUND SOURCE:						
TOTAL	525.6	525.6	1,018.4	1,180.4	1,180.4	1,180.4

POSITIONS:

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

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.)
 Please see the attached Analysis.

Prepared By: Diane Schenker, Legislative Liaison Phone: 465-3376
 Division: Commissioner's Office Date: 02/20/92
 Approved by Commissioner: Lloyd Hames, Commissioner
 Agency: Department of Corrections Date: 02/20/92

CONTINUATION OF FISCAL ANALYSIS

BILL: Lawlog 92-0039 "An Act relating to murder, kidnapping, controlled substances and imitation controlled substances offenses; creating the crime of conspiracy and the crime of money laundering; amending a provision relating to general principles of criminal liability."

Sections 1 and 2: These sections make it a crime to conspire to commit murder, kidnapping, or a felony drug offense. Because conspiracies to commit murder or kidnapping are rare, the major impact of the conspiracy law would probably result from drug offenses. The Department of Law predicts that the conspiracy law will facilitate more effective prosecution of cases involving multiple defendants and may encourage defendants to cooperate with the state to get reduced charges. The result will probably be more offenders sentenced for drug charges, but not necessarily sentenced for longer periods of time. On December 31, 1991, a "snapshot" prisoner profile indicated there were 158 offenders incarcerated on felony drug offenses. If the conspiracy law results in a ten percent increase, approximately 16 additional offenders would be expected. The majority of drug offenders are incarcerated for Misconduct Involving a Controlled Substance in the Third Degree, a Class B felony. The mean sentence for such a charge is estimated to be 20.1 months. With a deduction of one third of the sentence for statutory good time, the actual time served would be slightly over one year. Sixteen offenders serving one additional year would result in 5,840 additional bed-days. If the offenders were housed in community residential center beds, at an average daily cost of \$45.00 per day, the additional contract cost per year would be \$262,800.00.

Section 3: This section makes it a Class A felony to engage in a continuing criminal enterprise involving three or more drug offenses committed with two or more other people. This section also elevates certain offenses involving cocaine from a Class B to a Class A felony. The Department of Law estimates that approximately 30 to 40 cases per year would be prosecuted which would be subject to the new penalties. The following analysis is based on a conservative estimate of 30 such cases per year. Based on information from the Department of Law and the Alaska Judicial Council, it is estimated that the average sentence for these types of offenses would increase from about three years to five years. Allowing for statutory good time deductions of one third of the sentence, the actual incarceration time would go from 24 months to 40 months, an increase of 16 months of incarceration per case. The effects of the bill on the prison population, therefor, would not be felt for two years. The effects would then be as follows:

FY 95: 30 offenders who would have been released under current law would remain incarcerated, based on a five year sentence received in FY 93. (30 X 365 = 10,950 prison-days)

F-2
HB554

CONTINUATION OF FISCAL ANALYSIS: LAWLOG 92-0039

FY 96: 30 offenders who would have been released under current law remain incarcerated, based on a five year sentence received in FY 94. This is in addition to 30 offenders (convicted in FY 93) finishing the remaining 4 months of their sentence (30 X 365 = 10,950; plus 30 X 120 = 3600. Total additional prison-days = 14,550)

The FY 96 figure would be repeated in FY 97 and FY 98, assuming the same rate of convictions resulting in five year, rather than three year sentences.

It is assumed that during the last 16 months of these sentences that the offenders would be eligible for placement on furlough to a community residential center and/or residential drug treatment program. The average statewide cost for such beds is approximately \$45.00 per day. Therefor, 10,950 additional bed-days in FY 95 would cost \$492,750.00. Each succeeding year would be \$654,750.00 per year in additional contract beds.

Section 4: This section elevates certain crimes involving large quantities of marijuana from a Class C to a Class B felony. In a "snapshot" inmate profile on December 31, 1991, there were 34 inmates incarcerated for MICS IV, a Class C felony. MICS IV includes possession of an ounce or more of marijuana, as well as a long list of other drug offenses. It is assumed that marijuana offenses make up a small percentage of the 34 MICS IV population, based on the extensive list of offenses included in this category. According to the Alaska Judicial Council, the mean sentence length for MICS IV is estimated to be about 12 months. If ten per cent (10 %) of the MICS IV offenses involved large amounts of marijuana, and would therefor be elevated to a Class B felony, that would be about 3 or 4 cases per year. Because the amount of marijuana addressed is quite large, it is assumed that such offenders would be at the high end of the sentencing range for Class C felonies under current law. Combined with the small number of anticipated cases, this would result in minimal fiscal impact for the Department.

