

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8586 HOUSE JUDICIARY

HB

32

appeal to Superior Ct
from administrative
order is \$100. (Adm R 9)

9-LS0161NG

CS FOR HOUSE BILL NO. 32(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered: 2/13/95

Referred: Judiciary, Finance

Sponsor(s): REPRESENTATIVE GREEN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to administrative proceedings involving a determination of
2 eligibility for a permanent fund dividend or authority to claim a dividend on
3 behalf of another."

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

5 * Section 1. AS 43.23.015(g) is amended to read:

6 (g) If an individual is aggrieved by a decision of the department determining
7 the individual's eligibility for a permanent fund dividend or the individual's authority
8 to claim a permanent fund dividend on behalf of another, the individual may, upon
9 payment of a \$25 appeal fee, request the department to review its decision. If the
10 individual is aggrieved by the decision of the department after all administrative
11 proceedings, the individual may appeal that decision to the superior court in
12 accordance with AS 44.62.560. An appeal to the court under this section does not
13 entitle the aggrieved individual to a trial de novo. The appeal shall be based on the
14 record of the administrative proceeding from which appeal is taken and the scope of

1 appeal is limited to matters contained in the record of the administrative proceeding.
2 If, as a result of an administrative proceeding or a court appeal, the individual
3 prevails, the \$25 appeal fee shall be returned to the individual by the department.

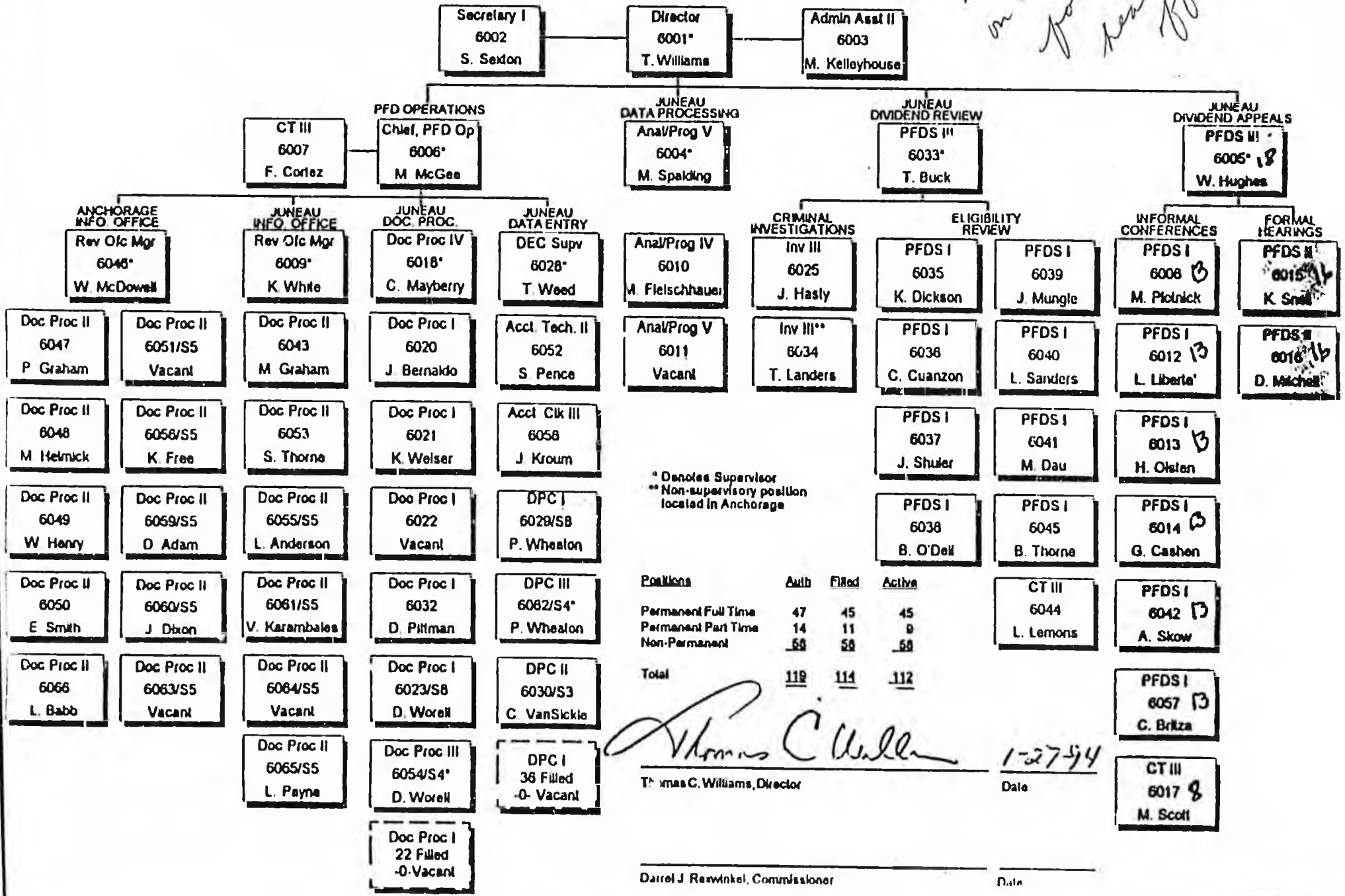
4 * Sec. 2. AS 43.23.015 is amended by adding a new subsection to read:

5 (i) An indigent individual may apply for a waiver of the appeal fee required
6 under (g) of this section. The department shall prescribe and furnish a form for that
7 purpose. The department shall grant the waiver if, during the year immediately
8 preceding the year the form is submitted to the department, the individual was a
9 member of a family with an income equal to or less than the federal poverty guidelines
10 for Alaska set by the United States Department of Health and Human Services.

ALASKA DEPARTMENT OF REVENUE
PERMANENT FUND DIVIDEND DIVISION
ORGANIZATION CHART

January 18, 1994

*Not shown
on chart -
formal
hearing
officers*



Alaska State Legislature

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DISTRICT 10



COMMITTEE ON GAS
VICE CHAIRMAN LABOR & COMMERCE
COMMITTEE
BUDGETARY COMMITTEE
HIGHER EDUCATION COMMITTEE
INTERNATIONAL TRADE & TOURISM
COMMITTEE
ECONOMIC TASK FORCE

Representative Joe Green

SPONSOR STATEMENT HB 32

HB 32 addresses a serious problem with the number of appeals filed after an applicant is denied a Permanent Fund Dividend, and the length of time that it takes to process those appeals. As of January 1, 1995 there were approximately 9,740 appeals pending, the highest number since the PFD program's inception. One district 10 resident is still waiting to be heard almost 2 years after filing, and there are people who have waited even longer for their appeals to be processed and resolved. Processing such a large number of appeals is costly as well as being unfair to those who have a legitimate claim. Currently there are 10 permanent full time employees in the Permanent Fund Division and one appeals officer in the commissioners office working on processing the appeals, yet there are still almost 10,000 appeals pending, with no end in sight. Part of the problem is that it only costs a 32 cent stamp to file an appeal. Many people who clearly do not meet the qualifications for receiving a dividend protest their denial simply because they have the opportunity to do so at no risk to themselves. The 1994 denial rate was 64%. In years prior to 1994 the percentage rate of denials has been significantly higher.

HB 32 would implement a \$25 filing fee for individuals protesting the denial of their PFD application (the department will adopt a regulation to allow indigent individuals to be exempt from the fee). The filing fee would be refundable if their appeal is successful, and non-refundable if the denial is upheld. It is anticipated that the implementation of a filing fee would discourage clearly unqualified individuals from appealing, thereby reducing costs which are deducted from the amount of the dividend, and making the appeals process significantly shorter for legitimate claims.

HOUSE COMMITTEE REPORT

2/13/95

(7)

Date Referred: January 16, 1995

FURTHER REFERRALS:

Judiciary
Finance

Date of Committee Action: 2/9/95

The STATE AFFAIRS Committee considered:

HB 32

HOUSE BILL NO. 32

PFD ADMINISTRATIVE PROCEEDINGS

"An Act relating to administrative proceedings involving a determination of eligibility for a permanent fund dividend or authority to claim a dividend on behalf of another."

recommends it be replaced with the following committee substitute C.S. HB 32 (STA) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____
 fiscal note(s) Revenue fiscal note(s) _____
 zero fiscal note(s) _____ zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Jeannette James</i>	JAMES	✓			
<i>James Porter</i>	Porter	✓			
<i>Green</i>	Green	✓			
<i>Ivan</i>	Ivan			✓	
<i>Robinson</i>	Robinson	✓			
<i>Willis</i>	Willis			✓	
<i>Ogan</i>	Ogan	✓			
		(5)		(2)	

CHAIR'S SIGNATURE *Jeannette James*
James

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 32

Revision Date: _____ Dept. Affected: Department of Revenue
 Title: PFD Administrative Proceedings BRU: Permanent Fund Dividend Division
 Component: Permanent Fund Dividend Division
 Sponsor: Representative GREEN
 Requester: House State Affairs COMPONENT SERIAL NO. 981

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES		(7.9)	(52.7)	(97.5)	(142.3)	(142.3)
TRAVEL						
CONTRACTUAL					(21.0)	(29.4)
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	(7.9)	(52.7)	(97.5)	(163.3)	(171.7)

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()	121.8	129.0	129.0	129.0	129.0	129.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
1050 Dividend Fund		(7.9)	(52.7)	(97.5)	(163.3)	(171.7)
TOTAL	0.0	(7.9)	(52.7)	(97.5)	(163.3)	(171.7)

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

FULL-TIME			(1)	(2)	(3)	(3)
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See Page 2.

Prepared by: Thomas C. Williams, Director *Thomas C Williams* Phone: 465-2323
 Division: Permanent Fund Dividend Division Date: 2/6/95
 Approved by Commissioner: *[Signature]* Date: 2/16/95
 Agency: Department of Revenue

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ALASKA DEPARTMENT OF REVENUE
PERMANENT FUND DIVIDEND DIVISION
ANALYSIS OF HB 32
As of February 6, 1995

Assumptions

- A. This legislation would be effective in FY 96.
- B. 55% of all appeals received involve bright line issues and 45% of all appeals received involve non-bright line issues. Bright line issues are those that are clearly definable by objective criteria, such as whether an individual was physically present in state during the two previous calendar years or met an application deadline. Non-bright line issues are those that involve issues that are more subjective, such as whether an individual demonstrated an intent to return to Alaska.
- C. The addition of a fee will mean some of those individuals whose denial involved a bright line issue as well as some of those individuals whose denial involved a non-bright line issue will not appeal.
- D. Necessary data processing programming updates to the PFD masterfile computer system would require approximately 4 staff weeks work for PFD Division data processing staff. Other data processing programming projects would be delayed to make time for the initial programming.
- E. Additional data entry and fee processing could be accomplished by current staff, since with the adoption of the appeal fee requirement the total number of appeals received is expected to decline.
- F. See the attached *Projected Revenues Resulting From HB 32* and *Projected Inventory Resulting From HB 32* regarding the number of appeals to be received and the required staffing levels. If these assumptions are correct then:
 - 1. in FY 97 one PFDS II could be reallocated to a PFDS I resulting in a savings of \$7.9. In FY 98, FY 99 and again in FY 00, a PFDS I position could be eliminated each year for an additional savings of \$44.8 each; and
 - 2. funding for one range 22 Formal Hearing Officer in the Commissioner's Office could be reduced to 75% in FY 00, and 65% in FY 01.
- G. To the extent that the number of appeals does not decline as projected, staffing levels could not be reduced as reflected. Similarly, to the extent that the number of appeals declines more than projected, staffing levels might be able to be reduced more than the amount reflected.

Attachments

ALASKA DEPARTMENT OF REVENUE
 PERMANENT FUND DIVIDEND DIVISION
PROJECTED INVENTORY RESULTING FROM HB 32

As of February 6, 1995

	<u>FY95(A)</u>	<u>FY96</u>	<u>FY97</u>	<u>FY98</u>	<u>FY99</u>	<u>FY00</u>	<u>FY01</u>
<u>Informal Conference Appeals</u>							
Beginning Appeal Inventory	9,704	8,954	6,714	3,224	984	0	260
Total New Appeals	3,000	5,260	5,260	5,260	5,260	5,260	5,260
Total Resolutions	<u>(3,750)</u>	<u>(7,500)</u>	<u>(8,750)</u>	<u>(7,500)</u>	<u>(6,244)</u>	<u>(5,000)</u>	<u>(5,000)</u>
Ending Inventory	<u>8,954</u>	<u>6,714</u>	<u>3,224</u>	<u>984</u>	<u>0</u>	<u>260</u>	<u>520</u>
<u>Formal Hearing Appeals</u>							
Beginning Appeal Inventory	978	988	735	509	282	55	4
Total New Appeals	535	447	473	473	473	473	473
Total Resolutions	<u>(525)</u>	<u>(700)</u>	<u>(700)</u>	<u>(700)</u>	<u>(700)</u>	<u>(525)</u>	<u>(455)</u>
Ending Inventory	<u>988</u>	<u>735</u>	<u>509</u>	<u>282</u>	<u>55</u>	<u>4</u>	<u>22</u>
<u>Staffing Levels</u>							
Permanent Fund Dividend Division							
Informal Conference Staff	6	6	7	6	5	4	4
Formal Hearing Staff	2	2	1	1	1	1	1
Total Permanent Fund Dividend Division Staff	8	8	8	7	6	5	5
Commissioner's Office Formal Hearing Staff funded by PFD Division	<u>1.5</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>0.75</u>	<u>0.65</u>

(A) Beginning Inventory for FY95 is as of January 1, 1995

HB

35

CS FOR HOUSE BILL NO. 35(HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered: 4/18/95

Referred: Judiciary, Finance

Sponsor(s): REPRESENTATIVES PARNELL, Bunde, Robinson

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to sexual misconduct as grounds for imposing disciplinary
2 sanctions on persons licensed by the State Medical Board."

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

4 * Section 1. AS 08.64.32 j(a) is amended to read:

5 (a) The board may impose a sanction if the board finds after a hearing that a
6 licensee

7 (1) secured a license through deceit, fraud, or intentional
8 misrepresentation;

9 (2) engaged in deceit, fraud, or intentional misrepresentation while
10 providing professional services or engaging in professional activities;

11 (3) advertised professional services in a false or misleading manner;

12 (4) has been convicted, including conviction based on a guilty plea or
13 plea of nolo contendere, of

14 (A) a felony or other crime if the felony or other crime is

1 substantially related to the qualifications, functions, or duties of the licensee;
2 or

3 (B) a crime involving the unlawful procurement, sale,
4 prescription, or dispensing of drugs;

5 (5) has procured, sold, prescribed, or dispensed drugs in violation of
6 a law, regardless of whether there has been a criminal action;

7 (6) intentionally or negligently permitted the performance of patient
8 care by persons under the licensee's supervision that does not conform to minimum
9 professional standards even if the patient was not injured;

10 (7) failed to comply with this chapter, a regulation adopted under this
11 chapter, or an order of the board;

12 (8) has demonstrated

13 (A) professional incompetence, gross negligence, or repeated
14 negligent conduct; the board may not base a finding of professional
15 incompetence solely on the basis that a licensee's practice is unconventional or
16 experimental in the absence of demonstrable physical harm to a patient;

17 (B) addiction to, severe dependency on, or habitual overuse of
18 alcohol or other drugs that impairs the licensee's ability to practice safely;

19 (C) unfitness because of physical or mental disability;

20 (9) engaged in unprofessional conduct, in sexual misconduct, or in
21 lewd or immoral conduct in connection with the delivery of professional services to
22 patients; in this paragraph, "sexual misconduct" includes sexual contact or
23 attempted sexual contact with a patient outside the scope of generally accepted
24 methods of examination or treatment of the patient, regardless of the patient's
25 consent or lack of consent, ^{during the course of the physician -} ~~whether during the course of treatment or outside of~~
26 the treatment setting, unless the patient is the licensee's spouse or a person in an
27 equivalent domestic relationship with the licensee; (existing)

28 (10) has violated AS 18.16.010;

29 (11) has violated any code of ethics adopted by regulation by the board;

30 (12) has denied care or treatment to a patient or person seeking
31 assistance from the physician if the only reason for the denial is the failure or refusal

1 of the patient to agree to arbitrate as provided in AS 09.55.535(a); or
2 (13) has had a license or certificate to practice medicine in another state
3 or territory of the United States, or a province or territory of Canada, suspended or
4 revoked unless the suspension or revocation was caused by the failure of the licensee
5 to pay fees to that state, territory, or province.

