

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
7488 SENATE JUDICIARY

SPONSOR STATEMENT

SCS CS SS HB 156 (HES)

Providing for Privileged Communications in Cases of Domestic Violence & Sexual Assault

Domestic violence and sexual assault are growing problems in Alaska. Communities throughout the state have established shelters and safe homes in an effort to provide counseling and safety to victims of these crimes. Since FY 87, the number of nights of safety provided by funded shelters has increased by 44%.

As a result of the fear and stigma associated with domestic violence and sexual assault, many victims fail to seek needed medical care and counseling for their emotional trauma. In order to fully recover from domestic violence and sexual assault crimes, it is necessary for victims to discuss thoughts and feelings with someone who is trained to address these issues. Domestic violence/sexual assault counselors provide this assistance. The relationship that develops between a victim and counselor is fragile and requires trust.

Need for Legislation

Current Alaskan law discourages some victims from coming forward by allowing the court system to subpoena records that disclose all information, given in trust, between a sexual assault counselor and victim.

At the request of the Alaska Network on Domestic Violence and Sexual Assault, I have sponsored SCS CS SS HB 156 (HES) to make changes to state law and establish a general rule that communications between a domestic violence or sexual assault victim and a domestic violence or sexual assault counselor are privileged and confidential. The bill allows for exceptions to the privileged communication rule in certain instances, for example, such as cases of child abuse or neglect or if the victim is deceased.

SCS CS SS HB 156 (HES) is necessary to encourage and protect the trust relationship between victim and counselor. Victims of domestic violence and sexual assault should be allowed to choose if and when deeply personal information is to become a matter of public record. SCS CS SS HB 156 (HES) would provide confidentiality for these highly personal, private and confidential communications.

SCS CS SS HB 156 (HES) would provide that the communications between a victim of domestic violence and/or sexual assault and a domestic violence/sexual assault counselor are privileged and may not be disclosed in a civil, criminal, legislative or administrative proceeding without the appropriate consent of the victim.

SCS CS SS HB 156 (HES) would extend to all victims of domestic violence and sexual assault a testimonial privilege encompassing the contents of communication with a domestic violence or sexual assault counselor and to render immune from discovery or legal process the records of the communications maintained by the domestic violence or sexual assault program.

SCS CS SS HB 156 (HES) would make amendments to AS 09.25 (Civil Evidence) and AS 12.45 (Criminal Trial) by adding new language to provide that confidential communications between a domestic violence or sexual assault victim and a counselor are privileged.

SCS CS SS HB 156 (HES) also amends and adds new sections to AS 25.35 (Domestic Violence) to establish a general prohibition, with certain exceptions, regarding compulsory disclosure of confidential communications between domestic violence and sexual assault victims and their counselors.

Exceptions to this general standard of privileged communications include cases involving:

- 1) reports of child abuse or neglect;
- 2) evidence that the victim is about to commit a crime;
- 3) a proceeding where the victim is deceased;
- 4) a communication relevant to an issue of breach by the victim or victim counselor of a duty arising out of the victim-counselor relationship;
- 5) a communication that is determined to be admissible hearsay as an excited utterance under the Alaska Rules of Evidence;
- 6) a children-in-need-of-aid proceeding under AS 47.10;
- 7) a communication made during the victim-counselor relationship if the services of the counselor were sought, obtained, or used to enable anyone to commit or plan a crime; or
- 8) a criminal proceeding concerning criminal charges against a victim of domestic violence or sexual assault where the victim is charged with a crime under AS 11.41 against a minor.

Further, the legislation provides that the location of a safe house of the identity of a domestic violence counselor may not be disclosed in a civil, criminal, legislative or administrative proceeding unless the court or hearing

officer determines that the information is necessary and relevant to the facts of the case.

Discussion

Confidentiality for victims working with domestic violence and sexual assault counselors and shelters serves both the needs of victims and the needs of society to help reduce the damage done by domestic violence and sexual assault crimes.

- As a result of the fear and stigma associated with domestic violence and sexual assault, many victims fail to seek needed medical care and counseling for the emotional injuries resulting from the crime.
- Without adequate psychological support, many of these victims fail to report the crime and cooperate with the criminal justice system.
- Domestic violence and sexual assault counselors are specifically trained to help victims recover from an assault. Skills and techniques employed by counselors are designed to encourage the victim to discuss the emotional aftermath of an assault and thereby normalize the life of the victim.
- Full recovery from an assault requires that victims discuss thoughts and feelings that a victim is unlikely to discuss without the assurance of confidentiality, and this confidentiality should be accorded to all assault victims who desire services whether or not they are able to afford the services of private psychiatrists and psychologists.
- These victims hesitate to turn to friends and family because of the social stigma attached to domestic violence and sexual assault.

Questions and Answers

- *Why is legislation needed?*

Because of the stigma and fear involved in sexual assault and domestic violence, victims simply will not talk to anyone if they think that their confidentiality will not be respected.

In one case in Pennsylvania, when a rape crisis program was forced to turn over counseling records in a rape trial, the numbers of callers to that center's hotline who would even identify themselves on the phone decreased by over one third. That resulted in the Pennsylvania legislature passing a privilege statute in its next session. We shouldn't wait for that to happen here.

In Alaska's small communities this protection is essential. By offering confidential services these programs have been able to increase the numbers of victims who prosecute their cases which has provided a great benefit to society in terms of convicting known offenders.

- *Aren't these records already protected?*

Currently, records are protected only through state regulation and, to some extent, because of federal funding requirements. Neither of these have the same force that a statutory change will provide.

- *What if the victim wants to release this information? Does this mean a person can't do it?*

In Alaska privilege belongs to the client. So, if the victim wants to release their records to anyone, they can do that. The point of this bill is to ensure that victims can have some control over this issue.

4/3/92 Rep. Kay Brown

SPONSOR STATEMENT

Sen CS for CS SS HB 156 (HES)

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Domestic violence and sexual assault are growing problems in Alaska. Communities throughout the state have established shelters and safe homes in an effort to provide counseling and safety to victims of these crimes. Since FY 87, the number of nights of safety provided by funded shelters has increased by 44 percent.

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Need for Legislation

Current Alaskan law discourages some victims from coming forward by allowing the court system to subpoena records that disclose all information, given in trust, between a sexual assault counselor and victim. At the request of the Alaska Network on Domestic Violence and Sexual Assault, I have introduced CS SS HB 156 (Judiciary) to make changes to the state laws and establish a general rule that communications between a domestic violence or sexual assault victim and a domestic violence or sexual assault counselor are privileged and confidential. The bill allows for exceptions to the privileged communication rule in certain instances, for example, such as cases of child abuse or neglect or if the victim is deceased.

CS SS HB 156 (Judiciary) is necessary to encourage and protect the trust relationship between victim and counselor. Victims of domestic violence and sexual assault should be allowed to choose if and when deeply personal information is to become a matter of public record. CS SS HB 156 (Judiciary) would provide confidentiality for these highly personal, private and confidential communications.

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Confidentiality for victims working with domestic violence and sexual assault counselors and shelters serves both the needs of victims and the needs of society to help reduce the damage done by domestic violence and sexual assault crimes.

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- Full recovery from an assault requires that victims discuss thoughts and feelings that a victim is unlikely to discuss without the assurance of confidentiality, and this confidentiality should be accorded to all assault victims who desire services whether or not they are able to afford the services of private psychiatrists and psychologists.

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In Alaska privilege belongs to the client. So if the victim wants to release her records to anyone, she can do that. The point of this bill is to ensure that victims can have some control over this issue.

In developing this legislation, I have worked very closely with the Alaska Council on Domestic Violence/Sexual Assault, the Department of Public Safety and the Alaska Network on Domestic Violence and Sexual Assault.

SECTIONAL ANALYSIS

Sen CS for CS for SS HB 156 (HES) Confidentiality Regarding Domestic Violence & Sexual Assault

Section 1

Amends AS 09.25 (Code of Civil Procedure) adding a new section to provide that confidential communications between a domestic violence or sexual assault victim and a counselor are privileged.

Section 2

Amends AS 12.45 (Code of Criminal Procedure) adding a new section to provide that confidential communications between a domestic violence or sexual assault victim and a counselor are privileged.

Section 3

Amends AS 25.35 to provide that communications between a domestic violence or sexual assault counselor and a domestic violence and sexual assault victim are privileged. Compulsory disclosure of these communications is generally prohibited, with certain exceptions, and may not be disclosed in a civil, criminal, legislative or administrative proceeding without the "appropriate consent" of the victim or the victim's parent, legal guardian, or guardian ad litem. Provision is made to allow a minor the opportunity to knowingly waive the confidentiality privilege established under this section if a court determines that the minor is capable of knowingly waiving the privilege. This section provides for exceptions to the general rule of confidentiality in certain instances, including among others, cases involving child abuse or neglect under AS 47.17 or if the victim is deceased.

This section also provides that the location of a safe house or the identity of a domestic violence counselor may not be disclosed in a civil, criminal, legislative or administrative proceeding unless the court or hearing officer determines that the information is necessary and relevant to the facts of the case.

SENATE COMMITTEE REPORT

Handwritten initials

DATE: 3/18/92

FURTHER: Judiciary

DATE TURNED INTO OFFICE: 01 APR 92

HES Committee considered CS SSB 156 (JUDICIARY)

"An Act providing that communications between a domestic violence or sexual assault victim and a domestic violence or sexual assault counselor are privileged, with exceptions; and prohibiting compelled testimony that would give identifying information about counselors and certain types of facilities used by victims of domestic violence or sexual assault, with exceptions."

and recommends it be replaced with

and recommends:

- replace with S CS CS SSB 156 (HES)
- or adopt previous CS ()
- attaches amendment(s)

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

and do pass

adopts _____ Letter of Intent

further referral to the _____

- do pass
- do not pass
- no recommendation
- individual recommendations

Handwritten note: PWD/1/2/1's

NEW FISCAL NOTES: Dept/Date

zero fiscal notes _____

fiscal notes _____

appropriation--no fiscal note

PREVIOUS FISCAL NOTES: Dept/Date

zero fiscal notes _____

~~PREVIOUS FISCAL NOTES~~

DPS 1.15.92

LAW 2.21.92

Admin 2.21.92

DO PASS:

OTHER RECOMMENDATIONS:

Handwritten signatures and initials:

[Signature] *Mund*

[Signature] *Ho*

[Signature] *Col*

[Signature] *Fish*

[Signature]

Chair: Signature and

Alaska State Legislature



Official Business

Senator Al Adams

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TO: Senator Rick Halford
FROM: Senator Al Adams *APA*
RE: Amendment to House Bill 156
DATE: May 2, 1992

Attached is an amendment I would like considered to House Bill 156 in committee today.

My first comment is that I am in support of this legislation and can find value in maintaining a certain level of confidentiality in the communications between victim of domestic violence/sexual assault and their counselors.

The amendment adds an exception to the privileges granted in this bill. The exception brings the privilege granted to counselors of domestic violence victims closer in line with the privilege granted to physicians and psychotherapists. Attached is Evidence Rule 504 from the Alaska Rules of Court and the accompanying commentary on the rule. Please refer to exception (d) (1) for the exception on "Condition an Element of Claim or Defense". The concept here parallels with the proposed amendment.

I cannot find justification for the grant of a privilege to counselors of domestic violence/sexual assault that is broader than the privilege granted to psychotherapists. Sufficient possibility exists for circumstances in which this information would be critical and suppression could well lead to untoward and unbalanced decisions. I believe the Department of Law can articulate its concerns before the committee today and I urge your consideration.

Amendment to Senate HES CS for CS for Sponsor Substitute for House Bill
156

Page 3, line 9 insert:

"(3) a communication relevant to the physical, mental, or emotional condition of the victim in a proceeding where the condition of the victim is an element of a claim or defense of

(A) the victim;

(B) a party claiming through or under the victim;

(C) a person claiming as a beneficiary of the victim through a contract to which the victim is or was a party;"

ReNUMBER accordingly.

Annotations

Cases

Defendant was a "client" within the meaning of the attorney-client privilege when she communicated with an employee of a law firm in order to obtain legal advice, notwithstanding that the law firm had not yet accepted her case and that only raw facts, not legal points, were discussed. *Amer. Nat. Watermattress Corp. v. Manville*, Op. No. 2477, 642 P2d 1330 (Alaska 1982).

In drunk driving prosecution in which the defendant had an independent blood test performed, by hospital personnel at his request to verify the accuracy of the police intoximeter examination, admission of expert testimony regarding the blood test did not violate the attorney-client privilege, since no lawyer participated in defendant's decision to take the blood test, nor did it violate the physician-patient privilege, since the physician-patient privilege does not apply in criminal cases. *Russel v. Municipality of Anchorage*, Op. No. 514, 706 P2d 687 (Alaska App. 1985).

Statements made by an insured to an insurer are not protected by the attorney-client privilege unless it can be shown that the insurer, in receiving such communications, was acting at the express direction of counsel for the insured. *Langdon v. Champlon*, Op. No. 3291, 752 P2d 999 (Alaska 1988).

While the attorney-client privilege protects communications regarding acts which the client may have committed prior to seeking representation, it will not protect communications which pertain to ongoing or future wrongdoing. *Munn v. Bristol Bay Housing Authority*, Op. No. 3458, 777 P2d 188 (Alaska 1989).

An attorney for a party is no more entitled to withhold information than any other potential witness, and may be required to testify at a deposition or trial as to material, nonprivileged matters. *Munn v. Bristol Bay Housing Authority*, Op. No. 3458, 777 P2d 188 (Alaska 1989).

Plaintiff would be entitled to depose defendant's attorney if plaintiff could present a prima facie case that defendants consulted the attorney for the purpose of interfering with plaintiff's employment relationship, since such conduct comes within the civil fraud exception to the attorney-client privilege; accordingly, trial court erred in quashing plaintiff's notice and subpoena for the taking of the deposition without considering whether he had made a prima facie showing that the information sought was not protected by the attorney-client privilege. *Munn v. Bristol Bay Housing Authority*, Op. No. 3458, 777 P2d 188 (Alaska 1989).