Section 5: This Section creates the crime of money laundering and makes it a Class C felony. Because this section creates a new crime, it is difficult to estimate the number of cases which will result in prison/probation sentences. Based on an assessment from the Department of Law, this type of offense is expected to occur infrequently and therefor impact the Department of Corrections minimally.

#3
HB550

CONTINUATION OF FISCAL ANALYSIS: LAWLOG 92-0039

Section 6: This Section defines "cocaine base" to include crack. It also reverses the recent Thronsen decision which held that a person cannot be prosecuted for "possession by consumption." In Thronsen, the police had a search warrant for a house which authorized them to look for drugs/paraphernalia. The defendant was present and appeared to have ingested drugs, so his blood and urine were tested and confirmed the presence of cocaine. He was charged with possession of paraphernalia as well as possession of cocaine in his blood system. The jury found him not guilty on the syringe charge and the possession by consumption charge was overturned by the courts. The circumstances of this case suggest that charges of "possession by consumption" will strengthen the State's ability to win convictions in drug cases. If this increases the number of felony drug offenders by ten percent, approximately 16 offenders per year will be incarcerated for an average of 12 additional months. If the Department contracted for additional community residential center beds to accomodate this increase, the cost would be 16 offenders X 365 days X \$45.00 = \$262,800.00.

Sections 7 and 8: These sections eliminate certain defenses to offenses involving controlled substances and are not expected to impact the Department fiscally.

The above-mentioned estimates are based on contract community beds since it cannot be accurately predicted when the increases in incarceration days will actually result in adding new prison beds to the current correctional system, based on this bill alone. Therefor, using the daily cost of a prison bed for each additional bed-day would not accurately reflect budget increases, since the cost of each existing bed is already reflected in the Department's budget. However, any increase in the number or lengths of prison or probation sentences will accelerate the need for additional prison construction, additional correctional staff and additional probation officers. The probation population is currently growing at a rate of about 4% per year. The prison pcpulation is currently remaining fairly stable.

FISCAL NOTE

NO. 7
 Bill Version: HB 554
 (H) Publish Date: 2-24-92

STATE OF ALASKA
 1992 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Department of Law
 Title: "An Act relating to murder, kid-napping, controlled substances..." BRU: Prosecution
 Component: All
 Sponsor: By Request of the Governor
 Requestor: Office of the Governor COMPONENT SERIAL NO.

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85 through 91

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)
 Please see the attached analysis.

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: February 18, 1992
 Approved by Commissioner: Richard I. Pegues / For
Charles E. Cole, Attorney General
 Agency: Department of Law Date: February 18, 1992

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. _____

This bill amends several criminal statutes dealing with murder, kidnapping and drug offenses, and with new crimes relating to conspiracy and money laundering. A section by section analysis follows below.

Section 1 and Section 2. These sections amend AS 11.31, adding a new section making it a crime to conspire with one or more other persons to commit murder, kidnapping or a felony drug offense. These amendments permit the state to stop conspirators short of committing the more serious offense, while permitting the state to prosecute the offenders on conspiracy charges. In major drug prosecutions, the state would be permitted to join several drug dealing offenses with the conspiracy offense, thereby laying out major drug trafficking schemes in a single trial. This ability to consolidate drug charges would reduce the number of trials that are now sometimes required.

For instance, the major effect of a conspiracy law is to permit the introduction of additional evidence in a trial. Thus the jury is permitted to hear, for example, more evidence about the overall drug operation, rather than being limited to evidence about specific drug sales on specific dates. The jury does not therefore view those sales in isolation, but is allowed to see the "big picture", and the state's case is made stronger. We believe that defendants charged under the conspiracy law will cooperate with the state to try to get a reduced charge, and therefore fewer trials will occur. Another potential cost-savings is that multiple defendants charged with conspiracy will be able to be tried in a joint trial, rather than separate trials as is usually the practice now.