6 * **Sec. 2. APPLICABILITY.** AS 08.64.326(a)(9), as amended by this Act, applies to
7 conduct by a licensee that occurs on or after the effective date of this Act.

#2

P. 2 line 23

After "sexual contact"

Insert:

"as defined by the board
in regulations adopted under
this section."

Conceptual

amendment -

to Rewrite page

MEMO

To: Rep. Brian Porter
House Judiciary Committee

From: Anne Carpeneti
Staff Counsel

Subject: CSHB 35 (HES) - An Act relating to sexual misconduct as grounds for imposing disciplinary sanctions of persons licensed by the State Medical Board
Scheduled for April 24, 1995 meeting

Date: April 23, 1995

This bill amends the section in AS 08.64 - the State Medical Board- which sets forth the bases for disciplinary action against a physician. It expands the prohibition of unprofessional conduct to specifically prohibit sexual misconduct.

The bill also defines sexual misconduct, which is the hard part. There are two issues regarding the definition, both raised by Rep. Parnell in his very helpful memo (attached). One is the use of "outside the accepted methods of examination or treatment of the patient"; there is fear that this is too vague and might leave loopholes for bad acts. It is certainly clearer that the present language (lewd or immoral conduct), and the board has the power to adopt regulations (AS 08.64.101) to define this more specifically.

The second problem raised by Rep. Parnell is the phrase "outside of the treatment setting" - which the department believes goes beyond the professional relationship and into the physician's private life. It is not uncommon to require that professionals who are in a position of trust in the professional relationship refrain from forming attachments with clients outside the professional relationship. For example, in general, lawyers are not allowed to have sexual relationships with clients, with some exceptions.

Physicians are in a similar position of trust. This bill goes beyond the lawyer-client prohibition, however.

Sometime when you have lots of time on your hands you might be interested in the attached ethics opinion by the Alaska Bar Association.

Alaska State Legislature

REPRESENTATIVE
SEAN R. PARNELL



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HOUSE OF REPRESENTATIVES

April 21, 1995

The Honorable Brian Porter, Chair
House Judiciary Committee

Dear Representative Porter:

Per your request earlier this session for "frank" letters regarding bill content, I am writing this memo for use by you and your staff in reviewing the CS for House Bill 35(HSS), sexual misconduct by medical professionals.

This legislation is not groundbreaking in nature; six states proscribe such conduct through statute and numerous other states have adopted similar regulations. Alaska currently has no express statutory or regulatory language prohibiting sexual misconduct by medical professionals.

The Department of Commerce and Economic Development has ultimate oversight of doctors via the State Medical Board. Interestingly enough, the department's position on the bill is neutral while the Board is supportive of this legislation. Commerce is on record stating that existing statute which prohibits "unprofessional conduct" is broad enough to regulate sexual misconduct, yet the Board would prefer to see "sexual misconduct" specifically in statute. Both groups have expressed some concerns with aspects of the bill as highlighted below:

page 2, line 23, beginning after "patient"

"outside the scope of generally accepted methods of examination or treatment of the patient"

The Medical Board believes this language will be difficult to define and because of this, may indirectly provide a loophole for an unscrupulous practitioner. One option is to delete this language but doing so would leave some doctors vulnerable by nature of their practice (OB-GYNs for example). At this point, I believe the standard set forth in the bill is

Rep. Porter memo
April 21, 1995
page 2

sufficiently descriptive to guide expert opinion in investigations, and I oppose deleting this language. However, I am open to other suggestions or modifications.

page 2, line 25

"whether during the course of treatment *or outside of the treatment setting,*"

The Administration and others raised concerns that this reaches beyond the '9-5' office schedule and into the doctors' personal lives. However, I believe the potential for a doctor to leverage his or her influence upon a patient can easily be extended beyond normal office hours.

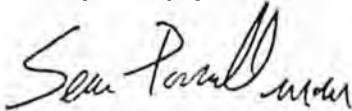
After the bill was drafted, we learned about proposed language from Rhode Island that might be appropriately for substituted here:

"during the existence of the physician-client relationship"

In my view, if the doctor and client choose to pursue a romantic relationship, the doctor would need to properly document termination of the professional relationship and referral to another doctor.

As a final note, sexual contact is not defined in the bill. It is my intent to provide this framework for the Medical Board to develop the necessary regulatory language; Legal Services has indicated no concerns with this approach.

Very truly yours,



Sean R. Parnell
Representative

Fax Transmittal Memo 7672

No of Pages 6

body Date 4-24-95 Time

To ANNIE CARPENETI

Company

From

STEVE VAN GOOR
ALASKA BAR ASSOCIATION
FAX # 1-907-272-2932
PHONE # 1-907-272-7469

Location

Fax # 1-907-465-3834

Telephone #

Original Dispatched

Delivery

Return

Call for return

Comments

-Annie:
Ethics Op. 92-6 as you requested. Please let me know if I can be of further assistance.
Steve Van Goor

**ALASKA BAR ASSOCIATION
ETHICS OPINION NO. 92-6**

**Propriety of an Intimate Relationship
Between an Attorney and a Client
of the Attorney's Law Firm**

The Committee has been asked previously whether it is in violation of the Code of Professional Responsibility for an attorney to commence a sexual relationship with a client during the time the attorney is representing that client. In Ethics Opinion 88-1, the Committee responded by setting forth criteria that would render such a relationship unethical. More recently, we have been asked to assess whether Ethics Opinion 88-1 applies to a sexual relationship commenced between an attorney and a client of the attorney's law firm. Specifically, we have been asked to determine whether it was unethical for a lawyer to become intimately involved with a client of the firm during the course of the firm's representation in a termination of parental rights proceeding.

The Committee has concluded that this conduct is unethical if:

- (1) The sexual relationship has an adverse affect on the lawyer's ability to protect the client's interests, or is otherwise prejudicial or damaging to the client's case;
- (2) The sexual relationship creates the potential that the attorney will be called as a witness on behalf of the client or to testify on issues prejudicial to the client;
- (3) The client is involved in a legal matter of the type that is generally recognized to be emotionally charged; or
- (4) The sexual conduct is exchanged for legal services, non-consensual, coercive, or illegal.

These factors recognize that there are some circumstances and types of representation under which a sexual relationship is inconsistent with a professional relationship between an

The Committee has taken this opportunity to expand and clarify the standards for determining when an intimate relationship is unethical and warrants withdrawal or disqualification. Most notable changes are those now set forth in criteria (2) and (3).

attorney and client. The Committee's basic concern is that the attorney-client relationship, once established, should not be exploited by the attorney. The attorneys' foremost duty must be loyalty to the client, not personal gratification.

It is the opinion of the Committee that a sexual relationship between an attorney and a client of the attorney's firm is improper to the same extent as a relationship between an attorney and the attorney's own client, with certain limited exceptions. First, an attorney not directly involved in representing the client must know or have reason to know of the attorney/client relationship existing between the client and the attorney's firm. Second, such attorney may rebut with objective evidence the presumption established in criterion (3), which assumes that an attorney who is sexually involved with a client during cases that are by nature emotionally charged is unethically exploiting the attorney-client relationship.

In the case presented, the Committee has not been provided with sufficient facts to determine whether the attorney's sexual relationship with the firm's client was proper. However, the fact that the client was involved in a proceeding to terminate parental rights would trigger the presumption in criterion (3), which is not satisfactorily rebutted by the client's subjective statements that he or she was not harmed by the short-lived affair. The attorney must carefully consider this and the remaining criteria to determine the propriety of his or her conduct. If any of the criteria are met, the attorney's conduct is unethical, and no member of the attorney's firm may continue to represent the client under principles of imputed disqualification embodied in DR 5-105(d). Accordingly, the firm must withdraw.

For further guidance, the above criteria are discussed separately below.

(1) Adverse Impact on Client's Case

In some situations, a sexual relationship with a client during the course of representation may adversely affect the client's case or otherwise prejudice or damage the client's position. The Oregon State Bar has evaluated the propriety of an attorney's sexual relationship with an unemployed woman he was representing in a divorce proceeding. Oregon State Bar Ethics Opinion 429 (May 1979). The opinion stressed that the particular facts are extremely important in each case. It concluded that there were several facts militating in favor of a finding that the lawyer's conduct was improper under DR 5-101, which prohibits a lawyer from accepting employment if

the exercise of his professional judgment on behalf of the client will be affected by personal interests. First, the lawyer's conduct could significantly aggravate the other spouse and threaten a reasonable settlement. Second, in the event of a trial, the potential for an embarrassing disclosure of the lawyer's affair might cause him to curb effective and aggressive representation.

Similarly, Maryland Ethics Opinion 84-9 (September 7, 1983), advises that a lawyer must withdraw from employment when he is sexually involved with a client who is seeking advice regarding the sale of property owned by the client and her husband, the transfer of property from the husband and wife, and a possible divorce. In these circumstances, an intimate personal relationship between the lawyer and the client may have an adverse effect on the lawyer's ability to protect his client's interests.

Although not directly discussed by the Oregon or Maryland opinions, a sexual relationship may also prove damaging to the merits of a client's case in particular circumstances. For example, in matters involving child custody, a parent's conduct is closely scrutinized, and the details of an intimate relationship may conceivably become part of this scrutiny, particularly to the extent it may affect the children in question. Not only could the parent's conduct be negatively viewed by the court, but the lawyer would face a serious risk of becoming a material witness and being required to withdraw. Additionally, the lawyer's professional judgment and ability to render competent representation may be compromised. Bourdon's Case, 565 A.2d 1052 (N.H. 1989); Kentucky Bar Assn. v. Meredith, 752 S.W.2d 786 (Ky. 1988).

Clearly, sexual relationships should be avoided because they pose a number of potential violations of DR 7-101(A)(3), which prohibits a lawyer from intentionally prejudicing or damaging his client during the course of the professional relationship. The fact that a lawyer's associate, not the lawyer, is sexually involved with the lawyer's client has little bearing on this analysis. Like the lawyer, the associate is ethically bound to refrain from conduct that prejudices or damages a client of the firm.

(2) Potential For Becoming a Witness

If an attorney or attorney's associate should be called as a witness on the client's behalf, the continued representation of the client by the attorney or the attorney's firm is jeopardized pursuant to DR 5-102. The risk of becoming a witness is particularly great where the client's ongoing

conduct is at issue, such as in a divorce, custody or adoption dispute; a matter involving the client's physical, mental or emotional limitations or injuries, including a personal injury and wrongful death case; and a criminal matter where a client's compliance with court orders may be at issue. In such cases, attorneys or associates who place themselves in a position to know first-hand intimate details of a client's life create a likelihood that they will learn information that either (1) ought to be divulged in the client's behalf at trial, which would require disqualification pursuant to DR 5-102(a), or (2) might prejudice the client, if the attorney or associate is called as a witness other than on the client's behalf. Such a risk is unacceptable because the potential of harm to the client is too great. Again, whether the lawyer or lawyer's associate is sexually involved with the client is irrelevant -- if either is in a position to be called as a witness, continued representation by the firm is jeopardized.

(3) Presumed Emotional Vulnerability

The Committee is of the view that sexual relationships with clients must be presumed to be harmful to clients in cases that can be viewed objectively as emotionally traumatic. Examples of such cases include, but are not limited to, divorce, child custody or adoption disputes, or criminal matters involving the client, client's spouse or other family member. These cases involve the loss or potential loss or incarceration of persons of significance to the client, such as spouses or children. Because such cases by nature involve emotional issues, clients' judgments on emotional matters can be expected to be impaired, making them more vulnerable to the advances of a lawyer or more likely to initiate advances of their own. A lawyer has a duty to be cognizant of this vulnerability and to refrain from sexual relationships for the duration of representation. See Drucker's Case, 577 A.2d 1198 (N.H. 1990); Levy, Attorneys, Clients and Sex: Conflicting Interests in the California Rule, 5 GEO. J. LEGAL ETHICS 649 (1992). This duty extends to the lawyer's associates, who are also in a position to exploit a client's emotional vulnerability through their affiliation with the firm and potential familiarity with the case.

(4) Sex that is Non-consensual, Coercive, Illegal, or Accepted in Exchange for Legal Services

A sexual relationship with a client that is initiated by an attorney under circumstances reflecting that the client may have been deprived of free choice with regard to the relationship is unethical. As an example, in People v.

0005 000

Gibbons, 685 P.2d 168 (Co. 1984), an attorney undertook representation of seven co-defendants charged with burglary. The lawyer, who was sixty-six years of age, initiated a sexual relationship with a twenty-three year old female defendant as a condition for his representation of her and her husband. Following the conclusion of the criminal case, his clients filed a complaint alleging blackmail because the sexual relationship was made a condition of representation. In disbarring the attorney based upon the sexual relationship and other matters relating to the attorney's responses to the grievance proceeding, the court noted that the client was in a stressful situation and she was placed "in a position in which she was unduly dependent on the respondent and in which she may not have been able to exercise free choice." *Id.* at 175. If the sexual relationship with the client, or sexual conduct toward the client, is illegal, the attorney is violating DR 1-102(A)(3), which prohibits a lawyer from engaging in illegal conduct involving moral turpitude. An attorney who had been retained to represent a female client on a drunk driving charge was found to violate DR 1-102(A)(3) when he made sexual advances to the client in the jail library and later in his car. In Re Littleton, 719 S.2d 772, 776 (Mo. en banc 1986). The Littleton court noted that DR 1-102(A)(3) does not require a conviction of a crime, but only illegal conduct. The court further noted that moral turpitude includes everything contrary to justice, honesty, modesty and good morals. In holding that the attorney had violated his professional obligations, the court stated:

Respondent and [client] entered into a professional relationship. [Client] had a right to expect that Respondent would conduct himself in that relationship in a manner consistent with the honorable position of the legal profession -- a tradition founded on service, integrity, vigorous commitment to the client's best interest, and that leads us to the rule of law. Instead of remaining true to that tradition, however, Respondent chose to exploit it, seeking to turn the professional relationship into a personal one. *Id.* The court also emphasized that the non-consensual nature of the sexual relationship was an important factor in the finding of impropriety. An attorney who grabbed his female client, kissing her and raising her blouse, was also found to engage in illegal conduct involving moral turpitude. In the Matter of Adams, 428 N.E.2d 786 (Indiana 1981).

