ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8912 SENATE JUDICIARY

403

Last year Alaska received a $50,000 planning grant for boot camps. As it appears before us, this bill would allow for receipt and expenditure of federal funds. The program itself is dependent on federal funding. A sunset provision for September 1998 has been included in the bill. It is felt that this will give the Department enough time to get a boot camp program running for two federal fiscal years and will give us information as to the success of the program, where the program needs to be revised, or if the program should be terminated. Additionally, more information will become available about the federal funding level.

Information I have indicates that savings from this legislation could be seen within two to three years. The program, as with any highly structured program, involves intensive staff time and follow-up through parole and probation. I think that in the end the expenditures are worth it if we can teach offenders how to structure their lives so as to not become repeat offenders.

I believe that a boot camp program could help us address many problems from prison overcrowding to recidivism rates. A boot camp program has the potential of providing us with many long-term benefits. I would urge positive consideration of this bill.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

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

MEMORANDUM April 16, 1996

SUBJECT: Sectional Summary of CSHB 2(FIN)
(Work Order No. 9-LS0016\R)

TO: Representative Ed Willis
Attn: Janet Seitz

FROM: Gerald P. Luckhaupt
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1 of the bill provides in uncodified law that the commissioner of corrections may establish a boot camp program as an alternative correctional facility of the state from July 1, 1996 until September 30, 1998, contingent upon the receipt of federal funds to fully fund and operate the program.

Subsection (a) establishes the program. Subsection (b) describes what the boot camp program involves (militarily-styled discipline and physical training, education, counseling, training). Subsection (c) requires the boot camp program to be designed so as to be completed within 150 days. Subsection (d) requires prisoners who fail the program to be reassigned to other correctional institutions. Subsection (e) requires the commissioner to adopt regulations, including charging prisoners a portion of the cost of the program. Subsection (f) allows the commissioner to contract for an alternative boot camp program. Subsection (g) requires the commissioner to report to the legislature. Subsection (h) limits the prisoners eligible for assignment to the boot camp program to those prisoners who are under 30 years of age, are selected by the commissioner, who are sentenced to a term of

imprisonment of at least 150 days, have not previously participated in a boot camp program,and who did not violate AS 11.41,[i] AS 11.46.300,[j] AS 11.46.400,[k] AS 11.56.300,[l] AS 11.56.810,[m] AS 11.61.100,[n] AS 11.61.190,[o] AS 11.61.195,[p] or AS 11.61.240.[q]

Subsections (i) and (j) create a boot camp advisory board. Subsection (k) provides that a prisoner who successfully completes the boot camp is eligible for discretionary parole notwithstanding any other statute that might restrict the prisoner's eligibility. Subsection (l) provides that a prisoner who is eligible for discretionary parole under subsection (k) may be released on parole when the prisoner successfully completes the boot camp program. Subsection (m) provides that a prisoner who successfully completes the boot camp is eligible for a pre-release furlough. Subsection (n) provides definitions.

GPL:klb
96-283.klb

---

[i] Crimes against persons, including, e.g., murder, manslaughter, assault, sexual assault, and sexual abuse.

[j] Burglary in the first degree.

[k] Arson in the first degree.

[l] Escape in the first degree.

[m] Terroristic threatening

[n] Riot.

[o] Misconduct involving weapons in the first degree.

[p] Misconduct involving weapons in the second degree.

[q] Criminal possession of explosives.

Alaska State Legislature

Legislative Research Agency

130 Seward Street, Suite 215
Juneau, Alaska 99801-2196

Phone: (907) 465-3991
Fax: (907) 463-3351

February 11, 1993

MEMORANDUM

TO: Representative Ed Willis

FROM: Patricia Young
Legislative Analyst

RE: **Boot Camps for Young Offenders**
Research Request 93.100

You asked for information about boot camps for young offenders. Specifically, you wished to know the age of participants, the type of crimes represented, the length of sentence, and the number of offenders typically in the programs. You were particularly interested in boot camp programs running in Virginia, Massachusetts, and Cuyahoga County, Ohio.

According to a *State Legislative Report*, "Prison Boot Camps: Policy Considerations and Options," (Denver: National Conference of State Legislatures, March 1991; attached) boot camps are generally military-style programs requiring team cooperation for highly disciplined drills, marching, and labor. Most such programs are designed for non-violent first-time felony offenders with relatively short sentences. Typically they are designed for young adults between the ages of 17 and 25, require a certain degree of physical and mental fitness, last from 60 to 180 days, and represent an alternative to incarceration. Although few data exist to evaluate the effectiveness of boot camp programs, particularly their long-term effectiveness, they are popular: at least 24 states currently operate such programs.

Despite their similarities, boot camp programs vary in structure and focus. A brief comparison of the programs in Virginia, Massachusetts, and Cuyahoga County, Ohio, illustrate some of the differences.

The Virginia Program

The Virginia program appears to be the most standard among the three. At its inception—mid-April of 1991—eligibility was limited to nonviolent, male felony offenders between the ages of 18 and 24 years at the time of sentencing. (Last year the age restriction was changed

to 24 years or under at the time of conviction, with no minimum age limit.) Misdemeanants are ineligible, as are felons convicted of murder, manslaughter, kidnapping, sexual assault, malicious wounding, robbery, or any attempt to commit any of these crimes. Camp capacity is 100 participants, and platoons of 30 to 45 individuals enter each month. To date, 522 participants have gone through the Virginia program.

The program is voluntary, lasts 90 days, and represents a condition of supervised probation in lieu of a penitentiary sentence. The primary emphasis is on discipline. Corrections officers involved in the boot camp program receive U.S. Marine Corps training as drill officers, and an offender's sole contact for the first two weeks of the program is with the drill officers.

Following the two-week orientation come program components involving labor, general education, substance abuse education, life skills development, vocational assessment, and some social education. Although participants are not taught vocation skills as such, manual labor is believed to help them develop a work ethic. The camp is located on a 2,600-acre farm, so offenders are employed as farm laborers. Labor for community projects, such as painting schools and cleaning state parks, is also required. All participants are evaluated as to their level of education: those who test at below grade 12.9 are enrolled in the Adult Basic Education (ABE) or General Education Development (GED) program, regardless of whether they have high school diplomas; those who test at or above grade 12.9 are used as tutors. Upon completion of the entire boot camp program, participants may invite family and friends to a full graduation ceremony. Participants are on probation following graduation for at least one year, the first 90 days of which are intensive supervision.

According to Drew Malloy, program director, Virginia's boot camp program is a five-year pilot program funded by the state legislature. Results have so far been positive, with a recidivism rate of 15 percent for the first 18 months. Admittedly, however, this is a very short time to accurately gauge the effectiveness of a program, and the recidivism rate is expected to increase over time. Nevertheless, Mr. Malloy anticipates funding for the program beyond the demonstration period.

The Massachusetts Program

The Massachusetts boot camp program, which began operation in August of 1992, is for male offenders under the age of 40. Ted O'Donnell, Department of Corrections project analyst with the program, describes it as originally designed for individuals convicted of misdemeanors and less serious felonies as a short, intense alternative to jail or probation, requiring a high level of offender involvement. It is a four-month program with a capacity of 256 participants. Approximately 50 offenders have graduated from the program to date.

Eligibility criteria for the Massachusetts boot camp program include that a participant 1) must be under 40 years of age; 2) may have prior convictions if his history is non-violent; 3) must have a sentence that is for no more than 18 months; 4) must not have received a mandatory sentence for violation of a drug law; 5) must not have been convicted of a crime against a person (with the exception of assault and battery); 6) must be medically and psychologically fit to participate; 7) must have no history of escape from a secure parameter nor any escapes within the past three years; and 8) must volunteer for the program.

According to Mr. O'Donnell, because the program capacity has yet to be filled, the original criterion of "no history of escape" was relaxed to its current form. Another proposed amendment would eliminate the criterion concerning prior convictions and shift the focus more to the present conviction.

The program, described by Mr. O'Donnell as having a "marine drill camp atmosphere," includes education, work, counseling, life skills, and team building components. Following graduation, participants are in parole status for an amount of time based on the duration of the original sentence. Aftercare parole requirements may include components such as contacting parole officers, maintaining jobs, and attending counseling sessions.

The Ohio Program--Cuyahoga County

Unlike the boot camp programs in Virginia and Massachusetts, Cuyahoga County's program is for juveniles between the ages of 14 and 17 who have been convicted of felonies and sentenced to state institutions for approximately 6 to 12 months. Participants must be mentally and physically capable and have not been convicted of aggravated murder, murder, rape, manslaughter, kidnapping, sexual assault, aggravated arson, criminal enticement, or corruption of a minor.

This is a nonvoluntary, 90-day residential program followed by six to nine months of highly structured aftercare. Participants are randomly selected but generally willing to participate. Ten are admitted at the beginning of each month, and ten are released at the end of each month. The maximum capacity is 30 participants at any given time. To date, 111 youth have entered the program. Although discipline is a part of the program's structure, it is based more on the Outward Bound, challenge education model than a military one. Furthermore, the program's substance is primarily treatment for the juvenile and reunification with the family and community. Other components include substance abuse education, general education, life skills development, and basic job acquisition and retention skills.

The Ohio program began in April of 1992 with a federal grant from the U.S. Justice Department for an 18-month project to be evaluated by the National Institute of Justice. Recidivism data will not be available until 1994. According to Tim Howard, project director, the unusually strong emphasis on the aftercare component should result in low recidivism rates.

More detailed information on each of these programs is being sent and will be forwarded to you upon arrival. I hope this information is useful. If you have questions, please let me know.

Attachment

HB

18

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 18

Revision Date: 4/16/96
Dept. Affected: Department of Law
Title: "An Act amending the statute of limitations applicable to civil actions brought against peace officers and coroners."
BRU: Civil Divison
Component: General Legal Services
Sponsor: Representative Therriault
Requester: Senate Judiciary Committee
COMPONENT SERIAL NO. 2087

Expenditures/Revenues (Thousands of Dollars)

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

FUND SOURCE (Thousands of Dollars)

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 amends AS 09.10 to reduce the time in which a civil action may be brought against a peace officer or coroner, from three years to two years, for a liability incurred by the doing of an act in an official capacity or by the omission of an official duty. This change in the statute of limitations for peace officers and coroners is consistent with the general statute of limitations of two years for most other persons. The bill will not have a fiscal impact.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director
Phone: 465-3672
Division: Administrative Services Division
Date: 4/16/96

Approved by Commissioner: Bruce M. Botelho, Attorney General
Date: 4/16/96
Agency: Department of Law

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FISCAL NOTE

No. 2
Bill Version: HB 18
(H) Publish Date: 2/8/95

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Revision Date:
Title: "An Act Amending the Statute of Limitations Applicable to Civil Actions Brought Against Peace Officers...."
Sponsor: Thorriault
Requestor:

Department Affected: Administration
BRU: Risk Management
Component: Risk Management
COMPONENT SERIAL NO. 71

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ( )	0	0	0	0	0	0

FUND SOURCE: (Thousands of Dollars)

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

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

There is no fiscal impact tothe Division of Risk Management.

Prepared by: Brad Thompson
Division: Risk Management
Phone: 465-2180
Date:

Approved by Commissioner: Mark Boyer
Agency: Department of Administration
Date: 1/30/95

PREPARER TO PRO[illegible] FISCAL NOTE [illegible] LATIVE OFFICE

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Rev. 01/95

No. 1

FISCAL NOTE

E. Version: HB 18

(H) Publish Date: 2/8/95

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Revision Date:
Title: "An Act amending the statute of limitations applicable to civil actions brought against peace officers and coroners.
Sponsor: Representative Therriault
Requester: Representative Therriault

Dept. Affected: Department of Law
BRU: Legal Services
Component: Operations
COMPONENT SERIAL NO. 0093

Expenditures/Revenues (Thousands of Dollars)

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

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 (FY95) 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 amends AS 09.10 to reduce the time in which a civil action may be brought against a peace officer or coroner, from three years to two years, for a liability incurred by the doing of an act in an official capacity or by the omission of an official duty. This change in the statute of limitations for peace officers and coroners is consistent with the general statute of limitations of two years for most other persons. The bill will not have a fiscal impact.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director — Phone: 465-3672
Division: Administrative Services Division — Date: 1/30/95

Approved by Commissioner: Bruce M. Botelho, Attorney General — Date: 1/30/95
Agency: Department of Law

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(Rev 10/94) 35fiscnts/DOR

Alaska State Legislature

REPRESENTATIVE
GENE THERRIAULT
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North Pole, Alaska 99705
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House District 33

While in Juneau
State Capitol
Juneau, Alaska
99801-1182
(907) 465-4797

House Of Representatives

To: Senator Robin Taylor
Chairman, Senate Judiciary Committee

From: Representative Gene Therriault

Date: January 31, 1996

This memo is in response to your request of January 25, 1996, seeking clarification on the need for House Bill 18, how the system would be improved and who would benefit.

House Bill 18 is intended to update a section of the state's statute of limitations law that, through oversight, was not amended in conformity with other statutes of limitations when the law was enacted for Alaska by Congress in 1900. The bill would benefit police officers and coroners by reducing the amount of time a person can file a civil action against them for actions performed in their official capacity, from three years to two. The statute of limitations for civil suits against police officers was originally set shorter than for those against a private citizen as a protection for police officers. In later years, however, when the legislature reduced the statute of limitations against private persons, it failed to do so for those against police officers even though the original intent of the differentiation had been to make the time shorter for suits against police officers. Our bill would rectify that situation and bring the statute of limitations up to date.

To provide background, Alaska's statute of limitations were taken from Oregon statutes, which were in turn taken from New York statutes that date back to 1829. The original New York law set the statute of limitations for filing suits against police officers at three years and the statute of limitations against a private person at six years. This was to protect police officers because it was recognized that they need to be free from excessive harassment to carry out their duties. In later years, however, Oregon shortened the statute of limitations for filing a suit against a private person to two years, but failed to correspondingly shorten the limitation against police officers, even though it had originally been intended that the statute of limitations for police officers be shorter. This was how the Oregon law stood when Congress enacted it for

Alaska, and it has not been changed. House Bill 18 would serve a twofold purpose of affording police officers the same protection as is provided to the general public and bringing an antiquated statute into conformity with more recent law. It has been identified by the Alaska Peace Officers Association as one of its priority pieces of legislation. See letter attached.

ALASKA PEACE OFFICERS ASSOCIATION

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

February 8, 1995

Representative Gene Therriault
Capitol Building
Juneau, Alaska 99801-1182

Dear Representative Therriault,

I am the State-wide president of the Alaska Peace Officers Association. Our organization represents over 1200 law enforcement officers from over 80 local, state and federal agencies. On January 31, 1995, the State Board met and discussed pending legislation dealing with peace officers.

We have chosen House Bill 18 as one of our priority pieces of legislation. We don't understand why civil suits against peace officers and coroners should have an extra year in the statute of limitations than other civil suits. This is one more year for memories to fade and witnesses to drift away. We feel peace officers and coroners deserve the same rights as other people when it comes to civil actions against us.

If there is anything this organization can do to assist your effort in passing this legislation please contact me (451-5316) or our Executive Director, Joseph Young (277-0515), or Alyce Hanley (243-7574). On behalf of the Alaska Peace Officers Association, I want to thank you for proposing this legislation and wish you the best in this legislative session.

Respectfully yours,

Michael Corkill by

Michael Corkill
Statewide President

PUBLIC COMMENT

HB

19

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

No. 2
Bill Version: HB 19
(H) Publish Date: 2/8/95

Revision Date:
Title: "An Act Relating to the Definition of 'Fault' ...."
Sponsor: Therriault
Requestor:

Department Affected: Administration
BRU: Risk Management
Component: Risk Management
COMPONENT SERIAL NO. 71

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0 0	0 0	0 0	0 0	0 0	0 0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ( )	0	0	0	0	0	0

FUND SOURCE: (Thousands of Dollars)

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

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)
There is no fiscal impact to the Division of Risk Management

Prepared by: Brad Thompson
Division: Risk Management
Phone: 465-2160
Date:

Approved by Commissioner: Mark Boyer
Agency: Department of Administration
Date: 1/30/95

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Rev. 01/94

No. 1
Bill Version: HB 19
(H) Publish Date: 2/8/95

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Revision Date:
Title: "...relating to the definition of "fault"...determining the liabilities of parties in civil actions..."
Sponsor: Representative Therriault
Requester: Representative Therriault

Dept. Affected: Department of Law
BRU: Legal Services
Component: Operations
COMPONENT SERIAL NO. 0093

Expenditures/Revenues

(Thousands of Dollars)

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

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1005 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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

POSITIONS	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill amends the definition of fault, in AS 09.17.900 (Civil Damages and Apportionment of Fault) to include intentional acts. Current state law defines fault as acts or omissions that are in any measure negligent or reckless toward the person or property of the actor or others, or that subjects a person to strict tort liability. There have been recent instances where persons have attempted to avoid liability for their acts, where a court apportions fault in a personal injury suit, by claiming that their contributory acts were intentional and not negligent or reckless and should therefore be excluded from apportionment. This bill will cure this problem and reduce litigation costs for the time and effort that must now be expended to overcome this line of defense. The bill will not have a fiscal impact.

Prepared by: Richard L. Peques, Director
Division: Administrative Services Division
Phone 465-3672
Date 1/30/95

Approved by Commissioner: Bruce M. Botelho, Attorney General, Department of Law
Date 1/30/95

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Alaska State Legislature

House of Representatives
House Judiciary Committee

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

LETTER OF INTENT

In adding "intentional" to the definition of fault in this chapter, the committee intends to make it clear that parties whose actions were arguably intentional may be named or joined in the litigation, as well as those who were allegedly negligent or reckless. The inclusion of intentional tortfeasors does not preclude consideration of whether the intentional tortfeasor's acts relieve unintentional tortfeasors of liability.

Brian D. Porter — 2-6-95

Representative Brian Porter, Chairman — Date

HOUSE adopted 3/1/95

Alaska State Legislature

Sen. Robin Taylor, Chairman
Sen. Lyda Green, Vice Chairman
Sen. Mike Miller
Sen. Al Adams
Sen. Johnny Ellis

State Capitol
Juneau, Alaska 99801-1182
(907) 465-3717
Fax: (907) 465-3922

Senate Judiciary Committee

MEMORANDUM

TO: Representative Gene Therriault

FROM: Senator Robin L. Taylor, Chairman RLT.
Senate Judiciary Committee

DATE: 1/25/96
REF: Hearing Requests

I apologize for the delay in responding to the requests you submitted for hearings on HB 18 and HB 19.

Regarding HB 18, I would appreciate clarification on how you feel the system would be improved by this change. Who is hurt by the current law and who would benefit by the proposed change?

Regarding HB 19, please cite any case in which a court has upheld this bizarre argument. Unless such a ruling exists, I fail to see the need for a legislative fix to a situation the court seems to have under control. An expansion on your statement referring to "costly court proceedings" might help clarify the issues.

I would be happy to discuss these bills with you at any time.

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO

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FAX (907) 276-3697

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☐ P.O. BOX 110300 DIMOND COURT HOUSE
JUNEAU, ALASKA 99811-0300
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DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 2, 1996

Hon. Gene Therriault
Alaska State Legislature
State Capitol, Room 421
Juneau, AK 99801-1182

Re: Cases involving apportionment of fault with intentional tortfeasors.

You have asked about actual cases in which there is resistance to having intentional tortfeasors receive a percentage of fault under AS 09.17.900 and its application to AS 09.17.080.

In Kerr v. State, 3AN-93-6531 the survivor of a bomb blast has made the argument. The family members of convicted murderers crafted a mail bomb and sent it to the chief witness for the prosecution. A claim was later made that the negligence of the Department of Corrections caused the injuries. The state added the bombers to the suit, and asked that the bombers be apportioned a significant measure of fault for the injuries. The plaintiff opposed, and has argued that the explicit terms of AS 09.17.900 excludes intentional tortfeasors from her suit. The jury ultimately found the state 12% at fault, with the bombing conspirators 88% responsible. The difference between collecting from the state and not collecting from the bombers is over $14,000,000.00. The time has not yet run for appeal, but plaintiffs have declared there will be an appeal.

