ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8072
6988 HOUSE JUDICIARY

23

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

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

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

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

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

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

II. DISCUSSION

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

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

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

1. Summary judgment was granted in this case on the basis of stipulated facts and exhibits. *De novo* review is the applicable standard of review on an appeal from a grant of summary judgment. *Kollodge v. State*, 757 P.2d 1028, 1032 (Alaska 1988). There is no genuine issue of material fact; rather, this appeal concerns statutory interpretation, which involves our own independent judgment. *Waller v. Richardson*, 757 P.2d 1036, 1039 n. 4 (Alaska 1988).

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

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

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

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

(i) Applicability of the APA

[1] As noted at the outset, AS 44.62.330–.630 governs the adjudicative procedures of the University "except to the extent that its inclusion is inconsistent with the provisions of AS 14.40." AS 44.62.330(a)(45). The University notes that under AS 14.40.170(b)(1), the Board of Regents may "adopt reasonable rules, orders and plans ... for the good government of the university...." The University then argues that since its rules governing grievance procedures are reasonable, an application of the APA procedures to its grievance proceedings would be inconsistent with the authority of the Board to manage the University. More specifically, the University contends that the APA procedures are inconsistent with AS 14.40 because they are more extensive and costly than its own reasonable grievance procedures, and therefore they are precluded under AS 44.62.330(a)(45).

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

> The Court concludes that AS 44.62.330 *et seq.* does apply to Defendant University of Alaska and that Defendant's grievance proceedings must comply with the provisions of such Act.
>
> In so ruling, the Court notes that on its face, the APA applies to Defendant University of Alaska. AS 44.62.330(45) [sic] expressly provides that the provisions of the Act apply to the "University of Alaska, except to the extent that its inclusion is inconsistent with the provisions of AS 14.40." Having reviewed the provisions of AS 14.40, particularly including the powers and duties of the University President as defined in AS 14.40.210–.220, the Court concludes that there is nothing inconsistent between such provisions and the APA. Clearly, the President's power to appoint professors and assistants, and to define and supervise the duties of such persons, are not inconsistent with the APA hearing procedure which is designed to guarantee due process to persons adversely affected by administrative action, such as adverse employment or personnel action.

ments of the APA "except to the extent that [the APA's] inclusion is inconsistent with the provisions of AS 14.40;" (2) AS 14.40 specifically authorizes the Board to "adopt reasonable rules, orders and plans ... for the good government of the University;" (3) the Alaska Legislature did not intend the University to be required by law to conduct the APA grievance procedures if the University were to adopt valid, adequate, and fair grievance procedures of its own; (4) under AS 14.40.170(b)(1), grievance procedures adopted by the Board need only be "reasonable," and the procedures instituted by the University meet this test of reasonableness; and (5) to the extent that the APA would require the University to hold substantially more extensive, time consuming, and expensive procedures than would be required under the validly adopted and reasonable University grievance procedures, application of the APA would be inconsistent with AS 14.40.170(b)(1).

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

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

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

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

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

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

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

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

are inapplicable to individual personnel decisions.

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

The University further contends that the APA adjudication procedures are inapplicable because McGrath is not grieving "adjudicative facts," but rather "legislative facts." As one court explained, "agencies employ rulemaking procedures to resolve broad policy questions affecting many parties and turning on issues of 'legislative fact.' Adjudicatory hearing procedures are used in individual cases where the outcome is dependent on the resolution of particular 'adjudicative facts.'" *Independent Bankers Ass'n of Georgia v. Board of Governors of Fed. Reserve Sys.*, 516 F.2d 1206, 1215 (D.C.Cir.1975).[6]

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

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

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

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

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

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

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

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

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

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

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

As to this issue, we again refer to and adopt the reasoning of Judge Serdahely in *Aden v. University of Alaska*. In rejecting the same argument as the University makes in the case at bar, Judge Serdahely stated,

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

(Emphasis added).

III. CONCLUSION

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

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

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

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

SHOW NEWS
**** 18-MAR-1992 08:26 "Proposed 17 Million UA Budget Cuts"

SUBJECT: PROJECTED IMPACTS OF PROPOSED $17 MILLION CUT TO UA FY93 BUDGET

Note: This file contains the text of the presentation President Komisar will make to the House and Senate Finance committees March 18, a summary of impacts to each unit, and historical comparisons of the UA budget share of the state general fund operating budget, and of the UA budget to the Higher Education Price Index from FY85 through FY92. Budget impact details for UAA, UAF, UAS and statewide programs and services are too long to include on SHOW NEWS, but may be found on the SYGABB vax bulletin board. Log on to ACAD3*. Type SYGABB at the USERNAME PROMPT. A menu will appear. Select the first category.

METRO
WEDNESDAY
SECTION B June 26, 1991

B3

Anchorage Daily News Wednesday, June 26, 1991

Faculty wins hearing in tenure case

Court finds teachers denied forum for complaints during merger with UAA

Chief Justice Rabinowitz

By PETER BLUMBERG
Daily News reporter

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

The high court, in reversing a 1988 Superior Court ruling, asserts that about 73 faculty members were deprived of a proper forum for airing complaints that the merger unfairly denied them tenure when they gave up their community college positions.

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

Two faculty members, Ralph McGrath and Don Mohr, then asked the court to order an administrative hearing, but their case was dismissed by Superior Court Judge Brian Shortell.

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

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

Please see Page B-3, TENURE

TENURE: Staff victory

Continued from Page B-1

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

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

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

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

HB

554

HOUSE COMMITTEE REPORT

(7) C

5-11-92

Date Referred: May 6, 1992 FURTHER REFERRALS: Finance

Date of Committee Action: 5/10/92

The JUDICIARY Committee considered: HB 554

HOUSE BILL NO. 554 CRIMINAL LAW; CONSPIRACY, MURDER, ETC.
"An Act relating to murder, kidnapping, controlled substances, and imitation controlled substances offenses; creating the crime of conspiracy and the crime of money laundering; amending a provision relating to general principles of criminal liability."

