

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8914 SENATE JUDICIARY

**HB**

**127**

9-LS0501AU  
Luckhaupt  
1/24/96

SENATE CS FOR CS FOR HOUSE BILL NO. 127(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES KELLY, Parnell

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to penalties for certain offenses committed against a peace  
2 officer, fire fighter, correctional employee, emergency medical technician, paramedic,  
3 ambulance attendant, or other emergency responders."

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

5 \* Section 1. AS 12.55.125(a) is amended to read:

6 (a) A defendant convicted of murder in the first degree shall be sentenced to  
7 a definite term of imprisonment of at least 20 years but not more than 99 years. A  
8 defendant convicted of murder in the first degree shall be sentenced to a mandatory  
9 term of imprisonment of 99 years when

10 (1) the defendant is convicted of the murder of a uniformed or  
11 otherwise clearly identified peace officer, fire fighter, or correctional employee  
12 [OFFICER] who was engaged in the performance of official duties at the time of the  
13 murder;

14 (2) the defendant has been previously convicted of

1 (A) murder in the first degree under AS 11.41.100 or former  
2 AS 11.15.010 or 11.15.020;

3 (B) murder in the second degree under AS 11.41.110 or former  
4 AS 11.15.030; or

5 (C) homicide under the laws of another jurisdiction when the  
6 offense of which the defendant was convicted contains elements similar to first  
7 degree murder under AS 11.41.100 or second degree murder under  
8 AS 11.41.110; or

9 (3) the court finds by clear and convincing evidence that the defendant  
10 subjected the murder victim to substantial physical torture.

11 \* Sec. 2. AS 12.55.125(c) is amended to read:

12 (c) A defendant convicted of a class A felony may be sentenced to a definite  
13 term of imprisonment of not more than 20 years, and shall be sentenced to the  
14 following presumptive terms, subject to adjustment as provided in AS 12.55.155 -  
15 12.55.175:

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

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

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

27 (4) if the offense is a third felony conviction, 15 years.

28 \* Sec. 3. AS 12.55.135(d) is amended to read:

29 (d) A defendant convicted of assault in the fourth degree upon a uniformed or  
30 otherwise clearly identified peace officer, fire fighter, correctional employee  
31 [OFFICER], emergency medical technician, paramedic, ambulance attendant, or other

1 emergency responder who was engaged in the performance of official duties at the  
2 time of the assault shall be sentenced to a minimum term of imprisonment of

3 (1) 120 [30] days if the defendant violated AS 11.41.230(a)(1) or (2);

4 (2) 30 days if the defendant violated AS 11.41.230(a)(3).

5 \* Sec. 4. AS 12.55.155(e) is amended to read:

6 (e) If a factor in aggravation is a necessary element of the present offense, or  
7 requires the imposition of a presumptive term under AS 12.55.125(c)(2) [, (d)(3) OR  
8 (e)(3)], that factor may not be used to aggravate the presumptive term. If a factor in  
9 mitigation is raised at trial as a defense reducing the offense charged to a lesser  
10 included offense, that factor may not be used to mitigate the presumptive term.

11 \* Sec. 5. AS 12.55.185 is amended by adding a new paragraph to read:

12 (14) "peace officer" has the meaning given in AS 11.81.900.

13 \* Sec. 6. AS 12.55.125(d)(3) and 12.55.125(e)(3) are repealed.

14 \* Sec. 7. This Act applies to all offenses committed on or after the effective date of this  
15 Act.

# FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

BILL NO. HB 127

Revision Date: \_\_\_\_\_ Dept. Affected: Corrections  
 Title: An Act increasing the minimum term .....assult on BRU: Statewide Operations  
...peace officers.... Component: All Institutions  
 Sponsor: Rep. Kelly  
 Requester: Rep. Kelly COMPONENT SERIAL NO. \_\_\_\_\_

**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	64.2	64.2	64.2	64.2	64.2	64.2
<b>TOTAL OPERATING</b>	<b>64.2</b>	<b>64.2</b>	<b>64.2</b>	<b>64.2</b>	<b>64.2</b>	<b>64.2</b>

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

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	64.2	64.2	64.2	64.2	64.2	64.2
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>64.2</b>	<b>64.2</b>	<b>64.2</b>	<b>64.2</b>	<b>64.2</b>	<b>64.2</b>

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

**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

This bill would increase the minimum sentence for assault defined in AS 12.55.135 (d) from 30 to 120 days imprisonment.

Because this offense involves assault on a clearly identified peace officer, fire fighter or other justice or emergency personnel, these individuals would serve their enhanced sentence in a correctional facility at a cost of \$107.00 per day. Allowing for good time accounting, each inmate affected would serve an additional 60 days at \$107 per day or \$6,420.00. Data concerning assaults on this group are not kept separate from other assaults, however, contacts with the Dept. of Law and Dept. of Public Safety indicate the number is small; perhaps 10 to 12.

$60 \times 10 \times \$107 = \$64,200.00$  annual cost of increase in minimum sentence.

Prepared by: Jerry Shiner  
 Division: Commissioner's Office  
 Approved by Commissioner: Margaret M. Pugh  
 Agency: Department of Corrections

Phone: 485-4640  
 Date: 2/8/95  
 Date: 2/8/95

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# FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

BILL NO. HB 127

Revision Date: \_\_\_\_\_ Dept. Affected: Department of Law  
 Title: "...assaults in the fourth degree committed against BRU: Prosecution  
a peace officer, fire fighter, correctional officer..." Component: All  
 Sponsor: Representative Kelly  
 Requester: Representative Kelly COMPONENT SERIAL NO. 0085-0090

**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						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	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 12.55.135(d) to increase the minimum term of imprisonment from 30 days to 120 days for a person convicted of assault in the fourth degree for assaulting a peace officer, fire fighter, correctional officer, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the assault. This is a sentencing provision that will not have a fiscal impact on the Department of Law.

Prepared by: Richard I. Pegues, Director Phone: 465-3672  
 Division: Administrative Services Division Date: 2/13/95  
 Approved by Commissioner: Richard I. Pegues Date: 2/13/95  
 Agency: Department of Law  
*(Signature: Bruce M. Botelho, Attorney General)*

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# FISCAL NOTE

STATE OF ALASKA

BILL NO: HB 127

1995 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety  
 Title: "An Act increasing the minimum term of Alaska State Troopers imprisonment for assaults against a peace officer..."  
 Component: Detachments  
 Sponsor: Representative Kelly  
 Requestor: (H) State Affairs COMPONENT SERIAL NO. 0799

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

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL EXPENDITURES</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CHANGE IN REVENUES ( )</b> <small>Revenue Code</small>	-0-	-0-	-0-	-0-	-0-	-0-

**FUNDING: (Thousands of Dollars)**

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

Estimate of current year (FY 95) impact: \$ 0-

**POSITIONS:**

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

ANALYSIS: (Attach a separate page if necessary.)  
 No significant fiscal impact is anticipated.

Prepared By: Francis C. Allan Phone: 289-5691  
 Division: Alaska State Troopers Date: 02/02/95  
 Approved by Commissioner: *Del Smith* Date: 2/10/95  
 Agency: Ronald L. Otte, Dept. of Public Safety

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# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. CSHB 127 (JUD)

Revision Date: 1/24/96 Dept. Affected: Department of Law  
 Title: "...penalties for certain offenses committed against BRU: Criminal Division  
a peace officer, fire fighter, corrections employee..." Component: Criminal Division  
 Sponsor: Representative Kelly  
 Requester: Senate Judiciary 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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

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 various criminal statutes prescribing mandatory terms of imprisonment for crimes committed against emergency personnel (peace officers, fire fighters, correctional officers, and other emergency responders) to change the term "correctional officer" to "correctional employee." The bill has the effect of extending the state's deterrent mandatory sentencing provisions to help deter crimes against non-uniform correctional employees, such as cooks and maintenance workers, who also work in the state's correctional institutions. There will not be a fiscal impact for the Department of Law.

*Richard I. Pegues*

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

Phone: 465-3672  
 Date: 1/24/96  
 Date: 1/24/96

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# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO: CSHB 127 (JUD)

Revision Date: 1/24/96 Dept. Affected: Public Safety  
 Title: "An Act increasing the minimum term of imprisonment for assault against a peace officer" BRU: Alaska State Troopers  
 Sponsor: Representative Kelly Component: Detachments  
 Requestor: (S) Judiciary COMPONENT SERIAL NO. 0799

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

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

**FUNDING: (Thousands of Dollars)**

1002 Federal Receipts						
1003 GE Match						
1004 GE						
1005 GE/Program Receipts						
1006 GE/MHTIA						
Other						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 95) impact: \$ \_\_\_\_\_

**POSITIONS:**

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

ANALYSIS: (Attach a separate page if necessary.)

No significant fiscal impact is anticipated.

Prepared By: Sandy Perry-Prevost, Special Assistant to the Commissioner Phone: 465-4322  
 Division: Commissioner's Office Date: 01/24/96  
 Approved by Commissioner: *Ronald L. Otto* Date: 1/24/96  
 Agency: Ronald L. Otto, Dept. of Public Safety

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# Alaska State Legislature

REPRESENTATIVE  
PETER KELLY

Mailing Address:

119 N. Cushman, Suite 203

Fairbanks, Alaska 99701

(907) 456-8161

Write to Juneau  
State Capitol  
Juneau, Alaska  
99801-1182  
(907) 465-2327

House District 31

## House Of Representatives

November 14 , 1995

The Honorable Judge Robin Taylor  
Chairman, Senate Judiciary Committee  
P.O. Box 1441  
Wrangell, Alaska 99929-1441

Dear Senator Taylor, *Robin*

I have been working on juvenile crime issues with local Police, Troopers, Juvenile Officers, and Judges. I asked Presiding Judge Richard Savell to explain the present sentencing process and learned that HB 127 needs at least one other section dealing with aggravating factors in sentencing, and that there are problems with the existing presumptive sentencing guidelines.

In our discussion of HB 127 last session, I believe you alluded to this problem, but it is frankly more complex than my understanding of the judicial process. I have enclosed Judge Savell's letter on this issues and I hope that we can solve this problem by amending HB 127.

Apparently it is not now possible for a judge to sentence an individual as severely for assaulting a police officer as for assaulting other citizens. As I understand it, the circumstances in which aggravating factors may be applied under AS 12.55.155(a) do not include the assault against a police officer sentencing requirements of AS 12.55.125(d), and (e)(1)-(3). The court is treating this as a drafting error. Unfortunately, it is too serious for a fix by our revisor. I have added a new Section 6 to HB 127 which I believe addresses this issue.

Additionally, the presumptive sentencing for assault against a police officer, et al, in AS 12.55.125(a),(b), and (c) appears to limit the sentencing options. It seems the interplay between the sentencing requirements under presumptive sentencing and "aggravators" creates a situation that reduces the sentencing options of a judge, rather than increasing them.

I believe this is a constructional artifact. I am open to suggestions. Perhaps we should modify AS 12.55.125 (a), (b) and (c), to make an offense against a peace officer a minimum sentence rather than a presumptive sentence?

AS 12.55.155(c)(13) makes conduct knowingly committed against a peace officer an aggravating factor, so I do not exactly know how to improve the aggravating factors. Perhaps, Senator, you can make a suggestion in this matter.

The Honorable Robin Taylor  
October 13, 1995  
Page 2.

HB 127 now includes several valuable clarification's to the original statutes. I hope you will feel free to provide an amendment setting the appropriate minimum sentencing term, be it 30, 45, 60, or 120 days, as well as other amendments needed.

Sincerely Yours,

Representative Pete Kelly

A handwritten signature in cursive script, appearing to read "Pete Kelly".

Attachment: Draft CS for HB 127.  
Letter from Presiding Judge R. Savell



**Superior Court**

**State of Alaska**

FOURTH JUDICIAL DISTRICT

Chambers of  
RICHARD D. SAVELL, Judge

604 BARNETTE STREET  
FAIRBANKS, ALASKA  
99701

September 28, 1995

The Honorable Peter Kelly  
Alaska State Legislature  
House of Representatives  
119 N. Cushman Street, Suite 203  
Fairbanks, Alaska 99701

Dear Representative Kelly:

Thank you for sending me your new draft of HB 127 for review. Section 6 appears to correct the legislature's oversight as found in Edwin v. State, 762 P.2d 499 (Alaska App. 1988).

I have encountered what I believe to be a more basic problem with the sentencing scheme for first time felony offenders who are convicted of third degree assault for conduct "knowingly directed at a police officer." While the inclusion of a presumptive sentence of one year was undoubtedly intended to elevate the seriousness with which this offense is treated for sentencing, in some respects it has the opposite effect. Let me give you an example.

Consider what might be a typical third degree assault. The defendant, who has been convicted of DWI and/or disorderly conduct in the past (both misdemeanors) is a first felony offender. His Assault 3<sup>o</sup> conviction arises from him firing or otherwise using a gun in a dangerous and threatening manner. The offense and the offender's history suggest the need for alcohol abuse evaluation and treatment and anger management counseling.

If the victim is a civilian neighbor, a judge can sentence the defendant to more than one year, requiring the offender to serve some time and suspend other time (e.g., 18 months with 12

The Honorable Peter Kelly  
September 28, 1995  
Page 2

months suspended.) The suspended time allows for probation supervision. The offender can then be monitored for a period of years. The judge can also require that the person attend anger management and alcohol treatment as conditions of probation. If the person violates the law or fails to get the treatment, the judge can impose the suspended year of imprisonment. This sentence can thus be used to monitor, require treatment to aid rehabilitation, and give the additional year of jail time if the defendant does not comply with the treatment requirement.

The possibility of a sentence in excess of one year and treatment and suspended time does not exist if the victim is a law enforcement officer. Under the same facts, the offender would have to be given a presumptive sentence of one year. Because no aggravators are found by "clear and convincing evidence" to apply, the sentence cannot be enhanced nor may any portion of the time be suspended. This also means that the court may not order probation. This means the defendant will not be supervised after the year is served. Without probation, the court may not require the defendant to get any treatment after being released from jail.

Under this analysis, there are less "teeth" and less protection in the case with the presumptive sentence than with the other. This has been a source of frustration for me in my sentencing role.

My purpose is to identify a problem, not to endorse any particular solution. Among other possible solutions would be converting "knowing conduct directed at a peace officer" into an aggravating factor in presumptive and non-presumptive cases [see Wylie v. State, 797 P.2d 651 (Alaska App. 1970)] or converting the presumptive sentence into a mandatory minimum sentence.

I hope you find this information helpful. Thank you for seeking my input. I am sorry for the delay in responding. My trial schedule has been particularly taxing of late.

Sincerely,



RICHARD D. SAVELL  
Presiding Judge

RDS:bj0

9-LS0501AK ✓  
Chenoweth  
7/26/95

SENATE CS FOR CS FOR HOUSE BILL NO. 127( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES KELLY, Parnell

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to penalties for certain offenses committed against a peace  
2 officer, fire fighter, correctional employee, emergency medical technician, paramedic,  
3 ambulance attendant, or other emergency responders."

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

5 \* Section 1. AS 12.55.125(a) is amended to read:

6 (a) A defendant convicted of murder in the first degree shall be sentenced to  
7 a definite term of imprisonment of at least 20 years but not more than 99 years. A  
8 defendant convicted of murder in the first degree shall be sentenced to a mandatory  
9 term of imprisonment of 99 years when

10 (1) the defendant is convicted of the murder of a uniformed or  
11 otherwise clearly identified peace officer, fire fighter, or correctional employee  
12 [OFFICER] who was engaged in the performance of official duties at the time of the  
13 murder:

14 (2) the defendant has been previously convicted of

1 (A) murder in the first degree under AS 11.41.100 or former  
2 AS 11.15.010 or 11.15.020;

3 (B) murder in the second degree under AS 11.41.110 or former  
4 AS 11.15.030; or

5 (C) homicide under the laws of another jurisdiction when the  
6 offense of which the defendant was convicted contains elements similar to first  
7 degree murder under AS 11.41.100 or second degree murder under  
8 AS 11.41.110; or

9 (3) the court finds by clear and convincing evidence that the defendant  
10 subjected the murder victim to substantial physical torture.

