

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8645 HOUSE JUDICIARY

MEMORANDUM

State of Alaska
Department of Law


TO: Ronald L. Otte
Commissioner
Department of Public Safety

DATE: July 12, 1995

FILE NO: 663-95-0323

TEL. NO: 465-3428

SUBJECT: Enforcement of criminal trespass
statutes in connection with concealed
handguns

FROM:  Dean J. Guane and Margot O. Knuth
Assistant Attorneys General
Criminal Division, Central Office

By memorandum dated December 21, 1994, you have requested advice as to whether a private business may bar from its premises someone who is carrying a concealed handgun and, if so, whether a person who nonetheless enters the business with a concealed handgun is guilty of a criminal offense. You have also requested advice as to whether a criminal offense is committed when a person carries a concealed handgun into a retail store that contains a branch office of a bank, in view of the new statute that prohibits concealed handguns from being carried into "financial institutions."

The Department of Law cannot provide legal advice to private parties, and consequently private businesses with questions about concealed firearms should contact their own legal advisors regarding their rights and liabilities for protecting patrons of their business and issues regarding employees of their business, civil actions for trespass¹ and general landlord and tenant matters.² Your question, however, is what action, if any, troopers should take when they receive a complaint about a person carrying a concealed handgun on private business premises. The following is our advice.

¹ This memorandum addresses criminal trespass laws only and we express no opinion on the ability of private persons to maintain a civil suit for trespass. See *Brown Jug, Inc. v. International Brotherhood of Teamsters*, 688 P.2d 932, 937-38 (Alaska 1984) (in civil action, intentional entry onto land of another constitutes intentional trespass even if trespasser believes that he or she has the right to be on the land).

² This department has previously opined, in response to questions from the legislature, that a landlord has a right to prohibit firearms on leased property. 1983 Inf. Op. Att'y Gen. (Jul. 1; 366-444-83).

I. Summary

The short answer to your first question is that it may, depending on the circumstances, be illegal under the state criminal trespass statutes for a person to carry concealed handguns on private business premises, even though the person has a permit for the weapon. The short answer to your second question is that clear demarcation of bank premises and notice to patrons are important considerations in enforcing the concealed handgun law on bank premises within larger stores. Issues regarding automatic teller machines and other premises of financial institutions will be discussed below. Before reaching these issues, however, we will first discuss the impact of the newly-enacted concealed handgun statutes on state criminal trespass laws.

II. Discussion

A. The Concealed Handgun Statutes Do Not Prevent Private Property Owners From Relying On Criminal Trespass Laws To Control Access To Their Premises

Under AS 11.61.220, it is a crime for a person to carry a concealed handgun unless the person is a peace officer, is on the person's own property, is engaged in a lawful outdoor activity requiring a weapon for protection, or has obtained a permit under the new statutes set out in AS 18.65.700 -- 18.65.790. Even if a person has obtained a permit to carry a concealed handgun, there are several types of places where these guns cannot be carried. AS 18.65.755(c) makes it a class B misdemeanor for a person with a permit to possess a concealed handgun in one of these legislatively designated areas.³

The first question that you have asked is whether there are any other premises that can be designated as off-limits for concealed handguns, even though they do not appear on the list of prohibited premises in AS 18.65.755. We believe that there are.

Alaska has a criminal trespass statute, AS 11.46.330, which makes it a crime to enter or remain on premises when a person is not privileged to do so or has been directed to leave. It provides as follows: "A person commits the crime of criminal trespass in the second degree if the person enters or remains unlawfully (1) in or upon premises; or (2) in a propelled vehicle." AS 11.46.330. AS 11.46.350 defines "enter or remain unlawfully" as meaning to "(1) enter or remain in or upon premises . . . when the premises . . . at the time of the entry or

³ These places include, among others: law enforcement or correctional facilities, school grounds, courthouses, certain governmental buildings, portions of airline terminals, and residences where an appropriate notice has been given by oral statement or by a conspicuous notice. AS 18.65.755.

remaining is not open to the public and when the defendant is not otherwise privileged to do so; [or] (2) fail to leave premises . . . that is open to the public after being lawfully directed to do so personally by the person in charge."

These statutes give property owners the right to exclude a person from their property for any reason. That reason can include carrying a concealed handgun, even with a permit, unless the concealed handgun permit laws are interpreted as somehow superseding this aspect of the criminal trespass laws. It is therefore necessary to consider whether the legislature's enactment of AS 18.65.755 impliedly repealed the criminal trespass statute (and any municipal ordinance prohibiting criminal trespass) as applied to the carrying of concealed handguns. As explained below, we do not believe that AS 18.65.755 prevents property owners from choosing to exclude persons carrying concealed handguns, even if the person has a permit, and, accordingly, those who enter or remain on property with a concealed handgun despite the owner's request that they leave can be prosecuted for criminal trespass.

To determine whether a prior statute has been impliedly repealed, Alaska's courts look to the intent of the legislature in passing the new statute to determine if there is an irreconcilable conflict between the two. *Peter v. State*, 531 P.2d 1263, 1268 (Alaska 1975). Although the supreme court will not automatically apply the common law presumption against implied repeals, the court has quoted from a well-respected commentator who notes that "[t]he presumption has . . . special application to important public statutes of long standing." *Id.* (quoting 1A J. Sutherland, *Statutes and Statutory Construction* § 23.10 (4th ed. Sands 1972)).

Criminal trespass laws are important public statutes that protect private property rights by allowing owners to choose who may enter or remain on their premises. Although there are limits on the extent to which private property owners can control free speech on portions of their premises that have become the functional equivalent of public property (*see, e.g., Pruneyard Shopping Center v. Robins*, 447 U.S. 74, 100 S. Ct. 2035, 64 L. Ed. 2d 741 (1980)), there are no similar limitations in Alaska law on the ability of businesses to prohibit firearms or smoking on the premises, or to require a dress code or otherwise require that patrons behave in a way that is believed by the business owner to be appropriate for operation of the establishment or for preserving the safety and comfort of other patrons.⁴

⁴ We note that the Alaska Constitution was recently amended to create an "individual" right to bear arms that is not to be infringed by state or local government. Art. I, § 19, Alaska Const. We conclude that this amendment does not prevent private persons from setting rules of conduct for their own property. For example, the Alaska Supreme Court has declared that ingesting substances (such as smoking tobacco) is constitutionally protected, *Gray v. State*, 525 P.2d 524 (Alaska 1974), as is choosing how to appear and what to wear, *Breese v. Smith*, 501 P.2d 159 (Alaska 1972). Nonetheless, private
(continued...)

Also, criminal trespass laws have been part of Alaska society for many years. The present Model Penal Code formulation of the criminal trespass statute has been part of Alaska law since 1980, and earlier criminal trespass statutes were part of the Alaska criminal code since well before statehood.⁵

Given the importance and long history of these laws, it is probable that the Alaska courts would impose a presumption against the implied repeal of the criminal trespass statutes. Even if no presumption is applied, however, it is unlikely that a court would find that the concealed handgun statutes impliedly repealed the criminal trespass statutes to the extent of prohibiting businesses from excluding concealed handguns on their premises.

There is nothing on the face of the concealed handgun statutes in general, or in AS 18.65.755 in particular, that is inherently inconsistent with the criminal trespass statute set out in AS 11.46.330. The concealed handgun statutes create a detailed statutory scheme for obtaining permits to carry concealed handguns. They also create a large number of *new* offenses for carrying concealed handguns in certain designated areas or for misusing the permit. See AS 18.65.760; AS 18.65.765. The criminal trespass statute, on the other hand, gives private property owners the right to ensure that their property is used in the manner they choose. These purposes are not in conflict.⁶ We accordingly conclude that AS 11.46.330, as applied to persons

⁴(...continued)

businesses indisputedly may ban smoking and impose dress codes. This is because the constitutional rights in Article I of the Alaska Constitution (like the Bill of Rights in the United States Constitution) are limitations on the power of government, rather than on the actions of private persons. *Luedtke v. Nabors Alaska Drilling, Inc.*, 768 P.2d 1123, 1129-30 (Alaska 1989).

⁵ See former AS 11.20.610, AS 11.20.630 and AS 11.20.650. The Revised Criminal Code replaced these earlier, more specific laws with broader provisions so as to eliminate a "needless proliferation of statutes." *Alaska Criminal Code Revision*, Tentative Draft, Part 3, Offenses Against Property (April 1977) at 59.

⁶ The legislative history of AS 18.65.755 discloses that an unsuccessful attempt was made in the House of Representatives to expand the list of prohibited premises to include retail establishments and other places that post signs prohibiting entrants from carrying concealed handguns. See Amendments 2 and 3 offered to CSHB 351(FIN) on April 15, 1994. House Journal at 3471-73 (1994). It is rarely appropriate to infer legislative intent from the defeat of a proposed amendment. Its defeat may mean only that legislators wanted to ensure that some areas would be off-limits to concealed handguns, regardless of whether a person carrying a concealed handgun noticed that a sign had been posted, while in other areas it is to be left to the discretion of the property owner whether to allow patrons to carry concealed handguns.

carrying concealed handguns, should not be interpreted as having been impliedly repealed by AS 18.65.755.⁷

B. Alaska's Criminal Trespass Laws

AS 11.46.330 makes it the crime of criminal trespass in the second degree, a class B misdemeanor, to "enter or remain unlawfully" in or upon land, buildings or propelled vehicles. Under AS 11.46.350, the phrase "enter or remain unlawfully" is defined to include

(1) for premises *not open to the public*, entering or remaining "when the defendant is not otherwise privileged to do so"; and

(2) for places *open to the public*, "fail[ing] to leave . . . after being lawfully directed to do so personally by the person in charge."

These two provisions differ slightly with regard to the type of notice that must be given to a person before that person may be deemed to have entered or remained unlawfully. We will first discuss places "*not open to the public*," and then places "*open to the public*."

1. Places Not Open to the Public

The primary elements of the crime of criminal trespass in the second degree, as applied to persons who carry concealed weapons into places that are *not open to the public*, are: (1) that the person knowingly entered or remained in the place with a concealed handgun, (2) that the person was not privileged to enter or remain in the place with a concealed handgun, and (3) that the person entered or remained with reckless disregard as to whether or not he or she was privileged to do so.

Whether a place is "not open to the public," for purposes of the criminal trespass statute, is a question ultimately to be decided by the factfinder in each specific criminal case and we accordingly will not attempt to try to list all the places that are "not open to the public." The term, however, almost certainly includes (1) private offices, (2) offices that require an

⁷ Our conclusion is bolstered by the analogy that can be made to the state's public drunkenness statutes. In *Peter v. State*, the Alaska Supreme Court held that the Uniform Alcoholism and Intoxication Treatment Act in AS 47.37 impliedly repealed Alaska's drunk-in-public law. The court found that the legislature's *expressed* intent in adopting the Uniform Act was to stop criminally punishing drunks and to rehabilitate them instead. 531 P.2d at 1271. This holding, however, has no impact on the ability of business owners to invoke the criminal trespass laws against drunks who are asked to leave the premises and refuse to do so.

appointment (such as doctor or dentist offices), (3) places reserved for residents or authorized guests of residents (such as nursing homes),⁸ (4) places for employees or authorized personnel only, (5) places that are limited to only members or authorized guests of members (such as members-only stores or clubs), and (6) premises that are normally open to the public, but closed for special occasions (for example, restaurants closed for a "private party"). *Johnson v. State*, 739 P.2d 781, 783 n.1 (Alaska App. 1987).

The simplest element of the offense of criminal trespass is whether the person knowingly entered or remained on the premises. Unless a person has entered a place by mistake, or for some reason is unaware of his or her location, this element can easily be proven.⁹

Assuming that a person has a permit to carry a concealed handgun, whether that person is privileged to carry the gun onto premises that are not open to the public depends on the policies of the office, theater, sporting event, or other premise operator. The prohibition against bringing guns onto the premises must be an official policy of the organization or be imposed by someone managing the premises.¹⁰

Whether or not a person entered or remained in reckless disregard of a lack of privilege depends on the type of notice provided. Although the statutory definition of "reckless" in AS 11.81.900(a) requires only awareness and disregard of a *risk* that the circumstance (in this case, a lack of privilege) exists, most juries will likely want proof that the person actually *knew* he or she was prohibited from carrying a concealed handgun on the premises.

The strongest evidence that a person knew he or she was not allowed to enter or remain on the premises with a concealed handgun is if the property manager or an agent of the manager provides this information to the person in a face-to-face conversation or by telephone.

⁸ *But see Steele v. Breinholt*, 747 P.2d 433 (Utah App. 1987), in which the issue of whether a nursing home was open to a particular visitor was deemed to be question of fact for the jury.

⁹ In most instances, a person both enters and remains either with or without the permission of the property owner. In some cases, however, a person may initially enter with the permission of the owner but thereafter lose that permission.

¹⁰ There is nothing, however, that precludes an organization from applying different rules at different times. For example, an arena or convention center may choose to allow guests to carry firearms, including concealed handguns, at a gun collectors show, but prohibit concealed weapons at a rock concert. It is also permissible for an organization to allow peace officers or other authorized persons (such as security guards) to carry concealed handguns, but prohibit other persons from carrying them.

Proof of a written communication of this information would also establish the fact. For example, in *Johnson v. State*, 739 P.2d 781 (Alaska App. 1987), the court upheld a criminal trespass conviction against a skier on the basis of a letter that the Alyeska Ski Resort had written to him, barring him from the resort for the remainder of the season because of the danger posed by his reckless conduct.

Alternatively, a business may communicate the information by placing a placard at each of its entrances. The Alaska Statutes specify the size and contents of a notice against trespass in AS 11.46.350(c).¹¹ The notice must be "printed legibly in English," be "at least 144 square inches in size," contain "the name and address of the person under whose authority the property is posted and the name and address of the person who is authorized to grant permission to enter the property," and be "placed at each . . . way of access onto the property." AS 11.46.350(c)(1) -- (4).¹²

There may, however, be circumstances under which a posted notice described in AS 11.46.350(c) may not be visible enough and therefore it will be difficult to prove that the entrant had actual knowledge. For example, persons seeking admission to a crowded auditorium may not be able to see a sign of the statutory minimum 144 square inches (12 inches by 12 inches). Or a person who enters an office or a "members-only" store for the first time may not notice a small sign. In these situations, one option would be for the business to increase the size of the sign.

In terms of the content of the notice, the following is an example of language that might be used:

NO CONCEALED HANDGUNS
EVEN IF YOU HAVE A PERMIT

Violators will be arrested and prosecuted.
This warning does not apply to peace officers
or authorized security personnel.

John Doe, Manager, P.O. Box 123
Anchorage, Alaska 99501

¹¹ AS 11.46.350 was enacted with other statutes in ch. 168, SLA 1988, dealing with trespasses to unoccupied land. Its terms, however, are not explicitly limited to unoccupied land.

¹² See also AS 18.65.755, setting out similar requirements for the posting of notice by homeowners that permittees are prohibited from bringing concealed handguns into their homes.

Organizations that wish to preclude firearms generally should use the phrase "no firearms" instead of "no concealed handguns."

There are a myriad of alternative means that may be used by businesses to provide the necessary notice. For example, a business may decide to give out handbills to persons entering the establishment. A similar notice could be given at the time a ticket is purchased or an application for membership is obtained. Alternatively, in theaters, sporting events, or members-only stores, it would seem to be a simple matter to print a written warning (similar to the sample sign set out above) directly on the admission ticket or membership card.

It would be difficult to list all the ways in which the necessary notice can be given, and it is impossible to predict all of the defenses that might be raised by persons claiming they were unaware that they did not have a privilege to possess firearms on the premises. State troopers investigating cases of trespass will have to determine whether, based on all the circumstances, there is evidence establishing that the person was aware of the prohibition.

2. Places Open to the Public

The primary elements of the crime of criminal trespass in the second degree, as applied to persons who carry concealed weapons into places that *are* open to the public, are: (1) that the person knowingly entered or remained in a place with a concealed handgun, (2) that the person was directed to leave personally by the person in charge or someone authorized by the person in charge, and (3) that the person recklessly disregarded the lawful order not to remain. *Johnson v. State*, 739 P.2d at 783-84.

Again, the element of whether the person knowingly entered or remained in the place is easily proven.

The second element, that the person was "directed to leave personally," is more difficult. A prosecution cannot easily be based on notice provided solely by a sign posted at an entryway. Notice, however, will be sufficient if the business owner, or the person in charge, acts through an agent to provide actual notice. *Cleveland v. Municipality of Anchorage*, 631 P.2d 1073, 1077 (Alaska 1981). As before, a face-to-face or telephone conversation is the clearest example of personal notice. It is likely that most cases of criminal trespass that require trooper involvement will occur *after* a person has been told not to bring a firearm into an establishment. This advisement should be deemed to remain in effect until rescinded.

As in *Johnson*, a letter directed to the person will also suffice under this subsection of the criminal trespass statute. Similarly, a handbill given to an entrant will also be

sufficient. The adequacy of other types of personal directions (for example, an announcement made over a loudspeaker) will depend on the circumstances.

If there is sufficient evidence that the person was personally directed to leave, then there should be no problem proving the final element, that the person recklessly disregarded that direction. The lawfulness of an order to leave — like other legal issues — would seem to be a question for a judge, rather than a question of fact for the jury to decide.¹³

C. The Defense of "Necessity" Is Not Available

Persons who carry concealed handguns often claim they are doing so for purposes of self-defense. It is foreseeable that a person charged with criminal trespass may try to raise the defense of "necessity." Thus, for example, a defendant charged with criminal trespass for refusing to leave premises when asked to do so by an owner who objects to the presence of concealed weapons may argue that his "need" to carry a concealed handgun outweighs the owner's interest in barring the presence of such weapons on the premises.

The defense of "necessity" is governed in Alaska by the common law and by AS 11.81.320. In accordance with these authorities, it is only rarely, if ever, that the defense of necessity will justify a person's possession of a concealed handgun on premises where such possession is prohibited by the owner.¹⁴ See *Cleveland v. Municipality of Anchorage*, 631 P.2d 1073 (Alaska 1981) (defense of necessity to "preserve life" rejected in trespass case arising from

¹³ But see *Johnson v. State*, 739 P.2d 781 (Alaska App. 1987), in which the court indicated that the lawfulness of the order was a "circumstance" in the case that the jury could review. It is not clear what the *Johnson* court meant by this. The court observed that, under the facts in that case, the defendant could claim he was not reckless because he reasonably questioned the "validity" of a warning letter. We believe that the technical lawfulness of an order is a question for a judge to decide. *Johnson*, however, suggests that the reasonableness of the defendant's belief with respect to that order is a question for the jury. In the rare case in which there may be a question about the legality of an order to leave (e.g., a property owner changes the terms of a lease in the middle of the tenancy), a judge would be the more appropriate one to decide the issue than a jury.

¹⁴ It is at least theoretically possible for a "necessity" defense to arise if, for example, a person with a concealed weapon were chased by attackers into a prohibited area. In the unlikely event that the person were prosecuted for trespass for entering the prohibited area, a defense of "necessity" or perhaps duress would be applicable. Note, however, that prisoners who escape can raise a defense of "necessity" if they were in danger in prison, but they must then turn themselves in and inform authorities immediately, or else justify their continuing absence. *Wells v. State*, 687 P.2d 346 (Alaska App. 1984). Like escape, criminal trespass is a continuing offense that would have to be justified.

defendant's refusal to leave an abortion clinic); *Bird v. Municipality of Anchorage*, 787 P.2d 119 (Alaska App. 1990) (abortion clinic trespass case). Nonetheless, we recommend that the investigating officer provide a suspect with the opportunity to explain why the suspect thought it was necessary to carry a concealed handgun onto the premises in contravention of the owner's explicit directions.

D. "Financial Institutions" under AS 18.65.755

Under AS 18.65.755(a)(11), a person with a permit to carry a concealed handgun is prohibited from carrying the gun "into . . . a financial institution." The statute defines "financial institution" as a "bank, savings bank, savings association, credit union, or other institution regulated by the Department of Commerce and Economic Development under AS 06."

You have asked whether a branch office of a financial institution fits within the prohibition of AS 18.65.755(a)(11) when the branch office is located within a larger retail store that is not a "financial institution." We conclude that a branch office of a bank is a financial institution under AS 18.65.755. This, however, does not mean that the entire retail store enclosing the branch office automatically becomes a financial institution for purposes of the prohibition set out in the concealed handgun law.

If the bank branch office is physically separated from the remainder of the store by walls or other barriers, then the statutory prohibition against carrying concealed handguns into a financial institution applies to that separate area, but not to the surrounding store. If the branch office is not physically separated from the remainder of the store, we believe that the prohibition set out in AS 18.65.755 applies only to those areas where a patron of the bank deals face-to-face with a bank employee, or in those waiting areas where patrons of the bank congregate or line up to wait to see a bank employee. In either situation, it is advisable for notice (through use of a sign or one of the other means discussed above) to be provided to the customers of the bank that concealed handguns or firearms are not allowed in that area.

A related question is whether drive-up teller windows, outdoor automatic teller machines, and bank parking lots are included within the term "financial institution" for purposes of AS 18.65.755. We believe that drive-up teller windows and automatic teller machines fall within the ambit of that term, while bank parking lots do not.

This, however, does not end the inquiry. For purposes of AS 18.65.755(a)(11), the key question about drive-up teller windows and outdoor automatic teller machines is whether the person using that service has come "into" a financial institution. We conclude that a person who uses a drive-up teller window has not entered "into" a financial institution. Similarly, a person who uses an outdoor automatic teller machine, even one that is connected to a bank, has

not entered "into" the bank itself. On the other hand, if the automatic teller machine is located inside bank premises, or in a foyer or other entry to the bank, a person who uses such a machines has entered "into" the institution.

If a financial institution reports that a person is carrying a firearm in a parking lot or when using a drive-up window or outdoor automatic teller machine, then the state troopers may take action if the elements of the offense of criminal trespass have been met, as discussed in earlier sections of this memorandum (*e.g.*, notice has been provided to the patron, etc).

III. Conclusion

For the reasons set out in this memorandum, we conclude that the state's criminal trespass laws can be used to arrest and prosecute a person who possesses a concealed handgun on private business premises, even if the person has obtained a permit for the concealed weapon, if the owner or management of the business has provided notice that concealed handguns (or all firearms) are prohibited on the premises.