Services sought by a client from an attorney in aid of any crime or a bad faith breach of a duty are not protected by the attorney-client privilege. *Central Const. Co. v. Home Indem. Co.*, Op. No. 3606, 794 P2d 595 (Alaska 1990).

Before engaging in an in camera review to determine the applicability of the "crime of fraud" exception to the attorney-client privilege, the judge should require a showing of a factual basis adequate to support a good faith belief by reasonable person that in camera review of the materials may review evidence to establish the claim that the crime-fraud exception applies. *Central Const. Co. v. Home Indem. Co.*, Op. No. 3606, 794 P2d 595 (Alaska 1990).

In action by tort claim obligee against insurance company for bad faith inaction by the insurance company as surety on performance and payment bonds, trial court erred in denying the obligee discovery of the existence and amount of any loss reserve the insurance company may have established regarding the claims; the existence and amount of a loss reserve is not a protected confidential communication made for the purpose of facilitating the rendition of professional legal services nor is it prepared in anticipation of litigation. *Loyal Order of Mosse v. Inter. Fidelity*, Op. No. 3626, 797 P2d 622 (Alaska 1990).

Rule 504. Physician and Psychotherapist-Patient Privilege.

(a) Definitions. As used in this rule:

(1) A patient is a person who consults or is examined or interviewed by a physician or psychotherapist.

(2) A physician is a person authorized to practice medicine in any state or nation, or reasonably believed by the patient so to be.

(3) A psychotherapist is (A) a person authorized to practice medicine in any state or nation, or reasonably believed by the patient so to be, while engaged in the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction, or (B) a person licensed or certified as a psychologist or psychological examiner under the laws of any state or nation or reasonably believed by the patient to so be, while similarly engaged.

(4) A communication is confidential if not intended to be disclosed to third persons other than those present to further the interest of the patient in the consultation, examination, or interview, or persons reasonably necessary for the transmission of the communication, or persons who are participating in the diagnosis and treatment under the direction of the physician or psychotherapist, including members of the patient's family.

(b) General Rule of Privilege. A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of diagnosis or treatment of his physical, mental or emotional conditions, including alcohol or drug addiction, among himself, his physician or psychotherapist, or persons who are participating in the diagnosis or treatment under the direction of the physician or psychotherapist, including members of the patient's family.

(c) Who May Claim the Privilege. The privilege may be claimed by the patient, by his guardian, guardian ad litem or conservator, or by the personal representative of a deceased patient. The person who was the physician or psychotherapist at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the patient.

(d) Exceptions. There is no privilege under this rule:

(1) Condition an Element of Claim or Defense. As to communications relevant to the physical, mental or emotional condition of the patient in any proceeding in which the condition of the patient is an element of the claim or defense of the patient, of any party claiming through or under the patient, of any person raising the patient's condition as an element of his own case, or of any person claiming as a beneficiary of the patient through a contract to which the patient is or was party; or after the patient's death, in any proceeding in which any party puts the condition in issue.

(2) Crime or Fraud. If the services of the physician or psychotherapist were sought, obtained or used to enable or aid anyone to commit or plan a crime or fraud or to escape detection or apprehension after the commission of a crime or a fraud.

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(Added by by SCO 8:

Cases

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(3) *Breach of Duty Arising Out of Physician-Patient Relationship.* As to a communication relevant to an issue of breach, by the physician, or by the psychotherapist, or by the patient, of a duty arising out of the physician-patient or psychotherapist-patient relationship.

(4) *Proceedings for Hospitalization.* For communications relevant to an issue in proceedings to hospitalize the patient for physical, mental or emotional illness, if the physician or psychotherapist, in the course of diagnosis or treatment, has determined that the patient is in need of hospitalization.

(5) *Required Report.* As to information that the physician or psychotherapist or the patient is required to report to a public employee, or as to information required to be recorded in a public office, if such report or record is open to public inspection, or as to information or matters contained in or reasonably raised by a report submitted under AS 08.64.336, other than information that would establish the identity of a patient, unless the court finds that it is necessary to admit the identifying information in order to serve the interests of justice.

(6) *Examination by Order of Judge.* As to communications made in the course of an examination ordered by the court of the physical, mental or emotional condition of the patient, with respect to the particular purpose for which the examination is ordered unless the judge orders otherwise. This exception does not apply where the examination is by order of the court upon the request of the lawyer for the defendant in a criminal proceeding in order to provide the lawyer with information needed so that he may advise the defendant whether to enter a plea based on insanity or to present a defense based on his mental or emotional condition.

(7) *Criminal Proceeding.* For physician-patient communications in a criminal proceeding. This exception does not apply to the psychotherapist-patient privilege.

(Added by SCO 364 effective August 1, 1979; amended by SCO 850 effective January 15, 1988)

Annotations

Cases

The state enactment of the child abuse reporting statute did not abrogate the psychotherapist/patient privilege in child abuse cases. *State v. R.F.*, Op. No. 375, 683 P2d 269 (Alaska App. 1984).

Child abuse reports are not open to the public and therefore are not within the exception to the psychotherapist/patient privilege for information required to be recorded in a public office and open to public inspection. *State v. R.H.*, Op. No. 375, 683 P2d 269 (Alaska App. 1984).

Where court-ordered psychiatric examination of defendant clearly pertained to a child protection proceeding, the exception to the psychotherapist/patient privilege for certain court-ordered examination did not apply to testimony before a grand jury investigating a criminal charge against defendant, since preparing evidence for the grand jury

was not the purpose for which the psychiatric examination was ordered. *State v. R.H.*, Op. No. 375, 683 P2d 269 (Alaska App. 1984).

In drunk driving prosecution in which the defendant had an independent blood test performed by hospital personnel at his request to verify the accuracy of the police intoximeter examination, admission of expert testimony regarding the blood test did not violate the attorney-client privilege, since no lawyer participated in defendant's decision to take the blood test, nor did it violate the physician-patient privilege, since the physician-patient privilege does not apply in criminal cases. *Russell v. Municipality of Anchorage*, Op. No. 514, 706 P2d 687 (Alaska App. 1985).

Defense counsel in a personal injury action may engage in informal ex parte interviews with a plaintiff's treating physician, but the physician cannot be compelled to submit to such interviews. *Langdon v. Champlon*, Op. No. 3249, 745 P2d 1371 (Alaska 1987).

The psychotherapist-patient privilege is waived unless someone acts at trial to exercise the privilege. *Clifton v. State*, Op. No. 826, 758 P2d 1279 (Alaska App. 1988).

Rule 505. Husband-Wife Privileges.

(a) Spousal Immunity.

(1) *General Rule.* A husband shall not be examined for or against his wife, without his consent, nor a wife for or against her husband, without her consent.

(2) *Exceptions.* There is no privilege under this subdivision:

(A) In a civil proceeding brought by or on behalf of one spouse against the other spouse; or

(B) In a proceeding to commit or otherwise place his spouse, the property of his spouse or both the spouse and the property of the spouse under the control of another because of the alleged mental or physical condition of the spouse; or

(C) In a proceeding brought by or on behalf of a spouse to establish his competence; or

(D) In a proceeding in which one spouse is charged with:

(i) A crime against the person or the property of the other spouse or of a child of either, whether such crime was committed before or during marriage.

(ii) Bigamy, incest, adultery, pimping, or prostitution.

(iii) A crime related to abandonment of a child or nonsupport of a spouse or child.

(iv) A crime prior to the marriage.

(E) In a proceeding involving custody of a child.

(F) Evidence derived from or related to a business relationship involving the spouses.

(b) Confidential Marital Communications.

(1) *General Rule.* Neither during the marriage nor afterwards shall either spouse be examined as to any confidential communications made by one spouse to the other during the marriage, without the consent of the other spouse.

of clients with a common interest who retain different lawyers. See subdivision (b) (3) of this rule *supra*.

Rule 504. Physician and Psychotherapist-Patient Privilege.

(a) **Definitions.** (1) "Patient" means a person who consults a physician for the purpose of diagnosis or treatment.

There seems to be little reason to perpetuate the distinction made between consultations for the purpose of diagnosis and consultations for the purpose of treatment. Persons do not ordinarily consult physicians from idle curiosity. They may be sent by their attorney to obtain a diagnosis in contemplation of some legal proceeding — in which case the attorney-client privilege will afford protection. They may submit to an examination for insurance purposes — in which case the insurance contract will contain appropriate waiver provisions. They may seek diagnosis from one physician to check the diagnosis made by another. They may seek diagnosis from one physician in contemplation of seeking treatment from another. Communications made under such circumstances are as deserving of protection as are communications made to a treating physician. See Cal. Evid. Code § 991 (West 1966).

The definition of "patient" does not include a person submitting to examination for scientific purposes.

(2) The definition of "physician" is extended to include not only a licensed physician, but a person who the patient has reasonable grounds to believe is a physician, a psychotherapist or psychologist. The patient should be protected from reasonable mistakes as to unlicensed practitioners. The burden is placed on the patient to satisfy the court that he in fact had reasonable grounds to believe that the person he made the communication to or disclosed information to was a physician before the patient can invoke the privilege.

The privilege also should be applicable to communications made to a physician authorized to practice in any state or nation. When an Alaska resident travels outside the state and has occasion to visit a physician during such travel, or when a physician from another state or nation participates in the treatment of a person in Alaska, the patient should be entitled to assume that his communications will be given as much protection as they would be if he consulted an Alaska physician in Alaska. A patient should not be forced to inquire about the jurisdictions where the physician is authorized to practice medicine and whether such jurisdictions recognize the physician-patient privilege before he may safely communicate with the physician.

(3) The definition of psychotherapist embraces a medical doctor while engaged in the diagnosis or treatment of mental or emotional conditions, including alcohol and drug addiction, in order not to exclude the general practitioner and to avoid the making of need-

less refined distinctions concerning what is and what is not the practice of psychiatry.

Medical doctors are generally covered under the definition in (2) above. When treating mental or emotional conditions, medical doctors are included under the definition of "psychotherapist" for purposes of the criminal proceeding exception. See subdivision (d) (7) *infra*.

A psychotherapist-patient privilege was recognized in *Allred v. State*, 554 P.2d 411 (Alaska 1976), although the supreme court divided on the source of the privilege and its scope. Since the court has power under the Alaska Constitution to create testimonial privileges, the source of power to create Rule 504 is beyond question. Defining the proper scope presents greater difficulty, however. While it is impossible to fashion a perfect rule because we will never know exactly how much of a return we get from a privilege — e.g., how much better is psychiatric care because of the privilege — and because we cannot be certain of either the optimal return or the marginal return for any expansion of a privilege, it is both necessary and practicable to establish a scope that appears to be as consistent as possible with the aims of the privilege.

Because the psychotherapist-patient privilege is designed to encourage those with mental or emotional problems to seek help, Rule 504(a) (3) provides that the privilege will attach if a patient sees someone reasonably believed by the patient to be licensed to practice medicine. Given the facts that Allred asked to see either one of two persons and that he apparently knew that one of them was a psychiatrist, it is probable that he believed that the person with whom he spoke was also licensed to practice medicine. If Allred was asking for psychiatric help, his communications would have been protected under the views of all members of the court. In fact Rule 504 (a) (3) satisfies both the concerns of the two members of the court who wished to prevent the privilege from attaching to all counseling and the two members of the court who wished to ensure that the patient who relies upon an apparent confidential relationship is not disappointed. Moreover, the social worker might have qualified under Rule 504 (a) (4) as a person reasonably necessary for the transmission of information, depending on the precise facts, without threatening the competing interest identified in the various opinions in *Allred*.

Because this rule focuses on the reasonable belief of the patient, it assumes throughout that the patient is capable of making the necessary choices to create and destroy the privilege. The question whether there are instances in which fairness requires a recognition of a right in the psychotherapist to claim the privilege for a patient who is not inclined to seek the benefits of non-disclosure is left for adjudication. See *Allred v. State*, 554 P.2d 411, 428 (Alaska 1976) (Dimond, J., concurring).

COMMENTARY
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(4) Confidential communication is defined in terms conformable with those of the lawyer-client privilege, Rule 503 (a) (5), with changes appropriate to the difference in circumstance. See Reporter's Comment to Rule 503 (a) (5). In addition, Rule 504(a) (4) treats as confidential communications made to the physician or psychotherapist in the presence of those "who are participating in the diagnosis and treatment under the direction of the physician or psychotherapist, including members of the patient's family." "Communications from members of the family . . . should be given broad protection . . . because effective treatment presupposes family participation." 2 Weinstein's Evidence § 504[05]. See *Falcon v. Alaska Public Offices Commission*, 570 P.2d 469 (Alaska 1977).

Participants in group therapy programs in the presence of a psychotherapist may be covered under the definition of "confidential communication." See *Cross, Privileged Communications Between Participants in Group Psychotherapy*, 1970 L. & Soc. Order 191.

(b) and (c) General Rule of Privilege — Who May Claim the Privilege. The phrasing of the general rule of privilege and the determination of those who may claim it draws heavily upon the attorney-client privilege rule. See Rule 503(b) & (c). Rule 504 supersedes the physician-patient privilege of Rule 43(h) (4), Alaska Rules of Civil Procedure. For a related provision, see AS 08.86.200 (confidential communications to psychologists).

