

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9175 HOUSE JUDICIARY

Program and Activity Index

The program and activity index measured inmate assignments, and activity or idleness.

Source

The source of the indicators and measures came from existing records, reporting procedures, and inspection processes. The primary sources were:

- 1 TDOC and CCA records
- 2 TDOC and CCA weekly, monthly, quarterly, and annual reports.
- 3 The Performance Audit Inspection
- 4 The Program and Activities Records and Jobs Audit

In addition to the records and reporting processes and the audits, the SOCC staff and consultant made site observations and conducted interviews with staff and inmates.

Validation

The primary process of validating or verifying the data and information routinely reported by TDOC and CCA was the Performance Compliance Audit and the Program and Activities and Jobs Audit.

Value or Weight

The value or numerical weight given to each indicator or measure previously discussed was agreed-to by TDOC and CCA as follows:

<u>Element</u>	<u>Value</u>
Nature of Inmates	0
Professional Standards	0
Audit	60
Security and Safety Index	25
Program and Activity Index	15
Survey	0

The nature of inmates, and the professional standards, were control measures. They were given no score. The performance audit consisted of nearly 200 elements. Each element was worth one point. The total performance audit was worth sixty (60) percent of the aggregate comparison score.

The security and safety index is worth twenty five (25) percent of the total comparison score. The program and activity index is worth fifteen (15) percent of the total score

Comparison

Describing what is a "comparable, superior, or poorer-than" quality of performance for correctional services is subjective. The risks associated with giving a numerical score to the quality of correctional performance is high. There are very few outcome measures that are either easily quantified or are very meaningful in judging quality of performance. There are many variables to consider when making a judgment about the quality of correctional services. This approach was designed to be as objective, fair, and comprehensive as was practical.

During the development of this design approach, it was clear the parties were concerned about a process that concludes with a numerical score. They were concerned about being given a score that may be misunderstood or misinterpreted. Since this project did not attempt to have scientific rigor, it would be misleading and imply a sense of false precision to rely on a numerical score. On the other hand, it was essential to give some weight and value to indicators and measures used. We have tried to avoid the limits of heavy reliance on a numerical score. The audit, security and safety, and program and activities measures were given a numerical score. They are supported by interpretations and explanations.

In each area where deficiencies are noted or comments are made by the SOCC staff or consultant, an opportunity was given to TDOC or CCA to present facts or evidence to clarify any misunderstandings and correct any misrepresentations.

LIMITATIONS

The methodology described above was sufficient to conduct the comparative evaluation. However, there are limitations and factors that were beyond the control of the State or the private contractor, and the evaluation methodology, that could affect the quality of the data described and the interpretation of that data.

It is important to point out those limitation factors, so they can be given consideration when reviewing or interpreting the data and findings in this comparative evaluation report.

- The first limiting factor was that each of the three institutions opened at different times. There was nearly a 1 1/2 year difference between the opening of Northeast and Northwest Correctional Centers. The methodology attempted to account for this starting time discrepancy by picking points in time that were consistent for data collection and evaluation. However, the fact remains that one institution had more than a year's experience over the other two institutions.

- There was an initial apparent lack of clarity regarding authority and responsibility, as it related to "care, custody, and control" by the private operator. This report was not an attempt to discuss or describe contractual language or responsibilities between the State and the private operator. However, the complexities in operational practices with regard to disciplinary authority and responsibility between the State and the private operator took several months to resolve. This critical period of opening and operating a new prison usually sets the tone for the operation, for a long time. This was not a quantifiable observation, but was based on the experience of opening prisons and jails and observing the impact of an organized transition and activation process, and the first year of operation of a new prison.
- The quality of data used in any evaluation is critical. The initial plan for the methodology was to use the State's Tennessee Offender Management Information System, (TOMIS) as the primary data source. The TOMIS system was being developed as the comparative evaluation data was being collected. This resulted in an inability to obtain certain data, a change in data reporting formats, and an agreement by the State and the private contractor to use certain data collection and verification efforts. It should be noted that the State, particularly the Department of Correction's Planning and Research Division, did an excellent job in controlling, managing, and reporting on the quality and quantity of data used throughout this comparative evaluation.
- The demands placed on the Office of Compliance, Tennessee Department of Correction, were not fully anticipated. The workload and tasks associated with contract monitoring, compliance monitoring, liaison and communication responsibilities were substantial. The TDOC Office of Compliance assumed these additional responsibilities and did an excellent job in coordinating and reporting compliance issues for the comparative evaluation process.
- The corrections system must be flexible and meet the demands of a constantly changing inmate population. A limiting factor in this comparative evaluation was some of the demand for change on the system. For example, during some of the evaluation period, the Northwest Correctional Center was partly used as a reception center because of system demands.
- A primary focus of the programs and activities associated with the correctional system was inmate jobs and work assignments. The industry component at each of the three facilities that was anticipated to supply substantial jobs, did not meet expectations.

In spite of these limitations and factors that could affect the quantity and quality of data, or the interpretation of the findings, it did not have a significant affect on the comparative evaluation approach. In fact, the State and the private contractor, particularly the wardens at the three institutions, used administrative prerogatives, creativity, and good judgment in mitigating many of the limitations.

4. What were the findings of the annual audits?

The following table represents the second annual inspection of each facility by the special comparative evaluation inspection team.

Second Inspection Element	NECC		SCCC		NWCC	
	<u>Comp.</u>	<u>Non-C.</u>	<u>Comp.</u>	<u>Non-C.</u>	<u>Comp.</u>	<u>Non-C.</u>
Administration	87.7	12.3	97.9	2.1	97.6	2.4
Safety & Conditions	95.6	4.4	88.1	11.9	94.5	5.5
Health Services	96.7	3.3	100.0	0.0	97.8	2.2
Mental Health	96.3	3.7	100.0	0.0	100.0	0.0
Treatment	95.9	4.1	99.35	.6	95.1	4.9
Security	99.5	.5	99.5	.5	98.4	1.6
AVERAGE (**)	95.28	4.72	97.48	2.52	97.23	2.77

** Does not include Correctional Enterprises

Compare Two Insp. Element	NECC		SCCC		NWCC	
	<u>Comp.</u>	<u>Non-C.</u>	<u>Comp.</u>	<u>Non-C.</u>	<u>Comp.</u>	<u>Non-C.</u>
First Inspection	90.67	9.35	84.53	15.47	90.08	9.92
Second Inspection	95.28	4.72	97.48	2.52	97.23	2.77
Percent Improvement	5.08		15.32		7.94	

For evaluation purposes, the second inspection score was counted in the overall rated comparison. After each audit the ratings were reviewed with the facility. It is interesting to note the substantial improvement for all three facilities between the first and second inspections. SCCC made the biggest improvement. It is also interesting to note the very high levels of compliance and the closeness of the scores. This is all the more impressive since it was done independently by a bi-partisan team from TDOC and CCA. Also, the scores are consistent with the ACA accreditation ratings.

ACA Accreditation Ratings

Facility	Date	Score
NECC	June 7-9, 1993	98.78
-SCCC	October 4-6, 1993	99.29
NWCC	June 6-8, 1994	98.88

5. What were the findings of the Security and Safety review?

A wide range of security and safety factors were reviewed. The review included reports on serious incidents for a fifteen-month period from July 1993 through September 1994, and a review of Disciplinary Classification reports and Dispositions for different periods in 1993 and 1994.

It is very difficult to say that one facility is more or less secure or safe than another facility. There are many variables that constitute safe and secure. Nearly everyone has an opinion. Our opinions were based on observations, data, and our best professional judgment. We started with some assumptions and we referred to data from TDOC and CCA reports for most of our comments

Our first assumption was that there was full compliance with security and safety practices, and that our observations and comments would describe deficiencies in security, or safety compliance, or practices. Our second assumption was that we would refer to serious incident and disciplinary reports, because they have been accepted by the parties, and are the parties' reports.

Statement of Qualifications

Before we discuss specific security and safety issues it is important to remind the reader of the need to qualify and condition the interpretation, use, and referencing of a single number or set of numbers, or narrow specific statements in this report. We recognize the wide and varied interests in the results of this evaluation. We have attempted to present information in text and tables that are clear and concise in form and style.

However, we are very conscious that information can be taken out of context and appear to be much more than it is. Or worse, what it is not. The reporting of events described as "serious incidents" in a prison report can have unintended consequences. We urge the reader to read the full report before reaching conclusions or quoting things out of context.

One measure of security and safety is the number and type of assaults that occur in a facility. During the fifteen-month period, NWCC had significantly more assaults than either NECC or SCCC. NWCC reported 165 assaults.

NECC reported 69 and SCCC reported 80. 62 of NWCC's assaults resulted in minor injuries to staff. Assaults reported for the three facilities include serious and minor assaults involving staff, inmates and visitors.

Disturbances, or the loss or threat of a loss of control is a measure of the security and safety of a facility. NWCC reported 7 temporary losses of control and NECC and SCCC each reported 2. A review of the 7 incidents at Northwest reflect the differences in reporting as the incidents were very minor, for example; a disruptive student in a classroom, a disruptive inmate in line to receive clothes, an inmate refusing to enter his cell and being escorted.

Escapes are an obvious measure of security for a prison. During the fifteen-month period, NECC had two, NWCC had one, and SCCC had no escapes from secure supervision. SCCC had 2 attempted escapes from secure supervision.

The number of injuries to staff and prisoners is a measure of the security and safety of a facility. During the fifteen-month period, SCCC reported significantly more injuries to prisoners and staff than either NECC or NWCC, with 214 injuries reported at SCCC, 21 and 51 at NECC and NWCC respectively.

The use of force is also reviewed when looking at the security and safety of a prison. The facilities have significantly different reported incidents of the use of force. SCCC had 30 reported incidents, NECC 4 and NWCC 6.

Both the injury and use of force data is as reported on TOMIS and does not necessarily reflect a higher incidence of injury or use of force at SCCC or NWCC. Rather, the data may be indicative of the focus of the facilities in reporting and the discretionary nature of the reporting requirements.

The use of a disciplinary system, and the writing of charges and disposition of those charges is a measure of the security and safety of a prison. There was not much difference in the issuing of disciplinary tickets among facilities. SCCC appears to write more minor infractions and NWCC appears to write more serious infractions.

The disposition of disciplinary charges is also a very good measure of the security and safety of a prison. It is an indication of how the facility manages its problems, and can be an indicator of facility safety. During the fifteen-month period, NECC reported 500 dispositions to verbal reprimand, while NWCC and SCCC reported seven and 13, respectively.

Each of the institutions met the security and safety requirements of two annual inspections and an ACA audit. Their respective scores were exceptionally high, in fact, almost identical. There were differences in certain indicators. However, in reviewing the entire period, in our

judgment, there was very little difference in the performance of security and safety among the three facilities.

6. What were the findings of the Program and Activities Review?

The following table summarizes the first and second years of operation at the three facilities regarding the percent of inmates inactive or idle due to job waiting.

This category depicts inmates who are eligible for a work or program assignment but remain idle and unassigned.

<u>Compare First and Second Years</u>	<u>Job Waiting Percent</u>		
	<u>NECC</u>	<u>SCCC</u>	<u>NWCC</u>
First Year	11	19	21
Second Year	4	11	12

The tables reflect the high rate of inmates in the "job waiting" category during the first year of operation. This is a critical time when inmates should be assigned to programs and work because the facility is setting its operational tone.

The tables also reflect the substantial improvement at each facility in reducing the amount of job waiting in the second year of operation.

The primary reason the job-waiting numbers and percents were so high was because the facilities had no industry program. The facilities were constructed but the program was not operational. SCCC and NWCC have had no real industry program during the evaluation period. NECC had a small industry program during the second year of operation.

The State recognized the prisoner "job waiting" and industry problem. In 1994 the SOCC initiated efforts that led to legislation creating a new prison industry board and a renewed focus to develop work opportunities and prisoner jobs.

7. What conclusions were reached from the comparative evaluation?

There were elements within each area that was reviewed where one facility received a higher rating than another facility. However, there were also elements within each area where one facility received a lower rating. In total, the facilities all rated very high and are nearly identical in their overall performance. The closest objective numerical rating to support this conclusion was the second annual inspection reports and the ACA audit.

We do not believe there was a significant security and safety performance difference among the three facilities during the rated evaluation period.

We do believe there was a significant "job-waiting" difference among the three facilities during the evaluation period. However, as TDOC and CCA agreed during the development of the methodology, adjustments could be made to the Program and Activity Index rating based on the jobs audit and verification of program and activity assignments. It is difficult to penalize SCCC and NWCC for not assigning inmates to an industry program that was not provided. On the other hand, the State was responsible for providing the industry program at all three facilities.

It was our judgment to rate all three facilities the same for the program and activity index.

Overall Rating

The overall Comparative Evaluation rating is depicted in the following table. It includes the second Annual Audit, worth 60 %, the Security and Safety Index, worth 25 %, and the Program and Activity and Jobs Index, worth 15 %.

<u>Evaluation Rating</u>	<u>NECC</u>	<u>SCCC</u>	<u>NWCC</u>
Audit (60 %)	57.17	58.49	58.34
Security and Safety Index (25 %)	25.00	25.00	25.00
Program and Activity Index (15 %)	15.00	15.00	15.00
	97.17	98.49	98.34

In reviewing the ratings we considered the range of difference of up to 3 % among the three facilities, as essentially comparable. Therefore, our conclusion was that all three facilities were operated at essentially the same level of performance.

8. What recommendations are being made?

The following recommendations were developed from information learned and opinions formed during the evaluation process. They are intended to guide State policy makers as they look for ways to improve the correctional system. They are intended to guide State policy makers in their decision making process, if the State decides to continue this contract or contracts for correctional services in the future. We recommend the following:

- Establish an independent contract monitoring and operational compliance capability for corrections contracts where a comparative evaluation will be conducted. The potential conflict and the complexities require a separate contract monitor.
- Review State restrictions and TDOC policy to provide maximum flexibility to allow corrections operational contractors to use their business and marketplace creativity; obviously, with appropriate legal safeguards.

