

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8620 HOUSE JUDICIARY

Section 15. AS 15.13.112, 114, 116 Contributions to candidates and groups could be used only for their own election campaign purposes. Contributions may not be used for personal benefit, personal income, personal loans, to pay more than fair market value, for criminal fines, and civil penalties except under this chapter. Illegal contributions would be required to be returned immediately; contributions which remain anonymous for five days are forfeited to the state general fund. Candidates would have to disburse any and all surplus campaign funds within 60 days after the election, at the latest. These surplus funds could only be used for campaign costs, including a legal challenge to the election of the candidate, donations to charity, government or a political party or to repay campaign loans. After the election, candidates could retain only \$2,500.00 worth of personal property; all property above this limit would be donated to the state or sold and the proceeds be disbursed along with any other surplus campaign funds. AS 15.13.116 does not allow return of contributions to contributors as a way of disbursing campaign assets.

Section 16. AS 15.13.120(d) People, companies and associations could file a complaint with APOC and/or a civil lawsuit for an injunction and civil penalties for a violation of the Campaign Disclosure Law or its regulations. The civil lawsuit must be filed within two years of the alleged violation. The commission could join in the lawsuit.

Section 17. AS 15.13.120(e) A commission member, its executive director and a member of the public could file a complaint with the commission within four years of the alleged violation. If the two year deadline for civil lawsuits had not yet passed, a person who had filed an administrative complaint could withdraw it and file a lawsuit. The procedure for handling a complaint whose subject matter was the same as that of an already filed lawsuit is unclear.

Sections 16 and 17 create concurrent jurisdiction of the court and the commission. This will be expensive, create possible conflicts and not necessarily be more efficient.

Section 18. AS 15.13.125 The commission currently has the power to impose civil penalties up to \$50.00 a day, but only for some late or incomplete reports. This section would authorize the commission to impose civil penalties up to \$500.00 a day for any violation of the Campaign Disclosure Law or its regulations. It would require the commission to assess the offender's mental state to establish the level of the civil penalty. Aggravating and mitigating factors for the amount of the civil penalty are specified. The commission would have to assess attorney's fees and costs of its investigation and adjudication against respondents in complaints. A court would be required to impose judgment for three times the maximum civil penalty against defendants who acted knowingly and didn't correct the violation within five days of its occurrence, as well as reasonable attorney's fees and costs.

These changes would result in higher civil penalty assessments of greater complexity, more civil penalties (fines), more appeals and possibly discouraging potential candidates and contributors. Simultaneous or overlapping processing of complaints or violations in

superior court and before the commission could occur, possibly resulting in different decisions and penalties for the same alleged violation. It is unclear if the commission could impose a civil penalty against a person if a court had already entered a judgment for the same conduct and vice versa.

Section 19. AS 15.13.135,.137 Only people and groups could make independent expenditures concerning candidates. Companies and associations couldn't. Independent expenditures for broadcast or print media would carry a disclaimer stating that the candidate did not authorize, pay and/or approve the effort. Contributions to a group that forms to make independent expenditures are, like contributions to any other group - limited to \$250.00.

AS 15.13.140 Independent expenditures may be made in support of or opposition to a ballot issue by an individual, association, company, or publicly funded entity but probably not a group.

AS 15.13.145,.150 The state, municipalities, school districts and other public bodies could not spend public money on contributions or independent expenditures concerning candidates, but may do so for ballot issues if specifically appropriated for that purpose. They could also spend public money which has been specifically appropriated for the purpose of disseminating nonpartisan information about ballot questions or all candidates for a particular public office. Expenditures must be reported. People, companies and associations could distribute neutral educational information about the views of all candidates, in a given race or sponsor open debate forums, and provide information about election dates and voter registration.

AS 15.13.400 For the purposes of this chapter when limits or prohibitions are placed on accepting contributions and making expenditures, "candidate" is defined to include campaign agents, the candidate's immediate family members and controlled groups.

The definitions of "contribution," "expenditure," "individual" and "person" are unchanged from the current statute.

"Group" would be more narrowly defined. The current definition of "group" includes combinations of associations and companies as well as combinations of people. The new definition of "group" includes only combinations of people. This definition could result in the formation of fewer groups.

"Honorarium" would be defined as payment of anything of value in exchange for an appearance, speech or article.

"Immediate family" would mean spouse, parents, siblings and children (natural, adopted and step).

"Independent expenditure" would mean an expenditure made completely separately from a candidate and all his or her agents.

"Publicly funded entity" has no definition. This is a new concept in AS 15.13 introduced in this bill. It is unclear in those sections where it occurs what entities are meant as other terms are used which refer to the State and its political subdivisions.

Section 20. AS 15.56.012,.014,.016,.018,.019 The crimes of campaign misconduct in the first, second and third degrees would be defined more broadly--and carry heavier sanctions--than under current statute. Any intentional, knowing or reckless violation of the Campaign Disclosure Law or its regulations would be campaign misconduct in the first, second or third degree, respectively. A person convicted of campaign misconduct in the first degree would lose all licenses allowing him or her to do business in Alaska for one year. This section would be enforced by the Criminal Division of the Department of Law. The Commission would refer allegations of campaign misconduct to the Department of Law.

Section 21. The scope of lobbyists' participation in the financial aspects of state campaigns would be reduced further. Lobbyists would not be able to collect or deliver contributions to any candidate in state or local races, and would not be able to engage at all in the fund raising activity of any state campaign.

Section 22. AS 24.60.031 This is a housekeeping measure which retains the definition of "contribution" in the Legislative Ethics Act by reference.

Section 23. The current provisions for criminal penalties in AS 15.13, some in AS 15.56 and definitions in AS 15.13 would be repealed. Sections 16, 18, and 20 and AS 15.13.400 in Section 19 would replace them. The net effect is that criminal violations will no longer be under the purview of the Commission for referral to the Attorney General.

Section 24. Construction. The bill's provisions would be construed to avoid a conflict with any prevailing federal law.

Section 25. Applicability. If persons who are not individuals (such as companies and associations) are adjudged to have a constitutional right to contribute to candidates or groups, then the Campaign Disclosure Law applies to them.

Section 26. Effective Date. If passed, by more than a two-thirds vote, this bill would take effect the day after the governor signs it, the day after the governor's veto is overridden, or the day after the period for the governor's action expires--whichever happens first. If passed by less than a two-thirds vote, this bill would become effective 90 days after its enactment.

Either scenario results in an effective date during the 1996 legislative campaigns. Changing requirements in the middle of the 1996 election cycle is of great concern to the

Commission.

PROPOSED AMENDMENTS

BILL NO. HB 368

- {1} The term person is defined to include corporation, company, partnership, firm, association, organization, business trust and society as well as natural person in AS 01.01.060. There are a number of places in this bill where the term "person" is used. Some of these may be more appropriately the term "individual", AS.15.13.080(b) for example.
- {2} Section 4. AS 15.13.030. Duties of the Commission. This provision should be amended by changing AS.15.13.030(11) to require a revision at the Commission's discretion but based on a recognized government index. The Commission is sensitive to the balance needed between a stable set of rules that participants in campaign activity depend upon and the need to have limits which reflect a changing economy.
- {3} Section 5. AS 15.13.040(a) and AS 15.13.040(b). Raise minimum contribution reporting requirement for candidates and groups from "in excess of \$100.00" to "in excess of \$250.00".

This would impose the same reporting level on candidates, groups and contributors to groups.

- {4} AS 15.13.040(d) (2). As a result of the 1995 U.S. Supreme Court decision in McIntyre v. Ohio Election Commission regarding the requirements for identification of political communications, the Commission requests this amendment to current statute.

(d) Every individual, person or group making a contribution or expenditure shall make a full report, upon a form prescribed by the Commission, of the following contributions or expenditures:

(2) any expenditure whatsoever for advertising in newspapers or other periodicals, on radio or television; or, for the publication, distribution or circulation of brochures, flyers, or other campaign material for any candidate or ballot proposition or question except for an expenditure or expenditures whose cumulative value does not exceed \$250.00

a year for billboards, signs or printed material concerning a ballot proposition or question paid for by an individual acting independently of any other individual or group.

- {5} This next amendment is suggested to clarify existing language and to simplify reporting of accrued expenditures.

AS 15.13.040(h) This provision should be amended by adding a new subsection to read:

(h) Accrued expenditures that in the aggregate total \$1000.00 or less a year per payee or account need not be included in the report of expenditures required under (a) and (b)(3) of this section. However if an unreported accrued expenditure is not paid within 90 days after it is incurred, it becomes a contribution and must be reported as required by this section and AS 15.13.110. For purposes of this subsection, "accrued expenditures" means expenses incurred but not yet paid. This would establish a bright line rule for the point at which a campaign debt becomes a contribution to the campaign. It would also simplify reporting accrued expenditures.

- {5} Section 7. AS 15.13.050. Registration Before Contribution or expenditure. The term "publicly funded entity" is not defined in this bill. It is unclear what is meant. Is "publicly funded entity" synonymous "State and its political subdivisions" used in AS.15.13.145?

This provision should be amended by adding "groups" to the list of makers of contributions or expenditures which are required to register before making a contribution or expenditure and changing "publicly funded entity" to "entity". Requiring groups to register before making a contribution or expenditure would continue current law and eliminate the inconsistencies this section has with several other sections of this bill.

This provision should be further amended by adding the following regarding the naming of groups:

If a [THE] group, except a political party or its subdivision, intends to support or oppose only one candidate, or to contribute to or expend on behalf of, or in opposition to, one candidate 33 1/3 [50] percent or more of

its funds, the name of the candidate shall be a part of the name of the group. Promptly upon receiving the registration, the commission shall notify the candidate of the group's organization and intent.

- {7} Section 8. AS 15.13.065. Who May Make Contributions. Subsection (b) of this section should be amended by deleting the language "a group that, if required by AS 15.13.050 to register, is registered, or a group not required to register under AS 15.13.050" and inserting " a group properly registered under AS 15.13.050".

Read in conjunction with the proposed amendment to AS 15.13.050, all groups would be required to register and would be allowed to make contributions and expenditures after registering.

Subsection (a) of this section should be amended to allow political parties and their subdivisions to contribute to each other.

Section 9. AS 15.13.070. Limitation On Amount Of Political Contribution. This section relies on a different interpretation of political party than the one which the Commission now uses. Currently the Commission views the party and each of its subdivisions as a separate entity with its own contributions. This interpretation is based on the definition of "group" in AS 15.13.103(4).

The Commission is concerned that if contributions by parties (including subdivisions) are limited it would weaken the parties or discourage grass roots activity. The Commission is concerned that if parties are limited in their contributions to candidates and other prohibitions remain as proposed, there will be more independent expenditures and less detailed disclosure to the public.

- {9} Section 10. AS 15.13.072. Restrictions On Solicitation And Acceptance of Contributions. Subsection (a)(3) of this section prohibits a candidate from soliciting or accepting contributions from a group whose participants are not Alaskan residents when the contribution is made and from groups which reside in another state. The Commission believes that national political parties should be exempt from the provision in subsection (a)(3).

It would be difficult to determine the residency of groups who are active in both Alaskan and non-Alaskan campaigns and likewise hard to establish those groups whose "participants" are not all Alaskans.

Subsection (c)(2)(B) does not address candidates who have lost the primary. If the word "primary" is added to the list of elections in (B) this would be corrected. If only added to the second half of the sentence, it would give primary losers a longer, perhaps more reasonable, period to retire debt.

- {10} Section 10. AS 15.13.074. Prohibited Contributions. As currently worded this provision would limit fundraising to a maximum of an 11 month period, starting 11 months before the municipal or general election and ending on or before the day of the dispositive election. For state and municipal races, the Commission suggests limiting campaigning to five months before the election, election day and nine months after the election to allow sufficient time to retire debt and pay accrued expenditures. The Commission suggests allowing an additional 60 days after fundraising is no longer allowed to obtain bank statements, close bank accounts and disburse campaign assets. The Commission recommends keeping the limit on cash contributions at its current level of \$100.00 rather than reducing it to \$25.00.
- {11} Section 10. AS 15.13.078. Contributions And Loans From The Candidate And The Candidate's Family Members. The term "contribution" includes loan or loan guarantee by definition in AS 15.13.130. The Commission does not believe that the contribution limits for family members of a candidate should be different from that of other contributors.
- {12} Section 11. AS 15.13.080. Statement By Contributor. Subsection (d) of this provision should be reworded to require the contributor to file a copy of the contributor statement with the contribution's recipient at the time the contributor statement (rather than the contribution) is filed with the Commission.
- {13} Section 12. AS 15.082. Limitation on Expenditures. The Commission recommends adding the words "or group" to subsection (c) as it is in subsection (a) and (b) which would require groups as well as candidates to record

information about a contribution before spending it.

- {14} AS 15.13.090. Identification of Communication. The Commission requests this section of current law be amended to comply with the U.S. Supreme Court decision in McIntyre v. Ohio Election Commission and the requested change in AS 15.13.040 (d)(2).

Section AS 15.13.090. Identification of Communication. All advertisements, billboards, handbills, paid-for television and radio announcements and other communications intended to influence the election of a candidate or out come of a ballot proposition or question shall be clearly identified by the words "paid for by" followed by the name and address of the candidate, group or individual paying for the advertisement except for billboards, signs or printed material, not including advertisements in newspapers or other periodicals, concerning a ballot proposition or question, which are paid for by an individual acting independently of any other individual or group.

- {15} Section 13. AS 15.13.110(b). Subsection .110(b) requires reporting of contributions and expenditures over \$250.00 during the nine days before the election within 24 hours of receipt. The Commission requests that the requirement for 24 hour expenditure reports be deleted. This information is no longer time critical since the campaign expenditure limits were repealed in 1986, and the Commission no longer enforces the requirement. All expenditures would still be reported on the 10 day election report.

- {16} Section 15. AS 15.13.116 Disbursement Of Campaign Assets After Election. The Commission recommends that the candidate's campaign be given sixty days following the final date of permissible fundraising activities to disburse the campaign's assets and close out bank accounts. (See Proposed Amendment Section 10, AS 15.13.074).

This section no longer allows candidates to return contributions to contributors as a way of disbursing campaign assets. This method of disbursing surplus campaign funds has not occurred very often and, when it has happened, has not been a problem. This method of disbursing campaign assets should be retained. Although limiting the retention of campaign assets is a good idea, it would be difficult to

enforce.

- {17} Section 16 and 17. AS 15.13.120(d)(e). The Commission is concerned about the proposed concurrent jurisdiction of the Court and the Commission. This will be more expensive, create possible conflicts and not necessarily be more efficient. At this point, the Commission does not have a constructive alternative.
- {18} Section 18, AS 15.13.125. Civil Penalties. The Commission currently has a statutory schedule for establishing civil penalties and mitigation criteria which allow flexibility in assessing penalties on a case by case basis. Currently, the classifying of violations by state of mind (reckless, negligent, knowing and intentional) applies only to criminal violations. Although maximum penalty amounts are tied to the length of time the violation exists under both current law and this provision, the state of mind classification is not necessary and will not necessarily result in better decisions as it is significantly more complex and time-consuming. Currently, civil penalties accrue until a violation is corrected and are set at a maximum of \$10.00 per day or \$50.00 per day depending upon the type of campaign report that is late or incomplete. Mitigation criteria are applied when a maximum penalty amount is appealed and the violator and/or staff sets forth extenuating circumstances.

The Commission adopted these mitigation criteria (based on almost two decades of experience) to give staff guidance in making penalty recommendations in civil penalty appeals. The criteria also give the Commission a yardstick upon which to exercise its discretion in making decisions in appeals of civil penalties. The Commission believes the current system for assessing penalties and rate of civil penalties is adequate and should not be changed.

The Commission does support the scope of the civil penalty section which establishes that all violations of AS 15.13 are subject to civil penalties. This corrects a deficiency in current law which makes late filing of individual contributor reports and independent expenditure reports as well as not identifying political communications, a criminal violation.

- {19} Section 19 AS 15.13.135 Independent Expenditures For Or Against Candidates. The last line of subsection (b) of this section requires a disclaimer that "the candidate" has neither authorized, paid for nor approved the campaign material. If the campaign material opposes [rather than supports] a candidate, it is obvious that "the candidate" who is the subject of the material didn't authorize, pay for or approve it. Replacing "the candidate" with "any of the candidates for this elective office" would expand the scope of the disclaimer to include all of the candidates who are running for the particular office, and thus be appropriate on material that opposes rather than supports a candidate.
- {20} Section 26 Effective Date. The immediate effective date of this bill is of concern to the Commission, especially in a legislative election year. An effective date of January 1, 1997 would allow campaigns currently underway to continue under the same rules through the end of the calendar year as well as allow staff time to revise manuals and forms.
- {21} Although not directly related to campaign finance reform, the Commission requests consideration of the following housekeeping measures to AS 24.45 Regulation of Lobbying. These changes streamline some procedures and eliminate several unnecessary or unused provisions.

Amend AS 24.45.031(b) to read:

(b) The Commission may

(1) hold hearings and conduct investigations into compliance with the provisions of this chapter;

(2) in conjunction with (1) of this subsection, issue subpoenas, compel the attendance and testimony of witnesses, administer oaths and affirmations, and require the production of books, papers, records, documents or other items material to the Commission's duties or powers under this chapter;

(3) prepare, publish, and make available to the public, semi-annual [PERIODIC, BUT AT LEAST QUARTERLY AND ANNUALLY,] summaries of the statements and reports received; these summaries shall list separately individual lobbyists and employers of lobbyists.

Amend AS 24.45.041(e) to read:

(e) Within 45 days after the convening of each regular session of the Commission shall publish a directory of registered lobbyists, containing the information prescribed in (b) of this section for each lobbyist [AND THE PHOTOGRAPH, IF ANY, FURNISHED BY A LOBBYIST UNDER (C) OF THIS SECTION]. From time to time thereafter the Commission shall publish those supplements to the directory that in the Commission's judgment may be necessary. The directory shall be made available to public officials and to the public at the following locations: a public place adjacent to the legislative chambers in the state capitol building, [THE OFFICE OF THE LIEUTENANT GOVERNOR, THE LEGISLATIVE REFERENCE LIBRARY OF] the Legislative Affairs Agency, and the Commission's central office.

Amend AS 24.45.061(a) to read:

(a) A person who employs, retains, or contracts for the services of a lobbyist shall sign the lobbyist's registration statement verifying that employment, retention, or contract for lobbying services. [WITHIN 15 DAYS AFTER EMPLOYING, RETAINING OR CONTRACTING FOR THE EMPLOYMENT OR RETENTION OF A LOBBYIST, THE PERSON WHO EMPLOYS, RETAINS OR WHO CONTRACTS FOR THE SERVICES OF A LOBBYIST SHALL FILE A STATEMENT WITH THE COMMISSION AUTHORIZING OR VERIFYING THAT EMPLOYMENT, RETENTION OR CONTRACT FOR LOBBYING SERVICES.]

