ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9520 SENATE HEALTH EDUCATION & SOCIAL SERVICES

LEGAL SERVICES

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

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

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

MEMORANDUM

January 29, 1997

SUBJECT: Senate Bill 61, relating to taxes on cigarettes and tobacco products and to use of the proceeds of the taxes -- sectional analysis. (Work Order No. 20-LS0276\A)

TO: Senator Johnny Ellis
ATTN: Lynn Kenney

FROM: Jack Chenoweth
Legislative Counsel

Senate Bill 61 proposes increases to state-imposed taxes on cigarettes and tobacco products.

Bill section 1 makes legislative findings for the measure.

Bill section 2: The bill section increases the tax on cigarettes by 62.5 mills per cigarette or $1.25 per pack (62.5 mills x 20 cigarettes per pack). Because the changes are made to the rate of a tax that is dedicated, they would have the effect of providing for the deposit of the increase into the "School Fund," AS 43.50.140.

Bill section 3: Whether the rate imposed in a dedicated tax may be changed without destroying the dedication is debatable. In the event the courts are asked to decide the question and determine that the dedication is destroyed, this bill section is included to restore the current rate of tax for the component that is dedicated for inclusion in the School Fund.

Bill section 4: This is a contingent amendment. In the event the changes set out in bill section 1 are found to destroy the dedication, the 62.5 mill rate increase is made to current AS 43.50.190(a), a provision that imposes a further tax on cigarettes and that, because the proceeds are not dedicated, adds the increased revenue to the state general fund.

Bill section 5: The amendment proposed would increase the excise tax on tobacco products other than cigarettes from its current 25 percent of the product's wholesale price to 100 percent of the wholesale price.

Bill section 6: The provision directs the Department of Revenue to account for the tobacco tax increase made in the preceding bill section within a "tobacco control and health

promotion account," and explains how that money may be used following legislative appropriation.

Bill section 7 emphasizes that the separate accounting and instruction for the use of the tobacco tax increase is not intended to create a dedicated fund.

Bill section 8 would increase the cigarette and tobacco tax rates, at two-year intervals, by imposition of a rate calculated to the consumer price index for the Anchorage area, and explains how the computation of the index shall be made and applied.

Bill section 9 directs the Department of Revenue to give notice to the public and to cigarette and tobacco tax licensees of the biennial changes in the rates of the cigarette and tobacco taxes.

Bill section 10 gives most of the bill's provisions an October 1, 1997, effective date.

Bill section 11, also an effective date provision, spells out the contingency under which certain of the earlier bill sections are to take effect. Those sections are to be given effect only if a court determines that changing the rate of taxation on cigarettes destroys the dedication of tax revenue derived from the cigarette tax.

JBC:jdr:glc
97-059.jdr

1057 West Fireweed Lane, Ste 201
Anchorage, AK 99503-1736
(907) 276-LUNG (5864)
Fax (907) 263-2090
Statewide: 1-(800) LUNG-USA

AMERICAN LUNG ASSOCIATION® of Alaska

RESOLUTION

BOARD OF DIRECTORS

AMERICAN LUNG ASSOCIATION OF ALASKA

Be it resolved that the Board of Directors of the American Lung Association of Alaska supports the passage of a $1.00 (one dollar) per pack tax on cigarettes and urges the State Legislature of Alaska to enact this tax in the 1997 legislative session to help prevent tobacco abuse in Alaska.

Kevin Fischer
President, Board of Directors

January 21, 1997

alaska academy of physician assistants

January 15, 1997

Citizens to Protect Kids from Tobacco
1057 W. Fireweed Lane, Suite 204
Anchorage, Ak 99503

The Alaska Academy of Physician Assistants supports SB234/HB442 which raises the tobacco tax in Alaska. Experience in California, Hong Kong, Britain, New Zealand and Canada reflect reduced smoking rates when higher cigarette taxes were imposed.

Alaska has the sixth highest rate of smoking in the U.S., the sixth highest rate of smoking related deaths in the U.S., and the 28th lowest state tobacco excise tax. By increasing cigarette taxes will reduce consumption, especially by the most price sensitive group, the teenagers. We also know that 84% of Alaskan adult smokers started smoking between the ages of 10 and 20.

The direct health care costs of smoking related diseases on the Alaskan economy were estimated to be $45.6 million dollars in 1991. Each Alaskan underwrites these costs whether or not they are smokers. By increasing the tobacco tax, we can deter smoking especially in teens, decrease the overall costs of smoking to all Alaskans, and generate income to be used toward public education on the hazards of smoking.

The Academy supports the tobacco tax and would urge you to consider supporting these bills.

Sincerely,

Jeanne M. Clark, PA-C
Past President
Alaska Academy of Physician Assistants

Fairbanks North Star Borough **Assembly**

809 Pioneer Road P.O. Box 71267 Fairbanks, Alaska 99707-1267 907/459-1000
Fax 907/459-1224

June 3, 1996

Honorable G. Lincoln
State Capitol
Juneau, Alaska 99811

RE: RESOLUTION NO. 96-046. A Resolution Supporting Passage Of A Bill Increasing State Taxes On Tobacco Products.

Dear Senator Lincoln:

The Fairbanks North Star Borough Assembly adopted the enclosed resolution at a Special Meeting of May 30, 1996.

The Assembly supports the passage of a bill increasing taxes on all tobacco products brought into the state from outside the state for sale, all tobacco made, manufactured, or fabricated in the state for sale in the state, or on tobacco products shipped or transported to a retailer in the state for sale by the retailer.

Your support of a bill increasing State taxes on tobacco products would be appreciated.

Respectfully yours,

Cheryl

Cheryl D. Kilgore
FNSB Assembly Presiding Officer

By: Dan LaSota
Introduced: 05/30/96
Adopted: 05/30/96

RESOLUTION NO. 96-046

A RESOLUTION SUPPORTING PASSAGE OF A BILL INCREASING STATE TAXES ON TOBACCO PRODUCTS

WHEREAS, it has been determined that use of tobacco products can be hazardous to a person's health, cause premature death, increase costs for employers in all categories because of illnesses caused by smoking; and

WHEREAS, it has also been shown that secondary smoke is hazardous to the health of those breathing the smoke, especially senior citizens and children; and

WHEREAS, the segment of the population which increasingly uses tobacco products is teenagers and young adults; and

WHEREAS, it has been shown in places where there has been a significant tax increase on tobacco products, the amount of smokers, especially among young persons, has dramatically decreased; and

WHEREAS, the Governor of the State of Alaska has caused to be introduced a bill increasing taxes on the sale of tobacco products in the state; and

WHEREAS, if the bill is adopted, it is the intent of the Legislature, subject to appropriations, to use the revenues from the tax increase to establish an aggressive anti-tobacco campaign targeting children, as grants to municipalities to be used to detect and prosecute those who sell or otherwise supply tobacco to children, and the balance for state support of elementary and secondary education.

