

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8479 SENATE STATE AFFAIRS

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Official Business

Alaska State Senate

Senate Finance Committee

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

Senate Bill 378: Sponsor Statement

Current statute provides that individuals who are incarcerated for a felony conviction are ineligible for a PFD in the next calendar year (AS 43.23.005(d)); the total amount that would have been paid to these individuals if they had been eligible is available for appropriation from the dividend fund during the next fiscal year to the crime victim compensation fund, the council on domestic violence and sexual assault, or the Department of Corrections (AS 43.23.028(b)).

SB 378 would change this process in two ways. First, it would increase the pool of individuals who are ineligible for a PFD to include convicted misdemeanants during a year in which they were convicted or incarcerated as a result of a conviction. Second, it would shorten the length of time necessary before the forfeited dividend funds are available for appropriation.

Misdemeanants impose a significant burden on the criminal justice system; in fact, the average misdemeanor costs the State at least \$1,559.60, based on the following estimates:

Department of Law	\$207.00
Department of Public Safety	\$300.00
Department of Corrections	\$852.60
Public Defender Agency	\$200.00
Court System	Unable to isolate costs

It is entirely appropriate that individuals convicted of a misdemeanor should forfeit the dividend and contribute towards the expenses incurred by the State's law enforcement, judicial, and correctional agencies.

Currently it takes three years before the forfeited dividend funds are available for appropriation; for example, the appropriation from the dividend fund for FY95 reflects convicted felons who were incarcerated in CY92. SB 378 would shorten this process to two years. This would have the effect of "bumping up" future appropriations by one year, thereby allowing a second appropriation from the dividend fund for FY95.

Additionally, SB 378 would add the court system to the list of agencies eligible to receive appropriations from the dividend fund; since every individual convicted of a felony or misdemeanor must appear before the court at some point, its inclusion should decrease the possibility of an equal protection challenge.

David,

The number of misdemeanors that we handle which result in conviction is roughly 14,000 each year. In addition, we handle roughly 3,000 probation revocations in misdemeanor cases. Because these revocation proceedings are usually simple and straightforward, we have not included them in the cost-per-case estimate calculated below.

The percentage of the attorney staff assigned to misdemeanor cases is roughly one-third, except in Anchorage where it is roughly one-quarter (most misdemeanor cases in Anchorage are handled by the municipal prosecutor's office).

The annual cost of misdemeanor prosecution is shown below, based on the FY 94 authorized budget. The costs fall into four components only, because misdemeanor cases are not handled by the components for special prosecutions and appeals or criminal justice litigation.

1st Jud. Dist.	1074 x 1/3 = 358
2nd Jud. Dist.	701 x 1/3 = 234
3rd -- Anch	2905 x 1/4 = 726
3rd -- all other	2784 x 1/3 = 928
4th Jud. Dist.	1956 x 1/3 = <u>652</u>
	2898 ÷ 14 = \$207.00

The misdemeanor cases fall into the following general categories. Next to each is the number of cases (rounded to the nearest hundred) that were sent to prosecution offices by police agencies in FY 93 to be reviewed for possible prosecution.

Assault	3300
Property Offens	2500
Disorderly Conduct/ Harrassment	700
Liquor Offenses	1700
Drug Offenses	500
Fish & Game	800
DWI	4200
Driv w/ Susp Lic	2400
Reckless/Neg Driv	200
Oth Driv Offenses	1900
All Other Misd Crimes	1600
Probation Revocation	<u>3300</u>
	23100

Attached is a listing of the crimes (and some other provisions) in Title 4 (alcohol), Title 11 (criminal code), Title 12 (criminal procedure), Title 16 (fish and game) and Title 28 (motor vehicles). The most common misdemeanors are highlighted. For your convenience, I have also included a copy of our criminal law manual, which contains all these provisions. In addition, however, there are a number of other offenses (usually punishable by fines only) that appear in regulations adopted by the Department of Fish and Game (related to hunting and fishing) and the Department of Public Safety (relating to motor vehicles, rules of the road, etc.)

Let me know if you have further questions.

Dean Guanel:

Mailed in minutes - arrived today... etc...

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY
DIVISION OF ADMINISTRATIVE SERVICES

Richard L. Burton
Commissioner

P.O. BOX 111200
JUNEAU, ALASKA 99811-1200
PHONE (907) 465-4336

April 13, 1994

The Honorable Steve Frank
Co-chair, Senate Finance Committee
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

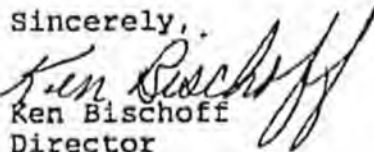
Dear Senator Frank:

In response to your staff's request to "estimate the average cost imposed on the Department of Public Safety by a misdemeanor arrest", a ballpark estimate is \$300 per arrest [5 hours X \$60 per hour]. The average time spent on a misdemeanor arrest can vary widely depending on whether it occurs in the bush or on a road system, the local court system's arraignment process, whether there is a state correctional institution or local contract jail nearby, and of course, the type of offense. The amount of time spent investigating a case can vary greatly. An "on sight" arrest can be very quick, but a theft case may take much time to investigate to the point of arrest. Also, violent offenses typically take much more time than a simple case.

Management reports are based on cases reported, and of course, not all cases result in an arrest, so it is not practical at this time to be definitive about the average time involved in a misdemeanor arrest. The most common misdemeanor arrest, Driving While Intoxicated, probably takes about three to four hours on the average. Some misdemeanor arrests take up to 60 hours of Trooper time. The 5 hour per arrest average is probably a low estimate.

The Alaska State Troopers currently contract with the US Forest Service to provide law enforcement in certain areas at a rate of \$60 per hour [which includes salary, benefits, and some support costs]. This rate has not been adjusted in recent years, and is due to be raised, but can be used as a rough estimate of the cost for an hour of Trooper time, a low estimate when all costs are taken into consideration.

Sincerely,



Ken Bischoff
Director

MEMORANDUM

STATE OF ALASKA

DEPARTMENT OF CORRECTIONS

TO: David Skidmore
Legislative Assistant to Senator Steve Frank

FROM: Diane Schenker 
Special Assistant to the Commissioner

DATE: April 13, 1994

This memorandum is in response to your question regarding the average length of stay in a correctional center for a misdemeanor. According to Steve Schwartz, our Research Analyst, the average length of incarceration for a misdemeanor is 8.7 days.

This average was calculated based upon a formula used by the National Institute of Corrections, using the Department's OBSCIS data from calendar year 1993, as follows:

559 (1993 average daily population of misdemeanants, both pretrial and sentenced) X 365 (days per year) divided by 23,468 (1993 total admissions for misdemeanants) = 8.7 days, average length of stay.

The average daily cost of care, including state correctional beds as well as community residential center beds, is \$98 per day. Therefore, incarceration for the average misdemeanor costs the department \$852.60 (\$98 X 8.7).

M E M O R A N D U M

DATE: 4-14-94

TO: Senator Steve Frank

FROM: John B. Salemi, Public Defender

RE: Average cost of Misdemeanor case

Per your 4-13-94 request, this memo contains the Alaska Public Defender Agency's best guess as to the average cost of providing legal representation for a client charged with a misdemeanor level offense. Please be advised that this estimate was prepared with less than one day's notice. It is also noteworthy that misdemeanor charges vary greatly, and therefore there really is no such thing as an average misdemeanor case. Finally, this estimate is not generated by computer number-crunching, but based on the collective experience of the attorneys presently handling misdemeanors in our Anchorage office. No information was gathered from our rural offices. Here goes:

ATTORNEY TIME

1. File review and client interview(s): 1.5 hours
 2. Pre-trial motion review, drafting, research: 1.0 hours
 3. Negotiations, phone calls, bail hearing(s): 1.0 hours
 4. Change of plea hearing (preparation and court): .75 hours
- TOTAL: 4.25 HOURS

A staff attorney doing misdemeanor cases is paid a salary which is the equivalent of \$22.38/hour. $4.25 \times \$22.38 = \95.12 .

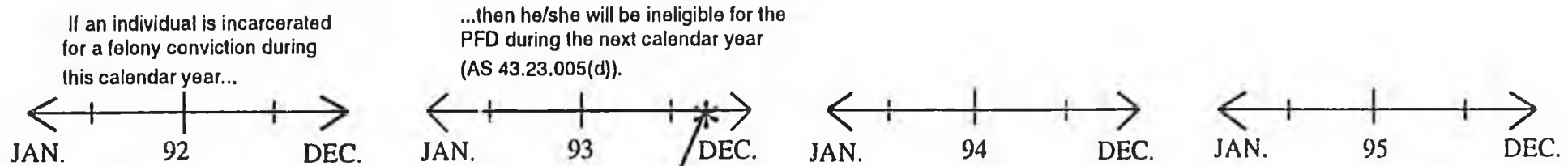
The remaining costs on an "on average basis" are even more speculative. Secretary time, photocopying, equipment costs, lease space expenses--the list of overhead items and allocation to misdemeanor work cannot be readily determined. Neither should it be ignored or minimized. So, a wild guess: \$100/case.

In summary, a quick, best guess, based on attorney-generated information (as opposed to statistical analysis) is approximately \$200 per case.

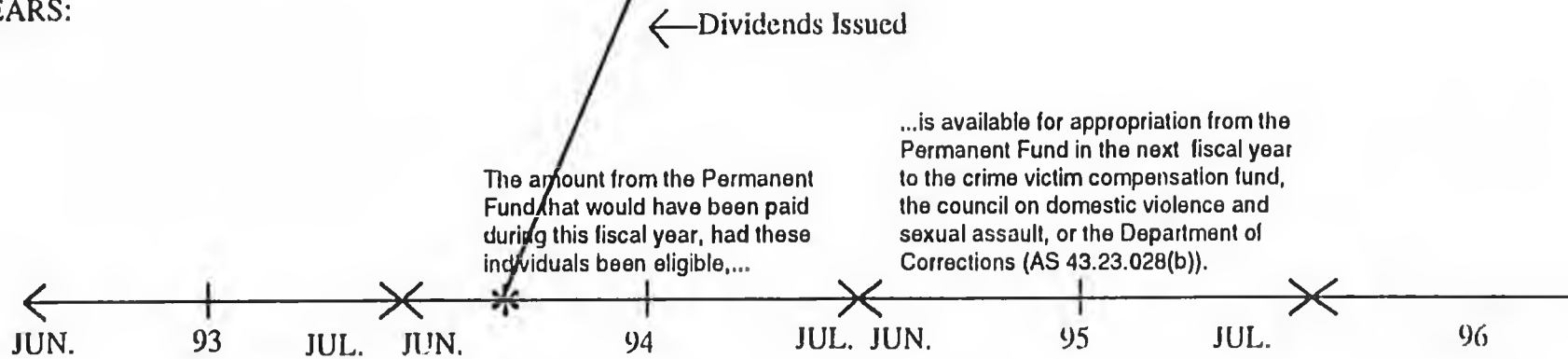
I hope this helps. Call if you would like to discuss this issue.

CURRENT PROCEDURE: Forfeiture of PFD by Individuals Convicted of Felony

CALENDAR YEARS:

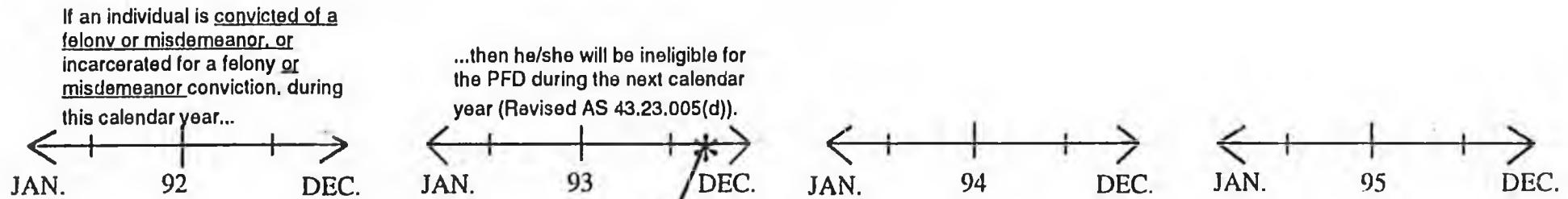


FISCAL YEARS:

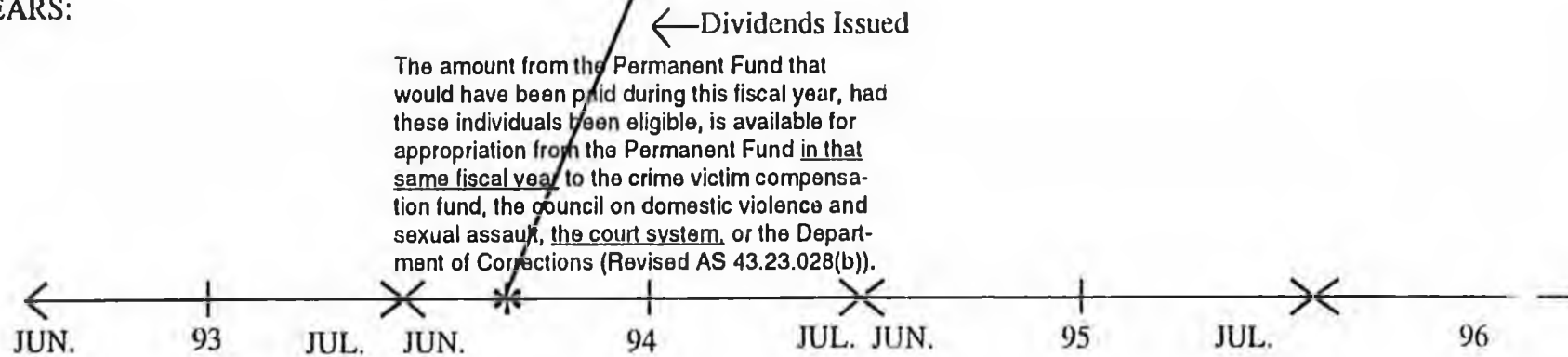


PROPOSED PROCEDURE: Forfeiture of PFD by Individuals Convicted of Felony or Misdemeanor

CALENDAR YEARS:



FISCAL YEARS:



VEHICLE AND TRAFFIC OFFENSES
NUMERICAL LISTING

Note: Offenses not listed here are mandatory court appearances.

