

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9232 HOUSE JUDICIARY



TEXAS DEPARTMENT OF CRIMINAL JUSTICE

P.O. Box 99 • Huntsville, Texas 77342-0099

Wayne Scott
Executive Director

January 23, 1997

The Honorable Dave Donley
State Capitol
Juneau, Alaska 99801-1182

Dear Senator Donley:

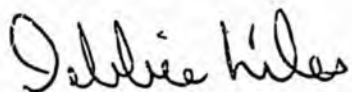
This letter is in response to your inquiry regarding our Tobacco Free Policy. Texas Department of Criminal Justice (TDCJ) went to a totally tobacco free policy which became effective March 1, 1995. This policy covers all property owned or leased by our department, with the exception of individual family dwellings, and is applicable to offenders and employees alike. I have included a copy of our Board Policy 02.02 for your review. Board Policy 02.02, "TDCJ Tobacco-Free Policy" was adopted November 18, 1994, by the Texas Board of Criminal Justice (TDCJ). The TBCJ is our governing board which is responsible for the overall management of our agency. Although adopted in November of 1994 the policy did not become effective until March 1, 1995.

In the months between the adoption and effective date of our tobacco-free policy, efforts were made to ensure the effective and orderly implementation of its provisions. Our agency initiated contact with the American Cancer Society (ACS), and sent several of our staff members through their "Fresh Start Program." The "Fresh Start Program" is a stop smoking initiative developed by the ACS to assist individuals in breaking the tobacco habit. TDCJ staff participating in the program became trainers, who in turn came back to our agency and presented "Fresh Start" to our employees who desired to participate. The Health Services Division of TDCJ presented the "Fresh Start Program" to our offender population.

In summary, our tobacco free policy has now been in existence for almost two years. We have not experienced any significant problems in association with the tobacco ban. TDCJ has encountered only isolated incidents of employees and offenders possessing "contraband" tobacco. However, we do believe the time between the adoption and the effective date in which the "Fresh Start Program" was presented, was extremely beneficial in assuring a smooth implementation.

I hope this overview of TDCJ's implementation of our tobacco free policy is helpful. We wish you the best of luck in administering your program should you choose to proceed with it. If there is any additional information you need please let us know.

Sincerely,

A handwritten signature in cursive script that reads "Debbie Liles".

Debbie Liles
Assistant Director for
Management Support

DL/cs

State to State

MINNESOTA CRIME BILL ELIMINATES INMATE SMOKING, ESTABLISHES MEDICAL COPAYMENTS

Minnesota's 1996 Omnibus Crime Bill will eliminate smoking privileges for all but a few inmates, and inmates seeking health care will be assessed copayments for requested medical, dental and mental health services.

The bill establishes that effective August 1, 1997, no inmate in a state correctional facility may possess or use tobacco or a tobacco-related device. The only exceptions granted will be the use of tobacco by adults as part of "traditional Indian spiritual or cultural ceremony," according to *Hotline*, a department newsletter.

A number of DOCs have banned inmate smoking for various reasons, including safety and health-related concerns, with varying success. Some have said that banning smoking only creates a new form of contraband, citing prices of up to \$20 for a pack of cigarettes. Recently, Georgia Corrections Commissioner Wayne Garner returned smoking privileges to inmates, saying the ban had become an "absolute nightmare."

Charging inmates for health care services is another growing trend and one that is not free from controversy. Minnesota inmates will be charged \$3 for health care services each time services are initiated by the inmate. Officials in other states with copayments have asserted that some inmates tend to abuse available medical services and that the nominal fees reduce unnecessary visits, thereby reducing overall health care costs. Opponents have argued that many inmates are indigent and cannot afford the copayment, stressing the possibility that states will see higher health care costs down the road if inmates are discouraged from seeking preventive care.

MARYLAND GOVERNOR SUSPENDS PRISON CONSTRUCTION, CUTS INMATE EDUCATION

The American Correctional Association reports that Gov. Parris Glendening of Maryland has decided to suspend funding for new prison construction despite a "substantial increase" in the state's inmate population in recent years. Glendening reportedly approved only the completion of the Western Correctional Institution, a 1,296-bed medium security facility near Cumberland scheduled to open this spring. The governor's budget plan calls for no new prison construction over the next five years, the ACA reports.

In another move to trim the state's budget, Glendening has ordered some educational programs at existing state prisons to be abolished, this according to a February 14 report in the *Washington Post*. The cuts will eliminate 49 teachers and one administrator who oversee high school equivalency exam preparation and vocational training courses.

Some members of the state's General Assembly have vowed to restore funds taken from penal education, and Gov. Glendening has indicated that he is open to change if lawmakers can recommend other budget cuts.

VERMONT PRISON CONDITIONS CASE WINS IMPROVEMENTS

Following extensive investigations in 1993, lawyers from the American Civil Liberties Union's National Prison Project together with local attorney Mitchell Pearl, filed suit against the State of Vermont, claiming that conditions in its prison deprived prisoners of basic constitutional rights to medical and mental health care and safe environmental conditions. The suit is now well-known for challenging a Vermont behavior modification program for sex offenders, which was the subject of a further filing last year that called for an end to the "physical and sexual abuse" of prisoners taking part in the program.

The ACLU reports that as a result of a settlement signed in Burlington on April 11 substantial improvements will be made over the next two years. Independent experts will be monitoring the prisons and making reports on the state's progress in providing prisoners with adequate medical and mental health care, fire safety and environmental safety. The reports will be made public.

"We believe the state is strongly motivated to do what is needed to address these problems and avoid future class action litigation," said National Prison Project attorney Margaret Winter. "We expect the prisoners to play an important role in reporting to the independent experts or day-to-day conditions in the facilities."

Within the sex offender treatment program, the state has called a halt to "simulated rapes and other abusive practices that were being carried out in the name of therapy," the Prison Project reports. Under the terms of the settlement, prisoners are free to sue again if the state ever resumes these practices.

LOUISIANA INMATES BUILD "SAFE" WEIGHT TRAINING EQUIPMENT

Prison Enterprises of Louisiana has introduced new weight lifting equipment designed to prevent the possibility of free weights being used as weapons. The three pieces of equipment, which are being built by inmates, have no removable parts.

According to Donald McNeal, Assistant Warden at Louisiana's Dixon Correctional Institute, incidents of violence involving free weights have occurred in the past. "Inmates have struck one another with loose weights during arguments," he said. Richard Stadler, Secretary of the Louisiana Department of Public Safety & Corrections, feels the new weights will make a safer environment for both inmates and officers, and he has encouraged wardens to consider the new equipment for use in their institutions.

Source: "The P.E.N.," *The Prison Enterprises Newsletter*, Spring 1996

TABLE II: INMATE

SYSTEM	CAN INMATES SMOKE IN FACILITIES? WITH WHAT RESTRICTIONS?
U.S. SYSTEMS	
ALABAMA	Yes, in designated smoking areas.
ALASKA	<i>No response</i>
ARIZONA	<i>No response</i>
ARIZANSAS	Yes, in all facilities. Restricted in hospital & punitive segregation.
CALIFORNIA	No, not in any facility. In prison yards or other outdoor areas designated for smoking by each institution head.
COLORADO	Yes, in all facilities. Only in cells or rooms.
CONNECTICUT	Depends on facility. Only in specified designated areas. All smoking is prohibited at designated "smoke-free" facilities.
DELAWARE	No, not in any facility. Only designated outdoor areas.
DISTRICT OF COLUMBIA <i>Min-security facility</i>	No. Inmates cannot smoke inside any building or govt. vehicle.
<i>Max-security facility</i>	Yes. Must smoke in cells or designated smoking areas.
FLORIDA	Yes, in designated smoking areas.
GEORGIA	<i>No response</i>
HAWAII	Depends on facility. Restricted to open-air areas. No smoking in enclosed, air-conditioned buildings.
IDAHO	Depends on facility. 6 of 7 facilities have designated smoking/non-smoking areas. 1 is completely non-smoking.
ILLINOIS	Depends on facility. Permitted in all but Boot Camp Facilities. All facilities have restricted smoking areas. Smoke-free housing unit wings at some facilities.
INDIANA	Yes, in all facilities (except juvenile).
IOWA	Depends on facility. Only outside.

¹ Various legislators have expressed dissatisfaction with access to recreational equipment including weight lifting equipment.

TABLE II: INMATE

SYSTEM	CAN INMATES SMOKE IN FACILITIES? WITH WHAT RESTRICTIONS?
KANSAS	Depends on facility. Prohibited at reception & diagnostic unit & 3 facilities. Where smoking is allowed, it is restricted to inmate cellrooms. All correctional facilities will become smoke-free on 07/01/95. Facilities that now allow smoking are offering smoking cessation programs.
KENTUCKY	Depends on facility. Certain areas of certain institutions. New institutions will be smoke free for staff & inmates.
LOUISIANA	Yes, in all facilities. In dormitories allowed to smoke in the dayroom, but not in the bed area. Extended lock-down, admin. segregation & disciplinary detention inmates not allowed to smoke.
MAINE	No response
MARYLAND	Yes, in all facilities. Only in designated areas. Smoking policy is under review due to changes in regulation that impose statewide restrictions on smoking.
MASSACHUSETTS	Yes, in all facilities. All facilities allow smoking in the yard or designated site w/in the facility. Most living areas, program space & common areas are smoke free.
MICHIGAN	Depends on facility. Only 1 non-smoking facility. All other facilities have at least a few non-smoking cells, otherwise they may smoke in their cells.
MINNESOTA	Depends on facility. Restricted to individual cells or the recreation yard.
MISSISSIPPI	Yes, in all facilities. Only in designated areas.
MISSOURI	Yes, in all facilities. Only in immediate living area or outdoors.
MONTANA	No, not in any facility. All buildings smoke-free except for at least 1 designated smoking area in each.
NEBRASKA <i>Comm. Corr. Center Lincoln</i>	Yes. Inmates may smoke in a room occupied by 4 inmates who smoke. During all other times they must smoke outside the facility.
<i>Lincoln Corr. Center</i>	Yes. Only on the outside of the compound & inmate cells. No smoking w/in the facility buildings except by inmates in their cells. Segregation areas, except the Protective Custody Unit, are totally non-smoking.
<i>Hastings Corr. Center</i>	Yes. Outside & in assigned sleeping bays (3 of 4 bays allow smoking).
<i>Omaha Corr. Center</i>	Yes. Outside at all facilities. Inside smoking not allowed in State Buildings. The only exception to this is inmates may smoke in their own cell if the cell is a designated smoking cell.

Corrections COMPENDIUM, June 1995

TABLE II: INMATE

SYSTEM	CAN INMATES SMOKE IN FACILITIES? WITH WHAT RESTRICTIONS?
NEVADA	Yes, in all facilities except Nevada Medical Facility.
NEW HAMPSHIRE	Depends on facility. Inmates may smoke in cells only — not in common areas, education, visiting or dining room.
NEW JERSEY	Yes, in all facilities. In authorized smoking areas only.
NEW MEXICO	Yes, in all facilities. Areas are posted for non-smoking.
NEW YORK	Yes, in all facilities. In housing areas & outside.
NORTH CAROLINA	Depends on facility. Prohibited in dormitory area, medical area & kitchen areas.
NORTH DAKOTA	Yes, in all facilities. Only in living quarters (individual cells).
OHIO	Depends on facility. Some institutions are totally non-smoking, others have smoke restricted & permitted areas. Segregation areas are all non-smoking (disciplinary control, local control & admin. control).
OKLAHOMA	Yes, in all facilities. Only in designated areas.
OREGON	Depends on facility. Some facilities are non-smoking now, some are making the transition 04/01/95. All facilities will be smoke free by 10/01/95.
PENNSYLVANIA	Yes, in all facilities. Not in dining halls, most work areas, treatment areas & school. Most smoking is outside or in cells.
RHODE ISLAND	Yes, in all facilities. In cells & designated areas.
SOUTH CAROLINA	Depends on facility. Prohibited in Max units. In other facilities, prohibited in program service, food prep serving, recreation/gym, medical/dental, classrooms, libraries & chapels. Prohibited in meetings, counseling sessions & offices unless agreed upon by office occupants. Institution heads may designate non-smoking areas in dormitory areas.
SOUTH DAKOTA	Depends on facility. There are facilities that allow smoking in cells, facilities that allow smoking outdoors only & a facility & grounds that is entirely smoke-free.