NOW, THEREFORE, BE IT RESOLVED that the Fairbanks North Star Borough Assembly supports the passage of a bill increasing taxes on all tobacco products brought into the state from outside the state for sale, all tobacco made, manufactured, or fabricated in the state for sale in the state, or on tobacco products shipped or transported to a retailer in the state for sale by the retailer.

Alaska Association Secondary School Principals

Educational Leadership for Alaska's Future
1720 Otter Street • Anchorage, Alaska 99504-2634
(907) 333-9613 • Fax (907) 333-3060 • aassp@alaska.net

RESOLUTION #96-9: **SUPPORT FOR INCREASED TOBACCO TAX**

SUBMITTED BY: Alaska Association of Secondary School Principals

WHEREAS 3,000 children become regular smokers each and every day; and

WHEREAS most smokers begin by age 15 and are addicted by age 18 and 84% of Alaskan adult smokers started smoking between the ages of 10 and 20 ; and

WHEREAS children and teenagers nationwide constitute 90% of all new smokers; and

WHEREAS as many as one-third of all children who become smokers will eventually die from smoking-related diseases; and

WHEREAS 80% of teen smokers want to and have tried to quit, but only 1.2% succeed; and

WHEREAS use of smokeless tobacco among young men has increased nearly 300% in the past 20 years; and

WHEREAS smokeless tobacco causes cancers of the gums, mouth, pharynx, larynx, and esophagus; and

WHEREAS Alaskan Natives suffer disproportionately from the burden of tobacco addiction and illness; and

WHEREAS higher tobacco prices have proven effective in reducing tobacco consumption, particularly among youth; and

WHEREAS Alaska has the sixth highest rate of smoking in the U.S. and the sixth highest rate of smoking-related deaths in the U.S. but has the 28th lowest state tobacco tax; and

WHEREAS the U.S. General Accounting Office has concluded that a 10% increase in the price of tobacco results in a 4% decrease in consumption among adults and a 10-14% decrease in consumption among youth; and

WHEREAS smokeless tobacco users are disproportionately young and economically disadvantaged, and therefore especially sensitive to tax increases; and

WHEREAS smoking-related death and disease cost the Alaska economy $127.6 MILLION DOLLARS in 1991;

THEREFORE BE IT RESOLVED that the Alaska Association of Secondary School Principals supports a significant increase in the Alaska state excise tax on cigarettes and on other tobacco products; and

BE IT FURTHER RESOLVED that the Alaska Association of Secondary School Principals calls upon the Alaska Legislature to enact a significantly higher state excise tax on all forms of tobacco, and to ensure that this higher tax rate is regularly increased to keep pace with inflation.

APPROVED: 10/22/96

CORRECTION

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

By: Dan LaSota
Introduced: 05/30/96
Adopted: 05/30/96

RESOLUTION NO. 96-046

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WHEREAS, it has been determined that use of tobacco products can be hazardous to a person's health, cause premature death, increase costs for employers in all categories because of illnesses caused by smoking; and

WHEREAS, it has also been shown that secondary smoke is hazardous to the health of those breathing the smoke, especially senior citizens and children; and

WHEREAS, the segment of the population which increasingly uses tobacco products is teenagers and young adults; and

WHEREAS, it has been shown in places where there has been a significant tax increase on tobacco products, the amount of smokers, especially among young persons, has dramatically decreased; and

WHEREAS, the Governor of the State of Alaska has caused to be introduced a bill increasing taxes on the sale of tobacco products in the state; and

WHEREAS, if the bill is adopted, it is the intent of the Legislature, subject to appropriations, to use the revenues from the tax increase to establish an aggressive anti-tobacco campaign targeting children, as grants to municipalities to be used to detect and prosecute those who sell or otherwise supply tobacco to children, and the balance for state support of elementary and secondary education.

NOW, THEREFORE, BE IT RESOLVED that the Fairbanks North Star Borough Assembly supports the passage of a bill increasing taxes on all tobacco products brought into the state from outside the state for sale, all tobacco made, manufactured, or fabricated in the state for sale in the state, or on tobacco products shipped or transported to a retailer in the state for sale by the retailer.

BE IT FURTHER RESOLVED that copies of this resolution shall be sent to the Honorable Tony Knowles, Governor, State of Alaska, and all members of the Alaska State Legislature.

PASSED AND APPROVED THIS 30TH DAY OF MAY, 1996.

Cheryl Kilgore
Presiding Officer

ATTEST:

Mona Lisa Drexler, CMC/AAE
Municipal Borough Clerk

Ayes: Hove, Quakenbush, LaSota, Bartos, Parr and Kilgore
Noes: Logan, McBride, St. John and Chizmar

Alaska Association Secondary School Principals

Educational Leadership for Alaska's Future
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BE IT FURTHER RESOLVED that the Alaska Association of Secondary School Principals calls upon the Alaska Legislature to enact a significantly higher state excise tax on all forms of tobacco, and to ensure that this higher tax rate is regularly increased to keep pace with inflation.

APPROVED: 10/22/96

Citizens To Protect Kids from Tobacco
1057 W. Fireweed Lane, Suite 204 • Anchorage, Alaska 99503 • (907) 277-8696 • Fax: (907) 263-2073

January 8, 1997

The Honorable Johnny Ellis
The Alaska Senate
State Capitol
Juneau, Alaska 99801

Dear Senator Ellis:

Those of us working on the tobacco tax campaign would like to wish you a happy and productive new year and let you know that we look forward to working with you in 1997 to save thousands of lives in the years ahead.

