

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672
7894 HOUSE JUDICIARY

154

HB

472

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 472

Revision Date: 2/25/94
 Title: An Act relating to referrals involving dental services.
 Sponsor: Rep. G. Davis
 Requestor: Rep. G. Davis

Department: Commerce and Economic Dev.
 BRU: Occupational Licensing
 Component: Operations
 COMPONENT SERIAL NO. 1844

Expenditures/Revenues		(Thousands of Dollars)					
	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00	
OPERATING EXPENDITURES							
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 EXPENDITURES							
CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0	

FUND SOURCE		(Thousands of Dollars)					
	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00	
1002 Federal Receipts							
1003 GF Match							
1004 General Fund							
1005 GF/Program Receipts							
1006 GF/MHTA							
Other							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	

Estimate of any current year (FY 94) cost: \$ None

POSITIONS	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary)
 HB 472 amends authority of the Board of Dental Examiners to discipline a licensee for receiving compensation for referring a person to another dentist or dental practice. If investigations arise as a result of this bill, it may be necessary to seek increased appropriation to recuperate those costs through other sources, such as the Legislative Budget and Audit Committee. However, until then, new funds are not required to implement HB 472.

Prepared by: Jennifer Strickler, Administrative Officer
 Division: Occupational Licensing
 Approved by Commissioner: Paul Fuhs
 Agency: Commerce and Economic Development

Phone: 465-2144
 Date: 2/25/94
 Date: 2-28-94

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Alaska Dental Society

3400 Spenard Road, Suite 10
Anchorage, Alaska 99503
(907) 277-4875

BACKGROUND HB 472

February 25, 1994

Dr. Pitts -

These are the incidents that I know of that pertain to the dental referral service. Is this what you want?

In Fairbanks, a dentist called the dental referral service and was told that the service only referred to dentists:
who were in good standing with the dental society, and
who did high quality work

The dentist replied that this company must refer to most of the dentists in the Fairbanks area if that was the criteria which was used. The referral service then admitted that they refer to the dentists who pay them to refer.

In Anchorage a dentist expressed concern that one of his patients had called the dental referral service listed in the yellow pages for a referral to an orthodontist and made an appointment with the dentist to whom he was referred. During the initial evaluation the dentist related that because the nature of the case he would have to consult with an orthodontist.

The patient then questioned the dentist as to his qualifications because he was led to believe that he had come to an orthodontist, when in fact he had been referred to a general dentist.

Following this call to our office concerning the dental referral service, several people called the number listed in the telephone book, giving various names and home addresses in various parts of town, and requesting various specialists. No matter what zip code was given, no matter what specialist was requested, the referral service only referred to 2 practices in Anchorage. Neither office was a specialty practice. One was a member of the dental society, another was not. There are 150 dentists in the Anchorage area who are members of the dental society.

The dental referral service has never asked the dental society which dentists are in good standing.

Betty

FEB-26-'94 MON 10:51 ID:ALASKA DENTAL SOC. TEL NO:907 274-2900

11387 P81

American Dental Association

BACKGROUND FOR HB 472

~~ADA~~

E

ADA
PRINCIPLES OF
ETHICS
AND CODE OF

C
PROFESSIONAL
CONDUCT

American Dental Association
Council on Ethics, Bylaws and Judicial Affairs
211 East Chicago Avenue
Chicago, Illinois 60611

With official advisory opinions
revised to January, 1993.

With official advisory opinions
revised to January, 1993.

ADA.

BACKGROUND
HB 472

Principle - Section 5

PROFESSIONAL ANNOUNCEMENT.

In order to properly serve the public, dentists should represent themselves in a manner that contributes to the esteem of the profession. Dentists should not misrepresent their training and competence in any way that would be false or misleading in any material respect.*

Code of Professional Conduct

5-A. ADVERTISING.

Although any dentist may advertise, no dentist shall advertise or solicit patients in any form of communication in a manner that is false or misleading in any material respect.*

Advisory Opinions

1. If a dental health article, message, or newsletter is published under a dentist's byline to the public without making truthful disclosure of the source and authorship or is designed to give rise to questionable expectations for the purpose of inducing the public to utilize the services of the sponsoring dentist, the dentist is engaged in making a false or misleading representation to the public in a material respect.
2. The Council on Ethics, Bylaws and Judicial Affairs believes it would be of service to the members to provide some insight into the meaning of the term "false or misleading in a material respect." Therefore, the following examples are set forth. These examples are not meant to be all-inclusive. Rather by restating the concept in alternative language and giving general examples, it is hoped that the membership will gain a better understanding of the term. With this in mind, statements shall be avoided which would: a) contain a material misrepresentation of fact, b) omit a fact necessary to make the statement considered as a whole not materially misleading, c) contain a representation or implication regarding the quality of dental services which would suggest unique or general superiority to other practitioners which are not susceptible to reasonable verification by the public, and d) be intended or be likely to create an unjustified expectation about results the dentist can achieve.
3. The use of an unearned or nonhealth degree in any general announcements to the public by a dentist may be a representation to the public which is false or misleading in a material respect. A dentist may use the

BACK @ 2000 HB472

FEB-28-'94 MON 11:06 ID:ALASKA DENTAL SOC.

TEL. NO: 907 274-2960

#388 P01

of unearned or nonhealth degrees could be misleading because of the likelihood that it will indicate to the public the attainment of a specialty or diplomate status. It may also suggest that the dentist using such is claiming superior dental skills.

For purposes of this advisory opinion, an unearned academic degree is one which is awarded by an educational institution not accredited by a generally recognized accrediting body or is an honorary degree. Generally, the use of honorary degrees or nonhealth degrees should be limited to scientific papers and curriculum vitae. In all instances state law should be consulted. In any review by the council of the use of nonhealth degrees or honorary degrees, the council will apply the standard of whether the use of such is false or misleading in a material respect.

4. A dentist using the attainment of a fellowship in a direct advertisement to the general public may be making a representation to the public which is false or misleading in a material respect. Such use of a fellowship status may be misleading because of the likelihood that it will indicate to the dental consumer the attainment of a specialty status. It may also suggest that the dentist using such is claiming superior dental skills. However, when such use does not conflict with state law, the attainment of fellowship status may be indicated in scientific papers, curriculum vitae, third party payment forms, and letterhead and stationery which is not used for the direct solicitation of patients. In any review by the council of the use of the attainment of fellowship status, the council will apply the standard of whether the use of such is false or misleading in a material respect.

5. There are two basic types of referral services for dental care: not-for-profit and the commercial.

The not-for-profit is commonly organized by dental societies or community services. It is open to all qualified practitioners in the area served. A fee is sometimes charged the practitioner to be listed with the service. A fee for such referral services is for the purpose of covering the expenses of the service and has no relation to the number of patients referred.

In contrast, experience has shown that commercial referral services generally limit access to the referral service to one dentist in a particular geographic area. Prospective patients calling the service are referred to the single subscribing dentist in the geographic area

the referral fee paid by the dentist. There is a connotation to such advertisements that the referral that is being made is in the nature of a public service.

A dentist is allowed to pay for any advertising permitted by the Code, but is generally not permitted to make payments to another person or entity for the referral of a patient for professional services. While the particular facts and circumstances relating to an individual commercial referral service will vary, the council believes that the aspects outlined above for commercial referral services violate the Code in that it constitutes advertising which is false or misleading in a material respect and violate the prohibitions in the Code against fee splitting.

6. An advertisement which omits a material fact or facts necessary to put the information conveyed in the advertisement in a proper context can be misleading in a material respect. An advertisement to the public of HIV negative test results, without conveying additional information that will clarify the scientific significance of this fact, is an example of a misleading omission. A dental practice should not seek to attract patients on the basis of partial truths which create a false impression.

5-B. NAME OF PRACTICE.

Since the name under which a dentist conducts his or her practice may be a factor in the selection process of the patient, the use of a trade name or an assumed name that is false or misleading in any material respect is unethical.

Use of the name of a dentist no longer actively associated with the practice may be continued for a period not to exceed one year.*

Opinion

1. Dentists leaving a practice who authorize continued use of their names should receive competent advice on the legal implications of this action. With permission of a departing dentist, his or her name may be used for more than one year, if, after the one year grace period has expired, prominent notice is provided to the public through such mediums as a sign at the office and a short statement on stationery and business cards that the departing dentist has retired from the practice.

5-C. ANNOUNCEMENT OF

DELIVERY SERVICE

continued

ARCTIC COURIERS INC

Fairbanks Delivery Service
Since 1980

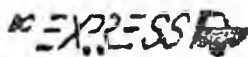
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BC EXPRESS



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& Matanuska Valley

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349-2430

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Pine Needle Wy Palmer 740-6788
LEP Profit International Inc 243-2430
L & M COURIER INC 276-6844
MAT-BU LEG COURIERS
523 W 276-1878
Max Valley Dial Toll Free 800 478-7733
Neighborhood Home & Office Movers 338-3983

PETROLEUM COURIER SERVICE

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TGI Freight 522-3088
Or 276-3276

(This Classification Continues)

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Fax Line 561-4849

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Pre-Owned Medical & Dental Equip
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11901 Industry Wy 345-1174
In State Dial Toll Free 800 478-1174

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tires possible, the fuel savings
would equal 400,000
barrels of oil per day.

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Crossbow Dental 345-5577
DIMARTINO DENTAL LABORATORY
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235 E 9th Av
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Mobile Phone 346-3705
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Dial Toll Free 800 736-7231
Professional Prosthetics Dental Laboratory 333-6596
Ron Harper Dental Lab 333-6792
ST CLAIR DENTAL LAB 562-7856
3823 McCain Ln
BANDERS DENTAL CERAMICS 274-1848
2044 E Northern Lights Blvd
Stars Dental Laboratory 561-2726
4050 Lake Cus Pkwy 338-6005
Branch
TOOTHCRAFTERS 563-5896
2805 Dawson
Fax Line 561-3622
Zundel Dental Laboratory Inc
4333 Fremont Av N Seattle WA
Dial Toll Free 800 248-1231

DENTIST INFORMATION BUREAU

DENTAL REFERRAL SERVICE INC 264-5622
(See Advertisement This Page)

CHOOSING A DENTIST?

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- EMERGENCY?
- FIRST TIME PATIENT?

Serving Your Community at...
NO COST TO YOU!

With one easy local call, our caring receptionists will refer YOU to the dentist nearest you who best meets your needs.

dental referral service



THE RIGHT CHOICE SINCE 1978

Alaska State Legislature

Interim
P.O. Box 1287
Soldotna, AK 99669
(907) 262-8414




Session
State Capitol
Juneau, AK 99801
(907) 465-2693

Representative Gary L. Davis

MEMORANDUM

TO: Representative Brian Porter, Chairman
House Judiciary Committee

FROM: Representative Gary L. Davis 

DATE: March 2, 1994

RE: House Bill 472, "An Act relating to referrals involving dental services."

I respectfully request that House Bill 472 be scheduled for a hearing by the Judiciary Committee at your earliest convenience.

House Bill 472 will prohibit the receipt of compensation by a dentist for referring a person to another dentist or dental practice. The American Dental Association Code of Ethics forbids dentists from profiting from referrals. This legislation codifies the ethical concern relating to referrals.

In Section 2, the receipt of compensation by a person or advertisement referring a dental service is prohibited unless the compensation for referral is disclosed at the time of referral. This legislation will help ensure that patients are being referred to a dentist or dental practice as a result of their quality service.

SPONSOR STATEMENT

Re,

rd

Alaska State Legislature

Interim:
P.O. Box 1287
Soldotna, AK 99669
(907) 262-8414



Session:
State Capitol
Juneau, AK 99801
(907) 465-2693

Representative Gary L. Davis

SECTIONAL ANALYSIS

HOUSE BILL 472

"An Act relating to referrals involving dental services."

Section 1 - Amends AS 08.36.315 by adding a new subsection relating to the grounds for discipline, suspension, or revocation of a license for the receipt of compensation for referring a person to another dentist or dental practice.

Section 2 - Amends AS 45.50.471 (b) by adding two new paragraphs relating to the receipt of compensation by a dentist or advertiser for referring a person to a dentist or dental practice.

American Dental Association

BACKGROUND FOR HB 472



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ADA
PRINCIPLES OF
ETHICS
AND CODE OF

C
PROFESSIONAL
CONDUCT

American Dental Association
Council on Ethics, Bylaws and Judicial Affairs
211 East Chicago Avenue
Chicago, Illinois 60611

With official advisory opinions
revised to January, 1993.

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HB 472

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ARE
POOR
ORIGINAL
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5-C. ANNOUNCEMENT OF

UNIVERSITY OF ALASKA
2626593 P. 05
- BACKGROUND HB 472

February 25, 1994

Dr. Pitts -

These are the incidents that I know of that pertain to the dental referral service. Is this what you want?

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The patient then questioned the dentist as to his qualifications because he was led to believe that he had come to an orthodontist, when in fact he had been referred to a general dentist.

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The dental referral service has never asked the dental society which dentists are in good standing.

Betty

Letter of Support - Betty Arntice
Director of Operations, AK Dental Society

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STATE OF ALASKA
THE LEGISLATURE



LEGISLATIVE AFFAIRS AGENCY
DIVISION OF PUBLIC SERVICES

Legislative Information Office
P.O. Box 1189
Delta Jct., AK 99737
(907) 895-4236

RECEIVED
APR 15 1994

Rep. Brian Portor

DATE: March 29, 1994

Please accept the enclosed original(s) of written testimony for
the House Judiciary teleconference hearing that was
scheduled on 3/28/94.

A copy of this testimony was transmitted to your committee via fax
on 3/28/94.

Thank you,

E. A. Sarver
Elizabeth A. Sarver
Information Officer



Alaska State Legislature

Please enter into the record my testimony to the House Judiciary
 committee name
 committee on HB478 EMT Auth to Pres. Death dated 3/28/94
 bill/subject

I STRONGLY SUPPORT HB 478. As a RURAL physician & sponsor for several Rescue squads, it makes sense to allow our well trained EMT's to have this higher level of decision making. Over the past 10 years in ALASKA, I have never encountered a situation where this proposed legislation would have given me/us any problem but it would have been a real help to EMT's & physicians & patient or patient's family

Signed: Ray E. Andressen MD
 Testifier

Delta/Tok/Northway/McCotzeb Plateau Rescue Squads.
 Representing (Option: I) + myself as physician
Box 468, DELTA JCT., AK 99737 SPONSOR
 Address
(907) 895-5100
 Phone No.

FISCAL NOTE

No. 1

Bill Version: CSHB 478(HES)

(H) Publish Date: 3/9/94

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL

Revision Date: _____ Dept. Affected: Health and Social Services
 Title: An Act relating to paramedics and EMT's to BRU: State Health Services
pronounce death under certain circumstances. Component: EMS Training & Licensing
 Sponsor: Therriault
 Requestor: House HES COMPONENT SERIAL NO. #297

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
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 EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGES IN REVENUES	0	0	0	0	0	0

FUND SOURCE (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) cost \$ NONE

ANALYSIS: (Attach a separate page if necessary)

There is no fiscal impact.

Prepared by: Peter M. Nakamura, MD, MPH Phone: (907) 465-3090
 Division: Public Health Date: 02/23/94
 Approved by Commissioner: Marga et R. Lowe, M.Ed., Ed.S. Date: _____
 Agency: Department of Health & Social Services

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FISCAL NOTE

No. 2
 Bill Version: CSHB 478(HES)
 (H) Publish Date: 3/9/94

STATE OF ALASKA
 1994 LEGISLATIVE SESSION

BILL

Revision Date: _____ Dept. Affected: Health and Social Services
 Title: An Act relating to paramedics and EMT's to BRU: State Health Services
pronounce death under certain circumstances. Component: Post Mortem Examinations
 Sponsor: Therriault
 Requestor: House HES COMPONENT SERIAL NO. #293

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
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 EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGES IN REVENUES	0	0	0	0	0	0
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FUND SOURCE

(Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) cost \$ NONE

ANALYSIS: (Attach a separate page if necessary)

There is no fiscal impact.

Prepared by: Peter M. Nakamura, MD, MPH
 Division: Public Health

Phone: (907) 465-3090
 Date: 02/23/94

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

Date: _____

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Alaska State Legislature

REPRESENTATIVE
GENE THERRIALT

P O Box 55326
North Pole, Alaska 99705
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House District 33



While in Juneau
State Capitol
Juneau, Alaska
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House Of Representatives

HB 478 The authority of mobile intensive care paramedics and emergency medical technicians to pronounce death under certain circumstances.

SPONSOR: Rep. Gene Therriault

SPONSOR STATEMENT:

House Bill 478 proposes to allow mobile intensive care paramedics and Emergency Medical Technicians (EMT) to determine and pronounce death under certain circumstances. Registered paramedics or certified EMTs who are active members of a certified emergency medical service, may make a determination and pronouncement of death if a physician is not immediately available upon determining that the person has suffered irreversible cessation of circulatory and respiratory functions.