TABLE II: INMATE

SYSTEM	CAN INMATES SMOKE IN FACILITIES? WITH WHAT RESTRICTIONS?
TENNESSEE	Yes, in all facilities. Of 20 facilities, 7 have designated non-smoking inmate housing units.
TEXAS	No, not in any facility. Effective 03/01/96, the use of tobacco products no longer allowed at any facility.
UTAH	No, not in any facility. None of the prison facilities allow smoking. If caught trying to illegally get tobacco into the facility, inmates are subject to disciplinary action.
VERMONT	Yes, in all facilities. Not inside the buildings.
VIRGINIA	Yes, in all facilities. In designated areas.
WASHINGTON	Yes, in all facilities (each is different). Smoking areas are clearly identified. Some facilities only allow smoking outside. Camps only allow smoking outside. No smoking in Intensive Management & segregation Units.
WEST VIRGINIA	Depends on facility. Restricted areas.
WISCONSIN	Depends on facility. Restricted to designated smoking areas only.
WYOMING	Depends on facility.
FEDERAL BUREAU OF PRISONS	All areas of BOP facilities & vehicles are no smoking unless specifically designated as smoking by Warden. Ordinarily, an outdoor area away from combustible materials is designated a smoking area. At all Low, Med, High, & Admin. institutions (except medical referral centers), Wardens identify outdoor smoking areas & may designate limited number of indoor smoking areas.
CANADIAN SYSTEMS	
ALBERTA	<i>No response</i>
B.C.	Yes, in all facilities. Limited to outdoors or in cells if adequate outdoor ventilation is available.
MANITOBA	Yes, in all facilities. Restricted to living location (cells) only or outside. No smoking in eating, visiting, gym & all other common areas.

Corrections COMPENDIUM, June 1995

IADOC NEWS RELEASE



Arizona Department of Corrections

Michael Arra
Public Information Officer

(602) 542-3133

1601 W. Jefferson St.
Phoenix, Arizona 85007

December 27, 1994

TONS OF WEIGHT EQUIPMENT DONATED

There are no more weights in Arizona's prisons and high schools and other organizations are the better for it.

The Arizona Department of Corrections has completed its goal of removing all weights and weight lifting equipment from all prisons around the state. Part of the process involved identifying organizations that would receive donations of the weights, which turned out to be the easiest part of the job. Response to the news that the Department would be donating the equipment away was great. Numerous high schools, middle schools, and non-profit organizations with athletic programs or strength and conditioning programs responded. Some of them include Mothers Against Gangs of Phoenix; the Eloy Boxing Club of Eloy; PREHAB of Arizona in Mesa; and Howenstine High School, which will use weights to train students for the Special Olympics.

The prisons making the donations and the schools or organizations receiving the weights are:

ASPC- Florence:

Mothers Against Gangs
Florence Middle School
Florence High School
Camp Verde High School
Youth Haven School
Supai Middle School
Eloy Boxing Club
Santa Cruz Union High School

JUN 24 1991 10:44 P.03:04

IADC NEWS RELEASE



Arizona Department of Corrections

Michael Arra
Public Information Officer

(602) 542-3133

1601 W. Jefferson St.
Phoenix, Arizona 85007

Globe Unified School District

ASPC- Eyman:

Carl Hayden High School
Florence Recreation Department
Florence High School
Coolidge Intermediate School
McCray Junior High School
PREHAB of Arizona

ASPC-Tucson:

Catalina High School
Desert View High School
Santa Rita High School
John A. Valenzuela Youth Center
Marana High School
Sahuaro High School
Howenstine High School

ASPC-Perryville:

Phoenix Union/Metro Tech
Tolleson Union High School
Peoria High School
Avondale Jr. High School

ASP-Yuma:

Antelope High School- Wellton
San Pasqual Valley High- Winterhaven

ASPC-Douglas:

Douglas Public Schools
Bisbee Public Schools
Tombstone Public Schools
Elfrida Public Schools

ASPC-Winslow:

Winslow High School
Verde Valley High School

ASP-Fort Grant:

Willcox High School
Bonita School District

ADOC NEWS RELEASE



Arizona Department of Corrections

Michael Arra
Public Information Officer

(602) 542-3133

1601 W. Jefferson St.
Phoenix, Arizona 85007

- ASPC-Safford: Thatcher High School
Pima High School
Superior High School
- ASPC-Phoenix: Phoenix Day School for the Deaf
Estrella Junior High School
Arizona State Hospital
Blue Ridge High School
Camp Verde High School
- ASP-Globe: Miami High School
Globe High School
- SACRC-Tucson: Tucson High School

The donated weight equipment's value was estimated to be in the hundreds of thousands of dollars. Weight equipment had been purchased over many years with money from the Department Athletic and Recreation Funds at each prison site.

It has been a long term objective of Corrections Director Sam Lewis to remove all weights from Arizona prisons, and a recent study determined they were the cause of approximately \$600,000 in medical services provided to inmates with weight lifting injuries last year. Weights also were frequently used by inmates to cause serious injury to other inmates in assaults, and for use in causing damage to state property during past prison disturbances.

Recipients of weight donations around the state have expressed overwhelming gratitude. From the Arizona Department of Corrections' perspective, the weights are now at places where they can do much more good than they ever could in the prisons.

#

For further information contact: Michael A. Arra, 542-3133

DAVE



FOR TODAY
TCN: 70479
RE: SB 1
TO: 2864

SENATOR DAVE DONLEY
ALASKA STATE LEGISLATURE

**CHANGES IN THE DRAFT CS SB 1 (JUD)
PREPARED BY SENATOR DONLEY**

- 1) **Representative Rokeberg**
Page 3, Line 21
Delete "90"
Insert "80"

Rationale: Gives the department a higher standard when budgeting for food service costs. In 1995 the Department of Corrections spent \$4.71 per person on food service costs while \$5.91 was spent on per day food service costs at Elmendorf Air Force base. This equates to a 80.5% ratio based on those figures.

- 2) **Representative Croft**
Page 3, line 23 following "the state":
Insert ";

Page 3, line 23 following "state":
Delete "use Alaska farm products and salmon to the greatest extent practicable;"

Page 6, lines 2 & 3 following "this section";
Insert "(2) Alaska farm products and salmon to the greatest extent practicable for food for prisoners in a state correctional facility operated by the state."

Rationale: Section #5 of the bill stipulates that commissioner may not provide certain things for prisoners. In this section however, the language requests the commissioner to use Alaskan products in its food service preparation. This amendment removes this language and places it into a new sub-section of the bill which should make the language easier to read.

- 3) **Representative Croft**
Page 4, line 9 following "or "NC-17""
delete "or that do not have a rating".

January-May: STATE CAPITOL • JUNEAU, AK • 99801-1182 • (907) 465-3892 • FAX: (907) 465-6595
June-December: 716 W. 4TH AVE. • STE. 430 • ANCHORAGE, AK • 99501 • (907) 258-8181 • FAX: (907) 258-1648

MEMBER: Senate Finance Committee • Legislative Budget & Audit Committee
• Senate Community & Regional Affairs Committee

Rationale: Concern is the existing language will be preclude inmates from watching certain movies which have no rating. Another concern raised is whether the language would preclude inmates from watching "home movies". The removal of this language should clear up those concerns.

#4) Representatives Croft & Porter

Page 4, lines 26 - 28

Section (E) of the previous version is broken into two separate sections (sections E & F of this version) which specifically define the prohibition of free weights.

Rationale: Removes confusion whether inmates may have access to free weights in those activities listed in (D) of the section.

#5) Representative Porter

Page 5, lines 14-18

Inserts language which precludes televisions in individual cells in maximum security facilities. Previous language precluded only those individuals classified as maximum custody under AS 33.30.011 (2).

Rationale: clearly defines which prisoners may have a TV in their cell.

#6) Representative Bunde

Page 6, line 6

Delete "The fee may not exceed \$2 a month."

Rationale: Removes the cap on how much the Department of Corrections may charge for fees for utility services. This gives the department the latitude to establish the most appropriate fee and allows them to charge accordingly in future years.

7) Department of Law/Representative Croft

Page 7, Line 17 after the word "prisoner's"

Insert "conviction or"

Rationale: According to the Department of Law a prisoner may gain access to the court to challenge the terms of their sentence and the terms of their conviction. This is a federal constitutional standard.

HJUD 4316



Alaska State Legislature

Please enter into the record my testimony to the House Judiciary
committee name

committee on SB 1, dated 3-21-1997
bill/subject

The did go to Colman Cove,
to take prisoners out to work these
fields for little leagues ect.

We had not no pet prisoners
didn't know what we were going to
get to work for us.

this idea of using half way
houses to get prisoners to work
for us half way houses. We have
no half way houses in valley and
I don't know what ward any.

Signed

Testifier

Representing (Optional)

PO Box 1562

Palmer 99645

Address

745-2245

Phone No.

House Judiciary Committee

904 488 6333

Florida

re: no. frills

SB 1 -

[Frank Sausser

Dir. of Institutions

[269 7405

SB

3

Croft

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. CSSB 3 (JUD)

Revision Date: _____
Title: "An Act authorizing prosecution and trial in the district court of municipal curfew violations"
Sponsor: Senator Pearce
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 ()	***	***	***	***	***	***
-------------------------------	-----	-----	-----	-----	-----	-----

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 CS reduces the fine to \$250 and permits community work service in lieu of it. With these reductions such penalty may not be considered criminal (see Booth v. State, 903 P.2d 1079 (Alaska App. 1995) and would therefore have no impact on the Public Defender Agency.

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: 4/25/97

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information, call the Governor's Legislative Office

HOUSE COMMITTEE REPORT

5/7/97
Finance

(7)
Date Referred to Committee: April 17, 1997 FURTHER REFERRALS:

Date of Committee Action: _____

The JUDICIARY Committee considered: CSSB 3(JUD)

CS FOR SENATE BILL NO. 3(JUD) MINOR'S CURFEW VIOLATIONS

"An Act authorizing prosecution and trial in the district court of municipal curfew violations, and providing for punishment of minors upon conviction for violation of a curfew ordinance."

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

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

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dept/Date)
 fiscal note(s) _____ ^{Senate} fiscal note(s) DFSS (Indeterminate) ^{2.21.97}
Admin (Indeterminate) ^{2.21.97} Adm (Indeterminate), COURT ^{2.21.97}
 zero fiscal note(s) _____ ^{Senate} zero fiscal note(s) DPS 2.21.97

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Brian D. Porter</i>	Porter			✓	
<i>John Green</i>	Green			✓	
<i>Monette James</i>	James	✓			
<i>Tom Burde</i>	Burde	✓			
<i>John Berkowitz</i>	Berkowitz		✓	✓	
<i>Nina Rolleberg</i>	Rolleberg	✓			
<i>Will Croft</i>	Croft			✓	
		(3)		(4)	

CHAIR'S SIGNATURE *[Signature]*

FISCAL NOTE

No. 1
 Bill Version: SB3
 (S) Publish Date: 2/21/97

**STATE OF ALASKA
 1997 LEGISLATIVE SESSION**

Revision Date: _____ Dept. Affected: Alaska Court System
 Title: Minor's Curfew Violation Heard in District Court BRU: Trial Courts
 Sponsor: Sen. Pearce and Donley Component: _____
 Requestor: _____ 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	24.3	24.3	24.3	24.3	24.3	24.3
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	24.3	24.3	24.3	24.3	24.3	24.3

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

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

Fund Source (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	24.3	24.3	24.3	24.3	24.3	24.3
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	24.3	24.3	24.3	24.3	24.3	24.3

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

Positions

Full-Time						
Part-Time	2.0	2.0	2.0	2.0	2.0	2.0
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

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

Phone: 264-8228
 Date: 02/20/97
 Date: 02/20/97

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

Alaska Court System
Fiscal Analysis
SB 3 ✕

SB 3 amends AS 47.12.030(b) to provide that if a minor is cited for violating a municipal ordinance which mandates a curfew, the minor shall be charged, prosecuted and sentenced in district court in the same manner as an adult.

It is anticipated that most municipalities will enact curfew ordinances. As drafted, SB 3 would allow municipalities to adopt criminal ordinances for which the penalty can be jail time, mandatory community service, or loss of a valuable license. Such ordinances would require the state to provide a jury trial. In addition, SB 3 would allow municipalities to require mandatory court appearances by juveniles. All citations which are contested will come before the court system, unless the municipality decides to pay for its own municipal hearing officer.

Based upon statistics generated during the first year of Anchorage's civil curfew system, which uses a municipal hearing officer rather than the court system, this note assumes that HB 474 will generate 3000 citations per year statewide. Noncontested citations may be paid directly to the municipalities; however, defendants may contest citations or enter guilty pleas at court. Thus, many persons subject to this section will come before a district judge and/or pay citations through the court's accounting system. This note assumes that no municipality will require a mandatory court appearance (probably an incorrect assumption), and that one-third of juvenile citations will be run through the court system; this is the rate at which the courts deal with other municipal citations. It should be kept in mind that the rate at which juveniles contest citations will depend on the size of fines set by the municipalities in their ordinances. This note also assumes that no municipality will criminalize curfew violations and require six-person jury trials. This last assumption is probably optimistic, in that some municipalities will likely criminalize repeat offenses or offenses by business owners who allow minors to remain on premises after curfew, if only to impose community service on the offenders.