(d) Exceptions. (1) *Condition or Element of Claim or Defense*. The patient-litigant exception provides that the physician-patient privilege does not exist in any proceeding in which an issue concerning the condition of the patient has been tendered by the patient. If the patient himself tenders the issue of his condition, he should not be able to withhold relevant evidence from the opposing party by the exercise of the physician-patient privilege. By injecting his condition into litigation, the patient must be said to waive the privilege, in fairness and to avoid abuses. See *Mathis v. Kilderbrand*, 416 P.2d 8 (Alaska 1966); *Trans-World Investments v. Drobny*, 554 P.2d 1148 (Alaska 1976). Those who claim through the patient stand in the patient's shoes for purposes of this Rule. After the patient's death, the policies of confidentiality give way to a party's need for information and any party may place the condition of a deceased patient in issue and obtain the benefits of the exception. Only information relevant to the patient's condition should be disclosed under this exception. See *Arctic Motor Freight Inc. v. Stover*, 571 P.2d 1006 (Alaska 1977).

(2) *Crime or Fraud*. The crime or fraud exception corresponds to, but is broader than, the similar provision under attorney-client privilege. See Rule 503(d) (1) and Reporter's Comment.

(3) *Breach of Duty Arising Out of Physician-Patient Relationship*. The breach of duty exception also corre-

sponds to a similar attorney-client privilege provision. See Rule 503(d) (3) and Reporter's Comment.

(4) *Proceeding for Hospitalization*. The interests of both patient and public call for a departure from confidentiality in commitment proceedings. Since disclosure is authorized only when the physician or psychotherapist determines that hospitalization is needed, control over disclosure is placed largely in the hands of a person in whom the patient has already manifested confidence. Hence damage to the relationship is unlikely. Usually, this exception will rise in psychotherapist-patient situations. Court-ordered appointments are treated in subdivision (d) (6) *infra*.

(5) *Required Report*. The required report exception enables a physician or psychotherapist to testify as to the contents of reports required by statute or administrative rule to be made to public officials. No valid purpose is served by preventing the use of relevant information when the law or rule requiring the information to be reported to a public office does not restrict disclosure.

(6) *Examination by Order of Judge*. In a court ordered examination, the relationship is likely to be an arm's length one, though not necessarily so. In any event, an exception is necessary for the effective utilization of this important and growing procedure. When the psychotherapist is appointed by the court, it is most often for the purpose of having the psychotherapist testify concerning his conclusions as to the patient's condition. It would be inappropriate to have the privilege apply in this situation. The exception, it will be observed, deals with a court ordered examination rather than with a court appointed physician or psychotherapist. Also, the exception is effective only with respect to the particular purpose for which the examination is ordered. The final sentence of the exception provides that an accused in a criminal case may have the benefits of private counseling with a psychotherapist. Of course, if the accused does place mental condition in issue, exception (1) will govern.

(7) *Criminal Proceeding*. Under the superseded Alaska Rules of Court concerning privileges (Rule 43(h), Alaska R. Civ. P., and Rule 26(b), Alaska R. Crim. P.), a physician-patient privilege was recognized in civil cases (Civil Rule 43 (h) (4)), but not in criminal cases. This distinction is followed here. However, the psychotherapist-patient relationship, with its more compelling need for confidential communication, demands that the privilege apply to criminal proceedings as well as civil cases, see *Schade v. State*, 512 P.2d 907, (Alaska 1973), although exception (5) will govern some aspects of the use of psychotherapists in criminal cases. Rule 13, Alaska R. Children's P., governs juvenile proceedings.

POSITION PAPER / COUNCIL ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

Bill No: CSSSHB 156 (JUD)

Date: March 5, 1992
Contact: Joanne F. Lopez
Executive Director
465-4356

Title: "An act providing that communications between a domestic violence or sexual assault victim and a domestic violence or sexual assault counselor are privileged ... "

The Council on Domestic Violence and Sexual Assault supports CSSSHB 156 (JUD) which provides that communications between a victim and a domestic violence or sexual assault counselor are privileged.

Confidentiality is essential to assure victim safety. The Council on Domestic Violence and Sexual Assault requires that Council-funded programs assure that confidential communications are kept confidential, and that the programs will not provide information to anyone outside their agency without the consent of the victim.

Protection for these communications is available in 20 states for victims of sexual assault and in 24 states for counseling of domestic violence victims. Five other states have covered all victim counseling as recommended by the President's Task Force on Victims of Crime.

Victims often speak to their counselors about their fears and feelings arising from the crime, and believe that they are revealing such information in a confidential environment. To betray that trust would undermine the client-counselor relationship. Victims who realize that their communications may be subject to disclosure may avoid counseling altogether.

Some victims can afford to seek help from private therapists, to whom communications are privileged under other laws, but many victims are not able to afford such services. CSSSHB 156 (JUD) would extend the victim-counselor privilege to all victims, regardless of their economic status.

Victim reporting of sexual assault and domestic violence crimes and willingness to cooperate with the criminal justice system has increased considerably in Alaska over the past 12 years. This is due in part to the victims' belief that their communications would remain confidential. Client-counselor privilege should be protected by law.

The Council on Domestic Violence and Sexual Assault supports this legislation.

Andy Klamsner (Signature)
Andy Klamsner, Chair
Council on Domestic Violence and Sexual Assault

ALASKA NETWORK
ON
DOMESTIC VIOLENCE
AND
SEXUAL ASSAULT

130 Seward, No. 301 • Juneau, Alaska 99801 • (907) 586-3650

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

NATIONAL ORGANIZATIONS SUPPORTING VICTIM/COUNSELOR PRIVILEGE

- * President's Task Force on Victims of Crime (1982)
- * The National Center on Women & Family Law
- * The National Organization for Victim Assistance
- * National Victim Center
- * National Coalition Against Domestic Violence
- * National Coalition Against Sexual Assault
- * National Network for Victims of Sexual Assault
- * National Woman Abuse Prevention Project

ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

130 Seward, No. 301 • Juneau, Alaska 99801 • (907) 586-3650

Abused Women's Aid in Crisis (AWAIC);
Advocates for Victims of Violence (AVV);
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Alaska Women's Resource Center (AWRC); Arctic Women in Crisis (AWIC);
Bering Sea Women's Group (BSWG); Emmonak Women's Shelter;
Kodiak Women's Resource & Crisis Center (KWRCC);
Mantlaq Regional Women's Crisis Program;
Tongass Community Counseling Center; Parent Aid Family Support Center;
Safe & Fear-Free Environment (SAFE); Sakans Against Family Violence (SAFV);
Seward Life Action Council (SLAC); Southwestern Alaska Council
for the Prevention of Child Sexual Assault (SWACPCSA);
South Peninsula Women's Services (SPWS);
Standing Together Against Rape (STAR); Tundra Women's Coalition (TWC);
Unalaskan Against Sexual Assault & Family Violence (USAFV);
Valley Women's Resource Center (VWRC);
Women In Crisis Counseling & Assistance (WICCA);
Women In Safe Homes (WISH); Women's Resource & Crisis Center (WRCC)

SOME STATES WITH VICTIM/COUNSELOR PRIVILEGE*

Alabama
California
Connecticut
Florida
New Hampshire
Illinois
Indiana
Iowa
Maine
Massachusetts
Minnesota
New Jersey
New Mexico
North Dakota
Pennsylvania
Utah
Washington
Wyoming

*Primarily limited to victims of sexual assault and/or domestic violence, although some states include victims of all violent crimes. So, federal statute under the Victims of Crime Act requires confidentiality of victim records for organizations receiving VOCA funding. About half of Alaska's dv/sa programs receive VOCA funds.

Support for . . .

House Bill 156

Confidentiality in Cases of Domestic Violence & Sexual Assault

Council on Domestic Violence and Sexual Assault
Alaska Network on Domestic Violence and Sexual Assault
Alaska Women's Lobby (Statewide)
Abused Women's Aid in Crisis (AWAIC), Anchorage
Advocates for Victims of Violence (AVV), Valdez
Aiding Women in Abuse & Rape Emergencies (AWARE), Juneau
Alaska Women's Resource Center (AWRC), Anchorage
Emmonak Women's Shelter
Arctic Women in Crisis (AWIC), Barrow
Bering Sea Women's Group (BSWG), Nome
Kodiak Woman's Resource & Crisis Center (KWRCC)
Maniilaq Regional Women's Crisis Program, Kotzebue
Tongass Community Counseling Center, Juneau
Parent Aid Family Support Center, Juneau
Safe & Fear-Free Environment (SAFE), Dillingham
Sitkans Against Family Violence (SAFV)
Seward Life Action Council (SLAC)
South Peninsula Women's Services (SPWS), Homer
Standing Together Against Rape (STAR), Anchorage
Tundra Women's Coalition (TWC), Bethel
Unalaskans Against Sexual Assault & Family Violence (USAFV)
Valley Women's Resource Center (VWRC), Palmer
Women in Crisis Counseling & Assistance (WICCA), Fairbanks
Women in Safe Homes (WISH), Ketchikan
Women's Resource & Crisis Center (WRCC), Kenai
Center on Women in Family Law, New York, New York



Alaska Women's Resource Center

111 W. 9th Ave., Suite 4 • Anchorage, Alaska 99501 • (907) 276-0528

February 28, 1992

Rep. Kay Brown
Alaska State House


Dear Kay,

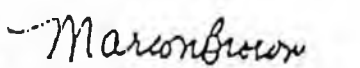
Please accept these comments in support of HB 156. Domestic Violence counseling on an outpatient basis is one of four program specialities at AWRC and represents our second largest program in terms of allocated budget. We have three domestic violence counselor advocates on staff and an ever-growing demand for services in this area.

We support HB 156's efforts to extend protection to communications between domestic violence victims and their counselors. Such communications are frequently the same kinds of discussion which might occur between doctor and patient or between lawyer and client. But experience has shown that the successful treatment of domestic violence does not necessarily require the services of a psychiatrist or a psychologist. Consequently, domestic violence counselors do not have the same protection we accord, without debate, to communications with a doctor or with a lawyer.

We have been fortunate at AWRC to avoid unfortunate incidents over the subject because we are also subject to federal confidentiality requirements (as a result of our alcoholism & substance abuse program) which prohibit the release of information without a court order. We urge you to support HB 156 and the important protection it provides to victims of domestic violence.

Sincerely,


Theda Pittman
Executive Director


Marion Brown
Program Director


Donna Knight
Counselor Advocate

ALASKA WOMEN'S LOBBY

P.O. BOX 22156, JUNEAU, ALASKA 99802

April 22, 1992

Senator Rick Halford
Chairman
Senate Judiciary
P.O. Box V
Juneau, Alaska 99811

Dear Senator Halford:

We would like to request a hearing for HB 156, a bill providing for the confidentiality of communications between victims of domestic violence and sexual assault and their counselors.

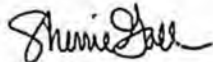
The current committee substitute meets the needs of the Department of Law while providing victims with the assurance that they may express themselves in confidence when they turn to a rape crisis center or a domestic violence shelter for help.

Similar protections have been adopted in many other states in the past few years.

We urge you to review the bill and hope that you will support it and schedule it for a hearing soon so that passage of this important legislation will be possible.

Thank you.

Sincerely,



Sherrie Markin Goll



PRESIDENT'S
TASK FORCE ON
VICTIMS OF CRIME

FINAL REPORT DECEMBER 1982

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can afford private treatment by these professionals; they do not shield the vast majority of victims.

At least one state has enacted a statute making rape victims' communications to counselors legally privileged.¹ While this is a step in the right direction, we believe that the privilege should encompass the counseling of all crime victims. Because of the responsibility of the prosecutor to afford discovery to the defendant, it is not contemplated that this counseling privilege extend to the prosecutor's office.

It was a great relief to have someone to talk to, who would in no way pass onto others what I thought, felt, or did at that confusing time.—a victim

Notes

1. The State of Pennsylvania has codified this privilege in 42 Pa. C.S.A. § 5945.1, "Confidential communications to sexual assault counselors."

COUNCIL ON
DOMESTIC VIOLENCE
AND SEXUAL ASSAULT

ANNUAL REPORT
TO
GOVERNOR HICKEL
AND THE
ALASKA LEGISLATURE

JANUARY 1991

COUNCIL MEMBERS AND STAFF

COUNCIL MEMBERS:

Mary Pete, Chair, Bethel (Public Member)

Paula Haley, Anchorage (Public Member)

Andrew Klamser, Homer (Public Member)

Karen Crane, Department of Education

Gayle Horetski, Department of Public Safety

Vacant, Department of Health and Social Services

Vacant, Department of Law

COUNCIL STAFF:

Barbara Miklos, Executive Director

Marcia Lynn McKenzie, Program Coordinator

Wil Coloma, Statistical Technician

Susan King, Secretary

Council on Domestic Violence
and Sexual Assault
Department of Public Safety
P.O. Box N
Juneau, AK 99811-1200
Phone: (907) 465-4356

Location:

Public Safety Building
450 Whittier Street
Room 204
Juneau, Alaska

INTRODUCTION

"We found that the perception you shared when you gave us our charge is unfortunately true. The innocent victims of crime have been overlooked, their pleas for justice have gone unheeded, and their wounds - personal, emotional and financial - have gone unattended."

In a letter to President
Ronald Reagan from the
President's Task Force
on Victims of Crime, 1982

"The problem of family violence has existed for generations, yet it is only recently that this phenomenon has begun to receive the attention it deserves."

Chief William L. Hart
Chairman, U.S. Attorney
General's Task Force on
Family Violence

Societies and shelters for the protection of animals existed in the United States before there was legislation to protect children who were abused. We have made progress since then. As a country, we have developed legislation and programs to protect children and adults who are victims of family violence. As a state, Alaska has programs and policies that are models for the rest of the country. However, much still needs to be accomplished. According to data compiled by the staff of the U.S. Senate Judiciary Committee, there are three times as many animal shelters in the United States as there are shelters for battered women.