STATUTE/REGULATION	OFFENSE	BAIL OR CATEGORY*	POINTS	PROCESSING CODE	PENALTY SECTION
AS 05.25.030(a)	Failure to Give Assistance or ID at Watercraft Accident	Mand/Cr	0	ZZZ	AS 05.25.090 misd.
AS 05.25.030(b)	Failure to Report Watercraft Accident	Mand/Cr	0	ZZZ	AS 05.25.090 misd.
AS 05.25.060(a)	Reckless Driving of Watercraft	Mand/Cr	0	ZZZ	AS 05.25.090 misd.
AS 05.25.060(a)	Negligent Driving of Watercraft	Mand/Cr	0	ZZZ	AS 05.25.090 misd.
AS 05.30.010	Operating An Unregistered Snow Vehicle	20	0	ZZZ	AS 05.30.110 misd.**
AS 05.30.040(a)	Failure to Display Snow Vehicle Numbered Registration Decal	20	0	ZZZ	AS 05.30.110 misd.**
AS 05.30.080(a)(1)-(4)	Snow Vehicle Equipment Required	Corr	0	ZZZ	AS 05.30.110 misd.***
AS 05.30.100	Snow Vehicle Operator to Report Accidents	Mand/Cr	0	ZZZ	AS 05.30.110 misd.
AS 11.46.460	Disregard of Highway Obstruction	Mand/Cr	0	ZZZ	AS 11.46.460(b) B misd.
AS 11.46.462	Unlawful Possession of Official Traffic Control Device	Mand/Viol	0	ZZZ	AS 11.46.462(b) viol.
AS 11.46.484(a)(7)	Tampering with Official Traffic Control Device or Damaging Highway Construction Work	Mand/Cr	0	ZZZ	AS 11.46.484(b) A misd.
AS 28.05.071	Failure to Notify Dept. of Change of Name/Address (See AS 28.35.135(b))				
AS 28.05.095(a)	Failure to Wear Safety Belt (age 16 and older: passenger or driver)	15 or donation****	0	CR2	AS 28.05.099(a) inf.
AS 28.05.095(b)	Failure to Provide Child Safety Device (Note: 1st charge may be dismissed by court upon proof of correction, but 2nd or subsequent charge is not dismissible)	50	2	CR1	AS 28.05.099(b) inf.
AS 28.05.095(b)	Failure to Properly Secure Child in Child Safety Device	50	2	CR1	AS 28.05.099(b) inf.
AS 28.05.095(d)	Illegal Removal of Vehicle Safety Belt	15 or donation****	0	MS	AS 28.05.099(a) inf.
AS 28.10.081(b)	Failure to Carry Certificate of Registration in Vehicle (Charge under AS 28.10.461)				
AS 28.10.451	Failure to Register Vehicle	50	0	RT1	AS 28.40.050(a-b) misd.**
AS 28.10.461	Plates/Decals/Permits Must Be Properly Attached and Displayed	20	0	RR5	AS 28.40.050(a-b) misd.**
AS 28.10.461	Failure to Carry Certificate of Registration in Vehicle	20	0	RT1	AS 28.40.050(a-b) misd.**

STATUTE/REGULATION	OFFENSE	BAIL OR CATEGORY*	PGINTS	PROCESSING CODE	PENALTY SECTION
AS 28.10.471	Operating Vehicle w/Expired Registration	50	0	RT2	AS 28.40.050(a-b) misd.**
AS 28.10.471	Operating Vehicle w/Suspended/Revoked Registration	Mand/Cr	0	RT4	AS 28.40.050(a-b) misd.
AS 28.10.481	Improper Use of Evidence of Registration/Title	Mand/Cr	0	RT3	AS 28.40.050(a-b) misd.
AS 28.10.491(a)	Felonies Relating to Title, Registration, ID No., etc.	Mand/Cr	0	RT4	AS 28.10.491(b) felony
AS 28.10.493(a)	Illegal Transfer of Vehicle by Owner	Mand/Cr	0	ZZZ	AS 28.10.493(a) B misd.
AS 28.10.493(b)	Illegal Transfer of Vehicle by Dealer	Mand/Cr	0	ZZZ	AS 28.10.493(b) B misd.
AS 28.15.011(b)	Driving With Expired License	30	2	VR	AS 28.40.050(a-b) misd.**
AS 28.15.011(b)	Driving Without a Valid License	Mand/Cr	2	VR5	AS 28.40.050(a-b) misd.
AS 28.15.041(b)	School Bus Driver Permit Required	Mand/Cr	2	VR5	AS 28.40.050(a-b) misd.
AS 28.15.051(a-b)	Driving in Violation of Instruction Permit	Mand/Cr	2	VR4	AS 28.40.050(a-b) misd.
AS 28.15.121(d)	Driving in Violation of Restricted License	Mand/Cr	2	VR4	AS 28.40.050(a-b) misd.
AS 28.15.131	License to be Carried and Exhibited on Demand	Corr	2	RR4	AS 28.15.131 /28.40.050(a-b) misd.
AS 28.15.281(a)	Unlawful Use of Driver's License	Mand/Cr	0	ZZZ	AS 28.40.050(a-b) misd.
AS 28.15.281(b)	Permitting Unauthorized Person to Drive	Mand/Cr	0	VR6	AS 28.40.050(a-b) misd.
AS 28.15.291	Driving While License Suspended/Revoked or Driving in Violation of Limitation	Mand/Cr	10	VR1	AS 28.15.291/ AS 28.15.181(a)(9) A misd.
AS 28.15.291	Driving While License Suspended	Mand/Cr	10	VR2	AS 28.15.291/ AS 28.15.181(a)(9) A misd.
AS 28.22.250	Falsification of Info. Required under AS 28.22.210-.240	Mand/Cr	0	ZZZ	AS 28.22.250 A misd.
AS 28.35.026	Failure to Return Rental Vehicle	Mand/Cr	0	ZZZ	AS 28.35.026 felony
AS 28.35.029	Open Container of Alcoholic Beverage in Motor Vehicle	50	2	D14	AS 28.35.029(d) /28.40.050(c) inf.**
AS 28.35.030	Driving While Intoxicated (DWI) (all motor vehicles except those listed below)	Mand/Cr	10	D11	AS 28.35.030 /28.15.181(a)(5) A misd.
	DWI - Snow Machines and Off-Road Vehicles	Mand/Cr	0	D17	AS 28.35.030 A misd.
	DWI - Watercraft	Mand/Cr	0	D18	AS 28.35.030 A misd.
	DWI - Aircraft	Mand/Cr	0	D19	AS 28.35.030 A misd.
AS 28.35.031(e)	Refusal to Submit to a Preliminary Breath Test	50	0	MS	AS 28.35.031(e) /28.40.050(c) inf.**
AS 28.35.032	Refusal to Submit to Chemical Test	Mand/Cr	0	D13	AS 28.35.032 /28.15.181(a)(8) A misd.

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STATUTE/REGULATION	OFFENSE	BAIL OR CATEGORY*	POINTS	PROCESSING CODE	PENALTY SECTION
AS 28.35.040	Reckless Driving	Mand/Cr	10	RK1	AS 28.35.040 /28.15.181(a)(6) misd.
AS 28.35.045	Negligent Driving	Mand/Inf	6	RK2	AS 28.35.045(c) /28.40.050(c) inf.
AS 28.35.050(a)	Leaving Scene of Injury Accident	Mand/Cr	9	HR1	AS 28.40.050(a-b) misd.
AS 28.35.050(b-c)	Leaving Scene of Property Damage Only Accident	Mand/Cr	9	HR2	AS 28.40.050(a-b) misd.
AS 28.35.060(a)	Operator to Give Information At Accident	Mand/Cr	2	HR	AS 28.35.060(b) misd.
12 AS 28.35.060(a)	Failure to Assist Injured Person At Accident	Mand/Cr	9	HR1	AS 28.35.060(c) /28.15.181(a)(3) felony
AS 28.35.080(a)	Failure to Give Immediate Notice of Accident	Mand/Cr	2	RR1	AS 28.35.110(b) misd.
AS 28.35.080(b)	Failure to File Written Accident Report Within 10 Days	Mand, Cr	2	RR1	AS 28.35.110(b) misd.
AS 28.35.110(a)	Giving False Information in Accident Report	Mand/Cr	0	ZZZ	AS 28.35.110(a) misd.
AS 28.35.130	False Report or Destruction of Evidence	Mand/Cr	0	ZZZ	AS 28.35.130 felony & misd
AS 28.35.135(a)	Making False Statement /Affidavit	Mand/Cr	0	ZZZ	AS 11.56.210 A misd.

AS 28.35.135(b)	Failure to Notify Dept. of Change of Name/Address	20	0	ZZZ	AS 28.40.050(a-b) misd.**
AS 28.35.140	Obstructing or Blocking Traffic	20	0	EM6	AS 28.40.050(a-b) misd.**
AS 28.35.145(a)	Failure to Stop For School Bus with Flashing Red Lights	Mand/Cr	6	PA4	AS 28.35.145(d) B misd.
AS 28.35.145(b)	Failure to Yield to Person Crossing Road To/From School Bus	Mand/Cr	6	RW5	AS 28.35.145(d) B misd.
AS 28.35.145(e)	Ownership of a Vehicle Which Illegally Passes a Stopped School Bus	50	0	ZZZ	AS 28.35.145(e) inf.**
13 AS 28.35.155	Operating Vehicle w/Studded/Chained Tires When Prohibited	Corr	0	ER2	AS 28.40.050(a-b) misd.***
AS 28.35.180	Disobedience to Signal of Officer Regulating Traffic	30	2	SC1	AS 28.40.050(a-b) misd.**
AS 28.35.182	Failure to Stop at Direction of Peace Officer	Mand/Cr	10	HR4	AS 28.35.182(c) B misd.
AS 28.35.235	Unauthorized Use of Handicapped Parking	100	0	ZZZ	AS 28.35.235(b) /28.40.050(c)**
AS 28.35.251	Contained or Confined Loads	100	0	EM2	AS 28.35.255 inf.**
AS 28.35.253	Anti-Spray Devices Required	Corr	0	ER1	AS 28.35.255 inf.***

AS 42.10 NOTE: The AS 42.10 (Alaska Motor Freight Carrier) offenses previously listed on the traffic bail schedule were repealed by 1983 initiative #2, effective February 1985.

Comparison of Incarcerated Misdemeanants/Child Support Obligor

Number of individuals incarcerated for
misdemeanor convictions in CY93: 9,900
(Source: Department of Corrections)

Of these 9,900 individuals, how many had active
cases with Child Support Enforcement Division? 2,000
(Source: Child Support Enforcement Division)

What percent of these incarcerated misdemeanants
would have been otherwise eligible to receive PFD
in absence of SB378? 66%
(Source: Permanent Fund Dividend Division)

Number of incarcerated misdemeanants ineligible
for PFD under SB378: 1,320

What percent of CSED cases involve garnishment
of PFD? 23%
(Source: Child Support Enforcement Division)

Number of incarcerated misdemeanants whose
forfeiture of PFD under SB 378 would conflict
with child support obligation in CY93: 304



Official Business

Alaska State Senate

Senate Finance Committee

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

MEMORANDUM

TO: Senator Steve Frank, Co-Chair
Senator Drue Pearce, Co-Chair
Senate Finance Committee

FROM: David Skidmore, Staff Aide

RE: Child support obligations

DATE: 20 April 1994

Individuals are required to assign their right to child support to the State in order to be eligible for Aid to Families with Dependent Children (AFDC). If CSED subsequently collects on a child support obligation through garnishment of the PFD, only the first \$50 of the delinquent amount is given to the AFDC recipient/support obligee; the balance is divided between the State and federal government as reimbursement for the AFDC assistance payments, and the State portion is deposited into the general fund as revenue.

Thus, if the child support obligees of the 304 incarcerated misdemeanants in 1993 all were on AFDC and the CSED garnished the entire \$950 PFD of each individual, the total amount received by the obligee families would have been \$15,200 (\$50 x 304); the State and federal governments each would have received \$136,800 (half of the remaining balance) as reimbursement.

Under SB 378 the entire amount collected from this source (\$288,800) would be available for appropriation by the State. While it is true that the obligee families would not receive the customary \$50, the federal government would no longer receive its 50% portion.

REPRESENTATIVE LIST OF MISDEMEANORS

ALCOHOLIC BEVERAGES

Failure to obtain required license or permit
Possession or consumption of alcohol by persons under the age of 21
Furnishing or delivery of alcoholic beverages to persons under 21

CRIMINAL LAW

Assault in the fourth degree
Reckless endangerment
Theft in the third degree
Theft in the fourth degree
Criminal trespass in the first degree
Criminal trespass in the second degree
Criminal mischief in the third degree
Criminal mischief in the fourth degree
Escape in the fourth degree
Unlawful evasion in the first degree
Unlawful evasion in the second degree
Resisting or interfering with arrest
Violating a domestic violence restraining order
Disorderly conduct
Harassment
Misconduct involving weapons in the fourth degree
Misconduct involving weapons in the fifth degree
Misconduct involving a controlled substance in the fifth degree
Misconduct involving a controlled substance in the sixth degree
Violation of conditions

FISH AND GAME

Strict liability commercial fishing penalties
Misdemeanor commercial fishing penalties
Wanton waste of big game animals and wild fowl

MOTOR VEHICLES

Driving without a drivers license
Driving on a suspended, revoked, or limited drivers license
Operating a vehicle, aircraft, watercraft, or commercial motor vehicle while intoxicated
Refusal to submit to chemical test
Reckless driving
Negligent driving

AMENDMENT #1

OFFERED IN THE SENATE
TO: SB 378

BY SENATOR FRANK

Page 1, line 5:

Insert a new bill section to read:

"* Section 1. PURPOSES. The purposes of the amendments to AS 43.23.005(d) and AS 43.23.028(b) in this Act are to obtain
(1) additional funding for the State agencies specified; and
(2) full or partial reimbursement from individuals convicted of a felony or misdemeanor for the costs imposed on the State criminal justice system that are related to conviction and incarceration."

Renumber following bill sections accordingly.

*Compensatory
cost recovery*

not punitive

3-A

ALASKA DEPARTMENT OF REVENUE
PERMANENT FUND DIVIDEND DIVISION
SUGGESTED LANGUAGE FOR A SENATE STATE AFFAIRS
COMMITTEE AMENDMENT TO SB 378

As of April 19, 1994

*The Department of
and Public
Safety*

Add a new section 3 to read as follows:

***Sec. 3.** AS 43.23.055(5) is amended to read:

(5) use a list of those individuals meeting the criteria of AS 43.23.005(d) provided annually by the Department of Corrections to annually determine [, IN COOPERATION WITH THE DEPARTMENT OF CORRECTIONS,] the number and identity of individuals ineligible for a permanent fund dividend under AS 43.23.005(d);

Renumber current sections 3 - 6 appropriately, updating references and making new section 3 retroactive to January 1, 1994.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 378

Revision Date: _____ Dept. Affected: Revenue
 Title: No PFD: Persons Jailed for Feiony or Misdemeanor BRU: Permaner:t Fund Dividend
 Component: Permanent Fund Dividend
 Sponsor: SENATE FINANCE COMMITTEE
 Requestor: Senate State Affairs Committee COMPONENT SERIAL NO 981

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
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						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING:

(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-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

ANALYSIS:

This fiscal note is predicated on the assumption that either the Department of Corrections or the Court System will annually provide the Department of Revenue with a computer tape file of all felons and misdemeanants as the Department of Corrections currently provides related to incarcerated felons.

This legislation would also reduce the pool of dividend applicants whose dividend could be attached or levied by various government agencies as well as private creditors. Please see the attached 1989-1993 summary of attachment and assignment activity.

Prepared by: Thomas C. Williams
 Division: Permanent Fund Dividend
 Approved by Commissioner: _____
 Agency: Department of Revenue

Phone: 465-2323
 Date: 04-18-94
 Date: 4/18/94

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ALASKA DEPARTMENT OF REVENUE
 PERMANENT FUND DIVIDEND DIVISION
1989 - 1993 PFD ATTACHMENT AND ASSIGNMENT ACTIVITY

As of January 18, 1994

<u>Services Held</u>	<u>5 Year Total</u>	<u>Permanent Fund Dividend Year (A)</u>				
		<u>1993</u>	<u>1992</u>	<u>1991</u>	<u>1990</u>	<u>1989</u>
<u>Attachments (B)</u>						
IRS (Federal Taxes)	68,594	19,758	18,125	12,413	11,548	6,750
CSED (Child Support Delinquencies)	36,977	7,868	7,883	7,571	7,112	6,543
Non-municipal Writs (Judgements) (C)	34,740	7,251	6,749	8,218	6,462	6,060
ACPE (Student Loan Delinquencies)	34,355	7,684	8,568	7,282	5,997	4,824
Municipal Writs (Fines & Taxes)	5,938	294	1,200	1,224	1,323	1,897
Certified Services (Judgements) (C)	2,510	2,156	354	(D)	(D)	(D)
PFDD (Repayment of Dividends)	2,423	525	106	760	549	483
Department of Law (Judgements)	1,365	1,365	0	0	0	0
DOL (Employment Taxes)	818	267	113	121	127	190
IEAD (State Taxes)	191	0	20	34	52	85
Court Orders (Judgements)	27	0	5	1	20	1
<u>Total Attachments</u>	<u>187,938</u>	<u>47,168</u>	<u>43,123</u>	<u>37,624</u>	<u>33,190</u>	<u>26,833</u>
<u>Assignments (E)</u>	<u>21,867</u>	<u>5,907</u>	<u>4,028</u>	<u>3,753</u>	<u>4,502</u>	<u>3,077</u>
<u>Total Services Held</u>	<u>209,805</u>	<u>53,075</u>	<u>47,751</u>	<u>41,377</u>	<u>37,692</u>	<u>29,910</u>

Notes

- (A) The figures reported for 1989-1992 are for the period April 1 through March 31 of a year indicated. The 1993 figures are for the period April 1, 1993 through December 31, 1993.
- (B) The attachment figures represent the number of attachments that actually were held. Some of the attachments received are returned because they are for an individual who is not on file. Others correspond to individuals who are on file but are released by the individual or agency filing the attachment before the department makes payment. The figures reported correspond to unreleased attachments held during the periods indicated.
- Not all these attachments received funds. For example, an individual may have been attached by both CSED and the IRS. If the CSED attachment equaled or exceeded the amount of the dividend, CSED would receive the entire dividend, and IRS the would receive nothing. However, the statistics would still reflect 2 attachments.
- (C) Until December 30, 1990 the exemption from attachment for these items was 50%. Effective January 1, 1991 the exemption from attachment for these items was reduced to 45% by § 3, Ch 198, SLA 1990. Non-municipal Writs are served by Process Servers.
- (D) Certified services were only available starting in 1992 as a result of amendments to AS 43.23.065 enacted by Ch 52, SLA 1992.
- (E) Since 1989 assignments can only be made to governmental agencies or a court.