In addition to the Kerr case, which went to trial in December 1995, the state has other pending suits which involve criminal actions where the state is alleged to have some fault because of its negligence. In Noblett v. Sta[illegible] children who were abused by a parent have sued the state's Department of Health and Social Services, alleging its negligence permitted the abuse. The state has asked for the parent to also bear a percentage of the fault, and the plaintiffs have opposed including the parent, pointing to the express words of AS 09.17.900.

BJC:lm

The possibility of the argument excluding intentional tortfeasors is not merely theoretical. A clarification that the ruling by the trial court in the Kerr case is not a change, but codification of what was always intended, would certainly resolve a lot of arguments as well as help the Supreme Court resolve the issue when an inevitable appeal reaches it.

BRUCE BOTELHO
ATTORNEY GENERAL

By: Randy M. Olsen
Randy M. Olsen
Assistant Attorney General

RMO/jac

c: Susan Cox
Chrystal Smith

TONY KNOWLES, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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JUNEAU, ALASKA 99811-0300
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April 29, 1996

The Honorable Drue Pearce
President of the Senate
State Capitol, Room 111
Juneau, Alaska 99801

The Honorable Gail Phillips
Speaker of the House
State Capitol, Room 208
Juneau, Alaska 99801

Re: *Kerr v. State of Alaska, et al.*,
Case No. 3AN-93-6531 Civil

Dear Senator Pearce and Representative Phillips:

This will respond to your letter, delivered to my office on April 25, requesting more information about the *Kerr* case. As you are aware, we participated in a settlement conference with Superior Court Judge Brian Shortell on Friday, April 19, 1996, and agreed on a final settlement of the case in the amount of $2,600,000. The court approved of the settlement by an order entered on April 19. We are pleased to respond to your questions about this case and the settlement.

I. General Background

The *Kerr* case stemmed from a criminal conspiracy between inmates incarcerated in state Department of Corrections facilities and inmate family members. In visits and phone calls, the inmates instructed their co-conspirators how to obtain bomb materials and how to construct a mail bomb. The target of the bomb was a witness in a

murder prosecution against the inmates. However, the target was out of state when the bomb was delivered, and in his absence his parents opened the package. The bomb instantly killed David Kerr and seriously injured his wife, Michelle Kerr. The extent of Ms. Kerr's injuries was extreme. Most of her face was destroyed. Doctors testified that she was struck by 2000 to 3000 projectiles. Bits of her husband were taken from her body. She nearly died many times over the next several months.

The co-conspirators were criminally prosecuted in federal court. The criminal prosecution consisted in part of the statements of other inmates, who were enthusiastic in their willingness to give evidence in return for leniency on their own cases. These other inmates recounted seeing the conspirator inmates, R.D. Cheely and Doug Gustafson, having discussions in prison hallways while waiting for visitors, conversing together at religious services, speaking through air vents when in adjoining inmate housing units, and also assisting them pass notes to each other. The federal prosecutors also presented evidence that these inmates received visitors and made phone calls to co-conspirators in violation of prison policies.

Gustafson confessed, on condition his sister and brother receive lenient sentences and he would not have to testify against Cheely. The sister and brother also confessed, and testified at the criminal trial of Cheely and Joe Ryan. Joe Ryan was the individual Cheely ordered to deliver explosives to Gustafson's sister. Ryan was only convicted of the transportation of explosives in violation of federal law. Cheely was convicted of conspiring to commit murder and attempted murder through the mails.

Michelle Kerr brought a civil suit against the State of Alaska on behalf of herself and the estate of her murdered husband. The state brought the bombing conspirators into the litigation so that their responsibility could be considered in apportionment of fault under AS 09.17.080. Kerr opposed inclusion of the bombing conspirators as parties to the civil suit, and opposed any apportionment of fault to the conspirators. Kerr maintained that the state's duty was to prevent harm by the inmates, and that the state should not be permitted to shift responsibility for breach of that duty to the criminals. In addition to claims of negligent supervision, Kerr alleged that the state was negligent in its security classification procedures, internal search procedures, and telephone monitoring procedures. The state, for its part, argued that the independent criminal actions of the family members outside the walls of the prison were beyond the state's control, and that it should not be held liable for the crime at all. The court rejected the state's argument, but allowed the jury to apportion fault to the criminals.

Immediately before trial the parties attempted to negotiate a settlement of claims against the state, but could not reach an agreement. Attorneys for Kerr opened at $7,000,000, while the state opened at $500,000. Kerr refused to move without a significant move by the state. The state went to $1,000,000, and later 1,250,000 as a show of willingness to negotiate. Kerr refused to make a counter offer at that time and the negotiation session concluded with plaintiff still at $7 million and the state at $1.25 million. The settlement judge advised that he felt the case should settle between $2.5 million and $3.5 million. He also opined that the state could be held for up to 50% of the fault at trial. Without a settlement, a trial was necessary to determine the amount of damages and relative percentages of fault.

At the trial the state demonstrated that the federal trial evidence critical of the state prison operations was generally not credible. The chief postal service bomb investigator testified that he had not looked at all the documents related to visitor records, and that some federal trial exhibits were not accurate. It was demonstrated conclusively that visits were not held in violation of prison regulations. Charts and drawings showed the inmates were not housed in such a manner as to permit communication through air vents, they did not have opportunity to communicate in hallways, the opportunity to communicate while one inmate was in an exercise yard was limited to a total of 6 hours, and that prison operations were generally well within the standards of the prison industry. One witness testified that he heard other inmates comparing information and making up stories for the federal prosecutors to make themselves more attractive as federal witnesses.

Conversations with the jurors following the trial revealed that they rejected or found inconclusive nearly all of the claims of negligence advanced by Kerr. However, the jurors concluded that the state was negligent in one respect, and that was when Gustafson's sister brought into a secured visit at the prison a micro-switch, and Gustafson explained to her how to wire the bomb with the switch. Tests showed that the switch was nearly completely plastic, and would not set off the highly sensitive metal detectors. However, the sister's testimony was that she carried the switch into the prison with her car keys, and the state had no way to refute her claim. Permitting car keys to remain with a visitor, even when the visits are by telephone through a window with no contact, is a violation of prison policies and procedures. The inmates were incarcerated for 18 months before the bombing. The sister never specified the date of the visit, which made it impossible for the Department of Corrections to fully challenge her claim. This vagueness also left Corrections without any identified personnel to discipline, if that were warranted. The jury concluded that for this breach the state's responsibility for the bombing should be set at 12%.

Damages to both victims were set by the jury at $11,864,690.72. With trial costs and fees as of the date of the verdict, December 15, 1995, the judgment against the state was worth approximately $1,800,000. Interest on this amount has been accruing at a rate of approximately $13,000 per month.

Significant post-trial motions were filed by plaintiffs to the end that the state should still be held 100% responsible for all harm. If Kerr were to win these motions in the trial court or prevail on appeal, the resulting total judgment against the state would be approximately $20,000,000.

Although the state's assessment of the risk was vindicated by the jury verdict, we anticipated some significant risks on appeal. First, the supreme court could hold the state 100% at fault for injuries committed by inmates. Second, many close questions were decided in the state's favor by the trial court, and there was no guarantee those rulings would be affirmed on appeal. The trial lasted five weeks. With a trial of that length, there is often a possibility of a reversal on appeal, based on error in the trial court's evidence rulings. If a re-trial were ordered there was a significant possibility the state would not do as well as in the first trial. In a re-trial, the evidence which had earlier been excluded, but because of reversal would then be admitted, could result in a much higher verdict against the state. Further, the jury which heard the civil case was unusually able to put sympathy aside and rule dispassionately on the evidence (their response to Michelle Kerr's testimony was in marked contrast to the weeping response of the federal criminal trial jurors). In a retrial, a different jury panel could well be less favorable to the state.

II. Reasons Supporting the Settlement Figure

Following the trial, Kerr's attorneys communicated a desire to conclude the litigation without an appeal, if the state would pay something above the jury decree to compensate for the risks faced by the state on appeal. With the assistance of the trial judge, Judge Shortell, the parties reached the settlement of $2,600,000. This is $800,000 more than the value of the verdict amount, plus costs, fees, and interest, as of December 15, 1995. Of this amount, approximately $100,000 represents interest on the jury award from the verdict date until July 1. The remaining amount over the value of the jury award -- $700,000 -- represents less than 4% of what the plaintiffs could obtain if they were to win on appeal. The settlement amount can also be considered the equivalent of the jury finding the state's fault to be 17% instead of 12%. Moreover, after discounting for the interest on the award since the jury verdict, the final settlement amount is less than what the settlement judge projected the claim to be worth.

The settlement also fully resolves all liability the state has with respect to Kerr's health care providers and insurer. Kerr is responsible for satisfying all liens and outstanding issues with her insurer.

III. Corrective Measures

As indicated above, no negligent DOC employee was identified, either in our background investigation or at trial. The department has taken measures to assure that its policies and procedures are reviewed and followed. However, many of Kerr's claims were explained away as inherent in a prison setting that complies with United States Supreme Court and Alaska court orders. For instance, the prisoners have rights to worship, and unless the prison has reason to restrict access to religious services, and can back up its reasons in a grievance hearing, inmates must be permitted to attend religious services. Visitation restrictions can only be imposed upon a showing that the visit is detrimental to the rehabilitation of the inmate or a danger to the public. Gustafson's sister was pregnant and brought her 5-year-old child to prison visits. She had no prior criminal history. There was no reason to restrict her visits. Cheely and Gustafson were incarcerated as 19-year-olds for their first criminal convictions. They did not warrant special security measures.

IV. Alternative Courses of Action

The only alternative to settlement would be to process an appeal. There appeared to be no chance of the state obtaining a reversal and being excused from all liability. On appeal the court would view the evidence in a way to support the jury verdict. Although in conversations with the jury the jury declared that it only found the one instance of negligence, at trial Kerr presented expert witnesses and other testimony which claimed that the state was negligent in multiple ways. On those facts the state would not be able to avoid <u>some</u> fault. The state was then, at a minimum, obligated to the extent of the jury verdict. The settlement prevents the risks of a much greater obligation on appeal, or by following a new trial. It also avoids the attorney costs associated with the appeal and a new trial, should one be ordered.

V. Assessment of Plaintiff's Chance of Success on Appeal

We believe Kerr's chances on appeal are also not good, although possibly somewhat better than the state's. The idea that, when the state has a duty to protect its citizens from inmates, it should not be allowed to blame the inmates when it breaches that duty has some support in court decisions from other states. Even if Kerr's chances on appeal were only 10%, at stake was the difference between the jury verdict ($1.8 million) and 100%

($20 million). The settlement negotiated is less than 5% of what Kerr would stand to gain if her appeal were successful.

VI. Length of Appeal

The time for receiving a decision on an appeal is a matter completely in the hands of the court. It would not be uncommon for the case to take two to three years for preparation of the record, briefing, oral argument, and decision. Even if the Alaska Supreme Court affirmed the trial court outcome, post-judgment interest would accrue on the judgment at the rate of 10.5% per year until paid.

Please let me know if we can be of further assistance on this matter.

Sincerely,

Bruce M. Botelho
Attorney General

BMB:SDC:pch

cc: Theodore W. Popely, Chief Counsel
William M. Bankston, Esq.
Nancy Slagle, Budget Director

I:\RITCHIE\KERR.MEM

REPRESENTATIVE
GENE THERRIAULT
Mailing Address
119 N. Cushman, Suite 101
Fairbanks, Alaska 99701
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Fax (907) 488-4271

Alaska State Legislature

House Of Representatives

While in Juneau
State Capitol
Juneau, Alaska
99801-1192
(907) 465-4797
Fax: (907) 465-3884

House District 33

HB 19: "An act amending the definition of 'fault' as that term is used for the purposes of determining the liabilities of parties in civil actions; amending the definition of 'fault' as it relates to setting limitations on civil liability; and amending the definition of 'fault' as it relates to authorizing the award, in conformance with applicable court rule, of attorney fees in civil actions."

Sponsor: Representative Gene Therriault

Sponsor Statement:

This legislation is intended to clarify a gray area of state civil liability law that allows individuals to argue that parties who acted intentionally are not liable for damages. The need arises from Alaska court cases in which the argument has been made that, because the law refers only to acts that are "negligent or reckless" and not specifically to acts that are "intentional," it does not allow for the apportionment of fault to those who have committed offenses intentionally. Particularly in cases in which more than one person contributes to the injuries or could be sued, the law is unclear as to whether or not the person who committed an offense intentionally can be held responsible for any of the fault. In the cases that have been heard so far, the judge has found the argument to be without merit, however, tightening the law would eliminate the need for these costly court proceedings.

STEVEN B. GILLETT
Post Office Box 91180
Anchorage, Alaska 99509
Telephone 907/345-8529

March 19, 1995

REPRESENTATIVE GENE THERRIAULT
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

RE: HB 19 -- DEFINITION OF "FAULT" FOR CIVIL LIABILITY

REF: House Judiciary Committee Letter of Intent;
House Journal Page 266;
House Judiciary Committee Hearing Minutes, Feb. 1, 1995

Dear Representative Therriault:

I have been following HB 19, with interest and with the gracious assistance of Ms. Whitaker, in order to help insure that the current law is revised without the creation of unintended consequences. It is with that purpose that I offer a substitute for the current House Judiciary Committee Letter of Intent.

The current Letter of Intent attempts to address the stated concerns of Mr. Winters and Rep. Finkelstein, that the revised statute may be read in implied derogation of the common law thus prescribing that an intentional tortfeasor escape with less than full liability for a tortious event. The current Letter encompasses the issue,

but does not expressly preclude the feared predicament from coming about.

Clearly Mr. Winters and Rep. Finkelstein are not concerned with the consideration of intentional fault under the revised statute since that is the very essence of the revision. What does concern them is the potential issuance of a jury instruction incorrectly prescribing the nature of that consideration; namely, "members of the jury, AS 09.17.080 requires that fault be apportioned among the parties, therefore you may not apportion 100% of the total to the intentional tortfeasor."

To effectively preclude this possibility I recommend that the following Letter of Intent be substituted during the upcoming Senate Judiciary Committee hearings:

> In adding "intentional" conduct to the definition of fault in this chapter, the committee intends to make it clear that an alleged tortfeasor whose actions were arguably intentional may be joined as a party to a litigation already comprising alleged tortfeasors whose conduct was arguably negligent or reckless, in order to properly apportion the total fault among all alleged tortfeasors involved in the tortious event. By the inclusion of "intentional" conduct within this chapter, the committee does not however intend that it be prescribed that the intentional tortfeasor be apportioned less than 100% of the total fault merely because alleged unintentional tortfeasors are parties to the litigation. On the other hand, the committee does not intend that such a multilateral apportionment be precluded. Apportionment continues to be a question for the trier of fact.

If you have any questions or comment concerning my offer of this substitute, do not hesitate to contact me.

Very truly yours,

Steven B. Gillett

cc: Rep. Finkelstein
Rep. Brian Porter, Chmn. House Jud. Comm.
Sen. Robin Taylor, Chmn. Senate Jud. Comm.

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO

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DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 2, 1996

Hon. Gene Therriault
Alaska State Legislature
State Capitol, Room 421
Juneau, AK 99801-1182

Re: Cases involving apportionment of fault with intentional tortfeasors.

You have asked about actual cases in which there is resistance to having intentional tortfeasors receive a percentage of fault under AS 09.17.900 and its application to AS 09.17.080.

In Kerr v. State, 3AN-93-6531 the survivor of a bomb blast has made the argument. The family members of convicted murderers crafted a mail bomb and sent it to the chief witness for the prosecution. A claim was later made that the negligence of the Department of Corrections caused the injuries. The state added the bombers to the suit, and asked that the bombers be apportioned a significant measure of fault for the injuries. The plaintiff opposed, and has argued that the explicit terms of AS 09.17.900 excludes intentional tortfeasors from her suit. The jury ultimately found the state 12% at fault, with the bombing conspirators 88% responsible. The difference between collecting from the state and not collecting from the bombers is over $14,000,000.00. The time has not yet run for appeal, but plaintiffs have declared there will be an appeal.

In addition to the Kerr case, which went to trial in December 1995, the state has other pending suits which involve criminal actions where the state is alleged to have some fault because of its negligence. In Noblett v. State children who were abused by a parent have sued the state's Department of Health and Social Services, alleging its negligence permitted the abuse. The state has asked for the parent to also bear a percentage of the fault, and the plaintiffs have opposed including the parent, pointing to the express words of AS 09.17.900.

The possibility of the argument excluding intentional tortfeasors is not merely theoretical. A clarification that the ruling by the trial court in the Kerr case is not a change, but codification of what was always intended, would certainly resolve a lot of argument, as well as help the Supreme Court resolve the issue when an inevitable appeal reaches it.

BRUCE BOTELHO
ATTORNEY GENERAL

By: Randy M. Olsen
Randy M. Olsen
Assistant Attorney General

RMO/jac

c: Susan Cox
Chrystal Smith

HB

25

FISCAL NOTE

No. 9

Bill Version: CSHB 25(FIN)

(H) Publish Date: 1/26/96

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Dept. Affected: Public Safety

Title: "An Act revising Rule 16, AK Rules of Criminal Procedure, relating to discovery..."

BRU: DPS Statewide

Sponsor: Representative Parnell

Components: Commissioner's Office

Requestor:

Serial #: 523

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants, Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (THOUSANDS OF DOLLARS)

General Fund	0.0	0.0	0.0	0.0	0.0	0.0
Federal Fund	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

Full-Time	0	0	0	0	0	0
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

see attached analysis

Prepared by: House Finance Committee — Date: 1/25/96

Rep. Mark Hanley, Co-Chair — Phone: 465-4939

Rep. Richard Foster, Co-Chair — Phone: 465-3789

COMMITTEE COPY

FISCAL NOTE

No. 8
Bill Version: CSHB 25(FIN)
(H) Publish Date: 1/26/96

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Revision Date: 01/23/96
Dept. Affected: Alaska Court System
Title: An Act revising Rule 16, Alaska Rules of Criminal Procedure, relating to discovery
BRU: Trial Courts
Component:
Sponsor: Reps. Parnell, Porter
Requester:
COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

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

Fund Source (Thousands of Dollars)

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

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

Positions

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel
Phone: 264-8228
Agency: Alaska Court System
Date: 01/23/96

Approved by: Arthur H. Snowden, II, Administrative Director
Date: 01/23/96
Agency: Alaska Court System

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FISCAL NOTE

No. 7
Bill Version: CSHB 25(FIN)
(H) Publsn Date: 1/26/96

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Revision Date: 1/23/96
Title: "...revising Alaska Rule of Criminal Procedure 16, relating to discovery and inspection in criminal proceedings..."
Sponsor: Representative Parnell
Requester: Representative Parnell

Dept. Affected: Department of Law
BRU: Criminal Division
Component: Criminal Division
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						
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 imposes a duty on both the prosecution and the defense for making full and fair disclosure of information in criminal cases. This version of the bill differs from previous versions in that it is less burdensome on the defense. As we advised in our original fiscal analysis, of 1/23/95, the department believes that the bill will result in fairer verdicts and, in some cases, may avoid trials when the prosecution is given early notice of a viable defense. Consequently, the bill will not have a fiscal impact.

Prepared by: Richard L. Pegues, Director — Phone: 465-3672
Division: Administrative Services Division — Date: 1/23/96
Approved by Commissioner: Bruce M. Botelho, Attorney General — Date: 1/23/96
Agency: Department of Law

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FISCAL NOTE

No. 6

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Bill Version: CSHB 25(FIN)
(H) Publsn Date: 1/26/96

Revision Date: 1/22/96
Title: "An Act revising Alaska Rule of Criminal Procedure 16, relating to discovery and inspection in criminal proceedings..."
Sponsor: Rep. Parnell
Requestor: (H) Fin

Dept. Affected: Administration
BRU: Public Defender Agency
Component: Public Defender Agency

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	00	00	00	00	00	00

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

There is no fiscal impact to the Public Defender Agency.