Finally, an arrangement between an attorney and client under which the client would provide sexual favors in exchange for legal representation would also violate DR 1-102(A)(3). Iowa State Bar Assn. v. Hill, 436 I.W. 2d 57 (Iowa 1989); Carter v. Kritz, 560 A.2d 360 (R.I. 1989). Similarly, the

withholding of services or provision of damaging legal advice because of a client's refusal to engage in sex is improper. McDaniel v. Gile, 281 Cal. Rptr. 242, 245-46 (Cal. 1991). Again, no separate standard is warranted for a lawyer's associate. If the sexual conduct is non-consensual, coercive, illegal, or induced in exchange for legal services, it is improper regardless of whether the attorney involved represents the client directly or is simply an associate of the client's attorney.

(5) Conclusion

The Committee concludes that sexual relationships with clients commenced during the course of representation by either an attorney or the attorney's law firm are unethical under any of the four circumstances described above. This opinion is not intended to prohibit representation of a client in a case where the attorney and client have been engaged in a mutually consensual and on-going sexual relationship prior to the commencement of the representation. In this regard, the Committee emphasizes that its chief concern is to diminish the potential for legal or personal harm to a client, for exploitation of a client's vulnerability, or for illegal coercion or force that are posed by the commencement of sexual relationships during or as a condition of representation by either a client's attorney or the attorney's associate. While the Committee would recommend that a lawyer not represent any client with whom he or she is sexually involved when the above circumstances exist, it is the commencement of a sexual relationship during the course of representation that is of greatest concern.

Approved by the Alaska Bar Association Ethics Committee on October 1, 1992.

Adopted by the Board of Governors on October 30, 1992.

Amendment Finlaystein
HB 35

~~P. 25~~

P. 2 line 25 Delete "whether"

P 2 line 25-26

Delete "or outside of the
treatment setting"

not offered



Official Business

Alaska State Legislature

HOUSE OF REPRESENTATIVES

State Capitol
Juneau, AK 99801-1182

Sponsor Statement

House Bill 35

Sexual Misconduct by Medical Professionals

This legislation provides the State Medical Board with the authority to sanction doctors who make sexual contact with their patients. Current statutory language governing such conduct is vague, sanctioning doctors for "unprofessional conduct, or in lewd or immoral conduct in connection with the delivery of professional services to patients."

Granting the Medical Board authority to sanction doctors in this case is critical for several reasons:

- *the degree of patient emotional and physical vulnerability which is inherent in virtually every doctor/patient relationship.

- *the extent to which a doctor may use his or her status in the professional relationship to induce the patient's consent to sexual activity.

- *the doctor's medical judgment is compromised by his or her sexual interest in the patient.

HB 35 brings specificity to the existing statute, giving the Medical Board and its examiners a viable mechanism to address this area of concern.

FISCAL NOTE

STATE OF ALASKA

BILL NO. HB 35

1995 LEGISLATIVE SESSION

Revision Date: February 6, 1995

Department: Commerce and Economic Development

Title: An Act relating to the grounds for imposing disciplinary sanctions....by the State Medical Board.

BRU: Occupational Licensing

Sponsor: Representative Parnell

Component: Operations

Requestor: Representative Parnell

COMPONENT SERIAL #: 1844

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0
---------------------------	------------	------------	------------	------------	------------	------------

FUND SOURCE

(Thousands of Dollars)

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

Estimate of any current year (FY 95) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

HB 35 amends the grounds for imposing disciplinary sanctions on medical licensees if the licensee engages in sexual misconduct with a patient. New funds are not required to implement this bill.

Prepared by: Jennifer Strickler, Admin. Officer,
 Division: Occupational Licensing
 Approved by Commissioner: William L. Hensley
 Agency: Commerce and Economic Development

Phone: 465-2144
 Date: 2/6/95
 Date: 2/6/95

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Juneau, Alaska 99801-2105

MEMORANDUM

March 21, 1995

SUBJECT: Sectional Analysis of HB 35 (Work Order No. 9-LS0170A)

TO: Representative Sean Parnell
Attn: Michael Morter

FROM: Tern Lauterbach 
Legislative Counsel

This memorandum is a sectional analysis of HB 35. Since you have asked no particular questions about the bill, this memorandum is brief. Please let me know if you need additional assistance.

Section 1.

Clarifies that "sexual misconduct" is a ground for imposing disciplinary sanctions on a physician. Defines some of the conduct included in "sexual misconduct."

Section 2.

Limits the applicability of the bill to conduct occurring after the effective date, thereby avoiding an ex post facto problem.

TML:lmb
95-149.lmb

HOUSE COMMITTEE REPORT

(9)

Date Referred: January 16, 1995

FURTHER REFERRALS:

Judiciary
Finance

Date of Committee Action: 4/13/95

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 35

HOUSE BILL NO. 35

SEXUAL MISCONDUCT BY MEDICAL PROFESSIONAL

"An Act relating to the grounds for imposing disciplinary sanctions on persons licensed by the State Medical Board."

recommends it be replaced
with the following committee substitute

CS HB 35 (HES)

the same title
 a new title

additional referral to _____ Committee

attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal note(s) _____

fiscal note(s) _____

zero fiscal note(s) CED

zero fiscal note(s) _____

SIGN	#	RECOMMENDATIONS	DP	DNP	NR	AM
<i>[Signature]</i>			✓			
<i>[Signature]</i>			✓			
<i>[Signature]</i>			✓			
<i>[Signature]</i>			✓			

CHAIR'S SIGNATURE

[Signature]

TONY KNOWLES, GOVERNOR

DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

3601 C STREET, SUITE 722
ANCHORAGE, ALASKA 99503-5986
PHONE: (907) 561-2878
FAX: (907) 562-5781

February 8, 1995

Representative Sean Parnell
State Capitol - Room 515
Juneau AK 99801-1182

Dear Representative Parnell:

At the February 2-3, 1995. meeting of the Alaska State Medical Board, House Bill 35 adding sexual misconduct language to AS 08.64.326, which you sponsored, was reviewed and discussed by the board.

The board wishes to advise you of their support of your efforts with this bill and to express appreciation for your advocacy on this important issue. As we have discussed, all parties agree such behavior is unacceptable by any health care provider under any circumstance. We are concerned that the words "... generally accepted methods of examination or treatment..." in the proposed bill may prove exceedingly difficult to define, and indirectly provide an ambiguity through which the intent of this law may be evaded by the unscrupulous practitioner whom this law seeks to address.

We are working on regulatory language to define "sexual misconduct"; if you think it beneficial, perhaps this proposed regulatory definition may accompany your bill. Certainly the passage of your bill will give our effort a great measure of support.

We know that it is through the endeavors of legislators such as yourself and Representative Cynthia Toohey who recognize the magnitude and significance of such legislation that the people of Alaska will be protected and we, as a board, support those endeavors.

Sincerely,



David A. McGuire, M.D.
Chairman, State Medical Board

LGH:I

xc: Representative Cynthia Toohey
Board Members

parnell.doc.4100

ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

130 Seward Street, No. 501 • Juneau, Alaska 99801 • (907) 586-3650

Abused Women's Aid in Crisis (AWAIC); Advocates for Victims of Violence (AVV);
Aiding Women in Abuse and Rape Emergencies (AWARE);
Alaska Women's Resource Center (AWRC); Arctic Women in Crisis (AWIC);
Bering Sea Women's Group (BSWG); Erimonak Women's Shelter;
Kodiak Women's Resource & Crisis Center (KWRC);
Matanuska Regional Women's Crisis Program; Parent Aid Family Support Center;
Safe & Fear-Free Environment (SAFE); Seward Life Action Council (SLAC);
Sitka Against Family Violence (SAFV); South Peninsula Women's Services (SPWS);
Standing Together Against Rape (STAR);
Tongass Community Counseling Center; Tundra Women's Coalition (TWC);
Unalaskans Against Sexual Assault & Family Violence (USAFV);
Valley Women's Resource Center (VWRC);
Women in Crisis Counseling & Assistance (WCCA);
Women in Safe Homes (WISH); Women's Resource & Crisis Center (WRCC)

HOUSE BILL 35 SEXUAL MISCONDUCT BY MEDICAL PROFESSIONALS

The Alaska Network on Domestic Violence and Sexual Assault (Network) is a statewide coalition of 22 nonprofit programs. Shelter, advocacy, crisis intervention and counseling, and referral services are offered by member programs to victims of domestic violence and sexual assault. During FY94, over 9,500 victims and minor children sought and received services from member programs.

The Network supports passage of HB35. The American Medical Association and most state boards have condemned sexual relationships concurrent with the physician/patient relationship, and have established standards and grounds for sanctions for those physicians who choose to engage in sexual misconduct. It is the physician's responsibility to establish and maintain professional boundaries. Consequences should be imposed when he or she crosses the line.

Self-reporting survey statistics are revealing. Nationwide some 7.1% of the male psychiatrists and 3.1 % of the female psychiatrists admitted to sexual involvement with patients. Overall, physician figures are estimated to be about 10%. The typical offender is between the ages of 40-50, has been practicing over 10 years, and is married with children.¹

Most sexual abuse involves a perpetrator exploiting a position of trust. Physicians have a unique position of trust with patients. In addition, they:

- 1) Have access to private information about patients.

¹Rhode Island Department of Health Bulletin, Summer 1993

- 2) Are in a physically intrusive position.
- 3) Can feel invisible and invincible because of their status and special relationship with patients.
- 4) Can rationalize that the patient's interest in them is personal rather than a by-product of the unique doctor-patient relationship.²

When health care providers are faced with their behavior, many try to say that particular act was the only one. Unfortunately, statistics and experience do not concur with their assertion. Dr. Gene Abel studied a group of 567 men who had engaged in sexual misconduct. Those 567 men accounted for 294,000 separate acts of legal sexual misconduct, and 195,000 victims. Over time, sexual misconduct tends to escalate; we see increased rates of offending and more intrusive behavior. Perpetrators are unlikely to stop the misconduct without intervention.³

HB35 gives notice to medical professionals of Alaska's commitment to ending sexual violence. It provides a mechanism for holding accountable those who choose to disregard a person's right to consent to sexual contact.

²Health Care Providers and Sexual Misconduct, Irwin S. Dreiblatt, Ph.D., p.3.

³ *Supra*, p.10.

FISCAL NOTE

STATE OF ALASKA

1995 LEGISLATIVE SESSION

Revision Date: February 6, 1995 Department: Commerce and Economic Development
 Title: An Act relating to the grounds for imposing BRU: Occupational Licensing
disciplinary sanctions....by the State Medical Board. Component: Operations
 Sponsor: Representative Parnell
 Requestor: Representative Parnell COMPONENT SERIAL #: 1844

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE

(Thousands of Dollars)

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

Estimate of any current year (FY 95) cost: \$ 0.0

POSITIONS

FULL-TIME	
PART-TIME	
TEMPORARY	

ANALYSIS: (Attach a separate page if necessary)

HB 35 amends the grounds for imposing disciplinary sanctions on medical licensees if the licensee engages in sexual misconduct with a patient. New funds are not required to implement this bill.

Prepared by: Jennifer Strickler, Admin. Officer, Phone: 465-2144
 Division: Occupational Licensing Date: 2/6/95
 Approved by Commissioner: William L. Hensley Date: 2/6/95
 Agency: Commerce and Economic Development

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HB

38

UNCLASSIFIED AND CLASS A FELONY OFFENSES

Unclassified Felonies

AS 11.41.100	Murder in the First Degree
AS 11.41.110	Murder in the Second Degree
AS 11.41.300	Kidnapping
AS 11.41.410	Sexual Assault in the First Degree
AS 11.41.434	Sexual Abuse of a Minor in the First Degree
AS 11.71.010	MICS in the First Degree

Class A Felony Offenses

AS 11.41.120	Manslaughter
AS 11.41.200	Assault in the First Degree
AS 11.41.500	Robbery in the First Degree
AS 11.46.400	Arson in the First Degree
AS 11.56.300	Escape in the First Degree
AS 11.61.190	Misconduct Involving Weapons in the First Degree
AS 11.61.240	Criminal Possession of Explosives (for murder/kidnapping)
AS 11.66.110	Promoting Prostitution in the First Degree
AS 11.71.020	MICS in the Second Degree

(sale of ...)

Crimes against the person, as defined in AS 33.30.901, include only offenses under AS 11.41.

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 38

Revision Date: _____ Dept. Affected: Alaska Court System
 Title: An Act relating to criminal sentencing... BRU: Trial Courts
 Components: _____
 Sponsor: Rep. Bunde
 Requestor: _____ COMPONENT SERIAL NO. 768

EXPENDITURES/REVENUES (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	145.4	145.4	145.4	145.4	145.4	145.4
TRAVEL						
CONTRACTUAL	90.0	90.0	90.0	90.0	90.0	90.0
SUPPLIES						
EQUIPMENT	0.8					
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	236.2	235.4	235.4	235.4	235.4	235.4

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	236.2	235.4	235.4	235.4	235.4	235.4
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	236.2	235.4	235.4	235.4	235.4	235.4

POSITIONS

FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME	3.0	3.0	3.0	3.0	3.0	3.0
TEMPORARY						

Estimate of current year (FY 95) cost: \$ None

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal analysis.

Prepared by: C. S. Christensen III, Staff Counsel *CC* Phone: 264-8228
 Agency: Alaska Court System Date: 03/07/95
 Approved by: Arthur H. Snowden, II, Administrative Director *AS* *CC*
 Agency: Alaska Court System Date: 03/07/95

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Alaska Court System
Fiscal Analysis
HB 38

HB 38 amends Alaska's presumptive sentencing laws to provide that a defendant convicted of a third felony offense is subject to a mandatory term of imprisonment of 99 years. The first two convictions must be for a "most serious" felony, and the third conviction must be for a class A or unclassified felony. The prosecutor has the discretion to pursue or not pursue the 99-year mandatory sentence.

A most serious felony is any unclassified or class A felony prescribed under AS 11 or an attempt or conspiracy to commit, or criminal solicitation under AS 11.31.110 of, an unclassified or class A felony prescribed under AS 11.

The Department of Law has estimated that prosecutors will seek the mandatory 99-year sentence 15 times per year. Because of the potential sentence, these cases can be expected to rival first-degree murder cases in the amount of court time spent on the actual trial, as well as on evidentiary hearings, collateral attacks on previous convictions, and other pre- and post-trial motion work. This is estimated to average four weeks of trial time per case, plus one week of additional hearings. If the defendants were not subject to a 99-year sentence, only three of these 15 cases would statistically be expected to go to trial; those would most likely be first-degree murder cases, with an average five week length.

