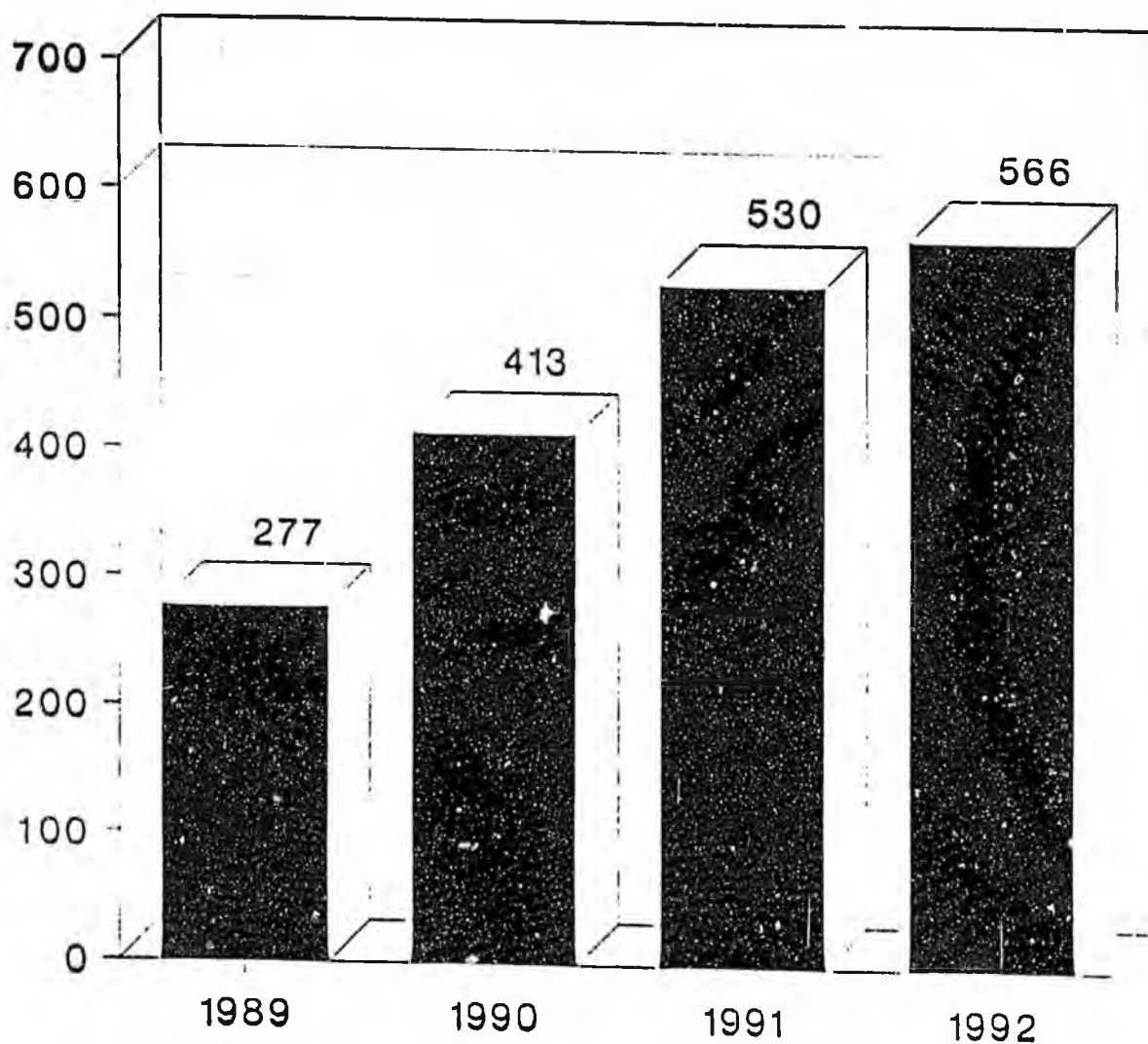


ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

7803 HOUSE HEALTH EDUCATION & SOCIAL SERVICES

Rape in Alaska

Numbers of Reported Rapes



Uniform Crime Report

Source: Dept. Public Safety UCR
Provided by Alaska Network on
Domestic Violence & Sexual Assault

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 340

Revision Date: _____ Dept. Affected: Corrections
 Title: An Act prohibiting the furlough BRU: Statewide Operations
of sex offenders Component: Institutions
 Sponsor: Rep. Farnell
 Requestor: House HESS COMPONENT SERIAL NO. 707-726

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS	907.2	907.2	907.2	907.2	907.2	907.2
TOTAL OPERATING	907.2	907.2	907.2	907.2	907.2	907.2

CAPITAL EXPENDITURES	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

CHANGE IN REVENUES ()	0	0	0	0	0	0
------------------------	---	---	---	---	---	---

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 GF	907.2	907.2	907.2	907.2	907.2	907.2
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	907.2	907.2	907.2	907.2	907.2	907.2

Estimate of any current year (FY94) cost: \$ 0

POSITIONS						
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Please see the attached fiscal analysis.

Prepared by: Diane Schenker, Special Assistant Phone: 465-4643/786-2147
 Division: Office of the Commissioner Date: 2/28/94
 Approved by Commissioner: J. Frank Prewitt, Jr. Date: 2/28/94
 Agency: Department of Corrections

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The bill would restrict sex offenders' eligibility for prerelease and short-duration furloughs.

Assumptions

1. The department revised its prerelease furlough policy this year in order to comply with legislative intent language contained in the FY94 budget encouraging at least six-month prerelease furloughs for most inmates. Under the revised prerelease furlough policy currently in effect, there were 27 sex offenders reviewed between December 20 and February 20. Out of 27 cases reviewed, 15 resulted in prerelease furloughs and 12 were denied. It is assumed that if 15 sex offenders were furloughed in a two-month period, that 90 sex offenders would be furloughed in a one-year period.
2. It is assumed that the length of prerelease furlough for sex offenders (and offenders in general) will be at least six months in duration, based upon the legislative intent language referenced above.
3. The average daily operating cost of a bed in a state correctional institution is \$113 per day.
7. The average statewide daily cost of a Community Residential Center bed is approximately \$57 per day.
8. If sex offenders are not furloughed, they will spend six months in higher-cost state correctional center beds instead of lower-cost CRC beds. Increased operating expenses computed below are reflected under "miscellaneous" on the fiscal note because the expense is based on average costs in institutions and includes some overhead expenses.
9. If sex offenders are precluded from furloughs, other offenders currently housed in state correctional beds, such as misdemeanants, would be diverted to the CRC beds intended for furlougees. CRC beds are currently about 100% utilized, state correctional centers are over 100 inmates past emergency capacity, and there are hundreds of offenders on court-ordered report waiting lists to serve sentences for DWIs and other misdemeanor offenses. The more of these offenders who can be housed in lower-cost community alternatives, the lower the department's operating expenses.

Operating Expenses

90 sex offenders per year X \$113 per day X 180 days = \$ 1,830,600
90 sex offenders per year X \$ 57 per day X 180 days = \$ 923,400
\$1,830,600 institutional cost minus \$ 923,400 CRC cost = \$ 907,200 higher cost per year

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 340

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act prohibiting the furlough of sex offenders" BRU: Public Defender Agency
 Component: Public Defender Agency
 Sponsor: Rep. Pamell, Phillips
 Requestor: (H) Hes COMPONENT SERIAL NO. 1631

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
Total	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY94) cost: none

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Prepared by: John Salemi, Public Defender Phone: 264-4400
 Division: Public Defender Agency Date: _____
 Approved by Commissioner: Nancy Bear Usura Date: 3/1/94
 Agency: Administration

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 340

Revision Date: _____
Title: 'An Act prohibiting the furlough
of sex offenders.'
Sponsor: Representatives Pamell, Phillips
Requestor: House HES

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

COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ()	0	0	0	0	0	0

FUNDING SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	0	0	0	0	0	0

Estimate of any current year (FY 94) cost: \$ 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

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Brant McGee
Division: Office of Public Advocacy

Phone: 274-1684
Date: _____

Approved by Commissioner: Nancy Bear Usara
Agency: Department of Administration

Date: 5/1/94

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO: HB 340

Revision Date: _____ Dept. Affected: Public Safety
 Title: "An act prohibiting furlough for sex offenders." BRU: Alaska State Troopers
 Sponsor: Rep. Parnell Component: Detachments
 Requestor: Rep. Parnell COMPONENT SERIAL NO. 799

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

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ()	-0-	-0-	-0-	-0-	-0-	-0-
Revenue Code						

FUNDING: (Thousands of Dollars)

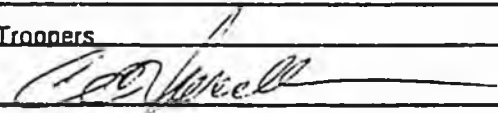
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 94) impact: \$ _____

POSITIONS:

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

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

Prepared By: Frank Allan Phone: 269-5691
 Division: Alaska State Troopers Date: 03/01/94
 Approved by Commissioner:  Date: 03/01/94
 Agency: Richard L. Burton, Dept. of Public Safety

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Alaska State Legislature

REPRESENTATIVE
SEAN R. PARNELL



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(907) 258-3194

While in Juneau
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JUNEAU, ALASKA 99801-1182
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HOUSE OF REPRESENTATIVES

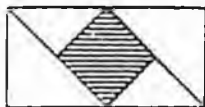
Sponsor Statement

House Bill 340 Prohibiting the Furlough of Sex Offenders

The Department of Corrections recently revised their matrix scoring system which determines inmate eligibility for pre-release furloughs to halfway houses. The net result of this change is substantially higher numbers of untreated sex offenders have been and will continue to be furloughed into communities.

Although the Department is under considerable financial constraints, this shift in policy has ultimately resulted with misdemeanants in prison facilities and sex offenders in halfway houses.

This bill prohibits the furlough of sex offenders except for secure medical, psychiatric or substance abuse treatment or if the prisoner is in direct custody of a correction officer while outside the correctional facility.



anchorage
TFSA

February 1, 1994

The Honorable Sean Parnell
Alaska State Legislator
716 W. 4th, Suite 320
Anchorage, AK 99501-2123

Dear Representative Parnell:

The Anchorage Task Force on Sexual Assault is very concerned about the recent practice of presumptive prerelease furloughs of untreated sex offenders. There are several areas of concern we would like to share with you at this time.

Currently, Alaska's numbers of reported rape are higher than at any time in the recent past. Reported rapes increased by 91% during 1989 and 1991 with the rate of remaining constant during 1992. There are only a few means at our disposal to address this crisis and to attempt a reduction in the number of victims. One is through prosecution of these crimes, which the Anchorage Task Force on Sexual Assault has advocated for actively. Another is through ensuring that untreated sex offenders, who are known to have an extremely high recidivism rate, are removed from our communities for as long as possible. A system which releases untreated sex offenders into the community before the completion of their sentence literally endangers the citizens of Alaska.

* While furloughed sex offender may be monitored in the halfway houses, we are not aware of any staff members in the community release programs who have been trained to work with untreated sex offenders. Community treatment programs will be unable to work with untreated sex offenders for the most part, and are not equipped in any event to deal with such a dramatic increase in numbers of this population. Since we know that many sex offenders are repeat offenders, this lack of appropriate supervision in the community release programs is alarming.

Another area of concern is with the current furlough matrix which governs the early release of untreated sex offenders. The matrix offers artificial guidelines for assessing the risk of an offender. A current and well documented report, the Able study, clearly illustrates that there is significant cross over between the classifications of sex offenders. The matrix attempts to distinguish sex offenders and to classify them as being more or less of a danger to society. Such classification is proven false. Sex offenders not only have an extremely high rate of recidivism but, have multiple sexual deviations. To measure risk based on the current matrix is dangerous.

The Anchorage Task Force on Sexual Assault is aware of the complex problems facing the Department of Corrections in regard to overcrowding and expenses. Providing furlough to untreated sex offenders, however, potentially exacerbates the current crisis of sexual assault which is plaguing public safety in Alaska.

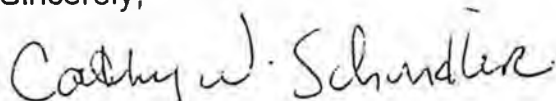
Anchorage Task Force on Sexual Assault

SAFE City Program, DHHS, MOA ♦ P.O. Box 196650 Anchorage, AK 99519 ♦ (907) 343-6302

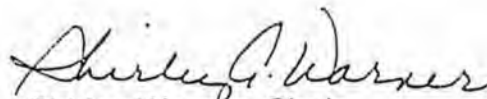
The Task Force urges you to not include sex offenders under the presumptive prerelease policy unless they have successfully completed treatment. Under the current system there is no incentive for participation in a treatment program. Members of the Task Force are willing to work with the Department in anyway which would provide an alternative solution to the early release of untreated offenders.

Thank you for your consideration of our collective concerns. Please feel free to contact the Task Force should there be any questions or if we may provide assistance. Thank you.

Sincerely,



Cathy W. Schindler
Anchorage Task Force on Sexual Assault/
Legislative Committee Chair



Shirley Warner, Chair
Anchorage Task Force on
Sexual Assault

State of Alaska Department of Corrections Policies and Procedures	Index: 818.02	Page 1 of 8
	Effective Date: 12-27-93	
	Distribution: A, B, C	
Approved by: J. Frank Prewit, Jr. Commissioner	Chapter: Release Preparation and Temporary Release	
Subject: Prerelease Furlough		

I. AUTHORITY:

In accordance with AS 44.28.030, AS 33.30.021 and 22 AAC 05.155, the Department of Corrections will establish and maintain a manual of policies and procedures to interpret and implement the statutory and regulatory duties of the department.

II. REFERENCES:

Alaska Statutes

33.30.011 Duties of Commissioner
 33.30.091 Designation of Programs
 33.30.101 Furloughs
 33.30.111 Prerelease Furloughs
 33.30.131 Furlough Involving Employment
 33.30.141 Effect of Violation of Furlough Conditions or Failure to Return
 33.30.901 Definitions

Alaska Administrative Code

22.05.260 Appeals Procedure
 22.05.310 Furlough for Prisoners Outside Alaska
 22.05.316 Furlough
 22.05.321 Prerelease Furlough
 22.05.331 Furlough Involving Employment
 22.05.335 Violation of Furlough Conditions
 22.05.660 Definitions

III. APPLICABILITY:

All employees; Community Residential Program providers; and sentenced prisoners.

IV. DEFINITIONS:

Community Residential Program (CRP): A program approved by the department to supervise offenders who are under the department's jurisdiction, outside a state correctional center. A program designed specifically to supervise offenders under the jurisdiction of the department, such as a private contract facility or an Intensive Furlough Supervision Program, must meet operating standards designed by the department. A program which provides services to clients who are not under the jurisdiction of the department, such as a substance abuse treatment center or hospital, may be approved by the department to supervise furloughees if the program's supervision standards meet the minimum supervision standards required under this policy.

