

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8927 SENATE JUDICIARY

Please give this matter your highest consideration. Many people are interested: those who own horses, professionals, and those who would like to become involved with horses but can not find anyone willing to not teaching them.

Thank you

Jane Hageman

Jane Hageman
HC 1 Box 161C
Soldotna, AK 99669
(907) 262-0704

SOUTHCENTRAL HORSEMEN, INC.

P.O. Box 670034
Chugak, AK 99567-0034
(907) 485-7433

Sandy Shacklett
Southcentral Horsemen, Inc.
P.O. Box 670034
Chugak, AK 99567-0034

April 1, 1996

Representative Diana Davis
Sales Office, Room 416
Ureka, AK 99801-1182

RE: Re: HB 479

Dear Representative Davis:

We would like to express our support for HB 479. As of those listed below feel that this bill would be harmful to the horse community as a whole. There are many activities that are abandoned due to the fear of suits by those who would otherwise engage in such activities.

Respectfully


Sandy Shacklett

Kelly WARD 694-6123

Brad deMontford 688-2917

Case Wacksmire 674-2741

Les Chouksey 688-2119

Patricia Flanagan 688-2105

Doreen Payne 688-2101

Alaska State Legislature


Interim:
145 Main Street Loop #223
Kenai, Alaska 99611
(907) 283-7095
(907) 283-3075 (fax)
(907) 262-7574 (h)

Session:
State Capitol
Juneau, Alaska 99801
(907) 465-2693
(fax) (907) 465-3835

Representative Gary L. Davis

MEMORANDUM

To: Senator Robin Taylor, Chairman
Senate Judiciary Committee

From: Rep. Gary Davis 

Re: CSHB 479(JUD) "An Act relating to civil liability for injuries or death resulting from equine activities."

Date: March 27, 1996

Please consider CSHB 479(JUD) "An Act relating to civil liability for injuries or death resulting from equine activities," to be heard in the Senate Judiciary Committee at your earliest convenience.

This legislation is intended to protect owners of equines and professionals in the equine industry from frivolous lawsuits. This is justified because equines are inherently dangerous animals. Thirty-five states have already passed similar equine liability laws.

Please contact me if you have any questions on this legislation.
Thank you for your consideration.

Alaska State Legislature

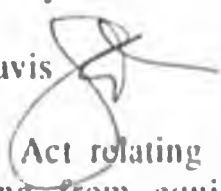
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Representative Gary L. Davis

MEMORANDUM

To: Senator Robin Taylor, Chairman
Senate Judiciary Committee

From: Rep. Gary Davis 

Re: HB 479, "An Act relating to civil liability for injuries or death resulting from equine activities."

Date: April 3, 1996

We recently discussed your concerns with HB 479 which has been referred to the Senate Judiciary Committee. As per your request, I have asked members of the equine industry for documentation showing a need for this type of legislation. Enclosed, you will find a variety of information describing situations of distress that seem to plague people involved in equine activities.

Many professionals in the equine industry have professed to me that they are frustrated due to the fact that Alaska still has not passed legislation like HB 479. Most other States have already passed a similar law.

Thank you for your consideration. Please contact me if you have any further questions or requests.

*Robin
While this information is not
the same as the one you
sent me*

Representing House District 8
Soldotna, Sterling, Funny River, Cooper Landing, Hope, Moose Pass, Seward

Thursday, April 25, 1985

Post-it® Fax Note	7671	Date	4-25-85	# of Pages	1
To	DARWIN	From	Charles Wills		
Co./Dept		Co.	Charles Wills		
Phone #		Phone #	907-376-2668		
Fax #		Fax #	907-572-2668		

a man
 ice in a high-speed car chase
 was found guilty Wednesday
 of reckless driving, leading the
 car with a revoked license,
 by Bob Linton. The jury, which
 acquitted Kulzer of local
 records, Kulzer was
 slammed into another vehicle
 as Kulzer had evaded police for
 cars off the road.

Violations
 ms that he was shocked at a
 onday against the club's
 a \$50,000 lawsuit against Spa
 that the facility's owners
 violation of state and municipal
 the suit. In July 1984, Patton
 cked while standing over a
 r at 5437 East Northern Lights
 hock resulted from an exposed

abuse case
 red bail Tuesday for an
 with sexually abusing a 13-year-

old child. Judge Victor Carlson
 24, released on \$2,500 bail. Cross' bail had previously been
 set at \$5,000. Cross was indicted April 4 on charges of
 second-degree sexual abuse of a minor.

Innocent plea entered in shooting

An Anchorage man charged with first-degree attempted
 murder in the shooting of another man in a barroom fight
 was arraigned Tuesday in Superior Court. Scott E.
 Kirkpatrick, 28, pleaded not guilty before Judge Victor
 Carlson. According to court records, the incident occurred
 during the early evening hours of March 21, when the
 victim, Tyree McCray, and another man were playing pool at
 the Tiki Cove Lounge, 3001 Spenard Road. The two men
 allegedly got into an argument in the bar before moving to
 an alley behind the lounge where McCray was later found
 with a single gunshot wound to the back of his neck. He is
 currently listed in satisfactory condition at Providence
 Hospital.

Calf roper sues arena owner

A man injured while roping a calf at a Wasilla arena filed
 suit Monday against the arena's owner. Wayne Taylor filed
 suit against Charles Wills, asking the court to award him
 \$25,000 in compensatory damages. According to the suit,
 Taylor was injured when a horse he was riding tripped and
 fell while practicing calf roping at an arena located on
 Wills' property.

From Daily News staff reports

**Denali National Park
 might open by May 1**

Denali National Park and
 Preserve hopes to open for
 campers by May 1, according
 to the National Park Service.

The road in the state's most
 popular national park is ex-
 pected to be passable to the
 campground at Teklanika,
 Mile 29, by the first of the
 month — even though there
 are now 18 foot snowdrifts
 blocking portions of it on the
 Teklanika Flats, said park
 spokeswoman Jane Anderson.
 Anderson is hopeful the
 road would be open to Toklat,
 Mile 53, by May 25, and to
 Wonder Lake by early June.

Campgrounds in the park
 will open as the road opens,
 according to Anderson. The
 Riley Creek, Savage and
 Sanctuary campgrounds, in
 addition to Teklanika, are ten-
 tatively planned to open by
 May 1, but some may lack
 running water until late May
 or early June, she said.

Private vehicles are per-

mitted on the park road
 through May 24.

Other Denali visitors must
 take the free shuttle bus from
 park headquarters near the
 George Parks Highway. The
 shuttle buses will start run-
 ning at 6 a.m. May 25 and
 continue through Sept. 15, ac-
 cording to Anderson.

Campground registration
 will be required starting May
 24 at 8 a.m. at the Riley Creek
 Information Center at the
 park. Campground registra-
 tion will continue at 8 a.m.
 daily through the summer,
 Anderson said.

In an effort to avoid long
 lines of tourists waiting to
 register for campsites each
 morning — as sometimes hap-
 pened last year — Anderson
 said the park service will
 allow people to register for
 camping spaces a day in ad-
 vance if all campgrounds are
 full and campsites are avail-
 able the next day.

le School District

International Fair
 Northway Mall

7 10 a.m. - 6 p.m.



Classic Toys

"Children you love deserve Classic Toys"

Opening May 1st!

We invite you to see our unique selection of European and American
 Toys, Stuffed Bears, Dolls from Germany, Italy, France and Great Britain



**Farm & Ranch Supplies
Health Foods**

281 Aspen Avenue
Soldotna, AK 99669
(907) 262-4698 FAX 262-6095

"More than just
a feed store"

4/2/96

ATTN: Judiciary Chairman

Re: HB 479

I have not had any lawsuits because
I have stopped allowing any activities with
my horses. The threat of a frivolous suit
has been enough to make me quit boarding,
lessons, friendly rides.

I also have a retail store where
might use the animals to promote sales.
It were not for the lawsuit threat

Jimma Taylor

03-29-96

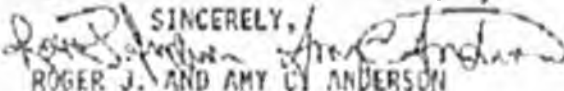
THE FOLLOWING LETTER IS IN CONSIDERATION OF JUDICIARY BILL HB479.

TO WHOM IT MAY CONCERN:

WE HAVE BEEN INVOLVED PROFESSIONALLY WITH EQUINES AND EQUESTRIAN ACTIVITIES IN THE STATE OF ALASKA FOR 19 YEARS. OUR EQUINE EXPERIENCE INCLUDES BUT IS NOT LIMITED TO-TRAINING, BREEDING, BOARDING, PROMOTIONS, FARRIER SERVICE, PRIVATE LESSONS, 4-H HORSE PROGRAM LEADERS, HORSE SHOWING, RODEO COMPETITION AND SPECIAL OLYMPICS EQUESTRIAN COACHING. DUE TO LITIGATION CONCERNS, AKA "THE INCREASE OF LAWSUIT HAPPY PEOPLE" WE HAVE PARED OUR INVOLVEMENT IN EQUINE ACTIVITIES CONSIDERABLY. WE NO LONGER OFFER RIDING LESSONS, TRAIN OR PROMOTE AS WE FEAR LAWSUITS, NOT DUE TO ANY NEGLIGENCE ON OUR PART BUT BECAUSE SO MANY IN OUR SOCIETY ARE WILLING TO SUE FOR MONETARY GAIN WHEN THE DAMAGE, IF ANY THAT OCCURS IS MINIMAL OR STEMS FROM THE INHERENT RISKS THAT EXIST ANY TIME YOU INTERACT WITH EQUINES. WE BOARD ON SHORT TERM OR EMERGENCY BASIS ONLY, HAVE TERMINATED OUR 4-H LEADERSHIP DUTIES AND HAVE PLACED SEVERED RESTRICTIONS ON OUR HANDICAPPED RIDERS AND THEIR FAMILIES. ALL THIS STEMS FROM THE LIABILITIES SURROUNDING EQUINE ACTIVITIES. LIABILITIES THAT HAVE INCREASED TEN FOLD OVER THE YEARS BECAUSE WE HAVE AMBITIOUS ATTORNEYS, GREEDY PEOPLE AND NOTHING IN THE STATE STATUTES TO PROTECT THOSE INVOLVED IN EQUINE ACTIVITIES. HB479 IS THE TYPE OF PROTECTION WE NEED.

WE HAVE BEEN INVOLVED PROFESSIONALLY IN EQUESTRIAN ACTIVITIES IN OREGON AND COLORADO, BOTH OF WHICH HAVE STATUTES ADDRESSING INHERENT RISKS INVOLVED IN EQUINE ACTIVITIES. THESE STATUTES ALLOW A COMFORT ZONE FOR EQUINE PROFESSIONALS WHO ARE NOT NEGLIGENT IN THEIR DUTIES.

MUCH MONEY IS GENERATED BY AND THROUGH INDIVIDUALS INVOLVED IN EQUINE ACTIVITIES IN THE STATE OF ALASKA. IT IS A STEADILY GROWING PART OF THIS STATES AGRICULTURAL ECONOMY. PLEASE CONSIDER AFFORDING THOSE INVOLVED SOME "COMMON SENSE" PROTECTION.

THANK-YOU FOR YOUR CONSIDERATION,
SINCERELY,

ROGER J. AND AMY C. ANDERSON
4804 STRAWBERRY ROAD
KENAI, ALASKA 99611 (907) 283-3414

ADDENDUM: IN 1990 I WAS RIDING IN A MOUNTED DRILL TEAM PERFORMANCE AT A STATE FAIR. MY HORSE FELL ON ME. MY LEG WAS FRACTURED. FOR EIGHT MONTH I ENDURED TREATMENT, THERAPY. LOSS OF WAGES, MENTAL AND EMOTIONAL ANGUISH. IF I HAD BEEN A "SUE HAPPY" INDIVIDUAL LOOKING FOR MONETARY GAIN AND NOT WILLING TO ACCEPT RESPONSIBILITY FOR MY ACTIONS AND INVOLVEMENT IN AN ACTIVITY THAT HAS INHERENT RISKS, THE FACT THAT HB 479 DID NOT EXIST WOULD HAVE MEANT A LAWSUIT AGAINST THE STATE. I ACTUALLY HAD AN ATTORNEY APPROACH ME AND PROMOTE HIS "DEEP POCKET" LAWSUIT SCENARIO! PLEASE PASS AND ENACT HB479.

SINCERELY,

AMY C. ANDERSON

STATE EQUINE LAWS

STATE	LAW PASSED	SIGNS POSTED	RELEASE W/WARNING	SPECIAL REQUIREMENTS
Alabama	Yes	Yes	Yes	
Alaska	No			
Arizona	Yes	No	Yes	
Arkansas	Yes	Yes	No	
California	Pending			
Colorado	Yes	Yes	Yes	
Connecticut	Yes	No	No	
Delaware	Yes			
Florida	Yes	Yes	Yes	
Georgia	Yes	Yes	Yes	
Hawaii	Yes	No	No	
Idaho	Yes	No	No	
Illinois	Yes	Yes	Yes	
Indiana	Yes	Yes	Yes	
Iowa	No			
Kansas	Yes	Yes	Yes	
Kentucky	Pending			
Louisiana	Yes	Yes	Yes	
Maine	Yes	No	Yes	
Maryland	No			
Massachusetts	Yes	Yes	Yes	
Michigan	Yes	Yes	Yes	
Minnesota	Yes	Yes	No	Non-riding licenses only
Mississippi	Yes	Yes	Yes	Also creates volunteer opportunities
Missouri	Yes	Yes	Yes	
Montana	Yes	No	No	
Nebraska	Pending			
Nevada	No			
New Hampshire	No			
New Jersey	Pending			
New Mexico	Yes	Yes	No	
New York	Pending			
North Carolina	Pending			

STATE EQUINE LAWS

STATE	LAW PASSED	SIGNS POSTED	RELEASE W/WARNING	SPECIAL REQUIREMENTS
North Dakota	Yes	No	No	
Ohio	No			
Oklahoma	Pending			
Oregon	Yes	No	Yes	Immunities apply to adult participants
Pennsylvania	Pending			
Rhode Island	Yes	Yes	Yes	
South Carolina	Yes	Yes	Yes	
South Dakota	Yes	Yes	No	
Tennessee	Yes	Yes	Yes	
Texas	Yes	Yes	Yes	
Utah	Yes	No	No	
Vermont	Pending			
Virginia	Yes	No	Yes	
Washington	Yes	No	No	
West Virginia	Yes	No	*No	Participants must sign statement.
Wisconsin	Yes	No	No	
Wyoming	Yes	No	No	
TOTALS	PASSED: 35	PENDING: 9	NO: 6	

HB

484


Alaska State Legislature

REPRESENTATIVE
GENE THERRIAULT
Mailing Address:
11911 Cushman, Suite 101
Fairbanks, Alaska 99701
(907) 488-0857
FAX (907) 488-4271

While in Session
State Capitol
Juneau, Alaska
99801-1182
(907) 465-4797
Fax (907) 465-3884
House District 33

House Of Representatives

To: Senator Robin Taylor
Chairman, Senate Judiciary Committee

From: Representative Gene Therriault 

Date: March 25, 1996

Re: Hearing Request for House Bill 484

I would like to request a hearing for House Bill 484, "An Act relating to enforcement of restitution orders entered against minors."

