

**ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672**

**8311**

**SENATE JUDICIARY**

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

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

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

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

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

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

The court normally will use the exclusionary remedy as the  
primary means of effectuating certain basic constitutional rights.  
The rationale for the exclusionary rule is deterrence of  
unconstitutional methods of law enforcement; and the imperative of  
judicial integrity which requires that the courts not be made  
"party to lawless invasions of the constitutional rights of  
citizens by permitting unhindered governmental use of the fruits  
of such invasions." see, Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684  
(1961); and Terry v. Ohio, 392 U.S. 1, 13, 88 S.Ct. 1868, 1875  
(1958). The court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 goes to the very heart of our constitutional history. The right  
2 of privacy and to "be let alone" is at issue. Protection from the  
3 government's unlawful search and seizure is at stake. Our  
4 discussion is not a "waste of time" (see, State Opposition, p.1).  
5 The values and rights in question are basic to our governmental  
6 structure.

7 Constitutional rights become simply words without content  
8 unless there is a meaningful consequence for their violation. The  
9 judiciary fails to support and defend the constitution (as we are  
10 sworn to do) if we permit official lawlessness.

11 In the instant case, Mr. Sabon was not only unlawfully  
12 arrested without a warrant, but also he was incarcerated and his  
13 pockets were searched. The indignity resulting from the arrest of  
14 Mr. Sabon was compounded by his subsequent incarceration and  
15 search. The government's action was an affront both to Mr. Sabon  
16 and the constitution. The aggravated nature of this lawless police  
17 conduct in violation of fundamental statutory and constitutional  
18 rights mandates a remedial response. Mr. Sabon's right to be let  
19 alone was violated. Further, the State's conduct amounted to a  
20 illegal search and seizure of Mr. Sabon. It is the opinion of this  
21 court in the interest: (1) of deterring such police conduct in the  
22 future, (2) of preserving the integrity of the judiciary, (3) of  
23 protecting fundamental constitutional rights, and (4) of furthering  
24 justice, that the present action is subject to the exclusionary  
25 rule and also to dismissal.

1 In summary, Mr. Sabon was arrested without a warrant for the  
2 misdemeanor offense of minor consuming. The arresting officer did  
3 not observe Mr. Sabon consume or possess alcohol. Mr. Sabon's  
4 arrest was not in accord with AS 12.25.030 and violated Alaska  
5 Constitution, art. I, section 14. The exclusionary rule leads to  
6 the suppression of evidence obtained following Mr. Sabon's arrest.  
7 The interests of police deterrence, judicial integrity,  
8 constitutional rights and furtherance of justice together with  
9 insufficient evidence, as a matter of law, call for dismissal of  
10 the present charges.

11 IV. CONCLUSION

12 Therefore, based on all of the above, and for good cause  
13 having been shown,

14 It Is Hereby Ordered, Adjudged, and Decreed:

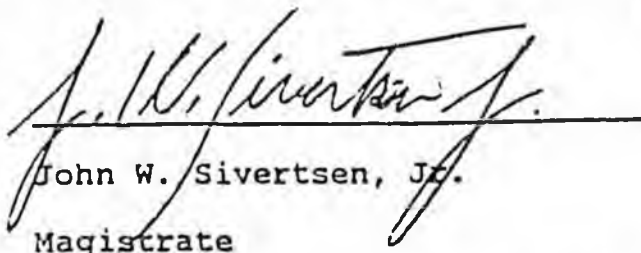
15 That any and all evidence seized following Mr. Sabon's arrest  
16 shall be suppressed;

17 That Defendant's Motion To Dismiss is Granted; and

18 That the present case is Dismissed with prejudice.

19 Dated this 2 March 1992.

20 In The District Court At Juneau

21   
22 \_\_\_\_\_  
23 John W. Sivertsen, Jr.  
24 Magistrate

25 **CERTIFICATION**

The undersigned certifies that on the 2 day of  
March, 1992, a true copy of this  
document was served on the following attorneys:  
Don. Utaluk, Esq. & David Bow  
Donna McPhee, Esq. & David Bow  
By Y. W. Smith, Secretary

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT JUNEAU

STATE OF ALASKA,

Plaintiff,

v.

IVAN SABON

Defendant.

Case No. 1JU-S92-386 Cr.

CERTIFICATION

[ ] This document and its attachments do not contain information that is confidential under AS 12.61.110 or the name of a victim of a crime listed in AS 12.61.140.

OPPOSITION TO MOTION TO DISMISS

FACTS

Officer Worth responded to the Senate Building on March 14, 1992 in response to a report of a person passed out in the restroom. Upon arrival at 1706 hours Worth discovered the defendant (Sabon) sitting on a toilet in an unconscious condition with his pants down. Worth's attempts to awaken Sabon proved difficult. Sabon had an odor of alcohol about his person and had bloodshot watery eyes. Sabon would not identify himself. Worth and Sergeant Herrera arrested Sabon for minor consuming based on Herrera's knowledge of Sabon's identity and presumably his age, although the police report doesn't indicate they knew his age.

ARGUMENT

The defendant argues in his memorandum that because the officers didn't see Sabon consume the alcohol the arrest is unconstitutional and the case must be dismissed. This does not

OPPOSITION TO MOTION  
TO DISMISS

in any way explain why the court should go beyond the requirements of the "exclusionary rule" of evidence illegally seized to the more drastic step of dismissing the case. Elson v. State, 659 P.2d 1195 (Alaska 1983) and State v. Sears, 553 P.2d 907 (Alaska 1976); Mapp v. Ohio, 367 U.S. 643; 81 S. Ct. 1684, 6 L.Ed.2d 1081 (1961).

An illegal arrest is not a valid basis for dismissal of the action or suppression of the evidence. McConnell v. State, 595 P2d 147, 156 (AK 1979) See also fn. 26 at 155. (question of whether probable cause existed for defendant's arrest for MICS 3d not addressed given above-cited law). The remedy lies with the civil courts. See Ingraham v. Wright, 430 U.S. 651, 680 n. 48, 97 S.Ct. 1401 (1977).

Nor is outrageous conduct involved in this matter. Vaden v. State, 768 P2d 1102 (Alaska 1989) discusses outrageous conduct. While the Alaska Supreme Court noted in Vaden that judicial intervention for outrageous conduct is not limited to entrapment cases, the court nowhere in the opinion set out a standard for outrageous conduct outside of the entrapment situation. The court did, however, include a footnote at page 1108 (No. 13) which discusses outrageousness outside of entrapment. The standard is the malum in se standard i.e. the conduct must be inherently evil, immoral in its nature, illegality founded on principles of natural, moral and public law.

In this case the officers arrested a drunken teenager who

had passed out in a restroom, there is nothing inherently evil or immoral about such conduct. From a philosophical perspective one would be hard pressed to say such actions violate moral or public law. The law of the land is that if an officer were to have deprived Lawrence of his liberty improperly he would have been able to bring a 1983 Civil Rights action. Furthermore, had the officers left Sabon in the building and he later wandered in front of a car, the court knows the likely outcome.

In this case the court should focus on whether suppressing evidence is applicable not dismissal. The purpose of the exclusionary rule is two-fold, the preservation of the integrity of the judicial system and to dissuade law enforcement from a lawless invasion of a citizen's constitutional rights. Terry v. Ohio, 392 U.S. 1; 88 S. Ct. 1868, 20 L.Ed.2d 889 (1968); Sears, 553 P.2d at 912. Assuming arguendo that there was an illegal arrest in this matter then the remedy is the exclusionary rule prohibiting the introduction of any evidence from the time of the arrest onward, not the dismissal of the case.<sup>1</sup>

Not all contacts between police officers and citizens involve a seizure of a person. The difference between a permissible encounter and a seizure is explained in Florida v. Royer, 103 S. Ct. 1319, 75 L.Ed.2d 229 (1983), when the United States Supreme Court said:

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<sup>1</sup> The defendant in citing the Minnesota case of State v. Abu-Shanab, 440 N.W.2d 557, relates to the sufficiency of evidence at trial rather than the exclusionary rule or dismissal.

Law enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if the person is willing to listen, or by offering in evidence in a criminal prosecution his voluntary answers to such questions . . . Nor would the fact that an officer identifies himself as a police officer, without more convert the encounter into a seizure requiring some level of objective justification . . . .

Here, there is no seizure of a person when a police officer approaches him and asks him questions and as a result of those questions later arrests the person.

There is nothing illegal about this arrest. The defendant argues that the court of appeals decision in State v. Thronsen, 809 P.2d 941 (Alaska App. 1991), should be applicable here. This is a case where the defendant was specifically charged with "possession" of cocaine by having the cocaine in his bloodstream. The court said that "possession" in one's bloodstream was not the exercise of dominion or control over the cocaine required by AS 11.81.900(b)(42) and hence the state had not, when it specifically charged possession in the bloodstream, met its burden of proof at trial. The court went on to say that the possession of cocaine in the bloodstream was circumstantial evidence of the person's possession before it got to the bloodstream. But in this instance, that is not how the crime was charged. A violation of AS 11.71.040 of "possession" of a controlled substance is a substantially different crime than a violation of AS 04.16.050. The essential elements of a violation

of AS 11.71.040 are: (1) at the time and place charged; (2) the defendant knowingly possessed a substance; and (3) that substance was a schedule IIA controlled substance. The essential elements of a violation of AS 04.16.050 are: (1) at the time and place charged; (2) the defendant was under 21 years of age; (3) that he knowingly consumed or possessed, or controlled an alcoholic beverage. Hence in this instance the definition of "possess" found in AS 11.81.900(b)(42) is only applicable to one of three ways that one can commit this offense.<sup>2</sup> In this instance, the defendant had consumed an alcoholic beverage as distinct from possessed an alcoholic beverage. The argument is that because the statute is written in the present tense, it does not include "consumed." If this were so, none of the criminal statutes would be applicable unless the crime was committed in the officer's presence. Take for example AS 11.41.100, murder. "A person commits the crime of murder in the first degree if with the intent to cause the death of another person the person causes the death of any person." If the defendant's argument were applied to murder, no one could be charged with the commission of the offense unless it occurred directly in the officer's presence because the charge would be that the person caused the death of

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<sup>2</sup> The definition found at AS 11.81.900(b)(42) reads: "'possess'" means having physical possession or the exercise of dominion or control over property. However, very specifically this definition is limited to Title 11. The preamble to the definition section says "for purposes of this Title," that is, Title 11. Therefore, possess may mean something substantially different for Title 4. However, the court need not reach this issue because possess is only one of three ways of committing this offense.

another person. The charge alleges something that occurred in the past. The very first legislature to compile Alaska laws in 1962 recognized that the absurd argument made here might arise and enacted AS 01.10.050 which says: "Words in the present tense include the past and future tenses and words in the future tense include the present tense." Consequently, no matter what creative use one puts Webster's New World Dictionary (2d edition, 1982), the Alaska State Legislature has indicated that the crime set forth in AS 04.16.050 includes the past tense of consuming an alcoholic beverage.

Sabon cites State v. Hornaday, 713 P.2d 71, 74 (1986) for the proposition that an arrest for minor consuming can't be made unless the officer sees the consuming. Hornaday is not an Alaska case. The proper citation is, State v. Hornaday, 713 P.2d 71 (Washington 1986), Under the revised code of Washington the Washington Supreme Court held that consume did not include the past tense. The RCW apparently does not include a provision such as AS 01.10.050. Because Alaska's statutory scheme is different, Hornaday does not apply.

The dissent of Hornaday is ,however, instructive. J. Brachtenbach suggested,

Common sense is not a bad precedent. To hold that an admittedly intoxicated person is not in possession of intoxicants is an exercise in sophistry beyond my comprehension unless we, like spiders, are content to spin fine but temporary webs.

J. Brachtenbach went on to quote from Francis Bacon's "Of Judicature" Essays from (1625),

Judges must beware of hard constructions and strained inferences, for there is no worse torture than the torture of laws.

Sabon's citation to State v. Abu-Shanab, 448 N.W. 2d 557 (Minn. App. 1989) isn't applicable because the issue there was whether the state proved venue at trial in a border town incident.

Neither is State v. Sorensen, 758 P.2d 466 (Utah App. 1988) applicable, where the issue was no evidence of intoxication at trial other than defendant's breath smelling of alcohol.

#### CONCLUSION

The defendant argues that this case should be dismissed, citing no authority for the dismissal of a case assuming an illegal arrest. Assuming an illegal arrest under Alaska law, the proper remedy is the application of the "exclusionary rule" from the time of the arrest into the future. There is no prospective application of the exclusionary rule found in any case. The arrest in this case is permissible in that the defendant was committing a misdemeanor by having consumed alcohol. For the above-stated reason the defendant's motion should be denied.

DATED at Juneau, Alaska this \_\_\_\_\_ day of May 1992.