We also conclude that a branch office of a bank that is located in a retail store is a financial institution under AS 18.65.755. If the branch office in the retail store has been physically separated from the rest of the store, through the use of walls or other types of dividers, then AS 18.65.755 prohibits a person from carrying a concealed weapon into the area. It is not a violation of AS 18.65.755, however, to carry concealed handguns to drive-up teller windows, outdoor automatic teller machines, or bank parking lots, although this conduct might constitute criminal trespass if all of the elements of that offense can be proven.

Please contact this office if you have further questions.

DJG/MOK/jf

RECEIVED
MAR 25 1996
Ans'd.....

March 25, 1996

Senator Lyda Green
Room 423
State Capitol
Juneau, Alaska 99801-1182

Dear Senator Green:

Attached is written testimony on behalf of SB 177 and HB 338 (Rep. James's bill) to streamline the process of obtaining a permit to carry a concealed weapon, and to provide for realistic restrictions. I have been unable to deliver this, or any other testimony due to job pressures. Please feel free to share this information and use it any way you see fit. I wish you the best in all your endeavors, and especially with the issue of concealed carry permits.

Sincerely,



Leonard Abel, Ph.D.
326 4th St. #1002
Juneau, Alaska 99801

Testimony In Support Of CS For SB 177 (STA) And CS For HB 338

I would like to take this opportunity to address the committee in support of CS For SB 177 (STA) and CS for HB 338. I will attempt to state that support briefly, and as dispassionately as possible. I realize that the issue of firearm possession, in general, is a highly controversial and emotional one, and that concealed weapons, in particular, occasion passionate discussion that is heavily laden with fear and misinformation but most frequently devoid of reasoned analysis.

As simply stated as possible, the effect of CS For SB 177 (STA) and CS for HB 338 would be to allow Alaskans more appropriate access to concealed weapon permits, and with a valid concealed weapon permit, to conduct their daily affairs, discretely armed for personal protection, without inappropriate restrictions as to where the weapon can be carried.

When the original legislation allowing concealed weapon permits appeared likely to pass, a number of amendments were quickly offered which made the permit harder to get. The cost of the permit was placed out of the reach of many working people, time limits to process applications were made too long, the training requirements imposed were excessive, and some of the past offenses which would bar a person from ever having a permit went beyond reason. For example, if you were ever convicted of playing your stereo too loud (AS 11.61.110 (a) (1) (2)), or of "moonning" someone (AS 11.61.110 (a) (7)), you would be considered too dangerous to carry a concealed weapon.

These amendments were not added because of a reasoned analysis of the issue of properly controlling access to concealed weapon permits. The amendments were driven by emotion - a fear of guns and anyone who would wish to carry one. The amendments were a deliberate attempt to allow as few permits as possible to be issued, and make the process of obtaining them as difficult as possible.

CS For SB 177 (STA) and CS for HB 338 would correct some of these problems. The cost of the permit is reduced 50%, bringing it in line with the majority of states that have enacted similar statutes, and that are currently in the process of enacting them. Time limits for processing applications have been shortened, and training requirements are streamlined. Annoying your neighbor with loud rock and roll music will no longer bar you from getting a permit, and the senate bill will not bar you because you "mooned" someone.

The 18th Legislature believed that law-abiding Alaskans should be allowed to carry concealed weapons for personal protection. If that assumption is valid, and I believe it is, the restrictions were illogical. If you do not believe that individuals have the right to carry weapons to protect themselves and their families, then the restrictions are something you are likely to support. However, there should be an honest statement that the opposition to the changes brought about through CS For SB 177 (STA) and CS for HB 338 are opposition to guns, and not to the particulars of these bills.

In addition to the restrictions placed on getting a permit, a number of other amendments were also offered by those opposed to concealed carry permits, which placed so many restrictions on

where the concealed weapon could be carried that a permit holder could not conduct a day's business without repeatedly returning to his home or car, removing the weapon from his person, leaving the weapon to conduct one item of business, going back to get the weapon, etc. The point of a concealed weapon for personal protection is to be able to conduct all daily activities with the weapon available, but not as an item of particular concern. You should be able to largely forget that it is there. Within reason, a law-abiding citizen who passes a criminal background check and has a valid permit should be able to go anywhere with the weapon that he could go without the weapon.

I can legally carry ten dollars and my concealed handgun to the supermarket to buy groceries. I am allowed to protect myself in that instance. However, if I am carrying ten thousand dollars to the bank, I have to leave the only reliable means of self protection at home and risk robbery, and worse. I can legally go to Burger King to eat while carrying my concealed handgun. However, I can not go out to eat at Josephine's in Anchorage with that same weapon, because the restaurant sells liquor by the drink, even if I only have coffee with my meal. CS For SB 177 (STA) and CS for HB 338 would change these situations.

I can carry my concealed weapon to my doctor's office, to my barber shop, to the hardware store, and to many other places of business, but I can't drop my kid off at school, pick my wife up at the airport (even if I'm outside the terminal in the passenger loading area), go onto a ferry, or go to Motor Vehicles to renew my car license tags. CS For SB 177 (STA) and CS for HB 338 would also change these situations. These restrictions were placed upon permit holders because those opposed to concealed carry permits believe that anyone carrying a weapon is a danger to society, despite the evidence to the contrary. The belief is that I would become a danger to bank employees and customers if I conducted my banking while armed. There is no data to support that contention. The evidence suggests that permit holders, as a group, commit far fewer crimes of all types than does the general population. A bank customer would be safer entering a bank which had present a dozen customers with permits, and all armed, than he would be with a dozen randomly selected citizens who were not permit holders.

I wish to repeat something I said earlier. The 18th Legislature believed that law-abiding Alaskans should be allowed to carry concealed weapons for personal protection. Even if you do not agree with their decision, that decision is Alaska law. CS For SB 177 (STA) and CS for HB 338 are pieces of legislation that reaffirm the faith that the 18th Legislature had in the wisdom, stability, and maturity of Alaskans to assume responsibility for their own protection and that of their families. That faith is shown in the removal of emotionally-driven restrictions upon that process. If you accept that persons have a basic right to protect themselves and their families, and if you accept the decision of the 18th Legislature that Alaskans who have a valid permit have the right to carry concealed weapons for that purpose, then you will find nothing of concern in CS For SB 177 (STA) and CS for HB 338, and should approve them. If you take the position that guns, and anyone who carries them, are inherently bad, then you will likely be opposed to this legislation, as a general stand against firearms. I hope that you will look logically and unemotionally at the issues. If you do, I trust you will approve CS For SB 177 (STA) and CS for HB 338.

10-5-95

Honorable Members :

The major failing of the recently enacted Concealed Carry law is the outrageous cost to obtain a permit. Out of six friends who had planned to apply for a permit only one has done so due to the high cost.

Thank you,

Daniel E. Stone

Po Box 111414

ANCHORAGE, AK 99511

October 5, 1995

Legislative Affairs Office
716 West 4th Avenue
Anchorage, AK 99501

ATTN: Senator Lyda Green &
House Representative Jeannette James
Ref. SB-177 & HB 338 (Concealed Weapon Permit)
Page 1 of 2

I begin my residency as a young boy back in the days when my father moved my brother and I (then we as three) from California to Alaska in January of 1960. Since those days there has been many changes since we first relocated to this state.

Growing up here created many memories of my youthful early days in Alaska. From attending elementary schools, high school graduation, college days and which inevitably lead me towards the courtship and marriage of my wife and raising a family. My wife and I have four grown daughters and we now enjoy the title of grandparents and godparents too.

My wife and I both have been long time employee's of righteous employer's striving to create a good example for our children and a solid living home environment for our family and friends.

I am interested in endorsing safe and healthy communities for all people who live or visit our great state. This includes (but not limited to), the elimination of fear of violence in the streets, our homes, our work places or any other everyday location(s) we desire to go.

I would like to say the expenses endured to obtain a concealed handgun permit within the State of Alaska would be to the benefit of the holder, providing, the costs were dramatically and immediately reduced. Unfortunately, still as of today, they are quite expensive since the inception of this permit program was implemented into law.

Due to the administrative "red tape" implemented by the individual(s) and /or agency(s) pursuing to maintain a high maintenance cost for processing each application, I fail to see where there is not a sound conclusive way to remodify and reduce the over all inflated process fees.

If we as United States citizens are experiencing everyday down sizing; cut backs; budgetary restraints; tightening up our belts; etc., and therefore are expected by our leaders to "do more with less resources". So why can't this same principle be applied here?

October 5, 1995
Legislative Affairs Office
ATTN: Senator Lyda Green &
House Representative Jeannette James
Page 2 of 2 (cont.)

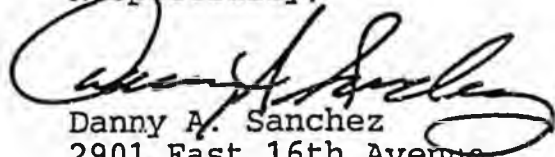
I as well as many others I'm sure are interested in minimizing costs and keeping these on-going law abiding opportunities available to the people of Alaska.

Those who choose to comply with the law and abide by the law, should not be chastised by over zealous expenditures beyond their reach, but, should be rewarded to share the opportunities granted to them by their elected officials as an incentive to reap the benefits and rewards of choosing to reside in the forty ninth state of the United States of America.

Therefore, I support and urge the both of you respectively to seek a more cost effective way to down size and reduce the overall cost of this concealed weapon bill for the benefit of the citizens of the State of Alaska now under reconsideration.

I thank you for this opportunity to speak out and be heard hopefully to have my vote counted in favor of concealed weapon permit application cost reduction fees to and for the people of the State of Alaska.

Respectfully;



Danny A. Sanchez
2901 East 16th Avenue
Anchorage, AK 998508-2911
907-269-4944 (W)

COMMENTS (PUBLIC OPINION) REGARDING HOUSE BILL NO.338 and
SENATE BILL NO.177

Most of the changes to the existing law that these two bills^{two} propose are beneficial. The single exception is Section 7.

The current law specifies the NRA-Personal Protection Course or similar approved course. This course includes, along with safety and handling, a section on local and state laws relating to lethal force and the responsibilities of owning and carrying a firearm. This is a necessary part of the course and should not be omitted. The only group of people that might be exempted from this required training would be civilian law enforcement officers. I was trained in the use of military small arms and I have been involved with the training of security guards. Neither training begins to cover the attitude of care and responsibility or legal knowledge necessary for responsible carry of a firearm for personal protection.

The present course requirements should remain as is. The proposed changes in Sec.7 should be omitted from these bills.

Sincerely,

J. David Longacre

P.O. box 103553
Anchorage, Ak. 99510
(907) 561-2522

M.M. Moore
2200 E 56th
Anchorage, Alaska 99507
(907) 563-7576

To: Senator Nyda Green

Re: SB 177 "An Act Relating to Permits to Carry Concealed Handguns"

Dear Senator Green:

It appears that Senate Bill 177 fails to make provision for former Alaska Peace Officers. These people who have carried a gun in the line of duty have had the training and are certainly qualified to obtain a permit without the necessity of participating in a training course.

May I suggest that Senate Bill 177, Number 6, page 2, be amended as follows:

6. Presentation of evidence of experience with a handgun, equivalent to any of the courses or classes above through participation in organized shooting competition or military service, or having served as a Alaska Peace Officer.

Sincerely,

M.M. "Moose" Moore

Michael and Sandra Coons
P.O. Box 4229
Palmer AK 99645
Phone (907) 745-6779

10/03/95

The House and Senate State Affairs Committee
House bill 338 and Senate Bill 177 Revisions
C/O Rep Jeannette James
P.O. Box 56622
North Pole, AK 99705

To All Committee Members:

We are writing in support of HB 338 and SB 177 to revise the standards for issuing Concealed Handgun Permits. Three of our biggest obstacles in obtaining a permit to carry has been the one year residency rule, cost for training and permit fees and the time to attend a class. With the proposed revisions all of these obstacles will be deleted. We will focus on these three issues in our written testimony.

We moved to Alaska in Apr of this year. Mike started his residency in Jan 95 while working in Allakaket and Sandy started her residency in Mar 95 when we started the purchase of our home in Palmer. Since that time we have become aware of the increased crime problems in Mountain View and Spenard, as well as the rest of the greater Anchorage area. Mike's work requires flying in and out of Anchorage at all hours of the day and night. This puts Sandy in a potentially dangerous situation when she drives alone without any legal means of defense against carjacking, drive-by shootings or other crimes which could occur. We feel strongly that Alaskan citizens are being penalized solely because we haven't been living in the state for an arbitrary period of time. We would be better served, as Alaskans, to be able to apply for a permit to carry upon obtaining a legal residence, driver's license and registering to vote. The current Handgun Law does not recognize us as Alaskan residents when in fact we are, under the state laws for voting and obtaining a driver's license and vehicle registration.

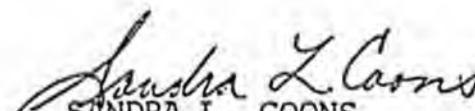
One of the big costs for a permit to carry is the requirement for fingerprints. According to Senator Lyda Green's staff, Florida has only had 0.01% of the applicants who applied turn out to be ineligible due to previous felony convictions. Florida does not use fingerprints but uses NCIC computers for criminal background checks. This method is cheaper for both the

applicant and the State/Federal government. Another cost, which is a burden, is the fees for firearms self defense instruction. We strongly concur with the revised requirements instead of the present law. As Hunter Safety Instructors for the State of Alaska from 1979 to 1981 we taught over 300 students. These students were taught the Ten Commandments of firearms safety. The most important of which is to only shoot at a clearly identified target which you intend to shoot (paraphrase). This applies to both a hunting environment as well as a self defense situation. The decision to shoot or don't shoot is a decision which cannot be taken lightly under any circumstances. From personal experience as an instructor there were usually 3-4 students in our classes who were taking the course either because their husband had firearms in the house and the wife was uneasy with firearms, or the student had or was purchasing a firearm for self defense purposes. The revised training requirements will reward those who have already taken firearms training courses by not requiring an additional cost. For those who have not had any firearms training these revisions will help in State-wide firearms safety overall, with minimal cost to the applicant.

The time factor in finding a class which does not interfere with work can be a burden. This may be viewed as a minor point of concern by many, but in reality it can be an irritating factor for someone who wants a carry permit. It becomes even more of an irritant to those of us who have life-long training in firearms use (which we could teach or have taught) but are still required to attend a course under the present law .

We agree with all other proposed changes to HB 338 and SB 177 as they currently appear. We appreciate the chance to testify to this hearing and look forward to a better law which will benefit all Alaskans.


MICHAEL C. COONS


SANDRA L. COONS

Post-It™ brand fax transmittal memo 7671		# of pages	3
To	H. State Affairs		
From	Nat - Mr LLO		
Dept.	376-3704		
Fax #	258-8173	Fax #	376-6180

TESTIMONY OF ULLRICH J. 1773 - JOURNAL HOUSE/ SENATE STATE AFFAIRS
 COMMITTEES ON BILLS TO AMEND THE CONCEALED HANDGUN PROVISIONS -
 HB-338/SB177.

I HAVE BEEN A SHOOTER FOR MORE THAN 50 YRS. AND HAVE CONSISTENTLY SUPPORTED RESPONSIBLE FIREARMS OWNERSHIP AND USE. I SUPPORTED PASSAGE OF HB-351 IN 1994. I ALSO SUPPORT CHANGES TO THE EXISTING LAW BASED PRIMARILY UPON ON THE BELIEF THAT PERMITTING IS EXCESSIVELY COSTLY AND TIME CONSUMING.

1. FINGERPRINTING & BACKGROUND CHECKS: I HAVE NO PERSONAL AVERSION TO BEING FINGERPRINTED OF HAVING MY BACKGROUND CHECKED...

A. BACKGROUND CHECKS, AT LEAST PRELIMINARY CHECKS, CAN BE MADE BY ALASKA AUTHORITIES USING THE FBI NATIONAL COMPUTER SYSTEM. FBI EXTRA CHECK MAY NOT BE NECESSARY. CHECKS SHOULD BE LESS COSTLY AND LESS TIME CONSUMING.

B. FBI FINGERPRINT CHECK SHOULD NOT BE STANDARD PRACTICE, BEING USED ONLY IF THERE IS COMPELLING REASON TO QUESTION THE VALIDITY OF AN APPLICANT'S RECORD.

C. UNDER NO CIRCUMSTANCES SHOULD A FEDERAL AGENCY BE ADVISED THAT THE REASON FOR ANY INQUIRIES RELATE TO CONCEALED CARRY PERMITTING OR FIREARM USE. IT IS A STATE PERMIT AND NOT FEDERAL. THE FEDERAL GOVERNMENT HAS NO NEED TO KNOW. THE PRACTICE REPRESENTS AN INTRUSION INTO MY PRIVACY. I WAS, AND REMAIN, ANGRY TO FIND THAT MY FBI FINGERPRINT FORM (FD-259) HAD UNDER REASON FINGERPRINTED: "CONCEALED HANDGUN APPLICANT AS 18.65.700"

2. TRAINING: IT IS RECOGNIZED THAT THE PRESENT TRAINING REQUIREMENT (NRA PERSONAL PROTECTION COURSE) IS BOTH EXPENSIVE AND MAY BE DIFFICULT TO SECURE IN SOME AREAS. I'VE TAKEN IT TWICE IT IS MY OPINION THAT IT IS ENTIRELY ADEQUATE AND TO BE RECOMMENDED. OTHER COURSES MUST STRESS FIREARMS SAFETY AND HANDLING. NO OTHER TRAINING ADDRESSES INDIVIDUAL RESPONSIBILITY WITH RESPECT TO ALASKA LAW AND THE LEGITIMATE USE OF DEADLY FORCE OR PROVIDES DEMONSTRATED SAFE HANDGUN HANDLING OR PROFICIENCY IN HANDGUN USE. THE DEMONSTRATION OF KNOWLEDGE AND ABILITY NEEDS TO BE PRESERVED.

3 RESTRICTIONS ON CARRY: EXCEPT FOR PERHAPS DRINKING ESTABLISHMENTS, ALL PRIVATELY OWNED ESTABLISHMENTS SHOULD BE OPEN TO A LICENSED CARRIER UNDER ALASKA STATUTE. ONLY BY VERBAL REQUEST BY A PROPRIETOR OR WITH PROPER SIGNAGE SHOULD A CARRIER BE KEPT FROM SUCH ESTABLISHMENTS. THIS SHOULD APPLY AS WELL TO FINANCIAL INSTITUTIONS.

4. RESTRICTIONS ON QUALIFYING FIREARMS: ANY LEGALLY MANUFACTURED MINIATURE HANDGUNS OR "DERRINGERS" SHOULD QUALIFY AS USEABLE FOR CONCEALED HANDGUN CARRY, IF AN INDIVIDUAL HAS DEMONSTRATED THE SAME PROFICIENCY WITH THEM AS OTHER HANDGUNS.

ROBERT H. PAPERSON - PH: (907) 745-4358
HC 02, BOX 7630-A1
PALMER, ALASKA 99645.

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TYPE OR PRINT ALL INFORMATION IN BLACK

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APPLICANT

LAST NAME **PARKERSON**, FIRST NAME **Robert**, MIDDLE NAME **Henry**

950974877008

SIGNATURE OF PERSON FINGERPRINTED
Paul H. Kochakian

ALIASES AKA

AKAST0100

RESIDENCE OF PERSON FINGERPRINTED
Our Rd, Old Glenn Hwy
PALMER, ALASKA

CLIENT #8001

DPS ANCHORAGE, AK

DATE OF BIRTH DOB
Month Day Year
06 02 31

SIGNATURE OF OFFICIAL TAKING FINGERPRINTS
Robert H. Henderson

CITIZENSHIP Q12 USA

SEX M RACE W HT 6'0" WT 205 BLU WHT

PLACE OF BIRTH POB
Brooklyn, N.Y.

EMPLOYER AND ADDRESS
Henderson & Holwosky S&A S&A
P.O. Box 3090
Palmer AK 99645

YOUR NC QCA 40010

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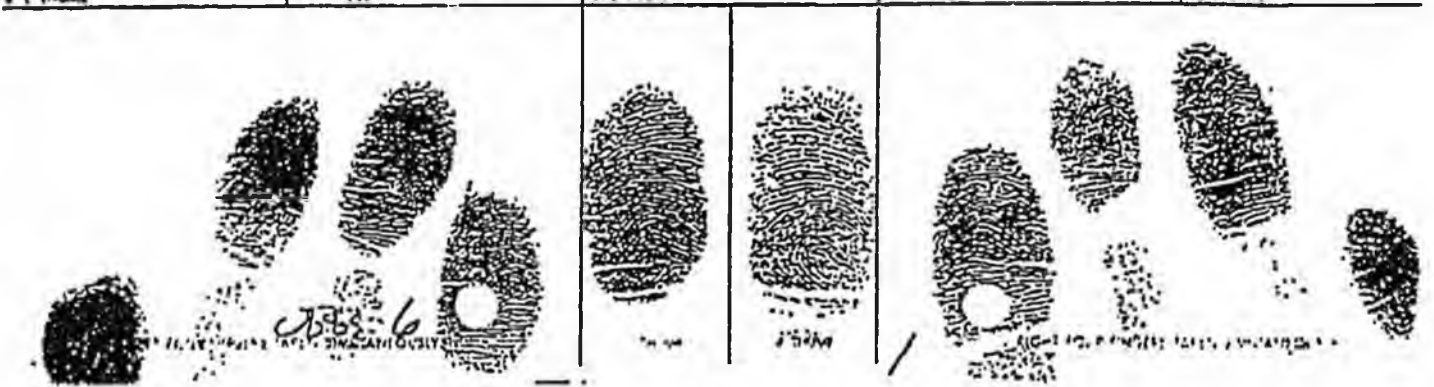
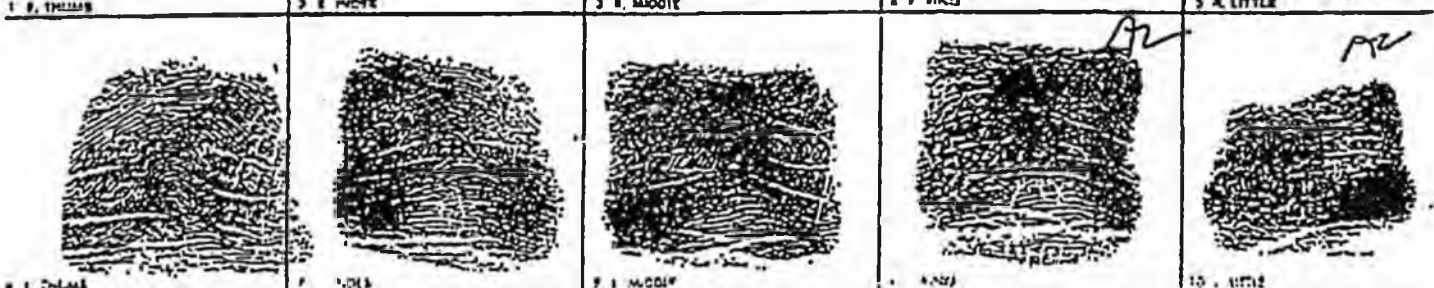
FBI NO FBI

ARMED FORCES NO MNU AF
15-506438

SOCIAL SECURITY NO. SOC
126-26-2573

MISCELLANEOUS NO. MNU
0465049

PERSON FINGERPRINTED
CONCEALED FIREARM
APPLICATION
AS 18.65.760





ROBERT WISEMAN
 P.O. BOX 1135
 SOLDOTNA, AK 99669
 (907) 283-6110

SEP 7 1995



September 6, 1995

Senator Green & Representative James

I have given considerable thought to your pending legislation. I feel that the intentions of your legislation is in the best interest of all Alaskans.