STATE OF ALASKA
1994 LEGISLATIVE SESSION

FISCAL NOTE

BILL NO.: SB 378

Revision Date:	_____	Dept. Affected:	Corrections
Title:	Re. PFD for felons/misdemeanants	BRU:	All
Sponsor:	S. Fin	Component:	All
Requestor:	S.STA	Component Serial #:	694-1884

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXP.	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXP	0.0	0.0	0.0	0.0	0.0	0.0
-------------	-----	-----	-----	-----	-----	-----

CHANGES IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0
---------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1006 GF/MHTLA						
Other (1050 PFD)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY94) cost \$ 0.0

POSITIONS

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

ANALYSIS:

Prepared by: Diane Schenker, Special Assistant
 Division: Office of the Commissioner
 Approved by: J. Frank Prewitt, Jr., Commissioner
 Agency: Department of Corrections

Phone: 465-4643/786-2147
 Date: 4/15/94
 Date: 4/15/94
 Page 1 of 1

AMENDMENT

#1
Adopted.
✓ unan. consent
4-18-94

OFFERED IN THE SENATE
TO: SB 378

BY SENATOR FRANK

Page 1, line 5:

Insert a new bill section to read:

"* Section 1. PURPOSES. The purposes of the amendments to AS 43.23.005(d) and AS 43.23.028(b) in this Act are to obtain
(1) additional funding for the State agencies specified; and
(2) full or partial reimbursement from individuals convicted of a felony or misdemeanor for the costs imposed on the State criminal justice system that are related to conviction and incarceration."

Renumber following bill sections accordingly.

"Conceptual Amend.:"

#2

(1) NON-mandatory Court appearances

(2) Statutory mail-in misdemeanors

✓ Adopted
unanimous
consent
✓ 4-18-94

#3

A M E N D M E N T

OFFERED IN THE SENATE
TO: CSSB 378(STA)

BY SENATOR FRANK

Page 1, lines 1 - 2:

Delete "and to dividends of individuals convicted of felonies or certain misdemeanors"

Insert ", to the ineligibility for dividends of individuals convicted of felonies or incarcerated for misdemeanors, and to the determination of the number and identity of certain ineligible individuals"

Page 2, lines 3 - 5:

Delete "or misdemeanor, other than a misdemeanor that is a bailable offense for which a court appearance is not required"

Page 2, after line 17:

Insert a new bill section to read:

** Sec. 4. AS 43.23.055 is amended to read:

Sec. 43.23.055. DUTIES OF THE DEPARTMENT. The department shall

(1) annually pay permanent fund dividends from the dividend fund;
(2) subject to AS 43.23.011 and paragraph (8) of this section, adopt regulations under AS 44.62 (Administrative Procedure Act) that establish procedures and time limits for claiming a permanent fund dividend; the department shall determine the number of eligible applicants by October 1 of the year for which the dividend is declared and pay the dividends by December 31 of that year;

(3) adopt regulations under AS 44.62 (Administrative Procedure Act) that establish procedures and time limits for an individual upon emancipation or upon reaching majority to apply for permanent fund dividends not received during minority because the parent, guardian, or other authorized representative did not apply on

behalf of the individual;

(4) assist residents of the state, particularly in rural areas, who because of language, disability, or inaccessibility to public transportation need assistance to establish eligibility and to apply for permanent fund dividends;

(5) annually determine, in cooperation with the Department of Corrections and the Department of Public Safety, the number and identity of individuals ineligible for a permanent fund dividend under AS 43.23.005(d);

(6) adopt regulations that are necessary to implement AS 43.23.005(d);

(7) adopt regulations that establish procedures for the parent, guardian, or other authorized representative of a disabled individual to apply for prior year permanent fund dividends not received by the disabled individual because no application was submitted on behalf of the individual;

(8) adopt regulations that establish procedures for an individual to apply to have a dividend warrant reissued if it is returned to the department as undeliverable or it is not paid within two years of the date of its issuance; however, the department may not establish a time limit within which an application to have a warrant reissued must be filed;

(9) adopt regulations establishing an optional longevity bonus program to provide for the direct payment by the department of an individual's permanent fund dividend to an annuity program selected by the individual."

Renumber the following bill sections accordingly.

Page 2, line 22:

Delete "and 5"

Insert "and 6"

Page 2, line 23:

Delete "and 4"

Insert ", 4, and 5"

8-LS1889AK ✓
Cook
4/18/94

CS FOR SENATE BILL NO. 378(STA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE FINANCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to permanent fund dividend program notice requirements and
2 to dividends of individuals convicted of felonies or certain misdemeanors; and
3 providing for an effective date."

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

5 * Section 1. PURPOSES. The purposes of the amendments made to AS 43.23.005(d) and
6 43.23.028(b) in this Act are to obtain

7 (1) a source of additional funding for the state agencies listed in
8 AS 43.23.028(b); and

9 (2) full or partial reimbursement from individuals convicted of a felony or
10 misdemeanor for costs imposed on the state criminal justice system related to convictions and
11 incarcerations.

12 * Sec. 2. AS 43.23.005(d) is amended to read:

13 (d) Notwithstanding the provisions of (a) - (c) of this section, an individual
14 [WHO HAS BEEN CONVICTED OF A FELONY] is not eligible for a permanent

1 func dividend for a dividend year when

2 (1) during the calendar year immediately preceding that dividend
3 year the individual was convicted of a felony or misdemeanor, other than a
4 misdemeanor that is a bailable offense for which a court appearance is not
5 required; or

6 (2) [,] during all or part of the [PREVIOUS] calendar year immediately
7 preceding that dividend year, as a result of the conviction of a felony or
8 misdemeanor, the individual was [IS] incarcerated.

9 * Sec. 3. AS 43.23.028(b) is amended to read:

10 (b) The notice requirements of (a) of this section do not apply to
11 appropriations from the dividend fund to the crime victim compensation fund
12 established under AS 18.67.162, to the council on domestic violence and sexual assault
13 established under AS 18.66.010, to the court system, or to the Department of
14 Corrections to the extent that amounts appropriated for a fiscal year do not exceed the
15 total amount that would have been paid during that same [THE PREVIOUS] fiscal
16 year to individuals who are ineligible to receive dividends under AS 43.23.005(d) if
17 they had been eligible.

18 * Sec. 4. Notwithstanding the amendment to AS 43.23.005(d) made in sec. 2 of this Act,
19 for purposes of determining eligibility for 1995 dividends, AS 43.23.005(d) shall be applied
20 as though it had not been amended by this Act.

21 * Sec. 5. Section 3 of this Act is retroactive to January 1, 1994.

22 * Sec. 6. Sections 1, 3, and 5 of this Act take effect immediately under AS 01.10.070(c).

23 * Sec. 7. Sections 2 and 4 of this Act take effect January 1, 1995.



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Signature of Camera Operator

11/6/97
Date

SCR

17

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SCR 17

Revision Date: February 17, 1994 Dept. Affected: None
 Title: "Honoring Alaskan and Palmer resident Tommy Moe, for winning a gold medal at 1994 Winter Olympic Games." BRU: n/a
 Component: " Sponsor: Senator Kerittula, Halford, et al " Component: n/a
 Requestor: Senate State Affairs Committee COMPONENT SERIAL NO. ---

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

FUND SOURCE

(Thousands of Dollars)

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

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

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Portia Babcock, Committee Aide Phone: 465-4522
 Division: Senate State Affairs Committee Date: February 17, 1994
 Approved by: Senator Loren Leman, Chair Date: February 17, 1994
 Agency: Senate State Affairs Committee

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8-LS1751N
Finley
3/2/94

CS FOR SENATE CONCURRENT RESOLUTION NO. 17(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered:

Referred:

Sponsor(s): SENATORS KERTTULA, Halford, Phillips, Kelly, Leman, Duncan, Taylor, Salo, Sharp, Miller, Pearce, Zharoff, Little, Jacko, Lincoln, Rieger, Donley, Ellis

A RESOLUTION

1 **Honoring Alaskan and Palmer resident Tommy Moe for winning gold and silver**
2 **medals at the 1994 Winter Olympic Games in Lillehammer, Norway.**

3 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 **WHEREAS** Palmer resident Tommy Moe showed early promise as a world class skier;
5 **and**

6 **WHEREAS** Tommy Moe displayed true Alaskan spirit in overcoming personal
7 hardships and difficulties to continue to develop his athletic skills; and

8 **WHEREAS** Tommy Moe and his father, Tommy Moe, Sr., exemplify the importance
9 of family support, love, and devotion -- values Alaskans hold dear; and

10 **WHEREAS** Tommy Moe never lost sight of his dream and persevered in bringing
11 honor and respect to the State of Alaska and the United States of America by winning a Gold
12 Medal in the Men's Downhill Skiing and a Silver Medal in the Men's Super-Giant Slalom in
13 the 1994 Winter Olympic Games in Lillehammer, Norway;

14 **BE IT RESOLVED** that the members of the Eighteenth Alaska State Legislature
15 reflect Alaska's pride by honoring Tommy Moe for his outstanding athletic achievement and,
16 in so doing, setting an example for Alaskans and Americans everywhere.

1 **COPIES** of this resolution shall be sent to Tommy Moe and the members of his
2 family.



RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.


Signature of Camera Operator

11/6/97
Date

SJR

2

SJR-2

ALASKA PEACE OFFICERS ASSOCIATION

State APOA Office • P.O. Box 240106 • Anchorage, Alaska 99524-0106 • (907) 277-0515



March 22, 1993

APR 7 1993

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Senator Loren Leman
Alaska State Legislature
Capitol, Room 113
P.O. Box V (MS 3100)
Juneau, Alaska 99801

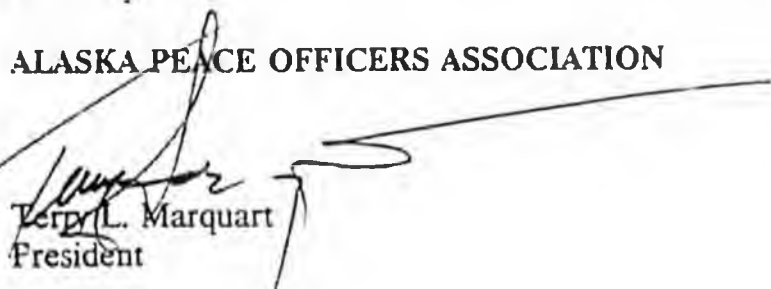
Dear Senator Leman:

On behalf of Alaska's Peace Officers we encourage you to support SJR 2, the Victim's Rights Bill. In 1990 the U.S. Congress passed the Victim's Rights and Restitution Act and urged the States to follow suit. To be both effective and humane, a criminal justice system must respond to the needs and concerns of the victims of crime at all stages of the criminal justice process.

One way to ensure appropriate consideration of victim's rights is to codify and enforce a "Victims' Bill of Rights." Victims' needs can include protection from further violence or retribution, restitution to cover economic loss and information about and participation in the criminal justice process. The criminal justice system should do all it can to minimize the pain of victims and victim-witnesses.

Sincerely,

ALASKA PEACE OFFICERS ASSOCIATION


Terdy L. Marquart
President

Ms. Janice Liennart 278-0977
619 E. 5th Avenue
Anchorage AK 99501 Date POM Sent 01/29/93
Constituency C Bill Number SJR 2 Response SUPPORTS
Subject

I ENCOURAGE YOU TO PASS THIS OUT OF COMMITTEE. THIS HELPS TO GIVE VICTIMS EQUAL RIGHTS.

Mrs. Theresa Cain 694-9997
P. O. Box 771318
Eagle River AK 99577 Date POM Sent 01/28/93
Constituency N Bill Number SJR 2 Response SUPPORTS
Subject

AS A VICTIM OF A CRIME, I ENCOURAGE THIS BILL TO PASS.



SENATOR DAVE DONLEY
ALASKA STATE LEGISLATURE

August 17, 1993

AUG 17 1993

Senator Loren Leman
Chair
Senate State Affairs Committee
716 West 4th Avenue
Suite 540
Anchorage, Alaska 99501

Dear Senator Leman:

The United States Constitution guarantees criminals certain rights and protections. Unfortunately, until recently innocent victims of crime have not been afforded the same protections. Although some progress has been made in statutory law, victims are still not given the same constitutional protections as are afforded criminals.

To help to rectify this injustice, I introduced Senate Joint Resolution 2 (SJR 2) last session, which would provide these constitutional protections to victims of crime. I was pleased to see you as a co-sponsor of this important resolution. Unfortunately, SJR 2 was not scheduled for any hearings during session, so I am asking if you would schedule it for interim hearings before our return to Juneau, so that interested members of the public have an opportunity to discuss this important matter with us in person.

Secondly, I would like to ask that as a committee chair, you request agency fiscal notes on this resolution. Apparently fiscal notes are only being issued to committee chairs, not sponsoring legislators, so your assistance on this score would be appreciated.

Thank you for your consideration of these requests.

Sincerely,

A handwritten signature in cursive script that reads "Dave Donley".

Senator Dave Donley

DD/jbv

CC: Victims for Justice
Anchorage Crime Commission
Alaska Peace Officers Association
STAR

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CRIMESTAKE

A Division of the National Rifle Association

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STEVEN J. TWIST
DIRECTOR

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Phoenix, Arizona 85004
(602) 266-6690
(602) 266-8390 FAX

December 7, 1993

Ms. Janice Lienhart
Victims for Justice
619 E. Fifth Avenue
Anchorage, Alaska 99501

Re: Alaska Victims' Rights Constitutional Amendment

Dear Janice:

I did not want the year to end without formally thanking you for your courtesy and hospitality during my recent visit in Alaska.

In the time intervening since my visit, I have continued to seek out information that may be helpful as we approach the legislative session early next year. I spoke today with Senator William Van Regenmorter in Michigan. He wrote and sponsored both the Michigan victims' rights statute and subsequently the Michigan victims' rights constitutional amendment. The Senator is sending me a booklet prepared after the passage of their law to explain victims' rights to citizens in Michigan. He also had some suggestions about how to approach certain sensitive issues.

Senator Van Regenmorter indicated that states opting for what he calls the "philosophical approach" (broad statements preserving and protecting the rights of victims to due process and fair treatment without specifying those rights) have found that they left too much discretion in the courts without sufficient direction regarding what those rights should be. He told me that in Michigan a victim's right to be present in the courtroom after he or she had testified was not adequately assured until a constitutional amendment was passed. Judicial power to control the courtroom preempted the victim's right to be present without reliance on any right of the defendant. It is therefore not simply a matter of defendants' rights defeating victims' rights.

I specifically asked about any legislative implementation language in their constitutional amendment. He said that his staff had researched the issue and felt that it was necessary. Without it, the Senator opined that the legislature would not be able to fully implement the victims' rights to provide for such things as enforcement, limitations, and means of implementation.

As for opposition to the proposed constitutional amendment, a Michigan taxpayer organization initially opposed the proposed constitutional amendment because they feared that prosecutors (and hence the state) could be liable to victims for violation of their rights. The resulting monetary damages would be paid out of the public coffers and place an additional burden on the taxpayer, hence their opposition. Senator Van Regenmorter indicated that as a result of this concern language was added restricting suits for monetary damages.

Finally, the Michigan victims' rights amendment was drafted to provide that an assessment against defendants could be ordered by the court to pay for the preservation and implementation of victims' rights. This provision was added to allow the state to shift the cost of implementation to the defendants. He cautioned however that the state needs to be prepared to meet this cost initially and not depend on revenues from defendants who frequently are indigent. Senator Van Regenmorter indicated that the it has cost the State of Michigan approximately \$1 1/2 million dollars to implement their constitutional amendment state wide, but in his opinion it is well worth the cost.

The Senator would be happy to answer any questions that we may have, or talk to any legislator that has questions. He is deeply committed to victims and victims rights and may be a valuable ally. His opinion as a Senator (and elected official) may be more persuasive to other Legislators since he understands the political implications of support for victims' rights.

Please keep me informed of the progress of your legislation. I am prepared to return to Alaska as needed to ensure our goal of passing a victims' rights constitutional amendment. Best regards to you and your sister, Sharon, for a safe and happy holiday season!

Sincerely,

Linda
Linda A. Akers
Deputy Director
Crimes *Linda*
la A.