Effective Date: 12-27-93

Index #: 818.02

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Subject: Prerelease Furlough

V. POLICY:

A sentenced prisoner will be granted a prerelease furlough during at least the last six months of incarceration unless the prisoner's potential for reformation is considered so minimal, and the immediate threat to public safety is considered so great that these factors clearly outweigh the benefits to the public and the prisoner of gradual reintegration into society prior to release from custody. Prisoners who are of close or maximum custody grade, or category I or II sex offenders who have not completed a Department of Corrections approved institutional sex offender treatment program, are an exception to this policy. It has been determined that such offenders pose an immediate threat to public safety which clearly outweighs any potential for reformation to be gained by furlough placement.

VI. PROCEDURES:

A. Review of Prisoners Eligible for Consideration of Prerelease Furlough

1. In accordance with Policy 818.03 (Victim Notification), the victims of a prisoner's crime will be notified of that prisoner's eligibility for prerelease furlough consideration. The probation officer shall make such notification:
 - a. upon receipt of a written request from a prisoner eligible under VI.A. 2, or
 - b. at least 30 days prior to the time a prisoner meets the eligibility criteria under VI.A.3.
2. Prisoners sentenced to one year or less: The assigned probation officer shall complete the Prerelease Furlough Matrix (20-818.02A) for a prisoner sentenced by the court to a composite term of one year or less or returned to custody by the Parole Board for a period of incarceration of one year or less.

QUALIFYING CRITERIA:

- a. Has not been found guilty of a high moderate or major infraction within the past 120 days of incarceration, and has no pending disciplinaries at any level;
- b. Requests in writing to be considered for a prerelease furlough.

APPROVING AUTHORITY:

- a. The holding facility superintendent is the approving authority for prisoners holding medium and minimum custody grades;
- b. The superintendent shall complete section G or H of the furlough Form and, if the furlough is approved, may modify any sections of the furlough conditions;
- c. Reduction to community custody becomes effective upon transfer to the CRP. The superintendent shall complete the information required in section H.

Effective Date: 12-27-93

Index #: 818.02

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Subject: **Prerelcase Furlough**

3. Prisoners sentenced to more than one year: The probation officer shall complete the Prerelcase Furlough Matrix (20-818.02A) for a prisoner sentenced by the court to a composite term of more than one year, or returned to custody by the Parole Board for a period of incarceration of more than one year.

CRITERIA:

- a. Has served at least one third of the sentence [(sentence imposed minus good time) divided by three] and has at least 60 days remaining to a firm release date;
 - b. Has not been found guilty of a major or high moderate infraction within the past 120 days of incarceration and has no pending disciplinaries at either of those levels;
 - c. If minimum custody grade, is within 38 months of a firm release date;
 - d. If medium custody grade, is within 14 months of a firm release date; and
 - e. Does not have an active detainer of any kind.
4. A prisoner who is pending possible revocation of probation or parole (i.e., a petition to revoke has been filed) due to failure to satisfy court-ordered program requirements during incarceration is not eligible for prerelcase furlough consideration.
 5. After completing the Prerelcase Furlough Matrix, the probation officer shall have the prisoner sign the form indicating whether the prisoner requests consideration for a prerelcase furlough. If the prisoner refuses to sign the form or does not wish to be considered, the probation officer shall forward a copy of the form to Central Classification for data collection purposes.
 6. If the prisoner requests prerelcase furlough consideration, the probation officer shall complete the Prerelcase Furlough Application/Agreement Form (20-818.02B), sections A through E and forward the form and attachments to the Superintendent. Special conditions requested by the Probation Officer or Superintendent should be noted in sections E and F respectively.
 7. If the prisoner is incarcerated in a contract facility outside the state, the furlough criteria of both the contracting agency and the Alaska Department of Corrections must be met before a prisoner may be placed on prerelcase furlough. Central classification will respond to any furlough requests received from an out-of-state contracting agency.

APPROVING AUTHORITY:

- a. For prisoners sentenced to more than one year, the Chief Classification Officer shall complete sections G or H and, if the furlough is approved, will impose any special conditions and record same in section I.
- b. Reduction to community custody becomes effective upon transfer to a Community Residential Program. The Chief Classification Officer shall complete the information required in section H.

Effective Date: 12-27-93

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Subject: Prerelease Furlough

- c. If the prerelease furlough is approved, the form shall be returned to the institution and a copy retained in Central Classification. The probation officer shall review the form with the prisoner, and have the prisoner sign under section K. The probation officer shall complete section L and arrange for the prisoner's placement in an approved CRP, or on the waiting list for a CRP. If the prisoner refuses to sign the Agreement, the probation officer shall forward a copy of the refusal to Central Classification for data collection purposes.

Note: A prisoner who is ineligible for a prerelease furlough or, if eligible refuses such placement, is ineligible for any kind of furlough or other community based activities

- d. If, while awaiting actual placement in a CRP, the prisoner becomes ineligible for a prerelease furlough due to disciplinary infractions or failure to continue compliance with court ordered or recommended programming, the institutional probation officer shall inform Central Classification, who may rescind the prior approval of prerelease furlough after giving the prisoner an opportunity to comment in writing on the proposed rescission.

B. Denial of Prerelease Furlough

1. Denial of Prerelease Furlough will be indicated in section G of the Furlough Application/Agreement.
2. Notice of the denial will be sent to the holding facility by OBSCIS or other expedient means.
3. The institutional probation officer shall deliver a copy of the notice to the prisoner. The later will acknowledge receipt by signing the notice. If the prisoner refuses to sign the document it will be so noted and placed in the prisoner's main institutional file.
4. The prisoner will be given a copy of the notice of denial.
5. The prisoner may appeal to the Deputy Commissioner, through the institutional probation officer, any aspect of a furlough action.

C. Prerelease Supervision

1. The probation officer responsible for caseload supervision of a furlougee (furlough officer) shall be designated by the Director of Institutions, unless the furlougee is participating in the Intensive Furlough Supervision Program, in which case the furlough officer shall be a probation officer designated by the Director of Community Corrections.
2. The furlough officer shall maintain the prisoner case record for a furlougee, coordinate movement between CRPs if authorized by the Prerelease Furlough Agreement, and ensure that prerelease procedures and other case management duties which cannot be performed by the CRP are followed according to department policies.

Effective Date: 12-27-93

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Subject: Prerelease Furlough

D. Minimum Operating Standards for a CRP

1. The restrictions and supervision required for a prerelease furlough shall provide safeguards that minimize risk to the public and include, as a minimum:
 - a. frequent contact with the furlougee by the CRP staff;
 - b. knowledge by CRP staff of the location of the prisoner;
 - c. periodic reports by the CRP to the department on the furlougee's performance; and
 - d. a residential setting in which CRP staff are obliged to immediately report to the department any violation of a condition set for the furlougee's conduct.
2. The Director of Community Corrections shall approve standards for the operation of a CRP before authorizing the CRP to supervise furlougees. The Director shall maintain a list, updated at least annually, of CRPs approved for furlough placements, and make the list available to superintendents, institutional probation officers, and the Chief Classification Officer. The list shall include, at a minimum, the following information:
 - a. location of the CRP;
 - b. eligibility criteria for admission;
 - c. minimum and maximum length of placements;
 - d. maximum length of time and conditions under which a furlougee may be authorized to be away from the residence, if any, including the minimum level of surveillance required when the furlougee is away from the residence, and
 - e. a description of any phase, step, or level program.

E. Employment and Financial Requirements for Prerelease Furloughs

1. A furlougee may be permitted to participate in suitable employment under conditions and at wages that represent the prevailing standard for the area. A furlougee may not participate in employment where an organized labor dispute is in progress.
2. A furlougee who is allowed to secure employment outside the facility shall request the employer to send all paychecks directly to the CRP manager. If such an arrangement is not possible, the manager may authorize the furlougee to deliver the paychecks to the CRP.
3. The CRP manager is responsible for collecting, safekeeping, accounting, reporting, and disbursing all monies received from or on behalf of a furlougee. Any disbursement from the furlougee's account must be authorized by the CRP manager in accordance with the furlougee's approved budget plan.

Effective Date: 12-27-93

Index #: 818.02

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Subject: Prerelease Furlough

4. A furlougee is required to pay the State of Alaska one-fourth (25%) of gross earnings for the cost of care in the CRP. However, this payment may not exceed the actual cost of participation in the CRP, as established by the Director of Community Corrections. The CRP manager shall transmit to the department each month a check payable to the State of Alaska in the total amount of all cost-of-care payments collected from the furlougees in the CRP. The CRP manager shall disburse the remainder of the furlougee's earnings according to a budget approved by the furlough officer, reflecting the following order of priority:
 - a. child support payments as required by AS 25.27.062;
 - b. any restitution or fine ordered by the court;
 - c. a civil judgement arising out of the criminal conduct of the furlougee;
 - d. reimbursement to the state for an award made for Violent Crimes Compensation under AS 18.67;
 - e. outstanding restitution or reimbursement resulting from a disciplinary sanction; and
 - f. the prisoner's account.
5. Only earnings retained by the CRP manager under IV. E. 4. f are subject to lien, attachment, garnishment, execution, or other proceedings to encumber money or property.

F. Violations of Prerelease Furlough Conditions

1. If a violation of the conditions of the prerelease furlough is alleged, the CRP manager shall immediately notify the furlough officer or, if the furlough officer is unavailable, the shift supervisor of the appropriate state correctional institution designated on the Prerelease Furlough Agreement. The CRP manager shall forward a written report to the furlough officer by the end of the next working day.
2. If, as a result of the alleged violation, the furlough officer or shift supervisor determines that a furlougee presents an immediate threat to public safety or to the security of the CRP, the furlough officer or shift supervisor may arrange with the superintendent of the appropriate state correctional facility to have the furlougee returned to the state correctional facility. If there is a dispute between the furlough officer or shift supervisor and the superintendent as to the need to return the prisoner to confinement, the prisoner shall be returned to confinement and the question referred to the Chief Classification Officer for a final decision.
3. A furlougee who is alleged to have violated the conditions of a furlough but who does not, in the opinion of the furlough officer or shift supervisor, present a threat to the public safety may not be returned to actual confinement in a state correctional center until a preliminary hearing is held at which a determination is reached that there is probable cause to believe that the violation(s) occurred. The hearing shall generally be conducted by the furlough officer, however, the furlough officer may designate another person who was not involved in the allegation of violation of conditions of furlough to act as the hearing officer.

Effective Date: 12-27-93

Index #: 818.02

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Subject: **Prerelease Furlough**

- a. The furlougee is entitled to at least 12 hours' advance written notice of the preliminary hearing, and the notice must inform the furlougee that the purpose of the hearing is to determine whether probable cause exists to believe that the furlougee has violated the conditions of the furlough, and what conditions are alleged to have been violated.
 - b. The furlougee is entitled to appear and speak on his or her own behalf, present letters, documents, or individuals who can give relevant information to the hearing officer, and upon request, have any person who has given information adverse to the prisoner questioned in the presence of the furlougee unless the hearing officer determines that the person would be subjected to risk of harm if the person's identity were disclosed.
 - c. A copy of the written summary of the hearing officer's decision which summarizes the evidence in support of a violation, the furlougee's responses and position, and includes the determination as to whether probable cause exists to believe the prisoner has violated the conditions of the furlough shall be delivered to the furlougee and the original placed in the prisoner case record.
4. A furlougee returned to actual confinement in a state correctional facility under V. F. 2 or 3 must be granted a classification hearing within seven days to determine whether the prerelease furlough will be terminated or continued and to consider a custody increase for a prisoner whose furlough is terminated. In addition, the furlougee is also subject to disciplinary sanctions as set out in 22 AAC 05.400-480.
 5. If the furlough is continued, the furlougee shall be returned to a CRP as soon as space is available or placed on the waiting list for space if it is not available.

G. Failure to Return or Be At Authorized Location

1. The failure of a furlougee to return to the place of confinement or residence within the time specified by those having direct supervision over the furlougee is an unlawful evasion under AS 11.56.340 - 350 and the furlougee is subject to criminal prosecution as well as termination of the furlough and disciplinary action.
2. Within one hour of determining that a furlougee is not present at the authorized residence or other location authorized in writing by the CRP manager, the CRP manager shall notify the furlough officer, or if the furlough officer is unavailable, the shift supervisor of the appropriate state correctional institution designated on the Prerelease Furlough Agreement. The furlough officer or shift supervisor shall immediately notify law enforcement officials, at which point the prisoner is considered to be on escape status.

Effective Date: 12-27-93

Index #: 818.02

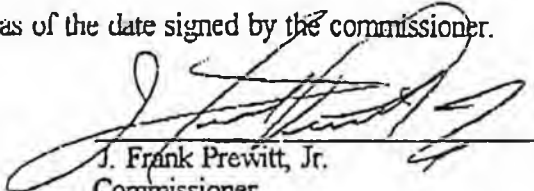
Page 8 of 8

Subject: Prerelease Furlough

VII. IMPLEMENTATION:

This policy and procedure is effective as of the date signed by the commissioner.

Date

12/29/93

J. Frank Prewitt, Jr.
Commissioner

Forms applicable to this policy:

20.818.02A Prerelease Furlough Matrix

20.881.02B Prerelease Furlough Application and Agreement

FURLOUGH SCORING MATRIX

Prisoners Name _____ DOB _____ OBSCIS _____

Custody _____ PRD _____ Institution _____

Offense(s) _____ Sentence _____

- ___ 1. Age at date of first criminal conviction.
0 = over 25 2 = 20-24 3 = 19 or under

- ___ 2. Prior felony convictions (*count multiple convictions stemming from one incident as one conviction*)
0 = none 2 = 1-2 3 = 3-5 5 = over 5

- ___ 3. Convictions for crimes against persons (AS 11.41) or Arson I (AS 11.46,400)
-5 = none 5 = past 10 = current 20 = past and current

- ___ 4. Current offense is Murder I or II, Kidnapping, Assault I or II AND offender used a weapon (other than a motor vehicle) against a victim who was unknown to the offender prior to the offense (random victim).
0 = no or N/A 20 = yes

- ___ 5. Total high moderate and major disciplinarys during this incarceration.
0 = none 1 = 1 2 = 2 3 = 3 4 = 4 5 = over 4

- ___ 6. Total drug/alcohol related disciplinarys during this incarceration
0 = none or N/A 1 = one 2 = two +5 = three or more

- ___ 7. Length of time, during this incarceration, without major or high moderate infraction, counting back from present
0 = 1 year or less -3 = 1 to 2 years -5 = 2 to 4 years -8 = 4 to 7 years
-10 = 7 years or more

- ___ 8. Used drugs/alcohol during current offense(s)
0 = no 5 = yes

- ___ 9. Prisoner has satisfactorily completed substance abuse program during this incarceration.
-5 = yes 0 = no

- ___ 10. Prisoner has completed self betterment programs other than substance abuse or sex offender treatment during this incarceration.
-5 = yes 0 = no

- ___ 11. Status of prior furlough(s) including this incarceration.
-5 = completed 0 = N/A 5 = failed to complete

- ___ 12. Comments from victim(s)
-5 = support 0 = none or N/A 3 = oppose 5 = strongly oppose

- ___ 13. Prior violation of "no contact" or restraining order against victim(s) of violent crime(s)
0 = no or N/A 10 = yes; by phone, mail, or third party only 15 = yes, in person

- ___ 14. Probation Officer recommendation
-10 = strongly support -5 = support 0 = none 5 = opposed 10 = strongly oppose

- ___ 15. SUB-TOTAL SCORE

16. Sex Offender Scoring Matrix

Category of Offense	Refuse Disch	TX Not Avail	Pre-TX Beg TX	Interm TX	Adv TX	Comp TX
I.	Not Elig.	Not Elig.	Not Elig.	Not Elig.	Not Elig.	0
II.	Not Elig.	Not Elig.	Not Elig.	Not Elig.	Not Elig.	-5
III.	15	10	5	0	-5	-10
IV.	10	5	0	-5	-10	-15
V.	5	0	-5	-10	-15	-20
VI.	0	-5	-10	-15	-20	-25

I. = Violent Sexual Assault: Offender uses violence or the threat of violence to sexually penetrate or attempt to penetrate an unwilling victim.