Tobacco issues continue to make headlines in Alaska and around the country, with frequent news stories about proposed FDA regulation of tobacco and implementation of the Synar Amendment by state governments. This letter is intended to clarify that while such efforts are worthwhile, a major tobacco tax increase ($1 per pack) is clearly the most effective tool we have to reduce tobacco use.

There is no "silver bullet" for ending the tobacco epidemic. A comprehensive approach that includes tax increases, media campaigns, innovative school programs, advertising restrictions, clean indoor air laws, and enforcement of youth access laws should be our goal.

The $1 per pack tobacco tax increase must be the cornerstone of a comprehensive tobacco control strategy, and should be enacted first. In a report produced by a panel of experts, the National Cancer Institute concluded that "few measures exhibit the speed and magnitude of impact achieved by increasing taxation on tobacco products... Increasing tobacco excise taxes must be considered an essential and primary component of any comprehensive tobacco control program." The $1 per pack tobacco tax increase will have immediate and dramatic impact on youth smoking and smokeless tobacco rates in every community in the state, without creating any financial drain on the state budget.

While there should be continuing efforts to enforce existing laws against selling tobacco to minors, reducing youth access to tobacco is easier said than done. The goal of the Division of Alcoholism and Drug Abuse is to increase vendor compliance to 80% (from the current rate of 64%), in keeping with the provisions of the federal "Synar" law. However, recent research conducted in Massachusetts shows that even when 80% of stores refuse to sell to minors, kids can still buy tobacco products. The researchers concluded that "compliance rates above 90% must be achieved before the youths in the community begin to have difficulty purchasing tobacco." While this is a worthwhile goal that we support, it is unlikely that we will be able to achieve it any time soon.

AMERICAN CANCER SOCIETY
Western Pacific Division

American Heart Association
Fighting Heart Disease and Stroke

AMERICAN LUNG ASSOCIATION of Alaska

Alaska Native Health Board

Likewise, **restricting tobacco sales to liquor outlets only, as some have proposed, makes a lot of sense but will be extremely difficult to achieve.** Convenience stores typically make more than half their profits from tobacco sales. Any change in the law will be met with extreme resistence, with the tobacco industry providing financial support to the opposition. Again, the best option to reduce teen smoking is to pass the $1 per pack tobacco tax increase.

While valuable as part of a comprehensive effort, FDA regulation of tobacco products will not adequately address the tobacco epidemic in Alaska. Even if the regulations are implemented, they will not have the kind of dramatic impact on youth smoking that can be achieved through a major tobacco tax increase.

The proven effectiveness of tobacco taxation, the strong public support for the tax, and the fact that there is no cost to state government are all reasons to support the proposed $1 per pack tax increase in Alaska. As the *Alaska Journal of Commerce* stated in an editorial last summer:

> *We can save thousands of lives in Alaska by protecting our kids from tobacco, and the best way to do that is to increase the state cigarette tax...**It should be an easy choice and a no-lose situation.** We can decrease the deaths from smoking while decreasing the dollars taken from the state savings account to support the budget, and we can reduce our future expenditures on health care.*

Please feel free to contact us for more information. We look forward to talking with you soon.

Sincerely,

Diana Kuhns
Chief Operating Officer
American Cancer Society (Alaska)

Suzanne Meunier
Executive Director
American Heart Association (Alaska)

Larry Dickerson
Executive Director
American Lung Association (Alaska)

Anne M. Walker
Executive Director
Alaska Native Health Board

SB

66

No. 4

FISCAL NOTE

Bill Version: SB66

E (S) Publish Date: 1/28/97

STATE OF ALASKA
1997 LEGISLATIVE SESSION

Revision Date:
Title: . . . to the collection by victims of restitution . . . safety of victims . . mental examinations of victims . . rights of victims
Sponsor: Rules Committee
Requester: Governor

Dept. Affected: Department of Law
BRU: Criminal Division/Civil Division
Component: Criminal Division/General Legal Services
COMPONENT SERIAL NO. 2085/2087

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)

This bill implements the "rights of crime victims" amendment contained in art. I, sec. 24, of the Alaska Constitution. Specifically, the bill amends AS 12.61 by providing that the victim has a right to be present at every proceeding in a criminal prosecution or delinquency adjudication in which the defendant or a minor has the right to be present. Further, the bill amends provisions in the substantive and procedural criminal law to facilitate, particularly from the victim's perspective, the prosecution of a person charged with a crime or the adjudication of a minor for delinquent acts. The bill also adopts provisions intended to better protect the safety and welfare of victims, other persons, and the community. It requires a court to consider the safety of the victim in setting bail and conditions of release. It makes it a class A misdemeanor to interfere with the report to law enforcement of a domestic violence crime. Finally the bill facilitates the collection of restitution by providing that the weekly income and liquid assets exemptions from execution do not apply to collection by a victim of court-ordered restitution from a prisoner.

This bill will have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson Joan M. Kasson Phone: 465-5370
Division: Administrative Services Division Date: 1/21/97

Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 1/21/97
Agency: Department of Law

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FISCAL NOTE

FISCAL NOTE

No. 3

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO: Version: SB66
(S) Publish Date: 1/28/97

Revision Date:
Title: Victim's Rights
Sponsor: Rules Committee
Requestor: Governor

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

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

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ( ) 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 will have a negligible fiscal impact to the Division of Alaska State Troopers.

Prepared By: Lt. Dan Lowden
Phone 269-5412
Division: Alaska State Troopers
Date: January 21, 1997

Approved by Commissioner: Dale Smith
Date: 1/21/97
Agency: Ronald L. Otte, Department of Public

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FISCAL NOTE

No. 2

Bill Version: SB66

(S) Publish Date: 1/28/97

STATE OF ALASKA
1997 LEGISLATIVE SESSION

Revision Date:
Title: Victims Omnibus Bill
Sponsor: Rules Committee
Requester: Governor

Dept. Affected: Corrections
BRU: ALL
Component: ALL
COMPONENT SERIAL NO. #0694

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				25.2	63.6	102.1
TOTAL OPERATING	0.0	0.0	0.0	25.2	63.6	102.1
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF				25.2	63.6	102.1
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	25.2	63.6	102.1

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

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Section 6 of this legislation changes the definition of "serious provocation" for purposes of the "heat of passion" defense to a charge of murder. This change will prevent the need to use self defense for qualifying as serious provocation by the victim for purposes of the "heat of passion" defense. The Department of Law estimates there may be one case per year that is affected by this legislation. This will result in an additional 10 years (actual time) of incarceration per individual. The average daily cost of prison care is $105.27.

