

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672  
7472 SENATE JUDICIARY

*23*

FISCAL NOTE

2/20/92 Work DRAFT  
 Judiciary Committee  
 BILL NO. SB 343

STATE OF ALASKA  
 1992 LEGISLATIVE SESSION

Revision Date: February 24, 1992  
 Title: "An Act relating to the crime of conspiracy."  
 Sponsor: Senator Halford  
 Requestor: Senate Judiciary Committee

Department Affected: Department of Law  
 BRU: Prosecution  
 Component: All

COMPONENT SERIAL 

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Expenditures/Revenues: (Thousands of Dollars)

85 through 91

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

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

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

POSITIONS:

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

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.) The 2/20/92 Judiciary Committee work draft for SB 343, reduces the bill's scope to "heinous offenses", which the work draft defines as offenses against a person under AS 11.41, punishable as an unclassified or class A felony, and offenses involving controlled substances under AS 11.71 punishable as an unclassified or class A felony. Consequently, the department's fiscal note impact will continue to be zero.

Prepared by: Richard I. Pegues, Director  
 Division: Administrative Services

Phone: 465-3672  
 Date: February 24, 1992

Approved by Commissioner: Charles E. Cole, Attorney General  
 Agency: Department of Law

Date: February 24, 1992

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

## CONTINUATION OF FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 343

This bill creates a crime of conspiracy when two or more people agree to commit a criminal offense and one of them does some act in furtherance of the agreement. The bill extends the application of the conspiracy law to specific crimes: certain felony offenses under Title 11 (criminal code) and Title 4 (alcoholic beverages).

The Department of Law believes there will not be a significant increase in the number of cases due to the conspiracy law. Current law permits prosecution of those who directly commit crimes, as well as those who are accomplices (AS 11.16). Because our present accomplice law allows us to prosecute people who aid and abet a criminal, it is unlikely that the conspiracy law (which requires proof of an agreement to commit the crime) will result in any more cases being prosecuted. Instead, the crime of conspiracy will be added as another count in a case that would have been prosecuted anyway.

In those cases that cannot be charged under current law, the crime of conspiracy will permit some additional cases to be prosecuted and some fiscal impact could result, although there may be offsetting cost savings.

The major effect of the 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.

Naturally the effects of any new law cannot be predicted with precise certainty. However, conspiracy laws and stiff drug penalties are nothing new in the rest of the country. United States Attorney Wev Shea and Anchorage District Attorney Ed McNally, himself a former federal drug prosecutor, have experience in dealing with these laws, and in their experience caseloads are not increased, but the government's case does get stronger and there are efficiencies from joint trials.

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. SB 343

Revision Date: \_\_\_\_\_ Department Affected: Department of Law

Title: "An Act relating to the crime of Conspiracy." BRU: Prosecution

Component: All

Sponsor: Senator Halford

Requestor: Senate Judiciary Committee

COMPONENT SERIAL NO. 

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85 through 91

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: \_\_\_\_\_

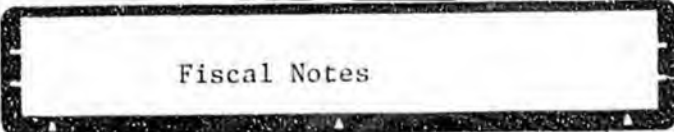
ANALYSIS: (Attach a separate page if necessary.)  
  
Please see the attached analysis.

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

Division: Administrative Services Date: February 13, 1992

Approved by Commissioner: Richard I. Peques / FOR Charles E. Cole, Attorney General

Agency: Department of Law Date: February 13, 1992



## CONTINUATION OF FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 343

This bill creates a crime of conspiracy when two or more people agree to commit a criminal offense and one of them does some act in furtherance of the agreement. The bill extends the application of the conspiracy law to specific crimes: certain felony offenses under Title 11 (criminal code) and Title 4 (alcoholic beverages).

The Department of Law believes there will not be a significant increase in the number of cases due to the conspiracy law. Current law permits prosecution of those who directly commit crimes, as well as those who are accomplices (AS 11.16). Because our present accomplice law allows us to prosecute people who aid and abet a criminal, is it unlikely that the conspiracy law (which requires proof of an agreement to commit the crime) will result in any more cases being prosecuted. Instead, the crime of conspiracy will be added as another count in a case that would have been prosecuted anyway.

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Naturally the effects of any new law cannot be predicted with precise certainty. However, conspiracy laws and stiff drug penalties are nothing new in the rest of the country. United States Attorney Wev Shea and Anchorage District Attorney Ed McNally, himself a former federal drug prosecutor, have experience in dealing with these laws, and in their experience caseloads are not increased, but the government's case does get stronger and there are efficiencies from joint trials.

Revision Date: \_\_\_\_\_  
Title: "An Act relating to the crime of conspiracy"

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

Sponsor: Senator Hallford  
Requestor: Senate Judiciary

COMPONENT SERIAL NO. 

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

OPERATING	FY 93	FY 94	FY 95	FY 95	FY 97	FY 98
PERSONAL SERVICES	360.9	371.7	382.9	394.4	406.2	418.4
TRAVEL	15.0	15.5	16.0	16.5	17.0	17.5
CONTRACTUAL	30.0	31.0	32.0	33.0	34.0	35.0
SUPPLIES	4.0	4.1	4.2	4.3	4.4	4.5
EQUIPMENT	6.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	415.9	422.3	435.1	448.2	461.6	475.4

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

GENERAL FUND	415.9	422.3	435.1	448.2	461.6	475.4
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	415.9	422.3	435.1	448.2	461.6	475.4

POSITIONS:

FULL-TIME	6.0	6.0	6.0	6.0	6.0	6.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: \_\_\_\_\_

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

Changes in CSSB 343 (JUD) reflect NO FISCAL CHANGE from the original fiscal note. This fiscal note is appropriate.  
2/18/92 R  
date Comte Aide (initial)

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

Phone: 279-7541  
Date: January 27, 1992

Approved by Commissioner: Nancy Bear Usura  
Agency: Administration

Date: 1/28/92

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

## ANALYSIS: (continued)

Title: "An Act related to the crime of conspiracy."

This bill creates a new crime of conspiracy if a person with the intent to promote or facilitate an illegal activity agrees to engage in or cause the performance of that activity and that person or one of the persons does an overt act in furtherance of the conspiracy. Illegal activity is defined to include all felony crimes against persons, all felony crimes against public administration and order, all felony crimes involving alcoholic beverages under AS 04 and unclassified, felony A and felony B drug offenses and felony A and felony B property offenses. In short, the crimes included are numerous. The only crimes where there could not be a conspiracy would be misdemeanors and C felony level property and drug offenses. Each conspiracy crime would be punished as a one step lower crime than the object crime of the conspiracy.

The net effect of this bill is to enormously increase the potential pool of defendants by not only covering a broad range of crimes, but also by making criminal a broader range of conduct. Under current accomplice liability statutes there must be a "substantial step towards the commission of the target offense." Under conspiracy there is no requirement that it progress past "an overt act." Therefore, multiple co-defendants will be generated even when a completed crime or a substantial step toward a completed crime is absent. The conspiracy statute penalizes speech and any overt act however preliminary in nature.

The scope of enforcement authority is expanded to include anyone only peripherally involved. There will be a larger and more complicated investigation and the net of prosecution will spread wider. Because such a law expands the persons who might be charged in any given crime, it also expands the pool of persons who might legitimately claim fifth amendment privileges. Additionally, multiple defendant trials, whether handled in a single trial or in numerous separate trials are extremely time consuming. The Public Defender Agency must assume that it will be appointed in a large number of conspiracy prosecutions just as it is currently appointed in a large number of all of the underlying types of object crimes. It must be assumed the numerous prosecutions will be pursued under this statute because of the current frequency of arrests for the substantive offenses involved.

Investigation in defense of conspiracy cases is extremely time consuming and labor intensive. Cases filed in conspiracy statutes on the federal level and in other states routinely involve substantial attorney time, particularly for preparation of pre-trial motions. The greater impact will more probably lie with the Office of Public Advocacy. The Public Defender Agency will only be permitted, due to legal conflict of interest rules, to represent a single conspirator. The Office of Public Advocacy, through its staff attorneys will be able to represent a single conspirator. The remaining co-conspirators will have to be represented by independent counsel hired under contract by the Office of Public Advocacy.

Due to the incredible breadth of the substantive target crimes of this conspiracy statute and due to the fact that the Department of Law's investigative activity will probably focus on more urban areas, the Public Defender Agency is requesting one experienced attorney, an investigator, and a clerk typist to handle representation of clients in its two largest urban areas. These attorneys and staff will be stationed in Anchorage and Fairbanks, but will represent clients charged with conspiracy on a statewide basis.

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. SB 343

BUDGET ANALYSIS - SB 343

100:	Attorney IV (Anchorage)	86.6	
	Attorney IV (Fairbanks)	98.2	
	Investigator II (Anchorage)	52.3	
	Investigator II (Fairbanks)	54.2	
	Clerk Typist III (Anchorage)	34.2	
	Clerk Typist III (Fairbanks)	35.4	
			360.9
200:	Travel (Attorneys, Investigators, Experts, Witnesses)		15.0
300:	Contractual (Office Space, Experts, Communications)		30.0
400:	Supplies (Office and law library)		4.0
500:	Equipment (one time)		<u>6.0</u>
	Total		415.9

Position Title Attorney IV		No. of Positions 2	Range / Step 24/A	Org. Unit IX
Time Status PFT	Staff Months 24.0	Location Anchorage and Fairbanks		Flection District 20-7
TYPE OF EXPENDITURE		AMOUNT		
Salary		137.7		
Benefits		47.2		
Premium Pay				
Other				
Total Personal Services		184.9	184.9	
Travel			10.0	
Contractual			19.0	
Commodities			2.0	
Equipment			3.0	
Other				
Total Cost			218.9	
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1001		218.9	
I-A Receipts	1007			
CIP Receipts	1061			
Other				
Justification SB 343  These senior felony attorneys will be stationed, one in Anchorage and one in Fairbanks. The Anchorage attorney will represent clients in the First and Third Judicial Districts while the Fairbanks attorney will cover the Second and Fourth Judicial Districts.				

8/LEG92/02716.kp/4

# Request For New Position

AGENCY ADMINISTRATION  
 BRU Public Defender Agency  
 COMPONENT Public Defender Agency

FY 93

Page 4 of 6  
 Revised Date: \_\_\_\_\_

Position Title Investigator II		No. of Positions 2	Range / Step 16/A	Barg. Unit CGU			
Time Status PFT	Staff Months 24.0	Location Anchorage and Fairbanks		Election District 20-7			
TYPE OF EXPENDITURE		AMOUNT					
Salary	75.3	Justification SB 343  These investigators will be based in Anchorage and Fairbanks but will provide services throughout the entire state.					
Benefits	31.1						
Premium Pay							
Other							
Total Personal Services	106.4						
Travel					5.0		
Contractual					7.0		
Commodities					1.0		
Equipment					1.5		
Other							
Total Cost					120.9		
FUNDING SOURCE FOR TOTAL COST							
Federal Receipts	1002						
G.F. Match	1003						
General Fund	1001	120.9					
I-A Receipts	1007						
CIP Receipts	1061						
Other							

8/LEG92/02716.kp/5

Request For  
New Position

AGENCY ADMINISTRATION

BRU Public Defender Agency

COMPONENT Public Defender Agency

FY 93

Page 5 of 6  
Revised Date: \_\_\_\_\_

Position Title Clerk Typist III		No. of Positions 2	Range / Step 8/B	Org. Unit CGU
Time Status PFT	Staff Months 24.0	Location Anchorage and Fairbanks		Election District 2-17
TYPE OF EXPENDITURE		AMOUNT		
Salary		46.8		
Benefits		22.9		
Premium Pay				
Other				
Total Personal Services		69.7	69.7	
Travel				
Contractual			4.0	
Commodities			1.0	
Equipment			1.5	
Other				
Total Cost			76.2	
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004		76.2	
I-A Receipts	1007			
CHP Receipts	1061			
Other				
Justification SB 343  These two support staff positions will be based in Anchorage and Fairbanks.				