CHARLES E. COLE  
ATTORNEY GENERAL

By: \_\_\_\_\_  
J. Ron Sutcliffe  
Assistant District Attorney

**S B**

**2 2 3**

# STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

## DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

P.O. BOX 110100  
 JUNEAU, ALASKA 99811-0100  
 TELEPHONE: (907) 465-2300  
 FACSIMILE: (907) 465-2369

September 30, 1993

The Honorable Randy Phillips, Chairman  
 Legislative Budget and Audit Committee  
 P.O. Box 142  
 Eagle River, AK 99577

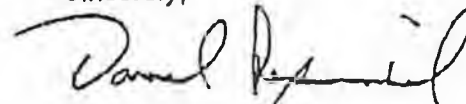
Dear Senator Phillips:

Alaska's education tax credit program was available to corporations and businesses which made contributions to public or private Alaska colleges or universities during the past year. Effective January 1, 1992 the education credit statutes were amended to increase the maximum credit from \$100,000 to \$150,000.

Under the education credit program, taxpayers are allowed a credit against their tax liabilities for 50% of qualified contributions of not more than \$100,000 and 100% of the next \$100,000 of contributions. In accordance with reporting requirements under the statutes listed below, following are the amount of education credits claimed against tax liabilities during the past year.

	Statute	Amount
Corporation Net Income	AS 43.20.014 (c)	\$438,016
Oil and Gas Production	AS 43.85.019 (c)	71,080
Oil and Gas Property	AS 43.56.018 (c)	24,333
Mining License	AS 43.65.018 (c)	0
Fisheries Business	AS 43.75.018 (c)	0
<b>Total</b>		<b>\$533,429</b>

Sincerely,



Darrel J. Rexwinkel  
 Commissioner

cc: Shelby Stastny, Director, Office of Management and Budget  
 Kris Lethin, Legislative Liaison  
 Robert Baratko, Director, Administrative Services Division  
 Larry Meyers, Director, Income and Excise Audit Division  
 John Pilkinton, Director, Oil and Gas Audit Division

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 93-11J

# Alaska State Legislature

Senate Majority Leader  
Chair, Judiciary Committee  
Vice Chair, Community &  
Regional Affairs

Member, State Affairs Committee  
Committee on Committees  
Western States Legislative Forestry Task Force  
Legislative Council



*Senator Robin L. Taylor*

State Capitol  
Juneau, Alaska 99801-1182  
(907) 465-3873  
Fax: (907) 465-3922

352 Front Street  
Ketchikan, Alaska 99901  
(907) 225-8088  
Fax: (907) 225-0713

## SPONSOR STATEMENT

### SPONSOR SUBSTITUTE FOR SENATE BILL 223

Despite reductions of about 35% since 1986, public broadcasting in Alaska still costs the general fund more than six million dollars per year. Enactment of this legislation would provide an incentive for business and industry to contribute to public broadcasting and reduce the dependence on state funding.

Alaska's public radio and television networks and stations are recognized as an integral part of our educational system. Under Senate Bill 223, contributions to those networks and stations would be allowed as a tax credit under the same provisions which allow for credit for donations to our colleges and universities.

This bill would allow for such credits against the Alaska Net Income Tax and four other state taxes. In fiscal year 1993, Alaska business and industry claimed \$533,429 against their taxes for donations under the education tax credit provisions.

The Alaska State Legislature has shown strong support for public broadcasting in the past. Public broadcasting is a vital part of our communications and education system, depended upon by thousands of rural and urban Alaskans.

To quote Rich McClear, the former manager of Raven Radio in Sitka, "Raven Radio would find this bill very useful in helping us become more independent of state support". That is the goal of SB 223 and I ask for your support.

SPONSOR STATEMENT

# FISCAL NOT

No. 2

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

Bill Version SSSB 223

(S) Publish Date: 3-2-94

Revision Date:	Dept. Affected: <u>Administration</u>
Title: <u>"An Act authorizing credits against certain taxes for broadcasting...."</u>	BFU: <u>Public Broadcasting Commission</u>
Sponsor: <u>Taylor</u>	Component: <u>Public Broadcasting Commission</u>
Requestor: <u>(S) CRA</u>	COMPONENT SERIAL NO. <u>77</u>

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>	0.0	0.0	0.0	0.0	0.0	0.0
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<b>CHANGE IN REVENUES ( )</b>	0.0	0.0	0.0	0.0	0.0	0.0
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**FUND SOURCE** (Thousands of Dollars)

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

Estimate of current year (FY94) cost: none

**POSITIONS:**

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

**ANALYSIS:** (Attach a separate page if necessary)

Prepared by: Doug Samimi-Moore Phone: 465-2846  
 Division: Alaska Public Broadcasting Commission Date: \_\_\_\_\_

Approved by Commissioner: Nancy Bear Usual Date: 3/28/94  
 Agency: Administration

PREPARER TO PROVIDE  
For further distribut

LEGISLATIVE OFFICE  
Info

# FISCAL NOTE

No. 1

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BI Bill Version SSSB 223  
(S) Publish Date: 3-2-94

Revision Date: \_\_\_\_\_ Dept. Affected: Revenue  
Title: Tax Credit: Gifts to Public Broadcasting BRU: Revenue Operations  
Component: Income and Excise Audit  
Sponsor: Senator Taylor  
Requestor: (S) CRA COMPONENT SERIAL NO. 113

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL</b>						
<b>REVENUE FUND SOURCE: General</b>	(**)	(**)	(**)	(**)	(**)	(**)

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: \$ 0

ANALYSIS: (Attach a separate page if necessary.)  
  
(\*\*) See Attached

Prepared by: Larry E. Mevers Phone: 465-2320  
Division: Income and Excise Audit Date: March 1, 1994  
Approved by Commissioner: Darrel J. Rexwinkel Date: March 1, 1994  
Agency: Department of Revenue

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### Bill Analysis

This bill authorizes taxpayers to claim a credit against taxes due for cash contributions to private nonprofit corporations that are licensed as a public broadcasting station in the state. The credit, not to exceed \$150,000, may be claimed against the following tax types:

- Corporation Net Income (AS 43.20)
- Oil and Gas Production (AS 43.55)
- Oil and Gas Property (AS 43.56)
- Mining License (AS 43.65)
- Fisheries Business (AS 43.75)

During the taxpayer's tax year, credits claimed cannot be combined to exceed \$150,000.

This bill takes effect January 1, 1995.

### Revenue

Total amount of credits will vary each year depending on contributions made by taxpayers. Although it is not likely that all taxpayers will make contributions to reach the maximum \$150,000 credit allowed under this bill and have tax liabilities to the extent of the credit, following is the maximum impact on revenue assuming that the top 10% of taxpayers claim the maximum credit allowed (except that all oil and gas taxpayers would claim credits).

<i>Tax Type</i>	<i># Taxpayers</i>	<i>Total Credits (# Taxpayers x \$150,000)</i>
Corporation Net Income	685	\$102,750,000
Oil and Gas Production and Property	30	4,500,000
Mining License	50	7,500,000
Fisheries Business	50	7,500,000
<b>Total</b>	<b>815</b>	<b>\$122,250,000</b>

LAW OFFICES

BIRCH, HORTON, BITTNER AND CHEROT A PROFESSIONAL CORPORATION

1127 WEST SEVENTH AVENUE • ANCHORAGE, ALASKA 99501-3563 • TELEPHONE (907) 276-1500 • TELECOPIER (907) 276-3800

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KEY BANK BUILDING  
100 CUSHMAN STREET, SUITE 301  
FAIRBANKS, ALASKA 99701-4872  
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TELECOPIER (907) 456-3055

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(907) 486-3880  
TELECOPIER (907) 486-2814

1105 CONNECTICUT AVE. N.W.  
SUITE 120C  
WASHINGTON D.C. 20036-4308  
(202) 450-0881  
TELECOPIER (202) 450-1021

WRITER'S DIRECT DIAL NO. (907) 263-7219 • WRITER'S DIRECT FAX NO. (907) 276-3680

February 28, 1994

Senator Fred Zharoff  
Room 121  
State Capitol  
Juneau, Alaska 99801-1182

VIA FACSIMILE

Re: SB 223

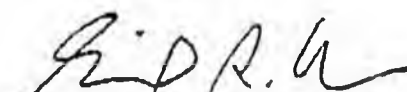
Dear Senator Zharoff:

I am writing to request your support for SB 223 when it comes up before your Community and Regional Affairs Committee tomorrow morning. I became involved with this bill soon after my return to Alaska because of the benefits I believe will accrue to rural Alaska upon its implementation. Growing up in rural Alaska during a time when there was only one radio station (and no television) available has absolutely convinced me of the importance of public broadcasting.

Unquestionably, APRN and its local affiliates play an important role in rural Alaska. Expanding the tax credit to include corporate contributions to public broadcasting will ensure that these stations have the support necessary to continue to provide the valuable services they currently provide to these communities. I urge you to support the bill, and thank you for your consideration.

Sincerely yours,

BIRCH, HORTON, BITTNER and CHEROT

  
Gail R. Oba

LETTERS OF SUPPORT



**RAVEN RADIO**  
**KCAW • 104.7 FM**

2 B Lincoln Street • Sitka, Alaska 99835 • (907) 747-5877

September 5, 1993

Joe Ambrose, Chief of Staff  
Senator Robin Taylor  
392 Front St.  
Ketchikan, AK 99901

Dear Joe,

Thank you for sending me the tax credit bill which Senator Taylor hopes to introduce in the legislature next session. The bill looks like the type we would like to see introduced and passed into law. Diane Kaplan of APRN is reviewing the bill and running it past two APRN board members who represent corporations that plan to make major contributions to Public Radio to see if there are any changes they feel would be helpful. Raven Radio would find this bill very useful in helping us become more independent of State support. It will be especially useful as we approach corporations in a capital drive.

This may be my last letter to you for a while. I will be going to Albania in mid September to work for Radio Tirane on a grant from the German Marshall Fund of the United States. Therefore I have resigned my position as manager of Raven Radio. I plan to return to Sitka in the spring of 1994 and pursue other activities. Ken Fate has been named Interim General Manager. He has been Chief Announcer, supervising volunteers for the past three years. Before that Ken managed KUOI in Moscow Idaho. I know you will find him a pleasure to work with.

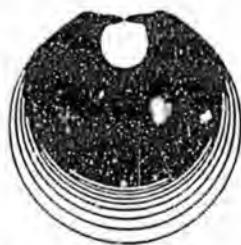
Thank you for your help on this legislation and for your overall help the past years.

Sincerely,

Rich McClear  
General Manager

# **CORRECTION**

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



**RAVEN RADIO**  
**KCAW • 104.7 FM**

2 B Lincoln Street • Sitka, Alaska 99835 • (907) 747-5877

September 5, 1993

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Thank you for your help on this legislation and for your overall help the past years.

Sincerely,

Rich McClear  
General Manager

August 30, 1993

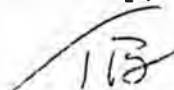
Joe Ambrose  
352 Front Street  
Ketchikan, Alaska 99901

Dear Joe:

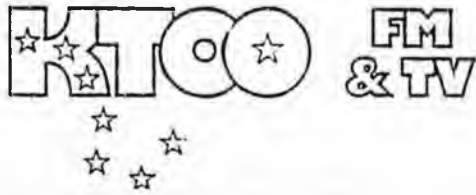
Just received your fax on Robin's draft bill on tax credits for public broadcasting. We appreciate Robin's efforts on our behalf as we face yet another year of decreasing revenue. KSTK has redoubled our efforts to find outside funding in order to keep the five staff members required for federal funding.

Please keep us notified of the progress of this bill. If you have any questions, please give me a call.

Sincerely,



Tis Peterman  
General Manager



Capital Community Broadcasting, Inc.  
224 Fourth Street  
Juneau, Alaska 99801-1198  
(907) 586-1670  
FAX: (907) 586-3612

August 27, 1993

Senator Robin Taylor  
c/o Joe Ambrose  
35 1/2 Front Street  
Ketchikan, Alaska 99901

Dear Senator Taylor:

Thanks for sharing the draft of the tax credit legislation. We're delighted that you're taking the lead on this important means of helping public stations become more self reliant.

At first glance, the draft bill seems right in line with our ideas. I'm hoping to have a chance to discuss the specifics with some of my colleagues at other stations in the next week or two, and will plan on a more complete response soon. One preliminary suggestion would be to extend the credit to communications and transportation companies. Both industries are already substantial supporters, and would be likely to increase their support under the terms of your bill.

I hope you're enjoying the interim and the great Southeast summer. Thanks for taking the time to think about this piece of legislation.

Sincerely,

A handwritten signature in cursive script that reads 'Bill'.

Bill Legere  
President and General Manager

**SB**

**225**

If you or your corporation pay any of these taxes to the state of Alaska

- Income Tax
- Oil and Gas Property Tax
- Oil and Gas Production Tax
- Fisheries Tax
- Mining License Tax

you may make a contribution to the University of Alaska and reduce your state tax bill.

In some cases, your gift can result in you paying no state taxes at all.

## How the Educational Tax Credit works

After you have made your contribution to the University and you fill out the forms to pay any of the taxes listed, you may claim an Alaskan Educational Tax Credit for up to 50% of the first \$100,000 of your gift and 100% of the next \$100,000 of your gift to the University.

For example, suppose in one year you or your business owes the state of Alaska an oil and gas production tax of \$200,000 and you make a \$200,000 contribution to the University of Alaska. You may then claim a credit against your state oil and gas production tax liability of \$150,000 (50% of the first \$100,000 plus 100% of the second \$100,000 of your gift = \$150,000).

Thus you have benefitted the University with a \$200,000 gift, and your oil and gas production tax bill has been reduced from \$200,000 to only \$50,000. The same is true of the other state taxes listed.