Currently, when a member of an emergency medical service begins CPR they are required to continue resuscitation until the person recovers, the EMT or paramedic is relieved by either a medical facility or physician, the responding parties become physically exhausted and no longer able to continue, their physical safety is seriously threatened, or a physician pronounces the person dead.

Many times physicians and medical facilities are not immediately available, and emergency medical response members are required to continue unproductive resuscitation for several hours.

HB 478 would allow an EMT or paramedic to declare death in situations where a physician is not available. This will help emergency response teams who respond to the emergency medical needs of Alaska.

Alaska State Legislature

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House Of Representatives

Sectional Analysis

HB 478

SECTION 1:

This section makes a technical amendment to AS 09.65.120 DEFINITION OF DEATH, to add mobile intensive care paramedics and emergency medical technicians to the list of individuals who may pronounce death.

SECTION 2:

Section 2 of HB 478 proposes new language, AS 18.08.089 AUTHORITY TO PRONOUNCE DEATH, which introduces detailed circumstances in which a registered mobile intensive care paramedic or a certified emergency medical technician may determine and pronounce the death of a person.

The paramedic or EMT may pronounce a person dead when a physician is not immediately available for consultation by radio or telephone and the paramedic or EMT has determined that the person has suffered irreversible cessation of circulatory and respiratory functions. The EMT or paramedic who determines and pronounces death must be an active member of a certified emergency medical service.

The paramedic or EMT who determines the death shall document the clinical criteria for the determination and pronouncement of death on the person's emergency medical service report form and notify the appropriate medical director as soon as communications can be established. The original bill proposed that the paramedic or EMT complete and sign the death certificate, but currently a medical examiner system is responsible for signing death certificates for out-of-hospital deaths. Therefore I have proposed an amendment which deletes a small section of line 19 of page 2 which refers to the signing of a death certificate by a paramedic or EMT and replaces it by having the EMTs and paramedics present the appropriate authorities with the same information that would be included in the death certificate.

Proposed AS 18.08.089(d)(1) gives the definition of "acceptable medical standards" as injuries incompatible with life, the presence of rigor mortis, the presence of post mortem lividity (i.e. the body has lost all color and has turned gray), or a

failure to show signs of spontaneous pulse or respiratory functions in response to "properly administered resuscitation efforts." Injuries incompatible with life are defined in this section as cardiac arrest accompanied by incineration, decapitation, open head injury with loss of brain matter, or detraction.

Proposed AS 18.08.089(d)(3) defines "properly administered resuscitation efforts" as at least 30 minutes of CPR on a non-hypothermic patient when a person authorized to perform advanced cardiac life support techniques is not available. When a patient is hypothermic at least 60 minutes of CPR in conjunction with rewarming techniques is required as described in the current State of Alaska Hypothermia and Cold Water Near-Drowning Guidelines published by the Division of Public Health. A minimum of 30 minutes of CPR combined with properly performed advanced life support techniques would be required when a person authorized to provide such services is present.

HB 478
House Health, Education & Social
Services Committee Letter of Intent

1. HB 478 REQUIRES ADDITIONAL TRAINING FOR EMTs

The House Health, Education and Social Services committee notes that the range of responsibilities held by emergency medical technicians in Alaska would be expanded by House Bill 478. This expanded responsibility will require that emergency medical technicians be well-trained in recognizing signs of death. It is therefore the intent of the House Health, Education and Social Services committee that the training of emergency medical technicians include specific instruction on the recognition of rigor mortis and of post mortem lividity. This instruction should be part of both the initial training for emergency medical technicians and the continuing education required to maintain currency of an emergency medical technician certificate. It is also the intent of the House Health, Education and Social Services committee that the department, under the authority of AS 18.08.080, amend 7 AAC 26 to include this requirement.

2. HB 478 REQUIRES EXTENSIVE NOTIFICATION

The House Health, Education and Social Services committee notes that the provisions of HB 478 may affect all emergency medical technicians and mobile intensive care paramedics in the state of Alaska. It is therefore imperative that full notification take place as soon as possible after the bill becomes law. It is evident that emergency medical technicians and mobile intensive care paramedics must be notified of this new responsibility, but it is also important that all emergency physicians be notified of this change in a timely manner. It is the intent of the House Health, Education and Social Services committee that, at the earliest practical opportunity after HB 478 becomes law, the department dispatch notifications to each emergency physician in the state as well as to each emergency medical technician and mobile intensive care paramedic in the state.



LASKA STATE MEDICAL ASSOCIATION

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

February 24, 1994

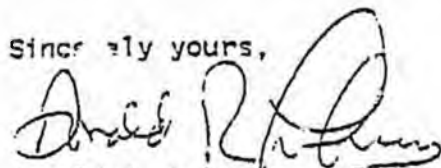
Representative Gene Therriault
Alaska State Legislature
P. O. Box V (MS 3100)
Juneau, AK 99811

Dear Representative Therriault:

Our Legislative Affairs Committee recently discussed your House Bill #478 that would allow paramedics and emergency medical technicians to pronounce death under certain circumstances. While generally supportive of your bill, we would like to suggest some language changes. As your bill is currently written on page two beginning on line eighteen: "Paramedics or EMTs would sign death certificates." As a medical association, we oppose this. There currently exists a medical examiner system which is responsible for signing death certificates for out-of-hospital deaths. We would encourage this system be preserved and lines 19 through 22 on page two be deleted. I would also suggest on page three, line two, the word "or" be changed to "and." This change would make findings of death a bit less subjective for personnel in the field.

If I can be of any other help to you regarding language changes on this bill, please do not hesitate to contact me.

Sincerely yours,



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

ORL:bj



INTERIOR REGION EMERGENCY MEDICAL SERVICES COUNCIL, INC.



1881 MARIKA ST • FAIRBANKS, ALASKA 99709
PHONE (907) 456-3978 • FAX 456-3870

RATIONALE:

NEED FOR AMMENDMENT:

Mobile intensive care paramedics (paramedics) and emergency medical technicians (EMTs) are often called to respond to medical emergencies in circumstances in which a patient has died, and can not be resuscitated. Under current law, these emergency care providers are generally required to initiate a resuscitation effort, and may not stop the resuscitation except under the following circumstances:

- (1) The patient develops spontaneous cardiac and respiratory activity (i.e. the patient recovers from the cardiac arrest, which is a rather rare outcome in the best of circumstances),
- (2) a physician or coronor determines and pronounces the death of the patient,
- (3) the resuscitation effort is turned over to health care providers with an equal or higher level of certification or licensure, or
- (4) the paramedics or EMTs are so exhausted they are not physically able to maintain the resuscitation effort.

In many areas of Alaska no physician or coronor is immediately available to determine and pronounce the death of a patient. Meanwhile, significant effort and resources are expended on resuscitation efforts that are clearly futile. This is especially true in isolated, rural settings where the combination of inadequate transportation and/or communication resources make it impossible for the paramedic or EMT to gain access to a physician.

The objectives of this proposed amendment to Alaska statutes is to help ensure that all patients receive appropriate emergency medical care, including resuscitation efforts, while allowing paramedics or EMTs to determine and pronounce death in circumstances where either starting or continuing a resuscitation effort are likely to be futile.

STATUTORY SAMPLE: This proposed amendment is written in the same format, using similar language as Sec. 08.60.395 of Alaska Statutes, allowing for determination of death by registered nurses. This format and language was used to promote uniformity and consistency with current statutes.

LIMITATIONS WRITTEN INTO THIS PROPOSAL:

- The paramedic or EMT must be licensed or certified in accordance with Alaska EMS laws and regulations, and must be functioning as a member of a licensed EMS provider agency. This provision helps ensure that only people trained to currently accepted medical standards, and who are working as a part of Alaska's EMS system are authorized to determine and/or pronounce death.

- A licensed physician is not immediately available for consultation by radio or telephone communications. This provision helps ensure that a licensed physician is directly involved in the determination and pronouncement of death whenever it is possible to communicate with a physician. This provision limits the authority of the paramedic or EMT to those circumstances where a death occurs in an isolated or remote setting where radio or telephone communication with a physician is not possible.
- Subsections 3 - 5 limit the authority of the paramedic or EMT to determine and pronounce death only when a resuscitation effort is almost certain to be futile. These limitations include injuries that are incompatible with life, and situations in which a properly performed resuscitation effort fails to restore cardiac and respiratory activity in the patient.
- Subsections (b) and (c) require the paramedic or EMT to document those clinical criteria on which the decision to determine and pronounce death were made, and ensure that each pronouncement is reviewed by the paramedic or EMT's medical director for quality control purposes.

Craig Lewis

Director
Interior Emergency Medical Service Council

H B

4 8 7

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 25, 1994

FURTHER REFERRALS:

Finance

Date of Committee Action: 3-31-94

The JUDICIARY Committee considered:

SSHB 487

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 487

SALE/DISPLAY OF MATERIAL HARMFUL TO MINOR

"An Act relating to the sale, display, or distribution of material harmful to minors at places where minors are present or allowed to be present and where minors are able to view such material; and prohibiting the sale or display of certain audio recordings, phonograph records, magnetic tapes, compact discs, or videotapes, without warning labels and opaque wrappings."

RECOMMENDATIONS:

be replaced with CSHB 487 (sub) 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) _____

zero fiscal note LAW

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>			<input checked="" type="checkbox"/>
		<i>[Signature]</i>			<input checked="" type="checkbox"/>
		<i>[Signature]</i>			<input checked="" type="checkbox"/>
		<i>[Signature]</i>			<input checked="" type="checkbox"/>

CHAIRMAN'S SIGNATURE

8-LS17450
Luckhaupt
3/30/94

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 487()

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE KOTT

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the sale, rental, or display for sale or rental of material
2 harmful to minors at places where minors are present or allowed to be present."

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

4 * Section 1. FINDINGS AND INTENT. (a) The legislature finds as a matter of public
5 policy and fact that the state has a compelling interest in protecting the health, welfare, and
6 morals of minors; that the exposure of minors to inappropriate sexual material is deleterious
7 to their health, welfare, and morals; that minors are exposed, in commercial establishments,
8 to materials that are obscene even for adults; that minors are exposed, in commercial
9 establishments, to sexual materials that are not obscene for adults but nonetheless are harmful
10 to minors; that the exposure of minors to harmful sexual material in commercial
11 establishments is of a particularly serious nature; and that in many parts of the state the
12 commercial exposure of minors to harmful sexual materials is increasing. The legislature also
13 finds that it is both desirable and possible to limit the exposure of minors to material harmful
14 to minors while not unreasonably interfering with normal trade and commerce in Alaska.

1 (b) The legislature intends for this Act to limit exposure of minors to explicit materials
2 that are harmful to minors. The legislature further intends that the definition of material
3 harmful to minors be narrowly construed so that it is not applied to materials in general
4 circulation that contain only relatively brief passages or incidental depictions or descriptions
5 of material harmful to minors. The legislature intends that the phrase "taken as a whole" in
6 the definition of material "harmful to minors" be applied in a broad sense, so as not to unduly
7 restrict access to material that has serious literary, scientific, educational, artistic, or political
8 value.

9 * Sec. 2. AS 11.61 is amended by adding a new section to read:

10 Sec. 11.61.127. SALF, RENTAL, OR DISPLAY FOR SALE OR RENTAL
11 OF MATERIAL HARMFUL TO MINORS. (a) A person commits the crime of sale,
12 rental, or display for sale or rental of material harmful to minors if the person
13 knowingly

14 (1) sells or rents material harmful to minors to a person under the age
15 of 18; or

16 (2) displays for sale or rental material harmful to minors, including the
17 covers and packaging of the material, in a place where minors are present or are
18 allowed to be present and where minors are able to view such material unless each
19 item of the material is

20 (A) sealed in an opaque wrapper; or

21 (B) kept behind devices commonly known as blinder racks so
22 that the material is not exposed to view.

23 (b) For material other than books, magazines, newspapers, pamphlets, or other
24 similar material, the requirements of (a)(2) of this section are satisfied if the portions
25 of the covers or packaging of the material that visually depict material harmful to
26 minors are blocked by a blinder rack or with an opaque wrapper and the wrapper is
27 sealed.

28 (c) In a prosecution under (a)(1) of this section, it is an affirmative defense
29 that the defendant made a reasonable bona fide attempt to ascertain the true age of the
30 person under the age of 18 before selling the material to the person. In this
31 subsection, "reasonable bona fide attempt" means an attempt to ascertain the true age

1 of the person to whom the material is sold by requiring production of a driver's
2 license, identification card, marriage license, birth certificate, or other governmental
3 or educational identification card or paper and not relying solely on the oral statements
4 or apparent age of the person.

5 (d) In this section,

6 (1) "harmful to minors" means any description or representation, in
7 whatever form, of nudity, sexual conduct, sexual excitement, or sado-masochistic abuse
8 when the material, taken as a whole, has the following characteristics: (A) the average
9 adult person applying contemporary community standards would find that the material
10 has a predominant tendency to appeal to a prurient interest in sex to minors, (B) the
11 average adult person applying contemporary community standards would find that the
12 material depicts or describes nudity, sexual conduct, sexual excitement, or sado-
13 masochistic abuse in a manner that is patently offensive to prevailing standards in the
14 adult community with respect to what is suitable for minors, and (C) the material lacks
15 serious literary, scientific, educational, artistic, or political value for minors; in this
16 paragraph, "contemporary community standards" mean contemporary standards
17 prevailing in the state as a whole;

18 (2) "material" means a book, magazine, newspaper, pamphlet, poster,
19 print, picture, figure, image, description, motion picture film, record, compact disc,
20 recording tape, or video tape;

21 (3) "nudity" means the showing of the human male or female genitals,
22 pubic area, or buttocks with less than a full opaque covering; the showing of the
23 female breast with less than a full opaque covering of a portion of the breast below
24 the top of the nipple; or the depiction of covered male genitals in a discernibly turgid
25 state;

26 (4) "sado-masochistic abuse" means flagellation or torture by or upon
27 a person clad in undergarments or bizarre costumes, or the condition of being fettered,
28 bound or otherwise physically restrained on the part of one so clothed;

29 (5) "sexual conduct" means acts of masturbation, homosexuality, sexual
30 intercourse, or physical contact with a person's clothed or unclothed genitals, pubic
31 area, buttocks, or, if the person is a female, breast;

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(6) "sexual excitement" means the condition of human male or female
genitals when in a state of sexual stimulation or arousal.

(e) Except as provided in (f) of this section, sale or display for sale of material
harmful to minors is a class B misdemeanor.

(f) A person convicted under this section is guilty of a class A misdemeanor
if the person has previously been convicted of a violation of this section.

Alaska State Legislature
House of Representatives

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PHONE (907) 694-8944
FAX: 694-8945

SESSION:
STATE CAPITOL
JUNEAU, AK 99811
PHONE (907) 465-3777

Representative Pete Kott

MEMORANDUM

DATE: March 22, 1994
TO: Rep. Brian Porter
Chairman, House Judiciary Committee
FROM: Rep. Pete Kott
RE: Request for hearing
HB 487, SALE, DISPLAY OF MATERIAL HARMFUL TO MINORS

Please schedule HB 487 for a hearing before the Judiciary committee as soon as possible.

The U.S. Attorney General's Commission on Pornography found that exposure to sexually violent material resulted in acts of sexual aggressiveness and anti-social behavior. It is self-evident that some material, whether in a visual or aural format, may not be suitable for distribution to children. At a minimum, the seller should make some attempt to shield innocent young people from unwanted contact with such material.

House Bill 487, while recognizing the constitutional restraints imposed on the legislature's right to curtail free speech, acts on the state's legitimate interest in providing some level of protection to children who may be harmed by unwanted exposure to sexually explicit material. The bill defines material harmful to minors and prohibits its sale to minors. It also requires that certain material be covered by opaque wrappers or blinder racks when displayed for sale in places where minors are likely to be present.

The following items are attached:

Sponsor statement
Sectional analysis
Fiscal note from the Department of Law
Background material

If you have any questions about this bill, please call me or my Legislative Assistant, Jack Phelps, at 465-3777.



Alaska State Legislature

House of Representatives

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STATE CAPITOL
JUNEAU, AK 99811
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Representative Pete Kott

SPONSOR STATEMENT

HB 487 – SALE/DISPLAY OF MATERIAL HARMFUL TO MINORS

The introduction of House Bill 487 was prompted by the sponsor's concern over the growing number of violent crimes in Alaska. Cases of reported rape, for example, nearly doubled between 1989 and 1991. Furthermore, there is growing evidence that violent crimes, especially rape and murder, are more frequently committed by young people.