RECOMMENDATIONS:
be replaced with CS HB 554/JUD
[ ] the same title
[X] a new title
[ ] have attached amendments(s)
[X] do pass
[ ] do not pass
[ ] no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[X] fiscal impact Courts
[ ] zero fiscal note _____

APPROVES PREVIOUS: (Dept/Date)
[X] fiscal note(s) Corrections 4/6/92
[X] zero fiscal note(s) DPS 2/24/92 Law 2/24/92

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Dave Donley	✓				
Terry Martin		Mary Sue Feldman VP		–	
Mark Hanley	✓				
Mike Miller	✓				
Kevin "Pat" Parnell	✓				

Dave Donley
CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Bill No. CS HB 554 (HES)

Revision Date:
Title: An Act relating to murder, kidnapping, controlled substances,...crime of conspiracy
Sponsor: House Rules Committee by request
Requestor:

Department Affected: Alaska Court System
BRU: Trial Courts
Components:

COMPONENT SERIAL NO. 000 | 000 | 000 | 768

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	296.7	296.7	296.7	296.7	296.7	296.7
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	296.7	296.7	296.7	296.7	296.7	296.7
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	296.7	296.7	296.7	296.7	296.7	296.7
FEDERAL FUNDS						
OTHER						
TOTAL	296.7	296.7	296.7	296.7	296.7	296.7

POSITIONS:

FULL-TIME	7.0	7.0	7.0	7.0	7.0	7.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel Phone: 264-8228
Division: Alaska Court System Date: 05/10/92

Approved by: Arthur H. Snowden, II, Administrative Director BY
Agency: Alaska Court System Date: 05/10/92

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

HB 554

This bill creates new crimes relating to conspiracy and money laundering, and amends existing statutes relating to drug offenses. A substantial fiscal impact on the court system is anticipated.

Sections 1 and 2 create a new crime of conspiracy to commit homicide, kidnapping, or certain drug offenses. Their purpose is to create a crime under which persons not presently prosecutable can be prosecuted.

The Department of Law has not estimated the number of prosecutions which will result from these sections. When narrower legislation was considered in 1987, the department projected a need for two additional attorneys, a paralegal, and a secretary, indicating a potentially large caseload. This session OPA has estimated that conspiracy legislation would require it to defend 25 co-defendants per year, in addition to those co-defendants represented by the Public Defender. Experience in other states and at the federal level demonstrates that conspiracy cases generally require extensive pre-trial motion hearings, and are more likely to go to trial than other felony cases.

Section 3 will make it easier for the Department of Law to charge individuals engaged in a continuing criminal enterprise by lowering the number of offenses and the number of individuals involved from that specified in existing law. This section will generate new cases by allowing prosecutors to file more criminal charges against more persons, even though the facts of the case remain unchanged.

As is the case with conspiracy statutes, experience in other states and at the federal level demonstrates that charges of "continuing criminal enterprise" generally require extensive pre-trial motion hearings, and are more likely to go to trial than other felony cases.

Section 4 reclassifies certain drug offenses to the next higher category of offenses, making defendants eligible for higher penalties. The potential for higher penalties generally influences more defendants to demand a jury trial.

Section 5 creates a new crime of money laundering. The language is broadly drafted and can be expected to generate many new cases against persons who are not now prosecutable, such as the spouses of drug dealers as well as persons who provide goods or services to a drug dealer.

Section 6 allows prosecution of a defendant for possession of drugs by consumption (that is, internal possession), thus overturning the decision in State v. Thronsen. It will generate new felony cases.

Sections 7 and 8 are unlikely to have a fiscal impact on the court system.

Alaska Court System

Fiscal Analysis
CS HB 554 (HES)

Personal Services

Classification	Salary	Benefits	Total
Pro Tem Superior Court Judge Anchorage, 12 months	$24,150	$19,673	$43,823
Pro Tem Superior Court Judge Anchorage, 12 months	24,150	19,673	43,823
Pro Tem Superior Court Judge Fairbanks, 12 months	24,500	19,711	44,211
Pro Tem Superior Court Judge Juneau, 12 months	24,150	19,673	43,823
In-Court Clerk, 12A, PFT, Anchorage	27,108	11,675	38,783
In-Court Clerk, 12A, PFT, Fairbanks	30,780	12,626	43,406
In-Court Clerk, 12A, PFT, Juneau	27,108	11,675	38,783
Total			$296,652

FISCAL NOTE No. 3

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Bill Version: HB 554
(H) Publish Date: 2-24-92

Revision Date: _____ **Department Affected:** Department of Corrections

Title: "An Act relating to murder, kidnapping, and controlled substances." **BRU:** Statewide Programs

Component: Various

Sponsor: _____

Requestor: Governor **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	525.6	525.6	1,018.4	1,180.4	1,180.4	1,180.4
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	525.6	525.6	1,018.4	1,180.4	1,180.4	1,180.4
CAPITAL						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached Analysis.

Diane Schenker

Prepared By: Diane Schenker, Legislative Liaison **Phone:** 465-3376

Division: Commissioner's Office **Date:** 02/20/92

Approved by Commissioner: Lloyd Hames, Commissioner Diane Schenker for

Agency: Department of Corrections **Date:** 02/20/92

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

Rev 10/7/91

FN 525.6 Corrections

#3
HB 554

CONTINUATION OF FISCAL ANALYSIS

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

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

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

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

CONTINUATION OF FISCAL ANALYSIS: LAWLOG 92-0039

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

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

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

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

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

#3
HB554

CONTINUATION OF FISCAL ANALYSIS: LAWLOG 92-0039

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

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

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

FISCAL NOTE

No. 4
Bill Version: HB 554
(H) Publish Date: 2-24-92

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Department of Law

Title: "An Act relating to murder, kidnapping, controlled substances..." BRU: Prosecution

Component: All

Sponsor: By Request of the Governor

Requestor: Office of the Governor COMPONENT SERIAL NO. [ ][ ][ ][ ] 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:						

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.

Richard I. Pegues

Prepared By: Richard I. Pegues, Director Phone: 465-3672

Division: Administrative Services Date: February 18, 1992

Approved by Commissioner: Richard I. Pegues for Charles E. Cole, Attorney General

Agency: Department of Law Date: February 18, 1992

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

Rev 10/7/91 FN 0 D.O.L.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. _____

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

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

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

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

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. _____

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

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

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

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

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

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. _____

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

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

FISCAL NOTE

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

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Public Safety

Title: Criminal Justice Reform BRU: Alaska State Troopers

Component: Criminal Investigations Bureau

Sponsor: Rules

Requestor: Governor COMPONENT SERIAL NO. | | 8 | 3 | 0 |

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

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

Prepared By: Gayle A. Horetski Phone: 465-4322

Division: Commissioner's Office Date: 2/18/92

Approved by Commissioner: Gayle A. Horetski for Richard L. Burton

Agency: Department of Public Safety Date: 2/18/92

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

EAI & Public Safety

B

(7)

I. JUSE COMMITTEE REPOI

5/6

Judiciary
Finance

Date Referred: February 24, 1992 FURTHER REFERRALS:

Date of Committee Action: 5/5/92

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered: HB 554

HOUSE BILL NO. 554 CRIMINAL LAW: CONSPIRACY, MURDER, ETC.