Since some of these state taxes are paid monthly, the Department of Revenue regulations and instructions will provide you with information as to how you may allocate a pro rata share of the annual credit to your monthly tax payments made to the state.

Please note that each contribution you make to the University of Alaska may be claimed for credit on *only one* of the state taxes listed above. Your accountant or attorney can help you decide under which tax you should claim your education contribution credit to provide you with the greatest benefit. The maximum credit which may be claimed by a taxpayer in any tax year is \$150,000.

## What kind of contributions are eligible?

To be eligible for a state educational contribution tax credit, your contributions to the University of Alaska must be in the form of cash.

## How do I claim the credit?

You should discuss this new law with your accountant and ask that your state tax forms be filled out to claim the credit. Alternatively, you may seek assistance from the Alaska State Department of Revenue on claiming the credit.

## How do I make my gift to support the University of Alaska?

You may simply write a check to the University of Alaska Foundation and send it to:

University of Alaska Foundation  
Attn: Scott Taylor, Executive Director  
910 Yukon Drive, Suite 206  
Fairbanks, AK 99775-5240  
(907) 474-7687 FAX 474-7664

If you would like your contribution to be used to benefit a particular university in the University of Alaska system (UAA, UAF, UAS) or a branch campus (Chukchi, Interior, Kenai, Ketchikan, Kodiak, Kuskokwim, Mat-Su, Northwest, Prince William Sound Community College, Sitka, etc.) or program (Engineering, Music, Physics, etc.), you may also include this in your letter to the Foundation.

If you would like help in making your contribution, you may call or write us at the address noted.

## How will my gift be managed and used?

Your gift to the University of Alaska is accepted and managed by the University of Alaska Foundation and used exactly as you specify in your letter accompanying your donation. Gifts which are unrestricted are especially valuable since they allow the University flexibility in allocating resources to the most pressing needs. The Foundation will invest your gift in accordance with its investment policy established by the Board of Trustees. A diversified portfolio approach is used by the Foundation's investment managers which has resulted in total returns ranging from 12% to 15% for its endowment funds over the last several years.

Recognition of all contributions to the University, except those who wish to remain anonymous, is made in the University of Alaska Foundation's Annual Report. Additional media coverage and/or special events often accompany especially large gifts. The Foundation can also help you to establish named endowment funds or other funds for special purposes to support the University.

## What you should know about the University of Alaska Foundation

The University of Alaska Foundation is a non-profit corporation established in 1974 to receive donations and to hold and manage them for the exclusive benefit of the University of Alaska.

Unrestricted gifts to the Foundation will be expended for the benefit of the University of Alaska by the Foundation's Board of Trustees in consultation with the University administration. Gifts to the Foundation which are restricted to specific campuses, purposes or uses will be expended exclusively in accordance with the terms of the gift.

The Foundation is a tax-exempt organization as described in Subsection 501(c)(3) of the Internal Revenue Code. It qualifies as a public charitable organization under Subsection 170(b)(1)(A)(vi) of the Internal Revenue Code. Contributions to the Foundation are deductible according to the schedules established under income and estate tax regulations.

Additional or specific inquiries should be addressed to the University of Alaska Foundation.

*The University of Alaska Foundation is not engaged in rendering legal or tax advisory services. For advice and assistance in specific cases, the services of an attorney or other professional advisor should be obtained. The purpose of this publication is to provide general information only.*

### Who is Eligible?

Any taxpayer who pays an Alaska state income tax, oil or gas production or oil and gas property tax, mining license tax or fisheries tax is eligible to claim a credit on their state tax for a portion of cash contributions made to the University of Alaska.

### Why Make a Gift to the University?

The University of Alaska needs private support to assure that it can reach and sustain levels of academic excellence. As state funding becomes more precarious, it is essential that we establish a strong and stable source of private funding to assure that our instructional, research and public service programs have the necessary resources to achieve the level of distinction Alaska deserves.

Partnerships between the university and the private sector must be made among all those who benefit from the growth and development of a strong state university system.



University of Alaska Foundation  
910 Milken Drive, Suite 206  
Fairbanks, AK 99775-5240  
(907) 474-7687



Gifts  
to the  
University of  
Alaska  
can reduce  
your state  
taxes . . .



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**LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

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

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

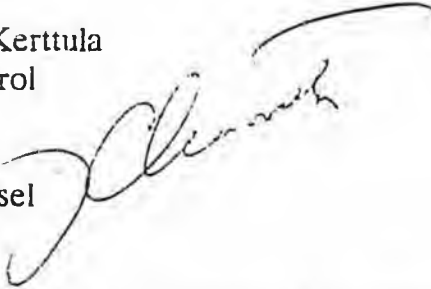
MEMORANDUM

January 19, 1994

**SUBJECT:** Senate Bill 225 -- Sectional analysis (Work Order No. 8-LS1268\E)

**TO:** Senator Jalmar Kerttula  
Attn: Carol Carrol

**FROM:** Jack Chenoweth  
Legislative Counsel



The measure would extend to payers of taxes imposed under the statutory title which regulates the business of insurance (AS 21) the same opportunity to claim credits for gifts to state educational institutions as were authorized for payers of various taxes imposed under AS 43 by ch. 71, SLA 1991.

Bill section 1: The bill section adds a subsection (j) to AS 21.09.210 that authorizes a claim of the credit against taxes due and payable under the general levy imposed on direct insurance premium income.

Bill section 2: The bill section adds a subsection (b) to AS 21.66.110 that authorizes a claim of the credit against taxes due and payable under the levy imposed on title insurance premiums.

Bill section 3: This provision defines the credit, extending the opportunity to claim a credit against taxes for contributions to qualifying educational institutions. The language derives directly from the claim of the credit authorized by the taxes imposed under AS 43. In amount, the claim of credit is limited to the lesser amount of (1) one-half of the amount of contributions on the first \$100,000 (\$50,000) and the full amount of the contribution on the next \$100,000, an effective maximum of \$150,000, or (2) 50 percent of the taxpayer's tax liability under AS 21.

Bill sections 4 - 8: The amendments to these five sections conform the various sections under which the educational institution credit is authorized against the corporate income tax (AS 43.20), oil and gas production (i.e severance) tax and surcharge (AS 43.55), oil and gas property tax (AS 43.56), mining license tax (AS 43.65), and fisheries business tax (43.75). Cumulative claims of the credits

Senator Jalmar Kerttula  
January 19, 1994  
Page 2

against all taxes--the insurance tax addressed in this bill and the five other taxes against which the claim may be made--during any one tax year may not, in total, exceed \$150,000.

Bill section 9: This provision makes the insurance tax credit claimable retroactive to January 1, 1994, to allow for a claim of the full amount of the credit in the current calendar year.

Bill section 10 gives the bill an immediate effective date.

JBC:pl  
94-050.plm

SPONSOR STATEMENT S.B. 225  
TAX CREDITS FOR INSURANCE COMPANIES  
SENATOR JAY KERTTULA

THIS BILL WILL ALLOW AUTHORIZED INSURANCE AND TITLE INSURANCE COMPANIES TO CREDIT THEIR STATE TAX LIABILITY WITH AN AMOUNT EQUAL TO DONATIONS THEY MAKE TO QUALIFIED HIGHER EDUCATIONAL INSTITUTION IN THE STATE.

AN INSURANCE COMPANY WILL BE ABLE TO TAKE A CREDIT FOR 50% OF THE FIRST \$100,000 AND 100% OF THE NEXT \$100,000 UP TO A LIMIT OF \$150,000 (OR 50% OF THEIR TAX LIABILITY WHICHEVER IS LESS) THAT THEY DONATE TO A QUALIFIED INSTITUTION. THIS BILL BROADENS TO THE INSURANCE INDUSTRY THE ALREADY EXISTING TAX CREDITS AVAILABLE FOR OTHER INDUSTRIES IN THE STATE TO SUPPORT HIGHER EDUCATION.

I UNDERSTAND THAT THERE ARE MANY INSURANCE COMPANIES DOING BUSINESS IN THE STATE, SOME OF WHICH HAVE A VERY LIMITED MARKET. THIS IS WHY I HAVE ADDED THE 50% OF TAX LIABILITY LIMITATION, IN ORDER TO ENSURE THAT EACH COMPANY HAS A

MINIMAL AMOUNT OF INTERACTION WITH THE DIVISION OF INSURANCE.  
IN ADDITION, THE DIVISION OF INSURANCE IS FUNDED ENTIRELY BY  
THE TAXES AND FEES THE INSURANCE COMPANIES PAY TO THE STATE.  
SO, IN ORDER TO ENSURE A STABLE BUDGET ARENA FOR THE DIVISION,  
I HAVE LIMITED THE CREDIT TO 50% OF THE TAX LIABILITY.

I BELIEVE THIS BILL WILL HAVE A POSITIVE AFFECT ON  
EDUCATIONAL INSTITUTIONS IN THE STATE BY PROVIDING AN  
INCENTIVE TO THE INSURANCE INDUSTRY TO SUPPORT ALASKA  
EDUCATIONAL INSTITUTIONS.

# FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

No. 2  
Bill Version: SB 225  
(S) Public's F.a.e. 2-4-94

Revision Date: \_\_\_\_\_ Dept. Affected: Revenue  
Title: Insurance Tax Credit: Gifts to Colleges BRU: Revenue Operations  
Sponsor: Senator Kerttula Component: Income and Excise Audit  
Requestor: (S) HES COMPONENT SERIAL NO. 113

Expenditures/Revenues: (Thousands of Dollars)

	FY95	FY96	FY97	FY98	FY99	FY00
<b>OPERATING</b>						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL</b>						
<b>REVENUE FUND SOURCE: General</b>	<b>**</b>	<b>**</b>	<b>**</b>	<b>**</b>	<b>**</b>	<b>**</b>

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME			
PART-TIME			
TEMPORARY			

Estimate of current year (FY94) impact: \$ 0

Changes in CS SB 225 (HES)  
reflect NO FISCAL CHANGE from the original  
fiscal note. This fiscal note is appropriate.  
2/4/94 keh  
date Comptroller (initial)

ANALYSIS: (Attach a separate page if necessary.)

\*\* It is not feasible to determine how credits claimed under this bill will impact credits claimed under AS Title 43 because credits under both Title 21 and Title 43 are competing for the \$150,000 total credit limitation. Amounts will vary depending on contributions made by taxpayers each year.

Prepared by: Larry E. Meyers Phone: 465-2320  
Division: Income and Excise Audit Date: January 31, 1994  
Approved by Commissioner: Darrel J. Rexwinkel Date: January 31, 1994  
Agency: Department of Revenue

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For further information, contact the Legislative Office

FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

Version: SB 225  
(S) Publish Date: 2-4-94

Revision Date: \_\_\_\_\_  
Title: Insurance Tax Credits: Gifts to Colleges  
Sponsor: Kertula  
Requestor: \_\_\_\_\_

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

Expenditures/Revenues:

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ( )	(900.0)	(900.0)	(900.0)	(900.0)	(900.0)	(900.0)
------------------------	---------	---------	---------	---------	---------	---------

GF 1004 & 68515  
FUND SOURCE

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

Estimate of current year (FY 94) cost: \$ 0

POSITIONS

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

Changes in CSB 225 (HES) )  
reflect NO FISCAL CHANGE from the original )  
fiscal note. This fiscal note is appropriate. )  
2/4/94 ban )  
date Comte Aide (initial)

ANALYSIS: (Attach a separate page if necessary.)

This bill provides for a maximum annual premium tax credit of \$150,000 for cash gifts to Alaska colleges. Any tax credit will reduce general fund premium tax revenue (CMB 1004, SAS 68515) by a like amount. It is impossible to predict the amount of premium tax credits that would be applicable in any given year. However, if six companies claimed the maximum premium credit, the result would be a loss of \$900.0 to the general fund.

Prepared by: Joan Brown, Administrative Officer  
Division: Insurance

Phone: 465-2597  
Date: 1/20/94

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

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

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For further distribution information call the Governor's Legislative Office



Office of the President

February 14, 1994

Honorable Senator Jay Kerttula  
PO Box V  
Juneau, AK 99811

RE: Senate Bill 225

Dear Senator Kerttula,

The above cited piece of legislation is of great interest to Sheldon Jackson College and the institutions of higher education in this state. We are in support of this bill and we appreciate your efforts in its introduction.

The Alaska Income Tax Education Credit is an extremely useful tool for Alaskans because it encourages mutually beneficial partnerships between industry and higher education. This tool allows colleges in the state to enhance and improve academic programs by having access to the funding necessary to implement quality education for Alaskans.

An omission in the original legislation, namely the omission of including the insurance industry as a taxpayer group eligible to participate in this most essential partnering incentive, can be rectified by SB 225.

We support the passage of SB 225 in order to rectify the omission of the original bill. Thank you for recognizing and attempting to correct the oversight of the incentive.

Best regards,

Kenneth M. Cameron D.M.D.  
President (Acting)

# ALASKA PACIFIC UNIVERSITY

The President

FAX for Senator Jay Kerttula  
 Re: Education Tax Credit

Dear Senator Kerttula:

I write to support Senate Bill 225 which seeks to include within the Education Tax Credit legislation a group of Alaskan corporations who were inadvertently left out of the earlier legislation. I refer to insurance companies who do not pay state income tax but do pay a tax based on premiums.