The sponsor believes that a contributing factor in this rising violence among young people is the increased frequency of sex-related violence as a theme in rock and rap music. This conclusion has been supported by the U.S. Attorney General's Commission on Pornography which found that exposure to sexually violent material resulted in acts of sexual aggressiveness and anti-social behavior. It is self-evident that some material, whether in a visual or aural format, may not be suitable for distribution to children. At a minimum, the seller should make some attempt to shield innocent young people from unwanted contact with such material.

House Bill 487, while recognizing the constitutional restraints imposed on the legislature's right to curtail distribution of certain material, acts on the state's legitimate interest in providing some level of protection to children who may be harmed by unwanted exposure to sexually explicit material.

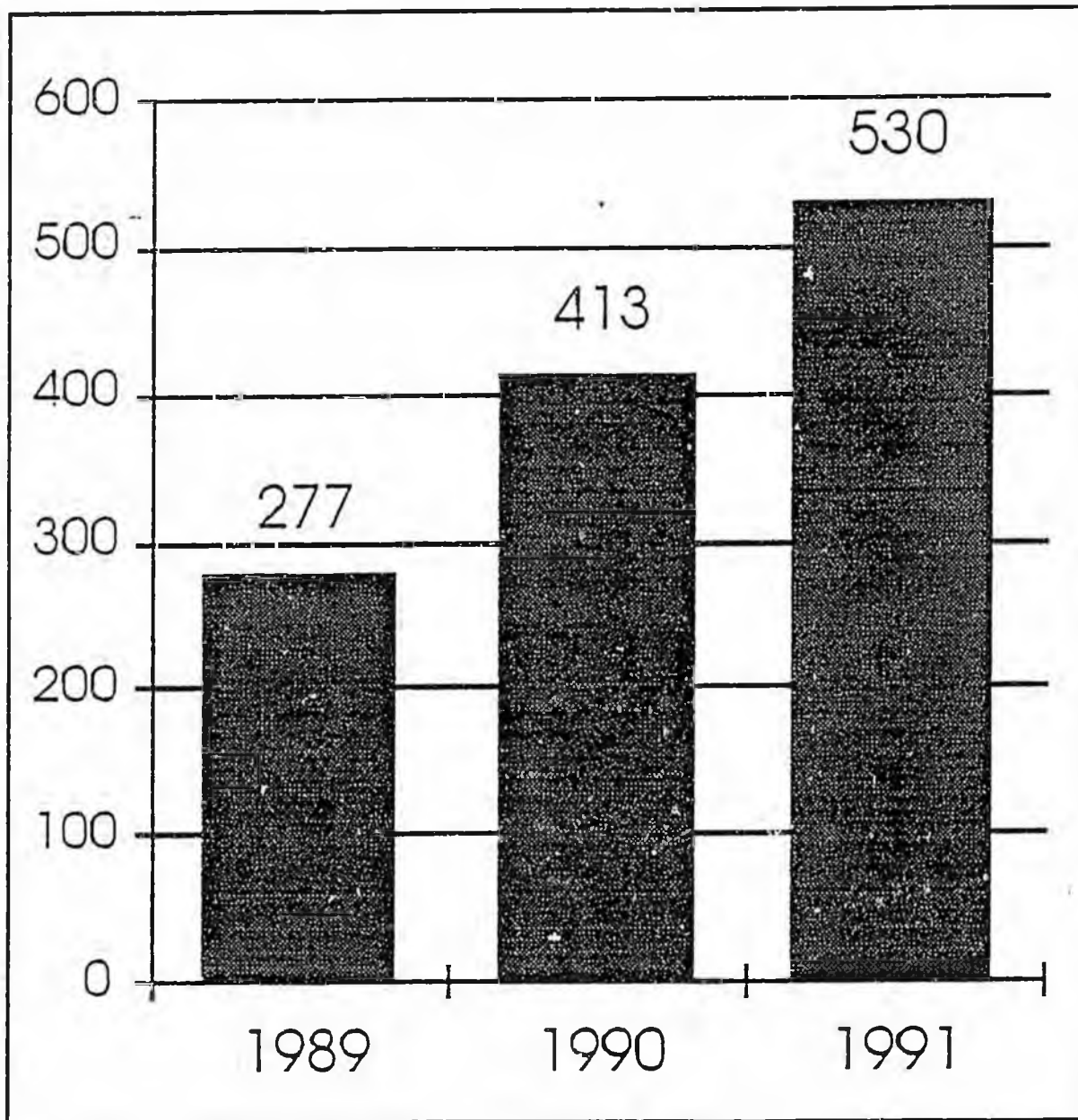
The bill would prohibit the sale to minors of certain sexually explicit material. It would require that printed matter, if it falls under the definition of material harmful to minors and is displayed in a place where minors are apt to view the material, must be sealed in an opaque wrapper or placed in blinder racks. Recorded material (CDs, tapes, etc.) would require opaque wrappings or blinder racks only if the offensive matter is depicted on the cover or packaging. The definition of material harmful to minors is drawn from the obscenity definition set forth by the U.S. Supreme Court as applied to minors.

Violation of the provisions of HB 487 would be a class B misdemeanor on first offense, and a class A misdemeanor on subsequent convictions.

House Bill 487 attempts to meet an important state obligation to protect young people from a corrupting influence in the marketplace. The bill is carefully crafted to place the least restriction possible on commercial activities while satisfying the state's interest. I urge its immediate passage.



Reported Rapes in Alaska 1989 through 1991



Provided by The Network on Domestic Violence and Sexual Assault

Source: Department of Public Safety

WARNING !
APPENDIX I
CONTAINS EXPLICIT
AND OFFENSIVE
LYRICS

APPENDIX I -- SONG LYRICS

I. SEXUAL THEMES

Judas Priest, "Eat Me Alive"

Sounds like an animal panting to the beat
Groan in the pleasure zone, gasping from the heat.
Gut wrenching frenzy that destroys every joint
I'm gonna force you at gunpoint
To eat me alive...squealing in passion
as the rod of steel injects.

2 Live Crew, "C'mon Baby"

(Female voice: "F**k me...Deeper...harder...Oh God,
I can't stop....Oh cum on me....F**k me....")

Love is the key to end all your woe
You'll be my bitch, not a dirty 'ho
Together as one we will be
I'll be fuckin' you and you'll be suckin' me
Then lick my ass up and down
Lick it 'til your tongue turns doo-doo brown.

Poison, "I Want Action"

I want action tonight
Satisfaction all night
Long legs and short skirts
These girls hit me where it hurts
I can't wait to get my hands on them
I won't give up 'til they give in
Now I'm not lookin' for love that lasts
I need a shot and I need it fast
If I can't have her, I'll take her and make her

2 Live Crew, "Pop That Pu**y"

Freaky bitches with plenty of ass, rollin' to the music and shakin' real fast.
Bend over backwards, make me shout, and work that pu**y in and out.
Movin' their body with plenty of action, bringin' the men more satisfaction.

Rub that ass and play with that clit, you know I like that freaky sh*t.
Girl, you know you look so cute, throwin' that pu**y the way you do.

2 Live Crew, "Me So Horny"

Girls always askin' why I f**k so much
Just say what's wrong, girl, with a quick nut
'Cause you're the one and you shouldn't be mad
I won't tell your momma if you don't tell your dad
I know he'll be disgusted
when he sees your pu**y busted
Won't your momma be so mad
if she knew I got that ass
I'm a freak in heat, a dog without warning
My appetite is sex 'cause me so horny.

Scorpions, "Love on the Run"

My love's a gun that wants to talk tonight
I kiss the lust right from your lips
The way it feels will hit you like a blitz
Love on the run, always loaded like a gun
For love I kiss the pearl right from the shell
Until you'll feel what all these words can't tell

2 Live Crew, "Put Her In the Buck"

I'll break ya down and dick ya long
Bust your pu**y, then break your backbone
I'll go between them legs that's open wide
Pushin' this dick from side to side
Legs to the ceilin' I'm feelin' the feelin'
When I bust a nut your ass'll be screamin'

Motley Crue, "All In the Name Of..."

She's only 15
She's the reason
The reason that I can't sleep
You say illegal
I say legal's never been my scene
I try like hell but I'm out of control
All in the name of Rock 'n' Roll
For sex and sex I'd sell my soul

Mentors, "Golden Showers"

Listen, you little slut, do as you are told,
Come with daddy for me to pour the gold.
Golden showers.
All through my excrement you shall roam.
Bend up and smell my anal vapor,
Your face is my toilet paper.
On your face I leave a sh*t tower.
Golden showers.

2 Live Crew, "We Want Some Pu**y"

Gotta a long hard dick for all the ladies,
You can work this stick in my Mercedes.
If you wanna blow just let me know,
We can go backstage at the end of the show.
I'll look at you and you'll look at me,
With my dick in my hand as you fall to your knees.
And you know what to do 'cause I won't say please,
Just nibble on my dick like a rat does cheese.

Prince, "Sister"

I was only 16, but I guess that's no excuse.
My sister was 32, lovely and loose.
My sister never made love to anyone but me,
She's the reason for my sexuality.
Show me where it's supposed to go,
A blow job doesn't mean blow.
Incest is everything it's said to be.

2 Live Crew, "Dirty Nursery Rhymes"

Little Jack Horner sat in a corner
A-fu*kin' this cutie pie.
Stuck in his thumb, made the bitch cum,
Said "Helluva nigger am I."

2 Live Crew, "A Fu*k Is a Fu*k"

F-U-C-K-I-N-G
I'm Fu*kin' you when you're suckin' me.
Fu*k relationships, motherfu*k love
'Cause makin' money is ail I'm thinkin' of.

Bitches know what's up with the one night stand,
Make a nigger wait with his dick in his hand.
But they want to fu*k just like we do,
So ho's, stop frontin', drop your drawers, let's screw.

Guns 'N' Roses, "Anything Goes"

Panties 'round your knees with your ass in debris,
Doin' that grind with a push and squeeze.
Tied up, tied down, up against the wall,
Be my rubbermaid, baby, and we can do it all.
My way, your way -- anything goes tonight.

2 Live Crew, "Dick Almighty"

He'll tear the pu**y open 'cause it's satisfaction
The bitch won't leave, it's fatal attraction
Dick's so powerful, she'll kneel and pray
Awaitin' her time, hopin' soon to slay.
That dick will make a bitch cry,
When fu*kin' a bitch that's tight inside.
That dick has got a spell on you,
Once it gets inside, you will act a fool.
That dick will make a bitch act cute,
Suck my dick, bitch, it will make you puke.

But not the long one, I won't play that sh*t,
Put her ass in the buck and kill the clit.
It's fifteen inches long, eight inches thick,
Last name Almighty, first name Dick.
That dick is a motherfu*ker,
I can't be pu**y whipped by a dick sucker.

Bitch, "Leatherbound"

The whip is my toy, handcuffs are your joy.
You hold me down and I'm screaming for more.
When you tie me up and gag me,
The way you give me pain.
Give me lashes, c'mon and drag me.

Van Halen, "Black and Blue"

Slip 'n' slide, push it in,
Bitch sure got the rhythm.
I'm holding back, yeah, I got control.
Hooked into her system, don't draw the line
Honey, I ain't through with you, the harder the better.
Let's do it 'til we're black and blue.

Nasty Savage, "Dungeon of Pleasure"

Forbidden techniques, it's just what they seek
Fantasy lane, dominance, submission,
handcuffs and chains.
Bondage and pain....
The bitch is bound and helpless,
she's screaming for more,
That sweet and innocent girl is really hardcore.
Her obsession with pain makes me bite my lip,
As she eagerly indulges when I give her the whip.

W.A.S.P. (We Are Sexual Perverts), "I Fu*k Like a Beast"

I got pictures of naked ladies lying on my bed,
I whiff the smell of a sweet convulsion.
Thoughts are sweating inside my head,
I'm making artificial love for free.
I start to howl in heat, I fu*k like a beast.

Slayer, "Necrophilia"

Mortuaries, dead of night, my body starts to rise
In my mind the horror lives, to feel death deep inside.

I feel the urge, the growing need,
To fu*k this sinful corpse.
My task's complete, the bitch's soul
Lies raped in demonic lust.

2 Live Crew, "Some Hot Head"

Hot head ho's, some white, some niggeros,
But I like the ones who suck toes and assholes.
With tongues like razors that cut when she licks,
How can I fu*k you with a skinless dick?
You take pride in suckin' a good dick,
And after I nut, bitch, you'd better not spit.
You're a dirt dobbler, a goop gobbler,
You'll fu*k Satan for the righteous dollar.
So give us some hot head.

2 Live Crew, "S & M"

So I pulled a little girlie, this is what I did,
Jumped in the ride and took her to the crib.
Rushed her in the room, sat her on the bed,
Grabbed her by the ears as she gave me head.
Then I turned her over, got it from the back,
The pu**y was sorry so the bitch got slapped.

Thrasher, "She Likes It Rough"

She loves the man who makes her bleed with pleasure,
She'll do it all, she loves to surrender.
All through the night she strains to get away....
She likes it rough, she likes it rough, she likes it hard.
Tie her down, she's knows what's waiting for her.
Nothing too cruel, so beat her 'til she's red and raw,
Crack the whip, it hardly stings the bitch.

2 Live Crew, "The Fu*k Shop"

So as you get the door and the panties drop,
Whole lot a suckin' and fu*kin' at the Fu*k Shop!
Please come inside and make yourself at home,
I want to fu*k 'cause my dick's on bone.
You little whore, behind closed doors
You would drink my cum and nothing more.
Now spread your wings, open for the flight,
Let me fill you up with somethin' milky and white.

KISS, "Let's Put the X in Sex"

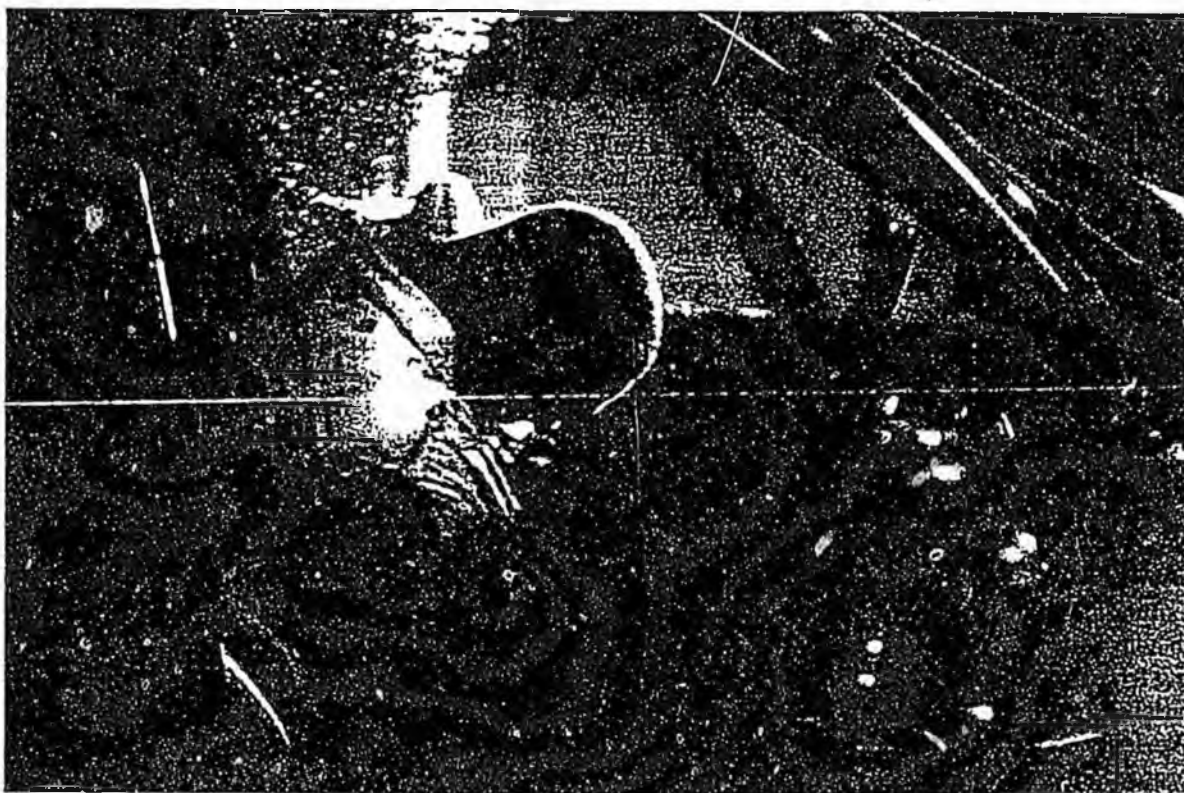
Baby, let's put the X in sex,
Love's like a muscle and you make me wanna flex.
Sometimes you gotta suffer for the
pleasure that you seek.
You're begging for an eyeful but you only get a peek.
The I saw those black lace panties,
And I knew that it was you.