In addition to the costs of the third felony case, the existence of the mandatory 99-year sentence will encourage offenders charged with their first or second most serious felony to fight the charge more strenuously, because conviction would greatly increase the chance that the offender would be vulnerable to the 99-year sentence at a later time. In the years 1984 through 1990, an average of about 900 defendants each year were charged with a first or second most serious felony. Trial rates for defendants charged with those felonies currently range from eight to 20 percent, depending on the classification of the offense (class B, class A, or unclassified). If the trial rate increases by 50 percent, over 50 additional felony trials will be held each year. Such changes in the trial rate are not unprecedented. When the plea bargaining ban was imposed in 1975, the felony trial rate doubled during the first year and tripled during the second year. Because it is impossible to predict what increase will occur in the trial rate as a result of HB 38, this note does not reflect those costs. Should HB 38 result in a significantly higher trial rate, the court system will need to return to the legislature for additional funding.

For similar reasons, it can be expected that the appeal rate and rate of applications for post-conviction relief will increase among the 900 defendants charged each year with a first or second most serious felony. Again, this note does not attempt to quantify those costs.

Alaska Court System

Fiscal Analysis

HB 38

Personal Services

	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Pro Tem Superior Court Judge, PPT, 50% vested, Anchorage, 12 months	\$48,300	\$30,891	\$79,191
Pro Tem Superior Court Judge, PPT, 50% vested, Anchorage, 3 months	12,075	6,447	18,522
In-Court Clerk, range 12A, PFT, Anchorage, 12 months	27,108	12,084	39,192
In-Court Clerk, range 12A, PPT, Anchorage, 3 months	6,777	1,745	<u>8,522</u>
Total Personal Services			145,427

Contractual Services

Jury fees for 12 jurors and 3 alternates for 20 days for 12 new trials at \$25 a day for each juror 90,000

Equipment

Desk and chair for permanent full-time in-court clerk 800

Estimated Total Cost \$236,227

HOUSE BILL NO. 38

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE BUNDE

Introduced: 1/16/95

Referred: State Affairs, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to criminal sentencing; relating to the availability for good time
 2 credit for offenders convicted of certain first degree murders; relating to mandatory
 3 life imprisonment, parole, good time credit, pardon, commutation of sentence,
 4 modification or reduction of sentence, reprieve, furlough, and service of sentence at
 5 a correctional restitution center for offenders with at least three serious felony
 6 convictions; and amending Alaska Rule of Criminal Procedure 35." - Reduction, Correction
 or Suspension of
 Sentence

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

8 * Section 1. FINDINGS AND INTENT. (a) The legislature finds that

9 (1) community protection from persistent offenders is a priority for any civilized
 10 society;

11 (2) a large percentage of criminal offenders convicted in this state have prior
 12 criminal histories;

13 (3) punishments for criminal offenses should be proportionate to both the

1 seriousness of the crime and the prior criminal history of the offender:

2 (4) the legislature has a right and the responsibility to determine when to impose
3 a life sentence.

4 (b) By sentencing three-time, most serious offenders to prison for life without the
5 possibility of parole, the legislature intends to

6 (1) improve public safety by placing the most dangerous criminals in prison;

7 (2) reduce the number of serious, repeat offenders by tougher sentencing;

8 (3) set proper and simplified sentencing practices that both victims and persistent
9 offenders can understand; and

10 (4) restore public trust in our criminal justice system.

11 * Sec. 2. AS 12.55.025(e) is amended to read:

12 (e) Except as provided in (g) and (h) of this section, if the defendant has been
13 convicted of two or more crimes, sentences of imprisonment shall run consecutively. If
14 the defendant is imprisoned upon a previous judgment of conviction for a crime, the
15 judgment shall provide that the imprisonment commences at the expiration of the term
16 imposed by the previous judgment. Nothing in AS 12.55.125(a) or (l) limits the court's
17 ability to impose consecutive sentences.

18 * Sec. 3. AS 12.55.125(c) is amended to read:

19 (c) A defendant convicted of a class A felony may be sentenced to a definite term
20 of imprisonment of not more than 20 years, and shall be sentenced to the following
21 presumptive terms, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

22 (1) if the offense is a first felony conviction and does not involve
23 circumstances described in (2) of this subsection, five years;

24 (2) if the offense is a first felony conviction, other than for manslaughter,
25 and the defendant possessed a firearm, used a dangerous instrument, or caused serious
26 physical injury during the commission of the offense, or knowingly directed the conduct
27 constituting the offense at a uniformed or otherwise clearly identified peace officer, fire
28 fighter, correctional officer, emergency medical technician, paramedic, ambulance
29 attendant, or other emergency responder who was engaged in the performance of official
30 duties at the time of the offense, seven years;

31 (3) if the offense is a second felony conviction, 10 years ;

1 (-4) if the offense is a third felony conviction and the defendant is not
2 subject to sentencing under (l) of this section, 15 years.

3 * Sec. 4. AS 12.55.125(i) is amended to read:

4 (i) A defendant convicted of sexual assault in the first degree or sexual abuse of
5 a minor in the first degree may be sentenced to a definite term of imprisonment of not
6 more than 30 years, and shall be sentenced to the following presumptive terms, subject
7 to adjustment as provided in AS 12.55.155 - 12.55.175:

8 (1) if the offense is a first felony conviction and does not involve
9 circumstances described in (2) of this subsection, eight years;

10 (2) if the offense is a first felony conviction, and the defendant possessed
11 a firearm, used a dangerous instrument, or caused serious physical injury during the
12 commission of the offense, 10 years;

13 (3) if the offense is a second felony conviction, 15 years;

14 (4) if the offense is a third felony conviction and the defendant is not
15 subject to sentencing under (l) of this section, 25 years.]

16 * Sec. 5. AS 12.55.125(j) is amended to read:

17 (j) A defendant sentenced to a mandatory term of imprisonment of 99 years under
18 (k) or (l) of this section may apply for a modification or reduction of sentence under the
19 Alaska Rules of Criminal Procedure after serving one-half of the mandatory term without
20 consideration of good time earned under AS 33.20.010.

21 * Sec. 6. AS 12.55.125 is amended by adding a new subsection to read:

22 (l) (1) Notwithstanding any other provision of law, a defendant convicted of an
23 unclassified or class A felony offense shall be sentenced to a mandatory term of
24 imprisonment of 99 years when the defendant has been previously convicted of two or
25 more most serious felonies and the prosecuting attorney has filed a notice of intent to
26 seek a 99-year mandatory sentence. If a defendant is sentenced to a mandatory 99-year
27 sentence under this section,

28 (1) imprisonment for the prescribed mandatory term may not be
29 suspended under AS 12.55.080; *Supervisor of sentence + probation*

30 (2) imposition of sentence may not be suspended under AS 12.55.085;

31 (3) imprisonment for the prescribed mandatory term may not otherwise

Prosecutor's choice
Suppose he/she does not file?
No SIS!! you idiot!

?
When need to say when!
**

Does this conflict w/ Review after 49 yrs

be reduced.

Prior convictions

* Sec. 7. AS 12.55.145(a) is amended to read:

(a) For purposes of considering prior convictions in imposing sentence under

(1) AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), or (i),

Don't apply to 2/2/14

(A) [(1)] a prior conviction may not be considered if a period of 40 or more years has elapsed between the date of the defendant's unconditional discharge on the immediately preceding offense and commission of the present offense unless the prior conviction was for an unclassified or class A felony;

no time limit on these?

(B) [(2)] a conviction in this or another jurisdiction of an offense having elements similar to those of a felony defined as such under Alaska law at the time the offense was committed is considered a prior felony conviction;

no

(C) [(3)] two or more convictions arising out of a single, continuous criminal episode during which there was no substantial change in the nature of the criminal objective are considered a single conviction unless the defendant was sentenced to consecutive sentences for the crimes; offenses committed while attempting to escape or avoid detection or apprehension after the commission of another offense are not part of the same criminal episode or objective;

Dear

(2) AS 12.55.125(l),

(A) a conviction in this or another jurisdiction of an offense having elements similar to those of a most serious felony is considered a prior most serious felony conviction;

Surely we could make this even less clear!

(B) of the two or more previous most serious felony convictions, (at least one of the previous convictions) must have occurred before the commission of any of the other most serious felony offenses and at least one of the other most serious felony convictions must have occurred prior to the commission of the present felony offense.

* Sec. 8. AS 12.55.145(c) is amended to read:

Prior Conviction

(c) The defendant shall file with the court and serve on the prosecuting attorney (notice of denial) consisting of a concise statement of the grounds relied

Prior Conviction

1 upon and that may be supported by affidavit or other documentary evidence, no
2 later than 10 days before the date set for the imposition of sentence if [IF] the
3 defendant

4 (1) denies

5 (A) the authenticity of a prior judgment of conviction;

6 (B) |,| that the defendant is the person named in the judgment;

7 (C) |,| that the elements of a prior offense committed in this or
8 another jurisdiction are similar [SUBSTANTIALLY IDENTICAL] to those of

9 a

10 (i) felony defined as such under Alaska law;

11 (ii) most serious felony, defined as such under Alaska

12 law;

13 (D) [, OR] that a prior conviction occurred within the period
14 specified in (a)(1)(A) [(a)(1)] of this section; or

15 (E) that a previous conviction occurred in the order required
16 under (a)(2)(B) of this section; or

17 (2) [IF THE DEFENDANT] alleges that two or more purportedly
18 separate prior convictions should be considered a single conviction under (a)(1)(C)
19 [(a)(3)] of this section [, THE DEFENDANT SHALL FILE WITH THE COURT AND
20 SERVE ON THE PROSECUTING ATTORNEY NOTICE OF DENIAL. NO LATER
21 THAN 10 DAYS BEFORE THE DATE SET FOR IMPOSITION OF SENTENCE.
22 THE NOTICE OF DENIAL MUST INCLUDE A CONCISE STATEMENT OF THE
23 GROUND RELIED UPON AND MAY BE SUPPORTED BY AFFIDAVIT OR
24 OTHER DOCUMENTARY EVIDENCE].

25 * Sec. 9. AS 12.55.145(d) is amended to read:

26 (d) Matters alleged in a notice of denial shall be heard by the court sitting without
27 a jury. If the defendant introduces substantial evidence that the defendant is not the
28 person named in a prior judgment of conviction, that the judgment is not authentic, that
29 the conviction did not occur within the period specified in (a)(1)(A) [(a)(1)] of this
30 section, [OR] that a conviction should not be considered a prior felony conviction under

1 (a)(1)(B) [(a)(2)] of this section or a prior most serious felony conviction under
2 (a)(2)(A) of this section, or that a previous conviction did not occur in the order
3 required under (a)(2)(B) of this section, then the burden is on the state to prove the
4 contrary beyond a reasonable doubt. The burden of proof that two or more convictions
5 should be considered a single conviction under (a)(1)(C) [(a)(3)] of this section is on the
6 defendant by clear and convincing evidence.

7 * Sec. 10. AS 12.55.145 is amended by adding a new subsection to read:

8 *with* (f) Under this section, a prior conviction has occurred when a defendant has
9 *proof* entered a plea of guilty, guilty but mentally ill, or nolo contendere, or when a verdict of
10 guilty or guilty but mentally ill has been returned by a jury or by the court.

11 * Sec. 11. AS 12.55.155(c)(20) is amended to read:

12 (20) the defendant was on furlough under AS 33.30 or on parole or
13 probation for another felony charge or conviction that would be considered a prior felony
14 conviction under AS 12.55.145(a)(1)(B) [AS 12.55.145(a)(2)];

15 * Sec. 12. AS 12.55.185 is amended by adding a new paragraph to read:

16 (14) "most serious felony" means any unclassified or class A felony
17 prescribed under AS 11 or an attempt or conspiracy to commit, or criminal solicitation
18 under AS 11.31.110 of, an unclassified or class A felony prescribed under AS 11.

19 * Sec. 13. AS 33.16.090(b) is amended to read:

20 (b) Except as provided in (e) of this section, a prisoner is not eligible for
21 discretionary parole during the term of a presumptive sentence; however, a prisoner is
22 eligible for discretionary parole during a term of sentence enhancement imposed under
23 AS 12.55.155(a) or during the term of a consecutive or partially consecutive presumptive
24 sentence imposed under AS 12.55.025(e) or (g). A prisoner sentenced to a mandatory
25 99-year term under AS 12.55.125(a) or (1) is not eligible for discretionary parole during
26 the entire term.

27 * Sec. 14. AS 33.20.010(a) is amended to read:

28 (a) Except as provided in (b) of this section and notwithstanding
29 AS 12.55.125(f)(3) and 12.55.125(g)(3), a prisoner convicted of an offense against the
30 state or a political subdivision of the state and sentenced to a term of imprisonment that
31 exceeds three days is entitled to a deduction of one-third of the term of imprisonment

1 rounded off to the nearest day if the prisoner follows the rules of the correctional facility
2 in which the prisoner is confined. A prisoner is not eligible for a good time deduction
3 if the prisoner has been sentenced to a mandatory 99-year term of imprisonment
4 under

5 (1) AS 12.55.125(a) after the effective date of this Act; or

6 (2) AS 12.55.125(l).

7 * Sec. 15. AS 33.30.101 is amended by adding a new subsection to read:

8 (c) The regulations adopted under (a) of this section may not provide for the
9 granting of a furlough of any type to a prisoner sentenced to a mandatory 99-year term
10 of imprisonment under AS 12.55.125(l) unless the prisoner is at all times in the direct
11 custody of a correctional officer while the prisoner is away from the correctional facility.

12 * Sec. 16. AS 33.30.161(b) is amended to read:

13 (b) To be eligible to serve time in a correctional restitution center, the prisoner

14 (1) must be employable or eligible to work on community service
15 projects approved by the commissioner and agree to secure employment or participate in
16 community service projects and obey the rules of the center,

17 (2) may not be serving a sentence for conviction of an offense

18 (A) involving violence or the use of force;

19 (B) under AS 11.41.320, 11.41.330, or AS 11.56.740;

20 (3) may not have been convicted of a felony offense, in the state or
21 another jurisdiction, involving violence or the use of force; [AND]

22 (4) may not have been convicted of an offense under AS 11.41.410 -
23 11.41.470 or an offense in the state or another jurisdiction having elements substantially
24 identical to an offense under AS 11.41.410 - 11.41.470; and

25 (5) may not have been sentenced to a mandatory 99-year term of
26 imprisonment under AS 12.55.125(l).

27 * Sec. 17. APPLICABILITY. References to prior or previous convictions in this Act apply
28 to all convictions occurring before, on, or after the effective date of this Act.

29 * Sec. 18. AS 12.55.125(j), amended by sec. 5 of this Act, has the effect of amending Alaska
30 Rule of Criminal Procedure 35 by permitting a court to reduce or modify a mandatory sentence
31 of imprisonment of 99 years imposed under AS 12.55.125(l) after the defendant has served one-

necessary for exposure factor?

1 half of the mandatory term.

STATE OF ALASKA
1994 LEGISLATIVE SESSION

FISCAL NOTE

BILL NO.: CSHB 334 (JUD)

Revision Date:	March 21, 1994	Dept. Affected:	Corrections
Title:	Three Strikes	BRU:	All
Sponsor:	Rep. Bunde	Component:	All
Requestor:	House Finance	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
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CHANGES IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0
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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						
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: Please see the attached explanation. Fiscal impact will be significant, but delayed beyond the years measured in this fiscal note.