Alaska Court SystemFiscal AnalysisSB 3 *^Personal ServicesPositions

	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Court Clerk II, range 10A, PPT, 4 months, Anchorage/statewide	\$8,420	\$2,169	\$10,589
Committing Magistrate, range 22B, PPT, Anchorage/statewide, 1 1/2 months	7,266	1,872	9,138
Overtime for In-Court Clerks at range 12A for additional trials			<u>4,600</u>
			<u>\$24,327</u>

Estimated Total Cost

\$24,327

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

N 3
BILL NO: Bill Version: SB3
 (S) Publish Date: 2/21/97

Revision Date: 02/17/97 Dept. Affected: Public Safety
 Title: Prosecute Juvenile Municipal Curfew BRU: Alaska State Troopers
Violations In District Court Component: Detachments
 Sponsor: Sen. Pearce
 Requestor: Senate HESS Committee **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 () Revenue Code	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

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

Estimate of current year (FY 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 would not have any significant fiscal impact on AST.

Prepared By: Capt. Ted M. Bachman Phone: 269-5650
 Division: Alaska State Troopers Date: 02/17/97

Approved by Commissioner: Ronald L. Otte Date: 2/18/97
 Agency: Department of Public Safety

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

For further distribution information call the Governor's Legislative Office

FISCAL NOTE

No. 2
 Bill Version: SB 3
 (S) Publish Date: 2/21/97

STATE OF ALASKA
 1997 LEGISLATIVE SESSION

Revision Date: _____
 Title: "An Act authorizing prosecution and trial in the district court of municipal curfew violations"
 Sponsor: Senator Pearce
 Requestor: (S) HES

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 ()	***	***	***	***	***	***
------------------------	-----	-----	-----	-----	-----	-----

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.)

This bill changes jurisdiction for violation of a municipal curfew ordinance from juvenile court to district court where the child will be prosecuted and sentenced in the same manner as if an adult. Fiscal impact will vary depending upon what degree of crime the municipal curfew ordinance establishes and whether or not the potential punishment gives rise to the right to appointed counsel. Without accurate numbers regarding referrals to the district court, fiscal impact is impossible to quantify.

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

Phone: (907) 264-4414
 Date: _____

Approved by Commissioner: Mark Boyer
 Agency: Department of Administration

Barbara K. Brink
 Date: 2/12/97

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information, call the Governor's Legislative Office

STATE OF ALASKA
1997 LEGISLATIVE SESSION

No. 4
Bill Version: SB3
(S) Publish Date: 2/21/97

Revision Date: _____
Title: Prosecution in district court of municipal curfew violations.
Sponsor: Senator Pearce
Requestor: Senate (HESS)

Dept. Affected: Health and Social Services
BRU: Family and Youth Services
Component: Probation Services
COMPONENT SERIAL NO. 2134
See also (SN#): _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	*****	*****	*****	*****	*****	*****

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

CHANGES IN REVENUES ()						
-------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

ANALYSIS: (Attach a separate page if necessary)

DFYS is not able to accurately project the fiscal impact of this bill on the division's detention beds. Changes to the juvenile code in recent years have given districts court authority to handle an increasing number of juvenile offenses, with minor consuming and smoking being two examples. District judges and magistrates in some jurisdictions have been issuing bench warrants for failure to appear and contempt citations for failure to pay fines, resulting in juveniles being detained for smoking infractions. We have no way to anticipate what the increase would be if municipal curfew violations were added. However, serious overcrowding already exists in DFYS detention facilities, and it seems unnecessary to increase detention admissions for such minor violations when there is inadequate space to house serious offenders.

SA/197

Prepared by: L. Diane Worley, Director
Division: Family & Youth Services
Approved by Commissioner: Karen Perdue, Commissioner
Agency: Department of Health & Social Services

Phone: 465-3191
Date: 02/10/97
Date: 2/12/97

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information, call the Governor's Legislative Office

STATE OF ALASKA

DEPARTMENT OF HEALTH AND
SOCIAL SERVICES

DIVISION OF FAMILY AND YOUTH SERVICES

TONY KNOWLES, GOVERNOR

P.O. BOX 110630

JUNEAU, ALASKA 99811-0630

PHONE: (907) 465-3170

FAX: (907) 465-3397

May 6, 1997

The Honorable Joe Green
Chair, House Judiciary Committee
Alaska House of Representatives
State Capitol
Juneau, Alaska 99801

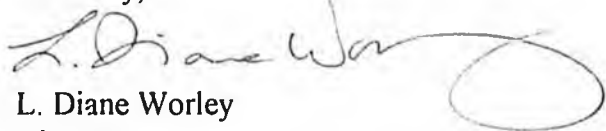
Dear Representative Green:

This letter is in response to Representative Jeannette James request for information during the April 25, 1997 Judiciary Committee hearing on SB 3 related to the case characteristics of those juveniles detained in our youth facilities by the district court for failure to appear or criminal contempt action related to tobacco, curfew and minor consuming alcohol offenses. The most significant impact occurred in Southeast where 16%, or 46 of the 288 detention admissions to the Johnson Youth Center, were related to district court action in these cases. Detentions for these offenses did occur in other regions in the state but were statistically insignificant when compared to the total number of detention admissions at the other regional facilities.

My analysis of the Johnson Youth Center detention admissions for FY 96 showed that 21% of these juveniles had no prior or post offense referrals to DFYS for delinquent offenses. 29% had delinquency referrals to DFYS for minor property offenses before or after their detention for an offense processed by the district court. The remaining 23 juveniles, 50%, were on formal juvenile probation prior to or following their status offense detention by the district court.

The impact on our detention resource in Southeast Alaska could have been reduced by 8% if sanctions available to the district court were limited to civil as opposed to criminal sanctions. Please let me know if you require additional information.

Sincerely,



L. Diane Worley
Director

A M E N D M E N T

*Sent to Pearce's
Office re:
Porter's
Went by to all points
so that a parent*

OFFERED IN THE HOUSE

TO: CSSB 3(JUD)

1 Page 1, line 1:

2 Delete "authorizing prosecution and trial in the district court of"

3 Insert "relating to"

4 Page 1, following line 5:

5 Insert a new subsection to read:

6 "(b) In a municipality that has acted by ordinance to provide for a curfew for
7 minors described in (a) of this section, the municipality may, by ordinance, also define
8 the offense of unreasonable failure to ensure the appearance of the minor before a
9 court or an administrative officer, as appropriate, in order to answer for a curfew
10 violation. The definition of the offense of unreasonable failure to ensure the
11 appearance of the minor before a court or an administrative officer, as appropriate, to
12 answer for the curfew violation must include failure of the parent or guardian of a
13 minor to enforce the minor's appearance at a hearing on the minor's violation of the
14 curfew ordinance of the municipality. The provisions of the ordinance authorized by
15 this subsection apply only if the municipality's ordinance requires that a copy of the
16 citation or other document charging the minor with violation of the municipality's
17 curfew ordinance is mailed to or served on the parent or guardian of the minor in a
18 timely manner so that the parent or guardian has reasonable opportunity to ensure the
19 appearance of the minor at the hearing."

20 Reletter the following subsections accordingly.

*the parent or
guardian notice*

*Failure to ensure
the child was
there*

Rough Draft

*Section 1. AS 29.10.200 is amended by adding a new paragraph to read:

(54) AS 29.25.070(e) (notice of ordinance enforcement against a minor).

*Sec. 2. AS 29.25.070(b) is amended by adding new subsections to read:

(b) The municipality or an aggrieved person may institute a civil action against a person, including a minor as provided in AS 47.12.280, who violates an ordinance. In addition to injunctive and compensatory relief, a civil penalty not to exceed \$1,000 may be imposed for each violation. An action to enjoin a violation may be brought notwithstanding the availability of any other remedy. On application for injunctive relief and a finding of a violation or a threatened violation, the superior court shall grant the injunction. Each day that a violation of an ordinance continues constitutes a separate violation.

*Sec. 3. AS 29.25.070 is amended by adding new subsections to read:

(e) The municipality shall provide written notice to the commissioner of health and social services or to the commissioner's designee of the commencement of a civil enforcement action for the violation of a ordinance under (b) of this section against a minor. Unless the commissioner and the municipality negotiate an agreement making other arrangements to satisfy the obligation imposed on the municipality by this subsection, the municipality may provide notice by mailing a copy of the citation or other document setting out the notice of the commencement of the civil enforcement action. This subsection applies to home rule and general law municipalities.

(f) In this section, "minor" means a person under 18 years of age.

Sec. 4. AS 47.12 is amended by adding a new section to read:

Sec. 47.12.280. **Civil penalties for violation of municipal ordinances.** (a) Except as

otherwise provided in this section, the enforcement of a civil penalty under AS 29.25.070(b) against a minor for violation of a municipal ordinance shall be heard in the district court in the same manner as for similar allegations brought against an adult, except that the minor's parent, guardian, or legal custodian shall be present at all proceedings.

(b) Allegations against a minor for a civil penalty under a municipal ordinance may be assigned to a hearing officer for resolution, if provided for by municipal ordinance.

(c) The court may allow a minor the option of performing community work in place of a part or all of any fine imposed for the violation of a municipal ordinance. In this section, "community work" includes the work described in AS 12.55.055(b) or work that, on the recommendation of the municipal or borough assembly, city council, or traditional village council of the minor's place of residence, would benefit persons within the municipality or village who are elderly or disabled. The value of community work shall be determined as provided in AS 12.55.055(c).

(d) An action for a civil penalty filed against a minor under this section does not give rise to a right to trial by jury or to counsel appointed at public expense.

LEGAL SERVICES

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

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

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

RECEIVED

MEMORANDUM


April 28, 1997

APR 28 1997

SUBJECT: Amendment to CSSB 3(JUD) (Work Order No. 20-LS0078/E.1)

TO: Senator Drue Pearce
ATTN: Myrna Maynard

FROM: Jack Chenoweth
Legislative Counsel



I am trying to be responsive to Representative Porter's desire to expand coverage of this bill to cover the parents or guardian of a minor who doesn't show up for a court hearing.

I don't know how else to easily involve the parents or guardian without independently providing notice and opportunity for the parent or guardian so that they are able to offer a defense. One defends against a criminal charge and, in this instance, it is the minor who is to be charged with the curfew violation, not the parent or guardian. By taking the curfew violation provisions out from under "delinquency" proceedings and requiring the minor to face the criminal charge directly, the minor who refuses or fails to appear is subject to the mechanisms in place that are applicable to any other defendant in a criminal action for failure to appear. Moreover, nothing in criminal law otherwise holds a parent or guardian liable for a minor's failure to appear in any criminal proceeding.

Consequently, the easiest approach, it seems to me, is to set out a separate criminal offense. Since all of this curfew matter is tossed at the municipalities to handle, the most logical approach would be to tell the municipalities that, if you have a curfew in place and are trying to enforce it, then you may also pass an ordinance that makes a criminal offense for the failure of a parent or guardian to ensure the minor's appearance at a hearing for breaking the curfew ordinance. That's all that this amendment proposes to do.

If this material is inserted as offered, the parent or guardian may, under a municipal ordinance, be separately charged, and the maximum fine recoverable from the parent or guardian is the same for the minor's conviction on the underlying curfew ordinance.

Senator Drue Pearce
April 28, 1997
Page 2

Inclusion of this additional alternative sanction addressed to parents of minors would not seem to defeat or interfere with the efforts in Anchorage to deal with curfew violations under its civil/administrative enforcement mechanism. This provision could be adapted by the Municipal Assembly to be covered by the civil/administrative enforcement mechanism.

Unfortunately, the bill has a narrow title--too narrow to accommodate this expansion of the subject matter without modification. You know the drill: if the material is to be inserted, a concurrent resolution should be prepared and offered that suspends the rule to allow for addition of material necessitating a change of title by the members of the second house.

JBC:glc
97-276.glc

SPONSOR STATEMENT FOR SB 3

Currently, juvenile offenses other than traffic, tobacco, fish and game, parks and recreational facilities, or alcohol violations, are handled through municipal courts where these exist, or are not handled at all because of the Division of Family and Youth Services caseload.

SB 3 will put in place a uniform approach to handling curfew violations. It will enable those communities who so wish to put a curfew ordinance into effect, with the ability to prosecute.