The fiscal impact of this legislation would not occur until the year 2001 because the convicted felon would have received a 5 year sentence under current law. The additional sentence (cost) would begin after this time is served.

Prepared by: Bruce Richards
Phone: 465-3307
Division: Office of the Commissioner
Date: 1/21/97

Approved by Commissioner: Margaret M. Pugh
Date: 1/21/97
Agency: Department of Corrections

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FISCAL NOTE

No. 1

STATE OF ALASKA
1997 LEGISLATIVE SESSION

B.[illegible] on: SB66
(S) Publish Date: 1/28/97

Revision Date:
Title: Omnibus victim's
Sponsor: Rules Commit
Requestor: Governor

Dept. Affected: Health and Social Services
BRU: #N/A
Component: #N/A
COMPONENT SERIAL NO.
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	0.0	0.0	0.0	0.0	0.0	0.0
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)

We find that this bill proposed legislation has no fiscal impact on the Division or the Department. We have consulted with DFYS and it is our joint opinion that administratively our Social Workers and staff will have to be made aware of their responsibilities to advocate for victims and victims rights.

1/23/97

Prepared by: [signature]
Division:
Phone: 4114
Date: 01/23/97

Approved by Commissioner: Karen Perdue, Commissioner
Agency: Department of Health & Social Services
Date: 1/23/97

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SB 66 - VICTIMS' RIGHTS
SECTIONAL ANALYSIS

Sections one and 14 (proposed AS 12.61.010(a)(1) and (2)) implement art. I, sec. 24 of the Alaska Constitution by allowing the victim to be present at every stage of a criminal prosecution where a defendant has a right to be present, and to be notified of every hearing where the defendant's release from custody will be considered; (AS 47.12.110(b) was adopted in 1996 to allow the victim of a delinquent act to be present at every hearing where the juvenile has a right to be present.)

Sections two through five create an exception to the weekly earnings and liquid assets exemptions from execution to allow a victim, in attempting to collect on an order of restitution, to levy upon assets held by a prisoner outside an institution (assets held inside the institution are already available to victims under AS 09.38.030(f)).

Section six amends the definition of "serious provocation" in the heat of passion defense to a murder charge to specify that an unreasonable belief in the need to act in self defense may not be considered serious provocation for the heat of passion defense to murder. (Note that a reasonable belief in the need to act in self defense is a defense to murder, but it is not part of the heat of passion defense.)

Section seven amends the definition of "incapacitated" in the sexual assault statutes. Sexual Assault in the Third Degree, for example, prohibits sexual contact with a person who the offender knows is incapacitated. The definition is amended so that the state, in proving its case, must prove either that the victim was temporarily unable to appraise the nature of his or her conduct, or that the victim was temporarily unable to express unwillingness to act. At present the statutes require the state to prove both in order establish its case.

Section eight adds a new provision to the criminal code making it a class A misdemeanor to interfere with a person who is reporting or attempting to report a crime of domestic violence to the police.

Sections nine through 12 amend the bail statutes to require that the safety of the victim be considered by the court when it makes decisions concerning bail and conditions of release for the defendant pending trial, sentence, and appeal.

Section 13 limits the cases where the court can order a victim to undergo a psychiatric or psychological examination to cases where (1) the victim's psychiatric condition is an element of the offense (for example, in sexual assault in the first degree under AS 11.41.410(a)(3), the defendant is charged with sexual penetration with a person who the defendant knows is mentally incapable and who is under the defendant's care); or (2) the state gives notice that it will rely on evidence that the victim is suffering from a continuing psychological condition (such as rape trauma syndrome).

Sections 14 and 15 amend the victims' rights statute by specifying that a victim has the right to be present in any proceeding in the prosecution of a defendant or adjudication of a minor where the defendant or juvenile has the right to be present, and that a victim has the right to notice of any hearing where the defendant's release from custody will be considered. Additionally, notice to victims required by other provisions of law, for example, the right to notice of a hearing to consider discretionary parole of a prisoner, are set forth in the victims' rights statute, so that a person may turn to one place in the law to find the rights of victims.

Section 16 provides that custody of the body of a deceased person transfers to his or her family at the completion of a medical death investigation, and that a subsequent autopsy may not be ordered if the state medical examiner has performed an autopsy and has documented the procedure with photographs.

Section 17 provides that applications and personally identifying information in the files of the Violent Crimes Compensation Board are confidential.

Section 18 allows victims who are subpoenaed to testify at the grand jury, who live more than 50 miles from the site of the grand jury or who must customarily fly to the site of the grand jury, to testify telephonically. Other witnesses are allowed under present law to testify by telephone under these circumstances.

Section 19 amends the Alaska Rules of Evidence to allow, in a prosecution of a crime involving domestic violence or interfering with a report of domestic violence, evidence to be introduced that the defendant has committed other crimes involving domestic violence or interfering with the report of a crime involving domestic violence against the same or another victim.

Sections 20 - 24 include effective date, applicability, court rule and repealer provisions, and the court rule change notations.

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

January 30, 1997

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

☐ *CRIMINAL DIVISION CENTRAL OFFICE*
P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3428
FAX: (907) 465-4043

☐ *OFFICE OF SPECIAL PROSECUTIONS AND APPEALS*
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501-2064
PHONE: (907) 269-6250
FAX: (907) 269-6270

The Hon. Gary Wilken
Chair, Senate Health, Education, and
Social Services Committee
Alaska State Legislature
State Capitol
Juneau, Alaska 99801

Re: SB 66 (Victims' Rights)

Dear Senator Wilken:

Senate Bill 66, which implements art. I, sec. 24 of the Alaska Constitution, Rights of Crimes Victims, was introduced January 28, 1997, and referred to your committee. I am writing to request that the bill be scheduled for hearing at your earliest convenience.

Crimes victims often say that they are victimized twice - first by the defendant, and second by the criminal justice system that prosecutes the defendant. Senate Bill 66 contains amendments to the substantive and procedural law which will help victims through the prosecution process, so that they will understand the system better, and so that the system better protects them.