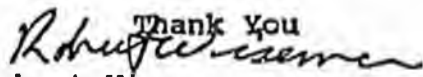
However, I believe there is a much larger picture that must be looked at.

I believe that the current program has a very distinct advantage. That advantage is the ability to have reciprocity with 30 other states. At this time there are at least 30 states who have or have pending legislation for concealed carry laws. I feel that all Alaskans as well as all americans would be very well served to have reciprocal concealed carry laws. I believe that to effect this wide spread reciprocity it is necessary to have the utmost integrity in our concealed carry law. I feel that we must maintain as part of our program the FBI fingerprint check, the 4 hour legal requirement, and the NRA certified instructors.

With the high number of Alaskans that travel to other states that have, or are trying to get, concealed carry laws and Alaska visitors from those states, reciprocity should be a very high priority. At this time there are some states who have legislation that makes reciprocity automatic for those states who recognize their permits. I believe that it would be very simple to give reciprocity to any state that as part of their program required the FBI fingerprint check and the 4 hour legal. This reciprocity could be for a maximum of 90 days for visitors. For anyone becoming a resident who has a permit from one of these states that our current renewal procedure could apply.

I believe that the current bill mandates the Dept. of Public Safety to justify the fee currently being charged for the permit. I have seen several changes recently that would indicate to me that they are trying to streamline their operation and thereby be able to lower the cost of the permit and cut down any delays. I feel that some communication between the legislature and the Dept of Public Safety may accomplish more than legislation in this area.

In conclusion I would ask that you give a lot of thought to what it might take to have reciprocity with as many states as possible, and how we might effect this. I would hope that you might agree that this direction might serve Alaskans better than taking a large part of the integrity out of the current program.

Thank You

 Robert Wiseman

SB 177

"An Act relating to permits to carry concealed handguns."

I support Senate Bill 177

NAME	ADDRESS	PHONE
KEVIN LEAVITT	HCO4 Box 9576 Palmer, AK 99645	745-1376
ROB SHIPLEY	9660 ALBATROSS DR. ANCH, 99515	257-3915
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Kim Medlock	PO Box 2125 Palmer	746-3519
PATRICK CRAMER	9411 AGATTU cir. EAGLE RIVER 99577	694-7898
TUCKERMAN DABROCK	HCO1 Box 6219 C Palmer 99645	746-7632
Jacob Hancock	6209 Cheryn Anch. AK 99502	243-3439
HERBERT L. FEY	PO Box 1101 Chickaloon AK 99674	746-5139
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JAMES W. HILL	3860 AMBER BAY LOOP, ANCH-99515	
Ron Johnson	PO Box 871701 Wasilla AK 99687	373-6700
Jeff Perry	PO Box 62 Willow AK 99688	745-1014
GARY M. MICHAEL	HCO1 Box 6050 BB PALMER 99645	745-8224
William W. Carlson	P.O. Box 190024 ANCH. AK 99519	346-2897

THANK YOU FOR YOUR SUPPORT

*** Senator ***

LYDA GREEN



SB 177**"An Act relating to permits to carry concealed handguns."****I support Senate Bill 177**

NAME	ADDRESS	PHONE
JEFF HASKIN	WASILLA, AK, 99654 500 E. Crestwood Ave	376-2073
PAM HASKIN	WASILLA AK 99654 500 E CRESTWOOD	376-2073
WILLIAM GAINES	P.O. Box 877414, WASILLA, ⁹⁹⁶⁸⁷	373-1634
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Jane Boekly	HC30 5503 WasAK 99654	373-7951
Lola Baker	P.O. Box 967 Palmer AK	373-7951
Ellen J. Irvine	6830 Ehrlich ¹¹ - Anch	337-5827
DAVE PETERSON	Box 1010, Willow, AK	495 6556
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Robert G. Ylvisaker	Box 2666 Palmer	746-0626
John A. Hooper	Box 2137 Palmer AK	745-1736
Billy C. Lemon, Jr	HC89 Box 8107 Talkeetna	355-1441
Flo M. Lemon	⁹⁹⁶⁸⁷ P.O. Box 870441 WASILLA AK	373-1441
PAT MARLEY	2901 WHISPERING WOODS DR.	376-5602

THANK YOU FOR
YOUR SUPPORT

*** Senator ***

LYDA GREEN



SB 177

"An Act relating to permits to carry concealed handguns."

I support Senate Bill 177

NAME	ADDRESS	PHONE
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Glenn R Goodrich	PO Box 821 Palmer AK 99645	745-3968
Dean Hendrickson	PO Box 1271 Palmer AK 99645	745-0838
RAE ANN HENDRICKSON	" "	" "
WALTER F FERGUS	840 Rockside Wasilla AK. 99654	376-6907
Rita Sanning	Box 19 SUTTON 99674	746-0789
Keith Pappas	Box 871415 Wasilla 99687	376-5523
JAMES GARHART	Box 872533 WASILLA	746-2828
ASHLEY EDWARD	7406 5th St Ft Richardson	428-4087
Tom Whitstone Jr	Box 871985 Wasilla	373-2578
Sherry Whitstone	" "	" "
DAVID AUSMAN	1503 W 33 RD ANCH.	501 8904

THANK YOU FOR
YOUR SUPPORT

*** Senator ***

LYDA GREEN



SB 177

"An Act relating to permits to carry concealed handguns."

I support Senate Bill 177

NAME	ADDRESS	PHONE
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William L. Burson	2814 Brittonville Anchorage 99504	333-0901
Peggy S. Bell	P.O. Box 878783 Wasilla	373-7339
Paul Barry	P.O. 878783 WASILLA 99687	3737339
		376-9350
Sam Raynovic	1061 East Pine wasilla 99654	
Paul Barry	3850 cowboy Dr.	376-4569
James J. Dwyer	4100 BULL MOOSE DR WASILLA	373-6670
		99654-1741
Lynda Clark	Bull Moose Dr Wasilla	373-6670
		99654-1741

THANK YOU FOR YOUR SUPPORT

*** Senator ***

LYDA GREEN



Please
sign-in

1995 Alaska State Fair - Visitors

NAME

ADDRESS

PHONE

I SUPPORT SB 177

"AN ACT RELATING TO PERMITS TO
CARRY CONCEALED HANDGUNS."

Stephen Stoll 1001 YORK CR WASILLA

Linnette Booth " "

Bill SPENCER PO Box 520553 Big Lake AK 99652 892-6745

Russel TUCKER P.O. Box 873425 Wasilla AK 99697

Roy C. McLaughlin 2021 Muldoon SPRING ANCHORAGE AK 99504

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PAUL H GABBENT 2ND WEST BEND ALEXANDER CR AK 99695

GERALD A. WILLMAN 1401 BOY 6083 PALMCR 745-3615

ROBERT KATSUR 445 JEROME DR. WASILLA 376-1384

Sandy Blomfield #B156 7610 Wildwood Cir. Anch, AK 346-2738

Pollia Bedbrook 6209 Cheviot St. 99502 # 243-3439

LORETTA WOLSKI 3354 ORION 243-2757

THANK YOU
FOR VISITING!

*** Senator ***

LYDA GREEN



SB 177

"An Act relating to permits to carry concealed handguns."

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Ans'd.....

I support Senate Bill 177

NAME	ADDRESS	PHONE
------	---------	-------

Mark Gordon	Hcoi 6131 AB Palmer AK 99645	907-745-5520
Roy W. White	P.O. Box 105	746-3026
PHIL E. WHITE	✓ ✓ ✓	✓
Claude MORRIS	PO Box 547 Girdwood AK 99587	783-2836
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Dick Train	2020 DIMOND DR ANCH, AK 99507	563-7986
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Randy J Hall	Box 1502 Soldotna	344-5997
DAVID PROSE	2208 DOUGLAS PL. AA 99574	337-2020
Larry Roberts	3705 ARCTIC #1317, ANCH, 99503	338-2692
DONALD FREDERICK	5881 CHISANA WAY	99516 3461721

THANK YOU FOR
YOUR SUPPORT

Senator Lyda Green
Senator Rick Halford



SB 177

"An Act relating to permits to carry concealed handguns."

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Ans'.....

I support Senate Bill 177

NAME	ADDRESS	PHONE
LARRY POLAND	PO Box 71405, Fairbanks, AK. 99707-1405	907-479-4425
Jay YAKOBY	PO Box 1554 Palmer AK 99645	907-745-1248
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Barbara Beckman	AL 32 Box 6629B Wasilla ⁹⁹⁶⁵⁴	373-2289
Jimmy Weinger	PO Box 1111 Chickadee AK 99674	745-2093
John Schultz	650 STORMY CIR WASILLA AK 99654	376-1480
JESSE RAY	1241 SAN ANTONIO ST ANCH AK 99508	357-8646
Ralph BROWNMAN	3840 EASTWOOD Ave Anch AK 99508	338-7950
DON BLACKER	5121 Spruce Creek Cir Anch AK 99516	346-3286
CAROL R BLACKER	5121 SPRUCE CREEK CIR ANCH AK 99516	346-3286
W H MARTIN	Box 1271 Eagle River, AK 99577	894-2627
James A. Miller	3024 Brittany Place Anch. AK. 99504	333-2075
Melvin Overlees	2912 Bonita Parkway Anch. Ak. 99504	333-5147
Howard Selo	PO Box 520707 Big Lake, AK 99652	892-8796

THANK YOU FOR
YOUR SUPPORT

Senator Lyda Green
Senator Rick Halford



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MAR 07 1993
Ans'l.....

I support Senate Bill 177

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Jim Wadell	Box 1315 Soldotna AK 99689	262-4400 ^{- 22301}
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John Savuc	6929 Camden Anch AK 99504	333 2207
Dean Syta	3006 Dennington Dr Anch AK 99504	333-1562
STEVEN CUIN	501 Togiak Cir Anch AK 99505	563 4436
Karen Steen	HC 32 Box 6561, Wasilla AK 99654	745-2739
^{WILLIAM H WATSON} [Signature]	310 STATE ST Anch AK 99504	337-6522
Carolynn Tomary	2104 Tenada Ave, Cheyik, AK 99567	688-5451
VICTORIA SCHULTE	P.O. BOX 2576 PALMER, AK 99645	745 1911
RODNEY SCHULTZ	P.O. BOX 2576 PALMER, AK 99645	745-1911
Don Wineinger	PO BOX 1111 Chukcheon Ak	745-2093
Ed Gross	2828 E 20th Anch AK 99508	277-3070

GEORGE BOYCE 419 Carefree Pl. Wasilla AK 99654 3768646

THANK YOU FOR
YOUR SUPPORT

Senator Lyda Green
Senator Rick Halford



SB 177**"An Act relating to permits to carry concealed handguns."**RECEIVED
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Ans'd.....**I support Senate Bill 177**

NAME	ADDRESS	PHONE
MIAN Applehans	P.O. Box 874004 WAILA AK.	373-5407
CAROL E. WHITEJK	POB 2482 PALMER AK	745-6587
Wicki White	PO Box 2482 Palmer, AK SOLDON TA KA	745-6587
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W. Doug Ryan	P.O. 671266 Chugach AK	688-3803
Robert Bone	P.O. 90825 Anch, AK	349-6240
KATH CORP	12921 TROY ST ANCH AK	345-4772
Clyde Corp	12921 Troy St Anch AK	345-4222
Heather Palmer	10270 Tanana Dr G. Wasilla AK 99654	376-7467
Patrick J. Parsley	3180 Leaning Circle Wasilla AK 99654	376-7235
Allen R. Dannel	751 W. 76 th Apt. B. Anch., AK. 99518	349-6970
DANIEL E. LUSH	PO Box 266 GLENHALLEN AK 99588	822 5879

HANK YOU FOR
YOUR SUPPORT**Senator Lyda Green**
Senator Rick Halford

SB 177

"An Act relating to permits to carry concealed handguns."

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Ans'd.....

I support Senate Bill 177

NAME	ADDRESS	PHONE
Keith FORSGREN	3400 SHAW COOP WASILLA	373 6054
PAT PARKS	MAGNETIC RD GOLDEN	262-5384
Norman Wilkins	HC1 Box 2440 GLENWALLEN	822-5271
London L. Dimpsey	PO Box 7497, NIKISKI AK 99635	776-8425
Kevin J. Herdley	12800 Foster Rd Anch AK 99518	345-1568
Charles F. Reed	P.O. Box 929 Eagle River, AK 99577	694-2792
Robert Reed	P.O. Box 929 Eagle River AK 99577	
Marvin R. Anderson	Box 1216 Palmer AK 99645	
Roger H. Buckland	Box 672086 Chugiak AK 99567	688-3849
Adam D. Schwinghammer	501 EVANS CIR ANCHORAGE AK 99507	344-7494
WILLARD L SHIPLETT	21-782 CITRUS AVE APT E EAGLE AK 99508	753-8122
Carl Winters	18212 Clear Falls Eagle AK	99577 746-7060
ELIZABETH R. STEVENS-ORCZEWSKA	HC.02 Box 7070 PALMER AK 99645	
ANDREW C. Smith	801 N. Denzow St Anch AK 99508	

HANK YOU FOR
YOUR SUPPORT

Senator Lyda Green
Senator Rick Halford



SB 177

"An Act relating to permits to carry concealed handguns."

RECEIVED
MAR 07 1983
Ans:.....

I support Senate Bill 177

NAME	ADDRESS	PHONE
JOHN A. GASEL	PO BOX 73 ER. AK	674-2168
RAY THIBAUT	P.O. 671247 ⁹⁹⁸⁶⁷ CHUGAK	688-6606
HANE STRUNK	PO BOX 2448	755-6325
Collen P Stunk	PO Box 2448	745-6325
Nancy Beatty	PO Box 875611 Wasilla	376-4366
Mike Beatty	P.O. Box 875611 wasilla	376-4366
CANDICE CHETFOUR	HCO1 Box 6081E PALMER	746-6963
Wm. Richter	HCO1, Box 6081E PALMER	746-6963
EWA MORGAN	P.O. Box 90564 ANCH	248-8857
GEORGE SCHWADERER	HCO1 Box 6312-C PALMER	376-6903
FRED SCHWADERER	3000 NAOMI DR. WASILLA, AK	373-1550
Kevin Robinson	PO Box 2711 Palmer AK	745 7611
Robt H. PARKERSON	HCO2, Box 7630-A1 ^{Palmer} AK	745-4358

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Senator Lyda Green
Senator Rick Halford



SB 177

"An Act relating to permits to carry concealed handguns."

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MAR 07 1975

Art:.....

I support Senate Bill 177

NAME	ADDRESS	PHONE
KURT R. JACOBSON	210 E 74th Ave, Ste 1A Anchorage, AK 99501	279-6371
CHRIS D. PARKER	MILE 8.2 KNIU RIVER RD PALMER, AK 99645	
LYNDA J BRASE	Bx 342 PITMEAD AK 99645	
JAMES KRACKER	Box 1946 Palmer 99645	745-5679
Richard E. Staller Jr.	21-666B PLUM ST. ELMENDORF AFB AK 99506	753-7128
Karl G. Braedel	P.O. Box 1148 Chickaloon, AK 99624	745-4064
Norman J. Braedel	P.O. Box 1148 Chickaloon, AK 99624	745-4064
Michael V. Avery	800 WIN CIR., WASILLA, AK 99654	376-0259
Rufford L. Nodalensky	7221 Sitkin Cir ANCHORAGE, AK 99504	333-4227
John Nicely	7507 E. 17th Ave Anchorage, AK 99504	338-0727
Randal S. Reuth	8521 Moss Ct unit B Anchorage AK 99504	333-6757
GEORGE THOMPSON	HCO 1 Box 6201-AB, PALMER, AK 99645	373-6347
GALLARD HALE	POB 272 PALMER AK 99645	745-5659
WALTER	12030 STEVENAUCLOPP AK 99516	345-7904

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YOUR SUPPORT

Senator Lyda Green
Senator Rick Halford



SB 177

"An Act relating to permits to carry concealed handguns."

RECEIVED
MAR 07 1993

I support Senate Bill 177

NAME	ADDRESS	PHONE
Rita Jones	PO Box 872544 Wasilla AK 99687	745-0550
Richard Coybett	4227 IRENE DR ANCHORAGE AK 99504	337-0977
DR. IAN TEETER	1519 WINTERGREEN AVE 99508	272-9846
Joe Palinsky	PO Box 879062 WASILLA 99687	892-8315
J. E. MARTIN	3440 KACHEMAK Ave. Anch. 99515-2336	349-1937
John Chamberlin	11535 Our Road Anch 99516	346-1524
MAURICE PEPPER	P.O. BOX 879016 WASILLA AK ⁹⁹⁶⁸⁷	376-5697
Joseph Espiritu	520 CHEVA AVE AK 99508	
Francisco U. Fernandez	1129 E 11th Ave 99501	
JOHN KARSTEN	Box 661 Palmer AK	
HUGH LITTELL	9460 Reliance Dr Anchorage 99507	
Patrick O'Connor	PO Box 3687 Palmer AK	
FRANK DANFORD	1500 24th Ave Anch 99524	
Robert K. Thronquist	18757 Meadow Circle Eagle River AK ⁹⁹⁵⁷⁷	696-5381

THANK YOU FOR
YOUR SUPPORT

Senator Lyda Green
Senator Rick Halford



concealed handguns."

RECEIVED
MAR 07 '83
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I support Senate Bill 177

NAME	ADDRESS	PHONE
H. GALE McKNIGHT	9501 ALBATROSS ANCITORA GE. AK	248-1908
Thomas Whelan	21432 Tanika PO Box 670123 Chugiak AK 99567	488-2381
Dawn Nelson	21432 Tanika PO Box 670123 Chugiak, AK 99567	688-2381
Paul Clark	POB 2725 Palmer AK 99645	3556688
Rita McKinley	Box 2062 Palmer AK 99645 7115 Crawford St	746-4008
Eric D Hansen	Anchorage, AK 99502	243-4765
Kimmie P. Coleman	H.C. 38 - BOX 3200 WASILLA, AK. 99654	376-5175
W. P. P.	P.O. Box 2408 Palmer AK 99645	745-4339
William J. Hult	Box 870240 Wasilla	376 6860
Lyda Green	Box 1538 PALMER	745-2226
JAMES GARNART	P.O. BOX 872533 WASILLA	746-2828
Rene Zarsch	1905 Jackknife Ct Wasilla	373-1492
Charles A. VanDyke	PO Box 331 Sutton AK	745-0534
John S. LeMay	P O Box 2271 Palmer AK	745-2960

HANK YOU FOR
YOUR SUPPORT

Senator Lyda Green
Senator Rick Halford



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MAR 07 1999

I support Senate Bill 177

NAME	ADDRESS	PHONE
Ela Conroy	Po Box 1985 Palmer AK 99645	
DAVID ZBARKLEY	Po Box 520824 BILAKEAK	892-82449
Jim Sum	12332 END ST #207 EAGLE RIVER AK 99577	696-1873
Jim Ritchie	4610 REKA DR A-19 ANCHORAGE AK 99508	333 1479
MICHAEL D. MOONEY	1185 OCEANVIEW DR ANCHORAGE, AK. 99515	345-3022
Rob Chapman	99669 BOX 1758 SOLDOTNA AK	262-9399
M.E. Christopher	Po Box 1758 Sold. AK 99669	262-9399
Paul W. Hillman	22835 Glacier View Dr. Eagle River AK 99577	694-2787
Yvon Brumlow	3811 G. 84th 99917	349-8237
Bob Brumlow	3811 158th 99507	349-8237
Stanley Woods	720 NORTH SAGE DRIVE 99654 24321 Jesse Lee Ct.	376-5888
Fawn Hill	Chugiak AK 99567	638-6421
Craig Hill	PO BOX 870912 WASILLA AK 99667	376-5261
Steve Z. Fisher	ANCHORAGE, AK PO BOX 221234 99502	243-8773

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Senator Lyda Green
Senator Rick Halford



SB 177

"An Act relating to permits to carry concealed handguns."

RECEIVED
MAR 07 1973
APR 11

I support Senate Bill 177

NAME

ADDRESS

PHONE

CARL BAKER P.O. Box 670221 CHULIAT AK 99567 688-2026

THANK YOU FOR
YOUR SUPPORT

Senator Lyda Green
Senator Rick Halford



Alaska State Legislature

REPRESENTATIVE
JEANNETTE JAMES
P O Box 56622
North Pole, Alaska 99705
(907) 488-1546
FAX (907) 488-4271



White in Juneau
State Capitol
Juneau, Alaska
99801-1182
(907) 465-3743
FAX (907) 465-2381

House Of Representatives

House District 34

CSHB 338 (STA) (Version 9-LS1157/K) **Concealed Handgun Revisions**

2/22/96

The House State Affairs Committee Substitute for House Bill 338 makes the following changes to the current statute which was passed two years ago:

Section 1 provides an affirmative defense against prosecution for misconduct involving weapons in the fourth degree (possessing a deadly weapon on school grounds) by allowing a licensee to carry a concealed handgun on school grounds within a propelled vehicle, other than a school bus, as long as the defendant did not exit the propelled vehicle.

Section 2 provides an affirmative defense against prosecution for misconduct involving weapons in the fifth degree (possessing a deadly weapon where intoxicating liquor is sold for consumption on the premises) by allowing a licensee to carry a concealed handgun into a place where intoxicating liquor is sold for consumption on the premises as long as the defendant did not consume intoxicating liquor there and did not consume intoxicating liquor at any time during the previous eight hours.