Amended AS 24.45.061(b) to read:

(b) A person who employs, retains, or [WHO] contracts for the services of one or more lobbyists, whether independently or jointly with other persons, and who directly or indirectly makes payments to influence legislative or administrative action shall file an annual [A QUARTERLY] report containing

(1) the full name, complete business address, and telephone number of the person making the report;

(2) information sufficient to identify the nature and interests of the person making the report;

(3) the total amount of payments made to influence

legislative or administrative action during the period, and the name and address of each person to whom these payments have been made during the period by the maker of the report, together with the date and amount;

(4) the date and nature of any gift exceeding \$100.00 in value made to any public official and the full name and official position of the recipient of each gift;

(5) a general description of the legislative or administrative action which the person making the report had attempted to influence;

(6) the name of each lobbyist employed or retained by the person making the report, together with the total amount paid to each lobbyist and the portion of that amount, if any, which was paid for specific purposes, including salary, fees, and reimbursement for expenses; and

(7) a notice of termination if the person filing a report has ceased employing or retaining a lobbyist registered under this chapter and if this report constitutes the final report of the lobbyist's activities on behalf of the maker of the report.

Amend AS 24.45.081 to read:

Section 24.45.081. Reporting Periods. Lobbyist reports [REPORTS] required under this chapter shall be filed during the calendar month following each calendar month during any part of which the legislature was in session and during the month following each calendar quarter when the legislature was not in session. However, if a lobbyist registered under this chapter has declared that the lobbyist seeks only to influence administrative action and not legislative action the lobbyist need only file a report required under this chapter for each calendar quarter. The period covered shall be the calendar month or the calendar quarter, as applicable, and shall in any event cover the period from the date of the last report filed under this chapter to the date of the end of the calendar month or quarter, as applicable, for which the report is being filed. The period covered shall not include any months covered in previous reports filed by the same person. When total amounts are required to be reported, totals shall be stated both for the period

covered by the statement and for the entire calendar year to date. Annual employer reports required under this chapter shall be filed either 30 days after all lobbying activities are terminated or during the month following the fourth calendar quarter, whichever occurs first.

The Commission also requests that the following sections of the law be repealed: AS 24.45.041(c), 24.45.051(5) and AS 24.45.116.

LEGAL SERVICES

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MEMORANDUM

March 12, 1996

SUBJECT: CSHB 368 (STA), reforming laws relating to election campaign financing based on Initiative 95CFPO (Work Order No. 9-LS1348\F)

TO: Representative Brian Porter, Chair
House Judiciary Committee

FROM: Jack Chenoweth
Legislative Counsel

I was not as careful as I should have been and produced, for the House State Affairs Committee's approval and further referral, a committee substitute that both authorizes (at AS 15.13.070(c), added by page 5, line 31 - page 6, line 3) **and** prohibits (at AS 15.13.112(b)(7), added by page 14, line 11) election campaign contributions by one group to another.

The Judiciary Committee may want to give this inconsistency its attention.

JBC:klb
96-177.klb

cc: Representative Jeannette James, Chair
House State Affairs Committee
ATTN: Walt Wilcox

HB 368

LEGAL SERVICES

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MEMORANDUM

February 28, 1996

SUBJECT: Draft CSSB 191 (), amending the current Campaign Financing Initiative (Work Order No. 9-LS1260\F)

TO: Senator Bert Sharp, Chair
Senate State Affairs Committee
ATTN: Ann Ringstad

FROM: Jack Chenoweth
Legislative Council

The comments in this memo are drafted to CSSB 191 () (Work Order 9-LS1260\F), but apply also to CSHB 368 () (Work Order No. 9-LS1348\C).

HB 368 and SB 191, companion measures, reflect this office's understanding of the current Election Campaign Practices Initiative, 95-CFPO, circulated and subsequently approved for inclusion on the November general election ballot ("the Initiative"). Since their introduction, an informal committee ("the Committee") of three legislators--Representative Jeannette James, Representative David Finkelstein, and Senator Tim Kelly--meeting with staff employed by several other interested legislators, twice debated and requested a series of changes to the original of each bill.

To aid the committee's understanding, this memo summarizes the Committee's changes in the context of the draft committee substitutes for each of the two bills.

I set these out generally in the order in which the Committee considered and acted upon the various changes.

1. **Indexing requirement deleted.** The Initiative contains a provision calling for "indexing" of the various dollar amounts set out in the Initiative at five-year intervals. The indexing is tied to a "recognized governmental index" and is intended to have the dollar amount limitations keep pace with inflation. The Committee opted to delete this requirement. Accordingly, I have deleted from the committee substitute the material added by bill section 4 of the original.

2. Requirement of registration before making contributions deleted. Each of the bills, HB 368 and ~~SB 191~~, was drafted to reflect this office's understanding that the Initiative appeared to require that, as a condition of making a valid campaign contribution, the prospective contributor might be required to first register with the Alaska Public Offices Commission. The Committee opted to omit any general campaign contribution registration requirement, and the committee substitute now limits the registration requirement to persons making expenditures in behalf of a candidate or ballot proposition or question. The change is made by amendment of the language of proposed AS 15.13.050 to limit its operation to "registration before expenditure" and by deletion of what had been AS 15.13.065(b) in the original.

3. Cash contribution limit increased; current limitation restored. Under current law (AS 15.13.070(b)), cash contributions of not more than \$100 are permitted. The Initiative proposes to reduce that limit to \$25. The Committee asked that the limitation on cash contributions set out in current law be restored. In the committee substitute, AS 15.13.074(e) has been amended to restore the reference to \$100.

4. Honorarium approach of existing law substituted. The Initiative bars payment of honoraria to and acceptance of honoraria by a candidate after declaration of candidacy or the equivalent. The Committee opted to remove the prohibition and to substitute restrictions that generally distinguished between compensation for personal services and honoraria. The drafting necessitated removal of prohibited honoraria in AS 15.13.072(d) and 15.13.074(d) of the original (and deletion of the related definition) and, in their place, insertion of a new section, AS 15.13.155.

5. Dates on which campaign fundraising may begin are changed. The Initiative sets a beginning date on campaign fundraising. That date is 11 months before the date of the election. The Committee revises to set fundraising beginning dates that are certain and generally shortens the period in which fundraising is permitted. For the governor and lieutenant governor ("statewide offices"), that initial date is January 1 of the general election year in years in which those offices are contested. For legislative races it is June 1 of the general election year in which the legislative seat is contested. For all other races--state special elections and municipal elections--it is five months before the date of the election. In the committee substitute, these revised limitations are set out in AS 15.13.074(c)(1)(B), (c)(2)(B), and (c)(3)(B).

6. Authority for candidates to accept and expend loans from family members deleted. The Initiative includes provisions by which certain specified family members may make loans to candidates. The Committee recommended omission of this provision, limiting the source of loans to the candidate's personal resources. This was accomplished by revising AS 15.13.078 to eliminate references to loans from family sources.

7. Requirement that certain copies of reports filed with APOC be sent to candidates deleted. Under AS 15.13.080, a copy of a report filed with the Alaska Public Offices Commission disclosing a contribution in excess of \$250 must also be sent to the candidate receiving the contribution. The Initiative revises and expands the provision to cover other contributions by individuals. The Committee opted to revise this section by deleting the requirement that copies of reports filed with the commission also be sent to the candidate. The deletion appears as a proposal to delete the last sentence of AS 15.13.080 (AS 15.13.080(c) as the committee substitute is drafted), at page 11, lines 26 - 29.

8. Definition of "prohibited contributions" for purposes of proper disposition expanded. The Initiative sets out what a candidate or group must do with a contribution the receipt of which is prohibited. That disposition appears, in the original House and Senate bills, in AS 15.13.114(a). The drafting of that provision refers to "prohibited contributions" under AS 15.13.074 but omits reference to "restricted contributions" set out in AS 15.13.072. The Committee recommended curing the omission, and the amendment appears as a cross-reference to "AS 15.13.072" on page 14, at line 26.

9. Surplus campaign funds: authorized uses expanded.

A. Pro rata repayment of contributions to contributors authorized: Repayment of surplus campaign contributions to contributors is not authorized by the Initiative. The Committee adds this as a permissible use of surplus campaign funds by the addition of a new paragraph, paragraph (6), in AS 15.13.116(a).

B. Carry-forward authorized: Carry-forward of any surplus campaign contributions is not authorized by the Initiative. The Committee adds this as a permissible use of surplus campaign funds by the addition of a new paragraph, paragraph (8), in AS 15.13.116(a). Note the limitations, with distinctions drawn as regards statewide candidates, state senate candidates, state house candidates, and candidates in other races.

C. Use of portion of surplus campaign funds for legislative office allowance authorized: Use of any surplus campaign contributions as a legislative office allowance is not authorized by the Initiative. The Committee adds this as a permissible use of surplus campaign funds by the addition of a new paragraph, paragraph (9), in AS 15.13.116(a). Note the reporting requirement and other restrictions, and the dollar limitations that distinguish between the accounts established by state senators and state representatives.

10. Penalty provisions modified. The Initiative establishes a sliding scale of civil penalties, and ties the civil penalty scheme to aggravating and mitigating factors based on notions of criminal culpability. The Committee opted to return to something more in line with the current civil penalty arrangement, omitting the sliding scale, substantially raising the dollar amount of the penalties imposable, and generally eliminating aggravating and mitigating factors tied to criminal culpability concepts. In terms of treatment in the draft,

AS 15.13.125 is restored, albeit amended to increase the penalty figures (bill section 21), and the following ~~additional~~ subsections (bill section 22) are revised in line with general instructions from the Committee as to what should be retained or eliminated.

11. Definition of "political party" modified. The Initiative draws in to AS 15.13 the definition of "political party" as used in the Election Code. That definition is based on a party's immediate past history of securing votes, looking to the most recent election for governor. To meet objections that the definition would exclude minor parties from being treated as political parties for purposes of the higher contributions that a party may receive, the Committee asked that the definition be amended to allow consideration of range of recent election results, and the definition offered looks to a party's record across the period of the five most recent gubernatorial elections.

12. Criminal penalties for campaign misconduct offenses reduced. The Initiative adds election law violations as criminal laws in the Criminal Code (AS 11). The original versions of the House and Senate bills maintained the penalties imposed by placing the offenses under the Election Code (AS 15) in the chapter already setting out crimes of voter misconduct in various degrees. The Committee opted to step down all penalties one level, eliminating felony penalties for intentional violations and allowing punishment of violations committed recklessly or with criminal negligence as violations, punishable only by fine. Section 24 of the committee substitute includes material that reflects the committee's requested changes.

13. 24-hour expenditure reporting requirement deleted. Existing law (AS 15.13.110(b)) requires that both contributions and expenditures exceeding \$250 made at the close of a campaign be reported. The Initiative makes no change in that requirement. The Committee opted to remove from that requirement all reference to "expenditure[s]." Contributions would still have to be reported. Bill section 16 accommodates this committee request.

14. Statement by contributor requirement revised to limit to individuals. I drafted the contributor statement provision of the original House and Senate bills to make reference to "persons." In point of fact, in context, only individual contributors are required to prepare and file the statements. The Committee opted to clarify the point and inserted "individual" for "person" at appropriate places in AS 15.13.080(b) (bill section 12).

15. Applicability of the "paid for by" requirement modified with respect to certain materials. The requirement of current law appears in AS 15.13.040(d) as relating to expenditures made having reference to a ballot proposition or question. The Initiative is silent on the provision. A year-old United States Supreme Court decision, McIntyre v. Ohio Elections Commission, 63 U.S.L.W. 4279 (April 19, 1995), apparently influenced authorizing an exception to the requirement for independent campaign-related expenditures that cumulatively did not exceed \$250 a year and that were made in conjunction with certain printed material provided in conjunction with the proposition or question.

16. **Definition supplied for "publicly-funded entity."** The Initiative uses the term without supplying a definition. The Committee directed inclusion of a definition, expressed in terms of the entity's receipt of substantial money from a government source or from a public corporation.¹

17. **Requirement of group name as inclusive of candidate's name modified.** Under current law (AS 15.13.130(4), in the definition of "group"), a group that takes a position and makes contributions of more than half its money to a candidate is considered to be supporting that candidate for purposes of reporting contributions and expenditures. The Initiative and the original of the House and Senate bills make no substantive change in that. Per directive of the Committee, the threshold is dropped from one-half (50 percent) to one-third (33 1/3 percent) in a pair of references appearing in the definition of the term "group."

18. **Contributions between political parties and subordinate or associated units and vice versa allowed.** The Initiative did not directly address the question of the relationship, for purposes of contributions, between a political party and its subordinate unit. Per direction of the Committee, those contributions--one to another and vice versa--are specifically authorized. See AS 15.13.065(b), in bill section 8.

19. **Cut-off date for receipt and acceptance of contributions by candidates losing primary elections added.** The original versions of the House and Senate bills made no provision for a deadline for receipts and expenditures by losing candidates in primary elections. The Committee directed insertion of a provision. The deadline is set at 45 days after the primary. See AS 15.13.074(c)(4)(B), page 9, lines 13 and 14.

20. **Disclaimer provision applicable to independent expenditures modified.** The decision in McIntyre (see point 15 above) also influenced this modification. The provision, added at the direction of the Committee, appears as a new bill section, bill section 14, at the bottom of page 12 of the committee substitute.

21. **Effective date altered.** By its terms, the Initiative, if approved by the voters, takes effect 90 days after the election results are certified, or approximately early- to mid-March, 1997. ~~HB 368 and SB 191~~ included an immediate effective date. The Committee asked that the committee substitute include a revised effective date of January 1, 1997, and that date is inserted.

¹ In the context of this committee substitute, a "publicly funded entity" is (1) required to register before making a contribution in support of or opposition to a ballot proposition or question (page 5, lines 1 - 3), and is specifically permitted to make independent expenditures--the term is elsewhere defined--in support of or in opposition to a ballot proposition or question (page 20, lines 1 and 2).

22. Proceeds of charitable gaming other than from raffles and lotteries not to be used to support political activities. The Initiative is silent on this topic. The Committee agreed to include a provision under which only the proceeds of raffles and lotteries would be available to support political campaigns. This change was accomplished by insertion of the material set out in bill section 2 of the committee substitute, proposing amendment of AS 05.15.150(a).

23. Contributions from out-of-state sources allowed; limitations on amounts of these contributions set. The Initiative bars contributions from nonresidents. The original versions of the House and Senate bills also so provided. The Committee directed insertion of a provision to authorize limited contributions from nonresidents. The material added appears in AS 15.13.072(b), at page 7, line 8. The limitations are set differently for nonresidents' contributions to statewide and to state senate and state house races. The provision is silent as to nonresidents' contributions to races other than these enumerated.

24. Maximum amounts that a political party may contribute to a candidate increased; limitations on amounts of these contributions set. The Initiative sets limitations--\$50,000 for statewide candidates and \$5,000 for other candidates--for political party contributions to candidates. Based on the Committee's instruction, the committee substitute, in its AS 15.13.070(d), page 6, line 16 of the committee substitute, revises and expands the limitations on contributions that a political party may make in statewide and legislative races.

25. Restoration to current law of amounts that groups may provide to candidates. Under current law (AS 15.13.070(a)), a group may not contribute more than \$1000. The Initiative reduced that to \$500. The Committee incorporates a provision in the committee substitute--AS 15.13.070(c), at page 6, line 6, that restores the \$1000 limitation.

26. Group contributions to other groups allowed; limitations on amount of these contributions set. The Initiative bars groups from contributing to other groups. The Committee incorporates a provision in the committee substitute--AS 15.13.070(c), at page 6, line 15, that allows group contributions to other groups, to a maximum of \$1000.

27. Provision limiting the governor and lieutenant governor from raising election campaign funds during the legislative session deleted. The Initiative bars the governor and lieutenant governor (among other state officers) and the persons whom they employ from soliciting and accepting campaign contributions while the legislature is convened in session. The original versions of the House and Senate bills also provided for this prohibition. See AS 15.13.072(d)1(A) (the governor and lieutenant governor individually) and (d)1(C)(i) (covering members of their staffs). The Committee asked that this prohibition be eliminated, and these provisions were removed from the committee substitute.

28. Litigation provision amended. In the Initiative, a person with a complaint based on an alleged violation of AS 15.13 or a regulation adopted under it may file a complaint with

Senator Bert Sharp
February 28, 1996
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the commission or file in superior court. The Committee directed modification of the provisions so that filing a complaint with the commission is a necessary step in all cases and barring a complaint in the superior court until the commission's staff has had 60 days in which to prepare a report of preliminary investigation. To meet the Committee's instruction on this point, I have revised AS 15.13.120(d), set out in bill section 19.

29. **Exemption for "small campaigns."** It is, I think, by regulation that the Alaska Public Offices Commission exempts from the reporting requirements of AS 15.13 the campaigns of candidates who propose to receive and expend not more than \$1000. The Initiative and the original versions of the House and Senate bills proposed to codify the provision. The Committee recommends increasing the ceiling for this "small campaign" exemption to \$2500, and provision for the change appears in the committee substitute's bill section 7.

30. **Severability provision added.** The Initiative contains a severability provision. A law does not necessarily require a severability provision for, under AS 01.10.030, one will be imputed. Nonetheless, it is not wrong to include a severability provision in a bill, and we will insert one when so requested. The Committee asked for inclusion of a severability provision in the committee substitute, and one is inserted and appears as bill section 30.

*

In addition, the measure incorporates language (bill section 31) providing that either the bill or the Initiative, but not both, may become law. If the lieutenant governor finds that the bill is not "substantially the same" as the Initiative, thereby allowing the Initiative to remain on the ballot, the bill does not become law.

I trust this explanation is useful.

cc: Senator Tim Kelly,
ATTN: Sherman Ernouf

Representative Jeannette James,
ATTN: ~~Walt~~ Wilcox

Representative David Finkelstein
ATTN: Jill Wittenbrader

Pat Pourchot, Legislative Office Director
Office of Governor Knowles

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MEMORANDUM

January 29, 1996

SUBJECT: House Bill 368, proposing reforms of the law regulating election campaign financing based on the recently certified Initiative petition, Initiative 95 CFPO -- sectional analysis (Work Order No. 9-LS1348\A)

TO: Representative Jeannette James
House State Affairs Committee
ATTN: Walt Wilcox

FROM: Jack Chenoweth 
Legislative Counsel

House Bill 368 proposes to reform laws regulating election campaign financing. The model for the bill draft is Initiative 95 CFPO. Lieutenant Governor Ulmer recently noted that the Initiative had secured a sufficient number of signatures and that it would appear on the November general election ballot.