Prepared by: John Salemi, Director
Division: Public Defender Agency
Phone: 264-4400
Date:

Approved by Commissioner: Mark Boyer
Agency: Department of Administration
Date: 1/23/96

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FISCAL NOTE

No. 5

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Bill Version: CSHB 25(FIN)
(H) Publish Date: 1/26/96

Revision Date:
Title: "An Act revising Alaska Rule of Criminal Procedure 16, relating to discovery and inspection in criminal proceedings..."
Sponsor: Rep. Pamell
Requestor: (H) Fin

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						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ( )	0	0	0	0	0	0

FUND SOURCE: (Thousands of Dollars)

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

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

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

Prepared by: Brant McGee, Public Advocate
Division: Office of Public Advocacy
Phone: 274-1684
Date:

Approved by Commissioner: Mark Boyer
Agency: Department of Administration
Date: 1/23/96

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Rev: 12/95

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SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 2/15/96

FURTHER: ~~Finance~~ - Wsund

DATE TURNED INTO OFFICE: 3-29-96

The Judiciary Committee considered CS FOR HOUSE BILL NO. 25(FIN)

Revising Rule 16, Alaska Rules of Criminal Procedure, relating to discovery and inspection in criminal proceedings.

and recommends:

[ ] be **replaced** with _____ CS _____ (_____)

[ ] adopt **previous** _____ CS _____ (_____)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by _____ Committee

[ ] further referral to the _____ Committee

Senate Bill:
[ ] same title
[ ] new title

House Bill:
[✓] same title
[ ] technical title
[ ] new: SCR*_____

SIGNING DO PASS	*DP*	*OTHER RECOMMENDATIONS*	*NR*	*DNP*	*AM*
Kyle Green	✓				
Pete Kott	✓				
CHAIR: Mike Navarre	✓	*CHAIR:*			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
Public Safety	1/25/96	✓	
Att General System	1/23/96	✓	
Law - Criminal Div	1/22/96	✓	
Public Defender	1/22/96	✓	
Public Advocacy	1/23/96	✓	

[ ] **APPROPRIATION -- no fiscal note**

***Include fiscal notes accompanying Governor's bill**

Alaska State Legislature

REPRESENTATIVE
SEAN R. PARNELL

HOUSE OF REPRESENTATIVES

SPONSOR STATEMENT
House Bill 25

"An act revising Rule 16, Alaska Rules of Criminal Procedure, relating to discovery and inspection in criminal proceedings."

HB 25 changes Alaska Rules of Criminal Procedure to allow for reciprocal discovery between the prosecution and the defense, a system used in many other jurisdictions.

The Alaska Supreme Court's *Scott* v. State decision (No. 1968), handed down 20 years ago, created the most extreme discovery system in all 50 states and the only system that denied virtually all discovery to protect a persons constitutional right against "self-incrimination." This use of Section 9 (Alaska Constitution's "self-incrimination" clause modeled almost word for word after Article V of the US Constitution) to prevent discovery of non-defendant statements is completely out of step with federal and other state judicial practice.

The *Scott* decision was a "snapshot" in time that permanently froze the judicial beliefs of the 70's into Alaska law. Unfortunately this was at a time of extremes and not before or since has any court come remotely close to this type of opinion on "self-incrimination" and discovery. Given that the federal courts have only held "self-incrimination" to protect defendant statements and not expert or alibi witness names and addresses, and given that Alaska modeled its language after the federal "self-incrimination" clause, it is not unreasonable to interpret similarly for Alaska's discovery laws.

The "self-incrimination" clause was designed to protect defendants from coerced confessions by unscrupulous prosecutorial powers. Reciprocal discovery does not coerce a defendant's statement, but simply requires that if either the prosecution or defense is likely to use particular information in their case, apart from defendants statements, that they disclose it beforehand to

encourage timely and fair justice. This accelerated discovery notion has been articulated in many courts where some form of reciprocal discovery is used.

In practice, Alaska's current Rule 16 does not require the defense to divulge virtually any information to the prosecution, but allows for one-sided discovery by the defense, a most inequitable result. Alaska's rule enables defense attorneys to ambush the prosecution mid-trial with previously undisclosed evidence, which causes costly continuances of trials while the prosecution tries desperately to prepare for this new evidence. These delays can result in a failed case, not because of the innocence of the accused, but because the prosecution lacked the time to adequately prepare for this new evidence.

The Alaska Supreme Court recently adopted a new rule 16 (effective 7/95), which would establish partial reciprocal discovery for alibi defense and expert witnesses, saying that if you are likely to use this evidence than you should disclose it before trial in the interest of fair and speedy justice. However, discovery issues protected at the heart of Alaska Supreme Court's *Scott* decision did not change, and could not be changed by a simple court rule change. If the Alaska Supreme court wanted to overturn the *Scott* decision they would need a court case in which *Scott* was violated. This will never happen unless the court rules are changed by law to allow for complete reciprocal discovery. Since the Alaska Supreme Court has adopted reciprocal discovery, where it did not violate *Scott*, it seems appropriate to allow the courts the opportunity to complete the reciprocal discovery package.

HB 25 is motivated by the philosophy that justice is better served when both sides have full and free discovery in a timely and cost effective manner. I respectfully request your support.

CSHB 25 (JUD): Who Provides What

Prosecution Obligation		Defense Obligation	
Criminal Rule 16(b)	When	Criminal Rule 16 (c)	When
(1) List of *all known* witnesses, plus written or recorded statements	Immediately	(1) List of witnesses likely to be used at trial, plus written or recorded statements	10 days after state provides items 1 thru 8
(2) Statements by defendant	Immediately		
(3) Statements by co-defendant	Immediately		
(4) Documents, photos or other objects likely to be used as evidence	Immediately	(2) Documents, photos or other objects likely to be used as evidence	10 days after state provides items 1 thru 8
(5) Rap sheets for defendant and any victims or witnesses likely to testify for state	Immediately		
(6) Information about line-ups or other identification procedures	Immediately		
(7) Any evidence tending to negate guilt or reduce the defendant's punishment	Immediately		
(8) Information provided by an informant or by electronic surveillance	Immediately		
(9) Agreements with witnesses or inducements to witnesses	Upon agreement or court order	(4) Agreements with witnesses or inducements to witnesses	Upon agreement or court order
(10) Information about searches and acquisition of statements	Upon agreement or court order		
(11) Character evidence the prosecution is likely to use *against the defendant*	Upon agreement or court order	(3) Character evidence the defense is likely to use *against victims and witnesses*	Upon agreement or court order
(12) Reports prepared by *any expert* consulted, and the opinions of experts likely to be used at trial	45 days before trial	(6) Experts likely to be used at trial, and their opinions	30 days before trial
(13) Any other relevant and admissible evidence as ordered by the court	Upon court order	(9) Any other relevant and admissible evidence as ordered by the court	Upon court order
		(5) Notice of alibi, duress, entrapment or other statutory defenses	30 days before felony trial; 10 days before misd trial
		(7) Notice of mental disease or defect	As required by AS 12.47
		(8) Physical evidence held by defense counsel	Immediately

HB 25 also creates a new procedure to allow defendants to obtain confidential information that is *not in the possession of the prosecution*, and sets standards for courts to follow in granting such requests.

Shaded areas show the information now required to be disclosed by the defense under present Criminal Rule 16.

CSHB 25 (JUD): Derivation

Prosecution Obligation

Crminal Rule 16(b)	Derivation
(1) List of *all known* witnesses, plus written or recorded statements	Rule 16(b)(1)(A)(i) ABA 11-2.1(a)(ii)
(2) Statements by defendant (3) Statements by co-defendant	Rule 16(b)(1)(A)(ii-iii) ABA 11.2.1(a)(i)
(4) Documents, photos or other objects likely to be used as evidence	Rule 16(b)(1)(A)(iv) ABA 11-2.1(a)(v)
(5) Rap sheets for defendant and any victims or witnesses likely to testify for state	Rule 16(b)(1)(A)(v) ABA 11-2.1(a)(vi)
(6) Information about line-ups or other identification procedures	ABA 11-2.1(a)(vii)
(7) Any evidence tending to negate guilt or reduce the defendant's punishment	Rule 16(b)(3) ABA 11-2.1(a)(viii)
(8) Information provided by an informant or by electronic surveillance	Rule 16(b)(2) ABA 11-2.1(c)
(9) Agreements with witnesses or inducements to witnesses	Rule 16(b)(6)(iii) ABA 11-2.1(a)(iii)
(10) Information about searches and acquisition of statements	Rule 16(b)(6)(ii/iii) ABA 11-2.1(a)(i)/(d)
(11) Character evidence the prosecution is likely to use *against the defendant*	ABA 11-2.1(b)
(12) Reports prepared by *any expert* consulted, and the opinions of experts likely to be used at trial	Rule 16(b)(1)(B) ABA 11-2.1(a)(iv)
(13) Any other relevant and admissible evidence as ordered by the court	Rule 16(b)(7)

Defense Obligation

Criminal Rule 16 (c)	Derivation
(1) List of witnesses likely to be used at trial, plus written or recorded statements	ABA 11-2.2(a)(i)
(2) Documents, photos or other objects likely to be used as evidence	ABA 11-2.2(a)(iii)
(4) Agreements with witnesses or inducements to witnesses	Same obligation as for prosecution
(3) Character evidence the defense is likely to use *against victims and witnesses*	ABA 11-2.2(b)
(6) Experts likely to be used at trial, and their opinions	Rule 16(c)(4) ABA 11-2.2(a)(i)
(9) Any other relevant and admissible evidence as ordered by the court	Same obligation as for prosecution
(5) Notice of alibi, duress, entrapment or other statutory defenses	Rule 16(c)(5)
(7) Notice of mental disease or defect	Rule 16(c)(5) AS 12.47
(8) Physical evidence held by defense counsel	Rule 16(c)(6)

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

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

MEMORANDUM February 11, 1996

SUBJECT: Sectional Summary of CSHB 25(FIN) (Work Order No. 91LS0146\P)

TO: Representative Sean Parnell
Attn: Richard Vitale

FROM: Gerald P. Luckhaupt
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1 of the bill amends Rule 16 of the Alaska Rules of Criminal Procedure, relating to pretrial discovery in criminal cases. The bill maintains, revises, and adds burdens concerning disclosure of information between the parties in a criminal case in an attempt to equalize those burdens.

Section 2 of the bill provides that the provisions of the bill are not severable despite the general severability clause provided in AS 01.10.030.

Section 3 of the bill provides that the provisions of the bill are retroactive and applicable to all criminal cases on or arising after the effective date.

Section 4 of the bill provides that the provisions of the bill supersede Rule 16, A.R.Cr.P., and any intervening amendments.

Section 5 of the bill provides an effective date.

GPL:lmb
96-043.lmb

Victims for Justice

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

January 19, 1996

JAN 24 1996

Representative Sean R. Parnell
House of Representatives
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Parnell,

I am writing a letter in support of HB 25. The theme of victims groups throughout the United States is "equal justice for all even the victim...". The inequitable discovery laws that the State of Alaska passed years ago does not provide the same equality for the prosecutors as it does for the defense attorneys. These laws often create reasons for more costly continuances and definitely gives the defense more power in the criminal justice system. It is much more difficult for the prosecutors to establish a proof of guilt when the laws are lopsided for the defense. The tragedy is this is real life cases, criminals should not have the edge. It is necessary to restore a **BALANCE** of justice. HB 25 provides this balance for justice to be better served. Thank you for taking the time to present a bill that better serves the criminal justice process and provides justice for all even the victim.

Sincerely,

Janice Lienhart

Janice Lienhart

- Crisis Intervention
- Short and Long Term Emotional Support
- Grief Educaton
- Victim Advocacy
- Assault Support Group
- Homicide Survivors Support Group
- Court Accompaniment
- CourtWatch Program
- Annual Victims Rights Week Observance
- Member - National Association of Victim Advocacy
- Member - National Organization Victim Assistance

Alaska Women's Resource Center
111 W. 9th Avenue • Anchorage, Alaska 99501 • (907) 276 0528 • Fax: (907) 278 8944

JAN 25 1996

January 22, 1996 VIA FAX

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

Dear Representative Parnell:

I am writing on behalf of the Alaska Women's Resource Center to express our support of House Bill No. 25.

For all citizens of the State of Alaska to enjoy a healthy and safe community in which to live, laws must be enforced in a thorough and timely manner. House Bill No. 25 addresses the sharing of information and evidence for the purpose of promoting a fair and expeditious disposition of the charges. This will not only facilitate the trial process, but it will also assure victims and non-victims in the community that perpetrators will be held accountable for their actions.

The Alaska Women's Resource Center favors House Bill No. 25 as a means of promoting fully informed and timely law enforcement for the protection of the citizens of Alaska.

Sincerely,

Diane J. Heard
Executive Director

ALASKA NETWORK
ON
DOMESTIC VIOLENCE
AND
SEXUAL ASSAULT

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

Comments on HB25: Discovery

The Alaska Network on Domestic Violence and Sexual Assault (Network) is the statewide coalition of community domestic violence and sexual assault intervention programs for Alaska. Twenty-one full member and five supporting member programs provide shelter, advocacy, crisis intervention, and, information and referral services to victims seeking assistance in ending the violence being perpetrated against them. The Network works to promote institutional and systemic change necessary to end violence against women.

The Network supports reciprocal discovery. Having each side aware of all the pertinent facts prior to trial will allow for more thorough preparation and less lengthy trials. Reciprocal discovery also allows victims of violent crimes to know prior to the time they are required to testify what approach the defense will be taking with them. They will be better able to respond to questioning and not be taken by surprise. Trials should be about fact-finding, not about blind-siding.

The Network is however, concerned over a victim's right to confidentiality. In 1992, the legislature passed a law providing for privileged communication between the victim of domestic violence or sexual assault, and a victim counselor. Approximately ten states that have established privilege for domestic violence and sexual assault victims have absolute privilege.

Alaska is one of several states that has established privilege with exceptions. The exceptions primarily address suspected child abuse and child-in-need-of-aid cases; excited utterances; and, circumstances in which the victim may have committed a crime.

Only two states require an in-camera hearing upon defense submission of a pretrial discovery motion. HB25 adds Alaska to this list. We hope enough safeguards surround the opportunity for in-camera review so that the privilege remains viable and victims will continue to come forward to seek help in ending the violence being perpetrated against them.

S. T. A. R.

Business 907/276-7279
24 Hour Crisis 907/276-7273
Toll Free 1-800-478-8999
TTDY 907/278-9983

January 19, 1996

Representative Sean Parnell
716 W. 4th
Anchorage, AK 99501-2133

Dear Representative Parnell:

We support the passage of **House Bill No. 25.** This bill addresses the sharing of information and evidence for the purpose of promoting a fair and expeditious disposition of the charges.

As an agency that works for and with victims of sexual assault, we must emphasize how important it is to have a system that supports and protects victims as well as defendants. The sharing of information would facilitate a more help reduce the risk of a "surprise attack" where victims may feel like they are being revictimized. After an assault where a victim was denied a voice and made powerless, it is an important part of the healing process for the victim to be able to be well informed.

We strongly support Representative Parnell's efforts to ensure that victims are kept aware and well informed so that the chance of being taken by surprise is greatly reduced or eliminated.

Thank you.

Sincerely,

Trisha Gentle

Trisha Gentle
Executive Director
Standing Together Against Rape

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

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

February 5, 1996

Representative Sean Parnell
Alaska State Legislature
State Capitol (MS 3100)
Juneau AK 99801-1182

Dear Representative Parnell,

On behalf of the Alaska Peace Officers Association, I would like to thank you for introducing House Bill 25 relating to the Rules of Discovery. At a recent meeting of the APOA State Board, we unanimously decided to support this piece of legislation. We agree that Alaska's Court Rules on discovery are out of step with the rest of the country and they do not foster a level playing field for the prosecution and the defense.

We encourage you to call on us when there are teleconference hearings, so that we may testify about the need for this legislation. If you need assistance as you shepherd this bill through the legislative process, please call me at 451-5316, or our business manager, Joseph Young at 277-0515.

Sincerely

Michael Corkill
State President

ANCHORAGE POLICE DEPARTMENT

4501 South Bragaw Street • Anchorage, Alaska 99507-1599
Telephone (907) 786-8500

Rick Mystrom
Major

Service since 1921

January 31, 1996

Representative Sean R. Parnell
Alaska State Legislature
State Capitol (MS 3000)
Juneau, Alaska 99801-1182

Dear Representative Parnell,

We support your efforts on three House Bills that you have introduced. They are House Bills 25, 314, and 326.

House Bill 25 would allow reciprocal discovery between the prosecution and the defense in criminal matters. Under current law the defense enjoys an unfair advantage because they don't have to divulge information to the prosecution that may be critical at trial. The public and the defendant both deserve a fair trial, and your bill would help level the playing field.

House Bill 314 would strengthen our domestic violence laws by affording victims more protection under the law when a Temporary Restraining Order is issued by a court. We need the additional specificity contained in House Bill 314.

House Bill 326 would reverse what we think was a mistake on the part of the Bar Association when they adopted a rule that allows for surreptitious taping without a person's notice or consent. Victims should not be subjected to this type of taped recording.

We thank you for introducing these bills. If we can be of any assistance, please contact my office.

Sincerely,

Duane S. Udland
Deputy Chief

City and Borough of Sitka

POLICE DEPARTMENT

304 Lake Street, Room 102 • Sitka, Alaska 99835

John H. Newell
Chief of Police

Business 747-3245
Fax 747-1075

February 2, 1996

Representative Sean Parnell
House of Representatives
State Capitol, Juneau, AK 99801-1182

Representative Parnell,

I support HB 25 and encourage the legislature to enact this bill into law.

We are all well aware of the crowded court dockets and frequent delays in proceedings which ultimately thwart in interest of justice. It seems reasonable and appropriate that similar, if not the same, rules apply to both prosecution and defense.

It is my view that passage of HB25 will increase the timely resolution of issues in criminal cases, reduce the courts time, and allow prosecution and defense opportunity to satisfactorily carry out their respective responsibilities.

Sincerely,

John H. Newell
Chief of Police

The CRIMINAL LAW REPORTER

Text No. 1

October 5, 1994 THE BUREAU OF NATIONAL AFFAIRS, INC. Volume 56, No. 1

ABA STANDARDS FOR CRIMINAL JUSTICE: DISCOVERY (THIRD EDITION)

Reprinted below are black letter American Bar Association Standards for Criminal Justice concerning Discovery. They were approved by the ABA's House of Delegates in August 1994.

The ABA's Criminal Justice Standards Committee, chaired by William H. Jeffress Jr., of Washington, D.C., and the Discovery Standards Task Force, chaired by Justice Ben F. Overton of the Florida Supreme Court, will be reviewing the proposed commentary to these Standards over the next year. The commentary is being prepared by Niki Kuckes of Miller, Cassidy, Larroca & Lewin in Washington, D.C. and by Professor Gerald Bennett of the University of Florida Law School. Upon completion, these Standards and supporting Commentary will be published in soft-cover by the ABA as part of the Third Edition ABA Standards for Criminal Justice.

CONTENTS

PART I. GENERAL PRINCIPLES

Standard 11-1.1 Objectives of pretrial procedures

(a) Procedures prior to trial should, consistent with the constitutional rights of the defendant:

(i) promote a fair and expeditious disposition of the charges, whether by diversion, plea, or trial;

(ii) provide the defendant with sufficient information to make an informed plea;

(iii) permit thorough preparation for trial and minimize surprise at trial;

(iv) reduce interruptions and complications during trial and avoid unnecessary and repetitious trials by identifying and resolving prior to trial any procedural, collateral, or constitutional issues;

(v) minimize the procedural and substantive inequities among similarly situated defendants;

(vi) effect economies in time, money, judicial resources, and professional skills by minimizing paperwork, avoiding repetitious assertions of issues, and reducing the number of separate hearings; and

(vii) minimize the burden upon victims and witnesses.