Bytches With Problems, "Teach a Muthafu*ka
How to Eat the Pu**y Right"

Make like Moses and part my pu**y like the Red Sea,
And slide your fat tongue inside of me.
I take my legs, wrap it around ya head,
Suffocating this bastard 'til he's almost dead.
When I looked down he had his hand on his dick,
I could not believe he was masturbating and sh*t.
My pu**y was goopin like cottage cheese,
His mouth was drippin' as he stood to his feet.

A Generation at Risk: What Can be Done?

by Thomas L. Jipping



■ *Too common a sight:* A young murder victim slumps over the wheel of his car in Washington, D.C., which leads the nation in homicides per capita.

Coming to grips with the homicide plague among America's youth is daunting indeed. Stories of dead teenagers are filling America's newspapers.

Just a year ago, the cover of *U.S. News and World Report* decried the "epidemic of teenage murder" that claims more young men every 100 hours than were killed during the Persian Gulf

War. According to the U.S. Department of Justice, teenagers are victims of violent crime at a rate three times that of adults. During the 1980s, arrests of minors for murder jumped by

more than 20 percent.

The picture is even more bleak in the black community. Firearm homicides by young black men more than doubled during the 1980s. Columnist Don Feder states that "statistically, a young black man is 10 times more likely to commit a homicide than a young white" man, while a National Center for Health Statistics study found that young blacks are five times as likely as whites to be homicide victims.

As my father used to say, liars figure and figures lie. Is there really a "homicide plague" among America's youth or a new "epidemic of teenage murder"? Ira Schwartz argues in his book *(In)Justice for Juveniles* that "we are not in the midst of a juvenile crime wave" and that "minority youth, particularly black youth, do not account for a substantially disproportionate amount of serious juvenile crime." Indeed, it remains true that the large majority of black youth are not out killing for Reeboks, but are going to school and church, working, and just trying to grow up.

What we do know is that the numbers themselves really cannot tell the whole story. This generation of America's youth is "at risk," to use the currently fashionable buzzphrase, and we all know it. Whether it is suicide, drugs, sexual promiscuity and abortion, or rebellion, many indicators even outside of the homicide statistics establish this loud and clear. And simply telling the grim tale alone permits copping

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The messages and values that young people learn from the prevailing culture will determine how they live their lives and, in turn, the ultimate nature and character of our society.

■

out by wringing hands at the relative size of the problem. Listing stats is the easy part, while going beyond to address the cause and cure is the real job here.

In a society of individuals who do not seem to believe in much anymore, who want license rather than ordered liberty, and rights rather than responsibility, people often refuse to either face the obvious or address the important. As such, most attempts to get on with the task of examining cause and cure are left stagnantly tinkering with symptoms and fail entirely to arrive at meaningful solutions.

Typical of the confident, almost cocky, media establishment, *U.S. News* announced last year that the main reason for the homicide epidemic is "the no-problem availability of guns." They miss the boat entirely. Observations about the current

weapon of choice tell us absolutely nothing about why that weapon (or any other, for that matter) is used and entirely ignore the fact that, even in America's urban jungles, most young black men commit no crimes at all. If the availability of guns is the cause, everyone who could obtain one (nearly everyone, according to *U.S. News*) would use them. But it just isn't so.

THE CAUSE

The cause is not guns. The cause is culture. Culture, writes Illinois state Rep. Penny Pullen in the foreword to *Heavy Metal, Rap, and America's Youth* (Free Congress Foundation, 1991), is "a major determiner of our values. . . . Not a mere environment but a malleable milieu, subject to manipulation for good or ill." The messages and values that young people learn from the prevailing culture will determine how they live their lives and, in turn, will determine the ultimate nature and character of our society.

One yardstick of the culture is the messages children receive through popular music. Sheila Davis, adjunct professor of lyric writing at New York University, writes that songs "are more than mere 'mirrors of society'; they are a potent force in the shaping of it. . . . Popular songs . . . provide the primary 'equipment for living' for America's youth."

Child and adolescent psychiatrist Robert Demski identifies



■ *Raddish firepower:* A Los Angeles gang member sports an Uzi. Availability of guns has been blamed for the murder plague, but what inspires the killer behind the gun?

music as one of the two most powerful influences on young people. These experts echo Aristotle, who believed that music has the power to shape character.

Motley Crue, perhaps the most popular heavy metal rock band today, says that "those who have the youth have the future." Who has them? The average teenager today listens to rock music from four to six hours a day. We should not wonder why. Young people are searching for guidance, meaning, and identity and are not finding it where they should.

The *Washington Post* recently ran a front-page story about the despair and sheer boredom among affluent northern

Virginia teenagers. Columnist Cal Thomas points out that rock stars meet three of children's basic needs: "First, [they] provide unlimited time. They never tell teens to come back when they're not busy. . . . Second . . . [they] offer complete, unqualified acceptance. . . . Third, [they] understand."

What do the rock stars tell America's youth during that unlimited time? *U.S. News* observed recently that there is an emphasis on "violence and far more explicit sexual descriptions." Even liberal columnist Ellen Goodman writes that "rock lyrics have turned from 'I can't get no satisfaction' to 'I'm going to force you at gunpoint to eat me

alive.'" *Time* magazine also noted that "rock music has become a dominant—and potentially destructive—part of teenage culture. Lyrics, album covers and music videos, particularly in the rock genre called heavy metal, romanticize bondage, sexual assaults and murder."

Among the hundreds of heavy metal bands willing to spend unlimited time with America's youth are Annihilator, Atrocity, Blood Feast, The Damned, Death, Deicide, Devastation, Entombed, Guillotine, The Horde of Torment, Infernal Majesty, Legion of Death, Massacre, Megadeth, Morbid Angel, Obituary, Pestilence, Poison, Rigor

Mortis, Slaughter, Slayer, Sodom, Suicidal Tendencies, Terrorizer, Venom, Wasted Youth, and The Zombies. We have further legitimized this part of youth culture by handing out a Grammy Award and an American Music Award each year to the "best" heavy metal band.

Rap music, popular among white as well as black youth, often pushes the same message of violence, deviance, and exploitation. The rapper Ice Cube recently released an album titled *Death Certificate*. In one song, he calls his former group N.W.A. (Niggers with Attitude) to kill their "white Jew" manager. In another song, "Black Korea," he calls on blacks to loot and burn business establishments operated by Koreans. Music critic Leonard Pitts cites Ice Cube and N.W.A. as examples of "gangsta rap," which he describes as "a sound of unredeemed violence and unrelied ugliness. . . . Think . . . of a world where the old rules are punk rules, where what's right for you is all that matters."

The group Public Enemy recently released a video titled "By the Time I Get to Arizona" protesting the decision by Arizona voters not to establish a public holiday to honor Dr. Martin Luther King, Jr. It depicts members of the group murdering the state's elected officials, including the governor. Black columnist Clarence Page called it "an odd-ball way to celebrate the legacy of Dr. King, a man who lived and died by a philosophy of non-vio-

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American culture today accepts the notion that death is a solution to life. The flipside of that coin is that life just does not mean much.
■

lence." The *New York Times* recently called bigotry "the new sound in pop music," and Mira Boland of the Anti-Defamation League of B'nai B'rith says that "given the popularity of rap music today, it's hard to think of a more insidious influence on the minds of young people."

Another example of a culture that produces violent youth is the breakdown of the family. Marriage today is seen as a temporary arrangement between two individuals rather than the life-long foundation of a family. The worst thing for children is their parents' divorce. Louis Sullivan, secretary of health and human services, points out that 70 percent of juveniles in long-term correctional facilities grew up without fathers.

My experience on the staff of a long-term youth rehabilitation facility is similar. More than 90 percent of the kids come from broken homes. One analyst, writing in *Policy Review*, concluded that the absence of fathers "is at the root of the epidemics of crime and

drugs."

Of course, a warm body around the house does not a good role model make. But no father at all brings the chances down to zero. Peter Weyrich's study *The Human Costs of Divorce: Who Is Paying?* describes how the capacity for parenting diminishes after divorce. He notes how the California Children of Divorce Project found that years after a divorce "anger, apathy, and unhappiness were common, as well as delinquency, including drug abuse, shoplifting, breaking and entering, drinking, and sexual promiscuity. Through it all, it was clear that strong emotional needs were still unmet."

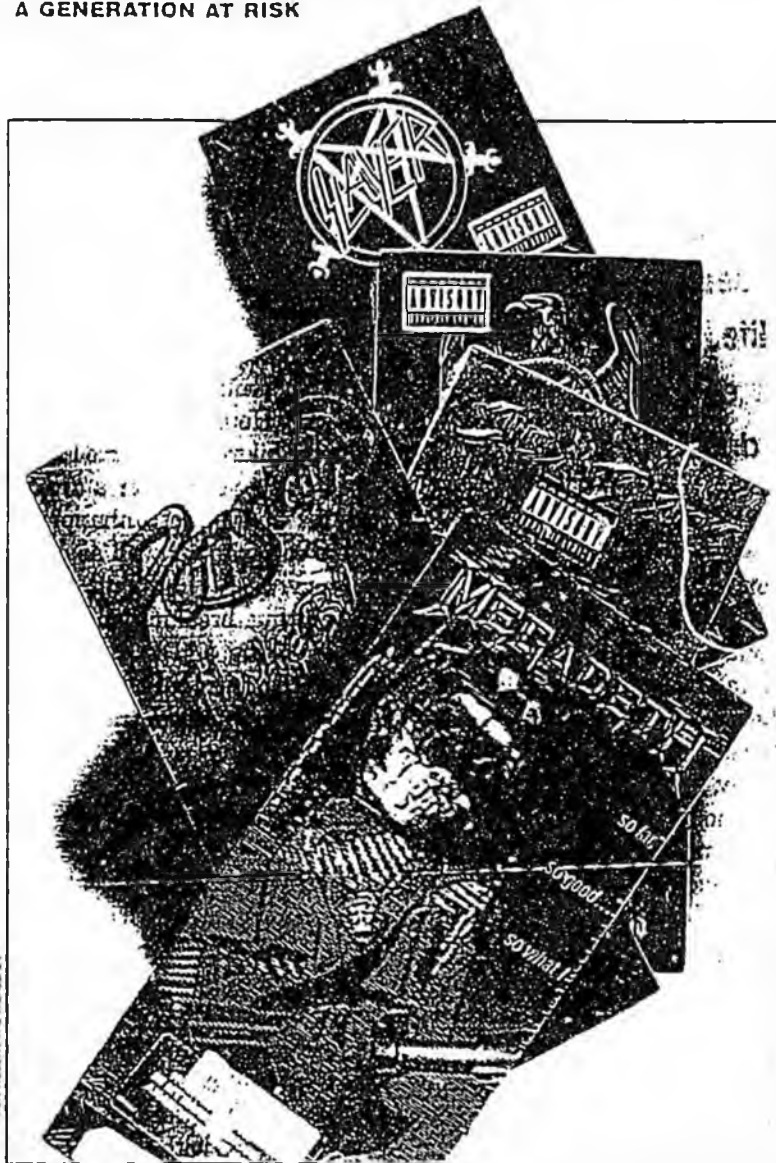
THE SOLUTION

Unless the cure meets the cause, the problem will persist. In general, the solution is to make children a priority. This has two components, one parental and one societal. The bottom line is that parents need to pay attention to their children. This means spending time with them. Pencil-ing in some "quality time" just won't do. The parent who treats the local shopping mall as a babysitter is the same parent who says "I never knew" when drugs are found in the school locker. Parents should know who their children's friends are; most have no clue.

Children want and need attention, to know that they matter to someone, to trust that someone cares about what hap-



A GENERATION AT RISK



KEN FEDER / THE WORLD & I

pens to them. In his book *Honorable Thy Children*, Orley Herron lists among his "21 commandments of good old-fashioned parenting" such things as taking time to be with your children, identifying with them, participating in projects with them, planning family activities, and enjoying them. All these things require attention and keeping children at the top of the priority list. Spouses do not

automatically make good parents: marriage should be as much for family and children as for each other.

Paying attention includes monitoring what is being pumped into children's brains through music and television. If someone were to come into your home and encourage your children to murder, rape, and rebel, you would show them not only the door, but

■ *Inducements to death:* Heavy metal and rap music, which often use words and imagery full of violence, sexual deviance, and suicide, help mold a culture that devalues life.

a thing or two besides. Any teacher who did the same would be fired. Well, don't forget that someone who is willing to spend unlimited time with your children may be doing just that through those Walkmans attached to their heads. Do you know who has your children's ear?

Paying attention also includes discipline. Adults often talk at and about teenagers, but they do not talk to them or with them. And they do not listen to them. Young people want direction, they want limits, they want meaning, and they want guidance. They will learn what they are taught and they will meet expectations.

When the teaching comes from delinquent peers or rock musicians, when expectations are only negative, it is little wonder why we see the results we do. At the facility where I volunteer, one boy wrote me a note that said: "You are the father I always wanted, who would take the time and show me what's right." That's what he had always looked for in a father but had never found: time and discipline.

Feder writes about exactly the same thing (we did not compare notes): "Our father knew what yuppies never learned, or

quickly forgot. There is no substitute for paternal affection and discipline." Could we be onto something here?

William Raspberry writes that the situation will not improve "until we learn once again to honor, preserve and strengthen the one arrangement that seems to offer the best chance for producing healthy, happy and competent children—the child-centered marriage."

There is also a societal component to making children a priority. First, we must encourage the formation and permanency of marriage. As long as it is deemed an arrangement only for two individuals rather than an institution for the family, children will continue to suffer. No-fault divorce assumes no-commitment marriage: no commitment to the spouse and none to children.

Second, we ease the financial burdens of raising children. Fathers today are actually earning less than their own fathers did. Most families with children now pay even more in payroll taxes than in federal income taxes. While the percentage of income paid in taxes by singles and married childless couples remained the same from the 1960s to the 1980s, it more than doubled for families with children.

This is why President Bush's proposal in his State of the Union address on January 18 to raise the exemption for dependent children by just \$500 means virtually nothing. An extra 20 cents

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It remains true that the large majority of black youth are not out killing for Reeboks, but are going to school and church, working, and just trying to grow up.
■

per day for families already so far behind just won't make a difference.

Third, we must bring parents directly in touch with, so that they can evaluate, some of the most destructive cultural influences on their children. Several states have considered legislation to prohibit the sale of recordings advocating violence, drug abuse, and the like to minors. Once Johnny has to ask Mom to buy the next release by Dark Throne, Morgoth, or Ultimate Revenge for him, Mom might just get the education she needs.

Finally, we must encourage and advance private efforts to help youth that work. For example, the Endowment for Community Leadership, founded by Spencer Brand, provides funds to support people helping people in community-based projects across the country. The endowment helps fund Colorado Uplift, for example. Of 1,300 delinquent youth in that program, more than

800 now enjoy full-time employment. Focused on developing leadership skills among minorities in major cities, the endowment believes that rebuilding families and teaching responsibility to youth are critical priorities.

My message usually is that rock stars should not be used as examples for anything. If parents give their children the unlimited time, unconditional acceptance, and understanding that rock stars are willing to provide, the homicide statistics would be far different.■

Thomas L. Jipping is director of the Center for Law and Democracy at the Free Congress Foundation, a nonprofit public policy research institute. He also serves as a consultant in the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention.

DIVISION OF LEGAL SERVICES

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Juneau, Alaska 99801-2105

MEMORANDUM

February 24, 1994

SUBJECT: Sectional Summary of SSHB 487 (Work Order No. 8-LS1745(E))

TO: Representative Pete Kott

FROM: Jerry Luckhaupt *JEL*
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1 of the bill amends AS 11.61 by adding two new sections:

AS 11.61.127 would make it a crime to sell, display, or distribute any material that is harmful to minors, other than audio or certain video recordings, at any place where minors are present unless the material is sealed in an opaque wrapper. A definition of "material harmful to minors" is provided and the crime is designated as a class A misdemeanor for the first offense and a class A misdemeanor for subsequent offenses;

AS 11.61.128 would make it a crime to sell or offer to sell an audio recording or a music video recording that contains lyrics that include or are descriptive of, or whose packaging includes or describes, material harmful to minors unless warning labels and opaque wrapping are provided. A different definition of "material harmful to minors" is provided for this section than for AS 11.61.127. A first offense is a class B misdemeanor and a second or subsequent offense would be a class A misdemeanor.

GPL:mi
94-040.mai

SECTIONAL SUMMARY

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 487

Revision Date: February 23, 1994
Title: "...sale, display or distribution of material harmful to minors...certain audio recordings...discs...tapes..."
Sponsor: Representative Kott
Requestor: Representative Kott

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

EXPENDITURES/REVENUES:

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

CAPITAL						
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REVENUE						
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FUNDING:

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

POSITIONS:

FULL-TIME	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: XXXX

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

Prepared by: Richard I. Pegues, Director Phone: 465-3672
Division: Administrative Services Division Date: February 23, 1994
Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law Date: February 23, 1994

PREPARER TO LEGISLATIVE OFFICE
For: FISCAL NOTE Legislative Office

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 487

ANALYSIS CONTINUATION:

HB 487 prohibits the sale or display of material harmful to minors and, in this respect, the bill is similar to SB 216. However, there are two important differences between the bills.