This legislation is intended to make it easier for victims of juvenile crimes to collect damages by allowing a judge to convert a criminal restitution order into a civil judgment.

Attached to this request are:

1. Sponsor statement
2. Sectional analysis
3. Fiscal notes
4. Department of Law position of support
5. Relevant court case
6. Judiciary committee report

Probable supporters of the bill include the Fairbanks North Star Borough and the State Department of Law. I do not know of any opponents to the bill at this time.

I would like to request a teleconference site be scheduled at the Fairbanks Legislative Information Office.

I would appreciate consideration of this bill at the Committee's earliest convenience. Thank you.

Alaska State Legislature

REPRESENTATIVE
GENE THERRIALT
P.O. Box 55326
North Pole, Alaska 99705
(907) 488-0862

White House
State Capitol
Juneau, Alaska
99801-1182
(907) 465-4797

House District 33

House Of Representatives

House Bill 484 : "An Act relating to enforcement of restitution orders entered against minors."

Sponsor: Representative Gene Therriault



Sponsor Statement

This legislation would allow the courts to convert a restitution order in a juvenile criminal case into a civil judgment. The bill is in response to a recent Alaska Court of Appeals case, *R.I v. State*, which held that a Superior Court judge lacks statutory authority to treat a restitution order as if it were a civil judgment in a juvenile case. AS 12.55.051(d) grants the state such authority in adult cases.

A civil judgment is especially helpful when the offender fails or refuses to make restitution payments. A civil judgment would allow the victim in such cases to execute against the offender's assets, including his or her permanent fund dividend, in order to enforce the restitution order without going to civil court and obtaining a civil judgment for the damages. Currently, if a juvenile does not pay a restitution order by his or her 19th birthday, the court has no more jurisdiction over the juvenile and the restitution order is basically moot. A victim must go to civil court, prove again that the juvenile was liable for the damages and obtain a civil judgment against the juvenile offender. This seems like an unnecessary and costly burden for the victim, who has already been hurt once.

Sectional Analysis

House Bill 484, "An Act relating to enforcement of restitution orders against minors."

Section 1 Adds a new section modeled after adult criminal procedure AS 12.55.051(d) to give the court authority to convert a restitution order into a civil judgment. The last line clarifies that the statute does not preclude the court from taking advantage of any other remedies that may be available.

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 484

Revision Date: _____
 Title: An Act relating to enforcement of restitution orders entered against minors
 Sponsor: Rep. Themault
 Requestor: (H) JUD

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ()	0	0	0	0	0	0
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FUND SOURCE: (Thousands of Dollars)

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

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

There is no fiscal impact to the Public Defender Agency.

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

Phone: 264-4400
 Date: _____

Approved by Commissioner: Mark Boyer
 Agency: Department of Administration

Date: 2/20/96

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 484

Revision Date: _____
 Title: An Act relating to enforcement of restitution orders entered against minors.
 Sponsor: Rep. Thernault
 Requestor: (H) JUD

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUND SOURCE: (Thousands of Dollars)

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

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

POSITIONS:

FULL-TIME					
PART-TIME					
TEMPORARY					

ANALYSIS: (Attach a separate page if necessary)

There is no fiscal impact to the Office of Public Advocacy

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

Phone: 274-1654
 Date: _____

Approved by Commissioner: Mark Rowe
 Agency: Department of Administration

Date: 2/20/96

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FISCAL NOTE

No. 3

Bill Version: HB 484

(H) Publish Date: 2/21/96

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Department of Law
 Title: "An Act relating to enforcement of restitution orders entered against minors." BRU: Criminal Division, Civil Division
 Sponsor: Representative Thernaut Component: General Legal Services
 Requester: House Judiciary Committee COMPONENT SERIAL NO. 2085, 2087

Expenditures/Revenues (Thousands of Dollars)

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

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES						
--------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
FULL-TIME	0.01	0.01	0.0	0.0	0.01	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill amends the Children's Proceedings statutes, AS 47.10.10 - 142, to provide that when restitution to a victim has been ordered as part of a juvenile delinquency adjudication, the victim recipient of the restitution may enforce payment of the restitution order in a civil proceeding. This is a matter between private parties and there will not be a fiscal impact for the Department of Law.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Division Date: 2/16/96
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 2/16/96
 Agency: Department of Law

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FISCAL NOTE

No. 1
 Bill Version: RB 484
 (H) Publish Date: 2/21/96

**STATE OF ALASKA
 1996 LEGISLATIVE SESSION**

Revision Date: _____ Dept. Affected: Alaska Court System
 Title: Enforce Restitution Order Against Minor BRU: Trial Courts
 Component: _____
 Sponsor: Rep. Thornault, Kelly
 Requestor: House Judiciary COMPONENT SERIAL NO. 788

Expenditures/Revenues		(Thousands of Dollars)					
OPERATING EXPENDITURES:	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02	
PERSONAL SERVICES							
TRAVEL							
CONTRACTUAL							
SUPPLIES							
EQUIPMENT							
LAND & STRUCTURES							
GRANTS & CLAIMS							
MISCELLANEOUS							
TOTAL OPERATING	3.0	0.0	3.0	3.0	3.0	3.0	
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ()							

Fund Source		(Thousands of Dollars)					
1002 Federal Receipts							
1003 GF Match							
1004 GF	3.0	3.0	3.0	3.0	3.0	3.0	
1005 GF/Program Receipts							
1007 GF/Mental Health							
Other							
TOTAL	3.0	3.0	3.0	3.0	3.0	3.0	

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

Positions							
Full-Time							
Part-Time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel Phone: 254-8228
 Agency: Alaska Court System Date: 02/15/96

Approved by: Arthur M. Snowden, II, Administrative Director Date: 02/15/96
 Agency: Alaska Court System

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB484

Revision Date: _____
 Title: Enforcement of Restitution Orders
 Against Juveniles _____
 Sponsor: Representative Therriault
 Requestor: House (JUD)

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

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY97	FY98	FY99	FY00	FY01	FY02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGES IN REVENUES						
---------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

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

POSITIONS:

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

Estimate of any current year (FY96) cost: 10.0

ANALYSIS: (Attach a separate page if necessary)

There would be no fiscal impact to the Division of Family & Youth Services if this bill were to become law.

5/16/96
 Prepared by: L. Diane Wierly, Director Phone: 465-3191
 Division: Family & Youth Services Date: 02/16/96
 Approved by Commissioner: Karen Priddy, Commissioner Date: 2/16/96
 Agency: Department of Health & Social Services

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STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

February 16, 1996

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

- CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3429
FAX: (907) 465-4043
- OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501-2064
PHONE: (907) 269-6250
FAX: (907) 269-6270

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

Re: HB 484

Dear Representative Therriault:

You have requested an analysis of the referenced bill, entitled "An Act relating to enforcement of restitution orders entered against minors." The bill provides the statutory authority for courts to enforce an order under AS 47.10.080(b)(4) for a minor to pay restitution as a civil judgment enforceable by execution under AS 09.35. We believe that the bill corrects a "loophole" in existing law, and is necessary to fully protect the rights of innocent victims of crime.

The need for statutory authority arose from a recent decision by the Alaska Court of Appeals. In R.I. v. State, 894 P.2d 683 (Alaska App. 1995), the court found that since there is no specific statutory authority in AS 47.10 to enter civil judgments in juvenile cases in favor of the restitution recipient, the court could not do so. This bill supplies the required authority. It is similar to the statutory authority which allow a court to enforce an order for restitution in a criminal case in adult court as a civil judgment under AS 09.35. AS 12.55.051(d).

The Hon. Gene Therriault
Alaska State Legislature

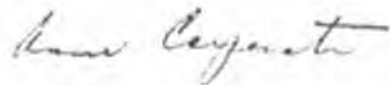
February 16, 1996
Page 2

If you have any questions or need further information, please feel free to call me. We are happy to provide any assistance you need in seeking passage of this legislation.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:


Anne D. Carpeneti
Assistant Attorney General

ADC:jf

R.I., Appellant,
v.
STATE of Alaska, Appellee.

No. A-5130.
Court of Appeals of Alaska.
May 12, 1995.

After juvenile was adjudicated delinquent and ordered to make restitution, the Superior Court, Fourth Judicial District, Fairbanks, Mary E. Greene, J., later revoked probation and entered civil judgment in amount of unpaid restitution. Appeal was taken. The Court of Appeals, Mannheim, J., held that even though delinquent minor could evade restitution order by waiting until he became "too old" for court to take action against him, court lacked authority to issue civil judgment ordering payment of restitution in connection with delinquency matter.

Reversed.

1. CRIMINAL LAW k1208.4(2)
110 ---
110XXVI Punishment of Crime
110k1208 Extent of Punishment in General
110k1208.4 Power to Impose Particular
Kinds of Punishment
110k1208.4(2) Restitution.

[See headnote text below]

1. INFANTS k224
211 ---
211VIII Dependent, Neglected, and
Delinquent Children
211VIII(E) Judgment; Disposition of Child
211k223 Delinquents and Law Violators
211k224 Fines and restitution orders.

Alaska App. 1995.

In both criminal cases and juvenile delinquency cases, superior court has authority to order that defendant pay restitution.

2. CRIMINAL LAW k982.5(2)
110 ---
110XXIII Judgment, Sentence, and Final
Commitment
110k982 Probation and Suspension of
Sentence
110k982.5 Conditions

110k982.5(2) Validity.

[See headnote text below]

2. CRIMINAL LAW k1208.4(2)
110 ---
110XXVI Punishment of Crime
110k1208 Extent of Punishment in General
110k1208.4 Power to Impose Particular
Kinds of Punishment
110k1208.4(2) Restitution.

Alaska App. 1995.

Sentencing court can order convicted defendant to pay restitution either as independent component of sentence or as condition of defendant's probation. *AS 12.55.045(a), 12.55.100(a)(2).*

3. INFANTS k224
211 ---
211VIII Dependent, Neglected, and
Delinquent Children
211VIII(E) Judgment; Disposition of Child
211k223 Delinquents and Law Violators
211k224 Fines and restitution orders

Alaska App. 1995.

In juvenile delinquency case, superior court can order restitution in lieu of or in addition to other authorized dispositions. *AS 47.10.080(b)(1-3).*

4. CRIMINAL LAW k1208.4(2)
110 ---
110XXVI Punishment of Crime
110k1208 Extent of Punishment in General
110k1208.4 Power to Impose Particular
Kinds of Punishment
110k1208.4(2) Restitution.

[See headnote text below]

4. INFANTS k224
211 ---
211VIII Dependent, Neglected, and
Delinquent Children
211VIII(E) Judgment; Disposition of Child
211k223 Delinquents and Law Violators
211k224 Fines and restitution orders.

Alaska App. 1995.

Statutes allowing for imposition of restitution for criminal cases and juvenile delinquency cases do not

894 P.2d 683, R.I. v. State, (Alaska App. 1995)

authorize sentencing court to issue civil judgment in favor of crime victim for amount of damage or loss inflicted by either adult or juvenile defendant. *AS 47.10.010 et seq.*

5. INFANTS k224
 211 ---
 211VIII Dependent, Neglected, and Delinquent Children
 211VIII(E) Judgment; Disposition of Child
 211k223 Delinquents and Law Violators
 211k224 Fines and restitution orders.

Alaska App. 1995.

Superior Court lacks authority to enter civil judgment in juvenile case in favor of intended recipient of restitution. *AS 47.10.010 et seq.*

6. CRIMINAL LAW k977(1)
 110 ---
 110XXIII Judgment, Sentence, and Final Commitment
 110k977 Power and Duty of Court in General
 110k977(1) In general.

Alaska App. 1995.

Legislation, and not inherent judicial power is source of court's sentencing authority.

7. CRIMINAL LAW k982.5(1)
 110 ---
 110XXIII Judgment, Sentence, and Final Commitment
 110k982 Probation and Suspension of Sentence
 110k982.5 Conditions
 110k982.5(1) In general.

Alaska App. 1995.

While court has wide discretion in setting conditions of defendant's probation, court must have legislative authorization before imposing conditions that fundamentally alter defendant's status as probationer.

8. INFANTS k223.1
 211 ---
 211VIII Dependent, Neglected, and Delinquent Children
 211VIII(E) Judgment, Disposition of Child

- 211k223 Delinquents and Law Violators
 211k223.1 In general.

Alaska App. 1995.

In juvenile delinquency cases, superior court's authority to impose particular types of disposition in juvenile case is granted by and governed by legislation.

9. INFANTS k223.1
 211 ---
 211VIII Dependent, Neglected, and Delinquent Children
 211VIII(E) Judgment; Disposition of Child
 211k223 Delinquents and Law Violators
 211k223.1 In general.

Alaska App. 1995.

Superior court may not issue civil judgment in favor of crime victim as part of juvenile disposition, despite superior court's broad, inherent power to fashion dispositional orders in juvenile cases.