If you have any questions about the bill or require any further information, please feel free to call me any time.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: Anne D. Carpeneti
Anne D. Carpeneti
Assistant Attorney General

ADC:jf

TONY KNOWLES
GOVERNOR

66

P.O. Box 110001
Juneau, Alaska 99811-0001
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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 27, 1997

The Honorable Mike Miller
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear President Miller:

In a civilized society, people who are criminally wronged by others do not seek personal retribution; rather, society seeks justice on behalf of the victim. There have been instances, however, when our efforts to insure a fair trial for defendants have caused us to ignore or overlook the rights of victims. In response, the people of Alaska ratified in 1994 the Rights of Crime Victims amendment to our state Constitution as art. I, sec. 24. This bill I transmit to you today will implement the victims' rights amendment through substantive and procedural changes to our law.

The bill guarantees a victim has the right to be present at every proceeding during a criminal prosecution or delinquency adjudication in which the defendant or minor has the right to be present. Although the constitution explicitly provides this right, victims in our state are still occasionally excluded from hearings. This exclusion can be very difficult for victims, particularly those who have lost family members as a result of the crime.

The constitutional amendment provides that victims have the right to be reasonably protected from a defendant through bail requirements or conditions of release prior to the defendant's trial. In the spirit of that provision, this bill requires the court to consider the safety of the victim when setting bail and imposing conditions of release.

The bill also closes up certain loopholes in the law that allow the crime of murder to be reduced to manslaughter. It's clear these loopholes were an unintended result of a 1980 change in the law. In addition, provisions in this legislation will make it easier for victims to collect restitution from prisoners.

I also feel it is important to address in this bill an unfortunate situation that arose from the recent tragic murder of Alaska State Trooper Bruce Heck while on duty. A successful defense request for a subsequent autopsy on Trooper Heck delayed his family's plans for cremation. This caused needless suffering for a family already stricken with grief. A provision in this bill will tighten the parameters for allowing subsequent autopsies, in the hope of shielding other families from this unnecessary pain.

Finally, the bill continues the effort I began last year in my legislation to fight domestic violence by making it a class A misdemeanor to interfere with a person who is attempting to report a domestic violence offense to the police.

The people of Alaska told us in 1994 they want victims' rights clearly protected in the state Constitution. This bill will put that public sentiment into practice.

Sincerely,

Tony Knowles
Governor

Article I

shall be passed. No law impairing the obligation of contracts, and no law making any irrevocable grant of special privileges or immunities shall be passed. No conviction shall work corruption of blood or forfeiture of estate.

SECTION 16. CIVIL SUITS; TRIAL BY JURY. In civil cases where the amount in controversy exceeds two hundred fifty dollars, the right of trial by a jury of twelve is preserved to the same extent as it existed at common law. The legislature may make provision for a verdict by not less than three–fourths of the jury and, in courts not of record, may provide for a jury of not less than six or more than twelve.

SECTION 17. IMPRISONMENT FOR DEBT. There shall be no imprisonment for debt. This section does not prohibit civil arrest of absconding debtors.

SECTION 18. EMINENT DOMAIN. Private property shall not be taken or damaged for public use without just compensation.

SECTION 19. RIGHT TO KEEP AND BEAR ARMS. A well– regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed. The individual right to keep and bear arms shall not be denied or infringed by the State or a political subdivision of the State.

SECTION 20. QUARTERING SOLDIERS. No member of the armed forces shall in time of peace be quartered in any house without the consent of the owner or occupant, or in time of war except as prescribed by law. The military shall be in strict subordination to the civil power.

SECTION 21. CONSTRUCTION. The enumeration of rights in this constitution shall not impair or deny others retained by the people.

SECTION 22. RIGHT OF PRIVACY. The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section.

SECTION 23. RESIDENT PREFERENCE. This constitution does not prohibit the State from granting preferences, on the basis of Alaska residence, to residents of the State over nonresidents to the extent permitted by the Constitution of the United States.

SECTION 24. RIGHTS OF CRIME VICTIMS. Crime victims, as defined by law, shall have the following rights as provided by law: the right to be reasonably protected from the accused through the imposition of appropriate bail or conditions of release by the court; the right to confer with the prosecution; the right to be treated with dignity, respect, and fairness during all phases of the criminal and juvenile justice process; the right to timely disposition of the case following the arrest of the accused; the right to obtain information about and be allowed to be present at all criminal or juvenile proceedings where the accused has the right to be present; the right to be allowed to be heard, upon request, at sentencing, before or after conviction or juvenile adjudication, and at any proceeding where the accused's release from custody is considered; the right to restitution from the accused; and the right to be informed, upon request, of the accused's escape or release from custody before or after conviction or juvenile adjudication.

ARTICLE II. THE LEGISLATURE.

SECTION 1. LEGISLATIVE POWER; MEMBERSHIP. The legislative power of the State is vested in a legislature consisting of a senate with a membership of twenty and a house of representatives with a membership of forty.

SECTION 2. MEMBERS' QUALIFICATIONS. A member of the legislature shall be a qualified voter who has been a resident of Alaska for at least three years and of the district from which elected for at least one year, immediately preceding his filing for office. A senator shall be at least twenty–five years of age and a representative at least twenty–one years of age.

SECTION 3. ELECTION AND TERMS. Legislators shall be elected at general elections. Their terms begin on the fourth Monday of the January following election unless otherwise provided by law. The term of representatives shall be two years, and the term of senators, four years. One–half of the senators shall be elected every two years.

SECTION 4. VACANCIES. A vacancy in the legislature shall be filled for the unexpired term as provided by law. If no provision is made, the governor shall fill the vacancy by appointment.

SECTION 5. DISQUALIFICATIONS. No legislator may hold any other office or position of profit under the United States or the State. During the term for which elected and for one year thereafter, no legislator may be nominated, elected, or appointed to any other office or position of profit which has been created, or the salary or emoluments of which have been increased, while he was a member. This section shall not prevent any person from seeking or holding the office of governor, secretary of state, or member of Congress. This section shall not apply to employment by or election to a constitutional convention.

SECTION 6. IMMUNITIES. Legislators may not be held to answer before any other tribunal for any statement made in the exercise of their legislative duties while the legislature is in session. Members attending, going to, or returning from legislative sessions are not subject to civil process and are privileged from arrest except for felony or breach of the peace.

