

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992
6956 HOUSE JUDICIARY 8672

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Kenai Chamber of Commerce
402 Overland
Kenai, Alaska 99611
(907) 283-7989



KENAI CHAMBER OF COMMERCE

RESOLUTION 92 - 2

RESOLUTION IN SUPPORT OF HOUSE BILL 367

WHEREAS, The Kenai area is deemed by its citizens as a law abiding area, and

WHEREAS, drug usage degrades the way of life in any area where it exists, and

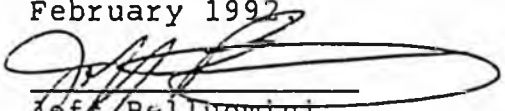
WHEREAS, strong anti drug laws are supported to suppress drug activity within Alaska, and

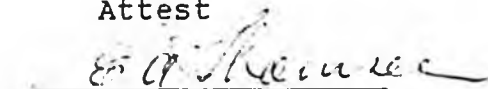
WHEREAS, House Bill 367 will address the closing of a loophole in the present day drug enforcement laws and

WHEREAS, the Kenai Chamber of Commerce represents a large number of businesses and organizations in the Kenai area.

NOW THEREFORE BE IT RESOLVED THAT THE KENAI CHAMBER OF COMMERCE supports House Bill 367.

Approved by the Board of Directors of the Greater Kenai Chamber of Commerce, Kenai, Alaska on this 21st Day of February 1992


Jeff Belluomini
President
Kenai Chamber of Commerce

Attest

Eleanor Thomson

Alaska State Legislature

Legislative Research Agency



130 Seward Street, Suite 218
Juneau, Alaska 99801-2196

Phone: (907) 465-3991
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February 14, 1991

MEMORANDUM

TO: Representative Jim Zawacki

FROM: Christine M. Cheff *CME*
Legislative Analyst

RE: Controlled Substances - Does Ingestion Equal Possession?
Research Request 92.132

You asked if any states have laws which provide that a person who ingests a controlled substance may be criminally convicted for possession of that substance.

Although we conducted a computer search of the statutes for all 50 states and a random manual search of the statutes in approximately 15 states, we were unable to find any statutory provisions pertaining to this issue.¹ There is a Montana statute which states that a person commits the offense of criminal possession of a toxic substance if he or she inhales or ingests substances such as: glue, fingernail polish, chemical solvents, paint and paint thinners (Attachment A). This law does not apply to controlled substances however.

We also reviewed opinions for several court cases in which the key issue was possession of a controlled substance. In general the courts have found that possession of a controlled substance must be either actual or constructive to be considered a crime.² Actual possession means that a person has physical control of a substance, while a person who merely knows of the presence and nature of a controlled substance may be said to have constructive possession.^{3,4} In 1983 the Kansas Supreme Court (659 P2d 208) ruled that once ingested a controlled substance cannot be controlled, possessed, used, disposed

¹Research conducted in West Publishing Company's WESTLAW service and the statute; for: Alabama, California, Colorado, Connecticut, Florida, Hawaii, Idaho, Massachusetts, Minnesota, Montana, Nevada, New Jersey, Oregon, South Dakota and Texas.

²*Words and Phrases*, West Publishing Co., Vol. 33, pp. 149 - 150.

³*Black's Law Dictionary*, 6th Edition (1990).

⁴*Words and Phrases*

Legislative Research

Representative Zawacki
February 14, 1991
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of or cause harm (Attachment B).⁵ As you know, that opinion has been cited and affirmed in subsequent cases, including the 1991 Alaska Court of Appeals case State v. Thronsen (809 P2d 941).

Please let us know if we can be of further assistance on this or any other matter.

Attachments

⁵*State v. Flinchpaugh*, 232 Kan. 831, 659 P2d 208 (1983).

ATTACHMENT A
Montana Statutes

MONTANA CODE ANNOTATED
1991

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45-9-116. Imitation dangerous drugs — exemptions — rules. (1) Sections 45-9-111 through 45-9-115 do not apply to:

(a) a person authorized by rules adopted by the board of pharmacy to possess with purpose to sell or sell imitation dangerous drugs;

(b) law enforcement personnel selling or possessing with purpose to sell imitation dangerous drugs while acting within the scope of their employment and

(c) a person registered under the provisions of Title 50, chapter 32, part 3, who sells, or possesses with purpose to sell an imitation dangerous drug for use as a placebo, by that person or any other person so registered, in the course of professional practice or research.

(2) The board of pharmacy shall adopt, amend, or repeal rules in accordance with the Montana Administrative Procedure Act to authorize the possession with purpose to sell or sale of imitation dangerous drugs whenever it determines that there is a legitimate need and that the drugs will be used for a lawful purpose.

History: En. Sec. 6, Ch. 451, L. 1983; amd. Sec. 1, Ch. 247, L. 1983; amd. Sec. 20, Ch. 3, L. 1985.

45-9-117 through 45-9-120 reserved.

45-9-121. Criminal possession of toxic substances — penalty. (1) A person commits the offense of criminal possession of a toxic substance if he inhales or ingests or possesses with the purpose to inhale or ingest, for the purpose of altering his mental or physical state, any substance with toxic effects that is not manufactured for human consumption or inhalation, including but not limited to glue, fingernail polish, paint and paint thinners, petroleum products, aerosol propellants, and chemical solvents.

(2) The provisions of subsection (1) do not apply to a bona fide institution of higher education conducting research with human volunteers pursuant to guidelines adopted by the institution or any federal or state agency.

(3) A person convicted under this section shall be imprisoned in the county jail for a term not to exceed 6 months or be fined an amount not to exceed \$500, or both.

(4) The youth court has jurisdiction of any violation of subsection (1) by a person under 18 years of age.

History: En. Sec. 1, Ch. 482, L. 1983.

45-9-122 through 45-9-124 reserved.

45-9-125. Continuing criminal enterprise — penalty. (1) A person who engages in a continuing criminal enterprise is guilty of a crime and upon conviction is punishable by a term of imprisonment and a fine not exceeding two times those authorized for the underlying offense. For purposes of this subsection, a person is engaged in a continuing criminal enterprise if:

(a) the person violates any provision of this chapter that is a felony; and

(b) the violation is a part of a continuing series of two or more violations of this chapter on separate occasions:

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ATTACHMENT B
Kansas Supreme Court (659 P2d 208)

232 Kan. 831

STATE of Kansas, Appellant,

v.

Janet P. FLINCHPAUGH, Appellee.

No. 54756.

Supreme Court of Kansas.

Feb. 19, 1983.

The defendant was charged with possession of cocaine and following a preliminary hearing where the magistrate found probable cause, defendant moved to dismiss. The District Court, Dickinson County, John F. Christner, J., sustained the defendant's motion to dismiss and the State appealed. The Supreme Court, Floyd H. Coffman, District Judge, Assigned, held that evidence of a controlled substance assimilated in defendant's blood did not establish possession of that substance, nor was it adequate circumstantial evidence to show prior possession by defendant.

Affirmed.

1. Drugs and Narcotics ⇌ 63, 64

Possession of controlled substance requires having control over substance with knowledge of and intent to have such control; knowledge of the presence of controlled substance as embraced within the concept of physical control with intent to exercise such control is essential.

2. Drugs and Narcotics ⇌ 63

"Control," as used in statute making it unlawful for any person to possess or control any narcotic drug, is given its ordinary meaning, namely, to exercise restraining or directing influence over.

See publication Words and Phrases for other judicial constructions and definitions.

3. Drugs and Narcotics ⇌ 63

Once controlled substance is within a person's system, power of person to control, possess, use, dispose of, or cause harm is at an end, and thus presence of the substance in the blood is not "possession" or "control"

of the substance within statutory prohibition. K.S.A. 65-4127a.

See publication Words and Phrases for other judicial constructions and definitions.

4. Criminal Law ⇌ 552(1)

"Circumstantial evidence" is evidence that tends to prove a fact in issue by proving other events or circumstances which, according to common experience of mankind, are usually or always attended by the fact in issue, and therefore affords basis for reasonable inference by jury or court of the occurrence of fact in issue.

See publication Words and Phrases for other judicial constructions and definitions.

5. Criminal Law ⇌ 561(1)

In criminal prosecution, defendant must be proven guilty beyond reasonable doubt of each element of crime charged. U.S.C.A. Const. Amend. 14.

6. Drugs and Narcotics ⇌ 64

Knowledge is essential ingredient of crime of illegal possession of controlled substance; defendant must know of presence of controlled substance. K.S.A. 65-4107(b)(5), 65-4127a.

7. Drugs and Narcotics ⇌ 64

Intent to possess, to appropriate the drug to oneself, constitutes requisite mental attitude for conviction of possession of a controlled substance. K.S.A. 65-4127a.

8. Drugs and Narcotics ⇌ 117

Discovery of drug in person's blood is circumstantial evidence tending to prove prior possession of drug, but is not sufficient evidence to establish guilt beyond reasonable doubt, since the drug might have been injected involuntarily, or introduced by artifice, into defendant's system. K.S.A. 65-4127a.

9. Drugs and Narcotics ⇌ 117

Evidence of controlled substance assimilated in defendant's blood did not establish possession of that substance, as defined by statute making it unlawful for any person to possess or distribute any narcotic drug, nor was it adequate circumstantial evidence

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to show prior possession by defendant, since prosecution failed to establish that defendant ever knowingly had control of controlled substance. K.S.A. 65-4127a.

10. Drugs and Narcotics ⇐ 117

In prosecution for possession of controlled substance based on evidence of controlled substance assimilated in defendant's blood, other corroborating evidence, combined with positive blood test could be sufficient evidence to prove guilt beyond reasonable doubt, depending on probative value of corroborating evidence. K.S.A. 65-4127a.

11. Drugs and Narcotics ⇐ 63

Purpose of Uniform Controlled Substances Act is to regulate drug traffic, and once controlled substance is in human system it is beyond control which the Act contemplated; therefore, without proof of person's knowledgeable prior possession of drug, punishment for presence of drug in person's system is not consistent with design of the Act. K.S.A. 65-4101 et seq.

Syllabus by the Court

1. Possession of a controlled substance requires having control over the substance with knowledge of and the intent to have such control. Knowledge of the presence of the controlled substance with the intent to exercise control is essential.

2. Control as used in K.S.A. 65-4127a means to exercise a restraining or directing influence over the controlled substance.

3. Once a controlled substance is within a person's system, the power of the person to control, possess, use, dispose of, or cause harm is at an end. The drug is assimilated by the body and the ability to control the drug is beyond human capabilities. Presence of the substance in the blood is not possession or control of the substance within K.S.A. 65-4127a.

4. Circumstantial evidence is evidence that tends to prove a fact in issue by proving other events or circumstances which, according to the common experience of mankind, are usually or always attended by the fact in issue, and therefore affords a

basis for a reasonable inference by the jury or court of the occurrence of the fact in issue. *Casey v. Phillips Pipeline Co.*, 199 Kan. 538, Syl. ¶ 6, 431 P.2d 518 (1967).

5. In a criminal prosecution, the defendant must be proven guilty beyond a reasonable doubt of each element of the crime charged. *State v. Douglas*, 230 Kan. 744, Syl. ¶ 1, 640 P.2d 1259 (1982).

6. Discovery of a controlled substance in a person's bloodstream is circumstantial evidence tending to prove prior possession of the substance, but it is not sufficient evidence to establish guilt beyond a reasonable doubt of possession or control of the substance. A blood test alone fails to establish knowledge of the presence of the substance and the intent to exercise control over the substance.

7. The purpose of the Uniform Controlled Substances Act is to control illicit and legitimate drug traffic. Once a controlled substance is in the bloodstream it is beyond the control which the uniform act contemplated.

Keith D. Hoffman, County Atty., argued the cause, and Robert T. Stephan, Atty. Gen., was with him on brief for appellant.

No appearance by appellee.

FLOYD H. COFFMAN, District Judge,
Assigned:

The State of Kansas appeals the dismissal of its prosecution against Janet Flinchpaugh for possession of cocaine, its salts, isomers, and salts of isomers, pursuant to K.S.A. 65-4127a and K.S.A. 65-4107(b)(5). Possession of cocaine is a class C felony. The defendant was charged with involuntary manslaughter in a separate prosecution.

Following a preliminary hearing the magistrate found probable cause. The defendant moved to dismiss and the parties stipulated to these facts. Janet Flinchpaugh, while driving in Abilene, Kansas during the late evening hours of November 13, 1981, was involved in an automobile collision. As

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a result of the impact, the driver of the other car died. Defendant suffered injuries and was taken to the hospital where she consented to the drawing of her blood. Samples of her blood were sent to the Kansas Department of Health and Environment in Topeka. Cocaine and/or benzoylecgonine was found in the blood samples. Benzoylecgonine is a metabolite of cocaine. In order for traces to be in the blood, cocaine must first have been present. The State had no direct evidence of how or when the chemicals were introduced into the defendant's system. The charge of possession is based solely on the result of the testing of the defendant's blood. The trial court, taking the case under advisement following oral argument, observed: "[A] controlled substance in the system controls the body and it is impossible to control the substance once in the bloodstream." Later, by memorandum decision, Judge Christner sustained the defendant's motion to dismiss stating "[a] human being does not possess a narcotic drug which is located in his bloodstream." The State appeals the dismissal through K.S.A. 22-3602(b)(1), and (b)(3). (Jurisdiction is taken under the former.)

The State's information charged the defendant with unlawfully, feloniously, and willfully possessing or having under her control cocaine, its salts, isomers; and salts of isomers. The relevant statutes are K.S.A. 65-4127a and K.S.A. 65-4107(a) and (b)(5):

"Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to manufacture, possess, have under his control, possess with intent to sell, sell, prescribe, administer, deliver, distribute, dispense or compound any opiates, opium or narcotic drugs. Any person who violates this section shall be guilty of a class C felony, except that, upon conviction for the second offense, such person shall be guilty of a class B felony, and upon conviction for a third or subsequent offense, such person shall be guilty of a class A felony, and the punishment shall be life imprisonment."

"(a) The controlled substances listed in this section are included in schedule II;

"(b) any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by combination of extraction and chemical synthesis: . . .

....
 (5) cocaine, its salts, isomers and salts of isomers."