It also clarifies current statute which provides an affirmative defense if the possession occurred on business premises owned or leased by the defendant or in the course of the defendant's employment for the owner or lessee of the premises.

Section 3 requires the Department of Public Safety to provide each applicant with a copy of state laws and regulations relating to concealed handguns.

Section 4 gives the Department of Public Safety a total of 30 days (instead of 15 days after receipt of background check information) to either approve or reject an application.

Section 5 amends qualifications for obtaining a permit. It returns to the original list of disqualifying misdemeanors in current statute. It also changes the residency requirement from one year to 90 days.

Section 6 changes the Department of Public Safety's requirement to provide each applicant with a copy of state laws and regulations relating to just concealed handguns (rather than relating to all firearms).

Section 7 adds a new subsection allowing an honorably retired peace officer to apply for and receive a permit within one year of retirement without having to demonstrate competency. This applies only to the initial application, not to subsequent renewals.

Section 8 adds a new section allowing the Department of Public Safety to enter into reciprocity agreements with other states. Applicants from qualifying states must meet Alaska's qualifications and pay a fee not to exceed Alaska's initial application fee.

Section 9 lowers the application fee cap to \$99 and the renewal fee cap to \$30.

Section 10 changes the list of places where a licensee may NOT carry a concealed handgun, to include only:

1. All places prohibited by federal law (all federal facilities and federal courts, airplanes, and some national parks).
2. State courthouses or courtrooms.

3. Residences, businesses, or meetings where notice prohibiting concealed handguns is conspicuously posted.
4. School grounds except within the licensee's vehicle.
5. Municipalities or villages that have opted out.

Section 11 changes the penalties for carrying a concealed handgun into a prohibited place.

The first offense is a violation, punishable by a fine.

The second offense is a class B misdemeanor.

The third and any subsequent offense are class A misdemeanors (two Class A misdemeanors cause revocation of the license), EXCEPT:

Section 12 adds a new subsection making it a class A misdemeanor to carry a concealed handgun in public while consuming intoxicating liquor or within eight hours after consuming an intoxicating liquor.

Section 13 repeals penalties for late renewal of a permit.

SB

194

MEMBER

TENTH ALASKA LEGISLATURE
ELEVENTH ALASKA LEGISLATURE
TWELFTH ALASKA LEGISLATURE
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NINETEENTH ALASKA LEGISLATURE

ALASKA STATE SENATE



SENATOR TIM KELLY

STATE CAPITOL
JUNEAU, ALASKA 99801-1182
(907) 465-3822
FAX (907) 465-3758

718 WEST 4TH, SUITE 400
ANCHORAGE, ALASKA 99501
(907) 258-8180
FAX (907) 258-4524

1-800-770-3822
(JANUARY 1996 - MAY 1996)
INTERNET: //http://www.state.ak.us/

Sponsor Statement
CCSB 194(JUD)

"An Act relating to offenses associated with criminal street gangs, and to sentencing for those offenses; relating to the offenses of murder in the second degree, an unclassified felony, misconduct involving weapons in the first degree, a class A felony, and misconduct involving weapons in the third degree, a class C felony; and amending Rule 702(a), Alaska Rules of Evidence; and providing for an effective date."

SB 194 was introduced in response to the rapid escalation of violent gang-related crime in Anchorage and throughout Alaska. In 1995, more than four gang-related murders were committed in Anchorage as well as numerous gang-related hold-ups and drive by shootings. Presently there are over 463 identified gang members in Anchorage alone. The central purpose behind the introduction of SB 194 is to give law enforcement and prosecutors the tools necessary to deal effectively with the increased presence of gangs in Alaska. The committee substitute now before you represents consensus language reached after many discussions with the Attorney General's Office.

Specifically, CSSB 194 would:

* Amend the crime of murder in the second degree to include a "felony murder" provision for a death resulting from a drug offense or a gang related shooting. Under current law, if a bystander is shot in a shoot-out between drug-dealers attempting to complete a drug deal or in a crime committed by a gang or gangs, the shooter can claim he was firing in self defense. This provision would eliminate a claim of self-defense when an innocent bystander is injured and would hold drug-dealers and gang members accountable for their violent and dangerous behavior.

* Make it a crime to recruit a gang member if the person uses or threatens to use force against a person or property to induce a person to participate in a criminal street gang or to commit

a crime on behalf of a street gang. This crime would constitute a class C felony. This crime of recruiting would also be extended to recruitment without force by a person 18 years or older who encourages a person under the age of 18 to participate in a gang. Recruitment in the second degree would constitute a class A misdemeanor.

- * Elevates the crime of weapons misconduct--applicable to drive-by shootings-- to a class A felony. (5 to 10 years).

- * Allows for expert testimony relating to criminal street gang activity such that in a criminal prosecution, expert testimony is admissible to show gang affiliation, custom, rivalry, and other characteristics of gangs. This section will give prosecutors the ability to introduce evidence of gang affiliation.

- * Provides for the forfeiture to the state of a motor vehicle, weapon, electronic communication device, or money or other valuables, used in or obtained through an offense that was committed for the benefit of, at the direction of, or in association with a criminal street gang.

- * Allows for gang membership to be considered as an aggravator for sentencing purposes in felonies. Further, SB 194 would elevate misdemeanors committed for the benefit of, at the direction of, or in association with a criminal street gang. For example, a B misdemeanor committed for the benefit of, at the direction of, or in association with a criminal street gang would be elevated to an A misdemeanor. Similarly, a class A misdemeanor would be elevated to a class C felony.

The CS for SB 194 now before this Committee is the result of much negotiation and deliberation between the Attorney General's Office and my office. The CS represents a consensus approach to dealing with the menace of gangs and gang-related violence in Alaska. I ask for your support of this legislation so we can move forward in sending the message that gang violence will not be tolerated in this state.

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

P.O. Box 240106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355



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Joseph E. Young
Anchorage

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James See, Member
Craig
Pres. Prince of Wales Chapter

March 19, 1996

Senator Tim Kelly
Alaska State Legislature
State Capitol (MS 3100)
Juneau AK 99801-1182

Dear Senator Kelly,

Our organization has over 1,100 Alaska members, representing local, state, and federal agencies. The membership shares a common goal to address issues pertaining to peace officers.

The APOA Board of Directors met recently and discussed the CS for SB 194. The board unanimously decided to endorse this legislation as it applies to offenses associated with street gangs. It is unfortunate that gangs and related problems have increased in some Alaska cities, necessitating legislative action. We feel that the proposed legislation provides a foundation to address these issues.

I encourage you to contact me if you need any further support on this, or any other legislation pertaining to peace officer issues. I can be reached at 451-5316, or through the APOA business manager, Joseph Young, at 277-0515.

Sincerely

Michael Corkill
State President

cc: Senators Pearce, Senate President
Donley
Green
Leman
Phillips

FISCAL NOTE

STATE OF ALASKA

BILL NO: CSSB 194(JUD)

1996 LEGISLATIVE SESSION

Revision Date: March 18, 1996

Dept. Affected: Public Safety

Title: Crimes associated with criminal street gangs

BRU: Alaska State Troopers

Component: Detachments

Sponsor: Senator Kelly

Requestor: H. Judiciary

COMPONENT SERIAL NO. 0799

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

OPERATING	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-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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CHANGE IN REVENUES () Revenue Code	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

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

Estimate of current year (FY 96) impact: \$ _____

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

This bill will not have a fiscal impact on the Division of Alaska State Troopers.

Prepared By: Lt. Dan Lowden

Phone: 465-5505

Division: Alaska State Troopers

Date: March 18, 1996

Approved by Commissioner: *Dal Smith*

Date: 3/19/96

Agency: Ronald L. Otte, Department of Public Safety

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SB 194

Revision Date: _____ Dept. Affected: Department of Law
 Title: "...relating to offenses with criminal street gangs
and the sentences for those offenses." BRU: Criminal Division
 Sponsor: Senator Kelly Component: Criminal Division
 Requester: Senate Judiciary Committee COMPONENT SERIAL NO. 2085

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

FUND SOURCE

(Thousands of Dollars)

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

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

POSITIONS

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 criminalizes participation in criminal street gangs. In so doing, the bill establishes several elements that would have to be proved in order to obtain a conviction. For this reason, the Department of Law believes that the bill's requirements are too complicated and provide too many defenses, making prosecution problematic. The bill also has the unintended potential effect of reducing the penalties for some gang related activities, which would otherwise be charged under accomplice liability provisions of current law.

Consequently, there will probably not be many prosecutions under the bill's provisions, if it is enacted. On those few occasions when the provisions are used, prosecution will be difficult and expensive.

Richard I. Pegues

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

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

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO: CSSB 194

Revision Date: February 28, 1996- Dept. Affected: Public Safety
 Title: Crimes associated with criminal street games. BRU: Alaska State Troopers
 Component: Detachments
 Sponsor: Senator Kelly
 Requestor: S. Judiciary COMPONENT SERIAL NO. 0799

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

OPERATING	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-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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CHANGE IN REVENUES () Revenue Code	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

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

Estimate of current year (FY 96) impact: \$ _____

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

This bill will not have a fiscal impact on the Division of Alaska State Troopers.

Prepared By: Lt. Dan Lowden Phone 465-5505
 Division: Alaska State Troopers Date: February 28, 1996
 Approved by Commissioner: *Ronald L. Otte* Date: 2/28/96
 Agency: Ronald L. Otte, Department of Public Safety

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Revision Date: _____
 Title: "An Act relating to offenses associated with criminal street gangs..."
 Sponsor: Senator Kelly
 Requestor: (S) Judiciary

Department 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	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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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: \$ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

There is no fiscal impact on the Public Defender Agency.

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

Phone: (907) 264-4412
 Date: _____

Approved by Commissioner: Mark Boyer
 Agency: Department of Administration

Date: 1/16/96

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FISCAL NOTE

No. 2
 Bill Version: CSSR 194(Jud)
 (S) Publish Date: 2/29/96

**STATE OF ALASKA
 1996 LEGISLATIVE SESSION**

Revision Date: _____ Dept. Affected: Department of Law
 Title: "...relating to offenses with criminal street gangs BRU: Criminal Division
and the sentences for those offenses." Component: Criminal Division
 Sponsor: Senator Kelly
 Requester: Senate Judiciary Committee COMPONENT SERIAL NO. 2085

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						
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CHANGE IN REVENUES						
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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 criminalizes participation in criminal street gangs. In so doing, the bill establishes several elements that would have to be proved in order to obtain a conviction. For this reason, the Department of Law believes that the bill's requirements are too complicated and provide too many defenses, making prosecution problematic. The bill also has the unintended potential effect of reducing the penalties for some gang related activities, which would otherwise be charged under accomplice liability provisions of current law.

Consequently, there will probably not be many prosecutions under the bill's provisions, if it is enacted. On those few occasions when the provisions are used, prosecution will be difficult and expensive.

Richard I. Peques

Prepared by: Richard I. Peques, Director Phone: 465-3672
 Division: Administrative Services Division Date: 1/16/96
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 1/16/96
 Agency: Department of Law

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STATE OF ALASKA
1996 LEGISLATIVE SESSION

Bill Version: CSSB 194 (Jud)

(S) Publish Date: 2/29/96

Revision Date: _____
Title: An Act Relating to Offenses Associated
with Criminal Street Gangs.
Sponsor: Senator Kelly et al
Requestor: Senate (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						
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CHANGES IN REVENUES ()						
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other (please specify)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

ANALYSIS: (Attach a separate page if necessary)

From the limited information available regarding street gangs, the Division cannot accurately assess the impact this bill would have on programs. However, it appears that it will be minimal.

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

Phone: 465-3191
Date: 01/16/96

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

Date: 1/15/96

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FISCAL NOTE

Bill Version: CS SB 194 (Jud)

(S) Publish Date: 2/29/96

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Revision Date: _____
Title: "An Act relating to offenses associated with criminal street gangs..."
Sponsor: Senator Kelly
Requestor: (S) Judiciary

Department 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	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 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: \$ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

There is no fiscal impact on the Public Defender Agency.

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

Phone: (907) 264-4412
Date: _____

Approved by Commissioner: Mark Bover
Agency: Department of Administration

Date: 1/16/96

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FISCAL NOTE

Bill Version: CS SB 194 (Jud.)

(S) Publish Date: 2/29/96

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Revision Date: _____
Title: "An Act relating to offenses associated with criminal street gangs..."
Sponsor: Senator Kelly
Requestor: Senate Judiciary

Department Affected: Administration
BRU: Office of Public Advocacy
Component: Office of Public Advocacy

COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING 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	****	****	****	****	****	****

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	****	****	****	****	****	****

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)
There will undoubtedly be a fiscal impact to OPA on our criminal section and on our contractors, due to increased arrests and increased criminal litigation. It is not possible at this time to quantify this impact.

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

Phone: 274-1684
Date: _____

Approved by Commissioner: Mark Boyer
Agency: Administration

Date: 1/17/96

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STATE OF ALASKA
1996 LEGISLATIVE SESSION

Bill Version: CSSB 194 (Jud)

(S) Publish Date: 2/29/96

Revision Date: February 28, 1996

Dept. Affected: Public Safety

Title: Crimes associated with criminal street gangs

BRU

Alaska State Troopers

Component:

Detachments

Sponsor: Senator Kelly

Requestor: S. Judiciary

COMPONENT SERIAL NO. 0799

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

	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
OPERATING						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES () Revenue Code	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

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

Estimate of current year (FY 96) impact: \$ _____

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

This bill will not have a fiscal impact on the Division of Alaska State Troopers.

Prepared By: Lt Dan Lowden

Phone: 465-5505

Division: Alaska State Troopers

Date: February 28 1996

Approved by Commissioner:

Ronald L. Otte
Ronald L. Otte, Department of Public Safety

Date: 2/25/96

Agency:

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SB194

Revision Date: _____
 Title: An Act Relating to Offenses Associated
with Criminal Street Gangs.
 Sponsor: Senator Kelly et al
 Requestor: Senate (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)

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:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

ANALYSIS: (Attach a separate page if necessary)

From the limited information available regarding street gangs, the Division cannot accurately assess the impact this bill would have on programs. However, it appears that it will be minimal.



Prepared by:
 Division:

L. Diane Worley
Family & Youth Services

Phone: 465-3191
 Date: 01/16/96

Approved by Commissioner:
 Agency:

Karen Perdue, Commissioner
Department of Health & Social Services

Date: 1/15/96

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property has been forfeited and will be disposed of.²²⁵ Third parties can then assert their interests,²²⁶ though they will prevail only under limited circumstances.²²⁷

Because of these powerful forfeiture provisions, and, more importantly, because they specifically address organized rather than isolated criminal activity, RICO and CCE have been successfully employed against criminal street gangs.²²⁸ Gangs were being prosecuted under RICO as early as the mid-1980s.²²⁹ By the early 1990s, the CCE statute was also being used against gangs that engaged in drug trafficking.²³⁰ For example, the first

225. 18 U.S.C. § 1963(f)(1) (1986).

226. *Id.* § 1963(f)(2).

227. Because of the relation-back doctrine, a third party challenging forfeiture under this section has the burden of proof by a preponderance of the evidence. Such a challenge will succeed if the property interest belonged to the petitioner, not the defendant, at the time the acts were committed, or if the petitioner was a bona fide purchaser for value with no reasonable cause to believe the property was subject to forfeiture at the time of purchase. *Id.* § 1963(f)(6). Goldsmith and Linderman have proposed that these provisions be changed to shift the burden to the government to show, again by a preponderance of the evidence, that the owner knew of the illegal conduct or acted with reckless indifference to such conduct. For transfers between family or friends, the government would have to show that the transferee knew or had reason to know of the underlying criminal conduct. Goldsmith & Linderman, *supra* note 24, at 1298.

228. Federal prosecutors brought RICO indictments against roughly two dozen gangs nationwide in 1994, about twice as many as had been obtained in 1993. Matthew Purdy, *Using the Racketeering Law to Bring Down Street Gangs*, N.Y. TIMES, Oct. 19, 1994, at A1. This includes anti-gang initiatives in New York City; Buffalo, New York; Shreveport, Louisiana; and Omaha, Nebraska. *Id.* at B5.

RICO and similar laws are so effective against gangs (and against organized crime in general) because they allow the government to put the organization itself on trial. As one defense lawyer observed: "Before RICO, you were not even allowed to utter a word about La Cosa Nostra [the Mafia] in a courtroom. But with RICO, not only are you allowed to talk about the criminal organization, you're required to prove the existence of it." Newton, *supra* note 12, at A27. The same, of course, is true of gangs. "We are intentionally trying to use the Federal Government's prosecution weapons to bring down a whole enterprise, rather than one murder here and one murder there," said a Justice Department official. Purdy, *supra*, at B5. However, this high level of success has some people worried. "The idea of these [RICO] mega-trials is that the jury gets to see all these drugs and all these guns, and they hear about all these awful things that the gang did. [The jurors] freak out. Then they convict everybody," said a defense lawyer in the El Rukn prosecutions. Newton, *supra* note 12, at A27.

However, prosecuting gangs under RICO and similar laws is not exactly the judicial equivalent of shooting fish in a barrel. "It can be a time-consuming and expensive process to prove that the gang is a criminal enterprise." In making out a RICO case, prosecutors must rely on wiretaps, confidential informants and gang members turning state's evidence. For example, the federal investigation of the El Rukn gang in Chicago began in 1987, with indictments handed up in 1989 and trials which ended in 1992 and 1993. *Id.*

229. See, e.g., *United States v. Louie*, 625 F. Supp. 1327, 1333-34 (S.D.N.Y. 1985) (holding that RICO indictment alleging "broad spectrum of illegal fundraising acts" and territorial disputes with rival gangs sufficient to establish pattern of racketeering activity under RICO).

230. See *United States v. Jackson*, 953 F.2d 640 (4th Cir. 1992).

RICO prosecution of a Washington, D.C., drug gang took place between 1991 and 1992 against a gang known as the R Street Organization.²³¹

The RICO prosecutions of the El Rukn gang²³² in Chicago in the late 1980s and early 1990s rank simultaneously as the most successful use of RICO against criminal street gangs and its most spectacular failure. The El Rukn prosecutors racked up an impressive series of RICO convictions²³³ against one of the most notorious street gangs in America, validating the use of RICO as a powerful gang-fighting tool.²³⁴ However, allegations of large-scale prosecutorial misconduct²³⁵ have resulted in new trials for

231. See *United States v. Williams-Davis*, 821 F. Supp. 727, 731 (D.D.C. 1993).

232. The specter of Al Capone is often invoked in discussions of the El Rukn gang, which has been called "the most infamous [gang] of organized criminals that Chicago has seen since the days of Al Capone," *United States v. Boyd*, 833 F. Supp. 1277, 1365 (N.D. Ill. 1993), and Chicago's "most violent and organized ring of gangsters since Al Capone's." Robert Blau, *Too Close for Comfort? How the Government's Assault on the Rukns Went Up in Smoke*, CHI. TRIB. Aug. 21, 1994, at 10 (Sunday Magazine).

Originally formed in the 1960s as the Blackstone Rangers, the gang was known as the Black P Stone Nation in the 1970s. When Jeff Fort became the undisputed leader of the gang in the 1980s, the group was renamed again, calling themselves the El Rukns, meaning "cornerstone." Fort and the El Rukns embraced certain elements of the Black Muslim faith, which extended to their organizational structure. Fort ruled the gang as "Imam." Subordinate ranks, in descending order, were called generals, "Officer Muftis," ambassadors, and, at the lowest level, the soldiers or "Els." Their headquarters was known as the Mosque, and religious services were actually held there on occasion. *United States v. McAnderson*, 914 F.2d 954, 939 (7th Cir. 1990).

The El Rukns ran a sophisticated drug-trafficking operation "which at its peak sold multiple kilograms of cocaine monthly . . . [and] generated between \$3 million and \$4 million in profits." Blau, *supra*, at 14. The money was hidden under the basement of the gang's South Side headquarters and in safe deposit boxes in Chicago and Milwaukee. *Id.* "The number of murders linked to the Rukns in their 20-year history ranges from the two dozen outlined in the [federal] indictments to many times that number suspected by police." *Id.*

233. Federal prosecutors in Chicago obtained more than 50 convictions against the El Rukns. Matt O'Connor, *Judge Implies Rukn Scandal Growing Worse*, CHI. TRIB., Nov. 13, 1993, at 5.

234. See, e.g., *United States v. Andrews*, 749 F. Supp. 1520, 1524 (N.D. Ill. 1990) (holding RICO not unconstitutionally vague as applied to street gang involved in large-scale drug conspiracy).

235. The allegations of misconduct are staggering in their sheer number; the opinion in one case, granting a new trial for seven gang members, alone covers 86 pages of the Federal Supplement. *Boyd*, 833 F. Supp. at 1280-1366. The government allegedly used perjured testimony by gang members; suppressed positive drug tests by Rukn generals testifying for the prosecution; allowed those witnesses to use drugs while confined in Chicago's Metropolitan Correctional Center (MCC); provided for conjugal visits between the witnesses and their wives; and gave other substantial benefits to the incarcerated witnesses, including money, gifts, clothing, radios, beer, cigarettes and access to government phones. A paralegal in the U.S. Attorney's office also allegedly engaged in a sexually explicit phone conversation with a witness and agreed to help smuggle contraband into the jail. These activities were not disclosed to the defense. See *Boyd*, 833 F. Supp. at 1277-95; *United States v. Burnside*, 824 F. Supp. 1215, 1224-48 (N.D. Ill. 1993); *Andrews*, 824 F. Supp. at 1277-87; see also Matt O'Connor, *Ruling Threatens Rukn Convictions*, CHI. TRIB., June 5, 1993, at 1.

practice in 1790.²¹⁵ Congress added criminal and civil forfeiture provisions to RICO not merely as an additional punishment, but to eliminate a defendant's control over the enterprise and prevent the defendant from receiving the benefits of the illegal activities.²¹⁶ Forfeiture provisions "allow the government to reach the illegally accumulated assets of a criminal enterprise and thereby strike at the heart of such enterprises."²¹⁷

Upon conviction, RICO requires forfeiture of, *inter alia*, any proceeds derived from racketeering activity.²¹⁸ Section 1963(a)(3), which allows forfeiture of profits obtained from organized crime, was added in a 1984 amendment to RICO. This amendment codified the Supreme Court's

215. Frederick P. Hafetz, *Criminal RICO: Forfeiture*, in RICO: CIVIL AND CRIMINAL LAW AND STRATEGY § 6.03[1], at 6-7 (Jed S. Rakoff & Howard W. Goldstein eds., 1991).