- Allow the private contractor the authority and opportunity to privatize the industry program at SCCC. This could take several different forms. This should not preclude a contract with the TRAIL Board.
- Review the "start-up" needs and provide TDOC with adequate resources to service the operational demands of a new private prison contract. The need for transitioning into the new facility and the prison activation process require commitment of time and resources.
- Review the needs and establish clearer lines of authority, accountability, and communication, between the State and a private contractor. Set policy and establish more formal and documented procedure.

3/11/97

Chenoweth Memo - per JG

line.

line 5 (at) a correction

line 11 (at) a correctional facility

"Municipality" or political subdivision
of state.

— radius - 2 miles

"affected" voter

"community" what is def.

Does state statute trump local
law —

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
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Juneau, Alaska 99801-2105

MEMORANDUM

April 2, 1997

SUBJECT: "Obvious' flaws" in the April 1 amendment to House Bill 53 (Work Order No. 0-LS0194\K)

TO: Representative Joe Green
ATTN: Lisa Kirsch

FROM: Jack Chenoweth
Legislative Counsel 

Page 1, line 4, should read "new subsections."

Page 1, line 6: AS 33.30.031(a) is a provision under which the Department may obtain facilities under agreement or contract. At line 6, you use the word "constructed," which leads me to think that there may be confusion as to whether this subsection, subsection (f), applies to all new construction or just to new construction that follows in conjunction with an agreement entered into under (a). If all new construction, this needs to go somewhere else. If just construction under an agreement entered into under AS 33.30.031, then it should be revised to say that.

On this same point, is it crystal clear to you that, by building these limitations into AS 33.30.031, the limitations will necessarily also apply to correctional facilities to be developed under a lease (AS 33.30.043) or under a lease-purchase arrangement (AS 36.30.085)?

Page 1, line 13 and line 16: What is an "other legal subdivision" of the state? Offer a definition for the term or delete it.

Page 1, line 14: Can the vote constitutionally be limited to "residential landowners"? See art. V. sec. 1, Constitution of the State of Alaska, allowing limitations on suffrage only in conjunction with bond issue elections, of which this is not one. Or is it your contention that this is not a state or municipal election to which this provision attaches?

Page 1, line 17: Do you mean the "external perimeter" of the "proposed" correctional facility? On that same point, are you talking about the "walls" of the nonexistent facility or

Representative Joe Green

April 2, 1997

Page 2

the outer lot line(s) on which that nonexistent facility is proposed to be placed? How the two miles is measured may determine whether a handful of people do or do not vote, and if there is any question on the point, you can expect litigation about its meaning.

Page 1, line 21: . . . may solicit "proposals" for what purpose? How does this solicitation of proposals tie back to "site selection process"? Proposals seems broader than site selection, so maybe reference to site selection process is too narrow.

Page 1, line 21: What turns on the limitation of a solicitation of proposals from "private entities"? Do you mean that municipalities and other public agencies may not respond?

Page 1, lines 21, 23, 26, and 28: Is the reference to "request for proposals" and "RFP" always a reference to the same document? Why does "or other document" not appear after "request for proposals" in lines 21 and 23?

Page 1, line 34: Where is "certification of approval" mentioned in subsection (f)? What is this a reference to? What turns on the fact that a certification of approval is "not valid"?

Page 2, line 36: Strike "the private entity" and substitute "a private entity that intends to respond to the commissioner's request for proposals."

Page 2, line 45: If limiting the vote to residential landowners is constitutionally improper, should this be changed to conform to whatever corrective action is made at page 1, line 14?

Page 2, lines 43 - 50: The approval process, such as it is, is contrived. Does it mean that every party responding to an RFP has to conduct a polling on its proposal? Suppose the municipality doesn't want to be responsible for the polling? Tie it back to the Division of Elections under the mail ballot provisions of current law, and authorize a municipality to conduct. Three months to receive the mail-in ballots is w-a-y t-o-o long.

Page 2, lines 44 and 51: Here "political subdivision"--previously, "legal subdivision." Are they the same? Different? What is it you have in mind? Either say so directly or define the term(s).

Page 2, lines 52 and 53: Here, there is some indication that the "private entity" making the proposal has responsibility for conducting the mail-in election, while under (h)(3) it is clear that the municipality is to do it. Very inconsistent.

Page 2, line 58: Here the commissioner of corrections is to count ballots.

Nothing in subsections (h) or (i) specifically says that if the voters vote "no" this site is no longer to be considered by the commissioner. I assume that this is where this idea is headed,

Representative Joe Green

April 2, 1997

Page 3

but a strong-willed commissioner may decide that, notwithstanding the no vote, the facility will be located at the site.

The material I received is two pages, ending at page 2, line 74. Did I get it all?

JBC:pl:jdr
97-084.plm

A M E N D M E N T

Withdrawn

OFFERED IN THE HOUSE
TO: HB 53

- 1 Page 1, lines 9 - 11:
- 2 Delete "a lease-purchase agreement or similar use-purchase agreement for the
- 3 design, construction, and operation of a correctional facility, and setting conditions and
- 4 limitations on the facility's design, construction, and operation"
- 5 Insert "lease-purchase agreements or similar use-purchase agreements for the
- 6 design, construction, and operation of correctional facilities, and setting conditions and
- 7 limitations on the design, construction, and operation of those facilities"

- 8 Page 4, line 31:
- 9 Delete "AGREEMENT"
- 10 Insert "AGREEMENTS"

- 11 Page 5, line 1:
- 12 Delete "AGREEMENT"
- 13 Insert "AGREEMENTS"

- 14 Page 5, line 4:
- 15 Delete "an agreement"
- 16 Insert "one or more agreements"
- 17 Following "AS 33.30.031,":
- 18 Insert "each to be"

- 19 Page 5, line 6:
- 20 Delete "a correctional facility"
- 21 Insert "one or more correctional facilities"

1 Page 5, line 11:

2 Delete "facility"

3 Insert "facilities that are approved by this section"

4 Page 5, line 12:

5 Delete "agreement"

6 Insert "agreements that are approved by this section"

7 Page 5, line 14:

8 Delete "agreement"

9 Insert "agreements"

10 Page 5, line 16, following "term of":

11 Delete "the"

12 Insert "a"

13 Page 5, line 18, following "(b)":

14 Delete "The"

15 Insert "A"

16 Page 5, line 21, following "male prisoners":

17 Insert "if only one correctional facility is designed and constructed under the notice
18 and approval given in (a) of this section; however, if more than one correctional facility is
19 designed and constructed under the notice and approval given in (a) of this section, at least
20 one correctional facility must be limited to confining female prisoners only"

21 Page 5, line 29:

22 Delete "The"

23 Insert "Each"

24 Page 6, line 17, following "operate":

25 Delete "the"

1 Insert "a"

2 Page 6, line 21, following "operation of":

3 Delete "the"

4 Insert "a"

5 Page 7, line 5:

6 Delete "a major correctional facility"

7 Insert "one or more major correctional facilities"

8 Page 7, line 7, following "job site of":

9 Delete "the"

10 Insert "a"

11 Page 7, lines 8 - 9:

12 Delete "the correctional facility described"

13 Insert "a correctional facility for which notice and approval is given"

AMENDMENT #3

OFFERED IN THE HOUSE

CROFT/GREEN

TO: HB 53

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Page 3, following line 3:

Insert a new bill section to read:

****Sec. 2. AS 33.30.031 is amended by adding a new subsections to read:**

(f) The commissioner may not enter into an agreement to provide necessary facilities under (a) of this section as a correctional facility that is to be constructed in this state under an agreement entered into under AS 3330.031 after the effective date of this Act unless the commissioner initiates and completes a site selection process. The site selection process must provide the public reasonable opportunity to comment about sites to be considered for the location of the correctional facility. In additions, if, on the basis of the site selection process, the commissioner determines to enter into an agreement to contract for provision of necessary facilities at a correctional facility that is to be located at a site within a municipality, the correctional facility may not be constructed at the site unless approved by a majority of the residential landowners within the "affected area" who vote at an election conducted by the municipality or legal subdivision of the state. For the purpose of this subsection, "affected area" means the precinct or precincts with at least 50% of their area within 2 miles of the external perimeter of the lot lines of the proposed correctional facility. This restriction does not apply to construction within the perimeter of correctional facilities in existence before the effective date of this act.

1 (g) In conducting the site selection process required by (f) of this section, the
2 commissioner may solicit proposals from private entities by publishing a request for
3 proposal in a newspaper of general circulation. The commissioner shall accept
4 proposals for six months after initial publication of the request for proposals. Any
5 such proposal shall certify in a manner prescribed by the commissioner that
6 (1) the facility to be constructed will meet the department's requirements as described
7 by the commissioner in the RFP or other document;
8 (2) the facility will be operated at a cost to the state below the state's cost to operate a
9 comparable facility, that cost to be described by the commissioner in the RFP or other
10 documents;
11 (3) the entity owns or has an option to buy at a fixed cost the land on which the
12 proposed facility would be located, and the entity agrees that the state may purchase
13 the land at a price fixed at the time of contracting if the state assumes ownership or
14 control of the facility pursuant to statute or provision of contract;
15

1 (h) in order for the certification of approval under subsection (f) to be valid, the
2 approval process must meet the following requirements:

3 (1) not more than one month after initial publication of the RFP, the private entity
4 shall publish in a newspaper of general circulation notice of intent to make a
5 proposal, including a description of the location to be proposed;

6 (2) not more than one month after initial publication of the RFP, the private entity
7 shall deliver by certified mail to all residential landowners residing within two miles
8 of the proposed site notice of intent to make a proposal, including a description of
9 the location to be proposed;

10 (3) at least three months prior to the bid closure date published on the RFP, the
11 municipality or political subdivision of the state conducting the election shall
12 deliver by certified mail to all residential landowners residing within two miles of
13 the proposed site a mail-in ballot approved by the commissioner that residential
14 landowners may use to signify approval of the proposed site;

15 (4) the approval process shall last not more than three months from the mailing of
16 the ballots and no indication of approval shall be counted after the close of this
17 period;

18 (i) If the proposed site lies within the boundaries of a municipality or political
19 subdivision of the state, the entity making the proposal may, at the expense of the
20 entity, contract with the administrator of the municipality or political subdivision to
21 count ballots prepared under (h) of this section, publish the results in a newspaper of
22 general circulation, and make all ballots received available for inspection by parties
23 with reasonable interest in the proposal. If the entity making the proposal does not
24 enter into a contract with the administrator of the municipality or political
25 subdivision to count ballots, the commissioner shall count the ballots, publish the
26 results in a newspaper of general circulation, and make all ballots received available
27 for inspection by parties with reasonable interest in the proposal.

1 Renumber the following bill sections accordingly.

2

3 Page 4, line 27:

4 Delete "sec. 4"

5 Insert "sec. 5"

6

7 Page 6, line 30:

8 Delete "sec. 3"

9 Insert "sec. 4"

10

11 Page 7, line 9:

12 Delete "sec. 4"

13 Insert "sec. 5"

14

15

16

A M E N D M E N T

OFFERED IN THE HOUSE

TO: HB 53

1 Page 4, line 5, following "this section":

2 Insert "and sec. 6 of this Act"

3 Page 5, line 9, following "this section":

4 Insert "and sec. 6 of this Act"

5 Page 7, following line 17:

6 Insert a new bill section to read:

7 "* Sec. 6. GEOGRAPHICAL LIMITATION. The Department of Administration or the
8 Department of Corrections, as appropriate, may not enter into an agreement under sec. 3 or
9 4 of this Act concerning a correctional facility that is located or to be located within the
10 boundaries of a municipality having a population of more than 100,000."

11 Renumber the following bill section accordingly.

Mulder

A M E N D M E N T

OFFERED IN THE HOUSE

TO: HB 53

- 1 Page 5, line 17, following "facility":
- 2 Insert "and the land on which it is located"

HB

57

0-LS0311VE
Luckhaupt
2/3/97

CS FOR HOUSE BILL NO. 57()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES GRUSSENDORF, Berkowitz

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to cruelty to animals."

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

3 * Section 1. AS 11.61.140(a) is amended to read:

4 (a) A person commits the crime of cruelty to animals if the person

5 (1) knowingly [INTENTIONALLY] inflicts severe [AND
6 PROLONGED] physical pain or prolonged suffering on an animal;

7 (2) with criminal negligence, fails to care for [RECKLESSLY
8 NEGLECTS] an animal and, as a result [OF THAT NEGLECT], causes the death of
9 the animal or causes severe physical pain or prolonged suffering to the animal; or

10 (3) kills an animal by the use of a decompression chamber.

Alaska State Legislature

REPRESENTATIVE
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FINANCE COMMITTEE

DISTRICT 2
KUPREANOF
PETERSBURG
SITKA
WRANGELL

House of Representatives

Sponsor Statement HB 57

"An Act relating to cruelty to animals"

This bill was introduced in response to concerns about the treatment of animals and the difficulty of prosecuting cases which involve animal cruelty.

There have been numerous incidents of animal cruelty and neglect in Alaska which have gone unprosecuted because of the current statutory language. One district attorney testified that the language, which reads "intentionally inflicts severe and prolonged physical pain or suffering on an animal," is "unprosecutable." He said "a dead animal is your only evidence." HB 57 gives the state a more workable statute. The following explains the changes the bill would make.

- Changes "intentionally" to "knowingly" which lowers the state of mind the state must prove in prosecuting an animal cruelty case. This would help in cases of starving animals. An owner's actions may not have been "intentional," but a reasonable person would "know" that a lack of food causes starvation.
- Changes "recklessly" to "with criminal negligence" which lowers the criminal standard. Recklessness is indicated by an awareness and conscious disregard. Criminal negligence is indicated by a "failure to perceive a substantial and unjustifiable risk that the result will occur..." 11.81.900
- Does not affect existing statute which protects farmers, hunters and trappers who conduct traditional, lawful practices. 11.61.140
- Does not affect the existing statute which designates cruelty to animals as a class A misdemeanor.
- Supporters of this bill include: *Alaska Animal Control Association* (statewide), *Alaska Society for the Prevention of Cruelty to Animals* (Anchorage), *Iditarod Race Winner Libby Riddles* (Wasilla), *Mush With Pride* (statewide), *Fairbanks Animal Control* (Fairbanks), *Kenai Animal Control* (Kenai), *Friends of Pets* (Anchorage), *Gastineau Humane Society* (Juneau).