[1] These statutes are similar to the Uniform Controlled Substances Act. This court in *State v. Faulkner*, 220 Kan. 153, 156, 551 P.2d 1247 (1976), in an opinion by Chief Justice Fatzer, observed:

"The Uniform Controlled Substances Act, (K.S.A. 65-4101 et seq.) does not define 'possession.' (See K.S.A. 21-3102[1].) In *State v. Neal*, 215 Kan. 737, 529 P.2d 114, we defined 'possession,' citing PIK Criminal, Ch. 53.00, at p. 69 (1971):

"'Possession. Having control over a place or thing with knowledge of and the intent to have such control. *State v. Metz*, 107 Kan. 593, 193 P. 177 (1920); *City of Hutchinson v. Weems*, 173 Kan. 452, 249 P.2d 633 (1952)....'

"... Knowledge signifies awareness and is a requirement for 'possession.'

'Knowledge of the presence of a narcotic or dangerous drug as embraced within the concept of physical control with the intent to exercise such control is essential....' (28 C.J.S., Drugs and Narcotics Supplement, § 160 [1974], p. 235.)"

Justice Burch, in a case concerning alleged unlawful possession of liquor, wrote:

"[C]orporeal possession is the continuing exercise of a claim to the exclusive use of a material thing. The elements of this possession are, first, the mental attitude of the claimant, the intent to possess, to appropriate to oneself; and second, the effective realization of this attitude." *State v. Metz*, 107 Kan. 593, 596, 193 P. 177 (1920).

Cite as, 655 P.2d 248 (Kan. 1983)

The editors of PIK Crim.2d 64.06 in defining Unlawful Possession of a Firearm—Felony, added to the requirement in the statute (K.S.A. 21-4204) that the element of "possession of the firearm" be done "knowingly," commenting:

"This construction of the word 'possession' is consistent with many Kansas cases which recognize that the elements of possession require a mental attitude that the possessor intended to possess the property in question and to appropriate it to himself." See *State v. Metz*, 107 Kan. 593, 193 P. 177, and *City of Hutchinson v. Weems*, 173 Kan. 452, 249 P.2d 633 (1952).

[2] "'Control,' as used in [the] statute making it unlawful for any person to possess or control any narcotic drug, is given its ordinary meaning, namely, to exercise restraining or directing influence over . . . *Speaks v. State*, 3 Md.App. 371, 239 A.2d 600, 604." Black's Law Dictionary 298 (5th ed. 1979).

[3] Once a controlled substance is within a person's system, the power of the person to control, possess, use, dispose of, or cause harm is at an end. The drug is assimilated by the body. The ability to control the drug is beyond human capabilities. The essential element of control is absent. Evidence of a controlled substance after it is assimilated in a person's blood does not establish possession or control of that substance. The Court of Special Appeals of Maryland has agreed:

"Once a narcotic drug is injected into the vein, or swallowed orally, we think it apparent that it is no longer within 'one's control' or held at 'one's disposal.' And it would likewise be beyond the taker's ability to exercise any restraining or directing influence over it. Consequently, once the drug is ingested and assimilated into the taker's bodily system, it is no longer within his control and/or possession in the sense contemplated by Section 277." *Franklin v. State*, 8 Md.App. 134, 13S, 258 A.2d 767 (1969), cert. denied 257 Md. 733 (1970).

See *State v. Downes*, 31 Or.App. 1183, 572 P.2d 1328 (1977); and *State v. Yunez*, 89 N.M. 397, 553 P.2d 252 (Ct.App.1976).

The State also contends the presence of a controlled substance in one's bloodstream is sufficient circumstantial evidence alone to prove possession of the substance at the time immediately before the substance was introduced into the person's system. In other words, the person must have possessed the drug before it was ingested.

In *Franklin v. State*, 8 Md.App. 134, 258 A.2d 767, the defendant was brought to a hospital in a semi-conscious state. Several hours later he acknowledged he had taken heroin; the treating doctor testified the defendant's condition was entirely compatible with having had an overdose of heroin; and this evidence was held sufficient to support a conviction for possession of heroin.

In *State v. Yanez*, 89 N.M. 397, 553 P.2d 252, the defendant was convicted of possession of morphine. The defendant was observed by police participating in what was thought to be a drug sale. After the occurrence, the defendant purchased two hypodermic needles and went to a service station restroom. There police found one of the needles which they believed the defendant had used. Marks on the defendant's arm were thought to be from use of the needle. Defendant was arrested for possession of heroin and transported to a hospital where a urine test revealed the presence of morphine. The court found the evidence sufficient to support the conviction.

In *State v. Downes*, 31 Or.App. 1183, 572 P.2d 1328, an undercover police officer saw a third person inject phencyclidine (PCP) into the defendant's arm. The Oregon Court of Appeals held this was use but not possession of the drug, noting Oregon had one criminal statute for "use," and another statute for "possession" of dangerous drugs.

[4] Circumstantial evidence is evidence that tends to prove a fact in issue by proving other events or circumstances which, according to the common experience of mankind, are usually or always attended by the fact in issue, and therefore affords a basis for a reasonable inference by the jury

or court of the occurrence of the fact in issue. *Casey v. Phillips Pipeline Co.*, 199 Kan. 538, Syl. ¶ 6, 431 P.2d 518 (1967).

[5] In a criminal prosecution, the defendant must be proven guilty beyond a reasonable doubt of each element of the crime charged. Fourteenth Amendment of the United States Constitution; *In re Winship*, 397 U.S. 358, 25 L.Ed.2d 368, 90 S.Ct. 1068 (1970); *State v. Douglas*, 230 Kan. 744, 640 P.2d 1259 (1982).

[6, 7] Returning to the definition of possession, knowledge is an essential ingredient of the crime of illegal possession of a controlled substance. The defendant must know of the presence of the controlled substance. *State v. Faulkner*, 220 Kan. at 156, 551 P.2d 1247. The intent to possess, to appropriate the drug to oneself, constitutes the requisite mental attitude for conviction of possession. *State v. Metz*, 107 Kan. at 596, 193 P. 177.

[8-10] Discovery of a drug in a person's blood is circumstantial evidence tending to prove prior possession of the drug, but it is not sufficient evidence to establish guilt beyond a reasonable doubt. The absence of proof to evince knowledgeable possession is the key. The drug might have been injected involuntarily, or introduced by artifice, into the defendant's system. The prosecution did not establish that defendant ever knowingly had control of the cocaine. None of the courts in the three cases cited previously upheld possession convictions based on the physical condition of the defendant alone. In the narrow holding of this case, we find that evidence of a controlled substance assimilated in one's blood does not establish possession of that substance as defined by K.S.A. 65-4127a, nor is it adequate circumstantial evidence to show prior possession by that person. Other corroborating evidence combined with positive results of a blood test could be sufficient evidence to prove guilt beyond a reasonable doubt depending on the probative value of the corroborating evidence.

[11] The purpose of the Uniform Controlled Substances Act, 9 Uniform Laws

Annotated, p. 197 (1979), is to regulate the drug traffic. The Commissioners on Uniform State Laws explained:

"The Uniform Controlled Substances Act is designed to supplant the Uniform Narcotic Drug Act, adopted by the National Conference of Commissioners on Uniform State Laws in 1933, and the Model State Drug Abuse Control Act, relating to depressant, stimulant, and hallucinogenic drugs, promulgated in 1966. With the enactment of the new Federal narcotic and dangerous drug law, the 'Comprehensive Drug Abuse Prevention and Control Act of 1970' (Public Law 91-513, short title 'Controlled Substances Act' [21 U.S.C.A. § 801 et seq.]), it is necessary that the States update and revise their narcotic, marihuana, and dangerous drug laws.

"This Uniform Act was drafted to achieve uniformity between the laws of the several States and those of the Federal government. It has been designed to complement the new Federal narcotic and dangerous drug legislation and provide an interlocking trellis of Federal and State law to enable government at all levels to control more effectively the drug abuse problem.

"The exploding drug abuse problem in the past ten years has reached epidemic proportions. No longer is the problem confined to a few major cities or to a particular economic group. Today it encompasses almost every nationality, race, and economic level. It has moved from the major urban areas into the suburban and even rural communities, and has manifested itself in every State in the Union.

"Much of this major increase in drug use and abuse is attributable to the increased mobility of our citizens and their affluence. As modern American society becomes increasingly mobile, drugs clandestinely manufactured or illegally diverted from legitimate channels in one part of a State are easily transported for sale to another part of that State or even to another State. Nowhere is this mobili-

ty manifested with greater impact than in the legitimate pharmaceutical industry. The lines of distribution of the products of this major national industry cross in and out of a State innumerable times during the manufacturing or distribution processes. To assure the continued free movement of controlled substances between States, while at the same time securing such States against drug diversion from legitimate sources, it becomes critical to approach not only the control of illicit and legitimate traffic in these substances at the national and international levels, but also to approach this problem at the State and local level on a uniform basis." 9 U.L.A. at 188.

Once a controlled substance is in the human system it is beyond the control which the uniform act contemplated. The deleterious effects of the drug are already in progress. What the act seeks to prevent has occurred. The "controlled substance" is no longer susceptible to the control the act seeks to regulate. Without proof of a person's knowledgeable prior possession of the drug, punishment for presence of the drug in a person's system is not consistent with the design of the Uniform Controlled Substances Act.

We affirm dismissal by the trial court.



232 Kan. 843

STATE of Kansas, ex rel., Robert T.
STEPHAN, Attorney General,
Appellant,

v.

PEPSI-COLA GENERAL BOTTLERS,
INC., Appellee.

No. 54813.

Supreme Court of Kansas.

Feb. 19, 1983.

Appeal was taken from an order of the Shawnee District Court, James M. MacNish,

J., denying State's motion for summary judgment against soft drink bottler for violation of Trading Stamp Act. The Supreme Court, Herd, J., held that: (1) appeal from trial court's order denying State's motion for summary judgment and entering judgment for soft drink bottler was not moot; (2) Act was applicable to promotion by soft drink bottler by which bottle caps were redeemed for prizes and/or money, where bottle caps were furnished to others at least in part in conjunction with sale of bottler's products; bottle caps constituted "other similar devices" within meaning of Act; and (3) promotion did not violate Act, under exception stating that Act would not apply to any bottle cap redeemed for "one specified and particular product not manufactured or packed by the manufacturer or packer."

Affirmed.

1. Appeal and Error ⇐ 843(1)

Supreme Court will not consider and decide questions when its decision would not be applicable to any actual controversy and where judgment itself would be unavailing; at same time, however, an appeal will only be dismissed when it clearly and convincingly appears actual controversy has ceased and only judgment which could be entered would be ineffectual for any purpose.

2. Injunction ⇐ 4

When properly applied; an injunction operates only in futuro, and not to provide relief for past or completed acts. K.S.A. 60-901.

3. Appeal and Error ⇐ 790(1)

Where need for an injunction has ceased Supreme Court will not review merits of issue on appeal. K.S.A. 60-901.

4. Injunction ⇐ 12, 16

To obtain injunctive relief from prospective injury it must be shown that there

Alaska State Legislature

Legislative Research Agency



P.O. Box Y
Juneau, AK 99811-3100
Phone: (907) 165-3991
Fax: (907) 163-3351

February 14, 1992

TO: Representative Jim Zawacki
FROM: Christine M. Cheff *Cheff*
Legislative Analyst
RE: Controlled Substances - Does Ingestion Equal Possession?
Research Request 92.132

Please check the appropriate box and return to Mail Stop 3100 or the above mailing address.

- I approve the release of this information.
- I approve the release of this information, but remove my name.
- Keep confidential.

Date

Signature

To assist us in improving the quality of our research services, we would appreciate your response to the following questions. Please be assured that we will take your comments seriously in performing future research for you.

Was the information objective?

Was it clearly written?

Did it provide answers to (or, at least, useful information on) all the questions you posed?

Was the research completed and delivered to you in a timely manner?

DEFENDANT MAY NOT BE CONVICTED OF POSSESSION OF COCAINE WHEN COCAINE IS IN DEFENDANT'S BODY.

The Alaska Court of Appeals ruled that a defendant could not be convicted of possession of cocaine (misconduct involving controlled substances in the fourth degree, AS 11.71.040(a)(3)(A), a class C felony) based on the presence in the defendant's blood of cocaine that the defendant had ingested before arrest. It accordingly affirmed the trial court's dismissal of the count of an indictment alleging that Thronsen had possessed cocaine in his body. The appeals court relied on cases from other states holding that possession implies control, and that a person with a drug in his or her body no longer has the necessary control.

State v. Thronsen, 809 P.2d 941 (Alaska App. 1991)

The court's decision is not clearly contrary to the language of AS 11.71.040(a)(3)(A), which merely uses the term "possesses". The decision also does appear to be consistent with the case law from other states. Nevertheless, 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 review is recommended.

which was rented by Earl J. Thronsen's brother. The police described the residence as a "crack house"—a place where people regularly go to congregate and use cocaine. The warrant authorized the police to look for cocaine, cocaine paraphernalia, and the ingredients for making the "crack" form of cocaine.

Thronsen was in the house when the search warrant was executed. He was lying face down on a couch in the living room; his hands were beneath him. It appeared to the police officer conducting the search that Thronsen was hiding something underneath his hands. When the police searched the couch, they found a syringe underneath a cushion where Thronsen had been lying. Thronsen's hands had been at the place where the cushions were separated. The syringe was the type used for intravenous drug use; that type of syringe usually leaves track marks on a person's arms. Thronsen had track marks on his arms. Later tests indicated that the syringe contained a trace residue of cocaine.

A sample of Thronsen's blood and urine was taken on November 9, 1989 at 6:39 p.m. and was sent to Anchorage for testing. The urine sample screened positive for the presence of cocaine and/or its metabolites. Expert testing established that Thronsen must have consumed cocaine within the previous 72 hours from the time the urine specimen was collected.

A grand jury indicted on two counts of misconduct involving a controlled substance in the fourth degree. AS 11.71.040(a)(3)(A). In Count I, the grand jury charged Thronsen with knowingly and unlawfully possessing a syringe which contained cocaine. In Count II, the grand jury charged that Thronsen "unlawfully possessed in his body ... cocaine." Thronsen was tried by a jury on these charges.

Thronsen testified at trial. He stated that he had, on previous occasions, taken cocaine with his brother at his brother's house. Although he denied possessing the syringe found in the couch, he stated that in the past, he had shot up cocaine in his brother's house with the type of syringe

which was discovered under the couch. He said he had not consumed cocaine at his brother's house on November 8. However, he had smoked a little cocaine at his own house "way earlier" than the time that the search warrant was executed on his brother's house.