(b) These needs can be served by:

(i) full and free exchange of appropriate discovery;

(ii) simpler and more efficient procedures; and

(iii) procedural pressures for expediting the processing of cases.

Standard 11-1.2. Applicability

These standards should be applied in all criminal cases. Discovery procedures may be more limited than those described in these standards in cases involving minor offenses, provided the procedures are sufficient to permit the party adequately to investigate and prepare the case.

Standard 11-1.3. Definition of "statement"

(a) When used in these standards a "written statement" of a person shall include:

(i) any statement in writing that is made, signed or adopted by that person; and

(ii) the substance of a statement of any kind made by that person that is embodied or summarized in any writing or recording, whether or not specifically signed or adopted by that person. The term is intended to include statements contained in police or investigative reports, but does not include attorney work product.

(b) When used in these standards, an "oral statement" of a person shall mean the substance of any statement of any kind by that person, whether or not reflected in any existing writing or recording.

PART II. DISCOVERY OBLIGATIONS OF THE PROSECUTION AND DEFENSE

Standard 11-2.1. Prosecutorial disclosure

(a) The prosecution should, within a specified and reasonable time prior to trial, disclose to the defense the following information and material and permit inspection, copying, testing and photographing of disclosed documents or tangible objects:

(i) All written and all oral statements of the defendant or of any codefendant that are within the possession or control of the prosecution and that relate to the subject matter of the offense charged, and any documents relating to the acquisition of such statements.

(ii) The names and addresses of all persons known to the prosecution to have information concerning the offense charged, together with all written statements of any such person that are within the possession or control of the prosecution and that relate to the subject matter of the offense charged. The prosecution should also identify the persons it intends to call as witnesses at trial.

(iii) The relationship, if any, between the prosecution and any witness it intends to call at trial, including the nature and circumstances of any agreement, understanding or representation between the prosecution and the witness that constitutes an inducement for the cooperation or testimony of the witness.

(iv) Any reports or written statements of experts made in connection with the case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons. With respect to each expert whom the prosecution intends to call as a witness at trial, the prosecutor should also furnish to the defense a curriculum vitae and a written description of the substance of the proposed testimony of the expert, the expert's opinion, and the underlying basis of that opinion.

(v) Any tangible objects, including books, papers, documents, photographs, buildings, places, or any other objects, which pertain to the case or which were obtained from or belong to the defendant. The prosecution should also identify which of these tangible objects it intends to offer as evidence at trial.

(vi) Any record of prior criminal convictions, pending charges, or probationary status of the defendant or of any codefendant, and, insofar as known to the prosecution, any record of convictions, pending charges, or probationary status that may be used for impeachment of any witness to be called by either party at trial.

(vii) Any material, documents or information relating to lineups, showups, and picture or voice identifications in relation to the case.

(viii) Any material or information within the prosecutor's possession or control which tends to negate the guilt of the defendant as to the offense charged or which would tend to reduce the punishment of the defendant.

(b) If the prosecution intends to use character, reputation or other act evidence, the prosecution should notify the defense of that intention and of the substance of the evidence to be used.

(c) If the defendant's conversations or premises have been subjected to electronic surveillance (including wiretapping) in connection with the investigation or prosecution of the case, the prosecution should inform the defense of that fact.

(d) If any tangible object which the prosecutor intends to offer at trial was obtained through a search and seizure, the prosecution should disclose to the defense any information, documents or other material relating to the acquisition of such objects.

Standard 11-2.2. Defense disclosure

(a) The defense should, within a specified and reasonable time prior to trial, disclose to the prosecution the following information and material and permit inspection, copying, testing and photographing of disclosed documents and tangible objects:

(i) The names and addresses of all witnesses (other than the defendant) whom the defense intends to call at trial, together with all written statements of any such witness that are within the possession or control of the defense and that relate to the subject matter of the testimony of the witness. Disclosure of the identity and statements of a person who will be called for the sole purpose of impeaching a prosecution witness should not be required until after the prosecution witness has testified at trial.

(ii) Any reports or written statements made in connection with the case by experts whom the defense intends to call at trial, including the results of physical or mental examinations and of scientific tests, experiments, or comparisons that the defendant intends to offer as evidence at trial. For each such expert witness, the defense should also furnish to the prosecution a curriculum vitae and a written description of the substance of the proposed testimony of the expert, the expert's opinion, and the underlying basis of that opinion.

(iii) Any tangible objects, including books, papers, documents, photographs, buildings, places, or any other objects, which the defense intends to introduce as evidence at trial.

(b) If the defense intends to use character, reputation or other act evidence not relating to the defendant, the defense should notify the prosecution of that intention and of the substance of the evidence to be used.

(c) If the defense intends to rely upon a defense of alibi or insanity, the defense should notify the prosecu-

tion of that intent and of the names of the witnesses who may be called in support of that defense.

Standard 11-2.3. The person of the defendant

(a) After the initiation of judicial proceedings, the defendant should be required, upon the prosecution's request, to appear within a time specified for the purpose of permitting the prosecution to obtain fingerprints, photographs, handwriting exemplars, or voice exemplars from the defendant, or for the purpose of having the defendant appear, move, or speak for identification in a lineup or try on clothing or other articles. Whenever the personal appearance of the defendant is required for the foregoing purposes, reasonable notice of the time and place of such appearance should be given by the prosecuting attorney to the defendant and the defendant's counsel.

(b) Upon motion by the prosecution, with reasonable notice to defendant and defendant's counsel, the court should upon an appropriate showing order the defendant to appear for the following purposes:

(i) to permit the taking of specimens of blood, urine, saliva, breath, hair, nails, and material under the nails;

(ii) to permit the taking of samples of other materials of the body;

(iii) to submit to a reasonable physical or medical inspection of the body, or;

(iv) to participate in other reasonable and appropriate procedures.

(c) The motion and order pursuant to paragraph (b) above should specify the following information where appropriate: the authorized procedure, the scope of the defendant's participation, the name or job title of the person who is to conduct the procedure, and the time, duration, place, and other conditions under which the procedure is to be conducted.

(d) The court should issue the order sought pursuant to paragraph (b) above if it finds that:

(i) the appearance of the defendant for the procedure specified may be material to the determination of the issues in the case, and

(ii) the procedure is reasonable and will be conducted in a manner which does not involve an unreasonable intrusion of the body or an unreasonable affront to the dignity of the individual; and

(iii) the request is reasonable.

(e) Defense counsel may be present at any of the foregoing procedures unless, with respect to a psychiatric examination, it is otherwise ordered by the court.

PART III. SPECIAL DISCOVERY PROCEDURES

Standard 11-3.1. Obtaining nontestimonial information from third parties

(a) Upon motion by either party, if the court finds that there is good cause to believe that the evidence sought may be material to the determination of the issues in the case, the court should in advance of trial issue compulsory process for the following purposes:

(i) To obtain documents and other tangible objects in the possession of persons not parties to the case.

(ii) To allow the entry upon property owned or controlled by persons not parties to the case. Such process should be issued if the court finds that the party requesting entry has met the standard that the government would be required to meet to obtain access to the property at issue.

(iii) To obtain from a third party fingerprints, photographs, handwriting exemplars, or voice exemplars, or to compel a third party to appear, move or speak for identification in a lineup, to try on clothing or other articles, to permit the taking of specimens of blood, urine, saliva, breath, hair, nails, or other materials of the body, to submit to a reasonable physical or medical inspection of the body, or to participate in other reasonable and appropriate procedures. Such process should be issued if the court finds that:

(1) the procedure is reasonable and will be conducted in a manner which does not involve an unreasonable intrusion of the body or an unreasonable affront to the dignity of the individual the individual, and

(2) the request is reasonable.

(b) The motion and the order should specify the following information where appropriate: the authorized procedure, the scope of participation of the third party, the name or job title of the person who is to conduct the procedure; and the time, duration, place and other conditions under which the procedure is to be conducted.

(c) A person whose interests would be affected by the compulsory process sought should have the right and a reasonable opportunity to move to quash the process on the ground that compliance would subject the person to an undue burden, or would require the disclosure of material that is privileged or otherwise protected from disclosure, or would otherwise be unreasonable.

Standard 11-3.2 Preservation of evidence and testing or evaluation by experts

(a) If either party intends to destroy or transfer out of its possession any objects or information otherwise discoverable under these standards, the party should give notice to the other party sufficiently in advance to afford that party an opportunity to object or take other appropriate action.

(b) Upon motion, either party should be permitted to conduct evaluations or tests of physical evidence in the possession or control of the other party which is subject to disclosure. The motion should specify the nature of the test or evaluation to be conducted, the names and qualifications of the experts designated to conduct evaluations or tests, and the material upon which such test will be conducted. The court may make such orders as are necessary to make the material to be tested or examined available to the designated expert.

(i) The court should condition its order so as to preserve the integrity of the material to be tested or evaluated.

(ii) If the material is contraband material or a controlled substance, the entity having custody of the material may elect to have a representative present during the testing of the material.

PART IV. TIMING AND MANNER OF DISCLOSURE

Standard 11-4.1. Timely performance of disclosure

(a) Each jurisdiction should develop time limits within which discovery should be performed. The time limits should be such that discovery is initiated as early as practicable in the process. The time limit for completion of discovery should be sufficiently early in the process that each party has sufficient time to use the disclosed information adequately to prepare for trial.

(b) The time limits adopted by each jurisdiction should provide that, in the general discovery sequence, disclosure should first be made by the prosecution to the defense. The defense should then be required to make its correlative disclosure within a specified time after prosecution disclosure has been made.

(c) Each party should be under a continuing obligation to produce discoverable material to the other side. If, subsequent to compliance with these standards or orders pursuant thereto, a party discovers additional material or information which is subject to disclosure, the other party should promptly be notified of the existence of such additional material. If the additional material or information is discovered during or after trial, the court should also be notified.

Standard 11-4.2. Manner of performing disclosure

Disclosure may be accomplished in any manner mutually agreeable to the parties. Absent agreement, the party having the burden of production should:

(a) notify opposing counsel that material and information, described in general terms, may be inspected, obtained, tested, copied, or photographed during specified reasonable times; and

(b) make available to opposing counsel at the time specified such material and information and suitable facilities or other arrangements for inspection, testing, copying, and photographing of such material and information.

Standard 11-4.3. Obligation to obtain discoverable material

(a) The obligations of the prosecuting attorney and of the defense attorney under these standards extend to material and information in the possession or control of members of the attorney's staff and of any others who either regularly report to or, with reference to the particular case, have reported to the attorney's office.

(b) The prosecutor should make reasonable efforts to ensure that material and information relevant to the defendant and the offense charged is provided by investigative personnel to the prosecutor's office.

(c) If the prosecution is aware that information which would be discoverable if in the possession of the prosecution is in the possession or control of a government agency not reporting directly to the prosecution, the prosecution should disclose the fact of the existence of such information to the defense.

(d) Upon a party's request for, and designation of, material or information which would be discoverable if in the possession or control of the other party and which is in the possession or control of others, the party from whom the material is requested should use diligent good faith efforts to cause such material to be made available to the opposing party. If the party's efforts are unsuccessful and such material or others are subject to the jurisdiction of the court, the court should issue suitable subpoenas or orders to cause such material to be made available to the party making the request.

(e) Upon a showing that items not covered in the foregoing standards are material to the preparation of the case, the court may order disclosure of the specified material or information.

PART V. DEPOSITIONS

Standard 11-5.1. Depositions to perpetuate testimony

(a) After an indictment or information upon which a defendant is to be tried is filed, upon motion of the defense or the prosecution, the court may order a deposition taken to perpetuate the testimony of a prospective material witness if the court finds that there is reason to believe that the witness will be unable to be present and to testify at trial because of serious illness or other comparably serious reason, and that it is necessary to take the witness's deposition to prevent a failure of justice. The motion should be verified or the grounds for the motion supported by affidavit.

(b) In the order for the deposition, the court may also require that any designated books, papers, documents or tangible objects, not privileged, be produced at the time and place of the deposition.

(c) The court should make provision for the defendant to be present at the taking of the deposition and should make such other provisions as are necessary to preserve the defendant's right to confrontation of witnesses.

(d) A deposition so taken and any evidentiary material produced at such deposition may be introduced in evidence at trial subject to applicable rules of evidence. However, no deposition taken under this section should be used or read in evidence when the attendance of the deposed witness can be procured, except for the purpose of contradicting or impeaching the testimony of the deponent.

Standard 11-5.2. Discovery depositions

(a) On motion of either the prosecution or the defense, the court should order the taking of a deposition upon oral examination of any person other than the defendant concerning information relevant to the offense charged, but only upon a showing that:

(i) the name of the person sought to be deposed has been disclosed to the movant by the opposing party through the exchange of names and addresses of witnesses or has been discovered during the movant's investigation of the case, and

(ii) no writing, summarizing the relevant knowledge of the person sought to be deposed, adequate to prevent surprise at trial, has been furnished to the movant, and

(iii) the movant has taken reasonable steps to obtain a voluntary oral or written statement from the witness, but the witness has refused to cooperate in giving a voluntary statement; and

(iv) the taking of a deposition is necessary in the interests of justice.

(b) The defendant may not be present at the deposition unless the court orders otherwise for good cause shown.

(c) The procedure for taking a discovery deposition, including the scope of the examination, should be in accordance with express rules to be written for depositions in criminal proceedings.

(d) Unless otherwise stipulated by the parties, a discovery deposition should be admissible at a trial or hearing only for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(e) A person whose deposition is sought should have the right to move to quash on the ground that compliance would subject the person to an undue burden, or would require the disclosure of material that is privileged or otherwise protected from disclosure, or would otherwise be unreasonable.

PART VI. GENERAL PROVISIONS GOVERNING DISCOVERY

Standard 11-6.1. Restrictions on disclosure

(a) Disclosure should not be required of legal research or of records, correspondence, reports, or memoranda to the extent that they contain the opinions, theories, or conclusions of the prosecuting attorney or the defense attorney, or members of the attorney's legal staff.

(b) Disclosure of an informant's identity should not be required where such identity is a prosecution secret and where a failure to disclose will not infringe the constitutional rights of the defendant. Disclosure should not be denied of the identity of witnesses to be produced at a hearing or trial.

(c) Disclosure should not be required where it involves a substantial risk of grave prejudice to national security and where a failure to disclose will not infringe the constitutional rights of the defendant. Disclosure should not be denied regarding witnesses or material to be produced at a hearing or trial.

(d) Disclosure should not be required from the defense of any communications of the defendant, or of any other materials which are protected from disclosure by the state or federal constitutions, statutes or other law.

(e) The court should have the authority to deny, delay, or otherwise condition disclosure authorized by these standards if it finds that there is substantial risk to any person of physical harm, intimidation, or bribery resulting from such disclosure which outweighs any usefulness of the disclosure.

Standard 11-6.2. Failure of a party to use disclosed material at trial

The fact that a party has indicated during the discovery process an intention to offer specified evidence or to call a specified witness is not admissible in evidence at a hearing or trial.

Standard 11-6.3. Investigations not to be impeded

Neither the counsel for the parties nor other prosecution or defense personnel should advise persons (other than the defendant) who have relevant material or information to refrain from discussing the case with opposing counsel or showing opposing counsel any relevant material, nor should they otherwise impede opposing counsel's investigation of the case.

Standard 11-6.4. Custody of materials

Any materials furnished to an attorney pursuant to these standards should be used only for the purposes of preparation and trial of the case, and should be subject to such other terms and conditions as the court may provide.

Standard 11-6.5. Protective orders

Upon a showing of cause, the court may at any time order that specified disclosures be restricted, conditioned upon compliance with protective measures, or deferred, or make such other order as is appropriate, provided that all material and information to which a party is entitled is disclosed in sufficient time to permit counsel to make beneficial use of the disclosure.

Standard 11-6.6. Excision

When some parts of material or information are discoverable under these standards and other parts are not discoverable, the discoverable parts should be disclosed. The disclosing party should give notice that nondiscoverable parts have been withheld and the nondiscoverable parts should be sealed, preserved in the records of the court, and made available to the appellate court in the event of an appeal.

Standard 11-6.7. In camera proceedings

Upon request of any person, the court may permit any showing of cause for denial or regulation of disclosures, or any portion of such showing, to be made in camera. A record should be made of both in court and in camera proceedings. Upon the entry of an order granting relief following a showing in camera, all confidential portions of the in camera portion of the showing should be sealed, preserved in the records of the court, and made available to the appellate court in the event of an appeal.

PART VII. SANCTIONS

Standard 11-7.1. Sanctions

(a) If an applicable discovery rule or an order issued pursuant thereto is not promptly implemented, the court should do one or more of the following:

(i) order the noncomplying party to permit the discovery of the material and information not previously disclosed,

(ii) grant a continuance,

(iii) prohibit the party from calling a witness or introducing into evidence the material not disclosed, subject to the defendant's right to present a defense and provided that the exclusion does not work an injustice either to the prosecution or the defense, or

(iv) enter such other order as it deems just under the circumstances.

(b) The court may subject counsel to appropriate sanctions, including a finding of contempt, upon a finding that counsel willfully violated a discovery rule or order.

instance of a defendant over the objection of any other defendant.

(Adopted by SCO 4 October 4, 1959; amended by SCO 157 effective February 15, 1973; by SCO 639 effective May 30, 1985; amended by SCO 157 effective February 15, 1973; and by SCO 1153 effective July 15, 1994)

Annotations

Cases

Denial of motion to take depositions of witnesses who had testified before the grand jury was no error where appellants had not made a showing sufficient under this rule. Merrill v. State, Op. No. 392, 423 P2d 686 (Alaska 1967).

Where the direct penalty for conviction of an offense may be incarceration, loss of a valuable license, or a fine heavy enough to indicate criminality, such offense is a "serious crime" within the public defender statute. A defendant who is charged with any such misdemeanor and who cannot afford to hire his own lawyer is eligible for representation by a public defender. Alexander v. City of Anchorage, Op. No. 738, 490 P2d 910 (Alaska 1971).

Expansion of discovery beyond provisions contained in court rules is most appropriately done through amendment of existing rules after thorough study. Buchanan v. State, Op. No. 1316, 561 P2d 1997 (Alaska 1977).

Where statements of juvenile codefendants were taken in juvenile proceedings, but juveniles testified at trial and statements were not introduced, no violation of the right to notice of a deposition occurred. Linden v. State, Op. No. 1905, 598 P2d 960 (Alaska 1979).

The admission of a witness' pretrial videotaped deposition at trial was reversible error where the state failed to subpoena the witness despite advance knowledge of her plan to be out of the state during the trial. Stores v. Seattle, Op. No. 2252, 625 P2d 820 (Alaska 1981).

Trial court did not err in denying defense motion to admit video deposition of expert witness where defendant failed to demonstrate either that the witness was beyond the jurisdiction of the court or that due diligence was exercised in attempting to secure her appearance. Dunbar v. State, Op. No. 387, 677 P2d 1275 (Alaska App. 1984).

In sexual abuse case, trial court did not abuse its discretion in refusing to allow defendant to depose his sons, who had given statements to the police and testified before the grand jury, but did not wish to be interviewed further, where on appeal the defense did not argue surprise at the children's trial testimony but instead argued, without further amplification, that the denial of discovery impaired its ability to adequately prepare for trial. State v. Covington, Op. No. 557, 711 P2d 1183 (Alaska App. 1985).

Rule 16. Discovery.

(a) **Scope of Discovery.** In order to provide adequate information for informed pleas, expedite trial, minimize surprise, afford opportunity for effective cross-examination, and meet the requirements of due process, discovery prior to trial should be as full and free as possible consistent with protection of persons, effective law enforcement, and the adversary system.