Neighbors help expose tragedy on dog lot

By LIN GALE
Staff Writer

Charlotte Fitzhugh's hand-painted plywood sign still sits along the Glenn Highway near Chistochina: "Husky pups for sale—\$50."

For the last two years, tourists drawn to her homestead by the ad emerged outraged by what they found. Some called Alaska State Troopers.

Others stopped by Clay Farnham's place.

Their description of emaciated, skulking sled dogs living belly-deep in excrement was not news to him. Farnham, a 60-year-old competitive sprint musher who lives and operates a 20-

dog kennel nearby, pestered authorities for two years to get Fitzhugh out of the dog business.

Even after Fitzhugh was convicted of her third animal abuse charge in December 1993 for the starvation death of five huskies, she was allowed to keep nearly 100 dogs for 16 months before the state took action. During that time, the dogs continued to suffer.

"It went on too long, too many animals died, and nobody listened," Farnham said.

Farnham's efforts finally succeeded Monday, when state authorities and volunteers from the

Alaska Society for the Prevention of Cruelty to Animals in Anchorage went to Fitzhugh's property and euthanized 81 severely malnourished dogs. Troopers initially reported that more than 90 dogs were killed.

A judge authorized the killings when 65-year-old Fitzhugh, who commutes between Chistochina and Fairbanks, missed a judge's deadline to get rid of all but three neutered dogs by March 21. The order resulted from the December neglect conviction.

See DOGS, Page A-10

DOGS: Neighbors help expose tragedy of sled dogs

Continued from Page A-1

Fitzhugh showed up at Chistochina with about 100 sled dogs in the spring of 1993, after she was convicted in Fairbanks of animal cruelty for the starvation death of a husky on her Miller Hill Road property. As a condition of probation, Superior Court Judge Jane Kauvar prohibited Fitzhugh from owning more than 20 dogs within the borough.

Fitzhugh hauled the dogs to her homestead, enlisted a neighbor to feed them, then headed back to Fairbanks.

That's when Farnham got involved.

"I went there and that's when I started witnessing the neglect," Farnham said.

Fitzhugh had left an inadequate food supply, no food or water dishes, and many dogs on eight-inch chains.

After that, Fitzhugh found a variety of drifters to stay at the property. Most lasted only a couple of days.

Fitzhugh would appear about once a week from Fairbanks, where she drives a cab part-time and sells puppies out of her truck in

shopping mall parking lots. Most of the time, Farnham said, no one was at the homestead.

Dogs ran around loose on the highway, and killed and ate the other dogs, he said. Breeding went unchecked.

"It was just litter after litter of pups being thrown out, and no care," he said.

Farnham began videotaping the dog yard.

"I have videos of dead dogs, dogs running loose, killing other dogs and cannibalizing them. I have videos of dead dogs on chains, dead, frozen in the houses," he said.

There was never any indication the dogs were harnessed and run, he said. Many of them were attached to their chains with crimped "S" hooks from which they could not be easily released.

Farnham worked with Glenallen Trooper Tom Pierce.

Pierce said he tried to convince the Palmer district attorney to press charges, but was told that until dogs were found dead on the ends of their chains, they would not prosecute her because neglect is difficult and expensive to prove.

On Christmas Eve, 1993, Pierce went to the homestead to check on Fitzhugh because she had not been seen for a while. He found five huskies starved to death on the ends of their chains.

The evidence was enough to charge her, but she was not convicted for another year. She was then given three months to get rid of all but three dogs. During that time, their numbers grew.

Fitzhugh's attempt to get another extension was denied.

Early Monday, a caretaker hired last week in Anchorage, Chuck Hines, loaded three females and 29 puppies in Fitzhugh's truck and brought them to Fairbanks. Hines said he planned to return with them to the property and begin training them for the Iditarod.

In Fairbanks on Monday, Fitzhugh said she has always taken good care of her dogs, and constantly monitored their condition. The judge should have given her more time to sell the puppies. The other dogs, she said, she had sold to Hines.

"I'm against killing dogs. I've always raised them to their highest potential," she said.

In addition to the Fairbanks and Palmer convictions, Fitzhugh was convicted of animal neglect in 1982 after the ASPCA rescued more than 30 starving sled dogs from her camp at Mile 101 Glenn Highway.

About 10 a.m. Monday, state veterinarian Bert Gore, Pierce and the three ASPCA volunteers arrived to euthanize the dogs.

ASPCA assistant director Amy Low was one of the volunteers who helped kill the dogs.

The stench from the unshoveled excrement was "overwhelming," and the dogs so afraid of humans they had to be caught and dragged out of their houses to be tranquilized, then taken to the euthanasia table, Low said.

"None of us wanted to do it, but we had to do it. We put them out of their misery," Low said.

Farnham had hoped the whole situation would come to a quiet end without publicity.

"I thought maybe we could take care of this without putting a black eye on dog mushing," he said. "It affects all dog mushers, because she claimed to be a dog musher. It's just downright embarrassing and disgusting."



Fairbanks Daily News Miner
4-27-95

*

Sec. 11.61.140. Cruelty to animals. (a) A person commits the crime of cruelty to animals if the person

(1) intentionally inflicts severe and prolonged physical pain or suffering on an animal;

(2) recklessly neglects an animal and, as a result of that neglect, causes the death of the animal or causes severe pain or suffering to the animal; or

(3) kills an animal by the use of a decompression chamber.

(b) It is a defense to a prosecution under (a)(1) or (2) of this section that the conduct of the defendant

(1) conformed to accepted veterinary practice;

(2) was part of scientific research governed by accepted standards; or

(3) was necessarily incident to lawful hunting or trapping activities.

(c) In this section, "animal" means a vertebrate living creature not a human being, but does not include fish.

(d) Cruelty to animals is a class A misdemeanor. (§ 7 ch 166 SLA 1978; am § 1 ch 78 SLA 1980; am § 20 ch 59 SLA 1982)

Editor's notes. — The provisions of paragraphs (2) and (3) of subsection (a) as it existed prior to the 1980 amendment may now be found in AS 11.61.145.

Collateral references. — 4 Am. Jur. 2d, Animals, §§ 27-30.

3A C.J.S., Animals, §§ 99-112.

Cruelty in trapping animals, 79 ALR 1308.

What constitutes statutory offense of cruelty, 82 ALR2d 794.

Sec. 11.81.620. Effect of ignorance or mistake upon liability.

NOTES TO DECISIONS

Applied in *Russell v. State*, 793 P.2d 1085 (Alaska Ct. App. 1990).

Quoted in *De Nardo v. State*, 819 P.2d 903 (Alaska Ct. App. 1991).

Sec. 11.81.640. Application of AS 11.81.600 — 11.81.630.

NOTES TO DECISIONS

Cited in *Cole v. State*, 828 P.2d 175 (Alaska Ct. App. 1992).

Article 6. Definitions.

Section
900. Definitions

Sec. 11.81.900. Definitions. (a) For purposes of this title, unless the context requires otherwise,

* (1) a person acts "intentionally" with respect to a result described by a provision of law defining an offense when the person's conscious objective is to cause that result; when intentionally causing a particular result is an element of an offense, that intent need not be the person's only objective;

* (2) a person acts "knowingly" with respect to conduct or to a circumstance described by a provision of law defining an offense when the person is aware that the conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular fact is an element of an offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless the person actually believes it does not exist; a person who is unaware of conduct or a circumstance of which the person would have been aware had that person not been intoxicated acts knowingly with respect to that conduct or circumstance;

* (3) a person acts "recklessly" with respect to a result or to a circumstance described by a provision of law defining an offense when the person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation; a person who is unaware of a risk of which the person would have been aware had that person not been intoxicated acts recklessly with respect to that risk;

* (4) a person acts with "criminal negligence" with respect to a result or to a circumstance described by a provision of law defining an offense when the person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

ALASKA ANIMAL CONTROL ASSOCIATION

c/o F.N.S.B. Division of Animal Control
P.O. Box 71287
Fairbanks, AK 99707

January 31, 1997

Representative Ben Grussendorf
State Capitol Building
Juneau, AK 99801

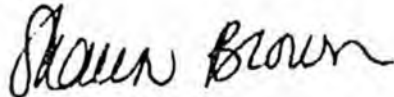
Dear Representative Grussendorf:

On behalf of the Alaska Animal Control Association (AACCA), we would like to go on record as being in support of House Bill 57.

* The current language in law AS 11.61.140 is very difficult to prove and courts have been unable to prosecute a number of neglect and cruelty cases. Bill 57 will improve the language in AS 11.61.140 and enable prosecutors to convict those that have participated in obvious acts of neglect and cruelty.

If there is anything I can do to facilitate passage of Bill 57, please let me know.

Sincerely,



Shaun Brown
President



THE ALASKA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, INC.

SPCA State Headquarters and Spay Clinic • 549 W. International Airport Road • Anchorage, Alaska 99518
Phone: 562-2999

Jan. 23, 1987

To Whom it may Concern:

The Alaska Society for the Prevention of Cruelty to Animals, is in full support of House Bill 517. Extent in past cruelty cases have been next to nothing. Alaska needs to have a stronger law to support our justice system in prosecution of animal abusers. The ASPCA in past years, has witnessed animal abusers in the worst scenarios. Due to insufficient laws, the District Attorney's office was unable to penalize these people.

*
Animal abuse is and has been occurring throughout the state. Most people are unaware of the severity of some of these cases. Public awareness is increasing and the state needs to update legislation to deal with cruelty offenders. Statistics show that there is a definite link between animal cruelty and spousal, child abuse occurring within the home.

Again, the ASPCA, as well as most of the public, is in strong support of HB 517, and shows a very strong interest in the passage of this bill.

"Kindness Uplifts The World"

Sincerely,
Diane [Signature]



Mush with PRIDE

Providing Responsible Information on a Dog's Environment

Will Forsberg, President
Box 378
Healy, Ak. 99743

Rep. Ben Grussendorf
State Capital
Juneau, Ak. 99801

Jan. 17, 1997

RE: HB 57- ANIMAL CRUELTY BILL

Dear Rep. Grussendorf,

Thank you for your continuing efforts to strengthen Alaska's animal cruelty laws. We believe that the lowering of the criminal standard for prosecution of cruelty to animals is a necessary step in protecting Alaska's domestic animals from negligent owners.

Sleddog medicine has become a speciality within the veterinary profession. Veterinarian members of the International Sled Dog Veterinary Medical Association (an internationally recognized professional organization), as well as most veterinarians in the Alaska Veterinary Medical Association are well aware of conditions and standards used in assessing care and well-being of sleddogs. In addition, Mush with PRIDE has issued Sleddog Care Guidelines which set standards for most common sleddog practices. These PRIDE standards, which have been endorsed by the major Alaskan racing organizations (Iditarod, Quest and ADMA) as well as several international sleddog racing groups (ISDRA and IFSS) were developed with constant input from several mushing veterinarians who are Directors of PRIDE. Therefore, we believe that the current statute does provide adequate protection against prosecution for legitimate recreational mushers and sleddog racers within its clause specifying that "accepted veterinary practice" may be used as a defense against prosecution. We do not feel that any other musher-specific defense against prosecution is needed to protect mushers against prosecution.

We are hopeful that HB 57 will be passed this session so that state officials can better deal with the small minority of abusive owners who tarnish the image of our state and the official state sport of dogsledding.

Sincerely,

William A. Forsberg, PRIDE President

Libby Riddles
Blazing Kennels
P.O. Box 372901
Wasilla AK 99687
907-376-8668 Ph & Fax

January 15, 1997

To Whom It May Concern,

* House Bill HB 57 has my support as a way to help control animal abuse cases in our state. The severe conditions in Alaska necessitate a stronger vehicle for dealing with cruelty or neglect cases, and it is pathetic to have to have a dead animal before the responsible party can be prosecuted. Your support of this bill is appreciated.

Sincerely,



Libby Riddles



CITY OF KENAI

" Oil Capital of Alaska "

210 FIDALGO AVE., SUITE 200 KENAI, ALASKA 99811-7794
TELEPHONE 907-283-7535
FAX 907-283-3014



January 21, 1997

Representative Ben Grussendorf
Alaska State Legislature
State Capitol (MS 415)
Juneau, AK 99801-1182

Subject: Support For House Bill No. 57

As an Animal Control Officer in the state of Alaska for over 17 years, I'm very pleased to support changes in the language of Alaska's present cruelty statute.

* These language changes will streamline investigations and prosecutions of animal cruelty cases in Alaska.

If I can be of any further assistance, please let me know.

Sincerely,

Bill Godek / JRG

Bill Godek
Chief Animal Control Officer, Kenai
Vice President Alaska Animal Control Association



7705 GLACIER HWY.

JUNEAU, ALASKA 99801

(907) 789-0280

FAX (907) 789-1795

January 21, 1997

Representative Ben Grussendorf
 State Capitol Building
 Juneau, Alaska 99801

Representative Ben Grussendorf:

*

On behalf of the Gastineau Humane Society we would like to go on record as being in support of House Bill 57. The statutory language currently in AS 11.61.140 is very difficult to prove and courts have been unable to prosecute a number of neglect and cruelty cases. Bill 57 will improve the language in AS 11.61.140 and enable prosecutors to convict those that have participated in obvious acts of neglect and cruelty.

If there is anything I can do to facilitate passage of Bill 57 please let me know.

Sincerely,

Linda M. Bleggen
 Gastineau Humane Society

'It was like a case out of Auschwitz'

Officials seize 11 sickly dogs from home

By KATE RIPLEY
Staff Writer

Borough animal control officials have seized 11 dogs from the home of a Fairbanks man they say starved one dog to death and caused the others to suffer without adequate water, food and veterinary care.

Officials are awaiting a final necropsy report on the dead dog before deciding whether to charge the man, Steve Ferraro, with violating the borough's animal cruelty law. The husky mix dogs were taken from Ferraro's home off the Elliott Highway earlier this month.

Ferraro said he's innocent and would not allow his dogs to suffer. In explaining the dead dog, he said he shot it in the head because it had parvo, a condition that attacks the intestines.

"They can't say I'm starving them to death. I'm not an animal criminal here," Ferraro said Monday. "My dogs never suffered one bit. Never one bit."