11 \* Sec. 2. AS 12.55.125(c) is amended to read:

12 (c) A defendant convicted of a class A felony may be sentenced to a definite  
13 term of imprisonment of not more than 20 years, and shall be sentenced to the  
14 following presumptive terms, subject to adjustment as provided in AS 12.55.155 -  
15 12.55.175:

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

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

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

27 (4) if the offense is a third felony conviction, 15 years.

28 \* Sec. 3. AS 12.55.125(d) is amended to read:

29 (d) A defendant convicted of a class B felony may be sentenced to a definite  
30 term of imprisonment of not more than 10 years, and shall be sentenced to the  
31 following presumptive terms, subject to adjustment as provided in AS 12.55.155 -

1 12.55.175:

2 (1) if the offense is a second felony conviction, four years;

3 (2) if the offense is a third felony conviction, six years;

4 (3) if the offense is a first felony conviction, and the defendant  
5 knowingly directed the conduct constituting the offense at a uniformed or otherwise  
6 clearly identified peace officer, fire fighter, correctional employee [OFFICER],  
7 emergency medical technician, paramedic, ambulance attendant, or other emergency  
8 responder who was engaged in the performance of official duties at the time of the  
9 offense, two years.

10 \* Sec. 4. AS 12.55.125(e) is amended to read:

11 (e) A defendant convicted of a class C felony may be sentenced to a definite  
12 term of imprisonment of not more than five years, and shall be sentenced to the  
13 following presumptive terms, subject to adjustment as provided in AS 12.55.155 -  
14 12.55.175:

15 (1) if the offense is a second felony conviction, two years;

16 (2) if the offense is a third felony conviction, three years;

17 (3) if the offense is a first felony conviction, and the defendant  
18 knowingly directed the conduct constituting the offense at a uniformed or otherwise  
19 clearly identified peace officer, fire fighter, correctional employee [OFFICER],  
20 emergency medical technician, paramedic, ambulance attendant, or other emergency  
21 responder who was engaged in the performance of official duties at the time of the  
22 offense, one year;

23 (4) if the offense is a first felony conviction, and the defendant violated  
24 AS 08.54.520(a)(7) - (10), one year.

25 \* Sec. 5. AS 12.55.135(d) is amended to read:

26 (d) A defendant convicted of assault in the fourth degree upon a uniformed or  
27 otherwise clearly identified peace officer, fire fighter, correctional employee  
28 [OFFICER], emergency medical technician, paramedic, ambulance attendant, or other  
29 emergency responder who was engaged in the performance of official duties at the  
30 time of the assault shall be sentenced to a minimum term of imprisonment of 120 [30]  
31 days.

1 \* Sec. 6. AS 12.55.155(a) is amended to read:

2 (a) If a defendant is convicted of an offense and is subject to sentencing under  
3 AS 12.55.125(c), (d), (e)(1) - (3) [(d)(1), (d)(2), (e)(1), (e)(2)], or (i) and

4 (1) the presumptive term is four years or less, the court may decrease  
5 the presumptive term by an amount as great as the presumptive term for factors in  
6 mitigation or may increase the presumptive term up to the maximum term of  
7 imprisonment for factors in aggravation.;

8 (2) the presumptive term of imprisonment is more than four years, the  
9 court may decrease the presumptive term by an amount as great as 50 percent of the  
10 presumptive term for factors in mitigation or may increase the presumptive term up  
11 to the maximum term of imprisonment for factors in aggravation.

12 \* Sec. 7. AS 12.55.185 is amended by adding a new paragraph to read:

13 (14) "peace officer" has the meaning given in AS 11.81.900.

14 \* Sec. 8. This Act applies to all offenses committed on or after the effective date of this

15 Act.

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. SSSB 52

Revision Date: \_\_\_\_\_  
Title: Capital Punishment for Murder

Dept. Affected: Alaska Court System  
BRU: Trial Courts  
Component: \_\_\_\_\_

Sponsor: Sens. Taylor, Pearco  
Requestor: \_\_\_\_\_

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		375.9	375.9	375.9	375.9	375.9
TRAVEL		142.2	142.2	142.2	142.2	142.2
CONTRACTUAL		511.8	511.8	511.8	511.8	511.8
SUPPLIES		7.0	7.0	7.0	7.0	7.0
EQUIPMENT		31.7				
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>00</b>	<b>1,068.6</b>	<b>1,036.9</b>	<b>1,036.9</b>	<b>1,036.9</b>	<b>1,036.9</b>

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

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

Fund Source (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		1,068.6	1,036.9	1,036.9	1,036.9	1,036.9
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
<b>TOTAL</b>		<b>1,068.6</b>	<b>1,036.9</b>	<b>1,036.9</b>	<b>1,036.9</b>	<b>1,036.9</b>

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

Positions

Full-Time		40	40	40	40	40
Part-Time		30	30	30	30	30
Temporary		10	10	10	10	10

ANALYSIS: (Attach a separate page if necessary)

See attached analysis

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

Phone: 264-8228  
Date: 02/06/96

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

Date: 02/06/96

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**Alaska Court System**

**Fiscal Analysis**

**SSSB 52**

Personal Services

<u>Position</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Pro Tem Judge, Anchorage Trial Courts, 50% vested, PPT, 12 months	\$48,300	\$29,779	\$78,079
Pro Tem Judge, Anchorage Trial Courts, 50% vested, PPT, 12 months	48,300	29,779	78,079
Pro Tem Judge, Fairbanks Trial Courts, 50% vested, PPT, 6 months	24,501	14,933	39,434
Law Clerk I, Anchorage Trial Courts, range 13D, PFT, 12 months	31,824	13,549	45,373
Law Clerk I, Anchorage Trial Courts, range 13D, PFT, 12 months	31,824	13,549	45,373
Law Clerk I, Fairbanks Trial Courts, range 13D, PFT, 12 months	36,672	14,835	51,507
Law Clerk I, Anchorage Appellate Courts, range 15D, PFT, 12 months	36,672	14,835	51,507
Bailiff, Statewide, range 6A, NPP, 24 months	38,184	3,647	41,831
			431,183

Offset cost of existing caseload -

*Currently, first degree murder cases experience a 50% trial rate and last approximately one month. Using this experience, the court could expect five trials and to incur approximately 5 months of trial. The proposed legislation will result in approximately 39 months of trial activity (see jury fees in the contractual section below). Therefore, the cost offset is computed at 5/39 of the expected personnel costs.*

	(55,300)
Net personal services	375,883

*Based on the fiscal note submitted by the Department of Law, the court system anticipates needing additional judicial staff to carry the workload of active judges assigned to capital offense cases. The court will use 50% vested pro tem judges, which are among the least-costly judicial positions available. Additional law clerks are required for extensive legal research of motions and other legal questions. Funding is requested for two non-permanent bailiffs, which will serve in the designated trial site.*

Travel

Jury sequestration costs - transportation, meals and lodging	126,000
10 innocence/guilt trials with 18 jurors, 7 days in deliberation each, @ \$100 a day	

Offset cost of existing caseload -

*See offset note in personal services.*

	(16,200)
Net travel	142,200

*Death penalty cases are often subject to intense media exposure, which may initiate changes in venue. High jury sequestration costs are anticipated due to lengthy deliberations.*

Contractual

Jury fees - 10 innocence/guilt trial @ 66 days each (3 month), 18 jurors @ \$25 a day	386,100
and 9 sentencing trials @ 22 day each (1 month), 18 jurors @ \$25 a day	
Contractual security guard to staff metal detectors	10,000
Transcription fees - 19 transcripts, 5,000 pages each at \$2.00 a page	190,000
Freight for high security equipment kit	1,000
	587,100
Total contractual services	587,100

Offset cost of existing caseload -

*See offset note in personal services.*

	(75,300)
Net contractual services	511,800

*See additional note on contractual costs on the next page.*

**Alaska Court System**  
**Fiscal Analysis (continued)**  
**SSSB 52**

*The Department of Law expects to prosecute 10 capital offences each year. Capital offense trials will be split into 2 separate trials with each lasting 2 to 6 months. The court anticipates extraordinary jury costs from calling additional jurors, extended juror selection questioning, the need for alternate jurors and lengthy trials. The court anticipates high transcription costs resulting from preparation of the voluminous record for capital offense trials.*

**Supplies**

Office and courtroom supplies for new positions and trials. 7,000

**Equipment (one-time cost)**

Standard office equipment and reference materials for law clerks 6,720

Portable high security equipment kit, consisting of a walk-through metal detector, temporary building card key system and video monitoring system. Will be shipped to trial site. 25,000

31,720

Total estimated costs \$1,068,603



# ALASKA STATE EMPLOYEES ASSOCIATION

AFSCME Local 52, AFL-CIO

February 27, 1995

The Honorable Representative Pete Kelly  
State Capital Building  
Juneau, Alaska 99801

Dear Representative Kelly,

As the prime sponsor of House Bill 127, I am writing to request your consideration of an Amendment to this legislation that would include Adult Probation Officers, Juvenile Probation Officers, Fish and Wildlife Protection Officers and Nurses who work in Correctional Institutions.

It is my opinion that these state employees are at risk of assault from persons that they serve in their professional capacities. As the President of Alaska State Employees Association, I want to ensure that members of ASEA who are at risk as a result of their employment, are protected under this statute. That protection will come in the form of deterrence of criminal behavior directed against them and prosecution when an assault does occur.

The amendment I am requesting could be added during hearings on this legislation before either the House Judiciary Committee or the House Finance Committee. Additionally, I would welcome the opportunity to discuss with you the specific language contained in this proposed amendment.

Thank you for your consideration of this legislative amendment request to House Bill 127. I can be reached at the number above at your earliest convenience.

Sincerely,

Kelly E. Brown, President  
Alaska State Employees Association  
American Federation of State, County  
and Municipal Employees, Local 52

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Fairbanks, AK 99701  
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TOLL free 800 478-ASEA

DIVISION OF LEGAL 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

January 30, 1995

**SUBJECT:** Sectional Summary of HB 127. (Work Order No. 9-LS0501\A)

**TO:** Representative Pete Kelly

**FROM:** Gerald P. Luckhaupt *JPL*  
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 increase the mandatory minimum jail term for assault in the fourth degree committed against a "peace officer, fire fighter, correctional officer, emergency medical technician, paramedic, ambulance attendant, or other emergency responder" from 30 days to 120 days

Section 2 of the bill provides an applicability section.

GPL glc  
95-098 glc

# STATE OF ALASKA

## DEPARTMENT OF CORRECTIONS

NORTHERN REGIONAL OFFICE

315 Barnette Street #207

Fairbanks, Alaska 99701



Fax Number: 452-3539

Telephone Number: 451-7762

Fax Number: \_\_\_\_\_ # of Pages: 0 + C

TO: Rep. Peter Kelly DATE: 2/28/95

LOCATION: Juneau / State House

FROM: Steve Widmer, Chief P.O., No. Region

COMMENTS:

*Pete: Thank you for the response. We appreciate the support -- I'm sending your HB 127 info. out to the "field", to my district offices in the region. Take care, and visit when in town?*

*Steve Widmer*

The information contained in this fax is confidential and/or privileged. This fax is intended to be reviewed by only the individual named above. If the reader of the TRANSMITTAL PAGE is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination or copying of the fax or the information contained herein is prohibited. If you received this fax in error, please immediately notify the sender by telephone and return this fax to the sender at the above address. Thank you.

# Alaska State Legislature

REPRESENTATIVE  
PETER KELLY

Mailing Address  
119 N. Cushman, Suite 203  
Fairbanks, Alaska 99701  
(907) 456-8161



Write to Jurgen  
State Capitol  
Juneau, Alaska  
99801-1182  
(907) 465-2327

House District 31

## House Of Representatives

February 14, 1995

House State Affairs Committee  
The Honorable  
Jeannette James, Chairman

### HB 127

#### Fiscal Note Summary:

<u>Department</u>	<u>Dollars</u>
Corrections	64.2
Law	0
Public Safety	0
Total	64.2

9-LS0501R  
Luckhaupt  
1/19/96

SENATE CS FOR CS FOR HOUSE BILL NO. 127( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES KELLY, Parnell

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to penalties for certain offenses committed against a peace  
2 officer, fire fighter, correctional employee, emergency medical technician, paramedic,  
3 ambulance attendant, or other emergency responders."

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

5 \* Section 1. AS 12.55.125(a) is amended to read:

6 (a) A defendant convicted of murder in the first degree shall be sentenced to  
7 a definite term of imprisonment of at least 20 years but not more than 99 years. A  
8 defendant convicted of murder in the first degree shall be sentenced to a mandatory  
9 term of imprisonment of 99 years when

10 (1) the defendant is convicted of the murder of a uniformed or  
11 otherwise clearly identified peace officer, fire fighter, or correctional employee  
12 [OFFICER] who was engaged in the performance of official duties at the time of the  
13 murder;

14 (2) the defendant has been previously convicted of

1 (A) murder in the first degree under AS 11.41.100 or former  
2 AS 11.15.010 or 11.15.020;

3 (B) murder in the second degree under AS 11.41.110 or former  
4 AS 11.15.030; or

5 (C) homicide under the laws of another jurisdiction when the  
6 offense of which the defendant was convicted contains elements similar to first  
7 degree murder under AS 11.41.100 or second degree murder under  
8 AS 11.41.110; or

9 (3) the court finds by clear and convincing evidence that the defendant  
10 subjected the murder victim to substantial physical torture.

11 \* Sec. 2: AS 12.55.125(c) is amended to read:

12 (c) A defendant convicted of a class A felony may be sentenced to a definite  
13 term of imprisonment of not more than 20 years, and shall be sentenced to the  
14 following presumptive terms, subject to adjustment as provided in AS 12.55.155 -  
15 12.55.175:

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

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

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

27 (4) if the offense is a third felony conviction, 15 years.

28 \* Sec. 3: AS 12.55.125(d) is amended to read:

29 (d) A defendant convicted of a class B felony may be sentenced to a definite  
30 term of imprisonment of not more than 10 years, and shall be sentenced to the  
31 following presumptive terms, subject to adjustment as provided in AS 12.55.155 -

1 12.55.175:

2 (1) if the offense is a second felony conviction, four years;

3 (2) if the offense is a third felony conviction, six years;

4 (3) if the offense is a first felony conviction, and the defendant  
5 knowingly directed the conduct constituting the offense at a uniformed or otherwise  
6 clearly identified peace officer, fire fighter, correctional employee [OFFICER],  
7 emergency medical technician, paramedic, ambulance attendant, or other emergency  
8 responder who was engaged in the performance of official duties at the time of the  
9 offense, two years.

10 \* Sec. 4. AS 12.55.125(e) is amended to read:

11 (e) A defendant convicted of a class C felony may be sentenced to a definite  
12 term of imprisonment of not more than five years, and shall be sentenced to the  
13 following presumptive terms, subject to adjustment as provided in AS 12.55.155 -  
14 12.55.175:

15 (1) if the offense is a second felony conviction, two years;

16 (2) if the offense is a third felony conviction, three years;

17 (3) if the offense is a first felony conviction, and the defendant  
18 knowingly directed the conduct constituting the offense at a uniformed or otherwise  
19 clearly identified peace officer, fire fighter, correctional employee [OFFICER],  
20 emergency medical technician, paramedic, ambulance attendant, or other emergency  
21 responder who was engaged in the performance of official duties at the time of the  
22 offense, one year;

23 (4) if the offense is a first felony conviction, and the defendant violated  
24 AS 08.54.520(a)(7) - (10), one year.