SECTION 7. SALARY AND EXPENSES. Legislators shall receive annual salaries. They may receive a per diem allowance for expenses while in session and are entitled to travel expenses going to and from sessions. Presiding officers may receive additional compensation.

SB

70

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 1/30/97

FURTHER: Judiciary
Finance

Date of 5-Day Notice: 2/13/97
(in accordance with Uniform Rule 23)

DATE TURNED IN TO OFFICE: 2/21/97

HESS Committee considered SENATE BILL NO. 70

"An Act defining the offenses of unlawful discharge of a firearm; and relating to the commission of those offenses by minors."

and recommends:

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

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

[ ] attached amendment(s)

[ ] adopt Letter of Intent by _____ Committee

[ ] further referral to the _____ Committee

Senate Bill:
[ ] same title
[ ] new title

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

SIGNING DO PASS	*DP*	*OTHER RECOMMENDATIONS*	*NR*	*DNP*	*AM*
Drew D. Logan	✓		X		
	✓				
CHAIR:	✓	*CHAIR:*			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
Corrections	2/18/97		✓
Admin - Public Defender	2/14/97	indet	
Law	2/13/97	✓	
Public Safety	2/18/97	✓	
Health + Social Services	2/14/97	✓	
Absk Court System	2/20/97	indet	

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

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

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

Sections Repealed in SB 70

(2) renders a highway impassable or passable only with unreasonable inconvenience or hazard.

(b) It is an affirmative defense to a prosecution under (a)(1) of this section that

(1) the defendant took reasonable steps to remove the substance from the highway; and

(2) no person suffered physical injury as a result of the presence of the substance on the highway.

(c) Obstruction of highways is a class B misdemeanor. (§ 7 ch 166 SLA 1978)

Collateral references. — 39 Am. Jur. 2d, Highways, Streets and Bridges, §§ 281-310.
39A C.J.S., Highways, §§ 217-231.

Sec. 11.61.160. Recruiting a gang member in the first degree. (a) A person commits the crime of recruiting a gang member in the first degree if the person uses or threatens the use of force against a person or property to induce a person to participate in a criminal street gang or to commit a crime on behalf of a criminal street gang.

(b) Recruiting a gang member in the first degree is a class C felony. (§ 2 ch 60 SLA 1996)

Effective dates. — Section 13, ch. 60, SLA 1996 makes this section effective September 1, 1996.

Sec. 11.61.165. Recruiting a gang member in the second degree. (a) A person commits the crime of recruiting a gang member in the second degree if the person is 18 years of age or older and, without force or the threat of force, encourages or recruits a person who is under 18 years of age and at least three years younger than the offender to participate in a criminal street gang.

(b) Recruiting a gang member in the second degree is a class A misdemeanor. (§ 2 ch 60 SLA 1996)

Effective dates. — Section 13, ch. 60, SLA 1996 makes this section effective September 1, 1996.

Article 2. Weapons and Explosives.

Section
130. Misconduct involving weapons in the first degree
195. Misconduct involving weapons in the second degree
200. Misconduct involving weapons in the third degree
210. Misconduct involving weapons in the fourth degree
220. Misconduct involving weapons in the fifth degree
240. Criminal possession of explosives
250. Unlawful furnishing of explosives

Collateral references. — 31 Am. Jur. 2d, Explosions and Explosives, §§ 121-130; 79 Am. Jur. 2d, Weapons and Firearms, §§ 1-34.

35 C.J.S., Explosives, § 1 et seq; 94 C.J.S., Weapons, §§ 3-25.

Validity and construction of gun control laws, 28 ALR3d 845.

Validity of state statutes restricting right of aliens to bear arms, 28 ALR4th 1096.

Sufficiency of evidence of possession in prosecution under statute prohibiting persons under indictment for or convicted of crime from acquiring, having, carrying or using firearms or weapons, 43 ALR4th 788.

Validity of state statute proscribing possession or carrying of knife, 47 ALR4th 651.

Sec. 11.61.190. Misconduct involving weapons in the first degree. (a) A person commits the crime of misconduct involving weapons in the first degree if the person

(1) uses or attempts to use a firearm during the commission of an offense under AS 11.71.010 — 11.71.040; or

(2) discharges a firearm from a propelled vehicle while the vehicle is being operated and under circumstances manifesting substantial and unjustifiable risk of physical injury to a person or damage to property.

(b) Misconduct involving weapons in the first degree is a class A felony. (§ 10 ch 79 SLA 1992; am § 3 ch 60 SLA 1996)

Effect of amendments. — The 1996 amendment, effective September 1, 1996, in subsection (a), redesignated a portion of the existing language as paragraph (1), added paragraph (2), and made a related stylistic change.

Sec. 11.61.195. Misconduct involving weapons in the second degree. (a) A person commits the crime of misconduct involving weapons in the second degree if the person knowingly

(1) possesses a firearm during the commission of an offense under AS 11.71.010 — 11.71.040; or

(2) violates AS 11.61.200(a)(1) and is within the grounds of or on a parking lot immediately adjacent to

(A) a public or private preschool, elementary, junior high, or secondary school without the permission of the chief administrative officer of the school or district or the designee of the chief administrative officer; or

(B) a center, other than a private residence, licensed under AS 47.33 or AS 47.35 or recognized by the federal government for the care of children.

(b) Misconduct involving weapons in the second degree is a class B felony. (§ 10 ch 79 SLA 1992; am § 1 ch 124 SLA 1994; am § 2 ch 130 SLA 1994)

Effect of amendments. — The first 1994 amendment, effective January 1, 1996, substituted "AS 47.35" for "AS 47.35.010 — 47.35.075" in subparagraph (a)(2)(B).

The second 1994 amendment, effective January 1, 1995, substituted "AS 47.33 or AS 47.35.010 — 47.35.070" for "AS 47.35.010 — 47.35.075" in subparagraph (a)(2)(B).