The inadvertence was due to the fact that the insurance companies are included in a different part of the code. S225 seeks to remedy this oversight to make it possible for these companies to receive credits against certain insurance taxes for contribution to certain educational institutions in the same way that is available to other companies under paragraphs in AS43.

Insurance companies, interested in making gifts through the Education Tax Credit program, have urged us to seek a way for them to be included in the program.

This is very important especially to the two private institutions in the state, Alaska Pacific University and Sheldon Jackson College, and to the University of Alaska Foundation. It encourages corporations to support institutions that are totally dependent on private philanthropy. These institutions provide substantial service to the state by educating a significant percentage of Alaska's students with high quality programs.

I urge the passage of S225.

Cordially,

*Tom*

F. Thomas Trotter  
 President

Post-It™ brand fax transmittal memo 7671 # of pages 1

To <i>Carol</i>	From <i>Tom Trotter</i>
Co. <i>Sen Kerttula's Office</i>	Co. <i>APU</i>
Dept.	Phone # <i>907-8220</i>
Fax # <i>465-3801</i>	Fax #



Wendy Redman, Vice President  
University Relations  
(907) 474-7562  
(907) 474-7570 (FAX)

University of Alaska Statewide System  
Fairbanks, Alaska 99775-6680

TO: Senate HESS Committee

FROM: Wendy Redman, Vice President *WR*

DATE: February 2, 1994

RE: SB 225 - Credits Against Certain Insurance Taxes

I am sorry that I am unable to testify in person, or by audio conference, in support of SB 225, but I ask that this letter be included in the proceedings of the meeting, and that the University of Alaska be shown as strongly in favor of passage.

The tax credit legislation passed several years ago has proved very helpful to the University of Alaska, to APU and to Sheldon Jackson College in seeking private funds in support of our academic programs. Corporations and businesses that are inclined to donate to higher education find it much more appealing because of the tax credit opportunity. It has been a significant asset for our fund-raisers in presenting their case to potential donors.

Legislation regarding the taxation of insurance companies doing business in Alaska precludes them from being able to utilize the current corporate tax credit. The legislation before you will extend the tax credit to this group of corporations and, we hope, make them more favorable to our solicitations.

As you know the legislature has been encouraging the University of Alaska to seek alternative revenue sources including private fund-raising. UAF has been particularly active, having just completed their first major campaign. The campus raised close to \$12 million over the past two years, exceeding their goal by \$2 million. The majority of these funds are in endowments that will provide benefits to students far into the future. UAA and UAS have engaged in smaller efforts, but they have each had notable success over the past year with several substantial gifts.

During discussion on the original legislation there were concerns that other private non-profit groups would be disadvantaged if donors were encouraged, by use of a tax credit, to give money to higher education. I believe that the pattern of private fund-raising in the state has shown that this is not true, and that corporations and businesses continue to make donations following their own internal priorities and principles. The tax credit is an advantage for securing donations that are already targeted for higher education but for one reason or another just haven't materialized.

Thank you for your interest and again, on behalf of the University of Alaska, I urge your support of this legislation, and ask for your vote to move SB 225 from the HESS Committee.

**SB**

**228**

# *Senator Judith E. Salo*

---

*Alaska State Legislature*

## SPONSOR STATEMENT

### SENATE BILL 228

In October of 1993 a man allegedly raped and assaulted two women in Anchorage. One of the sad facts in this case was that the perpetrator had been convicted and sentenced for a felony drug offense and yet he was still free. He had a long criminal record that included convictions for three rapes and two vehicle thefts in California. In Alaska he had been convicted for gambling, carrying a concealed weapon, fourth degree assault, trespassing, and possession of cocaine. His criminal record indicates a violent past and a threat of being a danger to the community. In spite of these facts, the defendant was released on (\$5,000.00) bail pending appeal. The lives of two women and their families are forever changed because of these circumstances.

S.B. 228 is a simple bill. It adds to the list of crimes and circumstances for which bail is not allowed under AS 12.30.040(b). It will prevent a persons release on bail either before sentencing or pending appeal where the person has been previously convicted of sexual assault in the second and third degrees, sexual abuse of a minor in the second and third degrees and stalking in the first degree.

I ask for the committee's support and prompt attention so that we might protect the lives of other potential victims of violent crime.

*South Anchorage • Indian • Bird Creek • Girdwood • Hope • Kenai • Nikiski • Kalifornsky Beach*

*State Capitol • Juneau, AK 99801 • (907) 465-4940 • (907) 465-3766 FAX*



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FISCAL NOTE

BILL NO. SB 228

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

Revision Date: January 20, 1994  
Title: "...bail after conviction...if defendent has certain previous felony convictions."  
Sponsor: Senator Salo  
Requestor: Senate Judiciary

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	-0-	-0-	-0-	-0-	-0-	-0-

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

REVENUE						
---------	--	--	--	--	--	--

FUNDING:

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

POSITIONS:

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

Estimate of current year (FY94) impact: -0-

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

*Richard I. Peques*

Prepared by: Richard I. Peques, Director Phone: 465-3672  
Division: Administrative Services/Division Date: January 20, 1994  
Approved by Commissioner: Bruce M. Botelho, Attorney General  
Agency: Department of Law Date: January 20, 1994

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FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. SB 228

ANALYSIS CONTINUATION:

This bill would prohibit bail after conviction and before sentencing or pending appeal if the person has been convicted of an offense that is an unclassified or a class A felony; or a class B or class C felony if the person has been previously convicted of an offense that is an unclassified felony, a class A felony, or stalking in the first degree, sexual assault in the second or third degrees, and sexual abuse of a minor in the second or third degrees. In most cases, courts usually deny bail under these circumstances. However, the bill removes the courts' existing authority to grant bail in these circumstances. In any event, these are sentencing provisions that occur after conviction and, consequently, there will not be a fiscal impact for the Department of Law.

# FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO: SB 228

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety  
 Title: "An Act relating to bail after conviction  
certain previous felony convictions" BRU: Alaska State Troopers  
 Sponsor: Senator Salo Component: Detachments  
 Requestor: S. JUD COMPONENT SERIAL NO. 799

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

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

**FUNDING: (Thousands of Dollars)**

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

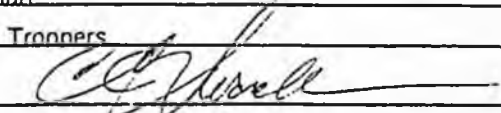
Estimate of current year (FY 94) impact: \$ \_\_\_\_\_

**POSITIONS:**

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

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact upon the Alaska State Troopers is anticipated.

Prepared By: Francis C. Allan Phone: 269-5691  
 Division: Alaska State Troopers Date: 1/12/94  
 Approved by Commissioner:  Date: 1/24/94  
 Agency: Richard L. Burton, Dept. of Public Safety

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FISCAL NOTE

BILL NO. SB 228

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_  
 Title: \*An Act relating to bail  
after conviction for various . . .  
 Sponsor: Senator Salo  
 Requestor: Senate Judiciary

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING SOURCE: (Thousands of Dollars)

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

Estimate of any current year (FY 94) cost: \$ 0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Brant McGee  
 Division: Office of Public Advocacy

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

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

Date: 1/24/94

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# FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. SB 228

Revision Date: \_\_\_\_\_ Dept. Affected: Administration  
 Title: "An Act relating to bail after conviction ...." BRU: Public Defender Agency  
 Component: Public Defender Agency  
 Sponsor: Senator Salo  
 Requestor: Senate Judiciary COMPONENT SERIAL NO. 1631

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

**FUND SOURCE** (Thousands of Dollars)

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

Estimate of current year (FY94) cost: none

**POSITIONS:**

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

**ANALYSIS:** (Attach a separate page if necessary)

Prepared by: John Salemi, Director Phone: 264-4400  
 Division: Public Defender Agency Date: \_\_\_\_\_  
 Approved by Commissioner: Nancy Bear Usera Date: 1/24/94  
 Agency: Administration

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# FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. SB 228

Revision Date: \_\_\_\_\_ Dept. Affected: Corrections  
 Title: No bail for felons with previous BRU: Statewide Operations  
convictions Component: Institutions  
 Sponsor: Sen. Sato  
 Requestor: Senate Judiciary COMPONENT SERIAL NO. 694-1884

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

<b>CAPITAL EXPENDITURES</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
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<b>CHANGE IN REVENUES ( )</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
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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						
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

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

**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

Please see the attached fiscal analysis.

Prepared by: Diane Schenker, Special Assistant Phone: 465-4643/786-2147  
 Division: Office of the Commissioner Date: 3/1/94  
 Approved by Commissioner: J. Frank Prewitt, Jr. Date: 3/1/94  
 Agency: Department of Corrections

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Fiscal Note/DOC

SB 228

March 1, 1994

Page 2 of 2

The bill would preclude an offender who has been convicted of a class B or C felony from being released on bail before sentencing or pending appeal if the offender had previously been convicted of an unclassified or class A felony, or certain sex offenses or stalking.

#### Assumptions

1. It is assumed that offenders convicted of class B or C felonies with the types of prior records applicable in the bill would be sentenced to some period of incarceration. Most will fall under presumptive sentencing statutes. The department reviewed 100 such cases, and found that 100% of the cases resulted in sentences of incarceration.
2. Since time served in custody prior to sentencing counts as time served on the sentence, the total time served will remain the same whether it is interrupted or delayed by posting bail or not.
3. The only impact on the department would be in cases in which the felon would receive bail under current law, then win an appeal which would result in no period of incarceration; under the bill the felon would have spent the appeal period incarcerated. According to the Clerk of the Court of Appeals, approximately 451 cases were appealed in 1992 (366 felonies and 85 misdemeanors.) Approximately 15% of the appeals resulted in reversals. This would be about 55 reversals per year for felony cases. Most reversals result in reduction in sentence length rather than overturning a conviction. Because the number of cases in which an appeal would result in no period of incarceration is assumed to be extremely small, and because there is no assurance that those cases would be released on bail pending appeal under current law, no measurable fiscal impact is expected.
4. If the department is able to gather more detailed data on the outcome of appeals referenced above, and the data indicates a significant number of appeals resulting in no period of incarceration, the fiscal note will be revised.

DATE: SUNDAY October 17, 1993

PAGE: B1

SECTION: Metro

SOURCE: By S.J. KOMARNITSKY Daily News reporter

EDITION: FINAL

LENGTH: Short

## SUSPECT IN RAPES ARRESTED

Acting on a tip, police arrested Leonard Hoffman and another man early Saturday morning at a Wasilla apartment where they were staying.

Police had been looking for Hoffman since Wednesday, when he allegedly assaulted one Anchorage woman and raped another at knifepoint. Police had asked for the public's help in finding the 36-year-old Hoffman, who they said was dangerous and possibly armed.

Trooper spokesman Steve Wilhelmi said a Crime Stoppers tip led police to the apartment building on the Seward-Meridian Parkway where Hoffman was staying.

When confronted, Hoffman initially gave troopers a fake name, Wilhelmi said. But then he admitted who he was and gave up without a struggle.

Another man staying at the apartment also was arrested on an unrelated charge, Wilhelmi said. The man, whom Wilhelmi would not identify, also had a

RANK 2 OF 2, PAGE 2 OF 2, DE AD3, DOCUMENT 291639  
warrant for

his arrest, he said. Wilhelmi did not know the relationship between the man or how Hoffman traveled from Anchorage to Wasilla.

Hoffman is charged with four counts of first-degree sexual assault and one count of third-degree assault. He has a long criminal record, including convictions in California for three rapes and two vehicle thefts. In Alaska, he has been convicted of gambling, fourth-degree assault, carrying a concealed weapon, trespassing and possession of cocaine, according to court records.

In June, he was sentenced to three years in jail for drug possession. He was out on bail appealing that conviction when the latest attacks occurred.

In a court appearance Saturday, his bail was set at \$75,000 with a court-approved third-party custodian.

Leonard Hoffman, birthdate unknown, was found guilty by a jury of fourth-degree misconduct involving a controlled substance, and the following charges were dismissed: two counts of third-degree assault, and one count each of second-degree sexual assault, first-degree sexual assault and kidnapping. Sentenced to three years in prison, with recommendation for substance abuse treatment and counseling. Judge Souter.

# Man sought in assaults on 2 women

## Police launching a search for knife-wielding suspect

**S.J. KOMARNITSKY**  
Daily News reporter

Anchorage police are searching for a 36-year-old man they say assaulted one woman and raped another at knifepoint early Wednesday morning.

Police have charged Leonard John Hoffman with one count of third-degree assault and four counts of first-degree sexual assault and have issued a warrant for his arrest.

According to court documents, Hoffman allegedly assaulted the first woman shortly after midnight at her Anchorage home. The woman told police she knew Hoffman and let him in. But, she told police, he grabbed her face, pushed her onto a couch and then threatened her with a knife.

He then broke off the attack and drove her vehicle to a second woman's residence in a mobile home park off Boniface Parkway, Capt. Shirley Warner said.

According to court documents, the second woman told police Hoffman is her sister's boyfriend. She let him in after he told her he had been beaten up. The woman said Hoffman had scratches on his arm and she tried to bandage it. She told police he then smoked what appeared to be marijuana.