But Dr. R.W. Van Pelt, the veterinarian who examined all the dogs for the borough, said there was no evidence of a bullet wound anywhere on the dead dog's body.

"I know what parvo looks like, and it doesn't look like this," Van Pelt said. "This dog starved to death."

Van Pelt said he could nearly count every bone in the dog's body without opening it up.

"He had literally digested his own tissues. It was like a case out of Auschwitz," Van Pelt said. "It was one of the worst cases I've seen, and I've seen a lot of them."

Indeed, a week after the dogs were seized, three of the adults still looked skeletal and acted listless Friday at the borough animal shelter, off Peger Road. Their ribs protruded from their sides and their hip bones jutting out sharply.

Four other adults were thin but in better shape. Most of the

dogs were infested with lice. All were severely dehydrated.

The dogs were seized from Ferraro's trailer, at about 9 Mile Elliott Highway, Feb. 15. They've been under the care of the borough since and are slowly improving.

Animal control officer Vicki Adkins said the dogs were taken into custody just in time. One mother and her 6-week-old pup weren't moving and had to be pulled out of their house. She was wobbly when Adkins stood her up.

"I think she would have died that night. She was dying," Adkins said of the shy cream-colored mother. The pup, found curled on top of its mother trying to stay warm, was hypothermic and full of worms.

Van Pelt also discovered two older pups, ages 4½ and 5½ months, have rickets, a bone disease caused by lack of vitamin D and calcium. The pups' front legs

See DOGS, Page B-2



News-Gleaner/News-Miner

ABUSED—Animal control officer Vicki Adkins holds one of the huskies that were removed from a home off the Elliott Highway. The dogs were all underweight and dehydrated.

DOGS: Owner may face cruelty charges

Continued from Page B-1

are bowed and their back legs knock-kneed. They are stunted, about the size of 3-month-old dogs, Van Pelt said.

The two pups seemed not to know of their health problems as they played in a large cage at the shelter Friday. They wagged their tails and walked around on their funny legs, happy to see visitors.

Ferraro admitted his dogs had worms, and he contends that's why they're so skinny. He said he was feeding them worm medication but found out later it was the wrong kind.

"It's my fault for not taking them to the vet, but I don't have

the money to take them to the vet," said Ferraro, who said he lost his latest job and doesn't own a vehicle that runs.

Ferraro said he has been mushing dogs for two years but is getting out of the sport because it's too expensive. He said he hasn't run his dogs much this winter.

Rather than get into a legal fight, Ferraro said he wants to work something out with the borough and have his dogs assigned to a friend.

It was a neighbor's complaint that led Adkins and Colleen Thompson, another animal control officer, to Ferraro's place Feb. 8. They could see the

mother and pup in front of the trailer and suspected other dogs were chained out back. The dead dog was stashed in an open shed in front of the trailer.

"That gave us probable cause to believe others would die," Adkins said.

Adkins wanted to get a search warrant right away, but an attorney wasn't available to help. She and Thompson made one more visit before obtaining the search warrant six days later.

People may be cited under the borough's animal cruelty law if they intentionally or negligently fail to provide dogs with adequate food, water, shelter or veterinary care to prevent physical suffering. The charge is a misdemeanor punishable by a \$500 maximum fine and up to 30 days in jail.

Adkins said that in her 16 years as an animal control officer she can remember the borough obtaining search warrants for similar cases only three times.

That's because many cruelty cases are borderline and difficult to prove, Adkins said. It's even more difficult in areas outside the borough, which falls under state jurisdiction.

Critics say the state law is vague and heavily requires an animal to die before authorities can act. Two bills in the Legislature would give those laws more teeth, but one, Senate Bill 238, has bogged down in the Senate Judiciary Committee while another, House Bill 380, is slowly working its way through the House.

Will Forsberg, of the educational group Mush with PRIDE, said animal cruelty laws must be strengthened.

"Authorities are at the scene, yet they don't have good enough statutes to go in and protect these animals until it's so extreme," Forsberg said. "That's what we've got to address."



Details emerge surrounding slaying of elder

By LISA DEMER
Daily News reporter

While Nikolai village elder Alaxendria Dennis spent her last evening celebrating Russian Orthodox Christmas, another sort of party was in full swing just a short distance from her home.

Someone in the tiny village had chartered a plane to McGrath for a booze run, and Bernie Alexia ended up with two half-gallon bottles of vodka. Sometime late Wednesday or early Thursday, a drunken Alexia went to Dennis' home, and, according to prosecutors, beat and strangled her. Now Alexia is charged with first-degree murder. He is being held at the Cook Inlet Pre-Trial Facility on \$500,000 bail.

New details about the killing, and sketchy information about Alexia's criminal past, emerged Sunday when a formal charging document became public.

At his first court appearance on Sunday, Alexia clutched the charging document in his shackled hands, reading and re-reading it. Other jail inmates fidgeted, chatted or yawned as they waited their turn, but Alexia was silent. Only when Magistrate Brian Johnson read the charge against him did the other inmates straighten up, taking notice of who among them was accused of murder.

Alexia has been in and out of trouble for nearly three decades, starting with a public drunkenness conviction in



BILL ROTH / Anchorage Daily News

Bernie Alexia appears before a magistrate via a television monitor Sunday in Anchorage.

1968, the charging document said. He has a couple of assaults on his record, including a felony conviction in 1977. And in 1993, his vio-

lence crossed paths with Dennis. He was convicted of cruelty to animals after he

Please see Page C-2, SLAYING

SLAYING: Accused man makes court appearance

Continued from Page C-1

strangled and mutilated her dog, according to the charging document.

Alexia, 50, told Alaska State Troopers he was drunk and didn't remember going to Dennis' house.

"He says he was in black-out," prosecutor Samuel Adams, who drew up the charging document, said in a brief interview on Sunday.

This much is known from the troopers' investigation, and interviews with village residents.

Dennis, 84, lived by herself in a one-room home. Her daughter lives next door and checked on her daily. Nikolai is home to some 125 people along the Kuskokwim River, about 200 air miles from Anchorage, off the road system.

Around 8 or 8:30 p.m. on Wednesday, a group of 25 to

30 people celebrating Russian Orthodox Christmas stopped at Dennis' house. They were going door to door with a hand-crafted star leading the way. At each stop, they would sing and pray and share food. No alcohol was allowed, said John Runkle, whose wife, Martha, is Dennis' granddaughter.

"People follow the star, the same as the wise men did, to see the savior," Runkle said.

After about 30 minutes, the group left, but Martha stayed behind to clean up. Her grandmother was in good spirits when she said good night around 11 p.m.

When the attack began, Dennis was in her bed. The assailant dragged her off the bed and across the floor. She was severely beaten, and a cord was used to choke her, according to the charging document.

About 9 a.m. Thursday, her daughter made her morning check and found her on the floor, dead. Also found in the home were a baseball cap, a knit cap and the remnants of a half gallon of vodka. Troopers were called to investigate.

In the meantime, Alexia was talking to other villagers. He appeared intoxicated. He mentioned he was looking for a lost hat. He asked the postmaster for \$10 in change so he could wash his clothes. And he contacted villager Joshua Nikolai and said "I confess, I confess," though he didn't say what he was confessing to, according to the charging document.

By the time troopers arrived, their investigation already had a target.

"People were talking about it in the village," prosecutor Adams said. "Everyone in the village knew what had hap-

pened, and his name came up during the initial part of the investigation."

Troopers interviewed Alexia and noticed a red substance on his snowmachine pants, which was later found to be blood. Alexia identified the baseball cap and knit cap as his, according to the charging document.

Adams said prosecutors are awaiting further laboratory tests and autopsy results to learn more about what happened. The case will be prosecuted out of the Bethel District Attorney's office, he said.

In the village, friends and family of both Dennis and Alexia are trying to be supportive in their grief. They don't want the killing to split the village in two, Runkle said.

"It is a terrible incident," he said, "and everyone is trying to help each other."

1996-97

Pet lovers sign up for 10 abused huskies

FAIRBANKS — A local animal shelter said it has been flooded with inquiries after 10 huskies were taken from a man facing animal cruelty counts. The dogs were seized from owner Steve Ferraro, who authorities say failed to provide sufficient food, water and veterinary care. Ferraro faces 11 criminal counts of cruelty. One dog was found dead at his home. The husky-mix dogs have been at the shelter since Feb. 15 and recently were readied for adoption. One dog, a female named Sasha, was placed with a new family on Friday, the shelter said. "I think it will be a real good home," shelter employee Andi Christman said. "They had been looking at her for quite a while." Christman said three of the dogs were still too skinny and would be nursed along at least for another week. Thirteen people were on a list of potential new owners. Ferraro, who was scheduled for a court appearance Thursday, relinquished ownership after receiving the criminal complaint. If convicted on the misdemeanor counts, he faces up to 30 days in jail and a \$500 fine.

METRO NEWS

Old, sick dog abandoned in trash bin

Robbin Terpstra heard a strange whimpering coming from a trash bin outside her pet store off Tudor Road. The owner of Fins, Fur and Feathers discovered an old golden retriever with its muzzle duct-taped and a Carrs grocery bag over its head, underneath layers of garbage, Terpstra said. Cancerous tumors covered its body. Its front legs were shaved and had multiple needle marks — a possible sign of treatment for diabetes, she said. It couldn't walk. Terpstra paid \$400 for a veterinarian to save the dog, but the dog had to be euthanized, she said. "We were just beside ourselves," Terpstra said. "We could not believe someone could do this." Anchorage Animal Control had few leads and they went nowhere, manager Greg Jefferies said. Terpstra found the dog about a week and a half ago. Jefferies will reopen the case if he gets more information, he said. Animal control charges \$5 to euthanize an animal, but will do it for free if a person can't afford it, Jefferies said. "Anything would have been more humane than what they've done," Terpstra said. "It's horrifying."

HB 57 - Terry 3824

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Dept of Law

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 57

Revision Date: _____
 Title: "An Act relating to cruelty to animals"
 Sponsor: Representative Grussendorf
 Requestor: (H) JUD

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	***	***	***	***	***	***
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	***	***	***	***	***	***

CAPITAL EXPENDITURES	***	***	***	***	***	***
----------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES ()	***	***	***	***	***	***
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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	***	***	***	***	***	***

Estimate of any current year (FY 97) cost: \$ -0-

POSITIONS:

FULL-TIME	***	***	***	***	***	***
PART-TIME						
TEMPORARY						

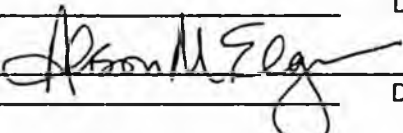
ANALYSIS: (Attach a separate page if necessary.)

The bill increases the potential numbers of cases which may be prosecuted by punishing "negligent" (not reckless) conduct which results in the death or physical pain of an animal and "knowing" (not intentional) conduct that causes severe pain or prolonged suffering. Without accurate predictions as to anticipated numbers of prosecutions, fiscal impact cannot be quantified.

Prepared by: Barbara K. Brink, Director
 Division: Public Defender Agency

Phone: (907) 264-4414
 Date: _____

Approved by Commissioner: Mark Boyer
 Agency: Department of Administration



Date: 2/4/97

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO: HB 57

Revision Date: _____
Title: Cruelty to animals
Sponsor: Representative Grussendorf
Requestor: House Judiciary

Dept. Affected: Public Safety
BRU: Alaska State Troopers
Component: Detachments
COMPONENT SERIAL NO. 0799

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

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ()	-0-	-0-	-0-	-0-	-0-	-0-
Revenue Code						

FUNDING: (Thousands of Dollars)

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

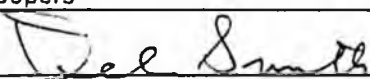
Estimate of current year (FY 97) impact: \$ _____

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

This bill will have a negligible fiscal impact on the Division of Alaska State Troopers.

Prepared By: Lt. Dan Lowden Phone: 269-5412
Division: Alaska State Troopers Date: January 24, 1997
Approved by Commissioner:  Date: 1/31/97
Agency: Ronald L. Otte, Department of Public

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 57

Revision Date: _____ Dept. Affected: Department of Law
 Title: "An Act relating to cruelty to animals." BRU: Criminal Division
 Component: Criminal Division
 Sponsor: Representative Grussendorf
 Requester: House Judiciary COMPONENT SERIAL NO. 2085

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 11.61.140(a) relating to cruelty to animals by lowering the legal standard of conduct from one who acts intentionally to one who acts knowingly and inflicts severe physical pain or prolonged suffering on an animal. Similarly, the bill lowers the legal standard of conduct from one who acts recklessly to one who acts with criminal negligence and neglects an animal and, as a result of that neglect, causes the death of the animal or causes severe physical pain or prolonged suffering of the animal. These changes have the effect of making cruelty to animal cases easier to prove and, may result in more of such cases referred for prosecution. We do not anticipate any fiscal impact at this time. However, if significant numbers of such cases are referred for prosecution, it could have a fiscal impact on the department and we would seek to reassess our budget position at that time.