Sec. 11.61.200. Misconduct involving weapons in the third degree. (a) A person commits the crime of misconduct involving weapons in the third degree if the person

(1) knowingly possesses a firearm capable of being concealed on one's person after having been convicted of a felony or adjudicated a delinquent minor for conduct that would constitute a felony if committed by an adult by a court of this state, a court of the United States, or a court of another state or territory;

(2) knowingly sells or transfers a firearm capable of being concealed on one's person to a person who has been convicted of a felony by a court of this state, a court of the United States, or a court of another state or territory;

(3) manufactures, possesses, transports, sells, or transfers a prohibited weapon;

(4) knowingly sells or transfers a firearm to another whose physical or mental condition is substantially impaired as a result of the introduction of an intoxicating liquor or controlled substance into that other person's body;

(5) removes, covers, alters, or destroys the manufacturer's serial number on a firearm with intent to render the firearm untraceable;

(6) possesses a firearm on which the manufacturer's serial number has been removed, covered, altered, or destroyed, knowing that the serial number has been removed, covered, altered, or destroyed with the intent of rendering the firearm untraceable;

(7) violates AS 11.46.320 and, during the violation, possesses on the person a firearm when the person's physical or mental condition is impaired as a result of the introduction of an intoxicating liquor or controlled substance into the person's body;

(8) violates AS 11.46.320 or 11.46.330 by entering or remaining unlawfully on premises or in a propelled vehicle in violation of a provision of an order issued or filed under AS 18.66.100 — 18.66.180 or issued under former AS 25.35.010(b) or 25.35.020 and, during the violation, possesses on the person a defensive weapon or a deadly weapon, other than an ordinary pocketknife;

(9) communicates in person with another in violation of AS 11.56.740 and, during the communication, possesses on the person a defensive weapon or a deadly weapon, other than an ordinary pocketknife;

(10) resides in a dwelling knowing that there is a firearm capable of being concealed on one's person or a prohibited weapon in the dwelling if the person has been convicted of a felony by a court of this state, a court of the United States, or a court of another state or territory, unless the person has written authorization to live in a dwelling in which there is a concealable weapon described in this paragraph from a court of competent jurisdiction or from the head of the law enforcement agency of the community in which the dwelling is located; or

(11) discharges a firearm from a propelled vehicle while the vehicle is being operated in circumstances other than described in AS 11.61.190(a)(2).

(b) It is an affirmative defense to a prosecution

(1) under (a)(1) of this section that

(A) the person convicted of the prior offense on which the action is based received a pardon for that conviction;

(B) the underlying conviction upon which the action is based has been set aside under AS 12.55.085 or as a result of post-conviction proceedings; or

(C) a period of 10 years or more has elapsed between the date of the person's unconditional discharge on the prior offense or adjudication of juvenile delinquency and the date of the violation of (a)(1) of this section, and the prior conviction or adjudication of juvenile delinquency did not result from a violation of AS 11.41 or of a similar law of the United States or of another state or territory;

(2) under (a)(2) or (10) of this section that

(A) the person convicted of the prior offense on which the action is based received a pardon for that conviction;

(B) the underlying conviction upon which the action is based has been set aside under AS 12.55.085 or as a result of post-conviction proceedings; or

(C) a period of 10 years or more has elapsed between the date of the person's unconditional discharge on the prior offense and the date of the violation of (a)(2) or (10) of this section, and the prior conviction did not result from a violation of AS 11.41 or of a similar law of the United States or of another state or territory.

(c) It is an affirmative defense to a prosecution under (a)(3) of this section that the manufacture, possession, transportation, sale, or transfer of the prohibited weapon was in accordance with registration under 26 U.S.C. 5801-5872 (National Firearms Act).

(d) It is an affirmative defense to a prosecution under (a)(11) of this section that the person was using a firearm while hunting, trapping, or fishing in a manner not prohibited by statute or regulation.

(e) The provisions of (a)(3) and (11) of this section do not apply to a peace officer acting within the scope and authority of the officer's employment.

(f) As used in this section,

(1) "prohibited weapon" means any

(A) explosive, incendiary, or noxious gas

(i) mine or device that is designed, made, or adapted for the purpose of inflicting serious physical injury or death;

(ii) rocket, other than an emergency flare, having a propellant charge of more than four ounces;

(iii) bomb; or

(iv) grenade;

(B) device designed, made, or adapted to muffle the report of a firearm;

(C) firearm that is capable of shooting more than one shot automatically, without manual reloading, by a single function of the trigger; or

Sec. 11.61.210. Misconduct involving weapons in the fourth degree. (a) A person commits the crime of misconduct involving weapons in the fourth degree if the person

(1) possesses on the person, or in the interior of a vehicle in which the person is present, a firearm when the person's physical or mental condition is impaired as a result of the introduction of an intoxicating liquor or a controlled substance into the person's body in circumstances other than described in AS 11.61.200(a)(7);

(2) discharges a firearm from, on, or across a highway;

(3) discharges a firearm with reckless disregard for a risk of damage to property or a risk of physical injury to a person;

(4) manufactures, possesses, transports, sells, or transfers metal knuckles;

(5) manufactures, sells, or transfers a switchblade or a gravity knife;

(6) knowingly sells a firearm or a defensive weapon to a person under 18 years of age;

(7) other than a preschool, elementary, junior high, or secondary school student, knowingly possesses a deadly weapon or a defensive weapon, without the permission of the chief administrative officer of the school or district or the designee of the chief administrative officer, within the buildings of, on the grounds of, or on the school parking lot of a public or private preschool, elementary, junior high, or secondary school or while participating in a school-sponsored event, except that a person 21 years of age or older may possess

(A) a deadly weapon, other than a loaded firearm, in the trunk of a motor vehicle or encased in a closed container in a motor vehicle;

(B) a defensive weapon;

(C) an unloaded firearm if the person is traversing school premises in a rural area for the purpose of entering public or private land that is open to hunting and the school board with jurisdiction over the school premises has elected to have this exemption apply to the school premises; in this subparagraph, "rural" means a community with a population of 5,500 or less that is not connected by road or rail to Anchorage or Fairbanks or with a population of 1,500 or less that is connected by road or rail to Anchorage or Fairbanks; or

(8) being a preschool, elementary, junior high, or secondary school student, knowingly possesses a deadly weapon or a defensive weapon, within the buildings of, on the grounds of, or on the school parking lot of a public or private preschool, elementary, junior high, or secondary school or while participating in a school-sponsored event, except that a student may possess a deadly weapon, other than a firearm as defined under 18 U.S.C. 921, or a defensive weapon if the student has obtained the prior permission of the chief administrative officer of the school or district or the designee of the chief administrative officer for the possession.