25 \* Sec. 5. AS 12.55.135(d) is amended to read:

26 (d) A defendant convicted of assault in the fourth degree upon a uniformed or  
27 otherwise clearly identified peace officer, fire fighter, correctional employee  
28 [OFFICER], emergency medical technician, paramedic, ambulance attendant, or other  
29 emergency responder who was engaged in the performance of official duties at the  
30 time of the assault shall be sentenced to a minimum term of imprisonment of

31 (1) 120 [30] days if the defendant violated AS 11.41.230(a)(1) or (2);

1  
2  
3  
4  
5

(2) 30 days if the defendant violated AS 11.41.230(a)(3).

\* Sec. 6. AS 12.55.185 is amended by adding a new paragraph to read:

(14) "peace officer" has the meaning given in AS 11.81.900.

\* Sec. 7. This Act applies to all offenses committed on or after the effective date of this Act.

9-LS0501MM ✓  
Luckhaupt  
1/22/96

SENATE CS FOR CS FOR HOUSE BILL NO. 127( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsors: REPRESENTATIVES KELLY, Parnell

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to penalties for certain offenses committed against a peace  
2 officer, fire fighter, correctional employee, emergency medical technician, paramedic,  
3 ambulance attendant, or other emergency responders."

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

5 = Section 1. AS 12.55.125(a) is amended to read:

6 (a) A defendant convicted of murder in the first degree shall be sentenced to  
7 a definite term of imprisonment of at least 20 years but not more than 99 years. A  
8 defendant convicted of murder in the first degree shall be sentenced to a mandatory  
9 term of imprisonment of 99 years when

10 (1) the defendant is convicted of the murder of a uniformed or  
11 otherwise clearly identified peace officer, fire fighter, or correctional employee  
12 [OFFICER] who was engaged in the performance of official duties at the time of the  
13 murder;

14 (2) the defendant has been previously convicted of

1 (A) murder in the first degree under AS 11.41.100 or former  
2 AS 11.15.010 or 11.15.020;

3 (B) murder in the second degree under AS 11.41.110 or former  
4 AS 11.15.030; or

5 (C) homicide under the laws of another jurisdiction when the  
6 offense of which the defendant was convicted contains elements similar to first  
7 degree murder under AS 11.41.100 or second degree murder under  
8 AS 11.41.110; or

9 (3) the court finds by clear and convincing evidence that the defendant  
10 subjected the murder victim to substantial physical torture.

11 \* Sec. 2. AS 12.55.125(c) is amended to read:

12 (c) A defendant convicted of a class A felony may be sentenced to a definite  
13 term of imprisonment of not more than 20 years, and shall be sentenced to the  
14 following presumptive terms, subject to adjustment as provided in AS 12.55.155 -  
15 12.55.175:

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

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

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

27 (4) if the offense is a third felony conviction, 15 years.

28 \* Sec. 3. AS 12.55.135(d) is amended to read:

29 (d) A defendant convicted of assault in the fourth degree upon a uniformed or  
30 otherwise clearly identified peace officer, fire fighter, correctional employee  
31 [OFFICER], emergency medical technician, paramedic, ambulance attendant, or other

1 emergency responder who was engaged in the performance of official duties at the  
2 time of the assault shall be sentenced to a minimum term of imprisonment of 120 [30]  
3 days.

4 \* Sec. 4. AS 12.55.155(e) is amended to read:

5 (e) If a factor in aggravation is a necessary element of the present offense, or  
6 requires the imposition of a presumptive term under AS 12.55.125(c)(2) [, (d)(3) OR  
7 (e)(3)], that factor may not be used to aggravate the presumptive term. If a factor in  
8 mitigation is raised at trial as a defense reducing the offense charged to a lesser  
9 included offense, that factor may not be used to mitigate the presumptive term.

10 \* Sec. 5. AS 12.55.185 is amended by adding a new paragraph to read:

11 (14) "peace officer" has the meaning given in AS 11.81.900.

12 \* Sec. 6. AS 12.55.125(d)(3) and 12.55.125(e)(3) are repealed.

13 \* Sec. 7. This Act applies to all offenses committed on or after the effective date of this  
14 Act.

# Alaska State Legislature

REPRESENTATIVE  
PETER KELLY

Mailing Address:  
119 N. Cushman, Suite 203  
Fairbanks, Alaska 99701  
(907) 456-8161



White in Juneau  
State Capitol  
Juneau, Alaska  
99801-1182  
(907) 465-2327

House District 31

## House Of Representatives

### Sectional

### HB 127\U

Section 1. Adds correctional employee. Correctional employees include nurses and others employed at our correctional institutions and exposed to some of our hardest offenders. This provision is for the murder of one of a police officer, et al.

Section 2. Same change, for class A felonies committed against a police officer, et al.

Section 3. The original bill, modified. Raises the minimum penalty for physical assault against a police officer from 30 days to 120 days. Modified to leave the verbal assault sentencing at 30 days.

Section 4. Technical change in numbering.


Section 5. Adds a "peace officer" definition to Title 12, the same definition as used in Title 11. This is a broad definition including parole officers, juvenile parole officers, VPSO's, all officers with arrest authority.

Section 6. Gets rid of a presumptive sentencing flaw. As drafted the current presumptive sentencing provision for class C and B felony assault against a peace officer could result in a lower sentence than for another first time offense. This change allows the sentence to be increased with the aggravating factor in AS 12.55.155(c) (13) if the offense was directed against a peace officer.

The aggravating factor expands the coverage further to include judicial officers. Yes, it gives the judge the option of increasing sentencing, not the mandate to increase sentencing, but the current presumptive sentencing structure precluded this option.

# DEPARTMENT OF CORRECTIONS

## MEMORANDUM

to: Representative Pete Kelly  
from: Jerry Shriner   
re: HB 127  
date: January 31, 1996

The Department of Corrections supports the efforts to enhance the safety and security the departments employees as well as the other groups covered by this bill.

While there is a cost as indicated on our fiscal note, it seems minimal in pursuit of this the goals of this bill.

cc:

from the desk of...

Jerry Shriner  
Special Assistant  
Department of Corrections  
240 Main, Suite 100  
Juneau, AK 99801

(907) 465-4640  
Fax: (907) 465-3100

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. CSHB 127(JUD)

Revision Date: \_\_\_\_\_ Dept. Affected: Corrections  
 Title: An Act increasing the minimum term...assault on BRU: Statewide Operations  
...peace officers... Component: All Institutions  
 Sponsor: Rep. Kelly  
 Requester: Senate Judiciary COMPONENT SERIAL NO. 1381

**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	64.2	64.2	64.2	64.2	64.2	64.2
<b>TOTAL OPERATING</b>	<b>64.2</b>	<b>64.2</b>	<b>64.2</b>	<b>64.2</b>	<b>64.2</b>	<b>64.2</b>

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

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

**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
1002 Federal Receipts						
1003 GF Match						
1004 GF	64.2	64.2	64.2	64.2	64.2	64.2
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>64.2</b>	<b>64.2</b>	<b>64.2</b>	<b>64.2</b>	<b>64.2</b>	<b>64.2</b>

Estimate of any current year (FY96) cost: \$ 00

**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

This bill would increase the mandatory minimum sentence for assault defined in AS 12.55.135 (d) from 30 to 120 days imprisonment. The bill also expands the coverage to correctional employees.

Because this offense involves assault on a clearly identified peace officer, fire fighter, correctional employee or other justice or emergency personnel, these individuals would serve their sentence in a correctional facility rather than a CRC ; at a cost of \$107.00 per day. Allowing for good time, each inmate affected would serve an additional 60 days at \$107 per day or \$6,420.00. Data concerning assault on this group are not kept separate from other assaults, however, contacts with the Dept. of Law and Dept. of Public Safety indicate the number of convictions will be 10 to 12 per year.

$60 \times 10 \times \$107 = \$64,200.00$  annual cost of increase in minimum sentence.

Prepared by: Jerry Shiner Phone: 465-4640  
 Division: Commissioner's Office Date: 1/29/96  
 Approved by Commissioner: Margaret H. Hugh Date: 1/29/96  
 Agency: Department of Corrections

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# FISCAL NOTE

Work Draft  
1/24/96

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. SCSHB 127 (JUD)

Revision Date: 1/28/96 Dept. Affected: Department of Law  
 Title: ...penalties for certain offenses committed against BRU: Criminal Division  
a peace officer, fire fighter, corrections employee... Component: Criminal Division  
 Sponsor: Representative Kelly  
 Requester: Senate Judiciary 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						
<b>TOTAL OPERATING</b>	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						
<b>TOTAL</b>	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 various criminal statutes prescribing mandatory terms of imprisonment for crimes committed against emergency personnel (peace officers, fire fighters, correctional officers, and other emergency responders) to change the term "correctional officer" to "correctional employee." The bill has the effect of extending these mandatory sentencing provisions to crimes against non-uniform correctional employees, such as nurses, cooks and maintenance workers, who also work in the state's correctional institutions. The bill also raises the minimum penalty for physical assault against a peace officer or emergency responder from 30 days to 120 days of incarceration. Finally, the bill changes a presumptive sentencing law for class C and B felonies against a peace officer. This change clarifies that a sentence may be increased with the aggravating factor in AS 12.55.155(c)(13) if the offense is directed against a judicial officer or peace officer or other emergency responder. These changes will not cause a fiscal impact for the Department of Law.

*Richard I. Pegues*

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

Phone: 465-3672  
 Date: 1/28/96  
 Date: 1/28/96

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# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. CSHB 127 (Jud)

Revision Date: January 29, 1996  
 Title: "An Act increasing the minimum term of imprisonment  
 for assaults in the fourth degree..."  
 Sponsor: Rep. Kelly  
 Requestor: (S)Jud

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

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

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

<b>CAPITAL EXPENDITURES</b>	0	0	0	0	0	0
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<b>CHANGE IN REVENUES ( )</b>	0	0	0	0	0	0
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**FUND SOURCE:** (Thousands of Dollars)

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

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 Salem, Director  
 Division Public Defender Agency

Phone 264-4400  
 Date \_\_\_\_\_

Approved by Commissioner Mark Borer  
 Agency Department of Administration

Date \_\_\_\_\_

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# Alaska State Legislature

REPRESENTATIVE  
PETER KELLY

Mailing Address

119 N. Cushman, Suite 203  
Fairbanks, Alaska 99701  
(907) 456-8161



State Capitol  
Juneau, Alaska  
99801-1182  
(907) 465-2327

House District J1

## House Of Representatives

### Sponsor Statement

House Bill 127

"An Act increasing the minimum term of imprisonment for assaults in the fourth degree committed against a peace officer, fire fighter, correctional employee, emergency medical technician, paramedic, ambulance attendant, or other emergency responders."

It is the intent of this bill to enhance a serious tool for police officers and others on the front line. It will increase the severity of punishment for acts committed against a police officer while in the performance of official duties.

This bill sends a clear message to individuals that once the police arrive the fight must stop. Alaska is not sending in our "tag team blue" for the next round. Expanding the fracas to include a police officer will result in jail time.

Although initially intended as a tool for police, it has even more meaning when applied to individuals with even less training or expectation of dealing with persons physically. Volunteers responding to a medical emergency, or fire are neither equipped nor trained to handle assault or violence directed against their persons.

Correctional employees are now included in this bill, within the confines of their official duties. The inclusion of correctional employees provides an opportunity for the "message" this bill sends to spread among those offenders currently in prison, before they return to the streets.

SPONSOR STATEMENT



Superior Court

State of Alaska

FOURTH JUDICIAL DISTRICT

604 BARNETTE STREET

FAIRBANKS, ALASKA

99701

Chambers of  
RICHARD D. SAVELL, Judge

September 28, 1995

The Honorable Peter Kelly  
Alaska State Legislature  
House of Representatives  
119 N. Cushman Street, Suite 203  
Fairbanks, Alaska 99701

Dear Representative Kelly:

Thank you for sending me your new draft of HB 127 for review. Section 6 appears to correct the legislature's oversight as found in Edwin v. State, 762 P.2d 499 (Alaska App. 1988).

I have encountered what I believe to be a more basic problem with the sentencing scheme for first time felony offenders who are convicted of third degree assault for conduct "knowingly directed at a police officer." While the inclusion of a presumptive sentence of one year was undoubtedly intended to elevate the seriousness with which this offense is treated for sentencing, in some respects it has the opposite effect. Let me give you an example.

Consider what might be a typical third degree assault. The defendant, who has been convicted of DWI and/or disorderly conduct in the past (both misdemeanors) is a first felony offender. His Assault 3<sup>o</sup> conviction arises from him firing or otherwise using a gun in a dangerous and threatening manner. The offense and the offender's history suggest the need for alcohol abuse evaluation and treatment and anger management counseling.

If the victim is a civilian neighbor, a judge can sentence the defendant to more than one year, requiring the offender to serve some time and suspend other time (e.g., 18 months with 12

The Honorable Peter Kelly  
September 28, 1995  
Page 2

months suspended.) The suspended time allows for probation supervision. The offender can then be monitored for a period of years. The judge can also require that the person attend anger management and alcohol treatment as conditions of probation. If the person violates the law or fails to get the treatment, the judge can impose the suspended year of imprisonment. This sentence can thus be used to monitor, require treatment to aid rehabilitation, and give the additional year of jail time if the defendant does not comply with the treatment requirement.

The possibility of a sentence in excess of one year and treatment and suspended time does not exist if the victim is a law enforcement officer. Under the same facts, the offender would have to be given a presumptive sentence of one year. Because no aggravators are found by "clear and convincing evidence" to apply, the sentence cannot be enhanced nor may any portion of the time be suspended. This also means that the court may not order probation. This means the defendant will not be supervised after the year is served. Without probation, the court may not require the defendant to get any treatment after being released from jail.

Under this analysis, there are less "teeth" and less protection in the case with the presumptive sentence than with the other. This has been a source of frustration for me in my sentencing role.

My purpose is to identify a problem, not to endorse any particular solution. Among other possible solutions would be converting "knowing conduct directed at a peace officer" into an aggravating factor in presumptive and non-presumptive cases [see Wylie v. State, 797 P.2d 651 (Alaska App. 1970)] or converting the presumptive sentence into a mandatory minimum sentence.

I hope you find this information helpful. Thank you for seeking my input. I am sorry for the delay in responding. My trial schedule has been particularly taxing of late.

Sincerely,



RICHARD D. SAVELL  
Presiding Judge

RDS:bj0

**HB**

**158**

**(File 1)**

DIVISION OF LEGAL AND RESEARCH SERVICES

LEGISLATIVE AFFAIRS AGENCY

STATE OF ALASKA

PHONE 465-3867 or 465-2450

FAX 465-2029

Mail Stop 3101

130 Seward Street Suite 409

Juneau, Alaska 99801-2105

MEMORANDUM

August 17, 1995

**SUBJECT:** Sectional Summary of CSIB 158(Fin) am (et. rls pld) (etd fld)  
(Work Order No. 9-LS0328K)

**TO:** Senator Robin Taylor *M. F.*  
Attn: Terry

**FROM:** Michael F. Ford  
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 and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Purpose section.

Section 2. Requires that a civil action for personal injury, death, or property damage must be filed within eight years of either substantial completion of construction alleged to be the cause of the injury, death, or property damage, or the last act alleged to be the cause of the injury, death, or property damage. Provides that the exception for a person less than 18 years of age contained in AS 09.10.140(a) does not apply to this section. Provides that the eight year limit does not apply to certain civil actions, including an action in which damages are caused by exposure to a hazardous substance, intentional acts or gross negligence, fraud, breach of a warranty, or to injuries caused by a defective product. Provides that the eight year limit does not apply if certain facts are intentionally concealed, or if a shorter time period imposed under another section of law would apply. Provides that the eight year limit does not run in periods during which an undiscovered foreign body with no therapeutic or diagnostic effect exists in the body of the injured person. Without this section, a person has two years from the time the person knows or should know of their claim, in which to file a civil action.

Section 3. Technical amendment.

*Sectional Analysis - LAA*

**Section 4.** Provides that the general limit for bringing a civil action for personal injury, death, or property damage is two years, which is the limit under existing law. Under this section, the two year limit would not apply if another provision of law would result in a shorter period. Also, the two-year period would begin to run when the person discovers or should have discovered their injury. This section also deletes an exception for a person under 18 years of age, which effectively imposes a two-year limit regardless of the age of the person who is injured. Under existing law a person under age 18 has two years after they reach age 18 in which to file a civil action.