Prepared by: Joan M. Kasson *Joan M. Kasson* Phone: 465-5370
 Division: Administrative Services Division Date: 1/31/97
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 1/31/97
 Agency: Department of Law

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HB

58

HOUSE COMMITTEE REPORT

2/27/97

(7)
Date Referred to Committee: February 17, 1997

FURTHER REFERRALS:

Finance

HB 58 CIVIL LIABILITY

Date of Committee Action: 2/27/97

The JUDICIARY Committee considered:

SSHB 58

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 58

CIVIL LIABILITY

“An Act relating to civil actions; relating to independent counsel provided under an insurance policy; relating to attorney fees; amending Rules 16.1, 41, 49, 58, 68, 72.1, 82, and 95, Alaska Rules of Civil Procedure; amending Rule 702, Alaska Rules of Evidence; amending Rule 511, Alaska Rules of Appellate Procedure; and providing for an effective date.”

recommends it be replaced with the following committee substitute CS SS HB 58 (Jud) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

CS
Forth coming

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PRE

fiscal note(s) _____ fiscal note(s) _____

zero fiscal note(s) _____ zero fiscal note(s) _____

Adm, Law, DCED

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
Croft	✓	✓		
Rokeberg	✓			
PORTER	✓			
GREEN	✓			
JAMES	✓			
BUNDE	✓			
BERKOWITZ		✓		
	(5)	(2)		

CHAIR'S SIGNATURE

Green

FISCAL NOTE

STATE OF ALASKA
997 LEGISLATIVE SESSION

BILL NO. HB 58

Revision Date: _____ Dept. Affected: Alaska Court System
 Title: Tort Reform BRU: Trial Courts
 Component: _____
 Sponsor: Rep. Porter
 Requestor: House Judiciary COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	4.9	4.9	4.9	4.9	4.9	4.9
TRAVEL						
CONTRACTUAL	8.7	8.7	8.7	8.7	8.7	8.7
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	13.6	13.6	13.6	13.6	13.6	13.6

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

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

Fund Source (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	13.6	13.6	13.6	13.6	13.6	13.6
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	13.6	13.6	13.6	13.6	13.6	13.6

Estimate of any current year (FY 97) cost: None

Positions

Full-Time						
Part-Time	1.0	1.0	1.0	1.0	1.0	1.0
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

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

Phone: 264-8228
 Date: 02/19/97

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

Date: 02/19/97

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Alaska Court SystemFiscal AnalysisHB 58Personal ServicesPositionSalaryBenefitsTotal

Pro Tem Judge, fully vested, Anchorage, PPT, 1 1/2 months

\$3,164

\$1,729

\$4,893

Contractual Services

Jury Fees

8,663

Superior Court-

42 - 1/2 day length collateral benefit hearings with 13
jurors at \$12.50 a half day (from trials)

6,825

District Court-

21 - 1/2 day length collateral benefit hearings with 7
jurors at \$12.50 a half day (from trials)

1,838

Estimated Total Cost

\$13,556

FISCAL NOTE

**STATE OF ALASKA
1997 LEGISLATIVE SESSION**

BILL NO. HB58

Revision Date: 02/18/97 Dept. Affected: Alaska Judicial Council
 Title: Civil Actions & Attorneys Provided by BRU: _____
Insurance Company Components: _____
 Sponsor: Reps. Brian Porter and John Cowdery
 Requestor: _____ **COMPONENT SERIAL NO. 0771**

EXPENDITURES/REVENUES (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	17.5	16.7	16.7	16.7	16.7	16.7
TRAVEL		1.3	1.3	1.3	1.3	1.3
CONTRACTUAL	9.0	1.2	1.2	1.2	1.2	1.2
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	26.5	19.2	19.2	19.2	19.2	19.2

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	26.5	19.2	19.2	19.2	19.2	19.2
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	26.5	19.2	19.2	19.2	19.2	19.2

POSITIONS

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

Estimate of current year (FY 97) cost: \$ None

ANALYSIS: (See attached pages)

Prepared by: William T. Cotton, Executive Director Phone: 279-2526
 Agency: Alaska Judicial Council Date: 2/19/97

Approved by: William T. Cotton, Executive Director
 Agency: Alaska Judicial Council Date: 2/19/97

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**Analysis for Alaska Judicial Council
Fiscal Note on HB 58:
Civil Actions and Attorneys Provided by Insurance Company**

The bill assigns two tasks to the Alaska Judicial Council: (1) review and report on alternative dispute resolution (ADR) programs in other states; and (2) collect, analyze and report on Alaska civil cases which are settled. The costs of the two functions are discussed separately.

1. Review of ADR Programs

The bill provides:

Section 09.42.010. Legislative Intent. It is the intent of this legislation to create a pilot alternative dispute resolution procedure within the existing civil litigation system in order to promote the timely, inexpensive and efficient resolution of civil disputes.

Sec. 09.42.020. Pilot program for alternative dispute resolution. The Alaska Judicial Council shall consult with the Alaska Dispute Settlement Association, review court sanctioned alternative dispute resolution programs in other states and in the federal court system, and make recommendations to assist the legislature and the Alaska Court System in the establishment of a pilot program for alternative dispute resolution within the Alaska Court System. The Alaska Judicial Council shall submit a written report to the legislature and to the Alaska Supreme Court within six months after the effective date of this legislation. The report shall include specific types of programs; specific types of cases within each program which are amenable to alternative dispute resolution; the cost to the parties and to the Alaska Court System under these programs; and the qualifications of the neutrals who will provide dispute resolution services under the programs, including nonlawyers.

Sec. 09.42.030. Definitions. In this chapter,
(a) "alternative dispute resolution" is limited to arbitration, mediation and early neutral evaluation.

The Council would hire a contract attorney to complete much of the review of ADR programs. The attorney would be paid \$35 per hour for 200 hours for a total of \$7,000. The contract attorney would work with Council staff to complete the project. Other costs would include a temporary secretary, long distance telephone, and costs for various books and other literature.

ADR Costs Summarized

Personnel

Temporary Secretary 50 hours @ \$16.38/ hour	\$ 841
---	--------

Contractual

Contract Attorney (200 hours @\$35/hour)	\$7,000
Telephone	\$ 500
Books	\$ 300

TOTAL \$8,641

2. Review of Settlement Data

The bill provides in relevant part:

Sec. 42. AS 09.68 is amended by adding a new section to read:

Sec. 09.68.130. Collection of settlement information.

(a) Except as provided in (c) of this section, the Alaska Judicial Council shall collect and evaluate information relating to the compromise or other settlement of all civil litigation. The information, including the case name and file number, a general description of the claims being settled, the dollar amount of the settlement to whom it was paid, and any nonmonetary terms, shall be collected on a form developed by the council for that purpose.

(b) The information received by the council under (a) of this section is confidential. This restriction does not prevent the disclosure of summaries and statistics in a manner that does not allow the identification of particular cases or parties.

(c) The requirements of (a) of this section do not apply to the following types of cases:

- (1) divorce and dissolution;
- (2) adoption, custody, support, visitation, and emancipation of children;
- (3) children in need of aid cases under AS 47.10 or delinquent minors cases under 47.12;
- (4) domestic violence protective orders under AS 18.66.100- 18.66.180;
- (5) estate, guardianship, and trust cases filed under AS 13;
- (6) small claims under AS 22.15.040.

The Council estimates that 8,000 settlement forms would be filed per year. The data would be entered into a Microsoft Access database (estimating four minutes per form). A data entry employee also would review approximately 500 case files per year to check the accuracy of the settlement data and put the settlements in context (estimated 20 minutes per case). Finally, the data employee would spend about 300 hours cleaning the data and working with Judicial Council staff to conduct the preliminary analysis.

Council staff would complete the analysis and issue a fairly brief annual report based on the settlement forms. A more extensive report would be prepared in the third year based on data both from the settlement forms and the case data. The time of existing Council staff is not included in the fiscal note.

Other costs include short trips to Fairbanks and Juneau to collect case data, a temporary secretary for forty hours, and a small amount for printing and postage.

Settlement Data Review Annual Costs Summarized

Personnel

One Part-time Data Entry/Analysis Employee
 8,000 forms @ 4 minutes each =533 hours
 5,000 case files @ 20 minutes each =167 hours
 Data cleaning and Prelim Analysis =300 hours

Total Hours: 1,000 @ \$16.00 per hour = \$16,000.00

Temporary Secretary
 40 hours @ \$16.83 per hour = \$ 673.20

Travel

One 5 day trip to Fairbanks \$ 700.00
 One 3 day trip to Juneau \$ 600.00

Contractual

Postage and Printing \$ 1,200.00

TOTAL \$19,173.20

In November of 1987, MICA went to trial on the Justice v. Humana Hospital Case. MICA insured each of the three defendants including the hospital on a "tail" policy purchased when Humana brought Community Hospital. The two physician defendants were dropped the day before trial by the plaintiff's attorneys and the hospital became a single defendant.

CASE FACTS:

Justice was seen in the emergency room on two occasions in May of 1982 for injuries received from a fall in an Anchorage bar. The visits were both in the middle of the night and 25 hours apart. 48 hours later the patient presented himself to Los Angeles County Hospital where he was admitted and discharged the next day. He was admitted yet again five days later, discharged and finally readmitted twelve days later comatose with a right sided hemiplegia.

LEGAL ACTION:

Separate suits were filed in California and later in Alaska. L.A. County made a settlement with an agreement that if the plaintiff was successful in Alaska, L.A. County could recover 1/3 of the Alaska award to a maximum of \$300,000.

TRIAL RESULTS:

MICA tried to join L.A. County Hospital in a joint defense. Certainly they were responsible for the last and longest treatment. Our court would not allow this and further would not allow any negligence by L.A. County to be a defense. The outcome was a verdict with the plaintiff 10% negligent and Humana 90% negligent. The verdict was an award totaling \$1,304,244 with add-ons for prejudgement interest and Rule 82 increasing the award to in excess of \$2,000,000.

TORT REFORM EFFECTS:

The cost to Alaska to pay for the plaintiff who had already received retribution in California is substantial. Tort Reform legislation would have had an absolute impact on the results of this case. Under Tort Reform legislation-

- the extent of L.A. County's negligence would have to be considered;
- the percentage of fault for Humana would be affected under joint and several liability;
- collateral source from the L.A. settlement would have to be offset and;
- a cap on non-economic losses would have impacted the judgement.

MICA feels this is an excellent representation of the positive effects of California tort reform. Because of the positive effects of California tort reform. Because of our own laws, Alaskans paid in the extreme for a plaintiff that had been compensated elsewhere. Our analysis of the Justice case leads us to the irrevocable conclusion that tort reform legislation will decrease costs to Alaska and its citizens.

**COMPARISON OF RESULTS IN JUSTICE
With Mandated Structured Settlements**

<u>California (WITH Tort Reform)</u>	<u>Alaska (WITHOUT Tort Reform)</u>
(\$1,344,000) \$32,000 paid per year for life expectancy of 42 years \$ 305,818	Total jury verdict \$ 1,449,180
\$75,000 payment on July 1, 1995. 28,113	Less plaintiffs 10% comparative negligence (144,918)
\$200,000 payment on July 1, 2005. 28,101	<u>\$ 1,304,244</u>
\$400,000 payment on July 1, 2015. 22,125	Present value of L. A. Hospital settlement as of July 1, 1985. (210,201)
Present value of future payment of total jury verdict of \$2,019,000 as of July 1, 1985. <u>\$ 383,958</u>	<u>\$ 1,094,043</u>
Plus cash payment on July 1, 1985. 50,000	Collateral benefits pursuant to AS 09.55.548(b) (89,378)
Plus attorney fees present values as of July 1, 1985. 130,000	Subtotal <u>\$ 1,004,665</u>
Plus costs 15,000	Prejudement interest @ 10.5% per annum from May 30, 1982 (date of injury) through March 16, 1988. 683,534
Subtotal <u>\$ 578,958</u>	Rule 82(a) attorney fees 171,319
Defense cost <u>unk</u>	Subtotal <u>\$ 1,859,518</u>
Total <u>\$ 578,958</u>	Insurance, Defense fees <u>501,805</u>
	Total <u>\$ 2,381,123</u>

DOES TORT REFORM WORK?

The effect of mandated structured settlements:

In California, the plaintiff received \$2,214,000 from a structured settlement for a present cost of \$578,958.

In Alaska, the plaintiff received \$1,859,518 with a present cost of \$1,859,518.

The present cost to health care consumers in Alaska is 3.2 times the amount in California.

Alaska State Medical Association

4107 Laurel Street • Anchorage, Alaska 99508 • (907) 562-2662 • (907) 561-2063 (fax)

February 24, 1997

The Honorable Joseph Green
Chairman, House Judiciary Committee
House of Representatives
State Capital (MS 3100)
Juneau, AK 99801-1182

Subject: SSHB58 - Civil Justice Reform

Dear Representative Green:

The Alaska State Medical Association (ASMA) is comprised of nearly 500 physicians located throughout Alaska. The ASMA House of Delegates and Board of Trustees would like to thank you for providing the opportunity for ASMA to testify on its recommendations for modifications to the civil justice system.

Physicians in Alaska practice in unique and challenging circumstances. Our goal is to provide the most appropriate and best medical care possible to our patients. Our profession is facing increasingly complex issues involving new technology, moral and ethical situations, and fiscal pressures from all fronts.

The practice of medicine in Alaska is typified by the sole practitioner or small clinic practices which are essentially small businesses. But this too is changing with managed care appearing throughout Alaska which brings its own special considerations. Questions arise as to quality of care in a managed care setting that is driven perhaps more by fiscal considerations than by the medical condition of the patient. These fiscal considerations are being driven by others than the treating physicians. Such circumstances provide for further complications and uncertainties in the applications of the civil justice system to the practice of medicine.

ASMA has been on record for many years supporting changes in the civil justice system that provide for less uncertainties in the system while not keeping any person from the courthouse. Those changes are as follows:

1. Ceiling on Non-economic Damages
ASMA recommends a ceiling of \$250,000 on recovery from non-economic damages which are those intangibles such as pain and suffering. No limit is suggested on proven economic damages such as loss of earnings and medical expenses.

No caps or extremely high ceilings for non-economic damages provides for a system along the lines of a lottery. Uncertain, extremely high potential awards lead to high professional liability insurance rates which in turn leads to more physicians going without such coverage. An uninsured doctor may not have the assets to satisfy a judgment for loss of earnings and future medical expenses let alone an award for non-economic damages.

2. Limits on Attorney Fees

A sliding attorney's contingency fee schedule is recommended as follows:

- 40% of the first \$50,000
- 33 1/3% of the next \$50,000
- 25% of the next \$500,000
- 15% of any amounts in excess of \$600,000

Sufficient, appropriate net compensation to the injured party is the goal of the recommendation while providing for just compensation to the injured party's attorney.

3. Collateral Source Evidence

Allow a defendant (e.g., physician) to introduce evidence pertaining to amounts of other proceeds received by a plaintiff due to the situation that resulted in the lawsuit. Examples of those proceeds are insurance proceeds and workers compensation payments. This prevents the unjust recovery of duplicate payments for the same loss.

4. Periodic Payment of Future Damages

When an award for future damages exceeds \$50,000, allow either party to require the court to provide that the judgment be paid in installments over the term of the plaintiff's disability.

This allows for the purchase of an annuity to make future payments as and when they arise - a significant savings over an immediate lump-sum payment of an entire award.

5. Arbitration

Allow physicians to contract with patients for mandatory arbitration of malpractice claims.