At the end of the state's presentation of its case, Thronsen moved for a judgment of acquittal on Count II, which charged Thronsen with possession of cocaine "in his body." Thronsen argued that he could not be convicted of possession of cocaine in his body because he no longer had control over the cocaine once he ingested or injected it. Superior Court Judge Richard D. Savell denied this motion without prejudice.

The jury found Thronsen not guilty on Count I, possession of cocaine in the syringe, and guilty of Count II, possession of cocaine "in his body." Following trial, Judge Savell reconsidered Thronsen's motion for judgment of acquittal on Count II, and then set aside and vacated the judgment of conviction. He reasoned that, although the state could use the presence of cocaine in Thronsen's blood or urine as circumstantial evidence that Thronsen had earlier possessed or used cocaine, the indictment did not charge Thronsen with prior possession of cocaine. The indictment only charged Thronsen with possession of cocaine "in his body." Judge Savell relied on *State v. Downes*, 31 Or.App. 1183, 572 P.2d 1328, 1330 (1977) and *State v. Flinchpaugh*, 232 Kan. 831, 659 P.2d 208, 211 (1983). Judge Savell stated, "[t]hese cases hold that control is an essential element of possession and that because the host body cannot exercise control or dominion over a substance after it is ingested ... the mere presence in the body cannot support a criminal conviction for possession." Judge Savell went on to say:

Plaintiff seeks to escape the effect of the cited cases by arguing that here "Mr. Thronsen clearly injected the cocaine into his own system...." This argument misses the mark. There was no evidence that defendant ingested the cocaine that was in his system. Nor may plaintiff rely upon defendant's presence in a

Cite as 809 P.2d 941 (Alaska App. 1991)

under the couch. He assumed cocaine at his November 8. However, the cocaine at his own had the time that the executed on his broth-

ate's presentation of ed for a judgment of II, which charged ion of cocaine "in his ed that he could not sion of cocaine in his rger had control over gested or injected it. Richard D. Savell thout prejudice.

Throsen not guilty on f cocaine in the sy- unt II, possession of " Following trial, red Throsen's mo- acquittal on Count II, d vacated the judg- re reasoned that, al- use the presence of blood or urine as that Throsen had sed cocaine, the in- e Throsen with pri- ne. The indictment with possession of Judge Savell relied 1 Or.App. 1183, 572 and *State v. Flinch-* 659 P.2d 208, 211 ated, "[t]hese cases essential element of cause the host body or dominion over e gested ... the mere not support a crim- ession." Judge Sa-

scape the effect of using that here "Mr. ted the cocaine into " This argument re was no evidence ed the cocaine that Nor may plaintiff 's presence in a

"crack house" or the presence of a cocaine soiled syringe nearby. Defendant was acquitted of knowing possession of the syringe. And, there was no evidence of when, where or how defendant possessed the cocaine that ended up in his system. Most importantly, defendant was not charged with possession of cocaine at the time and place of ingestion. Rather, he was only charged with possessing the drug in his body. This additional element, *i.e.*, possession *in the body*, is fatal to the state's case. (Emphasis in original.)

Judge Savell entered a judgment of acquittal on Count II. The state appeals from this order. We affirm.

We may not reverse a genuine verdict of acquittal on appeal without violating the constitutional provisions of the United States and the Alaska Constitutions which prohibit putting a defendant twice in jeopardy. See *United States v. Martin Linen Supply Company*, 430 U.S. 564, 97 S.Ct. 1349, 51 L.Ed.2d 642 (1977); *State v. Kott*, 636 P.2d 622, 623 (Alaska App.1981), *aff'd* 678 P.2d 386 (Alaska 1984). In addition, AS 22.07.020(d)(2) states that "the state has no right of appeal in criminal cases except to test the sufficiency of the indictment or information or to appeal a sentence on the ground that it is too lenient." Since Judge Savell's order purported to be a judgment of acquittal, we ordered the parties to brief whether this court had jurisdiction. The parties submitted supplemental briefs.

Where, "the ruling of the judge, whatever its label, actually represents a resolution, correct or not, of some or all of the factual elements of the offense charged," the ruling constitutes a judgment of acquittal. *Martin Linen Supply Company*, 430 U.S. at 571, 97 S.Ct. at 1354-55. However, courts are not bound by the fact that a judge refers to his ruling as a "judgment of acquittal." In some cases, the judge's ruling can be classified as a motion dismissing the indictment. See *Selman v. State*,

406 P.2d 181, 186 (Alaska 1965). In this case, we might be able to properly classify Judge Savell's order as essentially dismissing the indictment against Throsen. On the other hand, Judge Savell's order does appear to weigh some of the evidence which the state presented against Throsen. This part of his order would support a conclusion that it was a genuine judgment of acquittal.

We find it unnecessary to resolve this issue. We conclude that Judge Savell was correct in concluding that, on its face, the indictment charged Throsen with possession of cocaine "in his body." All of the cases we have reviewed support the conclusion that a defendant cannot be convicted for possession of cocaine in his or her body. These cases conclude that a person who has cocaine in his or her body has no control over the cocaine and therefore does not have possession. *Flinchpaugh*, 659 P.2d at 208; *Downes*, 572 P.2d at 1328. The state has cited us to cases from Georgia which hold that a defendant may be convicted of possession of cocaine based upon positive blood and urine tests for cocaine. *Green v. Stat.*, 194 Ga.App. 343, 390 S.E.2d 285 (1990), *aff'd* 260 Ga. 625, 398 S.E.2d 360 (1990). However, these cases only stand for the proposition that a defendant may be convicted of possession of cocaine based upon this evidence. They do not appear to stand for the proposition that a defendant may be convicted of possession of cocaine "in his body." We accordingly affirm Judge Savell's order dismissing Count II of the indictment.

AFFIRMED.

MANNHEIMER, J., not participating.



810

HB

370

Revision Date: _____
 Title: An Act Extending the Statute of Limitations in Criminal Prosecutions of Certain Sex Offenses where Victim is Minor
 Sponsor: Representative Boyer
 Requestor: House Judiciary

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	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

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

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

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)
 No impact.

Prepared by: Kevin Brooks, Director *KB*
 Division: Administrative Services

Phone: 465-2277
 Date: 1/21/92

Approved by Commissioner: Nancy Bear Usery *NBU*
 Agency: Administration

Date: 1/21/92

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

FISCAL NOTE

BILL NO. HB 370

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: _____
Title: 'An Act abolishing the statute of limitations with certain offenses committed against minors under the age of 16.'
Sponsor: Boyer
Requestor: House Judiciary

Department Affected: Administration
BRU: Public Defender Agency
Component: Public Defender Agency

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						
TRAVEL						
CONTRACTUAL	25.0	25.8	26.6	27.4	28.2	29.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	25.0	25.8	26.6	27.4	28.2	29.0

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

GENERAL FUND	25.0	25.8	26.6	27.4	28.2	29.0
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	25.0	25.8	26.6	27.4	28.2	29.0

POSITIONS:

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

Estimate of current year impact: None

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

Prepared by: John B. Salemi, Director
Division: Public Defender Agency

Phone: 279-7541
Date: January 27, 1992

Approved by Commissioner: Nancy Bear Useya
Agency: Administration

Date: 1/27/92

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

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL/RESOLUTION NO. HB 370

ANALYSIS: (continued)

BILL ANALYSIS - HB 370

Title: "An Act abolishing the statute of limitations in connection with certain offenses committed against minors under the age of 16."

This bill abolishes the statute of limitations for sex offenses, promoting prostitution, contributing to the delinquency of a minor and certain sex offenses under statutes which have now been modified or otherwise amended.

In terms of fiscal impact, abolishing the statute of limitations for cases of this nature will increase workload and expenditures. Sexual Abuse of a Minor in the First Degree cases carry mandatory eight-year prison sentences without possibility of parole. Because the charges are grave and the penalties high trials are not uncommon. Trials are also very expensive. More expensive are the defense of stale cases where investigation is more difficult, time-consuming and far reaching geographically. Trying to locate witnesses who have relevant information about an event that did or did not occur 15-20 years earlier will be difficult at best. It likely will involve travel to other states, perhaps other countries. Digging up stale leads will require hours and hours of investigative overtime. Because passage of HB 370 would result in expensive investigations the Public Defender Agency is submitting a fiscal note for additional contractual monies to cover this facet of defense preparation in these kinds of cases.

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Bill No. HB 370

Revisor Date: _____ Department Affected: Alaska Court System
 Title: An Act extending the statute of limitations in criminal prosecutions... BRU: Trial Courts
 Components: _____

Sponsor: Boyer
 Requestor: Judiciary 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						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

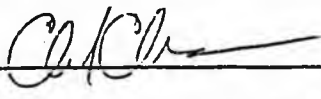
POSITIONS:


FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel  Phone: 264-8228
 Division: Alaska Court System Date: 01/21/92

Approved by: Arthur H. Snowden, II, Administrative Director  #87 Date: 01/21/92
 Agency: Alaska Court System

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 370

Revision Date: _____ Department Affected: Public Safety
 Title: An Act extending the statute of BRU: Domestic Violence & Sexual Assault
~~limitations in criminal prosecutions.~~ Component: Domestic Violence & Sexual Assault
 Sponsor: Boyer
 Requestor: House Judiciary COMPONENT SERIAL NO.

5	2	1
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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: None

ANALYSIS: (Attach a separate page if necessary.)
 No fiscal impact is anticipated.

Prepared By: Joanne F. Lopez *Joanne F. Lopez* Phone: 465-4356
 Division: Council on Domestic Violence & Sexual Assault Date: 1-21-92
 Approved by Commissioner: George A. ... for Richard L. Burton
 Agency: Department of Public Safety Date: 1-21-92

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HR 370

Revision Date: _____ Department Affected: Department of Law
 Title: "...extending the statute of _____ BRU: Prosecution
 limitations...sex offense where the victim is a minor." Component: All
 Sponsor: Representative Boyer
 Requestor: House Judiciary Committee 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						

REVENUE FUND SOURCE:						
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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: January 21, 1992
 Approved by Commissioner: Charles E. Cole, Attorney General
 Agency: Department of Law Date: January 21, 1992

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 370

This bill amends AS 12.10.020, the state's general statute of time limitations for criminal prosecutions, to provide that even if the existing 5-year limitation has expired a prosecution may be commenced at any time if the crime is a sex offense committed against a person under the age of 18. The bill also provides that this amendment to the statute of limitations will be prospective. Consequently, there would not be a fiscal impact for at least 5 years. Although information that would indicate how many of these crimes go uncharged under the current 5-year limitation is not available, the department does not anticipate that this amendment will have a significant fiscal impact.

FISCAL NOTE

**STATE OF ALASKA
1992 LEGISLATIVE SESSION**

BILL NO. H.B. 370

Revision Date: _____ Department Affected: Department of Corrections
 Title: "An Act extending the statute of limitations." BRU: Statewide Operations
 Component: Various

Sponsor: Rep. Boyer
 Requestor: House Judiciary 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						
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						
FEDERAL FUNDS						
OTHER						
FUND SOURCE:						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.) This bill will probably result in increased arrests, prosecutions, and convictions for sexual offenses, which will result in additional prison sentences. However, the number of cases is not expected to be large enough to have significant fiscal impact. The impact is expected to be at least five years away.

Prepared By: Carl Nickel, Director Phone: 465-3376
 Division: Administrative Services Date: 01/17/92
 Approved by Commissioner: Lloyd Hames, Commissioner
 Agency: Department of Corrections Date: 01/17/92

ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

419 6th Street, No. 116 • Juneau, Alaska 99801 • (907) 586-3650

Abused Women's Assistance (AWAIC); Advocates for Victims of Violence (AVV);
Aiding Women in Abuse and Rape Emergencies (AWARE);
Alaska Women's Resource Center (AWRC); Arctic Women in Crisis (AWIC);
Bering Sea Women's Group (BSWG); Emmonak Women's Shelter;
Kodiak Women's Resource & Crisis Center (KWRC);
Marilou Regional Women's Crisis Program; Parent Aid Family Support Center;
Safe & Fear-Free Environment (SAFE); Seward Life Action Council (SLAC);
Sitka Against Family Violence (SAFV); South Peninsula Women's Services (SPWS);
Standing Together Against Rape (STAR);
Tongass Community Counseling Center; Tundra Women's Coalition (TWC);
Unalaska Against Sexual Assault & Family Violence (USAFV);
Valley Women's Resource Center (VWRC);
Women in Crisis Counseling & Assistance (WICCA);
Women in Safe Homes (WSH); Women's Resource & Crisis Center (WRCC)

HB370 SEX OFFENSES AGAINST MINORS CRIMINAL STATUTE OF LIMITATIONS

The Alaska Network on Domestic Violence and Sexual Assault is a non-profit organization with 22 member programs around Alaska which serve victims and their families. The Network supports House Bill 370, which would eliminate the criminal statute of limitations for sex offenses against children.

A child subjected to sexual abuse is not often free to say no to an adult or to anticipate or understand the consequences of sexual involvement with an adult. Abusers typically coerce compliance and enforce silence through the threat or use of force, or by emotional blackmail (e.g., threats to harm another family member, or stating that revealing the truth will hurt the other parent). One study conducted among offenders showed that the use of physical violence was quite common in order to control the victim.

The adolescent health survey conducted in Alaska in 1989 and 1990 showed that 1 in 4 girls and 3% of boys have been sexually abused by the time they were in junior high school. Only 29% of those who had been abused reported that they had told anyone. The most common confidant for those who did tell someone was a close friend.

Children learn to keep silent so well that numbers of them repress some or all of their memories of the abuse. Responses of psychological denial commonly persist into adulthood. Memories of abuse for these children often do not begin to surface until they begin their own life as adults, with marriage and child rearing commonly triggering the upwelling of these memories -- well beyond any possibility of prosecution under current law in Alaska.

All studies done of child molesters indicate that they victimize many children over a long period of time. One survivor who testified at a recent hearing noted that her step-father, who had molested her as a young girl over 10 years ago, had recently been imprisoned for the abuse of another young girl. Offenders rely on the very fact of the age of their victims as protection against the consequences of their acts. Allowing victims to act in their own behalf as adults can aid in ending crimes against future victims.