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

February 4, 1994

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX 110300 - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3428
FAX: (907) 465-4043

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501-2064
PHONE: (907) 269-6250
FAX: (907) 272-1249

The Honorable Loren Leman
Chairman, State Affairs Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: CS SS SJR 2(STA)

Dear Senator Leman:

You have asked the Department of Law to address several issues relating to CS SS SJR 2(STA), "Proposing an amendment to the Constitution of the State of Alaska relating to the rights of victims of crimes and to criminal and juvenile justice administration." Please be advised that an attorney from the Department's Civil Division is responding to the your questions regarding the probable effect of this proposed constitutional amendment on the juvenile justice system as currently administered under Title 47 of the Alaska Statutes and caselaw from our appellate courts.

I will attempt here to address your other questions, relating to the phrase "community condemnation of the offender" and to the term "restitution." The phrase "community condemnation of the offender" is not a synonym for punishment or retribution. Instead, it is a part of the *Chaney* criteria that was expressed by the Alaska courts as follows:

Under Alaska's Constitution, the principles of reformation and necessity of protecting the public constitute the touchstones of penal administration. Alaska Const., art. I, § 12. Multiple goals are encompassed within these broad constitutional standards. Within the ambit of this constitutional phraseology are found the objectives of rehabilitation of the offender into a noncriminal member of society, isolation of the offender from society to prevent criminal conduct during the period of confinement, deterrence of the offender himself after his release from confinement or other penological treatment, as well as deterrence of other members of the community who might possess tendencies toward criminal conduct similar to that of the offender, and community

condemnation of the individual offender, *or in other words, reaffirmation of societal norms for the purpose of maintaining respect for the norms themselves.*

State v. Chaney, 477 P.2d 441, 444 (Alaska 1970) (emphasis added) (footnote incorporated into text). See also AS 12.55.005(6) ("In imposing sentence, the court shall consider . . . the effect of the sentence to be imposed as a community condemnation of the criminal act and as a reaffirmation of societal norms").

In *Smothers v. State*, 579 P.2d 1062 (Alaska 1978), the Alaska Supreme Court offered the following:

We note that the trial court expressed some uncertainty as to the meaning of the fourth *Chaney* criterion, the reaffirmation of societal norms, questioning whether it actually was a disguise for retribution. The use of retribution as a goal of sentencing is inconsistent with the mandate of art. I, § 12 of the Alaska Constitution that "Penal administration shall be based on the principle of reformation and upon the need for protecting the public," and was not adopted as one of the four goals in *State v. Chaney*, 477 P.2d at 444.

The support of community expectations that existing norms will be enforced and delicts will be punished is separate from retribution.

579 P.2d at 1064. The Alaska Supreme Court further addressed the matter in *Leuch v. State*, 633 P.2d 1006 (Alaska 1981), a copy of which is attached to this letter.

As I indicated at the hearing before the Senate State Affairs Committee, the term "restitution" has thus far been defined by the legislature in title 12 only to refer to payments made to persons harmed by the defendant's conduct, and not to also refer to payments the defendant should make to the "system" for the cost he is imposing on society as a whole. The legislature, however, may define the term more broadly if it so chooses. This, however, would not require a constitutional amendment. I have not been successful in thinking of a term that could be used instead of "restitution" in this constitutional amendment that would convey the sense you have tried to create. If ever one comes to me, I will be pleased to let you and the committee know.

Finally, I would like to reiterate the Department of Law's desire to see this proposal amended as suggested in our memorandum dated January 26, 1994. We believe that such an amendment would protect the state from unintended and undesired effects that might arise from this proposal.

The Honorable Loren Leman

February 4, 1994
Page 3

Thank you for your consideration. If you have any further questions that we might be able to address, please do not hesitate to contact us.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: Margot O. Knuth
Margot O. Knuth
Assistant Attorney General

MOK:jf

for an employer to hire an employee to work long overtime hours rather than to hire more workers, contrary to one purpose of the overtime provision, which was to force employers to spread employment by hiring more persons.¹⁵

We are persuaded that the state's position is correct. Under a standard hourly wage salary, as a worker's overtime hours increase, the average hourly wage increases. Under the FWW, as a worker's overtime hours increase, the average hourly wage decreases. This contravenes the policies of requiring increased overtime compensation and promoting the spreading of employment.

Thus, we must conclude that the regulation's definition of "regular rate of pay" so as to exclude use of the FWW is consistent with, and reasonably necessary to carry out, the purposes of the relevant statutory provisions. The regulation does not exceed the power delegated by the legislature. Further, 8 AAC 15.100(d)(3) is a reasonable and non-arbitrary method of furthering the statute's policies.¹⁶

Dresser raises several collateral arguments concerning the regulation's prohibition of the "Belo" pay plan, *see Walling v. A.H. Belo Corp.*, 316 U.S. 624, 62 S.Ct. 1223, 86 L.Ed. 1716 (1942); 29 U.S.C.A. § 207(f), and the permissibility of piece-work and commission pay plans. The validity of these provisions is not before us, and we perceive no inconsistency so blatant as to render the prohibition of the FWW unreasonable or arbitrary.

The judgment of the superior court is **AFFIRMED**.



15. The United States Supreme Court has repeatedly emphasized this point. In *Bay Ridge Operating Co. v. Aaron*, 334 U.S. 446, 460, 68 S.Ct. 1186, 1194, 92 L.Ed. 1502, 1514 (1948), the Court said, "The purpose was to compensate those who labored in excess of the statutory maximum number of hours for the wear and tear of extra work and to spread employment

David LEUCH, Appellant,

v.

STATE of Alaska, Appellee.

No. 5255.

Supreme Court of Alaska.

Sept. 25, 1981.

Defendant was convicted, pursuant to guilty pleas, before the Superior Court, Fourth Judicial District, Fairbanks, James R. Blair, J., of two counts of grand larceny, and he appealed sentence. The Supreme Court, Rabinowitz, C. J., held that: (1) where an offense is against only property, involving no physical threats or violence, where it is the offender's first felony conviction, and where there is no background of unsuccessful paroles or probations which would indicate that probation is unsuitable to protect the public, to deter the offender, and to further his rehabilitative process, probation, coupled with restitution, is the appropriate sentence unless other factors militate against it, and (2) concurrent sentences of eight years with four suspended was excessive and upon remand defendant should receive concurrent sentences which, including any period of suspension and probation, did not exceed five years in total length.

Sentence reversed and remanded.

Matthews, J., dissented and filed opinion in which Burke, J., joined.

1. Criminal Law ⇔ 986.2(1)

Absent a conviction, an indictment is absolutely no evidence of guilty conduct.

through inducing employers to shorten hours because of the pressure of extra cost."

16. The parties have not addressed, and we express no opinion concerning, the question whether there may be any conflict between 8 AAC 15.100(d)(3) and AS 23.10.060(17) and (18), enacted in ch. 31, § 1, SLA 1980.

2. Criminal Law \Leftrightarrow 1184(1)

Supreme Court will modify a sentence only if, after independent review of the record, it concludes that superior court was clearly mistaken.

3. Criminal Law \Leftrightarrow 1134(2)

In reviewing a sentence, a portion of which is suspended, period of suspension as well as period of incarceration must be weighed.

4. Criminal Law \Leftrightarrow 986.2(4)

A significant indication that a noncustodial sentence is inappropriate would be a past history of unsuccessful attempts at such sentences. AS 12.55.015(b).

5. Criminal Law \Leftrightarrow 28

Offenses which are committed solely against property or the public order are, on the whole, less severe than offenses involving threats, injuries, or death, or other invasions of another's person. AS 11.41.100 et seq., 11.46.100 et seq., 12.55.155(c), (c)(1, 2, 4-6, 8, 12, 18).

6. Criminal Law \Leftrightarrow 986.2(1)

Extent of harm visited upon victim by the offender is a proper consideration at sentencing.

7. Criminal Law \Leftrightarrow 982.4(2)

Where an offense is against only property, involving no physical threats or violence, where it is the offender's first felony conviction, and where there is no background of unsuccessful paroles or probations which would indicate that probation is unsuitable to protect the public, to deter the offender, and to further his rehabilitative process, probation, coupled with restitution, is the appropriate sentence unless other factors militate against it.

8. Criminal Law \Leftrightarrow 986.2(1)

Financial inability of an offender to make restitution should not be regarded as a factor favoring a sentence of incarceration.

1. Both were also charged with an additional count of grand larceny, three counts of burgla-

9. Larceny \Leftrightarrow 88

Where, although defendant's convictions on two counts of grand larceny were his first felony convictions, defendant had record of numerous misdemeanors which involved extreme dishonesty, where, although there was no background of supervised probation, defendant had failed to make restitution for prior offenses and, where, although offenses in question were solely against property, one of the felonies was a large scale crime and had severe impact on uninsured victim, some period of incarceration was warranted. AS 11.41.100 et seq., 12.55.015(b).

10. Larceny \Leftrightarrow 88

Concurrent sentences of eight years with four suspended after conviction on two counts of grand larceny were excessive and upon remand defendant should receive concurrent sentences which, including any period of suspension and probation, did not exceed five years in total length. AS 11.41.100 et seq., 12.55.015(b).

David C. Backstrom, Deputy Public Defender, Fairbanks, for appellant.

Bill D. Murphree, Asst. Dist. Atty., and Harry L. Davis, Dist. Atty., Fairbanks, for appellee.

Before RABINOWITZ, C. J., and CONNOR, BURKE, MATTHEWS and COMPTON, JJ.

OPINION

RABINOWITZ, Chief Justice.

David Leuch pled guilty to two counts of grand larceny. The superior court imposed concurrent sentences of eight years with four suspended. Leuch now appeals this sentence, claiming it is excessive.

[1] The offenses to which Leuch and his co-defendant, Michael Darr, pled guilty involved the theft of two motorcycles from the Fairbanks Harley-Davidson dealership and the theft of a safe, a dolly, and approximately \$12,000 from the Healy Roadhouse on the Parks Highway.¹

ry not in a dwelling, and one count of concealing stolen property, and Darr was charged with

The presentence report on Leuch's background shows that he grew up in a "stable, loving environment" with his adoptive parents in California. During that time, he graduated from high school, having participated in the tennis and music programs and served as class president. He attended college for a time, but his grades show that he was a poor student at this level.

In 1975, having taken a three-month course in truck driving, Leuch began to drive a truck cross-country. In 1976, he worked for a few months for a Manpower program in Denver, Colorado, then came to Anchorage in June of 1976 to find a trucking job. For three months in 1977, he was employed as a driller's helper. From June of 1977 to February of 1979 he worked as a cab driver, leasing his own taxi for the last nine months of that time.

His criminal record up to that point consisted only of several traffic offenses. On February 14, 1979, however, he was convicted of twenty-six counts of unemployment fraud, for which he was given a ninety-day sentence with all but fifty-four suspended, together with a fine of \$260, and was required to make restitution in the amount of \$1,274.²

It was during this initial incarceration on the unemployment fraud charges that he met his co-defendant Michael Darr. After their release, the two traveled to Fairbanks together purportedly intending to file on a gold claim of Darr's. Upon their arrival in Fairbanks, their truck broke down. They tried to spend the night in the truck until it got too cold, according to Leuch, and then they entered a church (unlocked, by Leuch's account) which apparently led to their conviction in Fairbanks on June 12 of petty larceny and unauthorized entry.³ Leuch

an additional count of receiving stolen property. The state argues that these additional counts "cannot be overlooked," forcing us to repeat once again that, absent a conviction, an indictment is absolutely no evidence of guilty conduct. *Waters v. State*, 483 P.2d 199 (Alaska 1971).

2. On November 15, 1979, Leuch admitted failure to make restitution on this charge, and was sentenced to an additional 30 days in jail.

was given ten days in jail. During that time, he apparently injured his knee, was hospitalized for surgery on some torn cartilage in that knee, and later convalesced at Careage North a convalescent home in Fairbanks. There he met a health care assistant who, presumably concerned about the fact that he knew few people in Fairbanks apart from Darr, allowed Leuch to reside with her until he was able to find suitable work.

The theft of the motorcycles was, in Leuch's words, sheer impulse on his part; he indicated that Darr, who had been considering the act for a couple of weeks, suggested it. They went to the motorcycle store; Leuch broke a window with a rock; Darr climbed through the window and opened the door; and each removed a motorcycle which they stored at a friend's cabin.

The Healy Roadhouse theft was to get money to ship the motorcycles out of the state. The health care assistant with whom Leuch was residing had a friend who had formerly been employed at the Roadhouse and apparently had a grudge against its owner. This friend supplied Darr and Leuch with the floor plans of the Roadhouse to enable them to locate the safe. Darr and Leuch, having planned the venture for two weeks in advance, broke in by unscrewing a single bolt lock on the back door. They then found a dolly and used it to remove the safe, taking both safe and dolly in a station wagon to a dirt road off Chena Pump Road. They broke into the safe and found about \$7500 cash, along with numerous checks and notes which they burned.⁴ They then dumped the safe into the river.

3. We cannot tell from the record whether these convictions were based on the entry into the church or on another incident.

4. Appellant asserts that the amount which the owner of the Healy Roadhouse stated was in the safe (\$16,000 in currency and checks) does not square with the amount of money Leuch

Leuch's letter explaining the incidents expressed his remorse over the harm caused the victims by his actions.⁵ He stated that he had been in a depressed state of mind during his recuperation, and that he was too easily influenced by his companions.

Letters on Leuch's behalf were submitted from Leuch's girlfriend, opining that Leuch, being new to Fairbanks, had been unduly influenced by his relationship with Darr, whom she had known for a long time and regarded as "bad company"; from his girlfriend's mother, stressing that she would continue to accept him into her home and endeavor to provide a positive influence; and from Leuch's parents, stating that Leuch's criminal activity came as a shock to them and that they were sure he would never engage in criminal behavior again. An institutional counselor in Anchorage indicated that Leuch had adjusted well to incarceration and was in the less secure section of the jail.

The probation officer preparing the presentence report noted that Leuch was the product of a stable home environment; that he appeared to be a dependable worker; that he was cooperative during the interview; and that he appeared to feel remorse for his actions. Although Leuch used alcohol and drugs (marijuana and occasionally cocaine), they were not a factor in the of-

said was in the safe when it was torn open (\$7,500 in cash). However, Leuch also stated in his letter to the court that he and Darr burned the checks and notes they found in the safe, which accounts for any discrepancy.

5. His letter said:

I know that when I had the money and the motorcycles I felt guilty and trapped and had the empty and insecure feeling of knowing they didn't belong to me. It feels good to have something that you make for yourself and pretty bad if someone takes it away from you. I can assure you that I am truly sorry about the events that took place and to the people I offended!

6. Although the theft of the motorcycles was apparently impulsive on the part of Leuch, the theft of the safe, as the probation officer pointed out, was a deliberately planned act.

7. The state notes that Leuch is not claiming that he did not receive the benefit of this or any

fenses. The probation officer attributed Leuch's criminal conduct to several factors: the fact that Leuch was an impulsive individual⁶ with poor judgment, especially with respect to choosing his associates; his lack of employment and poor financial situation; his lack of discipline and structure in goal orientation; and his lack of familial ties in Alaska, where he apparently plans to reside. The probation officer noted that Leuch stated he had two job offers, one as a trucker north of Fairbanks and the other as a laborer in a cannery in Dutch Harbor. The probation officer did not, however, regard either of these opportunities as a viable job plan. The presentence report concluded by recommending incarceration, in view of the seriousness of the offenses and the large amounts of money involved, and the fact that Leuch had apparently not learned from his prior contacts with the criminal justice system.

At the sentencing hearing, the prosecutor apparently ignored his agreement with Leuch's defense counsel to bring to the court's attention Leuch's cooperation with the state in offering to testify against Darr, and this was pointed out by defense counsel.⁷ It was also brought out that Darr, learning of Leuch's cooperation, had made statements indicating that he intended to retaliate physically against Leuch.⁸

other concession expected. We agree, and this aspect of the case is not before us here.

8. The record contains a transcript of an interview between one of the investigators on the case and an inmate who had overheard Darr talking about the offense. The primary content of the transcript concerns Darr's statements incriminating himself in the motorcycle and safe thefts. At the end, the following fact came to light:

Q. Can you think of anything else?

A. Ah . . . The only thing I can think of is that . . . [Darr] does, that he does intend to, to settle it with David Leuch in the event that something physically does happen to David Leuch by him that he did have intent previous to that of doing something to him.