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

RECOMMENDATIONS:
be replaced with CS HB 554 (HES)

[✓] 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)

[✓] fiscal impact Corrections

[ ] zero fiscal note _____

APPROVES PREVIOUS: (Dept/Date)

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

[✓] zero fiscal note(s) LAW 2/24/92 | PublicSafety 2/24/92

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

CHAIRMAN'S SIGNATURE

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

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

The bill

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

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

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

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

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

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

FISCAL NOTE

Bill Version: [illegible]

(H) Publish Date: 2-24-92

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: _____

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

Sponsor: _____

Requestor: _____

Department Affected: Administration

BRU: Public Defender Agency

Component: Public Defender Agency

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

CAPITAL						

REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

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

Prepared by: John B. Salemi, Public Defender
Phone: 279-7541
Division: Public Defender Agency
Date: January 31, 1992

Approved by Commissioner: Nancy Bear Usera
Agency: Administration
Date: 2/4/92

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

Rev 10/07/91
1/LEG92/3408.kp/1

Public Defender
FN 152.5 Admin.

#1
HB554
2-24-92

FISCAL ANALYSIS - LAW LOG 92-0039

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

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

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

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

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

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

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

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

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

BUDGET ANALYSIS

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

A:legis/LL920039

Position Title	No. of Positions	Range / Step	Barg. Unit
Attorney III	1	22/A	PX

Time Status	Staff Months	Location	Election District
PFT	12.0	ECA	7

TYPE OF EXPENDITURE		Amount
Salary	55,969	
Benefits	20,733	
Premium Pay		
Other		
Total Personal Services	76,702	76,702
Travel		5,000
Contractual		10,000
Commodities		1,000
Equipment		1,500
Other		
Total Cost		94,202
FUNDING SOURCE FOR TOTAL COST		
Federal Receipts 1002		
G.F. Match 1003		
General Fund 1004		94,202
IA Receipts 1007		
CIP Receipts 1061		
Other		

Justification

The new crime of conspiracy, changes in the law concerning "continuing criminal enterprise" and internal possession of drug cases will, at the very least create additional cases in the urban areas of the state. The one felony level attorney and paralegal requested to meet these increases is considered a conservative fiscal response to this criminal justice reform bill.

Request For New Position

AGENCY Department of Administration

BRU Public Defender Agency

COMPONENT Public Defender Agency

Page 4 of 5

Revised Date:

FY ____

#1 2-24-92

Position Title	No. of Positions	Range / Step	Barg. Unit
Paralegal Assistant II	1	16/A	CGU

Time Status	Staff Months	Location	Election District
PFT	12.0	EBA	7

TYPE OF EXPENDITURE		Amount
Salary	36,930	
Benefits	15,326	
Premium Pay		
Other		
Total Personal Services	52,257	52,257
Travel		-0-
Contractual		3,500
Commodities		1,000
Equipment		1,500
Other		
Total Cost		58,257
FUNDING SOURCE FOR TOTAL COST		
Federal Receipts 1002		
G.F. Match 1003		
General Fund 1004		58,257
I.A. Receipts 1007		
CIP Receipts 1061		
Other		

Justification

The new crime of conspiracy, changes in the law concerning "continuing criminal enterprise" and internal possession of drug cases will, at the very least create additional cases in the urban areas of the state. The on felony level attorney and paralegal requested to meet these increases in considered a conservative fiscal response to this criminal justice reform bill.

Request For New Position

AGENCY Department of Administration

BRU Public Defender Agency

COMPONENT Public Defender Agency

Revised Date:

FY

2.24.42

FISCAL NOTE NO. -

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Bill Version: HB 554
(H) Publish Date: 2-24-92

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

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

COMPONENT SERIAL NO. [ ] [ ] [4] [3]

Expenditures/Revenues: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: None.

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

Prepared by: Brant McGee, Public Advocacy
Division: Office of Public Advocacy
Phone: 274-1684
Date: January 21, 1992

Approved by Commissioner: Nancy Bear Usera
Agency: Administration
Date: 1/27/92

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

Rev 10/07/91
6/legS2/02209.KP/1

Public Advocacy.
FN 517.8 Admin

FISCAL NOTE

#2

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. 554

ANALYSIS: (continued)

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

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

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

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

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

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

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

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

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

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

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

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

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

Position Title	No. of Positions	Range / Step	Barg. Unit
Attorney IV	1	24/A	PX

Time Status	Staff Months	Location	Election District
PFT	12.0	Anchorage-EBA	8

TYPE OF EXPENDITURE		AMOUNT
Salary		64.0
Benefits		22.6
Premium Pay		
Other		
Total Personal Services		86.6
Travel		
Contractual		3.4
Commodities		1.0
Equipment		3.6
Other		
Total Cost		94.6
FUNDING SOURCE FOR TOTAL COST		
Federal Receipts	1002	
G.F. Match	1003	
General Fund	1004	94.6
I-A Receipts	1007	
CIP Receipts	1061	
Other		

Justification

The Anchorage Office of Public Advocacy presently has four attorney positions devoted to criminal defense. These attorneys are also handling several major cases outside the Anchorage area as staff coverage and travel is more cost effective than contracting major cases to private attorneys in rural areas. Current caseloads indicate that these four attorneys cannot absorb the additional cases which would result from this legislation. It is necessary that an additional attorney be added to the Anchorage staff to cover the resultant increased caseload.