ALASKA NETWORK
ON
DOMESTIC VIOLENCE
AND
SEXUAL ASSAULT

419 6th Street, No. 116 • Juneau, Alaska 99801 • (907) 586-3650

Abused Women's Aid in U... (AWAIC); Advocates for Victims of Violence (AVV);
Aiding Women in Abuse and Rape Emergencies (AWARE);
Alaska Women's Resource Center (AWRCC); Arctic Women in Crisis (AWIC);
Bering Sea Women's Group (BSWG); Emmonak Women's Shelter;
Kodiak Women's Resource & Crisis Center (KWRCC);
Marilq Regional Women's Crisis Program; Parent Aid Family Support Center;
Safe & Fear-Free Environment (SAFE); Seward Life Action Council (SLAC);
Sikans Against Family Violence (SAFV); South Peninsula Women's Services (SPWS);
Standing Together Against Rape (STAR);
Tongas Community Counseling Center; Tundra Women's Coalition (TWC);
Unalaskans Against Sexual Assault & Family Violence (USAFV);
Valley Women's Resource Center (VWRC);
Women in Crisis Counseling & Assistance (WCCA);
Women in Safe Homes (WISH); Women's Resource & Crisis Center (WRCC)

RESOLUTION

WHEREAS, the Alaska Network on Domestic Violence & Sexual Assault recognizes the women of Tununak in their courageous stand to change the criminal statute of limitations in child sexual assault cases; and

WHEREAS, the Alaska Network applauds and affirms the efforts of the women of Tununak to hold perpetrators accountable for their violation of children.

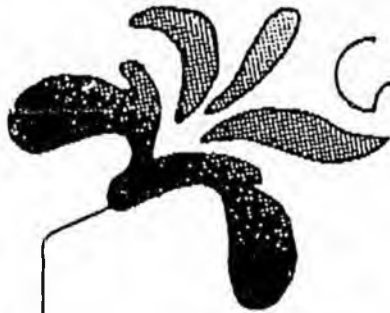
NOW, THEREFORE, BE IT RESOLVED THAT The Alaska Network on Domestic Violence & Sexual Assault pledges to work with the women of Tununak in order to change the criminal statute of limitations in child sexual assault cases.

PASSED by unanimous consent on October 6, 1991

ALASKA NETWORK ON DOMESTIC VIOLENCE & SEXUAL ASSAULT

By Cindy Smith

Cindy Smith, Executive Director



WIC-CA

January 21, 1992

Representative Mark Boyer
District 20-B
P.O. Box V
Juneau, Alaska 99811

Dear Representative Boyer,

We are writing in support of HB 370 consisting of changes to, AS 12.10.020 (c).

It is extremely important that the age be raised from 16 to 18. There are many reasons for this needed change. One is that no matter how sophisticated teens think they are, they do not have the skills to deal with this type of trauma. By leaving the age 16, we would be saying that 16 and 17 year olds are capable of handling their own abuse. By no far stretch of the imagination can a 16 year old deal with abuse, understand the legal aspects, or know where to seek counseling.

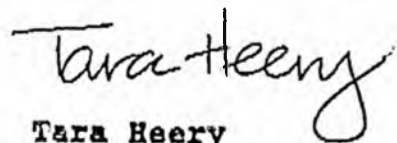
Additionally, it is important to raise the age to 18 in order to be consistent with Section 47.17.070(1) of the Alaska Child Abuse and Neglect Reporting Law.

It is imperative that the time limitation on reporting be removed completely. Young victims of abuse often engage in a safety mechanism called "blocking". Memories of abuse are "blocked out" of the conscious memory for a period of time. Memories (or flashbacks) occur throughout a survivor's life depending on ongoing circumstances. From our client contact, we have observed that this period of time can vary anywhere from several days to several decades. There can be no time limit placed on an individuals ability to recall abuse. Certainly survivors cannot be expected by our judicial system to remember such traumatic experiences any sooner than they are capable.

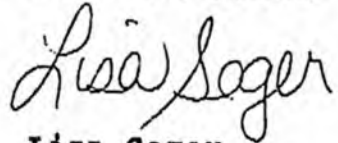
Another point in favor of removing the time limitation is the concern for the survivor's individual safety. For example, if the survivor is still living with, depending on or working with the perpetrator it may be unsafe to report.

We appreciate your efforts on behalf of survivors of childhood abuse. Please feel free to contact us for personal testimony.

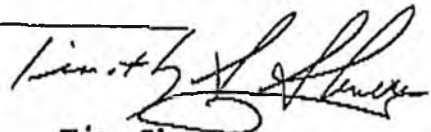
Sincerely,



Tara Heery
Sexual Assault Advocate
Women In Crisis



Lisa Seger
Community Educator
Women In Crisis



Tim Shreve
Co-Community Educator
Women In Crisis



January 21, 1992

1401 Kellum St.
Fairbanks, AK 99701
(907) 456-2866
(907) 451-8125 (FAX)

The Honorable Mark Boyer
House of Representatives
Alaska State Legislature
Juneau, AK 99811

Dear Mark:

HONORARY BOARD OF DIRECTORS

Martin Bergeson, M.D.
Carol Brice
J.B. Caroshan
Anna Frank
Jerome B. Kouliar
William Wood

BOARD OF DIRECTORS

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Barbara Kootuk
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David N. Leone
Dawn Weithereil

STAFF

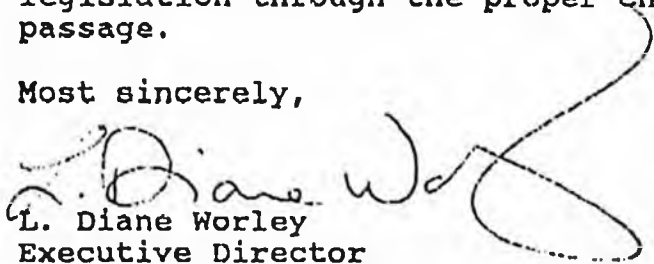
L. Diane Worley, Executive Director
Karen Alexander
Karl Burrell
Mary Ann Carter
Pamela K. Christianson
Joan Cunningham
Thy P. Fox
S. Hales
Liber Johnston
Melba Knouse
Kathleen Nance
Jean O'Neill
Myraa O'Neill
Julie Williams-Curry

I am writing to extend both my personal support, as well as the support of the Resource Center for Parents and Children for HB 370, "An Act extending the statute of limitations in criminal prosecution of certain sex offenses where the victim is a minor."

As you know, much of the work that we do at the Resource Center is with young victims of child sexual abuse, as well as with adult men and women who were victims of sexual abuse as children. What we know both from our direct experience and from national research is that it is very difficult for a young child, while still living with or around the perpetrator, to disclose the details of what has occurred. Also, we know that often times a child will disclose but no one takes them seriously or tries to ignore what is happening. When this occurs, it is unlikely a child will disclose a second time, instead suppressing the facts and living in a world of denial. Too often it is only after a child has become an adult, has received counseling or in some way has come to terms with the abuse, that a disclosure can be made. And usually, it is too late for the victim to bring charges against the perpetrator.

We believe that in the case of child sexual abuse the statute of limitations for criminal prosecution should be eliminated and we support your efforts through HB 370. Please let us know what role we can play in assisting this legislation through the proper channels and on to passage.

Most sincerely,


L. Diane Worley
Executive Director

A Chapter of the National Committee for Prevention of Child Abuse
and
A Member of United Way of the Tanana Valley

PROMPT FOUNDATION, INC.

For Preservation of Family
Prevention of Domestic Violence and
Child Abuse
P.O. Box 32762
Juneau, AK 99803

January 18, 1992

Representative Boyer
State Capital Building
Juneau, AK

Dear Representative Boyer:

As the President of PROMPT FOUNDATION, I fully support and endorse HB 370, "An Act extending the statute of limitations in criminal prosecution of certain sex offenses where the victim is a minor" for the following reasons:

- 1- Sexual offenders do not have a typical profile. They can be among any level or any class of the society.
- 2- A sexual offender will repeat his/her act over and over again.
- 3- Sex offenders use sexual gratification as a fix for their habitual sickness; therefore, they need to have a daily reprieve and a life time treatment.
- 4- A child molester usually searches for opportunities where children are present; therefore, most likely a child molester is attracted to employment with child care facilities.
- 5- The victims of sexual offense, carry psychological and emotional scars which affect their entire lives.
- 6- Some of the victims themselves become sexual offenders.

I urge the passage of the above Bill very highly.

Respectfully,



MASSOUD SHADZAD, M.A.
President and Chairman

PETITION

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By amending state law in this way, we believe Alaskan laws will be more in accord with that of other states regarding prosecution of child molesters.

Print Name	Signature	Address
KATHY LAVELLE	Kathy Lavelle	801 Pioneer Road Fairbanks 99701
Dianne Bengtson	Dianne M Bengtson	351 Cloud P.O. Box 82124 Fairbanks AK 99708
Shirley Ann Kaltenbach	Shirley Ann Kaltenbach	P.O. Box 83094 Fairbanks, AK 99708
Tamara E. Morris	Tamara E. Morris	412 Dark Star Ct. Fairbanks 99709
Cindy K Hamilton	Cindy K. Hamilton	540 Lee Dr. Fairbanks, AK 99709
Colleen M Glover	Colleen M. Glover	PO Box 81150 Fairbanks AK 99708
CHRIS BURK	Chris Burk	P.O. Box 55475 North Pole, AK 99705
Tammy S Jordan	Tammy S Jordan	1066 Cokerview Tr. Rd Fairbanks, AK 99701
Maria McKenzie	MARIA McKenzie	5915 Palo Verde Fairbanks
Jackie O'Kelley	Jackie O'Kelley	PO Box 83421 Fairbanks AK 99708
Lonnie L. Pote	Lonnie L. Pote	4774 Glasgow Dr #3 Fairbanks, AK 99709
PAUL L. KIN	Paul L. Kin	PO Box 51415 Fairbanks AK 99706
KELLY S. MCGONAGAL	Kelly S. McGonagal	PO Box 32657 Juneau, AK 99803
M. Jane Bird	M. Jane Bird	P.O. Box 56921 North Pole AK 99705
Charles F. Popp	Charles F. Popp	524 Longspur Dr 200 P Fairbanks AK 99709
Boneta M. O'Connor	Boneta M. O'Connor	1630 Skyflight Ave Fairbanks AK 99709
John Hechtel	John Hechtel	Box 81567 Fairbanks AK 99708

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<u>Print Name</u>	<u>Signature</u>	<u>Address</u>
Eunice A. Fowler	<i>Eunice A. Fowler</i>	405 Iditarod, Fbks 99701
JOHN ALAN MacFARLANE	<i>John Alan MacFarlane</i>	1103 Willow Grove Rd, FBKS AK 99712
Sheryl Burnett	<i>Sheryl Burnett</i>	1027 Albatross Dr Fairbanks AK 99712
Lisa Gibbons	<i>Lisa Gibbons</i>	PO Box 75425, FBKS, AK 99705
Roxanne Ingram	<i>Roxanne Ingram</i>	P.O. Box 82699 FBKS AK 99708
MARY E. BUNK	<i>Mary E. Bunk</i>	1714 CARBONE FBKS AK 99701
Pat Patty ←	<i>PAT PATTY</i>	57.5 MARSHALL FB, AK 99712
SHERYL ROACH	<i>Sheryl Roach</i>	121 Eureka Ave FBKS, AK 99701
MICHAEL BRYAN	<i>Michael Bryan</i>	378 SHANNON DR., FBKS AK 99701
Amy Amstrup	<i>Amy Amstrup</i>	1109 Red Ridge Rd Fbks 99709
Megan Campbell	<i>Megan A. Campbell</i>	3203 Jefferson Dr FBKS 99709
LAWRENCE D. FOSTER	<i>[Signature]</i>	P.O. Box 82717 FBKS, AK 99708
TERESA L. MILLES	<i>Teresa L. Milles</i>	1403 CARR FBKS AK 99709
ROBERT A. WOOD	<i>Robert A. Wood</i>	1919 Lathropite FBKS AK 99701
Dawn Macaulay	<i>Dawn Macaulay</i>	1919 Lathropite FBKS AK 99701
Cathy Cuyton	<i>Cathy Cuyton</i>	1919 Lathropite 211 FBKS
Margaret S. Soden	<i>Margaret Soden</i>	3222 Anella Ave F

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Print Name	Signature	Address
JANE DUCE	Jane Duce	720 10 th Ave. #2, Fbx 99701
Picky Lawyer	Picky Lawyer	858 Memory Ave N. Pole
Patricia Alexander	Patricia Alexander	720 10 th Ave #7, Fbks 99701
DORINA SCHALLER	Dorina Schaller	720-10 th Ave. #1, Fbks 99701
Ginger A. Powell	Ginger A. Powell	720-10 th Ave. #3, Fbks. 99701
Deborah Wells	Deborah Wells	720-10 th Ave #8, Fbks 99701
Joy O. Griffin	Joy O. Griffin	720 10 th Ave. Fbks 99701
Robert M Antesberger	Robert M Antesberger	981 Clear St N. Pole 99705
Dolores M. Antesberger	Dolores M Antesberger	981 Clear St. N. Pole 99705
Cheryl S Gagne	Cheryl Gagne	1219 McClurdy Fbx #2 99701
Mary C. Humberg	Mary C. Humberg	140 SACIA, Fbx 99712
Carl A. Wacker	Carl A. Wacker	5082 Alaskan Science Center
Frances Dixon	Frances Dixon	2350 Cordes Way Fbx 99709
Kenneth R. Vanderhoof	Kenneth R. Vanderhoof	770 8 th Avenue, Fbx. 99701
Susan Brockelsby	Susan Brockelsby	1077 Aspen St 99709
JOHN ANDRESEN	John Andersen	2 nd Mistee Hwy. 99707

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Print Name	Signature	Address
Edith Barbour	Edith M Barbour	PO Box 81536 Box 99708 945 Pioneer Ct North Pole, AK 99705
LOIS ZAVEL	Lois Zavel	1967 Cannomile Ln.
Maria E. GAVORA	Maria E. Gavora	1967 Cannomile Ln.
Dorine Rufford	Dorine Rufford	197 Palace Circle Apt. D-5 99701
Stanley J Zavel	Stanley J Zavel	619 2 nd St. Anchorage 99701
Rose ZAVEL	Rose Zavel	619-2nd St. Anchorage 99701
SHERRI BESTARD	Sherri Bestard	212 Cowles FDRS. AK 99701
GARY LEE	Gary Lee	457 Cord. Dr. Anchorage 99701
STEVE GAVORA	Steve Gavora	1967 Cannomile Ln. FAIRBANKS, AK 99712
GERARD R. LA PAUL	Gerard R La Paul	3272 Riverview Dr FAIRBANKS, AK 99709