This is a sectional analysis of House Bill 368.

Although my drafting changes to the Initiative are substantial, they are offered with the intent of maintaining consistency with the requirements of the current edition of the Legislative Drafting Manual while presenting, in effect, "substantially the same measure" as has been proposed by the Initiative.

I. General overview of the measure's provisions:

For Initiative ~~95~~ CFPO, the Department of Law prepared this impartial summary that circulated with the Initiative:

This [Initiative] would ban contributions from, or spending by, sources other than individuals or political groups of individuals. It would also ban contributions from non-residents. It would prohibit lobbyist contributions to out-of-district candidates. The [Initiative] would lower contribution amount limits and restrict the time for campaign fund-raising. It would ban personal use of campaign funds and the carryforward of surplus funds. It would ban the state or [municipalities] from attempting to affect the

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election of a candidate. It would also permit stricter local regulation of campaigns. The [Initiative] would increase penalties and enforcement for violations.

The department's summary provides a useful means by which to consider the Initiative's principal features and the corresponding provisions of House Bill 368.

II. Discussion of the principal features of the Initiative and corresponding provisions of the bill as identified in the neutral proposition summary for the Initiative:

This [Initiative] would ban contributions from . . . sources other than individuals or political groups of individuals.

The Initiative proposes to repeal and reenact existing AS 15.13.070. The framers of the Initiative have combined into that one section provisions regulating or prohibiting political contributions and expenditures, the timing of them, and the amount and form of payment.

The first four sentences of the Initiative's AS 15.13.070(a), as repealed and reenacted, direct:

Only an individual may make contributions to a group. Only individuals and groups may make contributions to a candidate. A candidate may not solicit or accept a contribution from any other person. No corporation, company, partnership, firm, labor union, association, organization, business trust or surety, or publicly funded entity which does not satisfy the definition of group in AS 15.13.140(4)(b) may make a contribution to a candidate. . . .

In HB 368, in order to separate more clearly the provisions of law applicable to contributions from others, these provisions are dealt with as follows:

(1) The limitation on contributions to a group only by an individual is set out in the bill's AS 15.13.065(a).

(2) ~~The~~ limitation on contributions to candidates by only individuals and groups is set out in AS ~~15.13.065~~(b). The drafting language is amplified, based on the requirement, drawn from the Initiative's AS 15.13.050(b), added in its sec. 4, declaring that

Each person and publicly funded entity, before making an expenditure . . . in support of or in opposition to a candidate ~~shall register . . . with the~~ [Alaska Public Offices C]ommission.

and by the Initiative's AS 15.13.050(a), also amended in its sec. 4, declaring that

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... Unless [an] expenditure is an independent expenditure, an individual or group expenditure is a contribution to the candidate . . .

Based on my reading of the Initiative, then, I drafted the first part of HB 368's AS 15.13.065(b) to limit the ability to make contributions to individuals who have registered with the Alaska Public Offices Commission. In the case of contributions by groups, contributions may be made only by groups who, when required to register, are registered with the commission.

(3) The third sentence bars a candidate from soliciting or accepting a contribution from any other person. The definition of "person" is the same under the Initiative and under the HB 368 and, in the bill, AS 15.13.072(a)(1) bars a candidate from soliciting or accepting a contribution from an individual or group "not authorized by law to make a contribution."

(4) The fourth sentence quoted sets out a prohibition against contributions by a "corporation, company, partnership, firm, labor union, association, organization, business trust or surety, or publicly funded entity which does not satisfy the definition of group." This prohibition is not explicitly stated in HB 368, but, again, in the bill's AS 15.13.072(a), a candidate is barred from soliciting or accepting contributions from groups not authorized by law to make contributions. The outcome or result is in my view the same as the sought by the Initiative's sponsors.

This [Initiative] would ban . . . spending by sources other than individuals or political groups of individuals.

This Initiative regulates expenditures. In the Initiative, under its sec. 4, amending and adding to existing AS 15.13.050, the sponsors make this breakdown:

For the election of a **candidate**,

-- only the candidate, an individual, or a group may make an expenditure concerning the election of a candidate; and

-- an expenditure by an individual or a group in behalf of a candidate must be an "independent expenditure"; if an expenditure made by an individual or group is not ~~an~~ "independent expenditure," the expenditure is to be treated as a contribution to the ~~candidate~~.

This provision of the Initiative is amplified in the Initiative's sec. 6, proposing language in its AS 15.13.075 to regulate independent expenditures for or against candidates, requiring that those expenditures be reported, restricting the taking of donations from parties to make those independent expenditures, and otherwise imposing a voter notice requirement.

Separately, in the Initiative's sec. 6, its proposed AS 15.13.074 addresses independent expenditures in conjunction with ballot propositions and questions. The Initiative's

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AS 15.13.074 requires the expenditure to be reported and subjects the expenditures to the limitations and restrictions on use of public funds for election campaign purposes.

The comparable provisions in the bill are to be found in AS 15.13.067 (part of bill section 8) and in AS 15.13.135 and 15.13.140 (added by bill section 19).

It would also ban contributions from non-residents.

The ban on contributions from persons--individuals and groups--not resident of the state appears in AS 15.13.070(b), part of the Initiative's sec. 5. In HB 368, the prohibition appears in AS 15.13.072(a)(2) and (3).

It would prohibit lobbyist contributions to out-of-district candidates.

The ban on contributions from lobbyists to candidates persons not resident of the state appears in AS 15.13.070(c), part of the Initiative's sec. 5. In HB 368, the prohibition appears in AS 15.13.074(f), under the list of prohibited contributions. Both measures except from the prohibition "representational lobbyists."

The [Initiative] would lower contribution amount limits and restrict the time for campaign fund-raising.

Contribution amount limits:

(1) A quick examination of the Initiative discloses that easily its most noteworthy feature is a chart--the material begins with the fifth sentence of AS 15.13.070(a)--summarizing the campaign contributions permitted. Under that section, in a given year,

-- An individual may contribute

-- not more than \$500 to a candidate;

-- not more than \$250 to a group;

-- not more than \$5,000 to a political party.

-- A group that is not a political party

-- may contribute not more than \$500 to a candidate;

-- may not contribute to a group that is not a political party and may not contribute to a political party.

-- A political party may contribute

- not more than \$50,000 to a statewide candidate;
- not more than \$5000 to any other candidate.

The schedule of limitations on contributions would replace the current ceiling of \$1000, a reduction in the limitation or ceiling, as the Department of Law's impartial summary notes.

The bill's counterpart provisions are to be found in the bill's repealed and reenacted AS 15.13.070(b) - (d), part of bill section 9, under the catchline "Limitations on Amount of Political Contributions."

- (2) The Initiative's AS 15.13.070(g) limits permissible cash contributions to \$25. The bill's counterpart provision is to be found in AS 15.13.074(e).

Constraints on campaign fundraising:

(1) The Initiative's AS 15.13.070(d), part of its section 5, defines a window period in which a candidate may seek contributions or may raise money. That period begins 11 months before the date of the scheduled election or the date of the filing for nomination or filing of a letter of intent, and ends 30 days after the election. Outside of that window, the candidate, and persons purporting to act on the candidate's behalf, could not solicit or accept political campaign contributions. In addition, the Initiative's AS 15.13.070(i) bars the making of prohibited contributions.

The corresponding provisions in HB 368 are the companion provisions appearing in AS 15.13.072(c) (contribution solicitation and acceptance) and AS 15.13.074(c) (making of political contributions).

(2) The Initiative's AS 15.13.070(e) bars solicitation and acceptance of campaign contributions and honoraria in the course of a legislative session and during a constitutional convention, and prohibits acceptance of honoraria in the course of a campaign for election to public office.

The ~~corresponding~~ provisions of the bill may be found in companion provisions AS ~~15.13.072~~(d) (campaign contribution and honoraria solicitation and acceptance) and 15.13.074(d) (payment of prohibited campaign contributions and honoraria).

(3) The Initiative's AS 15.13.070(h) bars anonymous contributions, contributions given in the name of another, and contributions given under a fictitious name, and spells out, as a consequence of receipt of a contribution in this form a requirement of return of the contribution or forfeiture of it to the state. The bill's corresponding provisions are to be found in AS 15.13.074(b) (contributions prohibited) and 15.13.114 (forfeiture).

(4) The Initiative's AS 15.13.070(j) limits the persons who may receive and handle campaign contributions and make expenditures. In HB 368, the counterpart provisions are AS 15.13.076 (receipt of campaign contributions) and AS 15.13.086 (making of campaign expenditures).

It would ban personal use of campaign funds and the carryforward of surplus funds.

The provisions to which this part of the Department of Law's summary is addressed covers "surplus" campaign funds. Under the Initiative's AS 15.13.072, part of sec. 6:

Contributions may only be used to pay candidate and campaign expenses reasonably related to campaign activities.

Uses other than for that purpose are prohibited, including use for "a personal benefit to the candidate" If a candidate has a remaining campaign balance--surplus campaign funds--then the Initiative's AS 15.13.073 spells out the permitted alternatives for the use of that remaining campaign balance.

In HB 368, the permissible and impermissible uses of campaign contributions are described in AS 15.13.112, added by bill sec. 15, while the disposition of any remaining campaign balance is addressed in AS 15.13.116, part of the same bill section.

In both cases, a candidate may retain property (apart from money) of a value not to exceed \$2500, and may not retain money. In both, too, the default mechanism proposed is a transfer of the surplus property to the Department of Revenue.

It would ban the state or [municipalities] from attempting to affect the election of a candidate.

The Initiative's AS 15.13.077, part of its sec. 6, bars use of public funds to influence election or opposition to a candidate, but allows their use, when so specifically appropriated, to influence the outcome of a ballot proposition or question. The corresponding provision of the bill is ~~AS 15.13.145~~, part of bill section 19.

It would also permit stricter local regulation of campaigns.

The Initiative's sec. 2, amending AS 15.13.010(a), inserts a provision relating to municipal regulation of municipal campaigns. The sections of HB 368 corresponding to the subject are bill sections 2 and 3.

The [Initiative] would increase penalties and enforcement for violations.

Criminal provisions. The Initiative's sec. 16 proposes to add sections to the state's Criminal

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Code (AS 11) to impose criminal penalties for the intentional, knowing, reckless, or criminally negligent violation of a provision of AS 15.13 or a regulation adopted under it.

HB 368 makes substantially the same effort by proposing to repeal existing criminal provisions of the state's Election Code (AS 15.60) and, in bill sec. 20, replace them with modified versions of the offenses defining "campaign misconduct" in one of three degrees.

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In addition to the "usual" criminal penalties, on conviction of an offense defined as an intentional violation of AS 15.13 and punishable as a class C felony, the Initiative's sec. 17 directs the court to forfeit any "license to do business in the state" for a period of one year. The bill's counterpart provision is AS 15.56.018(b), part of bill section 20.

Administrative and judicial enforcement and civil penalties. The Initiative also modifies the enforcement mechanism and penalty for civil enforcement. The Initiative's secs. 10 and 11, authorizes persons with complaints to file either with the Alaska Public Offices Commission or with the superior court, and the commission's authority to initiate a civil proceeding is expanded. There is set out in the section a table of specific penalties that may be imposed, with distinctions drawn on the basis of the number of days that the violation has continued, and on a determination of whether the conduct of the person complained against was intentional or knowing or whether it was based on negligence or reckless conduct. In setting appropriate civil penalties, the commission and the court are authorized to consider aggravating and mitigating factors. On matters determined by the superior court, the court is to order trebled penalties ("shall adjudge against the defendant civil penalties, **which penalties shall be trebled**") unless the defendant had acted expeditiously to correct the violation, and the party initiating the complaint is entitled to recover one-half of the civil judgment imposed, with the balance of the amount recovered to be paid into the state's general fund.

In HB 368, the corresponding adjudicative and civil penalty imposition and recovery provisions are to be found in bill sections 16 - 18.

III. Discussion of the features of the Initiative and corresponding provisions of the bill that were not specifically considered in the neutral proposition summary for the Initiative:

In addition to the contribution and expenditure bans highlighted in the neutral proposition summary, the Initiative expands and adds new constraints on political campaign contributions and expenditures:

(1) The Initiative continues the obligation of current law of a political candidate to disclose to the Alaska Public Offices Commission political campaign contributions that

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exceed \$100. However, in its AS 15.13.040(h), part of its sec. 3, the Initiative exempts a candidate's political campaign activities--receiving contributions and making expenditures--that will not exceed \$1000 for that election campaign. Thus, if one expects to raise contributions and expend money in the course of a political campaign in amounts that do not exceed \$1000, the candidate is exempt from the reporting requirements of AS 15.13.

HB 368 addresses the same exemptions in its bill sections 5 and 6.

(2) The Initiative's AS 15.13.040(g), part of its sec. 3, codifies an obligation on the part of a candidate to record specific information about a political campaign contribution before expending or using the contribution.

The corresponding provision of the bill is to be found as a limitation on a candidate's expenditures set out in AS 15.13.082(c), part of bill section 12.

(3) Existing law (AS 15.13.080) requires persons and groups making campaign contributions to furnish a disclosure statement to the candidate to whom the contribution is given. The Initiative's sec. 7, and HB 368's sec. 11, modify the contributor statement requirement to limit to individuals but otherwise revise and expand the circumstances under which the disclosure statement must be furnished and the information that must be included in that statement.

(4) The Initiative's AS 15.13.072(k) precludes making "any campaign expenditure whatsoever . . . unless the source is disclosed" as AS 15.13 requires.

The corresponding provision of HB 368 is to be found in AS 15.13.082(b).

(5) The Initiative's AS 15.13.070(h) limits cash expenditures to \$100 unless, for amounts in excess of that figure, the person making the expenditure obtains a written receipt and files the receipt with the commission.

The bill's counterpart provision is AS 15.13.082(a).

(6) ~~The Initiative~~ and the bill treat with political campaign contributions and loans from the candidate and from the candidate's family members:

-- In its AS 15.13.070(f), part of sec. 5, the Initiative authorizes a candidate to contribute any amount to the candidate's own campaign, so long as it is reported. The corresponding provision of the bill is AS 15.13.078(a), part of bill section 10.

-- In its AS 15.13.070(f), part of sec. 5, and in its AS 15.13.071(b), part of sec. 6, the Initiative speaks to a candidate's providing a loan of the candidate's own resources to the campaign. Before the candidate may repay the loan, the candidate

must record with the commission the particulars of the loan within five days of receiving it. The like provision of HB 368 is its AS 15.13.078(b).

-- In its AS 15.13.071(a), part of sec. 6, the Initiative authorizes loans from the candidate's family members, and sets restrictions on those loans. Loans of up to \$1000 may be received from an immediate family member--the term "immediate family member" is defined--and are not to be counted as contributions. The loan must be documented as a loan at the time made. The loan may not be repaid by the candidate unless the documentation of the loan has been filed with the commission. Amounts "loaned" in excess of \$1000 are treated as contributions, subject to other reporting requirements. In HB 368, the material relating to loans from family members is set out in AS 15.13.078(c) - (e).

Adjustment of limitations set out in statute:

The Initiative, in its AS 15.13.070(i), directs the Alaska Public Offices Commission to review the maximum dollar limitations on contributions, allowable loans from family members, and campaign expenditures paid by cash and to periodically adjust them, using "a recognized governmental index." The review and adjustment is to occur at five-year intervals.

The corresponding provision in HB 368 is made by the addition of paragraph (11) to AS 15.13.030, adding to the Alaska Public Offices Commission's duties.

Allowable election educational activities:

The Initiative's AS 15.13.076, part of its sec. 6, explicitly authorizes certain educational activities relating to elections, notwithstanding limitations on expenditures for election activities by AS 15.13 as amended. The bill's corresponding provision is AS 15.13.150, part of bill section 19.

Additional limitation on lobbyists:

In addition to the prohibition on lobbyists' contributions to out-of-district candidates noted earlier, the Initiative's sec. 18 bars lobbyists, who, under current law, are barred from participating in fund-raising activities in conjunction with legislative campaigns, from doing the same in campaigns for governor and lieutenant governor. The language of the current provision, in addition to being expanded to the statewide races, is rewritten to cover closely-related circumstances in which activity is currently allowed by law. The counterpart provision in HB 368 may be found in bill section 21.

Amendment and additions to definitions:

The Initiative's secs. 13, 14, and 15 amend or add to the definitions that appear in AS 15.13.199. The corresponding bill section is AS 15.13.400, part of bill section 19. In the development of the list of definitions in the bill, I did not see a need to restate the definition of "political party" for the term is already defined for the Election Code (AS 15) and applicable to AS 15.13.

Findings and Statement of Purpose:

The first section of both the Initiative and the bill set out a series of findings and statement of purpose.

Construction and applicability provisions:

These provisions, drafted in codified form in the Initiative's sec. 12 and set out as proposed AS 15.13.126(a) and (c), are set out in uncodified form in the bill's sections 24 and 25.

A companion severability provision, AS 15.13.126(b) of the Initiative's sec. 12, is omitted from the bill altogether because a general law provision, AS 01.10.030, generally operates as to all enacted legislation.

Effective date:

Consistent with a directive in the last section of the Initiative, HB 368 is given an immediate effective date.