To the extent that the crime of conspiracy will be added as another charge, along with the target offense (for example, charging someone with both murder and conspiracy to commit murder), the fiscal impact is not likely to be great. Similarly, if the crime of conspiracy is charged in cases where current law would allow charging as an accomplice (AS 11.16.110), there will not be much additional cost. The department believes that even in cases that cannot be charged under current law, there will not be a significant increase in the number of cases due to the conspiracy law because they will be offset by the efficiencies discussed above. Therefore, these amendments should not have a fiscal impact.

Section 3. This section makes it a class A felony to engage in a continuing criminal enterprise involving three or more drug offenses committed with two or more other people. Existing law

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. _____

makes it an unclassified felony offense to engage in this type of conspiracy when it involves five or more drug offenses committed with five or more additional people. Creating this lesser offense when fewer people and transactions are involved will permit prosecution of small drug rings.

Section 3 also elevates the manufacture or delivery of cocaine, or the possession of cocaine with the intent to manufacture or deliver, from a class B to a class A felony offense when the quantity involved exceeds 500 grams. It also makes it a class A felony to manufacture or deliver, or possess with the intent to manufacture or deliver, five grams or more of a substance containing "crack." The conspiracy provisions in this section will, again, permit us to consolidate charges against small drug rings, and for that reason should not result in a fiscal impact for the department. The other provisions elevating the penalty for manufacturing and dealing of cocaine exceeding 500 grams, and making it a class A felony to manufacture or deliver five grams or more of a substance containing "crack" deal with sentencing and should also not have a fiscal impact.

Section 4. This section elevates the delivery of marijuana or the possession of marijuana with the intent to deliver from a class C to a class B felony offense when the quantity involved exceeds 10 kilograms. This is a sentencing provision and should not cause a fiscal impact for the department.

Section 5. This section creates a money laundering crime, making it a class C felony to take money known to be derived from drug violations. This amendment is intended to bolt the door before it is opened. There will not be a fiscal impact.

Section 6. This section defines "cocaine base," used in Section 3, as including "crack." It also defines "possession" for drug offenses so that a person who has ingested drugs is subject to prosecution to the same extent as those who are found with drugs in their clothes' pockets or at their house. This will have the effect of reversing a Court of Appeals decision, which held that a person cannot be prosecuted for "possession by consumption." This charge returns the law to its interpretation prior to the Court of Appeals decision and, consequently, there will not be a fiscal impact.

Section 7. This section strengthens the state's existing "Imitation Controlled Substance Act" by providing that it is not a defense to possessing or distributing illegal imitation drugs that the person believes the imitations are the real thing. This amendment, which prevents a person who has one type of illegal

#4
HB5

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. _____

substance from being immune from prosecution because he or she thought it was a different illegal substance, will not have a fiscal impact.

Section 8. This section makes a technical amendment to the criminal statutes to ensure that a person prosecuted for distributing or possessing less than a certain weight of a controlled substance cannot escape conviction by proving that the weight was more than that alleged. This technical amendment will not have a fiscal impact.

B

I. JUSE COMMITTEE REPORT

5/6

(7)

Date Referred: February 24, 1992

FURTHER REFERRALS:

Judiciary
Finance

Date of Committee Action: 5/5/92

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 554

HOUSE BILL NO. 554

CRIMINAL LAW: CONSPIRACY, MURDER, ETC.

"An Act relating to murder, kidnapping, controlled substances, and imitation controlled substances offenses; creating the crime of conspiracy and the crime of money laundering; amending a provision relating to general principles of criminal liability."

RECOMMENDATIONS:

be replaced with CS HB 554 (HES)

[x] the same title

[] a new title

[] have attached amendments(s)

[x] do pass

[] do not pass

[] no recommendations

[] individual recommendations

[] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

[x] fiscal impact corrections

[x] fiscal note(s) Admin 2/24/92 / Admin 2/24/92

[] zero fiscal note

[x] zero fiscal note(s) LAW 2/24/92 / Public Safety 2/24/92

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Cheri Davis		Betty Davis			X
J.G. Soyaks	✓				
Mary Miller	✓	Ray / CARNEY			✓
		Demetrius			✓

60 - CHAIRMAN'S SIGNATURE

H B

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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 24, 1992

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Speaker Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that will improve our criminal justice system by making a series of tailored amendments to the state's laws governing criminal prosecutions.