First, both bills add a new section to AS 11.61 that provide that a person commits the crime of sale or display of material harmful to minors if the person knowingly sells, displays, or distributes any material, including the cover or packaging of the material, that is harmful to minors in any place where minors are present or are allowed to be present and where minors are able to view such material unless each item of the material is sealed in an opaque wrapper. The bill defines material harmful to minors to mean a description or representation, in any form, of nudity, sexual conduct, or sexual excitement when it:

- (1) predominately appeals to the prurient, shameful, or morbid interest of minors in sex;
- (2) is potently offensive to contemporary standards in the adult community with respect to what is suitable sexual material for minors; and
- (3) taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.

The Senate version would not apply to:

- (1) recognized and established schools, religious institutions, museums, medical or psychological clinics, hospitals, public libraries, and government agencies in making available or providing material harmful to minors to a minor as an official function; or
- (2) a parent or guardian of a minor who provides material harmful to minors to the minor.

These exclusions are not provided in the House version, and we believe the lack of exclusions will result in extensive litigation if the provisions of HB 487 are enforced against those parties that are excluded in SB 216. In the department's research of other states' laws dealing with this subject, all of the other states' laws that we examined provided for exclusions similar to those provided in SB 216. Consequently, enforcement against schools, religious institutions, museums, medical or psychological clinics, hospitals, public libraries, government agencies and parents and guardians will probably be both difficult and expensive. Sale or display of material harmful to minors would be a class B misdemeanor, under both versions of the bill.

Second, HB 487 provides that a person commits the crime of unlawful sale of audio or video recording if the person knowingly sells or offers to sell an audio recording, phonograph record, magnetic tape, compact disc, or video tape that contains lyrics that include or are descriptive of material harmful to minors, unless the cover of such recording, record, tape, or disc contains a warning label that the lyrics contain material harmful to minors.

The bill further provides that a person commits the crime of unlawful display of audio or video recording if the person knowingly displays an audio recording, phonograph record, magnetic tape, compact disc, or videotape, whose packaging uses words, symbols, or pictures that include or describe material harmful to minors unless the recording is sealed in an opaque wrapping.

The bill prescribes lettering sizes for the warning and prescribes the wording of the warning to be:

"WARNING:
May contain explicit lyrics that include
or describe material harmful to minors.
PARENTAL ADVISORY"

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 487

ANALYSIS CONTINUATION:

Each day that a violation occurs and each audio recording, phonograph record, magnetic tape, compact disc, or video tape that is found in violation would be a separate offense. Unlawful sale of audio or video recording and unlawful display of audio or video recording would be class B misdemeanors, except that a person convicted of either offense would be guilty of a class A misdemeanor if the person was previously convicted of either offense. Material harmful to a minor would have the same meaning for unlawful sale and unlawful display of a audio or video recording as the meaning of material harmful to minors would have for the crime or sale, display or distribution of material harmful to minors.

It is impossible to determine the effect of multiple counts that will result from treating each violation as a separate offense. For example, ten copies of a particular recording that do not contain a warning label or are not contained in a sealed opaque wrapper for ten days would result in 100 separate counts. Moreover, prosecutors will have to prove in each case that the seller knew that the lyrics contained material harmful to minors. In cases involving explicit language this may be easy, but only if the prosecution can prove that the seller had listened to the recording and had knowledge of its contents. And in cases involving suggestive language it may be quite difficult for a prosecutor to prove that the seller knew the recording contained material harmful to minors. Data is not available that would indicate the number of audio or video titles that would fall within the bill's provisions, nor is data available that would indicate the number of outlets where those titles are sold or the number of copies of the individual titles that are available. Consequently, we cannot determine fiscal note costs. Those costs could be substantial in view of not excluding parties that have been excluded in other jurisdictions, and in view of varying interpretations of lyrics that may be sexually suggestive to some and not to others.

Alaska State Legislature
House of Representatives

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Representative Pete Kott

SPONSOR STATEMENT

HB 487 - SALE/DISPLAY OF
MATERIAL HARMFUL TO MINORS

The introduction of House Bill 487 was prompted by the sponsor's concern over the growing number of violent crimes in Alaska. Cases of reported rape, for example, nearly doubled between 1989 and 1991. Furthermore, there is growing evidence that violent crimes, especially rape and murder, are more frequently committed by young people.

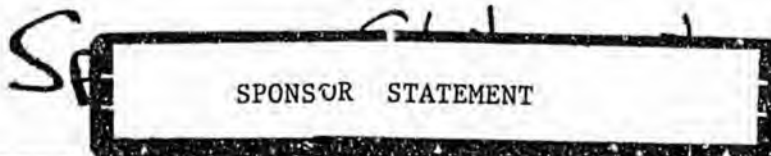
The sponsor believes that a contributing factor in this rising violence among young people is the increased frequency of sex-related violence as a theme in rock and rap music. This conclusion has been supported by the U.S. Attorney General's Commission on Pornography which found that exposure to sexually violent material resulted in acts of sexual aggressiveness and anti-social behavior. It is self-evident that some material, whether in a visual or aural format, may not be suitable for distribution to children. At a minimum, the seller should make some attempt to alert parents to the contents of such material, and to shield innocent young people from unwanted contact with such material.

House Bill 487, while recognizing the constitutional restraints imposed on the legislature's ability to curtail distribution of certain material, acts on the state's legitimate interest in providing some level of protection to children who may be harmed by unwanted exposure to the material.

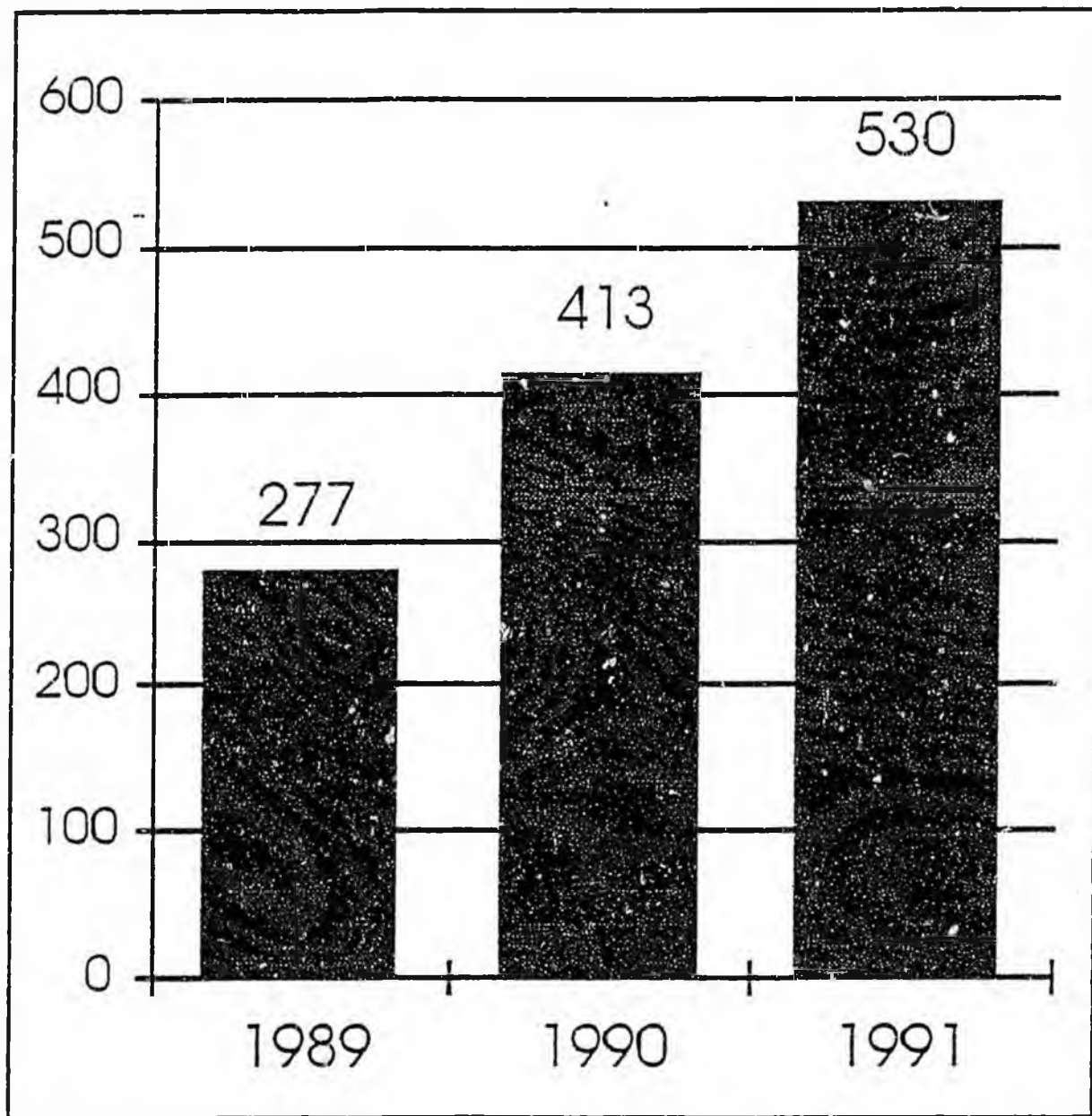
The bill would regulate the distribution, sale and display of two different types of material. First, it would require that printed matter, if it visually depicts material harmful to minors and is displayed in a place where minors are apt to view the material, must be covered by an opaque wrapper and individually sealed. The definition of material harmful to minors in this section is drawn from the obscenity definition set forth by the U.S. Supreme Court.

Second, the bill requires labeling on any audio recording or music video recording that contains lyrics harmful to minors. The label is required to give a parental advisory that the recording contains lyrics that include or describe material harmful to minors. The bill also applies the wrapping and sealing requirements of the first part of the bill to certain audio and video recordings. For audio and video recordings the definition of material harmful to minors is expanded to include certain kinds of violence.

Violation of the provisions of HB 487 would be a class B misdemeanor on first offense, and a class A misdemeanor on subsequent convictions.



Reported Rapes in Alaska 1989 through 1991



Provided by The Network on Domestic Violence and Sexual Assault

Source: Department of Public Safety

DAVIS WRIGHT TREMAINE

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March 14, 1994

VIA FACSIMILE

David E. Leibowitz, Esq.
Executive Vice-President and General Counsel
Recording Industry Association of America, Inc.
1020 Nineteenth Street, N.W.
Suite 200
Washington, D.C. 20036

Re: Constitutionality of Alaska Proposed Substitute for
House Bill No. 487

Dear Mr. Leibowitz:

You have asked us to review the text of Alaska Proposed Substitute for House Bill 487 ("PSHB 487"), an Act relating to the sale, display or distribution of sound recordings and related materials, in order to analyze its constitutionality. PSHB 487 requires mandatory labeling, places restrictions on display, and criminally penalizes the sale of musical sound recordings deemed "harmful to minors." Because PSHB 487's provisions are in direct contradiction to both the history and principles of the First Amendment and the separate and distinct guarantees of Article I, Section 5 of the Alaska State Constitution, as more fully explained below, it is our opinion that PSHB 487 is unconstitutional.

I. PSHB 487 Abridges the Right of Free Speech and Expression.

"Music, as a form of expression and communication, is protected under the First Amendment." Ward v. Rock Against Racism, 491 U.S. 781, 790, reh'g denied, 492 U.S. 937 (1989). See also Schad v. Mount Ephriam, 452 U.S. 61, 65 (1982); Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546, 557-58 (1976). While the constitutional protections afforded to music under the First Amendment are broad, those protections are even greater in Alaska under Article 1, Section 5 of the Alaska Constitution which, "protects speech in a more explicit and

David E. Leibowitz, Esq.
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direct manner than the federal constitution." Messerli v. State, 626 P.2d 81 (Alaska 1980).

The United States Supreme Court has emphasized the special role music serves in our society and the importance of protecting music against government censorship:

Music is one of the oldest forms of human expression. From Plato's discourse in the Republic to the totalitarian state in our own times, rulers have known its capacity to appeal to the intellect and to the emotions, and have censored musical compositions to serve the needs of the state. The Constitution prohibits any like attempts in our own legal order.

Ward, 491 U.S. at 790. Particularly invidious is censorship of expression based on its content, R.A.V. v. City of St. Paul, 112 S. Ct. 2538, 2542 (1992), or "simply because society finds the idea offensive or disagreeable." Texas v. Johnson, 491 U.S. 397 (1989).

Alaska's consideration of PSHB 487 seems to assume that it does not run afoul of either the United States or Alaska Constitutions because it purportedly regulates only "obscene" or "violent" speech. This position suffers from several significant flaws. First, expression having social and/or artistic value enjoys and always has enjoyed full constitutional protection. As the U.S. Court of Appeals for the Eleventh Circuit stated in the leading case to subject music to the Miller test, "we tend to agree with appellants' contention that because music possesses inherent artistic value, no work of music alone may be declared obscene." Luke Records, Inc. v. Navarro, 960 F.2d 134, 135 (11th Cir. 1992).

The inherently subjective nature of a piece of music, *i.e.*, the various meanings understood by different listeners, makes it especially intolerable to regulate music. Constitutional speech protections cannot depend upon determinations whose inherent subjectivity "would allow a jury to impose liability on the basis of the juror's tastes or views." Hustler Magazine, Inc. v. Falwell, 485 U.S. 46, 55 (1988). Indeed, "it is largely because governmental officials cannot make principled distinctions in this area that the Constitution leaves matters of

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taste and style so largely to the individual." Cohen v. California, 403 U.S. 15, 25 (1971). As the Supreme Court recently reaffirmed in the context of rap music:

[i]t would be a dangerous undertaking for persons trained only to the law to constitute themselves final judges of the worth of [a work], outside the narrowest and most obvious limits. At the one extreme some works of genius would be sure to miss appreciation. Their very novelty would make them repulsive until the public had learned the new language in which their author spoke.

Campbell v. Acuff-Rose Music, Inc., ___ U.S. ___, 1994 WL 64738 at 6 (March 7, 1994), citing, Bleistein v. Donaldson Lithographing Co., 188 U.S. 239, 251 (1903).

Further, music does not lose its constitutional protection by virtue of sexually explicit lyrics any more than movies and books lose protection simply because they contain some scenes of nudity. See Erznoznik v. City of Jacksonville, 422 U.S. 205, 211 n.7 (1975). The inclusion of a human voice in a piece of music enhances the piece's value and constitutional protection, both as a musical instrument and as a conduit for words which contribute additional social, literary, artistic, and/or political value to the work. These words are an integral part of the music in which they are sung, a critical point ignored by those who would justify music censorship by waiving around a sheet of lyrics.

Similarly, music does not lose its constitutional protection merely because it contains content characterized as "violent." See Winters v. New York, 333 U.S. 507, 514 (1947) (state statute aimed at prohibiting publication of "stories of bloodshed and lust in such a way as to incite to crime against the person" held unconstitutional); American Booksellers Ass'n v. Hudnut, 771 F.2d 323, 329-30 (7th Cir. 1985), summarily aff'd, 475 U.S. 1001 (1986) (violent speech, "however insidious," is protected speech). Indeed, regardless of the State's alleged ability to regulate obscenity, there is absolutely no authority for the State to regulate "violent" speech. See R.A.V., 112 S. Ct. 2538 (1992).

Second, even if some musical expression could in theory be "obscene" or "violent," simply because the State purportedly aims

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to regulate obscene or violent speech does not vitiate the First Amendment and Article I, Section 5. The State's efforts must be clearly, carefully, narrowly and fairly drawn so as not to infringe on protected expression. PSHB 487 is not so drawn, and it therefore substantially and unconstitutionally infringes on protected musical expression. See R.A.V., 112 S. Ct. 2538 (1992) (finding that even "hate speech" cannot be regulated).

Also unavailing is any reliance the State may place on Ginsberg v. New York, 390 U.S. 629 (1968), to argue that PSHB 487 affects only speech that is obscene as to minors and is, therefore, constitutionally permissible. In Ginsberg, the Court did not consider the statute's effects on adults' access to expression that is not obscene as to them or the indirect chilling effect on expression that is not obscene as to anyone. As the Eleventh Circuit has recognized, the Court in Ginsberg "did not address the difficulties which arise when the government's protection of minors burdens (even indirectly) adults' access to material protected as to them." American Booksellers v. Webb, 919 F.2d 1493, 1502 (11th Cir. 1990), cert. denied 111 S. Ct. 2237 (1991).