Meanwhile, he made several trips between the resi-



Special to the News

Police describe Leonard John Hoffman as 6-foot, 230 pounds, with brown hair and brown eyes.

dence and the vehicle. As he went to leave one time, he suddenly grabbed her, pulled out a knife and dragged her into the bedroom, she said. He then raped her, she said.

The woman told officers she ran out of the mobile home about 1:30 a.m. when Hoffman went to get some food in a microwave. She called police from a neighbor's residence. Police staked out the mobile home for about four hours, at-

Please see Page E-5,  
**WARRANT**

## **WARRANT:** Man sought in attacks

Continued from Page E-1

tempting to make contact. But Hoffman had apparently snuck out after the woman left, Warner said.

Hoffman is considered extremely dangerous and possibly armed, Warner said.

Hoffman has a long criminal record including convictions in California for three rapes and two vehicle thefts.

In Alaska, Hoffman has been convicted for gambling, carrying a concealed weapon, fourth-degree assault, trespassing and possession of cocaine, according to court records.

Last December, he was also charged with four counts of sexual assault for allegedly tying up and raping a woman to whom he offered a ride. Those charges were later dropped for lack of evidence.

In June, he was sentenced to three years in jail for drug possession. He was released on bail after he appealed the conviction.

Sgt. Walt Monegan said police are familiar with Hoffman. And although they didn't step up patrols Wednesday night, all officers had been briefed on him and a picture was being circulated.

"Right now, we are keeping our eyes out ... and following up on any possible sightings," Monegan said.

He said officers also were watching Hoffman's usual haunts. That included his last reported residence on West 26th Street.

Police describe Hoffman as 6 foot, 230 pounds, with brown hair and brown eyes. He often uses the aliases Leonard J. Samano and Leo Hoffman or combinations of the two. He is considered dangerous and anyone spotting him should call the Anchorage Police Department at 786-8900.

Exempt From VRA Certif.

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA AT ANCHORAGE

*depto*

(X) STATE OF ALASKA )  
 ( ) MUNICIPALITY OF ANCHORAGE )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Leonard J. Hoffman )  
 dob:4/29/57 )  
 SS#574-30-4503 ) Defendant. )

CASE NO. 3AN-S93-7782 CR  
ARREST WARRANT

To Any Peace Officer Or Other Authorized Person:

You are commanded to arrest the defendant and bring the defendant before the nearest available judicial officer without unnecessary delay to answer to a complaint/~~information/indictment~~ charging the defendant with violation of

A.S. 11.41.220(a)(1) and four counts 11.41.410(a)(1)  
 (statute or ordinance)  
Assault 3° and four counts Sexual assault 1°  
 (offense)

Bail is set at \$ 75,000 .  The defendant may not be released until the court approves a third party custodian and/or conditions of release.



*[Signature]*  
 Judge/Deputy Clerk as ordered on the record  
 by Judge Wielgospolski  
 Date 10/13/93

Sex: M Race: W Ht: 6' Wt: 230# Hair: BRN Eyes: BRN  
 DOB: 4-29-57 OL/ID AK 6058879 SSN 574-30-4503  
 Last Known Address: 1414 West 26th. phone: \_\_\_\_\_  
 Place of Employment: \_\_\_\_\_ phone: \_\_\_\_\_

RETURN

I received the above warrant on \_\_\_\_\_, 19\_\_\_\_, and executed it by arresting the defendant and serving the defendant with a copy of this warrant in \_\_\_\_\_, Alaska, on \_\_\_\_\_, 19\_\_\_\_.

Return Date \_\_\_\_\_ Signature of Peace Officer \_\_\_\_\_ Type or Print Name \_\_\_\_\_

*10*

IN THE DISTRICT COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 Leonard J. Hoffman )  
 )  
 DOB: 4/29/57 )  
 AK ID/OL: 6058879 )  
 SSN: 574-30-4503 )  
 ATN: )  
 Defendant. )

Filed in the Trial Courts  
STATE OF ALASKA THIRD DISTRICT  
IN ANCHORAGE

OCT 13 1993

Clerk of the Trial Courts  
BY \_\_\_\_\_ Deputy

Court No. 3AN-S93-7782 Cr.

COMPLAINT

COUNT ONE  
ASSAULT IN THE THIRD DEGREE  
AS 11.41.220(A)(1)

COUNT TWO  
SEXUAL ASSAULT IN THE FIRST DEGREE  
AS 11.41.410(A)(1)

COUNT THREE  
SEXUAL ASSAULT IN THE FIRST DEGREE  
AS 11.41.410(A)(1)

COUNT FOUR  
SEXUAL ASSAULT IN THE FIRST DEGREE  
AS 11.41.410(A)(1)

COUNT FIVE  
SEXUAL ASSAULT IN THE FIRST DEGREE  
AS 11.41.410(A)(1)

THE COMPLAINANT CHARGES IN COUNT ONE:

that on or about October 13, 1993, at or near Anchorage, in the Third Judicial District, State of Alaska, Leonard J. Hoffman did recklessly place another, M.B., in fear of imminent serious physical injury by means of a dangerous instrument.

All of which is a class C felony offense, being contrary to and in violation of AS 11.41.220(a)(1), and against the peace and dignity of the State of Alaska.

THE COMPLAINANT CHARGES IN COUNT TWO:

that on or about October 13, 1993, at or near Anchorage, in the Third Judicial District, State of Alaska, Leonard J. Hoffman did knowingly and unlawfully engage in sexual penetration with another person, K.V., without K.V.'s consent, by penetrating her anus with his finger.

All of which is an unclassified felony offense, being contrary to and in violation of AS 11.41.410(a)(1), and against the peace and dignity of the State of Alaska.

THE COMPLAINANT CHARGES IN COUNT THREE:

that on or about October 13, 1993, at or near Anchorage, in the Third Judicial District, State of Alaska, Leonard J. Hoffman did knowingly and unlawfully engage in sexual penetration with another person, K.V., without K.V.'s consent, by penetrating her vagina with his finger.

All of which is an unclassified felony offense, being contrary to and in violation of AS 11.41.410(a)(1), and against the peace and dignity of the State of Alaska.

THE COMPLAINANT CHARGES IN COUNT FOUR:

that on or about October 13, 1993, at or near Anchorage, in the Third Judicial District, State of Alaska, Leonard J. Hoffman did knowingly and unlawfully engage in sexual penetration with another person, K.V., without K.V.'s consent, by penetrating her vagina with his penis.

All of which is an unclassified felony offense, being contrary to and in violation of AS 11.41.410(a)(1), and against the peace and dignity of the State of Alaska.

THE COMPLAINANT CHARGES IN COUNT FIVE:

that on or about October 13, 1993, at or near Anchorage, in the Third Judicial District, State of Alaska, Leonard J. Hoffman did knowingly and unlawfully engage in sexual penetration with another person, K.V., without K.V.'s consent, by penetrating her mouth with his penis.

All of which is an unclassified felony offense, being contrary to and in violation of AS 11.41.410(a)(1), and against the peace and dignity of the State of Alaska.

I, Robert M. Gray, state under oath that this complaint is based

on information and belief derived from my investigation in this matter.

M.B. reports that just after midnight, in the early morning hours of October 13, 1993, she was at her home in Anchorage, when the defendant, who she knows as an acquaintance, came to see her. While at her home, the defendant suddenly grabbed her face with his hand, splitting her lip, and pushed her face into the couch. He then ripped her panties off, stuffed them in her mouth, and held up a knife as if he were going to stab her. He told her he had killed two back men already tonight with a baseball bat. M.B. said he suddenly stopped and began to frantically try to make telephone calls. She suggested to him that he could take her car, and he left. M.B. said she struggled with him during the above encounter, and scratched his face and bit his finger.

K.V. reports that around 12:30 a.m. on October 13, 1993, she was at her home in Anchorage, when the defendant, whom she knows as a boyfriend of her sister, came to her home. She said he wanted in, that some black guys had beaten him up. She observed injuries on him and invited him in and tried to bandage up his arm, using an Ace bandage.

K.V. said he smoked what appeared to be marijuana, after he offered her some, and she declined. She said he went back and forth to his car several times. She said one time as he was leaving, he grabbed her, pulling her shirt off, and pulled out a knife, which he used to cut off her bra. He then dragged her into the bedroom. He tied her hands above her head, using the Ace bandage she had given him earlier. He told her, "I have nothing to lose. I'm going to k'll you." He told her he had an Uzi in the car. He then forced his finger into her anus. He continued to assault her by forcing his finger into her vagina. He forced his penis into her vagina. He grabbed her hair and forced her mouth onto his penis. During these assaults, he was rubbing the knife around her breasts.

Afterward, K.V. tried to pretend everything was okay, because she was still afraid that the defendant would carry through on his threat to kill her. She offered to make him some food, and managed to escape to call the police when he went to the microwave to get his food. She said he followed her, cursing, but she managed to get away.

#### BAIL INFORMATION

The defendant is known to me as a convicted sexual assault felon in California. I am also aware that he is currently on bail pending appeal on a drug conviction.

DATED this 13 day of October, 1993, at Anchorage,  
Alaska.

Det Robert M. Slay Jr #0512  
Inv.  
Anchorage Police Department

SUBSCRIBED AND SWORN to before me this 13<sup>th</sup> day of  
October, 1993, at Anchorage, Alaska.

[Signature]  
Judge/Magistrate

**S B**

**2 3 4**

12/18/93

Peggy Steward  
P.O. Box 670747  
Chugiak, AK 99567

Senator Loren Leman  
716 W 4th Ave  
Suite 540  
Anchorage, AK 99501

I picked up a flyer of yours at the Citizen Crime Summit which mentions two new bills being prefiled--Three Strikes Your'e Out & a juvenile weapons possession bill.

Regarding the Three Strikes Your'e Out bill:

I am glad that "something" is finally being done about violent crimes but, I just want you to know that I think "Three Strikes, You're Out" is too lenient. "One strike You're Out" following the FIRST violent felony conviction is what I want to see. Why are the first two victims any less important than the third? Why wait until there are two more? What kind of logic is that? Baseball rules? Violent crime is not a game except to the criminals.

If someone is violent once--they could be violent again. And even if they are not, does that make the first violent crime acceptable? What exactly is considered a violent felony in our system & why does everyone think someone should be should be allowed three?

I am a mother of four wonderful children & should not have to wonder if someone has been set free who will destroy their lives. It causes me great heaviness to know there are people so damaged they can, without conscience, commit hideous crimes, but it causes me great frustration & anger to see them set free after a few months or years. They seem to receive better treatment than the persons who suffer at their hands. I do not believe they deserve to be rehabilitated nor am I naive enough to accept that they need a second or third chance. Surely & without question, the victims don't get a second chance. When a law is in place that provides for the death penalty or life in prison without possibility of parole on the first violent felony, we won't have to worry about repeat offenders.

CONSTITUENT LETTER

It seems like everyone blames their actions on a lousy childhoods, mental incompetency or video games (depending on the latest, socially acceptable defense tactic that is working at the time). We send them to prison for a little while & with intensive therapy they are suddenly "Okay". SO WHAT? Why do they deserve to be "Okay"? You cannot ever make the victim "okay". Can't bring back the dead, can't stop the nightmares or fear & can't replace what has been taken. Why does the criminal get such special treatment? The money & energy would be better spent providing therapy for the victims or education to help prevent more of the same kind of people. The criminal didn't ask to be raised as he/she was or have the "sickness" he/she might have, but the victim definitely didn't have anything to do with it & they & their families are the ones suffering the real, never ending consequences.

As far as the juvenile weapons possession bill:

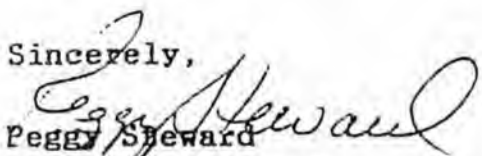
Kids who carry guns, know all too well the system that threatens & holds no real consequence. Pulling their license, taking the weapon & community service isn't going to deter the ones who are carrying with criminal intent. It sounds like this legislation is just waste of paper & time with no real backbone.

Wake up & realize that not all of the juveniles today are "children". The ones carrying weapons with criminal intent may be a product of bad environments, child abuse or fried brains from parents who were addicts or whatever, but it is too late for them. Some things you just can't fix. Fix what you can. Without proper education & counseling services for non offenders, you can't prevent them in the future either. We are going to have to accept the fact that some are beyond help & give more attention to the ones who are still able to be reached.

I know there are MANY small pieces to be considered & this is just a quick vent letter, but I cannot just sit by & watch the ignorance be perpetrated over & over again. The idea that a person gets to be violent 3 times before he/she is punished makes me sick & the idea that a juvenile who is damaged enough to carry a gun will not have any real consequences until he/she uses it, scares the hell out of me.

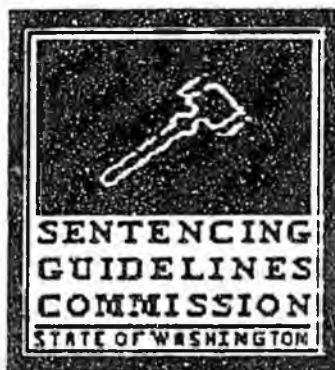
I hope you will consider some tougher legislation.