(b) **Disclosure to the Accused.**

(1) *Information within Possession or Control of Prosecuting Attorney.* (A) Except as is otherwise provided as to matters not subject to disclosure and protective orders, the prosecuting attorney shall disclose the following information within the prosecuting attorney's possession or control to defense counsel and make available for inspection and copying:

(i) The names and addresses of persons known by the government to have knowledge of relevant facts and their written or recorded statements or summaries of statements;

(ii) Any written or recorded statements and summaries of statements and the substance of any oral statements made by the accused;

(iii) Any written or recorded statements and summaries of statements and the substance of any oral statements made by a co-defendant;

(iv) Any books, papers, documents, photographs or tangible objects, which the prosecuting attorney intends to use in the hearing or trial or which were obtained from or belong to the accused; and

(v) Any record of prior criminal convictions of the defendant and of persons whom the prosecuting attorney intends to call as witnesses at the hearing or trial.

(B) *Expert Witnesses.* Unless a different date is set by the court, as soon as known and no later than 45 days prior to trial, the prosecutor shall inform the defendant of the names and addresses of any expert witnesses performing work in connection with the case or whom the prosecutor is likely to call at trial. The prosecutor shall also make available for inspection and copying any reports or written statements of these experts. With respect to each expert whom the prosecution is likely to call at trial, the prosecutor shall also furnish to the defendant a curriculum vitae and a written description of the substance of the proposed testimony of the expert, the expert's opinion, and the underlying basis of that opinion. Failure to provide timely disclosure under this rule shall entitle the defendant to a continuance. If the court finds that a continuance is not an adequate remedy under the circumstances of the case, the court may impose other sanctions, including prohibiting the prosecutor from calling the expert at trial or declaring a mistrial.

(2) *Information Provided by Informant — Electronic Surveillance.* The prosecuting attorneys shall inform defense counsel.

(i) of any relevant material or information relating to the guilt or innocence of the defendant which has been provided by an informant, and

(ii) of any electronic surveillance, including wiretapping, of

(aa) conversations to which the accused or the accused's attorney was a party,

(bb) premises of the accused or the accused's attorney.

(3) *Information Tending to Negate Guilt or Reduce Punishment.* The prosecuting attorney shall disclose to defense counsel any material or information within the prosecuting attorney's possession or control which tends to negate the guilt of the accused as to the offense or would tend to reduce the accused's punishment therefor.

(4) *Information Within Possession or Control of Other Members of Prosecuting Attorney's Staff.* The prosecuting attorney's obligations extend to material and information in the possession or control of

(i) members of the prosecuting attorney's staff, and

(ii) any others who have participated in the investigation or evaluation of the case and who either regularly report or with reference to the particular case have reported to the prosecuting attorney's office.

(5) *Availability of Information to Defense Counsel.* Whenever defense counsel designates and requests production of material or information which is not in the possession or control of the prosecuting attorney but would be discoverable if in the possession or control of the prosecuting attorney, the court shall issue suitable subpoenas or orders to cause such material to be made available to defense counsel.

(6) *Information Regarding Searches and Seizures — Statements From the Accused — Relationship of Witnesses to Prosecuting Attorney.* Except as otherwise provided the prosecuting attorney shall, upon request of defense counsel, disclose and permit inspection, testing, copying and photographing of any relevant material and information regarding:

(i) Specified searches and seizures;

(ii) The acquisition of specified statements from the accused; and

(iii) The relationship, if any, of specified witnesses to the prosecuting authority.

(7) *Other Information.* Upon a reasonable request showing materiality to the preparation of the defense, the court in its discretion may require disclosure to defense counsel of relevant material and information not covered by subsections (b) (1), (b) (2), (b) (3), and (b) (6).

(8) *Legal Research and Records of Prosecuting Attorney.* Disclosure shall not be required of legal research or of records, correspondence, reports or memoranda to the extent that they contain the opinions, theories or conclusions of the prosecuting attorney or members of the prosecuting attorney's legal staff.

(c) **Disclosure to the Prosecuting Attorney.**

(1) *Non-Testimonial Identification Procedures — Authority.* Upon application of the prosecuting attorney, the court by order may direct any person to participate in one or more of the procedures specified in subsection (c) (2) of this rule if affidavit or testimony shows probable cause to believe that:

(i) An offense has been committed by one of several persons comprising a narrow focal group that includes the subject person;

(ii) The evidence sought may be of material aid in identifying who committed the offense; and

(iii) The evidence sought cannot practicably be obtained from other sources.

(2) *Non-Testimonial Identification Procedures — Scope.* An order issued under subsection (c) (1) of this rule may direct the person to do or submit to any and all of the following:

(i) Appear in a line-up;

(ii) Speak words, phrases or sentences relevant to the case for identification by witnesses;

(iii) Be fingerprinted;

(iv) Pose for photographs not involving reenactment of a scene;

(v) Try on articles of clothing;

(vi) Permit the taking of specimens of material under the person's fingernails;

(vii) Permit the taking of samples of blood, hair and other materials of the person's body which involve no unreasonable intrusion thereof;

(viii) Provide specimens of the person's handwriting;

(ix) Submit to a reasonable physical or medical inspection of the person's body.

(3) *Right to Counsel.* When issuing an order under subsection (c) (1) of this rule, the court shall also order that the person be represented by counsel or waive the right to be represented by counsel before being required to appear in a lineup, give a specimen of handwriting, or speak for identification by witnesses to an offense.

(4) *Expert Witnesses.* Unless a different date is set by the court, no later than 30 days prior to trial the defendant shall inform the prosecutor of the names and addresses of any expert witnesses the defendant is likely to call at trial. The defendant shall also make available for inspection and copying any reports or written statements of these experts. For each such expert witness, the defendant shall

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also furnish to the prosecutor a curriculum vitae and a written description of the substance of the proposed testimony of the expert, the expert's opinion, and the underlying basis of that opinion. Failure to provide timely disclosure under this rule shall entitle the prosecutor to a continuance. If the court finds that a continuance is not an adequate remedy under the circumstances of the case, the court may impose other sanctions, including prohibiting the defendant from calling the expert at trial. Information obtained by the prosecutor under this rule may be used only for cross-examination or rebuttal of defense testimony.

(5) *Notice of Defenses.* Unless a different date is set by the court, no later than 10 days prior to trial, the defendant shall inform the prosecutor of the defendant's intention to rely upon a defense of alibi, justification, duress, entrapment, or other statutory or affirmative defense. Failure to provide timely notice under this rule shall entitle the prosecutor to a continuance. If the court finds that a continuance is not an adequate remedy under the circumstances of the case, the court may impose other sanctions, including prohibiting the defendant from asserting the designated defense. The defendant shall give notice of an insanity defense or a defense of diminished capacity due to mental disease or defect in compliance with AS 12.47.

(6) *Physical Evidence.* Defense counsel shall turn over to the prosecutor any physical evidence of the offense received by counsel. If the physical evidence is received from the client or the client's agent or acquired as a direct result of information communicated by the client, defense counsel may not be compelled to provide any information concerning the source of the evidence or the manner in which it was obtained. In such cases, the prosecutor may not reveal the source of the evidence to the jury. If the physical evidence is not received from the client or the client's agent or acquired as a direct result of information communicated by the client, defense counsel shall reveal the manner in which the physical evidence was obtained unless that information is otherwise privileged.

(d) **Regulation of Discovery.**

(1) *Advice to Refrain From Discussing Case.* Except as is otherwise provided as to matters not subject to disclosure and protective orders, neither counsel for the parties nor other prosecution or defense personnel shall advise persons (except the accused) having relevant material or information to refrain from discussing the case with opposing counsel or showing opposing counsel any relevant material, nor shall they otherwise impede opposing counsel's investigation of the case.

(2) *Additional or Newly Discovered Information.* If, subsequent to compliance with these rules or orders issued pursuant thereto, a party discovers additional material or information which is subject to disclosure, that party shall promptly notify the other party or the other party's counsel of its existence. If the additional material or information is discovered during trial, the court shall also be notified.

(3) *Materials to Remain in Exclusive Custody of Attorney.*

(A) Materials furnished to an attorney pursuant to these rules shall remain in the attorney's exclusive custody, shall be used only for the purposes of conducting the case, and shall be subject to other terms and conditions that the court may provide if the information is

(i) a criminal history record of a victim or witness;

(ii) a medical, psychiatric, psychological, or counseling record of a victim or witness;

(iii) an adoption record;

(iv) a record that is confidential under AS 47.10.090 or a similar law in another jurisdiction;

(v) a report of a presentence investigation of a victim or witness prepared pursuant to Criminal Rule 32 or a similar law in another jurisdiction;

(vi) a record of the Department of Corrections other than incident report relating to the crime with which the defendant is charged; or

(vii) any other record that the court orders be kept in the exclusive custody of the attorney.

(B) An attorney shall not disclose to a defendant the residence or business address or telephone number of a victim or witness, obtained from information provided under this rule, even if the defendant is acting as co-counsel. If the address and telephone numbers of all victims and witnesses have been obliterated, materials that had contained the address or telephone number of a victim or witness may be provided to a defendant proceeding without counsel only as allowed by AS 12.61.120.

(C) Notwithstanding a defendant's status as co-counsel, materials covered by subsection (d)(3)(A) shall remain in the exclusive custody of the defendant's attorney.

(D) If a defendant is proceeding without counsel, materials covered by subsection (d)(3)(A) may be provided to the defendant. If materials are provided to an unrepresented defendant under this paragraph, the court shall order that the materials remain in the defendant's exclusive custody, be used only for purposes of conducting the case, and be subject to other terms, conditions, and restrictions that the court may provide. The court shall also inform the defendant that violation of an order issued under this paragraph is punishable as a contempt of court.

(4) *Restriction or Deferral of Disclosure of Information.* Upon a showing of cause, the court may at any time order that specified disclosure be restricted or deferred, or make such other order as is appropriate, provided that all material and information to which a party is entitled shall be disclosed in time to permit the party's counsel to make beneficial use thereof.

(5) *Material Partially Discoverable.* When some parts of certain material are discoverable under these rules and other parts are not discoverable, as much of the material shall be disclosed as is consistent with this rule. Excision of certain material and disclosure of the balance shall be preferred to withholding of the whole. Material excised pursuant to court order shall be sealed and preserved in the records of the court, and shall be made available to the court of appeals and the supreme court in the event of an appeal.

(6) *Denial or Regulation of Disclosure — Disclosure to Court in Camera — Record of Proceedings.* Upon request of any party, the court may permit:

(i) any showing of cause for denial or regulation of disclosure, or

(ii) any portion of any showing of cause for denial or regulation of disclosure to be made to the court in camera ex parte. A record shall be made of such proceedings. If the court enters an order granting relief following such a showing, the entire record of the proceedings shall be sealed and preserved in the records of the court, to be made available to the court of appeals and the supreme court in the event of an appeal.

(e) **Sanctions.**

(1) *Failure to Comply with Discovery Rule or Order.* If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with an applicable discovery rule or an order issued pursuant thereto, the court shall order such party to permit the discovery of material and information not previously disclosed or enter such other order as it deems just under the circumstances.

(2) *Willful Violations.* Willful violation by counsel of an applicable discovery rule or an order issued pursuant thereto may subject counsel to appropriate sanctions by the court.

(f) **Omnibus Hearing.**

(1) *Time for Hearing — When Set.* If the defendant is charged with a felony, the court shall set a time for an omnibus hearing when a plea of not guilty is entered. The omnibus hearing shall be scheduled for a time when the briefing of pretrial motions should be complete.

The omnibus hearing may be cancelled by the court only upon the stipulation of counsel that there are no motions which require hearing and that discovery is complete. Counsel shall also provide the information outlined in section (f)(2)(D).

The court may set an omnibus hearing in a misdemeanor case.

(2) *Duties of Trial Court at Hearing.* At the omnibus hearing the court shall:

(A) ensure that discovery under this rule is complete;

(B) rule on any pending motions which are ripe for decision;

(C) schedule any necessary evidentiary hearings, and

(D) obtain case management information from the parties, including the expected length of trial, the likelihood of trial, and any anticipated scheduling difficulties.

(Adopted by SCO 4 October 4, 1959; amended by SCO 157 effective February 15, 1973; by SCO 211 effective July 15, 1975; by SCO 212 effective July 15, 1975; by SCO 329 effective January 1, 1979; by SCO 331 effective January 1, 1979; by SCO's 640 and 641 effective September 15, 1985; by SCO 1086 effective July 15, 1992; by SCO 1092 effective July 15, 1992; by SCO 1126 effective July 15, 1993; by SCO 1153 effective July 15, 1994; and by SCO 1191 effective July 15, 1995)

Note: AS 12.61.120, added by ch. 57, § 13, SLA 1991, amended Criminal Rule 16 by restricting discovery available to criminal defendants.

Annotations

Cases

I. In General

This rule affords limited discovery in criminal case. Stariknes v. State, Op. No. 389, 423 P2d 700 (Alaska 1967).

Where a defendant's substantive rights are not affected by the introduction into evidence of a reference to physical evidence which had been negligently destroyed by the police, the admission of the testimony is not "plain error." Torres v. State, Op. No. 1017, 519 P2d 788 (Alaska 1974).

Existence of this rule gives notice to state that evidence might be the object of discovery and should be preserved. Lauderdale v. State, Op. No. 1234, 548 P2d 376 (Alaska 1976).

This rule is designed to further discovery in order to eliminate jockeying for tactical advantage and trial by surprise. Jardine v. State, Op. No. 1245, 551 P2d 181 (Alaska 1976).

Where there is a violation of this rule not of constitutional dimensions the "harmless error" test will be applied. Des Jardins v. State, Op. No. 1245, 551 P2d 181 (Alaska 1976).

Even where violations of this rule did not prejudice defendant, matter would be remanded to trial court for hearing on sanctions that might be imposed on prosecutor under Rule 16(e)(2). Des Jardins v. State, Op. No. 1245, 551 P2d 181 (Alaska 1976).

Expansion of discovery beyond provisions contained in present rules is most appropriately done through amendment of existing rules after thorough study. Buchanan v. State, Op. No. 1316, 561 P2d 1197 (Alaska 1977).

Paragraph (d) of this rule, does not justify conducting an ex parte in camera hearing to consider evidence in conjunction with a bail reduction proceeding. Carman v. State, Op. No. 1420, 564 P2d 361 (Alaska 1977).

Order denying motion for discovery is a final order and may be appealed even if motion is not renewed. Batson v. State, Op. No. 1486, 568 P2d 973 (Alaska 1977).

Failure to order discovery of relevant material was not reversible error where the material sought to be discovered would have been merely cumulative. Braham v. State, Op. No. 1522, 571 P2d 631 (Alaska 1977).

Superior court's in camera examination of kidnap victim's journal did not deprive defendant of "effective confrontation" or of access to evidence which was potentially helpful to his defense where that portion of journal pertaining to defendant was turned over to defense and where defense could reasonably have assumed that the remainder of the journal contained no references to the defendant or the alleged crime. Morrell v. State, Op. No. 1577, 575 P2d 1200 (Alaska 1978).

Where confession of co-defendant was disclosed by prosecution for the first time after the trial began, but out of the presence of the jury, the trial court acted properly in denying a motion by the other defendants for a mistrial, in granting a continuance, and in refusing to allow the prosecution to use the confession at trial. Hawley v. State, Op. No. 2137, 614 P2d 1349 (Alaska 1980).

The remedy of exclusion of significant evidence for a violation of the discovery rules should be imposed only in rare situations, and absent substantial prejudice to the nonoffending party, the appropriate remedies are the granting of continuances, imposition of monetary sanctions, or the exercise of contempt powers by the court. State v. Lewis, Op. No. 35, 632 P2d 547 (Alaska App. 1981).

In the absence of a timely pretrial objection, hearsay testimony presented to and considered by a grand jury should be regarded on appeal as constituting admissible and fully competent evidence. Cassell v. State, Op. No. 91, 645 P2d 219 (Alaska App. 1982).

Fact that indictment charged defendant with theft of copper wire but did not allege a specific theory of theft did not deny defendant due process since liberal discovery rules permit an accused to obtain adequate discovery of the state's case and to get adequate notice of the state's theory or theories of prosecution. Williams v. State, Op. No. 106, 648 P2d 603 (Alaska App. 1982).

Defendant's motion to strike telephone record evidence based upon his constitutional right of privacy after the state had already introduced much of the evidence was properly denied on the ground that defendant had waived the objection by not making the motion at the omnibus hearing prior to trial. Hohman v. State, Op. No. 290, 669 P2d 1316 (Alaska App. 1983).

Motion to dismiss grand jury indictment on the ground that improper information was presented to the grand jury was properly denied as untimely, since the motion was not raised until during or after jury selection, and because the other evidence presented was so strong that the grand jury's decision to indict was clearly not affected by the allegedly improper information. Pritchard v. State, Op. No. 319, 673 P2d 291 (Alaska App. 1983).

Where motion to suppress evidence was filed late but prior to trial, it was abuse of discretion for the trial court to deny the motion as untimely where defendant was not personally responsible for the late filing and his attorney did not act in bad faith for the purpose of delay. Fox v. State, Op. No. 394, 685 P2d 1267 (Alaska App. 1984).

Where charge of being a felon in possession of a firearm was properly joined to kidnapping and other charges, thereby allowing the jury to be informed of defendant's prior felony conviction, which would not have been the case had the firearm possession charge been severed, trial judge did not abuse his discretion in refusing as untimely defendant's severance motion made on the morning of trial. Wortham v. State, Op. No. 414, 689 P2d 1133 (Alaska App. 1984).

A party intending to rely upon a subsistence defense to charges of violating hunting laws must make a preliminary showing at a reasonable time before trial; failure to give notice of the defense before trial or in the manner prescribed in a pretrial order may, unless excused for good cause, result in the forfeiture of the defense. State v. Eluska, Op. No. 456, 698 P2d 174 (Alaska App. 1985).

Argument that search warrants were improperly broad and premature was not made to trial court and would not therefore be considered on appeal. Stuart v. State, Op. No. 464, 698 P2d 1218 (Alaska App. 1985).

The broad rights to discovery granted a criminal defendant under the Alaska rules will render a bill of particulars unnecessary in most cases. Covington v. State, Op. No. 491, 703 P2d 436 (Alaska App. 1985).

Where the trial court permits an untimely pretrial challenge to the indictment and rules on the merits of that challenge, the challenge will not be deemed forfeited on appeal. Abruska v. State, Op. No. 502, 705 P2d 1261 (Alaska App. 1985).

An in camera examination of material submitted by the prosecutor must involve more than a cursory determination that the material is not discoverable; where there is a suggestion that the prosecutor has not submitted all the requested material, the court should inquire further. Braaten v. State, Op. No. 504, 705 P2d 1311 (Alaska App. 1985).

Where defendant's discovery request was for evidence which the state was under obligation to provide and defendant did not request action of the court regarding the request and no court action was taken, defendant's discovery request was not a discovery motion; accordingly, trial court erred in excluding the period during which the request was pending from the speedy trial computation. Miller v. State, Op. No. 511, 706 P2d 336 (Alaska App. 1985).

Violation of the affirmative duty to collect and preserve material evidence requires reversal on appeal only where the defendant is denied due process as a result of the violation; due process is violated only if the evidence, if collected and/or preserved, could possibly affect the outcome. Klumb v. State, Op. No. 575, 712 P2d 909 (Alaska App. 1986).

Failure to preserve tissue samples from the area of the victim's wounds did not violate defendant's due process rights where photographs of the wounds and the pathologist's reports provided the necessary evidence. Klumb v. State, Op. No. 575, 712 P2d 909 (Alaska App. 1986).

Although defendant had a right to be present at his omnibus hearing, his absence from the hearing was held harmless beyond a reasonable doubt despite his claim that attendance would have alerted him to the need to peremptorily challenge the trial judge and to affirmatively protect his speedy trial right. Trudeau v. State, Op. No. 581, 714 P2d 362 (Alaska App. 1986).