Q. What you're trying to say is that ah, he is upset with David Leuch? Why is that?

A. I think he's more or less upset with David Leuch because ah, he refers to it as snitching but—he has reason to believe that

The superior court did not find Leuch to be the worst offender within the class, but found the question a close one. The court stated that although this was Leuch's first felony offense, his misdemeanor convictions showed extreme dishonesty, and that he was on his way to becoming a professional criminal. But the court also noted that, to Leuch's credit, he had admitted his participation and that his attitude in jail appeared to be good. The superior court assessed the *Chaney* factors⁹ as follows: Leuch's chances of rehabilitation were greater than those of Darr, which were described as "slim"; there was also a little higher likelihood that Leuch would be deterred by a sentence than in the case of Darr, where the likelihood was "not that good"; the necessity of isolation for the protection of the community was high; and the extent of community condemnation was also high. The superior court also expressed the view that the deterrent effect of a sentence on the general community is negligible in practically any case because, in the superior court's view, sentences are not sufficiently publicized to have any significant impact. The court's main concern was the proximity of this offense to Leuch's two prior jail sentences, which precluded a suspended sentence. The court then imposed the concur-

David Leuch snatched on him for, for ah, getting a lesser sentencing in his particular crime . . . and then being transferred to a different . . . incarcerated area, he has reason to believe that there was more or less foul play on David Leuch's part.

Q. OK. So in other words, he may try to, to get back at David Leuch if possible in some manner?

A. Ah, I have reason to believe that ah, psychologically that ah, Mr. Darr, ah, shows signs of rebelliousness, ah, not just to his other inmates but to the guards and so forth and that I would not put it past ah, his particular situation to want to do bodily injury to David Leuch.

9. In *State v. Chaney*, 477 P.2d 441, 444 (Alaska 1970), we said:

Under Alaska's Constitution, the principles of reformation and necessity of protecting the public constitute the touchstones of penal administration. Multiple goals are encompassed within these broad constitutional standards. Within the ambit of this constitutional phraseology are found the objectives of rehabilitation of the offender into a non-

rent eight year sentences with four years suspended.

[2, 3] We will modify a sentence only if, after an independent review of the record, we conclude that the superior court was clearly mistaken. *McClain v. State*, 519 P.2d 811, 813-14 (Alaska 1974). In reviewing a sentence, a portion of which is suspended, the period of suspension as well as the period of incarceration must be weighed. It would, of course, be unrealistic to consider the suspended time to be as harsh a sanction as time to be served in prison. However, it would also be incorrect to consider suspended time as a nugatory or insignificant sanction. Thus, this appeal involves concurrent eight-year sentences four years of which have been suspended. We have previously indicated that, except for cases involving particularly serious offenses, dangerous offenses, and professional criminals, maximum sentences ought not to exceed five years. *Donlun v. State*, 527 P.2d 472, 475 (Alaska 1974).

We are in general agreement with the position of the ABA Standards that, in the absence of affirmative reasons to the contrary, a sentence not involving confinement is to be preferred.¹⁰ "Affirmative reasons

criminal member of society, isolation of the offender from society to prevent criminal conduct during the period of confinement, deterrence of the offender himself after his release from confinement or other penological treatment, as well as deterrence of other members of the community who might possess tendencies toward criminal conduct similar to that of the offender, and community condemnation of the individual offender, or in other words, reaffirmation of societal norms for the purpose of maintaining respect for the norms themselves. [Footnotes omitted.]

10. The ABA Standards Relating to Sentencing Alternatives and Procedures § 2.3(c) (Approved Draft 1968) states: "A sentence not involving confinement is to be preferred to a sentence involving partial or total confinement in the absence of affirmative reasons to the contrary." Section 2.4(c) of the same document indicates that "[a] sentence involving partial confinement is to be preferred to a sentence of total confinement in the absence of affirmative reasons to the contrary."

to the contrary" should be found on the basis of a showing that probation, or some other alternative to incarceration, is inadequate to serve one or more of the *Chaney* criteria. The ABA Standards list the following legitimate reasons for the selection of total confinement:

(i) Confinement is necessary in order to protect the public from further criminal activity by the defendant; or

(ii) The defendant is in need of correctional treatment which can most effectively be provided if he is placed in total confinement; or

(iii) It would unduly depreciate the seriousness of the offense to impose a sentence other than total confinement.

ABA Standards Relating to Sentencing Alternatives and Procedures § 2.5(c) (Approved Draft 1968). The Standards go on to specify that "[o]n the other hand, community hostility to the defendant is not a legitimate basis for imposing a sentence of total confinement." *Id.* We read these considerations as corresponding to the *Chaney* criteria of isolation, rehabilitation, and community condemnation. We also think that a finding that a non-custodial sentence would fail to deter the defendant and/or others to the requisite degree, the other factors in the *Chaney* list, justifies a sentence of incarceration. These "affirmative reasons to the contrary" should have some basis in the record.

[4] A significant indication that a non-custodial sentence is inappropriate would be

To the extent that this policy is inconsistent with the presumptive sentences laid out in the new criminal code or the sentencing guidelines proposed by the Sentencing Guidelines Committee, the latter are to prevail. For most first offenders, however, these guidelines leave the choice between probation and short periods of incarceration open.

11. This policy is also reflected in the new statutory sentencing provisions. AS 12.55.015(b) reads:

The court, in exercising sentencing discretion as provided in this chapter, shall impose a sentence involving imprisonment when

(1) the defendant deserves to be imprisoned, considering the seriousness of his present offense and his prior criminal history, and imprisonment is equitable consider-

a past history of unsuccessful attempts at such sentences. If an individual has not proven amenable to parole or probation in the past, it is likely that, absent some change, he will not prove to be so in the future.¹¹

A lack of information which stems from the absence of any experience as to how the offender will perform on probation renders it especially difficult to make any judgment as to three of the *Chaney* factors: the need to deter the offender, the need to isolate the offender, and the offender's amenability to the rehabilitative process. On the other hand, it is clear from Leuch's record that a pattern of short incarcerations followed by unsupervised release has been insufficient to protect the public, to deter Leuch himself, or to assist him in rehabilitating himself.

The preference for non-incarcerative sanctions may be overridden, even if information is lacking regarding their past use in terms of the above three factors, by the other *Chaney* considerations, general deterrence and community condemnation, which are not as closely tied to information regarding past performance on probation programs.

Here, the superior court joined that the general deterrence factor played little or no role.¹² The community condemnation factor, however, was regarded as significant by the superior court.

ing sentences imposed for other offenses and other defendants under similar circumstances;

(2) imprisonment is necessary to protect the public from further harm by the defendant; or

(3) sentences of lesser severity have been repeatedly imposed for substantially similar offenses in the past and have proven ineffective in deterring the defendant from further criminal conduct.

12. The superior court was of the view that whatever sentence was imposed would have little or no impact on the community in general, as sentencings are regarded by the news media as insufficiently newsworthy to receive adequate publicity.

In light of the fact that the community condemnation factor has been the cause of some concern in this and other recent cases, we think a discussion of this sentencing factor is appropriate.

We recently discussed the community condemnation factor in *Kelly v. State*, 622 P.2d 432, 435-36 (Alaska 1981). There we emphasized that community condemnation is a different concept from general deterrence, a separate sentencing goal under *Chaney*, and from retribution, an impermissible consideration in sentencing.

Many theoretical explanations of this concept have been put forward, all of which are useful in understanding why this aspect of *Chaney* is to be retained in sentencing decisions. The Kantian view is that each member of society is granted certain benefits, and agrees to subject himself to certain restraints so that other members of society may enjoy these same benefits. When an individual ignores these restraints, he achieves an unfair advantage over other members of society by avoiding his obligations while continuing to enjoy his benefits.

13. See J. Murphy, *Kant: The Philosophy of Right* 109-12, 140-44 (1970).

14. O. W. Holmes, *The Common Law* 36 (Howe ed. 1963). See also Weiler, *Why Do We Punish? The Case for Retributive Justice*, 12 U.B.C.L.Rev. 295, 308 (1978):

Sir James Stephen, the famed Victorian jurist and historian of criminal law once said, '[t]he criminal law stands to the passion of revenge in much the same relation as marriage to the sexual appetite.' He believed that authoritative punishment of criminals was a desirable institution because it provided an orderly outlet for emotions that would otherwise express themselves in socially less acceptable ways. If the state did nothing about punishing an offender, the natural and potentially destructive feelings of resentment aroused in victims of the offence or other interested parties would no doubt result in attempts at private vengeance.

15. See Morris, *The Future of Imprisonment: Toward a Punitive Philosophy*, 72 Mich.L.Rev. 1161, 1173 (1974):

No sanction greater than that 'deserved' by the last crime, or series of crimes, for which the offender is being sentenced should be imposed. The principle strikes directly at the larger question I have deferred, namely, why not hold all convicted criminals until risk of recidivism is past? My answer, in part, is

According to Kant, restoration of the balance on which society depends requires that such an individual be deprived of those benefits to some extent.¹³ Oliver Wendell Holmes believed that, since society has required individual victims to set aside their tendency toward private vengeful action in favor of societal remedies against the offender, society must punish the offender on behalf of the victim or else risk a return to private methods of forcing the offender to suffer.¹⁴ More recently, concern over the disparity in sentences under rehabilitation-oriented systems has led to the conclusion that some notion of just punishment must be included in sentencing considerations.¹⁵

[5] Theoretical justifications are of limited value in the difficult sentencing decision itself in a particular case. Our decisions have not provided the internal structure which is necessary to implement this concept in sentencing decisions. We have been reluctant to provide this structure ourselves because judgments as to the extent to which the community condemns a partic-

ular legislations criminal to emerge from which ty or severies, er's tor i is al new Th retic with bility whic prop more whic or di can pure (idea victi sens tim

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that the link between established crime and deserved suffering is a central precept of everyone's sense of justice, or, more precisely, of everyone's perception of injustice. To use the innocent as a vehicle for general deterrence would be seen by all as unjust, although it need not be ineffective if the innocence of the punished is concealed from the threatened group. Punishment in excess of what the community feels is the maximum suffering justly related to the harm the criminal has inflicted is, to the extent of the excess, a punishment of the innocent, notwithstanding its effectiveness for a variety of purposes.

Compelling reasons for accepting a notion of just punishment are explained thoroughly and intelligently in several recent works on sentencing theory and proposals, which we commend to sentencing courts and others interested in sentencing. See A. von Hirsch, *Doing Justice: The Choice of Punishments*, Report of the Committee for the Study of Incarceration (1976); Weiler, *Why Do We Punish? The Case for Retributive Justice*, 12 U.B.C.L.Rev. 295 (1978). See also A. Dershowitz, *Background Paper to Fair and Certain Punishment*, Report of the Twentieth Century Fund Task Force on Criminal Sentencing (1976); M. Frankel, *Criminal Sentences: Law Without Order* (1973).

ular offense are more properly made in the legislative area than by the judiciary. The new criminal code with its sentencing provisions provides this structure for most crimes, and should be of immense guidance to sentencing courts. One principle which emerges, both from our prior case law and from the new criminal code, is that offenses which are committed solely against property or the public order are, on the whole, less severe than offenses involving threats, injuries, or death, or other invasions of another's person. We have emphasized this factor in several of our prior decisions,¹⁶ and it is also inherent in several aspects of the new code.¹⁷

This is congruent, not only with the theoretical justifications noted above, but also with common-sense notions of reprehensibility. In Kantian terms, the imbalance which is solely one person's wrongful loss of property and another's wrongful gain is more easily righted than the imbalance which involves the victim's loss of life, limb or dignity. Under the Holmes view, society can fulfill its obligation to the victim of a purely financial loss with less drastic means (ideally, restitution) than in the case of a victim of a physical assault. In common-sense terms, the harm imposed on the victim of a financial loss is generally much less

injurious, degrading and painful than the harm stemming from a personal threat or physical injury.¹⁸ Yet another relevant aspect of purely property crime is that the remedy of restitution can approximate the "making whole" of a victim in this context in a way which it cannot in the context of crimes involving physical threats or invasions of a victim's person.¹⁹

[6] This is not meant to indicate that the loss occasioned by property crimes is an insignificant one, or that it should be disregarded, or that it can never result in incarceration. We do think, however, that the extent of harm visited upon the victim by the offender is a proper consideration at sentencing, and that the proper *Chaney* vehicle for this consideration is the community condemnation factor.

[7, 8] Taking all these factors into account, we think that where an offense is against only property, involving no physical threats or violence; where it is the offender's first felony conviction; and where there is no background of unsuccessful paroles or probations which would indicate that probation is unsuitable to protect the public, to deter the offender, and to further his rehabilitative progress, probation, coupled with restitution,²⁰ is the appropriate

16. See, e. g., *Black v. State*, 569 P.2d 804, 805 n.6 (Alaska 1977); *Andrews v. State*, 552 P.2d 150, 154 (Alaska 1976).

17. Generally, offenses against the person (chapter 41 of Title 11) carry higher sentences than offenses against property (chapter 46 of Title 11). Additionally eight of the eighteen aggravating factors listed in AS 12.55.155(c) involve potential physical injury (subsections 1, 2, 4, 5, 6, 8, 12, and 18) as a part of the present offense or the offender's record.

18. Cf. W. Shakespeare, *Othello*, Act III, Scene iii, lines 157-61:

Who steals my purse steals trash—'tis something, nothing.
'Twas mine, 'tis his, and has been slave to thousands—
But he that filches from me my good name
Robs me of that which not enriches him
And makes me poor indeed.

19. Again, we find significance in the new legislative enactments which give a greater role to restitution in the sentencing provisions:

The Code gives greater emphasis to restitution than is the case under existing law. Restitution is available in *all* cases and in connection with most kinds of sentences. As it now stands, only passing reference is made to restitution in AS 12.55.100(a)(2), where it is listed as a possible condition of probation.

Further, because restitution is the one sanction which has the potential for making a victim 'whole,' or nearly so, and because a victim is the most frequently ignored party in the justice system, the Subcommittee felt that restitution should be given more extended treatment as a complementary sanction in the Revised Code.

Criminal Code Revision Subcommittee, Alaska Criminal Code Revision, Commentary to ch. 36, art. 6, at 54 (Tent. Draft, Part 6, 1978).

20. The probation officer in the instant case noted that Leuch did not have the financial resources to make restitution. We do note that, generally, an offender will be in a better position to make restitution while in the com-

sentence unless other factors militate against it.²¹ Naturally, this is not to be construed as a hard and fast rule.

[9, 10] Here, several factors are present which would justify a departure from this general rule. Although these were Leuch's first felony convictions, he had a record of numerous misdemeanors which the sentencing judge found had involved "extreme dishonesty"; although there was no background of supervised probation, there was a failure to make restitution for the prior offenses; and although the offenses in question here were solely against property, one of the felonies was a large-scale crime and had a severe impact on the uninsured victim. Consequently, the community condemnation factor must be placed on the

munity than while incarcerated. Also, the statute is designed to permit the imposition of restitution without creating undue financial burdens on the offender or his dependents, a concern to which the court should give weight in cases arising before the application of the new statutory provisions. Further, the financial inability of an offender to make restitution should not be regarded as a factor favoring a sentence of incarceration.

21. It was while serving his initial sentence for his prior misdemeanors that Leuch met Darr, striking up a relationship which has led to nothing but trouble for both and for their innocent victims. Given the probation officer's opinion that there was a direct correlation between Leuch's criminal behavior and his peer group association, Leuch's own admission that he was unduly influenced by Darr, and Leuch's girlfriend's statements that Leuch, who was new to Fairbanks, had erred in regarding as his friend such "bad company" as Darr, the only possible conclusion is that Leuch's prior incarceration had a net impact of furthering his criminal career. This is a classic illustration of the counter-productive effect which incarceration can have.

Cf. C.B. Shaw, The Crime of Imprisonment 32-33 (Citadel ed. 1961):

He is, at the expiration of his sentence, flung out of the prison into the streets to earn his living in a labor market where nobody will employ an ex-prisoner He seeks the only company in which he is welcome: the society of criminals; and sooner or later, according to his luck, he finds himself in prison again. . . . The criminal, far from being deterred from crime, is forced into it; and the citizen whom his punishment was meant to protect suffers from his depredations.

upper end of the spectrum for property crimes. Thus, we are unwilling to hold that the general rule articulated above must be applied literally in the case at bar. Therefore we think the sentencing court was correct in concluding that some period of incarceration was appropriate. We think the court was clearly mistaken, however, in imposing concurrent sentences of eight years with four suspended. Given the circumstances of this case we think the superior court was clearly mistaken in imposing a total sentence which exceeded five years.²² In short, we hold the sentence is excessive and that upon remand appellant should receive concurrent sentences which, including any period of suspension and probation, do not exceed five years in total length.