/02209.wp/1

Request For New Position

AGENCY ADMINISTRATION

BRU Office of Public Advocacy

COMPONENT Office of Public Advocacy

FY 93

Revised Date:

#2 SJR

LL 92-01

Position Title	No. of Positions	Range / Step	Barg. Unit
Legal Secretary I	1	10/A	GG

Time Status	Staff Months	Location	Election District
PFT	12.0	Anchorage–EBA	8

TYPE OF EXPENDITURE		AMOUNT
Salary		25.1
Benefits		12.0
Premium Pay		
Other		
Total Personal Services		37.1
Travel		
Contractual (Office Space)		2.7
Commodities		1.0
Equipment		7.4
Other		
Total Cost		48.2
FUNDING SOURCE FOR TOTAL COST		
Federal Receipts 1002		
G.F. Match 1003		
General Fund 1004		48.2
I-A Receipts 1007		
CIP Receipts 1061		
Other		

Justification

The Anchorage Office of Public Advocacy presently has three legal secretary positions providing clerical support, 15 professional positions, six VISTA volunteers, and the VGAL program. The addition of an attorney with a full caseload necessitates the addition of another secretary. The clerical workload generated by an additional attorney cannot be absorbed by the current clerical staff.

6/1/02209.wp/2

Request For New Position

AGENCY ADMINISTRATION

BRU Office of Public Advocacy

COMPONENT Office of Public Advocacy

FY 93

Revised Date:

HB 554

Schleuss & McComas
ATTORNEYS AT LAW
500 L STREET, SUITE 300
ANCHORAGE, ALASKA 99501
(907) 258-7807
FAX (907) 276-1158

May 1, 1992

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

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

RE: House Bill 554 and 555

Dear Representatives Carney and Lincoln:

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

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

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

Sincerely yours,

LAW OFFICES OF SCHLEUSS & McCOMAS

Christine S. Schleuss

CSS:3842\dm
Enclosure

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

POSITION PAPER

HOUSE BILL NO. 554

(Governor Hickel's Crime Bill No. 1)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This proposal is a bad idea and should be rejected.

HB

555

(7)

HOUSE COMMITTEE REPORT

Date Referred: May 6, 1992 FURTHER REFERRAL: Finance

Date of Committee Action: 5.9.92

The JUDICIARY Committee considered: HB 555

HOUSE BILL NO. 555 CRIMINAL LAW AND PROCEDURE

"An Act relating to criminal law and procedure; relating to proceedings regarding delinquent minors; and amending Alaska Supreme Court Rule of Appellate Procedure 215, Alaska Supreme Court Rules of Criminal Procedure 6, 11, 24, and 35, Alaska Supreme Court Delinquency Rule 10, and Alaska Supreme Court Rules of Evidence 609 and 704; and providing for an effective date."

RECOMMENDATIONS: be replaced with CS HB 555 (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)

[ ] fiscal impact _____
[ ] zero fiscal note _____

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) _____
[✓] zero fiscal note(s) Admin(x2), Corrections; Law; DPS (ALL DATED 2-24-92)

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Dave Donley	✓	Wm T. Lorenzen		✓	
Terry Martin	✓				
Mike Miller	✓				
Mark Hanley	X				

Dave Donley
CHAIRMAN'S SIGNATURE

FISCAL NOTE

No. 5
Bill Version: HB 555
(H) Publish Date: 2-24-92

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Public Safety

Title: Criminal Prosecution Amendments BRU: Alaska State Troopers

Component: Detachments

Sponsor: Rules

Requestor: Governor COMPONENT SERIAL NO. | | 7 | 9 | 9 |

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)
Most of the changes made in this bill are procedural, and are not expected to have a fiscal impact on the Department of Public Safety.

Prepared By: Gayle A. Horetski Phone: 465-4322

Division: Commissioner's Office Date: 1/30/92

Approved by Commissioner: Richard L. Burton

Agency: Department of Public Safety Date: 1/30/92

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

Rev 10/7/91

COMMITTEE COPY

FISCAL NOTE

No. 4
Bill Version: HB 555
(H) Publish Date: 2-24-92

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Department of Law

Title: "relating to criminal law and procedure...amending...Court Rules..." BRU: Prosecution

Component: All

Sponsor: Rules by Request of Governor

Requestor: Office of the Governor COMPONENT SERIAL NO. [ ][ ][ ][ ]

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:						

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.

Richard L. Pegues

Prepared By: Richard L. Pegues, Director Phone: 465-3672

Division: Administrative Services Date: February 18, 1992

Approved by Commissioner: Charles E. Cole, Attorney General

Agency: Department of Law Date: February 18, 1992

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

Rev 10/7/91

COMMITTEE COPY

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. _____

The bill deals with tailored amendments to the state laws governing criminal prosecutions. Some amendments were proposed by this department to respond to court cases. All of the amendments were designed to make criminal prosecutions fairer and more effective in the state. The bill is designed to level the playing field between state and criminal defendants. The end result is to give the public more confidence in the state's abilities to prosecute criminal defendants. The department's section-by-section analysis follows below.

Section 1. Section 1 amends Alaska's accomplice liability statute to provide that an accomplice is liable for the conduct of the person he aids or abets if he acts with the culpable mental state with respect to the result that is sufficient for the commission of the crime. This amendment is in response to the court of appeals' recent decision in Echols v. State, Op. No. 1164 (Alaska App. Oct. 4, 1991), which now makes it more difficult to prosecute an accomplice than it is to prosecute the principal. The effect of the amendment is to reverse the court's decision and, therefore, this change will not have any fiscal impact on the department.

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

Section 4. Section 4 prevents a convicted, incarcerated person from securing a release on bail simply by filing an application for post-conviction relief. Instead, the court must rule on the merits of the application and find that the person is entitled to relief before the person may be released. This is a custody provision and will not have a fiscal impact on the department.

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

Sections 6 and 26. Sections 6 and 27 expand the permissible cases in which hearsay evidence may be presented in a grand jury proceeding from prosecutions for sexual offenses to all felony

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. _____

cases. Circumstances must indicate that the statement is reliable and the witness must either testify at the proceedings or be available to testify at trial. Furthermore, the grand jury is given the ability to require the prosecuting attorney to produce the witness whose testimony is being offered into evidence. Federal courts have for years permitted hearsay in grand jury proceedings; this would allow the same practice in state proceedings. This is a procedural provision and will not have a fiscal impact on the department.

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

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

This new procedure, which is recommended by the Model Penal Code, accomplishes two ends. First, it resolves the charges against the defendant within a year; a committed defendant may no longer be tried years after the charges were filed. Second, this procedure provides a more appropriate disposition for permanently incompetent defendants who present a danger to others and have been found guilty of a serious violent crime. The civil commitment, which is appropriate for persons who are not dangerous, is replaced by the commitment proceedings applied to defendants found not guilty by reason of insanity. The defendant may be held in custody

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. _____

by the commissioner of health and social services for as long as the defendant could have been imprisoned on the criminal charges. The defendant may be released upon proving that he no longer suffers from a mental illness that causes him to be dangerous to the public. The defendant may also be conditionally released if he or she can be adequately controlled and treated in the community with proper supervision. These amendments provide for more orderly and appropriate handling of criminal charges against permanently incompetent defendants and should not have a fiscal impact on the department.