Failure to raise an objection at trial to the state's reliance on testimony of a sexual assault victim's physician resulted in forfeiture of the objection. Hilburn v. State, Op. No. 800, 765 P2d 1382 (Alaska App. 1988).

Defendant forfeited his argument that the prosecutor, who had participated in a videotaped interrogation of defendant, should be recused, by failing to make a motion to that effect at the omnibus hearing prior to trial. Kanulie v. State, Op. No. 1070, 796 P2d 844 (Alaska App. 1990).

This rule requires disclosure of "rebuttal" witnesses. Bostic v. State, Op. No. 3659, 805 P2d 344 (Alaska 1991).

Constitutional challenge to statute under which defendant is indicted need not be raised before trial. Gudmundson v. State, Op. No. 3780, 822 P2d 1328 (Alaska 1991).

Argument that this rule precludes trial judge from ordering defendant to submit to independent psychiatric examination unless defendant intends to raise insanity defense was rejected. Nelson v. State, Op. No. 1346, 874 P2d 298 (Alaska App. 1994).

II. Disclosure to Accused

The trial court should require the state to produce for in camera examination police reports of oral statements made to them by a witness called by the state who has testified, as well as any reports or summaries that may exist of pretrial statements made by such witness, when demand is made by the defendant. Mahle v. State, Op. No. 84, 371 P2d 21 (Alaska 1962).

The prosecution has an affirmative duty to disclose to an accused any information within its control which tends to negate the defendant's guilt. Scott v. State, Op. No. 1004, 519 P2d 774 (Alaska 1974).

Generally, rebuttal witnesses do not come within the requirement that the prosecution furnish a list of witnesses to the defense, so long as the rebuttal is true rebuttal and not an attempt to present the state's case in-chief in the rebuttal. McCurry v. State, Op. No. 1173, 538 P2d 100 (Alaska 1975).

Where the state produces a rebuttal witness whose name has not been included on witness list, the court is bound on motion to grant a continuance to allow the defense to investigate the witness' background. McCurry v. State, Op. No. 1173, 538 P2d 100 (Alaska 1975).

District court properly exercised discretion in requiring production of ampules used in breathalyzer test. Lauderdale v. State, Op. No. 1254, 548 P2d 376 (Alaska 1976).

Where failure to disclose oral statements of defendant was harmless and introduction of statement was not objected to by defense, conviction would not be reversed nor would hearing be had on sanctions under Rule 16(e)(2). Kristich v. State, Op. No. 1264, 550 P2d 796 (Alaska 1976).

This rule imposes a duty on the prosecutor to disclose the information listed in subsection (b) and other information as the court may order. Des Jardins v. State, Op. No. 1245, 551 P2d 181 (Alaska 1976).

Prosecutor has an obligation to disclose evidence which tends to negate guilt, mitigate the degree of the offense or reduce punishment. Des Jardins v. State, Op. No. 1245, 551 P2d 181 (Alaska 1976).

Witness testifying in rebuttal need not be placed on prosecution's witness list. Des Jardins v. State, Op. No. 1245, 551 P2d 181 (Alaska 1976).

When prosecution fails to disclose evidence it is required to provide until just before it plans to use it, trial court should grant a continuance to allow defense adequate time to prepare. Des Jardins v. State, Op. No. 1245, 551 P2d 181 (Alaska 1976).

Prosecutor is obliged to use diligent good faith efforts to make discoverable material available to defense counsel. Des Jardins v. State, Op. No. 1245, 551 P2d 181 (Alaska 1976).

Where defense counsel was not furnished discoverable police reports until six days before testimony was taken, but after proceedings had commenced, defense was not entitled to dismissal. Scharver v. State, Op. No. 1397, 561 P2d 300 (Alaska 1977).

This rule requires only disclosure of information in prosecution's possession. State v. Clark, Op. No. 1497, 568 P2d 406 (Alaska 1977).

Expense logs showing amounts of money and gifts given to defendants by undercover officers were relevant to defense of entrapment and denial of discovery was improper. Batson v. State, Op. No. 1486, 568 P2d 973 (Alaska 1977).

If material of which discovery is sought is relevant to defense, it must be disclosed even if disclosure would be inconsistent with law enforcement or protection of persons unless prosecution is abandoned. Braham v. State, Op. No. 1522, 571 P2d 631 (Alaska 1977).

If claim that disclosure of material sought to be discovered would be inconsistent with law enforcement or protection of persons fails, material must be disclosed to defense counsel and issue of relevance decided in adversary context. Braham v. State, Op. No. 1522, 571 P2d 631 (Alaska 1977).

Defense motion to prevent essential prosecution witness from testifying because of prosecution's failure to comply with court order to turn the witness' personal file over to defense was properly denied in the absence of a showing of prejudice to defendant of such a nature as likely to have a substantial effect on the outcome of the case, since failure of counsel to comply with discovery order should not be utilized as a basis for ultimate disposition of litigation. Johnson v. State, Op. No. 1596, 577 P2d 230 (Alaska 1978).

State's failure to preserve and produce the position and direction of fingerprints found on lamp at scene of crime did not violate Criminal Rule 16(b)(7) where the materiality of the evidence was marginal at best and there was no hint or suggestion of bad faith on the government's part. White v. State, Op. No. 1605, 577 P2d 1056 (Alaska 1978).

Trial court did not err in not dismissing the charge when the state failed to provide immediate discovery, since subsi-

trial rights of defendant were not impinged. Christie v. State, Op. No. 1644, 580 P2d 310 (Alaska 1978).

Failure of prosecution to disclose police report which contained information used on cross-examination by prosecution to impeach defendant's alibi witnesses clearly contravened the policies which underlie Criminal Rule 16. Stevens v. State, Op. No. 1658, 582 P2d 621 (Alaska 1978).

Failure of prosecution to disclose police report which it used on cross-examination constituted prejudicial error since it could not fairly be said that the error did not appreciably affect the jury's verdict. Stevens v. State, Op. No. 1658, 582 P2d 621 (Alaska 1978).

If a rebuttal witness is a person known by the prosecution to have knowledge of relevant facts, then his name, address and any statement he has given must be disclosed to defense counsel. Howe v. State, Op. No. 1780, 589 P2d 421 (Alaska 1979).

Non-disclosure of the names of rebuttal witnesses whose knowledge is reasonably not thought to be germane to the case, until a position taken by the defense during trial makes it so, is justified. Howe v. State, Op. No. 1780, 589 P2d 421 (Alaska 1979).

The state's failure to preserve and make available to the defendant the physical items from which fingerprint evidence was taken did not violate the defendant's statutory right of discovery. Wyrick v. State, Op. No. 1790, 590 P2d 46 (Alaska 1979).

Where prosecution failed to produce documents pursuant to request for discovery, but violation was in good faith, and where defendant did not request a continuance, it was not error to admit documents. Williams v. State, Op. No. 1939, 608 P2d 741 (Alaska 1979).

State had a responsibility to disclose to defense the fact that reward for witness entitled, that state's witness had been told early on that he was potential recipient, that witness had requested money when he first approached the police, and the fact that witness was paid money after he gave the initial statement. Carman v. State, Op. No. 1994, 604 P2d 1076 (Alaska 1979).

Pre-trial request for a psychiatric report to which the state had access concerning the state's key witness was properly denied where the report would not have contributed in a meaningful way to a more effective cross-examination of the witness. Gunnerud v. State, Op. No. 2091, 611 P2d 69 (Alaska 1980).

Prosecution's failure to disclose oral statement of defendant which destroyed defense theory did not require new trial where the theory was not reasonably credible. Hampton v. State, Op. No. 2283, 623 P2d 318 (Alaska 1981).

Where, on the morning of trial, the prosecutor presented defendant's attorney for the first time with a newly discovered police report containing the name and address of an apparent witness to the alleged crime, it was error for the court to deny defense motion for continuance, but the error was harmless. Russell v. Municipality of Anchorage, Op. No. 14, 626 P2d 96 (Alaska App. 1981).

The imposition of sanctions for the state's failure to make evidentiary material available to the defendant depends upon a degree of culpability as to the state weighed against the prejudice to the defendant. Putnam v. State, Op. No. 2451, 630 P2d 35 (Alaska 1981).

A tape which the prosecution inadvertently failed to disclose to the defendant prior to trial is admissible if the defendant does not suffer substantial prejudice from its admission. Fields v. State, Op. No. 2360, 629 P2d 46 (Alaska 1981).

Destruction of taped evidence which should be preserved under this rule does not deny defendant due process when the evidence merely would have been cumulative of other evidence on trial. Williams v. State, Op. No. 2366, 629 P2d 56 (Alaska 1981).

Trial court's failure to insure that prosecution witness, rather than the state, exposited disclosure of the witness' medical and psychiatric records was error, but the error was harmless where there was nothing in those records bearing on her credibility and competency that was not cumulative to her trial testimony and where those records were not inconsistent with her testimony. Spencer v. State, Op. No. 80, 642 P2d 1371 (Alaska App. 1982).

Failure of defendant at his first trial to request disclosure of evidence taken from the victim, which evidence was destroyed after the trial, waived any right he may have had to the evidence at his second trial on the same charge, reversal of his first conviction not having revived discovery rights which had already lapsed, consequently, the prosecution had no duty to preserve the evidence in question unless it was so clearly exculpatory that the prosecutor was obligated to preserve it absent a request. Carman v. State, Op. No. 206, 658 P2d 131 (Alaska App. 1983).

Where defendant was charged with obtaining or attempting to obtain money by deception from an elderly male friend, trial court's order that the State disclose all financial records upon which it intended to rely, rather than ordering production of all bank records of the victim from May 1980 through March 1981 as requested by defendant, was proper. Linne v. State, Op. No. 324, 674 P2d 1345 (Alaska App. 1983).

Although trial court should have allowed discovery of a police report concerning rape victim's activities during the period the defendant claimed he met her, the error was harmless, since the police report itself did not contain any exculpatory material, nor was there any reason to believe that any other statements taken by the police in connection with the report disclosed exculpatory information. Beaston v. State, Op. No. 504, 705 P2d 1311 (Alaska App. 1985).

Although the prosecution should have given drunk driving defendant pretrial notice of its intent to call an expert witness to testify concerning an analysis of defendant's blood taken following his arrest, it was not an abuse of discretion for trial court to permit the witness to testify. Russell v. Municipality of Anchorage, Op. No. 514, 706 P2d 687 (Alaska App. 1985).

Trial court's decision not to compel disclosure of information relating to the case obtained by police through calls to the "crime stoppers" program, a program which solicits information from the public concerning crimes under investigation, did not substantially impair the fairness of defendant's trial, or otherwise impermissibly infringe upon his constitutionally protected trial rights. Balentine v. State, Op. No. 538, 707 P2d 922 (Alaska App. 1985).

Assuming without deciding that the State had a duty to preserve police dispatch tape, the State met its burden of establishing that the destruction of the tape was done in good faith and that the defendant was not prejudiced by the destruction, that trial court did not abuse its discretion in refusing to sanction the State by dismissing the indictment against defendant. Abdulbaqui v. State, Op. No. 659, 728 P2d 1211 (Alaska App. 1986).

Failure of the prosecution to provide appropriate pretrial discovery did not require preclusion of disputed testimony since the continuance offered by the trial court would have cured any prejudice stemming from the discovery violation; however, the lack of prejudice was purely fortuitous; in future cases appellate courts will continue to scrutinize prosecutorial conduct in this area, and will not hesitate to reverse where it appears that the defendant has been prejudiced by such action. Bostle v. State, Op. No. [illegible] 772 P2d 1089 (Alaska App. 1989).

Where defendant made no showing that he was significantly disadvantaged by the introduction without prior notice of testimony regarding a statement he made to the police, the trial court's offer of a continuance was the proper remedy for the violation of this rule. Longley v. State, Op. No. 940, 776 P2d 339 (Alaska App. 1989).

Where prosecution violates this rule by not disclosing to defense counsel a witness it intends to call, the prosecution has the burden of showing that the defendant has not been prejudiced in the manner he specifically claims; if this burden is not met in regard to a violation of this rule which surfaces during trial, and the prosecution deems the evidence too important to proceed without it, the proper remedy is a mistrial rather than a continuance. Bostle v. State, Op. No. 3659, 805 P2d 344 (Alaska 1991).

A prosecutor should disclose to the defense, upon request, criminal records of jurors, at least in cases where the prosecution intends to rely on them. Tagala v. State, Op. No. 1134, 812 P2d 601 (Alaska App. 1991).

In drug case where an issue was whether the police investigation was the product of an illegal search by police informants, and the state asserted its privilege not to identify the informants, upon which the judge conducted an in camera hearing in which he questioned the informants using questions submitted by the defendant and the state and concluded that the identity of informants did not have to be revealed, the defendant was entitled to see the transcript of the in camera hearing with all information deleted that might identify the informants. Peterson v. State, Op. No. 1139, 813 P2d 685 (Alaska App. 1991).

III. Disclosure to Prosecution

The mere fact that a court orders an accused to submit pretrial information which is not specifically included in this rule does not establish that the court has abused its discretion. Scott v. State, Op. No. 1004, 519 P2d 774 (Alaska 1974).

An order requiring an accused to produce information not expressly provided for in these rules for criminal procedure does not constitute an improper promulgation of a new rule of criminal procedure. Scott v. State, Op. No. 1004, 519 P2d 774 (Alaska 1974).

The privilege against compelled self-incrimination under the Alaska Constitution prohibits extensive pretrial prosecutorial discovery in criminal proceedings. Scott v. State, Op. No. 1004, 519 P2d 774 (Alaska 1974).

The fundamental right not to incriminate one's self applies at every stage of a criminal inquiry or proceedings regardless of any judge made exclusionary or evidentiary rules. Scott v. State, Op. No. 1004, 519 P2d 774 (Alaska 1974).

A pretrial order requiring an accused to disclose the names and addresses of witnesses, to produce for inspection and copying all written or recorded statements of prospective defense or government witnesses which the accused possesses and to produce advance notice of the alibi defense together with information indicating any place or places he claims to have been, violates the accused's privilege against self-incrimination under the state Constitution. Scott v. State, Op. No. 1004, 519 P2d 774 (Alaska 1974).

A pretrial discovery order requiring an accused to furnish notice of the alibi defense does not violate an accused's privilege against self-incrimination under the state Constitution. Scott v. State, Op. No. 1004, 519 P2d 774 (Alaska 1974).

Where there was no indication that defendant ever intended to use the report of a firearms expert at trial, it was error for the court to compel its disclosure to the state. Gipson v. State, Op. No. 2066, 609 P2d 1038 (Alaska 1980).

Criminal Rule 16(c)(1) has no relevance when a person whose fingerprints are sought consents to give them. Henry v. State, Op. No. 2188, 621 P2d 1 (Alaska 1980).

This rule, as it pertains to obtaining identification evidence such as fingerprints, does not apply to persons lawfully in custody. Linton v. State, Op. No. 219, 658 P2d 1346 (Alaska App. 1983).

Trial court did not err in ruling to suppress evidence of palm print taken from defendant without a warrant while defendant was lawfully in custody. Linton v. State, Op. No. 219, 658 P2d 1346 (Alaska App. 1983).

Rule 17. Subpoena.

(a) For Attendance of Witnesses—Form—Issuance.

(1) Subpoenas shall be issued by the clerk under the seal of the court, and shall be signed and sealed but otherwise in blank. The party requesting a subpoena shall fill in the blanks before the subpoena is served.

(2) A subpoena shall

(i) state the name of the court and the title, if any, of the proceeding, and

(ii) state whether the witness is to testify on behalf of the state, a municipality, city or borough and order any witness testifying on behalf of the state, a municipality, city or borough, to appear without the prepayment of any witness fee, and

(iii) command each person to whom the subpoena is directed to attend and give testimony at the time and place specified therein.

(3) Magistrates may issue subpoenas in any proceeding before them.

(b) Defendants Unable to Pay. A subpoena shall be issued by the clerk as provided in section (a) for a defendant financially unable to pay the fees of the witness. The determination of financial inability shall be made in accordance with the criteria

HB

57

9-LS0269\F

SENATE CS FOR HOUSE BILL NO. 57(TRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE TRANSPORTATION COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES GREEN, Bunde, Toohey

A BILL

FOR AN ACT ENTITLED

"An Act relating to driver's licensing; and providing for an effective date."

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

* Section 1. AS 28.15.031(a) is amended to read:

(a) The department may not issue a driver's license to a person

(1) who is under the age of 16 years, except that the department may issue a permit under AS 28.15.051 or a restricted license under AS 28.15.121; or

(2) who is at least 16 years of age but not yet 21 years of age unless the person meets the requirements of AS 28.15.057.

* Sec. 2. AS 28.15.051(a) is amended to read:

(a) Except as provided in (b) of this section, a person who is at least 14 years of age may apply to the department for an instruction permit. The department may, after the applicant has successfully passed all parts of the examination under AS 28.15.081 other than the driving test, issue to the applicant an instruction permit. The permit allows a person, while having the permit in the person's immediate possession, to drive a specified type or class of motor vehicle on a highway or

vehicular way or area for a period not to exceed two years. The permittee must be accompanied by a person at least 25 [19] years of age who has been licensed at least one year to drive the type or class of vehicle being used, who is capable of exercising control over the vehicle and who occupies a seat beside the driver, or who accompanies and immediately supervises the driver when the permittee drives a motorcycle. An instruction permit may be renewed.

* Sec. 3. AS 28.15 is amended by adding new sections to read:

Sec. 28.15.055. PROVISIONAL DRIVER'S LICENSE. Upon application, the department may issue a provisional driver's license to a person who is at least

(1) 16 years of age but not yet 18 years of age if the person has been licensed under an instruction permit issued under AS 28.15.051 or under the law of another state with substantially similar requirements, for at least six months; or

(2) 18 years of age but not yet 21 years of age.

Sec. 28.15.057. RESTRICTIONS ON DRIVER'S LICENSE ISSUED TO A PERSON UNDER 21. (a) Except as provided under AS 28.15.051 or 28.15.055, a person who is at least 16 years of age but not yet 18 years of age may not be issued a driver's license unless the person has been licensed under an instruction permit issued under AS 28.15.051 for at least six months and has held a valid provisional driver's license issued under AS 28.15.055 for at least one year.

(b) Except as provided under AS 28.15.055, a person who is at least 18 years of age but not yet 21 years of age may not be issued a driver's license unless the person has held a valid provisional license issued under AS 28.15.055 for a period of at least one year.

(c) A person authorized to drive a motor vehicle under an instruction permit issued under AS 28.15.051 or a provisional driver's license issued under AS 28.15.055 may not drive a motor vehicle on a highway or vehicular way or area between the hours of 1:00 a.m. and 5:00 a.m. each day. This paragraph does not apply to a person authorized to drive under a provisional driver's license who is driving from the person's place of residence to the person's place of employment or from the person's place of employment to the person's residence and who is driving along the most direct highway, vehicular way or area available between the residence and the place

of employment.

* Sec. 4. AS 28.15.221(b) is amended to read:

(b) The regulations adopted under (a) of this section must [SHALL] include a designated level of point accumulation that [WHICH] identifies drivers who are habitually reckless or negligent or who are habitual or frequent violators of traffic laws, so as to show a disrespect for traffic laws and a disregard for the safety of other persons. In formulating the point system authorized by this section, the commissioner shall, in the interest of interstate uniformity, provide for suspension, revocation or denial of a driver's license, privilege to drive, or privilege to obtain a license for an accumulation of 12 or more points as a result of offenses committed during any consecutive 12-month period or 18 or more points as a result of offenses committed during any 24-month period, except for a person licensed under an instruction permit or provisional license. A person licensed under an instruction permit or provisional license shall have the person's license suspended, revoked, or denied for an accumulation of eight or more points as a result of offenses committed during any consecutive 12-month period.