Domestic violence and sexual assault continue to be major problems in our country and our state. People continue to be killed, beaten and raped in record numbers. Although violent crime in general is declining, violent crimes against women (including domestic violence) are increasing. Since 1974, the rate of assaults against young women (ages 20 - 24) has risen almost 50%; for young men it has decreased. Data from the National Crime Survey shows that women are the victims of violent crime committed by family members at a rate three times that for men. Also, according to the Survey, spouses or ex-spouses commit more than half of all violent crimes committed by relatives against women.

A woman is beaten every 18 seconds and 4,000 battered women are killed every year in the United States. Nationwide, more than one million abused women each year seek medical assistance for injuries caused by battering. In Alaska, 26% of adult women have been physically abused by a spouse sometime during their lives and most of the battered women were abused at least once a month. It is estimated that a minimum of 13,200 women living in Alaska have required medical treatment by a doctor or hospital for injuries sustained by abuse at some time in their life. In 1988, fifty

percent of female murder victims in Alaska were killed by their husbands or boyfriends.

Children raised in violent homes suffer the effects of living in this environment and are at higher risk for physical and sexual abuse. Children raised in violent homes are 1500% more likely to be physically abused or seriously neglected. Nearly fifty percent of abusive husbands batter their wives when they are pregnant, making these battered women four times more likely to bear infants of low birth weight. These women had twice as many miscarriages as non-battered women.

Former U.S. Surgeon General Dr. C. Everett Koop identified domestic violence as the number one health threat to women and declared it to be a public health issue. In one of his final speeches as U.S. Surgeon General, Koop stated: "The mind set that any type of violence that results in physical and mental damage is a private or family matter or a tradition should be abhorrent to us all. Battery is the single most significant cause of injury to women in this country." Dr. Koop went on to note that in the United States, an estimated 40% of all women have experienced some type of sexual abuse as children and as many as 44% of adult women report completed or attempted rape, including rape by their husbands or other family members.

People from all walks of life have come to recognize the seriousness of the problems and the need for a comprehensive and coordinated response to domestic violence and sexual assault. A study by the National Council of Juvenile and Family Court Judges recommends that courts treat family violence as a serious crime. The Honorable Stephen B. Herrell, Chairman of the group and a judge from Portland, Oregon, says that violence against women and children has created a generational cycle of violence that cannot be broken without strong intervention by the courts.

Responses to sexual assault have been improved, but sexual violence against women continues to rise. During the past ten years, rape rates have risen nearly four times as fast as the total crime rate. According to data provided by a criminological study conducted in 1990, rape remains the most under-reported of all major crimes; only 7% of all rapes are reported to police. One in five adult women will be raped at some time in their lives and one in four women now in college will be attacked by a rapist. Alaska continues to have one of the highest incidences of rape in the country. In 1989 in Alaska, there were 53 reported cases of forcible rape against adult women per 100,000 population compared to the national rate of 38 cases per 100,000.

Services for victims of domestic violence and their children are crucial in order to save lives and reduce the pain and suffering caused by these crimes. Victims of sexual assault must receive crisis intervention services so they can overcome the trauma. Without assistance, they may continue to relive the event and live in fear for their life and safety. The report from the U.S. Attorney General's Task Force on Family Violence states that "Shelters are an important resource for a diverse group of victims of family violence who must leave home to escape life-threatening

abuse and have nowhere else to go. Among the most important services shelters offer for battered women and their children are immediate safety, counseling, referrals to alcohol and drug treatment programs and assistance in seeking employment and permanent housing.

Services for child victims must be available to help them cope with the horrors they have encountered. Children from violent homes suffer emotional and physical disorders as a result of their family situations. Many of these children are victims of physical and sexual abuse, who need to be protected and helped. Helping these children will not only ease the pain, but also prevent future problems. Alcohol and other drug abuse, suicide and criminal behavior are often caused by abuse suffered in childhood. Services for children are important to stop the cycle of abuse.

Treatment for batterers is an integral part of the system to protect victims. Experience has shown that most battered women return to the violent relationships. This happens for many reasons, including the lack of financial resources to allow them to live independently. Without counseling and treatment for batterers, violence in these relationships generally becomes more frequent and severe, often resulting in death.

Alaska is fortunate to have a comprehensive, coordinated system for addressing the pain and suffering caused by family violence. In FY91, the Council on Domestic Violence and Sexual Assault is funding 23 community-based programs to provide services to victims of domestic violence and their families. These programs also provide important educational services to their communities as well as outlying communities. Without an all-out effort by community members, family violence will not be stopped. In FY90, Council-funded programs served 9,729 clients. Almost 8,000 of these clients were victims of domestic violence and their children. These victims and their children were provided almost 53,000 nights of safety in shelters or safe homes. The need for these services can be seen in the numbers of clients as well as the tremendous increases in demand for services. Since FY87, the number of nights of safety has increased by 44%.

The mission of the Council on Domestic Violence and Sexual Assault is to provide immediate safety and support to victims of domestic violence and sexual assault in life-threatening situations and to reduce the incidence of domestic violence and sexual assault in Alaska. The Council accomplishes this through serving as a funding agency for community-based programs. The Council processes applications for funding and monitors programs that receive grants and provides technical assistance to programs and other community groups. It also serves as a planning and coordinating agency for domestic violence and sexual assault services provided by various agencies. This report presents major Council initiatives in 1990, describes programs funded by the Council, presents statistical data gathered from programs in FY90 and identifies issues of concern and possible solutions.

obtain injunctive relief orders in cases of domestic violence as well as other protections provided to victims of domestic violence be expanded to include people in dating relationships. Police officers may arrest for domestic violence misdemeanor assaults even if it was not committed in their presence; it is also important that this protection be provided in dating relationships.

2. Teen Violence, an Issue for Legislative Consideration

In December, 1989, the Council held a statewide teleconference on teen violence. After hearing from the people testifying, the Council agreed the problem merited the attention of the Legislature and requested that the House and/or Senate Health, Education and Social Services Committees hold hearings on the topic of teen violence. Many people who testified at the Council's teleconference wanted to address their concerns to legislators, and had suggestions for legislation and for needed services.

People who testified work with teens either through domestic violence programs, youth-serving agencies, or schools. Many people testified to the growing trend toward violence among youth and observed that young people state that "violence is a way to have fun". A clinical psychologist in Fairbanks stated that he feels teen violence is symptomatic of societal breakdown.

Many teens are victims of violence. One participant who works with pregnant teenagers spoke of the many young women who are either present or past victims of abuse, as well as some who are abusive to their own child. For some, violence begins in the womb.

A representative from the Division of Public Health, Department of Health and Social Services, testified that violence has replaced infection as the major cause of death for adolescents in the United States, with violent deaths accounting for 77% of all adolescent deaths. Accidents are the highest causal factor, with alcohol being implicated in over half the accidental deaths. Homicide is the second leading cause of teenage fatality in the U.S.; with a 300% increase of teenage homicide between 1970 and 1980. The third leading cause of teenage death is drug use, which is doubling since 1950.

3. Confidentiality of Victim Counseling

Domestic violence and sexual assault programs have identified the need to develop legislation that makes victim counseling legally privileged and not subject to defense discovery or subpoena. This type of legislation is important because it protects victims from further abuse by the system. If the confidential communications exchanged between victims and counselors during treatment can be used as evidence in criminal proceedings, counseling may not benefit victims, and, in fact, may add to their trauma. Victims often speak to their counselors about fears and feelings arising from the crime. Those who are

under the impression that they are revealing such information solely for therapeutic purposes often feel betrayed when their counselors are compelled to disclose their communication before the public at an open trial. Victims who realize in advance that their communications may be subject to disclosure may avoid counseling altogether. The President's Task Force on Victims of Crime recommended that legislation be enacted making designated victim counseling legally privileged.

... victims should not routinely be forced to surrender their privacy.

But that's not the only concern in the equation. A careful balancing against the public's right to know is needed. It's a difficult task, one that is best not dictated by state legislators.

But . . .

Legislature has other ways to help

The proposed rape shield law described above goes too far, but the legislature has other ways to help victims of rape and domestic violence.

First and foremost is money. The state offers grants to 23 agencies that help prevent and treat sexual assault and domestic violence. Vetoes inflicted by outgoing Gov. Steve Cowper, together with new cuts proposed by Gov. Wally Hickel, would reduce those grants by 13 percent.

The House has voted to restore both sets of cuts. But even so, the \$5.9 million is barely adequate to help everyone who turns to rape crisis lines and shelters for battered women. And the Senate's figure falls \$400,000 short of the House mark.

In addition to spending money, legislators can act on several bills.

One would help victims who need court orders to protect themselves against domestic violence. The right to get an order would be extended to someone whose dating partner becomes threatening. As the murder of Sandra Pogany last summer shows, a spurned lover can turn dangerous even when the relationship falls short of marriage or living together.

Another change would extend the legal privilege of confidentiality to domestic violence and rape counselors. Victims are less likely to seek help if they fear that what they tell a counselor may be aired out in court.

A final worthwhile change would allow shorter presumptive prison terms for victims of domestic violence who turn on their assailants. Enduring abuse doesn't legally excuse assault or murder, but it could justify a lighter sentence.

The House has either passed or is making good progress on these proposals. Work on the Senate side has been slower. If lawmakers are serious about helping those who suffer sexual assault and domestic violence, they'll pass these measures — and restore full funding for agencies serving victims — before the session ends.

QUOTABLE

"This stuff has been used for 4,000 years before the birth of Christ. All of us farmers are conservationists and environmentalists to a point, and if it was harmful I sure wouldn't be doing it."

— Byron Hollebeak, on his plan to use sewage sludge from Fairbanks as fertilizer on his Delta Junction farm.

"The question for us is: Is it fertilizer or hazardous?"

lined. Nobody much asks for money without giving something.

The man with the tongue was on Bourbon Street and right out of a David Lynch movie. He wore a stocking cap, three days of beard and a drab olive jumpsuit.

First he did a mock strip, with a slow teasing roll of his nylon socks, taking ad-

When he passed revelers pressed for fill it. His overhead than most.

Mimes, for instance those elaborate costumes that, considering such Orleans, must be cleaning every night then.

Street musicians of different species of the

Rioters suffered no

WASHINGTON — Before I became a columnist, I was a reporter — a riot reporter too. I covered riots in Washington, D.C., Harlem, Brooklyn and one of the very worst (26 dead) in Newark. It was in Newark that I got religion — converted to a mild form of Richard Daleyism. It was the late Chicago mayor who suggested busting some heads.

I would not go anywhere near that far. But Washington, D.C., which had itself a fine little riot in a mixed Latino neighborhood for two nights, seemed to go as far as possible in the other direction. In full view of television viewers, stores were looted, cars torched, city buses attacked and the police — well, the police did little. It was not until after the midnight curfew on the second night of the riot that significant arrests were made. Washington had permitted unpardonable no-fault rioting.

Some would disagree. There was "fault," and it was linked to something called "grievances" — lack of housing, jobs and, of course, the cultural differences between Latino immigrants and the local constabulary. (The shooting of a Latino by a police officer triggered the riot.) But in



RICHARD COHEN

Newark I learned matter how legitimate underlying grievance is a chance to have time and to get some goods on the all terms.

Once, I had thought wise. I had read that Watts rioters of 1965 exercised some discretion: what they trashed: Only the stores of who lived out of the hood were hit.

But in Newark, door-to-door after trying to find out who owned the looted stores, I was off — good people, kind. The residents shook heads in disbelief. I what had happened neighborhood.

DOONESBURY



HB

169

Delivered To Senate Secretary 4-30/91

SEVENTEENTH LEGISLATURE
SENATE JUDICIARY COMMITTEE BILL FILE

BILL NUMBER: HB 169
ABBREVIATED TITLE:

Search Warrant FAX

SPONSOR: HSE SUD ORIGINAL RECEIVED: April 15, 1991
WRITTEN REQUEST TO SCHEDULE REC'D: _____ FROM: _____
SPONSOR'S STATEMENT REC'D: _____ FROM: _____
SECTIONAL ANALYSIS RQST'D: _____ FROM: _____
SECTIONAL ANALYSIS RECEIVED: _____

FISCAL NOTE (ORIGINAL)
RQST'D OF: _____ REC'D FROM: Pub. Sec. O DATE: With Bill
RQST'D OF: _____ REC'D FROM: Count O DATE: With Bill -
RQST'D OF: _____ REC'D FROM: _____ DATE: _____

FISCAL NOTE (C.S.)
RQST'D OF: _____ REC'D FROM: _____ DATE: _____
RQST'D OF: _____ REC'D FROM: _____ DATE: _____
RQST'D OF: _____ REC'D FROM: _____ DATE: _____

FIVE DAY NOTICE GIVEN: See House NOTICE OF HEARINGS GIVEN: 18 April -
COMMITTEES OF REFERRAL: FIRST: Jud SECOND: _____ THIRD: _____

COMMITTEE ACTION Legislative Draftsman

DATE: 4-30-91
Passed on final Rec -
Carlin, Rode, Halford, DePass, etc - Absent

PERSONS TO BE NOTIFIED OF HEARING

- 1. SPONSOR HSE Sud -
- 2. AGENCY _____
- 3. Marag Knuth - 3960
- 4. _____
- 5. _____
- 6. _____
- 7. _____
- 8. _____
- 9. _____
- 10. _____

Revision Date: _____ Department Affected: Public Safety
 Title: An Act relating to the issuance of a search warrant by facsimile machine. BRU: Alaska State Troopers
 Component: Detachments
 Sponsor: House Judiciary
 Requestor: House Judiciary

COMPONENT SERIAL NO.		7	9	9
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EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not Included)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year impact None

ANALYSIS: (Attach a separate page if necessary)
 This bill would explicitly allow the use of facsimile machines to transmit search warrants under certain conditions. Use of fax machines in this manner would lead to a more efficient use of state trooper time; it is not expected to have a distinct fiscal impact, however.