*684 J. John Franich, Asst. Public Advocate, Fairbanks, and Brant McGee, Public Advocate, Anchorage, for appellant.

D. Rebecca Snow, Asst. Atty. Gen., Fairbanks, and Bruce M. Botelho, Atty. Gen., Juneau, for appellee.

Before BRYNER, C.J., and COATS and MANNHEIMER, JJ.

OPINION

MANNHEIMER, Judge.

R.I. was adjudicated a juvenile delinquent under *AS 47.10.050(a)*. As one of the conditions of his probation, he was ordered to make restitution in the amount of \$3,018.83. Later, because of various violations of his probation (including failure to make restitution), the superior court revoked R.I.'s probation and institutionalized him. In addition, the court entered a civil judgement against R.I. (in favor of the victims of his crimes) for the amount of the unpaid restitution.

R.I. appeals this last aspect of the superior court's dispositional order. He contends that the superior court, by entering the civil judgement against him, in

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effect increased the severity of his sentence and thus violated the double jeopardy clauses of the federal and state constitutions. We asked the parties to brief a related issue: whether the superior court had the authority to convert the unpaid restitution into a civil judgement. After consideration of the supplemental briefing, we now hold that the superior court lacked authority to convert the restitution order into a civil judgement.

The superior court's decision to issue a civil judgement against R.I. was apparently prompted by the fact that the court's jurisdiction over R.I. was about to end. (FN1) The *685 court wished to ensure that R.I. eventually paid the restitution, even if payment did not occur until after R.I.'s release from juvenile supervision. However, in attempting to achieve this goal, the court acted beyond its legal powers.

[1][2][3] In both criminal cases and juvenile delinquency cases, the legislature has authorized the superior court to order a defendant to pay restitution. In criminal prosecutions, a sentencing court can order a convicted defendant to pay restitution either as an independent component of the defendant's sentence, see AS 12.55.045(a), or as a condition of the defendant's probation, see AS 12.55.100(a)(2). And in juvenile cases, AS 47.10.080(b)(4) authorizes the superior court to order restitution "in lieu of or in addition to" the dispositions authorized by AS 47.10.090(b)(1)-(b)(3).

[4][5] These statutes, however, do not authorize a sentencing court to issue a civil judgement in favor of a crime victim for the amount of damage or loss inflicted by an adult or juvenile defendant. (FN2) More specifically, no provision of AS 47.10 gives the superior court the authority to enter civil judgement in a juvenile case in favor of the intended recipient of restitution. This lack of statutory authority determines the outcome of R.I.'s appeal.

[6][7] In the realm of criminal law, the Alaska Supreme Court has repeatedly held that legislation, not inherent judicial power, is the source of a court's sentencing authority. The legislature sets the maximum, minimum, and presumptive terms of imprisonment for crimes. See *Nell v. State*, 642 P.2d 1361, 1365 (Alaska App. 1982), (citing several Alaska cases "which have explicitly recognized the

authority of the legislature in the area of fixing criminal sentences"). The legislature decrees whether a defendant's sentence may be suspended in whole or in part. *Pete v. State*, 379 P.2d 625, 626 (Alaska 1963) (a court has no inherent power to suspend a sentence of imprisonment and place a defendant on probation; such authority must be granted by the legislature). The legislature determines what length of probation may be imposed. *Gonzales v. State*, 608 P.2d 23, 25-26 (Alaska 1980); *Jackson v. State*, 541 P.2d 23, 25 (Alaska 1975) (when a defendant's sentence of imprisonment is suspended and the defendant is placed on probation, the defendant's total period of probation may not exceed the 5-year period specified in AS 12.55.090(c)); *Tiedeman v. State*, 576 P.2d 114, 116 n. 11 (Alaska 1978) (because a different statute (AS 12.55.085(a)) governs probation when a defendant receives a suspended imposition of sentence (SIS), the 5-year limitation does not apply; rather, SIS probation is limited to the same number of years as the maximum sentence of imprisonment for the crime). And, while a court has wide discretion in setting the conditions of a defendant's probation, a court must have legislative authorization before imposing conditions that fundamentally alter a defendant's status as a "probationer" (that is, someone who is released from custody upon his or her promise to abide by certain conditions). *Whittlesey v. State*, 626 P.2d 1066, 1067 (Alaska 1980); *Boyme v. State*, 586 P.2d 1250, 1251 (Alaska 1978) (absent explicit legislative authorization, a court may not impose imprisonment as a condition of probation). See *Brown v. State*, 559 P.2d 107, 110 (Alaska 1977) (because AS 12.55.100(a)(1) authorizes a court to impose a fine as a condition of probation, a sentencing court can order a defendant to pay a fine as a condition of probation even when the underlying crime is punishable by imprisonment only).

[8] In juvenile cases, the supreme court has followed the same rule: the superior *686 court's authority to impose particular types of disposition in a juvenile case is granted by and governed by legislation. In *re E.M.D.*, 490 P.2d 658 (Alaska 1971). In *E.M.D.*, the superior court found a minor to be a "child in need of supervision" under former AS 47.10.290(7) (a status that is now termed "child in need of aid" under AS 47.10.010(a)(2)). Based on this finding, the superior court ordered E.M.D. to be

894 P.2d 683, R.I. v. State, (Alaska App. 1995)

institutionalized "in a correctional or detention facility ... until released therefrom upon a showing ... that the minor has completed a program of rehabilitation and has been amenable thereto". *E.M.D.*, 490 P.2d at 659.

The minor appealed, contending that the superior court had exceeded its authority when it ordered her to be institutionalized. *E.M.D.* argued that the legislature had authorized institutionalization only for delinquent minors, not for children in need of supervision. The supreme court agreed:

Alaska's pertinent statutory provisions and procedural rules distinguish between categories of children.... Of controlling significance here is that each class or category mandates distinct differences regarding the permissible content of any dispositional order the trial court can enter.

Study of our children's laws leads to the conclusion that the legislature has authorized institutionalization only where the child is found to be a delinquent minor.... [T]he only instance under our children's laws authorizing institutionalization or incarceration is when the child has violated the laws of the state[.] Since the runaway child in the case at bar was found to be a child in need of supervision, not a delinquent minor, no legal basis existed for her incarceration.

E.M.D., 490 P.2d at 659-660.

Attempting to avoid this result, the State in *E.M.D.* argued that the superior court was not bound by the literal terms of AS 47.10. The State contended that, "in light of the legislature's broad policy declaration [that] protection of children is the paramount purpose [of the] laws pertaining to children's courts", the superior court should be deemed to enjoy broad power to fashion dispositions different from, or in addition to, the ones specifically listed in AS 47.10.050. *Id.* at 660. The supreme court rejected this argument:

[W]e recently held that the benevolent social theory supposedly underlying children's court [legislation] does not furnish justification for dispensing with constitutional safeguards [citing *R.L.R. v. State*, 457 P.2d 27, 30-31 (Alaska 1971)] (a child alleged to be a delinquent minor is

entitled to a trial by jury)]. [In] the case at bar, it is equally appropriate to note that notions of benevolent protective policies cannot be used to validate departures from positive law relating to the adjudicative and dispositive phases of children's proceedings.

E.M.D., 490 P.2d at 660.

[9] Returning to the present case, no provision of AS 47.10 authorizes the superior court to issue a civil judgement in favor of a crime victim as part of a juvenile disposition. The State attempts to deal with this lack of statutory authority by asserting that, in children's cases, the superior court enjoys broad, inherent power to fashion dispositional orders. The State reasons that there was no need for the legislature to specify the superior court's power to convert a restitution order to a civil judgement in children's cases because the superior court has "broad dispositional discretion" to pursue any mode of enforcing its judgement.

This is essentially the same argument that the supreme court rejected in *E.M.D.*. The superior court does not have unfettered dispositional power in children's cases; rather, the court's authority arises from, and is limited by, statute. The legislation defining the superior court's authority in juvenile cases does not authorize the court to enter civil judgement in favor of a crime victim or convert a previously-entered restitution order into a civil judgement. Because no provision of AS 47.10 confers this power on the superior court, we hold that the superior court lacked the authority to convert the restitution portion of its dispositional order into a civil judgement against R.I..

The State contends that, if the superior court lacks the power to convert its restitution orders to civil judgements, then delinquent *687 minors might evade the court's orders "simply by waiting to get too old" for the court to take action against them. Nevertheless, as the State's brief in *E.M.D.* recognized, courts must not exceed their granted powers "even where ... the factual circumstances cry out for a disposition beyond the fingertips of the [sentencing] court". *E.M.D.*, 490 P.2d at 660-61 n. 10.

The contested portion of the superior court's

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judgement is REVERSED.

FN1. Under AS 47.10.100(a), the superior court's jurisdiction over a juvenile ends when the juvenile reaches his or her nineteenth birthday (or, with the child's consent, his or her twentieth birthday). *State v. T.M.*, 860 P.2d 1286, 1288 (Alaska App.1993).

FN2. We note that, in criminal prosecutions, the legislature has authorized crime victims to pursue execution upon a restitution order as if it were a

civil judgement in their favor. *Alaska Statute 12.55.051(d)* provides:

The state may enforce payment of a fine and [a] restitution recipient may enforce payment of a restitution order against a defendant under AS 09.35 as if the order were a civil judgment enforceable by execution. This subsection does not limit the authority of the court to enforce fines and orders of restitution to victims.

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: February 9, 1996

FURTHER REFERRALS:

2/21/96
Rules

Date of Committee Action: 2-19-96

The JUDICIARY Committee considered:

HB 484

HOUSE BILL NO. 484

ENFORCE RESTITUTION ORDER AGAINST MINOR

"An Act relating to enforcement of restitution orders entered against minors."

recommends it be replaced with the following committee substitute _____ [] the same title [] a new title

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

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____
[] fiscal note(s) _____ [] fiscal note(s) _____

3) [] zero fiscal note(s) Court Law, [] zero fiscal note(s) _____
HSS

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	SM
<i>Brian Porter</i>	Porter	✓			
<i>John Vezar</i>	Vezar	✓			
<i>John Finkelstein</i>	Finkelstein	✓			
<i>Beth Davis</i>	B. Davis	✓			
<i>Chris Green</i>	Green	✓			
<i>Bob Bunde</i>	Bunde	✓			
<i>John Toohy</i>	Toohy	✓			
		(7)			

CHAIR'S SIGNATURE Brian Porter
Porter

HB

520

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 520 (FIN)

Revision Date: 03/12/96
 Title: Inquests, Coroners, Post Mortems, etc.
 Sponsor: House Finance
 Requester: House Finance

Dept. Affected: Alaska Court System
 BRU: Trial Courts
 Component: _____
 COMPONENT SERIAL NO. 758

Expenditures/Revenues		(Thousands of Dollars)					
OPERATING EXPENDITURES:	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02	
PERSONAL SERVICES	287.511	287.511	287.511	287.511	287.511	287.511	
TRAVEL							
CONTRACTUAL							
SUPPLIES							
EQUIPMENT							
LAND & STRUCTURES							
GRANTS & CLAIMS							
MISCELLANEOUS							
TOTAL OPERATING	287.511	287.511	287.511	287.511	287.511	287.511	
CAPITAL EXPENDITURES							
CHANGE IN REVENUES							

Fund Source		(Thousands of Dollars)					
1002 Federal Receipts							
1003 GF Match							
1004 GF	287.511	287.511	287.511	287.511	287.511	287.511	
1005 GF/Program Receipts							
1007 GF/Mental Health							
Other							
TOTAL	287.511	287.511	287.511	287.511	287.511	287.511	

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

Positions							
Full-time	4.751	4.751	4.751	4.751	4.751	4.751	
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

This legislation will transfer coroner duties to the Department of Health & Social Services.

Prepared by: C. S. Christensen III, Staff Counsel
 Agency: Alaska Court System
 Approved by: Arthur H. Snowden, II, Administrative Director
 Agency: Alaska Court System

Phone: 254-2228
 Date: 03/12/96
 Date: 03/12/96

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

ANALYSIS (cont.):

Line 200 - \$15.0 is allotted in travel for death scene investigations, and for recruiting and training local and regional Medical Examiners and lay investigators.

Line 300 - \$18.0 will be need in the contractual for the lease of three vehicles for use on the road system @ \$6.0/year/vehicle.

Line 400 - \$4.3 in general office supplies.

Line 500 - \$30.0 will be needed for 5 computers, software and a LAN system, and office furniture.

Position Title Investigator II		No. of Positions 1	Range/Step 16A	Organizing Unit GGD	Fund No. CST0520
Time Status PFT	Staff Months 12.0	Location Anchorage		Election District	
TYPE of EXPENDITURE		AMOUNT			
Salary		93.3			
Benefits		16.7			
Premium Pay					
Other					
Total Personal Services		60.0			
Travel					
Contractual		27.2			
Commodities		1.0			
Equipment		15.0			
Other					
Total Cost		93.2			
FUNDING SOURCE for TOTAL COST					
1002	Federal Receipts				
1003	GP Match				
1004	General Fund	93.2			
1005	GP/Program Receipts				
1007	I/A Receipts				
1037	GP/MII				
1061	CIP Receipts				
Other ()					
Justification This position will serve as the lead death scene investigator. It will also be responsible for the training of lay investigators in the local communities.					

**REQUEST for
NEW POSITION**

AGENCY: Health and Social Services
 BRU: State Health Services
 COMPONENT: State Medical Examiner

FY97

Page 4 of 6
 Revised Date

Position Title Administrative Clerk II		No. of Positions 1	Range/Step BA	Bargaining Unit GGU	Bill No CSHB 520
Time Status PFT	Staff Months 12.0	Location Anchorage		Election District	
TYPE of EXPENDITURE		AMOUNT			
Salary		23 0			
Benefits		11 5			
Premium Pay					
Other					
Total Personal Services		34 5			
Travel					
Contractual					
Commodities		1 0			
Equipment		5 0			
Other					
Total Cost		40 5			
FUNDING SOURCE for TOTAL COST					
1002	Federal Receipts				
1003	GP Match				
1004	General Fund	40 5			
1005	GP/Program Receipts				
1007	VA Receipts				
1037	GP/MI				
1061	CIP Receipts				
Other ()					
<p>Justification</p> <p>This position will give clerical support to the four professional positions. It will arrange travel, type forms, do transcription of the death scene investigation reports, perform filing and general clerical functions.</p>					

**REQUEST for
NEW POSITION**

AGENCY: Health and Social Services
 BRU: State Health Services
 COMPONENT: State Medical Examiner

FY97

Page: 5 of 5

Revised Date

CS FOR HOUSE BILL NO. 520(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE FINANCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to death investigations and inquests, coroners, public
2 administrators, and medical examiners, including the state medical examiner;
3 relating to the jurisdiction of district court judges and magistrates in certain cases
4 involving death."