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<u>Print Name</u>	<u>Signature</u>	<u>Address</u>
Rita Schiptmorn	<i>Rita Schiptmorn</i>	9420 S Fairbanks Ak HAYS Don't want
Vicky Beidong	<i>Vicky Beidong</i>	1831 Jee el LEHO AK
Rosita A. Kuralcava	<i>Rosita A. Kuralcava</i>	4700 E 4th #180 Ave.
Eileen A. Quinn	<i>Eileen A. Quinn</i>	2295 Ravenwood Ave FBKS AK 99709
Demilli E. Zesco	<i>Demilli Zesco</i>	4000 Brasaw #7 Anchorage, Ak. 9950x
KENNI E. GARY	<i>KENNI E. GARY</i>	4000 Brasaw #7 Anchorage Ak 99508
Kathleen A. Blades	<i>Kathleen A. Blades</i>	471 Keep Dr. Jkt. 99712
Margaret (Margaret) NARVONIE Murphy	<i>Margaret (Margaret) NARVONIE Murphy</i>	643 Lullery Ave Fairbanks AK 99709
BARBARA J. ENGBREKSON	<i>Barbara Engbrekson</i>	1815 BRIDGEWATER FAIRBANKS AK 99709
PATRICIA A. PERKINS	<i>Patricia A. Perkins</i>	1725 University Ave #1023 Fairbanks AK 99709
Susan R. Murphy	<i>Susan R. Murphy</i>	525 Sprucewood FBK AK 99709
JEFFREY TEGGARDIN	<i>Jeffrey Teggardin</i>	345 Cindy Dr. Fairbanks AK 99701

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<u>Print Name</u>	<u>Signature</u>	<u>Address</u>
Richard Hodges	<i>Richard Hodges</i>	2608 Kuskoquim N. Pt. AK. 99705
Tammy Roberts	<i>Tammy Roberts</i>	2618 Lee Lane
Sharon Baker	<i>Sharon Baker</i>	110 Glacier Ave., Fbks AK 99701
Ethel Frederickson	<i>Ethel Frederickson</i>	Box 83741 FBKS, 99708
Judy FRIEDRICH ROGERS	<i>Judy F. Friedrich Rogers</i>	4994 Anderson Rd Fairbanks AK 99709
Billie Hollenbeck	<i>Billie Hollenbeck</i>	1642 Madison Dr 2Bk 99709
Judy Kuss	<i>Judy Kuss</i>	946 WOODWAY FBKS AK 99709
Christine A. Redick	<i>Christine A. Redick</i>	2173-30 B FAI AK 99701
MARYLEE DEXTER	<i>Mary Lee Dexter</i>	949 Grant FAI 99709
SHAWN TRUESDELL	<i>Shawn Truesdell</i>	PO BOX 4112 FAIRBANKS 99708
PATRICIA M. GREIMANN	<i>Patricia M. Greimann</i>	2522 Talkeetna St. FAIRBANKS, AK 99709
Lynette Holt	<i>Lynette Holt</i>	998 Clear St NP AK 99705
Leanne Leggett	<i>Leanne Leggett</i>	99709
David Hamm	<i>David Hamm</i>	3731 Swenson Fairbanks
PAUL BAIR	<i>Paul Bair</i>	P.O. BOX 60946 FBKS, AK 99706
MICHAEL P. NORUM	<i>Michael P. Norum</i>	665 CARLSON RD NORTH POLE AK, 99705
Tamara Hambright	<i>Tamara Hambright</i>	Box 60774 Fairbanks AK 99706

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Print Name	Signature	Address
Karla McIntyre	Karla McIntyre	P.O. Box 61756 Fairbanks AK 99706
Cheryl Sunderlin	Cheryl Sunderlin	199 Thoreau Dr. Fairbanks, AK 99712
Lee Schmidt	Lee Schmidt	1522 3rd Ave Fairbanks AK 99701
Greg Land	Greg Land	1756 Hollenell Ct NP AK 99705
Tim Donovan	Tim Donovan	3930 Sabrina Ct North Pole AK 99705
DEBORAH Reed	Deborah Reed	8055 Austin Fairbanks AK 99701
Peter/Ann Stenberg	Peter/Ann Stenberg	267 Wilderness Dr. Fairbanks AK 99712
John J. Aronow	John J. Aronow	2103 Hilton Ave. Fairbanks AK 99701
Joe LETAITE	Joe LETAITE	Box 75074 Fairbanks AK 99707
Christie White	CHRISTINE WHITLOW	341 KATHRYN AVE
T M VANASSE	T M Vanasse	310 KAMBELING RD FAI
Julia Voelker	JULIA VOELKER	PO Box 56953 N.P.
Angela M Ruggirella	Angela M Ruggirella	539 Nebula Way Fairbanks, AK 99709
Steven H. Sunderlin	Steven H. Sunderlin	199 Thoreau Dr. Fairbanks AK 99712
Louis Hall	Louis B. Hall	1410 3rd Ave Fairbanks AK 99701
Verna Roberts	Verna Roberts	1607 Madison Dr. Fairbanks AK 99709
Jeanne Aguilar	Jeanne Aguilar	410 Dunkel St. Fairbanks AK 99701

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<u>Print Name</u>	<u>Signature</u>	<u>Address</u>
Travis Erickson	<i>Travis Erickson</i>	605 Old Steese ^{FAI AK 99716}
June M. Utz	<i>June M. Utz</i>	Box 845 FBK AK. 99707
Margie McFarland	<i>Margie McFarland</i>	6119 AK 99706 ^{PO Box}
Bob Emmerich	<i>Bob Emmerich</i>	61474 Fairbanks AK. 99701 ^{P.O. Box}
Steven D Pugh	<i>Steven D Pugh</i>	P.O. Box 94721 FBK AK 99705
Ron Mayo	<i>Ron Mayo</i>	P.O. Box 83975 FBK AK 99708
David T. Conrad	<i>David T. Conrad</i>	PO Box 61067 FBK AK 99706
J. Nell Blair	<i>J. Nell Blair</i>	P.O. Box 60946 FBK AK 99706
Mary C. Emerson	<i>Mary C. Emerson</i>	2271 Selk Ave. FBK, 99709
Elizabeth Morris	<i>Elizabeth Morris</i>	453 Marshall Rd. FBK 99702
Nancy Bataille	<i>Nancy Bataille</i>	P.O. Box 81537 FBK 99708
Patricia L. Bateman	<i>Patricia L. Bateman</i>	P.O. Box 10118 FBK 99710
Tirzah Naylor	<i>Tirzah Naylor</i>	P.O. Box 82848 FBK 99708
Lynette Wicklemann	<i>Lynette Wicklemann</i>	1360 Little Fox Tr FBK 99712
Susan B. Biehl	<i>Susan B. Biehl</i>	3065 Forrest Dr. FBK, AK 99708
Tom R. Bradshaw	<i>Tom R. Bradshaw</i>	2711 R.D. A FBK AK 99709
Dobbie Mowbray	<i>Dobbie Mowbray</i>	1919 Capitol Av FBK AK 99709

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Print Name

Signature

Address

Leslie Miller

Leslie Miller

P.O. Box 71591 FBKS AK
204 West 32nd St A-217 99707

Sharon Miller

Sharon Miller

P.O. Box FBKS AK 99704

John H. Miller

John H. Miller

P.O. Box 71591 FBKS AK

Ben Hancock

Ben Hancock

304 Westwood Ave Anchorage AK 99501

MARY CORNELIUS

Mary E. Cornelius

1615 Madison Dr. AK

Kathy Kitts

Kathy L. Kitts

P.O. Box 2062, Valdez AK 99686

Marie Friedrich

Marie Friedrich

1776 Army rd. P.O. 80303 99708 Fairbanks AK.

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<u>Print Name</u>	<u>Signature</u>	<u>Address</u>
Judith A. Hogenson	Judith A. Hogenson	450 Valley View Dr., Fbks AK
JUDITH A. SMITH	Judith A. Smith	412, Linn A AVE., Fbks, AK
Julie A. Smith	Julie A. Smith	191 Dome Rd, Fairbanks, AK 99709
Michelle J. Foley	Michelle J. Foley	111 Hickory Dr., Fbks 99705
KAROL Alderman	KAROL Alderman	4057 West Fairbanks, AK 99709
Gone Hatch	Gone Hatch	Box 70292, Fairbanks AK 99707
Robu Huh	R. Poke Haffner	Po Box 90 ESTER AK 99725
AM BRANDT	AM BRANDT	1137 DESPERADO N.P. 99705
Claine Shannon	Claine Shannon	1746 Bridgeway Fairbanks AK 99709
Ricky MacDonald	Ricky MacDonald	Box 51035 Fbks 99708
Theodore A. Norris	Theodore A. Norris	Box 56294 99705 1979 Peger Rd
Mary Mielme	Mary Mielme	Po Box 83996 Fairbanks, Ak 99708
Kari L. Mann	Kari L. Mann	1013 9th Ave. Fairbanks, AK 99701
Amber D. Sauppe	Amber D. Sauppe	159 2nd Ave. Fairbanks, Ak. 99701
Rori L. Ellis	Rori L. Ellis	21004 Lancelot Dr. W. N. Pole, AK 99705
Barbra Hompesch	Barbra Hompesch	P.O. Box 6012 & Fbks, AK 99706

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<u>Print Name</u>	<u>Signature</u>	<u>Address</u>
Janet B Zimmerman	<i>Janet B Zimmerman</i>	PO Box 82334 Fairbanks AK 99708
GAIL KAUFMAN-LINDH	<i>Gail Kaufman-Lindh</i>	589 Prospectors Trail Fairbanks, AK 99712
R. H. ZIMMERMAN	<i>R. H. Zimmerman</i>	P.O. 82334 FBKS AK 99708
J. THOMAS Kurth	<i>J. Thomas Kurth</i>	P.O. Box 60337 FBKS, AK 99706
ARMANDO DUBE	<i>Armando Dube</i>	P.O. Box 84611 FBKS, AK 99708
BILL SIMONSON	<i>Bill Simonson</i>	105 S. Lake Dr West
Mike Sterling	<i>Mike Sterling</i>	Box 84218 Fairbanks AK 99708
STEPHEN W JOHNSON	<i>Stephen W Johnson</i>	PO BOX 114 CENTRAL, AK 99730
Brad Grossweiler	<i>Brad Grossweiler</i>	Box 83225, FBKS, AK 99708
Barbara J Pleasants	<i>Barbara J Pleasants</i>	PO BOX 85033, FBKS, AK 99708
XXXXXXXXXX		
JAMES R Couckney	<i>James R Couckney</i>	3850 Birch Ln, FBKS, AK 99709
Karen Gordon	<i>Karen Gordon</i>	Box 55211 North Pole 99705
SWE A. WHITNEY	<i>Sue A Whitney</i>	Box 82865 Fairbanks 99708
Christi Shields	<i>CHRISTI SHIELDS</i>	PO BOX 84354 FBKS AK 99708

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<u>Print Name</u>	<u>Signature</u>	<u>Address</u>
JAMES MCANN	James M. McAnn	532 LEE DRIVE FBX 99709
CANTZ L. DACHKE	[Signature]	1979 PEGEE ROAD FBX 99709
TIMOTHY A. HUNYON	Timothy A. Hunyon	1979 PEGEE RD FBX 99709
VICKIE ROHL	Vickie Rohl	2235 COWLES FBKS 99701
Roger B. Ellis	[Signature]	Po Box 28 Cantwell 99729
Steve H. Bear	[Signature]	1979 PEGEE RD FBKS 99709
JEFFREY F. MANNS	Jeffrey F. Manns	1979 PEGEE RD FBKS 99709
Corri Conkle	Corri Conkle	PO Box 56044 North Pole 99705
Patricia Mohrmann	Patricia Mohrmann	PO BOX 83688 FBKS 99708
Shirley E. Bonacci	Shirley E. Bonacci	P.O. Box 83877 FBKS 99709
Mattie L. Lanagan	Mattie L. Lanagan	1979 PEGEE RD 99709
Paula J. Hannis	[Signature]	1979 PEGEE RD FBKS 99709
Susan E. Dupont	Susan Dupont	3150 Treaty St, NP 99705
AINA K. SANDERS	[Signature]	PoB 83055 FBKS 99708
DIXIE SPENCER	Dixie Spencer	1979 PEGEE RD FBX 99709
PATRICIA BRACKEN	Patricia Bracken	435 Ramona Fairbanks
Wanda M. Bailey	Wanda M. Bailey	2655 Old Street Hwy, 99709 FBKS, AK 99712
Samantha Dahl	Samantha I. Dahl	1204 24th #3 FBKS AK 99701

PETITION

We, the undersigned, residents of the State of Alaska, hereby petition the Alaska State Legislature to amend the current state statutes regarding child sexual abuse. We specifically request that statute of limitations on criminal prosecution be extended from the current limit of one year after a victim's 16th birthday to a more reasonable time period of within 10 years of a victim's 21st birthday.

We believe this is essential because a sixteen-year-old minor is clearly too young to be required to report. Often it is not until a victim has reached full maturity that he or she is aware of the emotional damage that results from child sexual abuse.

By amending state law in this way, we believe Alaskan laws will be more in accord with that of other states regarding prosecution of child molesters.