Prepared by: Gavle A. Horetski Phone: 465-4322
 Division: Commissioner's Office Date: 3/5/91
 Approved by Commissioner: *Richard L. Burton* Richard L. Burton
 Agency: Department of Public Safety Date: 3/5/91

FISCAL NOTE

No. 2

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Bill Version: CSHB 169(JUD)
(H) Publish Date: 3/11/91

Revision Date: _____ Department Affected: Alaska Court System
 Title: An Act relating to the issuance of BRU: Trial Courts
search warrant by facsimile machine Components: _____
 Sponsor: By Judiciary Committee by request
 Requestor: Judiciary COMPONENT SERIAL NO.

000 000	000 768
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

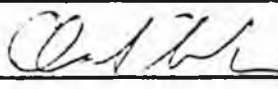
POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

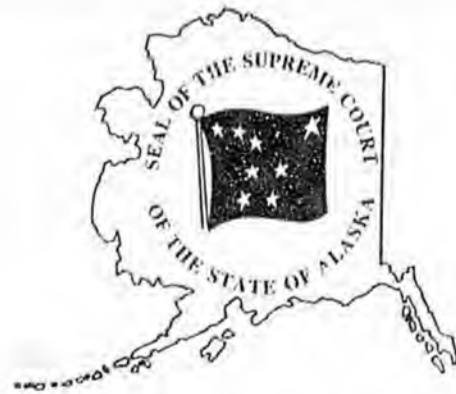
No fiscal in.pact.

Prepared by: C. S. Christensen III, Staff Counsel  Phone: 264-8228
 Division: Alaska Court System Date: 03/04/91

Approved by: Arthur H. Snowden, II, Administrative Director  Date: 03/04/91
 Agency: Alaska Court System

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

COMMITTEE COPY



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

303 K Street
Anchorage, AK 99501
(907) 264-8228

CHARLES S. CHRISTENSEN III
Staff Counsel

April 16, 1991

The Honorable Rick Halford
Chairman, Senate Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

Dear Senator Halford:

I am writing to request that the Judiciary Committee schedule House Bill 169, relating to the issuance of a search warrant by facsimile machine, at its earliest convenience.

At the present time, AS 12.35.015 provides that search warrants may be issued upon sworn oral testimony communicated by telephone. A common example involves a trooper in a remote community without a judicial officer who must call a court in another community in order to apply for a search warrant.

Unfortunately, this statute was adopted before the common availability of facsimile machines. As a result, it requires the applicant to prepare a "duplicate original search warrant" and read it verbatim, along with any supporting affidavits, to the judicial officer at the distant location. The judicial officer enters what is read on an original search warrant. If the judicial officer makes changes in the course of the hearing, the applicant is directed to modify the duplicate original. The judicial officer then signs the original warrant, indicates the exact time of signing, and orally authorizes the applicant to sign the judicial officer's name and enter the same time on the duplicate original.

A search warrant is a minimum of four pages long. Frequently, additional pages will be added in order to list the specific property for which the applicant is searching. Supporting affidavits can number in excess of 40 pages. Reading these documents is time consuming, prone to error, and often

The Honorable Rick Halford
April 16, 1991
Page 2

unnecessary given the technological changes that have taken place since the original statute was drafted.

To remedy this situation, CSHB 169 (JUD) provides that the applicant may simply transmit affidavits by facsimile machine to the judicial officer, and the judicial officer may transmit the original search warrant to the applicant. The facsimile warrant then serves as an original. Time will be saved by all involved in the process, and the accuracy of the final product will be improved. The bill has no fiscal impact.

Thank you for your courtesy. Please feel free to contact me if you have any questions or comments.

Very truly yours,



C. S. Christensen III
Staff Counsel

CSC:bh

HFB

189

Alaska State Legislature

REPRESENTATIVE
MARK BOYER

VICE-CHAIRMAN
HOUSE FINANCE COMMITTEE

FAIRBANKS

1098 LAKEVIEW TERRACE
FAIRBANKS, ALASKA 99701
(907) 456-6473

JUNEAU

P.O. BOX V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3466

House of Representatives

To: Senator Rick Halford, Chair
Judiciary Committee

From: Representative Mark Boyer 

Date: March 10, 1992

Subject: Waiver for SCSCSHB 189

The above referenced bill entitled "An Act establishing the Alaska heritage endowment fund, authorizing tax credits against the Alaska net income tax for contributions to the fund, and amending the responsibilities of the Alaska State Museum and of the Museum Collections Advisory Committee; and providing for an effective date", is currently in your committee. I am asking for your consideration of waiving this bill out of your committee to its next committee, Finance.

SCSCSHB 189 was introduced to provide a mechanism for the Alaska State Museums to receive additional funding for acquisitions from private donors. The current budget for the State museum's does not provide a non-lapsing mechanism for monies appropriated or donated for acquisitions. By establishing this fund, monies will be available, once appropriated or donated, at all times to fund major acquisitions. This idea is not new. The 1981 legislature appropriated funds to review the issues associated with securing a secure funding source for museum acquisitions. Their 1982 report recommended an endowment like that created by HB 189.

This bill defines the Department of Revenue's responsibility as the trustee of the fund and also acts to increase the responsibilities of the Museum Collections Advisory Committee to monitor the museum's scope of collections and expenditures from the fund.

FAIRBANKS 20B

Page 2.

Senator Rick Halford

The Senate Hess Committee adopted our title change and language to include the State Museums as an additional institution qualifying under the Alaska Tax credit provisions for donations by corporations.

There are no apparent issues inclusive in this bill that would require Judicial consideration. The committees of referral have been Health and Social Services and Finance in both the House and Senate. I would appreciate your consideration of this waiver. I have included memos to Senate HESS for more information as well as excerpts from the referenced study.

Alaska State Legislature

REPRESENTATIVE
MARK BOYER

VICE CHAIRMAN
HOUSE FINANCE COMMITTEE



House of Representatives


FAIRBANKS

1098 LAKEVIEW TERRACE
FAIRBANKS, ALASKA 99701
(907) 456-6473

JUNEAU

P.O. BOX V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3466

To: Senator Arliss Sturgulewski, Chair
Senate HESS Committee

From: Representative Mark Boyer 

Date: February 5, 1992

Subject: Scheduling of CSHB 189

I respectfully request scheduling of the above referenced bill entitled "An Act establishing the Alaska heritage endowment fund and amending the responsibilities of the Alaska State Museum and of the Museum Collections Advisory Committee; and providing for an effective date."

This bill creates an endowment fund for the Alaska State Museum that will enable them to acquire outstanding Alaskan native art and historical Alaskan art and objects from international, national and state markets. The focus of this bill is primarily for acquisition funding.

Acquisition funding by the State Museum has ranged from zero to an average of less than \$60,000 over the last 14 years. Additionally, materials frequently come on the market and are sold long before the normal appropriation process can be completed. HB 189 creates a perpetual fund within the general fund that will allow private monetary donations in addition to appropriations from the legislature to remain available to the State museum for acquisitions.

At a time when we no longer have the ability to fund every type of interest, we must provide our institutions and political subdivisions the tools with which to generate their own revenues. Even if we fail to endow this new fund, private and corporate donors may contribute with a comfort level that the fund will have separate accounting within the general fund.

This legislation passed the House today, February 5, with a 38-0 vote. I would encourage your co-sponsorship and an early hearing date in your committee. Thank you for your consideration.

FAIRBANKS 20B



Final Draft

Alaska Heritage Endowment Report

CORRECTION

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

Final Draft

Alaska Heritage Endowment Report

Executive Summary: Alaska Heritage Endowment Fund

It is proposed that the State of Alaska establish an endowment fund to provide supplemental funding for purchase of exceptional artifactual and archival materials by museums, historical libraries, and archives statewide.

Need for a Heritage Endowment Fund

Outstanding Alaskan native art, historical Alaskan art, historical objects, and archival materials are in great demand in state, national, and international markets. Yet, Alaskan museums, historical libraries, and archives do not have sufficient funding to effectively compete in these markets. As a result, essential Alaskan cultural materials continue to flow from or remain outside the state.

Structure, Operation, and Funding of An Alaska Heritage Endowment Fund

An initial appropriation to the Alaska Heritage Endowment would be invested and managed by the Department of Revenue. A Board of Trustees, established and governed by statute, would be created within the Department of Education to oversee expenditure of annual derived income from this fund. Derived income would be used to purchase exceptional artifactual and archival materials, pay for annual costs to manage the fund, and cover expenses of the Board of Trustees.

There appear to be no legal obstacles to establishment of such a fund if the Legislature annually appropriates derived income to the purposes of the endowment.

A first phase appropriation of \$7,500,000 for the endowment, followed by an additional appropriation in two to three years is recommended. A \$7,750,000 endowment would generate approximately \$750,000 per year for statewide preservation of Alaska's heritage.

Benefits

An Alaska Heritage Endowment Fund would:

- Provide continuing funding through a one- or two-time appropriation for preservation of Alaska's heritage.
- Enable private and public sector partnership in heritage preservation by providing a mechanism for the state to obtain bequests and donations.
- Serve museums, historical libraries, and archives statewide.
- Assure that outstanding heritage resources are retained or returned to Alaska for the perpetual benefit of Alaskans.

Introduction

Cultural, art, archival, and scientific materials physically and spiritually represent and document Alaska's land and people from prehistoric times to present. These materials:

- Reflect and represent Alaska's artistic and cultural achievements
- Document historical events and personalities
- Provide for advancement of historical and scientific research
- Communicate information, ideas, values, and emotion from person to person and generation to generation
- Support development of quality Alaskan education through direct access to objects and materials of exceptional significance and quality
- Affirm Alaska's unique culture and environment.

The importance attached to preservation of the state's heritage materials is a measure of Alaska's pride and identity with its past, present, and future.

The purpose of museums, historical libraries, and archives is to collect, preserve, and use irreplaceable cultural resources to enrich and benefit present and future generations. At present, this purpose cannot adequately be achieved.

The Alaska State Museum was funded by the Legislature to prepare a report on the potential of a state-funded Endowment Fund to better preserve Alaska's heritage. A Steering Committee comprised of members of the public, and museum, historical library, and archives professionals from throughout the state has analyzed statewide heritage preservation needs and formulated the following plan for an Endowment Fund to meet those needs.

Benefits of an Alaska Heritage Endowment Fund

Creation of an Alaska Heritage Endowment Fund would result in capability for Alaska to, for the first time, adequately collect and preserve its exceptional material heritage — a heritage which reflects the achievements and history of all Alaskans from prehistoric times to present.

The Alaska Heritage Endowment Fund would benefit Alaskans, now and in the future, by:

- Establishing a one-time permanent investment in Alaska's heritage
- Developing an innovative and unprecedented way for the public and private sector to work in partnership for preservation of Alaska's heritage
- Providing the capability for Alaskan museums, historical libraries, and archives to retain or return Alaska's exceptional heritage resources
- Creating a program which meets statewide needs and assures statewide participation by museums, historical libraries, and archives
- Building collections of premiere heritage materials which are accessible to the public and able to fully document and profile Alaska's special human and natural character
- Building a legacy of permanent Alaskan cultural, historical and scientific materials which can be handed down to future generations.

HB

303

FISCAL NOTE

J. 3

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Bill Version: CSHB 303 (FIN)

(H) Publish Date: 3-13-92

Revision Date: _____ Department Affected: Alaska Court System
 Title: An Act relating to the state's right to BRU: Trial Courts
appeal in criminal cases Components: _____
 Sponsor: House Judiciary
 Requestor: _____ COMPONENT SERIAL NO.

000 000	000 768
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel *[Signature]* Phone: 264-8228
 Division: Alaska Court System Date: 03/04/92
 Approved by: Arthur H. Snowden, II, Administrative Director *[Signature]*
 Agency: Alaska Court System Date: 03/04/92

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

STATE OF ALASKA
1992 LEGISLATIVE SESSION

FISCAL NOTE
 No. 1
 Version: CSHB 303(JUD)
 (H) Publish Date: 2/7/92

Revision Date: _____
 Title: "An Act relating to the State's right to appeal in criminal cases . . ."
 Sponsor: House Judiciary
 Requestor: House Judiciary

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

COMPONENT SERIAL NO.

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

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

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

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

The fiscal impact of this bill depends entirely on the numbers of cases where review was previously denied, which now must be heard by the appellate courts. It is doubtful that there are any such cases. The appellate courts rarely have denied discretionary review to the State.

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

Phone: 279-7541
 Date: February 3, 1992

Approved by Commissioner: Nancy Bear Usery
 Agency: Administration

Date: 2/4/92

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

COMMITTEE COPY

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

No. 2
Bill Version: CSHB 303 (JUD)
(H) Publish Date: 2/7/92

Revision Date: _____ Department Affected: Department of Law
Title: "An Act relating to the state's right to appeal in criminal cases..." BRU: Prosecution
Sponsor: House Judiciary Committee Component: All
Requestor: House Judiciary Committee COMPONENT SERIAL NO.

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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:						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared By: Richard I. Pegues, Director Phone: 465-3672
Division: Administrative Services Date: January 21, 1992
Approved by Commissioner: Charles E. Cole, Attorney General
Agency: Department of Law Date: January 21, 1992

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 303(Jud) #2
2-7-92

This bill amends AS 22.07, AS 22.10, AS 22.15, and repeals Rule 202(c), Alaska Rules of Appellate Procedure, to provide that the state's right to appeal in criminal cases is limited by the prohibition against double jeopardy contained in the United States Constitution and the Alaska Constitution. Existing law limits this right except to test the sufficiency of the indictment or information or to appeal a sentence on the ground it is too lenient. The effect of granting broadened appeals rights to the state will be to permit it to test evidentiary rulings that are adverse to the state's case at the outset. Currently, the state's only opportunity to test evidentiary rulings is when a defendant appeals a ruling adverse to the defense and the state gets to respond.

Although there will be some incremental cost when the state elects to affirmatively bring an evidentiary appeal, it will certainly be more efficient than the current system where we must wait for a defense appeal before evidence issues are finally resolved.