Alaska cannot, by enacting a law for the protection of minors, "prohibit an adult's access to material that is obscene for minors but not for adults." Id.; see also Butler v. Michigan, 352 U.S. 380, 383 (1957) (legislation must not "reduce the adult population ... to reading only what is fit for children"). A statute that prohibits such access or deters protected expression, directly or indirectly, is unconstitutionally overbroad: it restricts more speech that the Constitution permits. See R.A.V., 120 L. Ed. 2d at 316-17 n.3. An overbroad statute must be struck down on its face and held incapable of any constitutional application.¹ See Osborne v. Ohio, 495 U.S. 103, 112 & n.8 (1990); Erznoznik, 422 U.S. at 215-17.

¹ The overbreadth doctrine is predicated on the danger that "persons whose expression is constitutionally protected may well refrain from exercising their rights for fear of criminal sanctions by a statute susceptible of application to protected expression." New York v. Ferber, 458 U.S. at 769-73 (quoting Village of Schaumburg v. Citizens for a Better Environment, 444 U.S. 620, 634 (1980)).

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The statute by definition regulates material that "appeals to the prurient interest of minors in sex." AS 11.61.127(c)(1)(A) (emphasis added). Because this definition of obscenity under Miller -- and because the category of materials that appeals to the prurient interest of minors is larger than that which appeals to the prurient interest of adults -- PSHB 487 necessarily reaches expression that is not obscene in constitutional terms. Thus, the statute's prohibitions on sale, distribution, and exhibition of erotic material directly apply to some material that is not obscene. The clearest example of this direct application is the statute's display restriction, which prohibits all distributors and dealers from displaying a sound recording found "harmful to minors" "in any place where minors are present or are allowed to be present and where minors are able to view such material." AS 11.61.127(a). This prohibition directly affects the access of everyone, including adults, to such sound recordings simply because they have been found "harmful" with respect to minors.

Third, regulations designed for the protection of minors must embody the least restrictive means of furthering the government's interest in protecting minors. Sable Communications of California, Inc. v. FCC, 492 U.S. 115, 126 (1989). The display restriction is not the least restrictive means of furthering the government's interest in keeping the contents of sound recordings away from minors. Indeed, it is wholly unrelated to furthering that interest. The prohibition on displays might make sense for a magazine with a naked body on the front cover. As applied to a compact disc, whose contents can only be heard and not seen, the requirement is absurd. This aspect of PSHB 487 is unquestionably overbroad and unconstitutional.²

² This chilling of free speech is patently the product of state action, which exists if "the conduct allegedly causing the deprivation of a federal right [is] fairly attributable to the State." Lugar v. Edmondson Oil Co., 457 U.S. 922, 937 (1982); see also Bantam Books, Inc. v. Sullivan, 372 U.S. 58 (1963) (self-censorship under threat of even informal government sanctions deemed state action). "When the state acts directly or even indirectly and its influence is significant, then constitutional restraints must be observed." Ginn v. Mathews, 533 F.2d 477, 479 (9th Cir. 1976).

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II. PSHB 487 Constitutes an Invalid Prior Restraint.

PSHB 487 explicitly authorizes suppression before the sound recording is played. AS 11.61.128(a) and (b) empower prosecutors to institute a criminal action when someone merely displays or "sells or offers to sell [to anyone] an audio recording, phonograph record, magnetic tape, compact disc, or music video recording that contains lyrics that include or are descriptive of material harmful to minors." A sound recording need not have become available to minors in order for prosecutors to initiate the process; it is enough, for example, that a sound recording has been sold or distributed by a record company to a particular store. As the statute authorizes censorship before the sound recording at issue is heard, it constitutes an unconstitutional prior restraint.

Just as clearly, PSHB 487 operates as a prior restraint as to all affected individuals not provided notice that the sounding recording is considered "harmful to minors" under PSHB 487. For example, the risk of denied access to an entire market of consumers -- which accounts for a significant percentage of sales of popular music -- carries serious enough consequences for record producers and musical artists that artistic decisions may be compromised to avoid even approaching the ambit of PSHB 487. Record store owners and distributors will be restrained from distributing potentially erotic sound recordings for fear of incurring the substantial costs of defending an erotic determination hearing or facing the substantial penalties for violating an erotic music recording determination -- which they may not even have knowledge of. The effect of the prior restraint is thus a dramatic curtailment of protected expression.

Finally, PSHB 487 provides that music deemed "harmful to minors" but never found to be obscene -- i.e., speech and expression fully protected by the United States Constitution -- cannot be distributed to its adult audience without meeting specific preconditions. It enforces these conditions through the threat of criminal proceedings that leave the speaker two choices: comply or be silent. This is precisely the sort of prior restraint³ the Supreme Court of the United States struck

³ Prior restraints include "injunctions and related judicial processes enforced through contempt proceedings." J. Jeffries, Jr., Rethinking Prior Restraint, 92 Yale L.J. 409, 421

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down in its landmark decision of Near v. Minnesota, 283 U.S. 697 (1931). The laws struck down in Near threatened the publisher with contempt proceedings for resuming distribution of speech that failed to meet certain preconditions. Id. at 712-13. Such a prior restraint, the Court declared, is "the essence of censorship," id. at 713, and is "the most serious and the least tolerable infringement on First Amendment rights." Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 559 (1976).

III. PSHB 487 Unlawfully Compels Speech as Part of the System of Prior Restraint.

Under PSHB 487, without the benefit of judicial guidance on what is considered "harmful to minors," all copies of sound recordings deemed "harmful to minors" by prosecuting attorneys, sold in any community in the State, must be labeled on the front cover with a PARENTAL ADVISORY. AS 11.61.128(c). PSHB 487 thus compels artists, producers, distributors, and retailers to carry a state-mandated message, upon threat of criminal penalties. AS 11.61.128(c), (g) & (h). This message should not be confused with the voluntary labeling system that has been developed by the recording industry. First, the label applied is different, and, second, and far more fundamentally, it is compelled by the government.

Compelling speech violates the constitutional guarantees of free speech just as surely as does censoring speech. In Wooley v. Maynard, 430 U.S. 705 (1977), the Court heard a First Amendment challenge to a New Hampshire law requiring all automobile license plates to carry the state motto "Live Free or Die." The court held it unconstitutional, stating: "[T]he right of freedom of thought protected by the First Amendment against state action includes both the right to speak freely and the right to refrain from speaking at all." 430 U.S. at 714.; see also Pacific Gas & Elec. v. California P.U.C., 475 U.S. 1, 9-18 (1986).

PSHB 487 infringes even more deeply on Alaska residents' free speech rights than did the statute in Wooley. By imposing its message on particular speakers, rather than all citizens of the state, PSHB 487 makes it more probable that the speaker will

(1983). See also Alexander v. United States, 113 S. Ct. 2766 (1993).

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be understood to endorse that message. It also will stigmatize the artists and distributors associated with the work. PSHB 487 thus not only compels speech, but interferes with artists' rights to communicate freely with their audiences. The labeling scheme imposed by the statute abridges the right of free expression, wholly apart from the other constitutional flaws in the statute's scope and procedures.⁴

IV. PSHB 487 is Underinclusive.

The United State Supreme Court has made clear that a State's interest in regulating speech is suspect if the State ignores other potential sources of an alleged harm. See United States v. Edge Broadcasting Co., 113 S. Ct. 2696 (1993). Here, the State does not even attempt to address the many other avenues, such as books and movies, on which similar allegedly harmful words are spoken. This suggests the lack of seriousness in the State's purpose as well as discrimination among media.

V. PSHB 487 Violates Due Process Under The Federal and State Constitutions.

The essence of due process is notice and an opportunity to be heard. See Mitchell v. W.T. Grant Co., 416 U.S. 600 (1974). Due process protections are even more critical when First Amendment freedoms are threatened under a law that attempts to curtail speech the State deems indecent or obscene. Smith v. California, 361 U.S. 147, 149-50 (1959). Indeed, the Supreme Court has maintained a special "insistence that regulations of obscenity scrupulously embody the most rigorous procedural safeguards ..." Id. (emphasis added; citations omitted); see also Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546, 561 (1975) ("rigorous procedural safeguards" required).

Of the numerous constitutional infirmities of PSHB 487, the bill's failure to provide minimal due process protections for free speech is the most blatant. Notably, PSHB 487 does not require that a prosecutor prove the central element of its criminal provisions -- that the sound recording is "harmful to minors" -- before a criminal action is undertaken. AS 11.61.127.

⁴ It acts as a disincentive for compliance with the voluntary labeling schemes already in place by the recording industry.

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Without such a requirement, there is no way a person of "common intelligence" can determine, without guessing, whether or not a particular sound recording is "harmful to minors." This is due, in part, to the legal definition of "obscene" and the state's ability to regulate this area of speech. Indeed, for this reason any reliance on Ginsberg v. New York, 390 U.S. 629 (1968), as support for the constitutionality of PSHB 487's definition of prohibited materials, is misplaced. Ginsberg's finding was based on the fact that the state statute regulating obscenity as to minors at issue was "virtually identical to the Supreme Court's most recent statement of the elements of obscenity." Id., 390 U.S. at 643. In this case, however, PSHB 487's definition of prohibited materials is not of "obscene" materials, but rather of "harmful to minor" materials. As such, the statute's definition of prohibited materials does not conform to the Supreme Court's "most recent statement of the elements of obscenity" and is unconstitutionally vague.

PSHB 487 also fails to define prohibited conduct with sufficient specificity to put citizens on notice of what conduct they must avoid. Without such guidance, classic words such as "To be or not to be, that is the question?" (a potentially "violent" message), or the sexual context of Shakespeare's Romeo and Juliet, read aloud or captured on a sound recording, could be criminalized and, therefore, banned in Alaska. Thus, PSHB 487's failure to list or provide specific subjects that are prohibited violates Alaska citizens' right to due process under both the Alaska and United States Constitutions. See McKinney v. Alabama, 424 U.S. 669 (1976).

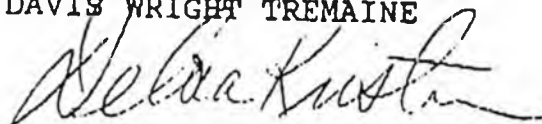
Further, PSHB 487 fails to provide notice to all those who may be subject to criminal prosecution under AS 11.61.127 and 11.61.128. On its face, this provision imposes criminal penalties on those who sell sound recordings deemed harmful to minors even if they were never notified of a judicial determination that the sound recording was "harmful to minors." This constitutes a violation of the right to due process. To prosecute someone for selling a sound recording that the accused does not know has been declared "harmful to minors" is fundamentally unfair.

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Given the numerous constitutional infirmities of PSHB 487,
it is our opinion that PSHB 487 is unconstitutional.

Very truly yours,

DAVIS WRIGHT TREMAINE



Daniel M. Waggoner
Debora K. Kristensen

WARNING !
APPENDIX I
CONTAINS EXPLICIT
AND OFFENSIVE
LYRICS

**WARNING !
APPENDIX I
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APPENDIX I -- SONG LYRICS

I. SEXUAL THEMES

Judas Priest, "Eat Me Alive"

Sounds like an animal panting to the beat
Groan in the pleasure zone, gasping from the heat.
Gut wrenching frenzy that destroys every joint
I'm gonna force you at gunpoint
To eat me alive...squealing in passion
as the rod of steel injects.

2 Live Crew, "C'mon Baby"

(Female voice: "F**k me...Deeper...harder...Oh God,
I can't stop....Oh cum on me....F**k me....")

Love is the key to end all your woe
You'll be my bitch, not a dirty 'ho
Together as one we will be
I'll be fuckin' you and you'll be suckin' me
Then lick my ass up and down
Lick it 'til your tongue turns doo-doo brown.

Poison, "I Want Action"

I want action tonight
Satisfaction all night
Long legs and short skirts
These girls hit me where it hurts
I can't wait to get my hands on them
I won't give up 'til they give in
Now I'm not lookin' for love that lasts
I need a shot and I need it fast
If I can't have her, I'll take her and make her

2 Live Crew, "Pop That Pu**y"

Freaky bitches with plenty of ass, rollin' to the music and shakin' real fast.
Bend over backwards, make me shout, and work that pu**y in and out.
Movin' their body with plenty of action, bringin' the men more satisfaction.

Rub that ass and play with that clit, you know I like that freaky sh*t.
Girl, you know you look so cute, throwin' that pu**y the way you do.

2 Live Crew, "Me So Horny"

Girls always askin' why I f**k so much
Just say what's wrong, girl, with a quick nut
'Cause you're the one and you shouldn't be mad
I won't tell your momma if you don't tell your dad
I know he'll be disgusted
when he sees your pu**y busted
Won't your momma be so mad
if she knew I got that ass
I'm a freak in heat, a dog without warning
My appetite is sex 'cause me so horny.

Scorpions, "Love on the Run"

My love's a gun that wants to talk tonight
I kiss the lust right from your lips
The way it feels will hit you like a blitz
Love on the run, always loaded like a gun
For love I kiss the pearl right from the shell
Until you'll feel what all these words can's tell

2 Live Crew, "Put Her In the Buck"

I'll break ya down and dick ya long
Bust your pu**y, then break your backbone
I'll go between them legs that's open wide
Pushin' this dick from side to side
Legs to the ceilin' I'm feelin' the feelin'
When I bust a nut your ass'll be screamin'

Motley Crue, "All In the Name Of..."

She's only 15
She's the reason
The reason that I can't sleep
You say illegal
I say legal's never been my scene
I try like hell but I'm out of control
All in the name of Rock 'n' Roll
For sex and sex I'd sell my soul

Mentors, "Golden Showers"

Listen, you little slut, do as you are told,
Come with daddy for me to pour the gold.
Golden showers.
All through my excrement you shall roam.
Bend up and smell my anal vapor,
Your face is my toilet paper.
On your face I leave a sh*t tower.
Golden showers.

2 Live Crew, "We Want Some Pu**y"

Gotta a long hard dick for all the ladies,
You can work this stick in my Mercedes.
If you wanna blow just let me know,
We can go backstage at the end of the show.
I'll look at you and you'll look at me,
With my dick in my hand as you fall to your knees.
And you know what to do 'cause I won't say please,
Just nibble on my dick like a rat does cheese.

Prince, "Sister"

I was only 16, but I guess that's no excuse.
My sister was 32, lovely and loose.
My sister never made love to anyone but me,
She's the reason for my sexuality.
Show me where it's supposed to go,
A blow job doesn't mean blow.
Incest is everything it's said to be.

2 Live Crew, "Dirty Nursery Rhymes"

Little Jack Horner sat in a corner
A-fu*kin' this cutie pie.
Stuck in his thumb, made the bitch cum,
Said "Helluva nigger am I."

2 Live Crew, "A Fu*k Is a Fu*k"

F-U-C-K-I-N-G
I'm Fu*kin' you when you're suckin' me.
Fu*k relationships, motherfu*k love
'Cause makin' money is all I'm thinkin' of.

Bitches know what's up with the one night stand,
Make a nigger wait with his dick in his hand.
But they want to fu*k just like we do,
So ho's, stop frontin', drop your drawers, let's screw.

Guns 'N' Roses, "Anything Goes"

Panties 'round your knees with your ass in debris,
Doin' that grind with a push and squeeze.
Tied up, tied down, up against the wall,
Be my rubbermaid, baby, and we can do it all.
My way, your way -- anything goes tonight.

2 Live Crew, "Dick Almighty"

He'll tear the pu**y open 'cause it's satisfaction
The bitch won't leave, it's fatal attraction
Dick's so powerful, she'll kneel and pray
Awaitin' her time, hopin' soon to slay.
That dick will make a bitch cry,
When fu*kin' a bitch that's tight inside.
That dick has got a spell on you,
Once it gets inside, you will act a fool.
That dick will make a bitch act cute,
Suck my dick, bitch, it will make you puke.

But not the long one, I won't play that sh*t,
Put her ass in the buck and kill the clit.
It's fifteen inches long, eight inches thick,
Last name Almighty, first name Dick.
That dick is a motherfu*ker,
I can't be pu**y whipped by a dick sucker.

Bitch, "Leatherbound"

The whip is my toy, handcuffs are your joy.
You hold me down and I'm screaming for more.
When you tie me up and gag me,
The way you give me pain.
Give me lashes, c'mon and drag me.

Van Halen, "Black and Blue"

Slip 'n' slide, push it in,
Bitch sure got the rhythm.
I'm holding back, yeah, I got control.
Hooked into her system, don't draw the line
Honey, I ain't through with you, the harder the better.
Let's do it 'til we're black and blue.

Nasty Savage, "Dungeon of Pleasure"

Forbidden techniques, it's just what they seek
Fantasy lane, dominance, submission,
handcuffs and chains.
Bondage and pain....
The bitch is bound and helpless,
she's screaming for more,
That sweet and innocent girl is really hardcore.
Her obsession with pain makes me bite my lip,
As she eagerly indulges when I give her the whip.