II. = Predatory Pedophilia: Offender actively seeks out pre-puberty children of either sex for specific purpose of committing any kind of sexual act. (Characteristically has multiple victims).

III. = Sexual Assault: Offender uses no force or only minimal force to achieve sexual contact with a non-consenting victim who is above the age of puberty, and that is short of penetration or attempted penetration. Hugging, kissing, and fondling are characteristic elements of offense. There should be no weapons or threat of weapons involved in the perpetration of this kind of offense.

IV. = Intra-Family Sexual Assault: Offender commits a sexual assault against a family member. Sexual relations between a father and daughter or step daughter are most common. There may be minimal or moderate physical force but not extreme violence or weapons. Offender often uses psychological intimidation. A high level of force would place offender in category I.

V. = Isolated Act of Pedophilia: Offender's sexual contact with a pre-puberty child is isolated in nature. Offense usually consists of some kind of fondling, rubbing or stroking. Normally there is a single victim, and the opportunity for the offense is the result of an otherwise legitimate basis of social interaction. Act often occurs when the victim is intoxicated. Actual sexual penetration or physical injury to the victim should be considered reason to place offender in category II.

VI. = Non-Violent Sexual Offenses: Offender engages in consensual sex that is illegal. A partner who is below the legal age of consent, but of post-puberty age, is most common example. Offenders whose victims are of pre-puberty age belong in another category. Such non-physical contact offense, as voyeurism, exhibitionism, obscene phone calls, etc. are also included in category VI.

Notes: 1. If an offense is comprised of elements that cut across two or more of the six categories, scoring should be on the basis of the most serious included behavior.

2. For each prior episode of sexual misconduct leading to a felony conviction, the prisoner should be moved upward one category level.

3. Assignment of the prisoner to the appropriate category should be based upon the best information available. This would include, but not be limited to, presentence reports, police reports and information obtained during the course of treatment programming.

17. TOTAL SCORE

18. Furlough Chart

Matrix/Custody	Min	Med
0 or Less	36	12
1 - 10	30	10
11 - 20	24	9
21 - 30	18	8
31 - 40	12	7
41 Plus	9	6

19. Assignment to furlough supervision is:

Regular _____ Increased _____

Note: The following categories of prisoners are automatically assigned to increased supervision:*

- (a) All sex offenders.
- (b) All other offenders with a total score of more than "20".

I have read or had explained to me Policy 818.02. Prerelease Furlough. I _____ DO _____ DO NOT wish to be considered for a prerelease furlough.

If not, explain reason(s): _____

Prisoner signature _____ Date _____

P.O. signature _____ Date _____

*Furloughed offenders assigned to this program component will be subjected to intensified monitoring and surveillance, both in the CRP facility and while engaged in employment or other activities in the community.

Original to Prisoner Case Record
Copy to Central Classification
Copy to Prisoner

Prerelease Furlough Application/Agreement

Prisoner's Name: _____

OBSCIS Number: _____

A. Purpose(s) of Prerelease Furlough <i>Probation Officer/Counselor check recommendation(s); approving authority initial approved purposes(s).</i>	B. Debts Owed <i>(required per AS 33.30.131)</i>	Amount	To Whom
secure a residence/other preparations for release	child support/AS 25.27.062		
seek or engage in employment	restitution/fines		
counseling/treatment for substance abuse	civil judgment/criminal act		
*counseling/treatment for other behavior	violent crimes reimbursement		
*medical/psychiatric treatment	disciplinary reimbursement		
*vocational training/education	TOTAL		

*Explain:

C. Community Residential Center Placement(s): *Probation Officer to recommend placement(s) in sequential order, if applicable, and dates. Approving authority to modify placements/dates if necessary. If recommending/approving dates other than as indicated by matrix, attach explanation/justification.*

Name of CRP/Date	Start Date	Ending Date

D. Documents Attached: *Court Judgment *Presentence Report Most recent classification action Furlough Matrix Prob./Parole supplemental conditions, if any Parole Order/MR conditions, if any Time Accounting Victim Comments, if applicable Wants/Warrants check Medical/mental health screening (optional) Documentation of program status if ordered or recommended by court, classification, treatment/unit management team _____
 Other: _____
**does not need to be attached for Central Classification/Deputy Commissioner review; on file in Central Office*

E. Probation Officer Comments: *(Address factors requiring consideration outside the matrix, such as high public profile cases, special medical/mental health concerns, etc. Attach additional sheet if necessary.)*

Probation Officer Signature/Date

F. Superintendent Comments: *(optional, for application requiring Central Classification Review)*

Superintendent Signature/Date

G. Prerelease Furlough Denied. *(State Reason)*

Signature/Title/Date

H. Prerelease Furlough Approved. custody reduced from _____ to community upon placement in CRP *(If approved on appeal, attach Appeal of Classification Action, 20-760.01)*

Signature/Title/Date

Prerelease Furlough Application/Agreement

Prisoner's Name: _____

OBSCIS Number: _____

I. Special Conditions: (P.O. recommend/approving authority modify as necessary. Include any no-contact/restraining orders if applicable.)

J. Standard Conditions of Prerelease Furlough

1. I agree to abide by all the rules of the Community Residential Program(s) (CRP) in which I am placed.
2. I agree to leave and return to the CRP only for the approved purpose(s) indicated on this application/agreement, and only at the times approved by the CRP staff.
3. I agree to go directly to the place(s) authorized and return directly to the CRP when authorized to leave the
4. CRP.
5. I agree not to make any purchases not specifically authorized in writing by the CRP manager or designee. I agree to turn over all earnings or any other money received to the CRP manager or designee, and understand
6. that one-fourth of my gross earnings (not to exceed the actual cost of care) will be given to the State of Alaska to pay for the cost of care. I agree not to ride in or on any vehicle without prior approval by the CRP manager or designee, and not to
7. drive any vehicle without written permission from the CRP manager and Furlough Officer, that may only be granted after a records check of my driving record. I understand that if prohibited from driving as a special
8. condition of this furlough, that I may not drive a vehicle under any circumstances.
9. I agree not to purchase, have in my possession, nor consume alcoholic beverages in any form, nor enter upon the premises where it is sold, stored, or dispensed. I further agree to submit to alcohol/drug testing upon
10. request. I agree to comply with all federal, state, and local laws and ordinances.
11. I agree not to enter into any contract to engage in business, borrow money, purchase property on the installment plan, nor incur any debts of any kind without first having obtained written permission from the CRP manager. I agree to abide by any special conditions/restrictions listed on this application/agreement. I understand that if I violate any condition of this agreement, I may be removed from the CRP and returned to a
12. state correctional center and that following a hearing by a classification committee, I may be removed from furlough status; and that in addition I may face disciplinary and/or criminal charges. I understand that my failure to return to the CRP or to be at an authorized location at the times required subjects
13. me to criminal prosecution under the criminal laws of the State of Alaska. I hereby waive any right to an extradition hearing if I leave the State of Alaska without written authorization during this prerelease furlough.

K. To be completed by Prisoner: I have read or had read/explained to me this Prerelease Furlough Agreement. I understand and agree to abide by the terms and conditions of the approved Agreement.

Prisoner's Signature/Date _____

L. To be completed by P.O. after approval of furlough and prisoner's signature agreeing to conditions of furlough:

- _____ I have reviewed the terms and conditions of this Prerelease Furlough Agreement with the prisoner.
- _____ The prisoner has been tested negative for drug/alcohol use no longer than 30 days prior to CRP placement.
- _____ Per Victim Notification Policy 818.03, I have notified the following, if required (enter N/A or date notified):

_____ Law Enforcement	_____ Sentencing Judge	_____ District Attorney
_____ Victim(s)	_____ Other: _____	

_____ I have attached a recent photo of the prisoner and appropriate, signed Releases of Information, in addition to the documents listed on the front page for this form, for use by the CRP

Furlough Officer name/Phone _____

Number: _____

Institution to be notified in emergency/phone _____

number: _____

P.O. Signature/Date _____

Original to Prisoner Case Record
Copies to: Prisoner Central Classification; CRP

H B

3 4 1 1

HOUSE COMMITTEE REPORT

(9) Date Referred: January 10, 1994 FURTHER REFERRALS: Finance

Date of Committee Action: 3/17/94

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered: HB 341

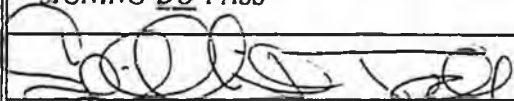
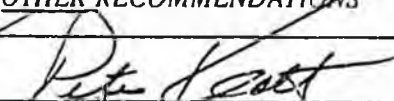

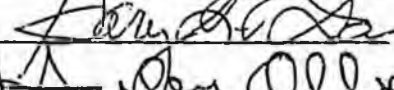
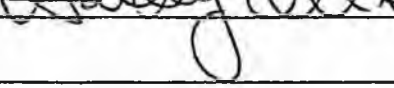
HOUSE BILL NO. 341 PHYSICIAN ASSISTANTS' SERVICES

"An Act relating to physician assistants; and providing for an effective date."

RECOMMENDATIONS:
 be replaced with CS HB 341 (HESS) the same title
 a new title
 have attached amendments(s)
 do pass
 do not pass
 no recommendations
 individual recommendations
 additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dept/Date)
 fiscal impact H+SS² fiscal note(s) _____
 zero fiscal note Labor, Commerce zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
	✓			✓	
Betty Davis	✓			✓	
Tom Price	✓			✓	
Con Bunker	✓			✓	


 CHAIRMAN'S SIGNATURE



Alaska State Legislature

House of Representatives
 COMMITTEE ON HEALTH, EDUCATION
 AND SOCIAL SERVICES

DATE: 3/17/94

PLACE: Capitol Room 106

SUBJECT OF MEETING:
 * HB 440: SCHOOL CONSTRUCTION: AK BIDDER PREFERENCE
 * HB 488: RESTRICT STUDENT LOANS TO ALASKA SCHOOLS
 * HB 341: PHYSICIAN'S ASSISTANTS SERVICES
 * INDICATES FIRST PUBLIC HEARING

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
DAN SHERMAN	ACPE	3030 Vintage Blvd				Y <input type="radio"/> N <input checked="" type="radio"/>	Available for questions HB 488
BOB WARD	AGC	16003 FRANK MARL DR JUNEAU AK 99801		789-3713	586-1648	<input checked="" type="radio"/> Y <input type="radio"/> N	ASG
Joe Mc Cormick	ACPE	3030 Vintage Blvd				Y <input type="radio"/> N <input checked="" type="radio"/>	will answer questions
Kim Busch	DMA					Y <input type="radio"/> N <input checked="" type="radio"/>	will answer questions
Dana W. Williams	DMA					<input checked="" type="radio"/> Y <input type="radio"/> N	
JOHN RILEY	Alaska Academy of Physician Assistants	1217 E 10TH AVE ANCHORAGE AK	99501	257-4600		<input checked="" type="radio"/> Y <input type="radio"/> N	HB 341
						Y <input type="radio"/> N <input type="radio"/>	
						Y <input type="radio"/> N <input type="radio"/>	
						Y <input type="radio"/> N <input type="radio"/>	
						Y <input type="radio"/> N <input type="radio"/>	
						Y <input type="radio"/> N <input type="radio"/>	



Alaska State Legislature
House of Representatives
 COMMITTEE ON HEALTH, EDUCATION
 AND SOCIAL SERVICES

SUBJECT OF MEETING:

DATE: 3/17/94

PLACE: Capitol Room 106

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Duane Guley	DOE	801 WEST 10 th ST. STE 201 JUNEAU, AK. 99801			465-8677	Y	N	AVAILABLE TO ANSWER QUESTIONS
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	

LN1100-R01
03/17/94

LEGISLATIVE TELECONFERENCE NETWORK

PAGE 01
16:48:39

TCN: 40530 DATE & TIME: 03/17/94 15:00 TO 17:00 STATUS:7 STATS: LM

**** ORDER SUMMARY ****

SPONSOR: HHS HOUSE HEALTH, EDUCATION AND SOCIAL SERVI CHAIRS: TOOHEY
PURPOSE: PUB PUBLIC HEARING LEGISLATIVE RUNDE
CONTACT: LYNN TEL#: (907)465-6025
CHAIRING SITE: JUREAU CAPITOL CAP106

SPONSOR REMARKS(TOP): TESTIMONY:Y ALLOWED 2 MINUTE LIMIT
TESTIMONY WILL BE TAKEN WITH A 2 MINUTE LIMIT.
TCN REQUESTED ON 03/17/94 AND HAS 3 UPDATES

**** AGENDA ****

1 HB 341 PHYSICIAN ASSISTANTS' SERVICES

**** PARTICIPATING LIDS ****

BAR BARRON	COURTHOUSE #305	LOCATION STAFF
FBX FAIRBANKS	119 N CUSHMAN ST	LOCATION STAFF
* JNU JUNEAU	CAPITOL CAP106	LOCATION STAFF
HAT HATSU	155 E PARKS HWY.	LOCATION STAFF
SEM SEWARD	2001 SEWARD HWY	LOCATION STAFF

**** VOLUNTEER & OFFNET SITES ****

ZZZ OF1 OFFNET 1	MCCRATH	BRENT URSEL	(907)524-3299
ZZZ OF2 OFFNET 2	PELTICAN	CLAY LANGLAND	(907)735-2250
ZZZ OF3 OFFNET 3	TALKEETNA	JESSICA STEVENS	(907)733-2273
ZZZ OF4 OFFNET 4	HEALY	JOHN WINKLEMAN	(907)683-2211
ZZZ OF5 OFFNET 5	SRAGWAY	LILA GUNNELL	(907)983-2255
ZZZ OF6 OFFNET 6	GALENA	WENDY HLADICK	(907)656-1891