Alaska State Legislature



House of Representatives House Judiciary Committee M E M O R A N D U M

State Capitol
Juneau, Alaska 99801-1182
(907) 465-4990

TO: Senator Rick Halford, Chair
Senate Judiciary Committee

FROM: Representative Dave Donley, Chair 
House Judiciary Committee

RE: HB 303 - State's Right to Appeal

DATE: April 21, 1992

I respectfully request that a committee hearing be scheduled for HB 303 at the earliest possible opportunity. This Judiciary Committee bill gives the state the right to appeal in criminal cases, and is based on testimony from prosecutors about the problems caused by the state not having this right. The primary effect of the legislation is to save state resources by changing the time frame for preparing appeals that are already considered by the courts. As a result, the bill is noncontroversial.

Under current statutes, if a trial judge commits error that hurts a defendant, the defendant can file an "appeal." The state, however, can only file a "petition for review" if the trial judge commits error that hurts the state. There are two main differences between an "appeal" and a "petition for review":

1. The court must consider the merits of an "appeal." In contrast, the court can exercise its discretion and refuse to consider a "petition for review."
2. A "petition for review" must be filed 10 days after entry of a final trial court order. With an "appeal," a notice of appeal must be filed 30 days after the final order, next a record on appeal must be completed, and then an additional 30 days is allowed to file the first appellate brief.

Giving the state the right to appeal in criminal cases balances the criminal justice system more fairly, and will assist the courts by allowing them to base decisions on more thorough legal briefing.

Thank you for considering this request to calendar HB 303.

DD:lc

Alaska State Legislature



House of Representatives
House Judiciary Committee
Chairman Dave Donley

P. O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4990
(907) 465-4712

ALLOWING STATE TO APPEAL IN CRIMINAL CASES

HB 303 enlarges the state's right to appeal in criminal cases by giving state prosecutors the same right to appeal as have federal prosecutors. Unlike Alaska law where the right of the prosecution to appeal is limited by statute (AS 22.07.020 and AS 22.10.020), the right of federal prosecutors to appeal erroneous decisions is limited only by constitutional double jeopardy provisions. A copy of the federal statute is attached.

Like all human institutions, our criminal justice system is not perfect and judges sometimes make mistakes. If a mistake is made in favor of the state, the defendant can appeal. A conviction that was wrongfully obtained will be reversed on appeal. That is as it should be; basic justice requires no less. But, if a judge makes a mistake in favor of a defendant, the state may not be able to obtain appellate review of the erroneous decisions. Constitutional prohibitions against double jeopardy do not require that these erroneous decisions stand uncorrected. The proposed amendment changes the statutes to allow the state to appeal in circumstances where an error has been made.

Under current state statutes, if a trial judge dismisses a case erroneously, the state must file a "petition for review", not an "appeal", with the court of appeals. The difference is two-fold.

First, the right to "appeal" means the right to have the court hear a case and consider it on the merits; the court cannot refuse to hear the case. But a "petition for review" is addressed to the court's discretionary power to review decisions of the trial court; the petitioner must convince the court that there is some good reason to take the case, aside from the fact that the judge may have made a mistake. The court can deny the petition because the legal issue raised is unusual, or because the issue is not likely to recur, or because the court is too busy, or for any other discretionary reason, without ever reaching the merits of the trial judge's decision. That is, the trial judge could be clearly wrong to have dismissed charges in a criminal case, but the court of appeals is not required to do anything to correct that wrong, even if it completely agrees with the state's legal argument.

Second, a petition for review must be drafted on very short notice. In the normal appeal process, a person has 30 days from the date of the trial judge's decision to file a simple pleading stating the person intends to appeal. The record on appeal is then prepared. After the record is completed, the person has an additional 30 days to file a brief. This means that, as a

practical matter, the person has several months to research and draft a brief before it must be filed with the court.

The petition for review process is quite different. The state has only 10 days from the trial judge's order to draft a petition that includes a sufficiently convincing argument on the merits of the case to convince the court of appeals that they should take the case and reverse the trial judge's decision. This 10-day period was designed with interlocutory -- mid-trial -- appeals in mind. However, with mid-trial appeals the parties and the judicial system cannot afford the luxury of leisurely briefing because everyone needs to know quickly whether the court of appeals is going to interrupt the trial to decide the legal issue involved. This frantic pace does not make a lot of sense when the state appeals a final order in a case; by definition, a final order adverse to the state ends the case. There is no reason to rush the briefing schedule after a final order has been entered.

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

P.O. BOX 111200
JUNEAU, ALASKA 99811-1200
PHONE: (907) 465-4322

OFFICE OF THE COMMISSIONER

April 28, 1992

The Honorable Rick Halford
Senate Judiciary Committee
Alaska State Senate
State Capitol
Juneau, Alaska 99801

Re: CSHB 303(FIN), State's
Right to Appeal in Criminal Cases

Dear Senator Halford:

I am writing to ask you to consider scheduling CSHB 303(FIN), an Act relating to the State's right to appeal in criminal cases, for a hearing in the Senate Judiciary Committee. CSHB 303(FIN) is a good bill, and one which has been sought by prosecutors and law enforcement agencies for several years.

The bill would give state prosecutors the same right to appeal from adverse rulings in criminal cases that federal prosecutors now have. Appeals would be allowed unless prohibited by the "double jeopardy" clauses of the United States or Alaska Constitutions.

Like all human institutions, our criminal justice system is not perfect. Judges sometimes make mistakes. If a mistake is made in favor of the State, the defendant can appeal. A conviction that was wrongfully obtained will be reversed on appeal. But if a judge makes a mistake in favor of a defendant, under present law, the State has no right to appeal these erroneous decisions.

Under current state law, if a trial judge dismisses a case erroneously, the state must file a "petition for review", not an "appeal", with the Court of Appeals. The right to "appeal" means that the court must hear a case and rule on its merits. But it is entirely within the court's discretion whether to accept a "petition for review". The court can deny the petition because the legal issue raised is unusual, because the issue is not likely to recur, because the court feels it is too busy, or for any other discretionary reason, without ever reaching the merits of the trial judge's decision.

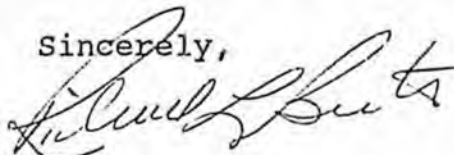
April 28, 1992

Constitutional prohibitions against double jeopardy do not require that erroneous decisions stand uncorrected. CSHB 303(FIN) amends State statutes to allow the State, as well as the defense, to appeal in circumstances where an error has been made.

I know that the Judiciary Committee is busy, and there are several important bills demanding attention. CSHB 303(FIN) is a relatively simple bill, however; I do not believe that it would take a lot of the committee's time to review it and, we hope, pass it out. I urge you not to allow this important bill to get lost in the press of business at the session's end. I would be glad to discuss the need for this bill with you personally, if you would like.

Thank you for your courtesy in considering this request.

Sincerely,

A handwritten signature in cursive script, appearing to read "Richard L. Burton".

Richard L. Burton
Commissioner

cc: Paul Fuhs
Governor's Legislative Liaison

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

WALTER J. HICKEL, GOVERNOR

REPLY TO:

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

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

March 5, 1992

Representative Dave Donley
3111 C St., Suite 450
Anchorage, AK 99503

Ref: House Bill No. 303

Dear Representative Donley:

This letter is in response to your request for information regarding how House Bill No. 303, which broadens the state's right to appeal, would affect the Criminal Division of the Department of Law. The bill would eliminate the need to file petitions for discretionary review of adverse dispositive rulings by trial courts, thereby reducing the workload of the appellate office.

The Office of Special Prosecutions and Appeals represents the State of Alaska in all felony merit appeals, in all criminal cases in the Alaska supreme court, and in all federal actions challenging state convictions. Under existing law, the state's right to appeal in most cases is limited by the court of appeals' discretion. OSPA must file petitions for review, seeking discretionary appellate review of adverse dispositive rulings by the trial court. For example, the state cannot currently appeal a trial court's dismissal of charges based upon an alleged violation of the defendant's right to a speedy trial; it must file a petition for review. Though in practice the court of appeals nearly always decides to grant the state's petitions in these cases, OSPA must nevertheless devote a significant amount of time to draft the petition.

Under existing law, the state has thirty days from the certification of the record or the filing of the appellant's brief to file its brief, but only ten days from the adverse ruling to file a petition for review. This ten-day time frame for filing a

HB 303 - 2
3/5/92

petition for review puts a strain on OSPA. Because the appellate attorney is new to the case, he must review the trial court pleadings and listen to cassette tapes of any relevant hearing. The attorney must then research the law because the petition must contain a "[d]iscussion of the reasons why the decision below is alleged to be erroneous." This is often as time consuming as filing a brief on direct appeal, and usually takes several days. If the petition is granted, the case proceeds as if an appeal had been filed: the parties designate a record, the clerk prepares the record, and the parties file briefs.

Under House Bill No. 303, the state would be permitted to appeal adverse decisions as a matter of right. A state attorney could initiate an appeal by filing a notice of appeal, a statement of points on appeal, and a designation of record. Preparation of these documents ordinarily would occupy at most a few hours. Once the record is certified, the state would have thirty days to file a brief.

At the current time, OSPA has seven appellate attorneys, two trial attorneys and a supervising attorney. Thirty-eight briefs and other responsive pleadings are due within the next thirty days. Two of the cases in the office involve extremely long trials, requiring the assigned attorneys to read 4000 and 5800 pages of transcripts. It would be difficult today for an appellate attorney to drop everything and devote the necessary time to filing a petition for review. An appellate attorney can more easily juggle an appeal into his caseload than he can a petition for review.

I strongly urge you to support the passage of the bill for it will greatly assist OSPA in providing effective representation in all appellate proceedings.

Yours truly,

CHARLES E. COLE
ATTORNEY GENERAL

By: Cynthia M. Hora
Cynthia M. Hora
Assistant Attorney General

The provisions of this section shall be liberally construed to effectuate its purposes.

(As amended Jan. 2, 1971, Pub.L. 91-644, Title III, § 14(a), 84 Stat. 1890.)

1971 Amendment. First par. Pub.L. 91-644, § 14(a)(1), enacted provision for appeal to a court of appeals from decision, judgment, or order of district court dismissing an indictment or information as to any one or more counts, except that no appeal shall lie where double jeopardy prohibits further prosecution.

Second par. Pub.L. 91-644, § 14(a)(1), enacted provision for appeal to a court of appeals from decision or order of district court suppressing or excluding evidence or requiring the return of seized property in a criminal proceeding, not made after the defendant has been put in jeopardy and before the verdict or finding on an indictment or information, if the United States attorney certifies to the district court that the appeal is not taken for purpose of delay and that the evidence is a substantial proof of a fact material in the proceeding.

Such first and second pars. superseded former first eight pars. Pars. one through four had provided for appeal from district courts to Supreme Court from decision or judgment setting aside, or dismissing any indictment or information, or any count thereof and from decision arresting judgment of conviction for insufficiency of indictment or information, where such decision or judgment was based upon invalidity or construction of the statute upon which the indictment or information was founded and for an appeal from decision or judgment sustaining a motion in bar, where defendant had not been put in jeopardy. Pars. five through eight provided for appeal from district courts to a court of appeals where there were no provisions for direct appeal to Supreme Court from decision or judgment setting aside, or dismissing any indictment or information, or any count thereof and from decision arresting a judgment of conviction, and from an order, granting a motion for return of seized property or a motion to suppress evidence, made before trial of a person charged with violation of a Federal law, if the United States attorney certified to the judge who granted the motion that the appeal was not taken for purpose of delay and that the evidence was a substantial proof of the charge pending against the defendant.

Third par. Pub.L. 91-644, § 14(a)(2), authorized within third par., formerly ninth, an appeal within thirty days after order has been rendered.

Fourth par. Pub.L. 91-644, § 14(a), in revising the provisions, had the effect of designating former tenth par. as fourth par.

Fifth par. Pub.L. 91-644, § 14(a)(3), substituted as a fifth par. provision for liberal construction of this section for prior eleventh par. provision respecting remand of case by Supreme Court to court of appeals that should have been taken to such court and treatment of the court's jurisdiction to hear and determine the case as if the appeal were so taken in the first instance and for prior twelfth par. provision respecting certification of case to Supreme Court that should have been taken directly to such Court and treatment of the Court's jurisdiction to hear and determine the case as if the appeal were taken directly to such Court.

Savings Provision. Section 14(b) of Pub.L. 91-644 provided that: "The amendments made by this section [to this section] shall not apply with respect to any criminal case begun in any district court before the effective date of this section [Jan. 2, 1971]."

Legislative History. For legislative history and purpose of Pub.L. 91-644, see 1970 U.S. Code Cong. and Adm. News, p. 5804.

Federal Practice and Procedure

Appellate review

Arrest of judgment, see Wright: Criminal 2d § 574.

Criminal contempt proceedings, see Wright: Criminal 2d § 715.

Decision setting aside or dismissing indictment or information, see Wright: Criminal 2d § 191.

Dismissal for unnecessary delay, see Wright: Criminal 2d § 814.

Motion for judgment of acquittal, see Wright: Criminal 2d § 469.

Search and seizure, see Wright: Criminal 2d § 678.

Government's right to appeal, see Wright: Criminal 2d § 874.

Mandatory release of defendant on his own recognizance upon dismissal of indictment, arrest of judgment and appeal by government, see Wright: Criminal 2d § 767.

Review of federal courts, see Wright, Miller & Cooper: Jurisdiction § 4034 et seq.

Writ applications, see Wright, Miller, Cooper & Grossman: Jurisdiction §§ 3932, 3934.