**Section 5.** Limits the damages that may be recovered for noneconomic damages (or pain and suffering injuries) to \$300,000, except that certain injuries described under subsection (c) are limited to \$500,000. Provides for an annual CPI adjustment to the limits imposed under subsections (b) and (c). Also under subsection (c), the limits of \$300,000 or \$500,000 do not apply if the injuries were caused by a person who was committing a felony. Provides that when multiple injuries are sustained in one accident, for purposes of this section they are treated as one injury.

**Section 6.** Requires that punitive damages may not be awarded unless there is clear and convincing evidence of outrageous conduct. Outrageous conduct includes acts done with malice or bad motives or reckless indifference to the interest of another person. This section specifies what kind of evidence is required in order for a court to award punitive damages.

**Section 7.** Limits an award of punitive damages to three times the amount of compensatory damages or \$300,000, whichever is greater. Provides an exception for injuries caused by a person committing a felony. Requires that if punitive damages are awarded, that one-half of the amount must be given to the state.

**Section 8.** Requires that if a judgment is paid under a periodic payment schedule, the court must require security for the payments, unless the state, a self-insured municipality or an insurer agrees to pay the judgment.

**Section 9.** Requires that a judgment requiring periodic payments, must specify any increases for inflation. Adds a definition of inflation.

**Section 10.** Limits the damages that can be recovered in a civil action, to amounts in excess of amounts received from collateral sources. Provides that collateral sources that have a right of subrogation, death benefits under life insurance, and workers' compensation benefits may not be used to reduce a damage award. Allows a person defending a claim to introduce evidence of certain collateral benefits. Prohibits a person who provides a collateral benefit used to reduce a damage award from seeking reimbursement for the collateral benefits. Under existing law, a defendant may introduce evidence of collateral benefits that do not have a right of subrogation under law or contract. The court is required to make a reduction in damages awarded, if the claimant would receive a double recovery and value of the

benefits exceeds the cost of obtaining the collateral benefits. The significant difference between existing law and this section appears to be the point at which collateral benefits are considered. Under existing law, collateral benefits are factored in after the claimant receives an award, whereas under this section collateral benefits become a trial issue and the claimant cannot recover damages that exceed certain collateral benefits.

Section 11. Requires the jury to determine the percentage of fault allocated to each person responsible for damages, regardless of whether the person is named as a party or not. Under existing law fault is only allocated among the parties to the lawsuit.

Section 12. Provides that an assessment of fault against a person who is not a party, may only be used as a measure for determining fault of a named party and does not subject a person who is not a party to civil liability.

Section 13. Changes the penalty for failing to accept an offer of judgment that is more favorable than obtained after litigation. Existing law adjusts the interest on a judgment, whereas under this section the penalty consists of costs and reasonable attorney fees.

Section 14. Changes the rate of interest on a judgment from a fixed 10.5 percent, to a floating rate equal to three percent above the federal discount rate.

Section 15. Prohibits an award of prejudgment interest for future economic or noneconomic damages, or punitive damages.

Section 16. Technical amendment.

Section 17. This section enacts a new statute that establishes qualifications in order to provide expert testimony on the issue of the appropriate medical standard of care in medical malpractice claims.

Section 18. Adds definitions of "professional negligence" and "professional services" for purposes of medical malpractice claims.

Section 19. Provides that a hospital is not liable for acts or omissions of a health care provider who is not an employee or actual agent of the hospital. Requires the hospital to post notice of those health care providers who are not employees. This provision is intended to reverse a decision of Alaska Supreme Court in Jackson v. Powers, 743 P.2d 1376 (Alaska 1987). In Jackson the court held that a hospital was liable for acts of a physician, even if the physician was not an employee.

Section 20. Prohibits a person who suffers personal injury or death, or the person's estate, from recovering damages for injury or death if the injury or death occurred while the person was committing a felony and the act substantially contributed to the injury or death.

Senator Robin Taylor

August 17, 1995

Page 4

**Section 21.** Requires that papers in a civil action must be signed by at least one attorney representing that party, except that in a situation when a party is not represented by an attorney the party must sign. Provides that the signature constitutes certification that the paper is factually based and warranted by existing law, that it is not asserted to harass or delay litigation. Requires the court to impose sanctions for violating this section.

**Section 22.** Repeals AS 09.55.548, relating to collateral benefits.

**Section 23.** Court rule change section for Civil Rule 95.

**Section 24.** Severability clause.

**Section 25.** Applicability section providing that the Act applies to a cause of actions accruing on or after the effective date of the Act.

MFF:lmb

95-245.lmb

Alaska State Chamber of Commerce  
217 2nd Street #201  
Juneau, Alaska 99801



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# ALASKA VOTERS: LAWSUIT ABUSE SURVEY

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*JANUARY, 1996*



*Dist. by Rep. Porter*

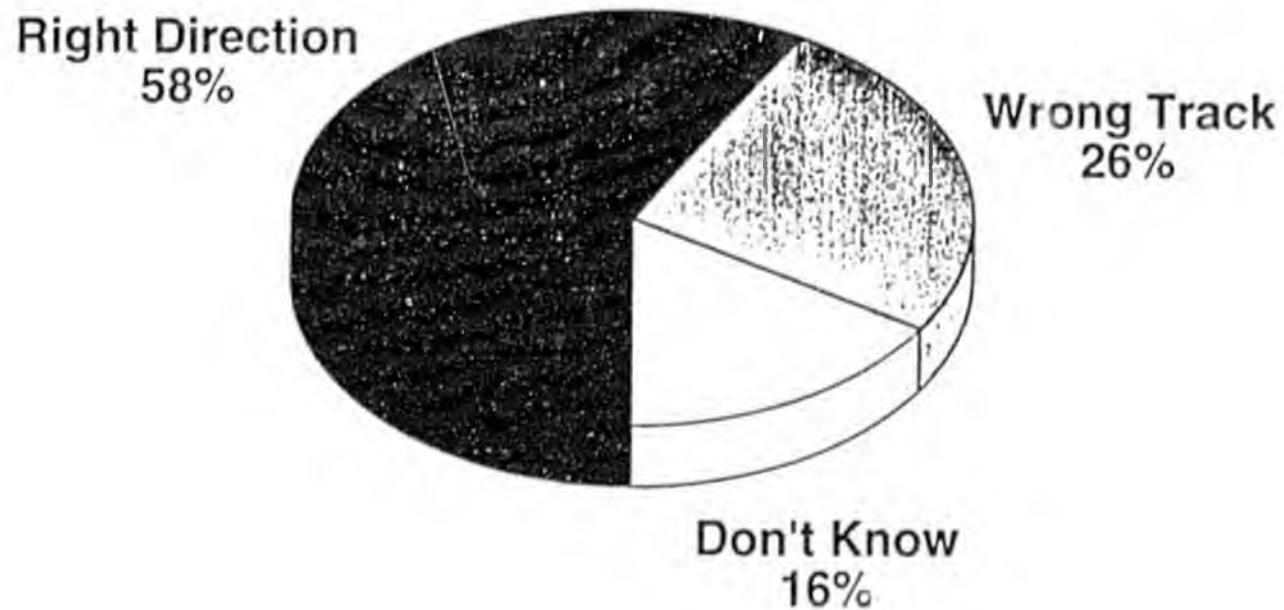
# Methodology

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<b>MODE</b>	Telephone Survey
<b>UNIVERSE</b>	Alaska Registered Voters
<b>SAMPLE SIZE</b>	N=500
<b>MARGIN OF ERROR</b>	+/- 4.4%
<b>FIELD DATES</b>	January 12, 13, 14, 16
<b>LENGTH</b>	56 questions; Approximately 15 minutes

# Mood of Alaska

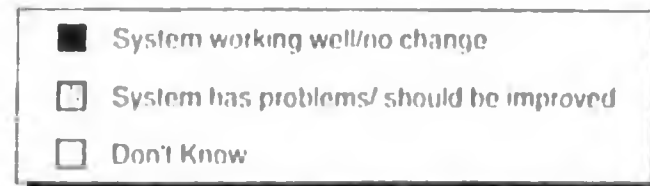
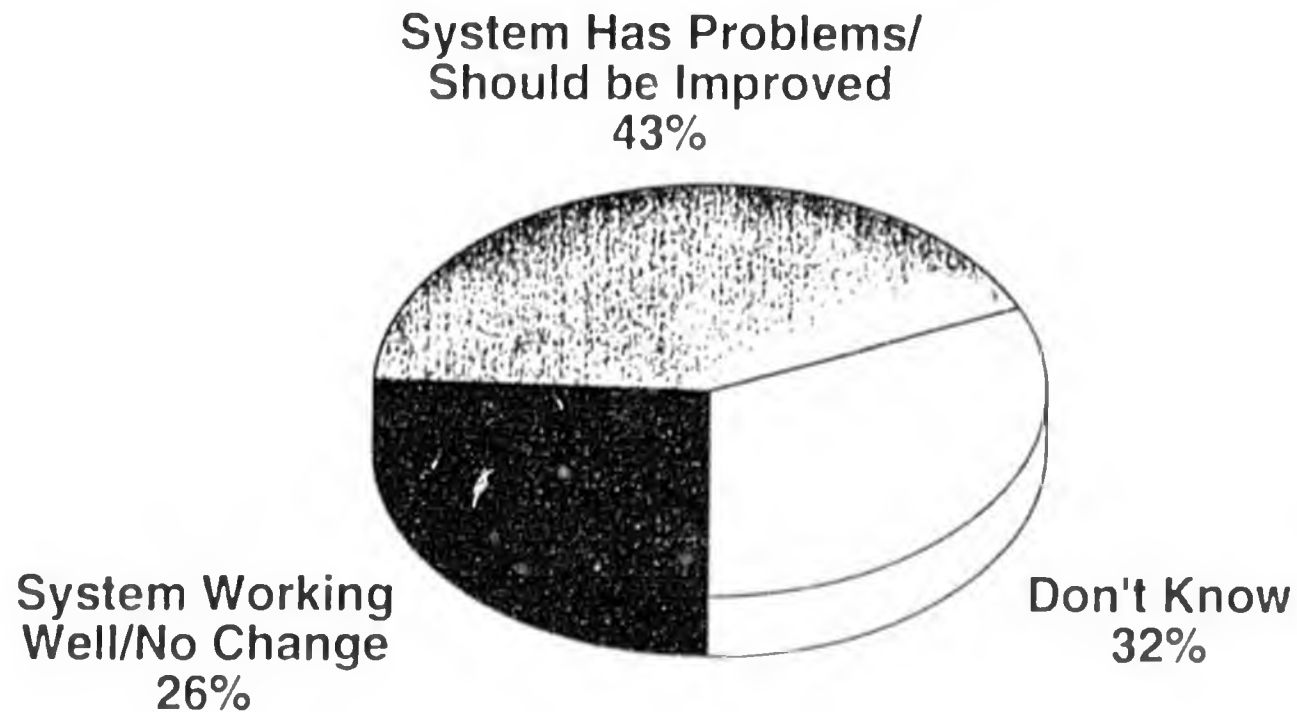
Do you feel things in Alaska are generally going in the right direction or do you feel things have pretty seriously gotten off on the wrong track? (Q1)



- Right Direction
- ▨ Wrong Track
- Don't Know

# Liability System Status

Thinking about the legal system here in Alaska, do you feel the present liability system is working well and should not be changed, or do you feel the present liability system has problems and should be improved? (Q2)



# Problems with Liability Court System

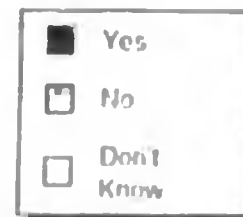
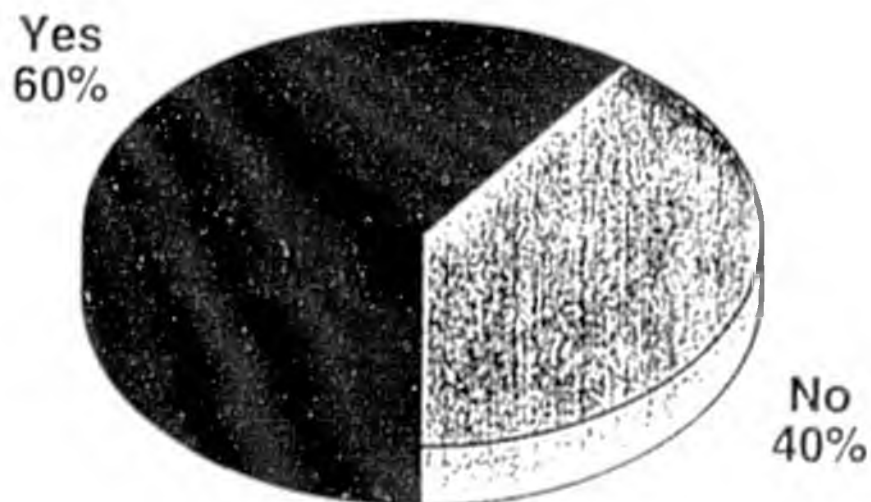
What are some of the problems with Alaska's liability court system that should be changed or improved? (Q3)

n=214

	<u>First</u> <u>Mentions</u> %	<u>Second</u> <u>Mentions</u> %
Too much money rewarded	17	17
Need new laws	14	27
Too easy to file lawsuits	14	22
Too many lawsuits	9	11
Fraud/Personal greed	9	9
Greedy//Unethical lawyers	7	10
Ties up the courts	7	8
Take resources away from real problems	3	4
Hurts innocent people	2	4
Everything	*	*
Other mentions	4	4
Don't know/refused	14	14

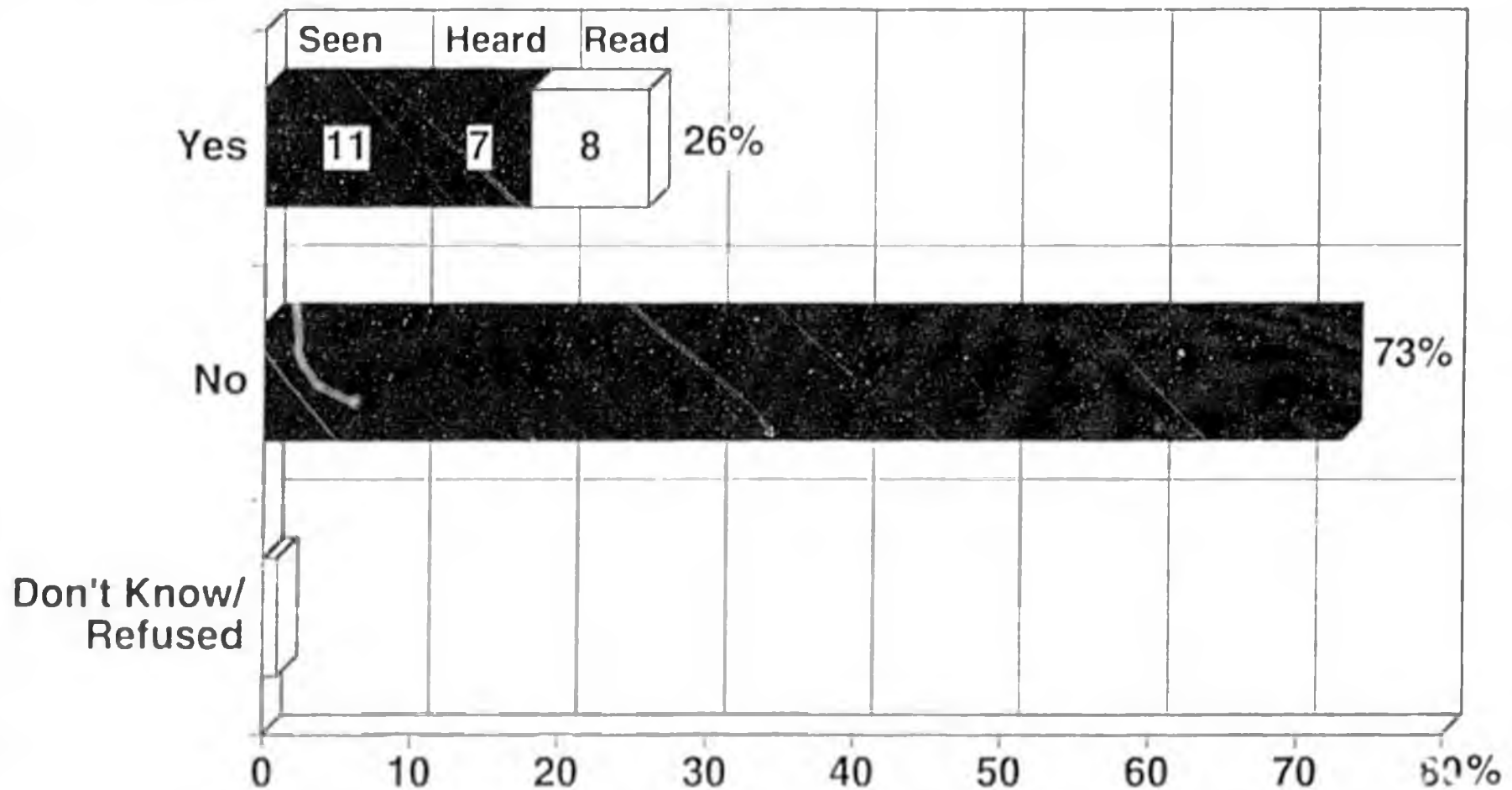
# Recall: Lawyer Advertisements

On a related subject, lawyers, like businesses, sometimes try to reach customers through advertising. Have you seen or heard any advertisements for lawyers recently? (Q4)