PARTICIPANTS IN: BARRON

BAR

1 MS	BEVERLY	HUGO	SELF	OBSV. HB 341
	BOX 677		BARRON	AK 99723 (907)252-5333

PARTICIPANTS IN: FAIRBANKS

FBX

1 MS	JEANNE	CLARK		TSFY. HB 341
	479 SLATER DRIVE		FAIRBANKS	AK 99701 (907)452-4117
2 MS	TON	WILSON		TSFY. HB 341
	546 AQUILA ST		FAIRBANKS	AK 99712 (907)457-7798
3 MS	ROBERT	WOODS		TSFY. HB 341
	751 OLD RICH HWY.		FAIRBANKS	AK 99701 (907)451-6561
4 MS	CINDY	HOLLAND		OBSV. HB 341
	P.O. BOX 82684		FAIRBANKS	AK 99708 (907)479-4444
5 MS	REBECCA	DEAN		OBSV. HB 341
	751 OLD RICH HWY.		FAIRBANKS	AK 99701 (907)451-6561

PARTICIPANTS IN: JUNEAU

JNU

1 RLP	C	TOOHEY		TSFY. ALL ITEMS
-------	---	--------	--	-----------------

2 REP	C	BUNDE	AK	(907)000-0000
3 REP	H	OLBERG	AK	(907)000-0000
4 REP	A	VEZET	AK	(907)000-0000
5 REP	G	DAVIS	AK	(907)000-0000

101100-R01 LEGISLATIVE TELECONFERENCE NETWORK PAGE 02
 03/31/94 DATE & TIME: 03/17/94 15:00 TO 17:00 16:49:39
 TUN: 40530 STATUS:7 STAS: IN

PARTICIPANTS IN: JUNEAU JRU

6 REP.	B	DAVIS	AK	(907)000-0000
7 REP	F	BRICE	AK	(907)000-0000
8 REP	J	SITTON	AK	(907)000-0000
9 MR.	?	RILEY	AK	(907)000-0000
10	TO	OBSERVE	AK	(907)000-0000
11	TO	OBSERVE	AK	(907)000-0000
12	TO	OBSERVE	AK	(907)000-0000
13	TO	OBSERVE	AK	(907)000-0000
14	TO	OBSERVE	AK	(907)000-0000
15	TO	OBSERVE	AK	(907)000-0000
16	TO	OBSERVE	AK	(907)000-0000
17	TO	OBSERVE	AK	(907)000-0000
18	TO	OBSERVE	AK	(907)000-0000
19	TO	OBSERVE	AK	(907)000-0000
20	TO	OBSERVE	AK	(907)000-0000
21	TO	OBSERVE	AK	(907)000-0000
22	TO	OBSERVE	AK	(907)000-0000
23	TO	OBSERVE	AK	(907)000-0000
24	TO	OBSERVE	AK	(907)000-0000

PARTICIPANTS IN: NATSU MAY

1 MR.	EDWARD	HANNING	AK	OBSV. HB 341
	P O BOX 87740	WASILLA	AK	99687 (907)373-6361

PARTICIPANTS IN: SEWARD SEN

1 MR.	REV	CLAUSEN	AK	OBSV. HB 341
	PO BOX 2681	SEWARD	AK	99664 (907)224-3816
2 MR.	DIJA	DE ROER	AK	TSFY. HB 341
	PO BOX 1526	SEWARD	AK	99664 (907)224-8468
3 MR.	RICHARD	JONES	AK	TSFY. HB 341
	PO BOX 361	SEWARD	AK	99664 (907)224-5205
4 MR.	DAVID	JOHNSON	AK	TSFY. HB 341
	PO BOX 3465	SEWARD	AK	99664 (907)224-5205

PARTICIPANTS IN: OFFNET 2 ZZZ OF 2

1	CLAY	LANGLAND	AK	TSFY. ALL ITEMS
		PELICAN	AK	(907)000-0000

PARTICIPANTS IN: OFFNET 3 ZZZ OF 3

1	JESSICA	STEVENS	AK	TSFY. ALL ITEMS
		TALKEETNA	AK	(907)000-0000

PARTICIPANTS IN: OFFNET 4 ZZZ OF 4

1	JOHN	WINKLEMAN	AK	TSFY. ALL ITEMS
		HEALEY	AK	(907)000-0000

H/HESS ROLL CALL FORM

BILL HB 332 341 DATE 3/17/94
 TAPE 94-55, A NUMBER 176
 SUBJECT OF VOTE ↑ PASS HB 341 OUT OF COMMITTEE

MEMBER	YEA	NAY	ABS
Rep. Cynthia Toohey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Con Bunde	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Gary Davis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Al Vezey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Pete Kott	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Harley Olberg	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Bettye Davis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Irene Nicholia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tom Brice	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TOTAL	<u>7</u>	<u>0</u>	<u>—</u>

+++++

DATE _____
 TAPE 94- NUMBER _____
 SUBJECT OF VOTE _____

MEMBER	YEA	NAY	ABS
Rep. Con Bunde	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Gary Davis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Al Vezey	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Pete Kott	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Harley Olberg	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Bettye Davis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Irene Nicholia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tom Brice	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Cynthia Toohey	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TOTAL	<u>—</u>	<u>—</u>	<u>—</u>



SEWARD GENERAL HOSPITAL

P.O. BOX 365 • 417 FIRST AVENUE • SEWARD, ALASKA 99664-0365 • (907) 224-5205 • FAX (907) 224-7248

March 17, 1994

Rep. Toohey and Rep. Bunde and members,
Health, Education and Social Services Committee

Re: HB 341, Testimony

Dear Committee Members,

I am writing to provide information regarding HB341 which would recognize Physicians Assistants as mid-level providers by medicaid and to ask for your support of HB341.

Rather than providing a long position paper on the role of Physician Assistants (PA) and Nurse Practitioners (NP) I will provide information to hopefully assist you in understanding what a Physician Assistant is and their role in meeting healthcare demands in Alaska, and why I believe they should be reimbursed for their services to medicaid patients.

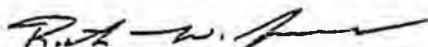
- * Physician Assistants and Nurse Practitioners have analogous training.
- * PA's practice under the auspices of the Board of Medical Examiners.
- * NP's practice under the auspices of the State Nursing Board.
- * PA's and NP's are licensed to practice medicine within their approved scope of practice after thorough review and examination.
- * The approved scope of practice is dependent on individual training, experience and practice setting, as well as existing state laws.
- * Both PA's and NP's practice clinically. They diagnose and treat illnesses and injuries within their scope of practice.
- * PA's are trained according to a "medical model" in PA programs; NP's are trained with varying degrees of combined "medical/nursing model" emphasis in nursing programs.
- * Both are currently employed by state and federally owned and operated healthcare organizations (clinics, prisons, hospitals, etc.)
- * PA's and NP's are designated as "mid-level providers." Mid-level providers are in very short supply nationwide, and the state of Alaska currently has many PA/NP position openings.

Health, Education and Social Services Committee
HB341 Physician Assistant Testimony
Page 2

- * DPA/DMA does issue provider numbers for some PA's located in remote rural settings. The remainder of the PA's can provide services to medicaid patients, but cannot bill for their services.
- * The Dept. of H&SS is in a comfortable position -- "of having their cake and eating it too." The PA's are licensed to practice medicine, but the department does not pay for those services by language of the current statute.
- * The Department has stated that "the PA's can practice but cannot bill for services and cannot bill under their collaborative physician.
- * With passage of HB341 PA's would be able to obtain an individual provider number.
- * PA's and NP's currently bill Medicare, VA, BIA, private pay and private insurance for services.
- * NP's have a provider number and bill medicaid.
- * Billing by use of their own number would clearly identify on the statement that the bill is for services provided by a PA.
- * PA's are able to bill for medicaid services in other states. Practice opportunities in those states are more attractive to PA's and PA's are more attractive to those institutions and physicians who hire them.
- * The current practice by the state of not recognizing PA's for medicaid reimbursement further limits the available candidates for Alaska's vacant mid-level positions.
- * The Physician Assistant is a "physician extender" and the role is intended to meet the needs of underserved populations.

I urge your support of HB341

Sincerely,



Richard W. Jones,
Administrator/CEO

#1

A M E N D M E N T

OFFERED IN THE HOUSE

TO: HB 341

Page 2, lines 3 - 7:

Delete all material.

Renumber the following bill sections accordingly.

Alaska State Legislature

While In Fairbanks
119 N. Cushman St.
Suite 203
Fairbanks, AK 99701
907-456-8161



While In Juneau
State Capitol
Juneau, AK 99801-1182
907-465-2327
907-465-4713

Representative Joe Sitton

EXPLANATION OF AMENDMENT #1 TO HB 341

THE DEPARTMENT OF PUBLIC SAFETY AND THE DMV HAVE PROVIDED US WITH INFORMATION THAT THE LANGUAGE IN THE FEDERAL LAW GOVERNING HANDICAPPED PARKING PERMITS PRECLUDES PHYSICIAN ASSISTANTS. THEREFORE, THE STATE DOES NOT HAVE THE POWER TO ENABLE PA'S TO ISSUE PERMITS.

#2

8-LS1417A.1 ✓
Lauterbach
3/11/94

A M E N D M E N T

OFFERED IN THE HOUSE

TO: HB 341

Page 3, lines 5 - 6:

Delete

- "(5) advanced nurse practitioner services;
- (6) physician assistant services;"

Insert

- "(5) physician assistant services;
- (6) advanced nurse practitioner services;"

Alaska State Legislature

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119 N. Cushman St.
Suite 203
Fairbanks, AK 99701
907-456-8161



While In Juneau
State Capitol
Juneau, AK 99801-1182
907-465-2327
507-465-4713

Representative Joe Sitton

EXPLANATION OF AMENDMENT #2 TO HB 341

WHEN THE BILL WAS BEING DRAFTED, WE SIMPLY FORGOT THAT THE LIST OF OPTIONAL SERVICES WAS AN "INVERSE LIST." THAT MEANS, WHEN THE LIST IS UNDERFUNDED, SERVICES ARE CUT FROM THE TOP OF THE LIST, INSTEAD OF THE BOTTOM. IT WAS ALWAYS OUR INTENTION TO ADD PHYSICIAN ASSISTANTS TO THE LIST, BUT AT THE POINT WHERE THEY WOULD BE UNFUNDED BEFORE ADVANCED NURSE PRACTITIONERS. THAT IS WHAT THIS AMENDMENT DOES.

March 15, 1994

Dear Legislator,

I am writing to you to ask for your support of HB#341, sponsored by Rep. Joe Sitton and Rep. Jeannette James. There is a similar Senate bill, SB#231, which is sponsored by Sen. Jay Kertulla.

These bills are important to prevent any insurance company from denying payment of services provided by a Physician Assistant. Currently, there are several companies that will not pay for medical services if provided by a Physician Assistant. (Nurse Practitioners and Chiropractors already have obtained legislation to prevent insurance companies from denying payment.)

The other important part of these bills is establishment of Medicaid reimbursement. At this time, Medicaid patients, in some remote areas, are denied care due to the fact that Medicaid will not authorize PA's Medicaid numbers to bill for services. In turn, these patients either don't receive care or are flown to town (at cost to Medicaid) for care.

These bills were developed after identification of some of the barriers to health care through discussion between the Interior Legislatures (or their aides) and Physician Assistants from Fairbanks. There have been letters of support from many organizations which include the Health Care Coalition, Alaska Nurses Association, and the Alaska State Medical Association to name a few.

The Alaska Academy of Physician Assistants is actively working on these and other issues that will streamline the ability to provide care to all Alaskans.

Thank you for your attention. I hope that we all can continue to strive toward improving health care delivery in Alaska.

Sincerely,



Howard Blount, M.D.

HOWARD P. BLOUNT III, MAJ, USAF, MC
085-60-2683 AFSC 44F3
3rd Medical Center
Elmendorf AFB, AK 99506-5300

*Bar
See me
Re answer*

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB341

Revision Date: _____
 Title: An Act Providing coverage under
 Medicaid for Services of Physicians' Assistants
 Sponsor: SITTON, JAMES
 Requestor: _____

Dept. Affected Health and Social Services
 BRU: Medicaid
 Component: Medicaid Non-facility
 COMPONENT SERIAL NO. 229

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	999.6	2,780.3	3,131.2	3,525.8	3,970.0	4,470.4
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	999.6	2,780.3	3,131.2	3,525.8	3,970.0	4,470.4

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGES IN REVENUES	499.3	1,390.4	1,565.6	1,762.9	1,985.0	2,235.2
---------------------	-------	---------	---------	---------	---------	---------

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts	499.8	1,390.4	1,565.6	1,762.9	1,985.0	2,235.2
1003 GF Match	499.8	1,390.4	1,565.6	1,762.9	1,985.0	2,235.2
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	999.6	2,780.8	3,131.2	3,525.8	3,970.0	4,470.4

Estimate of current year (FY94) impact: 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

ANALYSIS (attach a separate page in necessary)

The bill adds physician's assistants as an enrolled provider of services. It is estimated that 25% of the 168 licensed and active physician's assistants will enroll as Medicaid providers, beginning with a 10% enrollment in the first year. Enrollment would begin in July of 1995. Charges by a physician assistant are assumed to be 70% of the amount that has been charged through a physician's office for services performed by a physician's assistant. Physician assistants are counted as working 5 days per week, 48 weeks per year and having an average of 3.5 Medicaid visits per day. Growth and inflation combined are assumed to be 12.6% per year.

Prepared by: Dave W. Williams *DW*
 Division: Medical Assistance

Phone: 465-3355
 Date: 2/10/94

Approved by: Margaret R. Lowe
 Commissioner: Margaret R. Lowe, M.Ed., Ed.S.

Date: 2-14-94

Agency: Department of Health and Social Services

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ASSUMPTIONS PERTAINING TO FISCAL ANALYSIS OF SB231 AND HB341

There are 194 licensed PAs in Ak; 168 are said to be in active status.

25% will enroll if the bill passes, which is 42 PAs of the active status.

35% of their practice will be Medicaid

The average charge will be \$70 per visit; reflective of 70% of the charges by PAs presently billing through physicians.

There will be 10 visits per day, 3.5 of those billed to Medicaid.

PAs will work 5 days per week, 48 weeks per year.