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

6 • Section 1. AS 09.55 is amended by adding new sections to read:

7 ARTICLE 2A. INQUESTS.

8 Sec. 09.55.062. DEATH INQUESTS. Upon petition by the state medical
9 examiner or a state prosecutor, a judicial officer shall conduct proceedings under
10 AS 09.55.062 - 09.55.069 to determine the cause and manner of a person's death. The
11 prosecutor shall present the evidence in the death inquest and assist the court in
12 instructing the jury and conducting the inquest only when the inquest is based on a
13 petition filed by the prosecutor or when the prosecutor requests to participate in the
14 proceedings.

1 Sec. 09.55.064. JURORS FOR INQUEST. (a) When a death inquest is to be
2 held under AS 09.55.062 - 09.55.069, the judicial officer shall promptly summon six
3 persons qualified by law to serve as jurors to appear before the court.

4 (b) When six jurors attend as required under (a) of this section, they shall be
5 sworn by the court to

6 (1) inquire into the identity of the deceased, and when, where, and by
7 what means the person died;

8 (2) inquire into the circumstances attending the death; and

9 (3) give a true verdict according to the evidence.

10 Sec. 09.55.066. SUBPOENA AND EXAMINATION OF WITNESSES. The
11 judicial officer or a prosecuting attorney may, when necessary to determine the material
12 facts relating to the death, subpoena and examine witnesses for a proceeding under
13 AS 09.55.062 - 09.55.069.

14 Sec. 09.55.068. VERDICT OF INQUEST JURY. After hearing the testimony,
15 the jury or two thirds of its number shall give its written verdict, signed and setting out

16 (1) the name of the deceased and when, where, and by what means the
17 deceased died; and

18 (2) whether the deceased was killed or the death was occasioned by the
19 act of another by criminal means.

20 Sec. 09.55.069. COMPENSATION AND EXPENSES ALLOWED. The
21 members of the jury and witnesses in an inquest under AS 09.55.062 - 09.55.069 are
22 entitled to the same compensation as in civil actions in a district court, and the
23 compensation and other incidental expenses shall be audited and allowed as in the case
24 of other similar expenses. When the judicial officer has submitted the petition to a jury
25 in compliance with AS 09.55.062 and there is no interested party or an estate from which
26 the costs of the proceedings can be audited and allowed, then the costs shall be paid
27 from the "relief fund" created by the laws dealing with lost persons, upon vouchers made
28 out, signed, and sworn to by the judicial officer.

29 • Sec. 2. AS 12.65 is amended by adding a new section to read:

30 Sec. 12.65.005. DUTY TO NOTIFY STATE MEDICAL EXAMINER. (a)

31 Unless the person has reasonable grounds to believe that notice has already been given,
32 a person who attends a death or has knowledge of a death, in addition to notifying a

1 peace officer, shall immediately notify the state medical examiner when the death
2 appears to have

3 (1) been caused by unknown or criminal means, during the commission
4 of a crime, or by suicide, accident, or poisoning;

5 (2) occurred under suspicious or unusual circumstances or occurred
6 suddenly when the decedent was in apparent good health;

7 (3) been unattended by a practicing physician or occurred less than 24
8 hours after the deceased was admitted to a medical facility;

9 (4) been associated with a diagnostic or therapeutic procedure;

10 (5) resulted from a disease that constitutes a threat to public health;

11 (6) been caused by a disease, injury, or toxic agent resulting from
12 employment;

13 (7) occurred in a jail or corrections facility owned or operated by the
14 state or a political subdivision of the state or in a facility for the placement of persons
15 in the custody or under the supervision of the state;

16 (8) occurred in a foster home;

17 (9) occurred in a mental institution or mental health treatment facility; or

18 (10) occurred while the deceased was in the custody of, or was being
19 taken into the custody of, the state or a political subdivision of the state or a public
20 officer or agent of the state or a political subdivision of the state.

21 (b) A person who attends a death or has knowledge of a death occurring in
22 circumstances other than those enumerated in (a) of this section may notify the state
23 medical examiners of the death if, in the person's opinion, a death investigation under
24 AS 12.65.020 - 12.65.025 may be appropriate.

25 (c) The body of a person whose death has been or should be reported to the state
26 medical examiner under this section may not be moved or otherwise disturbed without
27 the permission of the state medical examiner.

28 • Sec. 3. AS 12.65.015(a) is amended to read:

29 (a) The [IN ADDITION TO APPOINTING MEDICAL EXAMINERS UNDER
30 AS 12.65.010, THE] commissioner of health and social services shall appoint a
31 [ESTABLISH IN THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES THE
32 POSITION OF] state medical examiner to perform the duties set out in AS 12.65.015.

1 12.65.025. The commissioner may also appoint a deputy medical examiner and
2 assistant medical examiners to perform or assist the state medical examiner in
3 performing these duties. To be eligible for the position of medical examiner, deputy
4 medical examiner, or assistant medical examiner, a person must be a physician
5 licensed to practice in this state or, if the physician is licensed in another
6 jurisdiction, the physician must be employed by the state or by an agency of the
7 United States government within the state. The state medical examiner, deputy
8 medical examiner, and assistant medical examiners are [IS] in the exempt service
9 under AS 39.25.110.

10 • Sec. 4. AS 12.65.015 is amended by adding a new subsection to read:

11 (d) The state medical examiner may, through contracts for services, appoint
12 local, regional, and district medical examiners throughout the state to perform or assist
13 in performing the duties assigned to the state medical examiner. To be eligible for
14 appointment as a local, regional, or district medical examiner, a person must be a
15 physician licensed to practice in this state or, if the physician is licensed in another
16 jurisdiction, the physician must be employed by the state or by an agency of the United
17 States government within the state. An appointment under this subsection may be for
18 a term of up to two years.

19 • Sec. 5. AS 12.65.020 is repealed and reenacted to read:

20 Sec. 12.65.020. MEDICAL DEATH INVESTIGATIONS. (a) When a death
21 is reported to the state medical examiner under AS 12.65.005, or when a person dies
22 under circumstances that, in the opinion of the state medical examiner, warrant an
23 investigation, the state medical examiner may perform a medical death investigation. In
24 performing the investigation, the state medical examiner may

25 (1) order that the body of the person who has died not be moved or
26 otherwise disturbed without the permission of the medical examiner;

27 (2) request a peace officer to secure the scene and perform an on-scene
28 investigation;

29 (3) view the remains of the deceased person;

30 (4) order the remains of the deceased to be transported to another
31 location;

32 (5) perform a post mortem examination;

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- (6) perform an autopsy;
- (7) take possession of property considered necessary for the investigation;
- (8) subpoena and examine a person or record necessary in the opinion of the medical examiner to determine the material facts relating to the death; and
- (9) take other actions appropriate under the circumstances to determine the cause and manner of death.

(b) When the state medical examiner has completed an investigation or made the inquiry considered appropriate by the examiner, the examiner shall prepare a report of the examiner's findings and conclusions. If the findings and conclusions indicate that the death may have been caused by criminal means, the state medical examiner shall submit a copy of the report to the district attorney responsible for prosecutions in the location where the death occurred. The state medical examiner's investigative report is a privileged and confidential document, not subject to public disclosure under AS 09.25. It may be disclosed to public officers and employees for a public purpose and, when doing so will not interfere with an ongoing investigation or prosecution, to a person who is related to the deceased or who has a financial or personal interest in the estate of the deceased person.

(c) The state medical examiner or a prosecuting attorney may petition the court to hold a death inquest under AS 09.55.062 if the findings and conclusions of the state medical examiner, in the opinion of the state medical examiner or prosecuting attorney, warrant the inquest. Otherwise, the state medical examiner shall cause a certificate of death for the deceased person to be completed and filed as prescribed by law.

(d) The state medical examiner may direct the state registrar of vital statistics to amend a death certificate when, in the opinion of the state medical examiner, the death certificate is incomplete or inaccurate.

(e) The state medical examiner may enter into agreements for services to be performed by persons in the course of medical investigations and may call upon public employees, including a peace officer or a village public safety officer, to perform or assist in performing the duties specified in this section.

(f) The state medical examiner and individuals who perform or assist the state medical examiner in performing the duties of the state medical examiner under this section are immune from civil liability based on determining the cause and manner of

1 a person's death.

2 (g) The Department of Health and Social Services shall adopt regulations to
3 implement this section.

4 * Sec. 6. AS 12.65.025(a) is amended to read:

5 (a) The state medical examiner [COMMISSIONER OF HEALTH AND
6 SOCIAL SERVICES] shall designate the facilities at which post mortem examinations
7 and autopsies ordered under this chapter may be performed. The Department of Health
8 and Social Services shall pay the costs of

9 (1) post mortem examinations and autopsies ordered under this chapter;

10 (2) related transportation to the location where the post mortem
11 examination is conducted and then to the community closest to where the death
12 occurred, except that transportation costs to another requested location may be paid
13 to the extent that the costs do not exceed the costs of returning the body to the
14 community closest to where the death occurred;

15 (3) embalming required by law; and

16 (4) cosmetology necessary to make the head, face, neck, and hands of
17 the deceased presentable if those parts of the body are disfigured by the post mortem
18 examination [AUTOPSY].

19 * Sec. 7. AS 12.65.100 is amended to read:

20 Sec. 12.65.100. UNCLAIMED BODIES. When a person dies and no person
21 appears to claim the body for burial, and no provision is made for the body under
22 AS 13.50, the [CORONER SHALL NOTIFY THE] Department of Health and Social
23 Services, upon notification, [WHICH] shall request a court order authorizing
24 [CAUSE] the body to be plainly and decently buried or cremated and the remains
25 decently interred. A judicial officer shall issue the requested order upon the sworn
26 testimony or statement of a representative of the Department of Health and Social
27 Services that a person has not appeared to claim the body for burial and provision
28 is not made for the body under AS 13.50.

29 * Sec. 8. AS 12.65 is amended by adding a new section to read:

30 Sec. 12.65.105. RELEASE OF PROPERTY TO TEMPORARY CUSTODIAN.

31 A person having possession of tangible personal property of a decedent may release the
32 property to a temporary custodian willing to take custody of and preserve the property

1 pending the appointment of a personal representative or other transfer under AS 13.16.
2 Upon execution of an affidavit that meets the requirements of court rules adopted to
3 implement this section, the person delivering possession of the property is discharged
4 from further obligation as though the person had dealt with the personal representative
5 of the estate, and the temporary custodian is answerable and accountable for the property
6 to any personal representative of the estate or to another person having a superior right.

7 * Sec. 9. AS 12.65.110 is amended to read:

8 Sec. 12.65.110. INVENTORY AND DISPOSITION OF PROPERTY. If a body
9 is unclaimed as described in AS 12.65.100 and money or other property belonging to the
10 deceased is found, the public administrator [CORONER] shall inventory it [FOR THE
11 CORONER'S RECORDS] and take it into possession [. THE CORONER SHALL,
12 WITHIN 30 DAYS AFTER INTERMENT, TRANSMIT A CERTIFIED COPY OF THE
13 INVENTORY AND THE MONEY OR PROPERTY TO THE PUBLIC
14 ADMINISTRATOR OF THAT JUDICIAL DISTRICT] for disposition under AS 13.16
15 [AS 22.15.320].

16 * Sec. 10. AS 18.50.230(d) is amended to read:

17 (d) When a death occurs without medical attendance, or when official inquiry
18 is required, the department shall provide by regulation, in accordance with law, the
19 responsibility for completing and signing the medical certification. This subsection is
20 intended to include, among others, cases involving a medical examiner [OR A
21 CORONER.] and cases involving presumption of death.

22 * Sec. 11. AS 22.15.030(a) is amended to read:

23 (a) The district court has jurisdiction of civil cases, including foreign judgments
24 filed under AS 09.30.200 and arbitration proceedings under AS 09.43.170, as follows:

25 (1) for the recovery of money or damages when the amount claimed
26 exclusive of costs, interest, and attorney fees does not exceed \$50,000;

27 (2) for the recovery of specific personal property, when the value of the
28 property claimed and the damages for the detention do not exceed \$50,000;

29 (3) for the recovery of a penalty or forfeiture, whether given by statute
30 or arising out of contract, not exceeding \$50,000;

31 (4) to give judgment without action upon the confession of the defendant
32 for any of the cases specified in this section, except for a penalty or forfeiture imposed

1 by statute:

2 (5) for establishing the fact of death or cause and manner of death of
3 any person in the manner prescribed in AS 09.55.020 - 09.55.069 [AS 09.55.020 -
4 09.55.060];

5 (6) for the recovery of the possession of premises in the manner provided
6 under AS 09.45.070 - 09.45.160 when the value of the arrears and damage to the
7 property does not exceed \$50,000;

8 (7) for the foreclosure of a lien when the amount in controversy does not
9 exceed \$50,000;

10 (8) for the recovery of money or damages in motor vehicle tort cases
11 when the amount claimed exclusive of costs, interest, and attorney fees does not exceed
12 \$50,000;

13 (9) over civil actions for taking utility service and for damages to or
14 interference with a utility line filed under AS 42.20.030;

15 (10) over cases involving injunctive relief for domestic violence under
16 AS 25.35.010 and 25.35.020.