SB 3 will help the City of Juneau, where plans for a youth curfew were set aside because the city had no avenue to prosecute offenders. This bill will relieve municipalities from the burden of prosecution and will allow for more effective and expeditious handling of these offenses. Municipalities where Youth Courts are currently in place will not be affected. They may continue their current process.

SB 3 will mandate that all juvenile curfew violations be handled in District Court. Alaska Delinquency Rules will not apply, and the minor accused of the offense will be charged, prosecuted, and sentenced in the district court in the same manner as an adult. When a minor is charged, prosecuted and sentenced for an offense under this subsection, the minor's parent, guardian, or legal custodian will be present at all proceedings. When parents have to become involved with their children at these hearings, they will perhaps exert pressure and some of the gang activity will decrease. Juveniles, as well, will know their actions have direct, and serious, consequences.

The bill enables juveniles who are unable to pay the fine, or whose parents choose not to pay, to choose to participate in community work, which may be lower than the amount of the fine, but will have a more lasting impression on the individual who has to perform the work. "Community work" includes work that, on the recommendation of the municipal or borough assembly, city council, or traditional village council of the defendant's place of residence, would benefit persons within the municipality or village who are elderly or disabled.

SB

8

FISCAL NOTE

No. 1

STATE OF ALASKA
1997 LEGISLATIVE SESSION

Bill Version: SB8

(S) Publish Date: 1/29/97

Revision Date: 1/28/97
 Title: "An Act relating to the noise levels of airports and sport shooting facilities."
 Sponsor: Senator Halford
 Requester: Senate Transportation

Dept. Affected: Department of Law
 BRU: Civil Division
 Component: General Legal Services
 COMPONENT SERIAL NO. 2087

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)
 SB 8 will have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson *Joan M. Kasson*
 Division: Administrative Services Division
 Approved by Commissioner: Bruce M. Botelho *Bruce M. Botelho*
 Agency: Department of Law

Phone: 465-5370
 Date: 1/28/97
 Date: 1/28/97

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information, call the Governor's Legislative Office

4/16/97
Rules

(7)
Date Referred to Committee: February 27, 1997

FURTHER REFERRALS:

Date of Committee Action: 4/14/97

The JUDICIARY Committee considered:

SB 8 am

SENATE BILL NO. 8 am

AIRPORT/SHOOTING FACILITY NOISE LEVELS

"An Act relating to the noise levels of airports and sport shooting facilities."

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

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

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

[] fiscal note(s) _____

[] fiscal note(s) _____

[] zero fiscal note(s) _____

[/] ^{Senate} zero fiscal note(s) DEPT. OF LAW

1.29.97

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
	Croft	✓	✓		
	Rolfeberg	✓	✓		
	James	✓			
	Porter	✓			
	Green	✓			
	Bunde	✓			
	Berkowitz				✓
		(6)		(1)	

CHAIR'S SIGNATURE



Alaska State Legislature

Please enter into the record my testimony to the H Judiciary
 committee name
 committee on SB 8, dated 4-14-97
 bill/subject

1:00 - Teleconference

Testimony- Judiciary Committee regarding SB 8

I am opposed to Senate Bill 8 regarding the expansion of existing airports and shooting ranges. I am familiar with the air field in the Eagle River area which helped to prompt this particular legislation. However, this bill, where it might help out one constituency, it does nothing to assist my neighborhood.

We purchased our home in a quiet neighborhood many years prior to the development of the Grouse Ridge Shooting Range nearby our residence. At the moment, the nuisance and uncomfortableness of hearing shots while in your living room is tolerated as the owners of the shooting range shoot under voluntary operating hours. However, SB 8 would allow expansion of the number of shots fired within the range while disabling the neighborhoods affected from doing anything to protect their own quality of life or home values.

I am NOT anti-business or against the development of Alaska. You must not label my plea against SB 8 as 'not in my backyard' mentality. This bill unfairly allows loud and irritating noise to increase without allowing for ANY local interference or involvement. It disregards that Alaska is increasingly populated with quiet residential subdivisions that also have rights to exist.

Please do not support SB 8 as written. Please suggest that there must be another way to protect emerging businesses without jeopardizing and disregarding their neighbors.

Sincerely,

Emily Forstner

PO Box 3942
 Palmer, Alaska 99645
 907 373 7646

.no.



Official Business

Alaska State Legislature

Senate

**RICK
HALFORD**

State Capitol
Juneau, Alaska
99801-1182
Phone (907) 465-4958

P.O. Box 670190
Chugiak, Alaska 99567
Phone (907) 694-4958

600 E. Railroad Avenue
Wasilla, Alaska 99654
Phone (907) 376-4958

Senate Bill 8 Sponsor Statement

Noise at Airports and Sport Shooting Ranges

Airports and sport shooting ranges offer a public service as well as recreational opportunities and have become increasingly under attack in the lower forty-eight states. Since populations are tending to shift from urban to rural areas, new groups of citizens are moving into areas with existing airports and ranges. This encroachment has resulted in hundreds of lawsuits and complaints against airport and range owners and operators due to the noise level.

Senate Bill 8 was introduced to provide private airports and sport shooting ranges in Alaska protection from lawsuits if the action arises out of the noise level from normal operation or its uses; provided the facility was established before the person acquired the property or prior to any noise control ordinance or law.

Without the passage of SB 8 private airports and sport shooting ranges within Alaska will remain vulnerable to legal sanctions jeopardizing the opportunities they provide through their ongoing and traditional uses.

This issue was addressed by the 19th Legislature with Senate Bill 274. SB 274 passed the Senate by a vote of 17-1, and the House by a margin of 33-5, before being vetoed by the governor.

This piece of legislation is endorsed by the National Rifle Association, Alaska Air Carriers Association, the Alaska Outdoor Council, Alaska Boating Association and the Alaska Airmen's Association.

Thank you for your consideration.

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services
Department of Education
State of Alaska



Alaska State Legislature

Please enter into the record my testimony to the H Judiciary
 committee name /
 committee on SB 8, dated 4-14-97
 bill/subject

1:00 - Teleconference

Testimony- Judiciary Committee regarding SB 8

I am opposed to Senate Bill 8 regarding the expansion of existing airports and shooting ranges. I am familiar with the air field in the Eagle River area which helped to prompt this particular legislation. However, this bill, where it might help out one constituency, it does nothing to assist my neighborhood.

We purchased our home in a quiet neighborhood many years prior to the development of the Grouse Ridge Shooting Range nearby our residence. At the moment, the nuisance and uncomfotableness of hearing shots while in your living room is tolerated as the owners of the shooting range shoot under voluntary operating hours. However, SB 8 would allow expansion of the number of shots fired within the range while disabling the neighborhoods affected from doing anything to protect their own quality of life or home values.

I am NOT anti-business or against the development of Alaska. You must not label my plea against SB 8 as 'not in my backyard' mentality. This bill unfairly allows loud and irritating noise to increase without allowing for ANY local interference or involvement. It disregards that Alaska is increasingly populated with quiet residential subdivisions that also have rights to exist.

Please do not support SB 8 as written. Please suggest that there must be another way to protect emerging businesses without jeopardizing and disregarding their neighbors.

Sincerely,

Emily A. Forstner
Emily Forstner

PO Box 3942
Palmer, Alaska 99645
907 373 7646

No.

1:00 - Teleconference

Testimony- Judiciary Committee regarding SB 8

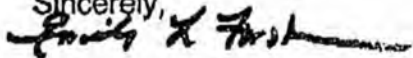
I am opposed to Senate Bill 8 regarding the expansion of existing airports and shooting ranges. I am familiar with the air field in the Eagle River area which helped to prompt this particular legislation. However, this bill, where it might help out one constituency, it does nothing to assist my neighborhood.

We purchased our home in a quiet neighborhood many years prior to the development of the Grouse Ridge Shooting Range nearby our residence. At the moment, the nuisance and uncomfotableness of hearing shots while in your living room is tolerated as the owners of the shooting range shoot under voluntary operating hours. However, SB 8 would allow expansion of the number of shots fired within the range while disabling the neighborhoods affected from doing anything to protect their own quality of life or home values.

I am NOT anti-business or against the development of Alaska. You must not label my plea against SB 8 as 'not in my backyard' mentality. This bill unfairly allows loud and irritating noise to increase without allowing for ANY local interference or involvement. It disregards that Alaska is increasingly populated with quiet residential subdivisions that also have rights to exist.

Please do not support SB 8 as written. Please suggest that there must be another way to protect emerging businesses without jeopardizing and disregarding their neighbors.

Sincerely,



Emily Forstner

PO Box 3942
Palmer, Alaska 99645
907 373 7646

Post-it® Fax Note 7671		Date 4-14-97	# of pages 1
To A-10	From Forstner		
Co./Dept.	Co.		
Phone #	Phone # 373 3242		
Fax # 3766150	Fax # 373 3649		



Official Business

Alaska State Legislature

Senate

**RICK
HALFORD**

State Capitol
Juneau, Alaska
99801-1182
Phone (907) 465-4958

P.O. Box 670190
Chugiak, Alaska 99567
Phone (907) 694-4958

600 E. Railroad Avenue
Wasilla, Alaska 99654
Phone (907) 376-4958

Senate Bill 8 Sponsor Statement

Noise at Airports and Sport Shooting Ranges

Airports and sport shooting ranges offer a public service as well as recreational opportunities and have become increasingly under attack in the lower forty-eight states. Since populations are tending to shift from urban to rural areas, new groups of citizens are moving into areas with existing airports and ranges. This encroachment has resulted in hundreds of lawsuits and complaints against airport and range owners and operators due to the noise level.

Senate Bill 8 was introduced to provide private airports and sport shooting ranges in Alaska protection from lawsuits if the action arises out of the noise level from normal operation or its uses; provided the facility was established before the person acquired the property or prior to any noise control ordinance or law.

Without the passage of SB 8 private airports and sport shooting ranges within Alaska will remain vulnerable to legal sanctions jeopardizing the opportunities they provide through their ongoing and traditional uses.

This issue was addressed by the 19th Legislature with Senate Bill 274. SB 274 passed the Senate by a vote of 17-1, and the House by a margin of 33-5, before being vetoed by the governor.

This piece of legislation is endorsed by the National Rifle Association, Alaska Air Carriers Association, the Alaska Outdoor Council, Alaska Boating Association and the Alaska Airmen's Association.

Thank you for your consideration.

LEGAL SERVICES

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

JAN 17 1997

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

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

MEMORANDUM

January 16, 1997

SUBJECT: Sectional Summary of SB 8 (Work Order 20-LS0135\A)

TO: Senator Rick Halford
Attn: Brett Huber

FROM: *TB*
Theresa Bannister
Legislative Counsel

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

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

Section 1. Adds a new chapter relating to the noise levels of sport shooting facilities and private airport facilities.

Sec. 34.75.010(a) prohibits the bringing of a civil or criminal action against a person who operates or uses a sport shooting facility or a private airport facility, if the action is based on the noise level from the normal operation or use of the facility. Establishes certain conditions for the application of this provision.

Sec. 34.75.010(b) states that (a) does not apply to a contract action or to certain personal injury actions.

Sec. 34.75.010(c) prohibits a person from bringing a nuisance action for noise level against a sport shooting facility or a private airport facility located in the vicinity of the person's property if the facility was established before the person acquired the property. Establishes some exceptions to this prohibition.

Sec. 34.75.020 sets a time limit on bringing a nuisance action against a sport shooting facility or a private airport facility for noise level. The time limit is five years after the facility is established or begins operation, or three years after a substantial change in the use of the facility.

STATE OF ALASKA

DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

P.O. BOX 112100
JUNEAU, ALASKA 99811-2100
PHONE: (907) 465-4700
FAX: (907) 465-2948

333 W. 4TH AVENUE, SUITE 220
ANCHORAGE, ALASKA 99501-2341
PHONE: (907) 269-4500
FAX: (907) 269-4520

April 10, 1997

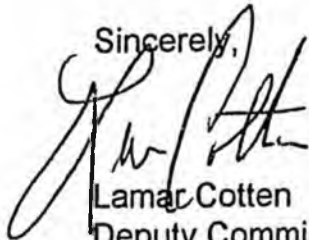
The Honorable Rick Halford
Alaska State Senator
State Capitol Room 121
Juneau, Ak 99801

Subject: SB 8

Dear Senator Halford:

This letter serves as a follow up to conversations with your staff concerning SB 8 (Airport/Shooting Facility Noise Levels). As you will recall, ADCRA expressed initial concerns about possible negative implications of this bill. However, because of the changes made as a result of via discussions with your office, AML and ADCRA, we are no longer objecting to the bill.