8/LEG92/02716.kp/6

**Request For  
New Position**

AGENCY ADMINISTRATION  
 BRU Public Defender Agency  
 COMPONENT Public Defender Agency

**FY 93**

Page 6 of 6  
 Revised Date: \_\_\_\_\_

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. SB 343

Revision Date: \_\_\_\_\_

Department Affected: Administration

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

BRU: Public Defender Agency

Sponsor: Senator Halford

Component: Public Defender Agency

Requestor: Senate Judiciary

COMPONENT SERIAL NO. 

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

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	360.9	371.7	382.9	394.4	406.2	418.4
TRAVEL	15.0	15.5	16.0	16.5	17.0	17.5
CONTRACTUAL	30.0	31.0	32.0	33.0	34.0	35.0
SUPPLIES	4.0	4.1	4.2	4.3	4.4	4.5
EQUIPMENT	6.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>415.9</b>	<b>422.3</b>	<b>435.1</b>	<b>448.2</b>	<b>461.6</b>	<b>475.4</b>

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

GENERAL FUND	415.9	422.3	435.1	448.2	461.6	475.4
FEDERAL FUNDS						
OTHER FUND SOURCE:						
<b>TOTAL</b>	<b>415.9</b>	<b>422.3</b>	<b>435.1</b>	<b>448.2</b>	<b>461.6</b>	<b>475.4</b>

POSITIONS:

FULL-TIME	6.0	6.0	6.0	6.0	6.0	6.0
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 27, 1992

Approved by Commissioner: Nancy Bear Usara

Agency: Administration

Date: 1/28/92

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

## FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. SB 343

ANALYSIS: (continued)

Title: "An Act related to the crime of conspiracy."

This bill creates a new crime of conspiracy if a person with the intent to promote or facilitate an illegal activity agrees to engage in or cause the performance of that activity and that person or one of the persons does an overt act in furtherance of the conspiracy. Illegal activity is defined to include all felony crimes against persons, all felony crimes against public administration and order, all felony crimes involving alcoholic beverages under AS 04 and unclassified, felony A and felony B drug offenses and felony A and felony B property offenses. In short, the crimes included are numerous. The only crimes where there could not be a conspiracy would be misdemeanors and C felony level property and drug offenses. Each conspiracy crime would be punished as a one step lower crime than the object crime of the conspiracy.

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FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. SB 343

BUDGET ANALYSIS - SE 343

100:	Attorney IV (Anchorage)	86.6	
	Attorney IV (Fairbanks)	98.2	
	Investigator II (Anchorage)	52.3	
	Investigator II (Fairbanks)	54.2	
	Clerk Typist III (Anchorage)	34.2	
	Clerk Typist III (Fairbanks)	35.4	
			360.9
200:	Travel (Attorneys, Investigators, Experts, Witnesses)		15.0
300:	Contractual (Office Space, Experts, Communications)		30.0
400:	Supplies (Office and law library)		4.0
500:	Equipment (one time)		<u>6.0</u>
	Total		415.9

Position Title Attorney IV		No. of Positions 2	Range / Step 24/A	Barg. Unit PX	
Time Status PFT	Staff Months 24.0	Location Anchorage and Fairbanks		Election District 20-7	
TYPE OF EXPENDITURE		AMOUNT			
Salary	137.7	<b>Justification</b> SB 343  These senior felony attorneys will be stationed, one in Anchorage and one in Fairbanks. The Anchorage attorney will represent clients in the First and Third Judicial Districts while the Fairbanks attorney will cover the Second and Fourth Judicial Districts.			
Benefits	47.2				
Premium Pay					
Other					
<b>Total Personal Services</b>	184.9				184.9
Travel					10.0
Contractual					19.0
Commodities					2.0
Equipment					3.0
Other					
<b>Total Cost</b>		218.9			
FUNDING SOURCE FOR TOTAL COST					
Federal Receipts	1002				
G.P. Match	1003				
General Fund	1004	218.9			
I-A Receipts	1007				
CIP Receipts	1061				
Other					

8/LEG92/02716.kp/4

# Request For New Position

AGENCY ADMINISTRATION

BRU Public Defender Agency

COMPONENT Public Defender Agency

FY 93

Page 4 of 6  
Revised Date: \_\_\_\_\_

Position Title Investigator II		No. of Positions 2	Range / Step 16/A	Barg. Unit CGU	
Time Status PFT	Staff Months 24.0	Location Anchorage and Fairbanks		Election District 207	
TYPE OF EXPENDITURE		AMOUNT			
Salary	75.3	Justification SB 343  These investigators will be based in Anchorage and Fairbanks but will provide services throughout the entire state.			
Benefits	31.1				
Premium Pay					
Other					
<b>Total Personal Services</b>	<b>106.4</b>				<b>106.4</b>
Travel					5.0
Contractual					7.0
Commodities					1.0
Equipment					1.5
Other					
<b>Total Cost</b>		<b>120.9</b>			
FUNDING SOURCE FOR TOTAL COST					
Federal Receipts	1002				
G.P. Match	1003				
General Fund	1004	120.9			
I-A Receipts	1007				
CIP Receipts	1061				
Other					

8/LECG2/02716.kp/5

# Request For New Position

AGENCY ADMINISTRATION

BRU Public Defender Agency

COMPONENT Public Defender Agency

FY 93

Page 5 of 6  
Revised Date: \_\_\_\_\_

Position Title Clerk Typist III		No. of Positions 2	Range / Step 8/B	Barg. Unit GGU
Time Status PFT	Staff Months 24.0	Location Anchorage and Fairbanks		Election District 207
TYPE OF EXPENDITURE		AMOUNT		
Salary	46.8	Justification SB 343  These two support staff positions will be based in Anchorage and Fairbanks.		
Benefits	22.9			
Premium Pay				
Other				
<b>Total Personal Services</b>	<b>69.7</b>			
Travel				
Contractual	4.0			
Commodities	1.0			
Equipment	1.5			
Other				
<b>Total Cost</b>	<b>76.2</b>			
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts 1002				
G.P. Match 1003				
General Fund 1004	76.2			
I-A Receipts 1007				
CIP Receipts 1061				
Other				

S/LECC?/02716.kp/6

## Request For New Position

AGENCY ADMINISTRATION

BRU Public Defender Agency

COMPONENT Public Defender Agency

FY 93

Page 6 of 6  
Revised Date: \_\_\_\_\_



FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. SB 343

ANALYSIS: (continued)

This bill will create a new crime of "conspiracy" under which two or more people involved in felonies 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, this bill will dramatically increase the potential pool of defendants who will request State-funded counsel, if charged. Such a charge will inevitably give rise to conflicts of interest among defendants which will mandate the legal representation of each defendant by a separate attorney or agency.

The Office of Public Advocacy (OPA) is responsible for providing representation for those with whom the Alaska Public Defender Agency (PDA) 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 PDA and OPA services. By definition, because the statute is designed to prosecute two or more people, OPA 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 PDA is appointed to represent defendant #1 in a conspiracy case, OPA will be appointed to provide representation, probably by a staff attorney, to defendant #2, and, through contract counsel, to all other co-defendants in a particular case.

Cases filed under conspiracy statutes on the federal level and in other states routinely involve substantial attorney time, particularly for the preparation of pre-trial motions. Due to the fact that the Department of Law investigation activity will probably focus on urban areas, the OPA is requesting one experienced attorney and a legal secretary in Anchorage to handle representation of clients charged under the bill. Because the staff attorney can represent but one co-defendant in a given case, the OPA must contract with private counsel for the representation of all other co-defendants 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. To our knowledge, the Department of Law has not estimated the number of prosecutions it will initiate during FY 93 or subsequent years under the new conspiracy statute. The projected \$375,000 in contract costs is thus based on the assumption that the OPA will only be responsible for 25 co-defendants 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 PDA will each be paying for one attorney, while the OPA will be responsible for providing counsel to all of the remaining co-defendants.

Position Title Attorney IV		No. of Positions 1	Range / Step 24/A	Barg. Unit PX
Time Status PFT	Staff Months 12.0	Location Anchorage-EBA		Election District 8
TYPE OF EXPENDITURE		AMOUNT		
Salary		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.				

6/1/02410.a/1

# Request For New Position

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

FY 93

Page 3 of 4  
 Revised Date: \_\_\_\_\_

Position Title Legal Secretary I		No. of Positions 1	Range / Step 10/A	Barg. Unit CG
Time Status PFT	Staff Months 12.0	Location Anchorage-EBA		Election District 8
TYPE OF EXPENDITURE		AMOUNT		
Salary		25.1		
Benefits		12.0		
Premium Pay				
Other				
Total Personal Services		37.1		
Travel				
Contractual (Office Space)		2.7		
Commodities		1.0		
Equipment		7.4		
Other				
Total Cost		48.2		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1001	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.

6/1/02440.a/2

# Request For New Position

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

FY 93

Page 4 of 4  
 Revised Date: \_\_\_\_\_

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. SB 343

Revision Date: \_\_\_\_\_  
Title: "An Act relating to the crime of conspiracy."

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

Sponsor: Halford, Collins, Pearce  
Requestor: Senate Judiciary

COMPONENT SERIAL NO. 

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	123.7	128.6	133.7	139.0	144.6	150.4
TRAVEL						
CONTRACTUAL	381.1	391.1	405.7	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						
<b>TOTAL OPERATING</b>	<b>517.8</b>	<b>521.8</b>	<b>542.6</b>	<b>564.3</b>	<b>586.9</b>	<b>610.4</b>

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

GENERAL FUND	517.8	521.8	542.6	564.3	586.9	610.4
FEDERAL FUNDS						
OTHER FUND SOURCE:						
<b>TOTAL</b>	<b>517.8</b>	<b>521.8</b>	<b>542.6</b>	<b>564.3</b>	<b>586.9</b>	<b>610.4</b>

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 24, 1992

Approved by Commissioner: Nancy Bear Usura  
Agency: Administration

Date: 1/28/92

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

## FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. SB 343

### ANALYSIS: (continued)

This bill will create a new crime of "conspiracy" under which two or more people involved in felonies 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, this bill will dramatically increase the potential pool of defendants who will request State-funded counsel, if charged. Such a charge will inevitably give rise to conflicts of interest among defendants which will mandate the legal representation of each defendant by a separate attorney or agency.

The Office of Public Advocacy (OPA) is responsible for providing representation for those with whom the Alaska Public Defender Agency (PDA) 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 PDA and OPA services. By definition, because the statute is designed to prosecute two or more people, OPA 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 PDA is appointed to represent defendant #1 in a conspiracy case, OPA will be appointed to provide representation, probably by a staff attorney, to defendant #2, and, through contract counsel, to all other co-defendants in a particular case.

Cases filed under conspiracy statutes on the federal level and in other states routinely involve substantial attorney time, particularly for the preparation of pre-trial motions. Due to the fact that the Department of Law investigation activity will probably focus on urban areas, the OPA is requesting one experienced attorney and a legal secretary in Anchorage to handle representation of clients charged under the bill. Because the staff attorney can represent but one co-defendant in a given case, the OPA must contract with private counsel for the representation of all other co-defendants 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. To our knowledge, the Department of Law has not estimated the number of prosecutions it will initiate during FY 93 or subsequent years under the new conspiracy statute. The projected \$375,000 in contract costs is thus based on the assumption that the OPA will only be responsible for 25 co-defendants 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 PDA will each be paying for one attorney, while the OPA will be responsible for providing counsel to all of the remaining co-defendants.

Position Title Attorney IV		No. of Positions 1	Range / Step 24/A	Barg. Unit PX
Time Status PFT	Staff Months 12.0	Location Anchorage-EBA		Election District 8
TYPE OF EXPENDITURE		AMOUNT		
Salary		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.				