17 * Sec. 12. AS 22.15.100 is amended to read:

18 Sec. 22.15.100. FUNCTIONS AND POWERS OF DISTRICT JUDGE AND
19 MAGISTRATE. Each district judge and magistrate has the power

20 (1) to issue writs of habeas corpus for the purpose of inquiring into the
21 cause of restraint of liberty, returnable before a judge of the superior court, and the same
22 proceedings shall be had on the writ as if it had been granted by the superior court judge
23 under the laws of the state in such cases;

24 (2) of a notary public;

25 (3) to issue marriage licenses and to solemnize marriages;

26 (4) to issue warrants of arrest, summons, and search warrants according
27 to manner and procedure prescribed by law and the supreme court;

28 (5) to act as an examining judge or magistrate in preliminary
29 examinations in criminal proceedings; to set, receive, and forfeit bail and to order the
30 release of defendants under bail;

31 (6) to act as a referee in matters and actions referred to the judge or
32 magistrate by the superior court, with all powers conferred upon referees by laws;

1 (7) of the superior court in all respects including but not limited to
2 contempts, attendance of witnesses, and bench warrants;

3 (8) to order the temporary detention of a minor, or take other action
4 authorized by law or rules of procedure, in cases arising under AS 47.10, when the
5 minor is in a condition or surrounding dangerous or injurious to the welfare of the minor
6 or others that requires immediate action; the action may be continued in effect until
7 reviewed by the superior court in accordance with rules of procedure governing these
8 cases;

9 (9) to issue a temporary order for injunctive relief in cases involving
10 domestic violence as provided in AS 25.35.010 and 25.35.020;

11 (10) to review an administrative revocation of a person's driver's license
12 or nonresident privilege to drive, and an administrative refusal to issue an original
13 license, when designated as a hearing officer by the commissioner of public safety and
14 with the consent of the administrative director of the state court system;

15 (11) to establish the fact of death or inquire into the death of a
16 person in the manner prescribed under AS 09.55.020 - 09.55.069.

17 • Sec. 13. AS 22.15.110(a) is amended to read:

18 (a) Each district judge and magistrate shall

19 (1) ~~PERFORM THE DUTIES AND EXERCISE THE AUTHORITY~~
20 ~~OF CORONER AS PRESCRIBED BY LAW;~~

21 (2) record birth, death, and marriage certificates presented to them for
22 record in the manner prescribed by law;

23 (2) authorize the burial or disposition of bodies under AS 12.65.100;
24 and

25 (3) upon application by an appropriate person, appoint the person
26 to assume temporary custody [TAKE CUSTODY AND CONTROL] of and preserve
27 the property and estate of deceased persons until disposition of the property is made
28 under AS 13.16 or further order is made by the court [A LEGAL CUSTODIAN IS
29 APPOINTED;

30 (4) REPEALED).

31 • Sec. 14. AS 22.15.310 is amended to read:

32 Sec. 22.15.310. APPOINTMENT. When authorized by the supreme court, the

1 presiding judge in each judicial district shall appoint a person to act as public
2 administrator of the estates of deceased persons [AND AS CORONER].

3 * Sec. 15. AS 22.15.320 is amended to read:

4 Sec. 22.15.320. ADMINISTRATION OF DECEDENTS' ESTATES. When
5 letters of administration are issued to a public administrator by the superior court in the
6 district, the public administrator is the legal custodian of and shall administer the estates
7 of deceased persons who leave property within the district. Letters of administration
8 shall be issued to the public administrator when (1) administration of a decedent's estate
9 is required by law, and (2) a period of 30 days has elapsed from the date of death with
10 no letters testamentary or letters of administration having been applied for and issued to
11 any other person entitled by law to administer the estate of the deceased person. Except
12 as otherwise provided in AS 22.15.310 - 22.15.340 [AS 22.15.310 - 22.15.350], a public
13 administrator shall administer estates as other administrators, and has all the rights and
14 authority, and is subject to all the duties and liabilities of other administrators.

15 * Sec. 16. AS 36.30.850(b) is amended to read:

16 (b) This chapter applies to every expenditure of state money by the state, acting
17 through an agency, under a contract, except that this chapter does not apply to

18 (1) grants;

19 (2) contracts for professional witnesses to provide for professional
20 services or testimony relating to existing or probable lawsuits in which the state is or
21 may become a party;

22 (3) contracts of the University of Alaska where the work is to be
23 performed substantially by students enrolled in the university;

24 (4) contracts for medical doctors and dentists;

25 (5) acquisitions or disposals of real property or interest in real property,
26 except as provided in AS 36.30.080 and 36.30.085;

27 (6) disposals under AS 38.05;

28 (7) contracts for the preparation of ballots under AS 15.15.030;

29 (8) acquisitions or disposals of property and other contracts relating to
30 airports under AS 02.15.070, 02.15.090, 02.15.091, and AS 44.88;

31 (9) disposals of obsolete property under AS 19.05.060;

32 (10) disposals of obsolete material or equipment under AS 35.20.060;

1 (11) agreements with providers of services under AS 44.47.250;
2 AS 47.07; AS 47.08; AS 47.10; AS 47.17; AS 47.24; AS 47.25.195, and 47.25.310;

3 (12) contracts of the Department of Fish and Game for flights that
4 involve specialized flying and piloting skills and are not point-to-point;

5 (13) purchases of income-producing assets for the state treasury or a
6 public corporation of the state;

7 (14) operation of the state boarding school established under AS 14.16
8 [.] if the State Board of Education or the commissioner of education adopts regulations
9 for use by the state boarding school in procurement and contracting;

10 (15) a contract that is a delegation, in whole or in part, of investment
11 powers held by the commissioner of revenue under AS 14.40.400, AS 14.42.200,
12 14.42.210, AS 18.56.095, AS 37.10.070, 37.10.071, or AS 37.14;

13 (16) a contract that is a delegation, in whole or in part, of investment
14 powers or fiduciary duties of

15 (A) the Board of Trustees of the Alaska Permanent Fund
16 Corporation under AS 37.13;

17 (B) the Alaska Mental Health Trust Authority under
18 AS 37.14.001 - 37.14.099;

19 (17) the purchase of books, book binding services, newspapers,
20 periodicals, audio-visual materials, network information services access, approval plans,
21 professional memberships, archival materials, objects of art, and items for museum or
22 archival acquisition having cultural, historical, or archaeological significance; in this
23 paragraph,

24 (A) "approval plans" means book selection services in which
25 current book titles meeting an agency's customized specifications are provided
26 to the agency subject to the right of the agency to return those books that do not
27 meet with the agency's approval;

28 (B) "archival materials" means the noncurrent records of an
29 agency that are preserved after appraisal because of their value;

30 (C) "audio-visual materials" means nonbook prerecorded
31 materials, including records, tapes, slides, transparencies, films, filmstrips,
32 cassettes, videos, compact discs, laser discs, and items that require the use of

1 equipment to render them usable;

2 (D) "network information services" means a group of resources
3 from which cataloging information, holdings records, inter-library loans,
4 acquisitions information, and other reference resources can be obtained;

5 (18) contracts for the purchase of standardized examinations for licensure
6 under AS 08;

7 (19) contracts for home health care provided under regulations adopted
8 by the Department of Health and Social Services and for adult residential care services
9 provided under regulations adopted by the Department of Health and Social Services or
10 by the Department of Administration;

11 (20) contracts for supplies or services for research projects funded by
12 money received from the federal government or private grants;

13 (21) guest speakers or performers for an educational or cultural activity;

14 (22) contracts of the Alaska Industrial Development and Export Authority
15 for a clean coal technology demonstration project that

16 (A) is attempting to develop a coal-fired electric generation
17 project;

18 (B) uses technology that is capable of commercialization during
19 the 1990's; and

20 (C) qualifies for federal financial participation under P.L. 99 -190,
21 as amended;

22 (23) disposals of supplies acquired through foreclosure of loans issued
23 under AS 03.10;

24 (24) purchases of curatorial and conservation services to maintain,
25 preserve, and interpret

26 (A) objects of art; and

27 (B) items having cultural, historical, or archaeological significance
28 to the state;

29 (25) acquisition of confidential seismic survey data necessary for pre-sale
30 oil and gas lease analyses under AS 38.05.180;

31 (26) contracts for village public safety officers;

32 (27) purchases of supplies and services to support the operations of the

1 Alaska state troopers or the division of fish and wildlife protection if the procurement
2 officer for the Department of Public Safety makes a written determination that publicity
3 of the purchases would jeopardize the safety of personnel or the success of a covert
4 operation;

5 (28) expenditures when rates are set by law or ordinance;

6 (29) construction of new vessels by the Department of Transportation and
7 Public Facilities for the Alaska marine highway system;

8 (30) contracts entered into with a regional development organization: in
9 this paragraph, "regional development organization" has the meaning given in
10 AS 44.33.026;

11 (31) contracts that are to be performed in an area outside of the country
12 and that require a knowledge of the customs, procedures, rules, or laws of the area: or

13 (32) contracts that are between the Department of Law and attorneys who
14 are not employed by the state and that are for the review or prosecution of possible
15 violations of the criminal law of the state in situations where the attorney general
16 concludes that an actual or potential conflict of interest makes it inappropriate for the
17 Department of Law to review or prosecute the possible violations;

18 (33) contracts between the Department of Natural Resources and
19 contractors qualified to evaluate hydrocarbon development, production, transportation,
20 and economics, to assist the commissioner of natural resources in evaluating applications
21 for oil and gas royalty increases or decreases or other oil and gas royalty adjustments,
22 and evaluating the related financial and technical data, entered into under
23 AS 38.05.180(j);

24 (34) contracts between the state medical examiner and a provider of
25 medical services to perform or assist in performing the duties assigned to the state
26 medical examiner in AS 12.65.020.

27 • Sec. 17. AS 39.25.110(13) is amended to read:

28 (13) the state medical examiner, deputy medical examiner, and
29 assistant medical examiners appointed under AS 12.65.015 and physicians licensed to
30 practice in this state and employed by the division of mental health and developmental
31 disabilities in the Department of Health and Social Services or by the Department of
32 Corrections;

- 1 * Sec. 18. AS 12.65.010, 12.65.030, 12.65.040, 12.65.050, 12.65.060, 12.65.070, 12.65.080,
- 2 12.65.090; AS 22.15.120(a)(10), and 22.15.350 are repealed.

Life Alaska, Inc.

Tissue Procurement Service
P. O. Box 230785
Anchorage, AK 99523
1-907-562-5433 - 1-800-719-5433
Fax 1-907-562-5333



Senate Judiciary Committee
Room 30, Capital
Juneau, AK 99801

March 29, 1996

Dear Senator Taylor:

I am writing to request your support of CSH 520, "an act relating to death investigations and inquests, coroners, public administrators, and medical examiners ..." As a non-profit tissue donation and family support agency serving Alaska, Life Alaska interacts with both the Alaska coroners and the state medical examiner for most of our tissue donations. Shifting the responsibility of receiving all death referrals to the medical examiners's office would simplify and speed up the investigation process. This change would help to ensure that more families could be given the option of tissue or organ donation. It would also mean that decedents would sometimes be released to their loved ones a full day earlier. I believe that HB 520 will benefit the Alaska community in several ways with no negative effects.

During 1995, Life Alaska was involved with 131 tissue donations in Alaska. Over half of these deaths were under the jurisdiction of the coroner and medical examiner. While over 400 people in Alaska were able to receive tissue transplants (cornea, bone, tendon, or skin transplants) in 1995, Life Alaska was not able to meet all the transplant needs. Permission for donation must be obtained from the medical examiner for any death falling under the medical examiner/coroner's jurisdiction. The medical examiner must have all the relevant circumstances of a case before he or she can grant permission for donation. Routing of information through the coroner adds time before the medical examiner can make a decision regarding donation or the need for an autopsy. This can delay a release for donation beyond medically acceptable time limits in spite of a family's wish for donation.

The above mentioned delay has also occasionally resulted in a body being held through the entire two or three day weekend because of a few hours' delay in communication between the police, coroner, and medical examiner when the death occurred Thursday night or Friday mourning. This type of hardship to the family could be greatly reduced by direct communication between the medical examiner and law enforcement personnel at the scene.

Finally, there will be a potential cost savings to both the state and to families by Life Alaska's involvement. When a family requests or consents to an anatomical gift, and the medical examiner permits the donation, Life Alaska can facilitate both the donation and the autopsy by paying body transportation costs to Anchorage and assisting with related facility costs.

Thank you for your consideration of this important legislation. Please feel free to contact me for any further information in Anchorage at 800-719-5433.

Sincerely,

Jens Saakvitne
Director

(11)

HOUSE COMMITTEE REPORT

Date Referred to Committee: March 6, 1996

FURTHER REFERRALS:

Date of Committee Action: 3/3/96

The FINANCE Committee considered:

HB 520

HOUSE BILL NO. 520

INQUESTS, CORONERS, POST MORTEMS, ETC.

"An Act relating to death investigations and inquests, coroners, public administrators, and medical examiners, including the state medical examiner; relating to the jurisdiction of district court judges and magistrates in certain cases involving death."

recommends it be replaced with the following committee substitute

19 HB 520 (FIN)

the same title
 a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

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

APPROVES PREVIOUS: (Dept./Date)

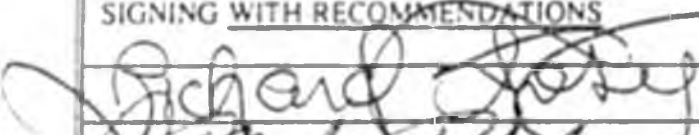


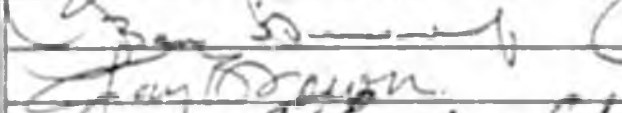
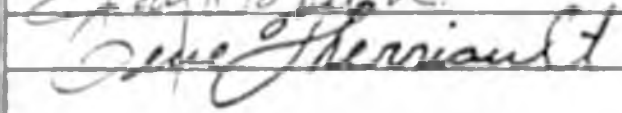


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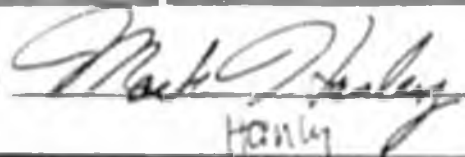
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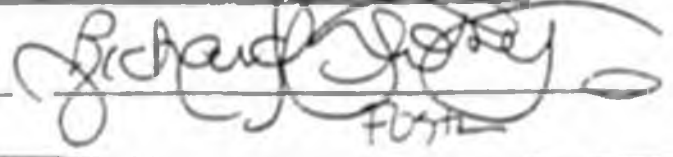
zero fiscal note(s) _____

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SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
	Foster	X			
	Hanky	X			
	Mulder	X			
	Kibben	X			
	Grossman	X			
	Brown	X			
	Therman	X			
COMMITTEE REPORT					

CHAIR'S SIGNATURE


Hanky


Foster

MEMORANDUM

TO: The Honorable Robin Taylor
FROM: WWG/Naknek
DATE: 04/03/96
RE: State Medical Examiner Bill

The bottom line is that this is a good piece of legislation.