6. Statute of Limitation

Maintain a statute of limitation that requires an action for injury or death against a physician to be filed within 2 years of when the person knows or should have known of the injury. However, for children under age six, require that action be brought before age eight or within two years, whichever is longer. But, the clock stops if there is fraud, intentional concealment of facts, or if there exists an undiscovered foreign body (of no therapeutic or diagnostic purpose) in the body of the injured child and the action is based on the presence of the foreign body.

7. Statute of Repose

Incorporate a general statute of repose that prevents suits from being brought after eight years measured from the date of the act that caused the injury or death. The statute of repose applies without regard to the statute of limitation. However, any statute of repose should not apply in cases involving intentional acts or if intentional concealment of facts occurred that resulted in a delay of more than eight years before the basis for the legal action was known.

8. Panel System

ASMA recommends the continuation of the panel system. Although, complete and credible empirical data which would indicate the impact of the panel system is impossible to develop, anecdotally many ASMA member physicians feel it is important and worthwhile for the panel system to remain in place. ASMA would consider a change in the method of selection of the panel to allow each side to choose a physician member with then those two members selecting a third physician. However, the physicians chosen should be physicians both licensed and actively practicing medicine in Alaska.

ASMA would also recommend that the "bias" questionnaire be changed so as to ferret out only real conflicts of interests as opposed to perceived conflicts. It would also appear that the existing questionnaire may be easily "gamed" by physicians not wanting to serve.

ASMA's experience is that it is not unusual for 40 suits involving medical malpractice to be filed each year which tend to take approximately two years to be adjudicated. Therefore, at any given point in time approximately 240 Alaska physicians are impaneled. This is over 20% of all physicians in Alaska, a significant contribution to the system for which, in most cases, the service is done pro bono.

The above are outlines of the features of civil justice reform that ASMA member physicians feel should be adopted. Many of the above are incorporated in SSHB58. For those that aren't, ASMA recommends amending SSHB58 to include them. Specifically, the absolute cap of \$250,000 on non-economic damages is recommended to be incorporated. The general concepts underlying SSHB58 are supported by ASMA.

The underlying purpose in the above is to provide some certainty where little certainty currently exists. Imposition of certainty provides for greater predictability and should result in reduced premium rates for professional liability coverage. Similar measures were adopted in California nearly 20 years ago with one result being that overall medical malpractice insurance premiums in California are half of what they are here in Alaska.

Lower rates should result in more physicians having professional liability insurance coverage with sufficiently high limits. This result should provide for added peace of mind to patients.

Should you have any questions or comments you may direct them to any of the following people:

ASMA Board of Trustees

Paul Raymond MD, President,
235-7000, fax 235-4050

John J. Smith MD,
276-5222, fax 278-9044

Kevin M. Tomera MD,
276-2903, fax 278-8052

Lee Schlosstein MD,
563-3929, fax 562-2848

James J. Jordan, Executive Director, ASMA,
562-2662, fax 561-2063

Cynthia Brooke MD,
563-8588, fax 563-6903

Patrick Brady MD,
261-3102, fax 261-4882

Douglas G. Smith MD,
272-2571, fax 272-6751

David E. Johnson MD,
225-5144, fax 247-0920

Thank you again for opportunity to provide testimony.

Sincerely,



James J. Jordan
Executive Director

A Surgical Fix for Medical Malpractice

Reforms Work Best as a Package, Study Shows

By Jeffrey Speicher

A

almost everyone agrees: The medical malpractice system in the United States serves no one well. Although a few multimillion dollar settlements draw public attention, most individuals who suffer real injury at the hands of their physician or hospital accept less than the full value of their claim—and endure long delays before receiving compensation. Those most

harméd—people left with lifelong medical needs or permanent loss of income—are most likely to be underpaid.

Physicians, who in the 1950s faced a 1-in-7 chance of being sued over the course of a career, now see the odds reduced to 1-in-7 *per year*. As a result malpractice insurance premiums have skyrocketed, causing many practitioners to abandon their specialties or adopt costly defensive-medicine procedures. Many insurers, buffeted since the early '70s by recurrent cycles of higher claims frequency and larger jury awards, have withdrawn from the market, which has reduced availability of coverage and further driven up costs. And as for attorneys . . . well, even some thoughtful legal scholars believe the system is out of whack.

According to Randall Bovbjerg of Washington's Urban Institute, author of numerous studies on medical malpractice, many of the system's problems arise from a basic difference between doctors and lawyers: Physicians think about healing injuries, attorneys about resolving disputes. Says Bovbjerg, "Doctors see medical malpractice as a way to make injured patients whole—financially as well as physically. Lawyers come into the process after a conflict arises, and their focus is on justice for their client."

Jeffrey Speicher is manager of member communications for the Academy and an editor for Contingencies.

This difference in worldview intertwines medical malpractice with the legal system. Malpractice must balance the need to compensate deserving claimants, deter future violations by making doctors more careful, and obtain justice for both patients and medical providers. All this from what Bovbjerg defines as "mainly an insurance system run by experts."

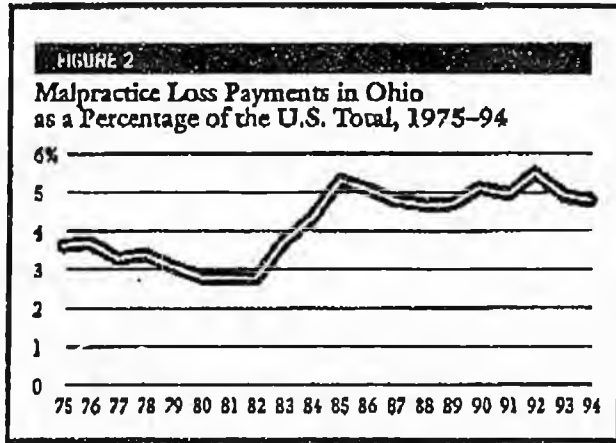
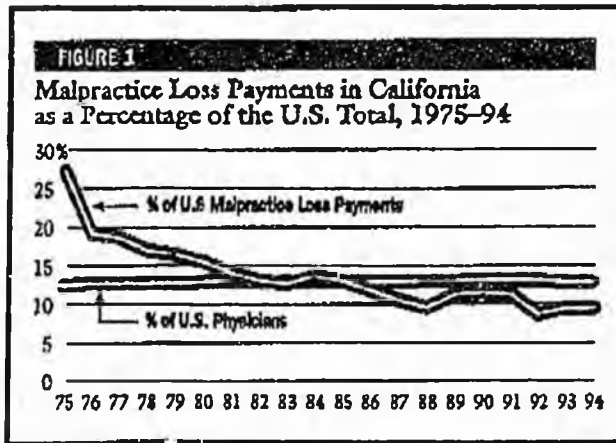
A group of those insurance experts, members of the American Academy of Actuaries, recently suggested an approach to make the system less costly. According to the Academy report, "Medical Malpractice Tort Reform: Lessons from the States," the mixed results of reform attempts by the states point the way to effective federal action.

"Congress should adopt a comprehensive approach to tort reform by adopting a package of measures," says Jim Hurley, an actuary with Tillinghast/Towers Perrin and leader of the Academy group. "Our report provides a synthesis of measures that have been effective at the state level."

A Package Deal

The California Medical Injury Compensation Reform Act (MICRA) of 1975 shows the success of the package approach. Before MICRA's adoption, the state's percentage of total U.S. loss payments was significantly higher than its proportion of the nation's physicians. By 1981, California's loss payments had dropped and were about even with its percentage of physicians. Costs continue to fall, even as California's share of physicians remains stable. Writes the Academy group: "The relationship of decreased relative costs to the timing of reform provides strong evidence for the effectiveness of the MICRA package." [See Figure 1.]

At the head of the Academy's list for lawmakers is a nationwide cap on jury awards for noneconomic damages such as pain and suffering. As evidence, Hurley points to Ohio where malpractice costs fell after a 1975 cap on damages, only to rise dramatically after court challenges led to a 1985



ruling that overturned the cap. [See Figure 2.]
 Such a cap should be established on a per-medical-injury basis at a level low enough to have an impact—at \$250,000, for example. In addition, a mandatory collateral-source offset rule is needed to ensure that double and triple indemnification cannot be collected through multiple suits. Under this rule, a jury or judge would have to consider compensation paid from other sources.

Above all, the Academy report warns against piecemeal or faulty changes. Loss experience in New York shows that the individual tort reform measures adopted in that state over the past two decades did not improve costs relative to the U.S. total. "Poorly crafted malpractice reform—either

Above all, the Academy report warns against piecemeal or faulty changes. "Poorly crafted malpractice reform—either individual measures that are too limited or broad transformations that are too far-reaching—can have unintended consequences that drive up costs."

individual measures that are too limited or broad transformations that are too far-reaching—can have unintended consequences that drive up costs," says Hurley.

The Academy's suggested approach involves what medical malpractice experts call "takeaway" reforms—preserving the current reliance on the tort system, but eliminating some of the costliest and most abused features.

Other voices in the debate, including representatives of the medical community, call for a back-to-the-drawing-board approach. Unfortunately, the design that comes back often relies on a no-fault model. While no-fault medical malpractice insurance would largely untangle the process from the legal system, no-fault often rewards individuals whose claims would otherwise be denied. Says Hurley, "No-fault would drive frequency of claims through the roof—some argue by a factor of at least two and perhaps by a factor of

eight or more. It's scary how many things can be compensated under the typical no-fault system."

Frequency of claims, according to Hurley, is the key driver of costs. "Over the past two decades, the plateaus and surges of claims frequency have been difficult to anticipate and measure, but the long-term trend has been up," says Hurley. Size of claims also is an important cost factor, but dollar amounts in settlements have been increasing in a more predictable fashion over time.

No-fault also would take most cases out of court and make malpractice a transaction between insurer and claimant. Advocates claim that this would cut legal costs—which are enormous. For example, according to the Insurance Services Office, legal defense costs for insurers alone accounted for 14 percent of total tort costs in 1992.

However, experience in Florida and Virginia, where no-fault for obstetric cases is already in place, does not show substantially reduced costs or less need for legal counsel. Says Boyberg, "Everyone who uses the no-fault system in Florida and Virginia consults a lawyer."

Other options exist. A proposal by Jeffrey O'Connell, professor at the University of Virginia School of Law, seeks a middle way between no-fault and status quo. He would shorten the process and lower costs through an early offer of payment of non-economic damages.

O'Connell is blunt about his disgust with the current state of affairs. "Medical malpractice is a nightmare of useless circularity," he says. However, according to O'Connell, the system is not consistently biased against defendants. Most proposed changes, on the other hand, invariably favor the defendant. Justice—as well as political reality—requires benefits for the plaintiff as well.

"Reform requires a quid pro quo," says O'Connell. "While the Academy has described quite lucidly the options for takeaway reform, such measures could not get through Congress without being so watered down as to be meaningless," says O'Connell. "True reform should involve a fair trade: making it easier for claimants to be paid, but paying them less, as under workers compensation laws."

An Offer You Can't Refuse

O'Connell's ideas have found sponsorship on Capitol Hill. A bill introduced in the 104th Congress by Sen. Mitch Mc-

Connell (R-Ky.) would create an early-offer plan for all tort claims, including medical malpractice. Under the proposal, a defendant in a personal injury claim is given the option of offering payment to the injured party within 180 days of the claim. The defendant purchases for the claimant a comprehensive major medical insurance policy that covers medical expenses, rehabilitation, and lost wages beyond monies received from collateral sources. In addition, reasonable hourly fees for the claimant's attorney would be paid.

Claimants who are offered such a settlement within 180 days of the claim would be obliged to accept. This won't get egregious medical offenders off the hook, however. A normal tort claim could be pursued for noneconomic damages, but with a higher-than-current standard of evidence.

Medical malpractice is a nightmare of useless circularity.

The plaintiff must prove that the medical provider's misconduct was wanton or intentional.

Because the defendant would not be forced to offer a settlement, physicians and their insurers could take their chances in court in the case of bogus claims. However, the risk might be too great. O'Connell cites a prominent medical malpractice defense lawyer who estimates that he'd make an early offer in 200 of the his firm's 250 current cases. So the balance is tipped toward the defendant, but not without providing a substantial benefit to the plaintiff: Timely resolution and quick settlement.

The limit on legal fees would discourage what O'Connell calls "the unconscionable abuse of the system by some members of my profession." Among other criticisms, the Virginia professor points out that contingent fees are often not truly contingent on risk. Attorneys take the same settlement percentage from open-and-shut cases as from complex cases, a practice that subsidizes work on failed litigation and which O'Connell denounces as an illegal tax on deserving claimants.

Hurley gives O'Connell's proposal a mixed review. "To its credit, the early-offer plan is not mandatory for defendants, which leaves the tort system in place to challenge claims perceived as nonmeritorious," says Hurley. He also notes that periodic insurance payment to claimants allows compensation to be made as costs are incurred, eliminating the burden of large lump-sum payouts. Also, O'Connell's plan emphasizes two fundamentals that the Academy report identified: mandatory recognition of collateral benefits and controlling noneconomic damage costs. In fact, the O'Connell plan eliminates consideration of noneconomic damages altogether unless the case goes to court.

However, Hurley notes, the periodic payment plan theoretically would have to remain in force for decades. Will claimants be out in the cold after the disability policy limits are reached, or will the insurer face unlimited exposure? Another concern: Like no-fault, the early-offer plan could give incentives for unmerited claims. Insurers may pay a doubtful claim rather than incur expensive litigation costs

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and risk a large judgment award. In addition to increased costs, Hurley worries about a basic question: "Is it the right message to send to individuals who think doctors and insurers have deep pockets? The system may have practical advantages, but in terms of equity, it is hardly fair."

No matter which remedy is tried, no action will slash premium costs immediately, Hurley cautions. "Tying tort reform to premium reductions, as has been done in some states, is unrealistic," he says. "There is little evidence that the cost savings can be translated directly into lower costs for health care providers. More likely, reform will slow the rate of premium cost increases."

The course of reform will be determined by elected officials at the state and federal levels. The debate will be long, no matter which option—if any—is approved. In the meantime, the cost of inaction continues to be passed on to the public in the form of increased medical fees and reduced services.