Obviously, we do not mean to intimate that incarceration always has this effect, or that the end result is solely caused by the incarceration rather than by the offender's exercise of free will. The pattern here, however, is too striking for us not to notice it.

22. Under the new criminal code, Leuch's offenses would be classified as Theft in the Second Degree, a class C felony. AS 11.46.130. Under that statute, no presumptive sentence is given for first offenders, but we note that the maximum sentence would be five years, the presumptive sentence for a second offender two years, and the presumptive sentence for a third offender three years. AS 12.55.125(e).

The Sentencing Guidelines Committee's current recommendations as to first offenses, which had not been promulgated as of the time sentence was imposed in this case, coordinate well with this statutory scheme. For this particular class C felony, the presumptive sentence under those recommendations for a first offender is probation, with up to sixty days incarceration. The presence of aggravating factors (including a history of misdemeanor convictions involving fraud, theft, or violence), to be specified by the sentencing judge, may support any sentence between sixty days and two years. A sentence in excess of two years (which would exceed the presumptive sentence for second offenders) should not be imposed unless the court finds on the basis of clear and convincing evidence that manifest injustice would result from the imposition of a sentence of two years or less, and the "extraordinary" circumstances necessary to support this finding are to be specified in the record.

MATTHEWS, Justice, with whom BURKE, Justice, joins, dissenting. as extinguishing aboriginal title to the same interest.

In view of the fact that the defendant had been twice incarcerated for two separate crimes not long before he committed the two felonies of which he now stands convicted, and in view of the premeditated nature of the theft of the safe, I am unable to say that the trial court was clearly mistaken in imposing concurrent eight year sentences with four years suspended.

Affirmed.

1. Waters and Water Courses ⇨23

Water rights acquired by appropriation under federal public land law is an interest in real property and, when it is acquired, it becomes private property. 43 U.S.C. (1976 Ed.) § 661.

2. United States ⇨105

Waters and Water Courses ⇨20

Water rights acquired by appropriation under federal public land laws were "conveyances of an interest in public land and water areas" pursuant to federal law within meaning of the Alaska Native Claims Settlement Act and, therefore, would be regarded as extinguishing aboriginal title to the same interest. 43 U.S.C. (1976 Ed.) § 661; Alaska Native Claims Settlement Act, § 4(c), 43 U.S.C.A. § 1603(c).

See publication Words and Phrases for other judicial constructions and definitions.

David C. Crosby, Wickwire, Lewis, Goldmark & Schorr, Seattle, Wash., and Robert S. Spitzfaden, Smith & Gruening, Anchorage, for appellant/cross-appellee.

R. Eldridge Hicks, Ruskin, Barker & Hicks, Anchorage, for appellee Wards Cove Packing Co.

Thomas E. Meacham, Asst. Atty. Gen., Anchorage, and Avrum M. Gross, Atty. Gen., Juneau, for appellee/cross-appellant State of Alaska.

Before RABINOWITZ, C. J., CONNOR, BURKE, and MATTHEWS, JJ., and SCHULZ, Superior Court Judge.*

OPINION

MATTHEWS, Justice.

Paug-Vik, Inc., the native village corporation of the village of Naknek, has appealed

the Constitution of Alaska.

PAUG-VIK, INC., LTD., Appellant,
v.
WARDS COVE PACKING CO., INC., and
State of Alaska, Appellee,
STATE of Alaska, Cross-Appellant,
v.
PAUG-VIK, INC., LTD., Cross-Appellee.
Nos. 5015, 5149.
Supreme Court of Alaska.
Sept. 25, 1981.

Village appealed decision of the Commissioner of Natural Resources that canyery was entitled to its requested appropriation of water. The Superior Court of the State of Alaska, Third Judicial District, Anchorage, James K. Singleton, J., found appropriation was proper, and village appealed. The Supreme Court, Matthews, J., held that water rights acquired by appropriation under federal public land laws were conveyances of an interest in public land and water areas pursuant to federal law within meaning of Alaska Native Claims Settlement Act and, therefore, would be regarded

* Schulz, Superior Court Judge, sitting by assignment made pursuant to article IV, section 16 of



DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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MEMORANDUM

March 17, 1994

SUBJECT: CSHJR 43(FIN) and CSSSSJR 2(STA)
(Work Order No. 8-LS1056\I and 18-LS0164\R)

TO: Senator Loren Leman
Attn: Portia Babcock

FROM: Jerry Luckhaupt *JLB*
Legislative Counsel

You have asked various questions concerning the above-referenced bill.

Question 1: Is there a single subject problem with CSSSSJR 2 (STA)?

In response to your question, I do not see any problem with CSSSSJR 2(STA) vis-a-vis the single subject requirement concerning bills that is contained in the constitution. Article II, § 13 of the Alaska Constitution provides that "[e]very bill shall be confined to one subject" Since art. XIII, § 1 of the Alaska Constitution does not refer to a bill being used to amend the constitution it is debatable whether the single subject requirement applies to constitutional amendments.^{1/} In my view at least (and the view historically taken by this office), the single subject requirement does not apply to constitutional amendments under art. XIII, § 1. In any event, even if the single subject requirement is applied to this resolution, I believe that the resolution is confined to a single subject, that being "crime". In this regard, the Alaska Supreme Court has held that what constitutes one subject should be broadly construed so as to allow the legislature to embrace in one act all matters properly connected with one general subject. North Slope Borough v. SOHIO Petroleum Company, 585 P.2d 534 (Alaska 1978); Gellert v. State, 522 P.2d 1120 (Alaska 1974). To that end, the Alaska courts have upheld such broad general single subjects as "land," see State v. First National Bank of Anchorage, 660 P.2d 406 (Alaska 1982), and "criminal law," see Galbraith v. State, 693 P.2d 880 (Alaska App. 1985). Considering the wide latitude the courts have afforded the legislature in this regard,

^{1/} For an example of the difference between bills and constitutional amendment proposals, bills are subject to veto by the governor under art. II, § 15, while constitutional amendment proposals under art. XIII, § 1 are not.

Senator Loren Leman
March 17, 1994
Page 2

I have no reason to doubt that sections 1 and 2 can survive together and that there is but one single subject.

Question 2: What, from CSSSSJR 2(STA) can be put into CSHJR 43(FIN) without changing the title of the resolution?

Sections 2 and 3 of CSSSSJR 2(STA) can be rolled into CSHJR 43(FIN) without any trouble (if I understand that you would like to replace all of CSHJR 43). Of section 1 of CSSSSJR 2(STA), I believe that only the additions of ", the rights of victims of crime, and restitution" may be added to the bases provided in the second sentence of section 1.^{2/} All of the other changes made to art. I, sec. 12 in section 1 of the resolution cannot be made without a change in the title to CSHJR 43(FIN).

Question 3: If all of CSSSSJR 2(STA) is rolled into CSHJR 43(FIN) what would need to be done?

As stated in response to Question 1, Uniform Rule 49(a)(5) provides that joint resolutions shall be treated in all respects as bills. Uniform Rule 41(b) provides an amendment in the second house to the title of a bill is not in order unless the title change is merely clerical or technical. Uniform Rule 54 allows the rules, including Rule 41(b) to be suspended by a concurrent resolution approved by a two-thirds vote of each house. It is my opinion that rolling all of CSSSSJR 2(STA) into CSHJR 43(FIN) would necessitate a substantive change to the title. So to comply with the Uniform Rules you would need a title change resolution. Of course the legislature could always ignore the Uniform Rules. Such an action would probably not be fatal to the resolution if it passed and was subsequently challenged. Bear in mind also that unlike a bill, there is no constitutional requirement that the contents of a resolution proposing amendments to the constitution be reflected in its title.

Generally, the courts will not consider questions regarding the procedure of the legislature because of separation of powers considerations. (Malone v. Meekins, 650 P.2d 351 (Alaska 1982); Aboud v. League of Women Voters of Alaska, 743 P.2d 333 (Alaska 1987)) Only failure to comply with constitutional requirements regarding the enactment of legislation will cause a court to invalidate the legislation. Even the Uniform Rules themselves recognize the principal that violations of the rules can be waived by the body through failure to object. (Uniform Rule 54)

When a rule is cooperatively disregarded by both legislative bodies, it is, as a practical matter suspended despite the failure to take formal action suspending the rule. Mason's Manual provides in Section 24

^{2/} This change would necessitate the removal of the words "and upon" in that sentence following "reformation."

Sec. 24. Failure of a House of the Legislature to Conform to Its Rules
Does not Invalidate Its Acts.

1. Violation of rules of procedure adopted by a house of the legislature for its own convenience and not required by the constitution will not impair the validity of a statute.
2. A legislative body having the right to do an act must be allowed to select the means of accomplishing such act within reasonable bounds.
3. A rule is virtually repealed for the occasion when it is disregarded by those who have power to control it; and the act of breaking it is at least a suspension of it. The body at its preceding meetings does not have the power to bind its successors or to put shackles on it that might be cast off only in a particular way.
4. Under a constitutional provision declaring that each house of the legislature shall determine the rules of its own proceedings, the fact that a house acted in violation of its own rules or in violation of parliamentary law in a matter clearly within its power does not make its action subject to review by the courts.

The Aboud case, involved violation of the Open Meeting Statute, not a Uniform Rule. The court still held that violation of committee procedures, even of procedures set out in statute rather than rule, does not invalidate the resulting legislation.

Rule 54 provides to each house of the legislature a method of enforcing a Uniform Rule that has been violated by the other house:

If either house violates a uniform rule a question of order may be raised in the other house. If it is decided by the other house that the Uniform Rules have been violated, the bill involved in that violation shall be returned to its house of origin without further action.

SPONSOR STATEMENT

SENATE JOINT RESOLUTION NUMBER 2

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE STATE OF ALASKA RELATING TO THE RIGHTS OF VICTIMS OF CRIMES.

In the past, courts both state and national, have leaned toward the rights of the accused in concern to judicial process, trial proceedings, and sentencing. This has led in some cases to the rights of the victims of crime being overlooked or even overtly ignored.

SJR 2 seeks to balance the approach courts take in trial proceedings, by mandating that the impact on the victims of crime be taken into account in nine specific areas. These nine rights of crime victims are:

1. The right to be treated with fairness and respect for their dignity and privacy; throughout the criminal justice process;
2. The right to timely disposition of the case following arrest of the accused;
3. The right to be reasonably protected from the accused throughout the criminal justice process;
4. The right to notification of court proceedings;
5. The right to attend trial and all other court proceedings that the accused has the right to attend;
6. The right to confer with the prosecution;
7. The right to make a statement to the court at sentencing;
8. The right to restitution as provided by law;
9. The right to information about the conviction, sentence, imprisonment, and release of the accused.

None of these guaranteed rights of the victim in any way diminish the rights of the defendant or his/her defense.



OVERVIEW OF CRIME AND VICTIMIZATION IN AMERICA

GENERAL DATA

- About 34.7 million Americans age 12 or older were victims of crime in 1987. This is a 1.8% increase in overall crimes from 1986, the lowest level of crime since 1971. (Bureau of Justice Statistics, *Criminal Victimization in 1987*, NCJ-113587, October 1988)
- One violent crime occurred every 21 seconds in 1987. (Federal Bureau of Investigation, Uniform Crime Reports, *Crime in the United States*, JUS-432, Release date July 10, 1988)
- Almost 6,000,000 of the crimes committed in 1987 were classified as violent. (Bureau of Justice Statistics, *Criminal Victimization 1987*, NCJ-113587, October 1988)
- One in four American households were touched by a crime of violence or theft in 1987, the same proportion as in the previous two years. (Bureau of Justice Statistics, *Households Touched by Crime, 1987*, NCJ-111240 May 1988)
- The *National Crime Survey* determined that an estimated 34.1 million crimes, including both completed and attempted offenses, were committed against individuals or households across the United States in 1986. (Bureau of Justice Statistics, *Criminal Victimization in the United States, 1986*, NCJ-111456, August 1988)
- Almost 5% of the nation's households had a member who was the victim of a violent crime in 1987. (Bureau of Justice Statistics, *Households Touched by Crime, 1987*, NCJ-111240, May 1988)
- Males were more often victimized by strangers than were females: 67% of violent crimes committed against males and 45% of violent crimes committed against females were committed by strangers. (Bureau of Justice Statistics, *Criminal Victimization in the United States, 1986*, NCJ-111456, August, 1988)
- Approximately a third of violent crimes involved the presence or use of a weapon. (Bureau of Justice Statistics, *Criminal Victimization in the United States, 1986*, NCJ-111456, August 1988)
- At current crime rates, an estimated five-sixths of U.S. citizens will be victims of attempted or completed violent crimes during their lifetimes. The risk is greater for males than females and for blacks than whites. (Bureau of Justice Statistics, *Report to the Nation on Crime and Justice, Second Edition*, NCJ-105506, March 1988)

DOMESTIC VIOLENCE

- Conservative estimates predict domestic violence affects more than 2.1 million women, four million children and one million older people each year. (Family Violence Project, San Francisco, California, *Safe At Home: Domestic Violence is Everyone's Business*)
- The most likely classification for incidents of domestic violence is simple assault, which is a misdemeanor in most jurisdictions. (American Bar Association *Journal, Violence in the Home*, May 1, 1987)
- In 1986, at least half of the domestic "simple assaults" actually involved bodily injury as serious or more serious than 90% of all rapes, robberies and aggravated assaults. (Bureau of Justice Statistics, *Preventing Domestic Violence Against Women*, NCJ-102037, August, 1986)
- Twenty to fifty percent of American couples have suffered violence regularly in their marriage. (National Institute of Mental Health, *Plain Talk About Wife Abuse*, July 29, 1987)
- In the *National Crime Survey*, seven out of ten incidents of domestic violence were committed by the woman's spouse, ex-spouse, boyfriend or ex-boyfriend. An estimated 52% of all incidents of domestic violence were reported to police. (Bureau of Justice Statistics, *BJS Data Report, 1987*, NCJ-110643, April 1988).

DRUNK DRIVING

- Every 22 minutes, one person dies in an alcohol-related auto crash. (National Highway Traffic Safety Administration, *Preliminary Estimates of 1987 Highway Safety Statistics, 1988*)
- Estimates of the economic costs of drunk driving range from \$11 billion (NHTSA, 1985) to \$24 billion (Allstate, 1982) each year. (Mothers Against Drunk Driving, *A Summary of Statistics Related to the National Drunk Driving Problem*, October 1988)
- In 1987, nearly nine 15- to 19-year-olds died each day in alcohol-related traffic crashes. (National Highway Traffic Safety Administration, *Preliminary Estimates of 1987 Highway Statistics, 1988*)
- Between 1970 and 1986 arrests for DWI increased nearly 223%, while the number of licensed drivers increased by 42%. (Bureau of Justice Statistics, *Drunk Driving*, NCJ-109945, February 1988)
- Nearly half of those in jail for DWI had previously been sentenced to probation, jail, or prison for DWI. (Bureau of Justice Statistics, *Drunk Driving*, NCJ-109945, February 1988)

HATE/VIOLENCE CRIMES (cont'd)

- The incidents of anti-gay violence rose 42% in 1987. A record 7,008 incidents, ranging from verbal abuse to slayings, were reported to the *National Gay and Lesbian Task Force*. Fifteen percent of all incidents reported in 1987 and five percent of the physical assaults involved verbal references to AIDS. (National Gay and Lesbian Task Force, *Anti-Gay Violence, Victimization & Defamation in 1987*)
- In January of 1988, five states required police to record and report incidents of racial, religious and ethnic violence. Three states had established procedures to collect data, although there was no data collection legislation. (National Institute Against Prejudice and Violence, *Forum* newsletter, Vol 3, No. 1, January 1988)

HOMICIDE

- In 1987, there was one murder every 26 seconds. (Federal Bureau of Investigation, Uniform Crime Reports, *Crime in the United States*, JUS-432, Release date July 10, 1988)
- Criminal homicide is one of the 15 most frequent causes of death, and for the 15- to 34-year age group, it is second only to accidents as a cause of death. (Washington Criminal Justice Reports, *Crime Victims Digest*, Vol 5, No. 11, November 1988)
- At the current homicide rates, about one out of every 133 Americans will become a murder victim. For black males, the proportion is estimated to be one in 30. (Bureau of Justice Statistics, *Lifetime Likelihood of Victimization*, NCJ-104274, March 1987)
- In 1986, 95% of the black murder victims were slain by black offenders; 88% of the white murder victims were killed by white offenders; males were most often slain by males (83%); however, 9 out of every 10 female victims were murdered by males. (Federal Bureau of Investigation, *Uniform Crime Reports 1986*, JUS-432, Release date July 25, 1987)

SEXUAL ASSAULT

- Every six minutes during 1987, one American was forcibly raped. (Federal Bureau of Investigation, Uniform Crime Reports, *Crime in the United States*, JUS-432, Release date July 10, 1988)
- Of the almost 125,000 rapes reported to the *Bureau of Justice Statistics* in 1987, 36.4% happened between 6:00 a.m. and 6:00 p.m. and 35.9% occurred between 6:00 p.m. and midnight. (Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics*, 1987, NCJ-111612)

LEGISLATION (cont'd)

- Forty-eight states now allow the use of victim impact statements.
- Seventeen states mandate court appearance for victims.
- Twenty-four states have plea bargain/consultation legislation.
- Forty-four states have victim/witness information statutes.
- Thirty-four states have notification of final disposition.
- Thirty-nine states have notification of the release of prisoners in felony cases.
- Forty-six states have victim compensation programs.
- Every state, including the District of Columbia, have some sort of restitution legislation, and 23 states have mandatory restitution legislation.

