

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

7868 HOUSE JUDICIARY

The court authorized interception of private communications by law enforcement officers to investigate serious crimes such as murder, kidnapping, and specified drug offenses is an effective tool for law enforcement, however, it has proven to be extremely labor intensive. The following impact is based primarily upon discussions with federal and state law enforcement officials that have utilized wiretap provisions in their jurisdictions.

It is anticipated that warrants will be obtained to authorize monitoring for periods of approximately 10 to 14 days even though warrants could be obtained to extend the monitoring for longer periods. This monitoring can be complicated by the fact that some conversations monitored may involve non-English speaking participants which will necessitate the need for bi-lingual interpreters and transcribers to augment the investigators on a 24-hour a day basis. If monitoring for example, involves more than one phone line or location, then additional monitoring teams will have to be established, further increasing the costs for personnel, professional and contractual services.

The following is a summary of the estimated costs based upon three wiretaps being utilized each year. This estimate only includes those additional costs that may be incurred to train, equip, implement, monitor, record and document the wiretap in accordance with statutory requirements that may be incurred during a criminal investigation.

Personal Services

Additional overtime for existing personnel:

A) Investigators

(Calculated at Range 77 Step K):

24 hrs x \$54 per x 15 days x 3 cases = \$58.3

B) Clerical support

(Calculated at Range 8 Step D):

16 hrs X \$24 per x 15 days x 3 cases = 17.3

Personal Services Subtotal \$75.6

Travel

Training courses covering wiretapping  
equipment, laws & regulations - 6 x  
Investigators (2 per shift / 6 per day),  
7 days, travel & per diem 4.2

Contractual

A) Utilities

Call Line Identification

\$181 x 3 cases = \$543 .5

Pen Register / Monitoring Unit

\$224 x 3 cases = \$672 .7

B) Translator / interpreter

24 hrs x \$30 per x 15 days x 1 case = 10.8

Contractual Subtotal 12.0

Equipment

Monitoring unit x 2 = 20.2

Total \$112.0

Rep. Brian Porter, Chairman

HB 187 Interception of Private Communications  
 HB 132 Extend Resource Extraction Permit/Lease  
 SB 149 Revision of Banking Code  
 SB 112 Uniform Commercial Code Revisions

# House Judiciary Committee

Date: April 19, 1993

Place: Capitol Room 120

Subject of Meeting: SB 84 Revoke Driver's License  
 if False ID Used; SB 86 Fund Transfers Under the UCC

Please Print Name	Representing	Business/Personal Mailing Address	Zip	(H) Phone	(W) Phone	Do you Want to Testify?	Which Subject/Which Bill?
LT. CHRIS STOCKARD	PUBLIC SAFETY	450 Whittier St Juneau				(Y) N	HB 187 - FOR QUESTIONS ONLY L
Juanita Hensley	DPS/DMV	Box 111200	99811		4335	(Y) N	SB 84
Bill Kelder	Sen. Kerttala	Room 427, Capitol Bldg Juneau 99801-1112			4834	(Y) N	SB 86 & SB 112 L
JOSH FINK	SEN. KELLY				3819	(Y) N	SB 84 L
JOSH FINK	SEN. KELLY				3819	(Y) N	SB 149 L
BUD JAEGER	ALASKA INSURANCE AGENTS	301 SEWARD ST. JUNEAU	99801		586-2414	(Y) N	SB 149 L
BEN WILLIAMS	REP. TOM BRICE	STATE CAPITOL	99801		73466	(Y) N	CSHB 132 (ND)
Margot Knuth	law - crim	Box 110300	99811		84049	(Y) N	HB 187
JEFF BUSH	Commerce - Banking + Securities	175 S. Franklin, Ste. 318, Juneau	99801		463-4150	(Y) N	SB 149 L
						Y N	
						Y N	
						Y N	

H B

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# HOUSE COMMITTEE REPORT

(7)

Date Referred: March 1, 1993

FURTHER REFERRALS:

Finance

Date of Committee Action: 4-16-93

The JUDICIARY Committee considered:

HB 188

HOUSE BILL NO. 188

FORFEITURE OF CERTAIN PROPERTY

"An Act relating to forfeiture of certain property; and providing for an effective date."

**RECOMMENDATIONS:**

be replaced with CS HB 188 (JUD)  the same title  a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): \_\_\_\_\_ (Dept)

APPROVES PREVIOUS: \_\_\_\_\_ (Dept/Date)

fiscal impact \_\_\_\_\_

fiscal note(s) 2 DEPT. OF ADMIN. (3-1)  
DEPT. OF PUBLIC SAF.  
 4 zero fiscal note(s) DEPT. OF LAW (3-1) (3-1)

zero fiscal note \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Joseph P. ...</i>	✓	<i>Jim Nordlie</i>		✓	
<i>John ...</i>	✓				
<i>Janette James</i>	✓				
<i>Brian ...</i>	✓				

*Brian ...*  
 \_\_\_\_\_  
 CHAIRMAN'S SIGNATURE

CS FOR HOUSE BILL NO. 188(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:  
Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to forfeiture of certain property; and providing for an effective  
2 date."

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

4 \* Section 1. AS 17.30.110 is amended to read:

5 Sec. 17.30.110. ITEMS SUBJECT TO FORFEITURE. The following  
6 property is subject to forfeiture under AS 17.30.110 - 17.30.126 [MAY BE  
7 FORFEITED TO THE STATE]:

8 (1) a controlled substance that [WHICH] has been  
9 manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter  
10 or AS 11.71;

11 (2) raw materials, products, and equipment that [WHICH] are used or  
12 intended for use in manufacturing, distributing, compounding, processing, delivering,  
13 importing, or exporting a controlled substance in violation of [WHICH IS A FELONY  
14 UNDER] this chapter or AS 11.71;

1 (3) property that [WHICH] is used or intended for use as a container  
2 for property described in (1) or (2) of this section;

3 (4) a right, title, or interest in real property, including buildings  
4 and any other improvements, or a conveyance, including but not limited to aircraft,  
5 vehicles, or vessels, that [WHICH] has been used or is intended for use in  
6 manufacturing, transporting, or in any manner in facilitating the manufacture,  
7 transportation, sale, receipt, possession, or concealment of property described in (1) or  
8 (2) of this section in violation of a felony offense under this chapter or AS 11.71 [  
9 HOWEVER,

10 (A) A CONVEYANCE MAY NOT BE FORFEITED UNDER  
11 THIS PARAGRAPH IF THE OWNER OF THE CONVEYANCE  
12 ESTABLISHES, BY A PREPONDERANCE OF THE EVIDENCE, AT A  
13 HEARING BEFORE THE COURT AS THE TRIER OF FACT, THAT USE  
14 OF THE CONVEYANCE IN VIOLATION OF THIS CHAPTER OR AS 11.71  
15 WAS COMMITTED BY ANOTHER PERSON AND THAT THE OWNER  
16 WAS NEITHER A CONSENTING PARTY NOR PRIVY TO THE  
17 VIOLATION;

18 (B) A FORFEITURE OF A CONVEYANCE ENCUMBERED  
19 BY A VALID SECURITY INTEREST AT THE TIME OF SEIZURE IS  
20 SUBJECT TO THE INTEREST OF THE SECURED PARTY IF THE  
21 SECURED PARTY ESTABLISHES, BY A PREPONDERANCE OF THE  
22 EVIDENCE, AT A HEARING BEFORE THE COURT AS THE TRIER OF  
23 FACT, THAT USE OF THE CONVEYANCE IN VIOLATION OF THIS  
24 CHAPTER OR AS 11.71 WAS COMMITTED BY ANOTHER PERSON AND  
25 THAT THE SECURED PARTY WAS NEITHER A CONSENTING PARTY  
26 NOR PRIVY TO THE VIOLATION];

27 (5) books, records, and research products and materials, including  
28 formulas, microfilm, tapes, data processing equipment, and data, that [WHICH] are  
29 used in violation of this chapter or AS 11.71;

30 (6) money, securities, negotiable instruments, or other things of value  
31 used in financial transactions derived from or used to facilitate a violation of

1 [ACTIVITY PROHIBITED BY] this chapter or AS 11.71; [AND]

2 (7) a dangerous instrument that [FIREARM WHICH] is visible,  
3 carried during, or used in furtherance of a violation of this chapter or AS 11.71; and

4 (8) property of any type traceable to a violation of this chapter or  
5 AS 11.71, except that for property that is real property, the violation must be a  
6 felony under this chapter or AS 11.71.

7 \* Sec. 2. AS 17.30.112 is repealed and reenacted to read:

8 Sec. 17.30.112. PROCEEDINGS RESULTING IN FORFEITURE; ORDERS  
9 OF FORFEITURE. (a) Property listed in AS 17.30.110(2) - (8) may be forfeited to  
10 the state in a criminal proceeding or in a separate civil proceeding in rem under  
11 procedures set out in AS 17.30.116, if the state proves that the property is subject to  
12 forfeiture by (1) a preponderance of the evidence for property other than real property,  
13 or (2) clear and convincing evidence for real property. It is prima facie evidence,  
14 sufficient to support an order of forfeiture, that a defendant has been convicted of  
15 conduct making the property subject to forfeiture, or that a grand jury has returned an  
16 indictment finding that the evidence, if unexplained or uncontradicted, would warrant  
17 a court to conclude that property identified in the indictment is subject to forfeiture.

18 (b) In commencing a forfeiture proceeding, the state shall provide notice of the  
19 property to be forfeited and of the connection the state will attempt to prove between  
20 the property and the conduct making it subject to forfeiture.

21 (c) At the request of either party, a forfeiture proceeding, including discovery,  
22 shall be held in abeyance until the conclusion of a pending criminal action relating to  
23 the conduct making the property subject to forfeiture.

24 (d) It is not a defense to a forfeiture proceeding that a criminal offense has not  
25 been prosecuted, or has resulted in a conviction of a different offense or an acquittal.

26 (e) A forfeiture order or an order granting relief under AS 17.30.124 removes  
27 all liens, encumbrances, or other clouds on the title that are a direct result of the  
28 forfeiture proceedings.

29 (f) A person whose conduct causes property to be subject to forfeiture shall,  
30 in addition to any other fine, be assessed the reasonable charge of maintenance,  
31 storage, disposal, or other expenses of the forfeiture proceeding, including attorney fees

1 of the state. These charges may be ordered paid as part of a sentence, a condition of  
2 probation or suspended imposition of sentence, or as an assessment of costs or attorney  
3 fees as appropriate in a civil or criminal proceeding.

4 (g) An order of forfeiture shall forfeit to the state any other assets of the  
5 person who caused the property to be subject to forfeiture, up to the value of property  
6 subject to forfeiture, if the property subject to forfeiture has been

7 (1) commingled with other property and cannot be separated without  
8 difficulty or unreasonable expense to the state;

9 (2) transferred to, sold to, or deposited with a third party, placed  
10 beyond the jurisdiction of the court, or removed so it cannot be located;

11 (3) substantially diminished in value by an act or omission of the  
12 person who caused the property to be subject to forfeiture; or

13 (4) remitted to a claimant under AS 17.30.124.

14 (h) An order of forfeiture issued under this section may be made regardless of  
15 the location of the property, if the state has obtained personal jurisdiction over the  
16 person whose interest would be affected by the forfeiture.

17 (i) A perfected priority lien on property that has been ordered forfeited is  
18 created in favor of the state up to an amount that is the sum of the expenses of  
19 investigation, prosecution, and forfeiture proceeding arising out of the conduct making  
20 the property subject to forfeiture. In calculating the amount of the lien, expenses of  
21 all state, federal, or local agencies are to be included. The lien has priority over all  
22 unsecured debts associated with the property.

23 \* Sec. 3. AS 17.30.114(a) is amended to read:

24 (a) Property listed in AS 17.30.110 may be seized by a peace officer upon an  
25 order issued by a court having jurisdiction over the property upon a showing of  
26 probable cause that the property may be forfeited under AS 17.30.110. Seizure  
27 without a court order may be made if

28 (1) the seizure is incident to a valid arrest or a search under a valid  
29 search warrant or is otherwise constitutionally permissible;

30 (2) the property subject to seizure has been the subject of an earlier  
31 judgment in favor of the state in a criminal proceeding or civil proceeding in rem

1 under this chapter or AS 11.71; or

2 (3) there is probable cause that the property is subject to forfeiture  
3 under AS 17.30.110 - 17.30.126 [WAS USED, IS BEING USED, OR IS INTENDED  
4 FOR USE, IN VIOLATION OF THIS CHAPTER OR AS 11.71] and the property is  
5 easily movable; property seized under this paragraph may not be held for more than  
6 48 hours without a court order obtained to continue its detention.

7 \* Sec. 4. AS 17.30.116(b) is amended to read:

8 (b) Upon service or publication of notice of commencement of a forfeiture  
9 action under this section, a person, including a criminal defendant, claiming interest  
10 in the property shall file within 30 days after the service or publication, a notice of  
11 claim. The notice of claim shall be made under oath and must set [ SETTING] out  
12 the nature of the interest, the date it was acquired, the consideration paid, and an  
13 answer to the state's allegations. If a claim and answer is not filed within the time  
14 specified, the property described in the state's allegation must be ordered forfeited to  
15 the state without further proceedings or showings.

16 \* Sec. 5. AS 17.30.116(c) is amended to read:

17 (c) Questions of fact or law raised by a notice of forfeiture action and answer  
18 of a claimant in an action commenced under this section must be determined by the  
19 court sitting without a jury. [THIS PROCEEDING MAY BE HELD IN ABEYANCE  
20 UNTIL CONCLUSION OF ANY PENDING CRIMINAL CHARGES AGAINST THE  
21 CLAIMANT UNDER THIS CHAPTER OR AS 11.71.]

22 \* Sec. 6. AS 17.30.116 is amended by adding a new subsection to read:

23 (d) A criminal defendant or a person claiming an interest in the property under  
24 this section and AS 17.30.124 may testify, present evidence and witnesses, and cross-  
25 examine witnesses presented by other parties. In addition to other testimony and  
26 evidence presented, the court may consider the relevant portions of the record of a  
27 related criminal action. The court shall make findings of fact regarding contested  
28 issues and shall set out its conclusions of law.

29 \* Sec. 7. AS 17.30.122 is amended to read:

30 Sec. 17.30.122. STATE DISPOSAL OF FORFEITED PROPERTY. Property  
31 forfeited under AS 17.30.110 - 17.30.126 other than controlled substances shall be

1 disposed of by the commissioner of administration in accordance with applicable law.