Notes of Decisions

Decision or judgment

Acquittal 34a

Double jeopardy 89

Exclusion of evidence 31b

Exclusion of witnesses 31a

Instructions 55

Mandamus 33a

Motion to correct sentence 54a

New trial, order granting 47b

Order reducing sentence 54

Parole terms 53

Quashing of subpoenas 90

States and territories, appeals by 9

Suppression of evidence

Generally 51

Time of ruling 53a

Writ of error 52

1. Constitutionality

Where there was a general finding of guilt rendered by court in a bench trial, and thereafter district court granted defendant's motion to suppress, double jeopardy did not bar an appeal by the government. *U.S. v. Rose*, 1976, 97 S.Ct. 26, 429 U.S. 5, 50 L.Ed.2d 5.

Where district court, following a perjury trial, found defendant guilty of charge of possessing marijuana with intent to distribute and thereafter

Note 4

ing out of violation of injunction issued pursuant to section 160 of Title 29 in a case involving an unfair labor practice. In re Union Nacional de Trabajadores, C.A. Puerto Rico 1974, 502 F.2d 113.

3. — Right to jury trial

District court, which stated that it would not impose a sentence in excess of six months, properly denied the jury trial motion of defendants. Professional Air Traffic Controllers Organization officers who were charged with criminal contempt for failing to honor temporary restraining orders. U.S. v. Martinez, C.A. La. 1982, 686 F.2d 334.

This section giving an accused a right to a speedy and public trial by an impartial jury in all cases of contempt arising under laws of United States governing issuance of injunction or restraining orders in any case involving or growing out of a labor dispute do not apply to contempt proceedings to enforce injunctions issued under section 141 et seq. of Title 29. Pabst Brewing Co. v. Brewery Workers Local Union No. 77, AFL-CIO, C.A. Ill. 1977, 555 F.2d 146.

Failure to at least accord defendants statutory right to "demand" trial by jury in criminal contempt proceeding violated due process. Richmond Black Police Officers Ass'n v. City of Richmond, Va., C.A. Va. 1977, 548 F.2d 123.

Writ of mandamus requiring jury trial in criminal contempt proceedings instituted by National Labor Relations Board was recalled, following United States Supreme Court decision that jury trials were not required in such cases, since withdrawal of mandate would not substantially prejudice rights of the union defendants and although defendants had spent considerable time and effort preparing for their challenge to jury selection procedure there was no vested interest in bringing such challenge in instant case and such work, which has been done by public interest legal group, presumably would be available in other cases. In re Union Nacional de Trabajadores, C.A. 1, 1975, 527 F.2d 602.

Business agent for union local did not have constitutional or statutory right to jury trial on charge of contempt for violation of a "Boys Market" temporary restraining order which enjoined the local and its officers, agents, members, and all persons in active concert and participation with them from in any manner engaging in a strike, work stoppage or picketing against employer. U.S. v. Parlin, C.A. La. 1975, 524 F.2d 992, certiorari denied 96 S.Ct. 1493, 425 U.S. 904, 47 L.Ed.2d 753.

Under this section providing that an accused is entitled to a jury trial in all cases of contempt arising under laws of the United States governing issuance of injunctions in any case involving or growing out of a labor dispute, union and officers cited for contempt arising out of their alleged violation of court order enjoining union from striking without complying with notice and waiting requirements of section 160 of Title 29, were entitled to jury trial. In re Union Nacional de Trabajadores, C.A. Puerto Rico 1974, 502 F.2d 113.

Section 160 of Title 29 stating that in granting or enforcing injunctive relief requested by National Labor Relations Board in connection with alleged unfair labor practice the jurisdiction of court sitting in equity shall not be limited by Norris-LaGuardia Act, section 101 et seq. of Title 29, does not insulate criminal contempt proceedings following issuance of Board-requested injunction from requirement of jury trial under this section giving an accused right to jury in all cases of contempt arising under laws of United States governing issuance of injunctions in a case involving a labor dispute. Id.

Air traffic controller's charged with contempt in violating preliminary injunction requiring them to refrain from concerted effort directed to work slow down or stoppage and to notify their supervisor of their medical and physical condition with supporting medical data were not entitled to jury trial. U.S. v. Robinson, C.A. Alaska 1975, 449 F.2d 925.

CHAPTER 235—APPEAL

§ 3721. Appeal by United States

In a criminal case an appeal by the United States shall lie to a court of appeals from a decision, judgment, or order of a district court dismissing an indictment or information as to any one or more counts, except that no appeal shall lie where the double jeopardy clause of the United States Constitution prohibits further prosecution.

An appeal by the United States shall lie to a court of appeals from a decision or order of a district court suppressing or excluding evidence or requiring the return of seized property in a criminal proceeding, not made after the defendant has been put in jeopardy and before the verdict or finding on an indictment or information, if the United States attorney certifies to the district court that the appeal is not taken for purpose of delay and that the evidence is a substantial proof of a fact material in the proceeding.

The appeal in all such cases shall be taken within thirty days after the decision, judgment or order has been rendered and shall be diligently prosecuted.

Pending the prosecution and determination of the appeal in the foregoing instances, the defendant shall be released in accordance with chapter 207 of this title.

H B

3 2 4

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SCS CSHB 324 (STA)

Revision Date: April 15, 1992
 Title: An Act relating to state procurement preferences
for persons with
 Sponsor: Ellis
 Requestor: _____

Department Affected: Administration
 BRU: General Services
 Component: Purchasing

COMPONENT SERIAL NO.

6	0		
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Expenditures/Revenues: (Thousands of Dollars)

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

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

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

POSITIONS:

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

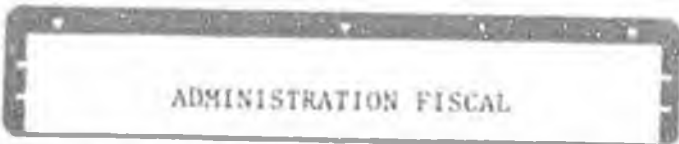
Estimate of current year impact: 0

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

Prepared by: Anne McCord, Director *Anne McCord* Phone: 465-2250
 Division: General Services Date: April 15, 1992

Approved by Commissioner: Nancy Bear Usra *Nancy Bear Usra* Date: 4/17/92
 Agency: Administration

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



Analysis:

The fiscal impact of this bill to agency expenditures depends upon the number of bidders who would qualify for the preference and the instances when they bid on a State solicitation.

Since the 1988 adoption of AS 36.30.170 there have been no bids awarded to employment programs as a result of the existing 10 percent preference over nonresident bidders.

The likelihood of fiscal impact to all agency expenditures from section 3 (e) and (f) (10 percent preference for bidders with a disability or bidders employing the disabled) may be greater since there may be more bidders qualifying. It is not possible to determine the potential cost impact to agency expenditures.

This bill will have a negligible fiscal impact to the division's purchasing activities.

3111 C STREET, SUITE 455
ANCHORAGE, ALASKA 99503
(907) 561-7620

WHILE IN SESSION
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3704

ALASKA STATE HOUSE



CHAIR
RULES COMMITTEE

JUDICIARY

SPECIAL COMMITTEE ON INTERNATIONAL
TRADE & TOURISM

LEGISLATIVE COUNCIL

REPRESENTATIVE JOHNNY ELLIS

SPONSOR STATEMENT

CSHB 324 Business Incentives for Hiring People with Disabilities

The purpose of this bill is to promote active business involvement between the State of Alaska and people experiencing a disability. CSHB 324 amends Alaska's procurement statutes (AS 36.30) to make **three** changes in favor of people with disabilities. The changes apply to the process of bidding on state contracts to provide services such as printing and janitorial services.

1. Increase the current procurement preference for employment programs (nonprofits that train people with disabilities for work) from 10 percent to 15 percent.
2. Creates a 10 percent preference for a business that employs more than 50 percent of its workforce with people who experience a disability.
3. Creates a 10 percent preference for a business that is owned by a person with a disability.

REASONS TO SUPPORT CSHB 324

1. Improves quality of life for people who experience disabilities. — Having a job increases a person's independence and ability for self-support.
2. Saves the State money. — State grant dollars to employment programs to provide residential support are decreased and sometimes eliminated, due to the fact that people are working, earning wages, and living on their own.

Over the last three years, ASETS in Anchorage has served 20 people on wait lists who experience development disabilities. Assuming an average annual service cost of \$8,000 to \$10,000 per person, they have saved the state Division of Mental Health and Developmental Disabilities at least \$320,000

3. People with Disabilities are not being hired — An ISER Report shows that over 3,500 Alaskans who experience disabilities are waiting for jobs or job training. There is only one for-profit business owned by a person with a disability in Alaska and zero for-profit businesses that employ people with disabilities as their main workforce.

SPONSOR STATEMENT

The CS unanimously passed the House March 30 and the Senate State Affairs Committee April 8. The CS changes the definition of a person with a disability so that the definition is more work-related. It narrows the definition of a business owned by a person with a disability to make sure that the business is a sole proprietorship. And it prevents a business owner who experiences a disability, who hires more than 50 percent of his or her workforce with people who experience a disability, from qualifying for two procurement preferences in this bill (page 2, sections e and f).

The Department of Administration has submitted a zero fiscal note.

The Americans with Disabilities Act (ADA) of 1990 took effect on Jan. 26, 1992. This mandates the elimination of discrimination against persons with disabilities — a right many Alaskans have been fighting to achieve for years. The purpose of CSHB 324 is to give an added incentive for businesses to hire people with disabilities.

It is time to get rid of the perceptions and attitudes that keep businesses from hiring people with disabilities. People who want to work should have the opportunity to contribute to the workforce. Having a job increases a person's independence and ability for self support and decreases reliance on public funds.

CSHB 324 IS SUPPORTED BY:

Access Alaska
Supportive Service Enterprises
Alaska State Department of Education, Division of Vocational Rehabilitation
Lifequest Comprehensive Mental Health Services
Kodiak Area Native Association
Alaska Specialized Education and Training Services
Work Force Development Agency
REACH Employment Program
Frontier Training Center
Fairbanks Resource Agency

Thank you for your consideration of CSHB 324.

STATE COMMITTEE REPORT

gmk

DATE: 4/1/92

FURTHER: Judiciary
Finance

DATE TURNED INTO OFFICE: 4/9/92

State Affairs Committee considered CS FOR HOUSE BILL NO. 324 (FINANCE)

"An Act relating to state procurement preferences for persons with a disability, for persons who hire persons with a disability, and for employment programs for persons with a disability; and providing for an effective date."

and a majority of the committee recommends it be replaced with

and recommends:

replace with SCS CSHB-324 (SA)
or adopt previous CS ()
 attaches amendment(s) and do pass

same title
 new title
 technical title change (HB only)

adopts Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

P H & F

NEW FISCAL NOTES: Dept/Date

zero fiscal notes _____

fiscal notes _____

appropriation--no fiscal note

PREVIOUS FISCAL NOTES: Dept/Date

zero fiscal notes (A) DDA 2/24/92

fiscal notes _____

applies to SCS

DO PASS:

John Durrence *Don*
J. R. Miller *Nick*
Pat Fournier *Pat*

OTHER RECOMMENDATIONS:

Paul Gruber *No Pass*
Mark Taylor *No Pass*

Signature and Recommendation

STATE OF ALASKA

DEPARTMENT OF EDUCATION

DIVISION OF VOCATIONAL REHABILITATION

WALTER J. HICKEL, GOVERNOR

CENTRAL OFFICE
901 WEST 10TH STREET, SUITE 200
JUNEAU, ALASKA 99811-1894
PHONE: (907) 465-2814
FAX: (907) 465-2856
TTD: (907) 465-2440

March 10, 1992

Representative Johnny Ellis
Alaska State Legislature
Juneau, Alaska 99801

Re: House Bill No. 324
Certification of People With Disabilities

Dear Representative Ellis,

At your request I present the following recommendations for the three qualified bidder areas covered by HB 324.

1. Employment Programs For Persons With Disabilities:

It is recommended that the current system for certifying employment programs remain unchanged.

This system, within the Division of Vocational Rehabilitation, certifies qualified employment programs throughout the state. These employment programs are developed to employ people who meet the definition of severely disabled.

The division updates the employment program list on an ongoing basis and supplies a copy to General Services and Supply.

2. Determining Which Persons With A Disability Are Eligible:

It is recommended that, in order for a person to qualify as a "person with a disability" they must present medical evidence to the Division of Vocational Rehabilitation to substantiate their claim. The Division of Vocational Rehabilitation considers that evidence in determining whether or not they can be certified.

The definition contained in the Bill (Sec. 3(g)(1) and (2) is very appropriate and adequate.

Certifying a person with a disability for this

section will require medical documentation. Generally a person who meets this definition will have extensive medical records available that can be presented to the division for use in certification. The cost of medical records would be the responsibility of the person seeking certification.

It is recommended that an individual who has a rating of at least 50% disabled by the Veterans Administration be automatically considered severely disabled and, therefore, eligible for certification by the division.

3. Determining Which Programs Are Eligible For Participation Under The Law:

It is recommended that, in order for a program to be eligible for participation that program must be either:

- a) employ certified individuals in a sheltered environment such as a workshop, enclave or small work crew, or
- b) have at least one-half of their employees certified as severely disabled by the Division of Vocational Rehabilitation.

This section would require the same documentation as outlined in the section above.

We hope that this bill will provide employment opportunities for persons with disabilities who would not otherwise have equal access to state contracts.

Historically most programs of this type employ persons with disabilities in a controlled settings with individual supervision of each employee.

Statistically, the division places a very small number of clients into self-employment. I personally don't foresee this bill opening the flood gates for the majority of business owners to receive an advantage in bidding.