Sincerely,



Lamar Cotten
Deputy Commissioner



NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
555 CAPITOL MALL, SUITE 455
SACRAMENTO, CA 95814
(916) 446-2455

January 16, 1997

Senator Rick Halford
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

Dear Senator Halford,

On behalf of the over 25,000 Alaska members of the National Rifle Association, let me take this opportunity to thank you for introducing Senate Bill 8 and to indicate strong support for the bill. Firearms shooting ranges are under attack across the United States and it is important to head this off, particularly in a state like Alaska which has such a strong firearms and shooting heritage.

Firearms shooting ranges have established a long tradition of service to a wide variety of citizen groups in local communities. However, population shifts from urban to suburban or rural areas have moved new groups of citizens in closer proximity to existing ranges. In recent years, this encroachment on previously existing ranges has resulted in hundreds of lawsuits and complaints filed by newcomers against range owners and operators or the passage of local ordinances aimed at closing ranges because of noise.

It is critical that the state of Alaska adopt SB 8 to ensure that ranges remain open for operation so as to provide safe places for the use of firearms. Range owners and operators must be protected from civil court action, criminal prosecution, or other local restrictions. SB 8 would only protect existing ranges and existing activity levels. This legislation would not tie the hands of local government to regulate the location of future ranges nor limit local government from regulating unsafe ranges.

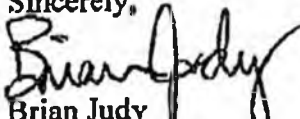
Firearm shooting ranges have longstanding records of safely providing important public services and recreational or training opportunities and often serve as training facilities for local law enforcement officials and military personnel. In addition to serving as locations to hold both informal practice sessions and organized competitions for those engaged in recreational shooting, firearm ranges offer firearm and hunter education and safety courses, providing invaluable hands-on instruction in the safe and proper handling and use of firearms.

January 16, 1997
Senate Bill 8
Page 2

Without the protection afforded by Senate Bill 8, shooting ranges which currently offer valuable public services and recreational opportunities while posing no hazard to nearby residents will continue to remain vulncrable to arbitrary legal or legislative sanctions. To date, eighteen other states have passed range protection legislation similar to SB 8, including Idaho, Indiana and Oklahoma which passed their laws just last session.

Senate Bill 8 is an important piece of legislation which will provide real benefits to Alaska's law-abiding firearm users and to the public at large.

Sincerely,


Brian Judy
Alaska State Liaison



January 17, 1997

Alaska Boating Association • P.O. Box 210430 • Anchorage, Alaska 99521

Senator Rick Halford
Alaska State Senate
State Capitol, Interdepartmental Mail Stop: 3101
Juneau, AK 99801-1182

Dear Senator Halford:

This letter is in response to your proposed SB0008 relating to the noise levels of airports and sport shooting facilities. At a regularly scheduled meeting of the Alaska Boating Association held on January 16, 1997, our organization voted unanimously to join the National Rifle Association, Alaska Air Carriers Association, Alaska Outdoor Council, and the Alaska Airmen's Association in endorsing this piece of legislation. This letter communicates to you our official position on this legislation.

In addition, many of our individual members will be corresponding with individual letters, POM's, testimony at teleconferences, etc. This bill is important to all of us for if it is not passed opportunities provided through ongoing and traditional uses may become jeopardized.

Thank you for your efforts and continue to keep us informed of any and all related legislative matters we can be effective in supporting.

Yours truly,

A handwritten signature in cursive script, appearing to read "Roy J. Burkhart".

Roy J. Burkhart, Legislative Affairs Officer
Alaska Boating Association
Voice:(907)495-6337 FAX:(907)495-6338 E-Mail: rjburk@alaska.net

cc: Donald Sherwood, President, Alaska Boating Association
Senator Drue Pearce, Co-Sponsor SB0008, Alaska State Senate

- Dedicated to the rights of Alaskan Boaters -

Kent Lee Woodman

12920 Hillside Drive, Anchorage, Alaska 99516-3260 USA

[1] (907) 345-1356 FAX [1] (907) 345-1626 M4Ctel 244-2388

E-Mail: CompuServe 71043.2035 - Internet: 71043.2035@Compuserve.com

TELEX: 3762848 COMPUSERVE (attn: 71043,2035)

REPORT TO THE BOARD ALASKA AIRMEN'S ASSOCIATION, INC. Real Estate Legislation Proposal

BACKGROUND: A number of years ago, when I was relatively new to the Board, a developer built a number of residential units off to the east side, north end of the *Lake Hood Strip*. We were all quite surprised how close they were to the flightpath and to the airstrip, as we all somehow imagined airport property extended further to protect operations.

At the time, several mentioned that we could certainly expect those new residents to "discover" the airport and make moves to close it or restrict operations to control sound. They did, in fact do that, though *Lowell Thomas Jr* and others off the south end of the main airport raised such a stink about the then new north-south runway, that this cluster at *Lake Hood* was not in the papers.

As far as I was concerned, that was the clincher. I wanted to do something to protect such residential creep on airports. My idea at the time was to pass State legislation which would require that any person purchasing property (residential or commercial) within a certain radiussay 2 nautical miles, be required to sign a statement in his or her closing documents something like:

"I have personal knowledge that there is/are airport/s within ___ nautical miles of this property. I have been to the airport and I have an idea of the nature of aeronautical operations there. I understand that airports and airplanes make noise, and that subject to airport and FAA regulations, I can expect to hear these aircraft operations under certain conditions.

I do NOT hereby give up any rights to protest undue noise or operations deemed to be excessive, but I DO hereby acknowledge the presence and historic operations of the airport/s and I DO hereby give up my right to be "surprised" in the future, to discover the noise and participate in efforts to close the airport/s for historical patterns of operations."

BOTTOM LINE: I propose that this would be a good project for the Airmen to complete and for which to take credit when it is signed into law. It will take some research, drafting and some lobbying to get it in form and find sponsors and get it passed. I am willing to do that, time available, between making a living and other emergencies, and would aim at having a draft ready for the winter session.

On the DOWN side, the only opposition I can imagine would come from one (1) of two (2) places:

1. Individual property owners: They are not organized and there is no one agency or voice to speak for them.

2. Realtors: They ARE organized and can speak, but if it is crafted carefully and if our intent is clear and we do our homework, I see no problems of significance.

Respectfully submitted this 08th day of June 1995:

KENT LEE WOODMAN, Member

Past director and V.P.

end end end

-3-



ALASKA OUTDOOR COUNCIL

P.O. BOX 2790

PALMER, AK. 99645

(907) 376-2913

Jan. 14, 1997

The Honorable Rick Halford, Chair
Senate Resources Committee
Alaska State Capitol
Juneau, Ak. 99801

Dear Senator Halford:

The Alaska Outdoor Council and its member organizations strongly support SB 8 and appreciate your continued efforts on the behalf of the citizens of Alaska to protect traditional activities important to them.

SB 8, "An act relating to the noise levels of airports and sport shooting facilities" is an important effort to maintain the opportunity to pursue traditional activities inherently important to many Alaskans. As you are well aware, most long time Alaskans have recently found themselves constantly fighting the increasing involvement of government in their lives. The Alaska Outdoor Council feels it is time to work towards reducing the level of government in our daily lives and look at efforts like SB 8 as a good start in the fight to protect and maintain traditional Alaskan activities.

Once again, the AOC would like to thank you Senator for your efforts supporting the traditions our members value. If there is something further we can do to assist you in this effort, please feel free to contact us.

Sincerely,

Rod Arno
President

cc: Senator Pearce

February 13, 1997

Senator Rick Halford
Alaska State Senate
State Capitol, Inderdepartmental Mail Stop: 3101
Juneau, AK 99801-1182

Dear Senator Halford:

We are sending this letter in support of your SB0008 relating to the noise levels of airports and sport shooting facilities. In addition we are sending a copy of this reply to all Senators and the Governor asking for their support of this very worthwhile proposed legislation.

It is a shame that people encroaching on the areas of existing airports and sport shooting ranges feel that they must complain against these existing operations due to noise levels. This simply is something the individuals should have taken into consideration before they bought property of otherwise elected to utilize areas in or near existing operations.

There is one area with laws already in existence that can be used here to show how similar usage considerations have been resolved. There probably is no area in the State Statutes that has any more stringent rules than the laws governing alcoholic beverage licensing under Title 4. Within that Title, Section 04.11.410 states that an alcoholic beverage license cannot be approved within a specified distance from an existing school or church. However, within the same section, it clearly states that any alcoholic beverage license approved prior to the existence of any school or church coming into existence within those distance constraints cannot be revoked. The same laws should apply to the conditions that affect your proposed bill.

We strongly support this legislation and encourage all those copied on this letter to do likewise.

Thank you,

Roy J. Burkhart
E. June Burkhart

E. June and Roy J. Burkhart

P.O. Box 204

Willow, AK 99688-0204

Voice: (907)495-6337 FAX:(907)495-6338 E-Mail Address: rjburk@alaska.net

cc: Tony Knowles, Governor, State of Alaska
All Senators, Alaska State Senate

Jimmie E. Coleman
HC-33 Box 3200
Wasilla AK 99654
376-5175

April 9, 1997

Editor,

I would like to respond to Mr. Richard A. Francavilla's letter in the Frontiersman dated April 8, 1997 regarding the passage of SB8.

I live about 350 yds from Grouse Ridge Shooting Range. I own 10 acres of land and a home, never, never has any activity at Grouse Ridge Shooting Range caused me any problems, nor has it lowered the value of my property. Just look at the yearly climb of my property taxes.

Over 20 years ago, I contacted Mr. Francavilla about buying 40 acres of his property on Tax Al Drive. His answer to me was no, I am waiting to see where directions of the oil drilling is going. Since that time, I have talked to him at least twice about the land. Both times he said he had bought the land for investment purposes and wanted to sell the whole 160 acres in one piece. From my discussions with him, he has never had any intentions of ever living on the land.

It is my opinion that Mr. Francavilla's opposition to SB8 is one of greed and greed alone.

No I don't shoot trap & skeet, but I believe in freedom and the sooner SB8 is passed the better off we will be.

Jimmie E. Coleman
Wasilla

Harry W. Brunnhoelzl
Po Box 1028
Palmer AK 99645
907-376-5400
907-376-6500 FAX

April 9, 1997

Editor:

Recent letters from Mr. Richard A. Francavilla, a resident of Staten Island N.Y., has grossly misrepresented the need for passage of SB8 and the good intentions of Sen. Rick Halford in trying to protect the rights of Alaskans who have constructed private air strips near their houses and gun clubs, like ourselves, from being forced out by subdivision encroachment.

My family and I own Grouse Ridge Shooting Grounds, a trap, skeet and sporting clay target facility, located almost 8 miles north of the Parks Hwy. In an area consisting almost exclusively of large tracts of land.

Mr. Francavilla was introduced to me last July by George Struthers, one of our closest neighbors. Mr. Francavilla had made the trip from New York to Alaska to investigate the possibility of selling his property and investing the money in another property closer to his residence on Staten Island and summer place in New Jersey.

During our negotiation with Mr. Francavilla, which lasted over six months, he stated in his New York style that he could be either our best friend or our worst enemy. A high market price of \$265,000 was agreed upon for the sale of his 160 acre parcel. The negotiations broke down when we could not comply with his demands to structure the sale to comply with IRS 1031 exchange provisions, which would allow him to reinvest without having to pay capital gains taxes on this property.

Our family is making a dedicated, life long commitment to the Mat Valley. We have lived, and worked here for over 20 years and have employed only local residents.

Please support Sen. Rick Halford and Sen. Lyda Green in their valiant efforts to protect our Alaskan lifestyle. Mr. Francavilla is a carpetbagger and he has no interest in our Valley except for the money he can extract.

Harry W. Brunnhoelzl
Palmer



217 Second Street, Suite 200 • Juneau, Alaska 99801 • Tel (907) 586-1325, Fax (907) 463-5480

February 3, 1997

Senator Rick Halford
State Capitol
Juneau, AK 99801

Dear Senator Halford:

Thank you for the opportunity to work with you on SB 8, relating to noise levels of airports and shooting facilities.

The Transportation, Utilities & Environment Policy Subcommittee and the Land Use, Resources and Economic Development Policy Subcommittee of the AML Legislative Committee discussed the legislation via teleconference. Municipalities recognize the right of the state to assume control and liability for certain statewide regulatory concerns.

The municipalities' biggest concern about the bill is clarifying the balance of rights between property owners regarding changes in the use of the facilities and its affect on existing surrounding private property owners. We understand the issue of people moving into an area where there is an existing airstrip or shooting range and complaining about noise after the fact. However, if, for example, an airstrip is historically used for landing a single small airplane but suddenly becomes a landing pad for helicopters, the neighbors could have a right to be upset at the change in noise levels.