6/1/02440.a/1

# Request For New Position

AGENCY ADMINISTRATION

BRU Office of Public Advocacy

COMPONENT Office of Public Advocacy

FY 93

Page 3 of 4  
Revised Date: \_\_\_\_\_

Position Title <b>Legal Secretary I</b>		No. of Positions <b>1</b>	Range / Step <b>10/A</b>	Barg. Unit <b>GG</b>
Time Status <b>PFT</b>	Staff Months <b>12.0</b>	Location <b>Anchorage-EBA</b>		Election District <b>8</b>
TYPE OF EXPENDITURE		AMOUNT		
Salary		25.1		
Benefits		12.0		
Premium Pay				
Other				
<b>Total Personal Services</b>		<b>37.1</b>		
Travel				
Contractual (Office Space)		2.7		
Commodities		1.0		
Equipment		7.4		
Other				
<b>Total Cost</b>		<b>48.2</b>		
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 VGAI 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.				

6/1/02440.a/2

# Request For New Position

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

FY 93

Page 4 of 4  
 Revised Date: \_\_\_\_\_

STATE OF ALASKA  
 1992 LEGISLATIVE SESSION

Revision Date: 3/3/92 Department Affected: Department of Corrections  
 Title: "An Act relating to the crime of conspiracy." BRU: Statewide Operations  
 Sponsor: Senator Halford Component: Various  
 Requestor: Senate Judiciary COMPONENT SERIAL NO. 

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	164.3	164.3	164.3	164.3	164.3	164.3
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	164.3	164.3	164.3	164.3	164.3	164.3
CAPITAL						

REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	164.3	164.3	164.3	164.3	164.3	164.3
FEDERAL FUNDS						
OTHER						
FUND SOURCE:						
TOTAL	164.3	164.3	164.3	164.3	164.3	164.3

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached Analysis.

Changes in CSSB 343 (JUD) reflect NO FISCAL CHANGE from the original fiscal note. This fiscal note is appropriate.

3/18/92 date rc Comte Aide (initial)

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

Division: Office of the Commissioner Date: 03/04/92

Approved by Commissioner: Lloyd Hames, Commissioner

Agency: Department of Corrections Date: 03/03/92

## CONTINUATION OF FISCAL ANALYSIS

BILL: SB 343 (2/27/92 Work Draft, Judiciary Committee) "An Act relating to the crime of conspiracy."

The bill would make it illegal to conspire to commit certain heinous crimes. Heinous crimes are defined as unclassified and class A felonies against the person under AS 11.41, or crimes involving controlled substances under AS 11.71 which are punishable as unclassified, class A, or class B felonies. Conspiracy would be the same class of offense as the most serious offense that was an object of the conspiracy.

Data on the numbers of cases and average sentences for conspiracy convictions is not available to the Department of Corrections since this has not been a crime in Alaska in the past. However, based on information from the Department of Law, Criminal Division, it appears likely that the conspiracy statute would enable more effective prosecution of drug crimes in particular. Since conspiracies to commit murder, kidnapping, or other serious violent crimes occur rarely and erratically, the impact on the Department is unpredictable.

Assumption: The greatest impact of a conspiracy statute would involve drug-related crimes:

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 offenses, rather than increasing sentence length. In 1991 there were 104 offenders incarcerated whose most serious charge was an unclassified (2), class A (8), or class B (94) Misconduct Involving Controlled Substances (MICS) offense. If this bill results in a ten percent increase in convictions for drug offenses, about ten (10) additional cases will be added per year. Since 90% of the relevant MICS offenses are class B felonies, the mean sentence length for a MICS B felony is used to calculate additional bed-days. (Mean sentence length is 20.1 months. Subtracting one third of the sentence for statutory good time results in time served of slightly over one year.) Ten additional offenders serving one additional year would result in 3,650 additional bed-days per year.

If these offenders can be placed in community residential beds at an average cost of about \$45 per day, the cost would be \$164,250 per year in additional contract bed costs. (If these offenders cannot be placed in community residential center beds, it is possible that other offenders will be displaced to the community residential center beds, with the same fiscal impact.)

CONTINUATION OF FISCAL ANALYSIS  
2/27/92 Work Draft (Judiciary) SB 343

The estimated costs are based on contractual community residential beds since it is not possible to predict when the increases in incarceration would actually require adding new prison beds to the current correctional system. Using the daily cost of a prison bed (about \$96.00 per day) for each additional bed-day would not accurately reflect budget increases, since the cost of each existing prison bed is already reflected in the Department's budget.

The current prison beds are full. The current prison population forecast predicts little or no growth, absent changes in legislation such as those addressed in this bill. If this bill results in any substantial increase in convictions and prison sentences for offenses other than the ten percent increase in drug offenses described above, or if sufficient numbers of offenders cannot be diverted to community residential contract beds, then the effect of this bill will be to accelerate the pace at which the Department moves toward new prison construction, including additional staff positions and other operating costs.

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

Revision Date: 3/3/92 Department Affected: Department of Corrections  
 Title: "An Act relating to the crime of conspiracy." BRU: Statewide Operations  
 Component: Various  
 Sponsor: Senator Halford  
 Requestor: Senate Judiciary COMPONENT SERIAL NO. 

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	164.3	164.3	164.3	164.3	164.3	164.3
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	164.3	164.3	164.3	164.3	164.3	164.3

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

GENERAL FUND	164.3	164.3	164.3	164.3	154.3	164.3
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	164.3	164.3	164.3	164.3	164.3	164.3

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: 0

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

Prepared By: *Diane Schenker* Diane Schenker, Legislative Liaison Phone: 465-3376  
 Division: Office of the Commissioner Date: 03/04/92  
 Approved by Commissioner: *Lloyd Hames* Lloyd Hames, Commissioner  
 Agency: Department of Corrections Date: 03/03/92

## CONTINUATION OF FISCAL ANALYSIS

BILL: SB 343 (2/27/92 Work Draft, Judiciary Committee) "An Act relating to the crime of conspiracy."

The bill would make it illegal to conspire to commit certain heinous crimes. Heinous crimes are defined as unclassified and class A felonies against the person under AS 11.41, or crimes involving controlled substances under AS 11.71 which are punishable as unclassified, class A, or class B felonies. Conspiracy would be the same class of offense as the most serious offense that was an object of the conspiracy.

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CONTINUATION OF FISCAL ANALYSIS  
2/27/92 Work Draft (Judiciary) SB 343

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The current prison beds are full. The current prison population forecast predicts little or no growth, absent changes in legislation such as those addressed in this bill. If this bill results in any substantial increase in convictions and prison sentences for offenses other than the ten percent increase in drug offenses described above, or if sufficient numbers of offenders cannot be diverted to community residential contract beds, then the effect of this bill will be to accelerate the pace at which the Department moves toward new prison construction, including additional staff positions and other operating costs.

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

240 Main Street, Suite 500  
Juneau, Alaska 99801-2101

### MEMORANDUM

March 12, 1992

**SUBJECT:** CSSB 343 (Judiciary)

**TO:** Senator Rick Halford  
Attention: Rick Cooke

**FROM:** Robert Glennon Casey  
Legislative Counsel

You have asked for a discussion of the various provisions of the 3/12/92 version of the above bill.

Section 1 establishes, in subsection (a), the crime of conspiracy as an agreement between two or more persons to engage in or cause a "serious felony offense," followed by an overt act by one of the persons. The overt act must be something done in furtherance of the serious felony offense.

Subsection (b) of Section 1 states the traditional rule that two links of a conspiracy may sometimes be treated as one large conspiracy. Thus if Tom conspires with Dick to commit some serious felony offense and knows that Dick has or will conspire with Harry to commit the same serious felony offense, then Tom is guilty of conspiring with Harry as well as with Dick.

Subsection (c) of Section 1 clarifies that a conspirator would remain liable for conspiracy even though the conspirator would not individually have been capable of being liable for the serious felony offense contemplated by the conspiracy. This is sometimes the case where one conspirator holds a license to engage in some activity but agrees with an unlicensed person to help the unlicensed person also engage in that activity.

Subsection (c) of Section 1 also clarifies that legal incapacity of a co-conspirator does not relieve the other conspirator from liability for the conspiracy. Thus if a sane person contracted with a legally insane person to have the insane person carry out a murder, the sane person would nonetheless be liable for conspiracy.

Senator Rick Halford

March 12, 1992

Page 2

Subsection (d) of Section 1 would prevent liability for conspiracy in agreements to commit crimes where the other person's participation in the crime was by definition a necessary element of the crime, so long as the serious felony offense actually was committed.

Subsection (e) of Section 1 provides a defense of renunciation. A person who had joined in a conspiracy may escape liability for the conspiracy in circumstances manifesting complete and voluntary renunciation, if the person either gives timely warning to law enforcement officers or does something else appropriate that prevents the commission of the serious felony offense.

Subsection (f) of Section 1 classifies conspiracy to commit a serious felony offense as a crime one degree below the level of the serious felony offense itself.

Section 2 would treat conspiracy the same way as solicitation and attempt are treated, under AS 11.31.140(a). Actual commission of the serious felony offense would not by itself be a defense to a charge of conspiracy.

Section 3 would treat conspiracy the same way as solicitation and attempt are treated, under AS 11.31.140(b). Multiple conspiracies, attempts, solicitations, and any combination thereof to commit the same crime could only yield liability for one conspiracy, solicitation, or attempt.

Section 4. A prosecutor would be able to charge a defendant with both conspiracy and commission of the serious felony offense. Once again, this would cause the new crime of conspiracy to be treated the way existing law treats solicitation and attempt.

RGC:pl  
92-169.plm

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

240 Main Street, Suite 500  
Juneau, Alaska 99801-2101

### MEMORANDUM

February 27, 1992

**SUBJECT:** Sectional Analysis of CS SB 343 ( )

**TO:** Senator Rick Halford  
Attention: Jeff

**FROM:** Robert Glennon Casey  
Legislative Counsel

R.G.C.  
2-27-92

You have requested a sectional analysis of the above described bill. The following is an explanation of the contemplated effect of various provisions, but this should not be considered an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

Section 1 creates the crime of conspiracy. Subsection (a) generally defines the crime as an agreement between two or more persons to engage in or cause commission of a "heinous offense," coupled with the taking of at least one overt act by one of the conspirators toward completion of the heinous offense.

Subsection (b) provides a rule that two links of a conspiracy are sometimes to be treated as one large link. For example, if Tom conspired with Dick and knew that Dick had or would conspire with Harry, then Tom would be liable for conspiracy with Harry even though Tom and Harry did not directly communicate with each other.

Subsection (c)(1) clarifies that a person otherwise liable for conspiracy is not relieved of liability simply because the person could not himself or herself legally commit the heinous offense. For example, if Tom conspired to have a heinous offense committed by Harry, then Tom could not escape liability simply because he would himself have been legally incapable of committing the heinous offense.

Slightly changing the above example, subsection (c)(2) clarifies that Tom could also not escape liability for conspiring with Harry to cause a heinous offense simply because Harry was legally incapable of committing the heinous offense.

Subsection (d) removes liability for conspiracy from conspirators who renounce the conspiracy by following certain guidelines. Renunciation must occur under circumstances manifesting a voluntary and complete renunciation of the conspirator's

intent to cause the heinous offense. Furthermore, the renouncing conspirator must take some action that prevents commission of the heinous offense, such as giving timely warning to law enforcement officers.

Certain halfhearted renunciations, such as those made after it was clear that the police had completed an investigation and were ready to arrest all of the conspirators, would not relieve a person from liability for conspiracy.

Subsection (e) classifies conspiracy the same as the classification of the most serious heinous offense whose commission was intended by the agreement among the conspirators.

Subsection (f) defines "heinous offense." Its effect is to limit liability for conspiracy to agreements to commit unclassified and class A felonies under AS 11.41 ("Offenses Against the Person" - generally the most serious violent crimes) and unclassified, class A, and class B controlled substances violations under AS 11.71.