By working together in recent years, insurers and health-care providers have begun to bring medical spending under control. Effective medical malpractice reform is one way to keep the momentum going. □

Answer to Brain Drain, page 13:
 The house number is 76.

A M E N D M E N T

OFFERED IN THE HOUSE
TO: HB 58

BY REPRESENTATIVE GREEN

1 Page 16, following line 5:

2 Insert a new bill section to read:

3 **"* Sec. 35.** AS 09.65 is amended by adding a new section to read:

4 **Sec. 09.65.085. Civil liability of electric utility.** (a) A utility offering
5 electrical service to the public for compensation under a certificate of public
6 convenience and necessity issued by the Alaska Public Utilities Commission under
7 AS 42.05.221 may not be held strictly liable for property damage, death, or personal
8 injury resulting from an act or omission of the utility.

9 (b) This section does not preclude liability for civil damages that are the result
10 of an intentional, reckless, or negligent act or omission."

11 Renumber the following bill sections accordingly.

*relating to the
production OR delivery
of electrical service*

Adopted as amended

2/26/97

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE PORTER

TO: HB 58

1 Page 16, following line 5:

2 Insert a new bill section to read:

3 **"* Sec. 35.** AS 09.65 is amended by adding a new section to read:

4 **Sec. 09.65.085. Civil liability of electric utility.** (a) A utility offering
5 electrical service to the public for compensation under a certificate of public
6 convenience and necessity issued by the Alaska Public Utilities Commission under
7 AS 42.05.221 may not be held strictly liable for property damage, death, or personal
8 injury resulting from an act or omission of the utility.

9 (b) This section does not preclude liability for civil damages that are the result
10 of an intentional, reckless, or negligent act or omission."

11 Renumber the following bill sections accordingly.

A M E N D M E N T

OFFERED IN THE HOUSE
TO: SSHB 58

BY REPRESENTATIVE CROFT #4

*Fails
2/27/97*

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Page 6, lines 3 - 20:

Delete all material.

Insert new subsections to read:

"(b) Except as provided in (c) of this section, the court shall require deposit into the general fund of 50 percent of that portion of the punitive damages award that is equal to or less than the greater of three times the amount of compensatory damages or \$300,000.

(c) The court shall require deposit into the general fund of 50 percent of that portion of the punitive damages award that is equal to or less than the greater of four times the amount of compensatory damages awarded or \$600,000, if

(1) the wrongful conduct or omission arose in connection with a commercial activity motivated by financial gain; and

(2) the likelihood of death or serious bodily injury from the commercial activity was previously known by the person responsible for making policy decisions relating to the commercial activity and the knowledge was gained from previous instances of death or serious bodily injury arising from the same wrongful conduct or omission, regardless of where the previous wrongful conduct or omission occurred.

(d) If a court or jury awards punitive damages under (a) of this section, the court shall require that 100 percent of the punitive damages award that exceeds the maximum amounts described under (b) or (c) of this section, as applicable, be deposited into the general fund or the Alaska permanent fund under AS 37.13.010. The party paying the punitive damages shall elect which fund shall receive the money required to be paid under this subsection.

(e) The provisions of this section do not grant the state the right to file or join

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE PORTER

TO: SSHB 58

- 1 Page 20, line 2, following "allocating":
- 2 Insert "fees and"

Adopt
2/27

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE PORTER

TO: SSHB 58

1 Page 10, lines 1 - 4:

2 Delete "The trier of fact may assign a percentage of fault to [DETERMINE THAT]
3 two or more persons [ARE TO BE TREATED AS A SINGLE PARTY] if their conduct was
4 a cause of the damages claimed and the separate act or omission of each person cannot be
5 distinguished."

6 Insert "[THE TRIER OF FACT MAY DETERMINE THAT TWO OR MORE
7 PERSONS ARE TO BE TREATED AS A SINGLE PARTY IF THEIR CONDUCT WAS
8 A CAUSE OF THE DAMAGES CLAIMED AND THE SEPARATE ACT OR OMISSION
9 OF EACH PERSON CANNOT BE DISTINGUISHED.]"

*Passed
Adopted
2/27/97*

A M E N D M E N T

OFFERED IN THE HOUSE
TO: SSHB 58

BY REPRESENTATIVE PORTER

- 1 Page 7, line 8:
- 2 Delete "[FUTURE]"
- 3 Insert "future"

- 4 Page 8, line 1:
- 5 Delete "[FUTURE]"
- 6 Insert "future"

Adopt
2/27

Alaska State Legislature



House of Representatives
House Judiciary Committee

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

MEMORANDUM

Date: February 27, 1997
To: Mike Ford, Legislative Legal
From: Lisa Kirsch, House Judiciary Committee
Re: Amendment to HB 58

HB 58 passed out of House Judiciary this morning with the following amendments.

1) Amendment 0-LS0056\H.1

Delete the period on line 8, after "utility" insert, "relating to the production or delivery of electrical service."

2) Rokeberg's amendment:

Page 8, line 13

Delete "Anchorage all items index"

Insert "U.S. City Average, all urban consumers, all items indices"

3) Amendment 0-LS0056\H.5--adopted as written

4) Amendment 0-LS0056\H.6--adopted as written

5) Amendment 0-LS0056\H.7--adopted as written

We need this in final form ASAP. I believe this is being read across as I write. Thanks very much.

Any problems or questions, call me at 4990.

WITHDRAWN

X #

0-LS0056H.8

Ford

2/26/97

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE GREEN

TO: SSHB 58

1 Page 1, line 3:

2 Delete "and 95"

3 Insert "95, and 100"

4 Page 15, following line 29:

5 Insert a new bill section to read:

6 **** Sec. 34. AS 09.55 is amended by adding a new section to read:**

7 **Article 10. Malpractice Action Against Design Professional.**

8 **Sec. 09.55.700. Mandatory mediation.** (a) A civil action against a design
9 professional seeking damages resulting from professional negligence shall be
10 submitted to mediation unless all the parties to the civil action agree to waive
11 mediation. The court shall order that mediation be conducted as provided under the
12 Alaska Rules of Civil Procedure, except that, if the court requires the costs of
13 mediation be paid by the party defending against the civil action, the provisions of
14 this section may be waived at the election of the party defending against the civil
15 action. If a party to the mediation is determined by the court to be indigent, the court
16 may impose the costs of mediation on another party. If more than one party is
17 defending against the civil action, waiver of mediation is not allowed unless all
18 defending parties agree to the waiver. For purposes of waiver allowed under this
19 subsection, "civil action" does not include a counterclaim, third-party claim, or cross
20 claim.

21 (b) In this section,

22 (1) "design professional" means an architect, engineer, or land surveyor
23 licensed in this state;

24 (2) "professional negligence" means a negligent act or omission by a

1 design professional in providing professional services;

2 (3) "professional services" means services provided by a design
3 professional that are within the scope of the services for which the design professional
4 is licensed."

5 Renumber the following bill sections accordingly.

6 Page 24, following line 28:

7 Insert a new bill section to read:

8 "* Sec. 62. AS 09.55.700, enacted by sec. 34 of this Act, has the effect of amending
9 Rule 100, Alaska Rules of Civil Procedure, by requiring, in a civil action against a design
10 professional, the parties to request mediation and the court to order mediation."

11 Renumber the following bill sections accordingly.



Alaska

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Cooperative

Association, Inc.

703 W. Tudor Rd., #200
 Anchorage, AK 99503-6650
 (907) 561-6103
 FAX (907) 561-5547

Electric Service for 357,000 Alaskans

February 26, 1997

Rep. Brian Porter
 State Capitol
 Juneau, Alaska 99801-1182

Subject: Response to Questions Regarding Strict Liability for Electric Utilities

Dear Representative Porter:

Pursuant to my testimony before the House Judiciary Committee regarding House Bill 58 on Tort Reform on February 22, 1997, you requested that I provide you with information regarding Strict Liability cases that have arisen in the Lower 48. In addition, Representative Eric Croft requested similar information on cases in the state of Alaska. Enclosed is preliminary research performed by our attorneys on both of these subjects. Please let me know if you require any additional information.

We very much appreciate your consideration of our amendment.

Sincerely,

Eric P. Yould
 Executive Director

✓ cc: Rep. Joe Green



ARECA

Electric Service for 357,000 Alaskans

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Association, Inc.

703 W. Tudor Rd., #200
Anchorage, AK 99503-6650
(907) 561-6103
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February 26, 1997

Rep. Eric Croft
State Capitol
Juneau, Alaska 99801-1182

Subject: Response to Questions Regarding Strict Liability for Electric Utilities

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We very much appreciate your consideration of our amendment.

Sincerely,

Eric P. Yould
Executive Director

cc: Rep. Joe Green

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RICHARD R. HUFFMAN
DONALD C. ELLIS

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ANCHORAGE, ALASKA 99503-3025
(907) 277-1604
FAX (907) 278-2493

ANDREW J. FIERRO
BOBBY DEAN SMITH
REBECCA C. PAULI

WRITER'S E-MAIL ADDRESS:
rpk@khe.com

February 24, 1997

Eric Yould
Executive Director
Alaska Rural Electric
Cooperative Association, Inc.
703 W. Tudor Road, Suite 200
Anchorage, AK 99503

VIA FACSIMILE: 561-5547

Subject: 1997 Legislation--Strict Liability

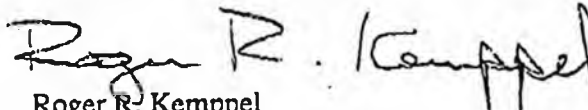
Dear Eric:

At your request, I am enclosing a short summary of some of the other states that have addressed the strict liability issue. Due to the time frame involved, the listing is not exhaustive but should provide some assistance to you in your testimony.

Please call if you have questions.

Sincerely yours,

KEMPEL, HUFFMAN AND ELLIS, P.C.



Roger R. Kempel
General Counsel for ARECA

:lka

Attachment

STRICT LIABILITY FOR THE SALE OF ELECTRICITY IN OTHER STATESWISCONSIN

Ransome v. Wisconsin Electric Power Company, 275 N.W.2d 641 (Wis. 1979).

Lightning struck an electric line near a transformer. An electrical insulator was damaged, but power was not interrupted. Four days later, there was a heavy rainstorm. The transformer exploded, and the electricity going to a nearby house was estimated to be in the range of 1,000 to 4,800 Volts instead of the normal 120-140 Volt service. The house caught fire. The investigator from the fire department believed the fire was caused by an overload of electricity in the service entrance of the house.

Through the application of strict liability, the electric company was liable for the damage to the house. The court said the electricity was unreasonable dangerous and defective when delivered to the house by the electric company.

ILLINOIS

Elgin Airport Inn, Inc. v. Commonwealth Edison, 410 N.E.2d 620 (C.A. 2d Dist. 1980).

During routine testing of a line that service the inn, electric service was switched to an alternate line and then back to the regular line. When service was switched back to the regular line, a switching mechanism failed. The switching mechanism had been tested once a year for the previous five years and was always found to be in good operating condition. The last test had been done about one month prior to the incident. The defect that occurred could not have been discovered by the inspections that took place. The defect caused low voltage which damaged air conditioning motors at the inn. The problem was corrected in five minutes. The court said the electric company was not negligent but could, through strict liability, be liable for the damages.

OHIO AND NEW YORK

Courts in these states have decided not to apply strict products liability to electricity. These decisions are based upon the acknowledgement that the sale and delivery of electricity by a power company is a service and not the sale of a product. These courts reason that the amount a customer pays is dependent upon the length of time the electricity flows through the customer's meter. If the amount paid is tied to the amount of usage, this is more like a service than a product.

STRICT LIABILITY FOR THE SALE OF ELECTRICITY IN ALASKA

The Alaska Supreme Court has not been asked to decide if it would apply the doctrine of strict liability to the sale of electricity. There are trial courts which have been presented with strict liability claims. For example, in *Fancyboy v. Alaska Village Electric Cooperative, Inc.*, Case No. 4BE-94-97 Civil, the assertion was made that the electric company should be held strictly liable for allegedly defective electric service delivered to the plaintiffs' house. In that case, the plaintiffs had received electricity to their house by running a length of 12/2 Romex wire from a neighboring house. The plaintiffs' house caught fire, and it has been alleged that the fire was caused because of low voltage. The trial court dismissed the strict liability claim when the testimony showed that the electrical service was not defective as of the time AVEC delivered the electricity to the neighbor's house.

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 58
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES PORTER, Cowdery

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil actions; relating to independent counsel provided under
2 an insurance policy; relating to attorney fees; amending Rules 16.1, 41, 49, 58,
3 68, 72.1, 82, and 95, Alaska Rules of Civil Procedure; amending Rule 702, Alaska
4 Rules of Evidence; amending Rule 511, Alaska Rules of Appellate Procedure; and
5 providing for an effective date."

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

7 * Section 1. LEGISLATIVE INTENT. In enacting this bill, it is the intent of this
8 legislature as a matter of public policy to

9 (1) encourage the efficiency of the civil justice system by discouraging
10 frivolous litigation and by decreasing the amount, cost, and complexity of litigation without
11 diminishing the protection of innocent Alaskans' rights to reasonable, but not excessive,
12 compensation for tortious injuries caused by others;

13 (2) provide for reasonable, but not excessive, punitive damage awards against

1 tortfeasors sufficient to deter conduct and practices that harm innocent Alaskans while not
2 hampering a positive business environment by allowing excessive penalties;

3 (3) encourage individual savings and economic growth by fostering an
4 environment likely to control the increase of liability insurance rates to individuals and
5 businesses resulting in a savings to the state, municipalities, and private businesses that are
6 self-insured;

7 (4) encourage the traditionally recognized Alaska values of self-reliance and
8 independence by underscoring the need for personal responsibility in making choices and
9 personal accountability for the consequences of those choices;

10 (5) alleviate the high cost of malpractice insurance premiums that discourage
11 physicians, architects, engineers, attorneys, and other professionals from rendering needed
12 services to the public;

13 (6) ensure that hospitals that comply with the disclosure requirements set out
14 in this Act are not liable for the negligence of independent contractors; to this extent, this Act
15 is intended to overrule Jackson v. Powers, 743 P.2d 1376 (Alaska 1987);

16 (7) ensure that one of several tortfeasors is not held responsible for the
17 negligence of an employer; to this extent, this Act is intended to overrule Lake v. Construction
18 Machinery, Inc., 787 P.2d 1027 (Alaska 1990);

19 (8) enact a statute of repose that meets the tests set out in Turner Construction
20 Co., Inc. v. Scales, 752 P.2d 467 (Alaska 1988);

21 (9) ensure that in actions involving the fault of more than one person, the fault
22 of each claimant, defendant, third-party defendant, person who has been released from
23 liability, or other person responsible for the damages be determined and awards be allocated
24 in accordance with the fault of each, thereby overruling Benner v. Wichman, 874 P.2d 949
25 (Alaska 1994); and

26 (10) reduce the amount of litigation proceeding to trial by modifying the
27 allocation of attorney fees and court costs based on the offer of judgment and the final court
28 award, thereby providing a financial incentive to both parties to settle the dispute.