Sections 10 and 11. Sections 10 and 11 amend the statute governing suspended impositions of sentence. Current law allows a court to suspend the imposition of sentence, and place the defendant on probation, for a period of time equal to the maximum period of imprisonment that could be imposed for the offense. This means that, when a court suspends imposition of sentence for a class B misdemeanor offense, it may do so for only 90 days. This makes some courts reluctant to grant an SIS for class B misdemeanors, because the defendant can be placed on probation for only such a short period of time. Section 10 amends the statute to extend the minimum length of time that imposition of a sentence may suspended to a period of one year. Section 11 clarifies confusing language in AS 12.55.085(c), governing the period during which the court may impose sentence following the revocation of an SIS. These SIS procedural changes will not have a fiscal impact.

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

Section 14. Section 14 concerns defendants who are subject to presumptive sentencing because of their prior convictions. Under current law, if a defendant denies the prior convictions, a hearing is scheduled before the court to resolve the matter. This

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CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. _____

amendment simply requires the defendant to make the denial under oath. This is intended to eliminate frivolous denials, which are more readily made when the defendant is not under oath and thus not subject to prosecution for perjury. This procedural amendment will not have a fiscal impact.

Section 15. Section 15 addresses the sentencing aggravator set out in AS 12.55.155(c)(18)(A), which applies in assault cases when the offense was committed against a spouse, a former spouse, or a member of the social unit comprised of those living together in the same dwelling as the defendant. This section adds former members of the household to the statute's list, to keep parity with the statute's inclusion of former spouses. This is a sentencing provision and it will not have a fiscal impact on the department.

Section 16. Section 16 amends AS 18.85.120(c), which governs judgments entered by the court against indigent criminal defendants for the cost of defense counsel provided by the state. This section removes the provision in the statute that prohibits the state from executing on a judgment against an incarcerated defendant until three years following the defendant's release unless the state petitions the court for a special order and show good cause for it. There does not appear to be any reason to categorically delay for three years any recovery on the court's judgment. This amendment will not have a fiscal impact on the department. It should enhance recoveries for the state treasury.

Section 17. Section 17 corrects an oversight in the discretionary parole statute, which prohibits a prisoner from being released until the prisoner has served any mandatory sentence or a presumptive sentence imposed for a class A or unclassified offense. Although citing the statutes for both mandatory minimum and presumptive sentences for class A and unclassified offenses, AS 33.16.100(d) refers only to the mandatory minimum sentences. This amendment makes an explicit reference to the presumptive sentences, as well. This is a technical amendment and will not have a fiscal impact.

Sections 18, 19 and 24. Sections 18, 19, and 24 authorize the use of hearsay evidence in the probable cause portion of a detention hearing against a juvenile being prosecuted for a sexual offense. This is analogous to the use of hearsay evidence in grand jury proceedings against adults. Existing law authorizes the use of hearsay evidence at grand jury proceedings on sexual offenses. This amendment will not have a fiscal impact on the department.

Section 22. Section 22 amends Criminal Rule 24(d) to give defendants the same number of peremptory challenges in felony cases as the state has. Currently, defendants are given ten, compared

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CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. _____

with the state's six. The amendment does not change the provision in Rule 24(d) that authorizes courts to allow defendants additional peremptory challenges when two or more are joined together for trial. This is a procedural amendment, and it will not have a fiscal impact on the department.

Section 25. Section 25 extends from five to ten years the period of time during which a witness's conviction for a crime of dishonesty may be used to impeach the witness. It also measures the time period from the date of the person's unconditional discharge on the offense, rather than from the date of the conviction. This is a procedural amendment. There will not be a fiscal impact on the department.

Section 26. Section 26 amends the Rules of Evidence to prohibit an expert witness from offering an opinion on the ultimate issue of fact as to whether a defendant did or did not have the necessary mental state or condition to commit the crime charged or to constitute a defense to the crime charged. Instead, this issue is to be left to the trier of fact. This is a procedural amendment and it will not have a fiscal impact.

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FISCAL NOTE No. 3

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Bill Version: HB 555
(H) Publish Date: 2-24-92

Revision Date: _____ Department Affected: Corrections

Title: "An Act relating to criminal law and procedure..." BRU: Statewide Operations

Component: Various

Sponsor: By Request of the Governor

Requestor: Office of the Governor 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						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Carl Nickel, Director Phone: 465-3376

Division: Administrative Services Date: 01/24/92

Approved by Commissioner: Lloyd Hames, Commissioner

Agency: Department of Corrections Date: 01/24/92

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

Rev 10/7/91

COMMITTEE COPY

FISCAL NOTE

No. 2
Bill Version: HB 555
(H) Publish Date: 2-24-92

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date:
Title: "An Act relating to criminal law and proceedings regarding delinquent minors; and amending Alaska Supreme Court Rule of Appellate Procedure 215 . . ."
Sponsor:
Requestor:

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

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	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:

ANALYSIS: (Attach a separate page if necessary.)
While some fiscal impact may be felt with respect to public counsel services, no hard figures can be generated. As such, a zero fiscal note is being submitted.

Prepared by: John B. Salemi, Public Defender
Division: Public Defender Agency
Phone: 279-7541
Date: February 4, 1992

Approved by Commissioner: Nancy Bear Usera
Agency: Administration
Date: 2/13/92

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

Rev 10/07/91
6/leg92/03726.KP/1

COMMITTEE COPY

No. 1

FISCAL NOTE

Bill Version: HB 555

(H) Publish Date: 2-24-92

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date:

Title: "An Act relating to criminal law and procedure; . . ."

Sponsor: Governor

Requestor: Rules Committee

Department Affected: Administration

BRU: Office of Public Advocacy

Component: Office of Public 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, Director
Division: Office of Public Advocacy

Phone: 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).

Rev 10/07/91
1/LEG92/02308A.kp

COMMITTEE COPY

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(7)

HOUSE COMMITTEE REPORT

Date Referred: February 24, 1992 FURTHER REFERRALS: Judiciary, Finance

Date of Committee Action: 5/5/92

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered: HB 555

HOUSE BILL NO. 555 CRIMINAL LAW AND PROCEDURE

"An Act relating to criminal law and procedure; relating to proceedings regarding delinquent minors; and amending Alaska Supreme Court Rule of Appellate Procedure 215, Alaska Supreme Court Rules of Criminal Procedure 6, 11, 24, and 35, Alaska Supreme Court Delinquency Rule 10, and Alaska Supreme Court Rules of Evidence 609 and 704; and providing for an effective date."