At the recommendation of our legislative subcommittees, we suggest the language be changed under Sec. 34.75.010 (b) to clarify this intent. Beyond this amendment, the AML does not have further comments, nor will it oppose the bill as curenly written with the amendment. The proposed clarification takes the language in (c) in the same section, and adds it to (b) to make it clear that the provision applies to both nuisance actions and regulatory exemptions:

- (b) The exemption [prohibition] in (a) of this section do not apply to an action that arises out of
- (1) a contract; or
 - (2) a personal injury suffered by a person while on the premises of the facility; or
 - (3) substantial change in use of the facility.

Again, we appreciate the opportunity to work with you and your staff on this legislation and if you have any questions, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin C. Ritchie', written over a horizontal line.

Kevin C. Ritchie
Executive Director

cc: Senate Resources Committee
AML Legislative Committee

c:\jkl\eg97\eb81r.doc

Member of the National League of Cities and the National Association of Counties



JAN 17 1997

ALASKA AIR CARRIERS ASSOCIATION

117 E. 35th Avenue, Suite 102
Anchorage, Alaska 99508
(907) 277-0071 Fax (907) 277-0072

January 14, 1997

Senator Rick Halford
Alaska State Senate
State Capital Building
Juneau, AK 99801-1182

via fax: 465-4928

Re: SB8 Noise Levels at Private Airports

Dear Senator Halford,

The Alaska Air Carriers Association, representing more than 100 air carriers operating throughout Alaska, supports the legislation you have introduced relating to noise levels at airports and shooting facilities.

If we can be of further assistance in the promotion of SB8, please contact this office.

Best Regards,

Kimberly S. Daniels Ross
Executive Director

cc: AACA Board of Directors

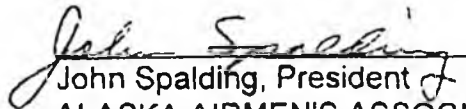


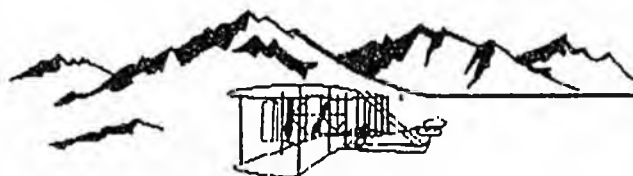
ALASKA AIRMEN'S ASSOCIATION., INC.

RESOLUTION

The Alaska Airmen's Association hereby resolves that the Alaska Legislature adopt proposed Senate Bill 8 relating to the noise levels of airports and sport shooting facilities.

So Resolved this 21 day of January, 1997


John Spalding, President
ALASKA AIRMEN'S ASSOCIATION, INC.



ALASKA AIRMEN'S ASSOCIATION., INC.

January 16, 1997

sent by facsimile

Senator Rick Halford
State Capitol Building, Room 508
Juneau, AK 99801-1182

Ref: SB-8

Dear Senator Halford: *Rich.*

It is the position of the Alaska Airmen's Association to strongly support SB-8, which is an act relating to the noise levels of airports and sport shooting facilities. In the definition of "airport facility" which currently reads "private area of land or water that is used or intended for use for the landing and take-off of aircraft", we are in support of you including heliports.

The Alaska Airmen's Association would like to thank you for the opportunity to review and submit our position on this important bill.

Sincerely,

John Spalding
John Spalding
President



Alaska State Legislature

Please enter into the record my testimony to the H Judiciary
committee name
committee on SB 8, dated 4-14-97
bill/subject

1:00 - Teleconference

Testimony- Judiciary Committee regarding SB 8

I am opposed to Senate Bill 8 regarding the expansion of existing airports and shooting ranges. I am familiar with the air field in the Eagle River area which helped to prompt this particular legislation. However, this bill, where it might help out one constituency, it does nothing to assist my neighborhood.

We purchased our home in a quiet neighborhood many years prior to the development of the Grouse Ridge Shooting Range nearby our residence. At the moment, the nuisance and uncomfortableness of hearing shots while in your living room is tolerated as the owners of the shooting range shoot under voluntary operating hours. However, SB 8 would allow expansion of the number of shots fired within the range while disabling the neighborhoods affected from doing anything to protect their own quality of life or home values.

I am NOT anti-business or against the development of Alaska. You must not label my plea against SB 8 as 'not in my backyard' mentality. This bill unfairly allows loud and irritating noise to increase without allowing for ANY local interference or involvement. It disregards that Alaska is increasingly populated with quiet residential subdivisions that also have rights to exist.

Please do not support SB 8 as written. Please suggest that there must be another way to protect emerging businesses without jeopardizing and disregarding their neighbors.

Sincerely,

Emily Forstner

PO Box 3942
Palmer, Alaska 99645
907 373 7646

.10.

April 9, 1997

Letters to the Editor (FAX: 352-2277)
The Frontiersman
1261 Seward Meridian Road, Suite F
Wasilla, Alaska 99654

This letter was "sparked" by a letter by Richard Francavilla in today's issue of the Frontiersman. It concerns SB-8 which, I understand has passed the Alaska Senate and is scheduled for a vote in the House early next week. I'll appreciate it if you can squeeze it in on Friday's issue.

Editor:

The last issue of this paper contained a letter by Richard Francavilla, of New York who claims to have "Alaska in his blood" but complained about Senate Bill-8 which is intended to protect established airstrips and shooting ranges from sanctions over the noise which they generate. Presumably Francavilla has owned has a parcel near Hatcher Pass since Territorial Days. He wishes to return to Alaska to retire nearby, but is concerned about the potential noise which might disturb him. Before that time, however, he enjoys the amenities and solitude of New York.

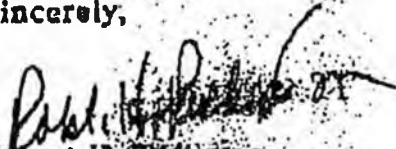
I too, am "originated" from the New York, have had Alaska in my blood since about 1948, but didn't arrive until '71. My migration to Alaska was to leave behind the attitudes that I found in that part of our country. Mr. Francavilla's letter epitomizes those attitudes. They are not very different from what we experience from some "migrants" from Anchorage, who buy land and build in the Valley, and then proceed to change the Valley to make it more urban.

It is hoped that readers who came to Alaska, for the love of Alaska and the personal freedom which living here provides, will soon contact members of the Alaska House and urge support for SB-8.

Bob Parkerson

You can verify the authenticity of this letter by calling my listed Palmer telephone number, 745-4358. Thank you.

Sincerely,


Robert H. Parkerson
HC 02, Box 7638-A1
Palmer, Alaska 99645

Department of Law, Proposed Amendment
Senate Bill 8 am
April 14, 1997

Page 2, line 8, after "person"
delete: "may not bring"
insert: "who brings"

Page 2, line ~~8~~⁹, after "property"
insert: "must,"

Page 2, line 10, after "property"
insert: "demonstrate that the
noise was grossly
unreasonable."

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO

1031 WEST 4TH AVENUE SUITE 200
ANCHORAGE ALASKA 99501-1931
PHONE (907)269-5100
FAX (907)276-3697

KEY BANK BUILDING
100 CUSHMAN ST. SUITE 400
FAIRBANKS ALASKA 99701-4579
PHONE (907)451-2911
FAX (907)451-2846

P.O. BOX 110300-DIMOND COURT-HU
JUNEAU ALASKA 99811-0300
PHONE (907)465-3600
FAX (907)465-8735

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 13, 1997

The Honorable Tim Kelly
Chair
Senate Rules Committee
State Capitol
Juneau, AK 99801-1182

Re: Department of Law Concerns
with Senate Bill 8

Dear Senator Kelly:

The Department of Law, on behalf of the executive branch, has four specific concerns with Senate Bill 8, "An Act relating to the noise levels of airports and sport shooting facilities." Because the bill was moved out of the Senate Resources Committee while we were in the middle of our presentation, these concerns have not yet been noted on the record. However, I have personally discussed Concern #4 with Brett Hubber of Senator Halford's staff and he will entertain amendments from us to assuage that concern. The purpose of this letter is to ensure that all of our concerns are noted before this bill moves out of the Senate.

The four concerns are:

1. As law, the bill will reduce fluidity of land use.
2. The bill is a legislative endorsement of unreasonable actions.
3. Noise is a local, not a statewide, issue.
4. Either the bill violates the Alaska Constitution or fails to clearly state what it means.

The Honorable Tim Kelly
Chair, Senate Rules Committee

February 13, 1997

Each of these is discussed in detail throughout the remainder of this letter.

Concern 1: THE BILL REDUCES FLUIDITY OF LAND USE AND INHIBITS GROWTH OF AN AREA BECAUSE IT COMPLETELY BARS NEW ARRIVALS FROM COMPLAINING ABOUT NOISE.

Explanation:

The bill completely bars a person from challenging noisemakers in court if that person acquired land in the vicinity of the noisemaker after the noisemaker started making noise. See, Proposed Section 34.75.010(a), (c); Page 1 lines 9-11, and page 2 lines 7-9. This doctrine -- that a person may complain about another only if the complainant was there first -- is known as "coming to the nuisance." As a complete bar to complaints, the doctrine was first recognized in England in 1838 but was abandoned there in 1878. It has never received widespread acceptance in American courts. On the contrary, it is generally repudiated by our judiciary. 5 Powell, Real Property (1995), ¶ 704[3] at 64-48.

In America, "coming to the nuisance" is one factor the courts consider when a person challenges a noisemaker but it is not a complete bar to the litigation. The reason for this has been explained in the Restatement of Torts, a compilation of America's common laws:

If people were barred from court because they came to the nuisance, those who settled in an area would acquire complete control over the future of adjoining and nearby land. This would inhibit and impair the fluidity of land use. Yet, fluidity of land use is a basic aspect of the American economy.

4 Restatement of Law 2d, Torts (1979), § 840D, comment b, (paraphrased, not quoted).

This same concern was stated differently in a treatise on American Real Property law (Powell, *supra*):

is a state
presumptively
appropriate
claim

The Honorable Tim Kelly
Chair, Senate Rules Committee

February 13, 1997

If new landowners were barred from court because they came to the nuisance, an existing landowner could, by setting up an activity or a condition that results in a nuisance, condemn all the land in his vicinity to a servitude without paying any compensation and so could arrogate to himself a good deal of the value of adjoining land.

(paraphrased, not quoted). We think it important that the legislature recognize it is embracing a doctrine that has been rather widely rejected by others because the doctrine inhibits logical growth of a community and reasoned development of realty.

Concern #2: THE BILL PREVENTS A LANDOWNER FROM ABATING ANOTHER PERSON'S ACTIVITIES EVEN WHERE THOSE ACTIVITIES UNREASONABLY INTERFERE WITH THE LANDOWNER'S USE AND ENJOYMENT OF HIS OWN PROPERTY.

Explanation:

A "nuisance" is, by definition, one person's unreasonable interference with a landowner's use and enjoyment of the landowner's property. 4 Restatement of Law 2d, Torts (1979), §§ 821B and 822. The key word is UNREASONABLE. We do not comprehend any rational basis for mandating that one landowner suffer unreasonable interference from another.

Moreover, in a nuisance action a landowner is protecting his own property. *Id.* at § 821D. Under common law, a landowner does not have a noise-based nuisance action against another unless the other's activities create noises that cross over to the landowner's property. *Id.* at § 821E. Thus, a nuisance case is not a situation where one person gets to tell another how the other should use his own land; it is a situation where one person gets to tell another that the other cannot also "use" the first person's land. We must wonder aloud why this legislature deems it appropriate to divest some landowners of the right to quietude that normally accompanies property ownership.

Nor do we understand why the bill fails to acknowledge that "reasonableness" changes over time. Had this legislature

The Honorable Tim Kelly
Chair, Senate Rules Committee

February 13, 1997

convened in Juneau when the old stamp mills were running, the legislators would have had to yell to be heard in their chambers. It was reasonable, at that time, for the local mining activity to be so noisy. Now, we think it fair to say that few legislators would accept such noise during the entirety of the session. Common law recognizes the evolution of reason. *Id.* at § 821F, comments c - f and § 826, comments b - c. We see no legitimate state interest in an act that fails to recognize that evolution but instead locks citizens into a status quo that may well become atavistic and anachronistic.

Concern #3: NOISE IS A LOCAL CONCERN.