W.A.S.P. (We Are Sexual Perverts), "I Fu*k Like a Beast"

I got pictures of naked ladies lying on my bed,
I whiff the smell of a sweet convulsion.
Thoughts are sweating inside my head,
I'm making artificial love for free.
I start to howl in heat, I fu*k like a beast.

Slayer, "Necrophilia"

Mortuaries, dead of night, my body starts to rise
In my mind the horror lives, to feel death deep inside.

I feel the urge, the growing need,
To fu*k this sinful corpse.
My task's complete, the bitch's soul
Lies raped in demonic lust.

2 Live Crew, "Some Hot Head"

Hot head ho's, some white, some niggeros,
But I like the ones who suck toes and assholes.
With tongues like razors that cut when she licks,
How can I fu*k you with a skinless dick?
You take pride in suckin' a good dick,
And after I nut, bitch, you'd better not spit.
You're a dirt dobbler, a goop gobbler,
You'll fu*k Satan for the righteous dollar.
So give us some hot head.

2 Live Crew, "S & M"

So I pulled a little girlie, this is what I did,
Jumped in the ride and took her to the crib.
Rushed her in the room, sat her on the bed,
Grabbed her by the ears as she gave me head.
Then I turned her over, got it from the back,
The pu**y was sorry so the bitch got slapped.

Thrasher, "She Likes It Rough"

She loves the man who makes her bleed with pleasure,
She'll do it all, she loves to surrender.
All through the night she strains to get away....
She likes it rough, she likes it rough, she likes it hard.
Tie her down, she's knows what's waiting for her.
Nothing too cruel, so beat her 'til she's red and raw,
Crack the whip, it hardly stings the bitch.

2 Live Crew, "The Fu*k Shop"

So as you get the door and the panties drop,
Whole lot a suckin' and fu*kin' at the Fu*k Shop!
~~Please come inside and make yourself at home,~~
I want to fu*k 'cause my dick's on bone.
You little whore, behind closed doors
You would drink my cum and nothing more.
Now spread your wings, open for the flight,
Let me fill you up with somethin' milky and white.

KISS, "Let's Put the X in Sex"

Baby, let's put the X in sex,
Love's like a muscle and you make me wanna flex.
Sometimes you gotta suffer for the
pleasure that you seek.
You're begging for an eyeful but you only get a peck.
The I saw those black lace panties,
And I knew that it was you.

Bytches With Problems, "Teach a Mutthafu*ka
How to Eat the Pu**y Right"

Make like Moses and part my pu**y like the Red Sea,
And slide your fat tongue inside of me.
I take my legs, wrap it around ya head,
Suffocating this bastard 'til he's almost dead.
When I looked down he had his hand on his dick,
I could not believe he was masturbating and sh*t.
My pu**y was goopin like cottage cheese,
His mouth was drippin' as he stood to his feet.

II. DESTRUCTIVE THEMES

Rigor Mortis, "Bodily Dismemberment"

Welcome to my home dear, I'll show you a good time
It's too bad that you never heard my fetish is a crime
There's no need to worry, bitch, just lay there and relax
And as you reach your climax I'll be reaching for my axe.

With five easy slices you're in six lovely pieces,
Bodily dismemberment as passion increases.

First I'll slice your tender leg off just above the thigh
Then I remove your slender arms,
 my passion running high.
Last I will decapitate your pretty little head,
A masterpiece of blood and flesh
 lies twitching on my bed.

Metallica, "Harvester of Sorrow"

Drink up, shoot in, let the beatings begin
Distributor of pain, your loss becomes my gain.
All have said their prayers, invade their nightmares,
To see into my eyes, you'll find where murder lies.
Infanticide.

Mtley Crue, "You're All I Need"

The blade of my knife faced away from your heart,
Those last few nights it turned and sliced you apart.

Metallica, "Fade to Black"

I have lost the will to live,
Simply nothing more to give.
There is nothing more for me,
Need the end to set me free.

Ozzy Osbourne, "Suicide Solution"

Breaking laws, knocking doors,
But there's no one at home.
Made your bed, rest your head,
But you lie there and moan.
Where to hide, suicide is the only way out,
Don't you know what it's really all about?
Why don't you kill yourself,
'Cause you can't escape the reaper.

Blood Feast, "Kill for Pleasure"

Raise of the sledge, bring it down on her head
Kill for pleasure, satisfy the need
Kill for pleasure, make her bleed.

Bathory, "Sadist (Tormentor)"

I love to see you writhe and throe,
The more you suffer my lust grows.
I slit your throat and tear your flesh,
My desire will be your death.
I welter in blood, I rape and slay,
Stab, lacerate, so much lust to satisfy.
To still my hunger, another must die....Sadist!

Ozzy Osbourne, "Bloodbath in Paradise"

They'll summon you, to wake from the dead as
 you lie bleeding, murdered in your bed.
The sweetest dreams are all in your mind,
But no one wakes when Charlie creeps behind.
Execution halts your breath, helter skelter
 spiral death, bloodbath in paradise.
But there's nowhere to break out baby, bloodbath
 in paradise – forever sleep in paradise.

Suicidal Tendencies, "Suicide's An Alternative"

Sick of life -- it sucks,
Sick and tired -- no one cares,
Sick of myself -- don't wanna live,
Sick of living -- gonna die!
Suicide's an alternative.

Metallica, "Damage, Inc."

Blood follows blood and we make sure,
Life ain't for you and we're the cure.
Victim is your name and you shall fall.
Damage jackals ripping right through you,
Sight and smell of this, it gets me goin'.

WORDS MASKED BY GUITAR SOLO:

Get the gun and try it!
Shoot...shoot...shoot...shoot...(laughter)

III. OCCULT THEMES

Slayer, "Spill the Blood"

Spill your blood, let it run on to me
Take my hand and let go of your life
Close your eyes and see what is me
Raise the chalice, embrace the evermore
You've spilt the blood, I have your soul.

Rigor Mortis, "Demons"

We force you to kill your brother,
Eat his blood and brain.
Shredding flesh and sucking bone 'til everyone's insane.

We are pestilent and contaminate the world,
Demonic legions prevail.

We are instruments of evil, we come straight out of hell.
We're the legions of the demons, haunting for the kill.
Cathedrals are now cemeteries, doom is all you see.
We have come to take the world, and give you misery.

We are pestilent and contaminate the world,
And make tombs of your cities.
Demons, demons, demons, demons.

Metallica, "Master of Puppets"

Master of puppets, I'm pulling your strings,
Twisting your mind and smashing your dreams.
Blinded by me, you can't see a thing,
Just call my name, 'cause I'll hear you scream.

Hell is worth all that, natural habitat
Just a rhyme without a reason
Neverending haze, drift on numbered days
Now your life is out of season.
I will occupy, I will help you die,
I will run through you, now I will rule you too.

Come crawling faster, obey your master.
Your life burns faster, obey your master.

Slayer, "Kill Again"

Kill the preacher's only son,
Watch the infant die.
Bodily dismemberment,
Drink the purest blood.

Slayer, "Altar of Sacrifice"

Waiting the hour destined to die,
Here on the table of hell.
A figure in white unknown by man,
Approaching the altar of death.
High priest awaiting, dagger in hand,
Spilling the pure virgin blood.
Satan's slaughter, ceremonial death.
Answer his every command.

Venom, "Possessed"

Look at me, Satan's child, born of evil, thus defiled.
Brought to life through Satanic birth,
Come look at me and I'll show you things that will
open your eyes.
Listen to me and I'll tell you things that will
stick in your mind.
I drink the vomit of the priests,
Make love with the dying whore.
Satan, as my master incarnate, hail,
Praise to my unholy host.

Iron Maiden, "The Number of the Beast"

The ritual has begun, Satan's work is done,
Six, six, six, the number of the beast.
Six, six, six, the one for you and me.
I'm coming back, I will return,
And I'll possess your body and I'll make you burn.



MOTION PICTURE ASSOCIATION
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MEMORANDUM IN OPPOSITION TO ALASKA HOUSE BILL 487

The Motion Picture Association of America, Inc. (MPAA) submits this memorandum in opposition to Alaska House Bill 487, which prohibits the dissemination of motion pictures on video cassettes that depict or describe sexual conduct "harmful to minors" unless permanent warning labels are affixed in specified type size and are covered by opaque wrappers.

The MPAA and its member companies*, who are the leading distributors of motion pictures for theatrical exhibition and subsequent release on video cassette, believe this bill is both unnecessary and contravenes the First Amendment to the United States Constitution.

HB 487 is unnecessary because the overwhelming majority of video tapes available in retail outlets either display the official MPAA rating and/or contain information for the parent to determine whether the video is appropriate for their children's viewing. For over 25 years, MPAA has administered the Classification and Rating Administration (CARA) which awards the familiar G, PG, PG-13, R and NC-17 to motion pictures. The rating system has been successful in guiding parents' decisions about their movie viewing. In the most recent nationwide survey, over 75% of parents surveyed said they found the rating system fairly helpful to helpful. Moreover, the overwhelming majority of theaters and video stores nationwide enforce the voluntary rules and regulations of the motion picture rating system, restricting access to movies that parents may find inappropriate for their children's viewing.

HB 487 would undermine the voluntary enforcement of the rules and regulation of the MPAA-administered rating system, and would cause severe damage to mainstream businesses, including motion picture distributors.

This bill also has the potential to cause retailers that rent and sell videos to provide only information and entertainment options that are appropriate for children due to the criminal liability associated with this bill if it is enacted.

* MPAA member companies include: Buena Vista Pictures Distribution, Inc. (Disney); Metro-Goldwyn-Mayer Inc.; Paramount Pictures Corp.; Sony Pictures Entertainment, Inc.; Twentieth Century Fox Film Corp.; Universal City Studios, Inc.; and Warner Bros., a division of Time Warner Entertainment Company, L.P.

Moreover, businesses like MPAA member companies and independent video manufacturers that distribute movies to video stores in Alaska may also simply decide not to do business in the state because they want to avoid the criminal liability associated with this bill. In addition, due to the relatively small size of the Alaska market, the risk may be too great for the volume of business that is generated.

HB 487 IS UNCONSTITUTIONAL, COULD PENALIZE TAXPAYERS

In addition to practical reasons that this legislation is unnecessary, HB 487 raises serious constitutional issues. If this bill is enacted, it could also cost taxpayers hundreds of thousands of dollars in attorneys' fees if a constitutional challenge was successful.

HB 487 makes it a criminal act to sell, rent or distribute video cassettes without warning labels, which contravenes the First Amendment to the United States Constitution. The statutory prohibition constitutes an impermissible prior restraint of expression and bears a heavy presumption against its constitutional validity. Bantam Books v. Sullivan, 372 U.S. 58 (1963). The very concept of prior restraints on speech is repugnant to the First Amendment. Near v. Minnesota, 283 U.S. 697 (1931).

Since warning labels are required, MPAA also submits that this bill is unconstitutional because the courts have long held that the freedom of thought protected by the First Amendment against state action includes both the right to speak freely and the right to refrain from speaking at all. This principle is illustrated by the case of Miami Herald Publishing v. Tornillo, 418 US 241 (1974) where the Supreme Court held unconstitutional a Florida statute placing an affirmative duty upon newspapers to publish the replies of political candidates they had criticized. The court found that the requirement deprived a newspaper of the fundamental right to decide what to print or omit. "For corporations as for individuals, the choice to speak includes within it the choice of what not to say." Tornillo at 258. The First Amendment guarantees freedom of speech a term which necessarily comprises the decision of both what to say and what not to say. See Riley v. National Federation of the Blind, 108 S.Ct 2667 (1988). This proposed bill compels film distributors to affix warning labels and create opaque packaging for certain video cassettes or to cease the distribution of videos in the State of Alaska. Such action constitutes impermissible forced speech which violates the First Amendment.

MPAA believes that the courts would strike down HB 487 as they did an order that compelled a utility to place a newsletter containing views of a third party in its billing envelopes because in both cases the freedom not to speak publicly does not lose its protection because of the corporate identity of the speaker. See Pacific Gas Electric v. P.V.C. of California, 106 S.Ct 903 (1986).

Since the proposed bill impinges on the First Amendment, plaintiffs who succeed in invalidating the law would be entitled to an award of court costs and attorneys' fees under Title 42 USC Section 1983. Thus, Alaska taxpayers would not only bear the cost of defending an invalid law, but also the cost of successful challenges. For example, as a result of losing a constitutional challenge to a Missouri statute, the State of Missouri was recently ordered to pay nearly \$200,000 in attorneys' fees to the MPAA and the Video Software Dealers Association.

Under this bill, filmmakers and video stores would be required to identify motion pictures which contain depictions that are "harmful to minors" in order to determine those on which to place the permanent "warning" label and cover with an opaque wrapper. The existence of such a list would likely lead to self-imposed censorship as motion picture distributors and video stores fear that the list could become public and thus falsely identify them as purveyors of pornography to minors which may result in unwarranted prosecution. In 1969, the United States Supreme Court struck down a Rhode Island law that authorized a commission to maintain a list of objectionable works. See Bantam Books v. Sullivan 372 US 58 (1969). In addition, the bill requires motion picture distributors to incriminate themselves by admitting their films contain depictions that are "harmful to minors" which might be subject to prosecution.

MPAA also believes the amendments to existing state law in HB 487, which would place labeling requirements on materials containing mere sexual conduct that have not been found by a court of law to be either obscene or harmful to minors, are unconstitutional because they infringe upon the First Amendment.

Motion pictures are a form of expression which is protected by the First Amendment to the U.S. Constitution, Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495 (1952); Eronoznik v. City of Jacksonville, 422 U.S. 205 (1975); Jenkins v. Georgia, 417 U.S. 153 (1974). The exhibition of a motion picture to an adult may be proscribed only if the motion picture is obscene, which requires a finding that such films "if taken as whole, appeal to the prurient interest in sex, which portray sexual conduct in a patently offensive way, and which taken as a whole, do not have serious literary, artistic, political or scientific value...", Miller v. California, 413 U.S. 15, 21 (1973). The more recent U.S. Supreme Court ruling in Pope v. Illinois, 481 U.S. 497 (1987), affirmed the Miller test, specifying that the proper inquiry in an obscenity prosecution is whether a "reasonable person," as opposed to the "community," would find that the material possesses serious value.

Regulations pertaining to restricting a minor's access to a motion picture face similar constitutional scrutiny: it may be prohibited only if the motion picture is "harmful to minors," which requires a finding that the motion picture depicts nudity, sexual

contact, sexual excitement, or sadomasochistic abuse in a manner which "predominantly appeals to the prurient, morbid, or shameful interests of minors, which is patently offensive to prevailing standards in the adult community concerning what is suitable for minors and which is utterly without redeeming social importance for minors." Ginsberg v. New York, 390 U.S. 629 (1968). In Interstate Circuit v. City of Dallas, 391 U.S. 53 (1968), decided on the same day as Ginsberg, a Dallas ordinance that prohibited the admission of minors to films defined as not suitable for minors including motion pictures, "describing or portraying brutality, criminal violence, depravity, nudity, sexual promiscuity or abnormal sexual relations", was found unconstitutionally vague and over broad. The Court found that the absence of narrowly drawn, reasonable and definite standards was fatal and that, while the Constitution does not grant absolute freedom, restrictions imposed cannot be so vague as to set the censor "adrift upon a boundless sea."

LABEL REQUIREMENT ON VIOLENT VIDEO MOVIES UNCONSTITUTIONAL

The attempt in HB 487 to require a parental advisory warning label on motion picture videos that contain depictions of violence goes well beyond obscenity guidelines established by U.S. Supreme Court decisions. While the Supreme Court stated in Miller that obscenity was not protected by the First Amendment and could be regulated by the states, it has repeatedly held that virtually all other portrayals of behavior are protected by the First Amendment.

In Interstate Circuit, Inc. v. City of Dallas, 366 F.2d 590 (5th Cir. 1966), remanded 391 U.S. 53, 88 S.Ct. 1649, 20 L.Ed.2d 415 (1968), the Fifth Circuit struck down as overbroad and unconstitutional an ordinance which classified as "not suitable for young persons" any film which described or portrayed excessive brutality or criminal violence. The Court found that the restriction on brutality or violence was invalid and held that "the standard for classification must be restricted to the control of obscenity". The Supreme Court in Sovereign News Co. v. Falke, 448 F. Supp. 306 (U.S.D.C. Ohio 977), remanded 610 F. 2d, 428, cert. denied Warner V. Sovereign News Co., 447 U.S. 923, rehearing denied, 448 U.S. 912, appeal after remand, 674 F. 2d. 484, cert. denied 459 U.S. 864, and 459 U.S. 883 (1982), confirmed a lower court ruling which held that materials containing non-obscene violence, brutality, or cruelty cannot be banned. The Court held that materials involving violence are given the highest degree of constitutional protection and may not be restricted unless they constitute a clear and present danger to society. More recently, the Supreme Court held that an Indianapolis ordinance that prohibited the depiction of non-obscene sexual violence was unconstitutional because the ordinance proscribed speech based on content. American Booksellers Association, Inc., et. al. v. William Hudnut III 771 F. 2d 323 (1985) aff'd, 106 S.Ct. 1172 (1986). The Court reasoned that the First Amendment preserves the right of every speaker in this nation to advocate even unpopular

views. Therefore, restrictions or regulations placed upon the depiction of distasteful, upsetting or socially unacceptable behavior restrain free expression and are unconstitutionally overbroad.