At the present time, too many offices are involved resulting in confusion, delay and additional expense. There is too much confusion as to just who is responsible for doing what and who is to pay for it. Furthermore, the present system has a potential for compromising the neutrality of the coroner/magistrates.

Having created the office of the state medical examiner, that office should have all those duties and responsibilities associated with conducting efficient and cost effective death investigations. This bill appears to do just that while properly reserving for the court system the related judicial functions, i.e., inquests, etc.

Not too brilliant an analysis; it is, however, short. And, anyway, what can you expect from the hush!

SPONSOR STATEMENT HB 520

House Bill 520 will create a unified death investigation system under the authority of the State Medical Examiner in the Department of Health and Social Services. The bill will position the State to enter the 21st century with a professional medical examiner system better able to both support the criminal justice system and to investigate deaths of concern to public health officers.

The bill has a net zero cost with funds transferred from the Court System to the Department of Health and Social Services to reflect the transfer of death investigation responsibilities.

Specifically, the bill

- Establishes a unified system within the executive branch for determining the cause and manner of death in suspicious or unusual circumstances;
- Better supports law enforcement and public health efforts;
- Eliminates duplication and inefficiency in death investigations by abolishing the position of coroner in the judicial branch and transferring the coroner's investigative functions to the state medical examiner in the executive branch of government;
- Retains inquests and other judicial processes within the judicial branch of government; and
- Places responsibility and management of medical death investigations in a single agency to better control costs.

Sectional Analysis for draft CS for HB 520(FIN) version 9-LS1678\C

This bill establishes a unified state medical examiner system in Alaska and abolishes the position of coroners. Alaska is one of only 18 states that still utilizes both medical examiners (in the executive branch) and coroners (in the judiciary) for death investigations. A hybrid system such as this can result in a duplication of efforts and expense and, in Alaska, has generated some confusion as to the responsibilities and authority of each.

Section 1 of the bill is essentially a housekeeping measure, renaming "coroners' inquests" as "death inquests" and moving the authorizing statutes from AS 12.55 to AS 09.55, where the presumptive death statutes are already located. A death inquest can be initiated at the request of the medical examiner or a district attorney.

Section 2 sets out the circumstances in which the state medical investigator must be notified of a death. These are essentially unanticipated deaths caused by other than natural means. If the state medical examiner concludes that it is appropriate to do so, the examiner will perform a medical death investigation under AS 12.65.020.

The Committee Substitute contains an amendment that requires the state medical examiner to be notified when a person dies while in the custody of a municipality or a municipal employee, as well as when the person dies in the custody of the state or an agent of the state. There is no reason to limit the duty of notification to instances when a death occurs in state custody and not require notification when a death occurs while a person is in the custody of a municipality.

SECTIONAL ANALYSIS

Section 3 amends the state medical examiner statute to authorize the commissioner of Health & Social Services to appoint local, regional, or district medical examiners to assist in performing the duties of the medical examiner. The deputy and assistant state medical examiners are in the exempt service. This is also set out in section 17 of the bill.

Section 4 gives the state medical examiner authority to contract with physicians around the state for assistance in performing the duties of his office.

Section 5, amending AS 12.65.020, represents the core of this bill. It transfers jurisdiction over the bodies of those who die unattended by a physician from coroners to the state medical examiner. The state medical examiner is authorized to view the remains of the deceased person, perform a post mortem examination, and take any other action necessary to make a proper determination of the cause of death, including taking possession of any property deemed necessary to the investigation. The state medical examiner is authorized to call upon public employees, including peace officers and village public safety officers, to provide assistance necessary to complete the medical death investigation. If the examiner concludes that death may have been caused by criminal means, a copy of the report of the medical examiner's findings and conclusions is to be submitted to the district attorney, who is authorized to initiate criminal proceedings.

An amendment to the bill extends the medical examiner's immunity to those who assist him in performing the duties of office.

Section 6 clarifies that the state will pay the costs of transporting a body to the location where a post mortem examination is to be conducted, and then the costs of returning the body to the community where the death occurred or to such other location as relatives may request to the extent that the costs of such transportation do not exceed the costs of returning the body to the place of death.

Section 7 authorizes the Department of Health and Social Services to provide burial or cremation services for unclaimed bodies.

Sections 9 and 13 relate to the tangible property of a decedent. This bill originally transferred the functions of public administrators from the judiciary to the Department of Health & Social Services. It has been determined, however, that the transfer of these functions presents complications that will require additional time to resolve. Accordingly, under this Committee Substitute, the judiciary will continue to provide the functions of the public administrator.

4-

Section 8 codifies the existing practices of persons who act as temporary custodians of property before a personal representative is appointed. At the same time, it clarifies the legal obligations of the respective parties to minimize issues of liability in these situations. The court system anticipates adopting and making available forms for temporary property custodians to use.

Section 9 changes a reference from the coroner to the public administrator.

Section 13 addresses liability concerns raised by law enforcement officials regarding their release of property following a person's death. This section authorizes district court judges and magistrates to appoint a person to take temporary custody of some or all of a deceased person's property. A person who is seeking the release of property from a law enforcement agency can be required by the agency to obtain this court order/appointment; law enforcement agencies will then be immune for actions taken in response to the court order. The judiciary expects to adopt forms that will make this process easy and quick to use.

Section 16 of the bill exempts from the procurement code contracts entered into by the medical examiner with health care providers to assist in medical examiner functions -- such as a contract with a physician or a hospital in an area outside of Anchorage to determine the cause of death in certain cases -- public administrator with law firms to handle the probate proceedings. This replaces a provision in the original bill that related to public administrators' contracts for legal services, which is no longer needed in view of the judiciary retaining the public administrator functions.

The remaining sections of the bill -- 9, 10, 11, 12, 14, 15, and 18 -- amend statutes in the criminal and judicial codes to delete references to coroners that are no longer necessary.

AME WILLIS IVANOV
ATTORNEY AT LAW

4325 LAUREL STREET
ANCHORAGE, ALASKA 99508
(907) 562-2215

April 2, 1996

RECEIVED

APR 8 1996

Ans'd.....

Senator Robin L. Taylor
State Capitol
Juneau, AK 99801

Re: House Bill 520 relating to death investigations and other matters

Dear Senator Taylor:

I will not be able to attend the legislative teleconference scheduled on this bill April 2, 1996 and am therefore submitting these written comments.

I am extremely concerned about the features of this bill that eliminate some important functions of the existing Coroner's office without transferring those functions to another office.

In particular, there is no one responsible for locating and notifying next of kin or securing property until the heirs can take possession. The proposed statute has retained a public administrator. However, the public administrator has no authority to act sooner than thirty days and then only in the case of an unclaimed body. With no one responsible for locating and notifying family, no responsible person may learn of the death soon enough to prevent loss of property. Furthermore, there may be more unclaimed bodies than at present because of lack of notice.

The Coroner's office has been very successful in locating hard to find family members. Will this now become a de facto duty of the police, the medical examiner or the funeral home? Can a landlord go through the deceased's things to try to contact someone to take responsibility for the property or the rent?

The Coroner has also had the authority to place a seal on the house or apartment. This action often gives enough protection. The Coroner has also taken custody of valuable property for safekeeping.

Some attempt to deal with the property issue has been made in the proposed statute by authorizing the court to appoint a temporary custodian. However, the statute does not address who

is an "appropriate person" to be appointed nor does it say what the rights and duties of that person are. A judge or magistrate is not in a position to either investigate "appropriateness" of the applicant or give notice to the heirs. The court will only have before it the application of the person seeking control of the property. The affidavit procedure, which requires the drafting of future court rules, is even more flawed. The statute gives no guidance to permit adoption of rules. I have served for several years on the Probate Rules Committee. The consensus of that group has been to adopt rules conforming to statute, not to write rules in place of a statute.

This bill has never been presented to the Probate Rules Committee for comment or, so far as I know, to any other bar committee. It has been drafted without adequate review by the people who deal with these problems on a regular basis.

The loss of the notification and property preservation functions of the Coroner's office will cause problems for rich and poor alike. The estates of single people of every walk in life will be affected. The Senate should defer action on this bill until the problems have been properly addressed.

Sincerely,



Ame Willis Ivanov

cc.Senator Dave Donley

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

TONY KNOWLES, GOVERNOR

P.O. BOX 110610
JUNEAU, ALASKA 99811-0610
PHONE: (907) 465-3090
FAX: (907) 586-1877

MEMORANDUM

DATE: March 16, 1996

TO: Susan Taylor
Budget Analyst
Legislative Finance

FROM: Sharon K. Lowe
Administrative Officer
Division of Public Health



SUBJECT: Number of Autopsies Performed by the State Medical Examiner

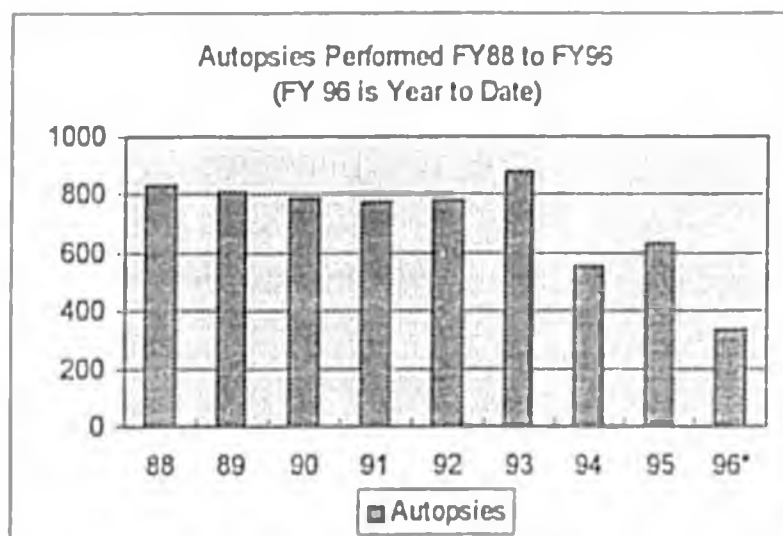
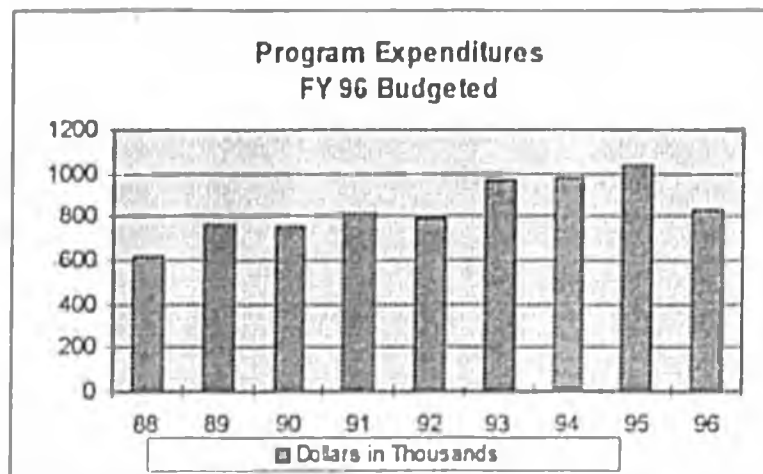
You requested the number of autopsies performed by the State Medical Examiner and the Deputy Medical Examiner since their date of hire.

The State Medical Examiner was hired on March 16, 1994, and the deputy on December 5, 1994. During FY95 the office kept track of the number of autopsies as a collective number and did not distinguish as to who performed the operation. Attached are graphs showing the number of autopsies versus inspections versus consultations for the periods of July through December, 1994 and January through June, 1995. There were a total of 839 cases in FY 95 with 368 autopsies, 268 inspections and 203 consultations.

The breakout for workload among the physicians is as follows:

	Autopsies	Inspections	Consults	Total
Michael Propst, MD	77	125	125	327
Norman Thompson, MD	81	36	100	217
Michael Stewart, MD	<u>17</u>	<u>3</u>	<u>-0-</u>	<u>20</u>
Total	175	164	225	564

Dr. Stewart is a contract pathologist located in Ketchikan. He performs those autopsies for deaths which occurs in Sitka or south and are of a more general nature. Dr. Thompson are assigned the more difficult cases, freeing the State Medical Examiner for the necessary administrative tasks that he must perform.



Autopsies are defined as opening any or all portions of the body; inspections are external examinations only; and consultations are cases where the medical examiner(s) consults with the coroner to determine if there is enough cause to do an external examination or autopsy. The State Medical Examiner (SME) is responsible for determining whether an autopsy or other less intrusive post-mortem examination is required to establish cause and manner of death in cases referred to the Medical Examiner by coroners. The decision of the SME concerning the need for an autopsy is made on the basis of facts surrounding the death and the medical examiner's professional medical judgment. If, based on the facts established in the death investigation, cause and manner of death can be conclusively established without an autopsy, no autopsy will be performed.

Close cooperation between coroners, law enforcement personnel and the Medical Examiner is obviously critical to an effective death investigation system. The Departments of Health & Social Services and Public Safety and the Alaska Court System have worked

closely together to implement the new Medical Examiner system. Coroners are encouraged to refer cases to the SME for consultation, and general guidelines have developed along national models and practice to aid the coroners in working effectively with the Medical Examiner. These guidelines do not limit the types of cases which can be referred to the Medical Examiner or limit the coroner's consultation with the Medical Examiner.