216. *Id.* § 6.04[1], at 6-9.

217. ALEXANDER S. WHITE ET AL., U.S. DEP'T OF JUSTICE, RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS (RICO): A MANUAL FOR FEDERAL PROSECUTORS 76 (1985); see also *supra* note 24 and accompanying text. Criminal forfeiture, and in personam forfeitures in general, have their origins in the English common law, which allowed forfeiture of estate on the theory that a breach of the peace should deprive the guilty party of the right to own property. William W. Taylor III, *Forfeiture Under 18 U.S.C. § 1963—RICO's Most Powerful Weapon*, 17 AM. CRIM. L. REV. 379, 381-82 (1980). This practice, however, was severely restricted by later developments, initially the Magna Carta in 1215. The thirty-second clause of the Magna Carta announced that forfeited lands would be returned to their original owners within a year and a day. *Id.* at 382 n.21. This effectively abolished forfeiture of an estate on a felony conviction in England. *Id.* at 382. Later, the abolition of both escheat for felony and forfeiture on a conviction of treason in 1870 further reduced forfeiture actions. Previously, all real estate automatically escheated to the Crown upon conviction of a felony. Hafetz, *supra* note 215, § 6.03[1], at 6-7.

The only criminal forfeiture provisions in the United States Constitution are found in Article III, which allows forfeiture of estate as a punishment for treason, but this only applies during the life of the person convicted. U.S. CONST. art. III, § 3, cl.2 ("The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted."). The first Congress codified the negative implication of Article III's reference to forfeiture in 1790 when it enacted the first U.S. criminal code and outlawed forfeiture for all criminal offenses other than treason. Act of Apr. 30, 1790, ch. 9, § 24, 1 Stat. 112 (1790) ("[N]o conviction or judgment for any of the offenses aforesaid, shall work . . . any forfeiture of estate."). Criminal forfeiture thus disappeared from American criminal jurisprudence and did not reappear for 180 years. Civil forfeiture, on the other hand, has been in continual use in America. Early civil forfeiture statutes provided for civil in rem proceedings to confiscate the proceeds of illegal activities. These were based on the legal fiction that the property, not its owner, was in violation of the law, and thus a penalty issued in rem against the property was proper. Hafetz, *supra* note 215, § 6.03[2], at 6-7 to 6-8.

218. Section 1963(a)(3) provides that any person convicted of a RICO violation shall forfeit "any property constituting, or derived from, any proceeds which the person obtained, directly or indirectly, from racketeering activity." 18 U.S.C. § 1963(a)(3) (1988). Federal prosecutors are instructed that the forfeiture provisions "are an integral part of a RICO prosecution and should be used wherever possible." WHITE ET AL., *supra* note 217, at 76.

holding in *Russello v. United States*²¹⁹ that "interest" as defined under RICO was broad enough to include profits derived from a RICO enterprise.²²⁰ The CCE forfeiture provisions mandate forfeiture of any profits derived from the enterprise, any property used to commit the underlying drug offenses, and any interest the defendant has which affords control over the enterprise.²²¹

The rights of third parties may be implicated when property is forfeited under RICO or CCE. For example, property may be forfeitable because it was used in a drug transaction or purchased with profits derived from such a transaction. Because a violation of the underlying criminal statute is required before forfeiture proceedings can begin, forfeitable property may be subject to a restraining order to preserve the property until after the trial is complete.²²² Such restrictions are necessary to prevent defendants from transferring their property before trial, thereby avoiding the forfeiture provisions.²²³ These restrictions also provide an incentive for third parties to monitor how their property is used or from what source it is derived.²²⁴ After forfeiture, the government must publish an announcement that the

219. 464 U.S. 16 (1983).

220. *Id.* at 22; see also Hafetz, *supra* note 215, § 6.04[2], at 6-9 to 6-10.

221. 21 U.S.C. § 853(a) (1988). These provisions are comparable to the RICO forfeiture law and are generally applied in the same fashion. 1 ASSET FORFEITURE OFFICE, U.S. DEP'T OF JUSTICE, ASSET FORFEITURE: LAW, PRACTICE AND POLICY 158 (1988). As a practical matter, however, property forfeitable under 21 U.S.C. §§ 853(a)(1) and (2), which apply to non-CCE drug violations, will probably be the same as forfeitable property under subsection (3), which only applies to CCE violations. *Id.* at 158 n.53.

222. RICO and CCE both provide for such restraining orders. Under RICO, potentially forfeitable property can be preserved by injunction or restraining order without a hearing upon the filing of a RICO indictment, see 18 U.S.C. § 1963(d)(1)(A) (1988), and prior to indictment if the restraining order is necessary to avoid transfer or destruction of the property. *Id.* In the latter case, notice and a hearing is provided to those with a possible interest in the property, and the restraining order cannot be issued if the need for preservation is outweighed by the hardship on a party with an interest in the property. The CCE law contains an identical provision. 21 U.S.C. § 853(e) (1988). Under the "relation back" doctrine, title in forfeitable property vests in the government at the time the criminal act in question is committed. Third-party transferees may escape this provision if they establish at a hearing that they were bona fide purchasers for value who were "reasonably without cause to believe that the property was subject to forfeiture" at the time of transfer. See 18 U.S.C. § 1963(c) (1988).

223. Goldsmith & Lindeman, *supra* note 24, at 1256. In fact, the Supreme Court pointed to such needs in holding that property could be seized without a prior hearing under a Puerto Rico statute that made vessels used to transport drugs subject to forfeiture. *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 679 (1974). Prior notice, the Court argued, "might frustrate the interests served by the statutes, since the property seized—as here, a yacht—will often be of a sort that could be removed to another jurisdiction, destroyed or concealed." *Id.*

224. "[Forfeiture] may have the desirable effect of inducing [third parties] to exercise greater care in transferring possession of their property." *Calero-Toledo*, 416 U.S. at 688.

to the judgment of the legislature whether to allow this type of evidence. A legislature could use either a specific rule of evidence²⁰⁰ or a general rule on expert testimony by which police officers and others familiar with gang activity could qualify as experts.²⁰¹ Before enacting such a rule, however, the legislature should weigh the benefits of this type of evidence against the possible risks to gang defendants.

IV. ENTERPRISE CRIMINALITY AND ORGANIZED CRIME

When the federal RICO²⁰² statute was enacted in 1970, it was hailed as a "new approach[] [to organized crime] that will deal not only with individuals, but also with the economic base through which those individuals constitute such a serious threat."²⁰³ Thus, RICO was enacted because existing laws proved inadequate in battling organized crime.²⁰⁴ Similar problems have prompted states to pass anti-gang laws.²⁰⁵ Because RICO focuses on enterprise criminality instead of individual crimes, it is

admissibility. *Id.* at 92. Furthermore, the officer had interviewed roughly sixty gang members during his investigations. "A witness may be qualified to testify as an expert although his knowledge may have been gained by practical experience rather than by scientific study or formal training." *Id.*

200. Nevada's anti-gang laws make use of such a provision, allowing for the use of expert testimony under certain circumstances. The statute does not address whether police officers may serve as experts on gang activity. NEV. REV. STAT. § 193.168.5 (Michie Supp. 1993).

201. For example, in states that have adopted the Federal Rules of Evidence, police officers could qualify as experts if their knowledge about gangs will assist the trier of fact to understand the evidence or determine a fact in issue. FED. R. EVID. 702. In such states, officers could testify as gang experts even in the absence of any specific statute authorizing testimony on gang activities or culture.

202. 18 U.S.C. §§ 1961-1964 (1988 & Supp. IV 1992).

203. S. REP. NO. 617, 91st Cong., 1st Sess. 79 (1969).

204. In a 1969 message on organized crime, President Nixon noted some of these problems. "The arrest, conviction and imprisonment of a Mafia lieutenant can curtail operations, but does not put the syndicate out of business. As long as the property of organized crime remains, new leaders will step forward to take the place of those we jail." 116 CONG. REC. 602 (1970) (citing President Nixon's April 23, 1969 message on organized crime). Upon introducing the original RICO legislation, Senator John McClellan echoed Nixon's remarks. "Our present laws are inadequate to remove criminals from legitimate-endeavor organizations. Constant references have been made to the frustration resulting when the only consequence of a conviction is that organized crime and its infiltrated organizations are run by a new leader, and the organizations which are the real threat are not affected." 115 CONG. REC. 9567 (1969). Although this statement relates largely to the infiltration of legitimate businesses by organized crime, its observations about the problems of fighting organized crime with traditional laws are no less true when applied to wholly illicit organizations. Moreover, Senator McClellan went on to say that under RICO, "if an organization is acquired or run by the proscribed racketeering method, then the persons involved are removed from the organization." *Id.* (emphasis added). This indicates that RICO was enacted to combat the twin evils of enterprise criminality: the corrupt organization itself and the poisoning of legitimate groups and businesses by organized crime.

205. See *supra* note 12 and accompanying text.

an extraordinarily effective tool against all forms of organized crime²⁰⁶ and has appropriately served as a model for the California STEP Act and other state anti-gang laws.

RICO provides three bases for criminal liability. Section 1962(a) prohibits the use of income acquired through a pattern of racketeering activity²⁰⁷ to obtain an interest in an enterprise²⁰⁸ that affects interstate commerce.²⁰⁹ Section 1962(b) forbids the acquisition of any interest in a RICO enterprise through a pattern of racketeering activity or collection of an unlawful debt.²¹⁰ Finally, Section 1962(c) makes it illegal to conduct an enterprise through a pattern of racketeering activity or collection of unlawful debt.²¹¹ Conspiracy to violate any of these three sections is also a RICO violation.²¹² A similar law, the federal Continuing Criminal Enterprise²¹³ (CCE) statute, also attacks enterprise criminality. A continuing criminal enterprise is defined as a continuing series of drug violations by five or more people. Liability is based on the occupation of a position of supervision or management and the commission of a drug felony that is part of the series.²¹⁴

The enactment of RICO and CCE in 1970 marked the first appearance of criminal forfeiture in the United States since Congress outlawed the

206. "Buried in RICO's legalese is a simple insight. In this century, organizations control the important elements of society, such as commerce and labor. Yet the criminal law prior to RICO had, for the most part, addressed only individuals." Gregory J. Wallace, *Outgunning the Mob*, A.B.A. J., Mar. 1994, at 60, 62. RICO, by contrast, focuses on the organization. As its drafter, Robert Blakey, explained, "It's not enough to investigate individuals—you need a theme. You've got to go after the organization. Individuals commit organized crime, but organizations make the organized crime possible." *Id.* at 63.

207. Section 1961(1) defines "racketeering activity" as any one of a long list of federal crimes, ranging from sports bribery to mail and wire fraud to money laundering, as well as any act or threat that involves murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or drug dealing that is chargeable under state law and punishable by more than a year in prison. 18 U.S.C. § 1961(1) (Supp. IV 1992). A "pattern of racketeering activity" is established by the commission of at least two § 1961(1) predicate crimes within 10 years of each other. 18 U.S.C. § 1961(5) (1988).

208. An "enterprise" is defined under § 1961(4) as "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." *Id.* § 1961(4).

209. See *id.* § 1962(a).

210. *Id.* § 1962(b). An unlawful debt is defined under § 1961(6) as a debt incurred by illegal gambling, or resulting from a loan in which the interest rate is at least twice the enforceable interest rate under state or federal law. *Id.* § 1961(6).

211. *Id.* § 1962(c).

212. *Id.* § 1962(d).

213. 21 U.S.C. § 848 (1988 & Supp. IV 1992).

214. 21 U.S.C. § 848(c) (1988).

includes "any person who . . . voluntarily associates himself with a course or pattern of gang-related criminal activity,"¹⁹³ sentence enhancements for gang-related forcible felonies¹⁹⁴ could be imposed on a person who merely associates with a gang but is not an actual member.¹⁹⁵

that the gang nevertheless denies him membership. Under these statutes, Tony would still be subject to gang-related sentence enhancements for his crimes if he lived in the gang's area, "hung out" with the gang members and adopted their style of dress, and if he had been "hanging out" with known members of the Jets when they were stopped or questioned by the police on at least four occasions. Although Tony would in any event be subject to punishment for his crimes, the additional penalties would be imposed solely because of his association with gang members.

193. ILL. ANN. STAT. ch. 740, para. 147/10(2)(J) (Smith-Hurd Supp. 1994).

194. *Id.* ch. 730, para. 5/5-5-3(c).

195. The constitutional problems with Illinois' gang-related sentencing guidelines are compounded by poor drafting. The relevant portion of the state criminal disposition statute prevents probation and requires a mandatory minimum sentence for a forcible felony "if the offense was related to the activities of an organized gang." ILL. ANN. STAT. ch. 730, para. 5/5-5-3(c)(2)(J) (Smith-Hurd Supp. 1994). Similarly, sentence enhancements are provided for crimes committed in a school or on a school bus "where the offense was related to the activities of an organized gang." *Id.* ch. 730, para. 5/5-5-3(c)(11). Both provisions incorporate the definition of "organized gang" contained in the Streetgang Terrorism Omnibus Prevention Act. See *id.* ch. 740, para. 147/10. This is the only term from the STOP Act mentioned in the criminal disposition statute. Therein lies the problem. Did the Illinois Legislature intend to incorporate *only* the definition of "gang" from the Act into the criminal disposition statute, or did it also intend courts to use the Act's definition of "gang-related" in determining which crimes would be subject to the sentencing guidelines?

If the first interpretation is used, it is clear that these provisions sweep too broadly, since the offenses in question need only be "related" to the activities of a gang. To continue the example from note 192, *supra*, suppose Tony has a girlfriend, Maria. She helps Tony escape after the first robbery attempt by shooting at Officer Krupke, who was pursuing Tony. She has committed a forcible felony, assault on a police officer, which is related to the activities of a gang. Therefore, if she is prosecuted and convicted, she may not be granted probation and must be given the minimum statutory prison term. These provisions would be triggered even if she were not a member of the Jets, but her conduct was related to activities of Tony and members of the gang.

The definition of "gang-related" crime contained in the STOP Act, by contrast, requires both specific intent to aid or benefit the gang by committing the crime and the direction, authorization, ratification, or consent of an officer or policymaking representative of the gang. See ILL. ANN. STAT. ch. 740, para. 147/10 (Smith-Hurd Supp. 1994). This definition creates fewer freedom-of-association problems, but because it does not state that only "gang members" as defined under the statute can commit gang-related activity, it creates a risk that nongang members may commit gang-related crime under the statute. Even if this definition were to be restricted to crimes committed only by gang members, the definition of that term is itself so broad that it can extend to those who merely associate with gang members. Under the statute, gang members include those who "voluntarily associate themselves" with a pattern of gang-related criminal activity, including those who cover up for the activity or aid and abet the crime. *Id.* Thus, Maria could qualify as a gang member for shooting at Officer Krupke even if her only contact with the gang came through Tony.

At a minimum, the Illinois laws should be amended to show more clearly which definitions Illinois intended to use in its sentencing guidelines. If the guidelines were to use the STOP Act's definitions of gang-related crime, then those definitions should be amended to clarify whether gang members (as defined by the statute) are the only ones who can commit gang-related crimes (as defined by the

Although the California STEP Act and its progeny have thus far survived all constitutional challenges, these laws could be revised to reduce their impact on individual rights without reducing their effectiveness against gangs.¹⁹⁶ For those states that have rejected the California approach, the positive effects of their laws in combatting gang activity do not outweigh the harm caused by their infringement on the rights of the individual. Thus, states that have not yet enacted anti-gang statutes should reject this latter approach and opt for a California-style law with increased individual protections.¹⁹⁷

B. Practical Problems

Practical questions about the application of the STEP Act center on the establishment of gang membership and a pattern of gang activity. Courts in California and elsewhere have upheld the use of expert testimony by police officers, even if such testimony is based in part on hearsay,¹⁹⁸ in order to establish gang membership and the conduct of the gang in question. Some object to this practice, arguing that such testimony should be excluded because police officers' mere presence on the beat does not transform them into experts in gang activity.¹⁹⁹ Clearly, it should be left

statute). Finally, if gang-related crimes are restricted only to statutory "gang members," the specific intent requirements found in the gang-related crime definitions should be imported into the gang membership definition. This would ensure that only those with a substantial relationship to the gang unit itself are covered by these provisions.

196. See *infra* notes 248-49 and accompanying text.

197. See *infra* Part V.

198. See, e.g., *People v. Gamez*, 286 Cal. Rptr. 894, 899-900 (Cl. App. 1991). Similar evidence has been upheld in jurisdictions without anti-gang statutes in which gang membership is nonetheless considered as an aggravating circumstance at sentencing. See *State v. Johnson*, 873 P.2d 514, 521-22 (Wash. 1994); *Anderson v. State*, 868 S.W.2d 915, 917-18 (Tex. Cl. App. 1994); see also *People v. Colon*, 618 N.E.2d 1067, 1072 (Ill. App. Ct. 1993) (holding evidence of gang affiliation, activity or involvement admissible "only when there is sufficient evidence demonstrating that the gang activity relates to the crime charged and that the defendant was aware that gang activity was involved") (citations omitted).

199. See, e.g., Burrell, *supra* note 37, at 770. "The fact that officers have been assigned to the 'gang detail' or have made many arrests in gang related cases is not sufficient to qualify them as experts," argues Susan Burrell. *Id.* "Nor does street experience transform officers into behavioral scientists who can predict individual or group behavior." *Id.* at 771. To support her theory, Burrell cites the lack of a coherent body of knowledge on the subject of gang behavior or gang activity. *Id.*; see also *supra* notes 40-41, 67-95 and accompanying text. But see *State v. Seddens*, 878 S.W.2d 89, 92-93 (Mo. Cl. App. 1994). The Missouri Court of Appeals upheld the expert testimony of a police officer, whose primary responsibility was investigating gang activity, about the practices, activities and history of the Crips and Bloods in St. Louis. *Id.* at 93. Any lack of formal training in gang activity (the officer had spent only fourteen days at professional seminars on the subject) went to the weight of the evidence, not its

The court refused to read a knowledge requirement into the sentence enhancement portion of the Act¹⁸³ and held that the lack of such a knowledge requirement does not punish "pure" association because of the specific intent requirement in subsection (b).¹⁸⁴

Other critics have suggested that the STEP Act may impermissibly intrude upon freedom of association rights.¹⁸⁵ Freedom of association protects the right to associate with others even if they are engaged in criminal activity. These claims are examined under a strict scrutiny standard:¹⁸⁶ the government must show that the law is designed to further a compelling governmental interest that cannot be achieved by less restrictive means.¹⁸⁷ Some have argued that the STEP Act and similar laws will not survive strict scrutiny review if they are ever challenged before the Supreme Court.¹⁸⁸ However, one court has held that freedom of association loses its First Amendment protection when the association takes place for the purpose of planning criminal activity.¹⁸⁹ If anti-gang

predicate acts by gang members. See *id.* at 903 n.5.

183. The court held that the two provisions punish separate conduct. "The gravamen of subdivision (a) is the participation in the gang itself," which requires knowledge of the gang's criminal activities. *Id.* at 903. The sentence enhancement provisions, on the other hand, punish crimes committed with the specific intent to further or promote the gang's criminal conduct. This subsection thus does not require knowledge of the gang's specific activities because it has a specific intent provision of its own. *Id.* at 903-04.

184. "The requirement that defendant commit the crime for the benefit of or in the association with the gang and with the specific intent to promote, further, or assist members of the gang in any criminal conduct is sufficient to appease any concerns regarding a violation of due process based upon 'pure association.'" *Id.* at 905; see also *People v. Rodriguez*, 26 Cal. Rptr. 2d 660, 664 n.2 (Ct. App. 1993) (citing *Green* and observing that "[m]ere membership in a street gang is not a crime. . . . [The STEP Act] carefully avoids punishing mere membership.")

185. Molina, *supra* note 35, at 466-69. This view attempts to make a distinction based on other groups who engage in both lawful and unlawful activities, such as Native American tribes who use peyote as part of their religious rituals. Under this argument, a STEP-type approach would punish a member of such a tribe both for the illegal peyote use and for belonging to the group that uses peyote. *Id.* at 467. This analysis, however, ignores STEP's requirement that a gang have as one of its primary activities the commission of crimes in order for active gang participation to be punishable under the Act. In the case of the Native American tribes, though it can certainly be said that their religious rituals are one of their primary activities, the use of peyote, in and of itself, clearly is not. This view also ignores the judicial meaning of the terms "active participation" and "promote, further and assist" as courts in California and elsewhere have construed them. The STEP Act punishes conduct that is significantly more purposeful than mere association.

186. See *NAACP v. Alabama*, 357 U.S. 449, 460-61 (1958).

187. *Id.* at 463-65.

188. Molina, *supra* note 35, at 469.

189. In *United States v. International Bhd. of Teamsters*, 708 F. Supp. 1388 (S.D.N.Y. 1989), the District Court for the Southern District of New York rejected an attempt by a union to dismiss a civil RICO claim against it on grounds that the lawsuit violated the union members' free-association rights.

statutes are tailored narrowly enough to encompass only clearly criminal conduct, freedom-of-association rights will not be implicated or chilled.

The anti-gang laws of Florida, South Dakota and Illinois are also susceptible to challenge on freedom-of-association grounds, though these challenges have yet to materialize. Under the Florida and South Dakota laws, a person could meet the statutory definition of a gang member simply by living in a gang area, associating with known gang members, and being stopped in the company of gang members more than four times.¹⁹⁰ These criteria would then trigger the sentence enhancements for gang-related crimes.¹⁹¹ Even though these penalties cannot be imposed in the absence of specific criminal activity by a particular defendant, an extended prison term could be imposed solely because of a person's association with gang members.¹⁹² Similarly, because Illinois' definition of gang member

Although First Amendment protection extends to association with individuals who are involved in criminal conduct, the court held that this was not a case of such pure association. "[W]hen such association is part of a plan to commit a crime it no longer is protected. Otherwise, it is apparent that any RICO enterprise or conspiracy could never be prosecuted because they all involve 'association.' 'Freedom of association' is not, however, a talisman that will ward off all government attempts to proscribe or regulate activity." *Id.* at 1393. The STEP Act and similar statutes are not directed at gang associations per se, but only criminalize those associations whose purpose is the planning and/or commission of criminal acts.