Assume regulations effective July 1, 1995

Growth and inflation combined are assumed to be 12.6%

Claims

17.0 PAs enrolled first year
 42.0 PAs enrolled 2nd year
 \$70 average expenditure claimed per visit
 3.5 Medicaid visits per day
 5.0 days worked per week
 48.0 weeks worked per year
 0.001 factor to change figures to thousands
 \$999.6 total claims expenditure 1st year; 17 PAs
 12.0 factor to get to monthly
 12.0 factor to get to paid part of fiscal year
 \$999.6 claims expenditures for paid part of first fiscal year
 \$2,469.6 claims expenditures for second year w/o growth and inflation

Contractual

\$6.23 processing cost per claim
 14280 total number of claims by PAs 1st year
 35280 total number of claims by PAs 2nd year
 0.001 factor to change figures to thousands
 \$89.0 cost for claims processing 1st year
 \$219.8 cost for claims 2nd and following years
 \$10.0 cost to modify MMIS for PA enrollment and claims processing
 \$99.0 total contractual for 1st year (MMIS plus claims processing)

Inflation and growth

1.126 factor for yearly increases

Federal participation

0.50 factor for Federal Financial Participation

0.0 factor for calls with \$0.0

Component	Combined Fiscal Note Totals					
	FY95	FY96	FY97	FY98	FY99	FY00
Med non-facility	229 999.6	2780.8	3131.2	3525.8	3970.0	4470.4
Claims process	243 99.0	247.6	278.8	314.0	353.6	398.2
Total	1098.6	3028.4	3410.0	3839.8	4323.6	4868.6

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB341

Revision Date: _____
Title: An Act Providing coverage under
 Medicaid for Services of Physicians' Assistants
Sponsor: SITTON, JAMES
Requestor: _____

Dept. Affected Health and Social Services
BRU: Medicaid
Component: Claims Processing

COMPONENT SERIAL NO. 243

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	\$0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	\$0.0
CONTRACTUAL	99.0	247.6	278.8	314.0	353.6	\$398.2
SUPPLIES	0.0	0.0	0.0	0.0	0.0	\$0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	\$0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	\$0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	\$0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	\$0.0
TOTAL OPERATING	\$99.0	\$247.6	\$278.8	\$314.0	\$353.6	\$398.2
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGES IN REVENUES	49.5	123.8	139.4	157.0	176.8	199.1

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	49.5	123.8	139.4	157.0	176.8	199.1
1003 GF Match	49.5	123.8	139.4	157.0	176.8	199.1
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	99.0	247.6	278.8	314.0	353.6	398.2

Estimate of current year (FY94) impact: 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

ANALYSIS (attach a separate page in necessary)

Contractual costs include claims processing at \$6.23 per claim with a one-time, first year cost of \$10.0 for system changes to add to the new provider type. Federal participation is available at 50% of costs. Growth and inflation combined are assumed to be 12.6% per year.

Prepared by: Dave W. Williams
Division: Medical Assistance

Approved by: Margaret R. Lowe
Commissioner: Margaret R. Lowe, M.Ed., Ed.S.
Agency: Department of Health and Social Services

Phone: 465-3355
Date: 2/10/94

Date: 2-14-94

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35% of their practice will be Medicaid

The average charge will be \$70 per visit; reflective of 70% of the charges by PAs presently billing through physicians.

There will be 10 visits per day, 3.5 of those billed to Medicaid.

PAs will work 5 days per week, 48 weeks per year.

Assume regulations effective July 1, 1995

Growth and inflation combined are assumed to be 12.6%

Claims

17.0 PAs enrolled first year

42.0 PAs enrolled 2nd year

\$70 average expenditure claimed per visit

3.5 Medicaid visits per day

5.0 days worked per week

48.0 weeks worked per year

0.001 factor to change figures to thousands

\$999.6 total claims expenditure 1st year; 17 PAs

12.0 factor to get to monthly

12.0 factor to get to paid part of fiscal year

\$999.6 claims expenditures for paid part of first fiscal year

\$2,469.6 claims expenditures for second year w/o growth and inflation

Contractual

\$6.23 processing cost per claim

14280 total number of claims by PAs 1st year

35280 total number of claims by PAs 2nd year

0.001 factor to change figures to thousands

\$89.0 cost for claims processing 1st year

\$219.8 cost for claims 2nd and following years

\$10.0 cost to modify MMIS for PA enrollment and claims processing

\$99.0 total contractual for 1st year (MMIS plus claims processing)

Inflation and growth

1.126 factor for yearly increases

Federal participation

0.50 factor for Federal Financial Participation

0.0 factor for cells with \$0.0

Combined Fiscal Note Totals

Component	FY95	FY96	FY97	FY98	FY99	FY00
Med non-facility	229 999.6	2780.8	3131.2	3525.8	3970.0	4470.4
Claims process	243 99.0	247.6	278.8	314.0	353.6	398.2
Total-	1098.6	3028.4	3410.0	3839.8	4323.6	4868.6

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 341

Revision Date: _____
Title: Physician Assistants' Services
Sponsor: Sitton
Requestor: _____

Department Affected: Commerce and Economic Development
BRU: Insurance
Component: Operations
COMPONENT SERIAL NO. 354

Expenditures/Revenues:

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
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 EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ()	0	0	0	0	0	0
------------------------	---	---	---	---	---	---

FUND SOURCE

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

Estimate of current year (FY 94) cost: \$ 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

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact.

Prepared by: Joan Brown, Administrative Officer
Division: Insurance

Phone: 465-2597
Date: 1/19/94

Approved by Commissioner: Paul Felt
Agency: Commerce and Economic Development

Date: 1/19/94

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO : HB 341

Revision Date: _____

Title: Physician assistants. services

Department Affected: Labor

BRU: Workers' Compensation

Component: _____

Sponsor: Representative Sitton

Workers' Compensation

Requestor: Representative Sitton

COMPONENT SERIAL NO. 341

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: \$ None

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Paul Arnoldt, Director *Paul Arnoldt* Phone: 465-2790

Division: Workers' Compensation Date: 1/25/94

Approved by Commissioner: Charles W. Mahlen *Charles W. Mahlen*

Agency: Department of Labor Date: 1/25/94

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Representative Joe Sitton

SPONSOR STATEMENT FOR HOUSE BILL 341, RELATING TO PHYSICIAN ASSISTANTS

House Bill 341 (HB 341) would amend several of Alaska's current statutes relating to health care providers in order to give Alaskans greater access to quality health care and place physician assistants on equal footing to those providers with similar levels of training.

Currently, physician assistants practicing outside a physician's office or a designated "Rural Health Clinic" do not qualify as Medicaid providers. This becomes a critical issue in rural Alaska because many communities have physician assistants as their sole health care provider. In such a community, Medicaid eligible patients must travel hundreds of miles to receive Medicaid services. The lack of reimbursement in these settings is a direct obstacle to health care for Medicaid recipients, and unfairly reduces job opportunities for physician assistants. HB 341 remedies this situation by amending the statutes to allow physician assistants to receive payment directly.

In addition, HB 341 amends the statutes governing workers' compensation and private insurance companies to account for physician assistants' emergence as health care providers and insure that they do not have trouble receiving payment from these entities. The bill also adds physician assistants to the statute that prohibits private insurance companies from refusing to pay one health care provider if another qualified practitioner could offer the same procedure or level of care. Lastly, HB 341 enables physician assistants to issue a handicapped parking permit.

I urge you to support HB 341. It will update Alaska's statutes to account for changes in health care professions and provide Alaskans with better access to health care facilities.

Alaska State Legislature

While in Fairbanks
119 N. Cushman St.
Suite 203
Fairbanks, AK 99701
907-456-8161



While in Juneau
State Capitol
Juneau, AK 99801-1182
907-465-2327
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Representative Joe Sitton

Sectional Analysis of HB 341 Relating to Physician Assistants

SECTION 1: AS 21.36.090(d) requires insurance companies to reimburse health care providers for services covered under an insurance plan as long as the health care provider is qualified by licensure to perform the service. This keeps insurance companies from limiting their reimbursement to physicians if the covered service can also be legally performed by other providers. Adding physician assistants to this list prohibits insurance companies from refusing to reimburse for their services.

SECTION 2: Amends AS 23.30.265(24) (Workers' Compensation) to add physician assistants to the definition of a physician and ensure that physician assistants can receive payment for services that they are qualified to provide.

SECTION 3: Amends AS 28.10.495 (Motor Vehicles) to enable physician assistants to issue a handicap parking permit.

SECTION 4: AS 7.07.030(b) details the optional medical services that are reimbursable under the state's Medicaid program. HB 341 adds physician assistants to this list.

SECTION 5: Adds physician assistants to prioritized list of optional medical services. Should the department find that the cost of Medicaid for all eligible persons exceeds the amount allocated in that year's state operating budget, AS 47.07.035 contains the prioritized list of what optional service will be paid in what order.

SECTION 6: Adds a definition of physician assistant services to AS 47.07.900 (Medicaid).

SECTION 7: Immediate effective date.

HB 341: "An Act relating to physician assistants; and providing for an effective date."

The department is in favor of section 1 of the bill, but has no position on the remaining sections of the bill.

Section 1 of the bill represents a simple modification to AS 21.36.090(d). This section of law prohibits discrimination against various medical practitioners who are performing services within the scope of their license that are covered under an insurance policy. Physician assistants would be added with this change. The change would allow physician assistants to bill and receive third-party reimbursements for the services they render. The department believes that this type of prohibition is the means to some savings in our health care system by assuring that less expensive providers of medical services can be reimbursed under an insurance policy.

The department views the issue as one of equity. If the state has established a license with a scope of practice, it is not consistent to allow discrimination against that licensee.

Paul Fuhs
Paul Fuhs, Commissioner

1-31-94
Date

PF/DK/dgl263.dk
012194a

Alaska State Legislature

While in Fairbanks
119 N. Cushman St.
Suite 203
Fairbanks, AK 99701
907-456-8161



While in Juneau
State Capitol
Juneau, AK 99801-1182
907-465-2327
907-465-4713

Representative Joe Sitton

Memorandum

TO: Representatives Con Bunde and Cynthia Toohey, Co-Chairs,
House Health Education and Social Services Committee

FROM: Representative Joe Sitton *JS*

DATE: February 28, 1994

SUBJECT: House Bill 341

After having reviewed the Department of Health and Social Services' rather large fiscal note for HB 341, I have a few points that I believe they have failed to effectively consider. What is missing from their analysis is an examination of cost shifting from patients following a PA to a new practice from the practice of the doctor or rural health clinic. Instead, what the fiscal note reflects is an assumption all Medicaid claims from PA's would be new costs to the state. Not only is this illogical, but it dramatically overstates the cost.

My first and foremost concern is the question of exactly how many new Medicaid recipients that Physician Assistants (PA's) would attract. The whole point of this bill is to increase access to health care, but I simply do not believe that 14,280 new claims the first year and 35,280 new claims the next, will be billed to Medicaid as a result of HB 341 becoming law. According to the Alaska Academy of Physician Assistants, one PA currently practices in a rural setting (Healy) outside of a designated rural health clinic or physician's office. With further allowances for a few PA's desiring some form of independence from their present practice arrangement, I still cannot reach such staggering figures for new claims. However, it is my fervent hope that such a high rate of usage would result from existing Medicaid recipients seeking services from PA's instead of physicians who charge more, thereby saving the state money at this same alarming rate.

I think if we draw upon our experience in a similar circumstance, such as when Nurse Practitioners were added to the list of optional services in 1992, we arrive at a much more reasonable figure. According to the Department's figures, an average of 36 to 38 nurse practitioners (compare to the Department's assumption of 42 PA's the second year) have billed Medicaid over the past fiscal year to date totaling \$210,473. Generously doubling this figure for the rest of the year, we arrive at a total of \$420,946 for patients and $1,019 \times \$6.23 \times 2 = \$12,697$ for processing for a total annual cost estimate of \$ 433, 643. That is approximately one seventh of, or \$2,594,747 less than, the Department's forecast for the PA's second year of \$2,780,800 with an additional \$280,000 for administrative costs. I might add that I would expect the billable rate of 80% that Advanced Nurse Practitioners receive to be entirely appropriate for PA's as well, though that is left to Medicaid Rate Board to decided.

I hope that you will give my observations some attention, and I request your assistance in devising a more reasonable fiscal note for this bill. If you have any questions, please contact me or my aide, Michael Johnson. Thank you.



alaska academy of physician assistants

January 18, 1993

Rep Joe Sitton
Room 609, Court
State Capitol
Juneau, AK 99801-1182

RE: HOUSE BILL NO. 341

Dear Representative Sitton,

I am writing in behalf of the Alaska Academy of Physician Assistants. I would like to extend my gratitude for the work that you have done to promote the health and well being of all Alaskans by sponsoring HOUSE BILL NO. 341.

This "Bill" is very important to all Physician Assistants in the State of Alaska. It will open many doors that have been previously closed and remove some of the barriers to PA's in this state. HOUSE BILL NO. 341 covers some areas that have been of concern to PA's such as not being included in the list of practitioners who can sign "Handicapped" parking permits, not being on the list of providers for Workers Compensation. But of course, there is the big issue of not being listed as a Medicaid provider. This issue is very important in areas where PA's work at sites that are different than that of their collaborative physician or for persons who do locum tenens work.

I again would like to express my gratitude and look forward to working with you on this important bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Barry L. Campbell", followed by a long horizontal line extending to the right.

Barry L. Campbell, PA-C
President



ALASKA STATE MEDICAL ASSOCIATION

4107 Laurel Street • Anchorage, Alaska 99508-5334 • (907) 562-2662

January 28, 1994

Rep. Joe Sitton
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, AK 99811

Dear Representative Sitton:

I am writing in support of your House Bill 341 which permits Medicaid reimbursement for physician assistant (PA services). Currently physician assistants practicing outside a physician's office or designated rural health clinics do not qualify as Medicaid providers. This is a critical issue in rural communities where the PA is the only health care provider. Medicaid eligible patients in these communities may have to travel long distances to obtain Medicaid services. The lack of reimbursement in these settings is a direct obstacle to health care for Medicaid recipients. Your bill would also amend the statute so that PA's would be permitted to perform Workman's Compensation evaluations and allow private insurance companies to reimburse for physician's assistant's services. This bill will also enable a physician assistant to issue handicap parking permits. I believe this bill will benefit health care for all Alaskans. If I can be of any assistance to you on this bill, do not hesitate to contact me.

Sincerely yours,

Donald R. Lehmann, M.D.
Chairman, Legislative Affairs Committee
President, Alaska State Medical Association.

CC: Byron Mallot, John Riley, PA-C



HEALTH CARE COALITION OF ALASKA

January 27, 1994

Mr. John Riley,
President
Alaska Academy of Physician Assistants
Anchorage Neighborhood Health Center
1217 East 10th Avenue
Anchorage, Alaska 99501

Dear Mr. Riley:

The Health Care Coalition (HCC) of Alaska is pleased to support HB341 and SB231, which allows Physician Assistants to bill for their services to the Medicaid program. The current situation works a particular hardship upon rural communities, where solo PAs are working. Even in those clinics that are federally designated as Rural Clinics Medicaid will only reimburse on a flat fee basis, with the result that the clinics are often not able to recover actual costs on cases which may consume inordinate amounts of the practitioner's time. Without question, the current system works a hardship on Medicaid eligible patients who may have to travel long distances in order to use that resource for their care.

The HCC also strongly supports SB 235, providing for the forgiveness of student loans for several categories of health care professionals (including PAs). This program is much needed as a means for meeting the severe shortage of providers in Alaska. It covers physicians, osteopaths, physical therapists, occupational therapists, registered nurses and physician assistants.

Finally, the HCC is in strong support of current efforts to preserve the MEDEX Northwest PA Training Program at Sitka, and the Alaska Center for Rural Health, at the University of Alaska Fairbanks. The Legislature will be requested to increase the University budget to continue both those programs.