IV. Comparative treatment of substantive provisions in Initiative and their location in House Bill 368:

What follows is a side-by-side summary of my handling of the Initiative material:

Location in the Initiative	Treatment in the bill draft
Sec. 1: Uncodified findings and purpose statement	-- Same --
Sec. 2: Relationship to municipal regulation	Secs. 2 and 3
Sec. 3: AS 15.13.040(g) AS 15.13.040(h)	AS 15.13.082(c), part of bill section 12 AS 15.13.040(g), set out in bill section 6

Sec. 4: AS 15.13.050(a) AS <u>15.13.050</u> (b)	AS 15.13.067, part of bill section 8 Reworked and set out as amendment of AS 15.13.050 in bill section 7
Sec. 5. AS 15.13.070(a), first two sentences	AS 15.13.065(a) and (b), part of bill section 8
same: third sentence	AS 15.13.072, part of bill section 10
same: fourth sentence	implicit in the working of the bill, so not stated
same: information in block	AS 15.13.070, bill section 9
Sec. 5: AS 15.13.070(b)	AS 15.13.072(a)(3) and (4), part of bill section 10
Sec. 5: AS 15.13.070(c)	Amends AS 24.45.121(a)(8), in bill section 21, as incorporated by reference in AS 15.13.072(a)(4), part of bill section 10
Sec. 5: AS 15.13.070(d)	Material divided between AS 15.13.072(c), part of bill section 10, and AS 15.13.074(c) in the same bill section
Sec. 5: AS 15.13.070(e)	Material divided between AS 15.13.072(d), part of bill section 10, and AS 15.13.074(d) in the same bill section
Sec. 5: AS 15.13.070(f)	AS 15.13.078(a), part of bill section 10
Sec. 5: AS 15.13.070(g)	Material divided between AS 15.13.072(b), part of bill section 10, and AS 15.13.074(e) in the same bill section
Sec. 5: AS 15.13.070(h)	AS 15.13.082(a), part of bill section 12
Sec. 5: AS 15.13.070(i) first part	Material divided between AS 15.13.074(b) and AS 15.13.074(e), both part of bill section 10
second part	AS 15.13.114, part of bill section 15
Sec. 5: AS 15.13.070 (j)	AS 15.13.076, part of bill section 10
Sec. 5: AS 15.13.070 (k)	AS 15.13.082(b), added by bill section 12
Sec. 5: AS 15.13.070 (l)	AS 15.13.030(11), added by bill section 4
Sec. 6: AS 15.13.071 AS 15.13.072 AS 15.13.073 AS 15.13.074 and AS 15.13.075 AS 15.13.076 AS 15.13.077	Made part of AS 15.13.078, part of bill section 10 AS 15.13.112, part of bill section 15 AS 15.13.116, part of bill section 12 Reworked and set out as AS 15.13.135 - 15.13.140, part of bill section 19 AS 15.13.150, part of bill section 19 AS 15.13.145, part of bill section 19

Representative Jeannette James
January 29, 1996
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Sec. 7: AS 15.13.080	Same AS section amended, <u>see</u> bill section 11
Sec. 8: AS 15.13.110	Same AS section amended, <u>see</u> bill sections 13 and 14
Sec. 9: AS 15.13.120(a)	Repealed in bill section 23
Sec. 10: AS 15.13.120(d) and (e)	Same AS subsections amended, <u>see</u> bill sections 16 and 17
Sec. 11: AS 15.13.125	Handled in bill section 18
Sec. 12: AS 15.13.126(b) AS 15.13.126(a) and (c)	Omitted: our statutes already contain a general severability provision (AS 01.10.030) Handled in bill sections 24 and 25
Secs. 13 - 15: amendments	Handled in AS 15.13.400, definitions, part of bill section 19
Sec. 16: criminal violations	Handled in related Election Code criminal provisions, bill section 20
Sec. 17: license suspension	Handled in AS 15.56.018(b), part of bill section 20
Sec. 18: lobbyists	Handled as part of bill section 21.

JBC:klb
96-039.klb

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Juneau, Alaska 99801-2105

MEMORANDUM

January 25, 1996

SUBJECT: Equal protection objections arising out of Initiative 95 CFPO (Work Order No. 9-LS1526)

TO: Representative Cynthia Toohey
ATTN: Marveen Coggins

FROM: Jack Chenoweth
Legislative Counsel 

This memo addresses two questions having origin in Initiative 95 CFPO, the Initiative relating to election campaign financing and the Alaska Public Offices Commission:

-- Do distinctions drawn in the Initiative that set different maximum permissible dollar limitations on contributions to and by political parties versus contributions to and by groups other than political parties violate constitutional equal protection guarantees?

-- Does the Initiative's omission of a means by which a political group may petition or otherwise act to obtain the status of a political party, to gain the benefit of the higher maximum permissible dollar limitations set by the Initiative for political parties, violate constitutional equal protection guarantees?

The questions are prompted by the December 18, 1995, letter of Len Karpinski. Mr. Karpinski is a member of the Libertarian Party and signed the letter as "Alaska LP chair."

For the reasons set out below, I would offer the following responses to the two questions:

-- ~~IF THE~~ Karpinski and the Libertarian Party are able to demonstrate that the distinctions drawn in the Initiative setting different maximum permissible dollar limitations on contributions to and by political parties versus contributions to and by groups other than political parties impose real burdens on the party members' ability to associate and advance their political beliefs, there is a fair chance that the court would find a violation of constitutional equal protection guarantees.

-- The Initiative's omission of a means by which a political group may petition or otherwise act to obtain the status of a political party in order to gain the benefit of the higher maximum permissible dollar limitations set by the Initiative for political parties significantly

Representative Cynthia Toohey

January 25, 1996

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raises the odds that the court would find a violation of constitutional equal protection guarantees.

I caution that both conclusions are tentative and that neither is free from doubt. My conclusions are based on my reading of cases that the court would likely consider in reaching a conclusion.

-- I --

In his letter, Mr. Karpinski writes:

... [T]he Libertarian Party is one of the "little guys" who will be profoundly hurt if this initiative becomes law. ...

What we take exception to the most is the part of [the Initiative] that would change AS 15.13.070 to change contribution limits. This section sets different limits for political parties recognized by the state and those which are not. For example, the maximum amount an individual could contribute per year to [a political party] would be [\$ 5,000]. But should that individual choose to contribute to a party which is not recognized by the state . . . , he would face a far different annual limit -- [\$250]. [Groups not qualifying as political parties] such as the L[ibertarian] P[arty] would face similar discriminatory limits when it came to contributing to [the group's] candidates for state office --¹

The Initiative's provisions setting limitations on contributions to political parties and groups and limitations on contributions by political parties and groups to the party's or group's candidates rely on the Election Code definition of "political party." As Mr. Karpinski's letter indicates, under AS 15.60.010(20), a "political party" means an organized group of voters that represents a political program and that nominated a candidate for governor who received at least three percent of the total votes cast at the preceding general election for governor.²

¹ The limitations in the Initiative on contributions by a political party to a candidate for governor or lieutenant governor is \$50,000 and to a candidate for other state office or for municipal office is \$5000, while the limitation on contributions by a group not a political party to any of these is \$500.

² There is at least one threshold problem. In the official report of the 1994 general election results, I cannot find that the Libertarian Party even nominated a candidate for statewide office. The last person nominated by the party to run in Alaska faced the voters in the 1992 presidential election. Thus, technically, under the current set of definitions of terms applicable to the Election Code, the Libertarian

(continued...)

Representative Cynthia Toohey

January 25, 1996

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Citing this reliance on the existing definition of "political party," Mr. Karpinski's letter goes on to assert that "we [presumably Mr. Karpinski and other Libertarian Party officials] view this initiative as an unconstitutional attempt by the big parties to keep competition out." Here, "unconstitutional" is the key word. I take this part of the Mr. Karpinski's letter to assert that, because the Initiative draws a distinction as to the maximum permissible political campaign contributions, based on the current statutory definition of the term "political party," the Initiative's provisions impermissibly set maximum permissible political campaign contributions in violation of guarantees of equal treatment set out in the United States and Alaska constitutions. In Mr. Karpinski's view, a system that sets higher maximum permissible contributions to and by political parties when compared to the limits applicable to political groups not qualifying as political parties places the groups' candidates at a disadvantage. That disadvantage is subject to an equal protection-based challenge as an infringement on the rights of those who associate together to support the disadvantaged candidate.

*

Analysis of this question necessarily begins with Buckley v. Valeo, 424 U.S. 1, 46 L.Ed.2d 659, 96 S.Ct. 612 (1976). The Buckley decision, as you may know, examined provisions of the Federal Election Campaign Act of 1971. In it, the United States Supreme Court considered and generally sustained limitations on political campaign contributions that were set out in the federal act. The limitations in question were expressed in terms of contributions to candidates entirely without regard to whether the candidate had been selected by a major political party or a minor political party, or was running an independent campaign. In so doing, the court concluded that the possibility that the limitations might disproportionately burden minor party candidates and independents did not render the limitations unconstitutional on their face. While the Federal Election Campaign Act's contribution ceiling might have a significant effect on some challengers, the court said, the court upheld the limitation, finding that the limitation effectively treated all candidates equally and that, on the record, there was no evidence to conclude that the limitation invidiously discriminated against minor party candidates.^{2/}

(...continued)

Party qualifies as a "political group," that is

... a group of organized voters which represents a political program and which does not qualify as a political party;

^{2/} Buckley sustained a single, generally applicable limitation on maximum permissible political contributions to candidates for public office. Mr. Karpinski's complaint is, of course, directed at the scheme set out in the Initiative proposing to set maximum permissible contributions to and by "political parties," as that term is

(continued...)

Representative Cynthia Toohey

January 25, 1996

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Buckley also upheld public financing of presidential election campaigns. More specifically, it found that Subtitle H of the Internal Revenue Code, the portion of the Code providing for public financing of the presidential nominating process and election campaigns, did not discriminate against minor political parties or newly-created political parties. To the argument that major and minor parties warranted like treatment, the court responded by citing its earlier conclusion in American Party of Texas v. White, 415 U.S. 767, 39 L.Ed.2d 744, 94 S.Ct. 1296 (1974) rejecting an equal protection-based challenge to a state election campaign financing law limiting support to candidates who cannot demonstrate substantial public support.

Taking into consideration the American Party of Texas and Buckley decisions, Mr. Karpinski's objection to the Initiative's treatment of the Libertarian Party and similar organizations suggests to me that he may be down, but certainly cannot be counted out. The precedents, treating, as they do, public financing of election campaigns, are factually distinguishable from Initiative 95 CFPO; the Initiative, as you know, makes no provision for payment of public subsidies to support election campaigns. On the other hand, since the courts clearly have recognized political campaign contribution limits that distinguish between political organizations based on the organizations' apparent public support, I am not persuaded that this Initiative cannot so distinguish.

While the probability of a challenge to the distinction is likely, the chance of prevailing is uncertain. If Mr. Karpinski's claim of an equal protection violation is to prevail, it must find a basis on the assertion that the differential limitation on permissible political campaign contributions prevents his party from meaningfully participating in the electoral process. The statute in question does not directly restrain his party's access to the ballot, so that, at least based on recent United States Supreme Court precedents, strict scrutiny of this element of the statute is not mandatory. On the other hand, Mr. Karpinski may prevail on his contention that, insofar as the distinction between political parties and political groups perpetuates the existing political system, further insulating them from other electoral challenges, an equal protection-based claim deserves more than the cursory examination that usually attends resolution under a rational basis standard. The likelihood of Mr. Karpinski's prevailing on the merits of the claim directly relates, it seems to me, to his ability to demonstrate that the distinction imposes a real burden on his members' ability to associate together and to advance their political beliefs. If he can show that, he may just be able to require the state to show that the distinction was necessary to serve a compelling state interest, and that would be a very tough standard of review to meet.

(...continued)

defined, differently from those who represent an entity not qualifying as a political party.

-- II --

The state's Election Code makes provision for "limited political parties." A "limited political party" is identified by another definition in AS 15.60.010 as

a political group which organizes for the purpose of selecting electors for President and Vice-President.

As noted in part I above, in its recent history the Libertarian Party, in addition to qualifying as a "political group," has also qualified as a "limited political party."^{4/} Mr. Karpinski's letter uses the existence of the "limited political party" statute to make this point:

Alaska is one of only 12 states in which there is no petition (or registration) procedure for a new party to attain "recognized" status. In 38 states a group which wants to become a recognized party can do so at any time (instead of once every four years) by circulating a petition. . . . If Alaska had such a procedure, then the proposed "campaign reform" initiative would be fairer to alternative parties. That limit on political parties that are not recognized by the government is unrealistically low. . . .

^{4/} The term "limited political party" is operatively used in but one state statute, AS 15.30.025. Under that statute, a limited political party may be organized only for the purpose of contesting the office of President of the United States in a presidential election. The process of qualifying contemplates presentation to the Division of Elections of a petition containing a number of signatures equal to one percent of the number of voters casting ballots in the preceding presidential election. Once having obtained status as a limited political party, a political group may lose that status if it fails to obtain a number of votes equal to at least three percent of the number of voters casting ballots in a presidential election.

~~In~~ In addition to having the status of a "political group" as identified and discussed in part I of this memo, the Libertarian Party petitioned to secure, and apparently did secure, the status of a "limited political party" for purposes of the 1992 presidential election. Thereafter, the party's candidates for President and Vice President, Andre Marrou and Nancy Lord, secured 1378 votes of the roughly 260,000 cast in this state, or about one-half of one percent. Under the statute, then, because of its failure to obtain three percent of the vote, the Libertarian Party would lose its status as a limited political party and would be required to re-petition to secure that status for the 1996 presidential election. The Libertarian Party re-petitioned; it submitted its documentation to the Division of Elections in late November, 1995, and was re-certified as a limited political party on December 19, 1995.

Representative Cynthia Toohey

January 25, 1996

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His letter concludes the point by asserting that the outcome of application of the Initiative "is horribly discriminatory towards parties such as my own."

Again, "discriminatory" is here the key word. I take Mr. Karpinski's characterization as fairly implying that, because the Initiative depends on the current statutory definition of "political party," the absence from the Initiative of a mechanism by which a "political group" may petition to qualify as a "political party" violates guarantees of equal treatment set out in the United States and Alaska constitutions.

*

As I understand, what Mr. Karpinski is objecting to is the absence in law of any mechanism, comparable to that in place by which an organization may qualify as a "limited political party,"^{5/} by which a "political group" could submit petitions to qualify as a "political party." Having the status of a "political party" would immediately raise the maximum contribution that the members and supporters of the Libertarian Party could make for support of the party from \$250 to \$5000 annually.

Mr. Karpinski's objection seems analogous to the manner in which the courts have addressed the problem presented by state imposition of barriers to a political association's advancement within the electoral process. Generally, though legal barriers imposed by states to inclusion of a political entity's candidate on an election ballot are not necessarily unconstitutional, they may be declared unconstitutional when they are excessively burdensome. States are free to condition access to an election ballot upon a demonstration that a political organization draws a "significant, measurable quantum of community support," American Party of Texas v. White, 415 U.S. 767, at 782, and are not required to provide that ballot access to major parties and to minor parties on precisely the same basis, Storer v. Brown, 415 U.S. 724, 746, 39 L.Ed.2d 714, 732, 94 S.Ct. 1274 (1974).

In this instance, it is not the fact that a provision in place is particularly burdensome to the Libertarian Party; rather, it is the absence of any mechanism whatsoever, amounting, in

^{5/} While Mr. Karpinski's identification of the "limited political party" device is helpful to an understanding of the problem, use of the "limited political party" model as an example on which to base a solution is questionable. The state's regulation and oversight of a presidential election may differ from what the state provides for other elections for which it has responsibility if only because, as the court observed in Anderson v. Celebrezze, 460 U.S. 780, 792 - 793 (1983), presidential contests "implicate a uniquely important national interest." Thus, because of the singular importance of the presidential election in the political life of the country, the fact that Alaska uses the device of the "limited political party" to qualify organizations for the presidential election ballot is an interesting, but hardly compelling, reason to make the reform Mr. Karpinski requests.

Representative Cynthia Toohey

January 25, 1996

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effect, to an exclusion, that arguably precludes the Libertarians from being able to seek the stature of a political party. My sense is that the courts are more likely than not to find the omission as burdening the right of the members of the Party to associate to advance their political beliefs (that is, a violation of the First Amendment-protected right of association) to the detriment of their fullest possible participation in the electoral process. If the court concludes that the right of association is burdened, then against that fundamental right the court would likely employ a strict scrutiny review, requiring the state to demonstrate that the distinction between "political party" and "political group" for purposes of establishing higher maximum permissible dollar limitations for parties than for groups is necessary to serve a compelling interest. As with my conclusion under part I above, I do not believe that the state could meet this burden and, accordingly, Mr. Karpinski's equal protection-based challenge could very well prevail.

JBC:pl

96-033.plm

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*Distributed
by
Sen. Kelly*

MEMORANDUM

January 9, 1996

SUBJECT: Relationship between gaming proceeds and Initiative 95 CFPO
(Work Order No. 9-LS1498)

TO: Representative Brian Porter

FROM: Jack Chenoweth
Legislative Counsel

Initiative 95 CFPO, the election campaign financing reform initiative, does not directly and automatically preclude gaming proceeds from being used for campaign purposes.

Under the Alaska Gaming Reform Act, AS 05.15, gaming permits may be held and used by political organizations, and the income from a permit held and used by a political organization may be used to support candidates for public office or used to support groups that support candidates for public office (AS 05.15.150(a)). Under the Initiative, a political party may make contributions to a candidate.

Gaming permits may be held by qualified organizations other than political organizations. AS 05.15.690 sets out a fairly inclusive definition of "qualified organization." However, the Initiative bars

. . . [a] corporation, company, partnership, firm, labor union, association, organization, business trust or surety, or publicly-funded entity which does not satisfy the definition of group in AS 15.13.130(4)(b) [sic] . . .

from making ~~a~~ political contribution to a candidate. See the Initiative's proposed AS 15.13.070(a), third sentence. For groups that can continue to qualify to be able to contribute, the Initiative limits the group's contributions to each candidate to \$500 a year. For groups that fall outside the definition of the group that is authorized to make contributions, political campaign contributions may not be made.

JBC:pl:glc
96-008.plm

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MEMORANDUM

January 4, 1996

RECEIVED BY 96
JAN 11 1996
Rep. Jeannette James

SUBJECT: HB 368, relating to election campaign financing

TO: Representative Jeannette James

FROM: Jack Chenoweth
Legislative Counsel

Your House Bill 368, prefiled for the upcoming Second Session, duplicates the Initiative on the same subject, Initiative 95 CFPO. As the bill is considered and acted on, I am sure that there will be amendments and changes that may or may not cause HB 368 to depart further from the text of the Initiative. Under article XI, section 4 of the state constitution and AS 15.45.210, the lieutenant governor is responsible for making a determination whether the final version of HB 368 is "substantially the same" as the Initiative. If it is, then the Initiative is voided and not placed on the November general election ballot.

I am concerned about the possibility that the final version of HB 368 as enacted into law is determined not to be "substantially the same" as the Initiative, that the Initiative is kept on the general election ballot, that the voters approve the Initiative, and that we are left with having to sort out the provisions of the enactment and the Initiative. To avoid that outcome, please consider offering an amendment to HB 368 that would delete the last section of the current bill, its section 26, and replace it with something that reads substantially as follows:

* **Sec. 26.** Sections 1 - 25 of this Act take effect only if, under article XI, sec. 4, Constitution of the State of Alaska, and AS 15.45.210, the lieutenant governor determines that the Act is substantially the same as the law proposed to be enacted by the Initiative entitled "An Initiative relating to election campaign financing and the Alaska Public Offices Commission; and providing for an effective date," identified by the Division of Elections as Initiative Petition 95 CFPO, filed with the lieutenant governor by the Initiative sponsors under AS 15.45.140 on December 15, 1995.

* **Sec. 27.** If sections 1 - 25 of this Act take effect, they take effect

....