190. The two laws have nearly identical statutory definitions of "gang member." See FLA. STAT. ANN. § 874.03(2) (West 1994); S.D. CODIFIED LAWS § 22-10-14(2) (Supp. 1994).

191. See FLA. STAT. ANN. § 874.04 (West 1994); S.D. CODIFIED LAWS ANN. § 22-10-15 (Supp. 1994).

192. Both statutes impose additional penalties for felonies or violent misdemeanors that are part of a pattern of gang activity. FLA. STAT. ANN. § 874.04 (West 1994); S.D. CODIFIED LAWS ANN. § 22-10-15 (Supp. 1994). Under both statutes, a pattern of gang activity includes the commission, attempted commission, or solicitation by any member or members of a gang of two or more felonies or violent misdemeanors within a three-year period. FLA. STAT. ANN. § 874.04 (West 1994); S.D. CODIFIED LAWS ANN. § 22-10-14 (Supp. 1994). South Dakota imposes the additional requirement that the offenses be undertaken "for the purpose of furthering gang activity." *Id.* § 22-10-14.

Both statutes define gang member as a person who engages in a pattern of gang activity. If the definition ended there, the laws would pose no freedom-of-association problem; for purposes of freedom-of-association analysis, they would be equivalent to the portion of the California STEP Act that provides enhancements for crimes committed with the specific intent to further gang activity. See *supra* notes 182-84 and accompanying text. Because the laws define a gang member as a person who meets only two of several criteria, three of which are distinctly associational in nature, they run the risk of punishing those who, though their crimes are committed to further gang activity, are not members of a gang but merely associate with members of a gang.

As an example, suppose that Tony wants to join the Jets, a gang that qualifies under the Florida and South Dakota definitions. Tony is asked to commit a crime, say armed robbery, in order to obtain membership. Tony tries to rob a convenience store but flees when the clerk sets off an alarm. The gang asks him to try again. This time he is successful. Because a pattern of gang activity includes attempted crimes, Tony has now participated in a pattern of gang activity under the two statutes. But then suppose

noting that the statute does not punish mere membership, but the promotion, furtherance or assistance of criminal conduct by a member of the gang.¹⁶⁵

The next constitutional challenge to the STEP Act on grounds of vagueness and overbreadth came in *People v. Gamez*.¹⁶⁶ In *Gamez*, the defendant claimed that the term "criminal street gang" was vague and overly broad. Gamez argued that the statute could be used to punish membership in groups such as the Los Angeles Police Department (LAPD) or even an organization of environmental activists, so long as individual members of the group commit criminal offenses.¹⁶⁷ In rejecting the overbreadth challenge, the court noted that even if LAPD officers commit crimes while on duty, the statute only punishes those groups who commit crimes as one of their primary activities, a category into which neither the LAPD nor environmental activist groups fall.¹⁶⁸ Because the STEP Act does not regulate speech or association, but conduct—and then only criminal conduct—it is not overly broad.¹⁶⁹ Notably, the *Gamez* court cited *Green*¹⁷⁰ in holding that the definition of criminal street gang is not unconstitutionally vague.¹⁷¹

The California Court of Appeal rejected yet another vagueness and overbreadth challenge to the STEP Act in *In re Alberto R.*¹⁷² The defendant in *Alberto R.* challenged several statutory terms and phrases as

165. *Id.* at 146. The court distinguished a 1939 U.S. Supreme Court case, *Lanzetta v. New Jersey*, 306 U.S. 451, 458 (1939), in which a New Jersey "gangster" statute was declared unconstitutional for overbreadth because it punished membership in "any gang consisting of two or more persons." The California Court of Appeal noted that the STEP Act does not criminalize membership in an undefined gang, as the New Jersey law did, but provides a specific definition of the term as used in the statute. *Green*, 278 Cal. Rptr. at 146-47. It further observed that the term "gang" as used in the STEP Act was similar to "enterprise" as used in RICO, and noted that courts had found little trouble defining the meaning of that term when applying RICO. *Id.* at 147.

166. 286 Cal. Rptr. 894 (Ct. App. 1991).

167. *Id.* at 901. Gamez also attempted to distinguish *Green* by arguing that *Green* did not address First Amendment freedom of association issues or "the outer boundaries of the statute's application." *Id.*

168. *Id.* at 901-02.

169. *Id.* at 902. The court argued that to the extent the Act regulates association, it only regulates those associations whose purpose is to engage in criminal activity, and, thus, it does not affect other, constitutionally protected forms of association. For an alternative view of this argument, see Molina, *supra* note 35, at 465-69.

170. See *supra* note 155.

171. 286 Cal. Rptr. at 902. "[W]hile the word 'gang' may be vague, the term 'criminal street gang' is not." *Id.*

172. 1 Cal. Rptr. 2d 348 (Ct. App. 1991).

unconstitutionally vague and overbroad: "promote, further and assist";¹⁷³ "felonious criminal conduct";¹⁷⁴ "benefit";¹⁷⁵ "the last of these offenses occurred within three years after a prior offense";¹⁷⁶ and "primary activities."¹⁷⁷ The court rejected all of the defendant's arguments and upheld his sentence enhancements under the Act. The court held that the STEP Act is not void for vagueness because of the plain language of the statute and the judicial meaning of its terms.¹⁷⁸ If construed narrowly, the court held, the Act also is not overly broad because it punishes specific criminal conduct or the active promotion of criminal conduct.¹⁷⁹

The California STEP Act has also been challenged, unsuccessfully, on due process grounds, on the premise that the Act punishes individuals because of their associations with others instead of their specific intent.¹⁸⁰ In *Gamez*,¹⁸¹ for example, the defendant argued that his due process rights were violated because the prosecution did not prove his actual knowledge that other gang members had committed predicate crimes.¹⁸²

173. CAL. PENAL CODE § 186.22(a) (West Supp. 1994). The court held that this term has consistently been used by courts to describe "aiding and abetting" and thus has a precise judicial meaning. *Alberto R.*, 1 Cal. Rptr. 2d at 356.

174. CAL. PENAL CODE § 186.22(a) (West Supp. 1994). The court held that so long as this term is construed narrowly to cover only purely felonious conduct, that is, only conduct punishable in state prison, it passes constitutional scrutiny. *Alberto R.*, 1 Cal. Rptr. 2d at 356.

175. CAL. PENAL CODE § 186.22(b)(1) (West Supp. 1994). Although defendant urged a narrow interpretation of this term, to mean only when a gang-related crime is committed for profit, the court instead held it should be defined broadly in the context of the definition of "promote, further and assist." See *supra* note 173. "As so defined, the potential for vagueness or overbreadth is eliminated." *Alberto R.*, 1 Cal. Rptr. 2d at 356.

176. CAL. PENAL CODE § 186.22(e) (West Supp. 1994). Defendant argued that this provision could result in gang members being punished for future crimes of which they had no knowledge and in which they did not participate. The court called this argument "absurd" and pointed to both the knowledge and active participation provisions of the Act. *Alberto R.*, 1 Cal. Rptr. 2d at 356.

177. CAL. PENAL CODE § 186.22(f) (West Supp. 1994). Because the Act specifically lists what types of criminal conduct are required to trigger its provisions, the court said, this term does not make the law vague or overly broad. The court held that evidence of the gang's primary activities should be weighed by the trier of fact to determine whether criminal conduct was among those activities. *Alberto R.*, 1 Cal. Rptr. 2d at 356.

178. See *supra* notes 173-77 and accompanying text.

179. See *supra* notes 175-76, 178 and accompanying text.

180. In order for a state to punish an individual for being a member of an organization engaged in illegal activity, the state must prove that the individual was aware of the group's conduct and either shared its goals or specifically intended to further its illegal activities. *Scales v. United States*, 367 U.S. 203, 223-28 (1961); see also Annalisa Kelso, Comment, *Review of Selected 1988 California Legislation: Street Terrorism Enforcement and Prevention Act*, 20 PAC. L.J. 543, 548-49 (1989).

181. 286 Cal. Rptr. 894 (Ct. App. 1991).

182. *Id.* at 903. Defendant was challenging a sentence enhancement under subsection (b) of the Act, which, unlike subsection (a), does not contain a knowledge requirement as to the commission of

statutory definition of "gang" than California's STEP Act.¹⁵⁰ Other state laws also reject the California model, but the laws of Florida, South Dakota and Illinois raise particular constitutional concerns.¹⁵¹

III. CONSTITUTIONAL AND PRACTICAL PROBLEMS WITH STATE ANTI-GANG LAWS

A variety of constitutional challenges and practical concerns have been raised with respect to state anti-gang statutes, particularly the California STEP Act and statutes modeled on it. Thus far, the laws have survived constitutional attack,¹⁵² but the winning streak may not continue. At a minimum, the various challenges to anti-gang laws suggest that these statutes should be refined. In addition, several state anti-gang laws that reject the California model raise serious constitutional questions, even though those statutes have not yet been challenged in court.

A. Constitutional Problems

In California, the primary constitutional challenges to the STEP Act have been based on vagueness, overbreadth, or both. A statute can be held void for vagueness if it does not provide adequate notice of the conduct it seeks

related felonies. Compare ILL. ANN. STAT. ch. 740, para. 147/10 (Smith-Hurd Supp. 1994) with ILL. ANN. STAT. para 5/5-5-3(c)(2)(J) (Smith-Hurd 1992).

150. "Streetgang" is defined as "any combination, confederation, alliance, network, conspiracy, understanding, or other similar conjoining . . . of 3 or more persons with an established hierarchy that, through its membership or through the agency of any member engages in a course or pattern of criminal activity." *Id.* ch. 740, para. 147/10 (Smith-Hurd Supp. 1994). A course or pattern of criminal activity is defined as two or more gang-related crimes (at least one of which is a felony) committed within 5 years of each other. Gang-related crimes under the statute are those committed to increase the membership, dominance or control of the gang; to provide the gang with an advantage in a criminal market sector; to exact revenge or retribution for the gang or a gang member; to obstruct justice or intimidate or eliminate any witness against the gang or any member of the gang; or for the general benefit of the gang, its members or its reputation. *Id.* Gang members include "any person who actually and in fact belongs to a gang, and any person who knowingly acts in the capacity of an agent for or accessory to, or is legally accountable for, or voluntarily associates himself with a course or pattern of gang-related criminal activity . . . or who knowingly performs, aids, or abets any such activity." *Id.*

151. While the California STEP Act mirrors the federal RICO statute, Arkansas' Criminal Gang, Organization or Enterprise Act is modeled on the federal Continuing Criminal Enterprise statute. See ARK. CODE ANN. § 5-74-104 (Michie Supp. 1993). The federal CCE statute is codified at 21 U.S.C. § 848 (1988). See *supra* note 23.

Indiana's anti-gang act defines "criminal gang" as a group of five or more people which either promotes or participates in the commission of a felony and requires the commission of a felony as a condition of membership. Participation in a gang is a substantive crime under the Indiana law. IND. CODE ANN. §§ 35-45-9-1 to -4 (Burns Supp. 1994).

152. See *supra* notes 33-36 and accompanying text.

to proscribe. This rule is designed to prevent arbitrary or discriminatory enforcement.¹⁵³ A law also may be struck down if it is drawn too broadly and, as a result, its regulation of conduct violates constitutionally protected rights.¹⁵⁴

The California Court of Appeal first confronted a vagueness and overbreadth challenge to the STEP Act in *People v. Green*.¹⁵⁵ In *Green*, the defendant contended that the terms "actively participates"¹⁵⁶ and "members"¹⁵⁷ were so uncertain as to be unconstitutionally vague.¹⁵⁸ The defendant also claimed that "member" was broad enough to include people who had been coerced into joining a gang, and thus the statute was void for overbreadth.¹⁵⁹ Nonetheless, the court rejected both the vagueness and overbreadth challenges and upheld the defendant's guilty plea to a violation of the STEP Act.¹⁶⁰

The court noted that in order for statutory provisions to survive a vagueness challenge, they need not be defined precisely, but will be upheld if they may be made reasonably certain by the plain language of the statute or by reference to common understanding.¹⁶¹ The court held that "member" had both a well-defined common meaning and a judicial definition, the latter of which refers to a person's relationship to an organization that is not accidental or artificial.¹⁶² The court then looked to the common-law definition of "active membership" to define "active participation" and found that "[t]o be convicted of being an active participant in a street gang, a defendant must have a relationship with a criminal street gang which is (1) more than nominal, passive, inactive or purely technical; and (2) the person must devote all, or a substantial part of his time and efforts to the criminal street gang."¹⁶³ Thus, because the terms member and actively participates had well-established definitions, the Act was not void for vagueness.¹⁶⁴ The court also rejected out of hand the defendant's overbreadth argument,

153. See *People v. Gamez*, 286 Cal. Rptr. 894, 902 (Cl. App. 1991) (citing *People v. Superior Court*, 758 P.2d 1046 (Cal. 1988)).

154. See *NAACP v. Alabama*, 377 U.S. 288, 307 (1964).

155. 278 Cal. Rptr. 140 (Cl. App. 1991).

156. CAL. PENAL CODE § 186.22(a) (West Supp. 1994).

157. *Id.*

158. 278 Cal. Rptr. at 142, 144-46.

159. *Id.* at 146.

160. *Id.* at 148.

161. *Id.* at 145.

162. *Id.* (citing *Galvan v. Press*, 347 U.S. 522, 528 (1954)).

163. *Green*, 278 Cal. Rptr. at 146.

164. *Id.* at 145-46.

gangs¹³⁵ and those who supply or sell firearms with knowledge that the buyer or transferee will use the weapons to commit a gang-related felony.¹³⁶ A separate provision of the California Penal Code establishes enhanced sentences for defendants who carry firearms during the commission of any STEP Act predicate crime.¹³⁷

2. Other State Anti-Gang Laws

Since California enacted its landmark STEP Act in 1988, twelve other states have followed with their own statutory responses to criminal street gangs.¹³⁸ Many of these statutes are based at least in part on the California law. Louisiana,¹³⁹ Georgia¹⁴⁰ and Missouri¹⁴¹ have enacted anti-gang laws that are essentially identical to the California STEP Act. Other states have employed approaches similar to California's,¹⁴² and still others have added new gang-specific provisions to existing laws.¹⁴³

135. A 1993 amendment punishes the threat of physical violence by adults in the solicitation of minors to participate in criminal street gangs. *Id.* § 186.26. Minors who threaten or use such coercion are guilty of a misdemeanor. *Id.* § 186.26(e). These provisions were part of the original STEP Act legislation, but were dropped during the legislative process and were not returned until 1993. *Id.* (historical and statutory notes).

136. *Id.* § 186.28. This offense is punishable by up to one year in prison or a county jail, and/or a fine of up to \$1,000. The buyer or transferee must first be convicted of one of the STEP predicate crimes in order for a seller to be prosecuted under this provision. This provision does not apply to sellers who themselves are convicted as principals of a STEP predicate felony. This crime was established in a 1992 amendment to the STEP Act. *Id.*

137. The sentence enhancements apply to any person who carries a firearm, loaded or unloaded, on their person or in a vehicle during the commission or attempted commission of gang-related crimes under sections 186.22(a) and (b) of the STEP Act. *Id.* § 12021.5. Enhanced sentences could thus be imposed either for the commission of a predicate crime that establishes a pattern of criminal street gang activity (§ 186.22(a)) or for a felony committed for the benefit of the gang (§ 186.22(b)). See *supra* notes 123-24 and accompanying text.

138. See *supra* note 27 and accompanying text.

139. LA. REV. STAT. ANN. §§ 15.1403-1405 (West 1992).

140. GA. CODE ANN. §§ 16-15-3 to -5 (1992). Georgia's anti-gang law does not, however, contain nuisance or forfeiture provisions such as those found in section 186.22a of the California STEP Act.

141. MO. ANN. STAT. §§ 578.421-.430 (Vernon Supp. 1994).

142. See, e.g., IOWA CODE ANN. § 723A.2 (West Supp. 1993); MINN. STAT. ANN. § 609.229 (West Supp. 1995).

143. Oklahoma supplemented an existing statute, which prohibits contributing to the delinquency of minors, by providing penalties for those who encourage or recruit minors to join street gangs. Under this law, gangs are defined as a group of five or more people that not only participates in the commission of one or more predicate acts, but that requires the commission of a predicate crime as a membership condition. OKLA. STAT. ANN. tit. 21, §§ 856D-F (West Supp. 1995). Nevada added sentence enhancements for gang-related felonies. NEV. REV. STAT. § 193.168 (Michie Supp. 1993).

Nevada's gang law is noteworthy because it specifically allows expert testimony to be admitted to

The anti-gang statutes of Florida, Illinois and South Dakota represent the most substantial departures from the California model. Florida's Street Terrorism Enforcement and Prevention Act, passed in 1990, has a specific definition of "criminal street gang member"¹⁴⁴ and a broader definition of "pattern of criminal street gang activity."¹⁴⁵ It does not establish a substantive gang-participation crime, although it does create sentence enhancements for gang-related felonies.¹⁴⁶ South Dakota employs an almost identical approach.¹⁴⁷ Illinois provides a civil cause of action in favor of any public authority affected by gang activity¹⁴⁸ and sentence enhancements for gang-related felonies.¹⁴⁹ Illinois also uses a different

show gang characteristics, rivalries, common practices and operations, social customs and behavior, terminology used by gang members, codes of conduct, and the types of crimes commonly committed by gangs. *Id.* § 193.168.5 (1993).

144. Section 874.03(2) defines "criminal street gang member" as

a person who engages in a pattern of criminal street gang activity and meets two or more of the following criteria:

- (a) Admits to criminal street gang membership.
- (b) Is a youth under the age of 21 years who is identified as a criminal street gang member by a parent or guardian.
- (c) Is identified as a criminal street gang member by a documented reliable informant.
- (d) Resides in or frequents a particular criminal street gang's area and adopts their style of dress, their use of hand signs, or their tattoos, and associates with known criminal street gang members.
- (e) Is identified as a criminal street gang member by an informant of previously untested reliability and such identification is corroborated by independent information.
- (f) Has been arrested more than once in the company of identified criminal street gang members for offenses which are consistent with usual criminal street gang activity.
- (g) Is identified as a criminal street gang member by physical evidence such as photographs or other documentation.
- (h) Has been stopped in the company of known criminal street gang members four or more times.

FLA. STAT. ANN. § 874.03(2) (West 1994).

145. Instead of providing a list of predicate offenses, the Florida law defines a pattern of criminal street gang activity as the commission, attempted commission, or solicitation of two or more separate felonies or violent misdemeanors within a three-year period. *Id.* § 874.03(3).

146. See *id.* § 874.04.

147. S.D. CODIFIED LAWS ANN. §§ 22-10-14 to -15 (Supp. 1994). The only difference between the two states' laws is that South Dakota omits item (b) from the list of gang member criteria contained in the Florida law. See *id.* § 22-10-14(2); *supra* note 145 (text of Florida's statutory definition of gang member).

148. Illinois enacted the Streetgang Terrorism Omnibus Prevention Act in 1993 (the STOP Act), providing a civil remedy for those public authorities affected by street gang activity. ILL. ANN. STAT. ch. 740, para. 147/15 (Smith-Hurd Supp. 1994). Indiana also provides a civil cause of action for victims of criminal gang activity. See IND. CODE ANN. §§ 34-4-30.5-1 to -3 (Burns Supp. 1994).

149. The STOP Act also amended the Illinois criminal disposition laws by adding sentence enhancements for gang-related forcible felonies and for criminal street gang activity committed on school property or a school bus. The definition of criminal street gang under the new legislation replaced a statutory definition of "organized gang" in a 1986 provision preventing probation for gang-

portion of the sentence enhancement (two years) unless there are mitigating or aggravating circumstances, and must explain its choice of sentence enhancements on the record.¹²⁴ A 1991 amendment to the STEP Act increased the possible sentence enhancements to two to four years for felonies committed within one thousand feet of a school during school hours.¹²⁵

STEP also covers gang-related misdemeanors, establishing a minimum sentence of up to one year in a county jail and a maximum of one to three years in state prison.¹²⁶ Those sentenced to county jails serve at least 180 days before being released.¹²⁷ As with felonies, courts may reject the sentence enhancements in the interests of justice, but in such "unusual cases" the court must explain on the record its reasons for doing so.¹²⁸

To violate the STEP Act, a person must actively participate in a criminal street gang with knowledge that its members engage in a pattern of criminal gang activity.¹²⁹ The STEP Act defines a "pattern of criminal gang activity" as the commission, attempted commission, or solicitation of two or more predicate offenses within three years, as long as the offenses are committed on separate occasions or by two or more people.¹³⁰ A

124. Section 186.22(b)(1) provides in relevant part:

[A]ny person who is convicted of a felony which is committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one, two, or three years at the court's discretion. The court shall order the imposition of the middle term . . . unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentence enhancements on the record at the time of the sentencing.

CAL. PENAL CODE § 186.22(b)(1) (West Supp. 1994). Defendants have argued, unsuccessfully, that sentence enhancement proceedings under this section should be bifurcated from trial on the underlying felonies. See *People v. Fines*, 28 Cal. Rptr. 2d 758, 764-65 (Ct. App. 1994); *People v. Martin*, 28 Cal. Rptr. 2d 660, 662-63 (Ct. App. 1994).

Section 186.22(b)(2) requires that those convicted of gang-related felonies punishable by life in prison not be paroled before serving at least 15 calendar years of their sentence. *Id.* § 186.22(b)(2). Furthermore, a 1994 amendment to the STEP Act requires 180 days of jail time whenever probation is granted or sentence suspended either on a substantive gang participation conviction or a gang-related felony with sentence enhancement. *Id.* § 186.22(c).

125. CAL. PENAL CODE § 186.22(b)(1) (West Supp. 1994).

126. *Id.*

127. *Id.* § 186.22(c).

128. *Id.* § 186.22(d).

129. *Id.* § 186.22(a).

130. *Id.* § 186.22(c). The predicate offenses listed in the Act are: assault with a deadly weapon; robbery; unlawful homicide or manslaughter; selling, possessing for sale, transporting, manufacturing, offering for sale or offering to manufacture controlled substances; shooting at an inhabited dwelling or

"criminal street gang" is defined as an organization or association, formal or informal, of three people or more, which has a common name, sign or symbol. The gang's primary activities must include the commission of one or more predicate acts, and its members, individually or collectively, must be involved in a pattern of criminal gang activity.¹³¹

Thus, a conviction for criminal street gang participation under the STEP Act requires proof of five major elements: 1) the existence of a criminal street gang (which requires a showing that the commission of one or more predicate acts is one of the gang's primary activities and that its members are engaged in a pattern of gang activity); 2) defendant's membership in that gang; 3) defendant's knowledge that the gang members are engaged in a pattern of gang activity; 4) defendant's willful promotion, furtherance or assistance in felonious criminal conduct by the gang; and 5) the pattern of gang activity itself, that is, the commission of two or more predicate crimes within three years.