The largest controllable expenses in the SME program are the transportation of human remains for examination and the mandated embalming and restoration costs associated with autopsies. The guidelines provide a means of ensuring that autopsies are performed only when necessary to satisfy public interests. They are not rigid criteria and are used along with facts gained in the death investigation and consultation with coroners and law enforcement personnel to determine the need for an autopsy, but do provide screening criteria to control program quality and costs.

The decision as to where post-mortem examinations will be conducted is made, for the most part, on an economic basis. Most autopsies are performed in Anchorage by the State Medical Examiner staff. For the first time in the history of the Post Mortem Examination/State Medical Examiner budget, we are projecting that it will not be necessary to request a supplemental or RP in order for the component to complete the year. This is due to Dr. Propst's tightening of the requirements which lead to transportation of human remains and autopsy.

Gaining control over the costs associated with post-mortem examinations was among the primary reasons for establishing the State Medical Examiner. Prior to September 1, 1993 when the Legislature amended AS 12.65 to establish the SME, the decision as to whether a post-mortem examination was required was made by the coroners. The guidelines used by the coroners for determining when an autopsy was required directed them to obtain an autopsy in most cases. Coroners had no mechanism to obtain medical consultation to help them establish cause of death short of obtaining an autopsy. The coroners had no fiscal responsibility and no incentive to limit the number of autopsies performed. Their responsibilities tend to guide them to order autopsies as a precaution.

Private pathologists who performed post-mortem examinations had no established mechanism to provide consultation to coroners outside the autopsy process. There were no standards for the autopsies performed by the private pathologists and no financial or legal incentives for them to limit the number of autopsies or to perform less intrusive and less costly examinations.

The Department of Health & Social Services had sole responsibility for paying the costs of post-mortem examinations as well as associated transportation, embalming and restoration costs. But DHSS had no decision-making authority; the department simply paid the vendors with little oversight.

Susan Taylor
March 16, 1996
Page 4

Since his appointment as State Medical Examiner, Dr. Michael Propst has implemented a wide range of administrative measures to establish fiscal and program accountability. This has allowed the program to operate in FY 96 within the appropriation for the first time. As the SME program evolves, it is expected that local and regional physician Medical Examiners and lay Medical Examiner investigators will be recruited and trained (in a curriculum similar to the program which has been developed in New Mexico). This development will be aided by the passage of HB 520 which would clearly establish the authority for the SME to appoint regional medical examiners and further define Alaska's death investigation system. This bill would establish a unified death investigation system with the executive branch and eliminate the confusion and inefficiencies in our current system resulting from overlap in roles and responsibilities and duplication of effort by the coroners and the State Medical Examiner.

We believe this bill would establish a medical death investigation system that will better support both criminal justice and public health efforts. By placing investigative responsibility and authority in the SME where the forensic expertise exists to establish the cause and manner of death, the bill would reduce the possibility of errors and oversights in death investigations which might otherwise jeopardize a criminal prosecution or fail to identify a public health threat. These changes would also further enhance our ability to control program costs.

It is interesting to note that FY 95 was the first year in which the costs from the Departments of Public Safety and Health & Social Services were combined. Prior to that time, the costs are only those associated with the DHSS portion of the program. The bill currently before the Legislature will combine the costs from the Court System to give us a more efficient system.

cc: Dr. Peter M. Nakamura, Director
Janet Clarke, Director
Dr. Michael T. Propst, State Medical Examiner

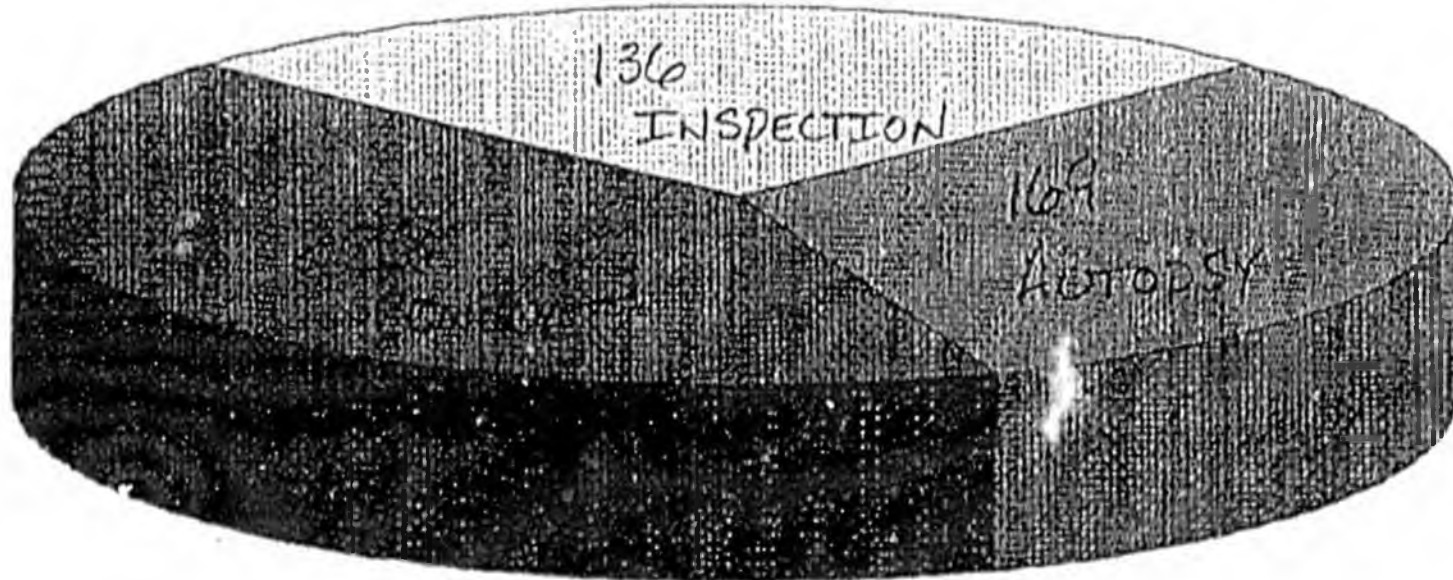
FY 1996

P.03

FAX NO. 9072695069

Alaska Med Exam'r

MAR-15-96 FRI 13:06



Autopsy Consult Inspection

TOTAL CASE
533

as of 2/21/96
==
==

FY 1995

CASE # 95-001 - 95-411

JAN. - JUN.



Autopsy Consult Inspection

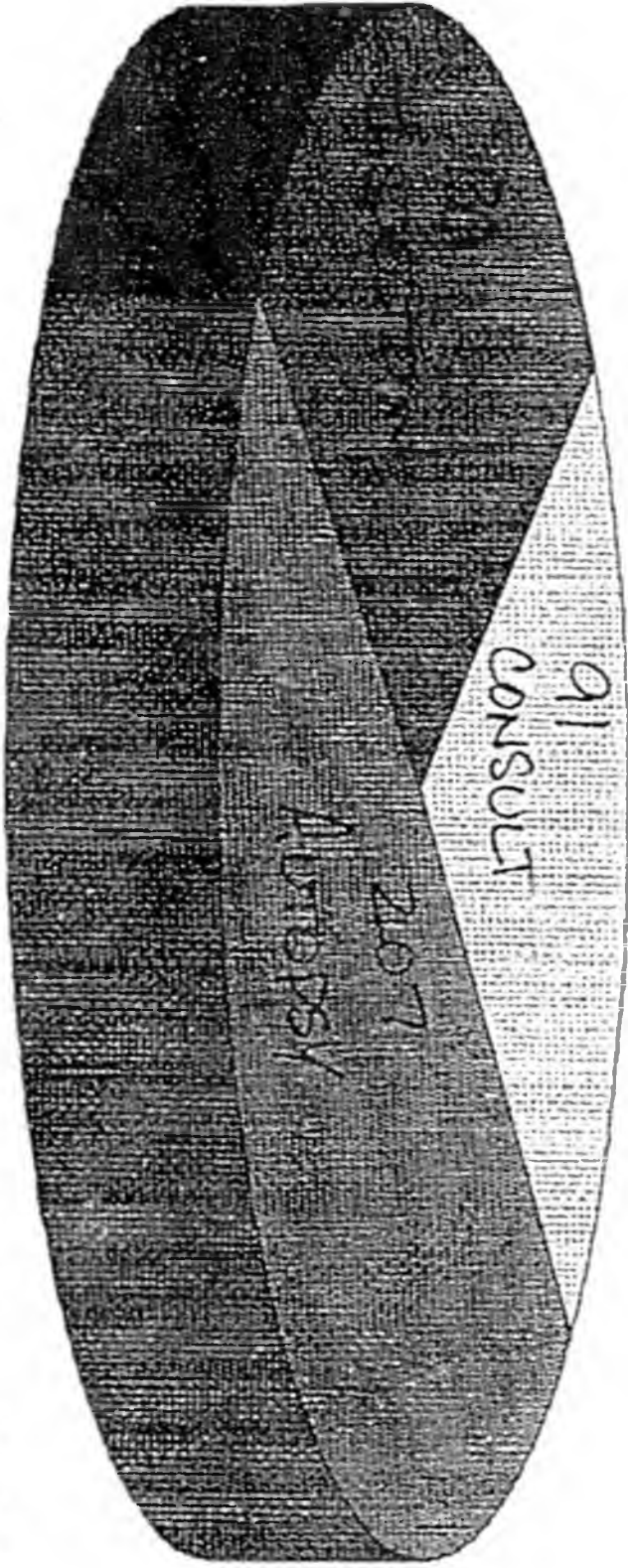
TOTAL CASE
FY 95'

- 839 CASES
- 368 Autopsy
- 268 INSPECTION
- 203 CONSULT

TOTAL CASE
411

FY 1995
CASE # 94-380 TO 94-808

Jul. - Dec.



018203

TOTAL CASE

498

HJR

20

3/10

HR-20

teleconf - Keani + Sold.

262-9289

Seymour Miles,

TO	Mr. [unclear]
FROM	Mr. [unclear]
DATE	3/13
TIME	1:27 PM
REMARKS	[unclear]

PHONE CALL

PHONE MESSAGE		DATE	3/14	TIME	1:25 AM	
FOR	Laura					
M	Wesley Newcome					
OF	Newcome					
PHONE ()	EXT.					
FAX	MOBILE	PAGER	()			
MESSAGE	262-3135					
Wants HJR 20 To be teleconferenced to Soldotna						
AVERY					SIGNED	[Signature]

- URGENT
- PHONED
- RETURNED YOUR CALL
- PLEASE CALL BACK
- WILL CALL AGAIN
- WAS IN
- WANTS TO SEE YOU

JACKSON CONSTRUCTION

241 Aspen
SOLDOTNA, ALASKA 99669
PHONE 262-4485

EQ

I respectfully ask you do all you can to defeat any movement or bill calling for a "CONFERENCE OF THE STATES".

I believe this to be a subversive effort to amend the constitution.

The constitution of the United States is not flawed or in need of any changes.

All that is needed for a balanced budget is for our elected representatives to confine spending appropriation to those provided for in the constitution as it is written.

The enclosed clipping is but one of thousands of examples of government run amuck, clearly illustrating the absurd and obscene actions leading to national bankruptcy as well causing a gut wrenching distrust for all government in general.

As the article points out, the estimated 82 billion annual cost for this theft is not including the associated tax breaks that most likely are of the same magnitude if not more.

It would not take a pain surgeon to figure out that eliminating only three or four similar programs would suffice to ballance the budget.

Respectfully I am,

Harold A. Jackson
Harold A. Jackson

3/14/95

The
UN is **NOT**
your friend!

HJR

30

FISCAL NOTE

REQUEST:

Revision Date: _____ Affected Agency: _____
 Title: Amend US Constitution to BRU: _____
limit Federal Courts
 Sponsor: Representative Vezey Components: _____
 Requestor: World Trade St/Fed Rel.

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 2000	FY 2001
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING	-0-					

CAPITAL	-0-					
---------	-----	--	--	--	--	--

REVENUE	-0-					
---------	-----	--	--	--	--	--

FUNDING: (THOUSANDS OF DOLLARS)

General Fund	-0-					
Federal Fund						
Other						
TOTAL	-0-					

POSITIONS:

Full-Time	-0-					
Part-Time						
Temporary						

Estimated FY 95 Impact: -0-

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

Prepared By: World Trade and State/Federal Relations Date: 3/20/95
 Division: _____ Phone: _____
 Approved By: [Signature]
 Agency: World Trade & State/Federal Relations Date: 3/2/95

DISTRIBUTION (BY PREPARER)
LEGISLATIVE FINANCE
LEGISLATIVE SPONSOR

REQUESTOR
OFFICE OF MANAGEMENT AND BUDGET
AGENCY(IES)

ALASKA STATE LEGISLATURE
HOUSE JOINT RESOLUTION NO. 30

HISTORY IN THE HOUSE

1995
2/8 Read first time and referred to:
WTR Jud

3/22 WTR RPT() CS()) New Title
3 DP 0 DNP 1 NR 0 AM
FN 1 OFN Previous FN

4/13 Jud RPT() CS()) New Title
5 DP 2 DNP 0 NR 0 AM
FN OFN 1 Previous FN 0

 RPT() CS()) New Title
 DP DNP NR AM
 FN OFN Previous FN

4/20 Read second time
CS() Adopted

Amended

4/20 fid to ADU

4/21 Advanced

4/21 Read third time

Return to second for specific amendment

4/21 PASSED EFD Same or
Yeas 25 Yeas
Nays 12 Nays
Excused 3 Excused
Absent 0 Absent

 Intent adopted

4/21 Reconsideration NAVARRE
4/22 Reconsideration not taken up

PASSED ON RECON. EFD Same or
Yeas Yeas
Nays Nays
Excused Excused
Absent Absent

 Intent adopted

4/22 Reported correctly engrossed
Signed by Speaker, to the Senate
Luigi Louie
Chief Clerk of the House