Sincerely,

  
Peggy Steward

A Look at The Persistent Offender Accountability Act  
Initiative 590 – “Three Strikes, You're Out”

593



May 5, 1992

David L. Fallen, Ph.D.  
Sentencing Guidelines Commission  
3400 Capitol Blvd.  
Olympia, WA 98504-0927

BACKGROUND STUDY  
INITIATIVE 593

## CHANGES TO PUNISHMENT:

① Mandatory life in prison without the possibility of parole for "persistent offenders".

② No earned good time reductions for offenders convicted of Murder in the first degree, Assault in the first degree, Assault of a Child in the first degree, or Rape in the first degree.

## OFFENDERS AFFECTED BY CHANGES:

① A "persistent offender" is someone convicted of a "most serious offense" who has at least two prior convictions on different occasions for a "most serious offense". Juvenile adjudications and offenses not counted in the offender score are not considered.

"Most serious offense" is defined as any of the following felonies (including attempts):

- Any Class A felony (including conspiracies and solicitations)
- Assault in the second degree
- Assault of a child in the second degree
- Child molestation in the second degree
- Controlled substance homicide
- Extortion in the first degree
- Incest when committed against a child under age fourteen
- Indecent liberties
- Kidnapping in the second degree
- Leading organized crime
- Manslaughter in the first degree
- Manslaughter in the second degree
- Promoting prostitution in the first degree
- Robbery in the second degree
- Sexual exploitation
- Vehicular assault
- Vehicular homicide (under the influence or recklessness)
- Any Class B felony with a sexual motivation finding
- Any felony with a deadly weapon finding

There were 16,554 adult felony offenders sentenced in Fiscal Year 1991. It is estimated that 63 of them would have met the definition of "persistent offender". The most common category of current conviction offense is Robbery (34%) followed by Sex offenses (26%) and Assault (16%). These categories are displayed in Figure 1.

② In Fiscal Year 1991, there were 119 offenders sentenced to prison for Murder in the first degree, Assault in the first degree, Assault of a Child in the first degree, or Rape in the first degree. The proposed removal of good time reductions for these offenders is independent of criminal history (i.e., even offenders with no criminal history would not be eligible for good time reductions).

**IMPACT ON STATE PRISON POPULATION:**

D The potential impact of mandatory sentences of life imprisonment for "persistent offenders" cannot be analyzed with the methods normally employed in this office. Unlike most sentencing proposals, this sentencing initiative applies only to a relatively small group of offenders with an extensive history of recidivism. Accordingly, the recidivism component must be explicitly factored into the impact estimation. Unfortunately, no Washington State data exist which documents the rate, nature, and timing of recidivism for this select group of offenders. One clue regarding the nature of the recidivism can be gleaned from the Commission's Fiscal Year 1991 data. Of the 16,554 SRA sentences that year, 1,844 of the offenders had one or more prior "most serious offenses". The current conviction for 25 percent of these 1,844 offenders was also a "most serious offense". The other 75 percent were convicted of less serious felonies.

The mandatory sentencing provisions of this initiative apply to offenders who would be drawing substantial prison terms under the current sentencing policies. Thus any impact of the mandatory sentencing provisions would be well into the future. In order to obtain a sense of the timing for the potential impact, a *worst case scenario* impact was estimated. This analysis used no phase-in adjustments (applies immediately to all offenders regardless of date of offense) and assumes no offender recidivates. Because this last assumption is unrealistic for this group of offenders, it must be emphasized this analysis should not be taken at face-value. The actual impact of this proposal would be substantially less than the figures in the following table.

**Worst Case Impact of Mandatory Life Sentences for "Persistent Offenders"**  
(for timing purposes only - not a forecast)

YEAR IMPACT		YEAR IMPACT	
1	1	11	296
2	5	12	342
3	18	13	390
4	36	14	439
5	62	15	488
6	93	16	539
7	127	17	589
8	166	18	642
9	207	19	695
10	250	20	746

Note: Impact is defined as an increase to the prison average daily population.

The impact detailed in the previous table is graphed in Figure 2.

ⓐ A separate analysis was conducted to estimate the impact of removing eligibility for good time reductions for offenders convicted of Rape 1, Assault 1, Assault of a Child 1, and Murder 1. As mentioned earlier, this portion of the initiative would apply to all offenders convicted of these offenses, regardless of their previous criminal history (if any).

In Fiscal Year 1991, there were 119 prison sentences for offenders convicted of Rape 1, Assault 1, or Murder 1 (excluding Aggravated Murder 1). Under current sentencing law, offenders convicted of these offenses are eligible for up to 15 percent sentence reduction for earned good time. The following impact analysis assumes offenders sentenced under current law would earn 87% of their good time (on the average, based on historical data). This analysis does not contain a phase-in adjustment (i.e., the early impact is slightly over-estimated).

**Potential Impact of Removing Good Time Eligibility for Offenders  
Convicted of Rape 1, Assault 1, or Murder 1**

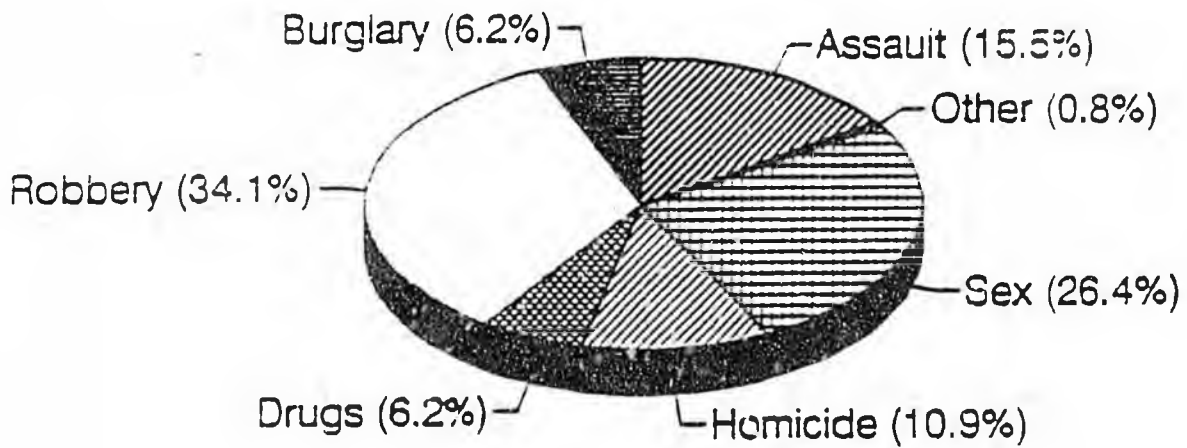
YEAR IMPACT		YEAR IMPACT	
1	0	11	51
2	0	12	61
3	0	13	69
4	0	14	76
5	1	15	83
6	2	16	88
7	3	17	92
8	17	18	97
9	29	19	103
10	42	20	109

*Note: Impact is defined as an increase to the prison average daily population.*

The impact detailed in the previous table is graphed in Figure 3.

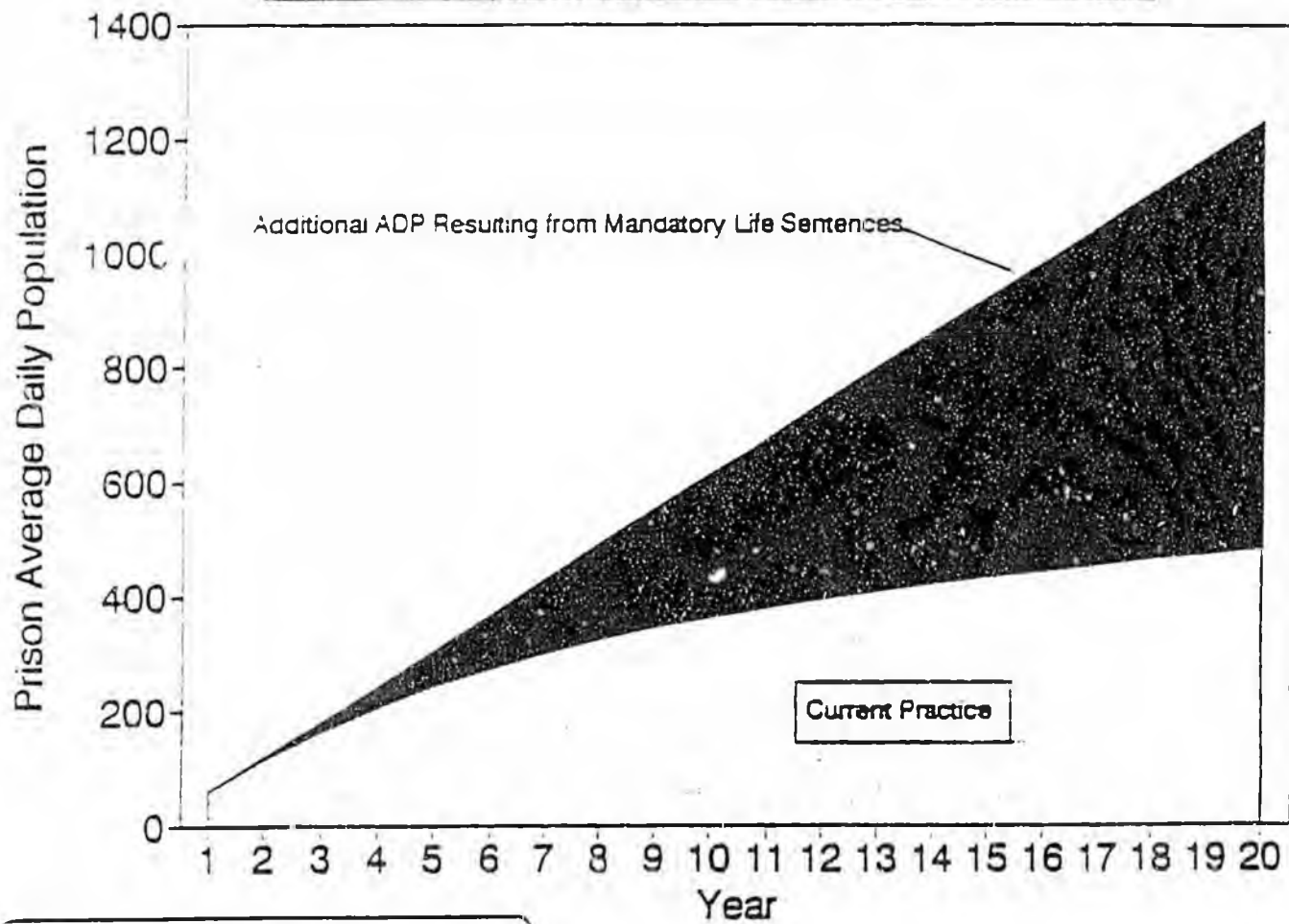
Figure 1

Conviction Offense for "Persistent Offenders" Receiving a Life Sentence



# Figure 2

## Impact of Mandatory Life Sentences for "Persistent Offenders"

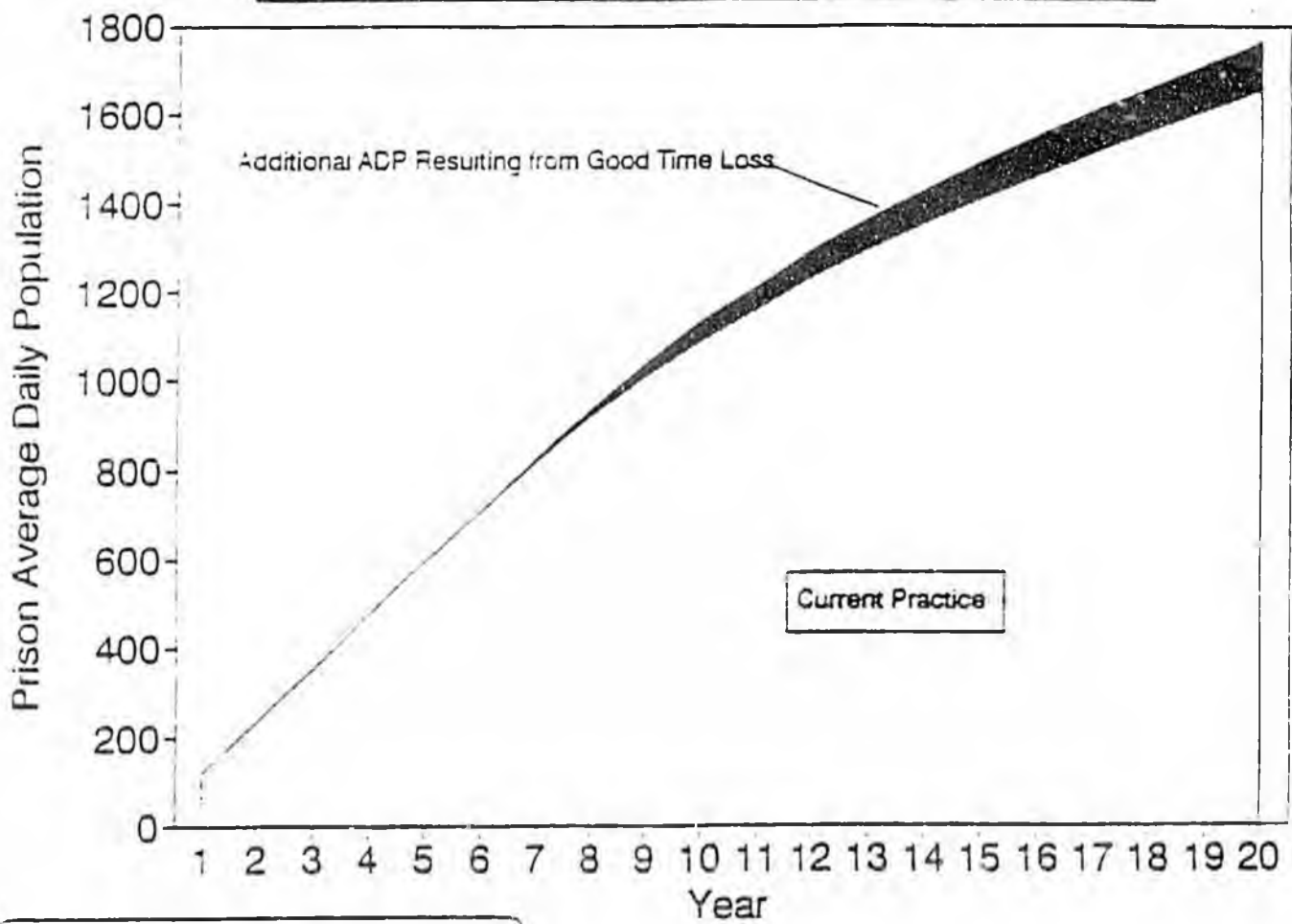


Sentencing Guidelines Commission 5/5/92

*Note: This graph displays a worst case scenario and is intended only to display the timing of any potential impact. It is not a forecast.*