You may also want to reconsider giving this measure an immediate effective date. With an immediate effective date, if HB 368 becomes law, it would take effect in the middle of the

Representative Jeannette James

January 4, 1996

Page 2

upcoming election campaign. The Initiative, by law (article XI, section 6), would not take effect until 90 days after certification of the election results, or sometime in late March or early April, 1997.

JBC:glc

96-001.glc

MEMORANDUM

To :Representative James
Fr :Ted Popely
Date :January 11, 1996
Re :Campaign Reform Initiative

The initiative and HB 368, which purport to be substantively similar, cover elections to decide public offices. The new law would substantially amend the state's campaign finance laws. Numerous provisions are included in the initiative, several of which raise constitutional questions. If signed into law, the questionable provisions would undoubtedly be challenged and litigated. If so, the new provisions would have to withstand both state and federal constitutional scrutiny.

WILL THE BILL OR INITIATIVE SURVIVE?

Unfortunately, a simple answer is impossible to give on this issue. Even the Attorney General has indicated that the questionable sections of the proposed bill are "in a constitutional grey area." So too finds our own Legislative Legal and Research Services. They are unable to assess whether the bill will survive scrutiny. But I will do my best to predict the outcome based on precedent.

CONSTITUTIONAL PROBLEMS

Federal campaign reform caselaw has examined the periphery of the issues now raised by the initiative. The problem is that the drafters took existing law into consideration when writing the proposed law. As such, it weaves a path around clear precedent, intentionally not challenging existing law. So the result is a largely untested and unusual spin on the established rules of permissible lawmaking in this area.

1.) Expenditure and Contribution Limitations

A general summary of the proposed changes in this area:

-Prohibits businesses, trade associations, unions, for-profit lobbyists, and other non-political groups from making contributions to, or expenditures on behalf of, candidates.

-Reduces the amount individuals, political parties, and political groups may contribute to candidates, and imposes other restrictions on contributions and expenditures.

-Amends reporting and registration requirements.

-Lists nonpartisan electoral activities that are not considered to be direct advocacy and are therefore exempt from the contribution or expenditure limits.

-Prohibits in-kind contributions, or independent expenditures on behalf of a candidate, by certain entities, including most corporations and businesses.

-Limits the time period during which a candidate may solicit or accept a campaign contribution, and imposes restrictions on a candidate's acceptance of an honorarium.

-Limits the individuals who may expend or receive campaign funds.

-Allowing the APOC to adjust expenditure and contribution limits to reflect inflation or deflation over a five-year period.

-Restricts the use of campaign contributions to the payment of expenses reasonably related to the campaign, and requires that a candidate distribute surplus funds within 60 days of ending candidacy.

-Imposes limitations on who may make, and requiring specific identification of, independent expenditures supporting or opposing a candidate.

-Prohibits the use of public funds to influence an election, except for ballot propositions where funds are specifically appropriated for that purpose by law.

All of these proposed changes raise both state and federal First Amendment issues related to expression and association. The Buckley line of cases addresses similar challenges to federal election

laws. There, the Supreme Court found campaign contributions and expenditures so related to speech as to "operate in an area of the most fundamental First Amendment activities." Thus, the highest protection is afforded such rights, and the rigorous strict scrutiny test will apply. To survive, the state law must serve a compelling governmental interest and be narrowly drawn. Buckley upheld the limitations imposed on individual contributions, but struck down the expenditure limitations placed on individuals and groups, and on expenditures by candidates from their personal funds.

Later Supreme Court cases invalidated state laws prohibiting corporations from making contributions or expenditures to influence a referendum question on the ballot. The case did not address whether similar expenditures toward candidates for office would survive. That question was left open.

Another decision struck down a requirement under federal election law that prevented a non-profit corporation from making expenditures in connection with an election to public office by limiting those expenditures to a separate fund financed by private monies raised. A few years later, the Court seemed to waffle and held that a similar restriction under Michigan campaign law did not constitute a First Amendment violation. The decision recognizes the authority of lawmakers to regulate the involvement of corporations in candidates' campaigns.

The authors of the initiative have drafted new rules designed to survive constitutional challenges to expenditure and contribution restrictions. Corporations and labor unions could not contribute to a candidate under the new rule. Furthermore, individual contributions would be further restricted. Under the federal scheme, the new rules would probably survive the test of strict scrutiny. I believe the state courts, however, will have difficulties with an all-out ban on corporate ~~contributions~~ and expenditures. States are free to impose stricter protections than those afforded by the federal courts. And Alaska tends to do just that: apply more rigorous test standards to proposed laws. As expenditures fall squarely within protected political speech, I think there's a slight chance these provisions will be struck down at the state level.

2.) Non-Resident Contributions Prohibited: Out-Of-District Lobbyist Contributions Prohibited

Summary of Changes:

-Prohibits certain types of lobbyists from contributing to legislative candidates, except those candidates for whom the lobbyist may vote.

-Prohibits contributions by out-of-state residents

The outright ban on out-of-state contributions is a novel idea. Though most states impose restrictions on out-of-staters, few, if any, ban them altogether. The Supreme Court under Buckley et al. allows more regulation on contributions than expenditures, reasoning that contributing money is less pure political "speech" than making expenditures on behalf of a candidate. Nonetheless, the strict scrutiny test will apply. The state would have to prove a compelling interest and least restrictive means.

My guess is that the compelling interest may be shown, but that this is certainly not the least restrictive means of accomplishing the state's goal. However that goal is termed, whether it be undue influence, or corruption, whatever--the outright ban on out-of-state money is extreme and over broad. In other words, it would operate to exclude legitimate campaign efforts from out-of-staters as well as those meant to be excluded. In addition, the distinction between out-of-staters and in-staters will be difficult to justify. Several constitutional challenges may be raised to that distinction, probably with success. In sum, I believe the out-of-state contribution ban is likely to fail before the state court.

While the Court has indicated that government has an interest in regulating ~~lobbying~~ efforts, it will not allow total bans on lobbyist contributions. Here, the Bill and initiative seek to ban lobbyist contributions outside the district. The restriction is likely to be found unduly restrictive under both a right to associate and freedom of expression of the First Amendment. Furthermore, the Equal Protection clause will pose problems since lobbyists are singled out by the proposed rule change. Again, this cannot be the least restrictive means available to cure whatever ill the initiative seeks to remedy. Therefore, I believe it is doomed.

3.) Anonymous Campaign Contributions Ban

A recent Supreme Court opinion invalidated a state law prohibiting the distribution of anonymous campaign literature. The case did distinguish between anonymous literature and anonymous contributions, holding that the decision on the former is not controlling on the latter issue. The decision suggests, however, that the anonymity requirement may pose First Amendment problems as well.

4.) Civil penalties

Legislative Legal raises a good point with respect to recovery by a "complaining citizen" of a portion of the civil fine imposed for a violation. That provision appears to violate at least two constitutional provisions, the "dedication of funds" and "public property transfers." It is inappropriate under state law to forfeit a portion of state government penal monies to a private citizen, despite that citizen's initiation of the complaint.

5.) Severability

These represent some of the more apparent legal obstacles inevitably faced by the initiative or House Bill. Either one, however, may be invalidated in part, leaving the remainder in effect. The initiative, by virtue of Section 12, may be ruled on line-by-line. So too may legislation pursuant to AS 01.10.030. Thus, while parts of the Bill probably will not survive, the remainder may remain intact.

HB

379

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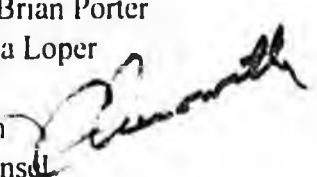
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Juneau, Alaska 99801-2105

MEMORANDUM

January 16, 1996

SUBJECT: Draft CSHB 379 (), relating to community dispute resolution centers
-- sectional analysis (Work Order No. 9-LS1423F)

TO: Representative Brian Porter
ATTN: Daniella Loper

FROM: Jack Chenoweth 
Legislative Counsel

The bill establishes community dispute resolution centers as a means of diverting or providing for the informal resolution and disposition of certain offenses committed by minors who have allegedly committed violations of state laws or municipal ordinances, and allows judges to use these community dispute resolution centers in conjunction with restitution orders made when a minor is adjudicated a delinquent.

Bill section 1 amends AS 47.10.020(a)(1)(A) to authorize referral of a minor to a community dispute resolution center for purposes of informal adjustment or disposition of a matter by the Department of Health & Social Services following preliminary inquiry.

Bill section 2 amends AS 47.10.080(b)(4) to permit a judge who has adjudicated a minor to be a delinquent and ordered the minor to pay restitution to require the minor and victim of the minor's offense to use the services of a community dispute resolution center to resolve a dispute involving the amount or manner of payment of the restitution.

Bill section 3, adding a new bill section, AS 47.10.267, spells out the procedures by which an entity organized for the purpose of providing community mediation services may operate a community dispute resolution center qualifying under this Act to provide services for minors and the victims of their offenses, and sets out standards and procedures under which the center is to operate.

JBC:pl
96-024.plm

Alaska State Legislature

Representative Brian S. Porter



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DISTRICT 20

SPONSOR STATEMENT

For

HB 379 COMMUNITY DISPUTE RESOLUTION CENTERS

Victim offender mediation is a process in which trained volunteer mediators bring victims and juvenile offenders face to face to discuss the property loss and emotional damage caused by the crime. The goal of this meeting is for the victim and the offender to agree on a restitution contract.

Victim offender mediation is part of the larger concept of restorative justice. With this approach offenders take personal responsibility for repairing the damage they have caused.

WHAT ARE THE BENEFITS?

FOR VICTIMS:

- o Victims report great satisfaction with the mediation process. It allows them to confront the offender with the very real personal impact of their crime.
- o Victims report satisfaction with the restitution agreements due to the fact that they are tailor made to repair their specific loss and their needs for restitution.
- o Victims appreciate having their case resolved in a timely and efficient manner with their maximum involvement.

FOR OFFENDERS:

- o Offenders have the chance to talk with a victim and to make amends of the crime.
- o Offenders are more willing to fulfill the restitution agreements that they helped create.
- o Offenders' parents get involved.

FOR THE COMMUNITY:

- o The public sees timely and more meaningful responses to juvenile crime.
- o Volunteer community mediators have a direct impact on youth.
- o National studies of offenders in victim offender mediation programs found that they committed considerably fewer future crimes.

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 379 (JUD)

Revision Date: _____
 Title: An Act authorizing establishment of
community dispute resolution centers ... juvenile offender
 Sponsor: Rep. Porter
 Requestor: House Judiciary

Dept. Affected: Alaska Court System
 BRU: Trial Courts
 Component: _____
 COMPONENT SERIAL NO. 768

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
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 (
----------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 96) cost: \$ None

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact

Prepared by: C. S. Christensen III, Staff Counsel
 Agency: Alaska Court System

Approved by: Arthur H. Snowden, II, Administrative Director
 Agency: Alaska Court System

Phone: 284-8228
 Date: 01/16/96
 Date: 01/16/96

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HIB 379

Revision Date: _____
 Title: "An Act authorizing establishment of alternative
 dispute resolution centers..."
 Sponsor: Rep. Porter
 Requestor: (H) Jud

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0	0	0	0	0	0
-----------------------------	---	---	---	---	---	---

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

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 96) cost: \$ -0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

There is no fiscal impact to the Public Defender Agency.

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

Phone: 269-264-4400
 Date: _____

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

Date: _____

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 379 (JUD)

Revision Date: _____ Dept. Affected: Alaska Court System
 Title: An Act authorizing establishment of BRU: Trial Courts
community dispute resolution centers ... juvenile offender Component: _____
 Sponsor: Rep. Porter
 Requestor: House Judiciary COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
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 ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 96) cost: \$ None

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact

Prepared by: C. S. Christensen III, Staff Counsel *[Signature]*
 Agency: Alaska Court System

Approved by: Arthur H. Snowden, II, Administrative Director *[Signature]*
 Agency: Alaska Court System

Phone: 264-8228
 Date: 01/16/96

Date: 01/16/96

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 379

Revision Date: _____ Dept. Affected: Department of Law
 Title: "..authorizing...alternate dispute resolution centers BRU: Civil Division
...disputes between juvenile offenders and their victims." Component: General Legal Services
 Sponsor: Representative Porter
 Requester: Representative Porter COMPONENT SERIAL NO. 2087

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
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 ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

POSITIONS	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 47.10 to authorize municipalities or nonprofit corporations organized exclusively for the resolution of disputes between minors who are alleged to have committed offenses and the victim of these offenses, to establish and operate alternative dispute resolution centers. The bill also provides that disposition of a juvenile court matter may include use of the services of an alternate dispute resolution center. Use of a center would be voluntary for both juvenile offenders and victims. The bill will not have a fiscal impact for the Department of Law, because alternate dispute resolution centers would be operated by municipalities and nonprofit organizations, and because of the voluntary nature of the bill's dispute resolution process. The bill should have a positive impact on the state's overburdened juvenile justice system.

Richard I. Peques

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

Phone: 465-3672
 Date: 1/16/96
 Date: 1/16/96

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 379

Revision Date: _____
Title: "An Act authorizing establishment of alternative dispute resolution centers..."
Sponsor: Rep. Porter
Requestor: (H) Judiciary

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 97	FY 98	FY 99	FY 00	FY 01	FY 02
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 ()						
------------------------	--	--	--	--	--	--

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 96) cost: \$ 0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

There is no fiscal impact on the Office of Public Advocacy.

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

Phone: 274-1684
Date: _____

Approved by Commissioner: Mark Boveri *Mark Boveri*
Agency: Administration

Date: _____

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB379

Revision Date: _____
 Title: Establish Alternate Dispute Resolution
Centers for Juvenile Offenders
 Sponsor: Representative Porter
 Requestor: House (JUD)

Dept. Affected: Health and Social Services
 BRU: Family and Youth Services
 Component: DFYS Central Office
 COMPONENT SERIAL NO. 259
 See also (SN#): _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY97	FY98	FY99	FY00	FY01	FY02
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						
----------------------	--	--	--	--	--	--

CHANGES IN REVENUES ()						
-------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY97	FY98	FY99	FY00	FY01	FY02
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF MHTIA						
Other (please specify)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

POSITIONS	FY97	FY98	FY99	FY00	FY01	FY02
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY96) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

This bill has no fiscal impact on the Division of Family & Youth Services.

Prepared by: L. Diane Worley
 Division: Family & Youth Services

Phone: _____
 Date: 01/16/96

Approved by Commissioner: Karen Pedraza
 Agency: Department of Health & Social Services

Date: 1/16/96

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Victims for Justice

619 East Fifth Avenue, Anchorage, AK 99501
Phone: (907)278-0977 FAX: (907)258-0740

January 17, 1996

Dear Representative Brian Porter,

As a founder of Victims for Justice and the Victim-Offender mediation project, I strongly support HB 579



Community Dispute Resolution Centers.

The main purpose of this legislation is to replace the nonparticipative courtroom with a new environment. Crime is viewed as a conflict between two people. Mediation, as process for mutual resolution of conflict, is more likely than a courtroom to allow for participation and reconciliation.

Mediation offers other benefits over and above reaching an agreement on restitution. The victim may feel some healing from the crime. The juvenile may feel more accountable and as a result may be more likely to comply with the restitution agreement. By intervening early, the first-time offender might be less likely to commit future violent acts.

It is anticipated that the Alaska Victim-Offender Mediation Project will have a profound impact on future juvenile crime in Alaska and on the victims of crime. Mediation may succeed where juvenile justice has failed in reducing the number of violent youths in our society.

Sincerely,

Janice Lienhart, Executive Director
Victims for Justice

Crisis Intervention

Short and Long Term
Emotional Support

Grief Education

Victim Advocacy

Assault Support
Group

Homicide Survivors
Support Group

Court Accompaniment

CourtWatch Program

Annual Victims Rights
Week Observance

Member - National
Association of Victim
Advocacy

Member - National
Organization Victim
Assistance



UNIVERSITY OF ALASKA ANCHORAGE

3211 Providence Drive
Anchorage, Alaska 99508

COLLEGE OF ARTS AND SCIENCES
DEPARTMENT OF SOCIAL WORK

January 16, 1995

Representative Brian Porter
Chair, House Judiciary Committee
Juneau, Alaska

RE: HB 379, Community Dispute Resolution Centers

Dear Representative Porter:

I wish to offer my support to your efforts to obtain passage of HB 397, which you recently introduced, as the primary sponsor. I am writing to you in my dual roles as a faculty member of the University of Alaska Anchorage with a long history of work in juvenile justice, and as the Chair of the McLaughlin Youth Center's Citizen Advisory Board.

In my opinion, establishing community dispute resolution centers to promote the active participation of victims and juvenile offenders in obtaining restorative justice, will have a positive and profound impact upon reducing crime and its deleterious effects. It engages both the victim and offender in a more active participation in the justice process. Direct confrontation, restitution, accountability, socialization, healing, empowerment, and achieving justice are all possible within this model. These centers will provide the opportunity for community members to actively participate in this process as volunteers and have a direct impact upon reducing crime, where they live. The dollar cost is minimal the savings enormous.

I recognize that this is not the final solution to one of our major social problem but it is definitely a program that has proven effectiveness. It is particularly useful in recognizing the need for victims to be major participants in responding to crimes against them and also in diverting youth from escalating their criminal activity. The idea of presenting a problem solving model in which the resolving of disputes can occur, without violence, has the potential of not only impacting juvenile offenders and their victims but anyone who chooses violence to solve dilemmas.

Thank you for creating this piece of legislation and if I can be of any assistance, please call upon me.

Sincerely yours,

A handwritten signature in cursive script that reads "Patrick M. Cunningham".