HISTORY IN THE SENATE

1995
4/25 Read first time and referred to:
JUD

 RPT() CS() DP NR DNP AM
 New Title Same Title Previous FN
 FN OFN To

 RPT() CS() DP NR DNP AM
 New Title Same Title Previous FN
 FN OFN To

 RPT() CS() DP NR DNP AM
 New Title Same Title Previous FN
 FN OFN To

 Rules Calendar() CS AM Other
 New Title Same Title Previous FN
 FN OFN

Read second time

 CS Adopted () New Title
 Amended Advanced

Read third time

 Letter of Intent adopted
 Return to second for specific amendment

PASSED EFD Same or
Yeas Yeas
Nays Nays
Excused Excused
Absent Absent

Reconsideration
Reconsideration not taken up

PASSED EFD Same or
Yeas Yeas
Nays Nays
Excused Excused
Absent Absent

Reported correctly engrossed
Signed by President, to the House

Secretary of the Senate

HOUSE-SENATE HISTORY Continued

19

Received from the Senate _____

Concur in Senate amendment
 Y ___ N ___ E ___ A ___
 ___ Efd same or Y ___ N ___ E ___ A ___

Failed to concur Senate amendment, ask Senate recede
 Y ___ N ___ E ___ A ___

Senate failed to recede from amendment
 Y ___ N ___ E ___ A ___

CC appointed by House _____ Chair

CC appointed by Senate _____ Chair

(H) Granted Limited Powers of Free Conference _____

(S) Granted Limited Powers of Free Conference _____

19

(H) Adopted CC Rpt _____
 Y ___ N ___ E ___ A ___
 ___ Efd same or Y ___ N ___ E ___ A ___

(S) Adopted CC Rpt _____
 Y ___ N ___ E ___ A ___
 ___ Efd same or Y ___ N ___ E ___ A ___

To enrolling
 Reported enrolled and sent to Governor
 _____ By Governor

Legislative Resolve Number _____

Filed with Lieutenant Governor _____

JUDICIARY COMMITTEE
DELIVERY ACCEPTANCE LOG

MEETING DATE 1/14/96

BILL NUMBERS 1191 / 1202

LEGISLATOR ACCEPTED BY TIME DATE 1/15/96

SEN. GREEN. [Signature]

SEN. MILLER. [Signature]

SEN. ADAMS. [Signature]

SEN. ELLIS [Signature]

Alaska State Legislature

House of Representatives

Official Business



State Capitol
Juneau, Alaska 99801-1182
(907) 463-3718

House Majority Leader

SPONSOR STATEMENT

The purpose of HJR-30 is to petition the Congress of the United States to prepare and present to the legislatures of all the states an amendment to the Constitution of the United States. This amendment would prohibit the Supreme Court or any inferior court of the United States, from ordering a state or political subdivision of a state to levy or increase taxes.

The resolution comes about as the only means to address the problem of the courts mandating imposition of taxes by judicial edict. This effort was brought about by a court case in Missouri, whereby the Supreme Court mandated the city of Kansas City to charge a tax to fund desegregation expenses ordered by the courts.

Previous to that time the courts had addressed the power of taxation in the following opinions.

In *People v. Baltimore & Ohio Southwestern Railway Co.*, 187 N.E.(1933):

Courts will not interfere with the exercise of sound business judgment on the part of taxing authorities, but will intervene only to prevent a clear abuse by such officers of their discretionary powers.

Marion and M. Ry. Co. v. Alexander County, 64 P. 978 (1901)

The authority to levy taxes is an extraordinary one. It is never left to implication, unless it is a necessary implication. Its warrant must be clearly found in the act of the legislature...when there is a reasonable doubt as to its (authority to levy taxes) existence the right must be denied.

Appeal of School District of City of Allentown, 87 A.2d 480 (1952)

Neither municipalities nor school districts are sovereigns, and they have no original or fundamental power of legislation or taxation, but have only the right and power to enact those legislative and tax ordinances or resolutions which are authorized by the act of the legislature.

Burris v. Wilkerson, 310 F.Supp. 572 (W.D. Va. 1969) affirmed 397 U.S. 44, 90 S.Ct. 812 (1970).

The courts have neither the knowledge, nor the means, nor the power to tailor the public moneys to fit the varying needs.....

Missouri v. Jenkins, 110 S.Ct. 1651 (1990): is not a "so what" case as Representative Finklestein stated on the House floor. It is a case that reverses decisions of courts for two hundred years and allows the Supreme Court to legislate tax laws throughout misinterpretation of the Constitution.

Presently there are ten states which have introduced a similar resolution.

The Case For A Constitutional Amendment
To Limit The Power To Tax Which Has Been
Assumed By The Federal Courts

By John R. Stoeffler



The Case For A Constitutional Amendment To Limit The Power To Tax Which Has Been Assumed By The Federal Courts

By John R. Stoeffler

Alexander Bickel in his book *The Least Dangerous Branch* makes the following observation regarding those who embrace what he calls the utility of benevolent illusions and the justification for creating them. Such individuals, he wrote, believe that, "The people of a democracy must be mercifully soothed when they find themselves ruled, to whatever extent, by the nine (justices) of the Supreme Court. (They) know what the people imagine. (The people) imagine that they rule themselves, and they imagine *Marbury v. Madison*. To the extent that this is not so, some explanation perhaps may be found or even made up. It would be no sin. It has been done before.

"But", Mr. Bickel notes, "this is very dangerous. What is even more ominous, (is) the illusion (thus created) may engulf its maker and breed, as it has occasionally done, (a) free-ranging "activist" government by the judiciary. Such government is incompatible on principle with democratic institutions."
I.

The United States Supreme Court and other federal courts do in fact pose a threat to representative government. All too often their rulings and decrees are attempts at judicial illusion; and all too often they succeed. Rulings and decrees from the courts today seem more often to reflect the social, economic and moral views of what the editorial board of the *St. Louis Post Dispatch* and the American Civil Liberties Union believe America should be than the unequivocal and uncompromising guidelines for a democratic republic which were clearly spelled out by the founding fathers in the United States Constitution. Such rulings and decrees only enhance the political power of the courts while diminishing those of the people through their duly elected representatives in the legislative branch of government.

As I see it there are three sources of power which control government; these are the power to legislate, the power of the sword and the

power of the purse. These are political powers. In any democratically elected government these political powers must remain in the hands of that branch closest to the people, the legislative branch of government, if representative government is to survive.

In addressing the Missouri General Assembly in 1982 Robert T. Donnelly, then Chief Justice stated, "I profoundly respect the United States Supreme Court as an institution. However, even the United States Supreme Court should not be permitted to wield power it was never given. The greed for power has surfaced from time-to-time in all civilizations. The uniqueness of our present concern is that the disease has cropped out among the judges, where one would least expect it." 2. This power grab, if left unchallenged, can only lead to a substantial lessening of those ties which bind our republican form of government, and the potential for the establishment of a judicial oligarchy which, despite any assurances to the contrary, will be anything but benign.

I stated earlier that there are three sources of political power which I believe control government; and while the subject of my talk deals with the power to tax which the federal courts have seized and what action needs to be done to address it, I feel it is also necessary to discuss ways in which the judiciary has reached into those two other areas of legislative power to support my contention that a pattern of judicial activism and usurpation is not only alive, but a real and growing threat to representative government.

First let me discuss the usurpation of legislative power by the federal judiciary.

In 1717 Bishop Hoadly stated, "(W)hoever hath an absolute authority to interpret any written or spoken laws it is he who is truly the lawgiver, to all intents and purposes, and not the person who first wrote them " 3. Today, the federal judiciary has taken upon itself the power to legislate by interpretation. Justice Holmes noted this in his 1930 dissent in *Baldwin v. Missouri*, he stated, "I have not yet adequately expressed the more than anxiety that I feel at the ever increasing scope given to the Fourteenth Amendment in cutting down what I believe to be the constitutional rights of the States...I cannot believe that the Amendment was intended to give us carte blanche to embody our economic and moral beliefs in its prohibitions." 4. He could have been echoing the thoughts of Alexander Hamilton in *Federalist 78* when he wrote, "It can be of no weight to say that the courts, on the pretense of repugnancy, may substitute their own pleasure to the constitutional intent of the legislature." Courts today, however, make no pretense concerning their

social or economic views and continue to claim the sole constitutional right to interpret the constitution in order to achieve such views and objectives. Alexander Bickel's observations led him to write that the judiciary sees itself as having an intellect and judgment superior to elected officials. Elected officials, he claimed, are viewed as, "(S)pokemen for the expedient short-run solutions while judges (have) a greater capacity to deal with principles of long run importance. Courts," he continued, "have certain capacities for dealing with matters of principle that legislatures and executives do not possess. Judges have, or should have, the leisure, the training and the insulation to follow the ways of the scholar in pursuing the ends of government." 5. To support their claim to a constitutional right to make law they refer back to John Marshall's often cited opinion in the case of *Marbury v. Madison*, however they neglect the fact that by John Marshall's own admission his "assertions of judicial supremacy were mere *orbiter dicta*, i.e. private expressions of opinion that did not form a part of the decision, the *ratio decidendi*, of the case." 6. More recently the United States Supreme Court, in the 1958 case of *Cooper v. Aaron*, declared its decisions to be, "(T)he supreme law of the land...and of binding effect upon (all) the States." 7. Such self-serving declarations bring to mind these words of Abraham Lincoln from his first inaugural address, "If the policy of the government upon vital questions affecting the whole people, is to be irrevocably fixed by decisions of the Supreme Court...the people will have ceased to be their own ruler, having to that extent practically resigned their government into the hands of that eminent tribunal." 8.

"The Constitution", writes Joseph Sobran, "was meant to assure us that every act of the federal government would be clearly traceable to a general heading: coining money, declaring war, providing postal service and a few other broad yet well-defined powers. It didn't leave much room for discretionary authority." 9. Today, however, the courts make law by judicial decree. Said Benjamin Cardozo in his book, *The Nature of The Judicial Process*, "I take judge made law as one of the existing realities of life." 10. Judicial opinions then become the law of the land with no legislative input or stamp of approval from those who should be the guardians of our republic...the Congress of The United States. Shouldn't we expect the Congress to step in and invoke their power to reign in the federal judiciary's appellate powers as spelled out under Article III? I think we should. But, based on the record, if we plan on counting on those procrastinating and pontificating Pontious Pilates of politics to stand up for us, we had better

think again. Consider this observation by Federal Judge Arthur Stanley, Jr., "I've been called on to do things that I felt properly should have fallen within the legislative field. I have a sneaking impression that Congress deliberately creates situations to avoid making decisions itself." 11.

At this point let me suggest to those who may be thinking that the solution to Congress' inaction is to elect a particular brand of politician or party to office. I wish it were that simple. Sure, we can change parties in the White House or in the United States Congress but political victories are meaningless if an activist Court will nullify any law it deems to be "unconstitutional" with arguments which, however ingenious, have no relation to the Constitution.

To many, the most blatant example of ongoing legislative activism by the federal judiciary is the ever increasing use by the courts of the Fourteenth Amendment to excise the Bill of Rights. It was the 1925 case of *Gitlow v. The People Of New York* which, for many, stands as the landmark case in which the Supreme Court accomplished this. The Court stated, "(W)e...assume that freedom of speech and of the press--which are protected by the First Amendment from abridgment by Congress--are among the fundamental "liberties" protected by the Fourteenth Amendment". 12. You may recall that the Bill of Rights as written was to apply to the federal government not the states. This is because the founding fathers had a deep and abiding fear of a strong central government. Although this may have been the founding fathers' intent it has not inhibited the federal judiciary today as they continue, through subjective rulings and decrees, to amend the United States Constitution whenever they deem it necessary to conform to their own economic or moral view of what they believe America should be.

One of the more notorious examples of judicial legislating is the Court's insistence that the First Amendment's wording grants to the court the authority to declare that the term "separation of church and state" is a constitutional imperative. Using this logic the Courts have removed any vestige of God from the classroom. You may agree with this or you may not, but it is not the right of any court to use the Fourteenth Amendment to temporarily set aside any part of the Bill of Rights in pursuit of a pragmatic philosophical objective. The founding fathers provided a method for change, it is called the amendment process, a part of the Constitution the judiciary ignores when it suits their purpose. And while all this is taking place, members of Congress, who have sworn to protect and defend the Constitution from all enemies foreign and domestic, sit upon their collective hands

claiming that it is not their place to challenge the courts inasmuch as they view them as the ultimate arbiters of Constitutional intent. Oh, really? They would do well to harken to the words of President Andrew Jackson, one known to not mince words when it came to the Court. On July 10, 1832 he stated, "Each public officer who takes an oath to support the Constitution swears that he will support it as he understands it, and not as it is understood by others. The (judiciary's) authority must not (be) permitted to control the Congress or the Executive when acting in their legislative capacities, but to have only such influence as the force of their reasoning may deserve." 13. (en.phasis mine)

As to the power of the sword Article I, Section 8 of the Constitution grants to Congress alone the authority, or power "to raise and support armies"; 'to provide and maintain a Navy'; and 'To make Rules for the Government and Regulation of the land and naval forces.'" In *Federalist 78* Alexander Hamilton addressed colonists' concerns over a strong federal judiciary. "The judiciary", he proclaimed, "has no influence over either the sword or the purse". That was the intent of the Founding Fathers, but today, whatever the courts want is a constitutional imperative while everything they choose to oppose is unconstitutional.

Recently the federal judiciary has begun to take upon itself the responsibility for our nation's defense readiness. While nowhere under Article III will one find such power granted to the courts this has not deterred them for even a millisecond. Having taken unto themselves the power to legislate by decree they have now begun a quest to acquire the political power of the sword to achieve subjective goals.

In an Associated Press report of Tuesday, October 19, 1993 it was noted that the Supreme Court agreed to decide whether states and communities hard hit by cuts in defense spending may challenge military base closings in court. The justices indicated that they would review a federal appeals court ruling which let local officials and union members try to overturn the government's decision to close the Philadelphia Naval Shipyard. Lawsuits, the report continued, over individual base closings would upset the process Congress adopted for making such politically difficult decisions. While the loss of jobs is a tragedy it is not the responsibility of the courts to interfere with political decisions made by Congress as they carry out the responsibilities delegated to them under Article I, Section 8 of the Constitution. The responsibility for our nation's defense rests with the legislative branch of government alone, and nowhere in the Constitution is