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: 2/22/94
 Date: 3/22/94
 Page 1 of 5

The bill would mandate a life sentence for a conviction for an unclassified or Class A felony if the offender has been previously convicted of two or more separate "most serious" felonies: any unclassified or Class A felony (or attempt, conspiracy or solicitation regarding an unclassified or Class A felony), or Assault II, Sexual Assault II, Sexual Abuse of a Minor II, or Unlawful Exploitation of a Minor. Offenders sentenced to mandatory 99 year sentences would not be eligible to earn statutory good time. Prisoners sentenced under the provisions of the bill would be ineligible for parole or other forms of early or graduated release, but could apply for a modification or reduction of sentence after serving half of the 99-year mandatory sentence (49.5 years.)

Assumptions

1. According to the department's data, approximately 19% of the prisoners incarcerated on November 4, 1993 had been convicted of three or more felonies. A June 30, 1993 profile indicated that approximately 1,052 (almost 40%) of the prisoners were incarcerated for a "most serious felony." [Estimates from the Alaska Judicial Council and from the department's OBSCIS system suggest that only 10% of incarcerated felons have been convicted of prior, multiple, most serious felonies.] To check these assumptions, ten cases were randomly selected from the list of prisoners incarcerated for unclassified and class A felonies, and criminal histories were checked according to file information. One out of the ten had a prior most serious felony conviction. Criminal justice information records are not available to discern whether or not prior convictions were separate, consecutive offenses. The department does not have the resources to conduct individual file reviews to determine this factor and therefore assumes the 10% estimate is correct.
2. The 99 year sentence is assumed to be a "life" sentence. The estimated lifespan of a male, by the year 2000, is estimated to be 73.5 years, according to the United States Statistical Abstract. The estimated age at the time of conviction for a most serious felony is estimated to be 28 years, according to the Alaska Judicial Council. Thus, those sentenced under this bill would be incarcerated for 45.5 years, rounded up to 46 years. (Age for males is used, since the prison population is over 95% male.) If allowed to earn statutory good time on a 99 year sentence, the prisoner would still have to serve 66 years. Furlough eligibility would not occur until the prisoner had served 63 years, with good time, and sentence modification allowed under the bill would not occur until after serving 49.5 years. Since the average prisoner would be dead prior to meeting these requirements, the provisions governing good time, furlough, and sentence modification are assumed to be irrelevant.

3. The estimated length of incarceration for applicable crimes under current law is listed in the table below, with the associated increase based upon sentencing under this bill. The current average lengths of incarceration for unclassified and Class A felonies are based upon data from the department's OBSCIS system on current prisoners.

Offense Category	Current Length of Incarceration	Proposed Incarceration	Difference	% increase
Unclassified: Murder I, Murder II, Kidnapping	over lifespan	over lifespan	0	0
Unclassified: MICS I, SA I, SAM I	13 years	46 years	+ 33 years	+ 354%
A felonies	12 years	46 years	+ 34 years	+ 383%

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

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

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

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

Operating Expenses and Capital Expenses

There will be long-term impact and expenses which the department will have to address through the budget process in subsequent years, because the impact will not occur during the six-year period addressed in the fiscal note process.

The table below calculates the increased costs of all the categories of offenders whose actual length of stay would be increased under the bill. Although the increases for various categories of offenses would result over varying periods of time, this method arrives at an aggregate increase in population in order to predict future needs for the prison system. It is assumed that 10% of the unclassified and class A felony population would increase according to the percentage increase in sentence lengths shown in the table under Assumption 3. Murder I, Murder II, and Kidnapping are excluded since the current average sentence already exceeds the expected lifespan.

Offense	Total in DOC on 6/30/93	10% (3rd repeaters)	Current Prisoner-days	% sent. length increase	Additional Prisoner-days
Unclassified Felonies					
SAM I	153	15.3	5,584.5	X 3.54	19,769.1
SA I	178	17.8	6,497		22,999.4
MICS I	9	.9	328.5		1,162.9
TOTAL UNCLASSIFIED					43,931.4
Class A Felonies					
Assault I	57	5.7	2,080.5	X 3.83	7,968.3
Manslaughter	28	2.8	1,022		3,914.3
Robbery I	101	10.1	3,686.5		14,119.3
Arson I	6	.6	219		838.7
Escape I	2	.2	73		279.6
MIW I	20	2	730		2,795.9
TOTAL A FELONIES					29,916.1
TOTAL ADDITIONAL PRISONER-DAYS					73,847.5

This suggests that the actual prison population would, over time, increase by 73,848 prisoner-days, or 202 prisoners as a result of the increased sentence lengths required by the bill.

73,848 prisoner-days X \$113 per day = \$ 8,344,824 operating expenses

202 beds X \$160,000 per maximum bed = \$ 32,320,000 capital expenses

TOTAL ADDITIONAL EXPENSE = \$ 40,664,824

This increase would be spread over the 46-year lifespan expectancy of the first batch of prisoners sentenced to 99 years, less the 12 years the first batch would be expected to receive, on average, under current law, or a 34 year period between FY07-41. Spread over those years, the average yearly cost would be approximately \$1,196,024.

This figure does not include any inflation factor and does not assume any increase in the rate of convictions/incarcerations. It does not account for increases in medical costs for a larger, aging population.

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

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

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE FINKELSTEIN

TO: HB 38

- 1 Page 6, line 19:
- 2 Delete "or class A"

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE FINKELSTEIN

TO: HB 38

- 1 Page 2, line 18, through page 3, line 3:
- 2 Delete all material.

- 3 Renumber the following bill sections accordingly.

- 4 Page 3, line 24:
- 5 Delete "or class A"

- 6 Page 7, line 31:
- 7 Delete "sec. 5"
- 8 Insert "sec. 4"

'Three strikes' overwhelms California courts

By WILLIAM CLAIBORNE
The Washington Post

LOS ANGELES — California's tough "three strikes" statute, signed into law by Republican Gov. Pete Wilson a year ago today, is straining the state's criminal justice system, clogging court calendars and jails, and forcing fewer prosecutions and the early release of nonviolent offenders.

Enacted with overwhelming legislative and popular support, the law has become a symbol of national determination to crack down on crime by removing from the streets habitual criminals responsible for most serious offenses. It requires people with a serious felony conviction on their record to receive twice the normal sentence when convicted of a second felony — and 25 years to life for a third.

The verdict is still out on the law's effect on serious crime, criminal justice officials say. But it has had a dramatic impact on state courts, drastically reducing the number of accused felons willing to offer guilty pleas in exchange for reduced charges, because they fear receiving 25 ye. rs to life either now or for a possible future conviction.

While more than 90 percent of felony cases were plea-bargained before the law, now 14 percent of second felonies and 6 percent of third felonies are being disposed of by guilty pleas, state officials say.

The law is similar to statutes enacted or under consideration in about half the states. Endorsed by ballot initiatives — and by President Clinton during his first State of the Union address — the concept could be a centerpiece of Wilson's presidential bid if he decides to run.

Public attention has focused largely on a handful of cases — most recently that of a habitual offender sentenced last week to 25 years to life for stealing a slice of pizza from some children. But the cumulative impact on the criminal justice system is just now becoming clear.

"The economic ramifications are going to be enormous, but I don't think people realize that yet," said Robert Pugsley, a criminal justice expert at the Southwestern University School of Law.

State officials have focused on long-range costs of expanding prison capacity to accommodate three-strikes offenders. But local officials contend the state has ignored the plight of localities already burdened by the costs of prosecuting, providing public defense for and detaining during trial an influx of offenders.

Secretary of State Bill Jones, a Republican assemblyman when he was the law's principal author, said, "I understand the courts will be crowded for a while. But the only other option is to run them in and out of prison like we've been doing. . . . This message is: Stop doing it, or get out of the state."

A survey by the District Attorneys Association estimated that six months after the law's enactment, more than 7,400 second- and third-strike cases had been filed. However, at the end of November 148 offenders statewide had been convicted of a third-strike felony, largely because defendants were demanding jury trials and creating a huge backlog, according to the governor's office. At the same time, there were nearly 5,000 people in state prisons with second-strike convictions.

MEMORANDUM IN SUPPORT

TO: The Honorable Jeannette James, Chair, House State Affairs Committee
The Honorable Con Bunde, Sponsor
The Honorable Members of the House State Affairs Committee

DATE: February 9, 1995

SUBJECT: House Bill 38, A BILL FOR AN ACT ENTITLED :
"An Act relating to criminal sentencing; relating to the availability for
good time credit for offenders convicted of certain first degree
murders; relating to mandatory life imprisonment..."

Violent criminals who willfully violate the law and prey on the public must be punished. And those who continue to commit violent crimes, even after a felony conviction, should not be given the opportunity to harm innocent citizens again.

It is with great hopes for its success in Alaska that NRA CrimeStrike and the NRA members announce our support for House Bill 38, a bill commonly referred to as "Three Strikes, You're Out." We applaud the sponsor, Representative Bunde, for addressing the serious issue of crime and punishment, and urge the State Affairs Committee to favorably report this bill.

The issue of crime has captured the national attention, and rightly so. Every 22 minutes a murder is committed; a rape every five minutes; and a robbery every 47 seconds.

Even Alaska is not immune. In Alaska, a woman is raped every 15 hours; someone is robbed every thirteen hours. In fact, a violent crime is committed in Alaska every two hours and fifteen minutes. Passage of "Three Strikes, You're Out" will help to alleviate the effects of crime on the citizens of Alaska by locking up incorrigible criminals for life.

House Bill 38 is part of a state legislative trend to protect society by incarcerating those most likely to victimize innocent citizens again. Washington State led the way with passage of "Three Strikes" in 1993; California, Georgia, and Virginia, and others passed versions in 1994; and Montana, Ohio, South Carolina, New York and other state legislatures will join Alaska in considering such legislation this year.

Representative Bunde's bill builds upon the foundation of the "Three Strikes" laws passed elsewhere, and includes some unique provisions like the "Old Age Safety Valve" found in sections 5 and 18. In HB 38, a criminal sentenced under the "Three Strikes" law may apply for, and the court may approve, a 50% reduction in sentence after half the time has been served. This provides the correctional department and the state the ability to release those prisoners who have served at least 49 years, and have most probably outlived their proclivity to commit crimes.

Repeat offenders are a serious threat to public safety. According to the National Center for Policy Analysis, the average criminal commits 187-287 crimes a year. With the passage of HB 38, the threat to the public is substantially reduced by taking these repeat offenders off the street.

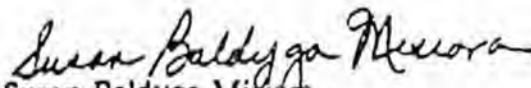
Increased incarceration for violent criminals works to reduce crime, and will work in Alaska if given a chance. As the attached chart demonstrates, Alaska's violent crime rate has roller-coasted as incarceration has declined or increased. When Alaska jailed more criminals, the crime rate decreased. With "Three Strikes" assuring that repeat offenders remain behind bars, the crime rate will show decline.

California's decrease in its violent crime rate in the last year is due in part to its passage of "Three Strikes": California Attorney General Dan Lungren reported that commission of major crime in California dropped 7.7% in the first six months of 1994, with homicide down 11.4%, rape down 7.8% and robbery dropping 11.5%. Alaska can hope for similar results.

Though a fiscal commitment must be made to put a criminal in prison for life, in the long run, "Three Strikes" will save Alaska money. The National Center For Policy Analysis reports that it costs taxpayers about \$25,000 a year to keep a criminal in prison. If that criminal is out on the street, committing the 187-287 crimes referenced above, the cost to society is approximately \$2,300 per crime. Added together, one career criminal could cost Alaska \$430,000 annually. California estimates that "Three Strikes" will save taxpayers \$29.5 billion over five years, as the enclosed handout indicates.

Contrary to popular opinion, making the decision to put repeat violent offenders in jail for life is not an easy decision. It requires the political will to stand up against the nay-sayers who preach, despite the overwhelming evidence to the contrary, that increased jail time is not the answer. The introduction, and subsequent passage, of HB 38 proves that Alaska has that will. Again, we respectfully urge a favorable report.

Respectfully submitted,


Susan Baldyga Misiora
Manager, CrimeStrike State Legislative Affairs


Brian Judy
Alaska State Liaison

**DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

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Mail Stop 3101

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

MEMORANDUM

January 17, 1995

SUBJECT: Sectional Summary HB 38 (Work Order No. 9-LS0187A)

TO: Representative Con Bunde
Attn: Pattie Swenson

FROM: Jerry Luckhaupt *JEL*
Legislative Counsel

You have requested a sectional summary of the above-described bill, please be advised that a sectional summary is not an authoritative statement of a bill and what it does - the bill is the best statement of its contents.

Section 1 of the bill provides findings and intent.

Section 2 of the bill amends AS 12.55.025(e) by clarifying that mandatory 99-year terms for certain three time felony offenders, added by sec. 6 of the bill, do not affect the court's ability to impose consecutive sentences.

Section 3 of the bill amends AS 12.55.125(c) by providing a conforming change to make it clear that the presumptive sentences provided in that subsection only apply if the defendant is not subject to sentencing as a third most serious felony offender under Sec. 6 of the bill.

Section 4 of the bill amends AS 12.55.125(i) by providing a conforming change to make it clear that the presumptive sentences provided in that subsection only apply if the defendant is not subject to sentencing as a third most serious felony offender under Sec. 6 of the bill.

Section 5 of the bill amends AS 12.55.125(j) to provide that a person sentenced to a mandatory term of 99 years under sec. 6 of the bill may apply to the court for a sentence reduction after serving one half of the sentence.

Section 6 of the bill amends AS 12.55.125 by providing a new subsection (l) that requires a court to sentence a defendant convicted of an unclassified or class A felony to a mandatory 99-year term of imprisonment when the defendant has been previously convicted of at least two most serious felonies. This section also provides that the mandatory 99-year term may not be suspended or reduced.

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services
Department of Education
State of Alaska

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LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

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MEMORANDUM

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Section 6 of the bill amends AS 12.55.125 by providing a new subsection (l) that requires a court to sentence a defendant convicted of an unclassified or class A felony to a mandatory 99-year term of imprisonment when the defendant has been previously convicted of at least two most serious felonies. This section also provides that the mandatory 99-year term may not be suspended or reduced.

Section 7 of the bill amends AS 12.55.145(a) to explain how a conviction can qualify as a prior most serious felony conviction for purposes of sentencing under sec. 6 of the bill.

Section 8 of the bill amends AS 12.55.145(c) to provide the procedure by which a defendant may challenge the use of a conviction as a prior most serious felony conviction at sentencing under sec. 6 of the bill.

Section 9 of the bill amends AS 12.55.145(d) relating to the burden of proof of showing that a conviction is a prior most serious felony conviction for purposes of sentencing under sec. 6 of the bill.

Section 10 of the bill amends AS 12.55.145 by adding a new subsection (f) that explains when a prior conviction has occurred for use at sentencing under AS 12.55.145.

Section 11 of the bill amends AS 12.55.155(c)(20) by providing a conforming change to the change made in sec. 7 of the bill.

Section 12 of the bill amends AS 12.55.185 by adding a new paragraph (14) that provides a definition of what is a "most serious felony."

Section 13 of the bill amends AS 33.16.090(b) to provide that a person receiving a mandatory 99-year term under AS 12.55.125(l) is not eligible for discretionary parole during the entire 99-year term.