Dr. Patrick M. Cunningham, DSW
Associate Professor

11. Impact of Mediation on Recidivism

- *Juvenile offenders in victim offender mediation programs committed considerably fewer crimes than a matched sample of similar offenders not in mediation.*
- *This finding of lower recidivism, however, was not statistically significant.*

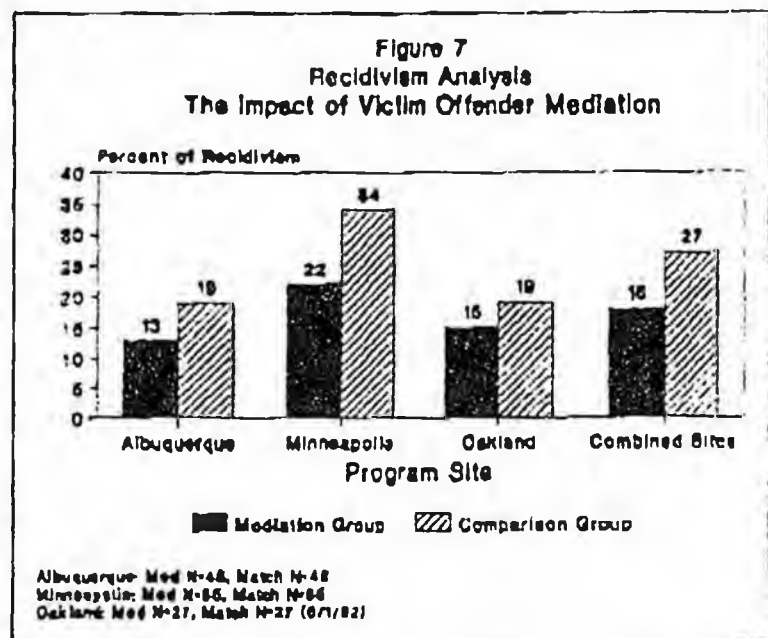
The issue of whether or not the victim offender mediation process has an impact upon reducing further criminal behavior (recidivism) by those offenders participating in mediation was examined at each of the three initial sites. The comparison group at each site consisted of similar offenders from the same jurisdiction who were matched with offenders in mediation, along the variables of age, sex, race, offense and restitution amount.

As Figure 7 indicates, juvenile offenders in the three mediation programs committed considerably fewer additional crimes, within a one year period following the mediation, than similar offenders in the court administered restitution program. They also tended to commit crimes that were less serious than the offense of referral to the mediation program. The largest reduction in recidivism occurred at the Minneapolis program site (post-adjudication cases in Hennepin County), with a recidivism rate of 22 % for the mediation sample and a rate of 34 % for the comparison group sample.

While it is important to know that the victim offender mediation process appears to have had an effect on suppressing further criminal behavior, the finding is not, however, statistically significant. The possibility that this apparent effect of mediation upon reducing recidivism occurred by chance cannot be ruled out. This marginal but non-significant reduction of recidivism is consistent with two English studies of victim offender mediation (Dignan, 1990; Marshall and Merry, 1990). Only one study in the U.S. is known (Schneider, 1986) to have found a significant impact of mediation upon offender recidivism. The program in that study, however, did not employ the same type of procedures

used by the programs described in this cross-site analysis of victim offender mediation.

For some, a finding of a marginal but non-significant impact of the mediation process upon reducing offender recidivism may come as a disappointment. For others, including the authors, it comes as no surprise. Rather, such a finding is consistent with recidivism studies related to other community justice alternative programs. It could be argued that it is



rather naive to think that a time-limited intervention such as mediation by itself (perhaps 4-8 hours per case) would be likely to have a dramatic effect on altering criminal and delinquent behavior in which many other factors related to family life, education, chemical abuse and available opportunities for treatment and growth are known to be major contributing factors.



A Publication of the
Justice Center

ALASKA JUSTICE FORUM

Alaska Justice
Statistical Analysis Unit

Summer 1994

UNIVERSITY OF ALASKA ANCHORAGE

Vol. 11, No. 2

Victim-Offender Mediation in Anchorage

Patrick Cunningham
and Lawrence C. Trastle

A pilot victim-offender mediation program, which involves juveniles accused of certain offenses and the victims of these crimes, has recently been established in Anchorage. Mediation is offered as a diversion from the usual system which the offender may accept to avoid more formal adjudication.

Mediation between a victim and offender with the goal of achieving restitution and reconciliation can supplement the formal adjudication process. Under mediation, both victim and offender are active participants in the resolution process. The victim has the opportunity to confront the offender to seek a resolution of the offense, and the offender is provided with the opportunity to make amends for the crime. Such problem-solving intends to restore both parties to more positive social functioning in the larger community and to compensate for some of the perceived inadequacies of the criminal justice system. Mediation programs often are used as an alternative to a diversion within the justice system or as a diversion from the system.

The western tradition from which the U.S. system of criminal justice has developed views crime as an offense against the state, even though a victim may also be involved. It is the state that prosecutes and

brings a case to disposition. Neither the victim nor the offender have much to say in the process, with the involvement of both often quite passive. Since, until recently, in ordinary court proceedings victims were seldom more than observers, feelings of frustration, powerlessness, and further victimization could arise.

Victim-Offender Mediation

Victim-offender mediation programs provide an opportunity for victims to meet the offenders face-to-face in the presence of a trained mediator for the purpose of reaching a reconciliation intended to resolve the injury of the crime in some way. Crime, under the mediation model, is viewed as a conflict between people rather than as an offense against the state. Through mediation the victim has the opportunity for involvement in the process of negotiating restitution, expressing feelings, and seeking answers from the offender. For the offender, mediation also achieves involvement by stressing accountability for the act, personalizing the crime, and providing a corrective intervention. The idea of the offender making restitution to the wronged person has precedent in many cultures, although it has not commonly been used as a criminal sanction under modern western systems.

Development

An early application of a modern western model providing mediation between a victim and offender occurred in 1974 in Kitchener, Ontario, Canada: the Victim Offender Reconciliation Program, or VORP. This was followed in 1979 in the United States by a program with the same name, which was started in Elkhart County, Indiana through the joint efforts of PACT Inc., Prisoners and Community Together, and the Methodist Church. The program spread, and by 1981 eight programs had been developed in the United States and Canada. By 1991, 50

program sites had been established, primarily in the Midwest and Canada. By 1994, 25 victim-offender mediation programs were operating in Canada, over 100 in the United States, and 165 in Western Europe.

According to Burt Galaway in a 1991 article in *Social Service Review*, of 14,000 cases referred by the courts to VORP programs, 86 percent were reported to have resulted in successfully completed restitution contracts. The study indicated that victims, for the most part, were not vindictive in negotiating with the offender and that there was a high level of willingness to meet among victim and offender. While long-term research regarding the effectiveness of the mediation model has been limited, such preliminary findings have been consistent in demonstrating that mediation is an effective way to resolve conflict between some crime victims and their offenders.

The Development of Victim-Offender Mediation in Anchorage

To date, the criminal justice system in Alaska has used formal mediation primarily with juvenile offenders. In 1991, Janice Lienhart, one of the founders of Victims for Justice, a private, nonprofit agency, which provides services to victims of crimes, sought assistance from staff at the McLaughlin Youth Center for a family whose son had been killed by a juvenile, what at that time was being held at the Center. What resulted was a victim-offender mediation involving the family and the juvenile. As a result of that mediation and several subsequent ones at McLaughlin, a core group of professionals formed an organizational base to explore the idea of implementing a victim-offender mediation program in Anchorage. Four organizations were represented in this effort: Victims for Justice, the McLaughlin Youth Center, the

Please see *Mediation*, page 5

HIGHLIGHTS INSIDE THIS ISSUE

- The Bureau of Justice Statistics describes federal and state prison populations (page 3).
- Cook Inlet Region, Inc. awards \$200,000 gift to the Justice Center (page 6).
- The Bureau of Justice Statistics analyzes the incidence of violent crime victimization in the workplace (page 7).

Mediation

(continued from page 1)

Department of Social Work and the Justice Center at the University of Alaska Anchorage.

In spring 1993, a survey was sent to 20 Anchorage area professionals connected directly or peripherally with the juvenile justice system; responses came from the Division of Family and Youth Services, the offices of the Public Defender, Public Advocacy, the Attorney General, law enforcement, the court system and various social service agencies. The intent of the survey was to determine the feasibility of establishing a victim-offender mediation program targeting juvenile offenders in Anchorage. Respondents were asked a series of questions regarding program concept, the types of crimes, offenders, and victims to be targeted, and the organizational structure, funding, and staffing patterns. The support for establishing a program from those surveyed was highly positive (96%), with many expressing a willingness to participate actively in the development of a program. Many of those surveyed later joined the project planning group.

In fall 1993 an organizational base, the Victim-Offender Mediation Project Planning Group, was formed. The group included the original four organizations, representatives from Juvenile Probation, the Office of Public Advocacy, the Alaska Judicial Council, the Alaska Youth and Parent Foundation, Family and District Court judges, the Attorney General's Office, the Anchorage Chamber of Commerce, private practice attorneys, and professional mediators. A six-month pilot project began in early 1994.

Plans for the pilot project evolved from committees of the Project Planning Group. The Chief Juvenile Probation Intake Officer and his staff agreed to provide referrals of cases identified as meeting the criterion of first or second-time juvenile offenders accused of property crimes. It was decided

that intake officers would screen cases and determine which referrals were appropriate for mediation. The Alaska Judicial Council participated in the development of instruments to evaluate the project, and the Alaska Youth and Parent Foundation, an Anchorage based private nonprofit agency, provided their facilities for training, meetings, and mediation sessions. A part-time coordinator was hired to train volunteers and implement the pilot project.

Ten volunteers, with previous mediation training, participated in a training program specific to victim-offender mediation. A training model developed by WORP in Elkhart, Indiana was drawn upon that included video presentations of mediations and issues in juvenile justice. Trainees participated in role-playing that replicated the entire mediation process, beginning with the initial contact of the participants through mediation and contracting. A second training was completed for additional community volunteers and included a teenage volunteer who had been active with Anchorage Youth Court. Fifteen trained volunteer mediators are now participating in the project. Except for the part-time coordinator, none of the participants is paid. Although evaluation of the project is in the initial stages, the volunteer mediator report success in the cases that have gone to mediation.

* By late summer 1994, 61 referrals had been received from Probation Intake, with 16 mediations and contracts being completed, 13 cases in progress and 32 closed without mediation occurring. Of those 32, 22 victims declined mediation and 4 cases were screened as not appropriate for mediation. In 4 cases the offender failed to keep the appointment, and in 2 cases the victim did not keep the mediation appointment.

Each mediation case has its own flow; however, an overall process has been developed. The intake officer interviews the offender following arrest and, if in the judgment of the intake officer, the case

meets the criteria for mediation, it is offered as a possible disposition. (Ordinarily, offenders are first or second-time offenders charged with property crimes, although several assault cases have also been mediated.)

Following the referral from Juvenile Intake, the project coordinator compiles the

Please see Mediation, page 4



Alaska Justice Forum

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Published quarterly by the Justice Center and
the Alaska Justice Statistical Analysis Unit at
the University of Alaska Anchorage, 3211
Providence Drive, Anchorage, AK 99508,
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ISSN 0893-8903

The Bureau of Justice Statistics, U.S. Department of Justice, provides approximately thirty-five percent of the funding for this publication.

The opinions expressed are those of individual authors and may not be those of the Justice Center or the Bureau of Justice Statistics.

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Mediation

(continued from page 5)

necessary information and assigns the case to two mediators. They, in turn, contact the offender to determine if he or she wishes to participate in the process. If the offender agrees to participate, an appointment is made with the victim. If all parties determine that mediation is feasible, it is conducted with a team of two mediators. The main purpose is to reach a reconciliation between the victim and offender. Mediators function as neutral facilitators of the process. Contracts for restitution resulting from the mediation are monitored by the project coordinator, with the intake officer informed of the final outcome. If a contract is not successfully completed, the intake officer makes a decision about further action on the case.

An example of a successful mediation involved a juvenile who had inflicted \$1,000 of damage by breaking into the garage of an elderly couple. Initially, the couple were resistant to mediation because of fear that meeting the offender would result in becoming known to the offender. They came to realize the irrationality of this fear because the offender obviously already did know where they lived. When the mediators present, the couple were able to ask questions of the offender and the offender was also able to explain his behavior. The woman negotiated a restitution contract with the offender in which he was to write her a letter of apology. The man presented receipts for repairs to the garage and contracted with the offender to do work at the couple's home at \$5 per hour during the summer until the \$1,000 in damages were

paid. Both the couple and offender expressed satisfaction with the mediation process, and the offender completed his contract. The male victim described his decision to participate in the mediation as akin to jury duty, a civic responsibility to participate in the justice process.

The project contains a formal evaluation component. The mediators complete separate pre-mediation questionnaires through interviews with both the victim and offender. Another interview is conducted with each participant immediately after the mediation, and telephone interviews with both victim and offender are also conducted 10 to 14 days later. Referred cases which did not result in mediation are evaluated to determine those factors which preclude the process. The major intent of the project evaluation is to gather information for use in developing an effective, ongoing program. The assembly and analysis of the data are monitored by the Alaska Judicial Council.

The evaluation instruments contain questions concerning the nature of the offense, feelings about the crime, perceptions of the effects of the offense, and perceptions about the justice process and the mediation process. In addition, both victims and offenders are given an opportunity to provide additional relevant comments if they desire.

The Victim Offender Mediation Project has received start-up funding through University of Alaska Anchorage Faculty Development Grants and the First National Bank of Anchorage. Project members are now seeking additional funding to continue and further develop an ongoing program.

Long-range plans are to institutionalize the victim-offender mediation program throughout the state in both the juvenile and adult criminal justice system. In a related effort, some members of the project are meeting with the Alaska Department of Corrections to develop an office for victim advocacy which would be housed in the offices of the Commissioner of Corrections but would operate as an entity separate from adult corrections. This may, in the future, lead to victim-offender mediation involving inmates in the Department of Corrections and their victims. Also, legislation may be sought to obtain confidentiality protection for the mediation process and support for statewide program development.

Patrick Cunningham is an associate professor of social work at the University of Alaska Anchorage. Lawrence C. Trotter is an assistant professor with the Justice Center.

REPORT

The first victim-offender mediation/dialogue program was established in Canada in 1974. Since then, victim-offender mediation/dialogue programs have spread to the United States as well as to other countries throughout the world. Over one hundred programs are now in existence in the United States, alone.

Victim-offender mediation/dialogue programs, as their name suggests, are programs in which a criminal offender and the victim of the crime meet together in the presence of a trained mediator-facilitator. During the meeting or meetings, the victim is afforded the opportunity to seek answers to questions about the crime that may have been troubling the victim, such as why the offender chose the victim's home to burglarize. The victim is also given the chance to tell the offender about how the crime has affected the victim. It is during this portion of the meeting that the offender will often, for the first time, realize the level of emotional trauma caused by his or her criminal conduct. During the meeting, the offender also discusses his or her views about the crime, and this discussion will often culminate in an expression of remorse for the harm that the offender has caused.

The victim and offender then attempt to reach an agreement to redress the harm caused by the offender's criminal conduct. The agreement may require the offender to pay restitution to the victim, to perform work for the victim, to perform community service work, and/or to participate in programs, such as a substance abuse treatment program. Through the implementation of the agreement, which holds an offender accountable for the harm caused by his or her criminal behavior, a victim-offender mediation/dialogue program can serve as an integral component in a comprehensive corrections system, helping to avoid the high human and economic costs of unnecessary incarceration.

One of the chief benefits of victim-offender mediation/dialogue programs is that they humanize the criminal justice process. By bringing criminal offenders together face-to-face with their victims, it becomes more difficult for the offenders to rationalize their criminal behavior. As they face the individual that they have victimized, the harm caused by their crime is also no longer an abstraction but very real.

Mediation/dialogue sessions also bring a human face to the person who is otherwise abstractly and impersonally known as "the criminal." During such sessions, victims may gain a better understanding of who the offenders are and of the circumstances that may have contributed to their criminal behavior.

Research results have confirmed the many benefits of victim-offender mediation/dialogue programs. See, e.g. Mark S. Umbreit & Robert B. Coates, Victim Offender Mediation: An Analysis of Programs in Four States of the U.S. (1992); Jim Dignan, Repairing the Damage: An Evaluation of an Experimental Adult Reparation Scheme in Leicestershire, Northamptonshire (1990); Tony F. Marshall & Susan Merry, Crime and

Victim Offender Mediation Project Program Standards and Policies

The juvenile Victim Offender Mediation Project (VOMP) recruits, trains, and assigns community, volunteer mediators to facilitate face-to-face meetings between certain juvenile offenders and their victims. Participation is entirely voluntary. VOMP's long-term goals are to implement its services statewide and in both juvenile and adult systems.

I. Administration

Structure. The VOMP project is administered by a private, nonprofit corporation, the Community Dispute Resolution Center, Inc. The CDRC's mission is to provide community dispute resolution and related services in Alaska. The VOMP program is one way in which the CDRC fulfills this mission. The Board of Directors of the CDRC hires and supervises VOMP's executive director, who serves as staff to VOMP and who in turn trains and supervises all VOMP volunteers.

Standards and Policies. The CDRC Board reviews and adopts all standards and policies relating to programs that it administers, including these standards. These standards and policies govern operation of the juvenile Victim Offender Mediation Project. They are separate from but consistent with the CDRC's administrative and personnel policies. The CDRC Board can change these policies as it sees fit to best administer the VOMP program.

Community Advisory Committee. A committee of volunteers from the community advises the CDRC Board of Directors on policy and technical issues relating to VOMP. The Community Advisory Committee meets monthly and includes representatives from Victims for Justice (a private, nonprofit victim counseling and advocacy entity), McLaughlin Youth Center, the University of Alaska (Departments of Social Work and the Justice Center), the Alaska Court System, the Public Defender Agency, the Office of Public Advocacy, the Alaska Judicial Council, the local mediation

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Founded in 1946 by Norman C. Brown

Crime control

Here's an idea with great potential

What would you say about a program that sends youthful criminals a sterner message, reduces the chances they will reoffend and gives victims more say in the outcome of a case — all for a fraction of the cost of dispensing conventional juvenile justice?

You'd probably say it sounds too good to be true.

Mediation could prove better than the current justice system.

But it's not. Exactly such a program is being started in Anchorage, perhaps as early as next month. Known as a "victim-offender mediation project," it's being spearheaded by two University of Alaska

professors, Pat Cunningham and Larry Trostle.

The effort targets juveniles who are nabbed for first- or second-time property crimes. If both the offender and victim agree, they will meet face-to-face with a mediator and work out a restitution agreement. Options will include repayment, community service or perhaps just a letter of apology — whatever the two parties can agree to.

Mediation could prove better than the current justice system in several ways. Conventional proceedings relegate both offender and victim to passive roles. Judges, prosecutors, lawyers, police officers and other experts dominate action (or inaction) on the case. Criminals are tempted to beat the rap by contesting the evidence, instead of coming clean.

As for victims, the crime often leaves them feeling violated and powerless. Those feelings are often amplified when the system treats them as complete afterthoughts. Sometimes victims may not even learn the youthful criminal's identity. Mediation can encourage the offender to take responsibility for the crime while helping victims restore some feeling of control over their lives.

Perhaps the most amazing thing about this pilot program is its price. It costs a mere \$9,000 for six months, funded by two University of Alaska faculty development grants. Volunteer help from many quarters makes the shoestring operation possible. Victims for Justice will help find victims to participate. Mediators will volunteer their services. Alaska Youth and Parent Foundation will supply office space. The Alaska Judicial Council will track the project's performance.