Depictions and descriptions of violence have never been included among the categories of unprotected speech. The Supreme Court has declined to create such a category in cases in which it has considered such depictions and descriptions. In Winters v. New York, 333 U.S. 507 (1948), the Court had before it magazines that were "nothing but stories and pictures of bloodshed and lust." 333 U.S. at 512. The Court further recognized that the magazines have no serious literary or other value, but it nevertheless held them fully protected by the First Amendment:

"We do not accede to (New York's) suggestions that the constitutional protection for a free press applies to the exposition of ideas. The line between the informing and the entertaining is too elusive for the protection of that basic right. Everyone is familiar with instance of propaganda through fiction. What is one man's amusement, teaches another's doctrine. Though we can see nothing of any possible value to society in these magazines, they are entitled to the same protection of free speech as the best of literature." 333 U.S. at 510.

More recently, the United States District Court for the Western District of Missouri declared a Missouri violence statute unconstitutional and permanently barred its enforcement. The Missouri statute, which was signed into law June 20, 1989, would have forbidden the sale or rental of "violent" video cassettes to minors. In his order ruling the law unconstitutional, Judge Bartlett recognized the distinction between obscene materials that are beyond the scope of the First Amendment and materials depicting violence:

"The Supreme Court has not held that violent speech is unprotected by the Constitution...unlike obscenity, violent expression is protected by the First Amendment." Video Software Dealers Association, et. al. v. William L. Webster, et. al., 773 F. Supp. 1275 (1991), aff'd 968 F.2d 684 (1992).

The Court of Appeals upheld the District Court, and recognized the distinction between materials depicting violence and those that are beyond the scope of First Amendment protection "...videos depicting only violence do not fall within the legal definition of obscenity for either adults or minors", 968 F.2d 684, 688 (1992). The State of Missouri has been ordered to pay nearly \$200,000 in

legal fees, resulting from their loss in the constitutional challenge, to the MPAA and VSDA.

In addition, this bill is impermissively vague because it does not specifically define the kind of violence that can be banned. The MPAA submits it would be impossible for theater owners or video retailers to determine which films or videos would be required to be labeled and/or packaged in an opaque wrapper. For example, a documentary that contains news footage from Bosnia, certain cartoons, like "Superman" and "Teenage Mutant Ninja Turtles," and sporting events, like football highlights, in theaters or on video cassette could be deemed to contain "representations of violent behavior."

This legislation could subject theater owners and video retailers who distribute mainstream motion pictures which are acceptable by the majority of Alaska residents to criminal prosecution. A movie with a message to discourage drug usage that utilizes a dramatic element in the content of the film which depicts "violent behavior" to illustrate the realities of the drug culture would subject theater owners and video store owners to prosecution if disseminated to a minor. This bill as drafted would establish an unreasonable burden and potential criminal liability on theater owners and video retailers.

Alaska HB 487 will not pass constitutional scrutiny because it prohibits the distribution of motion pictures on video cassette, without a permanent warning label in an opaque wrapping, that are protected under the First Amendment. The Supreme Court has never approved of a regulation or prohibition against the depiction of sexual conduct, even for minors, unless the Miller or Ginsberg tests are met. Further, violence is a class of speech that has never been permitted to be regulated, even for minors.

CONCLUSION

HB 487 is unnecessary and contravenes the United States Constitution.

This bill undermines the voluntary procedures and policies of the video industry which provides parents specific information about the content of the movies available for sale and rent so they can determine what is suitable for their children's viewing

HB 487 is unconstitutional because mandated warning labels are a form of prior restraint, forced speech and because the bill requires that video cassettes be labeled "harmful to minors" before there has been any determination that the material has been found to be obscene or harmful to minors based on United States Supreme Court standards. At the same time, the "harmful to minors" standards contained in the bill, which include the depiction of violent behavior, go well beyond the guidelines permitted by the

United States Supreme Court. See Ginsberg v. New York, 390 U.S. 629 (1968). Moreover, this may result in self censorship because it would force theater owners and video stores to identify movies that contain depictions of sexual conduct which might also cause self incrimination. Bantam Books v. Sullivan 372 US 58 (1969). The bill is also overbroad and vague, based on constitutional standards, because it does not identify the "person" required to be identified on the label or who is to affix it.

In addition, unless a motion picture film meets the narrow definition of obscenity for adults set forth by the Supreme Court in Miller v. California or for minors in Ginsberg v. New York, it may not be prohibited. The proposed legislation, which would require a permanent warning label on motion pictures and films on video cassette in an opaque wrapper containing non-obscene sexual conduct, exceeds the parameters of the Miller and Ginsberg decisions. Such government regulations are constitutionally invalid.

For both practical and legal reasons, we urge the Alaska Legislature to defeat HB 487.

February, 1994

THE MEDIA COALITION, INC.

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(212) 768-6770

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March 8, 1994

Representative Bill Hudson
Chairman
House Labor and Commerce Committee
State Capitol
Juneau, AK 98801-1182

Re: House Bill 487

Dear Representative Hudson,

House Bill 487 threatens the distribution of First Amendment protected recordings and videos in Alaska. The Media Coalition, whose members include recording manufacturers, recording and video retailers, publishers, booksellers, librarians, periodical wholesalers and distributors in Alaska and the rest of the United States, opposes this effort to limit constitutional rights.

A provision of H.B. 487 prohibits the dissemination of recordings and music videos that are "harmful to minors" unless warning labels are affixed and the videos are covered in opaque wrappers. This would clearly chill the distribution of constitutionally-protected materials to adults as well as to minors. It is impossible for a recording or video retailer to review the thousands of new recordings or music videos he or she receives within a year. If a recording or video has not been voluntarily labelled by the manufacturer, there may be no way to discern whether it contains material "harmful to minors." Thus, a retailer will have no choice but to withdraw from sale any recording or video which he or she suspects may be "harmful to minors." Adults would no longer have access to material that they have a First Amendment right to purchase or borrow.

H.B. 487 violates the First Amendment in another way--by including the "graphic description...of violent behavior" in its definition of "harmful to minors." Violent content in otherwise constitutionally protected material is not a permissible subject of regulation. Every court that has addressed this issue has held that violent content of depiction is constitutionally protected speech. Davis-Kidd Booksellers, Inc. v. McWherter, Chancery Court, 20th Judicial District, Case No. 90-1893-III (I), February 14, 1992 struck down a restriction on the sale to minors of material containing "excess violence." Video Software Dealers Assn. v. Webster, 773 F. Supp. 1275 (W.D. Mo. 1991) held that "unlike obscenity, violent expression is protected by the First

Rep. Hudson
March 8, 1994
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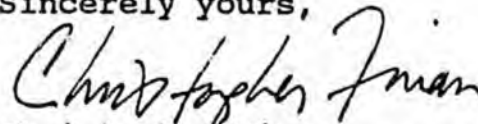
Amendment." State v. Johnson, 343 so. 2d 705,710 (La. 1977) declared that prohibiting the sale of violent materials to minors exceed the limits placed on regulation of obscene materials by the U.S. Supreme Court. Sovereign News Co. v. Falke, 448 F. Supp. 306, 400 (N.D. Ohio 1977) overturned a statute defining as "harmful to minors" material describing or representing "extreme or bizarre violence."

The regulation of violent material is not made permissible by adding it to the type of regulation at issue in Ginsberg v. New York, 390 U.S. 629 (1968) and Miller v. California, 413 U.S. 15 (1973). Both Ginsberg and Miller involved the regulation of sexually explicit material that may be constitutionally regulated.

Because it threatens the distribution of constitutionally-protected works, H.B. 487 will be vulnerable to a legal challenge if it is enacted. If the law is overturned, the state could be ordered to pay the plaintiffs' attorneys' fees. In a case challenging an unconstitutional Indianapolis ordinance, the members of Media Coalition and others were awarded over \$100,000 in attorneys' fees.

Please defeat H.B. 487.

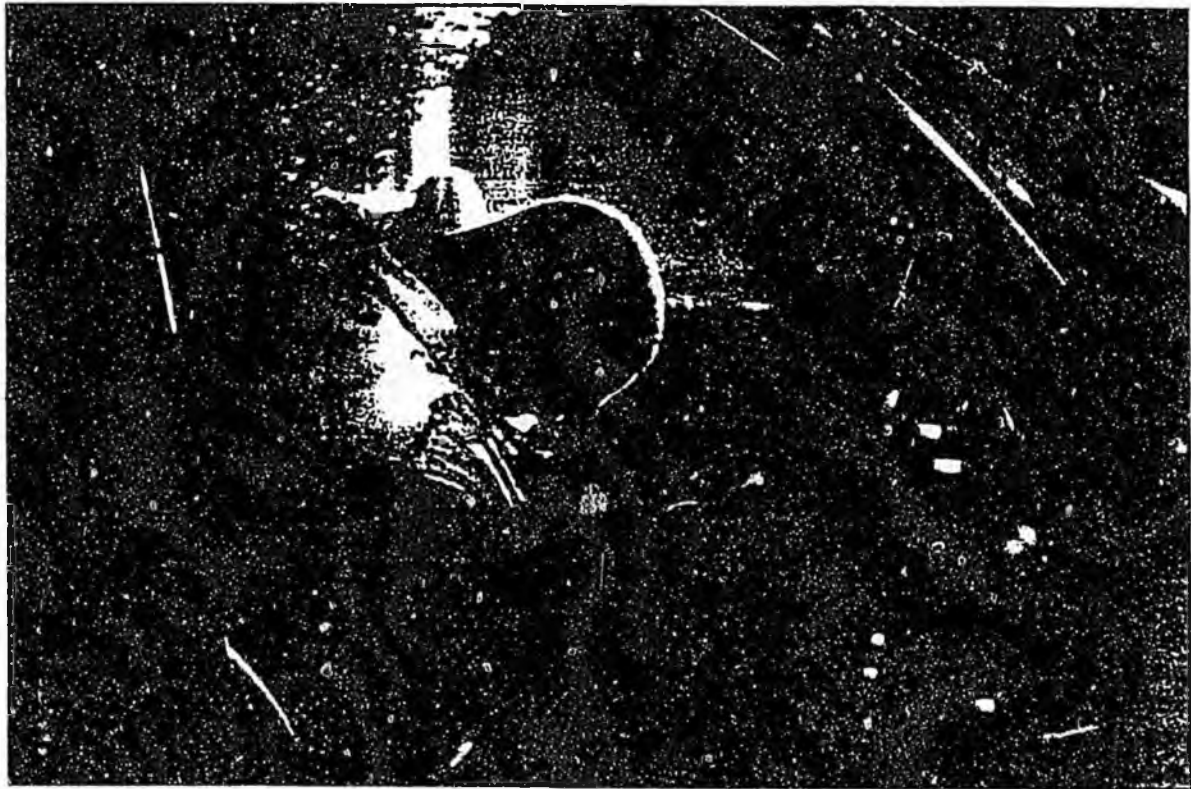
Sincerely yours,



Christopher Finan
Executive Director

A Generation at Risk: What Can be Done?

by Thomas L. Jipping



■ *Too common a sight:* A young murder victim slumps over the wheel of his car in Washington, D.C., which leads the nation in homicides per capita.

Coming to grips with the homicide plague among America's youth is daunting indeed. Stories of dead teenagers are filling America's newspapers.

Just a year ago, the cover of *U.S. News and World Report* decried the "epidemic of teenage murder" that claims more young men every 100 hours than were killed during the Persian Gulf

War. According to the U.S. Department of Justice, teenagers are victims of violent crime at a rate three times that of adults. During the 1980s, arrests of minors for murder jumped by



■ *Faddish firepower:* A Los Angeles gang member sports an Uzi. Availability of guns has been blamed for the murder plague, but what inspires the killer behind the gun?

music as one of the two most powerful influences on young people. These experts echo Aristotle, who believed that music has the power to shape character.

Motley Crue, perhaps the most popular heavy metal rock band today, says that "those who have the youth have the future." Who has them? The average teenager today listens to rock music from four to six hours a day. We should not wonder why. Young people are searching for guidance, meaning, and identity and are not finding it where they should.

The *Washington Post* recently ran a front-page story about the despair and sheer boredom among affluent northern

Virginia teenagers. Columnist Cal Thomas points out that rock stars meet three of children's basic needs: "First, [they] provide unlimited time. They never tell teens to come back when they're not busy. . . . Second . . . [they] offer complete, unqualified acceptance. . . . Third, [they] understand."

What do the rock stars tell America's youth during that unlimited time? *U.S. News* observed recently that there is an emphasis on "violence and far more explicit sexual descriptions." Even liberal columnist Ellen Goodman writes that "rock lyrics have turned from 'I can't get no satisfaction' to 'I'm going to force you at gunpoint to eat me

alive.'" *Time* magazine also noted that "rock music has become a dominant—and potentially destructive—part of teenage culture. Lyrics, album covers and music videos, particularly in the rock genre called heavy metal, romanticize bondage, sexual assaults and murder."

Among the hundreds of heavy metal bands willing to spend unlimited time with America's youth are Annihilator, Atrocity, Blood Feast, The Damned, Death, Deicide, Devastation, Entombed, Guillotine, The Horde of Torment, Infernal Majesty, Legion of Death, Massacre, Megadeth, Morbid Angel, Obituary, Pestilence, Poison, Rigor

CORRECTION

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

A Generation at Risk: What Can be Done?

by Thomas L. Jipping



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War. According to the U.S. Department of Justice, teenagers are victims of violent crime at a rate three times that of adults. During the 1980s, arrests of minors for murder jumped by

more than 20 percent.

The picture is even more bleak in the black community. Firearm homicides by young black men more than doubled during the 1980s. Columnist Don Feder states that "statistically, a young black man is 10 times more likely to commit a homicide than a young white" man, while a National Center for Health Statistics study found that young blacks are five times as likely as whites to be homicide victims.

As my father used to say, liars figure and figures lie. Is there really a "homicide plague" among America's youth or a new "epidemic of teenage murder"? Ira Schwartz argues in his book *(In)Justice for Juveniles* that "we are not in the midst of a juvenile crime wave" and that "minority youth, particularly black youth, do not account for a substantially disproportionate amount of serious juvenile crime." Indeed, it remains true that the large majority of black youth are not out killing for Reeboks, but are going to school and church, working, and just trying to grow up.

What we do know is that the numbers themselves really cannot tell the whole story. This generation of America's youth is "at risk," to use the currently fashionable buzzphrase, and we all know it. Whether it is suicide, drugs, sexual promiscuity and abortion, or rebellion, many indicators even outside of the homicide statistics establish this loud and clear. And simply telling the grim tale alone permits coping

■

The messages and values that young people learn from the prevailing culture will determine how they live their lives and, in turn, the ultimate nature and character of our society.

■

out by wringing hands at the relative size of the problem. Listing stats is the easy part, while going beyond to address the cause and cure is the real job here.

In a society of individuals who do not seem to believe in much anymore, who want license rather than ordered liberty, and rights rather than responsibility, people often refuse to either face the obvious or address the important. As such, most attempts to get on with the task of examining cause and cure are left stagnantly tinkering with symptoms and fail entirely to arrive at meaningful solutions.

Typical of the confident, almost cocky, media establishment, *U.S. News* announced last year that the main reason for the homicide epidemic is "the no-problem availability of guns." They miss the boat entirely. Observations about the current

weapon of choice tell us absolutely nothing about why that weapon (or any other, for that matter) is used and entirely ignore the fact that, even in America's urban jungles, most young black men commit no crimes at all. If the availability of guns is the cause, everyone who could obtain one (nearly everyone, according to *U.S. News*) would use them. But it just isn't so.

THE CAUSE

The cause is not guns. The cause is culture. Culture, writes Illinois state Rep. Penny Pullen in the foreword to *Heavy Metal, Rap, and America's Youth* (Free Congress Foundation, 1991), is "a major determinant of our values. . . . Not a mere environment but a malleable milieu, subject to manipulation for good or ill." The messages and values that young people learn from the prevailing culture will determine how they live their lives and, in turn, will determine the ultimate nature and character of our society.

One yardstick of the culture is the messages children receive through popular music. Sheila Davis, adjunct professor of lyric writing at New York University, writes that songs "are more than mere 'mirrors of society;' they are a potent force in the shaping of it. . . . Popular songs . . . provide the primary 'equipment for living' for America's youth."

Child and adolescent psychiatrist Robert Demski identifies