Section 2 provides that actual occurrence of the heinous offense does not automatically relieve a person from liability for having conspired to commit the heinous offense. This is the way that existing Alaska law treats the other two "anticipatory crimes" (attempt and solicitation). The theory behind applying this rule to conspiracy is that certain conspirators would be far removed from the scene of the heinous offense and therefore difficult to prosecute successfully for commission of the heinous offense. Under this provision, a conspirator who could not be proven to have committed the heinous offense could at least be prosecuted for conspiracy.

Section 3 clarifies that multiple attempts, solicitations, or conspiracies (or any combination of them) to cause just one heinous offense would yield liability for only one anticipatory crime. Thus if Tom and Dick conspired several times over 5 months to murder Harry, then Tom and Dick each unsuccessfully attempted the murder twice, and then one of them finally did murder Harry, there would be just one heinous offense (the murder). Since there was only one heinous offense, Tom could be successfully prosecuted for only one count of either conspiracy or attempt, rather than several counts. The same would go for Dick. (Of course, one or both of them could also be prosecuted for the murder, depending on the circumstances.)

Section 4 clarifies that a prosecutor could charge a conspirator with both conspiracy and the heinous offense. (That is already the rule in Alaska for the anticipatory

Senator Rick Halford

February 27, 1992

Page 3

crimes of attempt and solicitation.) Thus a district attorney would not be forced to pick between charging a defendant with the heinous offense or charging the defendant with conspiracy. The district attorney could try to prove both crimes at trial and let the jury could decide which crimes the defendant actually committed.

RGC:gc  
92-169.glc

# Alaska State Legislature

Senate District L  
Al Adams

WHILE IN SESSION  
P.O. Box V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-3707

OUT OF SESSION  
P.O. Box 333  
Kotzebue, Alaska 99752  
(907) 442-3245

Official Business

TO: Senator Rick Halford, Chair  
Senate Judiciary Committee

FROM: Senator Al Adams <sup>APA</sup>

RE: Senate Bill 343, "An Act relating to the crime of conspiracy"

DATE: March 9, 1992

This memo proposes amendments to the aforementioned legislation. The amendments conform to the proposed committee substitute dated 2.27.92 and are presented sequentially rather than in order of importance. I will distribute this to members of the Judiciary Committee today and trust we can discuss the amendments at the committee meeting tomorrow.

These amendments are proposed to make this legislation more easily understood, add reason and fairness to the proposal, provide consistency with other statutory provisions and conform with the Model Penal Code.

## Amendment #1

Page 1, line 5 delete "heinous"

Page 1, line 5, after the word "a", insert " serious felony"

Page 1, line 9, delete "heinous"

Page 1, line 9, after the word "a", insert "serious felony"

Page 1, line 10, delete "heinous"

Page 1, line 10, after the word "same", insert "serious felony"

Page 2, line 18, delete "heinous"

Page 2, line 18, after the word "section," insert " a serious felony"

Reasoning: the word "heinous" is problematic in two respects. First this word is difficult for most people to pronounce. Secondly, heinous is not a word commonly used in the English vocabulary. It is worth our efforts to place words in our statutes that are easily understood and that most people enunciate without difficulty.

**Amendment #2**

Page 1, line 7, after the word "conspiracy." insert: " As used in this section, an overt act is an act of such character that it manifests a purpose on the part of the actor that the object of the conspiracy should be completed."

**Reasoning:**

This amendment eliminates ambiguity in use of the word "overt act". It also eliminates imposing criminal liability when an "act" allegedly taken in furtherance of the conspiracy is one that does not bear a close relationship to the commission of the object offense. An example would be a person who lives in Kotzebue who is alleged to have conspired with an individual to sell drugs, and the overt act alleged is making a phone call for a place to stay in Anchorage. Although making such a phone call is an overt act, it is not necessarily of such character that it should trigger criminal liability for conspiracy.

This amendment conforms to clarifications made in other state's conspiracy laws and addresses the uncertainty noted by the Alaska Action Trust in its position paper section on the problem with of leaving "overt act" undefined.

**Amendment #3**

Page 2, after line 9, insert a new subsection to read: "In a prosecution under this section, it is a defense that, if the criminal objective were achieved, the defendant would not be legally accountable under AS 11.16.120 9(b) for the conduct of the person with whom the defendant conspired."

**Reasoning:**

This language was deleted from the original bill version.

AS 11. 16.120 (b) says, "Except as otherwise provided by a provision of law defining an offense, a person is not legally accountable for the conduct of another constituting an offense if

(1) the person is the victim of the offense; or

(2) the offense is so defined that the person's conduct is inevitably incidental to its commission."

This amendment would make our statutes conform to the Model Penal Code and to Wharton's Rule, a rule in the criminal law of conspiracy, that an agreement between two people to commit a crime cannot be prosecuted as a conspiracy when the crime necessarily requires the participation of two people. Examples of such crimes would be adultery, incest or buying and selling drugs.

For further elaboration on this amendment, I would suggest that a representative from the Department of Law discuss this rule, the adaptation of our criminal statutes to the Model Penal Code and the untoward implications of its omission from this bill.

**Amendment #4**

Page 2, line <sup>13</sup>14 after the word "effort", delete "that prevented" and insert "to prevent".

**Reasoning:**

This returns to the language of the original bill.

The CS places an unreasonable burden on the defendant in that he or she must have *actually* prevented the commission of the crime in order to prove renunciation. This imposes criminal liability on a person who renounced a crime and reported a conspiracy even if law enforcement officials made a policy decision to let the offense occur or even if they were irresponsible and ignored the warning. Tying the defense of renunciation to circumstances that are completely outside the defendant's control is neither fair nor reasonable.

The original language provided the defendant the opportunity to exert efforts towards preventing the crime. The amendment does not alter other language in this section which demand that the circumstances surrounding the effort must manifest a voluntary and complete renunciation of the defendant's criminal intent.

Again, the existing language is unreasonable because not everyone has the knowledge, capacity or power to prevent a crime, no matter how much they try to do so. The defendant may not know when, how, where or by whom the conspiratorial crime was to be committed. Language on page 1 specifically notes that a conspirator does not even need to know the identities of the individuals who commit the crime. The amendment would allow the defendant to show that efforts were made to stop the crime as evidence of renunciation of the act.

**Amendment #5**

Page 2, delete lines 16 and 17

Page 2, after line 15, insert:

"Conspiracy is a

(1) class A felony if the object of the conspiracy is a crime punishable as an unclassified felony;

(2) class B felony if the object of the conspiracy is a crime punishable as a class A felony;

(3) class C felony if the object of the conspiracy is a crime punishable as a class B felony."

Reasoning:

This amendment also returns to language in the original version and provides consistency with our other similar statutes of attempt and solicitation.

AS 11.31.100 and AS 11.31.110 relating to attempt and solicitation respectively, slide the charges for those offenses one step down from the charge for the person who actually committed the crime. It makes no sense why conspiracy charges should carry the same implications as the criminal act while attempt and solicitation do not. The result without this amendment is that a person who took greater steps to complete the crime would have lower liability than a person who took fewer steps to complete the crime.

An example: a person convicted of attempted arson under an accomplice liability theory who committed a "substantial step" such as helping to fling gasoline around the building to be burned, would be guilty of a class B felony. On the other hand, a person convicted of conspiracy to commit arson who committed an "overt act" such as buying gasoline at the local gas station, would be guilty of a class A felony. This type of classification scheme is irrational.

**Amendment #6**

Page 2, following line 17 insert:

"If the particular conduct charged to constitute a criminal conspiracy is so inherently unlikely to result or culminate in the commission of a crime that neither the conduct nor the actor presents a public danger warranting the grading of such offense, the court shall exercise its power to enter judgement and impose sentence for a crime of a lower grade, or in extreme cases, may dismiss the prosecution."

Reasoning:

Amendment #6 is offered if Amendment #5 is not implemented. The language is taken from the Model Penal Code 5.05 relating to the grading of conspiracy charges. It allows for judicial discretion in instances where the link between the conspiratorial act and the crime are so weak that it is fundamentally unfair or unreasonable to charge the individual as though they had committed the crime themselves.

**Amendment #7**

Insert: "Notwithstanding any other provision of law, venue for proceedings under AS 11.31.120 is the judicial district in which the conspiracy allegedly occurred, unless a change in venue is requested by the defendant."

Reasoning:

This amendment is proposed as a cost containment measure and to protect rural residents in their rights to trial by peers. In general, a conspiracy prosecution may be brought at the place of the agreement or in any locale where an overt act by any conspirator took place.

Thus, a conspiracy that was agreed to in a rural area and that involved a crime that was to be committed in the rural area, could be charged in an urban area if even one overt act took place in an urban area.

An example: A conspiracy agreed to in Barrow involved a crime that is to be committed solely in Barrow. When one of the conspirators is in Anchorage, he makes a hotel reservation that the prosecution alleges was intended to provide other conspirators with a place to hide out in after the crime is committed. All of the Barrow conspirators could be forced by the prosecution to stand trial in Anchorage. This is unfair and unreasonable for the defendants, but because prosecutorial resources are much more substantial in Anchorage, it is easier for the police and prosecutors to prosecute there and it is difficult to find a jury pool of peers.

I can't say it any better than one of the concurring judges in the U.S. Supreme Court case Krulewitch v U.S. 440 69 S. Ct. 7165, 93 LEd. 790 (1949) said it:

The leverage of a conspiratory charge lifts [the constitutional venue] limitation from the prosecution and reduces its protection to a phantom, for the crime is considered so vagrant as to have been committed in any district where any one of the conspirators did any one of the acts, however innocent, intended to accomplish its object. The government may, and often does, compel one to defend at a great distance from any place he ever did any act because some accused confederate did some trivial and by itself innocent act in the chosen district.

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR ADAMS

TO: CSSB 343 ( )

Page 1, line 5:

Delete "heinous offense"

Insert "serious felony"

Page 1, line 9:

Delete "heinous offense"

Insert "serious felony"

Page 1, line 10:

Delete "heinous offense"

Insert "serious felony"

Page 2, line 18:

Delete "heinous offense"

Insert "serious felony"

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR ADAMS

TO: CSSB 343( )

Page 1, line 7, following "conspiracy.":

Insert "In this subsection, an "overt act" is an act that manifests a purpose on the part of the actor that the object of the conspiracy be completed."

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR ADAMS

TO: CSSB 343( )

Page 2, following line 9:

Insert a new subsection to read:

"(d) In a prosecution under this section, it is a defense that, if the criminal objective were achieved, the defendant would not be legally accountable under AS 11.16.120(b) for the conduct of the person with whom the defendant conspired."

Reletter the following subsections accordingly.

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR ADAMS

TO: CSHB 343( )

Page 2, line 13:

Delete "that prevented"

Insert "to prevent"

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR ADAMS

TO: CSHB 343( )

Page 2, lines 16 - 17:

Delete all material and insert:

"(e) Conspiracy is a

(1) class A felony if the object of the conspiracy is a crime punishable as an unclassified felony;

(2) class B felony if the object of the conspiracy is a crime punishable as a class A felony;

(3) class C felony if the object of the conspiracy is a crime punishable as a Class B felony."

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR ADAMS

TO: CSHB 343( )

Page 2, following line 17:

Insert a new subsection to read:

"(f) If the particular conduct charged to constitute a criminal conspiracy is so inherently unlikely to result in commission of a crime that neither the conduct nor the actor presents a public danger warranting grading of the offense under (e) of this section, then upon conviction under this section the court may impose sentence for a crime of a lower classification and, in an extreme case, the court may dismiss the prosecution."

Reletter the following subsection accordingly.

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR ADAMS

TO: CSHB 343( )

Page 2, following line 15:

Insert a new subsection to read:

"(e) Notwithstanding other provision of law, venue for a prosecution under this section is the judicial district in which the agreement under (a) of this section is alleged to have occurred."

Reletter the following subsection accordingly.