Sincerely,


Stan Ridgeway
Deputy Director

DEPARTMENT OF EDUCATION

DIVISION OF VOCATIONAL REHABILITATION

CENTRAL OFFICE
P.O. BOX F
JUNEAU, ALASKA 99811-0581
PHONE: (907) 465-2814
FAX: (907) 465-2856
TTD: (907) 465-2440

February 5, 1992

Representative Johnny Ellis
Alaska State Legislature
Room 204, Capitol
P.O. Box V
Juneau, Alaska, 99811

Re: House Bill No. 324

Dear Representative Ellis:

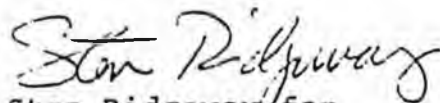
Thank you for asking the division to respond to your bill allowing preference for qualified work programs and Alaskan business owners who are, or employ, people with disabilities.

Over the last several years there has been a shift in philosophy related to work programs which are owned by or employ persons with disabilities. The shift is away from what have been traditionally known as "sheltered workshops" to community based placements. Because of this shift your bill, as written, would provide incentives for sheltered workshops, supported employment programs and businesses which are either owned by or provide employment to persons with disabilities.

The division endorses H.B. 324 which allows bidder preference for a wide range of employment options for Alaskans with disabilities.

As you know, the Division of Vocational Rehabilitation has the responsibility of identifying qualified employment programs throughout the state. We offer our assistance to the Chief Procurement Officer to further identify bidders who meet the definition as outlined in this bill.

Sincerely,



Stan Ridgeway for
Keith J. Anderson, Director
Division of Vocational Rehabilitation

**Kodiak
Area
Native
Association**



REC'D FEB 10 1992

402 Center Avenue
Kodiak, Alaska 99615
Phone (907) 486-5725

January 31, 1992

The Honorable Johnny Ellis, Representative
Alaska State House
P.O. Box 5
Juneau, AK 99811

Reference: House Bill 324, State Procurement Practices

Dear Representative Ellis,

Thank you very much for your letter of January 22, 1992, outlining the provisions of the above-named House Bill, and providing me with a copy of that proposed act. I'd like to thank you for your interest in this very significant Alaska resource, that of workers with disabilities.

I would like to indicate my agency's support for this bill. I think bills such as this are particularly important during times of economic depression, to give people with disabilities that additional competitive edge which they may need.

Again, thank you very much for your concern and this bill.

Sincerely,

KODIAK AREA NATIVE ASSOCIATION
KELLY SIMEONOFF, JR., PRESIDENT

Joe Kelley, CRC
Vocational Rehabilitation
Administrator

JK:kdc

cc: Rita Stevens
Vice President, KANA



Frontier Training Center

P.O. Box 2110

Soldotna, Ak. 99669

(907) 262-6331

March 25, 1991

Representative Johnny Ellis
State Capitol
Juneau, Ak.
99801-1182

Dear Sir,

I fully support your legislative efforts in working towards passage of CSHB 324. Frontier Training Center is an employment center for persons with Developmental Disabilities. The abilities for disabled people to attain vocational placement in the community would be greatly enhanced by the passage of this bill.

Employment Centers work on integrating the disabled into the community with meaningful employment opportunities. This often means having supports such as Vocational Trainers, transportation to and from the work sites where no public transportation exists, Job Coaches and other supports. These are costs that other businesses do not have to factor into a competitive bid. These additional costs sometimes result in not receiving competitive contract awards. CSHB 324 would help to rectify these cost differentials and empower Employment Centers to provide employment opportunities.

CSHB 324 could provide additional deferral of those overhead costs necessary to provide vocational work opportunities to persons with disabilities. Any additional costs in providing these supports is more than offset by making a person with disabilities into tax paying citizens in their community of meaningful tie.

Employment Centers can provide a competitive product at the same time that they ensure that these special members of society are allowed to vocationally integrate into their communities. Your bill would allow for greater access into the community by providing individualized economic opportunities.

Cordially yours,

Rick A. Roeske
Vocational Program Director



A United Way Agency



P.O. Box 34197 • Juneau, Alaska 99803 • Phone: (907) 789-7673 • FAX: (907) 789-1326

Representative Johnny Ellis
ATTN: Diana Rhodes (Rm. 204)
State Capital Building
Juneau, AK. 99801-1182

March 25, 1992

RE: Support for HB-324

Dear Rep. Ellis and House Rules Committee et.al.:

On behalf of REACH, Inc., I would like to offer support for passage of HB-324 as introduced by Rep. Ellis. This bill holds promise and opportunity for employment programs and disabled workers state-wide. The particulars of HB-324 would allow employment programs to potentially expand their state contract base which will lead to increased employment for disabled persons.

Further, such increases in state contracts could ultimately result in decreased state grant subsidies to employment programs. Disabled business owners, disabled contractors and service providers would benefit from passage of this bill as well.

I urge strong consideration and passage of HB-324. Please feel free to contact me anytime during business hours at (907) 789-7673 should have questions or desire further comment regarding this issue.

With Regards,

A handwritten signature in cursive script that reads "Rod Moline".

Rod Moline
Executive Director



ASETS*

*Alaska Specialized Education and Training Services, Inc.
A Non-profit Alaskan Corporation

2330 Nichols Street
Anchorage, AK 99508-3495
(907) 279-8617

Karen Ward, Ed.D.
Executive Director

3/24/92

Representative Johnny Ellis
State Capitol, Room 204
Juneau, Alaska 99801-1182

Dear Representative Ellis:

This letter is to express our support of HB324 (State procurement preferences for people with a disability). This bill will benefit Employment Programs such as ASETS and encourage the private sector to hire people with disabilities. It also provides an incentive for Title I of the Americans with Disabilities Act.

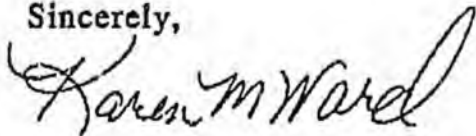
The private sector is under the false perception that state funded employment programs are unfair competition. It is important to note that state grants from Health and Social Service are not used to subsidize commercial operations. These grants are used to provide additional staff and resources to train and support people with developmental and psychiatric disabilities in employment. In other words, grants pay for the extraordinary training expenses associated with the population. All expenses related to the production of goods and services which create jobs for persons with disabilities served through our programs are solely supported by income generated through contracts. In other words, all equipment, wages (including production supervisors), transportation, raw materials, expendable supplies, and administrative overhead are paid from the contract. If expensive equipment is needed, we go to the bank and take out a loan

The importance of HB324 is that it will benefit people with disabilities. First, it means wages. ASETS has several labor contracts with the state and federal government as well as the private sector. Over the last 6 years we have expanded our services through contract labor with the state and federal government. The collective wages earned by the consumers in our program has increased from \$174,502 (1986) to \$596,933 (1991). These dollars are spent in

Alaska! If one assumes that every dollar spent in Alaska has an economic impact of 7 times, the economic impact of our program last year was \$4,178,531. Secondly, Employment Programs manage labor (commercial) contracts like any other business person. That is, we try to be efficient enough to have income exceed expenses. This excess is then used to support our program. Over the last 3 years we have served 20 individuals who experience developmental disabilities who were on state service waiting lists. Assuming an average annual service cost of \$8,000 - \$10,000 per person, we have saved the state Division of Mental Health and Developmental Disabilities at least \$320,000.

We look forward to HB324 becoming law. Please feel free to contact me should you have further questions.

Sincerely,

A handwritten signature in cursive script that reads "Karen M. Ward". The signature is written in dark ink and is positioned below the word "Sincerely,".

Karen Ward, Ed.D.
Executive Director

Supportive Service Enterprises

A Division of the Lodge, Inc.

DR

April 17, 1992

Rep. Johnny Ellis
State Capitol
Juneau, AK 99801-1182

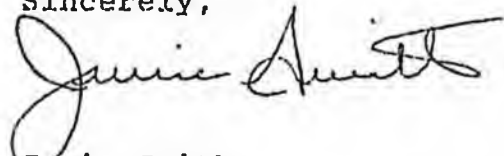
Dear Rep. Ellis,

We are writing to you to voice our support for your bill, HB 324. As individuals who have worked in the field of rehabilitation for many years, we know it is essential that the government who controls funds for the disabled take a positive lead in ensuring that funds and supporting efforts are spent on those projects where the most good can be done.

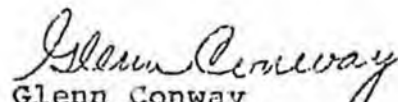
In our opinion, bill HB 324 is a project which we think will benefit not only the disabled, but all Alaskans.

If there is any further support for this bill which we can provide, please do not hesitate to call us.

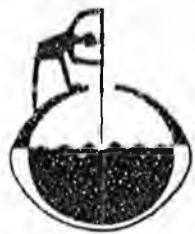
Sincerely,



Jamie Smith
Program Director



Glenn Conway
Executive Director



ISER RESEARCH SUMMARY

Institute of Social and Economic Research, University of Alaska Anchorage

April 1991, R.S. No. 47

What Do Alaskans with Disabilities Need?

More than 20,000 Alaskans—4 percent of the state population—are disabled and live outside institutions. Most of them are getting medical care, but many lack special equipment, information, and other help they need.

These are among the findings of a recent ISER survey of more than 4,300 Alaska households. It is the first survey of its kind in the nation to determine how many disabled persons live on their own and what they need to continue living independently. ISER did the survey for the Division of Vocational Rehabilitation in the Alaska Department of Education, which will use the results to improve services for disabled Alaskans.

What Disabilities Do Alaskans Have?

Most disabled Alaskans have more than one disability. The estimated 22,220 disabled Alaskans living outside institutions report about 61,000 disabilities.

Inability to walk or difficulty walking is the most common disability, followed by arthritis; deafness or hearing loss; learning disabilities; blindness or vision loss; and circulatory or respiratory problems. A variety of other disabilities are less common. (Table 1.)

What Services Do Disabled Alaskans Need?

Figure 1 shows how many disabled Alaskans need specific services, and how many of them are getting what they need.

All disabled Alaskans need medical care, and 85 percent are receiving it—but that leaves 3,400 who aren't.

Most disabled persons also need information on their disabilities and help in getting benefits and in making their problems known. About 70 percent are receiving those services—which means several thousand are not.

Table 1. Most Common Disabilities

Impaired Mobility	19%
Arthritis	12%
Deafness or Hearing Loss	12%
Learning Disability	10%
Blindness or Vision Loss	9%
Circulatory or Respiratory Disorder	8%
Others	30%

Estimated Number of Alaskans with One or More Disabilities	22,220
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Average Number per Person	2.75
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Many disabled Alaskans also need information on special equipment or the loan of equipment, as well as newsletters to tell them about available services. Fewer than half of those who need equipment information or loans are getting what they need, and only 20 percent are receiving newsletters.

Large numbers of disabled Alaskans also need job training, centralized information and counseling about their disabilities, and support groups. Most (70 percent) are getting job training and counseling, but fewer than half get centralized information and only 20 percent belong to support groups.

What Special Equipment Do Disabled Alaskans Need?

Figure 2 shows kinds of special equipment or information about available technology disabled Alaskans need.

Disabled Alaskans most commonly need devices to help them hear, see, or speak better (either in person or over the telephone); wheelchairs, walkers, and other devices to improve mobility; and building modifications for their homes or offices.

This Research Summary is based on An Assessment of the Needs of Alaska Residents Who Are Disabled, by Virgene Hanna and Jack Kruse. The full report is available from ISER at a cost of 10 cents per page. This publication is printed on recycled paper.

Easing the disabled into the workplace

By DEBORAH A. SAKAMOTO

Mary Hanes, 36, job coach for the disabled. Hanes' career with Alaska Specialized Education Training Services — a non-profit business that trains disabled people for the workplace — started seven years ago when she substituted for a cafeteria worker at ASETS.

The organization's supervisor liked the way she worked with the disabled and offered her a permanent position training both mentally and physically handicapped people to work for various employers in the community.

But before Hanes can train a worker, she has to learn the task at hand herself.

"My supervisor finds an available job and then we try to match it with a worker. A job coach is then selected to train for that job before a worker is trained. I've learned many a job. I'm a jack-of-all-trades. One of the first sites I had was out at the airport learning how to sweep carpets.

"I've learned how to pull carts and work the dishwashers at Humana Hospital. . . . We have a contract at the commissary out on base to learn how to stock. I also did janitorial work at the old federal building. They have nine miles of carpet that we had to vacuum every night. That is where a worker dropped a lot of weight.

"We have workers in a veterinary clinic cleaning cages and moving animals and another who works at Alaska Silk Pies. We also have people at Alaska Cleaners.

"We are trying to branch out to other jobs that offer more versatility. We don't want to give them only 'grungy jobs' that no one else wants. We want them to take pride in what they do.

"It gives the disabled a more fulfilling life and is a learning experience for the community. Getting the disabled into the workplace is better than keeping them in sheltered workshops, out of sight.

"In my department . . . there are six job coaches, each with about six to eight people on their case load.

"I have no official education for this job. I think it helps coming from a large family because you're used to getting along with all different kinds of people. I have nine brothers and sisters. I'm right in the middle.

"The most important trait one must have for this job is the ability to get along with people. It's amazing the amount of patience I've learned since I've had this job. You try and put yourself in their position and realize you have to keep trying different ways to get them to understand (the required task). Each trainee functions at a different level. You have to put yourself in their shoes and try to get the point across to them.

"I'm working with (a disabled person) right now. The (invoicing) machine we are working on is very frustrating. It's frustrating to me, but I can't let him see that. I have to be able to ask him if he's frustrated, to see if he can acknowledge that, and then encourage him to take a break.



BOB HALLINEN / Anchorage Daily News

"I also have to make sure to tell him that it is OK to be frustrated. He may not even know that it is frustration he's feeling.

"With proper training, (mentally and physically disabled people) function wonderfully. If I ever have my own business, I would hire disabled people because they are loyal — they

will always be there. They love performing for themselves and getting the feedback that they are doing a wonderful job." ■

— Deborah Sakamoto is a Daily News editorial assistant.