2 The commissioner of administration may

3 (1) destroy property harmful to the public;

4 (2) sell the property and use the proceeds for payment of all proper  
5 expenses of the proceedings for forfeiture and sale, including expenses of seizure,  
6 custody, and court costs;

7 (3) take custody of the property and authorize its use in the  
8 enforcement of this chapter or AS 11.71, or transfer it to another agency of the state  
9 or a political subdivision of the state for a use in furtherance of the administration of  
10 justice;

11 (4) at the direction of the commissioner of public safety, transfer up to 90  
12 percent of the net value of the forfeited property to one or more agencies or  
13 political subdivisions of the state for use in furtherance of the administration of  
14 justice; in directing this transfer, the commissioner of public safety may take into  
15 account an equitable allocation based on the amount of the contribution made by  
16 each agency to the investigation or prosecution of the conduct making the  
17 property subject to forfeiture, or based on any agreements as to the sharing of  
18 assets;

19 (5) take custody of the property and remove it for disposition in  
20 accordance with law;

21 (6) [(5)] forward it to the Drug Enforcement Administration of the  
22 United States Department of Justice for disposition; or

23 (7) [(6)] transfer ownership of an aircraft to the Alaska Wing, Civil Air  
24 Patrol.

25 \* Sec. 8. AS 17.30.124 is amending by adding a new subsection to read:

26 (c) A person who has filed a timely claim under AS 17.30.116(b) may have  
27 the property remitted by the court under (a) of this section upon proof by a  
28 preponderance of the evidence that the person

29 (1) has a valid right, title, or interest in the property, acquired in good  
30 faith, that takes priority over a lien in favor of the state arising under AS 17.30.112(h);

31 (2) did not knowingly participate in or facilitate the conduct that

1           resulted in the property being subject to forfeiture; and

2                           (3) did not know that a person might engage in the conduct that  
3           resulted in the property being subject to forfeiture.

4   \* Sec. 9. AS 17.30.900 is amended by adding a new subsection to read:

5                           (c) In AS 17.30.110 - 17.30.126, "dangerous instrument" has the meaning  
6           given in AS 11.81.900(b).

7   \* Sec. 10. AS 17.30.124(b) is repealed.

8   \* Sec. 11. This Act takes effect July 1, 1993.

8-GH1057AE  
Luckhaupt  
4/12/93

CS FOR HOUSE BILL NO. 188(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:  
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9 manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter  
10 or AS 11.71;

11 (2) raw materials, products, and equipment that [WHICH] are used or  
12 intended for use in manufacturing, distributing, compounding, processing, delivering,  
13 importing, or exporting a controlled substance in violation of [WHICH IS A FELONY  
14 UNDER] this chapter or AS 11.71;

1 [ACTIVITY PROHIBITED BY] this chapter or AS 11.71; [AND]

2 (7) a dangerous instrument that [FIREARM WHICH] is visible,  
3 carried during, or used in furtherance of a violation of this chapter or AS 11.71; and

4 (8) property of any type traceable to a violation of this chapter or  
5 AS 11.71, except that for property that is real property, the violation must be a  
6 felony under this chapter or AS 11.71.

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10 the state in a criminal proceeding or in a separate civil proceeding in rem under  
11 procedures set out in AS 17.30.116, if the state proves by a preponderance of the  
12 evidence that the property is subject to forfeiture. It is prima facie evidence, sufficient  
13 to support an order of forfeiture, that a defendant has been convicted of conduct  
14 making the property subject to forfeiture, or that a grand jury has returned an  
15 indictment finding that the evidence, if unexplained or uncontradicted, would warrant  
16 a court to conclude that property identified in the indictment is subject to forfeiture.

17 (b) In commencing a forfeiture proceeding, the state shall provide notice of the  
18 property to be forfeited and of the connection the state will attempt to prove between  
19 the property and the conduct making it subject to forfeiture.

20 (c) It is not a defense to a forfeiture proceeding that a criminal offense has not  
21 been prosecuted, or has resulted in a conviction of a different offense or an acquittal.

22 (d) A forfeiture order or an order granting relief under AS 17.30.124 removes  
23 all liens, encumbrances, or other clouds on the title that are a direct result of the  
24 forfeiture proceedings.

25 (e) A person whose conduct causes property to be subject to forfeiture shall,  
26 in addition to any other fine, be assessed the reasonable charge of maintenance,  
27 storage, disposal, or other expenses of the forfeiture proceeding, including attorney fees  
28 of the state. These charges may be ordered paid as part of a sentence, a condition of  
29 probation or suspended imposition of sentence, or as an assessment of costs or attorney  
30 fees as appropriate in a civil or criminal proceeding.

31 (f) An order of forfeiture shall forfeit to the state any other assets of the person

THE  
FOLLOWING  
DOCUMENTS  
ARE  
POOR  
ORIGINAL  
COPIES

8-GH1057E  
Luckhaupt  
4/12/93

CS FOR HOUSE BILL NO. 188(JUD)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
EIGHTEENTH LEGISLATURE - FIRST SESSION

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1 (3) property that [WHICH] is used or intended for use as a container  
2 for property described in (1) or (2) of this section;

3 (4) a right, title, or interest in real property, including buildings  
4 and any other improvements, or a conveyance, including but not limited to aircraft,  
5 vehicles, or vessels, that [WHICH] has been used or is intended for use in  
6 manufacturing, transporting, or in any manner in facilitating the manufacture,  
7 transportation, sale, receipt, possession, or concealment of property described in (1) or  
8 (2) of this section in violation of a felony offense under this chapter or AS 11.71 [;  
9 HOWEVER,

10 (A) A CONVEYANCE MAY NOT BE FORFEITED UNDER  
11 THIS PARAGRAPH IF THE OWNER OF THE CONVEYANCE  
12 ESTABLISHES, BY A PREPONDERANCE OF THE EVIDENCE, AT A  
13 HEARING BEFORE THE COURT AS THE TRIER OF FACT, THAT USE  
14 OF THE CONVEYANCE IN VIOLATION OF THIS CHAPTER OR AS 11.71  
15 WAS COMMITTED BY ANOTHER PERSON AND THAT THE OWNER  
16 WAS NEITHER A CONSENTING PARTY NOR PRIVY TO THE  
17 VIOLATION;

18 (B) A FORFEITURE OF A CONVEYANCE ENCUMBERED  
19 BY A VALID SECURITY INTEREST AT THE TIME OF SEIZURE IS  
20 SUBJECT TO THE INTEREST OF THE SECURED PARTY IF THE  
21 SECURED PARTY ESTABLISHES, BY A PREPONDERANCE OF THE  
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25 THAT THE SECURED PARTY WAS NEITHER A CONSENTING PARTY  
26 NOR PRIVY TO THE VIOLATION];

27 (5) books, records, and research products and materials, including  
28 formulas, microfilm, tapes, data processing equipment, and data, that [WHICH] are  
29 used in violation of this chapter or AS 11.71;

30 (6) money, securities, negotiable instruments, or other things of value  
31 used in financial transactions derived from or used to facilitate a violation of

1 [ACTIVITY PROHIBITED BY] this chapter or AS 11.71; [AND]

2 (7) a dangerous instrument that [FIREARM WHICH] is visible,  
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4 (8) property of any type traceable to a violation of this chapter or  
5 AS 11.71, except that for property that is real property, the violation must be a  
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8 Sec. 17.30.112. PROCEEDINGS RESULTING IN FORFEITURE; ORDERS  
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10 the state in a criminal proceeding or in a separate civil proceeding in rem under  
11 procedures set out in AS 17.30.116, if the state proves by a preponderance of the  
12 evidence ~~that~~ the property is subject to forfeiture. It is prima facie evidence, sufficient  
13 to support an order of forfeiture, that a defendant has been convicted of conduct  
14 making the property subject to forfeiture, or that a grand jury has returned an  
15 indictment finding that the evidence, if unexplained or uncontradicted, would warrant  
16 a court to conclude that property identified in the indictment is subject to forfeiture.

17 (b) In commencing a forfeiture proceeding, the state shall provide notice of the  
18 property to be forfeited and of the connection the state will attempt to prove between  
19 the property and the conduct making it subject to forfeiture.

20 (c) It is not a defense to a forfeiture proceeding that a criminal offense has not  
21 been prosecuted, or has resulted in a conviction of a different offense or an acquittal.

22 (d) A forfeiture order or an order granting relief under AS 17.30.124 removes  
23 all liens, encumbrances, or other clouds on the title that are a direct result of the  
24 forfeiture proceedings.

25 (e) A person whose conduct causes property to be subject to forfeiture shall,  
26 in addition to any other fine, be assessed the reasonable charge of maintenance,  
27 storage, disposal, or other expenses of the forfeiture proceeding, including attorney fees  
28 of the state. These charges may be ordered paid as part of a sentence, a condition of  
29 probation or suspended imposition of sentence, or as an assessment of costs or attorney  
30 fees as appropriate in a civil or criminal proceeding.

31 (f) An order of forfeiture shall forfeit to the state any other assets of the person

1 who caused the property to be subject to forfeiture, up to the value of property subject  
2 to forfeiture, if the property subject to forfeiture has been

3 (1) commingled with other property and cannot be separated without  
4 difficulty or unreasonable expense to the state;

5 (2) transferred to, sold to, or deposited with a third party, placed  
6 beyond the jurisdiction of the court, or removed so it cannot be located;

7 (3) substantially diminished in value by an act or omission of the  
8 person who caused the property to be subject to forfeiture; or

9 (4) remitted to a claimant under AS 17.30.124.

10 (g) An order of forfeiture issued under this section may be made regardless of  
11 the location of the property, if the state has obtained personal jurisdiction over the  
12 person whose interest would be affected by the forfeiture.

13 (h) A perfected priority lien on property that has been ordered forfeited is  
14 created in favor of the state up to an amount that is the sum of the expenses of  
15 investigation, prosecution, and forfeiture proceeding arising out of the conduct making  
16 the property subject to forfeiture. In calculating the amount of the lien, expenses of  
17 all state, federal, or local agencies are to be included. The lien has priority over all  
18 unsecured debts associated with the property.

19 \* Sec. 3. AS 17.30.114(a) is amended to read:

20 (a) Property listed in AS 17.30.110 may be seized by a peace officer upon an  
21 order issued by a court having jurisdiction over the property upon a showing of  
22 probable cause that the property may be forfeited under AS 17.30.110. Seizure  
23 without a court order may be made if

24 (1) the seizure is incident to a valid arrest or a search under a valid  
25 search warrant or is otherwise constitutionally permissible;

26 (2) the property subject to seizure has been the subject of an earlier  
27 judgment in favor of the state in a criminal proceeding or civil proceeding in rem  
28 under this chapter or AS 11.71; or

29 (3) there is probable cause that the property is subject to forfeiture  
30 under AS 17.30.110 - 17.30.126 [WAS USED, IS BEING USED, OR IS INTENDED  
31 FOR USE, IN VIOLATION OF THIS CHAPTER OR AS 11.71] and the property is

1 easily movable; property seized under this paragraph may not be held for more than  
2 48 hours without a court order obtained to continue its detention.

3 \* Sec. 4. AS 17.30.116(b) is amended to read:

4 (b) Upon service or publication of notice of commencement of a forfeiture  
5 action under this section, a person, including a criminal defendant, claiming interest  
6 in the property shall file within 30 days after the service or publication, a notice of  
7 claim. The notice of claim shall be made under oath and must set [ SETTING] out  
8 the nature of the interest, the date it was acquired, the consideration paid, and an  
9 answer to the state's allegations. If a claim and answer is not filed within the time  
10 specified, the property described in the state's allegation must be ordered forfeited to  
11 the state without further proceedings or showings.

12 \* Sec. 5. AS 17.30.116 is amended by adding a new subsection to read:

13 (d) A criminal defendant or a person claiming an interest in the property under  
14 this section and AS 17.30.124 may testify, present evidence and witnesses, and cross-  
15 examine witnesses presented by other parties. In addition to other testimony and  
16 evidence presented, the court may consider the relevant portions of the record of a  
17 related criminal action. The court shall make findings of fact regarding contested  
18 issues and shall set out its conclusions of law.

19 \* Sec. 6. AS 17.30.122 is amended to read:

20 Sec. 17.30.122. STATE DISPOSAL OF FORFEITED PROPERTY. Property  
21 forfeited under AS 17.30.110 - 17.30.126 other than controlled substances shall be  
22 disposed of by the commissioner of administration in accordance with applicable law.  
23 The commissioner of administration may

24 (1) destroy property harmful to the public;

25 (2) sell the property and use the proceeds for payment of all proper  
26 expenses of the proceedings for forfeiture and sale, including expenses of seizure,  
27 custody, and court costs;

28 (3) take custody of the property and authorize its use in the  
29 enforcement of this chapter or AS 11.71, or transfer it to another agency of the state  
30 or a political subdivision of the state for a use in furtherance of the administration of  
31 justice;

1           (4) at the direction of the commissioner of public safety, transfer up to 90  
2 percent of the net value of the forfeited property to one or more agencies or  
3 political subdivisions of the state for use in furtherance of the administration of  
4 justice; in directing this transfer, the commissioner of public safety may take into  
5 account an equitable allocation based on the amount of the contribution made by  
6 each agency to the investigation or prosecution of the conduct making the  
7 property subject to forfeiture, or based on any agreements as to the sharing of  
8 assets:

9           (5) take custody of the property and remove it for disposition in  
10 accordance with law;

11           (6) [(5)] forward it to the Drug Enforcement Administration of the  
12 United States Department of Justice for disposition; or

13           (7) [(6)] transfer ownership of an aircraft to the Alaska Wing, Civil Air  
14 Patrol.

15 \* Sec. 7. AS 17.30.124 is amending by adding a new subsection to read:

16           (c) A person who has filed a timely claim under AS 17.30.116(b) may have  
17 the property remitted by the court under (a) of this section upon proof by a  
18 preponderance of the evidence that the person

19           (1) has a valid right, title, or interest in the property, acquired in good  
20 faith, that takes priority over a lien in favor of the state arising under AS 17.30.112(h);

21           (2) did not knowingly participate in or facilitate the conduct that  
22 resulted in the property being subject to forfeiture; and

23           (3) did not know or have reasonable cause to believe that a person  
24 might engage in the conduct that resulted in the property being subject to forfeiture.

25 \* Sec. 8. AS 17.30.900 is amended by adding a new subsection to read:

26           (c) In AS 17.30.110 - 17.30.126, "dangerous instrument" has the meaning  
27 given in AS 11.81.900(b).

28 \* Sec. 9. AS 17.30.124(b) is repealed.

29 \* Sec. 10. This Act takes effect July 1, 1993.