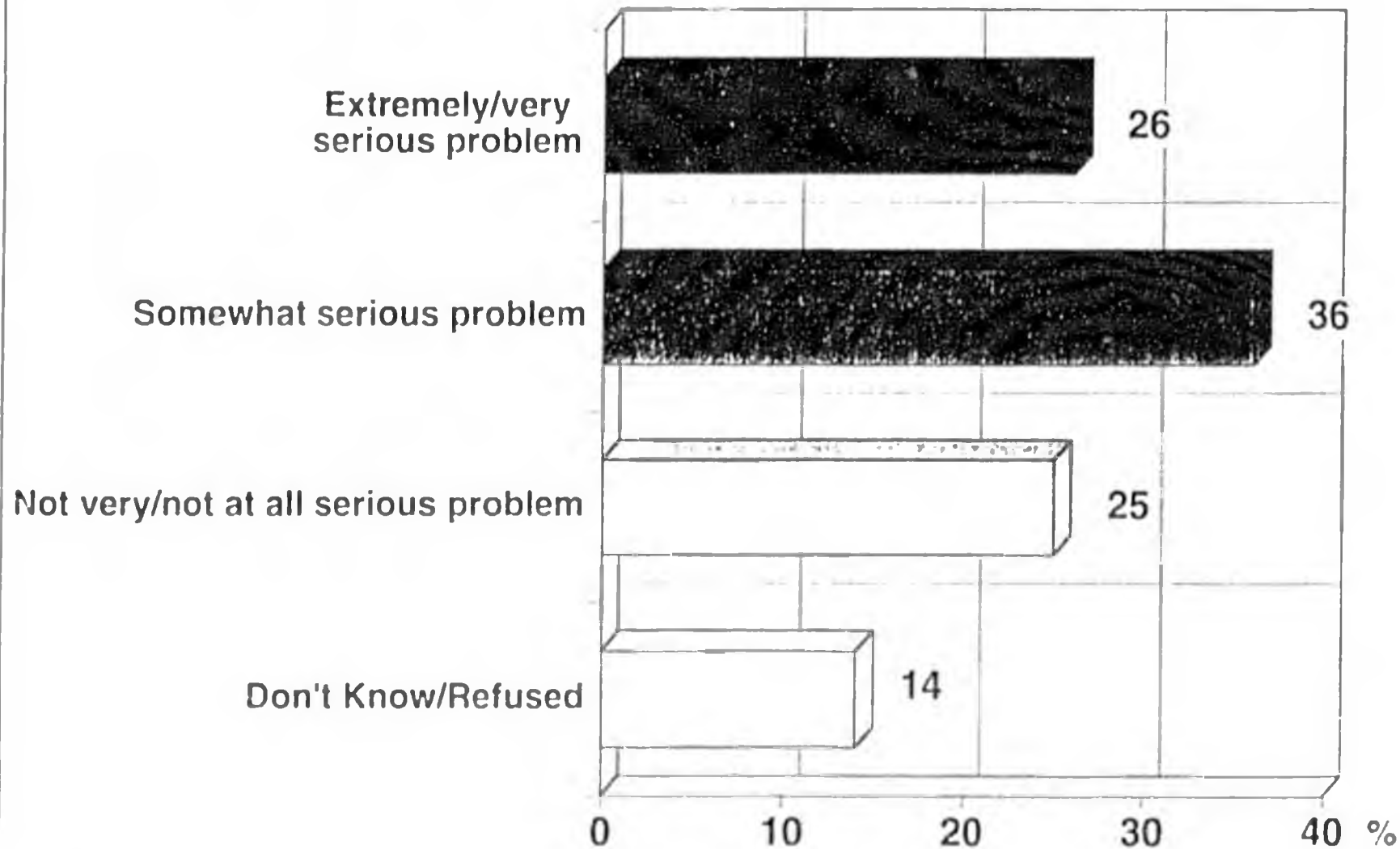
# Recall: Legal System Reform

One issue that has come up is reforming the state's legal system to reduce the number of frivolous lawsuits being filed. On this issue, have you seen, heard or read anything in the news lately? (Q5)



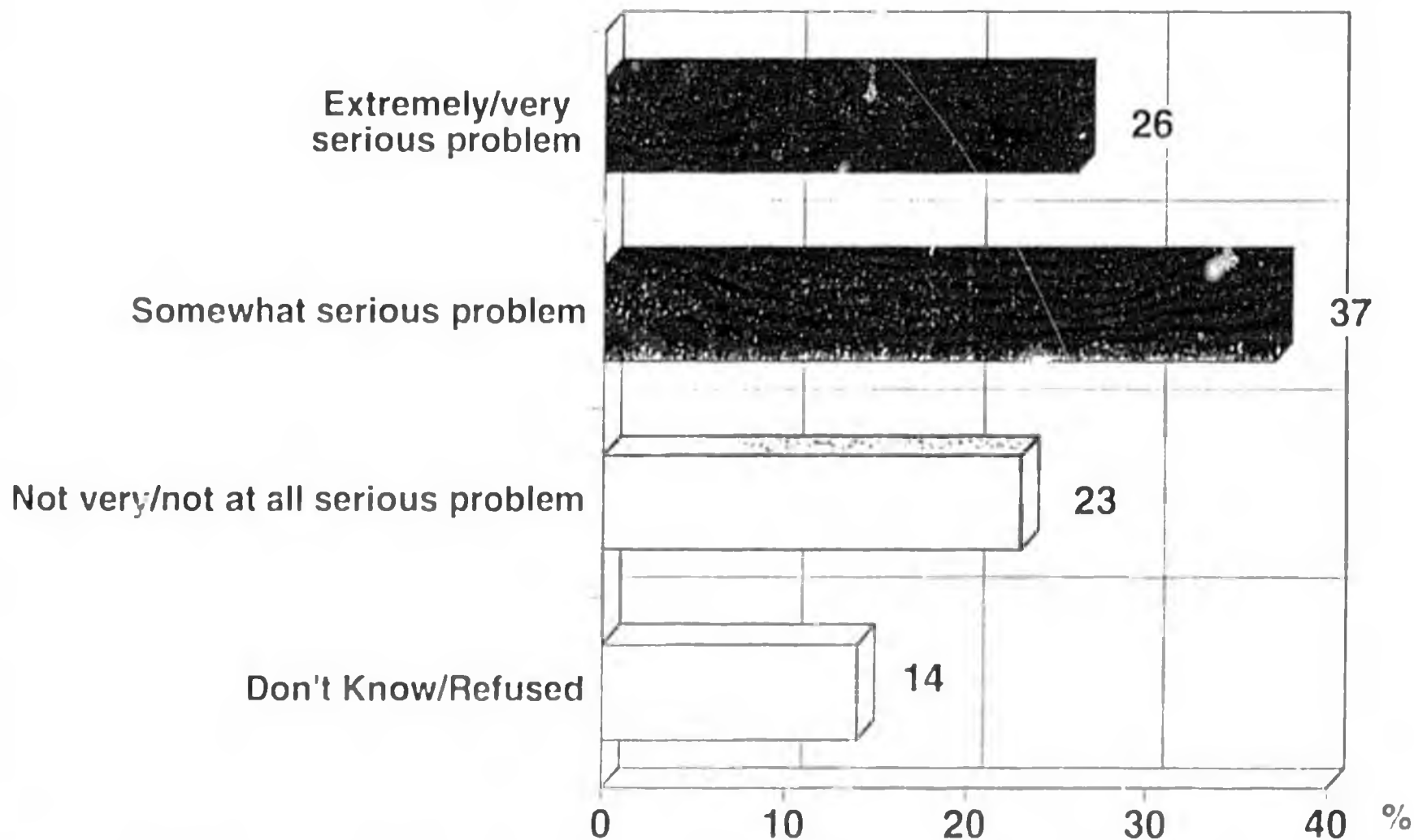
# Frivolous Lawsuits Problem in Alaska

From what you have heard about the issue of frivolous lawsuits, how serious a problem would you say they are in Alaska? Are frivolous lawsuits... (Q6)



# Negative Impact of Frivolous Lawsuits on Alaska Economy

Some people say there are too many frivolous lawsuits being filed in Alaska and that they are having a negative impact on our economy; others disagree. How much negative impact do you think frivolous lawsuits are having on the Alaska economy? Would you say they are having... (Q7)



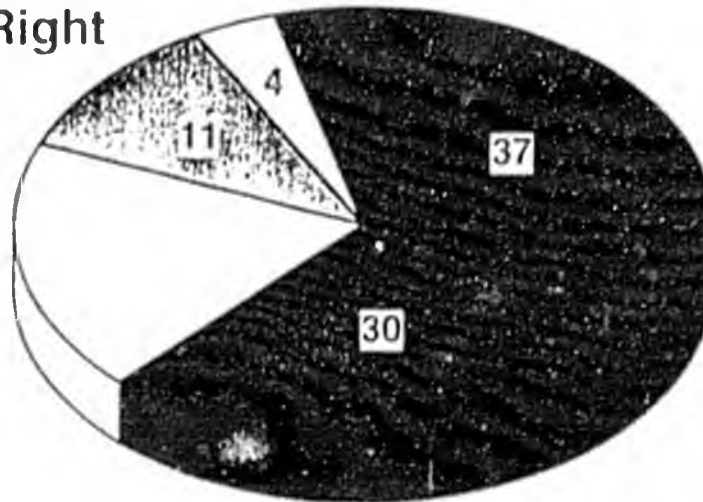
# Too Many Lawsuits vs. Not Enough People Exercising Right

Which of the following statements comes closer to your opinion regarding the liability law system? And would that be strongly or somewhat more like your opinion? (Q8)

Some people say: There are too many lawsuits being filed in Alaska these days.  
Other people say: Not enough people in Alaska are exercising their right to sue.

Not Enough  
Exercising Their Right  
15%

Don't  
Know  
19%



Too Many  
Lawsuits  
67%

- Too many lawsuits/strongly
- Too many lawsuits/somewhat
- Don't Know
- Not enough exercising their right/somewhat
- Not enough exercising their right/strongly

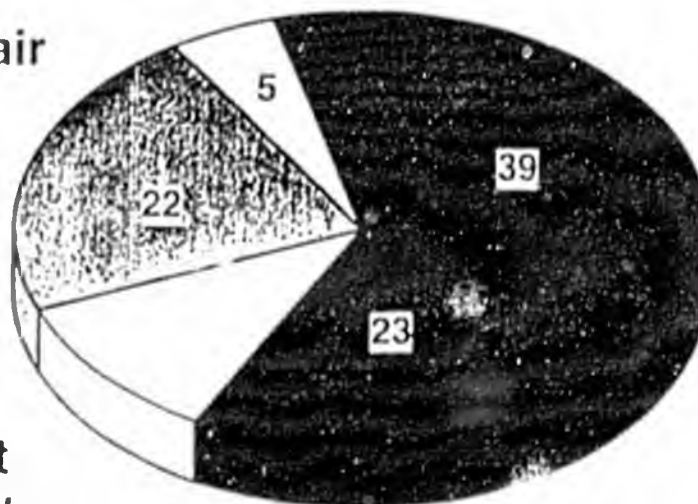
# People Taking Advantage vs. System is Fair

Which of the following statements comes closer to your opinion? And would that be strongly or somewhat more like your opinion? (Q9)

**Some people say:** Too many people are taking unfair advantage of the system in order to get their hands on large damage awards.

**Other people say:** Although it may have some loopholes, the system is fair in nearly all cases.

System is Fair  
27%



Too Many People  
Taking Advantage  
62%

Don't  
Know  
11%

- Too many people taking advantage/strongly
- Too many people taking advantage/somewhat
- Don't Know
- System is fair/somewhat
- System is fair/strongly

## Agree/Disagree Statements *Ranked by Agree*

Please tell me whether you agree or disagree with the following statements about frivolous lawsuits in the liability law system. Frivolous lawsuits are lawsuits that are unnecessary in many people's views. And would that be a somewhat or strongly (agree/disagree)? (Q10-16)

	Agree %	Disagree %	Don't Know %
Frivolous lawsuits have caused higher insurance premiums for everyone. (Q15)	87 (64)*	8	5
Fear of frivolous malpractice suits causes doctors to practice defensive medicine which has raised health care costs. (Q14)	80 (55)	13	7
The number of frivolous lawsuits delays compensation to legitimate victims. (Q16)	73 (44)	15	12
Frivolous civil lawsuits are the main reason the civil courts are so clogged and cases are delayed. (Q10)	68 (37)	19	13

\* Strongly Agree

## Agree/Disagree Statements (p. 2)

### *Ranked by Agree*

Please tell me whether you agree or disagree with the following statements about frivolous lawsuits in the liability law system. Frivolous lawsuits are lawsuits that are unnecessary in many people's views. And would that be a somewhat or strongly (agree/disagree)? (Q10-16)

	Agree %	Disagree %	Don't Know %
Frivolous lawsuits have increased the cost of medical care in Alaska. (Q11)	66 (40) *	18	16
I am afraid that one day I, or someone in my family or my business, will be the victim of a frivolous lawsuit. (Q12)	61 (28)	31	9
Frivolous lawsuits have increased the cost of consumer products in Alaska. (Q13)	55 (27)	27	18

\* Strongly Agree

# Proposals to Address Frivolous Lawsuits

## *Ranked by Favor*

People have mentioned a number of different proposals to address the issue of frivolous lawsuits. Please tell me whether you would favor or oppose each of the following proposals. And would that be somewhat or strongly (favor/oppose)? (Q17-29)

	Favor %	Oppose %	Don't Know %
A proposal that would make jurors aware of all the different sources of compensation an injured party has already received before trial, and stop injured parties from secretly collecting twice for the same injury without the jury's knowledge. (Q24)	86 (68) *	10	5
A proposal that will stop forcing someone who is found only 10% responsible to pay 100% of a damage award, and instead require them only to pay their percentage of fault and no more. (Q27)	84 (59)	9	7
A proposal to strengthen the penalties and fines against attorneys who are guilty of improper client solicitation. (Q21)	83 (58)	9	8

\* Favor Strongly

# Proposals to Address Frivolous Lawsuits

## *Ranked by Favor (p.2)*

People have mentioned a number of different proposals to address the issue of frivolous lawsuits. Please tell me whether you would favor or oppose each of the following proposals. And would that be somewhat or strongly (favor/oppose)? (Q17-29)