Source: *National Organization for Victim Assistance*, January 1988.

FOR FURTHER INFORMATION CONTACT:

National Victim Center
307 W. 7th Street, Suite 1001
Fort Worth, TX 76102
(817) 877-3355

U.S. Department of Justice
633 Indiana Avenue, N.W.
Washington, DC 20531

Bureau of Justice Statistics: (202) 724-7782
National Institute of Justice: (202) 724-2949
Office for Victims of Crime: (202) 724-6134

Federal Bureau of Investigation
Office of Public Affairs
10th and Pennsylvania Avenue
Washington, DC 20535
(202) 324-3000

Constitutional Amendments Enacted

- Arizona:** After the amendment failed in the 1988 legislative session, a state coalition of victims' rights organizations began a citizens' initiative to qualify the amendment for the November 1990 ballot. The amendment received support from 58% of the voters and was passed into law in 1990.

- California:** Proposition 8 -- the *Victims' Bill of Rights* -- was ratified by voters in 1982. Among the rights granted to crime victims are the rights to speak at sentencing and parole hearings.

- Colorado:** During 1991 National Crime Victims' Rights Week, supporters kicked off the Colorado campaign to pass a constitutional amendment. Two weeks later, the amendment had passed both the Senate and the House, and was signed by the Governor. Comprehensive enabling legislation was also passed in 1992. The amendment was ratified with support from 86% of voters in the November 1992 General Election.

- Florida:** The state legislature passed the amendment during the 1987 legislative session, which was ratified by 90% of the voters during the 1988 November General Election.

- Illinois:** House Joint Resolution Constitutional Amendment 21 was introduced during the 1990 legislative session. It failed to move out of Committee. A strong coalition succeeded in getting a new amendment introduced and passed during the 1992 legislative session. Illinois voters overwhelmingly supported constitutional rights for crime victims with 77% of the vote in the 1992 November General Election.

- Kansas:** Attorney General Bob Stephan made the passage of a constitutional amendment a priority in his 1992 legislative package. Senate Resolution 1634 passed through the legislature, and was ratified with 84% of the electorate in the 1992 November General Election.

- Michigan:** The amendment submitted by Rep. Bill Van Regenmorter was passed by the state legislature during the 1988 session, and won an overwhelming 80% voter approval in the November 1988 General Election.

TC 40096

Post-It™ brand fax transmittal memo 7671 # of pages 4

To: <i>Sen. Stemen</i>	From: <i>Anch LIO</i>
Co: <i>State Affairs</i>	Co: <i>Senior President</i>
Dept.:	Phone #:
Fax #:	Fax #:

Constitutional Amendment Enacted (continued)

- Missouri:** An amendment introduced during the 1990 legislative session was passed by the House of Representatives, but failed to pass out of the Senate by the end of the legislative session. It was successfully re-introduced and passed during the 1991 legislative session. In the General Election of 1992, 84% of Missouri voters supported passage of the constitutional amendment.
- New Mexico:** The amendment was introduced during the 1991 legislative session. It was heard and passed out of three Senate committees, but the session ended before a vote of the full Senate was taken. The amendment was re-introduced in the 1992 legislative session and passed. In the General Election of 1992, 68% of voters supported the constitutional amendment for victims' rights.
- New Jersey:** The amendment was passed by the legislature and ratified by the voters in November of 1991.
- Washington:** Submitted by Attorney General Eikenberry, the amendment was passed by the 1989 legislature and ratified by 78% of voters in November 1989.
- Rhode Island:** In 1986, voters passed a constitutional amendment granting victims the right to be treated with dignity and respect, the right to victim impact statements, and the right to receive restitution.
- Texas:** The amendment was submitted and passed during the 1989 legislative session, and ratified by 73% of the voters in November of 1989.
- Wisconsin:** Legislation was introduced prior to the conclusion of the 1990 legislative session and was re-introduced in April 1991, where it worked through the Senate Judiciary Committee. During the 1992 session, the bill was passed by the Senate and the House. By law, an amendment to the Wisconsin Constitution must be passed by two consecutive legislative sessions; it did so in the 1993 legislative session, and was ratified on April 6, 1993.

Pending Constitutional Amendments

- Alaska:** Representative Dave Donnelly introduced HJR 76 during the 1992 legislative session. Now Senator Donnelly, he will re-introduce the amendment with bi-partisan representation.
- Georgia:** A constitutional amendment will be introduced in the 1993 legislative session.
- Maryland:** The amendment was originally introduced during the legislative session of 1989. Despite several failures, dedicated coalition members continue to press for the amendment's passage.
- Maine:** An amendment was introduced in 1991, and is currently pending.
- Massachusetts:** Legislation was originally introduced in 1990. Senate Bill 706 was re-introduced during the 1992 legislative session. A hearing was held by the Senate Judiciary Committee on March 16, 1992, but the Committee has yet to vote upon the amendment.
- Nebraska:** Legislation was introduced during the 1992 legislative session, where it passed out of Committee. It is waiting to be heard on the Senate Floor.
- Nevada:** Senate Joint Resolution 2 was introduced during the 1993 legislative session.
- New York:** Legislation was introduced in the Senate in June of 1990. During the 1991 legislative session, Assemblyman Yevoli introduced the Assembly version of the bill. The bill was re-introduced during the 1992 legislative session in the Senate and a companion bill was introduced in the Assembly.
- N. Carolina:** The Legislative Research Commission (LRC) subcommittee studying the rights of victims in North Carolina voted unanimously in December of 1992 to support the current language of the proposed victims' rights constitutional amendment legislation. The bill will be presented to the full LRC in January 1993 for approval, then will be introduced into the 1993 session of the General Assembly.

Pending Constitutional Amendments (continued)

- Ohio:** Members of the victims' rights coalition continue to work toward the passage of a constitutional amendment in Ohio. Language was first introduced during the 1989 legislative session. Currently assigned to the House Judiciary Committee, a hearing date for the amendment has not been set.
- S. Carolina:** Legislation was introduced during the 1991 legislative session. Buoyed by a 1992 statewide public opinion poll which showed very strong support for a victims' rights constitutional amendment, supporters hope to re-introduce an amendment in the 1993 legislative session.

Updated 4/26/93

02/03/94 12:05 907 586 7402
02-03-94 04:08PM FROM SENATOR STEVENS

TO JUNEAU

P001/002

PUBLIC LAW 103-29—MAY 6, 1993

107 STAT. 75

Public Law 103-29
103d Congress

Joint Resolution

To designate the week beginning April 25, 1993, as "National Crime Victims' Rights Week".

May 6, 1993
[S.J. Res. 62]

Whereas there were over thirty-five million crimes committed last year in America, with one violent crime occurring every seventeen seconds;

Whereas victims of crime across America deserve respect and assistance not only from the criminal justice system, but from society as well;

Whereas there is a crucial need to provide crime victims with quality programs and services to help them recover from the devastating psychological, physical, emotional, and financial hardships resulting from their victimization;

Whereas there are ten thousand public and private agencies and organizations in the United States that are dedicated to improving the plight of crime victims;

Whereas the Nation's victims' rights movement and allied professions deserve recognition for their tireless efforts on behalf of victims of crime and to reduce senseless violence in America; and

Whereas it is essential for all Americans to join together and commit their individual and collective resources to victim assistance and violence reduction: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week beginning April 25, 1993, is hereby designated as "National Crime Victims' Rights Week". The President is authorized and requested to issue a proclamation calling upon the people of the United States to observe the week with appropriate ceremonies and activities.

Approved May 6, 1993.

LEGISLATIVE HISTORY—S.J. Res. 62:
CONGRESSIONAL RECORD, Vol. 139 (1993):
Mar. 29, considered and passed Senate.
Apr. 22, considered and passed House.

FISCAL NOTE

STATE OF ALASKA

BILL NO. SS SJR 2

1994 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Office of the Governor
 Title: Amendment to the Constitution RE: Rights of Victims of Crimes BRU: Division of Elections
 Component: General and Primary Elections
 Sponsor: Senators Donley & Leman
 Requestor: _____ COMPONENT SERIAL NO. 22

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	2.2*	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND &	0	0	0	0	0	0
GRANTS,	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL	2.2*	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE						
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FUNDING:

1002 Federal	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	2.2*	0	0	0	0	0
1005 GF/Program	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	2.2*	0	0	0	0	0

POSITIONS:

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

Estimate of current year (FY94) impact: 0

ANALYSIS: (Attach a separate page if necessary.)*This figure covers cost of inclusion of information about this issue in the Official Elections Pamphlet as required by AS 15.58, and programming for DataVote counting of votes cast on the measure. However, only 4 measures can be printed on a single ballot card. Should this measure require printing an additional ballot card, the fiscal impact would be 53.4.

Prepared by: Joseph L. Swanson, Director Phone: 465-4611
 Division: Division of Elections Date: 12/19/94

Approved by Commissioner: Lt. Governor John B. Coghill
 Agency: Office of the Lt. Governor Date: _____

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Department of Law

Proposed Amendment to SS SJR 2

January 26, 1994

Replace page 2, lines 12 - 14, with the following:

(b) Law enforcement agencies, prosecutors, and the courts shall make every reasonable effort to ensure that victims of crimes have the rights set out in (a) of this section. However, a failure to ensure these rights does not give rise to a separate cause of action against law enforcement agencies, other agencies of the state, or a political subdivision of the state.

FISCAL NOTE

STATE OF ALASKA
93 LEGISLATIVE SESSION

BILL NO. SJR 2

Revision Date: _____
Title: Amendment to the Constitution RE: rights of victims of crimes
Sponsor: Senators Donley and Leman
Requestor: _____

Department Affected: Office of the Governor
BRU: Division of Elections
Component: General and Primary Elections
COMPONENT SERIAL NO. 22

PENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	2.2*	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	2.2*	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:						
1002 Federal Receipts	0	0	0	0	0	0
1003 GF March	0	0	0	0	0	0
1004 GF	2.2*	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	2.2*	0	0	0	0	0

POSITIONS:						
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY93) impact: 0

ANALYSIS: (Attach a separate page if necessary.) *This figure covers cost of inclusion of information about this issue in the Official Elections Pamphlet as required by AS 15.58, and programming for DataVote counting of votes cast on the measure. However, only 4 measures can be printed on a single ballot card. Should this measure require printing and additional ballot card, the fiscal impact would be 53.4.

Prepared by: Charlot E. Thickstun, Director *Charlot E. Thickstun* Phone: 465-4611
Division: Division of Elections Date: 1/15/93
Approved by Commissioner: Lt. Governor John B. Coghill *J. B. Coghill*
Agency: Office of the Lt. Governor Date: 1/15/93

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SJR 2

Revision Date: January 14, 1994
Title: "...amendment to the Constitution...relating to the right of victims of crime..."
Sponsor: Senator Donley
Requestor: Senate State Affairs

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.

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

Phone: 465-3672
Date: January 14, 1994

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

Date: January 14, 1994

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SJR 2

ANALYSIS CONTINUATION:

SJR 2 would place an amendment to the state's constitution before the voters at the next general election that would establish certain constitutional rights for victims of crime. Currently, victims rights are provided by statute (AS 12.61.010-AS 12.61.900) and the effect of the amendment, if approved by the voters, would be to guarantee those rights in a far broader and absolute fashion. For instance, AS 12.61.015 provides for many of the same rights that are included in the proposed amendment. Adoption of this resolution will not have a fiscal impact for the Department of Law.

STATE OF ALASKA
1994 LEGISLATIVE SESSION

FISCAL NOTE
BILL NO.

SJR 2

Revision Date: _____ Dept. Affected: Corrections
 Title: Amendment to the Constitution RE: Penal Administration BRU: All
 Component: All
 Sponsor: Sen. Donley
 Requestor: Senate State Affairs COMPONENT SERIAL NO. 694-1884

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS:	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

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

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

FUNDING: (Thousands of Dollars)

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

Estimate of current year (FY94) impact: \$ 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: Diane Schenker Phone: 465-3315/561-4426
 Division: Office of the Commissioner Date: 1/17/94
 Approved by Commissioner: J. Frank Prewitt, Jr. (For) Date: 1/18/94
 Agency: Department of Corrections

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Luckhaupt
3/21/94

SENATE CS FOR CS FOR HOUSE JOINT RESOLUTION NO. 43(STA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES PORTER, Phillips, Barnes, Bunde, Green, Sitton, Nordlund

SENATORS Donley, Leman

A RESOLUTION

1 Proposing amendments to the Constitution of the State of Alaska relating to the
2 rights of victims of crimes and to penal administration.

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

4 * Section 1. Article I, sec. 12, Constitution of the State of Alaska, is amended to read:

5 SECTION 12. PENAL ADMINISTRATION [EXCESSIVE PUNISHMENT].
6 Excessive bail shall not be required, nor excessive fines imposed, nor cruel and
7 unusual punishments inflicted. Penal administration shall be based [ON THE
8 PRINCIPLE OF REFORMATION AND] upon the following in the order provided:
9 the need for protecting the public, community condemnation of the offender, the
10 rights of victims of crimes, restitution from the offender, and the principle of
11 reformation.

12 * Sec. 2. Article I, Constitution of the State of Alaska, is amended by adding a new section
13 to read:

14 SECTION 24. RIGHTS OF CRIME VICTIMS. To preserve and protect
15 victims' rights to justice and due process, a victim of crime shall have the right to be
16 reasonably protected from the accused, to confer with the prosecution, and to be

1 treated with dignity, respect, and fairness during all phases of the criminal and juvenile
2 justice process. A victim of crime shall be entitled to the right: to timely disposition
3 of the case following the arrest of the accused; to be informed of and allowed to be
4 present at all criminal or juvenile proceedings where the accused has the right to be
5 present; to be allowed to be heard, upon request, at sentencing, before or after
6 conviction or juvenile adjudication, and at any proceeding where the accused's release
7 from custody is considered; to restitution from the accused; and to be informed, upon
8 request, of the accused's escape or release from custody before or after conviction or
9 juvenile adjudication. The legislature shall implement this section.

10 * Sec. 3. The amendments proposed by this resolution shall be placed before the voters of
11 the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the
12 State of Alaska, and the election laws of the state.

**SENATE CONCURRENT RESOLUTION NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION**

BY THE SENATE STATE AFFAIRS COMMITTEE

Introduced:
Referred:

A RESOLUTION

1 **Suspending Uniform Rules 24(c), 35, 41(b), and 42(e) of the Alaska State**
2 **Legislature concerning House Joint Resolution No. 43, relating to a constitutional**
3 **amendment concerning victims of crime.**

4 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 That under Rule 54 of the Uniform Rules of the Alaska State Legislature, the
6 provisions of Rules 24(c), 35, 41(b), and 42(e) of the Uniform Rules, regarding changes to the
7 title of a bill, are suspended in consideration of House Joint Resolution No. 43, relating to a
8 constitutional amendment concerning victims of crime, by inserting "and to penal
9 administration" on page 1, line 2, following "victims" in the title of the version that passed
10 the House.

SPONSOR SUBSTITUTE FOR SENATE JOINT RESOLUTION NO. 2

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY SENATORS DONLEY, Leman

Introduced: 3/5/93
Referred: STA, JUD, FIN

A RESOLUTION

1 Proposing an amendment to the Constitution of the State of Alaska relating to
2 the rights of victims of crimes and to penal administration.