Alaska Action Trust

P.O. Box 102333 • Anchorage, Alaska 99510  
Office: 540 "L" Street, Suite 206 • Anchorage, AK 99501  
(907) 258-4040 • FAX (907) 276-7185

To: Representative Porter, Chair of House Judiciary  
Representative James, Vice-Chair of House Judiciary  
Representative Kott  
Representative Phillips  
Representative Green  
Representative Davidson  
Representative Nordlund

From: Christine Schleuss

Date: April 13, 1993

RE: HB 188, "An Act related to forfeiture of certain property; and providing for an effective date."

\*\*\*\*\*

The Alaska Action Trust would not oppose a bill which would provide for the forfeiture of controlled substances and of property traceable to drug dealing when the property is forfeited from convicted drug dealers. However, the Alaska Action Trust opposes HB 188 because it will be unfairly used to take property from innocent citizens who committed no crime and who did not know that their property was being used by drug dealers to complete their illegal deals.

As presently written, AS 17.30.112 provides for forfeiture upon either a conviction of the defendant for a drug crime, or upon a judgment of a court in a separate civil proceeding. The proposed changes to AS 17.30.112 dramatically increase the circumstances when forfeiture is permitted. These changes will result in seizure and forfeiture of a person's primary residence, a person's boat, airplane, or other vehicle if any minimal

connection is made between such property and any alleged felony narcotics offense.

The reality is that few people can afford effectively to contest forfeiture proceedings. Frequently, the value of the property itself will be less than the cost of resisting forfeiture. What that means is that in the majority of cases, the state will succeed in taking away the private property of Alaskans simply on a showing of probable cause, without ever having to prove, even by a preponderance of evidence, that it is entitled to the property. Innocent owners of real and personal property will be greatly harmed.

1. The Scope Of The Forfeitures Envisioned By This Bill Is Vast.

Without question, the most frequently prosecuted offenses in Alaska consist of alleged violations of drug laws. In addition to providing procedures for forfeiture, HB 188 amends AS 17.30.110, and specifically authorizes the seizure and forfeiture of real property. Under this Bill, if one member of a residence, or even a visitor to the residence, uses or intends to use the family home in order to possess, conceal, or store a small amount of a controlled substance, possession of which is a class C felony, the state may seize the residence on a showing of probable cause connecting the possession to the home, thus shifting the burden of proof as to the narrow, permitted defense or exemption to perfectly innocent co-habitants of the home.

Recommendation:

(1) Forfeiture provisions should be made applicable only to the most serious felony drug offenses. By narrowing the class of cases in which forfeiture is available, the Legislature can minimize the potential for abuse and maximize the compensatory and deterrent effect.

(2) No forfeiture of real property should be permitted unless the interest in the property "contributes directly and materially to the commission of a specified" serious felony offense for which the defendant is convicted. N.Y. CPLR Art. 13A §1310(4)(a); New York Penal Laws §490.00(6).

2. Additional Observations.

The provision in this Bill which permits the proceeds of forfeitures to end up with the Department of Public Safety creates tremendous potentials for unlawful searches and seizures and abuse of the forfeiture process. Any general forfeiture bill should mandate disbursement of any proceeds of forfeitures to the Department of Health & Social Services.

Jurisdiction becomes a problem. Currently state court prosecutions may be coordinated with federal forfeiture proceedings. If the state expands its forfeiture provisions, then the Bill should include a prohibition against state enforcement officers initiating federal forfeiture proceedings.

Proposed AS 17.30.114(a)(1) purports to permit a peace officer to seize property allegedly subject to forfeiture without a court order as "is otherwise constitutionally permissible. . . ."

This provision is hopelessly vague, encourages warrantless privacy invasions, and contains no limits upon the discretion of individual officers. This proposed additional clause must be deleted.

The provisions provide for permanent forfeiture of property upon only a showing of a preponderance of evidence as the burden of proof. This burden of proof is constitutionally deficient. At least clear and convincing evidence should be required before valuable licenses, personal residences, and other substantial interests may be forfeited to the state. Dep't of Law Enforcement v. Real Property, Etc., 588 So.2d 957 (Fla. 1991).

#### CONCLUSION

A carefully constructed, procedurally fair, and judiciously implemented statute which provides procedures for forfeiture of proceeds from, or instrumentalities used in, the commission of the most serious drug offenses is a desirable legislative goal. HB 188, however, is a procedurally unfair, constitutionally deficient proposal, which will result in the overbroad application of disfavored forfeiture proceedings in virtually every felony drug case.

While the Bill may be an effective way of divesting citizens of their private property, it is not narrowly tailored or closely fitted to divesting only those who have actually used the property in, or benefitted from, criminal conduct. Instead, it will encourage privacy violations by providing an affirmative financial incentive for law enforcement officers to conduct suspect searches and seizures. It will result in a massive redistribution

of private property, not because accurate determinations have been made of the connection between the property and crime, but simply because very few individuals will have the resources or incentive to enter into forfeiture fights with the state. The methods and consequences of an expansive forfeiture scheme are offensive to peculiarly Alaskan beliefs in, and commitments to, the importance of individual privacy, preservation of private property, guarantee of fair process, and minimization of discretionless government intrusion into private lives.

## How HB 188 Protects Innocent Owners of Property

Current law allows lienholders and secured creditors (such as banks and other lending institutions) to avoid forfeiture of cars, planes, boats, and other conveyances if they did not consent to it being used to deal drugs, and they were not "privy to the violation". AS 17.30.110(4).

Although there is no statutory definition of "privy", the Alaska Supreme Court has followed federal law in describing when the state can constitutionally forfeit property owned by someone other than the law violator. In *State v. Rice*, 626 P.2d 104 (Alaska 1981), the court held that property must be returned to a security holder if "prior to parting with the property he did not know, nor have reasonable cause to believe, [either] that the property would be used to violate [the law, or] . . . that the violator had a criminal record or a reputation for" committing such an offense. *Id.* at 114 (quoting from 19 CFR § 171.13(a)).

Thus, under the supreme court's analysis, if a bank loans money for a new car to a person who is known to be a convicted drug dealer, or who even has a reputation as a drug dealer, the state could constitutionally forfeit the bank's interest in the car if the buyer later uses it to sell drugs. This is a high standard of care that is imposed upon lending institutions, and it is doubtful there is any practical way they can conduct the kind of searching inquiry that will completely insulate them from forfeiture of the security interest.

HB 188, however, takes a more practical approach. First, it protects all types of innocent owners, not merely those who have a security interest in cars, planes, and boats. Second, it specifies that property is to be returned ("remitted" is the term of art used in the bill) to the innocent owner if the person did not "knowingly" participate in or facilitate the crime, and if the person did not "know or have any reasonable cause to believe" that a drug offense would be committed using the property.

Under this provision, persons who loan or rent their property to friends or acquaintances who are drug dealers will have to think twice before doing so, while legitimate business will be able to loan money without fear that they face losing their entire interest if the property is used in a way that was not foreseeable.

## HB 188: House Judiciary Committee

Thank you Chairman Porter, Members of the Committee. My name is Shelley Owens. I am an attorney in private practice in Juneau. A few years ago I was employed by the Municipality of Anchorage as an Asst. Municipal Prosecutor. I'm speaking in opposition to HB 188 on behalf of the AK Civil Liberties Union.

HB 188 would broaden a law which already represents a fundamental and basic attack on individual rights guaranteed by State & Federal Constitutions. In forfeiture proceedings, there are no due process rights or right to counsel because forfeiture is an action against the property itself, not the person. Forfeiture creates a punishment mechanism which is outside of the criminal justice process, thereby circumventing the protections that would otherwise be guaranteed to a person accused of a crime.

Currently the law provides for forfeiture following criminal conviction or a civil judgment in a forfeiture action. HB 188 would allow the state to forfeit property following a person's indictment for a criminal offense. One impact of this change would be to allow the State to seize a person's bank accounts after an indictment, possibly eliminating the defendant's ability to retain independent defense counsel, which I have been told would transfer the defense burden to the the State Public Defender Agency. I haven't seen a fiscal note about the added costs to the state of enacting HB 188.

HB 188 also opens the door for the State to forfeit the property of innocent people who haven't been charged with a crime. Nationally, half of people who lose property under forfeiture laws have not been charged w/ a crime, and 80% of people who lose their property don't or can't contest the forfeitures. I came across a few examples of problems with overbroad forfeiture laws in other states in the WA Post and Newsweek Magazine:

- Priest in Wasco, CA bought a Mercury Grand Marquis from a car dealer who was running a drug-smuggling organization on the side. FBI seized the car & 3 mos. for the priest to get car back.
- NY man lost 1986 Camaro & \$40,000 in legal fees: gave ride to customer at bar he worked at (carrying cocaine): charges dismissed but car not returned: prosecutor argued for forfeiture that it was an ideal type of car for undercover work.
- Married couple in SD lost \$100,000 home bought w/ insurance proceeds from accident husband suffered as an ironworker. Police found trace of mj in home & mj roach or butt in daughter's car.

Other states have expanded the law beyond drug offenses:

- NJ woman lost '87 Oldsmobile after lent it to son who drove to Sears, shoplifted pair of pants & ran into a security guard.
- Portland, OR: restaurant owner hired his brother to work as a bartender. The brother engaged in gambling without the restaurant owner's knowledge, and was arrested. The police seized the restaurant & it cost the owner \$20,000 to get restaurant back, incl. \$10,000 in attorney fees.

Forfeiture laws have existed since 1700's when used against pirates & smugglers: revived in 1980's. Since then the Govt has used the law to engage in a little piracy of its own:

Chair of House Govt Operations Committee John Conyers: Fed. program is creating gross miscarriages of justice. Since 1985 Fed. Govt. has seized \$2.6 billion in assets. In 1991, 35,295 seizures were made, incl. a Mr. Coffee & pair of baby shoes. A NJ prosecutor is driving around in a seized yellow Corvette & Denver police seized weight lifting equipment from health club bust for their use.

A 1991 General Accounting Office report noted chronic problems w/ US Dept of Justice program. Head of Office of Asset Forfeiture calls the program "Goose that lays the golden egg".

US SCT is scheduled in July to decide if 8th Amendment prohibition against cruel and unusual punishment should apply to forfeiture proceedings. I'd suggest that you hold the bill over until next year to see what the impact of the Supreme Court rulings on HB 188.

I gave you some examples of forfeiture abuses in other states, but Alaska has had problems as well with Fed. forfeiture law. A few years ago a couple moved into a mother-in-law apartment attached to a single family dwelling on the Hillside in ANC. A day or two after they moved in, before they had unpacked, the police raided the house & apt. The police seized the tenants' property as well, including jewelry and artwork, much of it still in boxes. The property was never returned to them and was sold without their notice at auction. The family has since left Alaska.

Under State law we currently have greater protection against these types of abuses than under Fed. law, which HB 188 would change. Judges now have the discretion to seize contraband, impose hefty fines & to seize conveyances and property following criminal conviction or a judgment in a civil forfeiture action. Expansion of the law to allow forfeiture upon indictment would create an automatic punishment outside of due process protections not only for a criminal defendant but for the uncharged innocent person as well.

A broadening of the forfeiture law coupled with the right to receive the forfeiture proceeds would give law enforcement agencies a direct financial stake in the outcome and an incentive towards overzealous law enforcement activities. A property owner in a forfeiture proceeding has no right to an attorney, and would have to choose between losing his property or engaging in an expensive and lengthy court battle against govt. Even if he gets his property back, he may still have to pay for towing, storage and retrieval fees as well as his attorney fees and costs.

While forfeiture is a useful and powerful tool in the war against drugs, it should not be accessed until a person has been convicted of a crime and where it can be proven that the property was actually used in a crime or represents the profits of criminal activity. If the concern of law enforcement is that the asset will disappear while the criminal action is pending, the preferred solution would be to seek a court order freezing the assets in question, rather than forfeiture and disposal of the asset prior to criminal conviction or civil court judgment.

The proposal of HB 188 to amend the existing law to allow forfeiture of property of a person who has not been charged with a crime, or who has been indicted but not yet convicted significantly enlarges the pool of people whose property is subject to forfeiture and puts every person at risk who lends a car to anyone (including their own teenager), gives a co-worker a ride, owns a joint bank account, owns rental or remote property or rents property from another person.

Thank you for the opportunity to speak on this bill.

## Section-by-section description of HB 188 (asset forfeiture for drug offenses)

Section 1 of the bill lists the property subject to forfeiture:

- permits forfeiture of real property, including buildings
- permits tracing of drug money to allow forfeiture of any property purchased by such funds
- permits forfeiture of all dangerous instruments used by drug dealers (current law forfeits only firearms) and modernizes the law by permitting forfeiture of computer equipment used in drug dealing
- deletes the provisions relating to "innocent owners", which are relocated and dealt with more comprehensively in Section 7

Section 2 of the bill lists the procedures used in forfeiture more comprehensively, thus resolving some of the procedural ambiguities noted by the Alaska Court of Appeals in *Badoino v. State*, 785 P.2d 39 (Alaska App. 1990).

- although the burden is on the state, the bill provides that a *prima facie* case has been proven if a defendant who has used the property has been convicted of a drug offense or if a grand jury issues an indictment identifying the property as connected to criminal activity

- requires the costs of the forfeiture proceedings to be paid by the drug dealer
- allows the court to forfeit other assets of the drug dealer if the property to be forfeited is commingled with other property, has been removed from the jurisdiction, or has been destroyed
- gives the state a perfected priority lien on the forfeited property, and thus avoids the pitfalls of *Fehir v. State*, 755 P.2d 1107 (Alaska 1988), which permits unsecured creditors to claim forfeited property

Section 3 permits seizure of property that is subject to forfeiture on any grounds permitted by the constitution.

Sections 4 and 5 resolve other ambiguities noted in *Badoino v. State*, by clarifying that the procedures in AS 17.30.116 also apply to defendants in criminal proceedings, by permitting criminal defendants to resist forfeiture through standard judicial procedures, and by requiring judges to set out findings of fact to support the forfeiture and to facilitate appellate review. The bill also specifies that persons claiming property that is subject to forfeiture must present that claim under oath.

Section 6 permits municipal law enforcement agencies to share in the value of forfeited property that they helped to obtain.

Section 7 provides that an innocent owner of property that is subject to forfeiture may obtain "remission" of that property by proving that the person acquired the property in good faith, did not participate or facilitate the crime, and did not know or have reasonable cause to believe that the property would be used in a drug offense.

Section 8 provides a definition used in Section 1. Section 9 is the repealer section. Section 10 provides an effective date of July 1, 1993.

FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

No. 4  
Bill Version: HR 188  
(H) Publish Date: 3/1/93

Revision Date: February 16, 1993

Title: "An Act relating to forfeiture of certain property..."