RECOMMENDATIONS: [✓] the same title
be replaced with CS HB 555 (HES) [ ] 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)

[ ] fiscal impact _____

[✓] zero fiscal note

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) _____

[✓] zero fiscal note(s) 2) Admin 2/24, 1) Corrections 2/24, 1) LAW 2/24, 1) PS 2/24

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Rhea Davis	✓			✓	
J-C. Gonzalez	✓				
Mary Miller	✓			✓	
		Betty J. Davis			✓

CHAIRMAN'S SIGNATURE

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

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

The bill

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

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

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

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

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

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

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

HB 555 improves the criminal justice system and "levels the playing field" for the state by making a series of amendments to laws governing criminal prosecutions.

The bill

☐ amends court rules to give the state the same number of peremptory juror challenges in felony cases as the defendant. Defendants are now given ten; the state only six. (Section 22)

☐ makes it easier to collect court-ordered costs from criminal defendants. (Section 16)

☐ makes needed changes in the laws governing plea agreements between defendants and the state, and provides that a defendant who agrees to a particular sentence cannot appeal that sentence as being excessive, or seek post-conviction modification for a reduction of the sentence. (Sections 12, 13, 21, and 23)

☐ reverses a recent court of appeals decision that has made it more difficult to prosecute an accomplice than it is to prosecute the person who committed the crime. (Section 1)

☐ prevents a convicted, incarcerated person from securing a release on bail simply by filing an application for post-conviction relief. (Section 4)

☐ makes it a crime to violate conditions of release. Not only will this encourage greater compliance by a defendant with court-ordered conditions, but it may also prompt courts to release a defendant on bail more frequently, and thus reduce jail overcrowding, knowing that the defendant has good reason to comply with the conditions the court imposes. (Section 5)

☐ expands the permissible cases in which reliable hearsay evidence may be presented in a grand jury proceeding. Circumstances must indicate that the statement is reliable and the witness must either testify at the proceedings or be available to testify at trial. For years, federal courts have permitted hearsay in grand jury proceedings; this bill would allow the same practice in state proceedings. (Sections 6 and 27) The bill also authorizes the use of reliable hearsay evidence to determine whether probable cause exists that a minor is delinquent in connection with certain sexual offenses. (Sections 18, 19, and 24)

The bill also

☐ corrects problems encountered in dealing with defendants who are permanently incompetent to stand trial.(Sections 7, 8, and 9) ☐ gives courts additional flexibility in suspending imposition of sentence in minor criminal matters.(Sections 10 and 11) ☐ amends the state's hindering prosecution statutes to make it criminal to render assistance, not just to a person known to have committed a crime, but also to a person known to have been charged with a crime.(Sections 2 and 3) ☐ simplifies some sentencing proceedings by creating a disincentive for defendants to lie about their prior criminal record.(Section 14) ☐ expands current law to make it an aggravated offense to assault former household members.(Section 15) ☐ amends court rules to extend from five to ten years the period of time during which a witness's conviction for a crime of dishonesty may be used to impeach the witness.(Section 25)

This bill makes criminal prosecutions fairer and more effective.

Alaska Action Trust
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(907) 258-4040

POSITION PAPER

HOUSE BILL NO. 555

(Governor Hickel's Crime Bill No. 2)

With certain exceptions discussed in this Position Paper, the Alaska Action Trust opposes House Bill No. 555.

SECTION 1: This Section is intended to overrule the decision by the Alaska Court of Appeals in Echols v. State, ____ P.2d _____ (Alaska App. 1991). The purpose of this amendment is to lessen the proof required to convict someone as an accomplice to a crime. It will inevitably result in greater numbers of people being prosecuted as accomplices to crime. The law as it is written now, and construed in Echols, is that the prosecutor must prove that the accomplice has intended the acts which make up the crime rather than acting with a lesser mental state.

As presently written, the law is the fair way to convict of crimes a person who does not actually commit the act, but is instead guilty because he was a helper of someone who committed the act. Because his culpability is less than the actual person who committed the criminal act, he should not be found criminally liable unless he intended the act to occur which was a crime.

Even as written, the law does not, and should not, require the state to prove that the helper intended to commit a

crime. Instead, all that is required is that the helper intended for particular acts to be done, which acts had been defined by the law as criminal acts.

No change to AS 11.16.110 is necessary. The law works well as written and fairly differentiates between those who commit criminal acts, and those who help people who commit criminal acts. Certainly, this section is better than adopting any of the conspiracy bills being proposed, but even this section goes too far.

SECTION 2: The Alaska Action Trust has no opposition to the changes proposed in Section 2 which amend AS 11.56.770(a).

SECTION 3: The Alaska Action Trust has no opposition to the Section 3 with the proposed amendments to AS 11.56.780(a).

SECTION 4: Section 4 should not be adopted by the legislacure. This Section is very poorly drafted and it is unclear whether the bill would act to deny bail to all people pending appeal, or only to people who have had their appeals denied and are filing Criminal Rule 35 motions. In any case, as presently written under AS 12.30.040(b) a person who is convicted of an unclassified felony or a Class A felony is already denied bail after his conviction even if he files a Rule 35 motion. There is absolutely no reason to deny bail to all individuals convicted of a crime, however minor, including, apparently misdemeanors, and who are no

danger to their communities. The law as written provides adequate protection against the release after conviction of dangerous offenders.

As it is, post-conviction bail for individuals convicted of less serious crimes is not a matter of right. Very few individuals who have lost their appeals and have been ordered to serve their sentences would be granted bail pending a Rule 35 motion. For those rare individuals convicted of Class B and less serious offenses who have a possibly meritorious Rule 35 motion, a judge should have discretion to grant bail. Otherwise they would serve their entire sentence before a decision could be made on the merits of the motion.

SECTION 5: The proposed amendment AS 12.30.060(a)(1) makes clear that punishment for failure to appear on a felony is a Class C felony, and therefore, subject to presumptive sentencing. To the extent that this amendment changes language from a generalized sentence of not more than five years to a sentence to a Class C felony, the Trust has no opposition to the amendment.