(1)

(d) If the criminal objective of the conspiracy is actually achieved, a defendant may not be convicted of conspiring with another person for whom the defendant is not legally accountable under AS 11.16.120(b).

property or in attempting to escape, rather than in taking property, as element of robbery, 93 ALR3d 643.

Criminal liability of third persons for death of another as result of accused's attempt to kill self or assist another's suicide, 40 ALR4th 702.

Impossibility of consummation as defense to prosecution for attempt, 41 ALR4th 588.

What constitutes attempted bank robbery under 18 USCS §§ 2113(a), making it offense to take or attempt to take, by force, violence, or intimidation, any property, money, or other thing of value from bank, 37 ALR Fed. 255.

Criminal responsibility under 18 USCS § 2(b) of one who lacks capacity to commit an offense but who causes another to do so, 52 ALR Fed. 769.

**Sec. 11.31.100. Attempt.** (a) A person is guilty of an attempt to commit a crime if, with intent to commit a crime, the person engages in conduct which constitutes a substantial step toward the commission of that crime.

(b) In a prosecution under this section, it is not a defense that it was factually or legally impossible to commit the crime which was the object of the attempt if the conduct engaged in by the defendant would be a crime had the circumstances been as the defendant believed them to be.

(c) In a prosecution under this section, it is an affirmative defense that the defendant, under circumstances manifesting a voluntary and complete renunciation of the defendant's criminal intent, prevented the commission of the attempted crime.

(d) An attempt is

(1) an unclassified felony if the crime attempted is murder in the first degree;

(2) a class A felony if the crime attempted is an unclassified felony other than murder in the first degree;

(3) a class B felony if the crime attempted is a class A felony;

(4) a class C felony if the crime attempted is a class B felony;

(5) a class A misdemeanor if the crime attempted is a class C felony;

(6) a class B misdemeanor if the crime attempted is a class A or class B misdemeanor.

(e) If the crime attempted is an unclassified crime described in a state law which is not part of this title and no provision for punishment of an attempt to commit the crime is specified, the punishment for the attempt is imprisonment for a term of not more than half the maximum period prescribed as punishment for the unclassified crime, or a fine of not more than half the amount of the maximum fine prescribed as punishment for the unclassified crime, or both. If the crime attempted is punishable by an indeterminate or life term, the attempt is a class A felony. (§ 2 ch 166 SLA 1978; am § 1 ch 102 SLA 1980; am § 10 ch 45 SLA 1982; am § 1 ch 59 SLA 1988)

2

view and modification  
 y vested in either the  
 he executive branch of  
 fore, the superior court  
 to review its own sen-  
 entered a judgment on  
 an 60 days after it has  
 Davenport v. State, 543  
 a 1975); Szeratics v.  
 3 (Alaska 1977).  
 its additional proba-  
 rvce of sentence. —  
 rity under Alaska law  
 ert, when probation is  
 a a fixed sentence, re-  
 nt to serve that sen-  
 ce the defendant on an  
 of probation following  
 ence. Franzen v. State,  
 ska 1978).  
 osed affirmed. — See  
 477 P.2d 447 (Alaska  
 . State, 548 P.2d 1298  
 ite v. Trunnel, 549 P.2d  
 ); Layland v. State, 549  
 1976); Godwin v. State,  
 ska 1976); Thurkill v.  
 1 (Alaska 1976); Noble  
 d 142 (Alaska 1976);  
 ., 553 P.2d 40 (Alaska  
 State, 553 P.2d 472  
 orton v. State, 553 P.2d  
 ); Schuster v. State, 553  
 a 1976); Buchanan v.  
 53 (Alaska 1976); Daw-  
 P.2d 142 (Alaska 1976);  
 557 P.2d 1136 (Alaska  
 v. State, 559 P.2d 91  
 utschler v. State, 560  
 1977); Gilligan v. State,  
 ka 1977); Bragg v. State,  
 ska 1977); Nukapigak v.  
 7 (Alaska 1977), aff'd on  
 2d 982 (Alaska 1978);  
 . 564 P.2d 20 (Alaska  
 State, 571 P.2d 1013  
 eter v. State, 572 P.2d  
 3); Mullins v. State, 573  
 1978); Welin v. State,  
 ska 1978); Alex v. State,  
 ska 1978); Menard v.  
 6 (Alaska 1978); Brown  
 2d 982 (Alaska 1978);  
 ., 579 P.2d 1062 (Alaska  
 e, 580 P.2d 304 (Alaska  
 State, 581 P.2d 1119  
 ndle v. State, 583 P.2d  
 3); State v. Afcan, 583  
 1978); Daniels v. State,  
 ska 1978); Honeycutt v.  
 5 (Alaska 1978); Fergu-

TO BE  
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 AS SEC. 5  
 (3)

son v. State, 590 P.2d 43 (Alaska 1979);  
 One v. State, 592 P.2d 1193 (Alaska  
 1979); Dayton v. State, 598 P.2d 67  
 (Alaska 1979); Stone v. State, 598 P.2d 72  
 (Alaska 1979); Edinger v. State, 598 P.2d  
 943 (Alaska 1979); Larson v. State, 598  
 P.2d 946 (Alaska 1979); Labarbera v.  
 State, 598 P.2d 947 (Alaska 1979); Elstad  
 v. State, 599 P.2d 137 (Alaska 1979);  
 Charles v. State, 606 P.2d 390 (Alaska  
 1980); Pyrdol v. State, 617 P.2d 513  
 (Alaska 1980); Coleman v. State, 621 P.2d  
 869 (Alaska 1980), cert. denied, 454 U.S.  
 1090, 102 S. Ct. 653, 70 L. Ed. 2d 628  
 (1981); Shearer v. State, 619 P.2d 726  
 (Alaska 1980); Nelson v. State, 619 P.2d  
 480 (Alaska Ct. App. 1980); Bryant v.  
 State, 623 P.2d 310 (Alaska 1981); Hoover  
 v. State, 641 P.2d 1263 (Alaska Ct. App.  
 1982); Davidson v. State, 642 P.2d 1383  
 (Alaska Ct. App. 1982); Parker v. State,  
 714 P.2d 862 (Alaska Ct. App. 1986);  
 State v. Price, 740 P.2d/476 (Alaska Ct.  
 App. 1987); State v. Capjohn, 779 P.2d  
 1255 (Alaska Ct. App. 1989); State v.  
 Clark, 782 P.2d 308 (Alaska Ct. App.  
 1989).  
 Sentence too lenient. — See State v.  
 Chaney, 477 P.2d 441 (Alaska 1970);  
 State v. Wortham, 537 P.2d 1117 (Alaska  
 1975); State v. Lancaster, 550 P.2d 1257  
 (Alaska 1976); State v. Abraham, 566  
 P.2d 267 (Alaska 1977); State v. Wassilie,  
 578 P.2d 971 (Alaska 1978); Putnam v.  
 State, 629 P.2d 35 (Alaska 1980); State v.  
 Brinkley, 681 P.2d 351 (Alaska Ct. App.  
 1984); Cleary v. State, 548 P.2d 952  
 (Alaska 1976); Salazar v. State, 562 P.2d  
 694 (Alaska 1977); Cleary v. State, 564  
 P.2d 374 (Alaska 1977); Amidon v. State,  
 565 P.2d 1248 (Alaska 1977); Black v.  
 State, 569 P.2d 804 (Alaska 1977);  
 Sumabat v. State, 580 P.2d 323 (Alaska

1978); Hansen v. State, 582 P.2d 1041  
 (Alaska 1978); Kanipa v. State, 520 P.2d  
 678 (Alaska 1980); Hintz v. State, 627  
 P.2d 207 (Alaska 1981); State v. Hooper,  
 750 P.2d 840 (Alaska Ct. App. 1988).  
 Inclusion of improper reference to  
 unverified police contacts did not re-  
 quire remand for resentencing before  
 different judge. — See Parks v. State,  
 571 P.2d 1003 (Alaska 1977).  
 Reference to unverified police contacts  
 in a presentence report does not require a  
 remand for resentencing where the record  
 indicates that the sentencing judge was  
 not unduly or improperly influenced by  
 reference to the unverified police contacts.  
 Pascoe v. State, 628 P.2d 547 (Alaska  
 1980).  
 Case remanded for resentencing. —  
 See Neal v. State, 628 P.2d 19 (Alaska  
 1981).  
 Case remanded for sentence review.  
 — Although a sentence of 15 years' im-  
 prisonment with eligibility for parole at  
 the discretion of the parole board upon  
 conviction of manslaughter was not excee-  
 sive, since the trial court had sentenced  
 defendant as if his conviction had been  
 obtained within one year of the crime and  
 therefore substantially ignored his subse-  
 quent history of steady employment, his  
 meritorious service in the army, and his  
 lack of involvement in any criminal activ-  
 ity other than a few traffic offenses in the  
 12 years since the commission of the  
 crime, the case was remanded for the pur-  
 pose of permitting the trial court to re-  
 view the sentence it imposed, in light of  
 all available information concerning de-  
 fendant without excluding the time period  
 commencing one year from the time of the  
 killing until the present. Padie v. State,  
 594 P.2d 50 (Alaska 1979).

**Sec. 12.55.125. Sentences of imprisonment for felonies.** (a) A  
 defendant convicted of murder in the first degree shall be sentenced to  
 a definite term of imprisonment of at least 20 years but not more than  
 99 years. *conspiracy to commit murder in the first degree.*  
 (b) A defendant convicted of murder in the second degree, at-  
 tempted murder in the first degree, kidnapping, or misconduct involv-  
 ing a controlled substance in the first degree shall be sentenced to a  
 definite term of imprisonment of at least five years but not more than  
 99 years.  
 (c) A defendant convicted of a class A felony may be sentenced to a  
 definite term of imprisonment of not more than 20 years, and shall be

CS FOR SENATE BILL NO. 343 (JUDICIARY)  
 IN THE LEGISLATURE OF THE STATE OF ALASKA  
 SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:

Referred:

Sponsor(s): SENATORS HALFORD, Collins, Pearce

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the crime of conspiracy."

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

3 \* Section 1. AS 11.31 is amended by adding new sections to read:

4           Sec. 11.31.120. CONSPIRACY. (a) An offender commits the crime of conspiracy if,  
 5           with the intent to promote or facilitate a serious felony offense, the offender agrees with one or  
 6           more persons to engage in or cause the performance of that activity and the offender or one of  
 7           the persons does an overt act in furtherance of the conspiracy.

8           (b) If an offender commits the crime of conspiracy and knows that a person with whom  
 9           the offender conspires to commit a serious felony offense has conspired or will conspire with  
 10          another person or persons to commit the same serious felony offense, the offender is guilty of  
 11          conspiring with that other person or persons to commit that crime whether or not the offender  
 12          knows their identities.

13           (c) In a prosecution under this section, it is not a defense

14           (1) that the defendant belongs to a class of persons who by definition are legally

1 incapable in an individual capacity of committing the crime that is the object of the conspiracy;  
2 or

3 (2) that a person with whom the defendant conspires could not be guilty of the  
4 crime that is the object of the conspiracy because of

5 (A) lack of criminal responsibility or other legal incapacity or exemption;

6 (B) unawareness of the criminal nature of the conduct in question or of  
7 the criminal purpose of the defendant; or

8 (C) any other factor precluding the culpable mental state required for the  
9 commission of the crime.

10 (d) In a prosecution under this section, it is a defense that the criminal objective was  
11 actually achieved if the defendant is not legally accountable under AS 11.16.120(b) for the  
12 conduct of the person with whom the defendant conspired.

13 (e) In a prosecution under this section, it is an affirmative defense that the defendant,  
14 under circumstances manifesting a voluntary and complete renunciation of the defendant's  
15 criminal intent, either (1) gave timely warning to law enforcement authorities; or (2) otherwise  
16 made proper effort that prevented the commission of the crime that was the object of the  
17 conspiracy. Renunciation by one conspirator does not affect the liability of another conspirator  
18 who does not join in the renunciation.