Print Name	Signature	Address
ELIZABETH STARKY-SVENSON	Elizabeth Starky-Svenson	P.O. Box 81770 FBKS, AK 99708
Steve Wilson	Steve Wilson	461 Lathrop St. FBKS 99701
Donald Benish	Donald Benish	208 Baranof FBRS AK 99701
Belinda Bernal	BELINDA B. BERNAL	1017 COPPET ST 99709
Pamela Anderson	Pamela Anderson	3030 Treaty St. N.P. AK 99705
Christine Anderson	Christine Anderson	3030 Treaty St. N.P. AK 99705
Chris & Cindy Fabach	Chris & Cindy Fabach	5059-B Palmer St Eielson AK - 99707 AK - 99707
Penny Emery	Penny B Emery	Box 71685 FBKS - 707
KATHLEEN CARDANI	Kathleen Cardani	BOX 50967 NORTH POLE, AK 99705
Sharon Kerstetter	Sharon Kerstetter	5103 North St ^C EAFB 99702
Scott Emery	Scott B Emery	P.B. 71695 F.A. Bank AK 99707
Karin Stilson	KARIN STILSON	P.O. Box 70294 FBKS, AK 99701
Joan O'Leary	Joan O'Leary	P.O. Box 75331 FBKS AK 99707
Suzanne M. Ohtonen	Suzanne M. Ohtonen	3040 Alaska Road, Box A-63 Fairbanks, AK 99709
Roni L. Mattson	Roni L. Mattson	2604 Lancelot Dr. W. North Pole, AK 99705

Petition

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Printed Name Signature Address

E. Colleen Hickman E. Colleen Hickman 536 Keeling No. Pole, AK 99705

Katherine Nesbitt Katherine Nesbitt 227 W. 14th St. #3 FBKS, AK 99709

Lea Marie Wilton Lea Marie Wilton 601 Yak Rd. FBKS AK 99709

John K. Bell John K. Bell P.O. Box 15083 Fairbanks 99710

Rebecca Buckman Rebecca Buckman 2438 Laramie FBKS AK 99701

Frank L. Nelson Frank L. Nelson 528 E. 1st St. FBKS AK 99712

Jack Stevenson Jack Stevenson 1080 Centurion Lane Fairbanks AK 99712

Kathleen Miller Kathleen Miller 934 Aspen St. Fairbanks AK 99709

Mary Davis Mary Davis P.O. Box 8251 Fairbanks AK 99708

John Carl John Carl 5190 Amhurst #1 Fairbanks AK 99709

Christie Loveless Christie Loveless 5190 Amhurst #1 Fairbanks AK 99709

Randy Wages Randy Wages 780 (Gol.) Dr. N. Fairbanks AK 99712

Bonnie Farrell Bonnie Farrell 2700 Bourne Dr. Fairbanks AK

John E. Kocis John E. Kocis 732 Old Stearns N., Fairbanks AK

David J. Nelson David J. Nelson 309 Iditarod St. Fairbanks AK 99701

Petition

We, the undersigned, residents of the State of Alaska, hereby petition the Alaska State Legislature to amend the current state statutes regarding child sexual abuse. We specifically request that statute of limitations on criminal prosecution be extended from the current limit of one year after a victim's 16th birthday to a more reasonable time period of within 10 years of a victim's 21st birthday.

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By amending state law in this way, we believe Alaskan laws will be more in accord with that of other states regarding prosecution of child molesters.

Printed Name

Signature

Address

PATRICIA TURNER

Patricia A. Turner

621 Singson
Fairbanks, Alaska 99709

HB

376

(7)
Date Referred: 1/13/92

FURTHER REFERRALS:

2-5-92
Finance

Date of Committee Action: 2/3/92

The JUDICIARY Committee considered:

HB 376

HOUSE BILL NO. 376

VICTIM RIGHTS: OFFENDER STATUS CHANGE

"An Act relating to the rights of victims of crimes committed by defendants found not guilty by reason of insanity."

RECOMMENDATIONS:

be replaced with CS HB 376 (JUD)

the same title
 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 ^{Dept of Health & Social Svcs.} Dept of Administration (2)

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>J. Ellis</i>	X				
<i>Mark Hendrix</i>	X				
<i>Mike Miller</i>	X				
<i>Terry Martin</i>	X				
<i>Mr. Gumbert</i>	-				
<i>Kevin P. Phelan</i>	✓				
<i>Mike Conley</i>	✓				

Mike Conley
CHAIRMAN'S SIGNATURE ✓

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 376

Revision Date: _____ Department Affected: _____
 Title: "An Act relating to the rights of victims/rights committed by defendant found not guilty by reason of insanity." BRU: Alaska Psychiatric Institute
 Sponsor: _____ Component: _____
 Requestor: Representative MacLean COMPONENT SERIAL NO.

--	--	--	--	--

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						
	-0-	-0-	-0-	-0-	-0-	-0-

REVENUE						
FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

This would have no measurable fiscal impact.

Prepared By: Margaret D. Lowe Margaret D. Lowe, M.Ed., Ed.S. Phone: 465-3370
 Division: Mental Health & Developmental Disabilities Date: January 28, 1992
 Approved by Commissioner: Theodore A. Mala Theodore A. Mala, MD; MPH
 Agency: Health & Social Services Date: 1/28/92

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 376

Revision Date: _____

Department Affected: Administration

Title: "An Act relating to the rights of victims of crimes committed by defendants found not guilty by reason of insanity."

BRU: Public Defender Agency

Component: Public Defender Agency

Sponsor: MacLean

Requestor: House Judiciary

COMPONENT SERIAL NO.

1	6	3	1
---	---	---	---

Expenditures/Revenues: (Thousands of Dollars)

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

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

REVENUE FUND SOURCE:	0	0	0	0	0	0
-----------------------------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: John Salemi, Public Defender
 Division: Public Defender Agency

Phone: 279-7541
 Date: January 22, 1992

Approved by Commissioner: Nancy Bear Usara
 Agency: Administration

Date: 1/22/92

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

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: _____
Title: "An Act relating to the rights of victims
of crimes . . ."
Sponsor: MacLean
Requestor: House Judiciary

Department Affected: Administration
BRU: Office of Public Ad vacy
Component: Office of Pub. Advocacy

COMPONENT SERIAL NO.

		4	3
--	--	---	---

Expenditures/Revenues: (Thousands of Dollars)

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

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

REVENUE FUND SOURCE:	0	0	0	0	0	0
-------------------------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: None.

ANALYSIS: (Attach a separate page if necessary.)

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

Phone: (907) 274-1684
Date: January 22, 1992

Approved by Commissioner: Nancy Bear Usera
Agency: Administration

Date: 1/27/92

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

ALASKA STATE LEGISLATURE

Representative Eileen Panigeo MacLean
Co-Chair House Finance Committee
P.O. Box 830
Barrow, Alaska 99723



WHILE IN JUNEAU
Box V
Juneau, Alaska 99811
465-4525
465-4833

HOUSE OF REPRESENTATIVES

District 22

North Slope
Borough

Anaktuvuk Pass
Atkasuk
Barrow
Kaktovik
Nuiqsut
Point Hope
Point Lay
Wainwright

Northwest Arctic
Borough

Ambler
Buckland
Deering
Kiana
Kivalina
Kobuk
Kotzebue
Noatak
Noorvik
Selawik
Shungnak

August 23, 1991

Ms. Margot Knuth
Assistant Attorney General
Department of Law
P.O. Box K-C
Juneau, Alaska 99811

Dear Ms. Knuth:

I have been requested to look into a matter involving the potential release of murderer found "not guilty by reason of insanity" from the Alaska Psychiatric Institute. My office was contacted by the family of the victim of the crime, Roberta (Brower) Quintavel.

In 1982, Roberta's father, Robert Brower, was killed by his brother Arnold A. Brower. Arnold, a Vietnam veteran was classified as a schizophrenic and found not guilty by reason of insanity. He was committed to the Alaska Psychiatric Institute (API) for forty years. The case number is 2EA-82-265CR.

Recently, that family has become aware that API has petitioned Judge Jeffries to grant Arnold unescorted passes from API four times a week to look for a job. The family is concerned that Arnold could eventually come back to Barrow and would like to have some say about his release.

Ms. Margot Knuth
Assistant Attorney General
August 23, 1991
Page 2

It is my understanding that because Arnold is in API, the victims rights law does not apply due to the confidentiality requirements. The result is that the victim's family is not notified of hearings regarding Arnold's sentence or release from API.

My immediate concern is to allow the family to become involved in the hearing process. They should be notified to enable them to have a say in conditions that may be imposed during Arnold's unescorted passes during the week and, his potential release from API.

A longer term concern is that there may be a loophole in the statutes. Prisoners sentenced to API are protected by confidentiality laws. This apparently supersedes the victims rights law (which enables victims to be notified and to have a say in sentencing procedures). Another area to review has to do with when an individual becomes "competent to stand trial." You indicated that after an individual becomes "competent to stand trial" there is no legal hold in the person. I would appreciate your review of this matter and recommendation on potential legislation to be introduced next session.

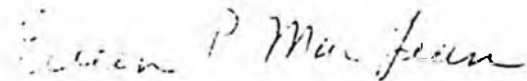
Finally, last week a hearing was held in Barrow regarding Arnold's unescorted passes from API. The family was concerned that no one from the state was represented at the hearing. I would like to know what the state's role is, in cases like this, where individuals are sentenced to API for lengthy terms, but later in sentencing procedures are allowed to be released much earlier. Does the state have any role or responsibility in providing input at hearings which essentially reduce the sentence of prisoners sentenced to API?

I'm interested in helping my constituents from Barrow, but I am also interested in improving the judicial system. If there are changes that can be made to the statutes, the hearing process, or to your departmental budget, as Co-Chair of the Finance Committee, I may be able to help. I would be glad to work with you or your staff in reviewing this matter.

Ms. Margot Knuth
Assistant Attorney General
August 23, 1991
Page 3

If you have any questions, or need any additional information,
please contact Rena Bukovich, of my Anchorage office at 561-7611.

Sincerely,



Representative Eileen P. MacLean
Co-Chair Finance Committee

cc: Commissioner Ted Mala
Dept. of Health and Social Services

Roberta Smith

NOV 28 1991

WALTER J. HICKEL, GOVERNOR

STATE OF ALASKA
DEPARTMENT OF LAW

CRIMINAL DIVISION

September 30, 1991

REPLY TO:

CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
PHONE: (907) 465-3428

**OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS**
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

*sent on 11/12 @ her
neg. not didn't arrive*

The Honorable Eileen P. MacLean
Representative, Alaska Legislature
P.O. Box 830
Barrow, Alaska 99723

Re: Notice to Victims in NGBROI Cases

Dear Representative MacLean:

Thank you for your letter of August 23, 1991, in which you related that you have been requested to look into a matter involving the potential release from API of a murder defendant who was found "not guilty by reason of insanity" in 1982. You have been contacted by Roberta Quintavel, whose father, Robert Brower, was killed by Arnold Brower. Arnold Brower, the decedent's brother, was a Vietnam veteran who was classified as schizophrenic and, after being found not guilty by reason of insanity, was committed to the Alaska Psychiatric Institute for a period of up to forty years.

Recently, Roberta Quintavel and her family has learned that API is petitioning the court to grant Arnold unescorted passes from API four times a week to look for a job. The family is concerned that Arnold may wish to return to Barrow in the near future and it would like to have some say about his release.

You have correctly noted that, because Arnold is being held at API and is not within the custody of the Department of Corrections, there is no provision under AS 33.30.013 for Roberta Quintavel to receive notice of Arnold's potential release. The issue you have raised is whether this means there is a notice "loophole" for defendants who are found not guilty by reason of insanity that should be corrected by legislation.

Interestingly enough, this problem was noted and resolved by the legislature in 1989. AS 12.47.095 now requires the commissioner of health and social services to provide various notices to the victim of a crime committed by a person who has been found not guilty by reason of insanity. Included within the requirements of this statute are: notice when a court is considering a conditional release for the offender; notice when a court is considering modifying an order of conditional release; and

notice when an offender petitions the court for discharge from custody.

Victims who desire notice under this statute must maintain a current, valid mailing address on file with the Department of Health & Social Services (which cannot be revealed to the offender). The commissioner is required to give notice of a change in the status of an offender "to any victim who has requested notice." AS 12.47.095.

You have provided me with a copy of a letter Ms. Quintavel wrote to James Doogan, an Assistant District Attorney in Fairbanks. I have no doubt that Mr. Doogan will be preparing an appropriate response to Ms. Quintavel's letter. For your benefit, I note that Judge Jeffries seems not to be aware of the provisions of AS 12.47.95. I expect he will become familiar with them in due course.

Next, you have inquired what the state's role is when offenders who have been ordered into the custody of API for lengthy terms seek early release. When such a petition is filed, both the attorney general and the attorney who represented the state at the initial proceedings are notified, as required by AS 12.47.090(e). Usually, although not always, an attorney from the civil division is expected to appear on behalf of the state. This is because the state's criminal prosecution is ended by the verdict of "not guilty by reason of insanity"; thereafter, the case becomes a civil commitment proceeding.

This means that, contrary to Ms. Quintavel's assumption, a victim's avenue for input to the court is frequently not going to be through the District Attorney's office, but instead will be through the Attorney General's Civil Division. She is correct, however, in recognizing that there is no provision for her to directly participate in the court's hearing on the question of release. Instead, her views can be presented to the court only through the state (i.e., one of the parties to the case).

As I noted in a telephone conversation with your staff, the issue I raised about notice to the state when an "incompetent to stand trial" defendant is about to be released by API is quite distinct from the "not guilty by reason of insanity" situation covered by AS 12.47.095. The lack of any requirement that notice be provided when a defendant becomes competent to stand trial means that a defendant may be released by API without the state's knowledge. ~~This is a problem that the legislature may be able to resolve.~~ If the issue is not addressed by one of the governor's bills this coming session, perhaps I could discuss it further with your staff members.

The Honorable Eileen P. MacLean

September 30, 1991
Page 3

If you have any further questions or concerns, please do not hesitate to contact me.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: M Knuth
Margot O. Knuth
Assistant Attorney General

September 5, 1991

James P. Doogan, District Attorney
604 Barnet Street Room 247
Fairbanks, Alaska 99701

Dear Mr. Doogan,

Understanding that the demands on the District Attorney and his office are such that every case to be tried by you and your office may not be followed up on. However, I feel that the issues surrounding this case are worthy of continued follow up as well as participation from your office for the following reasons.

It is my understanding, and please correct me if I am wrong, in the case of State of Alaska vs. Arnold A. Brower case number 2EA-82-265CR the assailant was found "not guilty by reason of insanity" for the murder of his brother Robert Brower Jr. and subsequently committed to the Alaska Psychiatric Institute for forty years. In such cases there has not been a determination that the victims have rights under the victims rights law. In light of these circumstances it came to our attention that a hearing was schedule and held before Judge Jeffries where the Alaska Psychiatric Institute petitioned and won unescorted passes to enable Arnold A. Brower to seek employment and to further his rehabilitation into the community. This raises two issues that concern me a great deal.

First off it would help you to know that I am a member of the victims family, and the views that I have are very personal. Never the less, the first concern is that what roll does the district Attorney's office play in continuing to insure that the welfare of the community is not jeopardized by the rehabilitations process? Understand that we have been aware that Arnold A. Brower has be allowed escorted pass for some time now, it has always been our hope that judicial system would allow for community input at such times when Arnold A. Brower would be allowed to move freely about the community. Much to our surprise this is not the case. It appears to me that, by law, the only avenue for input would have to come from the District Attorney's Office. We were able to gain some support from the court when Judge Jeffries, subsequent to the last hearing, entered an order to notify some family members including myself (enclosed is a copy) of any future hearings. Understanding that ~~this is not required by law~~, I am disturb by the fact that the District Attorney's office was not represented at that hearing. Furthering my fears that should Arnold A. Brower complete the rehabilitation process long before the forty years sentence is complete the community may not be aware, nor be in a position to accept his return.