Similar approaches have worked well elsewhere. Research by UAA students found 100 such programs around the country, and scores more in Canada and Europe. In one study of 14,000 cases, recidivism rates fell and offenders honored 86 percent of the restitution agreements.

Cunningham hopes the approach will merit expanding to juveniles outside Anchorage and to selected violent offenders. Eventually it may offer a useful alternative for certain crimes and offenders in the adult system statewide. Widespread mediation might someday revolutionize American style justice.

Throughout history, other cultures have emphasized restitution and reintegrating offenders into the community. Those values now get lost in the shuffle of adversarial-style American justice. Making amends and healing victims are incidental to deciding whether the accused is guilty or innocent. Mediation could produce a criminal justice system that delivers less crime and more justice.

FORUM / LETTERS

Mediation offers hope where juvenile justice fails

By MARY ANN DEARBORN



Youth violence is on the increase. There seems to be no easy fix. Too often people blame the individual. Perhaps if we develop a better understanding of how the individual relates to his or her environment, we can take steps to improve how our children cope with their world and how the world copes with them. By creating the right environment, successful interventions may be developed to correct or avoid violent behavior. One place to start might be the current juvenile justice system.

confidentiality under current children's court rules, the victim may never find out the juvenile's identity.

Because the juvenile's role is so passive, he or she frequently does not feel remorse and is reluctant to comply with the ordered restitution. Due to an overburdened legal system, compliance with restitution may not be enforced. As a result, the victim may feel further victimized, this time by the system, and the juvenile may not think twice before planning future criminal acts.

A University of Alaska Anchorage faculty development grant awarded in 1993 explored the feasibility of establishing a victim/juvenile offender mediation program in Anchorage. The pro-

venues targeted are first- and second-time property offenders. The pilot project is now in the second stage and is funded through June. This program represents a dramatically different approach to the current juvenile justice system and is supported by 15 groups, including state agencies and the Alaska Court System.

The main purpose of the program is to replace the nonparticipative courtroom with a new environment. Crime is viewed as a conflict between two people. Mediation as a process for mutual resolution of conflict, is more likely than a courtroom to allow for participation and reconciliation. The victim and juvenile offender meet privately, face to face. An impartial mediator guides them in a round table discussion, and together they develop a mutually acceptable restitution agreement. The agreement

Mediation, as a process for mutual resolution of conflict, is more likely than a courtroom to allow for participation and reconciliation.



Dearborn

reached might be as simple as a sincere letter of apology or a community service contract.

Mediation offers other benefits over and above reaching an agreement on restitution. The victim may feel some healing from the crime. The juvenile may feel more accountable and as a result may be more likely to comply with the restitution agreement. By intervening early, the first-time offender might be less likely to commit future violent acts.

Dr. Pat Cunningham, Department of Social Work, and Dr. Larry Trostle, Department of Justice, co-authored the UAA grant and are working with other members of the community to get the project rolling.

Juvenile probation officers will be making referrals and will follow up to make certain the restitution agreements are fulfilled by the juveniles. Victims for Justice will contact and screen victim participants. The Alaska Judicial Council will

monitor the project to confirm the intervention has merit. Alaska Youth and Parent Foundation has offered office space, and Niki Stewart, former AYPF coordinator, has been hired to coordinate the program.

It is anticipated that the Alaska Victim Offender Mediation Project will have a profound impact on future juvenile crime in Alaska and on the victims of crime. Crowded correctional institutions and growing doubts as to their effectiveness in deterring crime make victim-offender mediation a highly cost effective alternative to incarceration for some offenders. Mediation may succeed where juvenile justice has failed in reducing the number of violent youths in our society.

Mary Ann Dearborn is a professional mediator in Anchorage.

Alaska groups target juvenile - victim mediation

By Mary Ann Dearborn
For the Journal of Commerce

Mediation is not just for settling civil disputes. Crime is viewed as a conflict between people and mediation offers an environment which is more likely than a courtroom to lead to a mutually acceptable resolution of that conflict.

A University of Alaska Anchorage faculty development grant awarded in 1993 is exploring the feasibility of establishing a victim-juvenile offender mediation program in Anchorage, Alaska. The pilot project is now in the second stage and is funded through June, 1994.

Dr. Pat Cunningham, Department of Social Work, and Dr. Larry Trostle, Department of Justice, co-authored the grant, and 15 Alaska groups are supporting the program, including state agencies and the Alaska Court system.

A mediated settlement approach to settling crimes pre-dates the idea of imprisonment. Restitution to persons wronged, intended to heal the injury of the crime, has precedence in many cultures. However restitution as a criminal sanction has played an insignificant role in the history of our criminal justice system. Instead of making individuals act responsibly, we lock people up in ever increasing



Dr. Larry Trostle

numbers and don't see much deterrence from criminal behavior after release.

First and second time juvenile property offenders are being targeted for a special project that will allow the juvenile offender and victim to meet face to face, using an impartial mediator, for the purpose of developing a restitution agreement. Some believe this will be a positive improvement to the current juvenile justice system.

Our current system dictates restitution in a courtroom setting where both offender and victim play passive



Dr. Pat Cunningham

roles. Due to confidentiality under children's court rules, the victim may never find out the juvenile's identity. Because of lack of participation, the juvenile frequently does not feel remorse, is reluctant to comply with the ordered restitution, and due to an overburdened legal system compliance with restitution may not be enforced. As a result the victim may feel further victimized this time by the system, and the juvenile may not think twice before pursuing future criminal activity.

The program calls for juvenile pro-

bation officers to make referrals to the program and follow up to ensure restitution agreements are fulfilled by the juveniles. Victims for Justice would contact and screen victim participants. The Alaska Judicial Council would monitor the project to confirm the intervention has merit. Alaska Youth and Parent Foundation has offered office space and Niki Stewart, former AYPF coordinator, has been hired to coordinate the project. Professional and volunteer mediators are offering their services and will be trained to work with the program.

Mediation, as an intervention alternative to the current juvenile justice system, offers hope for other benefits over and above reaching an agreement on restitution. The victim may feel some healing from the crime. The juvenile may feel more accountable and as a result may be more likely to comply with the restitution agreement. By intervening early, the young offenders may be less likely to commit future criminal acts.

It is anticipated that the Alaska Victim Offender Mediation project will have a profound impact on future juvenile crime in Alaska and on the victims of crime. The long range plan is to implement this program statewide and in both the juvenile and

Continued on Page 28

Alternative Dispute Resolution

NEWS & INFORMATION

ALASKA BAR
ASSOCIATION
ADR SECTION



Victim-offender mediation: Restorative alternative

By Nikishka Stewart

In January 1994 a pilot project was funded through the University of Alaska Anchorage implementing a Victim-Offender Mediation Project. This project addresses juvenile crime and its effects on individuals and the community as a whole.

In our society, crime is viewed as an offense against the state and not as an injury to a person. Victim-Offender Mediation seeks to personalize the experience and humanize the parties involved while seeking a restitution agreement that effectively resolves the damage done.

The Anchorage mediation project has adopted five goals that help it accomplish this mission 1.) To encourage accountability on the part of the juvenile offender. 2.) To provide an opportunity for the victim to work directly with the offender in discussing restitution. 3.) To provide an op-

portunity for parties to feel restored from or reconciled to the event. 4.) To provide a referral option for the juve-



Nikishka Stewart.

nile corrections system to help handle their caseload. 5.) To maintain a high level of community investment and support.

This project utilizes trained volunteer mediators from the community and has a dynamic advisory committee which includes Master Bill Hitchcock (children's court), Donis Morris (McLaughlin Youth Center), Janico Lienhart (Victims for Justice), Suzanne Cole (Public Defender), Bob Buttane (Juvenile Intake), Patrick Cunningham (UAA), Sig Murphy (District Court Judge), Jay Page (First National Bank) and approximately 15 other community members who volunteer their time to provide direction and support.

To date the project has handled 60 cases. All referrals come from the intake officers at the Juvenile Intake Department housed at McLaughlin Youth Center. Of these 60 cases, 23 are ongoing and being developed for

mediation, 22 were closed without going to mediation and, so far, 15 were successfully mediated with restitution contracts in place.

In the 22 cases that were closed without mediation, 18 of those were due to victims declining to participate and four were screened out by program staff. Typically, when a party refuses it is the victim who declines.

There are more than 200 programs such as this throughout the U.S. and Canada. It is a community-based approach to a problem that affects us as individuals and as a community. How many of us have had the experience of being the victim of a crime? We know the ripple effect it has. We wonder, "Who did it?", "Why me?", "Are they going to do it again? Without information and answers to these questions, we find that our minds tend to work to fill the void. We suppose all sorts of things and can often paint a picture of some horrible, threatening person who seeks only to prey on the unsuspecting. We can lose faith in our surroundings, in others. We wonder, what is safe any more? Who can you trust?

If the case is not resolved to the point where our questions are answered and to the point we feel justice is done our aggravation and frustration can be compounded. We end up fed up with the system and feeling

Mead

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Restorative alternative works for victim-offender mediation

Continued from Page 20

that crime is out of control.

The Anchorage-based project brings victim and juvenile offender face to face in a safe and constructive setting to discuss the crime and the impacts it has had. The offenders hear how their actions have affected another person, the victims hear the juveniles' side of the story, and both parties work out an agreement that "makes it right." The offender takes

responsibility and shows he/she is willing to work it out. The victim feels heard, in control, and gets to deal with reality rather than fearful suppositions. The end result is that both parties get to put the crime behind them. The victim feels restored and the offender has had a reality check that makes him or her think twice about breaking the law again. For further information or to volunteer, contact Nikishka (Niki) Stewart, the Project Coordinator at 274-1542.

corpus or a petition for post-conviction relief) because, over this five-year period, the accumulated loss of good time has come to equal the number of days remaining in his sentence.

**ALASKA SUPREME COURT
NOTE: INCLUDES TWO OPINIONS RELEASED BY THE ALASKA SUPREME COURT
THE WEEK OF July 1, 1994**

- Collateral estoppel
- Full Faith and Credit Clause

Denis McCaCampion v. State of Alaska, Department of Community & Regional Affairs, Housing Assistance Division, Op. No. 4096 (Alaska July 1, 1994) (14 pages)

OPINION: Moore, C.J.

ATTORNEYS: Kevin M. Morford, Jensen, Harris & Roth, Anchorage, for Appellant. Richard N. Ullstrom, Routh & Crabtree, P.C., Anchorage, for Appellee.

TRIAL COURT: J. Justin Ripley, Superior Court, Third Judicial District, Anchorage.

PRINCIPAL ISSUE ON APPEAL: Under collateral estoppel and the Full Faith and Credit Clause, is a federal judgment interpreting an Alaska statute binding between the parties in later litigation in Alaska?

HOLDING: The superior court judgment was reversed. The doctrine of collateral estoppel, also referred to as issue preclusion, bars re-litigation, even in an action on a different claim, of all issues of fact or law that were actually litigated and necessarily decided in a prior proceeding.

- Rebuttal of presumption of compensability in Worker Compensation cases

- Necessity of expert medical evidence in Worker Compensation cases

- Substantial evidence needed to support Board conclusions

Norcon, Inc. and Eagle Pacific Insurance Co. v. Alaska Workers' Compensation Board and Ellen Siebert, Op. No. 4097 (Alaska July 1, 1994) (17 pages)

OPINION: Compton, J.

ATTORNEYS: Karen L. Russell and Joseph M. Cooper, Russell, Tesche & Wagg, Anchorage, for Appellants. Joseph A. Kalamarides, Kalamarides & Associates, Anchorage, for Appellees.

Reformers tout ADR programs

Continued from Page 18

ments sooner than the typical eve-of-trial agreements. Within 30 days of the filing of a responsive pleading, an administrator holds a meeting with the attorneys and their clients, including someone from both sides with the authority to settle. Each side discusses facts, issues and possible solutions.

If no settlement is reached, the administrator and the parties agree on the limited discovery that will be needed for ADR, which is scheduled within 90 days of the meeting. Litigants can choose from a number of options, but most pick mediation overseen by the program's administrator, probably because his services are free.

According to Donna Stienstra, a senior research associate for the Federal Judicial Center, the emphasis on getting cases into ADR quickly in Missouri's program is unusual. "There is an expectation that ADR works better later," she said. "One of the surprises of the program may be that

it works well early."

Indeed statistics kept by the district show some success. The cases are divided into three groups: those that are required to go through the early assessment program, those that may opt for it, and a control group of those that may not opt for it.

The median time from filing to disposition of the cases was 232 days for those required to participate, 310 days for those that could opt in, and 317 days for the control group. The cases studied were filed between Jan. 1, 1992, and April 30, 1993.

The 404 attorneys surveyed gave the program a thumbs up. Ninety-two percent said it should be continued and 67 percent said it was very or somewhat helpful in reducing the cost of resolving cases.

Wolf says the program "has been very effective in a district (without) significant problems" with case backlogs. "Can you imagine how effective it would be in a district where many cases are taking three years or more to go to trial?" he asked.

Inspiration for Windows program outlines

Continued from Page 19

Inspiration doesn't have the graphics features of programs like Power Point or Persuasion. But we do like the program both as an outliner, and for the ease in which we could prepare good looking graphics.

Inspiration for Windows, Version 4. Inspiration Software Inc., 2920 E. V. Dolph Court, Portland, OR 97219. Phone (800) 877-4292 ex 14 or (503) 245-2011. Fax (503) 246-4292

writes about computers from his office in Homewood, Ill. Benjamin H. Cohen is based in Chicago, Ill. These columns are available electronically on NewsNet, Predicasts Newsletter file, Westlaw in the LawPrac file, and on Counsel Connect. For further information you can contact Law Office Technology Review by writing to P.O. Box 2577, Homewood, IL 60430, or sending e-mail to bbayer@bix.com, bbayer@MCI Mail, bbayer@ABA/Net, or Barry Bayer on Counsel Connect.

**"I'd rather have a root canal!":
notes from a mediation**

Donny B.* Broke into the home of Mr. and Mrs. S*. He used a garden shovel to break into their front porch when neither of them were home. Substantial and costly damage was done to the home. The estimate for repair was beyond Mr. and Mrs. S's means.

In a mediation facilitated by two trained volunteer mediators, Mr. and Mrs. S, an older couple, confronted the offender with what his crime had done to them.

Mrs. S. told Donny and the mediators she was out of state at the time caring for her father who was very ill. She spoke of receiving the phone call from her husband and feeling great stress at being unable to return home to support him. She was surprised when tears came to her eyes and had to pause several times as she told of her feelings of helplessness and anger about the crime and not being able to share the burden with her husband.

Mr. S went next and said that the break-in had been the last in a string of misfortunes for the couple. He had suffered a stroke that year and had incurred much debt that was not covered by insurance. The doctor had ordered him to avoid stress to protect his health but it had been very difficult due to the bills, his father-in-law's illness, and now the break-in.

Donny, his voice often shaky and strained, told Mr. and Mrs. S. that he now felt he was stupid and wrong for having broken in to their home. He told them that it had been an exciting spur of the moment crime, his first, and he had never thought about the real people who lived there. After much discussion of the impacts on Mr. and Mrs. S and of his own loss of parental trust, friends, and loss of feelings of self-worth, Donny agreed to do what he could to make it up to them. He also wanted to rebuild his relationship with his parents and hoped the efforts he made toward the couple would help.

Before the mediation, Mr. and Mrs. S talked about how they were fearful to confront the individual who had done the crime. Some thoughts they were having were: Why me? What were you thinking when you did this? Don't you know how devastating this is for us? How do you feel about hurting people this way? What did we do to make you do this to us? As much as they wanted answers they feared retribution. After talking with Donny in the mediation, Mr. and Mrs. S. realized that he was just a kid who had done a dumb thing. They could see him becoming more aware of the impact of his crime. They felt safe again and also reassured by Donny's honest and thorough answers to all of their questions.

The mediators moved the discussion on to restitution. The victims and the offender talked about how to make things right. Donny explained he didn't have the money for permanent repairs. At this point, Mr. and Mrs. S decided to give Donny a chance to personally make it up to them. They explained that neither of them could do yard work anymore and had to pay someone to do that. Mrs. S. proposed that Donny do the yard jobs to work off the costs. Mr. and Mrs. S could then take the yard work money from their budget and apply it to fixing the porch. Startled and grateful, Donny accepted. Together, they collaborated on the details of the agreement, including alternative plans to continue the yard work into the next spring if winter closed in before the total debt was paid.

Mediation had certainly turned things around for the victims and the offender. All the apprehension and stress was relieved. Everyone was feeling better. Mr. S finished up the mediation by offering that if Donny did a good job on their yard and he wanted some money they would consider hiring him in the future to more yard work. Donny, feeling proud and grateful, shook hand with Mr. and Mrs. S and assured them he would be at work bright and early the following Saturday. Mrs. S. said as she left, "You know, when I was approached to do this mediation I thought I would rather have had a root canal. But now that I've been though it I realize it is the best thing I could have done."

* This case synopsis is based on a real mediation. The names of clients and certain details have been changed to protect the participant's identities and confidentiality.

9-LS1423\K ✓
Chenoweth
1/18/96

CS FOR HOUSE BILL NO. 379()

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE PORTER

A BILL

FOR AN ACT ENTITLED

1 "An Act authorizing establishment of community dispute resolution centers to
2 foster the resolution of disputes between juvenile offenders and their victims."

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

4 * Section 1. AS 22.35 is amended by adding a new section to read:

5 Sec. 22.35.020. RECOGNITION OF COMMUNITY DISPUTE RESOLUTION
6 CENTERS FOR MATTERS INVOLVING MINORS. The administrative director may
7 recognize an entity described in AS 47.10.267(a) as a community dispute resolution
8 center to serve as a center to resolve disputes between minors and victims. Before
9 extending recognition under this section, the administrative director shall determine that
10 the bylaws of the entity ~~shall~~ standards and procedures that meet the requirements of
11 AS 47.10.267(b).