*an unclass felony if the object of the consp.  
is murder in 1st degree.*

19 (f) Conspiracy is a

20 (1) class A felony if the object of the conspiracy is a crime punishable as an  
21 unclassified felony; *other than murder in the 1st degree*

22 (2) class B felony if the object of the conspiracy is a crime punishable as a class  
23 A felony;

24 (3) class C felony if the object of the conspiracy is a crime punishable as a class  
25 B felony.

26 (g) In this section, "serious felony offense" means an offense

27 (1) against the person under AS 11.41, punishable as an unclassified or class A  
28 felony; or

29 (2) involving controlled substances under AS 11.71, punishable as an unclassified,  
30 class A, or class B felony.

31 \* Sec. 2. AS 11.31.140(a) is amended to read:

1 (a) It is not a defense to a prosecution under AS 11.31.100 - 11.31.120 [AS 11.31.100  
2 OR AS 11.31.110] that the crime the defendant attempted to commit, solicited to commit, or  
3 conspired to commit [THAT IS THE OBJECT OF THE ATTEMPT OR SOLICITATION] was  
4 actually committed pursuant to the attempt, solicitation, or conspiracy [OR SOLICITATION].

5 \* Sec. 3. AS 11.31.140(b) is amended to read:

6 (b) A person may not be convicted of more than one crime defined by AS 11.31.100 -  
7 11.31.120 [AS 11.31.100 OR AS 11.31.110] for conduct designed to commit or culminate in  
8 commission of the same crime.

9 \* Sec. 4. AS 11.31.140(d) is amended to read:

10 (d) This section does not bar inclusion of multiple counts in a single indictment or  
11 information charging commission of a crime defined by AS 11.31.100 - 11.31.120 [AS 11.31.100  
12 OR 11.31.110] and commission of the crime that is the object of the attempt, conspiracy, or  
13 solicitation.

CS FOR SENATE BILL NO. 343 ( )  
 IN THE LEGISLATURE OF THE STATE OF ALASKA  
 SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:  
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3 \* Section 1. AS 11.31 is amended by adding new sections to read:

4           Sec. 11.31.120. CONSPIRACY. (a) An offender commits the crime of conspiracy if,  
 5 with the intent to promote or facilitate a heinous offense, the offender agrees with one or more  
 6 persons to engage in or cause the performance of that activity and the offender or one of the  
 7 persons does an overt act in furtherance of the conspiracy.

8           (b) If an offender commits the crime of conspiracy and knows that a person with whom  
 9 the offender conspires to commit a heinous offense has conspired or will conspire with another  
 10 person or persons to commit the same heinous offense, the offender is guilty of conspiring with  
 11 that other person or persons to commit that crime whether or not the offender knows their  
 12 identities.

13           (c) In a prosecution under this section, it is not a defense

14           (1) that the defendant belongs to a class of persons who by definition are legally

1 incapable in an individual capacity of committing the crime that is the object of the conspiracy;  
2 or

3 (2) that a person with whom the defendant conspires could not be guilty of the  
4 crime that is the object of the conspiracy because of

5 (A) lack of criminal responsibility or other legal incapacity or exemption;

6 (B) unawareness of the criminal nature of the conduct in question or of  
7 the criminal purpose of the defendant; or

8 (C) any other factor precluding the culpable mental state required for the  
9 commission of the crime.

10 (d) In a prosecution under this section, it is an affirmative defense that the defendant,  
11 under circumstances manifesting a voluntary and complete renunciation of the defendant's  
12 criminal intent, gave timely warning to law enforcement authorities or otherwise made proper  
13 effort that prevented the commission of the crime that was the object of the conspiracy.  
14 Renunciation by one conspirator does not affect the liability of another conspirator who does not  
15 join in the renunciation.

16 (e) Conspiracy is the same class of offense as the most serious offense that was an object  
17 of the conspiracy.

18 (f) In this section, "heinous offense" means an offense

19 (1) against the person under AS 11.41, punishable as an unclassified or class A  
20 felony; or

21 (2) involving controlled substances under AS 11.71, punishable as an unclassified,  
22 class A, or class B felony.

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25 OR AS 11.31.110] that the crime the defendant attempted to commit, solicited to commit, or  
26 conspired to commit [THAT IS THE OBJECT OF THE ATTEMPT OR SOLICITATION] was  
27 actually committed pursuant to the attempt, solicitation, or conspiracy [OR SOLICITATION].

28 \* Sec. 3. AS 11.31.140(b) is amended to read:

29 (b) A person may not be convicted of more than one crime defined by AS 11.31.100 -  
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31 commission of the same crime.

1 \* Sec. 4. AS 11.31.140(d) is amended to read:

2 (d) This section does not bar inclusion of multiple counts in a single indictment or  
3 information charging commission of a crime defined by AS 11.31.100 - 11.31.120 [AS 11.31.100  
4 OR 11.31.110] and commission of the crime that is the object of the attempt, conspiracy, or  
5 solicitation.

# STATE OF ALASKA

## DEPARTMENT OF PUBLIC SAFETY

### DIVISION OF STATE TROOPERS

WALTER J. HICKEL, GOVERNOR

RICHARD L. BURTON, COMMISSIONER

5700 EAST TUDOR ROAD  
ANCHORAGE, ALASKA 09507  
PHONE: (907)

269-5641

February 20, 1992

Senator Rick Halford  
Alaska State Legislature  
Box V  
Juneau, AK 99811

Dear Senator Halford:

I, Director of the Alaska State Troopers heartily support SB 343, creating the new crime conspiracy.

This bill will significantly increase efficiency of the criminal justice system within Alaska and provide a valuable and essential tool to all law enforcement within Alaska.

Federal conspiracy laws assist State and local law enforcement, however it is imperative that Alaska enact it's own conspiracy statute in order that State prosecutors can prosecute criminal organizations.

I wholeheartedly support your efforts towards passage of SB 343 (an act relating to the crime of conspiracy).

Sincerely,

*John R. Murphy*  
Colonel John R. Murphy  
Director

cc: Commissioner Burton

Post-It™ brand fax transmittal memo 7871		# of pages ▶ 2
To <i>Sen. Halford</i>	From <i>Col. Murphy</i>	
Co.	Co.	
Dept.	Phone #	
Fax #	Fax # <i>465-3825</i>	



U. S. Department of Justice

United States Attorney

District of Alaska at Anchorage

February 18, 1992

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

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

The Honorable Rick Halford  
State Senate  
Alaska State Legislature

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

Dear Mr. ~~Halford~~ 

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

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

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

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

Best Wishes.

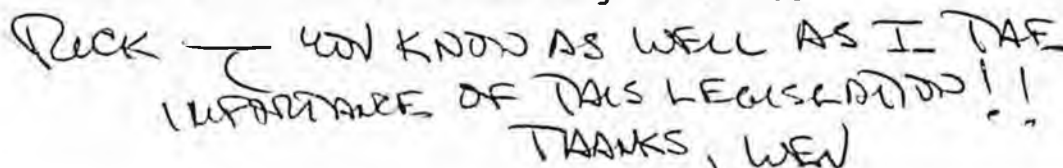
Yours Very Truly,

  
WEVLEY WILLIAM SHEA  
United States Attorney

WWS:kjm

Enclosure

cc: Chuck Farmer, Coordinator  
Law Enforcement Coordinating Committee

  
Rick - you know as well as I the  
importance of this legislation!!  
THANKS, WEN

FRANK H. MURKOWSKI  
ALASKA

COMMITTEES:  
SELECT COMMITTEE ON INTELLIGENCE (VICE CHAIRMAN)  
ENERGY AND NATURAL RESOURCES  
FOREIGN RELATIONS  
VETERANS AFFAIRS  
SELECT COMMITTEE ON INDIAN AFFAIRS

United States Senate

WASHINGTON, DC 20510-0702  
(202) 224-0865

722 WEST 4TH AVENUE, Box 1  
ANCHORAGE, AK 99511-7170  
(907) 771-3735

101 18TH AVENUE, Box 7  
FAIRBANKS, AK 99701-6278  
(907) 466-0233

P.O. BOX 21647  
JUNEAU, AK 99802-1647  
(907) 580-7400

170 TRADING BAY ROAD, Suite 37  
KENAI, AK 99501-7716  
(907) 703-5000

103 MAIN STREET  
KEETCHIKAN, AK 99801-6436  
(907) 225-6000

February 28, 1991

The Honorable Rick Hallford  
Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801-1182

Dear Senator Hallford: *RH*

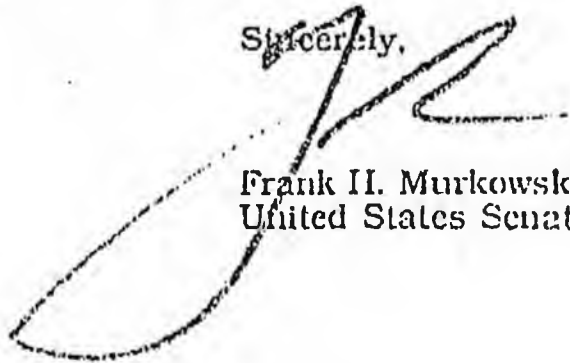
When I had the opportunity to speak before the State Legislature earlier this month, I expressed my deep concern about the escalation of drug activity in Alaska. We must recognize that the weakness of our state's drug laws sends an unfortunate message to those who would traffic in illegal drugs. I applaud your efforts to address this problem by introducing legislation calling for a state conspiracy law. The passage of such a law should dispel any notion drug organizations may have that Alaska is a safe haven for their illicit operations.

It is time to give law enforcement in Alaska the tools necessary to break the criminal organizations that prey on our youth. Your legislation is an important step toward achieving that goal. The enactment of a state conspiracy law would allow us to bring down entire drug organizations rather than just prosecuting the pushers who are easily replaced.

We cannot simply rely upon the federal criminal justice system to deal with the rise of criminal organizations in Alaska. While federal conspiracy laws play a significant role in combatting criminal organizations, we must give the state's law enforcement community the ability to use effectively their valuable resources to stem the tide of drugs washing up on Alaska's shores. We must make every effort to ensure that state and local law enforcement can take the steps necessary to adequately protect our youth and our communities.

I am hopeful that the Legislature will act quickly to provide for this protection by enacting a criminal conspiracy statute.

Sincerely,



Frank H. Murkowski  
United States Senator

# Alaska Association Chiefs of Police



February 21, 1992

Senator Rick Halford  
Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801-1182

Dear Senator Halford,

On behalf of the Alaska Association of Chiefs of Police, I would like to offer our support of Senate Bill 343, an act relating to conspiracy. For many years, law enforcement has asked that the legislature pass such a law.

We believe that a conspiracy law is an effective way to combat crime. Most states have conspiracy laws, as does the federal government. Alaska also needs such laws, and we urge the passage of Senate Bill 343.

If we can be of any assistance, please contact me at 786-8552.

Sincerely,

A handwritten signature in cursive script, reading "Duane S. Udland".

Duane S. Udland, President  
Alaska Association of Chiefs of Police  
4501 South Bragaw  
Anchorage, Alaska 99507

COPY

**FBI National Academy Associates**

**Alaska Chapter**



February 20, 1992

269-5641

Senator Rick Halford  
Alaska State Legislature  
Box V  
Juneau, AK 99811

Dear Senator Halford:

The FBI National Academy Associates, Alaska Chapter strongly support SB 343, creating the new crime conspiracy.

This bill will significantly increase efficiency of the criminal justice system within Alaska and provide a valuable and essential tool to all law enforcement within Alaska.

Federal conspiracy laws assist State and local law enforcement, however it is imperative that Alaska enact it's own conspiracy statute in order that State prosecutors can prosecute criminal organizations.

Once again, Senator, we wholeheartedly support your efforts towards passage of SB 343 (an act relating to the crime of conspiracy).