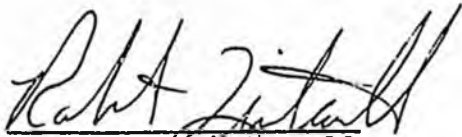
Secondly, what avenue, if any, do we the victims family have to insure that we may participate in any release hearing so that we may continue to live in this community with a solid piece of mind knowing that our families would not be threatened.

James P. Doogan
District Attorney
September 5, 1991
Page two

Please understand that I not trying to put you or your staff in a defensive position I merely would like to find a means to protect our community from a situation that potentially would divide not only our family but the community as a whole. As you are well aware Barrow is made up of 3,500 people and has all the characteristics of a small town.

I would like to thank you for taking the time to look into these concerns and look forward to hearing from you soon.

Respectfully,



Roberta Quintavell
P.O. Box 547
Barrow, Alaska 99723

cc: Ted Mala, Commissioner, Dept. of Health and Social Services
✓ Representative Eileen P. MacLean
Senator Al Adams

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
SECOND JUDICIAL DISTRICT AT BARROW

STATE OF ALASKA,)
)
 plaintiff,)
)
 vs.)
)
 ARNOLD A. BROWER,)
)
 defendant.)
)

FILED IN THE TRIAL COURTS
STATE OF ALASKA AT BARROW

AUG 23 1991

[Signature]
MAGISTRATE/CLERK

ORDER FOR NOTICE

Case No. 2BA-S82-265 CR

In exercise of the court's discretion and in the interests of justice, and on request of the following concerned individuals,

IT IS HEREBY ORDERED that notice of any future hearings in this case shall be provided to:

Bill Brower
P.O. Box 845
Kenai, AK 99611

Roberta Quintavell
P.O. Box 547
Barrow, AK 99723

Sally Brower
P.O. Box 312
Barrow, AK 99723

Effective Date: August 22, 1991

ENTERED AT Barrow, Alaska, this 22 day of August, 1991.

[Signature]

Michael I. Jeffrey
Superior Court



I certify that I sent Alaska Court System copies to: DA-Doogan/PD-Wright/above persons

on 8/23/91 *[Signature]* Clerk

SEP 25 1991

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION/FOURTH JUDICIAL DISTRICT

OFFICE OF THE DISTRICT ATTORNEY

REPLY TO:

- P.O. BOX 755
BETHEL, ALASKA 99559-0755
PHONE: (907) 543-2055
- 604 BARNETTE ST., RM 247
STATE COURT & OFFICE BLDG.
FAIRBANKS, ALASKA 99701-4573
PHONE: (907) 452-1565

September 13, 1991

Roberta Quintavell
P.O. Box 547
Barrow, AK 99723

Re: Arnold A. Brower, 2BA-S82-265

Dear Ms. Quintavell:

Your letter of September 5 raises some interesting questions. I will try to answer them to the best of my ability.

This is why no notice for

In 1989, many years after Mr. Brower was found not guilty by reason of insanity and committed, the legislature passed a new law (A.S.12.47.095) requiring the Commissioner of the Department of Health and Social Services, hereafter called "the commissioner", to notify the victims of the crime for which the defendant was committed if the defendant is to be released, or if the defendant is to be allowed conditional release, or if he has petitioned for release. The definition of "victim" in the law (A.S.12.55.185) includes, in a murder case, the deceased's spouse, parents, grandparents, brothers and sisters, and adult children and grandchildren. However, a "victim" must first send a current mailing address to the commissioner with a request for notification. Also, if there are many relatives who qualify as "victims", the commissioner may pick one of them as the person to be notified, and that person is then responsible to tell the others.

Please note that the law only requires notice to victims if the defendant might be "released" or granted "conditional release". Unescorted passes from API do not constitute "release" or "conditional release" under the law. The law as presently written does not require that victims be notified before API grants temporary passes to persons such as Mr. Brower.

From your letter, it appears that no one explained the law to you before. Since you have sent a copy of your letter to the commissioner, I am sure you will be receiving notice of any requests for "release" or "conditional release" by Mr. Brower. I note also that Judge Jeffery has issued an order in this case to insure that the court will notify you and certain other family members of future hearings, even if they do not involve release or conditional release of Mr. Brower.

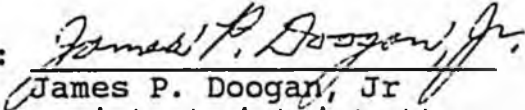
In this case, the request to allow Mr. Brower limited unescorted passes in the Anchorage area was made by the state's Department of Health and Social Services, through representatives of the Alaska Psychiatric Institute. These representatives are mental health experts who work for the state, and who have been treating and supervising Mr. Brower. Under present law, there is no requirement that API request court approval before granting unescorted passes, nor that any court hearings be held on such requests. However, Judge Jeffery, in his discretion, decided to have a hearing on the API request. It was perfectly proper for him to do this. My office, part of the Criminal Division of the Department of Law, does not provide legal representation to the Department of Health and Social Services or to API. Consequently, there was no role for the District Attorney's Office to play at the hearing held by Judge Jeffery.

Our office does receive and review reports from API on persons such as Mr. Brower. If anything in the reports indicates that proposed treatment plans might create an unacceptable danger to the public, we notify attorneys in the Civil Division of the Department of Law, who represent the Department of Health and Social Services, of our concerns. We did review the API letter concerning unescorted passes for Mr. Brower. The API proposal to grant Mr. Brower limited, carefully controlled unescorted passes in the Anchorage area did not seem unreasonable, and so no further action was taken by this office.

Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

HARRY L. DAVIS
DISTRICT ATTORNEY

By: 
James P. Doogan, Jr.
Assistant District Attorney

- cc - Dr. Theodore Mala
Commissioner, Dept. Of Health and Social Services
- ✓ - Rep. Eileen P. MacLean
Alaska House of Representatives
- Sen. Al Adams
Alaska State Senate

HB

377

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 24, 1992

FURTHER REFERRALS:

Finance

Date of Committee Action: 4-10-92

The JUDICIARY Committee considered:

HB 377

HOUSE BILL NO. 377

"An Act relating to prevention, abatement, and control of air pollution; and providing for an effective date."

RECOMMENDATIONS:

be replaced with CS HB 377 (JUDICIARY) the same title
 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) DEC 2-24-92

zero fiscal note _____

zero fiscal note(s) _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>X J. Gandy</i>	<i>/</i>	<i>Terry Mast...</i>		<i>/</i>	
<i>H. Ellis</i>	<i>X</i>	<i>Mark Stanley</i>		<i>X</i>	
		<i>Mike Miller</i>		<i>X</i>	
		<i>Kevin Pas...</i>		<i>/</i>	
		<i>Dave Donley</i>			<i>/</i>

Dave Donley
 CHAIRMAN'S SIGNATURE

FISCAL NOTE

No. 1
 Bill Version: CSHB 377(Res)
 (H) Publish Date: 2-24-92

STATE OF ALASKA
 1992 LEGISLATIVE SESSION

Revision Date: _____
 Title: Alaska Air Permit Statutes
 Sponsor: Representative Tom Moyer
 Requestor: Resources Committee

Department Affected: Environmental Conservation
 BRU: Division of Environmental Quality
 Component: Air Quality Management

COMPONENT SERIAL NO. 1 14 2 18

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	728.7	180.0	603.3	315.9	243.3	260.2
TRAVEL	180.2	0.0	106.3	48.7	151.5	9.5
CONTRACTUAL	48.2	(60.0)	(393.1)	20.0	270.7	0.0
SUPPLIES	56.0	0.0	35.7	16.1	145.7	8.8
EQUIPMENT	207.0	(120.0)	0.0	(34.2)	30.0	60.0
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	1220.1	0.0	352.2	366.5	841.2	338.5

CAPITAL						
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REVENUE (note 2)	1,320.1	0.0	894.3	366.5	841.2	506.5
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FUNDING: (Thousands of Dollars) (Incremental Increases)

GENERAL FUND	0 (Note3)	0.0	0.0	0.0	(38.3)	(168.0)
FEDERAL FUNDS	(100.0)	0.0	(542.1)	0.0	0.0	0.0
OTHER	1,320.1	0.0	894.3	366.5	879.5	506.5
TOTAL	1220.1	0.0	352.2	366.5	841.2	338.5

POSITIONS:

FULL-TIME	18.0	0.0	6.0	0.0	0.0	0.0
PART-TIME	0.5	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)

- Note 1. FY93 General Fund program receipts are contained in the Governor's FY93 Operating Budget.
 Note 2. Revenue Fund Source consists of program receipts deposited in the General Fund. Following passage of this bill, program receipts are to be deposited in the Clean Air Protection Fund.
 Note 3. No additional general funds will be required for this program over FY92 levels.

Prepared by: Leonard D. Verrelli
 Division: Environmental Quality

Phone: 465-5100
 Date: 20-Feb-92

Approved by Commissioner: [Signature]
 Agency: Department of Environmental Conservation Date: 2/21/92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ics).

COMMITTEE COPY

#1
CSHB 377 (Res)
2-24-92

FISCAL NOTE COMPUTATIONS

OVERVIEW

The current statewide program consists of 30.5 professionals and three clerical persons. This staff level includes six positions created in mid FY92 with additional grant funds from EPA for Clean Air Act implementation. Because the new permit program requires a major restructuring of the existing permit program, and at least tripling of the number of state air quality permits, the department must obtain significant staff increases to accomplish the mandates of the Act. Failure to develop and implement the new permit program will result in withdrawal of federal highway construction funds. In addition, the Act mandates that permit program direct and indirect costs be completely funded by operating permit fees.

Twelve (12) new technical positions and four (4) administrative support positions would perform the program development work. Development work to be accomplished in FY93 and early FY94 includes a complete rewrite of the regulations in 18 AAC and the associated State Air Quality Control Plan, and working with the regulated community to adopt a program that meets Alaskan as well as federal needs.

Another major aspect of the permit program is small business support function. The Small Business Assistance program will provide technical and compliance assistance on air pollution matters, and establishes a state small business liaison to provide direct oversight. In addition, the Act creates a compliance advisory panel composed of appointees from the Executive and Legislative branches to determine the effectiveness of the program. In FY93, the Small Business Assistance program would fund one full-time Environmental Specialist, one part-time Clerk Typist, one position for the small business liaison, staff travel, contractual, publication and distribution of information material, and the direct (but not salary) costs of quarterly meetings of the Compliance Advisory Panel.

INCREMENTAL EXPENDITURE PROJECTION

Salary projections are based on the FY93 operating budget increment request. For projections beyond FY93, specific line item budget needs are based on funding required for new personnel and shifts in program tasks as the permit restructuring progresses from the development phase to the operations phase. The employee estimate is derived from the year-by-year workload evaluation based on the deadlines established in the Clean Air Act, the number of permits to be issued, and the increases in the associated work tasks, such as inspections and facility report review. For FY94 and beyond, personnel estimates are based on a management structure that shifts from central office program development to one that is primarily implemented by the department's regional offices, beginning in FY96.

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	FY93	FY94	FY95	FY96	FY97	FY98
Full-time positions added	18	0	6	0	0	0
Part-time positions added	.5	0	0	0	0	0

Incremental costs

Line Item	FY93	FY94	FY95	FY96	FY97	FY98
71000 Personal	728.7	180.0	603.3	315.9	243.3	260.2
72000 Travel	180.2	0.0	106.3	48.7	151.5	9.5
73000 Contract	48.2	(60.0)	(393.1)	20.0	270.7	0
74000 Supplies	56.0	0.0	35.7	16.1	145.7	8.8
75690 Equipment	207.0	(120.0)	0.0	(34.2)	30.0	60.0

Year	FY93	FY94	FY95	FY96	FY97	FY98
Total Cost Projection	1220.1	0.0	352.2	366.5	841.2	338.5

INCREMENTAL REVENUE PROJECTIONS

Projected revenues for the FY93 and FY94 years are directly derived from the budgets prepared, and interim program receipts projections. Revenue projections for operating permit program for FY95 and later are comprised of two components: permit fees assessed to existing facilities and permit fees assessed to new facilities. The fee structure used to estimate revenue has three components: a base cost of \$1500 for a permit to a "small" affected facility, \$25 per ton of regulated air contaminant per year emitted by existing facilities (larger than 100 tons per year), and a fee "cap" at 4000 tons per year. From emission estimates of currently permitted facilities, the fee schedule was applied and "phased in" over three years. The estimate for new facilities revenues was derived from an assumption of composition of these sources, 80 percent of which emit less than 100 tons per year, the remainder emitting less than 500 tons per year. These facilities will be permitted starting in the third year of the program. Note that program receipts directly offset any expenditure that would otherwise be required from general funds.

Projected Incremental Revenues

Year	FY93	FY94	FY95	FY96	FY97	FY98
General Fund Match	0.0	0	0	0	(38.3)	(168.0)
CAA Supplemental funds <100.0>		0	<542.1>	0	0	0
Interim fees, current	1320.1	0	(617.3)	(330)	(424.1)	0
Fees, current facilities	0	0	1511.6	696.5	864.4	61.9
Fees, new facilities	0	0	0	0	439.2	444.6

Year	FY93	FY94	FY95	FY96	FY97	FY98
Total Funds	1220.1	0	352.2	366.5	841.2	338.5

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CSHB 377 (Res)
2-24-92

OVERVIEW OF TOTAL PROGRAM DEVELOPMENT

To fully evaluate the effects of the requirements of the Clean Air Act on the air quality management program, the total program costs, personnel, and funding are presented. Note that a number of positions which are currently funded by federal grants and state matching funds will be funded by permit program fee revenue after the implementation of the new program.