Section 1 amends the state's accomplice liability statute to provide that an accomplice is liable for the conduct of the person the accomplice aids or abets if the accomplice acts with the culpable mental state with respect to the result that is sufficient for the commission of the crime. This amendment is in response to the court of appeals' recent decision in Echols v. State, Op. No. 1164 (Alaska App. Oct. 4, 1991), which makes it more difficult to prosecute an accomplice than it is to prosecute the principal. The court ruled that, even though a principal may be liable for recklessly causing serious physical injury, a person who aids and abets the principal can be criminally liable only if the person intended the principal to cause serious physical injury.

Sections 2 and 3 amend the state's hindering prosecution statutes to make it criminal to render assistance, not just to a person known to have committed a crime, but also to a person known to have been charged with a crime. This amendment will halt those persons who have hindered a prosecution from arguing that, although they knew the person they were assisting was charged with a crime, they did not believe that the person was guilty.

Section 4 prevents a convicted, incarcerated person from securing a release on bail simply by filing an application for post-conviction relief. Instead, the amendment would require the court to rule on the merits of the application and to find that the person is entitled to relief before the person may be released.

Section 5 makes a defendant's violation of conditions of release a misdemeanor offense. Not only will this encourage greater compliance by a defendant with court-ordered conditions, but it may also prompt courts to release a defendant on bail more frequently, knowing that the defendant has good reason to comply with the conditions the court imposes. This amendment could help ease the state's prison over-crowding situation.

Gov's Transmittal Letter

The Honorable Ben Grussendorf
February 24, 1992
Page 2

Sections 6 and 27 expand the permissible cases in which hearsay evidence may be presented in a grand jury proceeding from prosecutions for sexual offenses to all felony cases. Circumstances must indicate that the statement is reliable and the witness must either testify at the proceedings or be available to testify at trial. Furthermore, the grand jury is given the ability to require the prosecuting attorney to produce the witness whose statement is being offered into evidence. For years, federal courts have permitted hearsay in grand jury proceedings; this bill would allow the same practice in state proceedings.

Sections 7, 8, and 9 amend state law to address the proceedings against a defendant who is permanently incompetent to stand trial. Existing law allows courts to commit for as long as 180 days any defendant who is incompetent to stand trial. At the end of that time, if the charged offense does not involve force, it must be dismissed and the state may proceed with civil commitment proceedings if the state considers it appropriate. If the charge does involve force and the defendant presents a substantial danger to others, the court may continue the defendant's commitment for an additional six months. At the end of that time, the charges must be dismissed and the defendant may be civilly committed. Under existing law, whenever the defendant becomes competent, the charges may be reinstated.

This bill amends the law for permanently incompetent defendants who present a substantial danger to others and who are charged with a crime involving force. At the end of the additional six-month commitment authorized by present AS 12.47.110(b), the court is required to hold a hearing to determine whether the defendant is permanently incompetent. If the defendant is found permanently incompetent, the case against the defendant on the underlying charges proceeds to adjudication, despite the defendant's incompetency. If the state proves the charges beyond a reasonable doubt, the defendant is then committed as though he had been found not guilty by reason of insanity under existing law. Thereafter, the rights and procedures applicable to those found not guilty by reason of insanity will apply to the defendant.

This new procedure, which is recommended by the Model Penal Code, accomplishes two ends. First, it resolves the charges against the defendant within a year; a committed defendant may no longer be tried years after the charges were filed. Second, this procedure provides a more appropriate disposition for permanently incompetent defendants who present a danger to others and have been found guilty of a serious violent crime. The civil commitment, which is appropriate for persons who are not dangerous, is replaced by the commitment proceedings applied to a defendant found not guilty by reason of insanity. The defendant may be held in custody by the commissioner of health and social services for as long as the defendant could have been imprisoned on the criminal charges. The defendant may be released upon proving that he or she no longer suffers from a mental illness that causes the defendant to be dangerous to the public. The defendant may also be conditionally released if he or she can be adequately controlled and treated in the community with proper supervision.

Sections 10 and 11 amend the statute governing suspended impositions of sentence. Current law allows a court to suspend the imposition of sentence, and place the defendant on probation, for a period of time equal to the maximum period of imprisonment that could be imposed for the offense. This means that, when a court suspends imposition of sentence for a class B misdemeanor offense, the court may do so for only 90 days. This makes some courts reluctant to grant a suspended imposition of sentence for class B misdemeanors, because the defendant can be placed on probation for only such a short period of time. Section 10 amends the law to allow imposition of a sentence to be suspended for as long as one year, even if the maximum period of imprisonment that could be imposed is less than one year. Section 11 clarifies confusing language in AS 12.55.085(c), governing the period during which the court may impose sentence following the revocation of a suspended imposition of sentence.