The proposed amendment to AS 12.30.060(a)(2) is a bad idea. To make the punishment for failure to appear on a Class B misdemeanor (subject to a maximum sentence of 90 days), a sentence of one year is arbitrary and unfair. A person should not be punished more harshly for failure to appear for a minor misdemeanor than the maximum sentence if convicted of the misdemeanor itself.

The amendment proposed in AS 12.30.030(b) is a very bad idea and should be rejected. It should remain discretionary with the judge hearing the facts and extenuating circumstances to decide whether an individual should forfeit his security for any violation of a condition of release. These provisions will make bail bondsmen much less willing to underwrite bail because of the increased likelihood the bail will be forfeited. Inevitably, this provision will cause tremendous and totally unnecessary overcrowding of the jails. Bondsmen will be unwilling to run the risk of losing a bond for any minor violation of a condition of release.

Even a minor violation of bail would result in a person losing their bail, and being charged with a new crime. Anytime a new crime is created, more people go to jail.

A person who substantially violates bail is already subject to be remanded to custody. This risk of a remand to custody is an adequate deterrent to individuals who might consider violating bail. Making it a new crime to violate bail, no matter how minor the violation, is unfair and unnecessary. In addition, it is very likely that this statute will not be applied fairly to all defendants, but will be used to discriminate against certain groups, likely having such discrimination based on lifestyle and location. It will much more likely result in a greater number of prosecutions for bail violations for rural Alaskans whose precise whereabouts and the conditions of bail are known to most people within the small rural community.

SECTION 6: The Alaska Action Trust vigorously opposes permitting the citizens of Alaska to be indicted for felony crimes where the only information heard by the grand jury is hearsay. In most instances, hearsay evidence is excluded from trial and grand jury because of the recognized fact that it is unreliable. To the extent it is reliable, hearsay is already admitted under the exceptions to the hearsay rule as set out in Evidence Rule 801, 802, 803, and 804.

There is absolutely no justification for permitting the indictment of a citizen in a case where the grand jury has no opportunity to hear the evidence being used against a person and thus, judge for itself whether the evidence is strong enough to merit a felony prosecution. This Section greatly increases the risk that citizens of this state will be prosecuted based on untrue, unreliable evidence which would not be adequate to justify prosecution if the grand jurors heard for themselves the testimony from those who have first hand knowledge of the facts.

This Section would violate the protection provided in Alaska's Constitution that an individual can only be charged with a felony if a grand jury finds there is sufficient evidence to charge an individual with a felony. The grand jury's most important job is to screen out cases where there is not sufficient evidence to justify a conviction. If government agents are permitted to come in and tell second and third hand their version

of what the evidence may be, innocent people will be wrongly prosecuted.

This amendment will not lessen any financial burden to the state. This is so because Criminal Rule 6 already permits telephonic testimony of out-of-town witnesses. In addition, expert reports can already be presented without the expense of requiring the expert to testify.

SECTION 7 through 9: These proposed revision create a new category of "permanently incompetent defendants." These proposed amendments are a major change from current law, which requires civil commitment procedures if a person remains incompetent.

The proposed amendment unnecessarily complicates a difficult area and offers no viable solution. Essentially, the result of the proposed amendments is that incompetent individuals would be forced to be tried on the charges and, if convicted, be committed and treated as if found not guilty by reason of insanity.

The proposed charges are very likely unconstitutional. They would result in incompetent individuals being required to go to trial and defend against the cases against them. Since the law clearly prohibits the trial of incompetent individuals, this effort to circumvent that law would fail on constitutional grounds.

SECTIONS 10 THROUGH 13: The Alaska Action Trust has no oppositions to the amendments proposed in Sections 10 through 13.

SECTION 14: The Alaska Action Trust opposes the proposed amendments to AS 12.55.145(c). Most denials of prior convictions are made by counsel and are based on legal arguments concerning the invalidity of the prior conviction. Included among grounds for denying the validity of the prior conviction are that the elements are not the same as the elements of a felony under Alaska law, that the defendant did not waive his right to counsel in the prior case, and that the defendant was denied his right to a jury trial in the prior case. There are many other similar legal grounds for denying the validity of a prior conviction. It is unclear how the oath requirement would apply to legal denials. The proposed amendment would add nothing and would unnecessarily confuse this procedure.

SECTION 15: The Alaska Action Trust has no opposition to the amendment to AS 12.55.155(c)(18) proposed in Section 15.

SECTION 16: The Alaska Action Trust has no opposition to the amendment proposed in Section 16.

SECTION 17: The Alaska Action Trust has no opposition to the amendment to AS 33.16.100(b) proposed in Section 17.

SECTIONS 18 AND 19: The Alaska Action Trust has no position on the proposed amendments to AS 47.10.140 proposed in Sections 18 and 19.

SECTION 20: The Alaska Action Trust has no opposition to the amendment to the Appellate Rules proposed in Section 20.

SECTION 21: The Alaska Action Trust has no opposition to the amendment to Criminal Rule 11(e) proposed in Section 21.

SECTION 22: The Alaska Action Trust vigorously opposes the proposed amendment to Criminal Rule 24(d) proposed in Section 22. Criminal Rule 24, which allows the state six peremptory challenges and the defense ten peremptory challenges in felony jury trials is based on Federal Criminal Rule 24, which also allows the same number of peremptory challenges to the prosecution and to the defense.

Over the years, in 1962 and 1976, recommendations have been made to Congress that it give these same number of peremptory challenges to the prosecution as to the defense by reducing from ten to six the number of peremptory challenges allowed to the defense. Congress rejected the proposal.

The House Judiciary Committee noted that prosecutors used the peremptory challenge to systematically exclude classes of people. The defense did not. Therefore, Congress concluded that providing each side with an equal number of peremptory challenges was a bad idea. See the Notes from the House Judiciary Committee, 95 Congress 1st Session (1977).

It is not often that the defense must use all ten peremptory challenges. They are only used in cases were there is extreme publicity which causes the jury panel to be prejudiced against a particular defendant or in small communities where many members of the jury panel will already know the defendant and know

the allegations against him through community news sources. Elimination of the additional peremptory challenges will mean that defense attorneys will be required to rely to a much greater extent on challenges for cause. The process for challenging a juror for cause is very time consuming. Eliminating the number of peremptory challenges will lengthen jury selection, not shorten it.