	Favor %	Oppose %	Don't Know %
A proposal to prohibit lawsuits by individuals for injuries sustained in the commission of a felony. (Q28)	80 (61)*	12	8
A proposal to limit medical expert witnesses who can testify in trials to currently licensed doctors who have practiced the medical specialty being questioned sometime within the last ten years. (Q26)	80 (56)	12	8
A proposal requiring harsher penalties for people who bring or aid in bringing a frivolous lawsuit. (Q22)	80 (53)	14	6
A proposal to limit the percentage a personal injury trial lawyer can receive as a fee from any settlement or award from the client. (Q17)	78 (53)	15	8

\* Favor Strongly

# Proposals to Address Frivolous Lawsuits

## *Ranked by Favor (p.3)*

People have mentioned a number of different proposals to address the issue of frivolous lawsuits. Please tell me whether you would favor or oppose each of the following proposals. And would that be somewhat or strongly (favor/oppose)? (Q17-29)

	Favor %	Oppose %	Don't Know %
A proposal to limit the ability of convicted felons in prison to bring liability lawsuits. (Q23)	76 (58)*	18	5
A proposal that would reduce to TEN years the time limit allowed to file a lawsuit for an injury someone is claiming happened years ago in the past. (Q29B)**	75 (53)	17	8
A proposal that would reduce to SIX years the time limit allowed to file a lawsuit for an injury someone is claiming happened years ago in the past. (Q29A)**	73 (49)	20	8

\* Favor Strongly

\*\* Split Sample

# Proposals to Address Frivolous Lawsuits

## *Ranked by Favor (p.4)*

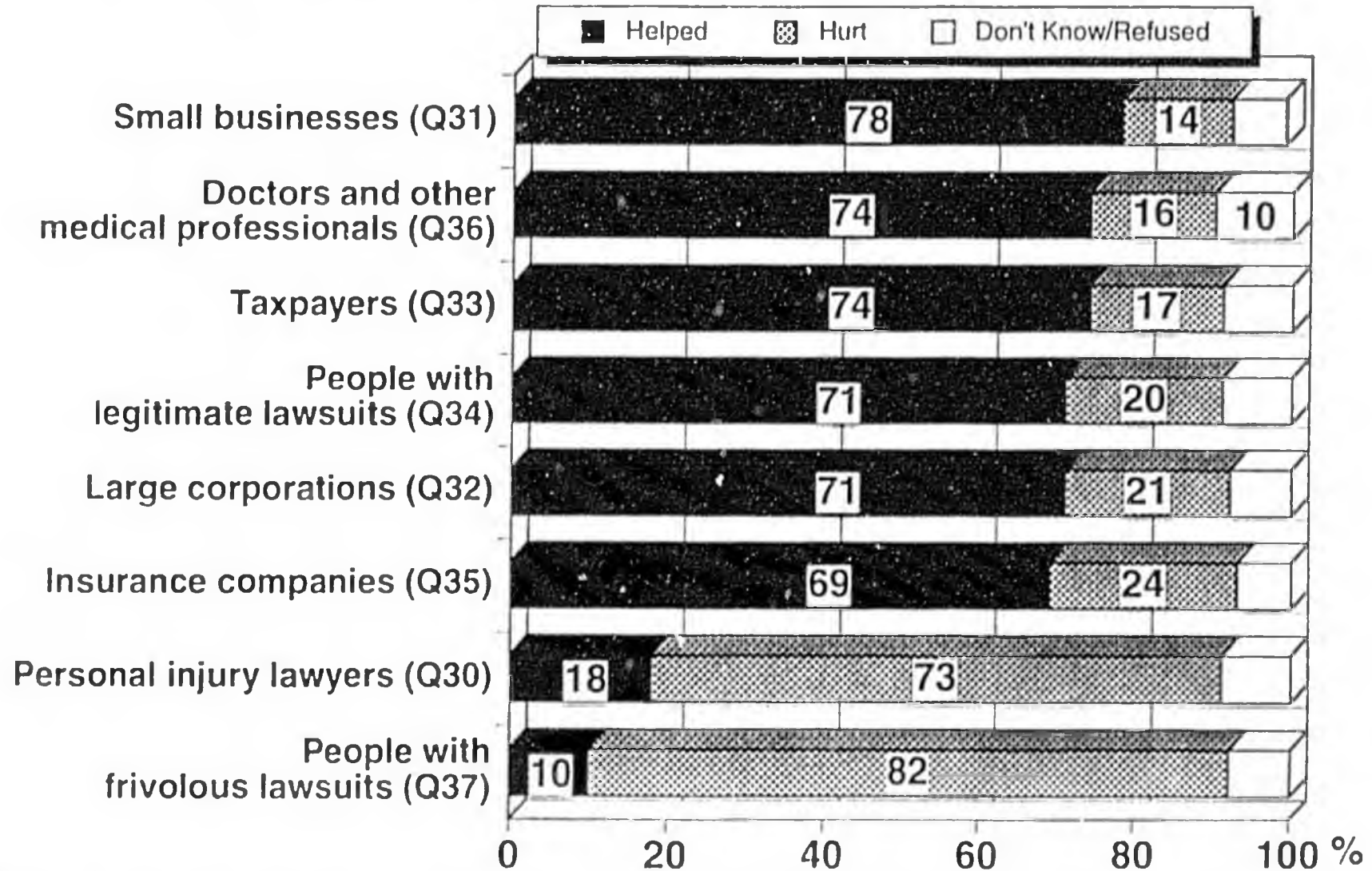
People have mentioned a number of different proposals to address the issue of frivolous lawsuits. Please tell me whether you would favor or oppose each of the following proposals. And would that be somewhat or strongly (favor/oppose)? (Q17-29)

	Favor %	Oppose %	Don't Know %
A proposal requiring that disputes of less than \$100,000 automatically go to arbitration or mediation before going to a jury trial. (Q20)	73 (44)*	17	10
A proposal that puts a limit on punitive damage awards by juries to three times economic and pain and suffering damages. (Q25)	66 (38)	19	15
A proposal requiring the loser of a lawsuit to pay legal fees for both sides. (Q19)	63 (35)	28	9
Having a no-fault insurance system where people involved in accidents receive insurance payments from their own insurance company regardless of who is at fault. (Q18)	49 (24)	39	13

\* Favor Strongly

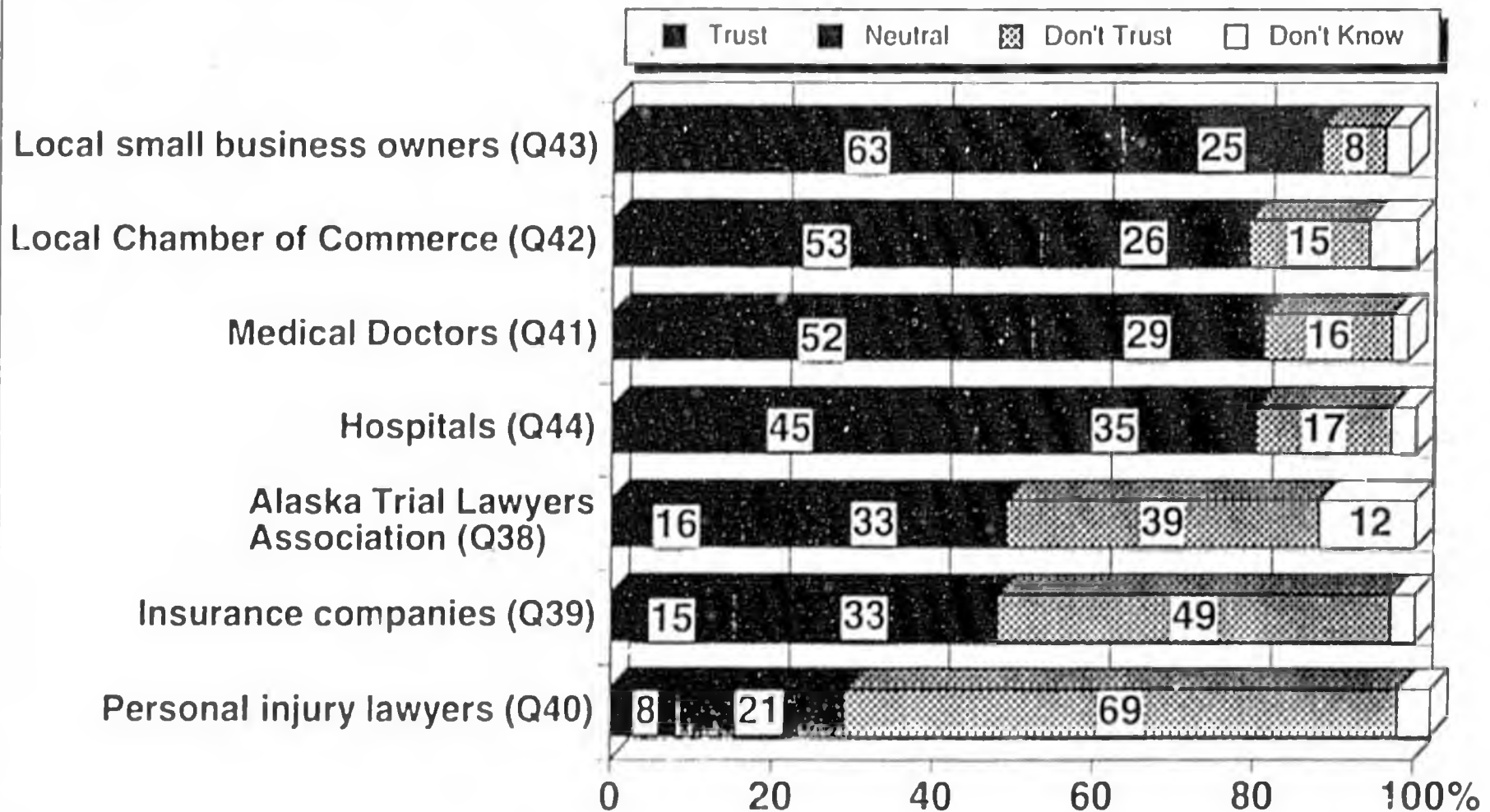
# Impact of Lawsuit Reforms

Now, I am going to read you a list of groups, and I would like you to tell me if you think these groups would be helped or hurt by all these lawsuit liability reform proposals I just read you. (Q30-37)



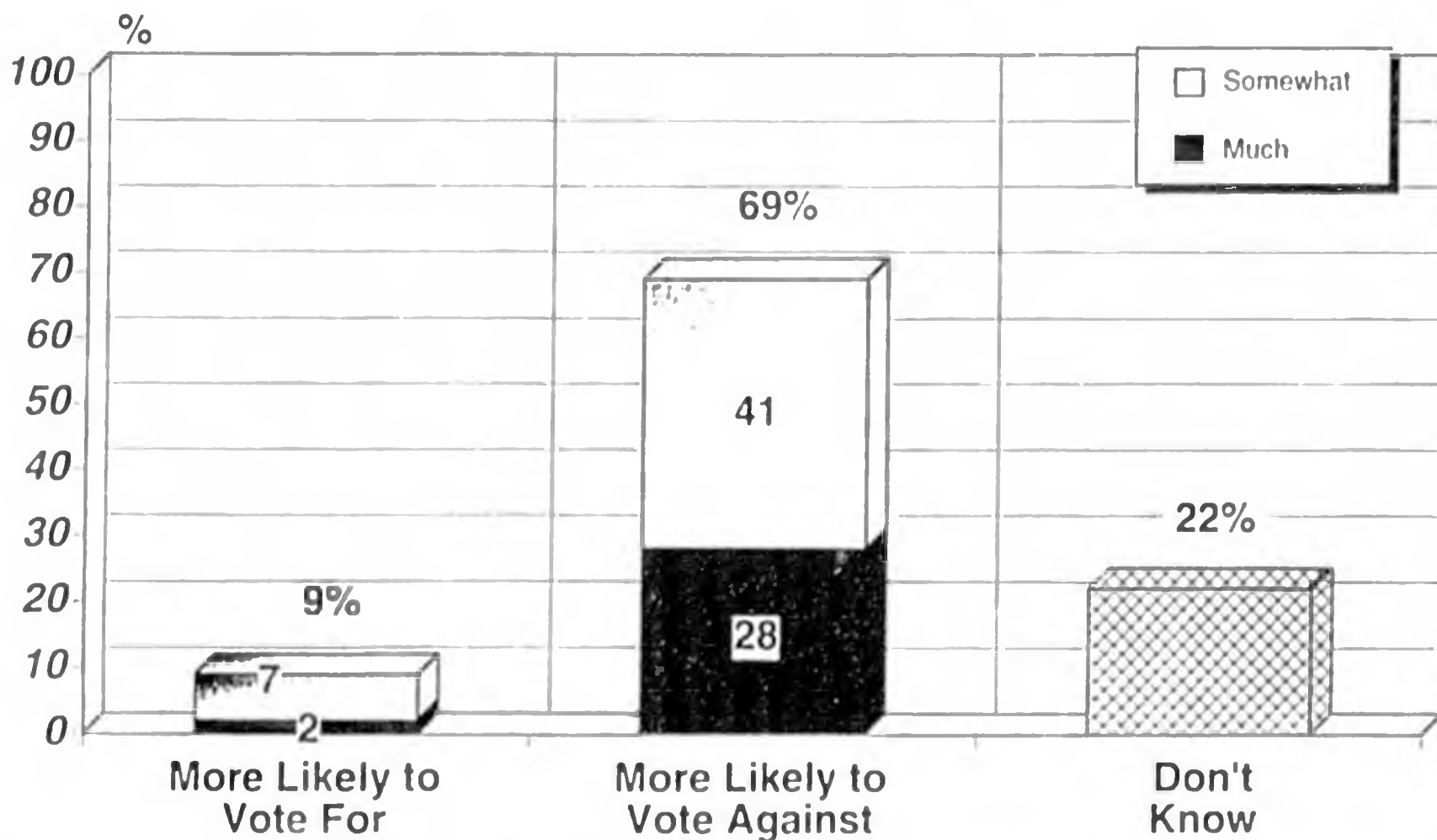
## Name I.D. / Favorability

There has been some talk about reforming the liability law system. I'd like to read you a brief list of groups and individuals who might speak out on this topic. For each one, on a scale of one to five where one means you don't trust that group or individual at all, and five means you trust that group or individual completely, please tell me how much you trust each on this topic. (Q38-44)