Figure 3

Impact of Eliminating Good Time for Murder 1, Assault 1, and Rape 1



Sentencing Guidelines Commission 5/5/92



## Washington State Senate

### Law and Justice Committee

#### INITIATIVE 593

TO: Senator Adam Smith, Chair

FROM: Dick Armstrong, Staff

SUBJECT: Initiative 593 (Persistent Offender)

DATE: July 15, 1993

#### INTRODUCTION

You requested a memorandum which explains Initiative 593, commonly referred to as "Three Strikes and You're Out". As the phrase implies, the Initiative provides that any person who commits three serious felonies (as defined) must be sentenced to a term of life imprisonment without possibility of parole.

To assist with your understanding of Initiative 593, the memo provides: ① background information on how habitual offenders were treated prior to the 1984 Sentencing Reform Act (SRA) and how repeat offenders are now sentenced under the SRA; ② a summary of the provisions of the Initiative, including a list of crimes which constitute a "most serious" felony; and ③ information on the fiscal impact of the Initiative.

#### BACKGROUND

Any person who was convicted of a crime committed before July 1, 1984 which involved fraud or an intent to defraud as an element, or larceny or any felony, could be sentenced to life imprisonment as a habitual criminal if he or she had two prior felony convictions, or had been convicted four times of any crime which involved fraud or intent to defraud as an element. Any person sentenced to life imprisonment as a habitual criminal was still eligible for parole.

The Sentencing Reform Act applies to felonies committed on or after July 1, 1984. The sentencing grid used pursuant to the Sentencing Reform Act counts prior felony convictions as part of the offender's criminal history score. Offenders with previous convictions receive higher scores under the grid, and as a result are given longer sentences. The sentencing judge can give an exceptional sentence that varies from the presumptive sentence if aggravating or mitigating

circumstances are present. Certain offenses (i.e., first degree murder, first degree rape and first degree assault) have mandatory minimum sentences.

The Sentencing Reform Act does not provide a punishment of life imprisonment for habitual offenders.

### SUMMARY

A person who meets the definition of a "persistent offender" must be sentenced to a term of life imprisonment without the possibility of parole, unless the offender is sentenced to death for the crime of aggravated murder.

"Persistent offender" is defined as an offender who has been convicted of a felony considered a "most serious offense," and has been previously convicted on at least two separate occasions of felonies that would be considered as most serious offenses.

"Most serious offense" is defined to include the following felonies or attempted felonies (For your information, the type of felony and the seriousness level on the sentencing grid is set forth):

- Any Class A felony (see attachment);
- Assault 2nd degree (Class B, Level IV);
- Assault of a child 2nd degree (Class B, Level IX);
- Child molestation 2nd degree (Class B, Level VII);
- Controlled substance homicide (Class B, Level IX);
- Extortion 1st degree (Class B, Level V);
- Incest with child under age 14 (sexual intercourse - Class B, Level VI; sexual contact - Class C, Level V);
- Indecent liberties (Class B, forced - Level IX, unforced - Level VII);
- Kidnapping 2nd degree (Class B, Level V);
- Leading organized crime (Class B, Level X);
- Manslaughter 1st degree (Class B, Level IX);
- Manslaughter 2nd degree (Class C, Level VI);
- Promoting prostitution 1st degree (Class B, Level III);
- Rape 3rd degree (Class C, Level V);
- Robbery 2nd degree (Class B, Level IV);
- Sexual exploitation (Class B, Level IX);
- Vehicular assault (Class C, Level IV);
- Vehicular homicide when proximately caused by driving under the influence or by driving recklessly (Class B, Level VII);
- Any other Class B felony with a finding of sexual motivation; and
- Any felony with a deadly weapon finding.

Persons convicted of first degree murder, first degree rape, and first degree assault are not eligible for community custody, earned early release time, furlough, home detention, partial confinement, work crew, work release, or any other form of early release or authorized leave

of absence unless it is for emergency medical treatment or inpatient treatment because of a first degree rape conviction.

Sentencing judges, law enforcement agencies, and correctional facilities are authorized, but not required, to give offenders who have been convicted of a serious offense notice of sanctions imposed upon persistent offenders.

The Governor is urged to refrain from pardoning or granting clemency to anyone sentenced as a persistent offender until the offender has reached the age of at least 60 and is judged to no longer be a threat to society. The Governor must provide reports at least twice a year on the status of persistent offenders who are released during the Governor's tenure. The reports must continue for at least ten years after the offender's release or until the death of the offender.

### FISCAL IMPACT

A review of Initiative 593 indicates that it will increase the prison population by about 40 beds per year. However, the impact will occur largely in the future. In addition, the analysis of the impact on prison populations needs to be considered with caution, as indicated in the attachments.

The fiscal analysis that is available is based on a 1992 review of Initiative 590 (Persistent Offender Accountability Act), which is nearly identical to Initiative 593. The only major difference between the Initiatives is that the crime of Rape in the 3rd Degree (statutory rape) is included as a "most serious offense" under Initiative 593. A copy of the analysis is attached. Dave Fallen, Executive Director of the Sentencing Guidelines Commission, is of the opinion that the impact analysis that he did in 1992 is essentially still valid for Initiative 593.

The impact of Initiative 593 on the state prison population is difficult to accurately predict because the initiative only applies to a relatively small group of offenders with an extensive history of recidivism. As to this select group of offenders, data does not exist which documents the rate, nature, and timing of recidivism.

However, as can be seen from the analysis provided by the SGC, the impact of the Initiative is largely in the future. A "worse case impact" provides that the average daily prison population will increase (a) 63 by the year 1998; (b) 292 by the year 2003; (c) 571 by the year 2008; and (d) 855 by the year 2013.

A fiscal note prepared by the Department of Corrections indicates a cost of \$18,046 for the 1993-95 biennium, \$3,731,383 for the 1995-97 biennium, and \$8,786,791 for the 1997-99 biennium.

**NOTE:** The information provided above is for analytical and legislative policy purposes only. It is not provided as an expression of support for or opposition to the measure.

ATTACHMENT "A"

CLASS A FELONIES

<u>Statute</u>	<u>Offense</u>	<u>Seriousness Level</u>
10.95.020	Aggravated Murder 1	XV
9A.48.020	Arson 1	VIII
9A.36.120	Assault of a Child 1	XII
9A.36.011	Assault 1	XII
9A.76.170	Bail Juror with Murder 1 Offense	VI
9A.52.020	Burglary 1	VII
9A.44.083	Child Molestation 1	X
69.50.415	Controlled Substance Homicide (Subsequent Drug Conviction)	IX
69.50.401(b)(1)(i)	Create, Deliver, or Possess a Counterfeit Controlled Substance - Schedule I or II Narcotic (First Drug Conviction)	II
9A.28.040	Criminal Conspiracy - Murder 1	Attempt**
9A.28.020(3)(a)	Criminal Attempt - Arson 1 or Murder 1	Attempt**
9A.28.030(2)	Criminal Solicitation - Arson 1 or Murder 1	Attempt**
70.74.280(1)	Damaging Building, Etc., by Explosion with Threat to Human Being	X
70.24.270(1)	Endangering Life and Property by Explosives with Threat to Human Being	IX
70.74.180	Explosive Device, (Possession with Intent to Use)	IX
9A.32.055	Homicide by Abuse	XIV

9A.40.020	Kidnapping 1	X
9A.52.060(1)(a)	Leading Organized Crime	X
69.50.401(a)(1)(i)	Manufacture, Deliver, or Possess with Intent to Manufacture or Deliver Heroin or Cocaine (Subsequent Drug Conviction or in a Protected Zone)	VIII
69.50.401(a)(1)(i)	Manufacture, Deliver, or Possess with Intent to Manufacture or Deliver Narcotics from Schedule I or II (Except Heroin or Cocaine) (Subsequent Drug Conviction or in a Protected Zone)	VI
9A.32.030	Murder 1	XIV
9A.32.050	Murder 2	XIII
69.50.406	Over 18 and Deliver Narcotic from Schedule I or II to Someone Under 18	X
9.40.120	Possession of Incendiary Device	Unranked
9A.44.050	Rape 2	X
9A.44.040	Rape 1	XI
9A.44.076	Rape of a Child 2	X
9A.44.073	Rape of a Child 1	XI
9A.56.200	Robbery 1	IX
9.41.180	Setting Spring Gun	Unranked
9.82.010	Treason	Unranked
9.41.225	Use of Machine Gun in Commission of Felony	Unranked

# FISCAL NOTE

**STATE OF ALASKA**  
**1994 LEGISLATIVE SESSION**

**BILL NO: SB 234**

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety  
 Title: Mandatory Life Imprisonment BRU: Alaska State Troopers  
 Component: Detachments  
 Sponsor: Senator Leman  
 Requestor: S. JUD COMPONENT SERIAL NO. \_\_\_\_\_

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

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

**FUNDING: (Thousands of Dollars)**

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

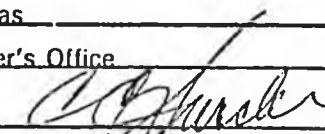
Estimate of current year (FY 94) impact: \$ \_\_\_\_\_

**POSITIONS:**

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

**ANALYSIS: (Attach a separate page if necessary.)**

No fiscal impact upon the Alaska State Troopers is anticipated.

Prepared By: Lee Ann Lucas Phone: 465-4322  
 Division: Commissioner's Office Date: 2/1/94  
 Approved by Commissioner:  Date: 2/1/94  
 Agency: Richard L. Burton, Dept. of Public Safety

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# FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. SB 234

Revision Date: \_\_\_\_\_ Dept. Affected: Corrections  
 Title: An Act relating to mandatory BRU: 317  
life imprisonment Component: All  
 Sponsor: Senator Leman  
 Requester: Senate Judiciary COMPONENT SERIAL NO. 694-1884

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS	0	0	0	0	453.7	907.4
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>453.7</b>	<b>907.4</b>

<b>CAPITAL EXPENDITURES</b>	<b>3,520.0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
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<b>CHANGE IN REVENUES ( )</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
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**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	3,520.0	0	0	0	453.7	907.4
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>3,520.0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>453.7</b>	<b>907.4</b>

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

**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

Please see the attached Fiscal Analysis.

Prepared by: Diane Schenker, Special Assistant Phone: 786-2147/465-4643  
 Division: Office of the Commissioner Date: 1/25/94  
 Approved by Commissioner: Frank Prewitt, Jr. Date: 1/17/94  
 Agency: Department of Corrections

Fiscal Note/DOC

SB 234

January 25, 1994

Page 2 of 7

The bill would mandate a life sentence for an offender's third conviction for a "most serious" felony: any unclassified or Class A felony, or Assault II, Sexual Assault II, Sexual Abuse of a Minor II, Unlawful Exploitation of a Minor, Robbery II, or Extortion. Offenders sentenced under the bill would not be eligible to earn statutory good time, parole, or other forms of early release. Certain felons would have to be warned of the new law, in writing, upon release from correctional facilities.