Sincerely,

Colonel John R. Murphy  
President

FBINAA  
Officers &  
Executive Board

President  
John R. Murphy, 138th  
5700 Tudor Road  
Anchorage, Alaska 99507  
(907) 269-5645

Secretary  
Ted R. Carlson, 121st  
P.O. Box 773288  
Eagle River, Alaska 99577  
(907) 694-2573Hm  
(907) 688-2677

John T. McConnaughey, 120th, Past President  
Glenn Flotha, 152nd, Vice President, South Central  
Michael A. Nielson, 118th, Vice President, Northern  
Dan Anslinger, 144th, Vice President, Southeast

# Recommended State Legislation

---

No strategy to combat illegal drug use can ignore the crucial role played by State and local governments. Many States have already enacted much useful anti-drug legislation. States that do not adopt legislative deterrents, while neighboring jurisdictions adopt bold legislation, will become havens for drug activity. No State can afford that risk or that reputation.

The Administration urges State officials, particularly State legislators, to consult with law enforcement officials, State and local prosecutors, treatment and education officials, and others to determine what laws or modifications to existing laws are needed in their States. In November 1990, the Office of National Drug Control Policy released a White Paper entitled "State Drug Control Status Report," which contained a number of suggestions for State anti-drug legislation. The following is a brief list of provisions that should form the core of a State's anti-drug efforts.

## Criminal Statutes

States should bolster their criminal codes with additional legislation tailored to the increased sophistication of today's drug trade. Among the statutes that State lawmakers should consider are the following:

**Attempted Drug Crimes.** Attempts to commit any drug crime should be punishable with up to the same penalty as if the offense had been completed. Such statutes permit law enforcement officers to

make drug arrests without consummating a sale or purchase with actual drugs.

**Drug Paraphernalia Laws.** Every State should enact a drug paraphernalia law based on the Model Drug Paraphernalia Act, originally drafted by the Drug Enforcement Administration in 1979. Such a law criminalizes the manufacture, distribution, and sale of paraphernalia intended for use with illegal drugs.

**Wiretap Statutes.** Some State laws governing the use of wiretaps and other electronic surveillance techniques may require dual consent, or may otherwise be outdated. These statutes should be amended to bring them into conformity with Federal law.

**Conspiracy Statutes.** Conspiracy statutes should be updated and expanded to enhance the ability of State officials to prosecute drug traffickers and dismantle the criminal enterprises they control. For example, the prohibition of joint trials of trafficking defendants renders impractical many State conspiracy statutes.

**Money Laundering Statutes.** States should enact criminal statutes to prohibit knowingly engaging in delivery, receipt, transfer, or any other transaction of funds derived from the proceeds of drug offenses. States should also pass other laws to control the activities of unregulated money exchange houses in their jurisdiction.

**Precursor Chemical Control Statute.** State laws should regulate the purchase of chemicals and, if appropriate, glassware and other equipment commonly used to manufacture and process drugs. Such laws are necessary to reduce the domestic production of drugs such as methamphetamine.

**Maintenance, Control, and Use of Buildings.** Landlords who knowingly allow their property to be used in connection with drug activity are just as responsible as the dealers themselves. States should adopt laws to punish landlords who continue to collect rents from tenants involved in the production or distribution of drugs, unless the landlord was reasonably unaware of the unlawful activity or notified the police of what was happening.

**Designer Drugs.** Chemists can synthesize new drugs that are almost identical to scheduled drugs but are sufficiently different that their manufacture and sale are legal. These drugs may be as dangerous as scheduled drugs. States should have emergency scheduling authority to prevent this practice and should also allow prosecution of those who engage in it.

**Counterfeit Substances.** Drugs produced in clandestine labs are often stamped with a legitimate company's trademark. It should be a criminal offense to misuse a trademark in this way.

## OPINION

## TAKING A STAND

## Without conspiracy laws Alaska easy target for organized crime

Alaska is unique. Approximately 50 percent of our population resides in the Anchorage area. Much of Alaska's remaining population is isolated. This isolation and lack of a transportation infrastructure places a substantial burden on state and local law enforcement.

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

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

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

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



Wevley William Shea

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

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

•MEXICAN MARIJUANA/COCAINE CONSPIRACY

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

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

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

•NIGERIAN HEROIN CONSPIRACY

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

•MUSLIM CRIPS CRACK-COCAINE CONSPIRACY

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

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

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

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

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

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

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

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

People we have lined up to testify in support of SB 343:

IN ANCHORAGE:

1. John Murphy -- Alaska State Troopers and FBINAA
2. Sgt. Mike Grimes -- Anchorage Homicide
3. Joe Bottinni -- Asst. U.S. Attorney
4. Ed McNalley -- Anchorage District Attorney
5. Terry Marquart (?) -- U.S. Marshall and APOA

IN JUNEAU:

6. Duane Udland -- Anchorage Asst. Chief of Police and AACOP
7. Bob Casey -- Legal Drafter

QUESTIONABLE SUPPORT:

IN ANCHORAGE:

1. Brant McGee -- Public Advocacy
2. John Salemi -- Public Defender

People Available Today  
To Answer Questions On  
SB 343

- 1) Col. John Murphy  
(or his designate) Alaska State Troopers Director
- 2) Terry Marquart or  
Ed Harder, Exec. Dir. APOA U.S. Marshell or APOA
- 3) Tim Burgess and/or  
Joe Bottini U.S. Attorney's Office
- 4) Ed McNalley  
(Probable) Anchorage D.A.
- 5) Glenn Flothe State Troopers
- 6) Brant McGee  
(might not arrive until  
2:00pm) OPA
- 7) Dean Guaneli Law
- 8) Bob Casey Bill Drafter

S B

3 5 8

SENATE COMMITTEE REPORT  
FIRST COMMITTEE OF REFERRAL

*Ruler*  
*just*

DATE: 1/16/92

FURTHER:

Date of 5-Day Notice: 1/30/92  
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 2/14/92

Judiciary Committee considered SB 358

"An Act making the theft of certain safety and survival equipment from a commercial fishing vessel theft in the second degree.)

and a majority of the committee recommends it be replaced with

and recommends:

replace with \_\_\_\_\_ CS \_\_\_\_\_ SB 358 (JUD)

- same title
- new title
- technical title change (HB only)

attaches amendment(s) **and do pass**

adopts \_\_\_\_\_ Letter of Intent

further referral to the \_\_\_\_\_

*30 Feb '92*

do pass

do not pass

no recommendation

individual recommendations

**NEW FISCAL NOTES:** Dept/Date

zero fiscal notes LAW SB E CS  
ADMIN SB + CS  
DPS SB + CS

**PREVIOUS FISCAL NOTES:** Dept/Date

Governor's bill with fiscal notes: zero fiscal notes \_\_\_\_\_

fiscal notes \_\_\_\_\_

fiscal notes \_\_\_\_\_

appropriation--no fiscal note

**DO PASS:** *Mark Hedley do pass*

**OTHER RECOMMENDATIONS:**  
*2 copies Colles no res*

*Frank* FRANK

*Rick Halford do pass*  
Chair: Signature and Recommendation

**SEVENTEENTH LEGISLATURE  
SENATE JUDICIARY COMMITTEE BILL FILE**

Bill Number: SB 358  
Abbreviated Title: \_\_\_\_\_

Sponsor: Elison Original Received: 1/16/92  
Written Request to Schedule Rcv'd: 1/29 From: Elison  
Sponser's Statement Rcv'd: 1/29/92 From: Elison  
Sectional Analysis Rqst'd: \_\_\_\_\_ From: \_\_\_\_\_  
Sectional Analysis Received: \_\_\_\_\_

**Fiscal Note (Original)**

Rqst'd Of: <u>LAW 1/31</u>	Rcv'd From: _____	Date: _____
Rqst'd Of: <u>DPS 1/31</u>	Rcv'd From: _____	Date: _____
Rqst'd Of: _____	Rcv'd From: <u>Admin</u>	Date: <u>2/3/92</u>

**Fiscal Note (C.S.)**

Rqst'd Of: _____	Rcv'd From: _____	Date: _____
Rqst'd Of: _____	Rcv'd From: _____	Date: _____
Rqst'd Of: _____	Rcv'd From: _____	Date: _____

Five Day Notice Given: 1/30 Notice of Hearings Given: 1/30  
Committees of Referral: First: JUD Second: \_\_\_\_\_ Third: \_\_\_\_\_  
LAA Contact: \_\_\_\_\_ To Senate Secretary: \_\_\_\_\_

**COMMITTEE ACTION**

DATE:

<u>1/31</u>	<u>CS requested to include theft of Aircraft safety equip</u>
<u>2/4</u>	<u>CS adopted no working document ordered from Casey</u>
_____	<u>to include ref from AS &amp; Fed regs to include</u>
_____	<u>definitions and requirement lists (cross reference) - Rewrite -</u>
<u>1/30</u>	<u>5 day notice given</u>
<u>2/1</u>	<u>CS adopted to include theft of Aircraft safety equip</u>
_____	<u>zero fiscal notes unchanged</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

**PERSONS TO BE NOTIFIED OF HEARING**

- |               |           |
|---------------|-----------|
| 1. Sponsor    | 6. _____  |
| 2. Agency     | 7. _____  |
| 3. <u>LAW</u> | 8. _____  |
| 4. <u>DPS</u> | 9. _____  |
| 5. _____      | 10. _____ |

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. SB 358

Revision Date: \_\_\_\_\_ Department Affected: Department of Law  
 Title: "...making the theft of...survival equipment theft in the second degree." BRU: Prosecution  
 Component: All  
 Sponsor: Senator Eliason  
 Requestor: Senate Judiciary Committee 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.

Prepared By: Richard I. Pegues, Director Phone: 465-3672  
 Division: Administrative Services Date: February 3, 1992  
 Approved by Commissioner: Charles E. Cole, Attorney General  
 Agency: Department of Law Date: February 3, 1992

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 358

This bill amends AS 11.46.130 to provide that a person commits the crime of theft in the second degree if the property is vessel safety or survival equipment and the property is taken from a licensed commercial fishing vessel or a vessel used exclusively for commercial salmon fishing that has been exempted from state licensing requirements under AS 16.05.495. The bill also amends AS 16.05.710(b) to provide that when a person is convicted of this crime a court shall, in addition to the penalty imposed by law, suspend one or more of the person's commercial fishing privileges or licenses for one year for a first conviction, and suspend their privileges for two years for a second or subsequent conviction. Theft in the second degree is a class C felony.

The Department of Law does not anticipate a fiscal impact because many safety and survival devices have a value that exceeds the \$500 threshold for theft in the second degree.

FISCAL NOTE

BILL NO. SB 358

STATE OF ALASKA

1992 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_

Department Affected: Administration

Title: "An Act making the theft of certain safety and survival equipment from a commercial fishing vessel theft in the second degree."

BRU: Public Defender Agency

Sponsor: Ellason

Component: Public Defender Agency

Requestor: Senate Judiciary

COMPONENT SERIAL NO. 

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

Expenditures/Revenues: (Thousands of Dollars)

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

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: \_\_\_\_\_

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

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

Phone: 279-7541  
Date: January 27, 1992

Approved by Commissioner: Nancy Bear Usara  
Agency: Administration

Date: 2/3/92

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

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. SB 358

ANALYSIS: (continued)

Normally in order to be charged with the crime of theft in the second degree, one must steal property which has the value of more than \$500. This proposal expands the definition of Theft in the Second Degree to include Theft of Safety and Survival Equipment from a Commercial Fishing Vessel regardless of its value.

This bill, if passed into law, will have no fiscal impact on the Public Defender Agency.

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. SB 358

Revision Date: \_\_\_\_\_ Department Affected: Public Safety  
 Title: "An Act making the theft of certain equipment theft in the second degree." BRU: Fish & Wildlife Protection  
 Component: Enforcement & JSU  
 Sponsor: Senator Eliason  
 Requestor: Senate Judiciary COMPONENT SERIAL NO. 

4	9	0
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EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

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

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

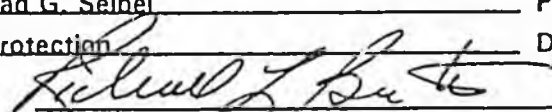
GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE:						
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

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 fiscal impact in anticipated.