Section 14 of the bill amends AS 33.20.010(a) to provide that a person receiving a mandatory 99-year term under AS 12.55.125(a)(after the effective date of this bill) or AS 12.55.125(l) may not earn good time deductions from the 99-year term.

Section 15 of the bill amends AS 33.30.101 by adding a new subsection (c) that provides that furlough regulations may not allow for the granting of a furlough to any inmate serving a mandatory 99-year term under AS 12.55.125(l) except in certain limited instances.

Section 16 of the bill amends AS 33.30.161(b) by adding a new paragraph (5) that provides that an inmate serving a mandatory 99-year term under AS 12.55.125(l) may not serve the inmate's sentence in a correctional restitution center.

Section 17 of the bill provides an applicability section.

Section 18 of the bill provides notice that the change made in sec. 5 of the bill has the effect of modifying Alaska Rule of Criminal Procedure 35 which thereby necessitates a two-thirds vote.



REPRESENTATIVE CON BUNDE
CO-CHAIR HEALTH, EDUCATION
& SOCIAL SERVICES
VICE-CHAIR RULES

Alaska State Legislature
House of Representatives

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DURING INTERIM:
716 WEST 4th AVENUE
ANCHORAGE, ALASKA 99501-2133
1 (907) 258-8168

**SPONSOR STATEMENT
HB 38**

HB 38 provides a mandatory 99-year sentence for a specific group of offenders who have two separate prior class A or unclassified felony convictions.

Under this proposed legislation discretionary parole and good time sentence reductions are not available to offenders who are sentenced to a 99 year term. However, HB 38 allows those with a 99-year sentence to ask the court for a reduction in sentence after they have served 50 years of their sentence. This provision is similar to what is allowed when a murderer is convicted of a 99-year sentence.

This proposed legislation gives prosecutors some discretion in the decision to pursue the 99-year sentence. This will avoid unjust results in certain cases where the evidence may be weak. This provision will also allow the prosecutor some flexibility to proceed with the normal presumptive sentencing provisions when necessary.

There is a cost for keeping a person incarcerated for 99 years. This legislation is crafted to keep cost to a minimum and save the state money. Strong punishments can shape behavior and deter crime. Offenders may find they want to move to a state without a 3 strikes statute. Some offenders may decide the third strike is not worth the rest of their life, and change their behavior. Additionally, studies have shown that the recidivism rates for three time offenders let back into society are between 65-76%. These offenders are taking up costly time in our judicial system by committing the same crimes again and again. If the revolving door is stopped the associated costs will decrease.

It is time to close the revolving door too many repeat offenders depend upon. This proposed legislation will make our state a safer place. I urge your positive consideration of this legislation.

HIGHLIGHTS

In 1960:

- ❖ There was a total of 3,384,200 million crimes reported to law enforcement authorities.
- ❖ The chance of being a victim of a crime was 1 in 53.
- ❖ There was a total of 288,460 million violent crimes reported to law enforcement authorities.
- ❖ The chance of being a victim of a violent crime was 1 in 622.
- ❖ While crimes were escalating throughout the 1960s, the actual prison population was on the decline: the aggregate national prison population fell from 190,000 in 1960 to 174,000 in 1972.

By 1980:

- ❖ There were 13,408,300 million crimes reported to law enforcement authorities.
 - ❖ The crime rate had risen over 215 percent above its 1960 level.
 - ❖ The chance of being a victim of crime was 1 in 17.
 - ❖ There were 1,344,520 million violent crimes reported to law enforcement authorities.
 - ❖ The violent crime rate had risen over 270 percent. The chance of being a victim of a violent crime was 1 in 168.
- ❖ From 1960 to 1980, the states that had the largest increases in imprisonment rates had the smallest increases in crime rates; while the states that had the sharpest decline in their incarceration rates had the largest increases in crime rates. The trend continued from 1980 to 1992.
- ❖ While the trends in each state are consistent, great differences exist among the states as to the degree of change. Between 1960 and 1980 the crime rate in California increased more than 125 percent, while in New Hampshire the crime rate increased over 579 percent.

By 1992:

- ❖ Crime rates had increased but had been curbed. There was a total of 14,438,200 million crimes reported to law enforcement authorities.
 - ❖ The crime rate was 200 percent above its 1960 level.
 - ❖ The chance of being a victim of a crime was 1 in 18.
 - ❖ Violent crime had soared to 371 percent above its 1960 level.
 - ❖ There were 1,932,246 million violent crimes reported to law enforcement authorities.
 - ❖ The chance of being a victim of a violent crime was 1 in 132.
- ❖ Since 1987, the percentage of juvenile arrests for violent crimes has increased more than 50 percent.
- ❖ In 1991, people under the age of 21 were responsible for more than one-third of all murders in the country.
- ❖ Today, a woman faces four times the chance of being raped than in 1960. In 1960 a woman's chance of being raped was 1 in 10,400; in 1980 it was 1 in 2,717.
- ❖ In the ten states with the highest increases in incarceration rates between 1980 and 1992, crime rates were substantially reduced. Even so, in all ten states their crime rates are more than double their 1960 levels. The states are: New Hampshire, New Jersey, California, Connecticut, Massachusetts, Arizona, Rhode Island, Idaho, Alaska, and Delaware.
- ❖ Approximately, one-third of all violent crimes are committed by an offender who is on probation, parole or pretrial release. This year more than 1,200 violent crimes will be committed every day by convicted felons on probation or parole; almost 700 more will be committed by a defendant on pretrial release.
- ❖ In 1990, the average prison sentence for all felony offenses which resulted in a prison sentence was 6 years, months. However, the actual time served in prison for that sentence was 2 years, 1 month, only one-third of the sentence imposed.
- ❖ In 1990, the average prison sentence for violent offenses which resulted in a prison sentence was 9 years, 11 months; the time served was 3 years, 9 months, or 38 percent of the sentence imposed.
- ❖ From 1960 to 1991 the correctional expenditure per adult inmate increased by nearly double.

❖ In California, the Federal Court has dictated the number of changes of clothes which must be provided inmates each week.

It is unlikely that this understanding of the Eighth Amendment (which forbids "cruel and unusual punishment") is within the intent of the U.S. Constitution. The extraordinary burdens placed by Federal Courts on state corrections authorities have contributed to an escalation in prison costs. From 1960 to 1990, per-inmate operating costs (current expenditures) nearly doubled (inflation adjusted.)

Immense savings in direct costs to the public, as well as a significant reduction in crime with its consequent savings in both financial cost and human suffering, could be realized simply by putting and keeping more convicted offenders in prison. This is not an impossible task.

If the cost per inmate had remained within the inflation rate since 1960, nearly an additional \$5.5 billion would have been available in 1990 alone for additional corrections capacity, tax reductions, or other public services. Some states achieved this level of cost control and better; the operating cost per inmate actually decreased in New Hampshire, Delaware and Oregon.

When prisoners are provided better institutional living conditions than they have available outside of prison, one of the primary purposes of punishment is undercut. "The infliction of disutility...is one of the objectives of criminal punishment; only if the only objective of punishment were incapacitation could it be argued that living conditions should be as comfortable in prison as outside."³



TABLE 2.1: AVERAGE ESTIMATED TIME SERVED BY TYPE OF OFFENSE

Offense	Percent of Sentence Served	Mean Prison Sentence	Estimated Time Served
All Offenses	33.0%	6 yrs., 3 mos.	2 yrs., 1 month
Violent Offenses	38.0%	9 yrs., 11 mos.	3 yrs., 9 mos.
Murder	43.0%	20 yrs., 3 mos.	8 yrs., 8 mos.
Rape	39.0%	13 yrs., 4 mos.	5 yrs., 2 mos.
Robbery	39.0%	9 yrs., 7 mos.	3 yrs., 9 mos.
Aggravated Assault	34.0%	6 yrs., 6 mos.	2 yrs., 2 mos.
Other	34.0%	7 yrs., 1 month	2 yrs., 5 mos.
Property Offenses	29.0%	5 yrs., 5 mos.	1 year, 7 mos.
Burglary	32.0%	6 yrs., 8 mos.	2 yrs., 2 mos.
Larceny	27.0%	4 yrs., 1 month	1 year, 1 month
Fraud	28.0%	4 yrs., 10 mos.	1 year, 4 mos.
Drug Offenses	29.0%	5 yrs., 6 mos.	1 year, 7 mos.
Possession	27.0%	4 yrs., 1 month	1 year, 1 month
Trafficking	31.0%	6 yrs., 2 mos.	1 year, 11 mos.
Weapons Offenses	40.0%	4 yrs., 2 mos.	1 year, 8 mos.

Source: Bureau of Justice Statistics, "Felony Sentences in State Courts, 1990"

³ Davenport v. DeRobertis, 844 F.2d 1310, 1313 (7th Cir. 1988) (Posner, J.).

'Revolving door' syndrome feeds cycle of violence

By Sam Vincent-Meddis
USA TODAY

In Washington, D.C., a teenager facing charges of deadly assault goes joy-riding while free on \$1,000 bond. He fatally shoots a woman in another car because he feels like "bustin' somebody."

In Hugo, Okla., a 39-year-old with a record of assault and property crimes buys an assault weapon and kills two people, wounds three others, then kills himself.

Many blame the easy access to guns for such carnage. But similarly under fire is a justice system that, to critics, seems to do little more than recycle criminals to the streets.

That outrage has sparked calls for a crackdown on repeat criminals nationwide: Washington state voters approved stiffer sentencing last year, and California voters consider an initiative this fall.

About 30 states are weighing similar measures, most of which provide long sentences without early parole for many repeat offenders.

"People have just had it — they don't want to live with the fear anymore," says Paul McNulty of the First Freedom Coalition, a group that advocates stiff crime penalties.

Looking at the numbers, repeat crime seems to be becoming the nationwide norm:

▶ About 60% of prison inmates have been behind bars before, according to a U.S. Bureau of Justice Statistics study; 44% were on probation or pa-

'3 strikes, you're out' likely in California

... In what could spark a new wave of citizen action nationwide, California voters are expected to approve a crackdown on career criminals in a November 1994 ballot measure.

The measure, known as "Three Strikes and You're Out," would double sentences for criminals convicted of second serious felonies — and require a minimum of 25 years to life for a third offense.

Thirty other states are considering similar measures to toughen sentences for repeat offenders.

Gov. Pete Wilson supports the concept, and supporters appear to have easily topped the 385,000 signatures needed to place it on the 1994 ballot.

The initiative has been pushed by Fresno photographer Mike Reynolds, whose 18-year-old daughter was killed by a parolee in June.

role when re-arrested.

▶ A mere 108,000 criminals in one federal study had a staggering 1.9 million arrests between them.

Recent U.S. and Pennsylvania studies found about 6% of criminals commit nearly 70% of violent crimes.

Targeting those criminals sounds simple. The reality is tougher.

COMPLIMENTS OF THE
ALASKA STATE LIBRARY

Violent crime up fivefold from '60s, legislators report

Cox News Service

WASHINGTON — Americans are almost five times more likely to be the victim of a violent crime in the 1990s than in 1960, the nation's state legislators reported Wednesday.

But "getting tough works," they said. States that increased their incarceration rates the most tended to reduce their violent crime rates the most, the lawmakers

Report Card on Crime and Punishment" showed.

"The message here is unequivocal. Leniency is associated with higher crime rates; getting tough brings crime rates down," said Samuel Brunell, executive director of the American Legislative Exchange Council, the nation's largest bipartisan association of state legislators.

The group released a study analyzing FBI crime statistics be-

tween 1960 and 1992 that shows how America has become a dramatically more dangerous place to live during the past three decades. In 1960, an American's chances of being a victim of a violent crime were 1 in 622. By 1992, the odds were 1 in 132.

"When the odds of being a victim of a violent crime increase five times over 32 years, there is an obvious problem with Ameri-


ca's criminal justice system," said Brunell.

"Today, criminals' rights are protected over victims," he said. "The result is our schools, streets, neighborhoods and homes are unsafe, and crime is clearly the leading cause of America's decaying social fabric."

The report indicated that violent crime could be reduced by keeping known criminals off the streets.

ZERO DOWN!

19	\$9,261	\$7,086	\$7,834
Cost*	Total Cost*	Total Cost*	Total Cost*



**All Used Cars
Come With A
Free 60-Day
Power Train
Warranty And
A Free 30-Day
Trial Exchange
Policy!**

'85 Nissan Pulsar \$49/Mo.
#11200 • Sale Price \$1,695 • \$517 Down
24 mos @ 8.25% • Deferred Pymt. \$1,693

'92 Chevy Corsica \$129/Mo.
#R649A • Sale Price \$6,995 • \$1,763 Down
48 mos @ 8.25% • Deferred Pymt. \$6,192

'87 Olds. Cutlass \$59/Mo.
#1107CP • Sale Price \$1,995 • \$698 Down
24 mos @ 8.25% • Deferred Pymt. \$2,114

'84 Chevy Pick-up \$89/Mo.

Western District of Washington¹, called on the LECC Advisory Board² to form a Triggerlock Task Force. This Task Force will meet on a regular basis to develop and implement strategies to "lock the triggers" of violent criminals - permanently. These criminals, especially repeat offenders, have demonstrated that only incarceration keeps them from committing new crimes. Recent FBI statistics reflect that violent crime was up 10 percent in 1991. Further studies show that 6 percent of the criminal population is committing 70 percent of the crime. One of the most effective ways to combat the armed criminal is to target these individuals and vigorously investigate, prosecute and imprison them. The Triggerlock Task Force will actively pursue drug traffickers and violent offenders, such as murderers, rapists, gang leaders -- virtually anyone who uses a gun in the commission of a crime is a potential target.

¹The Western District of Washington is comprised of the 19 counties West of the crest of the Cascades - Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Mason, Pacific, Pierce, San Juan, Skagit, Skamania, Snohomish, Thurston, Wahkiakum and Whatcom Counties.

²The LECC Advisory Board is comprised of representatives from throughout Western Washington. City Agencies: Patrick Fitzsimons, Chief, Seattle Police Department; Rod Frederiksen, Chief, Vancouver Police Department; Don Pierce, Chief, Bellingham Police Department. County Agencies: C. Dan Clem, Kitsap County Prosecutor; Norm Maleng, King County Prosecutor, II. Steward Menefee, Grays Harbor County Prosecutor; Jim Scharf, Snohomish County Sheriff. State Agencies: Ken Eikenberry, Washington State Attorney General; George Tellevik, Chief, Washington State Patrol. Federal Agencies: William D. Gore, Special Agent-in-Charge, Federal Bureau of Investigation; Dixon McClary, Special Agent-in-Charge, Environmental Protection Agency; Ray McKinnon, Special Agent-in-Charge, Drug Enforcement Administration; Chris Nelson, Special Agent-in-Charge, Bureau of Alcohol, Tobacco and Firearms; Noreen Skagen, United States Marshal; Steve Carlisle, LECC Manager. Canadian Agency: John Sebastian, Chief Superintendent, Royal Canadian Mounted Police.

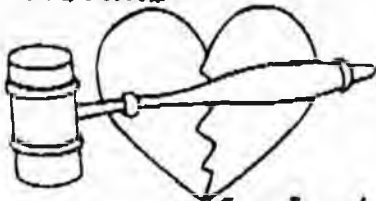
There are times when state laws do not provide appropriate sanctions against gun-using offenders. Federal prosecutions emanating from state violations can be of enormous help. Project Triggerlock has a simple, effective design - federal firearms laws carry tough penalties. They will now be fully employed against gun-using violators not only of federal laws, but of certain state and local laws as well. Absent evidentiary problems, there will be no plea bargains.