#### Assumptions

1. According to the department's data, approximately 19% of the prisoners incarcerated on November 4, 1993 had been convicted of three or more felonies. A June 30, 1993 profile indicated that approximately 1,052 (almost 40%) of the prisoners were incarcerated for a "most serious felony." If 19% of those incarcerated for a most serious felony were third-time or higher offenders, there would be 200 offenders currently incarcerated who would be eligible for sentencing under this bill. However, information from the Alaska Judicial Council and from the department's OBSCIS system suggests that only 10% of the felons incarcerated for a most serious felony have been convicted of prior most serious felonies. To check these assumptions, ten cases were randomly selected from the list of prisoners incarcerated for most serious felonies, and criminal histories were checked according to file information. One out of the ten had a prior most serious felony conviction; it is assumed that 10% of those convicted of a most serious felony will qualify for the 99 year sentence under the bill.
2. The 99 year sentence is assumed to be a "life" sentence. The estimated lifespan of a male, by the year 2000, is estimated to be 73.5 years, according to the United States Statistical Abstract. The estimated age at the time of conviction for a most serious felony is estimated to be 28 years, according to the Alaska Judicial Council. Thus, those sentenced under this bill would be incarcerated for 45.5 years, rounded up to 46 years. (Age for males is used, since the prison population is over 95% male.)
3. The estimated length of incarceration for applicable crimes under current law is listed in the table below, with the associated increase based upon sentencing under this bill. The current average lengths of incarceration for unclassified and Class A felonies are based upon data from the department's OBSCIS system on current prisoners. Data from OBSCIS on the average length of sentence for B felonies is not available, so the presumptive sentence of six years for a third conviction is used, less one third of the sentence for statutory good time.

Offense Category	Current Length of Incarceration	Proposed Incarceration	Difference	% Increase
Unclassified: Murder I, Murder II, Kidnapping	over lifespan	over lifespan	0	0
Unclassified: MICS I, SA I, SAM I	13 years	46 years	+ 33 years	+ 354%
A felonies	12 years	46 years	+ 34 years	+ 383%
B felonies (specified in bill)	4 years	46 years	+ 42 years	+1150%

4. The fiscal impact of the bill would occur when a third-time most serious felon reaches what would have been his or her release date under current law, but instead remains incarcerated for life. According to the table above, only those whose third most serious felony is a B felony would be released, under current law, within the six year timeframe measured on page 1 of this fiscal note. Information from the department's OBSCIS system indicates the following average annual number of prisoners sentenced for the B felonies specified in the bill, based upon average intake from 1984 through 1992:

Most Serious Class B Felony	Average Annual No. of Prisoners Sentenced 1984 -- 1992	10% Assumed to Have 2+ Priors
Sexual Assault II	24	2.4
Sexual Abuse of a Minor II	49	4.9
Unlawful Exploitation of a Minor	1	.1
Assault II	24	2.4
Robbery II	15	1.5
Extortion <i>* No data available on number of prisoners sentenced. In 6/30/93 snapshot, there were no prisoners nor probationers/parolees on record for this offense, so no impact is assumed.</i>	no data*	0
<b>TOTAL</b>	<b>113</b>	<b>11.3</b>

5. The statewide average cost of incarceration in a state correctional center is \$113 per day. This figure does not include CRC beds, since prisoners under this bill are prohibited from furlough, restitution center placement, etc. This figure includes the standard overhead for medical and administrative costs. This number should be considered to be conservative, since medical expenses for older prisoners doing life sentences are expected to be higher than average. Operating expenses are reflected under "miscellaneous" on page 1 of the fiscal note since the total operating cost involves multiple categories of expenses.

7. The average cost for construction of a maximum security prison bed in Alaska is \$160,000. It is assumed that prisoners sentenced to life will require high security housing. Capital expenses might be reduced if additional beds were purchased under contract, however there are no contract beds currently available in Alaska for prisoners with higher than minimum custody.

8. The correctional system cannot absorb any additional prisoners without additional resources. The system has been operating over emergency capacity throughout the past year. Even when all aspects of the department's current population management plan are achieved, only the current overcrowding will be addressed, not including any additional numbers of inmates caused by new legislation. In addition to posing safety hazards, operating over emergency capacity for prolonged periods may result in fines of up to \$1,000 per day if the department is found in contempt of court for violating population caps.

9. Because a number of crime bills are pending before the legislature this year, it is difficult to predict the total number of beds by which the prison system may need to be increased, and therefore difficult to predict how and where such beds would be added: through new facility construction, facility modification, or contracting. It is not possible to estimate the number of staff positions needed until specific expansion plans are made.

#### Operating Expenses

An estimated 113 most serious Class B felons would be sentenced to prison during FY95, 96, 97, and 98, under the current or the new law. Assuming 10% would be third time most serious offenders, 11.3 (rounded down to 11) would qualify for the enhanced sentence. Those sentenced in FY95 would be released by the end of FY98, under current law, but would remain incarcerated under the proposed law, for an addition of 11 prisoner-years, or 4015 prisoner-days in FY99. In FY00, the 11 B felons sentenced in FY96 would remain incarcerated instead of being released, in addition to the still-remaining FY95 batch, for an increase of 22 prisoner-years, or 8,030 prisoner-days:

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January 25, 1994  
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FY99: 4,015 prisoner-days X \$113 = \$ 453,695  
FY00: 8,030 prisoner-days X \$113 = \$ 907,390

Capital Expenses

In order to accommodate the Class B felons who would be added to the population in FY99 and FY00, 22 additional prison beds would need to be constructed. Assuming time for planning and construction, this would be requested in FY 95.

22 X \$160,000 per maximum bed = \$3,520,000

Expenses Not Reflected on Page 1 of the Fiscal Note

Method 1: This method addresses only the continuing expenses of the most serious B felons, beyond the six year timeframe of the fiscal note. After FY00, 11 additional B felons would continue to accumulate every year until FY41, when the first batch sentenced in FY95 would be assumed to reach the ends of their expected lifespans. This means that approximately 451 (11 X 41 years) B felons would be added to the system under this law, over the course of 41 years beyond those reflected on page 1 of the fiscal note.

451 prisoners X 365 days per year X \$113 per day = \$18,601,495 operating expense

Over 41 years, this would average \$ 453,695 per year in additional operating expense, just for the additional most serious B felons.

Method 2: This method addresses the increased costs of all the categories of offenders whose actual length of stay would be increased under the bill. Although the increases for various categories of offenders would result over varying periods of time, this method arrives at an aggregate increase in population in order to predict future needs for the prison system. It is assumed that 10% of the current population incarcerated for most serious felonies would increase according to the percentage increase in sentence lengths shown in the table under Assumption 5. Murder I, Murder II, and Kidnapping are excluded since the current average sentence already exceeds the expected lifespan.

Offense	Total in DOC on 6/30/93	10% ( 3rd repeaters)	Current Prisoner-days	% sent. length increase	Additional Prisoner-days
<b>Unclassified Felonies</b>					
SAM I	153	15.3	5,584.5	X 3.54	19,769.1
SA I	178	17.8	6,497		22,999.4
MICS I	9	.9	328.5		1,162.9
<b>TOTAL UNCLASSIFIED</b>					<b>43,931.4</b>
<b>Class A Felonies</b>					
Assault I	57	5.7	2,080.5	X 3.83	7,968.3
Manslaughter	28	2.8	1,022		3,914.3
Robbery I	101	10.1	3,686.5		14,119.3
Arson I	6	.6	219		838.7
Escape I	2	.2	73		279.6
MIW I	20	2	730		2,795.9
<b>TOTAL A FELONIES</b>					<b>29,934.1</b>
<b>Class B Most Serious Felonies</b>					
SA II	48	4.8	1,752	X 11.50	20,148
SAM II	113	11.3	4,124.5		47,431.8
Exploit Minor	0	0	0		0
Assault II	50	5	1,825		20,987.5
Robbery II	33	3.3	1,204.5		13,851.7
Extortion	0	0	0		0
<b>TOTAL B FELONIES</b>					<b>102,419</b>
<b>TOTAL ADDITIONAL PRISONER-DAYS</b>					<b>182,284.5</b>

Method Two suggests that the actual prison population would, over time, increase by 182,285 prisoner-days, or 499 prisoners as a result of the increased sentence lengths required by the bill.

182,285 prisoner-days X \$113 per day = \$20,598,205 operating expenses

499 beds X \$160,000 per maximum bed = \$ 79,840,000 capital expenses

**TOTAL ADDITIONAL EXPENSE = \$100,438,205**

Averaged over the 46 year period it would take to reach the peak accumulation of prisoners, this additional expense would require \$ 2,183,439 additional operating and capital expenditures per year, every year from FY95 through FY41. This estimate does not include any inflation factor, nor does it consider the possibility of an increase in crime rates.

Offsetting this number, it would be expected that some savings might be expected in the Community Corrections component, since most of these prisoners would otherwise have been released and supervised on probation or parole under current law. However, the \$6 average cost per day for this supervision is almost negligible compared to the \$113 cost per day of incarceration, and would only be a factor for a relatively small portion of the total sentence.

Another offsetting factor might be the avoidance of costs of new crimes, probably violent, that these chronic types of offenders might be assumed to commit if they were released, under current law. These savings would be experienced by other agencies and departments through avoidance of arrests, investigations, trials, etc.

FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. SB 234

Revision Date: January 31, 1994  
 Title: ...relating to mandatory 99-year sentences,  
 parole and furlough eligibility...  
 Sponsor: Senator Leman  
 Requestor: Senate Judiciary

Department Affected: Department of Law  
 BRU: Prosecution  
 Component: Third District/Fourth District  
 Criminal Appeals and Special Prosecution  
 COMPONENT SERIAL NO. 0087/0088/0090

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL	255.8	255.8	255.8	255.8	255.8	255.8
TRAVEL	15.0	15.0	15.0	15.0	15.0	15.0
CONTRACTUAL	30.2	30.2	30.2	30.2	30.2	30.2
SUPPLIES	9.9	9.9	9.9	9.9	9.9	9.9
EQUIPMENT	19.5					
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	330.4	310.9	310.9	310.9	310.9	310.9

CAPITAL						
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REVENUE						
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FUNDING:

1002 Federal						
1003 GF Match						
1004 GF	330.4	310.9	310.9	310.9	310.9	310.9
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	330.4	310.9	310.9	310.9	310.9	310.9

POSITIONS:

FULL-TIME	3.0	3.0	3.0	3.0	3.0	3.0
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: -0-

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

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

Phone: 465-3672  
 Date: January 31, 1994

Approved by Commissioner: Bruce M. Botelho, Attorney General  
 Agency: Department of Law

Date: January 31, 1994

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## FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. SB 234

### ANALYSIS CONTINUATION:

This bill amends Alaska's presumptive sentencing laws, under AS 12.15.125-175, to provide that a defendant convicted of a felony offense shall be sentenced to a mandatory term of imprisonment for 99 years without the possibility of parole if the defendant has been previously convicted of two or more felony offenses and if the current felony conviction and at least one of the prior felony convictions is for a most serious felony offense.

The bill also amends AS 12.55.135 to provide that "most serious felony" means any unclassified or class A felony or a felony attempt to commit any unclassified or class A felony, assault in the second degree, sexual assault in the second degree, sexual abuse of a minor in the second degree, unlawful exploitation of a minor, robbery in the second degree, and extortion.

The bill also provides that imposition of a sentence under the bill's provisions may not be suspended; provides that a person sentenced to a mandatory 99-year term of imprisonment is not eligible for parole and is not eligible for a good time deduction; and provides that furlough of any type may not be granted to a person sentenced to a mandatory 99-year term of imprisonment.

The Criminal Justice Working Group believes that prosecution of between ten and thirty defendants will occur each year, where "most serious felony" circumstances are present triggering a mandatory 99-year sentence. Consequently, the Department of Law will be impacted in the following ways. First, because the bill provides for a mandatory 99-year prison term without any chance for reduction, and in many cases the sentence will be more severe than the sentence for first degree murder, the stakes for the defense will be much higher resulting in much more difficult litigation for the prosecution and the defense. Second, the defense can be expected to attack the underlying prior convictions seeking post conviction relief under Criminal Rule 35.1, and seeking relief using collateral habeas corpus attacks in federal court. Litigation disposing of the attacks on the underlying prior convictions must be completed before trial on the third felony triggering the mandatory 99-year prison term can be conducted.

Prior to adoption of Alaska's new criminal code in 1980, Alaska had a habitual criminal law, which gave prosecutors the option to seek a separate enhanced sentence based on two prior convictions. The former law was triggered after a defendant had served two prior sentences, including two periods of release to demonstrate reformation, and then was convicted of a third offense. However, under the state's current presumptive sentencing provisions, coupled with provisions of SB 234, it is possible that a defendant could be sentenced to a mandatory 99-year term after a single period of incarceration and release, if the defendant's prior convictions included two or more crimes that were joined in a single trial that resulted in consecutive sentences. Because SB 234 amends the presumptive sentence law there would be no option available unless prosecutors elected to reduce the third charge below the "most serious felony" level. In many cases this would result in an inappropriately low charge and sentence. In view of the number of cases and their high level of difficulty, one new prosecutor each will be needed in Anchorage and Fairbanks, and one new attorney will be needed in the Office of Criminal Appeals and Special Prosecution to handle post-conviction appeals.

FISCAL NOTE

STATE OF ALASKA  
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BILL NO. SB 234

ANALYSIS CONTINUATION:

Component Analysis

	<u>0087</u> <u>Third District</u>	<u>0088</u> <u>Fourth District</u>	<u>0090</u> <u>Crim. Appeals</u>	<u>Total</u>
Personal Services	81.7	92.4	61.7	255.8
Travel	7.5	7.5	0.0	15.0
Contractual	13.6	8.0	8.6	30.2
Supplies	3.3	3.3	3.3	9.9
Equipment	<u>6.5</u>	<u>6.5</u>	<u>6.5</u>	<u>19.5</u>
Total	112.6	117.7	100.1	330.4