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

4 * Section 1. Article 1, sec. 12, Constitution of the State of Alaska, is amended to read:

5 SECTION 12. EXCESSIVE PUNISHMENT. Excessive bail shall not be
6 required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.
7 Penal administration shall be based [ON THE PRINCIPLE OF REFORMATION
8 AND] upon the following in the order provided: the need for protecting the public,
9 the rights of victims of crimes, and the principle of reformation.

②
"Community
condemnation"
of the
offender"

10 * Sec. 2. Article 1, Constitution of the State of Alaska, is amended by adding a new
11 section to read:

restitution ④

12 SECTION 24. RIGHTS OF VICTIMS OF CRIMES. (a) Crime victims, as
13 defined by law, shall have the following rights, as provided by law:

- 14 (1) the right to be treated with fairness and respect for their dignity and
- 15 privacy throughout the criminal justice process;
- 16 (2) the right to timely disposition of the case following arrest of the

1 accused:

2 (3) the right to be reasonably protected from the accused throughout
3 the criminal justice process:

4 (4) the right to notification of court proceedings;

5 (5) the right to attend trial and all other court proceedings that the
6 accused has the right to attend;

7 (6) the right to confer with the prosecution;

8 (7) the right to make a statement to the court at sentencing;

9 (8) the right to restitution as provided by law;

10 (9) the right to information about the conviction, sentence,
11 imprisonment, criminal record, and release of the accused.

12 (b) The legislature may provide by law for the enforcement of this section.

13 (c) The legislature may provide for assessments against convicted defendants
14 to pay for crime victims' rights.

15 * Sec. 3. The amendments proposed by this resolution shall be placed before the voters of
16 the state at the next general election in conformity with art. XIII, sec. 1. Constitution of the
17 State of Alaska, and the election laws of the state.

We Alaskans

THE ANCHORAGE DAILY NEWS MAGAZINE

DECEMBER 12, 1993



**FACING
WINONA**

Editor's Notes

By GEORGE BRYSON

How would you react to the murder of your parents?

For nearly all of us, the question is academic. Our answers would be hypothetical. But for longtime Anchorage residents Janice Liennart and Sharon Nahorney, the question isn't academic at all — it's real. So real, it's managed to define who they are and how they've lived their lives for eight years — ever since that spring day in 1985 when 14-year-old Winona Fletcher and 19-year-old Cordell Boyd broke into the home shared by their parents, Tom and Ann Faccio, and aunt, Emelia Elliott, holding all three elderly residents at gunpoint, robbing them, listening to their cries for mercy, laughing, then shooting them one by one, execution style — all because the youngest robber forgot to wear her ski mask.

How Liennart and Nahorney reacted to these murders is the focus of this week's magazine. In today's cover story, Anchorage free-lance writer Linda Weiford explores what's happened to the victims, the killer, and the Alaska criminal justice system ever since Winona Fletcher's trial made her the youngest convicted female murderer in state history.

Among other changes in their lives, the Faccio sisters founded Victims for Justice, an advocacy group with thousands of members statewide. Through it they've helped counsel and console hundreds of victims of violent crime. They've attended countless trials. They've lobbied the legislature to promote their view of a more victim-friendly criminal justice system — particularly in cases of juvenile crime. Along the way they've helped remove the legal veil that previously prevented youthful criminals from ever meeting face-to-face with their victims, a form of therapy endorsed by both sides as a step toward healing. Ironically, it's a step that the sisters and Winona Fletcher haven't yet taken. Fletcher was serving her time in far-away North Dakota. It wasn't convenient. But last month, prison officials suddenly transferred her back to Alaska. Would Janice, Sharon and Winona finally meet? That's where our story today begins.

This Week



Sisters for justice: Janice Liennart, left, and Sharon Nahorney.

WINONA AND THE JUSTICE SISTERS:

After years spent convincing victims of juvenile crime to confront the perpetrators, Anchorage sisters Janice Liennart and Sharon Nahorney now must consider it themselves: Winona Fletcher, who with Cordell Boyd robbed and killed their parents, has been moved back to an Alaska prison. By Linda Weiford. **Page 6.**

COVER: Winona Fletcher at her sentencing in 1986. Daily News file photo by Fran Durner.

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December 12, 1993

Vol. 15, No. 50

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Free-lance articles for We Alaskans may be sent on speculation to the magazine editor at the Anchorage Daily News, P.O. Box 149001, Anchorage, AK 99514-9001. Topics should focus on Alaska environments and lifestyles. Payment upon publication.

Letters

A wonderful article

I can't remember all the times I've complained about what I perceived as biased reporting by the Daily News. Now at last, I am favorably impressed! Your article in We Alaskans Nov. 29 about the Mormon missionaries was wonderful.

So often, members of the Church of Jesus Christ of Latter-day Saints get a little defensive when we see a story about our church. We know that most reporters can't seem to write anything without working in a little nasty dig or unfounded information.

This was just a regular story, presented in a

me and my husband because we first heard of the church through missionaries tracting through our neighborhood. That was in 1953, in Anchorage. The church has grown considerably in Anchorage and throughout the world since then, largely as a result of missionary work.

My husband and I are going on a mission for the church also. We are going to the England Manchester Mission about the middle of February. We will be gone for 18 months. Thank you again for the great article.

—Marie Dickey

Some wolves must die

start to starve, feed them animal-rights people. Surely they wouldn't mind giving up their lives for their beloved wolves. Maybe they won't love them quite so much as the hungry animals move in for the kill.

However we take care of the wolf problem, it has to be done. Humans messed up the wilderness cycles by killing caribou, so we had better smooth it out as much as possible.

These people also seem to think that we trappers are all blood-thirsty, inhumane murderers that just like to wipe out all fur animals for a little money. I can't say that I have ever heard of a trapper that didn't feel regret when they had to finish off fuzzy little



Janico Lienhart, who with sister Sharon Nahomey formed Victims For Justice, says she's prepared to meet the woman who killed her parents. "I could see Winona now," Lienhart says. "Still, I'll wait for Sharon. When she's ready, and if Winona's ready, we'll go."

FLAN DURMER / Anchorage Daily News

By
LINDA WEIFORD

Alaska's youngest murderer has come home.

The daughters of one of her victims must now decide whether they're ready to confront her.

Sitting in their Fifth Avenue office in Anchorage, sisters Janice Lienhart and Sharon Nahorney

tried to absorb the news that their nightmare had returned. Their family's killer was back in Alaska.

Lienhart and Nahorney hadn't seen Winona Fletcher in seven years. She was just 15 then, crying in an Anchorage courtroom after Judge Victor Carlson sentenced her to 297 years behind bars. Since then, the sisters kept close track of her whereabouts. The last they heard, she was still serving time at North Dakota State Penitentiary.

So they were surprised last month to learn that Fletcher, now 22, had recently been transferred to Juneau's Lemon Creek Correctional Center to serve her remaining years. North Dakota's penitentiary warden evicted her from his jurisdiction in October because she was caught sexually involved with a male inmate in a coed

Continued on next page

Winona and the Justice Sisters

prison program.

But the sisters were even more surprised to hear what Fletcher said about them during her five-day stop-over in Anchorage before being flown to Juneau. She said she might want to see the two women now that she's back.

"I'd like to talk to them, but not like this," Fletcher said, motioning to the commotion in the small, noisy visiting room at the Sixth Avenue Jail. "They hate me. ... I'd like to see them ... (but) I honestly don't know what I'd say."

"I think I'd like to see her, too," Lienhart said.

"I'm shaking," said Nahorney.

Nearly nine years have passed since 14-year-old Winona Fletcher blasted her way through the sisters' lives and made alarming headlines for the execution-style murders of their parents and aunt.

Her crimes today define much of who the sisters are and what they do. As Alaska's premiere champions of victims' rights, the two women have fought court battles, changed laws and held the hands of hundreds of victims who also were belted by crime.

Fletcher's crimes are also rooted in one of the toughest questions facing Alaska's lawmakers: What to do about the soaring frequency and brutality of juvenile crime.

THE FACCIOS

In 1949, Janice and Sharon Faccio moved with their parents from California to Alaska. Janice was 11, Sharon was 5.

Their father, Tom Faccio, was a business-savvy construction worker who came to Anchorage to build military housing for Elmendorf Air Force Base. In the early '50s, he opened the Tom's Plumbing and Heating store on Mountain View Drive, where it remains open today.

Their mother, Ann, devoted her time to the two girls. She gardened, canned fish and raised chickens to help provide food for the family.

Also in the '50s, their father built a large home in East Anchorage on two wooded acres bordering Russian Jack Springs Park. The trilevel house was perched on a hill, and when the Faccios moved in, it offered solitude and scenery.

"It was the peacefulness and the view — that's why Daddy built it there," Nahorney says today. "We could look out the window and see Mount McKinley and the Inlet, and outside all we could hear were the birds."

As teenagers, the two sisters were active in student clubs at East High School. They also found fulfillment in worshipping God. Lienhart made the discovery first while attending Bible camp one summer.

"God became very real to me, and it was such a wonderful experience," she says today. "When I got back, I went on

they discovered the reality of God.

The Faccios were a close-knit family and the kids were governed by strict rules.

"We knew our boundaries and never got into trouble," recalls Nahorney. "The worst I did was wear lipstick too young."

While Janice was studying nursing at a Christian college in Washington state, her parents adopted a baby boy. Originally the son of a relative, Tom Jr. grew up angry and rebellious, and the sisters never got very close to him. He would be convicted of drunken driving, assault and battery and malicious destruction of property.

The Faccios' house would serve as a center for family reunions, Christmas and even marriage celebrations. Champagne flowed there in 1960 when Janice, 22, married her high school sweetheart, Wayne Lienhart. And vows were exchanged there nine years later when Sharon, 25, married the family dentist, Harry Nahorney.

THE MAKINGS OF WINONA

Two years after Sharon married, Winona Marie Fletcher was born in Milwaukie, Ore., the first of two children. Her father walked out on the family when Winona was just 4. By the age of 10, she had her first drink of alcohol, and by 11 her first joint of marijuana. Her mother, an alcoholic, took what was left of the family to Alaska in 1983, and moved in with an abusive, drug-addicted boyfriend. Winona would argue with them and flee their East Anchorage apartment. She dressed tough, wearing heavy makeup, black leather and studs. She began burglarizing homes with the teen-age son of her mother's boyfriend.

"I didn't care about anyone or anything back then," recalls Fletcher today. "My mom's boyfriend, I hated him. He was always drunk and high. He'd hit her. She'd leave him and go back to him. She was so involved with all that, she lost track of me."

At 14, Winona met a street-smart young man who paid attention to her. He was 19-year-old Cordell Boyd, a West High School dropout who, like Winona, had a passion for stealing. Winona stopped attending classes at Clark Junior High when the two moved in together and began burglarizing homes to buy food and drugs.

During the spring of 1985, while Winona and Boyd were on a stealing spree, Lienhart and Nahorney were leading lives of church, family and work.

Lienhart, then 46, was a Sunday school teacher and mother of five. Her husband was the manager of her father's plumbing business, which, after 33 years, was the oldest plumbing supply store in Anchorage.

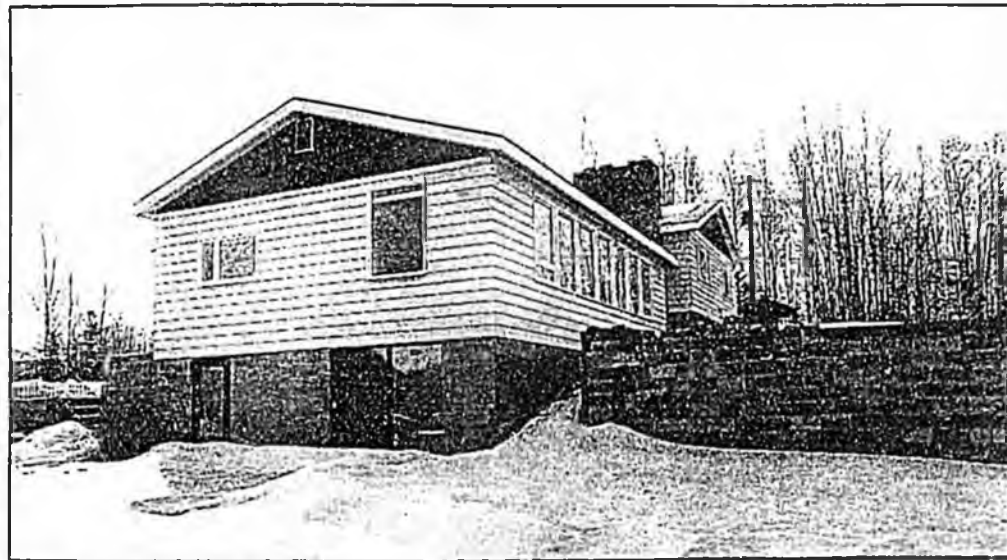
Nahorney, 40, was an interior decorator and office manager for her husband's orthodontic practice. A



Sharon Nahorney, left, and Janice Lienhart at the trials in January of 1986.



FRAN DURNER / Anchorage Daily News file photo



The Faccio home in East Anchorage was a large trilevel built in the 1950s on a hill bordering Russian Jack Springs Park.



Daily News file photo

Above: Emelia Elliott, a year before she was murdered at age 76.

Left: Ann and Tom Faccio moved to Alaska from California in 1949.

stepmother of five grown children, she spent much of her free time with her husband's children.

The sisters kept in close touch with their mother, 70, and father, 69, and their 76-year-old aunt on their mother's side, Emelia Elliott, who had moved in with the elder Faccios 10 years earlier.

On the afternoon of April 22, 1985, Lienhart and her mother watched proudly as Lienhart's daughter performed in a church musical. Lienhart dropped her

mother off at the Faccio house just before suppertime.

It was the last time she saw her mother alive.

THE MURDERS

The following morning, Lienhart was beginning another day of home-schooling her youngest child when the phone rang. Her husband sounded shaken. He had just received a call at work from the Anchorage Police Department. Her parents and aunt were dead, he said, and investigators were still

inside the house with the bodies.

Lienhart drove across town to her parents' home thinking it was all a mistake. When she arrived, she was met by members of Anchorage's Homicide Response Team. The men explained that her parents and aunt had been shot to death. Bullets had been fired close-range through their skulls.

Several hours later and thousands of miles away, Nahorney

Continued on Page 10

...the slayings at an Anchorage mortuary, where the two sisters wept as they brushed their mother's hair.

At the service the following day, mourners filled the Abbott Loop Christian Center and eulogies were spoken throughout the city. Tom and Ann Faccio had lived in Anchorage for 36 years, leaving behind hundreds of grieving friends and relatives.

A 'SECRET' KILLER

Six weeks later, there were still no arrests. Then Nahorney got a call from a police investigator. She was unprepared for the news he delivered: The reward they offered had led to the arrest of a female in connection with the slayings.

She was only 14 years old. Other than that, the detective would say little more about the suspect. Because she was a juvenile, he said, the girl was protected by privacy laws.

Nahorney hung up. The stormy grief that had gripped her since the murders slowly gave way to searing anger.

The suspect was Winona Fletcher. Despite the privacy shield designed to protect her, the media soon learned her name — and it was reported everywhere.

But it wasn't until her boyfriend was arrested a few days later that Lienhart and Nahorney learned the brutal truth of what had happened. Since Cordell Boyd was 19 and an adult, police and prosecutors were able to reveal more facts about the shootings.

Winona and Boyd got caught because a Crimestopper informant — a former jailmate of Boyd's — blew the whistle to collect the record \$50,000 reward offered through the Faccio estate. With his help, police had secretly tape-recorded conversations with the couple as they discussed the killings.

Winona and Boyd told the informant they had targeted the Faccio home for a robbery because of its elderly residents and secluded location. They said they forced their way into the house at dinnertime. They killed the three residents because Winona, unlike Boyd, wasn't wearing a mask and didn't want to be later identified.

Details of the murders were even more shocking. Winona had taken Ann Faccio upstairs to a bedroom after she showed signs of a heart attack. In the taped conversations between Winona and the informant, she laughed as she told how Mrs. Faccio prayed just before she shot her through the skull.



Cordell Boyd after his arrest in 1985. Boyd, a 19-year-old West High dropout and imprisoned at Seward's Spring Creek Correctional Center. "I haven't talked to (Cordell) since the sentencing," Fletcher says. "I don't hate him and I'm not angry. I just think we both need to get on with our lives."

JIM LAVRAKAS / Anchorage Daily News