Sections 12, 13, 21, and 23 change the laws governing plea agreements between defendants and the state. Under existing law, if a defendant enters into an agreement with the state that he or she should receive a particular sentence, the court may respond in any of three ways: First, it may accept the agreement and sentence the defendant accordingly; second, it may reject the agreement and allow the defendant to withdraw his or her plea and proceed to trial; and third, it may accept the agreement but impose a lesser sentence than was agreed to by the parties. These sections remove the third option so that, if the court concludes that the agreed-upon sentence is too harsh, the court may only reject the agreement and return the parties to their earlier positions. These sections also clarify that a defendant who agrees to a particular sentence cannot appeal that sentence as being excessive, nor may he or she seek post-conviction modification for a reduction of the sentence from the trial court.

Section 14 concerns defendants who are subject to presumptive sentencing because of their prior convictions. Under current law, if a defendant denies the prior convictions, a hearing is scheduled before the court to resolve the matter. This amendment simply requires the defendant to make the denial under oath. This is intended to eliminate frivolous denials, which are more readily made when the defendant is not under oath and thus not subject to prosecution for perjury.

Section 15 addresses the sentencing aggravator set out in AS 12.55.155(c)(18)(A), which applies in assault cases when the offense was committed against a spouse, a former spouse, or a member of the social unit comprised of those living together in the same dwelling as the defendant. This section adds former members of the household to the statute's list, to keep parity with the statute's inclusion of former spouses.

Section 16 amends AS 18.85.120(c), which governs judgments entered by the court against indigent criminal defendants for the cost of defense counsel provided by the state. This section removes the provision in the statute that prohibits the state from executing on a judgment against an incarcerated defendant until three years following the defendant's release unless the state

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petitions the court for a special order and shows good cause for it. There does not appear to be any reason to categorically delay for three years any recovery on the court's judgment.

Section 17 corrects an oversight in the discretionary parole statute, which prohibits a prisoner from being released until the prisoner has served any mandatory sentence or a presumptive sentence imposed for a class A or unclassified felony offense. Although citing the statutes for both mandatory minimum and presumptive sentences for class A and unclassified felony offenses, AS 33.16.100(d) refers only to the mandatory minimum sentences. This amendment makes an explicit reference to the presumptive sentences, as well.

Sections 18, 19, and 24 authorize the use of hearsay evidence in the portion of a hearing to determine whether probable cause exists that a minor is delinquent in connection with certain sexual offenses. This is analogous to the use of hearsay evidence in grand jury proceedings against adults. Existing law authorizes the use of hearsay evidence at grand jury proceedings on sexual offenses.

Section 22 amends Rule of Criminal Procedure 24(d) to give defendants the same number of peremptory challenges in felony cases as the state has. Currently, defendants are given 10, compared with the state's six. The amendment does not change the provision in Rule 24(d) that authorizes courts to allow defendants additional peremptory challenges when two or more defendants are joined together for trial.

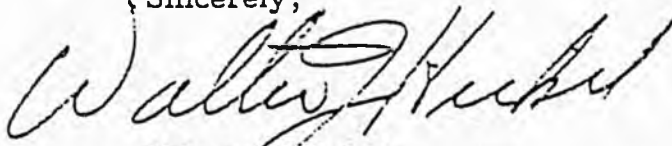
Section 25 amends Rule of Evidence 609(b) to extend from five to ten years the period of time during which a witness's conviction for a crime of dishonesty may be used to impeach the witness. It also measures the time period from the date of the person's unconditional discharge on the offense, rather than from the date of the conviction.

Section 26 amends the court rules to prohibit an expert witness from offering an opinion on the ultimate issue of fact as to whether a defendant did or did not have the necessary mental state or condition to commit the crime charged or to constitute a defense to the crime charged. Instead, this issue is to be left to the trier of fact.

These amendments are all designed to make criminal prosecutions fairer and more effective in this state. Many, if not all, do nothing more than level the playing field for the state. This is an appropriate time to do so.

I urge your favorable action on the bill.

Sincerely,



Walter J. Hickel
Governor