Sponsor: Rules Committee/Reg. of Governor

Requestor: Governor's Office/OMB

Department Affected: Department of Law

BRU: Prosecution

Component: All

COMPONENT SERIAL NO. 0085 through 0090

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

REVENUE FUND SOURCE:						
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FUNDING:

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

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

Estimate of current year (FY93) impact: -0-

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

Prepared by: Richard I. Peques, Director

Division: Administrative Services/Division

Phone: 465-3672

Date: February 16, 1993

Approved by Commissioner: Charles E. Cole, Attorney General

Agency: Department of Law

Date: February 16, 1993

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FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

No. 1  
Bill Version: HB 188  
(H) Publish Date: 3/1/93

Revision Date: \_\_\_\_\_  
Title: 'An Act relating to forfeiture of certain property . . .'  
Sponsor: Rules Committee  
Requestor: Governor

Department Affected: Administration  
BRU: Public Defender Agency  
Component: Public Defender Agency  
COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

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

POSITIONS:

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

Estimate of current year (FY93) impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

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

Phone: 279-7541  
Date: \_\_\_\_\_

Approved by Commissioner: Nancy Bear Usery  
Agency: Administration

Date: 2/10/93

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# **CORRECTION**

**THIS DOCUMENT  
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TO ASSURE LEGIBILITY**

FISCAL NOTE

No. 4  
 Bill Version: HB 188  
 (H) Publish Date: 3/1/93

STATE OF ALASKA  
 1993 LEGISLATIVE SESSION

Revision Date: February 16, 1993  
 Title: "An Act relating to forfeiture of certain property..."  
 Sponsor: Rules Committee/Req. of Governor  
 Requestor: Governor's Office/OMB

Department Affected: Department of Law  
 BRU: Prosecution  
 Component: All  
 COMPONENT SERIAL NO. 0085 through 0090

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

REVENUE						
FUND SOURCE:						

FUNDING:

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

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

Estimate of current year (FY93) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

*Richard I. Peques*

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

Phone: 465-3672  
 Date: February 16, 1993

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

Date: February 16, 1993

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FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. 188

NO. 4

Pg 2 of 2

ANALYSIS (Continued):

This bill amends the state drug asset forfeiture laws (AS 17.30) in order to resolve procedural ambiguities in the existing law, as noted in Badoino v. State. Because of those ambiguities the state has had to rely on federal prosecutors for most drug forfeiture actions in Alaska, thus reducing the proceeds that would otherwise flow to the state as the result of the seizure and sale of assets used in narcotics trafficking.

This bill would also permit the forfeiture of real property, including buildings; permit the tracing of drug money to allow forfeiture of any property purchased with that money; permit the forfeiture of all dangerous instruments used by a drug dealer, while existing law requires forfeiture only of firearms; permit the sharing of forfeited assets between municipal police departments and the state; require the state's costs for forfeiture proceedings to be paid by the drug dealer; allow the court to forfeit other assets of the drug dealer if the property to be forfeited is commingled with other property, has been removed from the court's jurisdiction or has been destroyed by the drug dealer; and give the state a perfected priority lien on the forfeited property ahead of unsecured creditors.

All of these changes are designed to improve the state's forfeiture and disposal of drug trafficking assets, and they are expected to have positive fiscal impact for the state.

FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

No. 1  
Bill Version: HB 188  
(H) Publish Date: 3/1/93

Revision Date: \_\_\_\_\_  
Title: 'An Act relating to forfeiture of certain property ...'  
Sponsor: Rules Committee  
Requestor: Governor

Department Affected: Administration  
BRU: Public Defender Agency  
Component: Public Defender Agency  
COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

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

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

FUNDING:

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

POSITIONS:

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

Estimate of current year (FY93) impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)  
\_\_\_\_\_

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

Phone: 279-7541  
Date: \_\_\_\_\_

Approved by Commissioner: Nancy Bear Usera  
Agency: Administration

Date: 2/10/93

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FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

No. 2  
Bill Version: HB 188  
(H) Publish Date: 3/1/93

Revision Date: \_\_\_\_\_  
Title: 'An Act relating to forfeiture of certain property;  
and providing . . .'  
Sponsor: Governor  
Requestor: Rules Committee

Department Affected: Administration  
BRU: Office of Public Advocacy  
Component: Office of Public Advocacy  
COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

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

REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

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

POSITIONS:

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

Estimate of current year (FY93) impact: None

ANALYSIS: (Attach a separate page if necessary.)

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

Phone: 274-1684  
Date: \_\_\_\_\_

Approved by Commissioner: Nancy Bear Usara  
Agency: Administration

Date: 3/1/93

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# FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

No. 3  
Bill Version: HB 188  
(H) Publish Date: 3/1/93

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety  
Title: "An Act relating to forfeiture  
of certain property." BRU: Alaska State Troopers  
Sponsor: Rules Component: Criminal Investigation Bureau  
Requestor: Governor COMPONENT SERIAL NO. 830

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

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>REVENUE FUND SOURCE:</b>	-0-	-0-	-0-	-0-	-0-	-0-

**FUNDING: (Thousands of Dollars)**

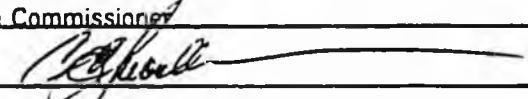
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

**POSITIONS:**

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

Estimate of current year (FY 93) impact: \$ \_\_\_\_\_

**ANALYSIS:** (Attach a separate page if necessary.) This zero fiscal note is based on the assumption that the Department of Admin. will make forfeiture reports available to the Dept. of Public Safety Commissioner to determine recommendations for the transfer of up to 90% of the net value of forfeited property to one or more agencies or political subdivisions of the State as set out in Sec. 17.30.122(4).

Prepared By: C.E. Swackhammer Phone: 465-4322  
Division: Office of the Commissioner Date: 2/12/93  
Approved by Commissioner:  Date: 2/12/93  
Agency: Richard L. Burton, Dept. of Public Safety

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# FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO: HB 188

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety

Title: "An act relating to forfeiture of BRU: Alaska State Troopers

certain property: " Component: Detachments

Sponsor: House Rules

Requestor: House Judiciary COMPONENT SERIAL NO. 799

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

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>REVENUE FUND SOURCE:</b>	-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						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

**POSITIONS:**

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

Estimate of current year (FY 93) impact: \$ \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact is anticipated.

Prepared By: Francis C. Allan Phone: 269-5691

Division: Alaska State Troopers Date: 3/17/93

Approved by Commissioner:  Date: 3/25/93

Agency: Richard L. Burton, Dept. of Public Safety

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HOUSE JOURNAL

490

March 1, 1993

**HB 188**

"An Act relating to forfeiture of certain property; and providing for an effective date."

was read the first time and referred to the Judiciary and Finance Committees.

The following fiscal notes apply to HB 188:

Zero fiscal notes (2), Dept. of Administration, 3/1/93

Zero fiscal note, Dept. of Public Safety, 3/1/93

Zero fiscal note, Dept. of Law, 3/1/93

"Dear Speaker Barnes:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill amending the state's asset forfeiture laws to make them more effective. Many of these changes are found in the Model Asset Seizure and Forfeiture Act (1991), prepared by the American Prosecutor's Research Institute. This bill

- permits forfeiture of real property, including buildings;
- permits tracing of drug money to allow forfeiture of any property purchased with that money;
- permits forfeiture of all dangerous instruments used by a drug dealer, while existing law requires forfeiture only of firearms;
- permits the sharing of forfeited assets between municipal police departments and the state;
- requires the costs of the forfeiture proceedings to be paid by the drug dealer;
- allows the court to forfeit other assets of the drug dealer if the property to be forfeited is commingled with other property, has been removed from the jurisdiction, or has been destroyed by the drug dealer;
- gives the state a perfected priority lien on the forfeited property, and thus avoids the pitfalls of *Fehir v. State*, 739 P.2d 785

March 1, 1993

491

**HB 188**

(Alaska App. 1987), which permits unsecured creditors to claim forfeited property; and

-- resolves some of the procedural ambiguities in existing forfeiture law noted in *Badoino v. State*, 785 P.2d 39 (Alaska App. 1990).

This bill is one of four that I am introducing this session to create tough new laws to combat drugs and violent crime. If enacted, these bills will give the state the tools it needs to prosecute serious criminals fairly and effectively.

I urge your favorable action on this bill.

Sincerely,

/s/

Walter J. Hickel  
Governor"

**HB 189**

HOUSE BILL NO. 189 by the House Rules Committee by request of the Governor, entitled:

"An Act relating to the charging, prosecuting, and sentencing of certain minors concerning offenses of murder in the first degree, attempted murder in the first degree, murder in the second degree, and certain other offenses; and providing for an effective date."

was read the first time and referred to the Health, Education & Social Services, Judiciary and Finance Committees.

The following fiscal notes apply to HB 189:

Zero fiscal notes (2), Dept. of Administration, 3/1/93

Zero fiscal note, Dept. of Corrections, 3/1/93

Zero fiscal note, Dept. of Health & Social Services, 3/1/93

Zero fiscal note, Dept. of Law, 3/1/93

Zero fiscal note, Dept. of Public Safety, 3/1/93

The Governor's transmittal letter, dated March 1, 1993, appears below:

**BILL NO:** HB 188

**DATE:** March 24, 1993

**TITLE:** "An Act relating to  
forfeiture of certain  
property. . ."

**CONTACT:** C.E. Swackhammer  
Deputy Commissioner  
465-4322

HB 188 will provide law enforcement with a more effective means of utilizing asset forfeiture as a tool to combatting drugs and violent crimes by taking weapons away from criminals and illegally gained assets from drug dealers.

This bill will:

permit forfeiture of real property including buildings;

permit tracing of drug money to allow forfeiture of any property purchase with that money;

permit forfeiture of all dangerous instruments used by a drug dealer;

permit the sharing of forfeited assets between municipal police departments and the state;

require the cost of all forfeiture proceedings to be paid by the drug dealer;

allow the court to forfeit other assets of the drug dealer if the property to be forfeited is co-mingled with other property, or has been removed from the jurisdiction;

give the state a perfected priority lean on the forfeited property and thus avoids the pitfalls of unsecured creditors claiming forfeited property;

resolve current procedural ambiguities in existing forfeiture law;

This legislation will provide Alaskan law enforcement agencies with the same mechanism presently utilized by the Federal government to seize from drug dealers assets used in the commission of crimes relating to controlled substances.



Richard L. Burton  
Commissioner

HB

1955

lib

1 procedures governing certain juvenile proceedings, the Alaska Delinquency Rules. To the  
2 extent of any inconsistency between them, the supreme court has observed, the delinquency  
3 rules supersede and prevail over related procedural provisions of the state statutes.

4 (b). The court's delinquency rules authorize the ~~use of pre-petition diversion~~  
5 ~~programs~~ informal disposition~~s~~ of alleged juvenile delinquency matters before the filing with  
6 the court of a petition for juvenile delinquency adjudication. They assign primary  
7 responsibility for those informal dispositions to the juvenile intake unit of the Department of  
8 Health and Social Services.

9 (c) The authorization and expansion of the youth court model made by this Act as a  
10 pre-petition diversion program is prompted by the success enjoyed by the Anchorage Youth  
11 Court model since its inception in 1989. In the Anchorage Youth Court model, interested  
12 young people and adults, with the generous support and assistance of the juvenile intake  
13 office, Department of Health & Social Services, the Alaska Court System, the Alaska Bar  
14 Association, the Anchorage Bar Association, law enforcement and school district officials,  
15 professionals, and parents, have developed and implemented a mechanism by which to respond  
16 to juvenile legal problems and to adjudicate them informally, promptly, and effectively, in a  
17 way that is meaningful to the offender, the victim, and the community.

18 (d) This Act is adopted in furtherance of the recommendation expressed in Legislative  
19 Resolve 61 adopted by the Seventeenth Alaska State Legislature urging expanded use of youth  
20 courts within the state.

21 \* Sec. 3. AS 18.05 is amended by adding a new section to read:

22 ARTICLE 2. YOUTH COURTS.

23 Sec. 18.05.100. YOUTH COURTS. (a) The ~~department~~ youth courts  
24 to hear, determine, and dispose of cases involving a minor whose alleged act that  
25 brings the minor within the jurisdiction of AS 47.10.010 - 47.10.142 constitutes a  
26 violation of a state or municipal law.

27 (b) Unless otherwise directed by the commissioner, the jurisdiction of a youth  
28 court is coextensive with the boundaries of the municipality in which the youth court  
29 is located. ~~Only one youth court~~ may be established within the boundaries of a  
30 municipality. Nothing in this subsection prohibits two or more municipalities from  
31 operating a single youth court for the municipalities by agreement between them.



Rep. Brian Porter, Chairman

# House Judiciary Committee

Date: April 16, 1993  
Place: Capitol Room 120

SB 54 Juvenile Waiver  
HB 222 Use of Rented Property/Law Violations  
HB 188 Forfeiture of Property  
HB 195 Authorizing Youth Courts  
HB 187 Interception of Private Communications

**Subject of Meeting:** HB 132 Extend Resource  
Extraction Permit/Lease

Please Print Name	Representing	Business/Personal Mailing Address	Zip	(H) Phone	(W) Phone	Do you Want to Testify?	Which Subject/ Which Bill?
ERANS McMillion	AK Environ. Lobby	P.O. Box 22151 <sup>JNU,</sup> AK	99802	586-2476	463-3366	<input checked="" type="radio"/> Y <input type="radio"/> N	HB 132
C. S. CHRISTENSEN	COURT SYSTEM	303 R. ST ANCH	99501		463-4770	<input checked="" type="radio"/> Y <input type="radio"/> N	HB 195
						<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	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	

Rep. Brian Porter, Chairman

# House Judiciary Committee

Date: April 16, 1993  
Place: Capitol Room 120

SB 54 Juvenile Waiver  
HB 222 Use of Rented Property/Law Violations  
HB 188 Forfeiture of Property  
HB 195 Authorizing Youth Courts  
HB 187 Interception of Private Communications

Subject of Meeting: HB 132 Extend Resource  
Extraction Permit/Lease

Please Print Name	Representing	Business/Personal Mailing Address	Zip	(H) Phone	(W) Phone	Do you Want to Testify?	Which Subject/Which Bill?
Mary A. A. ORRACE	ALASKA MINERS ASSN	240 MAIN ST., STE 500	99801		586-3340	<input checked="" type="radio"/> Y <input type="radio"/> N	HB 132
Margot Knuth	Law - CDCO	BOX 110300	99811		465-3428	<input checked="" type="radio"/> Y <input type="radio"/> N	SB 54
Randall Hines	DHSS	Box 110630	99811		465-3187	<input checked="" type="radio"/> Y <input type="radio"/> N	SB 54 & HB 195
						<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	
						<input type="radio"/> Y <input type="radio"/> N	

FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

BILL NO. CSHB 195 (HES)

Revision Date: April 7, 1993 Dept. Affected: Health and Social Services  
 Title: An Act authorizing youth courts for peer adjudication of minors... BRU: Family & Youth Services  
 Sponsor: Representatives SITTON, Ulmer Component: Southeastern, Southcentral, & Northern Regions  
 Requestor: House Judiciary Committee COMPONENT SERIAL NO. 0258, 0254, & 0255

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

REVENUE FUND SOURCE						
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FUNDING:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: None

ANALYSIS: (Attach a separate page if necessary)

There would be no fiscal impact to the department if this bill were to become law.