* Sec. 5. AS 28.40.100(a)(8) is amended to read:

(8) "driver s license" or "license," when used in relation to driver licensing, means a license, provisional license, or permit to drive a motor vehicle, or the privilege to drive or to obtain a license to drive a motor vehicle, under the laws of this state [,] whether or not a person holds a valid license issued in this or another jurisdiction;

* Sec. 6. This Act takes effect January 1, 1997.

FISCAL NOTE

STATE OF ALASKA **BILL NO: SCS HB 57(TRA)**

1996 LEGISLATIVE SESSION

Revision Date: 2/28/96
Title: An Act relating to driver licensing...
Sponsor: Representative Green
Requestor: S JUD

Dept. Affected: Public Safety
BRU: Motor Vehicles
Component: Driver Services
COMPONENT SERIAL NO. 500

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

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	22.9	36.7	36.7	36.7	36.7	36.7
TRAVEL	5.6	0	0	0	0	0
CONTRACTUAL	62.8	2.3	2.3	2.3	2.3	2.3
SUPPLIES	0.5	0.5	0.5	0.5	0.5	0.5
EQUIPMENT	16.5	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	108.3	39.5	39.5	39.5	39.5	39.5
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES (1005)) Revenue Code	163.0	163.0	163.0	163.0	163.0	163.0

FUNDING: (Thousands of Dollars)

1002 Federal Receipts	77.1	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	31.2	39.5	39.5	39.5	39.5	39.5
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTAA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	108.3	39.5	39.5	39.5	39.5	39.5

Estimate of current year (FY 95) impact: $ _____

POSITIONS

FULL-TIME	1	1	1	1	1	1
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS (Attach a separate page if necessary)

SEE ATTACHED

Prepared By: Juanita M Hensley — Phone: 465-2650
Division: Motor Vehicles — Date: 2/28/96
Approved by Commissioner — Date: 3/5/96
Agency: Ronald L Otte, Dept of Public Safety

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FISCAL NOTE:

HB 57/Fiscal Note Analysis

In 1993, the National Highway Traffic Safety Administration (NHTSA) offered to states direct grants to assist in the implementation and evaluation of a graduated license system. In 1994, Alaska and North Carolina were the only two states to be awarded these grants. Alaska's grant was in the amount of $77.1.

Traffic crashes are the number one cause of death for youth nationwide. Alaska statistics are no different than the national statistics.

The impact this bill has on the Division of Motor Vehicles is the issuance of the full driver's license after the provisional license period is over. This bill requires the person be re-issued a driver's license without the provisional license restriction. The person will be required to pay a duplicate license fee of $10. The division issued approximately 10,000 driver's licenses in 1994 to individual's in this age group. This will generate approximately $100.0 in new general fund program receipts.

A person of this age group will have their driver's license suspended for accumulation of points at the 8 point level instead of 12 points in a 12 month period. In 1994, 1,205 warning notices were sent to individual's in this age group. It is anticipated, this bill, will cause a deterrent effect on this age group and approximately 500 of these individuals will not reach the 8 point accumulation. This will result in approximately 700 additional point suspensions yearly. Since the point suspension notices are automated, the cost the Division will incur is for the postage to mail the suspension notices to the individual. The law requires these notices to be mailed by certified mail return receipt. Postage rate for certified mail is $2.52 each.

It is estimated, 90 percent of all persons whose license is suspended will reinstate their driver's license. A $100.00 reinstatement fee is charged anytime a person has had their license suspended. This will generate approximately $63.0 in new general fund program receipts revenue. The total amount of additional new general fund program receipt revenue generated by this bill is $163.0.

The following is a cost breakdown associated with Alaska's graduated license implementation grant.

Personnel Services.....$ 4.5 (Overtime cost associated with the grant administration.)
Travel.....$ 5.6
Contractual.....$60.5
Equipment.....$ 6.5
TOTAL.....$77.1

The following analysis is an estimate of the operational cost the Division of Motor Vehicles anticipates with the passage of this bill.

		FY 97	FY 98
PERSONAL SERVICES			
1 Motor Vehicle Representative (Anchorage) 1/2 year FY 97		$18.4	$35.7
	Federal Grant Receipts	$ 4.5	
TRAVEL			
	Federal Grant Receipts	$ 5.6	
CONTRACTUAL			
Postage 700 notices (certified mail) @ $2.52 each		$ 1.8	$ 1.8
Computer (Mainframe Connection) yearly costs		$ 0.5	$ 0.5
	Federal Grant Receipts	$60.5	
$9.6 Data Processing Fees			
$30.0 Computer Programming			
$6.6 Public Service Announcements and Brochures			
$13.0 Public Opinion Survey			
$1.3 Tuition-National Judicial College for Hearing Officer Training			
SUPPLIES			
Routine office supplies		$ 0.5	$ 0.5
EQUIPMENT			
1 Complete Computer Workstation		$1.0.0	
One time costs			
	Federal Grant Receipts	$ 0.5	
Upgrade of Computer equipment and software			
	TOTAL	$108.3	$39.5

SENATE COMMITTEE REPORT

DATE: 2/28/96 FURTHER: Finance

DATE TURNED INTO OFFICE: 3/28/96

The Judiciary Committee considered HOUSE BILL NO. 57

"An Act relating to driver's licensing; and providing for an effective date."

and recommends:

|X| be replaced with ____ CS HB 57 (FIN)

| | adopt previous ____ CS _____ (_____)

| | attached amendment(s)

| | adopt Letter of Intent by _____ Committee

| | further referral to the _____ Committee

Senate Bill
| | same title
| | new title

House Bill
|X| same title
| | technical change
| | new: SCR*_____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS*	NR	DNP	AM
Lyda Green	✓	H L Ellis	X		
		Mike Sutton	X		
CHAIR: Chris T. Taylor	✓				

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
Public Safety	3/5/96	0	108.3

| | APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

the State shall at a minimum suspend, cancel, or revoke the person's CDL or his/her pending application, or disqualify the person from operating a commercial motor vehicle for a period of at least 60 consecutive days.

(h) *Reciprocity.* A State shall allow any person who has a valid CDL which is not suspended, revoked, or canceled, and who is not disqualified from operating a commercial motor vehicle, to operate a commercial motor vehicle in the State.

(i) *Alternative procedures.* A State may implement alternative procedures to the certification requirements of §383.71(a)(1), (4), and (6), provided those procedures ensure that the driver meets the requirements of those paragraphs.

§383.75 Third party testing.

(a) *Third party tests.* A State may authorize a person (including another State, an employer, a private driver training facility or other private institution, or a department, agency or instrumentality of a local government) to administer the skills tests as specified in Subparts G and H of this part, if the following conditions are met:

(1) The tests given by the third party are the same as those which would otherwise be given by the State; and

(2) The third party has an agreement with the State containing, at a minimum, provisions that:

(i) Allow the FHWA, or its representative, and the State to conduct random examinations, inspections and audits without prior notice;

(ii) Require the State to conduct onsite inspections at least annually;

(iii) Require that all third party examiners meet the same qualification and training standards as State examiners, to the extent necessary to conduct skills tests in compliance with Subparts G and H;

(iv) Require that, at least on an annual basis, State employees take the tests actually administered by the third party as if the State employee were a test applicant, or that States test a sample of drivers who were examined by the third party to compare pass/fail results; and

(v) Reserve unto the State the right to take prompt and appropriate remedial action against the third-party testers in the event that the third-party fails to comply with State or Federal standards for the CDL testing program, or with any other terms of the third-party contract.

(b) *Proof of testing by a third party.* A driver applicant who takes and passes driving tests administered by an authorized third party shall provide evidence to the State licensing agency that he/she has successfully passed the driving tests administered by the third party.

§383.77 Substitute for driving skills tests.

At the discretion of a State, the driving skill test as specified in §383.113 may be waived for a CMV operator who is currently licensed at the time of his/her application for a CDL, and substituted with either an applicant's driving record and previous passage of an acceptable skills test, or an applicant's driving record in combination with certain driving experience. The State shall impose conditions and limitations to restrict the applicants from whom a State may accept alternative requirements for the skills test described in §383.113. Such conditions must require at least the following:

(a) An applicant must certify that, during the two-year period immediately prior to applying for a CDL, he/she:

(1) Has not had more than one license (except in the instances specified in §383.21(b));

(2) Has not had any license suspended, revoked, or canceled;

(3) Has not had any convictions for any type of motor vehicle for the disqualifying offenses contained in §[illegible].51(b)(2);

(4) Has not had more than one conviction for any type of motor vehicle for serious traffic violations; and

(5) Has not had any conviction for a violation of State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with any traffic accident, and has no record of an accident in which he/she was at fault; and

(b) An applicant must provide evidence and certify that:

(1) He/she is regularly employed in a job requiring operation of a CMV, and that either:

(2) He/she has previously taken and passed a skills test given by a State with a classified licensing and testing system, and that the test was behind-the-wheel in a representative vehicle for that applicant's driver's license classification; or

(3) He/she has operated, for at least 2 years immediately preceding application for a CDL, a vehicle representative of the commercial motor vehicle the driver applicant operates or expects to operate.

SUBPART F — VEHICLE GROUPS AND ENDORSEMENTS

§383.91 Commercial motor vehicle groups.

(a) *Vehicle group descriptions.* Each driver applicant must

possess and be tested on his/her knowledge and skills, described in Subpart G of this part, for the commercial motor vehicle group(s) for which he/she desires a CDL. The commercial motor vehicle groups are as follows.

(1) *Combination Vehicle (Group A)* — Any combination of vehicles with a Gross Combination Weight Rating (GCWR) of 26,001 or more pounds provided the GVWR of the vehicle(s) being towed is in excess of 10,000 pounds.

(2) *Heavy Straight Vehicle (Group B)* — Any single vehicle with a GVWR of 26,001 or more pounds, or any such vehicle towing a vehicle not in excess of 10,000 pounds GVWR.

(3) *Small Vehicle (Group C)* — Any single vehicle, or combination of vehicles, that meets neither the definition of Group A nor that of Group B as contained in this section, but that either is designed to transport 16 or more passengers including the driver, or is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR Part 172, Subpart F).

(b) *Representative vehicle.* For purposes of taking the driving test in accordance with §383.113, a representative vehicle for a given vehicle group con-

9-LS0269\G
Ford
3/26/96

SENATE CS FOR HOUSE BILL NO. 57(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES GREEN, Bunde, Toohey

A BILL

FOR AN ACT ENTITLED

"An Act relating to driver's licensing; and providing for an effective date."

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

* **Section 1.** AS 28.15.031(a) is amended to read:

(a) The department may not issue a driver's license to a person

(1) who is under the age of 16 years, except that the department may issue a permit under AS 28.15.051 or a restricted license under AS 28.15.121; or

(2) who is at least 16 years of age but not yet 18 years of age unless the person meets the requirements of AS 28.15.057.

* **Sec. 2.** AS 28.15.051(a) is amended to read:

(a) Except as provided in (b) of this section, a person who is at least 14 years of age may apply to the department for an instruction permit. The department may, after the applicant has successfully passed all parts of the examination under AS 28.15.081 other than the driving test, issue to the applicant an instruction permit. The permit allows a person, while having the permit in the person's immediate possession, to drive a specified type or class of motor vehicle on a highway or

vehicular way or area for a period not to exceed two years. The permittee must be accompanied by a person at least 25 [19] years of age who has been licensed at least one year to drive the type or class of vehicle being used, who is capable of exercising control over the vehicle and who occupies a seat beside the driver, or who accompanies and immediately supervises the driver when the permittee drives a motorcycle. An instruction permit may be renewed.

* Sec. 3. AS 28.15 is amended by adding new sections to read:

Sec. 28.15.055. PROVISIONAL DRIVER'S LICENSE. Upon application, the department may issue a provisional driver's license to a person who is at least 16 years of age but not yet 18 years of age if the person has been licensed under an instruction permit issued under AS 28.15.051 or under the law of another state with substantially similar requirements, for at least six months.

Sec. 28.15.057. RESTRICTIONS ON DRIVER'S LICENSE ISSUED TO A PERSON UNDER 18. (a) Except as provided under AS 28.15.051 or 28.15.055, a person who is at least 16 years of age but not yet 18 years of age may not be issued a driver's license unless the person has been licensed under an instruction permit issued under AS 28.15.051 for at least six months and has held a valid provisional driver's license issued under AS 28.15.055 for at least one year.

(b) A person authorized to drive a motor vehicle under an instruction permit issued under AS 28.15.051 or a provisional driver's license issued under AS 28.15.055 may not drive a motor vehicle on a highway or vehicular way or area between the hours of 1:00 a.m. and 5:00 a.m. each day. This paragraph does not apply to a person authorized to drive under a provisional driver's license who is driving from the person's place of residence to the person's place of employment or from the person's place of employment to the person's residence and who is driving along the most direct highway, vehicular way or area available between the residence and the place of employment.

* Sec. 4. AS 28.15.221(b) is amended to read:

(b) The regulations adopted under (a) of this section must [SHALL] include a designated level of point accumulation that [WHICH] identifies drivers who are habitually reckless or negligent or who are habitual or frequent violators of traffic

laws, so as to show a disrespect for traffic laws and a disregard for the safety of other persons. In formulating the point system authorized by this section, the commissioner shall, in the interest of interstate uniformity, provide for suspension, revocation or denial of a driver's license, privilege to drive, or privilege to obtain a license for an accumulation of 12 or more points as a result of offenses committed during any consecutive 12-month period or 18 or more points as a result of offenses committed during any 24-month period**, except for a person licensed under an instruction permit or provisional license. A person licensed under an instruction permit or provisional license shall have the person's license suspended, revoked, or denied for an accumulation of eight or more points as a result of offenses committed during any consecutive 12-month period**.

*** Sec. 5.** AS 28.40.100(a)(8) is amended to read:

(8) "driver's license" or "license," when used in relation to driver licensing, means a license**, provisional license,** or permit to drive a motor vehicle, or the privilege to drive or to obtain a license to drive a motor vehicle, under the laws of this state [,] whether or not a person holds a valid license issued in this or another jurisdiction;

*** Sec. 6.** This Act takes effect January 1, 1997.

GRADUATED *Driver Licensing System*

for Young Novice Drivers

State Status
September 1995

U.S. Department of Transportation
National Highway Traffic Safety
Administration

Graduated Licensing In The United States

The American Association of Motor Vehicle Administrators (AAMVA) and the National Highway Traffic Safety Administration (NHTSA) encourage states to implement a graduated driver licensing (GDL) system. A GDL system eases young drivers into the driving environment under safer conditions prior to full unrestricted licensure. This system consists of three stages, named by the type of license possessed at each stage: learner's permit, intermediate (provisional) license, and full unrestricted license. Young drivers are required to demonstrate responsible driving behavior in each stage of licensing before advancing to the next.

Although licensing practices vary from state to state and no state has a comprehensive GDL system, several states have components of a system. Eight (8) states have three stages of licensing: California, Colorado, Maryland, Massachusetts, New York, Pennsylvania, West Virginia, and Wisconsin. These states require a learner's permit and have an intermediate license (e.g., provisional or junior license), prior to a full unrestricted license.

Four (4) states require a two-tiered licensing system and have several components of graduated licensing: Illinois, New Jersey, Oregon, and Vermont. Illinois and New Jersey require a permit prior to full unrestricted licensure. Oregon and Vermont do not require a permit but do have an intermediate license prior to full unrestricted licensure.

Four (4) additional states, Idaho, Louisiana, South Carolina, and South Dakota, do not have graduated licensing systems but do have one of the highly recommended components of such a system– nighttime driving restriction.

This booklet contains a table showing the recommended components of a GDL system, a map of states with GDL stages, and tables showing the components of licensing in states having three stages of licensing and two stages, one being an intermediate license.

States With Graduated Driver Licensing Stages
September 1995

States With Two Stages Of Licensing (*Intermediate license w/restrictions or has at least five components one being a night restriction)*
Illinois, New Jersey, Oregon, Vermont

States With Three Stages Of Licensing
California, Colorado, Maryland, Massachusetts, New York, Pennsylvania, West Virginia, Wisconsin

California

	Stage 1 Learner's Permit	Stage 2 Intermediate License	Stage 3 Full License
Eligibility	Minimum age of 15 years. Verification of birthdate/legal presence. Parents or guardian's signature accepting liability for minor on license application. Must pass provisional law test and vision test. One week waiting period if Law test failed. Simultaneous enrollment in both Driver Education and Driver Training. Provisional permit is not valid until student starts driver training or is age 17 years and 6 months. Provisional permit must be held for 30 days before taking driving test for provisional license.	Minimum age of 16 (Provisional License). Verification of birthdate/legal presence. Parents or guardian's signature accepting liability for minor on license application. Must pass provisional law test, vision test, and driving test. One week waiting period if Law test is failed. Two week waiting period if driving test is failed. Must have completed Driver Education and Driver Training (required if under 18). Certification of 30 day minimum driving practice by supervising adult driver age 25 years or older and not on probation.	Minimum age of 18. Verification of birthdate/legal presence. Must pass law and vision tests. Must pass driving test (if required).
Components	Drive only with driver age 25 years or older and not on probation. Distinctive paper permit.	Distinctive license (age 21 in 0000, provisional until 18). No accidents/maintain financial responsibility. No Failure to Appear or Failure to Pay fines. No more than two points (convicted) in 12 months.	Distinctive license (age 21 in 0000, provisional until 18).
Other Supportive Laws	Zero tolerance (.01) for under age 21. Primary safety belt law requires all passengers to wear safety belts.	Zero tolerance (.01) for under age 21. Primary safety belt law requires all passengers to wear safety belts.	Zero tolerance (.01) for under age 21. Primary safety belt law requires all passengers to wear safety belts.

Massachusetts

	Stage 1 Learner's Permit	Stage 2 Intermediate License	Stage 3 Full License
Eligibility	Minimum age 16. Vision and road sign test required. Must have parental/guardian consent.	Minimum age 16 years, 6 months (Junior License). Must have completed certified driver's education program. Must pass driving test. Must have parental consent.	Minimum age 18.
Components	Must be accompanied by licensed driver 18 years of age or older. Distinct license.	Prohibited driving between 1:00 a.m. and 4:00 a.m. unless accompanied by parent or legal guardian. Distinct license - Under 21 - Junior Operator. Youthful driver improvement actions.	Distinct license - Under 21.
Other Supportive Laws	Zero tolerance (.02) for under age 21. Secondary safety belt law – applies to all passengers.	Zero tolerance (.02) for under age 21. Secondary safety belt law – applies to all passengers.	Zero tolerance (.02) for under age 21. Secondary safety belt law – applies to all passengers.

New York
(Does Not Include New York City)

	Stage 1 Learner's Permit	Stage 2 Intermediate License	Stage 3 Full License
Eligibility	Minimum age 16. Must pass knowledge and vision tests. Parent/guardian consent required.	Minimum age 16 - Junior License. Must have Learner's Permit (no minimum period). Must pass knowledge, vision and driving tests.	Minimum age 17. Must have completed high school driver education. Must pass vision test.
Components	Must be accompanied by licensed driver - 18 years or older. Distinctive license - "Under 21" Learner's Permit. Restricted driving - applies to 16-17 year old - between 9:00 p.m. and 5:00 a.m. unless accompanied by parent/guardian.	Restricted driving - applies to 16-17 year old - between 9:00 p.m. and 5:00 a.m. unless accompanied by parent/guardian. Youthful driver improvement actions (license suspended for 2 months for single serious violation). Distinctive license - "Under 21" Conditional License.	Distinctive license - "Under 21".
Other Supportive Laws	Primary safety belt law – applies to front seat passengers.	Primary safety belt law – applies to front seat passengers.	Primary safety belt law – applies to front seat passengers.