Year	FY92	FY93	FY94	FY95	FY96	FY97	FY98
FTE	33.5	52.0	52.0	58.5	58.5	58.5	58.5
Total Costs							
Personal	1646.5	2375.2	2555.2	3158.5	3474.4	3717.7	3977.9
Travel	175.8	356.0	356.0	462.3	511.0	662.5	672.0
Contract	816.3	864.5	804.5	411.4	431.4	702.1	702.1
Supplies	68.2	124.2	124.2	159.9	176.0	321.7	330.5
Equipment	52.2	259.2	139.2	139.2	105.0	135.0	195.0
Total	2759.0	3979.1	3979.1	4331.3	4697.8	5539.0	5877.5

Total Program Funding							
Year	FY92	FY93	FY94	FY95	FY96	FY97	FY98
Federal	1534.2	1434.2	1434.2	892.1	892.1	892.1	892.1
G.F. Match	1174.1	1174.1	1174.1	1173.5	1173.5	1135.2	967.2
P/R	49.7	1370.8	1370.8	754.1	424.1	0	0
C.A. Fund	0	0	0	1511.6	2208.1	3511.7	4018.3
Total	2759.0	3979.1	3979.1	4331.3	4697.8	5539.0	5877.5

COMMITTEE COPY

*denotes material
not in SB383. Changes
in section numbering
are also indicated.*

CS FOR HOUSE BILL NO. 377 (RESOURCES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered: 2/24/92

Referred: Judiciary, Finance

Sponsor(s): REPRESENTATIVES MOYER, Boyer, Brown, Finkelstein, B.Davis, Koponen

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to air quality control and the prevention, abatement, and control of air
2 pollution; relating to civil and criminal penalties, damages, and other remedies for air
3 quality control violations; amending the definition of 'hazardous substance'; relating to use
4 of the oil and hazardous substance release response fund; relating to inspection and
5 enforcement powers of the Department of Environmental Conservation; and providing for
6 an effective date."

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

8 * Section 1. PURPOSES. (a) The primary purpose of this Act is to bring the state into compliance
9 with the 1990 amendments to the federal Clean Air Act codified at 42 U.S.C. 7401 - 7671q. Changes
10 in state law are necessary to allow the state to continue to have primary management of air quality in
11 the state and to retain federal approval of the state's air quality control program in order to ensure the
12 continued receipt of federal highway and air pollution control money. The federal Environmental
13 Protection Agency must prohibit the approval of highway projects and highway grants, and may withhold

1 air pollution control grants, if the state does not comply with 42 U.S.C. 7401 - 7671q (Clean Air Act).

2 (b) The legislature also recognizes that the replacement of automobiles, light trucks, and vans
3 in the state fleet with vehicles fueled by energy sources other than gasoline will contribute to the
4 improvement of air quality in the communities in which they are used. Therefore, another purpose of
5 this Act is to require state agencies operating in nonattainment areas for carbon monoxide and particulate
6 matter to procure alternative-fueled vehicles.

7 * Sec. 2. AS 14.09 is amended by adding a new section to read:

8 Sec. 14.09.030. ALTERNATIVE-FUELED BUSES. The department shall develop plans
9 to encourage contractors that provide school bus transportation to procure alternative-fueled
10 buses. In this section, "alternative-fueled" means capable of operating on a fuel such as
11 compressed natural gas, liquefied petroleum gas, liquefied natural gas, methanol, ethanol,
12 reformulated gasoline, or electricity that, compared to operation on regular fuel, results in lower
13 emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide, or particulates.

14 * Sec. 3. AS 36.30 is amended by adding a new section to article 1 to read:

15 Sec. 36.30.097. PROCUREMENT OF CERTAIN VEHICLES. (a) When the
16 Department of Transportation and Public Facilities procures an automobile, light truck, or van
17 for addition to the state fleet at a location in a nonattainment area in which the Department of
18 Transportation and Public Facilities maintains a fleet of at least 15 vehicles, the procurement
19 officer shall procure only an alternative-fueled vehicle if an alternative-fueled vehicle is available
20 from an original equipment manufacturing company.

21 (b) In making a procurement under this section, the procurement officer may give a
22 preference to an automobile, light truck, or van operated on compressed natural gas.

23 (c) In this section, "alternative-fueled" means capable of operating on a fuel such as
24 compressed natural gas, liquefied petroleum gas, liquefied natural gas, methanol, ethanol,
25 reformulated gasoline, or electricity that, compared to operation on regular fuel, results in lower
26 emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide, or particulates.

27 * Sec. 4. AS 46 is amended by adding a new chapter to read:

28 CHAPTER 14. AIR QUALITY CONTROL.

29 ARTICLE 1. CLASSIFICATIONS AND STANDARDS.

30 Sec. 46.14.010. EMISSION CONTROL REGULATIONS. (a) After public hearing, the
31 department may adopt regulations under this chapter as necessary to prevent, abate, control, or

1 identify air pollution due to emissions, including regulations setting emission standards,
2 performance standards, and limitations. The standards and limitations may be based on risk
3 assessments or on available technology and may be for the state as a whole or may vary from
4 area to area in recognition of local conditions.

5 (b) In implementing this chapter, the department may not require a person to use
6 machinery, devices, or equipment from a particular supplier or produced by a particular
7 manufacturer if the required emission limitations or performance standards may be met by
8 machinery, devices, or equipment available from another manufacturer.

9 Sec. 46.14.020. CLASSIFICATION OF FACILITIES OR SOURCES; REPORTING.

10 (a) The department, by regulation, may classify facilities or sources that, in the department's
11 determination, are likely to cause or contribute to air pollution, according to the levels and types
12 of emissions and other characteristics that relate to air quality. The department may make a
13 classification under this subsection applicable to the state as a whole or to a designated area of
14 the state. The department shall base the classifications on consideration of health, economic, and
15 social factors, sensitivity of the receiving environment, and physical effects on property.

16 (b) The department or a local program authorized under AS 46.14.500 may require an
17 owner and operator of a facility or source classified under this section to report information to
18 the department or the authorized local program concerning location, size, and height of
19 contaminant outlets or area sources, processes employed, fuels used, the nature and time periods
20 or duration of emissions, and other information relevant to air quality that is available or
21 reasonably capable of being calculated and compiled.

22 ARTICLE 2. EMISSION CONTROL PERMIT PROGRAM.

23 Sec. 46.14.200. PERMITS FOR CONSTRUCTION, MODIFICATION, OR
24 OPERATION. (a) A person may not construct, install, modify, reconstruct, or establish a
25 facility subject to AS 46.14.205(a), except in compliance with the construction permit and an
26 order or other determination of the department under this chapter.

27 (b) A person may not operate a major facility or a facility that contains one or more of
28 the sources listed in AS 46.14.205(b) except in compliance with the operating permit and an
29 order or other determination of the department under this chapter.

30 (c) An owner and operator required to have a permit under AS 46.14.205 shall comply
31 with the terms and conditions of that permit.

1 (d) The department shall ensure that permits issued, modified, amended, or renewed
2 under this chapter comply with the emission limitations and other requirements of 42 U.S.C.
3 7401 - 7671q (Clean Air Act), applicable federal regulations, and the state air quality control
4 plan.

5 (e) If the federal administrator exempts a source from the requirements of 42 U.S.C.
6 7661a(a) (Clean Air Act, sec. 502(a)), the commissioner, by regulation, may exempt that source
7 from some or all of the requirements of this chapter.

8 Sec. 46.14.205. FACILITIES ^{AND SOURCES} ~~REQUIRING PERMITS~~. (a) Before constructing,
9 installing, modifying, reconstructing, or establishing a facility, the owner and operator shall obtain
10 a construction permit from the department if the facility is any one of the following:

11 (1) a new facility that has the potential to emit greater than 250 tons per year
12 (TPY) of a regulated air contaminant;

13 (2) a new facility of a type classified under AS 46.14.020 that has the potential
14 to emit greater than 100 TPY of a regulated air contaminant, including fugitive emissions;

15 (3) a new facility of a type classified under AS 46.14.020 that has the potential
16 to violate the ambient air quality standards or otherwise pose a threat to public health;

17 (4) a new facility that has the potential to emit greater than 10 TPY of a
18 hazardous air contaminant, or 25 TPY, in the aggregate, of two or more hazardous air
19 contaminants;

20 (5) an existing facility, otherwise described in (1), (2), (3), or (4) of this
21 subsection, for which a modification is proposed that would increase actual emissions of ^{an} ~~a~~ ^{regulated} ~~regulated~~ ^{air} ~~air~~
22 contaminant to an amount equal to or greater than the annual emission quantity set out in
23 regulations adopted under AS 46.14.010.

24 (b) The owner and operator of a facility shall obtain an operating permit from the
25 department if the facility is a major facility or if the facility contains one or more of the
26 following sources:

27 (1) a stationary source, including an area source, subject to federal new source
28 performance standards under 42 U.S.C. 7411 (Clean Air Act, sec. 111) or national emission
29 standards for hazardous air pollutants issued under 42 U.S.C. 7412 (Clean Air Act, sec. 112); or

30 (2) another stationary source designated by the federal administrator or the
31 department, by regulation.

1 Sec. 46.14.210. EMISSION CONTROL PERMIT PROGRAM REGULATIONS. (a)
2 The department may adopt regulations to implement AS 46.14.200 - 46.14.290. The department
3 shall adopt regulations to address the following elements of the emission control permit program:

4 (1) a standard permit application form that meets the requirements of federal
5 regulations adopted under 42 U.S.C. 7661a(b) (Clean Air Act, sec. 502(b));

6 (2) procedures for preparation and submission of a monitoring, reporting, and
7 quality assurance plan and, if required, a compliance schedule describing how a permitted facility
8 will comply with the applicable requirements of AS 46.14.200 - 46.14.295;

9 (3) procedures for

10 (A) expeditiously determining when a permit application is complete;

11 (B) processing and reviewing an application; and

12 (C) providing public notice, including opportunity for public comment and
13 hearing;

14 (4) standard permit conditions, including conditions for

15 (A) emission standards and limitations;

16 (B) monitoring, recordkeeping, and reporting;

17 (C) inspection and entry;

18 (D) certification of corporate or other business organization reports;

19 (E) annual certification of compliance; and

20 (F) excess emission or process deviation reporting;

21 (5) fees, and procedures for collecting fees;

22 (6) procedures for renewing, modifying, amending, or revising a permit that
23 provide maximum flexibility in the operation of the facility consistent with the purposes of this
24 chapter and with 42 U.S.C. 7401 - 7671q (Clean Air Act); and

25 (7) procedures for approving physical or operational limitations that will reduce
26 a facility's emissions to levels below those that would make the facility subject to AS 46.14.200
27 and 46.14.205.

28 (b) The absence of, or the department's failure to adopt, a regulation under this section
29 does not relieve a person from compliance with a permit issued under this chapter and with other
30 provisions of law, including emission control requirements.

31 Sec. 46.14.215. STATE POLICY; STATE AIR QUALITY PLAN. (a) It is the policy

1 of the state to have a program to prevent, abate, control, and identify air pollution that complies
2 with 42 U.S.C. 7401 - 7671q (Clean Air Act), as amended, and federal regulations adopted under
3 those laws.

4 (b) The department shall act for the state in any negotiations relative to the state air
5 quality control plan developed under 42 U.S.C. 7401 - 7671q (Clean Air Act). The department
6 may adopt regulations necessary to implement the state plan.

7 ^{(c) omitted}
8 Sec. 46.14.220. TIME FOR SUBMISSION OF PERMIT APPLICATIONS. The owner
9 and operator of a facility required to have an operating permit under this chapter shall submit the
10 required application and monitoring, reporting, and quality assurance plan no later than 12
11 months after the date on which the facility becomes subject to AS 46.14.200, or at an earlier time
12 if required by the department.

13 Sec. 46.14.225. ADMINISTRATIVE ACTIONS REGARDING PERMITS. (a) Except
14 as provided in AS 46.14.245, after receipt of a complete application, and after notice and
15 opportunity for public comment and hearing, the department shall issue or deny

16 (1) a construction permit within 30 days after the close of the public comment
17 period;

18 (2) an operating permit, other than a general operating permit, within 18 months
19 after receipt of the complete application by the department.

20 (b) Notwithstanding (a) of this section, the department may establish a phased schedule
21 for acting on operating permit applications submitted on or before November 15, 1994. A phased
22 schedule must ensure that at least one-third of the applications submitted on or before
23 November 15, 1994, will be acted on by the department during each of the three years after
24 November 15, 1994. On or before November 15, 1997, the department shall act on all
25 applications received on or before November 15, 1994.

26 (c) Failure by the department to act within the time limits established in or under (a) or
27 (b) of this section shall be treated as a final agency action, but only for purposes of judicial
28 review to require that action be taken by the department.

29 Sec. 46.14.230. REVIEW OF PERMIT ACTION. If aggrieved by a permit action under
30 this chapter, the owner and operator, a person who participated in the public comment process,
31 or a person with standing under state or federal law to obtain administrative or judicial review
of a permit action under this chapter may request an adjudicatory hearing under the department's

1 adjudicatory hearing procedures. After the issuance of an adjudicatory hearing decision, a party
2 to the hearing may obtain judicial review of that decision as provided in Alaska Rules of
3 Appellate Procedure.

4 ~~Sec. 46.14.235. SINGLE PERMIT.~~ Regardless of whether a facility contains a single
5 source or multiple sources, only a single operating permit is required for the facility.

6 Sec. 46.14.240. GENERAL OPERATING PERMITS. After notice and opportunity for
7 public comment and hearing, and after approval by the federal administrator, the department may
8 establish a general operating permit that would be applicable to more than one facility determined
9 by the department to be similar in source structure. A general operating permit must contain
10 provisions that meet the requirements of this chapter applicable to operating permits. A general
11 operating permit is not effective for a specific facility until the owner and operator of the facility
12 has submitted an application under AS 46.14.220 and the department has issued the general
13 operating permit. The department shall issue or deny a general operating permit within 30 days
14 after receipt of a complete application.

15 Sec. 46.14.245. OBJECTION BY FEDERAL ADMINISTRATOR. (a) An operating
16 permit may not be issued under this chapter until the federal administrator approves the permit,
17 or until 45 days after a copy of the final draft permit has been provided by the department to the
18 federal administrator, whichever is earlier. If, during the 45-day period, the federal administrator
19 files an objection with the department, the department shall notify the applicant of the objection.
20 The permit may not be issued until the objection is resolved or the permit is revised to meet the
21 objection of the federal administrator.

22 (b) Within 60 days after the close of the 45-day period under (a) of this section, and in
23 accordance with procedures established in federal regulations adopted under 42 U.S.C. 7661b(2)
24 (Clean Air Act, sec. 505b(2)), a person may petition the federal administrator to file an objection
25 to the permit.

26 Sec. 46.14.250. PAYMENT OF FEES AND FEE SCHEDULE. (a) The owner and
27 operator of a facility who is required to apply for a permit under AS 46.14.205 shall pay the
28 applicable fees set out in the fee schedule adopted by the department under (b) of this section.
29 The owner and operator shall pay the fees to the department or to the public entity designated
30 by the department.

31 (b) The department shall adopt, by regulation, a fee schedule based upon the type of