Prepared by: Deborah R. Wing, Director  
 Division: Family and Youth Services

Phone: 465-3191  
 Date: 04/07/93

Approved by Commissioner: Theodore A. Mala, MD, MPH  
 Agency: Department of Health & Social Services

Date: 4/12/93

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Chenoweth  
4/13/93

CS FOR HOUSE BILL NO. 195( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES SITTON, Ulmer, Willis, Foster, Brown, B.Davis, Olberg, Porter

A BILL

FOR AN ACT ENTITLED

1 "An Act authorizing youth courts by which to provide for peer adjudication of  
2 minors who have allegedly committed violations of state or municipal laws, and  
3 renaming the community legal assistance grant fund and amending the purposes  
4 for which grants may be made from that fund in order to provide financial  
5 assistance for organization and initial operation of youth courts."

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

7 \* Section 1. PURPOSE OF ACT. The purpose of this Act is to provide a means by which  
8 young people under the age of 18, with the concurrence of the juvenile intake unit of the  
9 Department of Health and Social Services, may choose to work with their peers and with  
10 interested adults in order to resolve their legal problems without receiving a criminal record.

11 \* Sec. 2. CONSIDERATIONS RELATING TO THE ACT'S ADOPTION. (a) "...  
12 [P]ursuant to [state] constitutional authority granting rulemaking power to the Alaska supreme  
13 court," the Alaska Court System has adopted a body of rules applicable to the practice and

1 procedures governing certain juvenile proceedings, the Alaska Delinquency Rules. To the  
2 extent of any inconsistency between them, the supreme court has observed, the delinquency  
3 rules supersede and prevail over related procedural provisions of the state statutes.

4 (b) The court's delinquency rules authorize the use of "pre-petition diversion  
5 programs," informal dispositions of alleged juvenile delinquency matters before the filing with  
6 the court of a petition for juvenile delinquency adjudication. They assign primary  
7 responsibility for those informal dispositions to the juvenile intake unit of the Department of  
8 Health and Social Services.

9 (c) The authorization and expansion of the youth court model made by this Act as a  
10 pre-petition diversion program is prompted by the success enjoyed by the Anchorage Youth  
11 Court model since its inception in 1989. In the Anchorage Youth Court model, interested  
12 young people and adults, with the generous support and assistance of the juvenile intake  
13 office, Department of Health & Social Services, the Alaska Court System, the Alaska Bar  
14 Association, the Anchorage Bar Association, law enforcement and school district officials,  
15 professionals, and parents, have developed and implemented a mechanism by which to respond  
16 to juvenile legal problems and to adjudicate them informally, promptly, and effectively, in a  
17 way that is meaningful to the offender, the victim, and the community.

18 (d) This Act is adopted in furtherance of the recommendation expressed in Legislative  
19 Resolve 61 adopted by the Seventeenth Alaska State Legislature urging expanded use of youth  
20 courts within the state.

21 \* Sec. 3. AS 18.05 is amended by adding a new section to read:

22 ARTICLE 2. YOUTH COURTS.

23 Sec. 18.05.100. YOUTH COURTS. (a) The department may use youth courts  
24 to hear, determine, and dispose of cases involving a minor whose alleged act that  
25 brings the minor within the jurisdiction of AS 47.10.010 - 47.10.142 constitutes a  
26 violation of a state or municipal law.

27 (b) Unless otherwise directed by the commissioner, the jurisdiction of a youth  
28 court is coextensive with the boundaries of the municipality in which the youth court  
29 is located. Only one youth court may be established within the boundaries of a  
30 municipality. Nothing in this subsection prohibits two or more municipalities from  
31 operating a single youth court for the municipalities by agreement between them.

1 (c) A nonprofit corporation may obtain recognition from the commissioner to  
2 serve as a youth court. The corporation may exercise only the powers that are  
3 delegated to a youth court by the commissioner, and shall exercise those powers as  
4 authorized by the corporation's articles of incorporation and bylaws. The bylaws of  
5 the corporation must set out standards and procedures by which the corporation, in its  
6 capacity as a youth court,

7 (1) guarantees the constitutional rights of the juvenile that are  
8 guaranteed by the state and federal constitutions;

9 (2) may secure jurisdiction over a juvenile;

10 (3) sets out the process for disposing of matters referred to it for  
11 resolution;

12 (4) provides a process for appeal of a verdict or sentence, and defines  
13 the basis for appeals; and

14 (5) prepares and delivers a report of the disposition of the matter  
15 referred to it for resolution to the commissioner.

16 (d) Subject to the privileges that witnesses have in the courts of this state, the  
17 commissioner may compel by subpoena, at a specified time and place, the

18 (1) appearance and sworn testimony of a person who the commissioner  
19 reasonably believes may be able to give information relating to a matter before a youth  
20 court; and

21 (2) production by a person of a record or object that the commissioner  
22 reasonably believes may relate to a matter before a youth court.

23 (e) If a person refuses to comply with a subpoena issued under (d) of this  
24 section, the superior court may, upon application of the commissioner, compel  
25 obedience by proceedings for contempt in the same manner as in the case of  
26 disobedience to the requirements of a subpoena issued by the court or refusal to testify  
27 in the court.

28 (f) The commissioner shall make and keep records of all cases referred to a  
29 youth court. The records of a youth court proceeding must be afforded at least the  
30 same protection and are subject to the same procedural safeguards in matters relating  
31 to access, use, and security as they would be under AS 47.10.090.

1 \* Sec. 4. AS 44.47.200 is amended to read:

2 Sec. 44.47.200. [COMMUNITY] LEGAL ASSISTANCE AND JUVENILE  
3 JUSTICE GRANT FUND. There is created in the department the [COMMUNITY]  
4 legal assistance and juvenile justice grant fund. From legislative appropriations to the  
5 fund, the department shall make grants

6 (1) to eligible communities and regions for the purpose of enabling  
7 them to obtain legal assistance; and

8 (2) to a nonprofit corporation established under AS 18.05.100 to  
9 operate as a vouth court.

10 \* Sec. 5. AS 44.47.210 is amended to read:

11 Sec. 44.47.210. ELIGIBILITY. First and second class cities and  
12 unincorporated villages, and regional associations of those communities, may apply to  
13 the department for a grant under AS 44.47.200(1) [AS 44.47.200]. Grants shall be  
14 made only to those communities or regions that would otherwise be unable to obtain  
15 legal assistance. A regional or village corporation formed under 43 U.S.C. 1601 -  
16 1608 (Alaska Native Claims Settlement Act) is not eligible for a grant under  
17 AS 44.47.200(1) [AS 44.47.200].

18 \* Sec. 6. AS 44.47.210 is amended by adding a new subsection to read:

19 (b) Nonprofit corporations proposing to establish and operate youth courts  
20 under AS 18.05.100 may apply to the department for an organizational grant under  
21 AS 44.47.200(2). A grant under this subsection must be matched on a dollar-for-dollar  
22 basis by the grantee in cash or in kind. The commissioner may waive the match  
23 required under this subsection on a showing satisfactory to the commissioner by the  
24 prospective applicant that matching funds are not available.

25 \* Sec. 7. AS 44.47.220 is amended to read:

26 Sec. 44.47.220. GRANTS. Grants made under AS 44.47.200(1)  
27 [AS 44.47.200] shall be used for a single legal project and not for the provision of  
28 general legal counsel. The department shall assure that the grant is spent for necessary  
29 legal assistance and that appropriate accounting procedures are maintained. Grants  
30 made under AS 44.47.200(1) and this subsection may not exceed \$20,000.

31 \* Sec. 8. AS 44.47.220 is amended by adding a new subsection to read:

1 (b) Grants made under AS 44.47.200(2) shall be used to defray the costs of  
2 organization of youth courts under AS 18.50.100. The department shall assure that the  
3 grant is spent for necessary organizational assistance and that appropriate accounting  
4 procedures are maintained. Grants made under AS 44.47.200(2) and this subsection  
5 may not exceed \$5,000. Only one grant may be made to a grantee under authority of  
6 this subsection.

Revision Date: \_\_\_\_\_ Dept. Affected: Community & Regional Affairs  
 Title: An Act Authorizing Youth Courts BRU: Adminstration & Support  
 Component: Administrative Services  
 Sponsor: Sitton, Ulmer  
 Requestor: Sitton, Ulmer COMPONENT SERIAL NO. 684

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

POSITIONS:

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

Estimate of current (FY93) Impact \$ none

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Remond Henderson Phone: 465-4708  
 Division: Administrative Services Date: 3/10/93  
 Approved by Commissioner: [Signature] Date: 3/10/93  
 Agency: Community & Regional Affairs

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STATE OF ALASKA  
1993 LEGISLATIVE SESSION

FISCAL NOTE

No. 1  
Bill Version: CSHB 195 (HSS)  
(H) Publish Date: 4/5/93

Division Date: \_\_\_\_\_ Dept. Affected: Community & Regional Affairs  
Title: An Act Authorizing Youth Courts BRU: Administration & Support  
Component: Administrative Services  
Sponsor: Sitton, Ulmer  
Requestor: Sitton, Ulmer COMPONENT SERIAL NO. 684

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
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)

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

POSITIONS:

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

Estimate of current (FY93) impact \$ none

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Remond Henderson Phone: 465-4708  
Division: Administrative Services Date: 3/10/93  
Approved by Commissioner: [Signature] Date: 3/10/93  
Agency: Community & Regional Affairs

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE  
For further distribution information call the Governor's Legislative Office  
FISCAL NOTE - C+RA - TO HESS CS..

FISCAL NOTE

STATE OF ALASKA  
99<sup>th</sup> LEGISLATIVE SESSION

BILL NO. HB 195

Revision Date: \_\_\_\_\_ Dept. Affected: Health and Social Services  
 Title: An Act authorizing youth courts for peer BRU: Family & Youth Services  
adjudication of minors... Component: Southeastern, Southcentral, & Northern  
 Sponsor: Representatives SITTON, Ulmer Regions  
 Requestor: House HESS Committee COMPONENT SERIAL NO. 0258, 0254, & 0255

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
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

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REVENUE FUND SOURCE

--	--	--	--	--	--	--

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	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: None

ANALYSIS: (Attach a separate page if necessary)

There would be no fiscal impact to the department if this bill were to become law.

Prepared by: Deborah R. Wing, Director *Deborah R. Wing*  
 Division: Department of Health & Social Services

Phone: 465-3191  
 Date: 03/10/93

Approved by Commissioner: Theodore A. Mala, MD, MPH *Theodore A. Mala*  
 Agency:  Department of Health & Social Services

Date: 3/11/93

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# FISCAL NOTE

No. 2  
 Bill Version: CSHB 195 (HES)  
 (H) Publish Date: 4/5/93

STATE OF ALASKA  
 1993 LEGISLATIVE SESSION

Effective Date: \_\_\_\_\_ Dept. Affected: Health and Social Services  
An Act authorizing youth courts for peer BRU: Family & Youth Services  
adjudication of minors... Component: Southeastern, Southcentral, & Northern  
 Sponsor: Representatives SITTON, Ulmer Regions  
 Requestor: House HESS Committee COMPONENT SERIAL NO. 0258, 0254, & 0255

Expenditures/Revenues:	(Thousands of Dollars)					
OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL \_\_\_\_\_

REVENUE FUND SOURCE \_\_\_\_\_

FUNDING:	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

POSITIONS:						
FULL-TIME						
PART TIME						
TEMP. PARY						

Estimate of current year (FY93) impact: None

ANALYSIS: (Attach a separate page if necessary)

There would be no fiscal impact to the department if this bill were to become law.

Prepared by: Deborah R. Wing, Director *Deborah R. Wing*  
 Division: Department of Health & Social Services

Phone: 465-3191  
 Date: 03/10/93

Approved by Commissioner: Theodore A. Mala, MD, MPH *Theodore A. Mala*  
 Agency: Department of Health & Social Services

Date: 3/11/93

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*A* FISCAL NOTE - DFYS - TO HESS CS

# 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

TO: Representative Brian Porter  
Chair, House Judiciary Committee

FROM: Representative Joe Sitton JS

SUBJECT: House Bill 195, relating to the establishment of youth courts

DATE: April 6, 1993

I would like to request that you schedule House Bill 195, relating to youth courts, for a hearing in the House Judiciary Committee.

House Bill 195 establishes a juvenile diversion program for youths who are under the age of 18. Modelled after the Anchorage Youth Court program, House Bill 195 provides a mechanism for alleged offenders to go through a youth court proceeding instead of through the regular court system, provided the juvenile, his parents, and the juvenile intake authorities agree and the youth court accepts the jurisdiction.

At a time when the state is seeking solutions to the increase in crime, a diversion program that works and has a record of success provides an "exciting" breath of fresh air.

This legislation has support from state agencies and diverse groups and individuals throughout Alaska.

Thank you for your attention to this request.

REQUEST TO SCHEDULE

# 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

## Sponsor Statement

House Bill 195 - relating to the establishment of youth courts

by

Representative Joe Sitton

House Bill 195 establishes the authority for the establishment of a youth program as a juvenile diversion program under the Department of Health and Social Services. Under the provisions of this legislation, youths under the age of 18 who have allegedly committed an offense may choose to go through a youth court proceeding instead of through the regular court system, provided they have the approval of the juvenile intake authorities and the consent of their parents.

While other states have youth (or teen) courts, in Alaska, only Anchorage has developed such a program; it has been in existence since 1989. It has enjoyed a tremendous success and is highly supported by the community. Out of a total of 69 cases, only four juveniles were arrested for a second offense.

Perhaps one of the greatest reasons for its success is the close working relationship between the different agencies involved: the Department of Health and Social Services, the Alaska Court System, the Alaska Bar Association, the Anchorage Bar Association, the school district, and law enforcement agencies.

In the Anchorage program, cases are referred by juvenile probation officers. Referrals may also be made by other entities, such as a store alleging shoplifting.

Defendants and their parents must agree to allow the Youth Court to hear the case and the Youth Court must accept jurisdiction. Court proceedings insure them the right to be represented by a lawyer, the right to trial by jury, the right to cross-examine witnesses, the right against self-incrimination, and the right to appeal.