Since career criminals and violent offenders are normally encountered while committing street crime, their cases are usually investigated and prosecuted at the state and county levels. Project Triggerlock is not intended to compete with or supplant the traditional local response to violent criminals and career criminals. Rather, it is intended to assist state and local authorities in this area of enforcement by providing a method to refer those violent offenders who use or possess a firearm and are such a menace to their communities that a lengthy, mandatory prison term is the only appropriate response.

STRATEGY

The Triggerlock Task Force for the Western District of Washington will focus on three goals:

VICTIMS



Representative Sharon Bunde
State Capital, Room 108
Juneau, Alaska 99801-1182
Fax 1 (907) 465-3871

Jan A. 1994

HB 38

Dear Representative Bunde,

Victims for Justice strongly supports "3 Strikes, You're Out". The "revolving door" system costs the state an enormous amount of money in law enforcement and legal fees each year, with no count of cost to the victims. It is time to stop this nonsense!

According to a study done by the Justice Department; of all crimes committed in this nation, only 15-20% of the criminals are apprehended and only 2-3% go to prison. Furthermore, 75-80% of all criminals who are released from prison reoffend within 36 months for the same offense!

Justice Charles L. Weltner sums it up well saying: "Right now a person who has been through the system and is contemplating a crime probably vies things as follows: 1. If I do it I won't get caught 2. If I get caught I won't get prosecuted, 3. If I get prosecuted I won't get convicted, 4. If I get convicted I won't go to prison, 5. If I go to prison I won't be there for very long". Given the statistics above, this assessment is real.

Criminals today are more violent than even a decade ago, and the cost to society is greater than the cost of keeping an offender incarcerated. Court costs are easily calculated but the cost to the victim is impossible to calculate. Victims never receive proper compensation or even proper justice through the system. With Alaska's modified matrix system DOC is releasing more serious offenders earlier, which will lead to more victimization. It is time to stop this madness! Please pass this important legislation! Build the necessary prisons, not resorts, but prisons and keep the repeat offenders in!

The prison system is told not heed the victims' pleas and public safety has been disregarded when releasing criminals. DOC claims to save money with early release into halfway houses, however the prior tracking system fails in this maze. Strikes Legislation will eliminate the errors of early release of repeat and dangerous offenders, which will ultimately save us millions in law enforcement, judicial, insurance, and victim costs.

Thank you for sponsoring this important bill!
Sincerely,

Sharon Nahofney
Janice Lienhart

A handwritten signature in cursive script, appearing to read "Sharon Nahofney".

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 38

Revision Date: _____ Dept. Affected: Department of Law
 Title: "...relating to criminal sentencings...mandatory life imprisonment, parole, good time credit, pardon, commutation..." BRU: Prosecution
 Sponsor: Representative Bunde Component: Third District/Fourth Dist.
 Requester: Representative Bunde COMPONENT SERIAL NO. Criminal Appeals & Special Prosecution
 0087,88,90

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	254.8	254.8	254.8	254.8	254.8	254.8
TRAVEL	15.0	15.0	15.0	15.0	15.0	15.0
CONTRACTUAL	30.2	30.2	30.2	30.2	30.2	30.2
SUPPLIES	9.9	9.9	9.9	9.9	9.9	9.9
EQUIPMENT	19.5					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	329.4	309.9	309.9	309.9	309.9	309.9

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	329.4	309.9	309.9	309.9	309.9	309.9
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	329.4	309.9	309.9	309.9	309.9	309.9

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

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

The bill also amends AS 12.55.185 to provide that "most serious felony" means any unclassified or class A felony or a felony attempt or conspiracy to commit any unclassified or class A felony.

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

Prepared by: Richard I. Pegues, Director
 Division: Administrative Services Division
 Approved by Commissioner: Bruce M. Botelho, Attorney General
 Agency: Department of Law

Phone: 465-3672
 Date: 1/30/95
 Date: 1/30/95

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO: HB 38

ANALYSIS CONTINUATION:

The bill does provide that a defendant sentenced to a mandatory term of imprisonment of 99 years may apply for a modification or reduction of sentence after serving one-half of the mandatory term without consideration of good time credit.

The Criminal Justice Working Group believes that prosecution of between ten and thirty defendants will occur each year, where "most serious felony" circumstances are present triggering a mandatory 99-year sentence. We believe the department will seek mandatory 99-year sentences in about 15 cases each year. Consequently, the Department of Law will be impacted in the following ways. First, because the bill provides for a mandatory 99-year prison term without any chance for reduction, and in many cases the sentence will be more severe than the sentence for first degree murder, the stakes for the defense will be much higher resulting in much more difficult litigation for the prosecution and the defense. Second, the defense can be expected to attack the underlying prior convictions seeking post conviction relief under Criminal Rule 35.1, and seeking relief using collateral habeas corpus attacks in federal court. Litigation disposing of the attacks on the underlying prior convictions must be completed before trial on the third felony triggering the mandatory 99-year prison term can be conducted. Third, defendants can be expected to wage a more vigorous defense (and seldom plead guilty) to any charge included in this bill as a most serious felony offense, because of the consequences of prior convictions. As a result, prosecutor time will also increase substantially for both first and, in particular, second most serious felony offense prosecutions.

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 38

ANALYSIS CONTINUATION:

Component Analysis

	<u>0087</u> <u>Third District</u>	<u>0088</u> <u>Fourth District</u>	<u>0090</u> <u>Crim. Appeals</u>	<u>Total</u>
Personal Services	81.3	92.2	81.3	254.8
Travel	7.5	7.5	0.0	15.0
Contractual	13.6	8.0	8.6	30.2
Supplies	3.3	3.3	3.3	9.9
Equipment	6.5	6.5	6.5	19.5
	_____	_____	_____	_____
Total	112.2	117.3	99.7	329.4

01/30/95

08:09:16.6

PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

PAGE: 1

DEPARTMENT OF LAW

SCENARIO: 3

COMPONENT #: 6501020300 NAME: THIRD JUDICIAL DISTRICT

BRU NAME: PROSECUTION

PCN	UNAUTH PCN	JOB CLASS TITLE	T S	LOCATION NAME	R C	B U	S	R&S BUDG	MOS	SALARY	PREM PAY	BENES	PER.SERV. COSTS	G. F. AMOUNT	
03#030		ATTORNEY III	F	ANCHORAGE	A	XE	AA	22A	12	53304	0	18385	71689.98		
<p>**** JUSTIFICATION: This position will be needed to handle an increased felony caseload when the penalty for driving while intoxicated (or refusing to take a chemical test) for the fourth or more times is raised from a class A misdemeanor to a class C felony.</p>													TRAVEL COSTS 3000.00 CONTRACTUAL COSTS 8600.00 SUPPLIES COSTS 3300.00 EQUIPMENT COSTS 6500.00 OTHER COSTS 0.00 =====		
													TOTAL COSTS 93089.98	71689.98	
													*** FUNDING DETAIL: 1004 GENERAL FUND RECEIPTS 71689.98 =====		
													TOTAL FUNDING	71689.98	
03#031		LEGAL SECRETARY I	F	ANCHORAGE	A	GG	2A	10A	12	24756	0	11367	36123.82		
<p>**** JUSTIFICATION: This position will be needed to handle an increased felony caseload when the penalty for driving while intoxicated (or refusing to take a chemical test) for the fourth or more times is raised from a class A misdemeanor to a class C felony.</p>													TRAVEL COSTS 0.00 CONTRACTUAL COSTS 6000.00 SUPPLIES COSTS 2400.00 EQUIPMENT COSTS 8500.00 OTHER COSTS 0.00 =====		
													TOTAL COSTS	53023.82	36123.82
													*** FUNDING DETAIL: 1004 GENERAL FUND RECEIPTS 36123.82 =====		
													TOTAL FUNDING	36123.82	
03#033		ATTORNEY IV	F	ANCHORAGE	A	XE	AA	24A	12	61008	0	20305	81313.82		
<p>**** JUSTIFICATION: This position will be required to handle prosecutions and appeals of third-time offenders of "most serious" felonies, where the penalty will be mandatory term of imprisonment of 99 years. In many cases, the penalty will be more severe than the sentence for first degree murder. Consequently, a much tougher defense can be expected, including attacks on the underlying prior convictions.</p>													TRAVEL COSTS 7500.00 CONTRACTUAL COSTS 13600.00 SUPPLIES COSTS 3300.00 EQUIPMENT COSTS 6500.00 OTHER COSTS 0.00 =====		
													TOTAL COSTS	112213.82	81313.82
													*** FUNDING DETAIL: 1004 GENERAL FUND RECEIPTS 81313.82 =====		
													TOTAL FUNDING	81313.82	

01/24/95

15:31:51.9

PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

PAGE:

4

DEPARTMENT OF LAW

SCENARIO: 3

COMPONENT #: 6501020600 NAME: CRIMINAL APPEALS & SPECIAL PROSECUTIONS BRU NAME: PROSECUTION

PCN	UNAUTH PCN	JOB CLASS TITLE	Y S	LOCATION NAME	R B S C U	R&S MOS	SALARY BUDG	PREM PAY	BENES	PER.SERV. COSTS	G. F. AMOUNT
03#035		ATTORNEY IV	F	ANCHORAGE	A XE AA	24A	12	61008	0	20305	81313.82

**** JUSTIFICATION:

This position will be required to handle prosecutions and appeals of third-time offenders of "most serious" felonies, where the penalty will be mandatory term of imprisonment of 99 years. In many cases, the penalty will be more severe than the sentence for first degree murder. Consequently, a much tougher defense can be expected, including attacks on the underlying prior convictions.

TRAVEL COSTS	0.00
CONTRACTUAL COSTS	8600.00
SUPPLIES COSTS	3300.00
EQUIPMENT COSTS	6500.00
OTHER COSTS	0.00
TOTAL COSTS	99713.82
	81313.82

*** FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS	81313.82
TOTAL FUNDING	81313.82

**** COMPONENT TOTALS:

FULL TIME NEW POSITIONS	1	TOTAL PERSONAL SERVICES	81313.82
PART TIME/SEASONAL NEW POSITIONS	0		
NON PERMANENT NEW POSITIONS	0	TOTAL COSTS INC. ASSOC COSTS	99713.82
OTHER.....	0		

NUMBER OF NEW POSITIONS IN COMPONENT: 1

FUNDING DATA: G.F. & G.F. MATCH:	81313.82
OTHER FUNDS:	0.00
TOTAL FUNDING:	81313.82

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 38

Revision Date: _____
Title: 'An Act relating to criminal sentencing,
relating to the availability of good time credit
Sponsor: Representative Bunde
Requestor: Representative Bunde

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	82.6	82.6	82.6	82.6	82.6	82.6
TRAVEL	10.0	10.0	10.0	10.0	10.0	10.0
CONTRACTUAL	63.4	63.4	63.4	63.4	63.4	63.4
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	3.6	3.6	3.6	3.6	3.6	3.6
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	160.6	160.6	160.6	160.6	160.6	160.6

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

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

FUNDING SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	160.6	160.6	160.6	160.6	160.6	160.6
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	160.6	160.6	160.6	160.6	160.6	160.6

Estimate of any current year (FY 95) cost: \$ None

POSITIONS:

FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME						
TEMPORARY						

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

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

Phone: 274-1684
Date: _____

Approved by Commissioner: Mark Boyer
Agency: Department of Administration

Date: 1/25/95

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 38

ANALYSIS: (continued)

HB 38 substantially revises the original "Three Strikes" proposals made last year and should significantly reduce the number of criminal defendants susceptible to the 99 year prison term. The changes allow prosecutorial discretion, modify the way prior felony convictions are viewed by the court, and require that the final charge be an A or Unclassified felony.

The Alaska Judicial Council, which provided the statistical analysis related to the original HB 334, has not provided additional statistics regarding the potential impact of the new bill on criminal justice agencies. However, the assumptions regarding the 1994 fiscal notes remain valid. While the numbers of cases will undoubtedly be reduced by the modifications contained in HB 38, there is no question that litigation surrounding "Three Strikes" cases will be lengthy and costly. Costs will be dictated by the high stakes of each case, the necessity for collateral attacks on prior convictions both in State and Federal courts, and the certainty that each of these cases will go to trial.

Because of the necessity of attacking underlying convictions and the treatment of each case as most serious because of the severity of the sanction, litigation will require the filing of numerous motions, not only on the current charge, but in each prior case which resulted in convictions. This will require the review of voluminous records associated with each of the prior felony cases and the initiation of new litigation in each case. If that prior conviction occurred in a different state, it would be necessary to retain out-of-state counsel to launch the collateral attacks upon these convictions. Further, expert testimony regarding the adequacy of prior counsel would probably need to be prepared in many of the cases.

While it is not possible to estimate the indirect impact of such legislation on client decision-making in first and second felony cases, there is little question that some clients will be influenced to go to trial rather than plead guilty when they know that this conviction will make them eligible for life in prison if they commit another felony. More trials mean higher costs for each criminal justice agency.

It should also be noted that these cases will give rise to many conflicts of interest which will necessitate withdrawal of the Public Defender Agency and the assignment of OPA to provide representation. These conflicts of interest will arise because the Public Defender will have provided representation in the earlier cases which resulted in convictions, and which would be subject to collateral attack during the litigation of each "Three Strikes" case.

Because OPA criminal lawyers are currently at maximum caseload capacity, and because of the loss of one such attorney in FY 93, it will be necessary to add an additional experienced attorney to provide representation in these cases throughout the state.

Further, because at least one of these cases each year will require the appointment of conflict counsel at an estimated cost of \$60,000 per case, contractual costs will also be high.

Position Title Attorney IV		No. of Positions 1	Range / Step 24/A	Barg. Unit PX
Time Status PFT	Staff Months 12	Location Anchorage		Election District 8
TYPE OF EXPENDITURE		AMOUNT		
Salary		61.0		
Benefits		21.6		
Premium Pay				
Other				
Total Personal Services	0.0	82.6		
Travel				
Contractual		3.4		
Commodities		1.0		
Equipment		3.6		
Other				
Total Cost		90.6		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts1002				
G.F. Match1003				
General Fund1004		90.6		
I-A Receipts1007				
CIP Receipts1061				
Other				
Justification The Anchorage Office of Public Advocacy presently has four attorney positions devoted to criminal defense. These attorneys are also handling several major cases outside of the Anchorage area as staff coverage and travel is more cost effective than contracting major cases to private attorneys in rural areas. Current caseloads indicate that these four attorneys cannot absorb the additional cases which would result from this legislation. It is necessary that an additional attorney be added to the Anchorage staff to cover the resultant increased caseload.				

8/LEG95/13/FN-OPA38.KP5

Request For New Position

AGENCY ADMINISTRATION
 BRU OFFICE OF PUBLIC ADVOCACY
 COMPONENT OFFICE OF PUBLIC ADVOCACY

FY 96

Page 3 of 3
 Revised Date: _____

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 38

Revision Date: _____

Department Affected: Administration

Title: *An Act relating to criminal sentencing...