Explanation:

No single noise travels throughout the state. For this reason courts deal with noise issues on a very local, site specific basis. E.g., Krueger v. Mitchell, 332 N.W.2d 733 (Wis. 1983) (airport noise); Gray v. Barnhart, 601 A.2d 924 (Pa. 1992) (shooting range noise), Soja v. Factoryville Sportsmen's Club, 610 A.2d 491 (Pa. 1992) (shooting range noise). While it is true that some control of aircraft noise has been taken over by the federal government, the only aircraft noise issues left to the control of other governments are peculiarly local. Cf., City of Burbank v. Lockheed Air Terminal, Inc., 411 U.S. 624 (1973) with Krueger, *supra*. We doubt there is any legitimate state interest in such local issues that justifies usurpation of control from the people most directly affected by the noise.

Concern #4: THE BILL IS AMBIGUOUS AND MAY VIOLATE THE CONSTITUTION.

Explanation:

Article I, Section 15 of the Alaska Constitution prohibits any law that irrevocably grants a special privilege or immunity. The proposed Section 34.75.010(a) grants a special privilege to operators of certain airports and shooting ranges: they may make lots of noise. That privilege is special because it is not given to public airports or shooting ranges; it is not given

The Honorable Tim Kelly
Chair, Senate Rules Committee

February 13, 1997

to noisy types of activities other than airports or shooting ranges; it is not given to private airports and shooting ranges that start up in an already established, quiet community.

The proposed Section 34.75.010(a) also immunizes certain facilities from suit and the proposed Section 34.75.030 immunizes them from regulation.

If these privileges and immunities are irrevocable, they are unconstitutional. These privileges and immunities are irrevocable if they are not limited or lost following a substantial change in the use of the facility. Are these privileges and immunities lost following a substantial change in use? The bill is ambiguous.

On the one hand, the proposed 34.75.010(b) [Page 2, lines 1 - 5] purports to list all instances where the privileges and immunities do not apply. Since that section does not reference "a substantial change in use of the facility," one could infer that the privileges and immunities are retained even after a substantial change. If that is true, the bill is probably unconstitutional, violating Article I Section 15.

On the other hand, the proposed 34.75.010(c) seems to grant some rights to certain persons if the facility substantially changes its use. [Page 2, lines 9 - 10.] Similarly, proposed 34.75.020 purports to establish a statute of limitations for bringing actions following a substantial change in use. [Page 2, line 15.] These two sections make no sense unless we infer that a cause of action following substantial changes is implied, notwithstanding the silence of 34.75.010(b). While a court might make that inference to avoid the unconstitutionality and the nonsense, to do so it would have to read into the bill language that is not actually there.

We think it necessary and appropriate for the legislature to ensure that it's bill is sensible and constitutional. Toward that end we embrace the amendments previously offered by the Alaska Municipal League and under consideration by Senator Halford.

The Honorable Tim Kelly
Chair, Senate Rules Committee

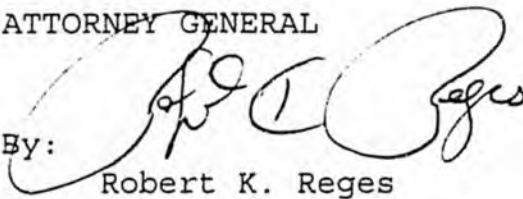
February 13, 1997

Thank you for this opportunity to express our views on
this bill.

Sincerely yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:


Robert K. Reges
Assistant Attorney General

RKR:prm

Basically bill creates remedy
to nuisance suit

p2 line6 →

They are discussing the
meaning of "substantial
change" that allows a
nuisance action when
someone moves in next
to airport / shooting range

- AG may have a amendment
to make it easier

H

S B

17

FISCAL NOTE

No: 6

STATE OF ALASKA
1998 LEGISLATIVE SESSION

Bill. version: SB 17
BILL NO: (H) Publish Date: 4/15/98

Revision Date: 03/09/98 Dept. Affected: Public Safety
 Title: Criminal Transmission of HIV BRU: Alaska State Troopers
 Component: Detachments
 Sponsor: Sen. Taylor
 Requestor: House HESS COMPONENT SERIAL NO. 0799

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

OPERATING	FY99	FY 00	FY 01	FY 02	FY 03	FY 04
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 98) 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.)

While there may be 1 or 2 cases a year involving this crime, it is not expected that this bill would have a significant fiscal impact on AST.

Prepared By: Capt. Ted M. Bachman Phone: 269-5650
 Division: Alaska State Troopers Date: 03/09/98
 Approved by Commissioner: Ronald L. Otte *Ronald L. Otte* Date: 4-9-98
 Agency: Department of Public Safety

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information call the Governor's Legislative Office

FISCAL NOTE

Bill Version: SB 17

(H) Publish Date: 4/15/98

STATE OF ALASKA
1998 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Department of Law
 Title: "An Act creating the crime of criminal transmission of human immunodeficiency virus (HIV)." BRU: Criminal Division
 Sponsor: Senator Taylor Component: 1st-4th Jud District/OSPA
 Requester: House HESS Committee #2198/99/
 COMPONENT SERIAL NO. 2261/79/01/03

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
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 (FY98) 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 would make it a class B felony for a person, knowing that he or she is infected with the human immunodeficiency virus (HIV), to knowingly expose others to HIV infection through intimate contact, potentially infectious body fluids (including blood, tissue, semen or organs) in any manner that could result in transmission of HIV to a person who is unaware that the person causing the exposure is infected with HIV.

At the current time, 640 out of 99,725 Alaskans tested through state health laboratories are known to be infected with HIV. Because many at high risk test anonymously or out of state, the actual number of persons residing in the state who have tested positive for HIV is undoubtedly higher than state records indicate.

Although the bill is intended to deter persons who have tested positive from engaging in conduct that may spread HIV, we are concerned that it will have the unintended, but certain effect of deterring persons at the highest risk from seeking HIV testing and counseling, thus increasing the risk of spreading HIV.

Prepared by: Joan M. Kasson
 Division: Attorney General's Office

Phone: 465-5370
 Date: 3/5/98

Approved by Commissioner: Bruce M. Botelho, Attorney General
 Agency: Department of Law

Date: 3/5/98

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

For further distribution information, call the Governor's Legislative Office

COMMITTEE COPY

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SB 17

ANALYSIS CONTINUATION:

Of the known HIV cases in Alaska, the vast majority resulted from consensual sexual contact. Obtaining a conviction under this circumstance (simply securing sufficient evidence to warrant a conviction) would be difficult, if not impossible. Consequently, the number of convictions resulting from exposure to HIV through intimate sexual contact may be relatively small. In a rare case where a person infected with HIV deliberately sets about to infect another, it might be possible to obtain a conviction. However, such a case is already chargeable under the state's existing criminal laws. Because the cases where it is likely that we could obtain a conviction, and thus initiate a prosecution, are for actions already prohibited under present law, we believe that this bill will have no significant fiscal impact on the Department of Law.

FISCAL NOTE

No: 4

STATE OF ALASKA
1998 LEGISLATIVE SESSION

Bill Version: SB 17
(H) Publish Date: 4/15/98

Revision Date: _____
Title: "An Act creating the crime of criminal transmission of HIV..."
Sponsor: Senator Taylor
Requestor: (H) HES

Department Affected: Administration
BRU: Legal and Advocacy Services
Component: Public Defender Agency

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
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						
1037 GF/Mental Health						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 98) cost: \$ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached.

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

Phone: (907) 264-4414
Date: _____

Approved by Commissioner: Mark Boyer
Agency: Department of Administration

Alison M. Elger
Date: 3/10/98

FISCAL NOTE

STATE OF ALASKA

BILL NO. SB 17

1998 LEGISLATIVE SESSION

ANALYSIS: (continued)

This bill creates the new crime of criminal transmission of HIV. If a person

(1) knows that they are infected with HIV, and

(a) voluntarily engages in intimate contact with another person; or

(b) transfers, donates or provides blood, tissue, semen, organs or other potentially infectious bodily fluids for transfusion, transplantation, insemination or other administration to another; or

(c) dispenses, delivers, exchanges, sells or in any manner transfers to another person any non-sterile intravenous or intramuscular drug paraphernalia.

The existing criminal statutes in Alaska already provide an adequate means to prosecute and punish anyone who either intentionally or recklessly transmit HIV. The bill unconstitutionally shifts the burden of proof to the accused person to show either that the person exposed knew that the defendant was infected or that the action could result in infection and consented with that knowledge. Additionally, many of the definitions are vague. As no cases of this type have been heard of in Alaska, and current statutes already allow for criminal prosecution, no additional fiscal impact is expected.

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

... 3
Bill Version: SB17
(S) Publish Date: 4/11/97

Revision Date:		Dept. Affected:	Department of Law
Title:	"An Act creating the crime of criminal transmission of human immunodeficiency virus (HIV)."	BRU:	Criminal Division
Sponsor:	Senator Taylor	Component:	Criminal Division
Requester:	Senate HESS Committee	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)

... the risk of spreading HIV.

Prepared by: <u>Joan M. Kasson</u>	Phone: <u>465-5370</u>
Division: <u>Administrative/Services Division</u>	Date: <u>4/10/97</u>
Approved by Commissioner: <u>Bruce M. Botelho, Attorney General</u>	Date: <u>4/10/97</u>
Agency: <u>Department of Law</u>	

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

N 2
 BILL NO: Bill Version: SB17
 (S) Publish Date: 4/11/97

Revision Date: 04/07/97 Dept. Affected: Public Safety
 Title: Criminal Transmission of HIV BRU: Alaska State Troopers
 Component: Detachments
 Sponsor: Sen. Taylor
 Requestor: Senate HESS 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.)

While there may be 1 or 2 cases a year involving this crime, it is not expected that this bill would have a significant fiscal impact on AST.

Prepared By: Capt. Ted M. Bachman Phone: 269-5650
 Division: Alaska State Troopers Date: 04/07/97
 Approved by Commissioner: Ronald L. Otte *Ronald L. Otte* Date: 4-7-97
 Agency: Department of Public Safety

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

For further distribution information call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

No. 1
Bill Version: SB17
(S) Publish Date: 4/11/97

Revision Date: _____
Title: "An Act creating the crime of criminal transmission of HIV..."
Sponsor: Senator Taylor
Requestor: (S) HES

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	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
----------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE: (Thousands of Dollars)

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

Estimate of any current year (FY 97) cost: \$ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

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

Phone: (907) 264-4414
Date: _____

Approved by Commissioner: Mark Bover
Agency: Department of Administration

Alison M. Elger
Date: 4/10/97

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information, call the Governor's Legislative Office

Alaska State Legislature

Chairman,
Judiciary Committee

Member,
Resources Committee
Rules Committee
Committee on Committees



State Capitol
Juneau, Alaska 99801-1182
(907) 465-3873
Fax: (907) 465-3922

352 Front Street
Ketchikan, Alaska 99901
(907) 225-8088
Fax: (907) 225-0713

Senator Robin L. Taylor
Senate Majority Leader

Sponsor Statement **Senate Bill 17**

Senate Bill 17 was introduced with the goal of putting Alaska in a pro-active position when it comes to dealing with individuals who knowingly place others at risk of HIV infection. SB 17 is intended to be preventative as well as punitive and is intended to render a criminal rather than moral judgment.

As of December 31, 1996, 369 Alaskans had been confirmed to have AIDS. That's since tracking began in 1982. Of these cases, 194 are known to have died.

The Epidemiology section of the Division of Public Health reports that as of December 31, 1996, 640 Alaskans had tested positive for HIV infection. That number represents only those who have voluntarily tested through the State Section of Laboratories.

The statistics show that HIV/AIDS affects both male and female, across all age groups and without respect to race or residence. The sad fact is that the rate of infection in Alaska is increasing.

If someone intentionally sets out to kill another person by infecting them with the AIDS virus, they can be charged under state law with attempted first degree murder. But, what do we do with the person who does not "intend" to kill, but who still places others in jeopardy? In 1990, the Attorney General's office reviewed that question and suggested that ...quote..."it might be possible to prosecute the person for reckless endangerment"....end quote.

District A:

Hyder • Ketchikan • Kupreanof • Meyers Chuck • Petersburg • Saxman • Sitka • Wrangell

Sponsor Statement - SB 17

Page Two

That is a class A misdemeanor prohibiting reckless conduct which creates a "substantial risk of serious physical injury".

Most people would equate becoming infected with HIV as something more than a "serious injury".

Twenty seven other states have seen fit to adopt specific laws dealing with criminal penalties for knowingly transmitting or exposing another to HIV infection. It would only be prudent for Alaska to have such a statute on the books.

SB 17 is brief and to the point. It creates the crime of criminal transmission of HIV and covers actions and conduct known to transmit the disease.