The court is composed of students under 18 years of age who volunteer as judges, jurors, bailiffs, clerks, prosecutors and defense attorneys. To be

Sponsor Statement

eligible to sit on the court, students must attend an 8-10 week class and pass a youth court bar examination. Legal advisors are available to assist student prosecutors and defense lawyers in preparing their cases for trial.

House Bill 195 would provide a similar mechanism for other communities in Alaska, both rural and urban. Each community would be able to tailor the youth court system to its own unique needs and resources. A great deal of effort has gone into crafting legislation which would provide a structure for a youth court program while at the same time providing maximum flexibility for communities to create a program which would work best for them.

This legislation provides for the establishment of a youth court program under the aegis of the Department of Health and Social Services; it is this department's juvenile intake officers who have jurisdiction over juvenile offenders.

In addition, the legislation amends AS 44.47.200, the community legal assistance grant fund to provide for "juvenile justice" grants to communities and to non-profit corporations to establish and organize a youth court program in a community. The grant amount may not exceed \$5,000 and the grant must be matched by cash or in-kind contributions. The burden of success thus lies with a community's commitment.

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

### MEMORANDUM

March 4, 1993

**SUBJECT:** House Bill 195, relating to the use of youth courts for certain minors -- sectional analysis. (Work Order No. 8-LS0599\O)

**TO:** Representative Joe Sitton  
ATTN: Paula Terrel

**FROM:** Jack Chenoweth  
Legislative Counsel

This memo outlines the principal features of HB 195, a measure authorizing youth courts in order to provide for peer adjudication of minors charged with violations of state laws or municipal ordinances. The bill also proposes to broaden (and rename) the use of the community legal assistance grant fund as a source of financial support for new youth courts.

**Section 2.** This bill section, the measure's principal operative provision, adds a new section to the body of codified law. AS 18.05.100 is added as a part of the title concerned generally with health and safety matters. The section authorizes establishment of youth courts "to hear, determine, and dispose of cases involving a minor whose alleged act that brings the minor within the jurisdiction of [the Alaska Court System]" constitutes a violation of a state law or municipal ordinance. The section defines the jurisdiction of youth courts, sets out the process for establishment of a youth court, imposes significant standards and procedures that are to guide a youth court as it operates, and provides the Alaska Court System general authority to refer a possible delinquency matter to a youth court.

\*

Bill sections 3 - 7 rename and revise the objectives of the existing Community Legal Assistant Grant Fund.

**Section 3.** The amendments proposed to AS 44.47.200 by this bill section change the name of the fund and authorize use of money in the fund to help nonprofit corporations start operations as youth courts.

Sectional analysis

**Section 5.** The addition of AS 44.47.210(b) proposed by this bill section permits nonprofit corporations planning to operate youth courts to apply for a grant from the fund, direct that the grant be matched, but permit waiver of the match requirement under the circumstances noted.

**Section 7.** The addition of AS 44.47.220(b) proposed by this bill section sets limits on the amount that may be awarded as a grant from the fund to a corporation planning to operate a youth court, and limits on the proper use by the grantee of the money received by the grant.

**Sections 4 and 6.** The changes made by these two bill sections are technical changes to existing law made in light of the proposed additions set out in bill sections 3, 5, and 7.

\*

The changes made by bill sections 8 - 10 affect the provisions of law generally covered under the title "Children's Proceedings" (AS 47.10.010 - 47.10.142).

**Section 8.** AS 47.10.020(a) currently sets out several options by which the courts may dispose of matters that involve minors. The amendment made to AS 47.10.020(a) by this bill section reorganizes and clarifies the existing options available to the court, and adds, as an option, referral of the matter to a youth court. The amendment notes the conditions under which a matter may be so referred. In addition, in order to assure cooperation with the youth court, the referring court is given explicit authority to "at the request of the youth court, issue a subpoena to a person whose testimony is required before the youth court."

**Section 9.** Provision is made in current law for the superior court to make use of "young adult advisory panels" to assist the court in making an adjudication and order involving a minor. The amendment proposed to AS 47.10.075(a) by this bill section limits the use of these advisory panels to situations in which the court does not informally dispose of a matter involving a minor and has not referred the matter to a youth court.

**Section 10.** As a general rule, records of a court generated in proceedings under AS 47.10.010 - 47.10.142 are, with exceptions, confidential. The addition proposed to AS 47.10.090 by this bill section extends that presumption to records of youth court proceedings.

\*

**Section 1.** In this uncodified section is set out a statement of purpose of the Act and a brief summary of the state's recent experience with youth courts.

# HOUSE COMMITTEE REPORT

(9)

Date Referred: March 3, 1993

FURTHER REFERRALS:

Judiciary  
Finance

Date of Committee Action: 4-2-93

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered: HB 195  
HOUSE BILL NO. 195 HB 195 AUTHORIZING YOUTH COURTS

"An Act authorizing youth courts by which to provide for peer adjudication of minors who have allegedly committed violations of state or municipal laws, renaming the community legal assistance grant fund and amending the purposes for which grants may be made from that fund in order to provide financial assistance for organization and initial operation of youth courts, and relating to young adult advisory panels in the superior court."

RECOMMENDATIONS:  
be replaced with CS HB 195 (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 \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

2  zero fiscal note C+RA, H+SS

zero fiscal note(s) \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Car Bunde</i>	✓	<i>[Signature]</i>		X	
<i>[Signature]</i>		<i>[Signature]</i>		X	
<i>[Signature]</i>	✓	<i>Harley (Olberg)</i>		✓	
<i>[Signature]</i>	✓				
<i>Betty Davis</i>	✓				
<i>[Signature]</i>	✓				

HESS COMM. RPT.

*Car Bunde*  
CHAIRMAN'S SIGNATURE

March 29, 1993  
4441 Delong Drive  
Anchorage, AK 99502

House of Representatives  
State Capitol  
Juneau, AK 99801-1182  
Interdepartmental Mail Stop: 3100

Dear Representative Porter;

My name is Wonder Russell, I am 14 years old, and I am a member of Anchorage Youth Court, (AYC). I am a good student, and I am Homeschooled by my mom. I really enjoy law, so I went through AYC's training course last year. I passed the Bar Exam successfully, and I am an involved and active member of AYC.

At a past meeting, our president, a graduating senior this year, informed us that there was a bill, that, if passed, would result in Youth Courts all over Alaska, instead of just in Anchorage. This bill is a certain House Bill number 195.

I am writing to ask you to please sign in favor of this Bill. AYC is a marvelous opportunity, that youths in Fairbanks, Nome, Barrow, Talkeetna, Wasilla, Palmer, Kenai, Soldotna, Homer, and even youths in our own capitol, Juneau, don't have!

Law, no matter how controversial the subject and career, is exciting, and undeniably a very effective way to learn about just how are government really works. I bet that if you asked all the youths in Fairbanks to tell you how a murder case is handled, right up through appeals and the final verdict, the majority, and a large majority at that, could not take you step by step through the case (if you take me up on this, youths who are "doin' time" don't count!).

Besides this, how about listing offenders who did not have the opportunity to be tried in Alaska's one and only Youth Court? I do not know the amount, but I'm sure there are a handful.

Maybe they are from small fishing villages with unpronounceable names. Maybe they come from Juneau. The point is, that whoever they are, they don't have the chance to go to a Youth Court, where they could be better served, whether to correct unlawful behavior, or to explore law, but their families just couldn't. Too much money, or too far away. So those kids miss out.

With your help, this could change. Please sign in favor of House Bill 195. Thank you for your time.

LETTER OF SUPPORT

Sincerely,

*Wonder Russell*

## Youth court could help

We're intrigued by an idea that could help more of Alaska's young people decide to go straight instead of falling into a life of crime.

Already in place in Anchorage, youth courts in which first-time young offenders are tried and judged by other teens could be set up in other Alaska communities under legislation under consideration by Rep. Joe Sitton, D-Fairbanks.

Sitton's proposal, which has not been introduced yet, would provide \$5,000 state grants to communities that want to set up a youth court to handle first-time misdemeanor crimes committed by young people ages 12-18.

The Anchorage Youth Court has been operating since 1989. The American Bar Association recently gave the program its top awards for outstanding partnership programs and outstanding public education programs.

Under the program, volunteer attorneys train teen prosecutors, defense attorneys, judges, clerks, bailiffs and jurors in grades seven through 12. They represent and judge their peers in actual criminal cases of first-time offenders referred from Anchorage's juvenile court intake.

Youths prosecuted in these courts have a significantly lower rate of recidivism than defendants who participate in the traditional juvenile justice system, according to the bar association.

Youths serving on the court gain an awareness of their legal responsibilities to society in a way unmatched in an classroom setting.

If youth courts could be set up in other Alaska communities, Rep. Sitton believes law-breaking would lose some of the glamor it now has among some groups of young people who apply peer pressure in negative ways. Students would be more likely to take their actions seriously if they are being judged in a court of their peers, he believes.

We think the idea has merit, and encourage lawmakers to give it serious consideration.

2/20/92 FOUWA

1993

Section B to THE ALASKA JOURNAL OF COMMERCE

### Justice zebue

forced the court to expensive and timing change of venue, he said.

er editor Desiree they wrote the story orial. She said they t of routine news cov- stified by the public's know, and her read- expect more of the

s say the town's judi- tem and newspaper an impasse that could ouble in the future.

onflict started when kins, a Kotzebue store was charged with six of sexual assault of The charges reflected ged acts of sexual as- 16-year-olds, two al- ts of sexual assault of olds and two alleged. Continued on Page 4B

### ort aking shment

asing crime is to in- ne sentence. But the , prisons are not a od punishment. In reasing sentences, if g, increases recidi-

port states one way



Photo by Naomi W. Klouda

Attorney Donna Willard, who will accept the award in Boston for the Youth Court, celebrates with Jesse Kehl, Youth Court Chief Justice; Milna Kumar, Youth Court Mediator; Bryan Clark, Youth Bar President; and attorney volunteers Blythe Marston and Jon Ealy.

## Anchorage Youth Court wins national ABA award

By Naomi Warren Klouda  
For the Journal of Commerce

Anchorage Youth Court has won the 1993 American Bar Association/Information America Public Education Project award for working in partnership with the justice system to produce a program involving teen lawyers, judges and defendants.

Donna Willard, local attorney and ABA board governor for the district which

includes Alaska will accept the award on behalf of the teen winners Feb. 5 in Boston at the National Conference of Bar Presidents luncheon. Some 188 teens, ranging from 7th to 12th graders are recipients of the award, which came with a \$5,000 cash grant as well as the Outstanding Partnership Award.

After finishing a 10-week law class, the students worked in actual courtroom settings with juvenile first-offenders arrested for misdemeanor and some felony

crimes.

Youth clients were represented and prosecuted by teenage lawyers - and sentenced by teenage judges. No adults are allowed to speak in the court, though teen attorneys can consult adult counsel present in the courtroom. Teen jurors were called in to decide some cases.

Sharon Leon, executive director of the four-year-old Youth Court, says the Anchorage program was

Continued on Page 2B

law firm of

**IOW & SHARROCK  
LL CORPORATION**

announce that

*baugher, Esq.*

older of the firm,  
lat

*hall, Esq.*

White & McAuliffe,  
der of the firm.

TE 500  
A 99501

78-8533  
3-8536

(...with the loan is paid back).  
This theory was used in many of our eastern states.

b. *Lien Theory:* Under the "lien" theory, the owner/mortgagor keeps both legal title and possession, and only gives the mortgagee a lien on the land which can be foreclosed upon in the event of a default under the loan. The lien theory is used in most western states, and is used today in Alaska.

the mortgagor may have built up a substantial investment in the pay-off of the loan. The law changed in order to protect those who had paid a sizeable amount of the installment debt before the default occurred, usually by giving the mortgagor either a "right to cure" the default, or a "right to redeem" the property.

Copyright © 1993 by Frank Nosek, Esq.

## Youth Court effective deterrent for first-time offenders

Continued from Page 1B

judged as unique in that it is the only one which gives teens "such a tremendous responsibility."

"It's also the most complete program — we even have a Youth Court Bar Association," Leon said.

Leon directs the program and is aided by a volunteer administrative board composed of attorneys, judges, police officers, businessmen, mediators and juvenile intake officers.

Peer advising and sentencing techniques seem to be working, Leon said. Out of a total of 69 cases involving first-time offenders, only four were arrested for a second time.

"Juvenile intake officers are pretty happy about that because the recidivism rate is usually 50 percent. All

the offenders are ordered to write an essay as part of their sentence reflecting on what they had done," Leon said.

"All of them said they never want to see the inside of a courthouse again." Some of them do, however. But the

**"All of them said they never want to see the inside of a courthouse again."**

next time they appear in court it is as youth court judges, lawyers, prosecutors or jurors as other offenders are brought into Youth Court.

On Jan. 25, 1993, another 119 young people were inducted into Anchorage Youth Court, joining the 188 already on the roster.

THE ALASKA JOURNAL OF COMMERCE

# We Mean Business

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**ANCHORAGE YOUTH COURT:  
TRIAL BY PEERS**

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I. PROJECT DESCRIPTION

The Anchorage Youth Court ("AYC") is a court in which the roles of attorneys, judges, bailiffs, clerks and jurors are filled by young people between the ages of twelve and eighteen. Defendant youths are afforded a chance via trial by their peers to resolve legal problems without receiving a criminal record. Simultaneously, the community benefits by receiving valuable work service as partial redress for the wrongs committed. Attorneys also have the opportunity to provide a service to their community. Most importantly, however, young people and adults work together through youth court to resolve conflict.

II. PLANNING

A. Needs Assessment

Often the juvenile justice system does not work for first time offenders. Two problems arise. First, due to the lack of resources, first time offenders are rarely punished. Juveniles become aware that the justice system will not follow through if an offense is committed. The result is a high recidivism rate. By the time the justice system takes action, many youthful offenders have established a lawbreaking behavior pattern.

Second, many juvenile defendants who maintain they are innocent cannot afford to hire legal counsel. They thus feel compelled to admit guilt to crimes they have not committed. They pay restitution as a cheaper alternative to hiring a lawyer.

A youth court can provide a solution to both problems. Attorneys, parents, school officials and students can join together to implement a court that will promptly respond to juvenile legal problems.

B. Determining Specific Objectives and Program Design

1. Decisions to be Made
  - a. Options - Objectives

The objectives of a youth court are four fold. First, a youth court provides a municipal wide alternative court where teenagers can be represented, prosecuted, and tried by a jury of their peers without incurring a record. Second, youth gain an awareness and respect for their legal responsibilities to society and are afforded the opportunity to play a positive role in the administration of justice. Third, a youth court reduces the volume of cases burdening a judicial system. Finally, attorneys are able to provide a service to the public by instructing youth about substantive and procedural criminal law.