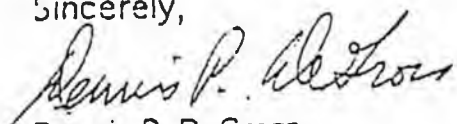
ALASKA ACADEMY OF PHYSICIANS ASSISTANTS • ALASKA PHARMACEUTICAL ASSOCIATION • ALASKA PUBLIC HEALTH ASSOCIATION
ALASKA STATE MEDICAL ASSOCIATION • HEALTH ASSOCIATION OF ALASKA • ALASKA NATIVE HEALTH BOARD • ALASKA NURSES ASSOCIATION • ALASKA DENTAL SOCIETY

working together . . . caring together

4107 Laurel Street Anchorage, AK 99508 (907) 562-2662 Fax 561-2063

Thank you for this opportunity to comment on these health measures.

Sincerely,

A handwritten signature in cursive script that reads "Dennis P. DeGross".

Dennis P. DeGross
President and Co-Chair

CC: HCC members

Alaska Public Health Association

*Robert L. Cole, President
P.O. Box 4 - 1825
Anchorage, Alaska 99505*

February 3, 1994

*Mr. John Riley, President
Alaska Academy of Physician Assistants
Anchorage Neighborhood Health Center
1217 East 10th Avenue
Anchorage, AK 99501*

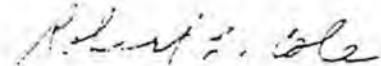
Dear Mr. Riley:

The Alaska Public Health Association strongly supports two pieces of legislation now before the Alaska Legislature. These are HB341 and SB231, which allow Physician Assistants to bill for their services to the Medicaid program.

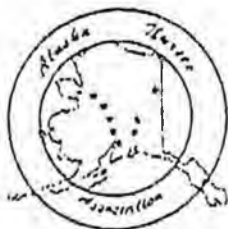
Currently, rural communities employing solo PAs are greatly disadvantaged. Even those communities with federally designated Rural Clinics Medicaid will only reimburse on a flat fee basis, with the unfortunate result that the clinics are often not able to recover actual costs on cases which may consume inordinate amounts of the practitioner's time. The current system is especially tough on Medicaid-eligible patients who may have to travel long distances in order to use that resource for their care.

The Alaska Public Health Association welcomes this opportunity to comment on this legislation.

Sincerely,



*Robert Cole
President*



ALASKA NURSES ASSOCIATION

237 E. 3rd Avenue #3 Anchorage, AK 99501 2523
(907) 274-0827 FAX (907) 272-0292

February 1, 1994

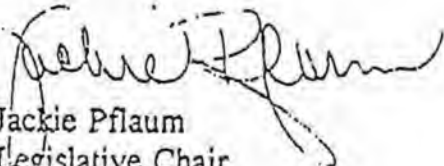
Representative Jeannette James
House of Representatives
State Capitol Room 501C
Juneau, Alaska 99801-1182

Dear Representative James:

This letter is written in support of HB 341, sponsored by yourself, and SB 231, sponsored by Senator Kertulla which permits Medicaid reimbursement for physician assistant (PA) services. Currently, physician assistants practicing outside a physician's office or a designated Rural Health Clinic do not qualify as Medicaid providers. This is a critical issue in rural communities where the midlevel practitioners are the only health care providers. Medicaid-eligible patients in these communities may have to travel long distances to obtain Medicaid services. The lack of reimbursement in these settings is a direct obstacle to health care for Medicaid recipients.

HB 341 and SB 231 also amend the statutes so that PA's are permitted to perform Workman's Compensation evaluations and requires private insurance companies to reimburse for PA services. The bills also enable physician assistants to issue handicapped parking permits.

Sincerely,


Jackie Pflaum
Legislative Chair

May 1, 1994

The Honorable Cynthia Toohey
House of Representatives
State of Alaska
Rm 104 Capito! Bldg
Juneau, AK 99801-1182

MAR 2 1994

RE: HOUSE BILL # 341 ESTABLISHMENT OF MEDICAID REIMBURSEMENT FOR
PHYSICIAN ASSISTANTS

Dear Representative Toohey:

I enjoyed the opportunity to speak with you yesterday regarding House Bill #341
concurring Physician Assistants Reimbursement by Medicaid.

You were most disturbed by the fiscal note attached to this bill of One Million Dollars. So
was I, when I learned this! This fiscal note is inaccurate!! If passed, there are about 40
Physician Assistants that this bill would affect. I think there are currently about 38 Nurse
Practitioners in the State who are billing for Medicaid. This would be about the same
number of Physician Assistants that this would affect. It makes me wonder if Physician
Assistants upset someone in the Medicaid office to provide you with this inaccurate cost!!
This is not correct or accurate information. We are only asking for the current rate of
reimbursement that is being provided to Nurse Practitioners, not the physician rate of
reimbursement.

To answer another one of your questions, Physician Assistants are licensed under the
Alaska State Medical Board. Nurse Practitioners under the State Nursing Board.

Also for your information, this bill which was supported by Representative Joe Sitton and
Representative Jeanette James, began at the grass roots level by concerned Fairbanks
Physician Assistants who turned to our legislators for help. You spoke of support of a bill
being worthy if it is represented by majority versus minority. I understand from our
conversation in your political environment this means a great deal to a bill on whether or
not gets recognized worthy of a hearing regardless of its content. This is a concept that I am
sure Physician Assistants do not understand. I urge you to at least consider a hearing on
this bill so it can begin to educate people about Physician Assistants and the role they
perform in health care delivery.

Since Nurse Practitioners are already being issued Medicaid numbers I hope you agree that
Physician Assistants who provide the same type of services should also be granted
Medicaid numbers. As I told you, I am a registered Nurse who went to a combined
Physician Assistant / Nurse Practitioner Program and I am living proof we are of equal
status and we do the same type of services in the delivery of health care.

We have the support of the Alaska Nurses Association, and the Alaska State Medical
Association and the Health Care Coalition just to name a few. Nurse Practitioners and
Physician Assistants are paid the same salary in Alaska. Most clinics and hospitals will hire
either one of us although the lack of issuing Medicaid numbers to Physician Assistants
(PA) is one example of a barrier to PA employment.

END

Representative Cynthia Toohey
March 1, 1994
Page Two

I also spoke with Con Bunde, your Co-Ch. He was more optimistic in telling me that a hearing would be scheduled, and if I didn't hear from him in the next two weeks to contact him. I do know that we are running short of time with the journey this bill must take. If I can provide any more information or help in any other way do not hesitate to call me. Thank you once again for your time in this matter.

Sincerely,

Wendy E Hladick PA-C

Wendy Hladick PA-C
Vice President of the Alaska Academy of Physician Assistants
Box 74
Galena, AK 99741
(907) 656-1891



Alaska Center for Rural Health

Telephone (907) 474-6020

P.O. Box 81710 • Fairbanks, Alaska 99708-1710

Fax (907) 474-6739

HB 341

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Bethel, AK

February 3, 1994

Mr. John Riley, President
Alaska Academy of Physician Assistants
Anchorage Neighborhood Health Center
1217 East 10th Avenue
Anchorage, AK 99501

Dear Mr. Riley:

The Alaska Center for Rural Health wishes to express its strong support for HB341 and SB231. These companion bills will permit Physician Assistants to bill for their services to the Medicaid program.

In many of our rural communities, solo PAs are working far from the support of physicians and other elements of Alaska's health system. Current policy prohibits those PAs from billing Medicaid for their services, thus working an unfortunate as well as unfair hardship for rural communities.

Granted, clinics designated by the federal government as Rural Clinics are allowed to bill for Medicaid reimbursement, but only on a flat fee basis. This means that clinics are often not able to obtain compensation for the amount of time that a PA might actually spend on a patient. The current system works a hardship on Medicaid eligible patients who may have to travel long distances in order to use the resource for their care.

Sincerely,

Daniel A. Johnson
Center Director

Dear Legislator,

I am writing to you to ask for your support of HB#341, sponsored by Rep. Joe Siton and Rep. Jeannette James. There is a similar Senate bill, SB#231, which is sponsored by Sen. Jay Kertulla.

These bills are important to prevent any insurance company from denying payment of services provided by a Physician Assistant. Currently, there are several companies that will not pay for medical services if provided by a Physician Assistant. (Nurse Practitioners and Chiropractors already have obtained legislation to prevent insurance companies from denying payment.)

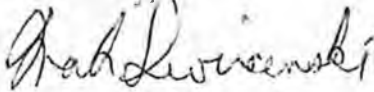
The other important part of these bills is establishment of Medicaid reimbursement. At this time, Medicaid patients, in some remote areas, are denied care due to the fact that Medicaid will not authorize PA's Medicaid numbers to bill for services. In turn, these patients either don't receive care or are flown to town (at cost to Medicaid) for care.

These bills were developed after identification of some of the barriers to health care through discussion between the Interior Legislatures (or their aides) and Physician Assistants from Fairbanks. There have been letters of support from many organizations which include the Health Care Coalition, Alaska Nurses Association, and the Alaska State Medical Association to name a few.

The Alaska Academy of Physician Assistants is actively working on these and other issues that will streamline the ability to provide care to all Alaskans.

Thank you for your attention. I hope that we all can continue to strive toward improving health care delivery in Alaska.

Sincerely,



Mark Swircenski, PA

MARK SWIRCENSKI
20440 Raven Drive
Eagle River AK 99577

Dear Legislator,

I am writing to you to ask for your support of HB#341, sponsored by Rep. Joe Sitton and Rep. Jeannette James. There is a similar Senate bill, SB#231, which is sponsored by Sen. Jay Kertulla.

These bills are important to prevent any insurance company from denying payment of services provided by a Physician Assistant. Currently, there are several companies that will not pay for medical services if provided by a Physician Assistant. (Nurse Practitioners and Chiropractors already have obtained legislation to prevent insurance companies from denying payment.)

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Thank you for your attention. I hope that we all can continue to strive toward improving health care delivery in Alaska.

Sincerely,

Judy Swircenski

Judy Swircenski

Barbara Feldman

JUDY SWIRCENSKI
20440 RIVER DRIVE
EAGLE RIVER, AK 99577

March 15, 1994

Dear Legislator,

I am writing to you to ask for your support of HB#341, sponsored by Rep. Joe Sitton and Rep. Jeannette James. There is a similar Senate bill, SB#231, which is sponsored by Sen. Jay Kertulla.

These bills are important to prevent any insurance company from denying payment of services provided by a Physician Assistant. Currently, there are several companies that will not pay for medical services if provided by a Physician Assistant. (Nurse Practitioners and Chiropractors already have obtained legislation to prevent insurance companies from denying payment.)

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Thank you for your attention. I hope that we all can continue to strive toward improving health care delivery in Alaska.

Sincerely,



Alan Smith, M.D.

9721 SPANG Hill Dr
Anchorage, AK 99507

March 15, 1994

Dear Legislator,

I am writing to you to ask for your support of HB#341, sponsored by Rep. Joe Sitton and Rep. Jeannette James. There is a similar Senate bill, SB#231, which is sponsored by Sen. Jay Kertulla.

These bills are important to prevent any insurance company from denying payment of services provided by a Physician Assistant. Currently, there are several companies that will not pay for medical services if provided by a Physician Assistant. (Nurse Practitioners and Chiropractors already have obtained legislation to prevent insurance companies from denying payment.)

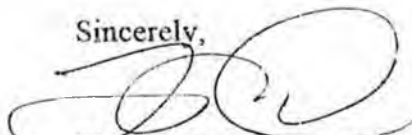
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Thank you for your attention. I hope that we all can continue to strive toward improving health care delivery in Alaska.

Sincerely,



Thomas Cross, P.A. - C

March 15, 1994

Dear Legislator,

I am writing to you to ask for your support of HB#341, sponsored by Rep. Joe Sitton and Rep. Jeannette James. There is a similar Senate bill, SB#231, which is sponsored by Sen. Jay Kertulla.

These bills are important to prevent any insurance company from denying payment of services provided by a Physician Assistant. Currently, there are several companies that will not pay for medical services if provided by a Physician Assistant. (Nurse Practitioners and Chiropractors already have obtained legislation to prevent insurance companies from denying payment.)

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The Alaska Academy of Physician Assistants is actively working on these and other issues that will streamline the ability to provide care to all Alaskans.

Thank you for your attention. I hope that we all can continue to strive toward improving health care delivery in Alaska.

Sincerely,



Edward Krumanaker, P.A. -?

March 15, 1994

Dear Legislator,

I am writing to you to ask for your support of HB#341, sponsored by Rep. Joe Sitton and Rep. Jeannette James. There is a similar Senate bill, SB#231, which is sponsored by Sen. Jay Kertulla.

These bills are important to prevent any insurance company from denying payment of services provided by a Physician Assistant. Currently, there are several companies that will not pay for medical services if provided by a Physician Assistant. (Nurse Practitioners and Chiropractors already have obtained legislation to prevent insurance companies from denying payment.)


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The Alaska Academy of Physician Assistants is actively working on these and other issues that will streamline the ability to provide care to all Alaskans.

Thank you for your attention. I hope that we all can continue to strive toward improving health care delivery in Alaska.

Sincerely,


Richard Clemons, P.A.-c

R. Clemons
8827 KAK Island
Eagle River, AK
99577

H B

3 4 4

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO: HB 344

Revision Date: _____ Dept. Affected: Public Safety
 Title: "An Act relating to the arrest of a person
for illegal possession of alcohol" BRU: Alaska State Troopers
 Sponsor: Representative Ulmer Component: Detachments
 Requestor: H. HES COMPONENT SERIAL NO. 799

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

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
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-
CHANGE IN REVENUES ()	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

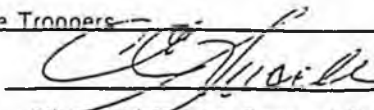
Estimate of current year (FY 94) impact: \$ _____

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact upon the Alaska State Troopers is anticipated.

Prepared By: Francis C. Allan Phone: 269-5691
 Division: Alaska State Troopers Date: 01/12/94
 Approved by Commissioner:  Date: 01/17/94
 Agency: Richard L. Burton, Dept. of Public Safety

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 344

Revision Date: _____ Dept. Affected: Administration
 Title: *An Act relating to arrest of a person for illegal possession * BRU: Office of Public Advocacy
 Component: Office of Public Advocacy
 Sponsor: Rep. Ulmer
 Requestor: (H) Hes COMPONENT SERIAL NO. 43

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
Total	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY94) cost: non-?