The bill also provides an affirmative defense when the person exposed knows beforehand that the action could result in infection. The bill also provides a provision excluding perinatal transmission of the virus and to assure that an individual is not prosecuted for an involuntary act.

SB 17 is not intended to punish those who have contracted HIV. It is intended to protect others who may be unknowingly exposed to the virus by what should be a criminal act of irresponsibility.

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

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



January 17, 1997

RECEIVED JAN 24 1997

Business Manager

Joseph E. Young
Anchorage

Board of Directors

Michael Corkill, President
Fairbanks

Robin Lown, Vice President
Juneau

Mike Grimes, Past President
Anchorage

Ron Selder, Member
Kena
Pres. Kenai Chapter

Leo Brandlen, Member
Anchorage
Pres. Anchorage Chapter

Sam Edwards, Member
Palmer
Pres. Mat-Su Chapter

Steve Heckman, Member
Fairbanks
Pres. Fairthest North Chapter

Steve Kalwara, Member
Juneau
Pres. Capitol City Chapter

Scot Chalin, Member
Wrangell
Pres. Wrangell Chapter

Leroy Mestas, Member
Ketchikan
Pres. First City Chapter

James See, Member
Craig
Pres. Prince of Wales Chapter

Senator Robin Taylor
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

Dear Senator Taylor,

On behalf of the Alaska Peace Officers Association, I would like to thank you for introducing Senate Bill 17 creating the crime of criminal transmission of human immunodeficiency virus (HIV). At a recent meeting of the APOA State Board, we decided unanimously to support this legislation. We believe that specific laws need to be enacted to address this ever-growing problem and further feel that your bill addresses this need.

In reviewing this bill, we did find that the proposed language on lines 7 & 8 of page 1 was a bit confusing. We suggest a change be made to that language without changing the meaning or intent of the bill.

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

Sincerely,


Michael Corkill
APOA State President

MEMORANDUM

State of Alaska

Department of Law

TO: Elizabeth L. Shaw
Assistant Attorney General
Department of Law - Civil Div.

DATE: November 16, 1990

FILE NO:

TEL. NO.: 465-3423

SUBJECT: Criminal liability for
having unprotected sex
while infected with HIV
or AIDS

FROM: Dean J. Guaneli *DG*
Assistant Attorney General
Criminal Division, Central Office

At the request of Chief Prosecutor Laurie Otto, I briefly reviewed the question of possible criminal liability for someone who intends to spread the HIV virus by having unprotected sex with another person, or by donating blood. In short, I believe we can certify that prosecution under state law is possible for both intentional or reckless conduct.

If someone intends to kill another person by infecting them with the AIDS virus, it could be prosecuted as attempted first degree murder.¹ This holds even if infection is, as a factual matter, unlikely or impossible, since impossibility is not a defense as long as the actor believes that death will occur. AS 11.31.100(b); see also Gargan v. State, 436 P.2d 968 (Alaska 1968) (factual impossibility which was not apparent to the actor should not, as a matter of policy, insulate him from conviction for attempting commission of the offense). This view is shared by Barry Stern, Professor of Law at Western New England Law School, who was one of the principal drafters of the revised criminal code. It would also be possible to charge an attempted assault, if the person only intended serious injury, rather than death.²

The more interesting problem, and the one more likely to occur, is when a person is aware of the infection and has, or attempts to have, unprotected sex with a partner who is unaware. The mental state would probably not be "intentional" (since the

¹ The Alaska Court of Appeals has held there is no such crime as attempted second degree murder, Huitt v. State, 678 P.2d 415 (Alaska App. 1984), and based on that opinion, there are no such crimes as attempted manslaughter or negligent homicide.

² The U.S. Supreme Court recently denied review of an opinion from a military court (attached) where the person was convicted of attempted aggravated assault (by means likely to cause death or bodily harm) by trying to have unprotected sex knowing he was infected by HIV. United States v. Johnson, 30 M.J. 53 (U.S. Ct. of Mil. Appeals, April 12, 1990), cert. den. 48 CrL 3037 (Oct. 15, 1990).

Elizabeth L. Shaw
Criminal liability for

November 16, 1990
Page 2

actor no doubt would not intend to pass the infection), nor would it be "knowing" (because the person may not believe infection was a substantial probability). However, the person is consciously disregarding a risk of infection, and most juries would find such a risk to be substantial and unjustifiable. Thus the mental state would be "reckless" under AS 11.81.900(a)(3), and it may be possible to prosecute the person for reckless endangerment, a class A misdemeanor (AS 11.41.250), that prohibits recklessly engaging in conduct which creates a substantial risk of serious physical injury.

Please let me know if a more detailed review of the law is necessary.

KNOWING EXPOSURE/TRANSMISSION

5/25/93

CRIMINAL PENALTIES FOR KNOWINGLY TRANSMITTING/EXPOSING
ANOTHER TO HIV INFECTION

Alabama, HB 338, Act 87-574 (87) - misdemeanor - "risks transmitting or conducts himself in a manner likely to transmit the disease)

Arkansas, HB 1496, Act 614 (89) - felony - "sexual intercourse" (without 1st informing others)

California, SB 1002, Chapter 1154 (88) - felony, blood donation

Colorado, HB 1255 (90) - class 6 felony for knowingly performing, offering or agreeing to perform certain sexual acts with persons other than their spouses in exchange for money or any other thing of value. Persons who are knowingly infected with HIV who patronize prostitutes are guilty of a class 6 felony

Delaware, HB 637, Chapter 335 (88) - felony, blood donation

Florida, HB 1313, Chapter 88-220 (88) - misdemeanor "sexual intercourse"; (88) - misdemeanor (if person has been informed of modes of transmission); HD 1519 (88) - felony of the third degree, blood/body fluids donation;

Georgia, HB 1261, Act 1440 (88) - felony (after obtaining knowledge of infection) knowing intercourse, donation, sharing syringes

Idaho, HB 653, Chapter 70 (88) - prohibits knowing or willful exposure; HB 433 (88) - felony (provides affirmative defense if sexual activity occurred between consenting adults); - felony, knowing transmission or transmit with the intent of infection

✓ Illinois, HB 1471 (89) - class 2 felony for criminal transmission = intimate contact; blood, semen, tissue or organ donation; sex, exchange, etc. non-sterile IV drug paraphernalia. Provides an affirmative defense if the person exposed knew that the infected person was infected with HIV, knew that the action could result in HIV infection and consented to the action with that knowledge.

Indiana, SB 9, Public Law 88-123 (88) - Class C felony, blood donation.

Kansas, HB 2841 (92) - Class A misdemeanor for individuals with a life threatening communicable disease to knowingly engage in sexual intercourse or sodomy, sell or donate blood, semen, tissue or other body fluids, or share hypodermic needles with intent to expose another to the disease.

Kentucky, HB 50 (88) - Class C felony, blood donation (also any health facility, physician or health care worker who knowingly transfuses untested blood when there is not an emergency situation is guilty of Class C felony

HB 425 (90) - felony for donating organs, skin or other human tissue; class A misdemeanor for persons who commit prostitution; class D felony for committing prostitution or who procures another to commit prostitution by engaging in sexual activity in a manner likely to transmit HIV infection.

Source: AIDS Policy Center, Intergovernmental Health Policy Project, The George Washington University, June 1993.

ADDITIONAL INFORMATION
PENALTIES IN OTHER

FROM: NCSL DENVER

KNOWING EXPOSURE/TRANSMISSION
PAGE 2

SB 244 (82) - Makes it a felony for any person to commit, offer, or agree to commit prostitution by engaging in sexual activity when he or she knew or had been informed that he or she could possibly transmit the virus through sexual activity.

Louisiana, HB 1728, Act 683 (87) - fine of not more than \$5,000, imprisonment with or without hard labor for not more than 10 years "sexual contact" without knowing consent of other person

Maryland, SB 719, Chapter 709 (88) - misdemeanor (may not knowingly transfer or attempt to transfer)

✓ Michigan, HB 5026, Public Act 490 (83) - felony, sexual penetration (if they do not inform other person of the presence of disease)

Mississippi, HB 515, chapter 557 (88) - knowingly and willfully violating health department orders

Missouri, HB 1151 and 1044 (88) - Class D felony, donation of blood, organ, sperm, tissue; sexual contact

Nevada, AB 550, Chapter 762 (87) - Provides that any person who practices prostitution after testing positive for HIV is guilty of a felony and will be imprisoned in the state prison for not less than 1 year, not more than 20 years and/or fined up to \$10,000. An owner of a house of prostitution who continues to employ HIV+ prostitutes is liable for any damages caused by HIV exposure as a result of the employment; SB 73 (89) - subject to confinement by court order as well as other penalties (which are not specified)

Ohio, HB 571 (88) - felony of the 3rd. degree, sell or donate blood plasma, blood product

Oklahoma, HB 1798 (88) - felony (with intent to infect); HB 1012 (91) - felony punishable by a maximum of 5 years of imprisonment for knowingly engaging with intent to infect in conduct reasonably likely to result in transfer of blood or bodily fluids into the bloodstream or through the skin or other membranes of a person except during in utero transmission.

✓ South Carolina, HB 2807, Ramification 547 (88) - sale, donation, exchange of blood products; "exposing another person to HIV without first informing"; SB 1166 (90) - felony (upon conviction must be fined not more than \$5,000 or imprisoned for not more than 10 years) for engaging with or without consent in sexual intercourse (vaginal, anal or oral) without first informing in prostitution, selling or donating blood or other body fluids or sharing needles

Tennessee, HB 481, Chapter 281 (91) - class C felony for committing prostitution when a person knows that he or she is HIV+

Texas, SB 959 (89) - felony for "engaging in conduct likely to transfer"

Utah, HB 24 (93) - Mandates HIV testing for persons convicted of prostitution or patronizing or sexually soliciting a prostitute. Provides enhanced penalties (3rd. degree felony) if these individuals test positive for HIV, know their test results and have received written personal notice of their positive test results from a law enforcement agency.

Virginia, HB 1974 (89) - class B felony, donating or selling blood, body fluids, organs or tissues

Washington, SB 6221, Chapter 206 (88) - assault in the second degree for a person who has exposed or transmitted HIV to another person with intent to inflict bodily harm

TOTAL = 28 STATES

429 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-2701
(202) 225-2038 (Fax)
rep.coburn@mail.house.gov
COMMITTEE ON COMMERCE

SUBCOMMITTEES:
OVERSIGHT AND INVESTIGATIONS
HEALTH AND ENVIRONMENT
ENERGY AND POWER

Congress of the United States
House of Representatives
Washington, DC 20515-3602

215 STATE STREET, SUITE 815
MUSKOGEE, OK 74401
(918) 687-2638
(918) 682-6503 (Fax)
170 S. MISSOURI, ROOM 105
CLAREMORE, OK 74017
(918) 341-9338
(918) 341-8437 (Fax)
34 "A" STREET N.E., ROOM 202
MIAMI, OK 74354
(918) 542-8337
(918) 542-8387 (Fax)

The HIV Prevention Act of 1997

It has been just 16 years since the first cases of AIDS were recognized. The initial thousand cases were reported to the Centers for Disease Control and Prevention (CDC) by February 1983. By the end of June 1996, the cumulative incidence of reported AIDS cases reached a total of 548,102. Of these, 343,000 are known to have died. Clearly, this is an epidemic of historic proportion that is continuing to grow.

While no cure exists for AIDS, we know enough about the disease to prevent its spread. For instance, we know that AIDS is caused by the Human Immunodeficiency Virus (HIV) and is actually the end stage of HIV infection. We also know that the disease is transmitted through exchange of body fluids and it attacks the body's immune system eventually leaving the body unable to fend off infection.

What we do not know is the extent of the epidemic. We have failed to employ the public health procedures which have been successful in curtailing other epidemics in our efforts against HIV. These include confidential HIV reporting and partner notification.

We have made an effort to report cases of AIDS on a state and national level but not cases of HIV. We do not make it a priority to notify those who may have been exposed that their lives may be endangered.

Put simply, the federal government and the public health community have been AWOL in the battle against HIV. Sound medical practices have been abandoned and replaced with political correctness. HIV has been treated as a civil rights issue instead of the public health crisis that it is.

The HIV Prevention Act of 1997 (H.R. 1062/ S. 503) will return sound medical practices to our Nation's public health policy and curtail the spread of the deadly HIV epidemic.

Recent scientific breakthroughs make prompt passage of this bill extremely important. Many of the world's top HIV scientists have suggested that it may be possible to "eradicate" the virus from the body and completely suppress it by using a combination of new HIV drugs. Most believe that these drugs may transform HIV for many from a terminal disease into a chronic disease like diabetes or heart disease. However, researchers agree that *the success of these drugs depends upon starting treatment early.*