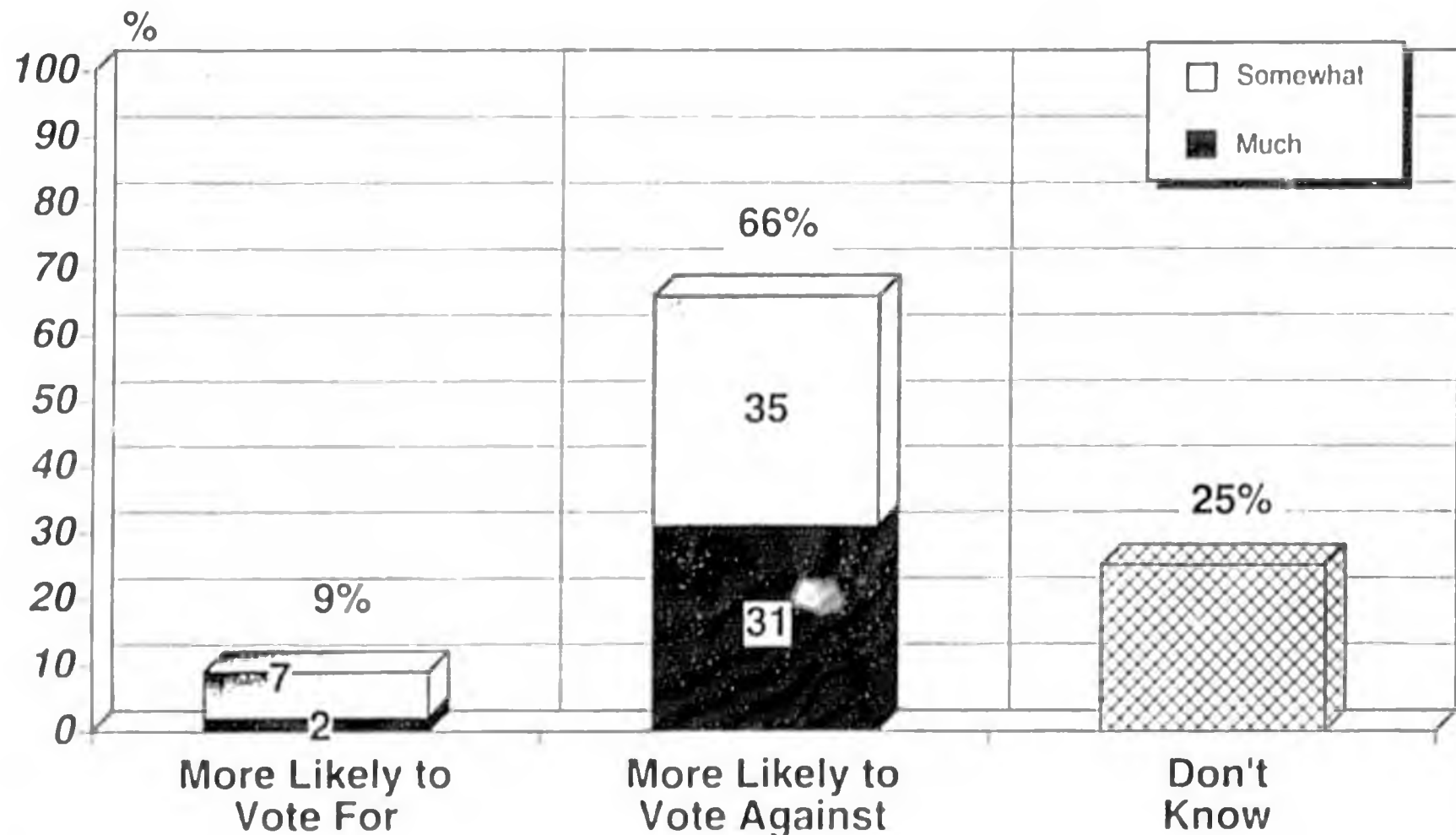
# Candidate Endorsed by Personal Injury Trial Lawyers

Would you be more likely to vote FOR or more likely to vote AGAINST a candidate for state office who was endorsed by personal injury trial lawyers? And would that be somewhat or much more likely to vote (for/against)? (Q45A)



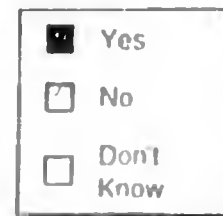
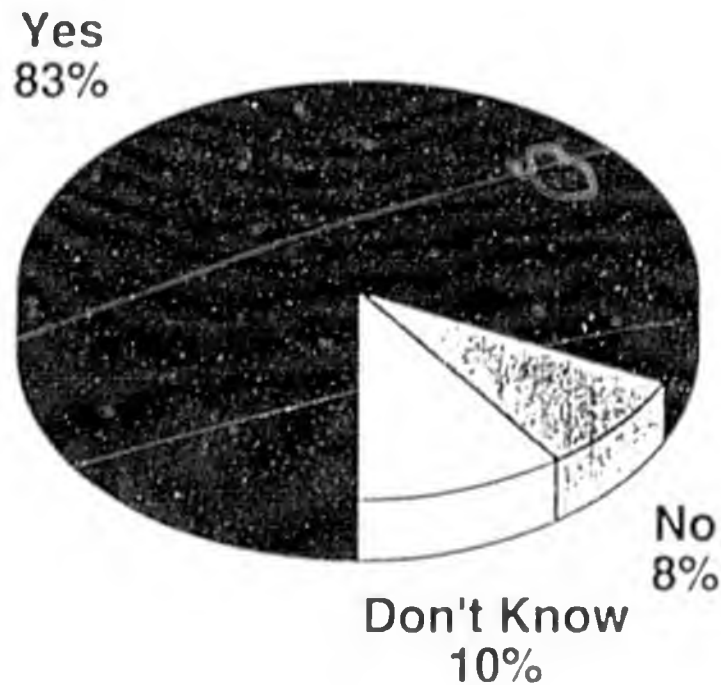
# Candidate Accepting Campaign Contributions from Personal Injury Trial Lawyers

Would you be more likely to vote FOR or more likely to vote AGAINST a candidate for state office who accepts campaign contributions from personal injury trial lawyers? And would that be somewhat or much more likely to vote (for/against)? (Q45B)



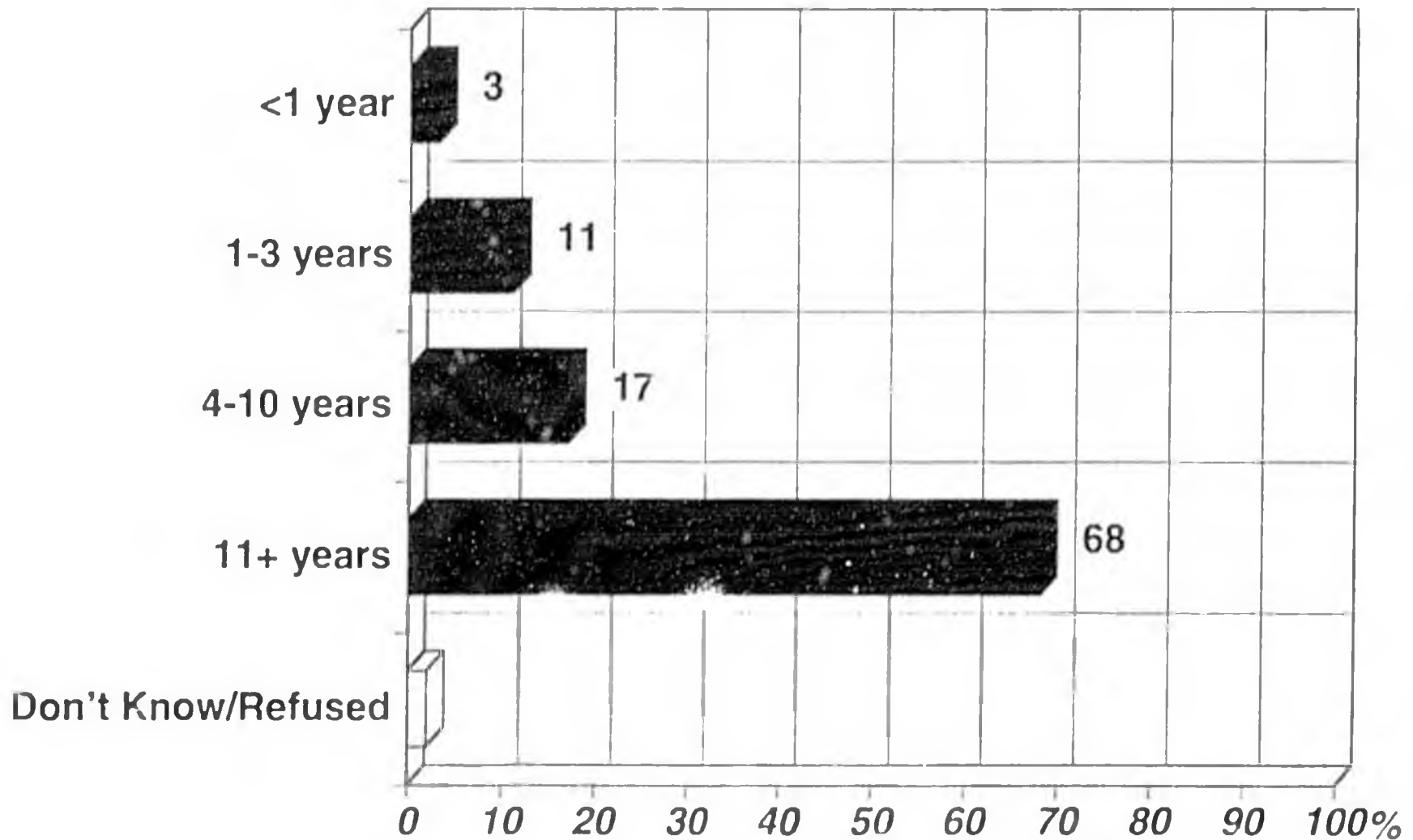
# Should Governor Sign Frivolous Lawsuit Reform?

If the State Legislature passes a liability reform measure aimed at reducing frivolous lawsuits, do you think the governor should sign it? (Q46)



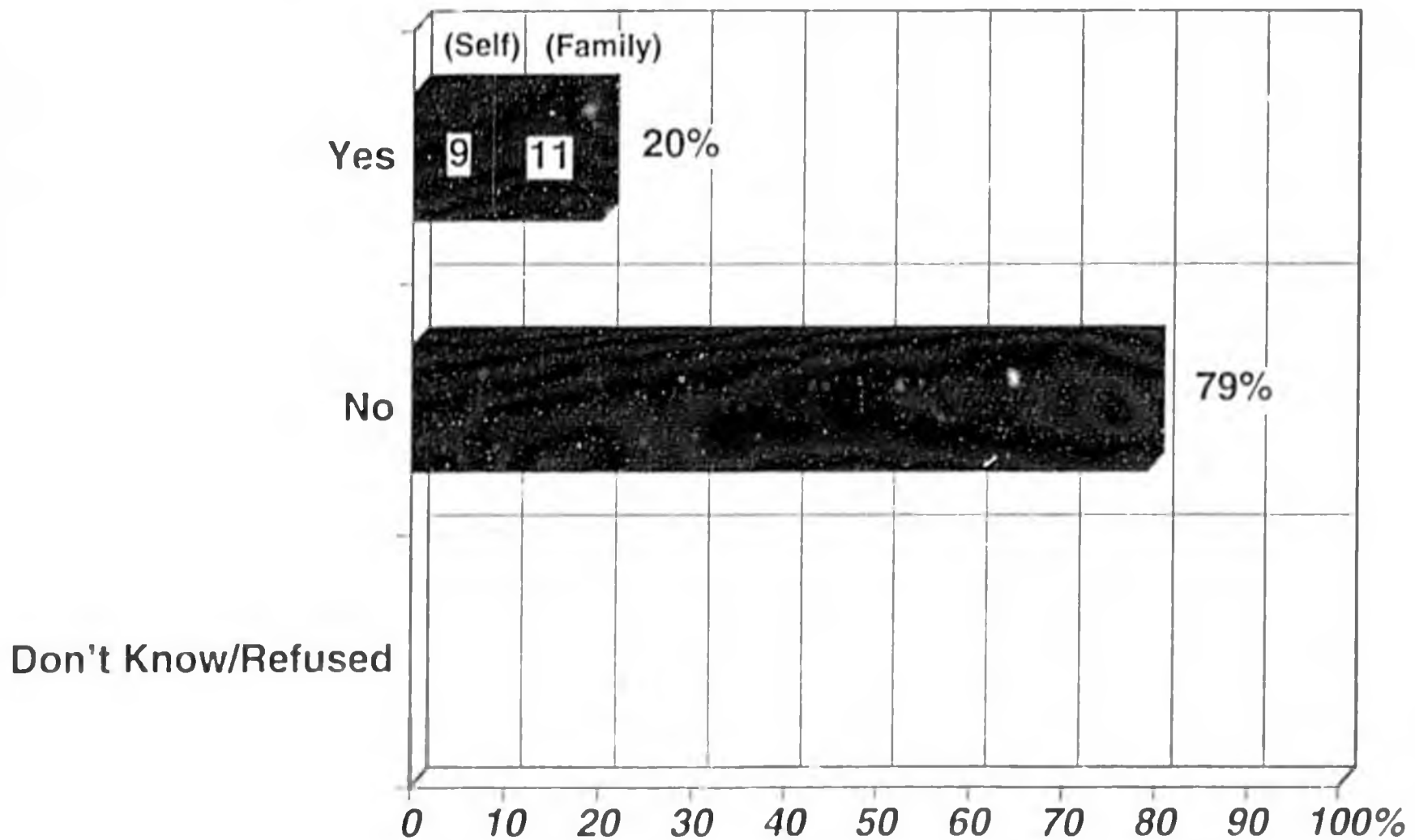
# Time Lived in Alaska

How long have you lived in Alaska? (Q47)



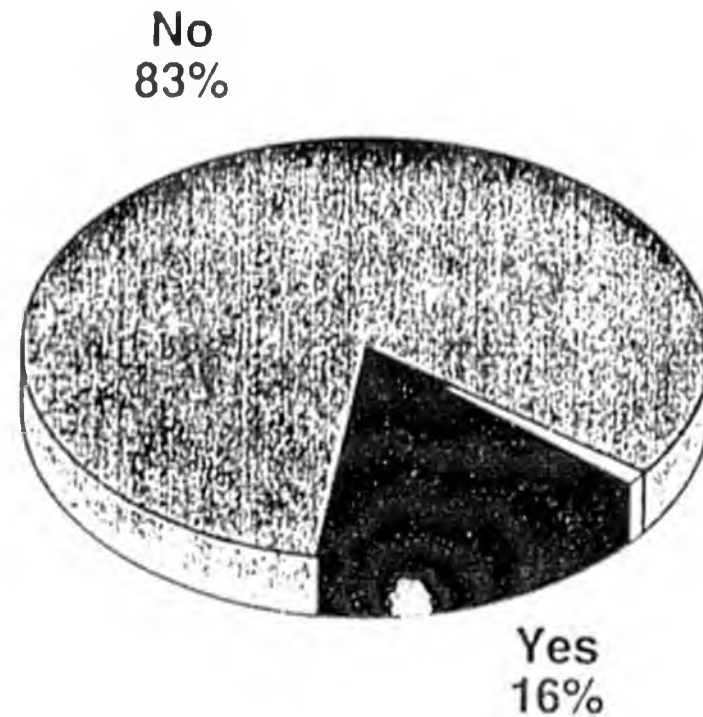
# Ever Involved in Personal Injury Lawsuit

Have you or anyone in your household ever been involved in a personal injury lawsuit? (Q48)



# Ever Served on a Jury

Have you ever served on a jury in a civil — that is, a non-criminal — court case? (Q49)



Yes  Don't Know/Refused  
 No

# Favorite Radio Station

What type of radio station do you listen to most? (Q50)

Country & western music	26%
Classic rock and roll	21
News talk/sports talk	17
Oldies/easy listening	16
Public radio/NPR	15
Contemporary pop music	9
Classical music	7
Christian radio	7
Modern/new wave/alternative rock	7
Jazz	5
Soul/Rap	1
Other	3
Don't Know/Refused	6

# CHARLTON RESEARCH COMPANY

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San Francisco, California 94104  
415/981-2343 • Fax 415/981-4850

## PERSONAL AND CONFIDENTIAL

#624  
ALASKA: LAWSUIT ABUSE  
AGGREGATE  
November 1995  
(n=500)

Interviewer: \_\_\_\_\_

Date: \_\_\_\_\_

Time Start: \_\_\_\_\_

Time End: \_\_\_\_\_

Record:

Male - 48%  
Female - 52%

=====

A. Is [ASK FOR NAME ON LIST] available?

Yes ..... 1 [CONTINUE]  
No ..... 2

[ASK WHEN WOULD BE A GOOD TIME TO REACH  
HIM/HER]

Hi, I'm \_\_\_\_\_ from the Charlton Research Company, a national research firm.  
We're talking with people in your area today and would like to ask you a few questions.

1. Do you feel things in Alaska are generally going in the right direction or do you feel things  
have pretty seriously gotten off on the wrong track?

Right Direction..... 58%  
Wrong Track..... 26  
Don't Know [DO NOT READ] ..... 16

Now I'd like you to think about the issue of liability lawsuits -- the lawsuits where a person claims  
to be injured and sues for money to pay for damages.

2. Thinking about the legal system here in Alaska, do you feel the present liability system is  
working well and should not be changed, or do you feel the present liability system has  
problems and should be improved?