SECTION 23: The Alaska Action Trust opposes the amendments to Criminal Rule 35(a) proposed in Section 23. This Rule prohibits any modification to a plea bargained sentence. The problem is that sometimes the state and the defense agree to certain modifications of sentence. In cases where both sides agree that a modification to a plea bargained sentence is appropriate, perhaps to provide for a circumstance overlooked by the parties at the time of the plea bargain, a modification would be impossible.

This amendment is unnecessary because plea bargained sentences are never modified over the prosecutions objection. If an amendment is deemed necessary, it should specifically allow modifications where both the state and the defense agree to the modification.

SECTION 24: The Alaska Action Trust has no position on the amendments to Court Delinquency Rule 10(c) as proposed in Section 24.

SECTION 25: The Alaska Action Trust vigorously opposes the amendments to Evidence Rule 609(b) as proposed in Section 25. This proposal applies to both civil and criminal trials. Currently

Alaska Evidence Rule 609 provides that evidence of a conviction of a crime of dishonesty or false statement is admissible if no more than five years have elapsed since the date of conviction. If necessary for a fair determination of the case, evidence of older convictions may be admitted with respect to witnesses other than the defendant.

The Commentary to Evidence Rule 609 tells that the drafters of the evidence rule thoughtfully and carefully considered all available time dates and determined that convictions more than five years old are generally stale and not probative of a witnesses credibility. The drafters told a time limit shorter than the federal time because they concluded a shorter time was a current reflection of the constitutional right to privacy enjoyed by the citizens of Alaska.

The proposed amendment would be extremely detrimental to civil plaintiffs. For example, the victim of an automobile accident, the victim of a physical or a sexual assault, and the victim of other kinds of negligent or intentional misconduct should not be forced to explain away to a jury an old, irrelevant conviction. The jury should focus on the issues at trial, not on some skeleton from a ten year old closet. The same is true for criminal defendants, and for witnesses for all sides.

SECTION 26: The Alaska Action Trust has no opposition to the amendments to Evidence Rule 704 proposed in Section 26.

HB

569

HOUSE COMMITTEE REPORT

(7)
Date Referred: April 6, 1992 FURTHER REFERRALS:

Date of Committee Action: 5·1·92

The JUDICIARY Committee considered: HB 569

HOUSE BILL NO. 569 LONGEVITY BONUS PROGRAM REGULATIONS

"An Act relating to regulations to implement the longevity bonus program."

RECOMMENDATIONS: [ ] the same title
be replaced with _____ [ ] a new title
[ ] have attached amendments(s)
[✓] do pass
[ ] do not pass
[ ] no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

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

[ ] fiscal impact _____ [ ] fiscal note(s) _____

[ ] zero fiscal note _____ [✓] zero fiscal note(s) Admin, (4-6)

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Mike Miller	✓	Dave Donley		✓	
Terry Martin	✓				
[illegible]	✓				
Kevin [illegible]	✓				

Dave Donley
CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 569

Revision Date:
Title: An act relating to regulations to implement the Longevity Bonus Program
Sponsor: Rules Committee by Request
Requestor: State Affairs

Department Affected: Administration
BRU: Pioneers' Benefits
Component: Longevity Bonus

COMPONENT | 0 | 0 | 2 | 7 |

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: Dennis L. DeWitt, Director
Division: Pioneers' Benefits
Phone: 465-4400
Date: April 2, 1992

Approved by Commissioner: Nancy Bear Usera NBC
Agency: Administration
Date:

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

Rev 10/07/91
b:\leg\HB569\1

ALASKA STATE LEGISLATURE

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Shirley Craft
Alaska State Senator

MEMORANDUM

To: Representative Dave Donley, Chair
House Judiciary Committee

From: Senator Shirley Craft

Date: April 7, 1992

Re: HB 569, "An Act relating to regulations to implement the longevity bonus program."

On November 21, 1990, the Department of Administration adopted regulations that would change the longevity bonus payment schedule from prospective to retrospective in nature. (It wasn't a simple issue and had created a $9.75 million debt to the state.)

On March 13, 1992, the Administrative Regulation Review Committee met to scrutinize emergency regulations adopted by the Department of Administration to correct the problem.

The emergency regulations were the solution to the "duplicate payment" problem created by the previous administration. I was informed that there may be a legal problem with the emergency regulations. An assistant attorney general stated at the hearing, that although they could advise the Division of Pioneer Benefits on what they should do, they could not tell them what to do, because the longevity bonus program is not subject to the Administrative Procedures Act (APA).

The committee has unanimously agreed that there is no reason why this program should not be subject to the APA. The "duplicate payment" problem may have been prevented if they had followed the procedures outlined in the APA when the regulations were adopted.

HB 569 would require the longevity bonus program to adhere to the Administrative Procedures Act when adopting regulations. HB 569 received unanimous support in the House State Affairs Committee. The Department of Administration's position is neutral.

I would appreciate early scheduling of this measure.

DIVISION OF LEGAL SERVICES

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MEMORANDUM February 18, 1992

SUBJECT: Longevity Bonus Payments (Work Order No. 7-LS2019)

TO: Senator Shirley Craft

FROM: Tamara Brandt Cook
Director TBC

You have supplied me with information that indicates that, while longevity bonus payments in the past have been made at the beginning of the bonus month, the Department of Administration implemented a new payment schedule at the beginning of 1991 under which the payment for a bonus month is made two months later. This lag time is designed to enable the department to verify eligibility, as I understand it. However, to accomplish the transition the department sent duplicate bonus payments for the months of January and February 1991 during March and April, so that each recipient would receive a bonus every month. Then in May the department sent out the payments for March under the new two month lag schedule.

Under 2 AAC 40.175(f) the department will take action to recover duplicate payments when a recipient becomes ineligible, is reinstated, or is terminated from the program. Because the of the extra payments made for January and February, the longevity program is short of money and may be seeking a supplemental appropriation. Since the change may affect the appropriation process, you have asked whether the department may make this change without legislative involvement.

The commissioner of administration is charged with administering the longevity bonus program. (AS 47.45.100) There is no provision for legislative involvement in decisions dealing with the administration of the program, and it is unlikely that the legislature could play much of a role in these matters without violating the separation of powers doctrine.

However, there are limitations to what an agency may do by regulation, and no regulation may substantively modify what is clearly provided for by statute. (AS 44.62.030; State v. Alyeska Pipeline Serv. Co., 723 P.2d 76 (Alaska 1986)) While regulations relating to the longevity bonus program need not comply with the