12 * Sec. 2. AS 47.10.020(a) is amended to read:

13 (a) Whenever circumstances subject a minor to the jurisdiction of
14 AS 47.10.010 - 47.10.142, the court shall

15 (1) provide, under procedures adopted by court rule, that, for a minor

1 who is alleged to be a delinquent minor under AS 47.10.010(a)(1), a state agency shall
2 make a preliminary inquiry to determine if any action is appropriate and may take
3 appropriate action to adjust or dispose of the matter without a court hearing; if, under
4 this paragraph,

5 (A) the state agency makes a preliminary inquiry and takes
6 appropriate action to adjust or dispose of the matter without a court hearing,
7 the minor may not be detained or taken into custody as a condition of the
8 adjustment or disposition and, subject to (d) of this section, the matter shall be
9 closed by the agency if the minor successfully completes all that is required of
10 the minor by the agency in the adjustment or disposition; in a municipality or
11 municipalities in which a youth court has been established under AS 47.10.265,
12 adjustment or disposition of the matter under this paragraph may include
13 referral to the youth court; if a community dispute resolution center has
14 been established under AS 47.10.267(a) and has obtained recognition under
15 AS 22.35.020 or AS 47.10.267(b), adjustment or disposition of the matter
16 under this paragraph may include use of the services of the community
17 dispute resolution center;

18 (B) the agency concludes that the matter may not be adjusted
19 or disposed of without a court hearing, the agency may file a petition under (2)
20 of this subsection setting out the facts; or

21 (2) appoint a competent person or agency to make a preliminary inquiry
22 and report for the information of the court to determine whether the interests of the
23 public or of the minor require that further action be taken; if, under this paragraph, the
24 court appoints a person or agency to make a preliminary inquiry and to report to it,
25 then upon the receipt of the report, the court may informally adjust or dispose of the
26 matter without a hearing, or it may authorize the person having knowledge of the facts
27 of the case to file with the court a petition setting out the facts; if the court informally
28 adjusts or disposes of the matter, the minor may not be detained or taken into the
29 custody of the court as a condition of the adjustment or disposition, and the matter
30 shall be closed by the court upon adjustment or disposition.

31 * Sec. 3. AS 47.10.080(b) is amended to read:

1 (b) If the court finds that the minor is delinquent, it shall

2 (1) order the minor committed to the department for a period of time
3 not to exceed two years or in any event extend past the day the minor becomes 19,
4 except that the department may petition for and the court may grant in a hearing (A)
5 two-year extensions of commitment that do not extend beyond the child's 19th
6 birthday if the extension is in the best interests of the minor and the public; and (B)
7 an additional one-year period of supervision past age 19 if continued supervision is in
8 the best interests of the person and the person consents to it; the department shall place
9 the minor in the juvenile facility that the department considers appropriate and that
10 may include a juvenile correctional school, juvenile work camp, treatment facility,
11 detention home, or detention facility; the minor may be released from placement or
12 detention and placed on probation on order of the court and may also be released by
13 the department, in its discretion, under AS 47.10.200;

14 (2) order the minor placed on probation, to be supervised by the
15 department, and released to the minor's parents, guardian, or a suitable person; if the
16 court orders the minor placed on probation, it may specify the terms and conditions
17 of probation; the probation may be for a period of time, not to exceed two years and
18 in no event extend past the day the minor becomes 19, except that the department may
19 petition for and the court may grant in a hearing

20 (A) two-year extensions of supervision that do not extend
21 beyond the child's 19th birthday if the extension is in the best interests of the
22 minor and the public; and

23 (B) an additional one-year period of supervision past age 19 if
24 the continued supervision is in the best interests of the person and the person
25 consents to it;

26 (3) order the minor committed to the department and placed on
27 probation, to be supervised by the department, and released to the minor's parents,
28 guardian, other suitable person, or suitable nondetention setting such as a family home,
29 group care facility, or child care facility, whichever the department considers
30 appropriate to implement the treatment plan of the predisposition report; if the court
31 orders the minor placed on probation, it may specify the terms and conditions of

1 probation; the department may transfer the minor, in the minor's best interests, from
2 one of the probationary placement settings listed in this paragraph to another, and the
3 minor, the minor's parents or guardian, and the minor's attorney are entitled to
4 reasonable notice of the transfer; the probation may be for a period of time, not to
5 exceed two years and in no event extend past the day the minor becomes 19, except
6 that the department may petition for and the court may grant in a hearing

7 (A) two-year extensions of commitment that do not extend
8 beyond the child's 19th birthday if the extension is in the best interests of the
9 minor and the public; and

10 (B) an additional one-year period of supervision past age 19 if
11 the continued supervision is in the best interests of the person and the person
12 consents to it;

13 (4) order the minor to make suitable restitution in lieu of or in addition
14 to the court's order under (1) - (3) [(1), (2), OR (3)] of this subsection; the court may
15 not refuse to make an order of restitution under this paragraph to benefit the victim of
16 the act of the minor that is the basis of the delinquency adjudication; the court may
17 require the minor to use the services of a community dispute resolution center
18 that has been recognized by the administrative director of the Alaska Court
19 System under AS 22.35.020 or by the commissioner under AS 47.10.267(b) to
20 resolve any dispute between the minor and the victim of the minor's offense as
21 to the amount of or manner of payment of restitution;

22 (5) order the minor committed to the department for placement in an
23 adventure based education program established under AS 47.21.020 with conditions
24 the court considers appropriate concerning release upon satisfactory completion of the
25 program or commitment under (1) of this subsection if the program is not satisfactorily
26 completed; or

27 (6) in addition to an order under (1) - (5) of this subsection, if the
28 delinquency finding is based on the minor's violation of AS 11.71.030(a)(3) or
29 11.71.040(a)(4), order the minor to perform 50 hours of community service; for
30 purposes of this paragraph, "community service" includes work

31 (A) defined as community service under AS 33.30.901; or

1 (B) that, on the recommendation of the city council or
2 traditional village council, would benefit persons within the city or village who
3 are elderly or disabled.

4 * Sec. 4. AS 47.10 is amended by adding a new section to read:

5 Sec. 47.10.267. COMMUNITY DISPUTE RESOLUTION CENTERS FOR
6 MATTERS INVOLVING MINORS. (a) An entity organized for the purpose of
7 providing community mediation services may establish and operate a community
8 dispute resolution center to resolve disputes between minors who are alleged to have
9 committed offenses and the victim of those offenses.

10 (b) The commissioner may recognize an entity organized for the purpose of
11 providing community mediation services as a community dispute resolution center to
12 serve as a center to resolve disputes between minors and victims. Before extending
13 recognition under this subsection, the commissioner shall determine that the bylaws of
14 the entity set out standards and procedures

15 (1) for filing requests for dispute resolution services with the center and
16 for scheduling mediation sessions participated in by the parties to the dispute;

17 (2) to ensure that each dispute mediated meets the criteria for
18 appropriateness for mediation and for rejecting disputes that do not meet the criteria;

19 (3) for giving notice of time, place, and nature of the mediation session
20 to the parties, and for conducting mediation sessions that comply with the provisions
21 of this section;

22 (4) to ensure that participation by all parties is voluntary;

23 (5) for obtaining referrals from public and private bodies;

24 (6) for providing mediators who, during the dispute resolution process,
25 may not make decisions or determinations of the issues involved, but who shall
26 facilitate negotiations by the participants themselves to achieve a voluntary resolution
27 of the issues;

28 (7) for communicating to the agency making a referral under
29 AS 47.10.020(a)(1)(A) or the court making a referral under AS 47.10.080(b)(4), as
30 appropriate, the following:

31 (A) notice that the minor and victim have been unable to enter

1 into a written agreement under (d)(2) of this section or that the minor or victim
2 has withdrawn from mediation as authorized by (f) of this section;

3 (B) notice that the minor and victim have entered into a written
4 agreement under (d)(2) of this section; the center shall transmit a copy of the
5 agreement to the agency or the court, as appropriate;

6 (C) notice that the minor has failed to perform fully the minor's
7 obligations under the written agreement under (d)(2) of this section;

8 (D) notice that the minor has successfully completed all that is
9 required of the minor under the provisions of the written agreement under
10 (d)(2) of this section; and

11 (8) for informing and educating the community about the community
12 dispute resolution center and encouraging the use of the center's services in appropriate
13 cases.

14 (c) A center established under this section shall provide dispute resolution
15 services between a minor who has committed an offense and who, because of the
16 commission of the offense, may be alleged to be a delinquent minor under
17 AS 47.10.010(a)(1), and a person who was a victim of that offense. The center shall
18 provide dispute resolution services either without charge to a participant or for a fee
19 that is based on the participant's ability to pay.

20 (d) In conducting a dispute resolution process under this section, a center shall
21 require that

22 (1) the minor and the victim enter into a written agreement that
23 expresses the method by which they shall attempt to resolve the issues in dispute; and

24 (2) at the conclusion of the dispute resolution process, the minor and
25 the victim enter into a written agreement that sets out the settlement of the issues and
26 the future responsibilities, if any, of each party.

27 (e) Except for a notice or a communication described in (b)(7) of this section,
28 all memoranda, work notes or products, or case files of centers established under this
29 section are confidential and privileged and are not subject to disclosure in any judicial
30 or administrative proceeding unless the court or administrative tribunal determines that
31 the materials were submitted by a participant to the center for the purpose of avoiding

1 discovery of the material in a subsequent proceeding. Any communication relating to
2 the subject matter of the resolution made during the resolution process by a participant,
3 mediator, or another person is a privileged communication and is not subject to
4 disclosure in a judicial or administrative proceeding unless all parties to the
5 communication waive the privilege. However, privilege and limitation on evidentiary
6 use set out in this subsection do not apply to a communication of a threat that injury
7 or damage may be inflicted on a person or on the property of a party to the dispute
8 to the extent the communication may be relevant evidence in a criminal matter.

9 (f) A minor or a victim who voluntarily enters a dispute resolution process at
10 a center established under this chapter may revoke consent, withdraw from dispute
11 resolution, and seek judicial or administrative redress before reaching a written
12 resolution agreement. The withdrawal shall be in writing. If a minor or a victim
13 withdraws from dispute resolution, a legal penalty, sanction, or restraint may not be
14 imposed upon the person for that withdrawal.

15 (g) A center established under this section may seek and accept contributions
16 and any other available money and may expend the money to carry out the purposes
17 of this section.

18 (h) A member of the board of directors of a community dispute resolution
19 center is immune from suit in a civil action based upon a proceeding or other official
20 act performed in good faith as a member of the board. Employees and volunteers of
21 a community dispute resolution center are immune from suit in a civil action based on
22 a proceeding or other official act performed in their capacity as employees or
23 volunteers, except in cases of wilful or wanton misconduct. A center is immune from
24 suit in a civil action based on a proceeding or other official act performed by its
25 employees, volunteers, or members or its board of directors, except in cases of wilful
26 or wanton misconduct by its employees or volunteers or in cases of official acts
27 performed in bad faith by members of the board.

28 (i) In this section, "center" means a community dispute resolution center.



UNIVERSITY OF ALASKA ANCHORAGE

3211 Providence Drive
Anchorage, Alaska 99508

COLLEGE OF ARTS AND SCIENCES
DEPARTMENT OF SOCIAL WORK

January 16, 1995

Representative Brian Porter
Chair, House Judiciary Committee
Juneau, Alaska

RE. HB 379, Community Dispute Resolution Centers

Dear Representative Porter:

I wish to offer my support to your efforts to obtain passage of HB 397, which you recently introduced, as the primary sponsor. I am writing to you in my dual roles as a faculty member of the University of Alaska Anchorage with a long history of work in juvenile justice, and as the Chair of the McLaughlin Youth Center's Citizen Advisory Board.

In my opinion, establishing community dispute resolution centers to promote the active participation of victims and juvenile offenders in obtaining restorative justice, will have a positive and profound impact upon reducing crime and its deleterious effects. It engages both the victim and offender in a more active participation in the justice process. Direct confrontation, restitution, accountability, socialization, healing, empowerment, and achieving justice are all possible within this model. These centers will provide the opportunity for community members to actively participate in this process as volunteers and have a direct impact upon reducing crime, where they live. The dollar cost is minimal the savings enormous.

I recognize that this is not the final solution to one of our major social problem but it is definitely a program that has proven effectiveness. It is particularly useful in recognizing the need for victims to be major participants in responding to crimes against them and also in diverting youth from escalating their criminal activity. The idea of presenting a problem solving model in which the resolving of disputes can occur, without violence, has the potential of not only impacting juvenile offenders and their victims but anyone who chooses violence to solve dilemmas.

Thank you for creating this piece of legislation and if I can be of any assistance, please call upon me.

Sincerely yours,

A handwritten signature in cursive script that reads "Patrick M. Cunningham".

Dr. Patrick M. Cunningham, DSW
Associate Professor

Alaska State Legislature



House of Representatives

House Judiciary Committee

January 16, 1996

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

TO: House Judiciary Committee members

FROM: Tom Meyer, *staff*

RE: Fiscal note/sectional analysis for HB 379

Sorry these materials couldn't get out sooner. Please add to your packets that have already been distributed to you.

CS FOR HOUSE BILL NO. 379()
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE PORTER

A BILL

FOR AN ACT ENTITLED

1 "An Act authorizing establishment of community dispute resolution centers to
2 foster the resolution of disputes between juvenile offenders and their victims."

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

4 * Section 1. AS 22.35 is amended by adding a new section to read:

5 Sec. 22.35.020. RECOGNITION OF COMMUNITY DISPUTE RESOLUTION
6 CENTERS FOR MATTERS INVOLVING MINORS. The administrative director may
7 recognize an entity described in AS 47.10.267(a) as a community dispute resolution
8 center to serve as a center to resolve disputes between minors and victims. Before
9 extending recognition under this section, the administrative director shall determine that
10 the bylaws of the entity set out standards and procedures that meet the requirements of
11 AS 47.10.267(b).

12 * Sec. 2. AS 47.10.020(a) is amended to read:

13 (a) Whenever circumstances subject a minor to the jurisdiction of
14 AS 47.10.010 - 47.10.142, the court shall

15 (1) provide, under procedures adopted by court rule, that, for a minor

1 who is alleged to be a delinquent minor under AS 47.10.010(a)(1), a state agency shall
2 make a preliminary inquiry to determine if any action is appropriate and may take
3 appropriate action to adjust or dispose of the matter without a court hearing; if, under
4 this paragraph.

5 (A) the state agency makes a preliminary inquiry and takes
6 appropriate action to adjust or dispose of the matter without a court hearing,
7 the minor may not be detained or taken into custody as a condition of the
8 adjustment or disposition and, subject to (d) of this section, the matter shall be
9 closed by the agency if the minor successfully completes all that is required of
10 the minor by the agency in the adjustment or disposition; in a municipality or
11 municipalities in which a youth court has been established under AS 47.10.265,
12 adjustment or disposition of the matter under this paragraph may include
13 referral to the youth court: if a community dispute resolution center has
14 been established under AS 47.10.267(a) and has obtained recognition under
15 AS 22.35.020 or AS 47.10.267(b), adjustment or disposition of the matter
16 under this paragraph may include use of the services of the community
17 dispute resolution center;

18 (B) the agency concludes that the matter may not be adjusted
19 or disposed of without a court hearing, the agency may file a petition under (2)
20 of this subsection setting out the facts; or

21 (2) appoint a competent person or agency to make a preliminary inquiry
22 and report for the information of the court to determine whether the interests of the
23 public or of the minor require that further action be taken; if, under this paragraph, the
24 court appoints a person or agency to make a preliminary inquiry and to report to it,
25 then upon the receipt of the report, the court may informally adjust or dispose of the
26 matter without a hearing, or it may authorize the person having knowledge of the facts
27 of the case to file with the court a petition setting out the facts; if the court informally
28 adjusts or disposes of the matter, the minor may not be detained or taken into the
29 custody of the court as a condition of the adjustment or disposition, and the matter
30 shall be closed by the court upon adjustment or disposition.

31 * Sec. 3. AS 47.10.080(b) is amended to read:

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(b) If the court finds that the minor is delinquent, it shall

(1) order the minor committed to the department for a period of time not to exceed two years or in any event extend past the day the minor becomes 19, except that the department may petition for and the court may grant in a hearing (A) two-year extensions of commitment that do not extend beyond the child's 19th birthday if the extension is in the best interests of the minor and the public; and (B) an additional one-year period of supervision past age 19 if continued supervision is in the best interests of the person and the person consents to it; the department shall place the minor in the juvenile facility that the department considers appropriate and that may include a juvenile correctional school, juvenile work camp, treatment facility, detention home, or detention facility; the minor may be released from placement or detention and placed on probation on order of the court and may also be released by the department, in its discretion, under AS 47.10.200;

(2) order the minor placed on probation, to be supervised by the department, and released to the minor's parents, guardian, or a suitable person; if the court orders the minor placed on probation, it may specify the terms and conditions of probation; the probation may be for a period of time, not to exceed two years and in no event extend past the day the minor becomes 19, except that the department may petition for and the court may grant in a hearing

(A) two-year extensions of supervision that do not extend beyond the child's 19th birthday if the extension is in the best interests of the minor and the public; and

(B) an additional one-year period of supervision past age 19 if the continued supervision is in the best interests of the person and the person consents to it;

(3) order the minor committed to the department and placed on probation, to be supervised by the department, and released to the minor's parents, guardian, other suitable person, or suitable nondetention setting such as a family home, group care facility, or child care facility, whichever the department considers appropriate to implement the treatment plan of the predisposition report; if the court orders the minor placed on probation, it may specify the terms and conditions of

1 probation: the department may transfer the minor, in the minor's best interests, from
2 one of the probationary placement settings listed in this paragraph to another, and the
3 minor, the minor's parents or guardian, and the minor's attorney are entitled to
4 reasonable notice of the transfer: the probation may be for a period of time, not to
5 exceed two years and in no event extend past the day the minor becomes 19, except
6 that the department may petition for and the court may grant in a hearing

7 (A) two-year extensions of commitment that do not extend
8 beyond the child's 19th birthday if the extension is in the best interests of the
9 minor and the public; and

10 (B) an additional one-year period of supervision past age 19 if
11 the continued supervision is in the best interests of the person and the person
12 consents to it;

13 (4) order the minor to make suitable restitution in lieu of or in addition
14 to the court's order under (1) - (3) [(1), (2), OR (3)] of this subsection: the court may
15 not refuse to make an order of restitution under this paragraph to benefit the victim of
16 the act of the minor that is the basis of the delinquency adjudication; the court may
17 require the minor to use the services of a community dispute resolution center
18 that has been recognized by the administrative director of the Alaska Court
19 System under AS 22.35.020 or by the commissioner under AS 47.10.267(b) to
20 resolve any dispute between the minor and the victim of the minor's offense as
21 to the amount of or manner of payment of restitution;

22 (5) order the minor committed to the department for placement in an
23 adventure based education program established under AS 47.21.020 with conditions
24 the court considers appropriate concerning release upon satisfactory completion of the
25 program or commitment under (1) of this subsection if the program is not satisfactorily
26 completed; or

27 (6) in addition to an order under (1) - (5) of this subsection, if the
28 delinquency finding is based on the minor's violation of AS 11.71.030(a)(3) or
29 11.71.040(a)(4), order the minor to perform 50 hours of community service; for
30 purposes of this paragraph, "community service" includes work

31 (A) defined as community service under AS 33.30.901; or