System working well/no change..... 26% [SKIP TO Q4]  
System has problems/should be improved ..... 43  
Don't Know [DO NOT READ] ..... 32 [SKIP TO Q4]

**[IF HAS PROBLEMS IN Q2, ASK:]**

3. What are some of the problems with Alaska's liability court system that should be changed or improved? [PROBE:] Is there anything else? [n=214]

	<u>First Mentions</u>	<u>Total Mentions</u>
Too much money rewarded .....	17%	17%
Need new laws .....	14	27
Too easy to file lawsuits .....	14	22
Too many lawsuits .....	9	11
Fraud/Personal greed .....	9	9
Greedy//Unethical lawyers .....	7	10
Ties up the courts.....	7	8
Take resources away from real problems.....	3	4
Hurts innocent people.....	2	4
Everything.....	*	*
Other mentions.....	4	4
Don't know/refused.....	14	14

4. On a related subject, lawyers, like businesses, sometimes try to reach customers through advertising. Have you seen or heard any advertisements for lawyers recently?

Yes .....	60%
No.....	40
Don't Know [DO NOT READ] .....	*

5. One issue that has come up is reforming the state's legal system to reduce the number of frivolous lawsuits being filed. On this issue, have you seen, heard or read anything in the news lately?

Yes/seen .....	11%
Yes/heard .....	7
Yes/read .....	8
No.....	73
Don't Know/Refused [DO NOT READ].....	1

6. From what you have heard about the issue of frivolous lawsuits, how serious a problem would you say they are in Alaska? Are frivolous lawsuits...[READ LIST:]

An extremely serious problem .....	8%
A very serious problem.....	18
A somewhat serious problem.....	36
Not a very serious problem .....	19
Not at all a serious problem .....	6
Don't Know/Refused [DO NOT READ].....	14

7. Some people say there are too many frivolous lawsuits being filed in Alaska and that they are having a negative impact on our economy; others disagree. How much negative impact do you think frivolous lawsuits are having on the Alaska economy? Would you say they are having...

An extremely negative impact .....	8%
A very negative impact .....	18
A somewhat negative impact .....	37
Not a very negative impact .....	15
No negative impact .....	8
Don't Know/Refused [DO NOT READ].....	14

8. Which of the following statements comes *closer* to your opinion regarding the liability law system? [WAIT FOR RESPONSE, ASK:] And would that be strongly or somewhat more like your opinion?

Some people say: There are too many lawsuits being filed in Alaska these days.

Other people say: Not enough people in Alaska are exercising their right to sue.

Too many lawsuits/strongly.....	37%	67%
Too many lawsuits/somewhat .....	30	
Don't Know [DO NOT READ] .....	19	
Not enough exercising their right/somewhat.....	11	
Not enough exercising their right/strongly .....	4	15%

9. Which of the following statements comes *closer* to your opinion? [WAIT FOR RESPONSE, ASK:] And would that be strongly or somewhat more like your opinion?

Some people say: Too many people are taking unfair advantage of the system in order to get their hands on large damage awards.

Other people say: Although it may have some loopholes, the system is fair in nearly all cases.

Too many people taking advantage/strongly .....	39%	62%
Too many people taking advantage/somewhat.....	23	
Don't Know [DO NOT READ] .....	11	
System is fair/somewhat.....	22	
System is fair/strongly .....	5	27%

Please tell me whether you agree or disagree with the following statements about frivolous lawsuits in the liability law system. Frivolous lawsuits are lawsuits that are unnecessary in many people's views. [WAIT FOR RESPONSE, ASK:] And would that be a somewhat or strongly (agree/disagree)? [ROTATE Q10 - Q16]

10. Frivolous civil lawsuits are the main reason the civil courts are so clogged and cases are delayed.

Agree/strongly .....	37%	68%
Agree/somewhat.....	31	
Don't Know [DO NOT READ] .....	13	
Disagree/somewhat.....	13	
Disagree/strongly .....	6	19%

11. Frivolous lawsuits have increased the cost of medical care in Alaska.

Agree/strongly .....	40%	66%
Agree/somewhat.....	26	
Don't Know [DO NOT READ] .....	16	
Disagree/somewhat.....	13	
Disagree/strongly .....	5	18%

12. I am afraid that one day I, or someone in my family or my business, will be the victim of a frivolous lawsuit.

Agree/strongly .....	28%	61%
Agree/somewhat.....	33	
Don't Know [DO NOT READ] .....	9	
Disagree/somewhat.....	20	
Disagree/strongly .....	11	31%

13. Frivolous lawsuits have increased the cost of consumer products in Alaska.

Agree/strongly .....	27%	55%
Agree/somewhat.....	28	
Don't Know [DO NOT READ] .....	18	
Disagree/somewhat.....	19	
Disagree/strongly .....	8	27%

14. Fear of frivolous malpractice suits causes doctors to practice defensive medicine which has raised health care costs

Agree/strongly .....	55%	80%
Agree/somewhat.....	25	
Don't Know [DO NOT READ] .....	7	
Disagree/somewhat.....	7	
Disagree/strongly .....	6	13%

15. Frivolous lawsuits have caused higher insurance premiums for everyone.

Agree/strongly .....	64%	87%
Agree/somewhat.....	23	
Don't Know [DO NOT READ] .....	5	
Disagree/somewhat.....	5	
Disagree/strongly .....	3	8%

16. The number of frivolous lawsuits delays compensation to legitimate victims

Agree/strongly .....	44%	73%
Agree/somewhat.....	29	
Don't Know [DO NOT READ] .....	12	
Disagree/somewhat.....	10	
Disagree/strongly .....	5	15%

People have mentioned a number of different proposals to address the issue of frivolous lawsuits. Please tell me whether you would favor or oppose each of the following proposals. [WAIT FOR RESPONSE, ASK:] And would that be somewhat or strongly (favor/oppose)? [ROTATE Q17 - Q29]

17. A proposal to limit the percentage that a personal injury trial lawyer can receive as a fee from any settlement or award from his or her client.

Favor/strongly .....	53%	78%
Favor/somewhat .....	25	
Don't Know [DO NOT READ] .....	6	
Oppose/somewhat .....	9	
Oppose/strongly .....	6	15%

18. Having a no-fault insurance system where people involved in accidents receive insurance payments from their own insurance company regardless of who is at fault.

Favor/strongly .....	24%	49%
Favor/somewhat .....	25	
Don't Know [DO NOT READ] .....	13	
Oppose/somewhat .....	18	
Oppose/strongly .....	21	39%

19. A proposal requiring the loser of a lawsuit to pay legal fees for both sides.

Favor/strongly .....	35%	63%
Favor/somewhat .....	28	
Don't Know [DO NOT READ] .....	9	
Oppose/somewhat .....	16	
Oppose/strongly .....	12	28%

20. A proposal requiring that disputes of less than \$100,000 automatically go to arbitration or mediation before going to a jury trial.

Favor/strongly .....	44%	73%
Favor/somewhat .....	29	
Don't Know [DO NOT READ] .....	10	
Oppose/somewhat .....	9	
Oppose/strongly .....	8	17%

21. A proposal to strengthen the penalties and fines against attorneys who are guilty of improper client solicitation

Favor/strongly .....	58%	83%
Favor/somewhat .....	25	
Don't Know [DO NOT READ] .....	8	
Oppose/somewhat .....	5	
Oppose/strongly .....	4	9%

22. A proposal requiring harsher penalties for people who bring or aid in bringing a frivolous lawsuit.

Favor/strongly .....	53%	80%
Favor/somewhat .....	27	
Don't Know [DO NOT READ] .....	6	
Oppose/somewhat .....	9	
Oppose/strongly .....	5	14%

23. A proposal to limit the ability of convicted felons in prison to bring liability lawsuits.

Favor/strongly .....	58%	76%
Favor/somewhat .....	18	
Don't Know [DO NOT READ] .....	5	
Oppose/somewhat .....	7	
Oppose/strongly .....	11	18%

24. A proposal that would make jurors aware of all the different sources of compensation an injured party has already received before trial, and stop injured parties from secretly collecting twice for the same injury without the jury's knowledge.
- |                                |     |     |
|--------------------------------|-----|-----|
| Favor/strongly .....           | 68% | 86% |
| Favor/somewhat .....           | 18  |     |
| Don't Know [DO NOT READ] ..... | 5   |     |
| Oppose/somewhat .....          | 5   |     |
| Oppose/strongly .....          | 5   | 10% |
25. A proposal that puts a limit on punitive damage awards by juries to three times economic and pain and suffering damages.
- |                                |     |     |
|--------------------------------|-----|-----|
| Favor/strongly .....           | 38% | 66% |
| Favor/somewhat .....           | 28  |     |
| Don't Know [DO NOT READ] ..... | 15  |     |
| Oppose/somewhat .....          | 10  |     |
| Oppose/strongly .....          | 9   | 19% |
26. A proposal to limit the kinds of medical expert witnesses who are asked to testify in trials. This proposal will only permit medical expert witnesses to testify who are currently licensed doctors, and who have also practiced the same kind of medical specialty that is being questioned in the trial, and actively practiced that specialty sometime within the last 10 years.
- |                                |     |     |
|--------------------------------|-----|-----|
| Favor/strongly .....           | 56% | 80% |
| Favor/somewhat .....           | 24  |     |
| Don't Know [DO NOT READ] ..... | 8   |     |
| Oppose/somewhat .....          | 6   |     |
| Oppose/strongly .....          | 6   | 12% |
27. A proposal that will stop forcing someone who is found only 10% responsible to pay 100% of a damage award, and instead require them only to pay their percentage of fault and no more.
- |                                |     |     |
|--------------------------------|-----|-----|
| Favor/strongly .....           | 59% | 84% |
| Favor/somewhat .....           | 25  |     |
| Don't Know [DO NOT READ] ..... | 7   |     |
| Oppose/somewhat .....          | 4   |     |
| Oppose/strongly .....          | 5   | 9%  |
28. A proposal to prohibit lawsuits by individuals for injuries sustained in the commission of a felony.
- |                                |     |     |
|--------------------------------|-----|-----|
| Favor/strongly .....           | 61% | 80% |
| Favor/somewhat .....           | 19  |     |
| Don't Know [DO NOT READ] ..... | 8   |     |
| Oppose/somewhat .....          | 5   |     |
| Oppose/strongly .....          | 7   | 12% |

[SPLIT SAMPLE Q29]

29A. A proposal that would reduce to SIX years the time limit allowed to file a lawsuit for an injury someone is claiming happened years ago in the past.

Favor/strongly .....	49%	73%
Favor/somewhat .....	24	
Don't Know [DO NOT READ] .....	8	
Oppose/somewhat .....	8	
Oppose/strongly .....	12	20%

29B. A proposal that would reduce to TEN years the time limit allowed to file a lawsuit for an injury someone is claiming happened years ago in the past.

Favor/strongly .....	53%	75%
Favor/somewhat .....	22	
Don't Know [DO NOT READ] .....	8	
Oppose/somewhat .....	8	
Oppose/strongly .....	9	17%

Now, I am going to read you a list of groups, and I would like you to tell me if you think these groups would be helped or hurt by all these lawsuit liability reform proposals I just read you.  
[ROTATE Q30-37]

30. Personal injury lawyers

Helped .....	18%
Hurt .....	73
Don't Know [DO NOT READ] .....	8
Refused [DO NOT READ] .....	1

31. Small businesses

Helped .....	78%
Hurt .....	14
Don't Know [DO NOT READ] .....	7
Refused [DO NOT READ] .....	•

32. Large corporations

Helped .....	71%
Hurt .....	21
Don't Know [DO NOT READ] .....	8
Refused [DO NOT READ] .....	•

33. Taxpayers

Helped .....	74%
Hurt .....	17
Don't Know [DO NOT READ] .....	8
Refused [DO NOT READ] .....	1

34. People with legitimate lawsuits

Helped .....	71%
Hurt .....	20
Don't Know [DO NOT READ] .....	9
Refused [DO NOT READ] .....	•

35. Insurance companies

Helped .....	69%
Hurt .....	24
Don't Know [DO NOT READ] .....	7
Refused [DO NOT READ] .....	•

36. Doctors and other medical professionals		
Helped .....	74%	
Hurt .....	16	
Don't Know [DO NOT READ] .....	10	
Refused [DO NOT READ] .....	*	
37. People with frivolous lawsuits		
Helped .....	10%	
Hurt .....	82	
Don't Know [DO NOT READ] .....	7	
Refused [DO NOT READ] .....	1	

There has been some talk about reforming the liability law system. I'd like to read you a brief list of groups and individuals who might speak out on this topic. For each one, on a scale of one to five where one means you don't trust that group or individual at all, and five means you trust that group or individual completely, please tell me how much you trust each on this topic. [READ LIST:] [ROTATE]

	Don't Trust At All			Trust Completely		Don't Know
38. Alaska Trial Lawyers Association.....	20%	19%	33%	10%	6%	12%
39. Insurance companies.....	24	25	33	11	4	3
40. Personal injury lawyers .....	44	23	21	6	2	4
41. Medical Doctors .....	6	10	29	36	16	2
42. Your local Chamber of Commerce.....	6	9	26	34	19	6
43. Local small business owners .....	3	5	25	42	21	3
44. Hospitals .....	7	10	35	32	13	3

[SPLIT SAMPLE Q45]

45A. Would you be more likely to vote FOR or more likely to vote AGAINST a candidate for state office who was endorsed by personal injury trial lawyers [WAIT FOR RESPONSE, ASK:] And would that be somewhat or much more likely to vote (for/against)?

More likely to vote for/much .....	2%	9%
More likely to vote for/somewhat .....	7	
Don't Know [DO NOT READ] .....	22	
More likely to vote against/somewhat.....	41	
More likely to vote against/much .....	28	69%

45B. Would you be more likely to vote FOR or more likely to vote AGAINST a candidate for state office who accepts campaign contributions from personal injury trial lawyers [WAIT FOR RESPONSE, ASK:] And would that be somewhat or much more likely to vote (for/against)?

More likely to vote for/much .....	2%	9%
More likely to vote for/somewhat .....	7	
Don't Know [DO NOT READ] .....	25	
More likely to vote against/somewhat.....	35	
More likely to vote against/much .....	31	66%

46. If the State Legislature passes a liability reform measure aimed at reducing frivolous lawsuits, do you think the governor should sign it?	
Yes .....	83%
No.....	8
Don't Know [DO NOT READ] .....	10

Now we have a few questions for statistical purposes...

47. How long have you lived in Alaska?	
Less than one year.....	3%
One to three years .....	11
Four to ten years.....	17
Eleven or more years.....	68
Don't Know [DO NOT READ] .....	1
Refused [DO NOT READ].....	1
48. Have you or anyone in your household ever been involved in a personal injury lawsuit?	
Yes/self.....	9%
Yes/family member.....	11
No.....	79
Don't Know [DO NOT READ] .....	.
Refused [DO NOT READ].....	.
49. Have you ever served on a jury in a civil -- that is a non-criminal -- court case?	
Yes .....	16%
No.....	83
Don't Know/Refused [DO NOT READ].....	1
50. What type of radio station do you listen to most? [ACCEPT UP TO 3 RESPONSES]	
Country/Western music.....	26%
Classic Rock and Roll .....	21
News talk/sports talk.....	17
Oldies/Easy listening.....	16
Public radio/NPR.....	15
Contemporary Pop music .....	9
Classical music .....	7
Christian radio .....	7
Modern/New Wave/alternative Rock.....	7
Jazz.....	5
Soul/Rap.....	1
Other .....	3
Don't Know/Refused [DO NOT READ].....	6
51. Would you generally describe yourself as <u>conservative</u> or <u>liberal</u> ? [IF SAY MODERATE OR NEITHER:] Well which way do you lean?	
Conservative .....	48%
Lean Conservative.....	13
Moderate/Neither [DO NOT READ].....	14
Lean Liberal.....	9
Liberal .....	14
Don't Know [DO NOT READ] .....	2