29 * Sec. 2. AS 06.05.473(h) is amended to read:

30 (h) After the payment of all other claims, including interest at the rate of 10.5
31 percent a year [ESTABLISHED UNDER AS 09.30.070], the department shall pay

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claims that are otherwise valid but that were not filed within the time prescribed.

* Sec. 3. AS 09.10.050 is repealed and reenacted to read:

Sec. 09.10.050. **Certain property actions to be brought in six years.** Unless the action is commenced within six years, a person may not bring an action for waste or trespass upon real property.

* Sec. 4. AS 09.10 is amended by adding a new section to read:

Sec. 09.10.053. **Contract actions to be brought in three years.** Unless the action is commenced within three years, a person may not bring an action upon a contract or liability, express or implied, except as provided in AS 09.10.040 or as otherwise provided by law.

*current
6 yrs*

* Sec. 5. AS 09.10.055 is repealed and reenacted to read:

Sec. 09.10.055. **Statute of repose of eight years.** (a) Notwithstanding the disability of minority described under AS 09.10.140(a), a person may not bring an action for personal injury, death, or property damage unless commenced within eight years of the earlier of the date of

*current
15 yrs.*

(1) substantial completion of the construction alleged to have caused the personal injury, death, or property damage; however, the limitation of this paragraph does not apply to a claim resulting from an intentional or reckless disregard of specific project design plans and specifications or building codes; in this paragraph, "substantial completion" means the date when construction is sufficiently completed to allow the owner or a person authorized by the owner to occupy the improvement or to use the improvement in the manner for which it was intended; or

(2) the last act alleged to have caused the personal injury, death, or property damage.

(b) This section does not apply if — **EXCEPTIONS**

(1) the personal injury, death, or property damage resulted from

(A) prolonged exposure to hazardous waste;

(B) an intentional act or gross negligence;

(C) fraud or fraudulent misrepresentation;

(D) breach of an express warranty or guarantee; or

(E) a defective product; in this subparagraph, "product" means

1 an object that has intrinsic value, is capable of delivery as an assembled whole
2 or as a component part, and is introduced into trade or commerce;

3 (2) the facts that would give notice of a potential cause of action are
4 intentionally concealed;

5 (3) a shorter period of time for bringing the action is imposed under
6 another provision of law.

7 (c) The limitation imposed under (a) of this section is tolled during any period
8 in which there exists the undiscovered presence of a foreign body that has no
9 therapeutic or diagnostic purpose or effect in the body of the injured person and the
10 action is based on the presence of the foreign body.

11 * Sec. 6. AS 09.10 is amended by adding a new section to read:

12 **Sec. 09.10.065. Limitation of actions against health care providers.** (a)

13 Notwithstanding the disability of minority described under AS 09.10.140(a), an action
14 based on professional negligence may not be brought against a health care provider if
15 the injured person is, on the date of the alleged negligent act or omission, less than six
16 years of age unless the action is commenced before the person's eighth birthday.

17 (b) The limitation imposed under (a) of this section is tolled during any period
18 in which there exists

19 (1) fraud, including fraud or collusion by a parent, guardian, insurer,
20 or health care provider, resulting in the failure to bring an action on behalf of an
21 injured minor;

22 (2) intentional concealment of facts that would give notice of a
23 potential action; or

24 (3) the undiscovered presence of a foreign object that has no
25 therapeutic or diagnostic purpose or effect in the body of the injured person and the
26 action is based on the presence of the foreign object.

27 (c) In this section,

28 (1) "health care provider" has the meaning given in AS 09.55.560;

29 (2) "professional negligence" has the meaning given in AS 09.55.560;

30 (3) "professional services" has the meaning given in AS 09.55.560.

31 * Sec. 7. AS 09.10.070(a) is amended to read:

*Amend
7 →*

*Effective
2/1/00
Am. 6/28
cld*

1 (a) Except as otherwise provided by law, a [A] person may not bring an
 2 action (1) for libel, slander, assault, battery, seduction, or false imprisonment, (2)
 3 [OR] for personal [ANY] injury or death, [TO THE PERSON] or injury to the rights
 4 of another not arising on contract and not specifically provided otherwise; (3) for
 5 taking, detaining, or injuring personal property, including an action for its
 6 specific recovery; (4) [(2)] upon a statute for a forfeiture or penalty to the state; or
 7 (5) [(3)] upon a liability created by statute, other than a penalty or forfeiture; unless
 8 the action is commenced within two years of the accrual of the cause of action.

9 * Sec. 8. AS 09.17.010 is repealed and reenacted to read:

10 Sec. 09.17.010. Noneconomic damages. (a) In an action to recover damages
 11 for personal injury or wrongful death, all damage claims for noneconomic losses shall
 12 be limited to compensation for pain, suffering, inconvenience, physical impairment,
 13 disfigurement, loss of enjoyment of life, loss of consortium, and other nonpecuniary
 14 damage.

*don't
 these
 count
 other
 out?*

15 (b) Except as provided under (c) of this section, the damages awarded by a
 16 court or a jury under (a) of this section for all claims, including a loss of consortium
 17 claim, arising out of a single injury or death may not exceed \$300,000.

500K

18 (c) In an action for personal injury, the damages awarded by a court or jury
 19 that are described under (b) of this section may not exceed \$500,000 when the
 20 claimant, as a result of the injury,

21 (1) is a hemiplegic, paraplegic, or quadriplegic and has permanent
 22 functional loss of one or more limbs resulting from injury to the spine or spinal cord;
 23 or

24 (2) has permanently impaired cognitive capacity and is incapable of
 25 making independent, responsible decisions.

26 (d) Multiple injuries sustained by one person as a result of a single incident
 27 shall be treated as a single injury for purposes of this section.

28 * Sec. 9. AS 09.17.020 is amended to read:

29 Sec. 09.17.020. Punitive damages. Punitive damages may not be awarded in
 30 an action, whether in tort, contract, or otherwise, unless supported by clear and
 31 convincing evidence of malice or conscious acts showing deliberate disregard of

another person by the person from whom the punitive damages are sought.

* Sec. 10. AS 09.17.020 is amended by adding new subsections to read:

(b) Except as provided under (c) of this section, the amount of punitive damages awarded by a court or jury under (a) of this section may not exceed three times the amount of compensatory damages awarded or \$300,000, whichever amount is greater.

3X
or
300

(c) The amount of punitive damages awarded by a court or jury under (a) of this section may not exceed four times the amount of compensatory damages awarded or \$600,000, whichever amount is greater, if

4X
600

(1) the wrongful conduct or omission arose in connection with a commercial activity motivated by financial gain; and

(2) the likelihood of death or serious bodily injury from the commercial activity was previously known by the person responsible for making policy decisions relating to the commercial activity and the knowledge was gained from previous instances of death or serious bodily injury arising from the same wrongful conduct or omission, regardless of where the previous wrongful conduct or omission occurred.

(d) If a person receives an award of punitive damages, the court shall require that 50 percent of the award be deposited into the general fund of the state. This subsection does not grant the state the right to file or join a civil action to recover punitive damages.

* Sec. 11. AS 09.17.040(a) is amended to read:

(a) In every case where damages for personal injury or death are awarded by the court or jury,

(1) the verdict shall be itemized between economic loss and noneconomic loss, if any, as follows:

(A) [(1)] past economic loss;

(B) [(2)] past noneconomic loss;

(C) [(3)] future economic loss;

(D) [(4)] future noneconomic loss; [AND]

(E) [(5)] punitive damages; and

(2) the amount of damages awarded shall be reduced by the

1 amount of federal and state income tax that would have been paid on damages
2 contained in the verdict under tax rates in effect on the date of the injury or
3 death; this paragraph does not apply to an award of damages if the damages are
4 taxable under federal or state law.

5 * Sec. 12. AS 09.17.040(d) is amended to read:

6 (d) In an action to recover damages, the court shall, at the request of a [AN
7 INJURED] party, enter judgment ordering that amounts awarded a judgment creditor
8 for [FUTURE] damages that exceed \$100,000 be paid to the maximum extent feasible
9 by periodic payments rather than by a lump-sum payment. If a portion of the
10 judgment awarded is owed to an attorney under a contingent fee agreement, that
11 portion of the judgment shall be reduced to present value, if necessary, and paid
12 in a lump sum, and the remaining portion of the judgment shall be paid as
13 provided under this subsection.

14 * Sec. 13. AS 09.17.040(e) is amended to read:

15 (e) Except as provided in this subsection, if a judgment is paid by
16 structured settlement type periodic payments, the [THE] court shall [MAY] require
17 security be posted in the form of United States government obligations [,] in order
18 to ensure that funds are available as periodic payments become due. The court may
19 not require security to be posted if the state, a self-insured municipality, or an
20 authorized insurer, as defined in AS 21.90.900, acknowledges to the court its
21 obligation to discharge the judgment, provided that an authorized insurer must be
22 rated by two nationally recognized independent rating agencies to be in the two
23 highest categories of quality and financial soundness. If a judgment is paid by
24 annuity type period payments, the court shall require the annuity be purchased
25 from an authorized insurer that is rated by two nationally recognized independent
26 rating agencies to be in the two highest categories of quality and financial
27 soundness. The injured party shall determine whether a structured settlement or
28 an annuity is the source of the periodic payments. The injured party may not be
29 required to accept a structured settlement or annuity from the defendant's or
30 other party's insurer or from any affiliated companies of the insurer.

31 * Sec. 14. AS 09.17.040(f) is amended to read:

1 (f) A judgment ordering payment of [FUTURE] damages for personal injury
 2 or death by periodic payment shall specify the recipient, the dollar amount of the
 3 payments. including any increases in future payments for anticipated inflation, the
 4 interval between payments, and the number of payments or the period of time over
 5 which payments shall be made. Payments may be modified only in the event of the
 6 death of the judgment creditor, in which case payments may not be reduced or
 7 terminated, but shall be paid to persons to whom the judgment creditor owed a duty
 8 of support, as provided by law, immediately before death. In the event the judgment
 9 creditor owed no duty of support to dependents at the time of the judgment creditor's
 10 death, the money remaining shall be distributed in accordance with a will of the
 11 deceased judgment creditor accepted into probate or under the intestate laws of the
 12 state if the deceased had no will. In this subsection, "inflation" means the change
 13 in the consumer price index for Anchorage, all items index, compiled by the
 14 Bureau of Labor Statistics, United States Department of Labor.

15 * Sec. 15. AS 09.17.070 is repealed and reenacted to read:

16 **Sec. 09.17.070. Collateral benefits.** (a) A claimant in an action for personal
 17 injury or death may only recover damages that exceed amounts received by the
 18 claimant, or that with reasonable probability will be received in the future by the
 19 claimant, as compensation for the injuries from collateral sources, whether private,
 20 group, or governmental, and whether contributory or noncontributory, except when

21 (1) the collateral source is a federally funded program that by law must
 22 seek subrogation;

23 (2) the collateral source has a right of subrogation under federal law;

24 (3) the collateral source is the payment of a dependent child's medical
 25 bills by the injured child's parent that does not result from insurance coverage;

26 (4) the benefit consists of death benefits paid under life insurance; or

27 (5) the benefit consists of workers' compensation benefits received
 28 under AS 23.30.

29 (b) A person defending a claim may introduce into evidence at trial an amount
 30 paid or payable as a benefit to the claimant as a result of the personal injury or death
 31 under 42 U.S.C. 301 - 1397 (Social Security Act); a federal disability act; health,

1 sickness, disability, accident, or income-disability insurance; insurance that provides
 2 health benefits or income-disability coverage; and a contract or agreement of a group,
 3 organization, partnership, or corporation, or other collateral source, to provide, pay for,
 4 or reimburse the cost of medical, hospital, dental, or other health care services,
 5 disability, or lost wages. However, evidence of a collateral source described under
 6 (a)(1) - (5) of this section may not be introduced into evidence at trial. If a person
 7 defending a claim elects to introduce evidence described in this subsection, the
 8 claimant may introduce evidence of the amount that the claimant has paid or
 9 contributed to secure the claimant's right to the collateral benefit, including the cost
 10 to the claimant resulting from depleted or exhausted coverage.

11 (c) A person who provides a collateral benefit admissible under (b) of this
 12 section may not recover an amount against the claimant as reimbursement for those
 13 benefits and may not be subrogated to the rights of a claimant against a person
 14 defending a claim.

15 * Sec. 16. AS 09.17.080(a) is amended to read:

16 (a) In all actions involving fault of more than one person [PARTY TO THE
 17 ACTION], including third-party defendants and persons who have been released
 18 [UNDER AS 09.16.040], the court, unless otherwise agreed by all parties, shall instruct
 19 the jury to answer special interrogatories or, if there is no jury, shall make findings,
 20 indicating

21 (1) the amount of damages each claimant would be entitled to recover
 22 if contributory fault is disregarded; and

23 (2) the percentage of the total fault [OF ALL OF THE PARTIES TO
 24 EACH CLAIM] that is allocated to each claimant, defendant, third-party defendant,
 25 [AND] person who has been released from liability, or other person responsible for
 26 the damages to each claimant regardless of whether the other person, including
 27 an employer, is or could have been named as a party to the action [UNDER
 28 AS 09.16.040].

29 * Sec. 17. AS 09.17.080(b) is amended to read:

30 (b) In determining the percentages of fault, the trier of fact shall consider both
 31 the nature of the conduct of each person [PARTY] at fault, and the extent of the

fault
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