The STEP Act also contains nuisance and weapon forfeiture provisions. Buildings used by gang members for the commission of STEP Act predicate crimes¹³² or any other offenses involving deadly weapons, burglary or rape may be declared public or private nuisances.¹³³ Additionally, gang weapons owned or possessed for the commission of STEP Act predicate crimes, burglary or rape may be seized and not returned if they are declared a nuisance.¹³⁴ Amendments to the STEP Act punish those who "utilize[] physical violence" to induce others to join criminal street

occupied motor vehicle; arson; intimidation of witnesses or victims; and grand theft of a vehicle, trailer or vessel. *Id.* § 186.22(e)(1)-(8). All the predicate offenses are punishable crimes under the California Penal Code.

131. Section 186.22(f) provides:

As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in (subsection (e)), which has a common name or common identifying sign or symbol, whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

CAL. PENAL CODE § 186.22(f) (West Supp. 1994).

132. See *supra* note 130.

133. CAL. PENAL CODE § 186.22(a) (West Supp. 1994). The nuisance sections of the STEP Act incorporate by reference the provisions of California nuisance law, codified in the Health and Safety Code. These laws allow district attorneys, city attorneys, or private citizens to bring suit to abate public nuisances. See CAL. HEALTH & SAFETY CODE § 11571 (West 1991 & Supp. 1994). The nuisance portion of the STEP Act does reserve several exceptions to the general nuisance law, most notably that no civil penalty will be assessed unless the person to be penalized knew or should have known of the unlawful acts taking place within the building. CAL. PENAL CODE § 186.22a(b)(1) (West Supp. 1994).

134. CAL. PENAL CODE §§ 186.22a(e)(1), (e)(2) (West Supp. 1994).



B. California's STEP Act and Other State Anti-Gang Laws

1. The STEP Act

The dramatic escalation of gang violence in California¹¹¹—and its increasing toll on innocent citizens caught in the crossfire¹¹²—led to the perception that gang activity had reached crisis proportions¹¹³ and prompted legislative action. In 1987, legislation that would become the STEP Act was introduced in the California legislature.¹¹⁴ The measure provided a three-pronged approach to deter criminal street gangs: criminal prosecution, civil action and asset forfeiture.¹¹⁵ The Act was based on the premise that existing laws punished only the manifestation of the gang problem, criminal activity, and not the problem itself, the pervasive presence of highly disciplined criminal organizations.¹¹⁶

111. Gang-related homicides in Los Angeles increased by 24% between 1985 and 1986. Hull, *supra* note 57, at 21. By the time California's anti-gang law was pending in the legislature in mid-1987, there had already been 200 gang killings in Los Angeles County that year, a projected increase of 80% over the 1986 total of 333 gang-related homicides. Jerry Gillam, *Anti-Gang Bill Wins Backing of Senate Panel*, L.A. TIMES, June 10, 1987, at 3, 21.

112. In 1987, Los Angeles police estimated, a majority of the city's nearly 200 gang-related homicides involved bystanders, robbery victims or other nongang members. Paul Feldman, "Murder by Strangers": From Gang Gunfire to Freeway Shootings, L.A. County's 1987 Homicides Often Linked by Their Random Nature, L.A. TIMES, Dec. 30, 1987, at 1, 8 (Metro). One 9-year-old was playing in a sandbox in south central Los Angeles when crossfire between two rival gangs caught him in the neck. He was dead within an hour. *Id.* at 1. A 66-year-old woman, who worked as a housemother for abused children, was killed in her Compton home when a stray bullet from a gang shootout hit her in the back while she sat at her desk. *Id.* "One of the things bothering us," said an Inglewood, California, police officer, "is the people firing the bullets have no regard for where they will end up." *Id.* at 8.

113. At a news conference to announce his endorsement of the STEP Act legislation, Los Angeles District Attorney Ira Reiner said that street gangs in L.A. "pose an imminent threat to the safety of the citizens of Los Angeles and California." Harris, *supra* note 13, at *1. The legislative findings accompanying the STEP Act declared that "the state of California is in a state of crisis which has been caused by violent street gangs whose members threaten, terrorize and commit a multitude of crimes against the peaceful citizens of their neighborhoods." CAL. PENAL CODE § 186.21 (West 1994). These activities, the legislature found, were a clear and present danger to public safety and, significantly, were not constitutionally protected. *Id.*

114. The measure was introduced in the California Senate by Senator Alan Robbins, a Democrat from Van Nuys, and in the Assembly by Assemblywoman Gwen Moore, a Democrat from Los Angeles. Gillam, *supra* note 111, at 3, 13, 21.

115. Harris, *supra* note 13, at *1. The anti-gang legislation made it a criminal act to participate in a street gang and contained sentence enhancements for gang-related crimes. It also provided for private civil actions for injunctive relief and allowed gang members' property to be seized in forfeiture actions. *Id.*

116. "[N]owhere in current California law do we recognize the unique danger posed by criminal organizations whose primary purpose is to commit serious and violent crime," said District Attorney

However, the measure did not survive the legislative process intact. The Senate Public Safety Committee did not approve the bill until its Senate sponsor, Senator Alan Robbins, agreed to drop criminal forfeiture provisions that would have required the seizure of gang members' property if it was acquired through criminal gang activity.¹¹⁷ Committee members were concerned that relatives of gang members would be affected by the proposed forfeitures although they were not involved in gang or other criminal activities.¹¹⁸

The legislation also met with opposition from the American Civil Liberties Union on freedom of association grounds,¹¹⁹ and from others who argued that the legislation was drawn too broadly.¹²⁰ Nevertheless, it passed the legislature¹²¹ and was signed into law on September 24, 1988 by Governor George Deukmejian.¹²²

The STEP Act establishes the new crime of participation in a criminal street gang, punishable by up to one year in a county jail or one to three years in state prison.¹²³ It also provides sentence enhancements of one to three years for gang-related felony cases. The court must impose the middle

Ira Reiner. "I believe that California law should explicitly make participation in such a gang a crime." *Id.*

117. Gillam, *supra* note 20, at 16.

118. *Id.* Robbins said the amended legislation did "not go as far as we would like . . . in dealing with the cancer of gangs . . . We need to get that [forfeiture of assets] at some point." *Id.*

To its credit, the California legislature did amend the state's drug forfeiture law in 1988 to enhance the state's ability to seize the assets of drug dealers. The amendment lowered the burden of proof required to show that the property is tied to drug sales from a clear and convincing evidence standard to a preponderance of the evidence standard. It also allowed local police to keep a greater share of the proceeds from the sale of seized property. Stephanie O'Neill, *Law Makes It Easier to Seize Drug Assets in State Courts*, L.A. TIMES, Oct. 27, 1988, at 11; see CAL. HEALTH & SAFETY CODE § 11470.1 (West Supp. 1994).

119. See Harris, *supra* note 13, at *1.

120. "This bill could have justified the internment of the Japanese in World War II," said Senator Bill Lockyer, a democrat from Hayward, perhaps taking exception to the assertions of a "gang crisis" in Los Angeles and elsewhere in California. The Senator further commented, "If that feels good to you, vote for it." Gillam, *supra* note 111, at 3, 21.

121. Carl Ingram & Jerry Gillam, *Some Win, Some Lose in Rush to Adjourn*, L.A. TIMES, Sept. 2, 1988, at 3.

122. Jerry Gillam & Daniel M. Weintraub, *Governor Signs Curbs on Gangs, Drugs*, L.A. TIMES, Sept. 25, 1988, at 29.

123. Section 186.22(a) of the California Penal Code provides:

Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for one, two, or three years.

CAL. PENAL CODE § 186.22(a) (West Supp. 1994).

Although the California legislature removed similar forfeiture provisions from the STEP Act during the legislative process because of concern that innocent third parties would be adversely affected by such provisions,²⁶⁷ this concern was misplaced. Third parties can and must have their interests protected from encroachment by criminal forfeiture procedures. So long as those interests are protected, third parties play an important role by carefully monitoring use of their property and discouraging its use for illegal activity.²⁶⁸ Accordingly, concern about the impact of forfeiture provisions on third parties is best served by strengthening protection for third parties, not by removing forfeiture provisions necessary for a strong anti-gang law. Finally, section 4 allows for confiscation of weapons used by gang members upon a showing by a preponderance of the evidence that the weapons were used in, or acquired through, a pattern of criminal street gang activity.²⁶⁹

States that adopt this or any other specific criminal statute to combat criminal street gang activity must also provide legislation specifically designed to address the causes of gang formation and activity.²⁷⁰ Gangs have been a major presence in America for more than a century²⁷¹ and even if these new laws are successful in eliminating criminal street gangs,

property they lend, purchase, or acquire that it is not used for illegal activity, this provision provides a disincentive for friends and family members to encourage criminal street gang activity by their friends and relatives through sharing in the proceeds of gang-related crime. See *supra* notes 224-27 and accompanying text.

267. See *supra* notes 117-111 and accompanying text.

268. See *supra* notes 224-25 and accompanying text.

269. Section 4(b) provides:

(1) Any firearm, ammunition which may be used with the firearm, or any deadly or dangerous weapon which is owned or possessed by a member of a criminal street gang for the purposes of the commission of any of the offenses listed in Section 1, or is acquired through a pattern of criminal street gang activity or the commission of any of the offenses listed in Section 1, may be confiscated by any law enforcement agency or peace officer.

(2) Any firearm, ammunition or other deadly weapon confiscated under Section 4(b)(1) will be forfeited to the State upon a showing by a preponderance of the evidence that it was, in fact, used in the commission of any of the offenses listed in Section 1, or that it was, in fact, acquired through a pattern of criminal street gang activity. The law enforcement agency seeking to obtain forfeiture shall have the burden of proof at such a hearing.

This provision acts in conjunction with the profit forfeiture sections of the Act to reduce the gangs' weapon superiority over the police. See *supra* notes 103, 264. The weapon forfeiture section eliminates the weapons used for specific gang activity. Section 4(b)(2) eliminates weapons that have been acquired through criminal gang activity, whether or not they were actually used to commit such activity. Section 4(a) in general reduces or eliminates the gang's financial ability to replace weapons forfeited through either section 4(a)(2) or section 4(b).

270. For a discussion of these causes, see *supra* notes 82-89 and accompanying text.

271. See *supra* notes 43-65 and accompanying text.

an alternative to gang life must be provided or the gangs will reappear.²⁷²

VI. CONCLUSION

By refining their statutory approaches to criminal street gangs, states will gain a powerful tool against a sophisticated, well-organized criminal element without unnecessarily infringing upon the constitutional rights of gang members or chilling gangs' legitimate, socially beneficial activities. If states combine strong anti-gang legislation with social programs designed to eliminate the causes of gang activity, America's newest form of organized crime can be substantially reduced or eliminated, and the renaissance of her inner cities may begin.

David R. Truman

272. So-called "gang intervention" programs must be comprehensive in order to be successful, targeting family life, the schools, and the development of job skills and opportunities. Arnold P. Goldstein, *Gang Intervention: A Historical Review*, in THE GANG INTERVENTION HANDBOOK, *supra* note 12, at 21, 37-38. A 1989 report by the California Council on Criminal Justice made a variety of recommendations to address the gang problem. Among its numerous and far-reaching suggestions for anti-gang social programs were to develop job-creating projects in the inner cities; expand testing of primary school children to identify learning disabilities; design and increase afterschool and weekend activities to appeal to teenage students; recruit business and community leaders to serve as role models for youth; enhance parenting skills and increase parental responsibility for children's activities; notify parents when their children are involved in gang activity; and encourage businesses to develop inner-city employment opportunities and training programs. *Id.* at 47-49.

in a gang.²⁵⁷ Second, the Act would punish as a felony the recruitment of minors through violence, threats of violence, or other solicitations to aid and abet the commission of a predicate crime under the Act.²⁵⁸ Both of these provisions are designed to hamper gang recruiting of children and thus cut off the supply of future members.²⁵⁹ Violation of either of these provisions by a minor would be only a misdemeanor under the Act.

Section 4 of the Act creates strong criminal forfeiture provisions that allow forfeiture of any interest acquired through the direction or management of criminal street gang activity.²⁶⁰ The management requirement is imported from the federal CCE statute.²⁶¹ This requirement only allows forfeiture of an individual's property if that property was acquired as the result of a pattern of criminal street gang activity and the individual occupies a position of leader, organizer, supervisor, or other management position within the gang. As with RICO, forfeiture under this section is mandatory upon a conviction of the substantive crime of participation in a criminal street gang, provided that the defendant occupied the requisite leadership position within the gang. These provisions reduce the economic

257. This provision mirrors § 186.26 of the California STEP Act. CAL. PENAL CODE § 186.26 (West Supp. 1994); see *supra* note 135 and accompanying text.

258. The crime in question must be committed for the benefit of or at the direction of the gang. This provision attacks the gangs' practice of using minors, often children as young as nine or ten years old, as lookouts or drug runners, which takes advantage of both the juvenile justice system and a loophole in gang-coercion statutes such as § 186.26 of the California Penal Code. "Because juveniles are rarely imprisoned for any great length of time, they provide a uniquely recyclable labor pool." Lamar, *supra* note 105, at 21. Because these children would not necessarily be actively participating in gang activity under the statutory definition, the provisions criminalizing coercion to participate in a gang, see *supra* note 257, would not be implicated.

Thus, without a prohibition against the use of minors to aid and abet gang activity, gang members could continue to exploit children and the juvenile justice system with impunity. By establishing a disincentive to use this newest form of child labor, an important form of gang recruiting is hampered and fewer children will be adopted into the surrogate family of the street gang. See *supra* note 25 and accompanying text.

259. See *supra* notes 105, 258 and accompanying text.

260. Section 4 provides:

(a) Any person who violates any provision of Section 3 of this Act shall, upon conviction and in addition to any other punishment provided by law, forfeit to the State:

- (1) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of the criminal street gang activity which provided the basis for the conviction; and
- (2) any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such criminal street gang activity, provided that
- (3) said person occupied a position of leader, organizer, a supervisory position, or any other position of management within the criminal street gang.

261. 21 U.S.C. § 848(c) (1988).

incentive to join gangs²⁶² by separating those most responsible for gang activity from their ill-gotten gains. It also enables prosecutors to attack the criminal gang organization itself by removing a source of financing for criminal activity²⁶³ and reducing the individual's economic control over gang activity.²⁶⁴

Section 4 also contains procedural protections for innocent third parties who may be affected by forfeiture. As under RICO, potentially forfeitable property is subject to pretrial injunction in order to preserve its availability until a forfeiture proceeding can take place.²⁶⁵ Under the Model Act, third parties affected by a forfeiture order could challenge the forfeiture at a post-trial hearing. In order to defeat forfeiture of a third-party interest, the challenging party would have the burden of proving by a preponderance of the evidence that they did not know, and had no reason to know, that the property was acquired through criminal street gang activity.²⁶⁶

262. See *supra* notes 80-81, 85, 105 and accompanying text.

263. For example, the tremendous profits gangs receive from the drug trade allows them to obtain sophisticated and deadly weapons, enabling gangs to outgun most police departments. See *supra* notes 102-03 and accompanying text. By requiring gangs to forfeit both their weapons and the criminal proceeds they might use to buy them, these advantages can be significantly reduced.

264. See *supra* note 243 and accompanying text.

265. Section 4(a)(4) provides:

Upon application of the State, the court may enter a restraining order or injunction, or take any other action necessary to preserve the availability of property described in Subsections (1)-(2)

(A) upon the filing of an indictment or information charging a violation of Section 3 of this Act and alleging that property exists which would, in the event of conviction, be forfeitable under this section; or

(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that

- (i) there is a substantial probability that the State will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and
- (ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered.

This section essentially mirrors a similar provision in RICO. See 18 U.S.C. § 1963(d) (1988). For a detailed discussion of the need for pretrial injunctions in the criminal forfeiture arena, see *supra* notes 222-23 and accompanying text.

266. Section 4(a)(5) provides:

All right, title and interest in property described in Section 4(a) vests in the State upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be subject to forfeiture, unless the transferee establishes in a hearing that they did not know, or had no reason to know, that the property in question was acquired as a result of criminal street gang activity.

This section also follows a similar provision in RICO. See 18 U.S.C. § 1963(f)(6) (1988). Much as federal criminal forfeiture law provides an incentive for third parties to take care with respect to the

example, may use such testimony to establish the proportion of criminal activity on the part of a given gang. Criminal street gangs vary tremendously in their characteristics, activities and habits,²⁵¹ and such expert testimony will be useful to the trier of fact in determining whether criminal conduct is a particular gang's primary activity, so as to trigger coverage of the Act.²⁵² The defense, on the other hand, might present expert testimony about the social functions and activities of a gang. Such evidence could rebut evidence for the state that tends to show that the gang's primary activity is criminal conduct.

Section 2 of the Model Act provides sentence enhancements for crimes committed at the direction of, or for the benefit of, the gang.²⁵³ Sentence

inadmissible evidence if the evidence is of a type reasonably relied upon by experts in the field. FED. R. EVID. 703. (Prior to the adoption of the Federal Rules of Evidence, a minority of states allowed this practice with respect to expert testimony. RICHARD O. LEMPET & STEPHEN A. SALTZBURG, A MODERN APPROACH TO EVIDENCE: TEXT, PROBLEMS, TRANSCRIPTS AND CASES 865-66 (2d ed. 1983). It may still be barred in those states that have not since adopted evidence rules based on the Federal Rules.) Inasmuch as gang experts inside and outside of the police force commonly rely on such evidence, it should be allowed to form the basis of an opinion on gang activity and conduct. Police officers would be allowed to testify on these issues so long as they met the relevant state standard for expert testimony. Under the Federal Rules approach, an officer's experience may provide him with the appropriate level of specialized knowledge about gangs to qualify as an expert. See FED. R. EVID. 702.

The Model Act, however, would not allow expert testimony on the issue of *defendant's* membership in a given gang, because the use of hearsay in such instances would tend to violate the Confrontation Clause of the Sixth Amendment. (Direct evidence of defendant's gang membership, of course, is not barred by the Model Act.) Expert testimony is allowed here only to establish whether a given gang is involved in criminal conduct as one of its primary activities, so as to trigger coverage of the Model Act.

251. See *supra* notes 66-94 and accompanying text.

252. Expert testimony on terminology used by gang members, see *supra* note 250, may be especially useful to the trier of fact in understanding the evidence and testimony presented by both sides, inasmuch as the gang culture may be largely foreign to the average juror or judge.

253. Section 2(a) provides:

Any person who is convicted of a gang-related felony shall be punished by an additional term of two years. The court may, in its discretion, choose not to impose the additional penalty if the interests of justice so require. The court shall state its reasons for so doing on the record at the time of sentencing.

Section 2(b) provides:

As used in this section, "gang-related felony" means any felony or attempted felony committed with the specific intent:

- (1) to increase a gang's size, membership, prestige, dominance, or control in any geographical area;
- (2) to provide the gang with any advantage in, or any control or dominance over any criminal market sector;
- (3) to exact revenge or retribution for the gang or any member of the gang;
- (4) to obstruct justice, intimidate or eliminate any witness against the gang or any member of the gang; or
- (5) to otherwise promote, further or assist any criminal conduct by gang members.

The definition of "gang-related felony" is similar to a provision in Illinois' Streetgang Terrorism

enhancements in this context punish the particular evil of group, as opposed to individual, crimes and act as a deterrent to gang-related criminal activity.²⁵⁴ Under section 2, these enhancements require specific intent to promote, further, or assist the gang's criminal activity, so as to avoid due process problems.²⁵⁵ The enhancements are mandatory unless the court finds that mitigating factors or the interests of justice require otherwise. By establishing a rebuttable presumption that gang-related activity will be punished more severely, the deterrent value of the enhancements is preserved while still allowing the court to consider mitigating factors.

Section 3 establishes the substantive crime of engaging in criminal street gang activity. This crime is committed by actively participating in a criminal street gang with knowledge that its members are engaged in a pattern of gang activity and willfully promoting, furthering or assisting felonious criminal conduct by members of the gang. Because the definition of criminal street gang under this Act contemplates that the gang's primary activity will be criminal conduct, due process concerns are not implicated here. Indeed, it will be difficult to be part of such a gang without also taking an active role in the commission of crime.²⁵⁶

Section 3 also establishes two other substantive crimes. First, it would be a felony to use or threaten force to induce a minor to actively participate

Omnibus Prevention Act. See ILL. ANN. STAT. ch. 740, para. 147/10 (Smith-Hurd Supp. 1994). It is both specific, to avoid vagueness problems, and broad, to cover the full range of gang-related criminal activity.

254. As the Seventh Circuit observed in upholding the consideration of gang membership as an aggravating factor at sentencing: "Gang membership, insofar as it bears on the issues of rehabilitation and general deterrence, may be a relevant factor in fashioning an appropriate sentence." *United States v. Johnson*, 903 F.2d 1084, 1091 (7th Cir. 1990). In *Johnson*, gang membership was particularly relevant because it involved an attack on a witness at the direction of the El Rukn gang. *Id.* The Supreme Court has held that evidence of gang membership may be presented at sentencing so long as such evidence is relevant to that proceeding. *Dawson v. Delaware*, 112 S. Ct. 1093, 1097 (1992). In *Dawson*, such evidence was held to be irrelevant because there was no connection between the gang and the crime in question. *Id.* at 1097-98. However, as Justice Thomas noted in dissent, gang evidence can show a defendant's tendency to engage in unlawful activity, as well as his future dangerousness, and can rebut a defendant's assertion of good character. *Id.* at 1100-01 (Thomas, J., dissenting).

Sentence enhancements for gang-related crimes codify these arguments. In the absence of such requirements, courts could properly consider gang membership, or whether a crime was committed to benefit a gang, as an aggravating factor in a gang-related crime. Just as states make policy judgments about which crimes are most serious by establishing statutory ranges of sentences, sentence enhancements in this context reflect a determination that organized criminal activity should be punished more severely than individual crime. See *supra* note 95 and accompanying text (gang members more likely to commit violent crimes acting within gang than alone).