- b. Options - Program Design

The AYC allows young people complete judicial authority. Young people are attorneys, judges, bailiffs, clerks, and jurors. Trials take place in the state courthouse. Defendants are referred by a referring authority, which for AYC is Alaska's Juvenile Intake Office. Once a defendant is referred to AYC, the defendant is arraigned. If he pleads guilty, he is tried by a jury or panel of judges. AYC confirms with the community service placement office that each defendant who is sentenced serves his sentence. If the defendant refuses to comply with the AYC process, AYC can return the case to Juvenile Intake for disposition. At completion of the case, the AYC closes the file and returns it to the referring authority. A criminal record is not accrued upon a finding of guilt.

2. Decision Making Process

AYC began with an ad hoc group of concerned attorneys, students, teachers, juvenile authorities and

*Anchorage Youth Court: Trial By Peers*

## B. Revenue Availability

The first source for information about funding should be the local bar association. There are several funds set up for the specific purpose of starting and operating law related education programs.

The second source of information is the local library. Most libraries have a resource section which provides information about private foundations that donate money to legal programs. Some cities also have foundation centers. These centers are clearing houses for information about corporate and private foundations.

Another form of funding is self-generating. Fund raisers, seminars, and requests for donations can generate funds. An especially good private source of funds is private law firms. It is possible to run a youth court entirely on donations. The only items needed for a youth court are time, office space and operating expenses. These can all be donated. Private law firms in Anchorage have donated hundreds of hours of time to AYC. They have also donated office space and copying. Further, The Alaska State Court System has donated the use of their courtrooms for AYC hearings and trials. Similarly, the local library has donated the use of its theater for meetings.

Even though personnel and funding are the usual stumbling blocks associated with establishing and operating a youth court, the essential element is dedicated individuals who are committed to a youth court. Although a great deal of funding is not necessary for starting a program, individuals who are dedicated to starting a youth court are essential.

## C. Evaluation Design

It is important to evaluate the youth court periodically. Regular evaluations allow for the youth court to be revised as needed. A timetable should be set up for evaluation. Items to be evaluated include: the status of pending cases, available personnel and available resources.

Statistics should also be kept throughout the tenure of the court. Some statistics that should be kept are: number of inquiries about the youth court, number of students who register to take the youth court training course, number of students who pass the youth court bar examination, number of cases referred to the youth court, the number of cases returned to the referring authority, the number of cases in which defendants have been found not guilty or guilty, and the sentences served by defendants found guilty.

Finally, the year's goals should be reviewed and compared with the status of the program. If any disparity exists, the youth court goals and methods should be re-examined for possible change.

## III. IMPLEMENTATION

### A. Timetable

To establish a youth court, a timetable of at least six months is advisable before trials commence. Six months allows sufficient time to organize volunteers and arrange for courtrooms, community support, community work service, and cooperation of schools, court system, attorneys, and police officers. The following provides a loose outline of the chronology of events:

1. Formalize the proposed youth court by preparing a youth court constitution. This constitution should outline the responsibilities of each organization and the procedure and roles of student members. The constitution should be reviewed and adopted by students.
2. Formalize the proposed youth court by preparing a youth court constitution. This constitution should outline the responsibilities of each organization and the procedure and roles of student members. The constitution should be reviewed and adopted by students.
3. Establish a curriculum and bar exam for new members of the youth court bar association.
4. Begin to enroll students in the bar review course.
5. When at least ten to twenty students have enrolled, set the date classes are to begin.

# **CORRECTION**

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

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ANCHORAGE YOUTH COURT:  
TRIAL BY PEERS

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I. PROJECT DESCRIPTION

The Anchorage Youth Court ("AYC") is a court in which the roles of attorneys, judges, bailiffs, clerks and jurors are filled by young people between the ages of twelve and eighteen. Defendant youths are afforded a chance via trial by their peers to resolve legal problems without receiving a criminal record. Simultaneously, the community benefits by receiving valuable work service as partial redress for the wrongs committed. Attorneys also have the opportunity to provide a service to their community. Most importantly, however, young people and adults work together through youth court to resolve conflict.

II. PLANNING

A. Needs Assessment

Often the juvenile justice system does not work for first time offenders. Two problems arise. First, due to the lack of resources, first time offenders are rarely punished. Juveniles become aware that the justice system will not follow through if an offense is committed. The result is a high recidivism rate. By the time the justice system takes action, many youthful offenders have established a lawbreaking behavior pattern.

Second, many juvenile defendants who maintain they are innocent cannot afford to hire legal counsel. They thus feel compelled to admit guilt to crimes they have not committed. They pay restitution as a cheaper alternative to hiring a lawyer.

A youth court can provide a solution to both problems. Attorneys, parents, school officials and students can join together to implement a court that will promptly respond to juvenile legal problems.

B. Determining Specific Objectives and Program Design

1. Decisions to be Made
  - a. Options - Objectives

The objectives of a youth court are four fold. First, a youth court provides a municipal wide alternative court where teenagers can be represented, prosecuted, and tried by a jury of their peers without incurring a record. Second, youth gain an awareness and respect for their legal responsibilities to society and are afforded the opportunity to play a positive role in the administration of justice. Third, a youth court reduces the volume of cases burdening a judicial system. Finally, attorneys are able to provide a service to the public by instructing youth about substantive and procedural criminal law.

- b. Options - Program Design

The AYC allows young people complete judicial authority. Young people are attorneys, judges, bailiffs, clerks, and jurors. Trials take place in the state courthouse. Defendants are referred by a referring authority, which for AYC is Alaska's Juvenile Intake Office. Once a defendant is referred to AYC, the defendant is arraigned. If he pleads guilty, he is tried by a jury or panel of judges. AYC confirms with the community service placement office that each defendant who is sentenced serves his sentence. If the defendant refuses to comply with the AYC process, AYC can return the case to Juvenile Intake for disposition. At completion of the case, the AYC closes the file and returns it to the referring authority. A criminal record is not accrued upon a finding of guilt.

2. Decision Making Process

AYC began with an ad hoc group of concerned attorneys, students, teachers, juvenile authorities and

*Anchorage Youth Court: Trial By Peers*

parents who believe in and are committed to establishing a youth court. This group contacted the Anchorage Bar Association, Young Lawyers Section for help with funding and for access to its resources in the community. They Young Lawyers have been involved ever since.

A group should use the following analysis to determine whether a youth court is appropriate for its community:

a. Make a rough needs assessment. Determine how many offenders enter the juvenile justice system each year and how each is handled. Determine whether diversion programs are currently in operation. If so, determine what kind of diversion programs exist. If not, determine whether the court system needs a youth court diversion as an alternative.

b. Identify one or more persons who are interested in helping start a youth court. There may be people involved in the local bar association, local law related education projects, the school system, or the juvenile justice system. Encourage such people to enlist support for the program and to attend initial meetings. Often judges, attorneys, local bar association members, probation personnel, police officers, teachers, students, and parents are interested in supporting a youth court.

c. Identify the target group of defendants based on the needs of the juvenile system, i.e. age, type of offense and usual disposition of case.

d. Learn the procedures that are followed with a juvenile from arrest until final disposition of the case. Is there a diversion mechanism already in place? What happens to first offenders? This information is necessary in order to formulate workable procedures for selecting appropriate cases for the youth court.

e. Meet with the chief judge of the trial court, the proposed referring authorities, the director of social services and community work service, and prosecuting and public defense attorneys. Such meetings should be designed to foster support for the program and to compile suggestions for implementation.

### 3. Considerations in Project Planning

#### a. Personnel Available

Four types of personnel are required for a youth court: (1) volunteer students willing to become bar association members and attorneys; (2) volunteer attorneys willing to be instructors and advisors; (3) community members willing to support the youth court including judges, police officers, school officials, and juvenile officers; and (4) advisory staff.

The ABA affiliate group should provide access to potential volunteer attorneys. The AYC contacted schools and other community leaders directly to solicit student involvement, community support, and staff help.

The advisory staff of the AYC consists of a Coordinator and Legal Advisor. Both jobs are time consuming. The Coordinator's position is a paid one and is currently part time, but could become full time.

The Coordinator is responsible for review and approval of referrals to the AYC. S/he also establishes, oversees, and directs the procedures and duties required to ensure the smooth and proper operation of the youth court. Further, the Coordinator must maintain accurate youth court records of costs and expenses and act as a liaison between the AYC Bar Association, Administrative Board, and Alaska Court system at large.

The Legal Advisor should be an attorney volunteer. His duties and responsibilities are to review and approve, together with, advise and direct AYC staff and members as requested, required or needed.

AYC has considered employing a law student intern to assist both the Coordinator and legal advisor. Because no law schools are located in Alaska, such a program is difficult in Alaska. Nonetheless, a law student intern could assist the Coordinator and legal advisor in his or her activities.

## B. Revenue Availability

The first source for information about funding should be the local bar association. There are several funds set up for the specific purpose of starting and operating law related education programs.

The second source of information is the local library. Most libraries have a resource section which provides information about private foundations that donate money to legal programs. Some cities also have foundation centers. These centers are clearing houses for information about corporate and private foundations.

Another form of funding is self-generating. Fund raisers, seminars, and requests for donations can generate funds. An especially good private source of funds is private law firms. It is possible to run a youth court entirely on donations. The only items needed for a youth court are time, office space and operating expenses. These can all be donated. Private law firms in Anchorage have donated hundreds of hours of time to AYC. They have also donated office space and copying. Further, The Alaska State Court System has donated the use of their courtrooms for AYC hearings and trials. Similarly, the local library has donated the use of its theater for meetings.

Even though personnel and funding are the usual stumbling blocks associated with establishing and operating a youth court, the essential element is dedicated individuals who are committed to a youth court. Although a great deal of funding is not necessary for starting a program, individuals who are dedicated to starting a youth court are essential.

## C. Evaluation Design

It is important to evaluate the youth court periodically. Regular evaluations allow for the youth court to be revised as needed. A timetable should be set up for evaluation. Items to be evaluated include: the status of pending cases, available personnel and available resources.

Statistics should also be kept throughout the tenure of the court. Some statistics that should be kept are: number of inquiries about the youth court, number of students who register to take the youth court training course, number of students who pass the youth court bar examination, number of cases referred to the youth court, the number of cases returned to the referring authority, the number of cases in which defendants have been found not guilty or guilty, and the sentences served by defendants found guilty.

Finally, the year's goals should be reviewed and compared with the status of the program. If any disparity exists, the youth court goals and methods should be re-examined for possible change.

## III. IMPLEMENTATION

### A. Timetable

To establish a youth court, a timetable of at least six months is advisable before trials commence. Six months allows sufficient time to organize volunteers and arrange for courtrooms, community support, community work service, and cooperation of schools, court system, attorneys, and police officers. The following provides a loose outline of the chronology of events:

1. Formalize the proposed youth court by preparing a youth court constitution. This constitution should outline the responsibilities of each organization and the procedure and roles of student members. The constitution should be reviewed and adopted by students.
2. Formalize the proposed youth court by preparing a youth court constitution. This constitution should outline the responsibilities of each organization and the procedure and roles of student members. The constitution should be reviewed and adopted by students.
3. Establish a curriculum and bar exam for new members of the youth court bar association.
4. Begin to enroll students in the bar review course.
5. When at least ten to twenty students have enrolled, set the date classes are to begin.

6. Start the eight to ten week bar review course.
7. Set the bar examination and swear in all students passing the bar as members of the youth court bar association.
8. Begin the youth court bar association monthly business meetings and continuing legal education program.
9. Ask the referring authority to refer its first case to youth court.

#### B. Fund Raising

Look for all avenues of funding. Funding can come from grants, donations, and fundraisers. Even though grants are the best kind of funding available, it must be noted that grant applications take a great deal of time to prepare. Secondly, foundations that award grants may make disbursements only once or twice a year.

AYC approached the Young Lawyers division of the American Bar Association for an initial grant. AYC was awarded \$1,700.00 to begin its project.

Subsequently, AYC approached the Anchorage Bar Association. It funded the first year of AYC by providing a grant of \$11,000.00. Private individuals, law firms and corporations have donated office space, equipment and time. In-kind donations have been essential to AYC's first year.

#### C. Recruitment and Training

AYC's organization consists of cooperation between local high schools, juvenile intake, the court system, and volunteer attorneys and paralegals. The AYC has three arms. The first arm is the AYC non-profit corporation. It is directed by an Administrative Board. The second arm is the AYC Bar Association which is directed by student bar members. The third arm is the AYC court system which is directed by the AYC Coordinator. Volunteers are needed to staff all three arms.

The AYC Constitution establishes that the Administrative Board consists of residents of the Municipality of Anchorage. An equal number of members represents the youth community and the adult community. Each member serves for a term of one year. Student representatives are selected from each school which has a student participating in AYC. Adult nominees are selected from and represent the following: the judiciary, juvenile probation, law enforcement, education, the Anchorage Bar Association, the adult community at large and parents of youths over whom the AYC has jurisdiction.

The duties of the Administrative Board include, but are not limited to, fiscal matters, appointing staff members, maintaining liaison between the AYC and law enforcement agencies of the State of Alaska, the Municipality of Anchorage, as well as general supervision of AYC. Members of the Administrative Board receive no training, but usually come to the Board with an expertise or interest which is important to the functioning of AYC.

The AYC Bar Association consists of members of the AYC who are enrolled in grades seven through twelve and in a public or private school in the Municipality of Anchorage. The students must successfully complete an eight to ten week training course and pass an AYC bar examination. In order to hold any elected or appointed position, a member must have active standing. In order to qualify as an active member must have attended a majority of AYC Bar Association meetings held within the last three months and attend continuing legal education classes.

The AYC Bar Association has a president, vice president, secretary, judges, and clerk, all of whom are elected. Further, bailiffs, attorneys and jurors are appointed on a case by case basis.

A significant amount of time must be spent by volunteer attorneys to educate students about substantive and criminal procedures, evidence, constitutional law and trial advocacy. Much of the training is done during the eight to ten week training course.

#### D. Publicity

The AYC uses two types of publicity; one is intended to gain the participation of AYC students and the other is intended to gain community support for AYC. AYC has waged a successful public relations campaign on both fronts. Stories have appeared in the "Anchorage Daily News", the "Anchorage Times", Alaska Bar Association publications, and the "ABA/YLD Affiliate". The AYC Coordinator has appeared before numerous public and private organizations, corporations and schools. The Anchorage community is extremely supportive and interested in the program. Speaking opportunities are easily available. A youth court should ensure that its coordinator is willing to submit press releases and speak publicly as opportunities arise.