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Brant McGee, Public Advocate Phone: 274-1684
 Division: Office of Public Advocacy Date: _____

Approved by Commissioner: Nancy Bear Usura Date: 2/9/94
 Agency: Administration

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Admin - OPA - Fiscal Note

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 344

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act relating to arrest of a person for illegal possession" BRJ: Public Defender Agency
 Component: Public Defender Agency
 Sponsor: Rep. Ulmer
 Requestor: (P) Hes COMPONENT SERIAL NO. 1631

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
Total	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY94) cost: none

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

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

Phone: 264-4400
 Date: _____

Approved by Commissioner: Nancy Bear Usery
 Agency: Administration

Date: 2/9/94

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Admin - Public Defender Agency - Fiscal Note



Alaska State Legislature

House of Representatives
 COMMITTEE ON HEALTH, EDUCATION
 AND SOCIAL SERVICES

DATE: 2/11/94

PLACE: Capitol Room 106

SUBJECT OF MEETING:
 *HB ~~344~~ 344: ARREST OF MINORS FOR CONSUMING ALCOHOL
 *HB 332: PUBLIC HEALTH COMMISSION
 * INDICATES FIRST PUBLIC HEARINGS

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
Don Dupovich	—	Box 021571 Juneau	99802	6-2173	6-1575	(Y) N	HB 344
Bob Berryhill	AHRP	157 Bedwells Ave JUNO	99801	6-2626	6-2626	Y (N)	HB-332
Deborah Smith	AMHB	431 N. Franklin Juneau	99801	6-1175	5-3071	(Y) N	HB 332
Elmer Lindstrom	DAISS	Commissioner's Office			5-3030	(Y) N	HB 332
Juanita Heasley	DPS	PO Box 20020	99802		465-2650	questioning Y N	HB 344
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	



Alaska State Legislature
House of Representatives
 COMMITTEE ON HEALTH, EDUCATION
 AND SOCIAL SERVICES

SUBJECT OF MEETING:

DATE: 2-10-94

PLACE: Capitol Room 106

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
SHERRIE COLL	Alaska Womens Lobby	P.O. Box 22156, Juneau AK 99802			463-6744	<input checked="" type="radio"/> Y <input type="radio"/> N	HB 332
Harlan Knudson	Hosp & Nursing Home Assn	319 Second 99501			586 1790	<input checked="" type="radio"/> Y <input type="radio"/> N	HB 332
Denny DeGross	Alaska Public Health Assoc	2348 Kander Cir Anch, AK 99515			344-5824	<input type="radio"/> Y <input type="radio"/> N	HB 332
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	

- 1 HB 344 ARREST OF MINORS FOR CONSUMING ALCOHOL
- 2 HB 332 PUBLIC HEALTH COMMISSION ESTABLISHED

*** PARTICIPATING LIOS ***

ANC ANCHORAGE	716 W 4TH. #200	LOCATION STAFF
FBX FAIRBANKS	119 N CUSHMAN ST	LOCATION STAFF
* JNU JUNEAU	CAPITOL	LOCATION STAFF
NOM NOME	FRONT STREET	LOCATION STAFF
TOK TOK	MP 1314 AK. HWY	LOCATION STAFF

*** VOLUNTEER & OFFNET SITES ***

ZZZ OF1 OFFNET 1 WASHINGTON STATE AARON KATZ (206)543-3670

PARTICIPANTS IN: ANCHORAGE ANC

1	BONNIE NELSON	AKPTRG	TSFY. HB 332
	20615 WHITE BIRCH RD	CHUGIAK	AK 99567 (907)688-3017
2	SHINJI WAKABAYASHI		OBSV. ALL ITEMS
	734 E 76TH AVE	ANCHORAGE	AK 99518 (907)349-1658

PARTICIPANTS IN: FAIRBANKS FBX

1 MS.	TERESA LYONS		TSFY. HB 332
	P.O. NOX 74119	FAIRBANKS	AK 99707 (907)479-3667
2 MS.	JULIE HOPKINS		OBSV. HB 332
	P.O. BOX 73573	FAIRBANKS	AK 99707 (907)456-2939
3 MS.	JOY GRIFFIN		OBSV. HB 332
	P.O. BOX 73305	FAIRBANKS	AK 99707 (907)479-7351
4 MS.	BARB AVIAL		OBSV. HB 344
	4160-5 6TH ST.	FT. WAINWRIGHT	AK 99703 (907)356-2946
5 MS.	DARLENE DEMIENTIEFF		OBSV. HB 344
	318 SLATER DR.	FAIRBANKS	AK 99701 (907) 52-8171
6 MS.	SHARON CAINARATA		OBSV. HB 344
	3427 JEREMY LN.	NORTH POLE	AK 99705 (907)488-4293
7 MS.	TERES STANG		OBSV. HB 344
	455 3RD AVE.	FAIRBANKS	AK 99701 (907)452-7066

PARTICIPANTS IN: JUNEAU JNU

1 REP.	CYNTHIA TOOHEY		TSFY. HB 344
			AK (907)000-0000
2 REP.	CON RUNDE		TSFY. HB 344
			AK (907)000-0000
3 REP.	IRENE NICHOLIA		TSFY. HB 344
			AK (907)000-0000
4 REP.	AL VEZEY		TSFY. HB 344
			AK (907)000-0000

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02/14/94

LEGISLATIVE TELECONFERENCE NETWORK

PAGE 02
20:24:51

TCN: 40287 DATE & TIME: 02/10/94 15:00 TO 17:00 STATUS:7 STATS. IN

PARTICIPANTS IN: JUNEAU JNU

5 REP.	GARY DAVIS		TSFY. HB 344
			AK (907)000-0000
6 REP.	PETE KOTT		TSFY. HB 344
			AK (907)000-0000
7 REP.	HARLEY OLBERG		TSFY. HB 344
			AK (907)000-0000
8 REP.	INF SITTON		TSFY. HB 344

Alaska State Legislature

HOUSE OF REPRESENTATIVES



REPRESENTATIVE FRAN ULMER

SPONSOR STATEMENT HB 344

Teen drinking is a major health problem in our state. It is vital that we recognize this and make every effort to address the problem through education, treatment and consistently enforced laws.

A recent judicial interpretation of current Alaska law held that a law enforcement officer may only make an arrest for minor consuming when a juvenile under the age of 18 is actually seen drinking the beverage or holding a container. HB 344 will allow police officers the discretion to make an arrest when there is reasonable cause to believe that the minor has consumed alcohol. Society thus provides a consistent message - teen drinking is not acceptable, it poses significant health and safety concerns, and law enforcement will intervene when necessary.

HB 344 returns the law to what it was prior to Magistrate John Sivertsen's decision and is what most people believe is the law. But a loophole in the law has been identified, and we must close it so that law enforcement can intervene and detain juveniles as appropriate.

The City and Borough of Juneau Department of Health and Social Services, in conjunction with the Division of Chemical Dependency, and the Mayor's Task Force on Drug Abuse Among Juneau's Youth assisted in the development of HB 344 and fully endorses the bill. It is further supported by The Association of Alaska School Boards, The Alaska Peace Officers Association and many private citizens.

SPONSOR STATEMENT



49

§ 04.16.050

ALCOHOLIC BEVERAGES

§ 04.16.051

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hotel, restaurant or eating place, may enter and remain within those premises for the purpose of employment, but may not in the course of employment, sell, serve, deliver or dispense alcoholic beverages. (§ 3 ch 131 SLA 1980; am § 16 ch 28 SLA 1981; am §§ 4—7 ch 109 SLA 1983)

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Effect of amendments. — The 1983 amendment rewrote subsection (a); in subsection (b) substituted "or an" for "his" preceding "agent," inserted "of the licensee" following "employee," substituted "21 years" for "19 years" in three places, and made other minor, punctuation changes; in subsection (c) inserted "by other provision in" following "Notwithstanding," deleted "his" following "in the course of," and made other minor, punctuation changes; and added subsection (d).

NOTES TO DECISIONS

Cited in *Wike v. State*, Ct. App. Op. No. 004 (File No. 5185), 623 P.2d 356 (1981); *M.O.W. v. State*, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

Sec. 04.16.050. Possession or consumption by persons under the age of 21. A person under the age of 21 years may not knowingly consume, possess, or control alcoholic beverages except those furnished persons under AS 04.16.051(b). (§ 3 ch 131 SLA 1980; am § 8 ch 109 SLA 1983)

Effect of amendments. — The 1983 amendment substituted "21" for "19."

NOTES TO DECISIONS

Cited in *M.O.W. v. State*, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

SUBJECT: CHILD ADVOCACY

94-39

UNDERAGE DRINKING

WHEREAS, alcohol abuse has a major debilitating effect on Alaska's children; and
WHEREAS, underage drinking frequently puts impaired drivers on the highway; and
WHEREAS, the ability of law enforcement to cite underage drinkers and bring them into contact with drug/alcohol counseling can have positive effects for young people; and
WHEREAS, a recent Alaska Court ruling prevents law enforcement officials from citing underage drinkers unless the officer specifically observes the youths drinking;
THEREFORE BE IT RESOLVED, that the Association of Alaska School Boards urges Alaska Legislature to amend AS 04.16051 (b) to allow officers to consider empirical evidence and to require a suspected youth to take a breathalyzer test.

SUBJECT: CHILD ADVOCACY

94-40

URGING THE ALASKA LEGISLATURE TO FUND LOCAL PROGRAMS TO COMBAT HEALTH PROBLEMS AMONG ALASKA'S ADOLESCENT POPULATION

WHEREAS, the Association of Alaska School Boards has, on numerous past occasions, directed its attention to the educational problems associated with poor health among the adolescent school population; and,
WHEREAS, the Alaska Adolescent Pregnancy and Parenthood Task Force, co-chaired by Senators Druce Pearce and Johnny Ellis, reported to the Legislature in 1991 that it had analyzed the problems and had concluded that: "...the State should provide adequate funding to school districts for school health services...; and,
WHEREAS, other data (as compiled in the study completed in 1992 by the State Department of Health and Social Services and the Alaska Native Health Board, the Alaska Department of Labor, the National Center for Health Statistics, and the other sources) demonstrate that Alaska leads the nation in such health problems as sexually-transmitted diseases, teen pregnancy, the adolescent birth rate, and associated ills; and,
WHEREAS, the Legislature approved Chapter 94, SLA 1991, an act that (among other things) specifically authorized the appropriation of funds for the purpose of encouraging and supporting locally-based initiatives to combat the problems associated with adolescent pregnancy and parenthood, to design and implement public awareness and education programs, to begin or to expand peer counseling programs, and to engage in related local activities to address adolescent health problems; and,
WHEREAS, in spite of that authority, the Legislature has thus far failed to provide the necessary financial support for school-based adolescent health initiatives;
THEREFORE BE IT RESOLVED, that the Association of Alaska School Boards does hereby strongly urge the Alaska Legislature to act on its authority to fund programs to address adolescent health issues during the next legislative session.

Ruling limits arrests of minors drinking illegally

By ED SCHOENFELD

THE JUNEAU EMPIRE

A recent court ruling could mean fewer underage Juneau residents will be prosecuted for illegal drinking.

The ruling, by Juneau Magistrate John Sivertsen Jr., instructed police and troopers that they must catch a person under 21 drinking alcohol or holding an open can or bottle before a minor consuming arrest can be made.

That means it will be harder for officers to arrest someone found at a drinking party, staggering or passed out with alcohol on his or her breath for minor consuming.

"We rarely see someone tossing back a beer in our presence," said Juneau Police Chief Mike Gelston.

The ruling, however, still allows

police to issue citations to 18-, 19- and 20-year olds mandating a court appearance.

But it prevents much enforcement action against those under 18, who cannot be issued a citation because of their age, said Juneau District Attorney Richard Svobodny.

That means fewer young people will be referred to alcohol counseling and treatment programs, said Don Dapevich, who runs the municipality's chemical dependency unit.

"The kids learn quickly and the message out to the kids right now is you can drink with impunity," Dapevich said.

The ruling, which apparently has affected only some Southeast communities, could be appealed,

but it will probably be addressed in legislation, said Dean Guanelli, the state Law Department's criminal division administrator.

The ruling involved a January charge against a 19-year-old Juneau man with a history of minor consuming arrests.

According to court documents, the man was "found extremely intoxicated on South Franklin Street hardly able to stand up." The arresting officer smelled alcohol and noted the man's eyes were blood-shot but did not actually see him drinking or holding an open container before searching and jailing him, court records said.

The man's attorney, Donna McCready of the public defender's office, claimed that was illegal. Previous court rulings had determined

police must have a warrant or see the law being broken before arresting someone for a misdemeanor, such as minor consuming, McCready said.

Magistrate Sivertsen agreed and dismissed the charge.

"The mere smell of alcohol did not give the police officer sufficient reason to believe that the crime was being committed in the officer's presence," wrote Sivertsen in a March opinion that also call the arrest "an affront" to the constitution.

The presence of alcohol in a suspect's body is not enough for an arrest or conviction, he wrote.

Superior Court judges in Juneau and Ketchikan and the Alaska Court of Appeals have issued rulings suggesting Sivertsen's deci-

sion would be upheld by higher courts, so the state is looking toward a legislative solution, Guanelli said.

The issue is being discussed with several lawmakers and is expected to come up when lawmakers return to work in January.

Ketchikan and Juneau municipal officials are also considering writing their own laws to permit arrests without witnessing the act of minor consuming.

Since the rulings have taken place only in the judicial district covering Southeast Alaska, its impact has apparently been limited to Panhandle communities. Svobodny said the number of minor consuming cases taken to court seems to have dropped since he issued a memo in May telling

police and troopers about the ruling.

Dapevich also said referrals to a Juneau assessment program for youths charged with minor consuming has dropped.

Gelston, however, said it is too early to tell how much effect Sivertsen's ruling has had, since the number of minor consuming arrests fluctuates greatly. There were 324 arrests in 1991, 194 in 1992 and 62 in the first half of this year.

Guanelli said the effect of the ruling may be lessened by using other laws to fight minor consuming.

"It's certainly not open season to just go out to Anke Rec and start partying because there are still ways the police can arrest you," he said.

BRIEFLY

Alaska

Store owner sentenced for teen shooting: An Anchorage furniture store owner has been sentenced to five years in prison without parole for the shooting death of a teenager during a scavenger hunt last year.

Five years is the standard sentence for manslaughter, the crime that Jim Lowe was convicted of in December for killing 18-year-old Clyde Thompson.

Superior Court Judge Karl Johnstone sentenced Lowe on Thursday after sending the case to a three-judge panel for review. Johnstone had sought permission for a lesser sentence given what he called Lowe's excellent prospects for rehabilitation.

The panel, however, returned the case to Johnstone whose only option was to impose a sentence of five years or more.

Prosecutor Jim Hanley said five years in prison is the best way to deter others who think they're justified in using lethal force against thieves.

With time off for good behavior and time served, the 62-year-old Lowe could be released in two years and nine months.

Anchorage man says he's innocent of Pepsi hoax: An Anchorage man has pleaded innocent to charges he falsely reported finding a hypodermic syringe in a Pepsi can last month.

Federal authorities have accused Jose Pagan of participating

Alaska heat warms up tourism

By DEAN FOSDICK

THE ASSOCIATED PRESS

ANCHORAGE - It's soggy in the Rockies, flooding in the Midwest and hot and humid in the East, but old-timers are calling this the best stretch of weather they've seen in Alaska in 30 years.

And that is accounting in part for what's shaping up as another banner year for tourism around the state.

"We've had such a fantastic summer so there's a lot going on," Carol Lay, with the Fairbanks Convention and Visitors Bureau, said Thursday. "I think we're seeing a few more out-of-town tours and soft adventure tours because of the weather."

"The Golden Days festival starts tomorrow and the city's packed. You still can find room, but the city is very full and it's expected to get fuller."

John Quinley, a spokesman for

influenced by new counting methods at the Klondike park in Skagway, he said.