255. See *supra* notes 182-84 and accompanying text.

256. See *supra* note 183 and accompanying text.

a model for its anti-gang legislation.

Criminal street gangs exist across generations, even though members grow up, are killed, or are prosecuted; only by attacking the gang itself can criminal street gang activity be eliminated. Thus, despite the collapse of the El Rukn prosecution, RICO should still be used to fight all types of organized crime, including street gangs. Similarly, state laws patterned after RICO, such as the California STEP Act, remain the most effective response to gangs at the state level.

V. A MODEL STREET GANG PREVENTION ACT

State statutes that target organized crime in general, and street gangs in particular, have proven effective in fighting the growing problem of criminal street gangs.²⁴⁵ However, these statutes must be drafted carefully. Impudently written legislation may infringe upon gang members' First Amendment rights of free expression and association or violate constitutional guarantees of due process. What follows is proposed legislation that should serve as a model for both new anti-gang laws and the amendment of existing laws.

Section 1(a) of this Model Act takes the definition of "pattern of street gang activity" from the California STEP Act, defining such a pattern as the commission of two or more predicate crimes within three years.²⁴⁶ The

245. See *supra* Part IV.

246. Under § 1(a), "pattern of criminal street gang activity" means the commission, attempted commission, or solicitation of two or more of the following offenses, within three years of each other, provided the offenses are committed either on separate occasions or by two or more persons:

- (1) Murder or any lesser included offense;
- (2) Assault with a deadly weapon;
- (3) Aggravated robbery;
- (4) Sale, possession with intent to deliver, transportation, or manufacture of controlled substances as defined under the state's health code;
- (5) Arson;
- (6) Witness tampering or intimidation;
- (7) Grand theft auto.

The list of predicate crimes is merely a starting point. Additions to the list should reflect the criminal gang activity in the relevant state. See *infra* note 247. All the predicate acts must already be independently punishable crimes under state law, or must be made so through concurrent legislation. As has been noted in the RICO context, this type of legislation is not a criminal statute in the strictest sense of the word. "[RICO] does not make criminal conduct that before its enactment was not already prohibited, since its application depends on the existence of 'racketeering activity' that violates an independent criminal statute." G. Robert Blakey & Brian Gettings, *Racketeer Influenced and Corrupt Organizations (RICO): Basic Concepts—Criminal and Civil Remedies*, 53 TEMP. L.Q. 1009, 1021 n.71 (1980). Here, too, the model anti-gang statute does not punish conduct that is not already criminal, but rather the commission of such crimes in an organized fashion. For example, one of the California STEP

list of predicate acts must be narrowly tailored to include only the types of criminal activities in which street gangs in a given state or area tend to be involved.²⁴⁷ Section 1(b) defines "street gang" as a group or association of three or more people with an identifying sign, name or symbol, whose primary activity is the commission of one or more predicate acts²⁴⁸ and whose members individually or collectively engage in a pattern of criminal gang activity.²⁴⁹ This definition reduces any chilling effect an anti-gang statute might have on freedom of association by more explicitly targeting major criminal gangs, rather than gangs whose criminal conduct is a less integral part of their activity.

Under section 1(c), expert testimony may be presented by either party on issues of gang activity, history and customs.²⁵⁰ The prosecution, for

Act predicate crimes is shooting at an inhabited dwelling or occupied motor vehicle, which is itself prohibited by the California Penal Code. Even though this crime is consistent with gang activity in California (and elsewhere), it could not be included in the STEP Act unless it was independently punishable under state law. See CAL. PENAL CODE §§ 186.22(e)(5), 246 (West Supp. 1994).

247. By narrowly tailoring the list of predicate crimes to match the conduct of gangs in a particular state, anti-gang legislation can survive constitutional challenges for overbreadth and vagueness. See *supra* note 33 and accompanying text. In addition, if a state does not have a significant problem with "traditional" street gangs, but instead is plagued by other forms of organized crime (such as motorcycle gangs), it could pass an anti-gang law specifically aimed at those types of gangs, again by establishing a list of predicate crimes that addresses the criminal conduct typically engaged in by such gangs.

248. This is a modification of the California STEP definition of street gang, which can be met if criminal activity is only one of the gang's primary activities. See *supra* note 129 and accompanying text.

249. This provision rejects the approach taken by Florida and South Dakota, which are much too broad in their statutory definition of gang members and gang activity. See *supra* notes 195-97 and accompanying text. This definition will help enable the act to survive a constitutional challenge based on overbreadth and freedom of association. See *supra* notes 153-79, 185-95 and accompanying text.

250. Section 1(c) provides:

- (i) In any prosecution under this statute, expert testimony is admissible to show conduct, status and customs indicative of criminal street gangs, including, but not limited to:
 - (A) Common characteristics of gang members;
 - (B) Rivalries between specific gangs;
 - (C) Common practices and operations of gangs;
 - (D) Social customs and behavior of gang members;
 - (E) Terminology used by gang members;
 - (F) Codes of conduct, criminal or otherwise, of particular gangs; and
 - (G) The types of crimes that a particular gang is likely to commit, or that gangs in general are likely to commit.

- (ii) Except when otherwise prohibited by state law, such testimony may be based in whole or in part on inadmissible evidence.

This provision is somewhat similar to Nevada's anti-gang statute. See NEV. REV. STAT. § 193.168 (Michie Supp. 1993).

The Model Act allows expert testimony to be based on police reports and other forms of hearsay evidence, unless state law prohibits the use of such evidence as a basis for expert opinion. See *supra* notes 198-201 and accompanying text. Federal Rule of Evidence 703 allows experts to rely on

fifteen defendants,²³⁶ requests for new trials by about two dozen others,²³⁷ and attempts to withdraw guilty pleas by several of the seventeen gang members who struck plea bargains with the prosecution.²³⁸ It seems unlikely that all of those whose convictions were overturned will be retried.²³⁹

Despite the disastrous collapse of the El Rukn prosecution, RICO and similar laws such as the California STEP Act remain a powerful tool against criminal street gang activity. There is ample evidence to suggest that the problems that plagued the El Rukn prosecution were attributable to an "incendiary mix" of factors, none of which has anything to do with RICO itself.²⁴⁰ Moreover, the successful use of RICO to prosecute gangs

236. O'Connor, *supra* note 233, at 5; *New Trial Ordered for 2 Rukn Chiefs*, CHIC. TRIB., Apr. 8, 1994, at 3 (Chicagoland); see *Boyd*, 833 F. Supp. at 1366; *Burnside*, 824 F. Supp. at 1272; *Andrews*, 824 F. Supp. at 1291.

237. O'Connor, *supra* note 233, at 5.

238. *Id.* Daniel J. Lehmann, *Judge to Let Some Rukns Try to Change Guilty Pleas*, CHICAGO SUN-TIMES, Sept. 22, 1993, at 11.

239. Lehmann, *supra* note 238, at 11. "The government's chief witnesses have been compromised," said a defense lawyer for a gang member whose conviction was overturned. "They have perjured themselves and accused each other of perjury . . ." *Id.*

In fact, by mid-1994, twelve of the fifteen Rukns who were given new trials had struck plea bargains with the prosecution and were sentenced to dramatically reduced prison terms. Several defendants were able to walk out of the courtroom as free men because their credit for time served exceeded the terms to which they had been sentenced. See Matt O'Connor, *7 Convicted Rukns Get a Break: Judge Cuts Sentences in Government-Misconduct Case*, CHIC. TRIB., Dec. 22, 1993, at 3 (Chicagoland); Robert Becker, *Another Rukn Case Figure Gets a Pass*, CHIC. TRIB., Jan. 28, 1994, at 4 (Chicagoland); *Rukn Sentences Cut After Bungled Trial*, CHIC. TRIB., June 11, 1994, at 5; *2 Rukns Sentenced After Plea Bargain*, CHIC. TRIB., Aug. 25, 1994, at 3 (Chicagoland). By contrast, Henry Leon Harris Jr., a former Rukn general and brother-in-law of Rukn leader Jeff Fort, who was at the center of the misconduct allegations, was sentenced to 30 years in prison and fined \$750,000. Matt O'Connor, *Rukn Informant in Botched Trials Gets 30 Years*, CHIC. TRIB., June 4, 1994, at 1 (Chicagoland). Harris was one of the witnesses whose failed drug tests had been suppressed and who had received conjugal visits. *Id.* at 6. "Though some of the ambassadors had once faced possible life sentences, none will [now] spend more than eight years in prison . . ." *Id.* at 1.

240. Matt O'Connor & William Grady, *What Went Wrong in Rukn Cases? Nearly Everything*, CHIC. TRIB., Sept. 26, 1993, at 1 (Chicagoland). Among the various reasons suggested for the Rukn scandal were overly aggressive prosecution by the lead assistant U.S. attorney, personality clashes, human frailty, a lack of supervision, and a sense of institutional arrogance on the part of the U.S. Attorney's office. *Id.* Some suggest that the determination that enabled lead prosecutor William Hogan Jr. to achieve his many victories against the notorious gang clouded his judgment and caused him to lose sight of the pursuit of justice. *Id.* One judge said that Hogan was "enticed by the prospect of convicting some of the most notorious malefactors in Chicago history" and so provided extensive favors to his star witnesses, the former Rukn generals, to be sure they would cooperate. *Boyd*, 833 F. Supp. at 1334-35.

The judges who overturned the Rukn convictions emphasized that the misconduct was the work of but a few members of the U.S. Attorney's office, and went out of their way to praise the professionalism and principles of the rest of the office and of the other agencies involved in the Rukn prosecution.

elsewhere belies the suggestion that gang convictions under RICO cannot be obtained without illegal or improper inducements to gang member-witnesses such as those that doomed the El Rukn prosecution.²⁴¹ RICO and similar organized-crime statutes should continue to be employed, on both the federal and state level, in the fight against criminal street gang activity.

RICO, as its name suggests, was designed to fight organized crime²⁴² and was enacted precisely because existing laws were inadequate to do so. Previous responses to organized crime were unsuccessful because they concentrated on individuals rather than the criminal unit itself, which was able to survive even as its members were prosecuted.²⁴³ RICO, by contrast, focuses on the criminal enterprise. It does not punish mere status in an organization, as some have suggested, but punishes those who band together to commit crimes. This explains why RICO has been used so successfully against gangs,²⁴⁴ and, indeed, why California chose RICO as

Boyd, 833 F. Supp. at 1366 n.61; *Burnside*, 824 F. Supp. at 1272. One judge characterized the misconduct on Hogan's part as an anomaly, "atypical of [his] career as a prosecutor." Calling Hogan a "bright, talented and dedicated individual," the judge noted that "the course of conduct [Hogan] displayed throughout the El Rukn prosecution did not stem from malice, but rather arose from his well meant, but misguided, sense of justice." *Boyd*, 833 F. Supp. at 1335.

The collapse of the El Rukn prosecution, though extensive, was by no means complete; not every Rukn succeeded in overturning his conviction on the basis of governmental misconduct. See, e.g., *United States v. Bates*, 843 F. Supp. 437, 440-41 (N.D. Ill. 1994) (upholding convictions, despite "outrageous and totally unprofessional" conduct by U.S. Attorney's office, because testimony of witnesses in question was cumulative).

241. See *supra* note 235 and accompanying text.

242. "Concern with enterprise criminality provided the impetus for RICO." Michael Goldsmith, *RICO and Enterprise Criminality: A Response to Gerard E. Lynch*, 88 COLUM. L. REV. 774, 775 (1988). Goldsmith's article is a rebuttal to an article by Columbia law professor Gerard Lynch, in which Lynch asserts, *inter alia*, that RICO was never intended to reach wholly illicit enterprises such as organized crime syndicates themselves, but instead was designed to address the infiltration of legitimate businesses by illegal enterprises. See generally Gerard E. Lynch, *RICO: The Crime of Being a Criminal*, pts. I & II, 87 COLUM. L. REV. 661, 666-80, 920 (1987).

243. As Senator Robert Byrd observed in 1970, the increased prosecution and conviction of organized crime leaders proved unsuccessful at eradicating the problem of organized crime itself. "[S]uch convictions alone, which simply remove the leaders from control of syndicate-owned enterprises but do not attack the vested property interests whose control passes on to other . . . leaders, are not adequate to demolish the structure of the surviving organizations . . ." 116 CONG. REC. 607 (1970). "Since the structure and strength of organized crime transcend its membership, criminal enterprises could thrive despite successful individual prosecutions." Goldsmith, *supra* note 242, at 775 (citation omitted).

244. See *Burdett v. Miller*, 957 F.2d 1375, 1379 (7th Cir. 1992) (noting RICO aimed not only at formal enterprises "but also at criminal gangs, which have a less formal, a less reticulated and differentiated structure").

SB

211

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSSB211(RLS) am

Revision Date: _____
 Title: An Act relating to sexual assault and sexual abuse...
 Sponsor: Sen. Ellis
 Requestor: (S)RLS

Dept. 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	0	0	0	0	0	0
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
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CHANGE IN REVENUES ()	0	0	0	0	0	0
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FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
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 Office of Public Advocacy.

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

Phone: (907)274-1684
 Date: _____

Approved by Commissioner: Mark Boyer
 Agency: Department of Administration

Date: 4/1/96

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Alaska State Legislature



House of Representatives House Judiciary Committee

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

April 11, 1996

TO: Sen. Johnny Ellis

FROM: Tom Meyer, ~~Chair~~ House Judiciary Committee

RE: SB 211

Attached is a copy of the new CS on SB 211. Also attached is a copy of Gerald Luckhaupt's memo re: the title change that was discussed by the committee yesterday.

While the memo raises the same concerns addressed by the committee yesterday, Chairman Porter asked me to convey his acknowledgement of the memo and his view that the differences between sexual assault and abuse are not sufficiently substantial to warrant any further action by the committee.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
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MEMORANDUM

April 11, 1996

SUBJECT: HCS CSSB 211(JUD)
(Work Order No. 9-LS1296(O))

TO: Representative Brian Porter
Attn: Tom Meyer

FROM: Gerald P. Luckhaupt *GLP*
Legislative Counsel

Enclosed is the House Judiciary Committee Substitute you requested for the above-referenced bill. Be advised that there is potentially a title problem with this HCS(JUD), that is, HCS CSSB 211(JUD) appears to have an overinclusive bill title caused by the committee's removal of bill sections 3 and 4 of CSSB 211(FIN) am.

An overinclusive bill title is a title that, for example, specifically mentions A and B when the body of the act deals only with A. In this case the title of the bill is "An Act relating to sexual assault and sexual abuse; and relating to endangering the welfare of vulnerable adults". Bill secs. 1 and 2 relate to "sexual assault" and bill sec. 3 relates to "endangering the welfare of vulnerable adults". Bill secs. 3 and 4 of CSSB 211(FIN) am dealt with "sexual abuse" and are no longer in the bill. While "sexual assault" and "sexual abuse" seem to be similar in scope, the meanings of those concepts in Alaska law are quite different. Nonconsensual sexual conduct is prohibited by our sexual assault laws while sexual conduct with minors, regardless of whether that conduct is consensual or not, by adults or other minors is prohibited by our sexual abuse laws.

Article II, Section 13 of the state constitution requires "the subject of each bill shall be expressed in the title." Clearly, if the title mentions something that is not contained in the bill, the title does not literally comply with this provision and there is a substantial risk that a court will find a violation of the constitution. However, the court has not specifically considered the question of an overinclusive title in this state, so no one can say with any degree of certainty how the court will react.

Courts have generally held that an act will be valid unless the title is misleading or deceptive. Lowery v. Red Cab Co., 262 S.W. 147 (Tex. Ct. Civ. App. 1924). Whether a particular title will be misleading or deceptive because it mentions something that is not included in the body of the act will depend on the facts of the case, so an overinclusive title will always be

Representative Brian Porter

April 11, 1996

Page 2

risky. However, some courts have been tolerant of overinclusive titles. Watts v. Oliphant, 143 S.E. 813 (S.C. 1965); Dovle v. King, 44 S.E. 2d 608 (S.C. 1947). On the other hand, a court has held an overbroad title to be misleading. Reeves v. Adam Hat Stores, 198 S.W.2d 789 (Ky. Ct. App. 1946).

My guess is that the more specific the description is of the "missing" item in the title, the more likely that a court will find the title misleading and unconstitutional. The uniform rules prohibiting title changes may affect the decision of Alaska's courts, not because the court would take it upon itself to enforce the rules, but because the court may find that those rules encourage legislators to rely on the title when deciding whether to accept amendments by the second house and, therefore, overinclusive titles cause the title to be misleading.

While our court has not had occasion to consider title questions, it has considered the single-subject requirement which is contained in the same section of the constitution and been lenient in finding compliance with that requirement. However, the Alaska Supreme Court has begun to reevaluate its broad interpretation of the single-subject rule. (State v. First National bank of Anchorage, 660 P.2d 406 (Alaska 1982); Yute Air Alaska, Inc. v. McA!pine, 698 P.2d 1173 (Alaska 1985)) These cases suggest that the court may be reluctant to adopt an expansive view of the constitutional title requirement.

GPL:klb

96-269.klb

Enclosure

te of Committee Action: 4/10/96

e JUDICIARY Committee considered:

CSSB 211(RLS) am

FOR SENATE BILL NO. 211(RLS) am

VULNERABLE PEOPLE:NEGLECT/ASSAULT/ABUSE

n Act relating to sexual assault and sexual abuse; and relating to endangering the welfare of vulnerable adults."

ecommends it be replaced
with the following committee substitute CSHBSB 211 (JMD) [] the same title
[] a new title

[] additional referral to _____ Committee
[] attached amendment(s)

DOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept, Date)

[] fiscal note(s) _____ [] fiscal note(s) _____

[] zero fiscal note(s) _____ [] zero fiscal note(s) P.S. (3-21-96) Law
(3-11-92) Corrections (3-11-92) Admin. (3-11-92)

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<u>Brian D. Porter</u>	<input checked="" type="checkbox"/>			
<u>David Ambrose</u>	<input checked="" type="checkbox"/>			
<u>Brian D. Porter</u>	<input checked="" type="checkbox"/>			
<u>[Signature]</u>	<input checked="" type="checkbox"/>			
<u>[Signature]</u>	<input checked="" type="checkbox"/>			

AIR'S SIGNATURE Brian D. Porter

HOUSE CS FOR CS FOR SENATE BILL NO. 211(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATORS ELLIS, Salo, Pearce, Lincoln, Donley, Phillips, Duncan, Taylor, Leman, Kelly, Torgerson, Sharp, Zharoff

REPRESENTATIVE Robinson

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to sexual assault and sexual abuse; and relating to
2 endangering the welfare of vulnerable adults."

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

4 * Section 1. AS 11.41.410(a) is amended to read:

- 5 (a) An offender commits the crime of sexual assault in the first degree if
 - 6 (1) the offender engages in sexual penetration with another person
 - 7 without consent of that person;
 - 8 (2) the offender attempts to engage in sexual penetration with another
 - 9 person without consent of that person and causes serious physical injury to that person;
 - 10 (3) the offender engages in sexual penetration with another person
 - 11 (A) who the offender knows is mentally incapable; and
 - 12 (B) who is in [ENTRUSTED TO] the offender's care
 - 13 (i) by authority of law; or
 - 14 (ii) in a facility or program that is required by law to be

1 licensed by the state [DEPARTMENT OF HEALTH AND SOCIAL
2 SERVICES]; or

3 (4) the offender engages in sexual penetration with a person who the
4 offender knows is unaware that a sexual act is being committed and

5 (A) the offender is a health care worker; and

6 (B) the offense takes place during the course of professional
7 treatment of the victim.

8 * Sec. 2. AS 11.41.420(a) is amended to read:

9 (a) An offender commits the crime of sexual assault in the second degree if

10 (1) the offender engages in sexual contact with another person without
11 consent of that person;

12 (2) the offender engages in sexual contact with a person

13 (A) who the offender knows is mentally incapable; and

14 (B) who is in [ENTRUSTED TO] the offender's care

15 (i) by authority of law; or

16 (ii) in a facility or program that is required by law to be
17 licensed by the state [DEPARTMENT OF HEALTH AND SOCIAL
18 SERVICES];

19 (3) the offender engages in sexual penetration with a person who the
20 offender knows is

21 (A) mentally incapable;

22 (B) incapacitated; or

23 (C) unaware that a sexual act is being committed; or

24 (4) the offender engages in sexual contact with a person who the
25 offender knows is unaware that a sexual act is being committed and

26 (A) the offender is a health care worker; and

27 (B) the offense takes place during the course of professional
28 treatment of the victim.

29 * Sec. 3. AS 11.51 is amended by adding new sections to read:

30 ARTICLE 2. VULNERABLE ADULTS.

31 Sec. 11.51.200. ENDANGERING THE WELFARE OF A VULNERABLE

1 ADULT IN THE FIRST DEGREE. (a) A person commits the crime of endangering
2 the welfare of a vulnerable adult in the first degree if the person

3 (1) intentionally abandons the vulnerable adult in any place under
4 circumstances creating a substantial risk of physical injury to the vulnerable adult and
5 the vulnerable adult is in the person's care

6 (A) by contract or authority of law; or

7 (B) in a facility or program that is required by law to be
8 licensed by the state; or

9 (2) violates AS 11.51.210 and, as a result of the violation, the
10 vulnerable adult suffers serious physical injury.

11 (b) Endangering the welfare of a vulnerable adult in the first degree is a class
12 C felony.

13 Sec. 11.51.210. ENDANGERING THE WELFARE OF A VULNERABLE
14 ADULT IN THE SECOND DEGREE. (a) A person commits the crime of
15 endangering the welfare of a vulnerable adult in the second degree if the person fails
16 without lawful excuse to provide support for the vulnerable adult and the vulnerable
17 adult is in the person's care

18 (1) by contract or authority of law; or

19 (2) in a facility or program that is required by law to be licensed by the
20 state.

21 (b) As used in this section "support" includes necessary food, care, clothing,
22 shelter, and medical attention. There is no failure to provide medical attention to a
23 vulnerable adult if the vulnerable adult is provided treatment solely by spiritual means
24 through prayer in accordance with the tenets and practices of a recognized church or
25 religious denomination of which the vulnerable adult is a member or adherent,
26 provided the vulnerable adult consents to the treatment through spiritual means only,
27 and the treatment is administered by an accredited practitioner of the church or
28 denomination.

29 (c) Endangering the welfare of a vulnerable adult in the second degree is a
30 class A misdemeanor.

31 Sec. 11.51.220. DEFINITION OF VULNERABLE ADULT. In AS 11.51.200