Prepared By: Captain Conrad G. Seibel Phone: 269-5509  
 Division: Fish & Wildlife Protection Date: 2/1/92  
 Approved by Commissioner:  Richard L. Burton  
 Agency: Department of Public Safety Date: 2/3/92

ALASKA STATE LEGISLATURE SENATE  
SENATOR RICHARD I. ELIASON

PRESIDENT OF THE SENATE  
LABOR & COMMERCE COMMITTEE  
RESOURCES COMMITTEE  
RULES COMMITTEE  
CHAIRMAN, SPECIAL COMMITTEE ON  
DOMESTIC & INTERNATIONAL  
COMMERCIAL FISHERIES



P.O. BOX 141  
SITKA, ALASKA 99835

P.O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465 4016

FAX (907) 465 4028

MEMORANDUM

TO: Senator Rick Halford, Chairman  
Senate Judiciary Committee

FROM: Senator Dick Eliason *Dick Eliason*

DATE: January 29, 1992

RE: Request for hearing on SB 358, relating to  
theft of safety/survival equipment from commercial  
fishing vessel

I hope that the Judiciary Committee will soon schedule for a hearing Senate Bill 358, relating to the criminal penalty for theft of safety and survival equipment from a commercial fishing vessel.

Thank you for your consideration of this request.

ALASKA STATE LEGISLATURE SENATE

SENATOR RICHARD I. ELIASON

PRESIDENT OF THE SENATE  
LABOR & COMMERCE COMMITTEE  
RESOURCES COMMITTEE  
RULES COMMITTEE  
CHAIRMAN, SPECIAL COMMITTEE ON  
DOMESTIC & INTERNATIONAL  
COMMERCIAL FISHERIES



P.O. BOX 143  
SITKA, ALASKA 99835

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1/29/92

TESTIMONY OF SEN. DICK ELIASON, PRIME SPONSOR, REGARDING SB 358,  
"An Act making the theft of certain safety and survival equipment form a  
commercial fishing vessel theft in the second degree."

The U. S. Coast Guard, in the course of implementing provisions of the Commercial Fishing Industry Vessel Safety Act of 1988, has issued regulations which include requirements for the safety and survival equipment aboard uninspected commercial fishing vessels. The regulations went into effect in late 1991, although some provisions have a delayed effective date. The purpose of the regulations is to prevent unnecessary loss of life, and the Coast Guard believes they will also result in fewer pollution incidents arising from vessel loss.

Alaska fishermen are required to make substantial expenditures on safety and survival equipment in order to comply with these regulations, and more vessels than ever before are equipped with survival suits, EPIRBs (Emergency Position Indicating Locator Beacons), and fire fighting equipment. This is good news, especially in light of the fact that commercial fishing is considered one of the most dangerous occupations.

Unfortunately, there have been increasing problems with theft of safety equipment from fishing vessels. The repercussions of such a theft can be disastrous. At the top of the list is the horrible possibility that lives would be lost due to an emergency at sea, the very thing the new Coast Guard regulations seek to prevent. The theft of equipment just prior to a fishing opening could result in the loss of the opportunity to fish, either because the theft was discovered and the vessel remained in port, or because the Coast Guard exercised its authority to compel the vessel to return to port immediately. Given the brevity of the fishing openings these days, an individual could miss an entire opening and be financially ruined as a result. In addition, the Coast Guard may impose stiff civil and criminal penalties for violations of the regulations.

Sponsor Statement

SB 358  
page two

Senate Bill 358 makes it a class C felony, rather than a class A misdemeanor, to steal certain safety and survival equipment from a commercial fishing vessel, whether or not the value of the property exceeds \$500. The safety and survival equipment is closely defined in the bill. The measure also includes a section to provide that if the offense is committed by a commercial fisherman, he or she stands to lose fishing licenses and privileges. This is consistent with penalties now on the books for theft of fishing gear.

The purpose of the legislation is to discourage the theft of safety equipment from commercial fishing vessels, and I strongly encourage its adoption.

**DIVISION OF LEGAL SERVICES**

**LEGISLATIVE AFFAIRS AGENCY  
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240 Main Street, Suite 500  
Juneau, Alaska 99801-2101

**MEMORANDUM**

February 3, 1992

**SUBJECT:** CS to SB 358, adding theft of aircraft safety equipment and upgrading the crime to a class C felony

**TO:** Senator Rick Halford

**FROM:** Robert Glennon Casey *RGC*  
Legislative Counsel

A committee substitute has been prepared which adds "aircraft safety equipment" to the list of items whose theft would violate AS 11.46.130.

It would be much better, however, if the committee substitute defined aircraft safety equipment. That would follow the example of the original bill, which adds "vessel safety or survival equipment" as items whose theft would violate the statute and then goes on to define safety and survival equipment.

To further parallel the other items in the list, I have limited this to thefts from aircraft. Also, you requested that the status of the crime be upgraded to a class C felony. AS 11.46.130 is already a class C felony, so the committee substitute makes no change in that area.

RGC:gc  
92-093.glc

Enclosure

7-LS1603NG  
Casey  
2/11/92

CS FOR SENATE BILL NO. 358 ( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): SENATORS ELIASON, Zharoff, Halford, Sturgulewski

A BILL

FOR AN ACT ENTITLED

1 "An Act making the theft of certain safety and survival equipment from watercraft and  
2 aircraft theft in the second degree."

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

4 \* Section 1. AS 11.46.130(a) is amended to read:

5 (a) A person commits the crime of theft in the second degree if the person commits theft  
6 as defined in AS 11.46.100 and

7 (1) the value of the property or services is \$500 or more but less than \$25,000;

8 (2) the property is a firearm or explosive;

9 (3) the property is taken from the person of another; [OR]

10 (4) the property is taken from a vessel and is vessel safety or survival  
11 equipment;

12 (5) the property is taken from an aircraft and the property is aircraft safety  
13 or survival equipment; or

14 (6) the value of the property is \$50 or more but less than \$500 and within the

1 preceding five years the person has been convicted and sentenced on two or more separate  
2 occasions in this or another jurisdiction of

3 (A) AS 11.46.120, or an offense under another law or ordinance with  
4 similar elements;

5 (B) a crime set out in this subsection or an offense under another law or  
6 ordinance with similar elements;

7 (C) AS 11.46.140(a)(1) or (2), or an offense under another law or  
8 ordinance with similar elements; or

9 (D) AS 11.46.220(c)(1) or (c)(2)(A), or an offense under another law or  
10 ordinance with similar elements.

11 \* Sec. 2. AS 11.46.130 is amended by adding a new subsection to read:

12 (c) In this section,

13 (1) "aircraft" means a contrivance used or designed for navigation of flight in air,

14 (2) "aircraft safety or survival equipment" means equipment required to be carried  
15 on an aircraft under AS 02.30.010 or AS 02.35.110;

16 (3) "vessel" means every description of watercraft, other than a seaplane on water,  
17 used or capable of being used as a means of transportation on water;

18 (4) "vessel safety or survival equipment" means personal flotation devices;  
19 immersion suits; personal flotation device lights; survival craft; equipment necessary for the  
20 proper operation of survival craft; emergency position indicating radio beacons; fire extinguishers  
21 and supporting equipment; firefighters' outfits; and self contained breathing apparatuses; in this  
22 subparagraph, "survival craft" means a device designed to enable a person to survive the loss of  
23 a vessel, and includes buoyant apparatuses, inflatable buoyant apparatuses, life floats, inflatable  
24 life rafts, and auxiliary craft, including skiffs, usable as survival craft.

25 \* Sec. 3. AS 11.46.295 is amended to read:

26 Sec. 11.46.295. PRIOR CONVICTIONS. For purposes of considering prior convictions  
27 in prosecuting a crime of theft under AS 11.46.130(a)(6) [AS 11.46.130(a)(4)] or 11.46.140(a)(3),  
28 or in prosecuting the crime of concealment of merchandise under AS 11.46.220(c), a conviction  
29 for an offense under another law or ordinance with similar elements is a conviction of an offense  
30 having elements similar to those of an offense defined as such under Alaska law at the time the  
31 offense was committed.

7-LS1603ND  
Casey  
2/3/92

**CS FOR SENATE BILL NO. 358 ( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - SECOND SESSION**

**BY**

**Offered:  
Referred:**

**Sponsor(s): SENATORS ELIASON, Zharoff, Halford, Sturgulewski**

**A BILL**

**FOR AN ACT ENTITLED**

**1 "An Act making the theft of certain safety and survival equipment from a commercial  
2 fishing vessel and theft of aircraft safety equipment theft in the second degree."**

**3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

**4 \* Section 1. AS 11.46.130(a) is amended to read:**

**5 (a) A person commits the crime of theft in the second degree if the person commits theft  
6 as defined in AS 11.46.100 and**

**7 (1) the value of the property or services is \$500 or more but less than \$25,000;**

**8 (2) the property is a firearm or explosive;**

**9 (3) the property is taken from the person of another; [OR]**

**10 (4) the property is taken from a vessel licensed under AS 16.05.490, or a  
11 vessel used for a purpose described in AS 16.05.495, and the property is vessel safety or  
12 survival equipment;**

**13 (5) the property is taken from an aircraft and the property is aircraft safety  
14 equipment; or**

Proposed CS to SB 358  
By Senator Halford

1           (6) the value of the property is \$50 or more but less than \$500 and within the  
2 preceding five years the person has been convicted and sentenced on two or more separate  
3 occasions in this or another jurisdiction of

4           (A) AS 11.46.120, or an offense under another law or ordinance with  
5 similar elements;

6           (B) a crime set out in this subsection or an offense under another law or  
7 ordinance with similar elements;

8           (C) AS 11.46.140(a)(1) or (2), or an offense under another law or  
9 ordinance with similar elements; or

10          (D) AS 11.46.220(c)(1) or (c)(2)(A), or an offense under another law or  
11 ordinance with similar elements.

12 \* Sec. 2. AS 11.46.130 is amended by adding a new subsection to read:

13          (c) In this section, "vessel safety or survival equipment" means personal flotation devices;  
14 immersion suits; personal flotation device lights; survival craft; equipment necessary for the  
15 proper operation of survival craft; emergency position indicating radio beacons; fire extinguishers  
16 and supporting equipment; firefighters' outfits; and self contained breathing apparatuses; in this  
17 subparagraph, "survival craft" means a device designed to enable a person to survive the loss of  
18 a vessel, and includes buoyant apparatuses, inflatable buoyant apparatuses, life floats, inflatable  
19 life rafts, and auxiliary craft, including skiffs, usable as survival craft.

20 \* Sec. 3. AS 11.46.295 is amended to read:

21          Sec. 11.46.295. PRIOR CONVICTIONS. For purposes of considering prior convictions  
22 in prosecuting a crime of theft under AS 11.46.130(a)(6) [AS 11.46.130(a)(4)] or 11.46.140(a)(3),  
23 or in prosecuting the crime of concealment of merchandise under AS 11.46.220(c), a conviction  
24 for an offense under another law or ordinance with similar elements is a conviction of an offense  
25 having elements similar to those of an offense defined as such under Alaska law at the time the  
26 offense was committed.

27 \* Sec. 4. AS 16.05.710(b) is amended to read:

28          (b) Upon a first conviction of a person for a violation of AS 11.46.120 - 11.46.130 in  
29 which the property is commercial fishing gear as defined in AS 16.43.990 or is vessel safety or  
30 survival equipment as defined in AS 11.46.130, the court shall, in addition to the penalty  
31 imposed by law, suspend one or more of the person's commercial fishing privileges and licenses

1 for one year. Upon a second or subsequent conviction for a violation of AS 11.46.120 -  
2 11.46.130 or a similar law of another jurisdiction in which the property is commercial fishing  
3 gear as defined in AS 16.43.990 or is vessel safety or survival equipment as defined in  
4 AS 11.46.130, the court shall, in addition to the penalty imposed by law, suspend one or more  
5 of the person's commercial fishing privileges and licenses for two years.