BRU: Public Defender Agency

Sponsor: Representative Bunde

Component: Public Defender Agency

Requestor: Representative Bunde

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	317.9	322.8	322.8	322.8	322.8	322.8
TRAVEL	5.0	5.0	5.0	5.0	5.0	5.0
CONTRACTUAL	50.0	50.0	50.0	50.0	50.0	50.0
SUPPLIES	2.5	2.5	2.5	2.5	2.5	2.5
EQUIPMENT	7.5	-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	382.9	380.3	380.3	380.3	380.3	380.3

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
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FUND SOURCE:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	382.9	380.3	380.3	380.3	380.3	380.3
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	382.9	380.3	380.3	380.3	380.3	380.3

Estimate of any current year (FY 95) cost: \$ 0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

See attached

Prepared by: John B. Salemi, Director *John B. Salemi*
Division: Public Defender Agency

Phone: (907) 264-4412
Date: _____

Approved by Commissioner: Mark Bover *Mark Bover*
Agency: Department of Administration

Date: 1/25/95

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HR 38

ANALYSIS:

INTRODUCTION

This proposal requires that certain repeat felony offenders receive prison terms that are the equivalent of life without parole. This is similar to proposals that have either been enacted or are being considered in other states. It is noteworthy that this punishment is harsher than that for first degree murder.

The actual expense is somewhat speculative, in that it is difficult to get a statistical "handle" on how many cases will be subject to "three strikes" punishment. For purposes of this fiscal analysis, the Public Defender Agency will rely on what are believed to be rather conservative estimates generated by the Alaska Judicial Council, which in turn were used by the Department of Law for its fiscal note.

Using those estimates, the Public Defender (PD) expects it will handle between 10 to 15 cases per year where the client will be facing a 99-year term, without parole release potential. Just as homicide cases are currently the most expensive, challenging and labor-intensive prosecutions to defend, these "three strikes" cases will be similarly treated because of the grave consequences attached to a conviction. Trials will be the rule, not the exception. Only the most experienced staff attorneys will be involved in these cases, adding to personal services costs. It is likely the litigation of these matters will involve significant investigation, extensive pre-trial motion work, and long and difficult trials. As a result, the court system and prosecutor's office will be affected.

Research has shown that states with three strikes laws have found fewer cases are "plea bargained." (Plea bargaining was recently reinstated in Alaska.) In those states where three strikes laws have been passed, defendants are less likely to plead to any "strike" felony because of the potential impact the strike could have on them if they reoffend. This translates into more trials, which means more prosecutors, Public Defenders, judges and court personnel to handle those cases. In Los Angeles, the district attorney eliminated entire sections of his office, including Environmental Crimes, Consumer Protection and the Major Fraud Unit, in order to free up enough attorneys to handle impact of the three strikes legislation. See "The Law that Brought the Criminal Justice System to its Knees." *Los Angeles Times* (March 27, 1994).

As part of its investigation and pre-trial workup, the defense will have to consider mounting what are called in the law "collateral attacks" of the prior convictions which trigger the "three strikes" penalty. Put another way, attorneys will necessarily explore the possibility of invalidating one or more of the prior convictions to avoid the 99-year penalty. This effort will involve considerable effort on the part of support staff, hence the request for paralegal assistants in this fiscal note. It will also necessitate contracting with attorneys in other states to collaterally attack out-of-state felony convictions which serve to trigger the 99-year penalty. For example, if a client has a felony conviction in Idaho or California, a determination will have to be made as to whether 1) the conviction qualifies as felony level conduct in Alaska, 2) the conviction was based on a knowing and voluntary plea, 3) the defendant was represented by competent counsel, 4) the conviction was susceptible to some set-aside or expungement procedure which was not exercised but could have been. This is only a partial list of issues which will arise in the context of out-of-state convictions, and which may require the assistance of lower 48 lawyers paid on contract. These lawyers will have to go into courts in their state and file post-conviction petitions moving to set aside convictions if a legal basis is found to support such a filing.

These collateral attacks, which the Department of Law acknowledges in its fiscal analysis will be part of the "three strikes" litigation landscape, is expensive and time consuming. It will also potentially involve some out-of-state travel on the part of investigators, paralegals and lawyers. It is for these reasons that additional contractual and travel funds are required.

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 38

FISCAL IMPACT

In order to absorb the impact of these cases, the Public Defender will require additional resources. Like the Department of Law, this will mean more staff lawyers. Because the lawyers will need support for the collateral attacks aforementioned along with investigation and pre-trial preparation, paralegal assistants and a secretarial position are also required.

One attorney IV position will be placed in the Anchorage office and one in Fairbanks. Anchorage will also receive one paralegal assistant and a secretary. Fairbanks will add one paralegal position. These lawyers and support staff will also be responsible for responding to "three strikes" prosecutions arising in rural locations, either by handling the case, or by providing support for the rural PD offices where the cases are sited. (It should be noted that the attorney positions will also absorb any additional appellate work which will generate post-conviction as concerns these cases.)

CONCLUSION

It is the opinion of the Public Defender that this proposal will result in protracted, expensive litigation, which will have a reverberating impact on the entire justice system. It is suggested that, given the strict presumptive sentencing structure already in place in Alaska, this proposal be given very close scrutiny.

BUDGET ANALYSIS

100: Anchorage -	Attorney IV	82.6
	Paralegal Asst. II	51.5
	Legal Secretary I	36.7
Fairbanks -	Attorney IV	93.7
	Paralegal Asst. II	<u>53.4</u>
		317.9
200: Travel		5.0
300: Contractual		50.0
400: Supplies		2.5
500: Equipment (one time)		<u>7.5</u>
	TOTAL	<u>382.9</u>

Position Title Attorney IV		No. of Positions 2	Range / Step 24/A	Barg. Unit PN
Time Status PFT	Staff Months 24.0	Location EBA - JBA		Election District 50 - 60
TYPE OF EXPENDITURE		AMOUNT		
Salary		131,100		
Benefits		45,284		
Premium Pay				
Other				
Total Personal Services	0.00	176,384		
Travel		5,000		
Contractual		50,000		
Commodities		1,000		
Equipment		3,000		
Other				
Total Cost		235,384		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004	235,384		
I-A Receipts	1007			
CIP Receipts	1061			
Other				
Justification				
This proposal will add 10 to 15 felony cases to the Public Defender workload per year. These cases will involve protracted, complex and therefore expensive litigation of both pretrial and trial issues in that they will require a labor-intensive effort of a magnitude mounted in murder cases. Only experienced lawyers will be assigned to these cases. These lawyers will need paralegal and secretarial support, especially to raise collateral attacks of prior convictions. These collateral attacks will also require the use of lawyers who practice and are licensed in other states. As such, contractual and travel funds will also be required.				
These positions will be necessary additions to current staffing in order to respond to the effects of this proposal.				
Anchorage:				
	Attorney IV		82.6	
	Paralegal Assistant II		51.5	
	Legal Secretary I		16.7	
Fairbanks:				
	Attorney IV		93.7	
	Paralegal Assistant II		53.4	
	Travel		5.0	
	Contractual		50.0	

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Request For New Position

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BRU PUBLIC DEFENDER AGENCY

COMPONENT PUBLIC DEFENDER AGENCY

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Revised Date: _____

Position Title Paralegal Assistant II			No. of Positions 2	Range / Step 16/A	Barg. Unit GGU
Time Status PFT	Staff Months 24.0		Location EBA - JBA	Election District 50 - 60	
TYPE OF EXPENDITURE			AMOUNT		
Salary		74,340	Justification This proposal will add 10 to 15 felony cases to the Public Defender workload per year. These cases will involve protracted, complex and therefore expensive litigation of both pretrial and trial issues in that they will require a labor-intensive effort of a magnitude mounted in murder cases. Only experienced lawyers will be assigned to these cases. These lawyers will need paralegal and secretarial support, especially to raise collateral attacks of prior convictions. These collateral attacks will also require the use of lawyers who practice and are licensed in other states. As such, contractual and travel funds will also be required. These positions will be necessary additions to current staffing in order to respond to the effects of this proposal: Anchorage: Attorney IV 82.6 Paralegal Assistant II 51.5 Legal Secretary I 36.7 Fairbanks: Attorney IV 93.7 Paralegal Assistant II 53.4 Travel 5.0 Contractual 50.0		
Benefits		30,535			
Premium Pay					
Other					
Total Personal Services	0.00	104,875			
Travel		-0-			
Contractual		-0-			
Commodities		1,000			
Equipment		3,000			
Other					
Total Cost		108,875			
FUNDING SOURCE FOR TOTAL COST					
Federal Receipts	1002				
G.F. Match	1003				
General Fund	1004	108,875			
I-A Receipts	1007				
CIP Receipts	1061				
Other					

8/leg95/17/pdhh38np.kp6/2

Request For New Position

AGENCY ADMINISTRATION

BRU PUBLIC DEFENDER AGENCY

COMPONENT PUBLIC DEFENDER AGENCY

FY 96

Page 2 of 3
Revised Date: _____

Position Title Legal Secretary I		No. of Positions 1	Range / Step 10/A	Barg. Unit GGU
Time Status PFT	Staff Months 12.0	Location EBA		Election District 50
TYPE OF EXPENDITURE		AMOUNT		
Salary		24,756		
Benefits		11,905		
Premium Pay				
Other				
Total Personal Services	0.00	36,661		
Travel		-0-		
Contractual		-0-		
Commodities		500		
Equipment		1,500		
Other				
Total Cost		38,661		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004	38,161		
I-A Receipts	1007			
CIP Receipts	1061			
Other				

Justification
This proposal will add 10 to 15 felony cases to the Public Defender workload per year. These cases will involve protracted, complex and therefore expensive litigation of both pretrial and trial issues in that they will require a labor-intensive effort of a magnitude mounted in murder cases. Only experienced lawyers will be assigned to these cases. These lawyers will need paralegal and secretarial support, especially to raise collateral attacks of prior convictions. These collateral attacks will also require the use of lawyers who practice and are licensed in other states. As such, contractual and travel funds will also be required.

These positions will be necessary additions to current staffing in order to respond to the effects of this proposal:

Anchorage:	Attorney IV	82.6
	Paralegal Assistant II	51.5
	Legal Secretary I	36.7
Fairbanks:	Attorney IV	93.7
	Paralegal Assistant I	53.4
	Travel	5.0
	Contractual	50.0

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Request For New Position

AGENCY ADMINISTRATION

BRU PUBLIC DEFENDER AGENCY

COMPONENT PUBLIC DEFENDER AGENCY

FY 96

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Revised Date: _____

STATE OF ALASKA
1995 LEGISLATIVE SESSION

No. 1

Revision Date: _____
Title: An Act relating to sentencing of serious felony offenders
Sponsor: Rep Bunde
Requester: Rep Bunde

Dept. Affec: _____
BRU: _____
Component: Dept. of Corrections
Bill Version: HB 38
(H) Publish Date: 2/10/95
COMPONENT SERIAL NO. _____

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	168.2	168.2				
TRAVEL	5.0					
CONTRACTUAL	4,848.0					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS	206.2	412.5	618.7	824.9	1,031.1	1,237.4
TOTAL OPERATING	5,227.4	580.7	618.7	824.9	1,031.1	1,237.4

CAPITAL EXPENDITURES		27,472.0				
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	5,422.6	28,052.7	618.7	824.9	1,031.1	1,237.4
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	5,422.6	28,052.7	618.7	824.9	1,031.1	1,237.4

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

FULL-TIME	2	2				
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill would mandate a 99 year sentence for a conviction of an unclassified or Class A felony if the offender has been previously convicted of two or more separate "most serious" felonies. This would include attempt, conspiracy or solicitation regarding unclassified or Class A felonies, Assault II, Sexual Assault II, Sexual Abuse of a Minor II and Unlawful Exploitation of a Minor. Offenders sentenced to 99 years under this bill would not be eligible for parole or other forms of early or graduated release. They could apply for sentence reduction after serving one half of the 99 year sentence. The bill mandates consideration of convictions in all other jurisdictions when determining if an offender is subject to the "three strikes of this bill"

Analysis of the Departments prison population indicates 40% of the population of 2775 is incarcerated for a "most serious" felony (.4X2775 = 1110). Analysis further indicates that approximately 20% of the population (.2X2775 = 555) have committed three or more felonies and , of these, 10% have been convicted of three or more "most serious" felonies (.1X 555 = 55.5).

CONTINUED ON ATTACHED PAGES :

Prepared by: Jerry Shriner
Division: Cornm. Office
Approved by Commissioner: /s/
Agency: Department of Corrections

Phone: 465-4640
Date: 1/25/95
Date: 1/25/95

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The 99 year sentence is assumed to be a "life" sentence. The estimated life span of a male, by the year 2000, is estimated to be 73.5 years, according to the United States Statistical Abstract. The estimated age at the time of conviction for a most serious felony is estimated to be 28 years, according to the Alaska Judicial Council. Thus, those sentenced under this bill would be incarcerated for 45.5 years, rounded up to 46 years. (Age for males is used, since the prison population is over 95% male.) If allowed to earn statutory good time on a 99 year sentence, the prisoner would still have to serve 66 years. Furlough eligibility would not occur until the prisoner had served 63 years, with good time, and sentence modification allowed under the bill would not occur until after serving 49.5 years. Since the average would be dead prior to meeting these requirements, the provisions governing good time, furlough, and sentence modification are assumed to be irrelevant.

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

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

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

The cost of maintaining this new population would rise to \$1,237,350 in the sixth year. Because a number of crime bills are pending before the legislature this year, it is difficult to predict the total number of beds by which the prison system may need to be increased, and therefore difficult to predict how and where such beds would be added through new facility construction, facility modification, or contracting. It is not possible to estimate the number of staff positions needed until specific expansion plans are made.

COMMITTEE COPY

The table below presents the Department's best estimate of the effect of this bill on the number of additional prison beds that would be needed within the corrections system. Although the increases for various categories of offenses would result over varying periods of time, this method arrives at an aggregate increase in population in order to predict future needs for the prison system. The "% length increase column" in the chart below is the multiplier which reflects the difference between the current average sentence for offenders impacted by this bill and the sentence they would have received if they had been sentenced under this bill. Murder I, Murder II and Kidnapping are excluded since the current average sentence already exceed the expected life span.

Offense	Total in DOC on 6/30/93	10% (3rd repeaters)	Current Prisoner-days	% sent. length increase	Additional Prisoner-days
Unclassified Felonies					
SAM I	153	153	5,584.5	X 3.54	19,769.1
SA I	178	178	6,497		22,999.4
MICS I	9	9	328.5		1,162.9
TOTAL UNCLASSIFIED					43,931.4
Class A Felonies					
Assault I	57	5.7	2,080.5	X 3.83	7,968.3
Manslaughter	28	2.8	1,022		3,914.3
Robbery I	101	10.1	3,686.5		14,119.3
Arson I	6	.6	219		838.7
Escape I	2	.2	73		279.6
MIW I	20	2	730		2,795.9
TOTAL A FELONIES					29,916.1
TOTAL ADDITIONAL PRISONER-DAYS					73,847.5

This suggest that the actual prison population would, over time, increase by 73,848 prisoner-days, or 202 prisoners as a result of the increased sentence lengths required by the bill.