The student members should also participate in the campaign. Each fall AYC students ensure that other students in the Anchorage community are aware of the AYC program by writing newspaper articles notifying students of the AYC bar review registration. Students deliver similar notices to local radio stations, T.V. stations and schools.

#### E. Day to Day Operations

The AYC organization operates as follows: After a preliminary investigation, a referring authority, usually juvenile intake, refers the case to AYC. The referring authority meets with the defendant and his or her custodial parent or guardian to explain the purposes of AYC, and its procedures including sentencing. After the opportunity to confer with counsel, the defendant is given the choice of proceeding to AYC or being handled through regular juvenile intake channels which may include a formal court hearing and a criminal record. If the defendant and his or her parent or guardian agrees to proceed with AYC, they will sign a voluntary agreement with the understanding that their case will be held open for 90 days to complete the youth court process. This voluntary agreement states that failure to comply with AYC and other established conditions, once agreed to, may result in having the case handled in a formal court proceeding.

The AYC Coordinator receives a copy of the defendant's signed voluntary agreement to participate in AYC, available arrest reports and other related documents. If the case is not accepted by AYC, the case is returned to the referring authority together with all documents relating to the case. If the case is accepted, proceedings in AYC are conducted in substantial conformity with the rules and statutes governing normal adult criminal proceedings. The rules and statutes are applied and modified as necessary to promote the prompt and just resolution of cases and legal education. At all times, AYC proceedings are conducted to ensure confidentiality.

The chief judge or his appointee presides over all courtroom proceedings of the AYC with the assistance of two associate judges. If the defendant pleads guilty or is found guilty at trial, the judges determine an appropriate sentence at a sentencing hearing to be held within five days of the verdict or plea. Sentencing is in accordance with the informal sentencing guidelines established by the referring authority.

If the defendant chooses to exercise his right to appeal, he must submit a written statement including reasons for appeal to the chief judge within three days following the sentencing hearing. If the defendant does not submit a written appeal within this time frame, his right to appeal is waived. Upon receipt of the appeal, the chief judge appoints a three member appeals panel. If the appeals panel finds for the defendant on any point of appeal, the case is remanded accordingly. The Coordinator oversees the defendant's compliance with AYC sentencing orders and provides status reports to the referring authority as required.

Once a year, the AYC recruits new members. In order to become a member of AYC, young people complete a legal training course whereby they learn basic legal principals and practices. The course covers such topics as constitutional law, criminal law, criminal procedure, evidence, trial advocacy, and ethics. After having completed the course, students take a bar examination. Once students pass the bar examination, they become AYC Bar Association members. They are then qualified to serve on the court as bailiffs, clerks, attorneys, and judges. They will also be able to participate in AYC Bar Association meetings through which they continue their legal education. At the meetings members participate in activities designed to give broader perspective of the justice system, such as workshops, mock trials, speakers, and movies about the judicial system. The initial and ongoing training require regular attention by the Coordinator.

#### IV. EVALUATION

As a result of AYC, Anchorage youth have gained an awareness and respect for their legal responsibilities to society. They are afforded the opportunity to play a positive role in administration of justice. The volume of cases

burdening the judicial system has been lightened and Anchorage lawyers have been able to provide a service to the public by educating students about substantive and procedural criminal law. Meanwhile, the community has received valuable service and redress for the wrongs committed.

AYC students, however, provide probably the best evaluation of AYC. A question on their first bar examination was, "What is Anchorage Youth Court?" Their responses were as follows:

**A Tenth Grader's response:**

The Anchorage Youth Court provides the benefits of citizenship to the youth of Anchorage by providing an alternative system of judgement and sentencing. It will allow those who commit misdemeanors, early in life, a chance to pay for their damage without incurring a criminal record. It shall also attempt to be fair in the proceedings by providing these defendants with a jury, judge, and lawyers composed of their peers. By modeling itself after the real court system, Anchorage Youth Court will attempt to foster a spirit of respect for the law.

**A Twelfth Grader's response:**

The Anchorage Youth Court is an opportunity for youth to constructively exercise their responsibility to themselves and society in securing and promoting a just legal system. It provides youth offenders with an alternate method to pay for the consequences of their actions - by having a trial by their peers, but not incurring any criminal record, and by paying back their community with restitution and community service hours. Anchorage Youth Court also provides active members with hands-on experience in the legal field and participation that could not be gained by any other source. The community as a whole benefits by the service Anchorage Youth Court provides.

**An Eleventh Grader's response:**

Anchorage Youth Court is essentially an opportunity. It is an opportunity for students of all kinds to come together in a healthy environment to learn about the laws that govern them. It is an opportunity for youth of Anchorage to help better their community. But mostly, it is an opportunity for kids who have made mistakes to have another shot, not so much to go unpunished, but to have another chance to reconsider the consequences of their actions without having a criminal record follow them through life.

AYC is essentially an opportunity, an opportunity for young people and adults to work together to resolve problems in their community.

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# ANCHORAGE YOUTH COURT CONSTITUTION

\* (As Revised Spring, 1991)

## Preamble

Municipality of Anchorage youths, recognizing the importance of respect for the law, and firmly believing that acceptance of responsibility is essential toward being conscientious citizens, hereby establish the Anchorage Youth Court as a practical application of their responsibility to themselves and their community.

## Statement of Purpose

Anchorage Youth Court is intended to provide benefits of citizenship to the youth of the Municipality of Anchorage. It shall do so by providing an alternate adjudication and sentencing procedure for young offenders. It shall offer an opportunity for those who make mistakes early in their lives to constructively pay their debt to society without incurring a criminal record. It shall foster an atmosphere of respect for the law through the principle of judgement by peers and restitution for wrongs committed.

The Anchorage Youth Court will emulate adult proceedings so as to provide an opportunity for youths to learn about criminal justice. Unless an action or procedure is specifically addressed by this constitution, the general principles of court proceedings shall apply as far as practicable.

## Article I: Organization

Section 1. The Anchorage Youth Court is not recognized as a court of original or appellate jurisdiction by the laws of the State of Alaska. All cases tried must be referred to the Anchorage Youth Court by a Referring Authority as defined in Section 2, below, (hereinafter "Referring Authority"), and all referrals will be made solely at the discretion of the appropriate Referring Authority. The Anchorage Youth Court's findings and recommendations in a case shall be returned to the Referring Authority before final disposition.

Section 2. For purposes of the Anchorage Youth Court, a Referring Authority shall include but is not limited to the Department of Health and Social Services and all recognized courts within the State of Alaska.

Section 3. The Anchorage Youth Court shall have only such power to enforce a sentence as is delegated by the Referring Authority. A person tried by the Anchorage Youth Court is not discharged from the jurisdiction of the Referring Authority until a recommendation of discharge of the case has been made by the Anchorage Youth Court to the Referring Authority, and the individual is discharged. Failure to comply with the sentence imposed by the Anchorage Youth Court will result in an automatic return of the case to the Referring Authority.

Section 4. The Anchorage Youth Court shall have jurisdiction over only those individuals who are charged with delinquent conduct occurring in the Municipality of Anchorage and are enrolled in grades 7 through 12 and/or are 12 to 18 years of age. Younger

defendants may be considered upon special agreement and with the understanding that the defendant will be adjudicated by 7 - 12 graders.

Section 5. Anchorage Youth Court shall consist of one or more organized courts.

## Article II: Administrative Board

Section 1. Composition. The Administrative Board shall consist of residents of the Municipality of Anchorage. An equal number of members shall represent the youth community and the adult community, each to serve for a term of one year. Nomination of Board members shall be made by a nominating committee comprised of the existing Administrative Board (except that the first nominating committee shall be the establishing constitutional committee). Any member of the Anchorage Youth Court Bar Association may nominate a member for a position on the Administrative Board, and that nomination must be given to the nomination committee within ten (10) days of the due date of nominations. The nominating committee shall be formed no less than 30 days prior to the due date of the list of nominees.

Youth nominees shall be selected from and represent one from each school which has students participating in Anchorage Youth Court. Youth nominees must maintain active status and attend Executive Board Meetings. Adult nominees may be selected from and represent the following:

- 1) the judiciary;
- 2) juvenile probation;
- 3) the field of law enforcement;
- 4) the field of education;
- 5) the Anchorage Bar Association
- 6) the adult community at large; or
- 7) parents of youths over whom the Anchorage Youth Court has

jurisdiction.

The list of nominees shall be given to the Anchorage Youth Court Coordinator who shall provide a written notice of the appointees within 15 days of receiving the list of nominees.

Section 2. Duties. The Administrative Board shall promote the purpose of this constitution. The duties of the board shall include, but are not limited to fiscal matters, appointing staff members, maintaining liaisons between the Anchorage Youth Court and law enforcement agencies of the State of Alaska and the Municipality of Anchorage, as well as general supervision of the Anchorage Youth Court. The Administrative Board may adopt any lawful resolution necessary to further the purposes of the Anchorage Youth Court not in conflict with the Anchorage Youth Court Constitution.

Section 3. Meetings. The Administrative Board shall meet at least once each semester with advance notice.

## Article III: Advisory Staff

Section 1. The advisory staff of the Anchorage Youth Court shall be appointed by the Administrative Board and shall consist of a Coordinator and a Legal Advisor, and such other staff deemed necessary. The advisory staff shall report to the Administrative Board. The term of service for an advisory staff member shall be one year.

voting shall be required for election to any office. Officers will assume positions the first of April, following election.

No one shall hold more than one elected position at any time. A vacancy of an elected position may be filled by the appointment of any active bar member, including members holding elected positions at the time. To assume the appointed position on a permanent and elected basis as outlined in Section 5 below, the said officer must resign his first position. If any member elected to a position is unable to fill that position, a new vote must be taken as soon as practicable.

Voting shall be by secret, written ballot. Each voter may cast one vote for each position to be elected. All ballots shall be placed by the voter in a sealed ballot box. At the conclusion of voting, the ballot boxes shall be delivered to the graduating seniors, who shall count and tally all ballots under the supervision of the Coordinator and report the results to the membership.

Section 4. Removal. Any person elected may be removed from office by a two-thirds majority of the votes cast by the members of Anchorage Youth Court, but only after the grounds therefor have been presented to the person in writing and the person has had an opportunity for a hearing before the Anchorage Youth Court Bar Association membership at a meeting set for that purpose.

Section 5. Vacancies. In the event of a vacancy in an elected position, the officers of the Anchorage Youth Court Bar Association (i.e., Bar Association President, Bar Association Vice President, Bar Association Secretary) shall have the authority to appoint a temporary replacement, if necessary, until an election can be held to fill the position. But no appointment shall be for more than 45 days, and an appointment shall end immediately upon election of a person to fill the position. Elections shall be held in the same manner as provided in Sections 2 and 3, above.

Section 6. Anchorage Youth Court Bar Association President. Any attorney who is at least 16 years old or at least a junior in high school is eligible to hold the office of Bar President. The Anchorage Youth Court Bar Association President shall chair all meetings of the Anchorage Youth Court Bar Association, assign attorneys to Youth Court cases, supervise all other business of the Bar Association with the assistance of the Coordinator, and serve as the student representative of the Anchorage Youth Court to the community. The Anchorage Youth Court President is authorized to create and fill any position he or she deems necessary. The Anchorage Youth Court Bar Association may remove appointees by 2/3 vote of the members present. The President shall preside over the executive board, which will consist of officers or their representatives, appointees and representatives from each active committee. This board will meet with the coordinator at a regularly scheduled time.

Section 7. Anchorage Youth Court Bar Association Vice President. Any attorney who is at least 16 years old or is a junior in high school is eligible to hold the office of Bar Association Vice President. The Anchorage Youth Court Bar Association Vice President shall serve in the absence of or at the request of the Anchorage Youth Court President, and in that event shall serve in place of and with the same power and authority of the Anchorage Youth Court Bar Association President.

Section 8. Secretary. Any member who is at least 16 years old or is at least a junior in high school is eligible to hold the office of Secretary. The Secretary shall take minutes and keep recordings of all Anchorage Youth Court Bar Meetings, maintain all

Section 2. In selecting a Coordinator, special consideration shall be given to applicants with some interest, experience, or education in law. It shall be the responsibility of the Coordinator to review and approve, together with the Legal Advisor, referrals to the Anchorage Youth Court; to establish, oversee, and direct such procedures and perform such duties as are required to ensure the smooth and proper operation of the Anchorage Youth Court network; to maintain accurate, current records of costs and expenses of the Anchorage Youth Court; and to act as liaison between the Anchorage Youth Court Bar Association and membership, and the Administrative Board and the Anchorage court system at large. In so far as elected positions are concerned, the Coordinator shall be responsible for receiving nominations, preparing and distributing ballots, and publishing election results.

Section 3. Legal Advisor. The Legal Advisor preferably should be an attorney. The duties and responsibilities of the Legal Advisor shall be to review and approve, together with the Coordinator, referrals to the Anchorage Youth Court; and to generally confer with, advise, and direct Anchorage Youth Court staff and members as requested, required, or needed.

#### Article IV: Membership and Positions

Section 1. Membership. To qualify as a member of the Anchorage Youth Court, a person must be enrolled in a grade between 7 and 12 in a public or private school in the Municipality of Anchorage, and must successfully complete a training course and pass an Anchorage Youth Court Bar examination. In order to qualify as an active member, a member must have attended a majority of Anchorage Youth Court Bar Association meetings held within the last three months. A member may avoid inactive status, when necessary, by making prior arrangement with the coordinator for pending absence. Upon return, the member may re-establish his or her standing by participating in a Youth Court function. All members are subject to the rules and guidelines established by the ethics committee.

Section 2. Nomination. The Administrative Board shall be responsible for appointing nominating committees from time to time. A nominating committee shall be responsible for compiling a list of nominees for positions of the administrative board and for obtaining written confirmation from those nominees of their willingness to serve. Except as provided in Article II, Section 1, and Section 5, below (Special Elections), a nominating committee shall be formed in a reasonable time prior to the due date of a final list of nominees. The final list of nominees shall be due no later than three weeks prior to the election and shall be given to the Coordinator. Nomination for candidacy for elected office shall be made verbally at the Bar Association meeting prior to the meeting at which elections are held. In order to become a candidate for office, one must be an active Bar Association member and within two (2) weeks of nomination submit a written letter of intent outlining expected duties, responsibilities, and level of commitment if elected.

Section 3. Election. Members of the Anchorage Youth Court shall elect from among members nominated pursuant to Article IV, Section 2, one Chief Judge, one Assistant Chief Judge, a pool of at least six Associate Judges, one Clerk, one Anchorage Youth Court Bar Association President, one Vice President, one Treasurer, and one Secretary. The term of each of these offices shall be one year. Elections shall be held annually in February at a meeting announced two weeks in advance in writing to all Anchorage Youth Court Bar Association members. A simple majority of those present and