Vermont

	Stage 1 Learner's Permit	Stage 2 Intermediate License	Stage 3 Full License
Eligibility	Permit not required. Minimum age of 15. Parent or guardian must sign application (if under 18). Must pass vision and knowledge tests, including rules of the road and signs and signals.	Minimum age of 16 - Junior Operator License. Must have valid learner's permit, have completed driver education, and pass behind-the-wheel skills test. Vision and written - [illegible] required without learner's permit. Parent or guardian consent required.	Minimum age of 18.
Components	All driving must be supervised by licensed adult at least 25 years or older in the front seat. 16 years or older must have licensed adult 18 years old or older in the front seat. Distinct license "Learner's Permit"	Youthful driver improvement actions (license can be revoked for violations). Distinct license "Junior Operator". At age 16 or older, if licensed, learner can get a motorcycle permit by passing written and skills tests.	
Other Supportive Laws	Zero tolerance (.02) for under age 18 Secondary safety belt law applies to all passengers.	Zero tolerance (.02) for under age 18 Secondary safety belt law applies to all passengers.	Zero tolerance (.02) for under age 18 Secondary safety belt law applies to all passengers.

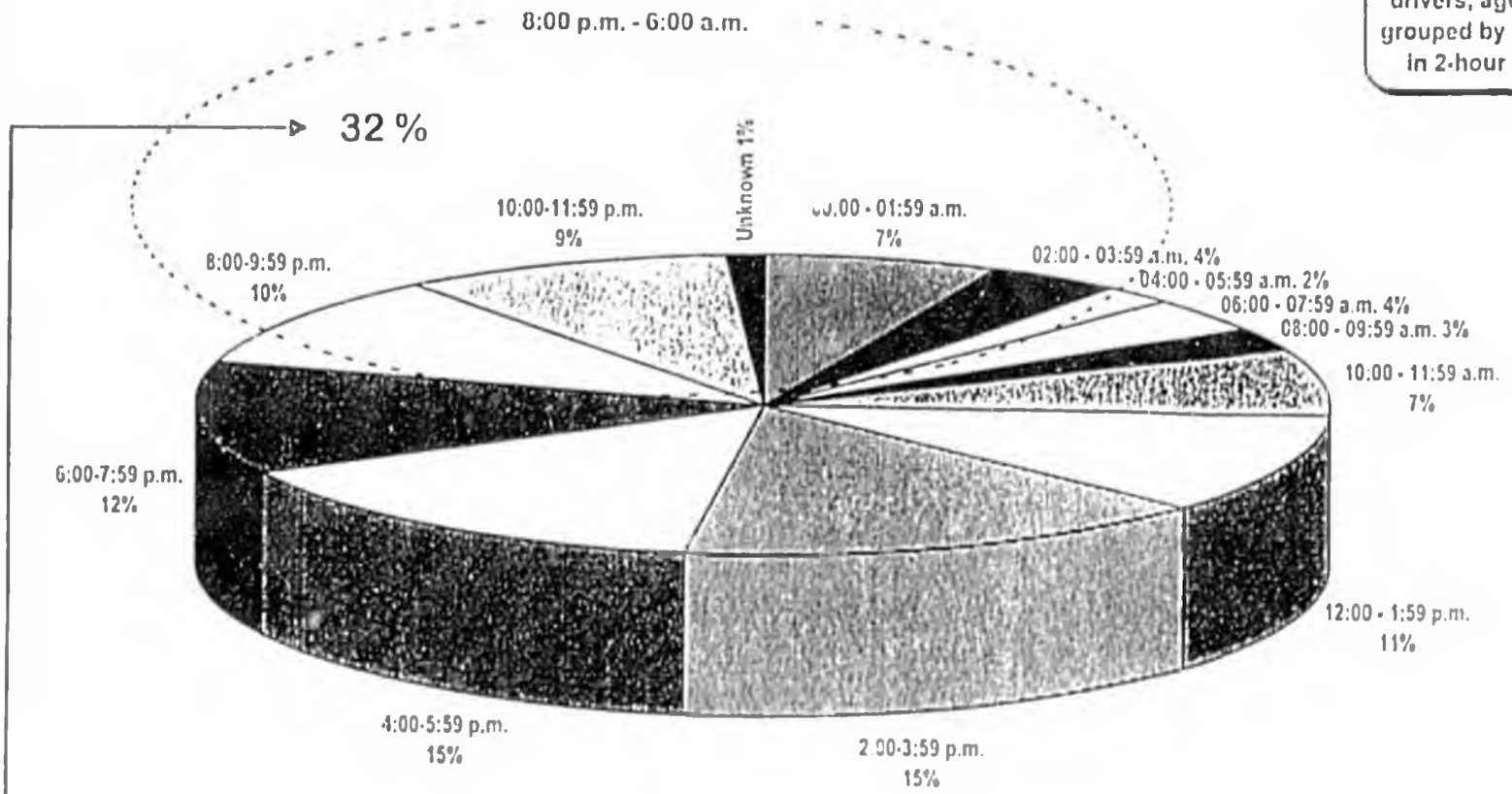
Wisconsin

	Stage 1 Learners Permit	Stage 2 Intermediate License	Stage 3 Full License
Eligibility	Minimum age 15 years, 6 months Must pass vision and knowledge test	Minimum age 16 - Probationary License Must pass knowledge, vision, and driving test Must have completed approved driver education, if under age 18	Minimum age 18 Must pass vision test
Components	If under 18, must be accompanied by parent, guardian or daughter with at least 2 years driving experience, with one other person in car If over 18, must be accompanied by licensed driver at least 25 years old with 2 years of driving experience Distinct license	Two additional demerit points on second and subsequent convictions Distinct license - Probationary - Under 21	Distinct license - Under 21
Other Supportive Laws	Zero tolerance (.00) under age 19 Secondary safety belt law - applies to all passengers	Zero tolerance (.00) under age 19 Secondary safety belt law - applies to all passengers	Zero tolerance (.00) under age 19 Secondary safety belt law - applies to all passengers

1993 YOUTH DRIVERS INVOLVED IN INJURY AND FATAL CRASHES {AGES: 16 - 20}

DATA REPRESENTED

Percentage of 1,138 injury and fatal crash drivers, ages 16 to 20, grouped by time of day, in 2-hour intervals.

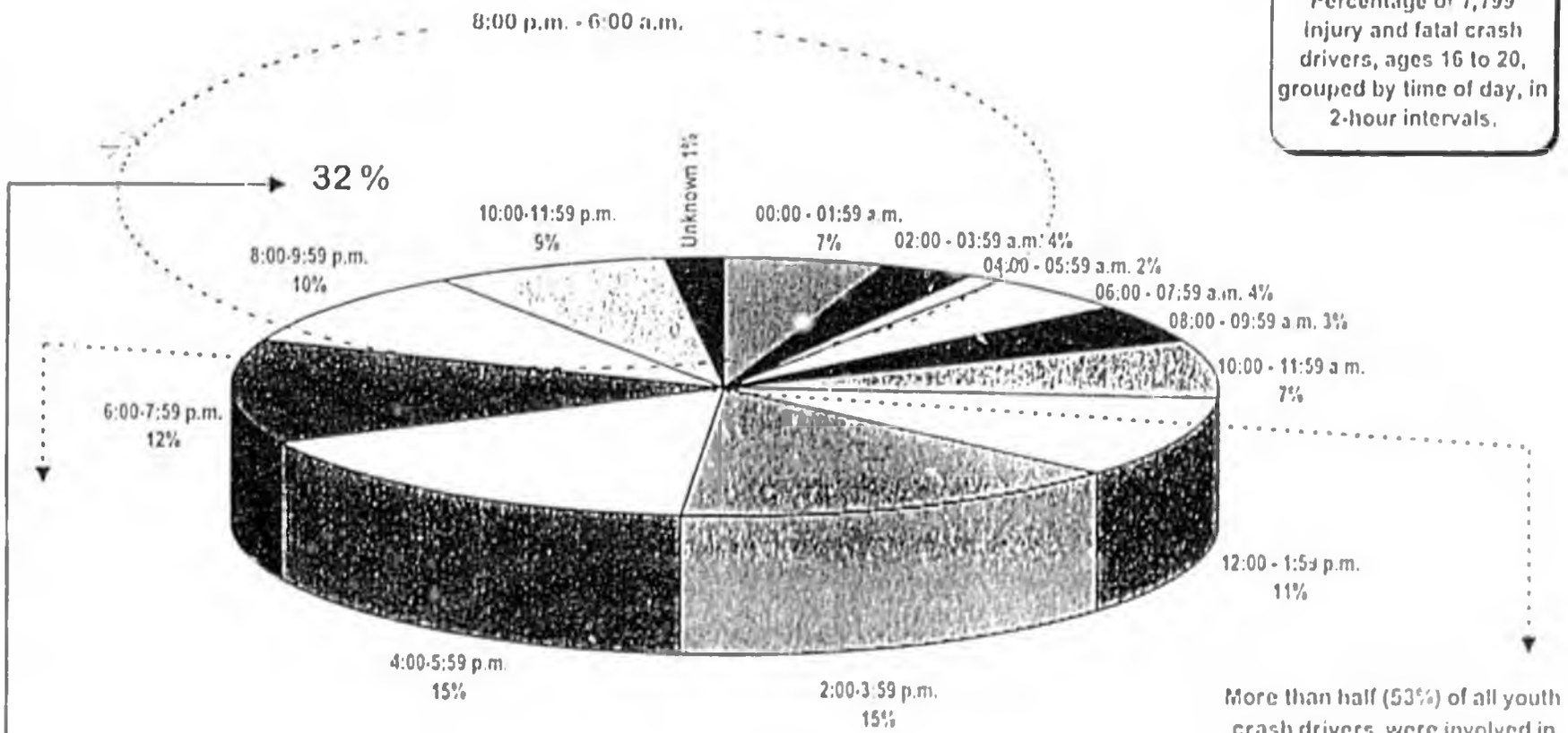


32 percent of youth crash drivers were involved in crashes which resulted in injuries and/or fatalities between the hours of 8:00 p.m. and 6:00 a.m.

1994 YOUTH DRIVERS INVOLVED IN INJURY AND FATAL CRASHES (AGES: 16 - 20)

DATA REPRESENTED

Percentage of *1,199* injury and fatal crash drivers, ages 16 to 20, grouped by time of day, in 2-hour intervals.



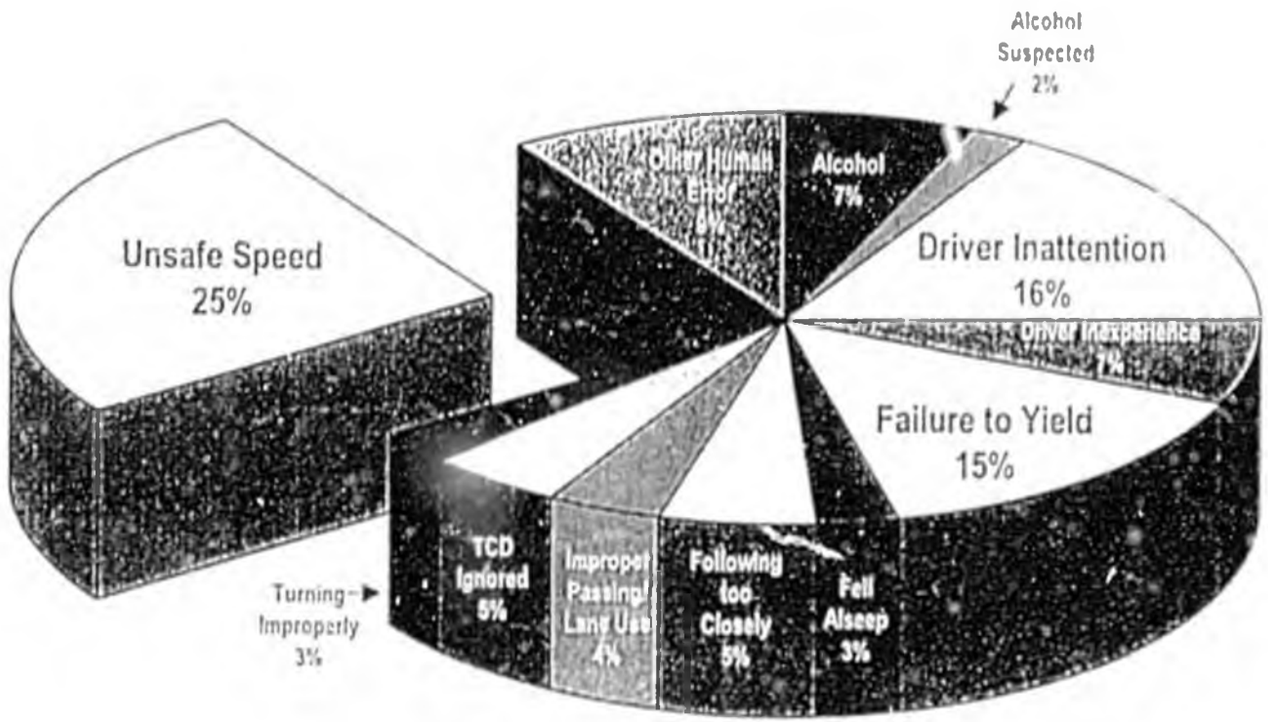
More than half (53%) of all youth crash drivers were involved in crashes which resulted in injuries and/or fatalities during the 6-hour period between Noon and 8:00 p.m.

32 percent of youth crash drivers were involved in crashes which resulted in injuries and/or fatalities between the hours of 8:00 p.m. and 6:00 a.m.

1993 HUMAN ERRORS KNOWN TO HAVE CONTRIBUTED TO INJURY AND FATAL TRAFFIC CRASHES INVOLVING YOUTH DRIVERS (AGES 16-20)

DATA REPRESENTED

Percentage of 814 known human errors contributing to injury and fatal crashes which involved a youth driver, age 16-20.



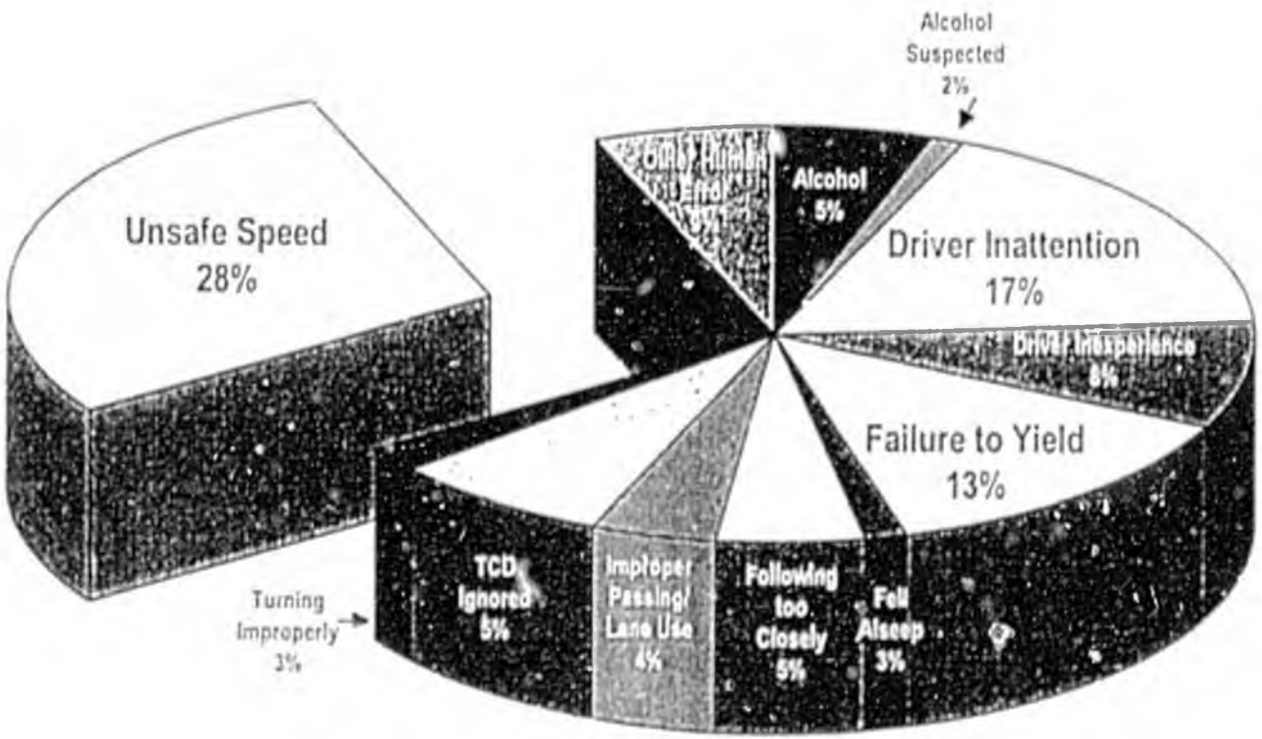
Other Known Factors

There were an additional 145 contributing factors other than human error. Of those other factors, 83 involved roadway conditions. 'Slippery pavement' was cited in 71% (59 of 83) of roadway factors. SPECIAL NOTE: *'unsafe speed' was cited in combination with 'slippery pavement' 68% of the time (40 of 59 occurrences).*

1994 HUMAN ERRORS KNOWN TO HAVE CONTRIBUTED TO INJURY AND FATAL TRAFFIC CRASHES INVOLVING YOUTH DRIVERS (AGES 16-20)

DATA REPRESENTED

Percentage of 953 known human errors contributing to injury and fatal crashes which involved a youth driver, age 16-20.



Other Known Factors

There were an additional 202 contributing factors other than human error. Of those other factors, 126 involved roadway conditions. 'Slippery pavement' was cited in 87% (110 of 126) of roadway factors

TEENAGERS

Q&A: GRADUATED LICENSING

Graduated licensing systems are designed to phase in young beginning drivers to full driving privileges as they mature and develop their driving skills, ensuring that initial experience is accumulated under lower-risk conditions. Graduated licensing systems exist in New Zealand, Victoria, Australia; and in Ontario and Nova Scotia, Canada. Each is different, but all have in common three stages — a required length of time in a learners period with supervised driving practice allowed under certain conditions, a restricted license for a set period of time with unsupervised driving allowed in some circumstances but not others; and then a full, unrestricted license provided the driver has remained free of violations or crashes. Restrictions may include night driving curfews, limits on the number and ages of passengers transported, and a low or zero blood alcohol concentration.

Laws in U.S. states include elements of graduated licensing systems. For example, nine states have night driving curfews. However, in most states unrestricted licenses can be obtained at an early age, requirements for the pre-licensure period are often minimal, and full driving privileges are typically bestowed upon initial licensure. The resulting high crash rate for the youngest drivers (the crash rate per million miles driven for 16 year-olds is eight times as high as it is for older drivers) has led states to consider adopting graduated licensing. This Q&A addresses some common arguments against graduated licensing systems.

Are graduated licensing systems discriminatory? Graduated licensing is basically a system for introducing beginners into the driving population in a low-risk manner, protecting both them and others they meet on the roads. Graduated licensing systems could apply to all first-time drivers, not just the youngest, as they do outside the United States. In the United States, however, young people make up the majority of beginning drivers, and graduated licensing systems now being considered in some states would focus on these drivers. It should be noted that young people are subject to a variety of legal restrictions. This is the case with voting, alcohol purchases, and financial obligations such as signing contracts.

The rationale for special policies for young drivers is that their crash risk is particularly high. Teenage drivers have the highest crash rate of all: 20 reported crashes per million miles driven, compared with a rate of 5 per million miles for all other ages combined. However, the rate for 16 year-olds is by far the highest (43), followed by 17 year-olds

The Insurance Institute for Highway Safety is an independent, nonprofit, scientific and educational organization. It is dedicated to reducing the losses — deaths, injuries, and property damage — resulting from crashes on the nation's highways. The Institute is supported by the American Insurance Highway Safety Association, the American Insurers Highway Safety Alliance, the National Association of Independent Insurers Safety Association, and a number of individual insurance companies. 1005 North Glebe Road, Arlington, VA 22201. 703-247-1500. April 1995.

INSURANCE INSTITUTE FOR HIGHWAY SAFETY