But the visitor center at Kenai Fjords in Seward is seeing a whopping increase in people, Quinley said.

"June of last year saw 9,639 people through the door," he said. "June of this year saw 24,284."

"We know cruise numbers are up. Highway numbers are down a little from last year but still ahead of '91," said Pete Carlson, with the state Division of Tourism in Juneau. "The ferry system is down a bit because the Taku was down (for maintenance)."

Lisa Rallo, with the Alaska Public Lands Information Center at the junction community of Tok, said visitor numbers are down a bit from last year at the Alaska-Canada border but vehicle movement is up 8 percent on the Taylor Highway.

but visitor-wise it was equal to 1991," Rallo said. "1992 was the record year because it was the 50th anniversary year of the highway and it was promoted a lot."

"We're only like 2,000 vehicles down, overall. The salmon bake is having the best year it's had in a long time. Hotels and camp grounds are generally full."

Kari Westlund, with the Convention and Visitors Bureau in Juneau, said cruise ship lines are running at 98 percent to 100 percent capacity each week.

"In addition to the great weather, we have had a lot of whales and eagles and the fishing has been good."

"Nature has been a big factor for us this year," Westlund said.

JUNEAU EMPIRE 7-16-93

Fish line entangles bald eagle

JEANINE POHL

JUNEAU EMPIRE

An adult male bald eagle tried to dive for the bait on a boater's fishing line in Glacier Bay National Park and ended up drowning, tangled in monofilament line.

The incident happened Monday at Ripple Cove, on the west side of the bay, across from park headquarters at Bartlett Cove. Mary Kralovec, with the Park Service's resource management division, said the boaters reported an entangled eagle, and she and rangers traveled by boat to Ripple Cove.

"The fishing line was wrapped around the primary feathers,

there was no sign of a hook,



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IN THE DISTRICT COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

STATE OF ALASKA,
Plaintiff,

vs.

IVAN SABON,
Defendant.

Filed in the Trial Courts
State of Alaska, First District
At Juneau

FEB 2 1992

By *KW* Deputy

Case No. 1JU-S92-00053 CR

MEMORANDUM DECISION/ORDER

ON MOTION TO DISMISS

I. FACTUAL AND PROCEDURAL BACKGROUND

On 10 January 1992 , the Defendant, Ivan Sabon, was charged with having violated AS 04.16.050 on or about the same date. The allegation are that "Sabon was found extremely intoxicated on S. Franklin St., hardly able to stand up." The Uniform Summons and Complaint Form filed by police officer Steffel states that Mr. Sabon was "incarcerated." (Complaint, JPD case no. 92000455).

On 11 February 1992, Mr. Sabon, filed a Motion To Dismiss. The Defendant's statement of facts include the following:

that police officer Steffel approached Mr. Sabon as he was walking on the sidewalk along S. Franklin Street;
that the officer alleges she smelled alcohol on Mr. Sabon's person and observed Mr. Sabon's eyes to be bloodshot;

that officer Steffel seized Mr. Sabon, charged him with minor consuming, and transported him to the Juneau Police Department; and

that police officers conducted a search of Mr. Sabon's pockets, and confiscated a bus pass which did not appear to belong to Mr. Sabon.

1 Mr. Sabon asserts that his arrest was unlawful as the alleged
2 illegal in violation of due process of law under Alaska
3 Constitution, Art. I, Sec. 14. Mr. Sabon submits that he did not
4 "consume, possess, or control alcoholic beverages" under AS
5 04.16.050 in the "presence" of the arresting officer. As such, Mr.
6 Sabon contends his arrest without a warrant was contrary to the
7 relevant arrest statute AS 12.25.030. (Motion, pp. 1-6).

8 On 13 February 1992, the State of Alaska filed its Opposition
9 To Motion To Dismiss. The State declares even if this were an
10 illegal arrest "(and it isn't in the state's view)", such is not
11 a valid basis for dismissal of the action or suppression of the
12 evidence. The defendant's remedy, contends the State, rests with
13 the civil courts. (Opposition, p. 1).

14 On 13 February 1992, Mr. Sabon filed an Amended Memorandum In
15 Support Of Motion To Dismiss. This amended pleading submits
16 additional authority for Mr. Sabon's position. (Supp. p. 6-7).

17 It is noteworthy that the State's has not provided a statement
18 of facts which in any way contradicts the defendant's factual
19 statement. Also, the State has not explained their view that Mr.
20 Sabon's arrest was legal. The State merely states their belief
21 without support. In any event, the State seeks to minimize the
22 merits of Mr. Sabon's position by characterizing it to be a "waste
23 of time responding to the law school exam question posed by Sabon."
24 (Opposition, p. 1). Instead, the State declares it is "not opposed
25 to suppressing all evidence seized following Sabon's arrest."

(Opposition, p. 1-2).

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II. POINTS AND AUTHORITIES

The Alaska Constitution, Art. I, Sec. 14 provides:

[t]he right of the people to be secure in their person, houses and other property, papers, and effects, against unreasonable searches and seizures, shall not be violated. No warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

The offense with which Mr. Sabon stands charged in violation of AS 04.16.050 declares:

A person under the age of 21 years may not knowingly consume, possess, or control alcoholic beverages....

The relevant arrest statute, AS 12.25.030, provides in pertinent part as follows:

(a) A private person or a peace officer without a warrant may arrest a person

(1) for a crime committed or attempted in the presence of the person making the arrest;....

"An arrest for a misdemeanor made by an officer without a warrant is valid if the offense is committed in his presence." Miller v. State, 462 P.2d 421, 425 (Alaska 1969). When a person is arrested on a misdemeanor, "the lawfulness of the arrest depends on whether the arresting officer was present at the commission of the offense." Rubey v. City of Fairbanks, 456 P.2d 470, 475 (Alaska 1969). The Alaska Supreme Court has recognized "that the grounds for arresting a person without a warrant for a misdemeanor committed in the presence of an officer are considerably more

1 restricted than those which would constitute probable cause for a
2 felony arrest without a warrant." Miller v. State, 462 P.2d at 426,
3 fn.3.

4 Whether a seizure has occurred is a question of fact. In
5 Waring v. State, 670 P.2d 357, 364 (Alaska 1976), the test for
6 determining whether a seizure occurred was explained:

7 [W]e will employ an objective standard to determine
8 whether or not a seizure has occurred, i.e., whether or
9 not a reasonable person would believe that he or she was
10 free to go....Such a confrontation, therefore, will
11 amount to a seizure 'only if the officer added to those
12 inherent pressures by engaging in conduct which a
13 reasonable man would view as threatening or offensive
14 even if coming from another private citizen.' 3
15 W.LaFave, "Search and Seizure: A Treatise on the Fourth
16 Amendment," Sec.9.2, at 53, 54 (1978). The critical
17 inquiry would be whether the policeman, although perhaps
18 making inquiries which a private citizen would not be
19 expected to make, has otherwise conducted himself in a
20 manner consistent with what would be viewed as a
21 offensive contact if it occurred between two ordinary
22 citizens.

23 III. APPLICATION AND ANALYSIS

24 In the instant case, there seems to be little dispute over
25 the fact that Mr. Sabon was arrested. He was transported to the
Juneau Police Department. His pockets were searched by police
officers. He was incarcerated at Lemon Creek Correctional Center.
His arraignment was the next day. It is clear that a reasonable
man in Mr. Sabon's situation would view as threatening or offensive
the police conduct in this case. As such, the police had "seized"
Mr. Sabon who had been placed under "arrest."

The significance of Mr. Sabon's arrest is that under AS

1 12.25.030 the police were only authorized to make such a
2 misdemeanor arrest of Mr. Sabon if the alleged crime of minor
3 consuming had been committed or attempted in the police officer's
4 presence. The common understanding of the term "consume" is "to
5 eat or drink up." Webster's New World Dictionary 305 (2ed. 1982).
6 The statutory definition of the word "possess" is "having physical
7 possession or the exercise of dominion or control over property."
8 AS 11.81.900 (45). There is sufficient grounds for a misdemeanor
9 arrest when the alcohol is in the minor's immediate dominion and
10 control. see, Miller v. State, 462 P.2d 421, 427 (Alaska 1969)
11 (open case of beer on the floor behind the driver's seat).
12 Additionally, the power of a person to control or possess an
13 alcoholic beverage ends once the person swallows the alcohol. see,
14 State v. Thronsen, 809 P.2d 941, 943 (Alaska App. 1991) (affirming
15 the trial court's rationale that "mere presence in the body cannot
16 support a criminal conviction for possession).

17 On the present facts, officer Steffel did not actually see Mr.
18 Sabon drink any alcohol. Additionally, the officer did not report
19 observing any alcoholic beverages in Mr. Sabon's presence. Mr.
20 Sabon was not witnessed as having any dominion or control over
21 alcoholic beverages. The odor of alcohol on Mr. Sabon was
22 circumstantial evidence that Mr. Sabon in the past may have
23 consumed, possessed, or controlled alcohol. The mere smell of
24 alcohol, however, did not give the police officer sufficient reason
25 to believe that the crime of AS 04.16.050 was being committed in

1 the officer's presence. As such, Mr. Sabon's arrest was not in
2 compliance with the limitations of AS 12.25.030, and was a
3 violation of Mr. Sabon's constitutional rights under Art.1, Sec.
4 14 to be secure against unwarranted searches and seizures. Cf.,
5 A.B.A., Standards for Criminal Justice, vol.II, (2ed. 1986), sec.
6 10-2.2 (mandatory issuance of citation).

7 The conclusion reached above is not precluded by AS 01.10.050
8 which states: "Words in the present tense include the past and
9 future tenses and words in the future tense include the present
10 tense." This statute may have some application in whether charges
11 can be filed against an accused. This statute, however, does not
12 apply to whether a misdemeanor arrest can lawfully be made under
13 AS 12.25.030. The purpose for the limitations of misdemeanor
14 arrest are clear. The statutory intent would be rendered null and
15 void if a police officer was able to arrest a person for a
16 misdemeanor crime previously committed. Any such use of AS
17 12.25.030 would be contrary to reason, policy, and precedent.

18 Beyond the above-referenced rationale construing Alaska's
19 right against unwarranted search and seizure, several other
20 decisions dealing with related rights under the Alaska Constitution
21 compel a strict application of article I, section 14. In Breese
22 v. Smith, 501 P.2d 159 (Alaska 1972), the supreme court interpreted
23 article I, section 1 of the Alaska Constitution, which includes the
24 guarantee "that all persons have a natural right to life, liberty,
25 the pursuit of happiness, and the enjoyment of the rewards of their

1 own industry." Relying on this provision's affirmative grant of
2 the right to "liberty," the supreme court held:

3 [T]he term "liberty" is an elusive concept, incapable of
4 definitive, comprehensive explication. Yetr at the core
of this concept is the notion of total personal immunity
from government control: the right "to be let alone."

5 Bresse vs. State, 501 P.2d at 168.

6 The court normally will use the exclusionary remedy as the
7 primary means of effectuating certain basic constitutional rights.
8 The rationale for the exclusionary rule is deterrence of
9 unconstitutional methods of law enforcement; and the imperative of
10 judicial integrity which requires that the courts not be made
11 "party to lawless invasions of the constitutional rights of
12 citizens by permitting unhindered governmental use of the fruits
13 of such invasions." see, Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684
14 (1961); and Terry v. Ohio, 392 U.S. 1, 13, 88 S.Ct. 1868, 1875
15 (1968). The court.

16 In short, police misconduct which shocks the conscience,
17 or is of a nature that calls for the judiciary, as a
18 matter of judicial integrity, to disassociate itself from
benefits derivable therefrom, would lead us to invoke the
exclusionary rule.

19 State v. Sears, 553 P.2d 907, 914 (Alaska 1976).

20 However, the court is not limited to the remedy of the
21 exclusionary rule. The court may on its own motion "and in
22 furtherance of justice," order an action be dismissed. see, Cr.R.
23 43 (c); see also, Cr.R. 1 and 2. Because of the small number of
24 criminal cases which actually go to trial, the deterrent effect of
25

1 the exclusionary rule is severely limited if the remedy for lawless
2 conduct of the police is restricted to the exclusionary rule.
3 Furthermore, the aggravated facts and circumstances of a particular
4 case may lead the court to the conclusion that dismissal is
5 warranted in the furtherance of justice, judicial integrity, and
6 deterrence. The admittedly extreme measure of dismissal is
7 appropriate when the government's outrageous conduct has
8 egregiously violated fundamental constitutional rights.

9 The authors of the constitution did not believe that any one
10 branch of government could be relied upon to honor or make
11 effective the fundamental guarantees contained in the Constitution
12 and the Bill of Rights. The prohibition against unlawful search
13 and seizure is a positive expression of restraint against the abuse
14 of governmental power. The role of the judicial system is vital
15 to the preservation of the fundamental rights. James Madison, in
16 an address to Congress, stated:

17 [I]ndependent tribunals of justice will consider
18 themselves in a peculiar manner the guardians of those
19 rights; they will be an impenetrable bulwark against
20 every assumption of power in the Legislative or
21 Executive; they will be naturally led to resist every
22 encroachment upon rights expressly stipulated for in the
23 Constitution by the declaration of rights. 1 Annals of
24 Congress 439 (1789).

25 Courts can not direct the daily operations of government and
law enforcement. The judiciary can respond only to those issues
brought before it in a case-by-case procedure. Indeed, the
protection of fundamental constitutional rights frequently has been

1 achieved by refusing to validate unlawful police conduct. see,
2 Fresneda v. State, 458 P.2d 134, 139-40 (Alaska 1969).

3 If courts allow unlawful action by other branches of the
4 government in the enforcement of law, then the judiciary becomes
5 party to the wrong. When courts condone the unlawful and
6 unconstitutional arrests, they render the statutory and
7 constitutional guarantees a nullity.

8 As Mr. Justice Brandeis observed in his historic dissent in
9 Olmstead v. United States, 277 U.S. 438, 48 S.Ct.564, 575 (1928):

10 In a government of laws, existence of the government will
11 be imperilled if it fails to observe the law
12 scrupulously. Our government is the potent, the omni-
13 present teacher. For good or for ill, it teaches the
14 whole people by its example. Crime is contagious. If
15 the government becomes a lawbreaker, it breeds contempt
16 for law; it invites every man to become a law unto
17 himself; it invites anarchy.

18 In the same case, Mr. Justice Holmes declared:

19 [W]e must consider the two objects of desire both of
20 which we cannot have and make up our minds which to
21 choose....We have to choose, and for my part I think it
22 is less evil that some criminals should escape than that
23 the government should play an ignoble part.
24If the existing code does not permit district
25 attorneys to have a hand in such dirty business it does
not permit the judge to allow such iniquities to succeed.

Unless actions are subject to dismissal in the furtherance of
justice for flagrant violations of constitutional rights, we engage
in governmental hypocrisy in a significant fashion. We are not
dealing with "law school exams" (see, State Opposition, p.1).
Rather, we are addressing important constitutional principles.
Freedom from unlawful search and seizures (and warrantless arrest)