(b) *[Repealed, § 4 ch 63 SLA 1990.]*

(c) The provisions of (a)(7) of this section do not apply to a peace officer acting within the scope and authority of the officer's employment.

(d) Misconduct involving weapons in the fourth degree is a class A misdemeanor. (§ 7 ch 166 SLA 1978; am §§ 21, 22 ch 102 SLA 1980; am §§ 2, 4 ch 63 SLA 1990; am § 7 ch 59 SLA 1991; am §§ 15, 16 ch 79 SLA 1992; am §§ 1, 2 ch 33 SLA 1995)

Revisor's notes. — Subsection (c) was enacted as (d). Relettered in 1995. Subsection (d) was formerly (b); relettered as (c) in 1980 and relettered again in 1995.

Effect of amendments. — The 1990 amendment added "in circumstances other than described in AS 11.61.200 (a)(7)" at the end of paragraph (a)(1) and repealed subsection (b).

The 1991 amendment, effective September 15, 1991, in subsection (a), rewrote paragraph (1) and added paragraphs (4) and (5).

The 1992 amendment, effective September 14, 1992, substituted "fourth degree" for "second degree" near the beginning of subsection (a) and in subsection (d); and added paragraph (a)(6) and made related stylistic changes.

The 1995 amendment, effective August 17, 1995, added paragraph (a)(7), made a related stylistic change, and added subsection (c).

Legislative history reports. — For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 29, 1980.

SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

SPONSOR STATEMENT
FOR SENATE BILL 70
"UNLAWFUL DISCHARGES OF FIREARMS"

Senate Bill 70 provides strong new deterrents to individuals who unlawfully discharge firearms at buildings .

Last year an Anchorage family was awoken in the middle of the night to a barrage of gunfire. The next day, the Anchorage Police Department found five bullets lodged in various locations of the family's home. Juneau has witnessed seven separate accounts of shootings at dwellings in the last year alone. **Under current state law, the unlawful discharge of a firearm at a building is only a misdemeanor.**

SB 70 creates a new felony offense for the unlawful discharge of firearms at or in the direction of a building. The legislation also creates a stiffer penalty for those individuals charged with discharging a firearm in the direction of a building with reckless disregard for a risk that the building is occupied. Senate Bill 70 also adds the "unlawful discharge of a firearm in the first or second degree" to the list of possible automatic waiver crimes for certain juveniles. Minors, at least 16 years of age at the time of offenses, would be charged, prosecuted and sentenced in superior court in the same manner as an adult.

SB 70 adds the crime of an unlawful discharge of a firearm in the first degree to the statutory definition of "most serious felony". Under this provision the crime of an unlawful discharge of a firearm would be on the same level as first degree offenses of arson and promoting prostitution.

SB 70 also denies individuals a concealed gun handgun permit if that person has been found guilty of an unlawful discharge of a firearm in the fourth degree within the last five years. Unlawful discharges of a firearm in the first, second and third degree already disqualifies individuals from obtaining a conceal carry weapons permit.

Finally SB 70 makes the statutes easier to understand by grouping all offenses dealing with the unlawful discharge of firearms into one separate section of law.

Senate Bill 70 addresses the problem of random reckless discharges of firearms by instituting tough new penalties on those individuals who not only endanger property but innocent lives as well.

DD/jja

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

SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

Sectional Analysis for Senate Bill 70 "Unlawful Discharge of Firearms"

Section #1 - restructures AS 11.61.200 (e) by deleting the offense of misconduct involving weapons in the third degree and reclassifies it as the unlawful discharge of firearms in the third degree.

Rationale: this reclassification groups this offense with other offenses of unlawful discharge of firearms created in section #2 of the bill. This restructuring makes the statutes easier to understand.

Section #2 - Creates four separate levels of offenses for the unlawful discharge of firearms. Additionally, this section creates a new felony offense for the unlawful discharge of firearms at or in the direction of a building and stiffens the penalty for discharging a firearm in the direction of a building with reckless disregard for a risk that the building is occupied.

Rationale: Last year in Alaska, there was a sharp increase in the number of random reckless discharges of firearms by individuals at buildings. Under current state law, the unlawful discharge of a firearm at a building is only a misdemeanor. This section establishes tough new penalties on those individuals who unlawfully discharge firearms.

Section #3 - classifies and adds the offense of unlawful discharge of a firearm in the first degree to the list of "most serious felonies" in state statutes.

Rationale: this section would add the unlawful discharge of firearm in the first degree to the list of crimes applicable in the newly adopted "Three Strikes and You Are Out" law. Under that law specific offenders who have two separate prior class A or unclassified felony convictions are sentenced to a definite term of 40-99 years on their third conviction.

Section #4 - adds the offense of unlawful discharge in the fourth degree to the list of offenses, which if convicted, deny individuals a concealed carry weapons permit.

January-May: STATE CAPITOL • JUNEAU, AK • 99801-1182 • (907) 465-3892 • FAX: (907) 465-6595
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MEMBER: Senate Finance Committee • Legislative Budget & Audit Committee
• Senate Community & Regional Affairs Committee

Rationale: in current state law, the first, second, and third degree offenses of a discharging of firearms already disqualifies individuals from obtaining a concealed weapons permit. This provision would disqualify individuals who discharge a firearm

1) at or in the direction of a building, other than a dwelling
2) from, on, or across a highway; or
3) with reckless disregard for a risk of physical injury to a person or damage to a property.

Section #5 - adds the "unlawful discharge of a firearm in the first or second degree to the list of possible automatic waiver crimes for certain juveniles. Minors, at least 16 years of age at the time of offenses, would be charged, prosecuted and sentenced in superior court in the same manner as an adult.

Rationale: unlawful discharges of firearms in the first or second degree are serious offenses and this provision would hold minors, 16 years or older, accountable for those offenses in superior court.

Section #6 - adds the offense of "unlawful discharge of a firearm in the first or second degree to the charges of an unclassified felony or class A felony and that are crimes against a person. If a minor petitions the court to be declared a delinquent when being charged for this offense the minor

1) is rebuttably presumed not to be amenable to treatment
2) has the burden of proof of showing that the minor is amenable to treatment.

Rationale: Minors under determination to be waived to adult court may petition the court be declared a delinquent for the commission of the offense. The serious nature of these crimes necessitates that a minor, not the state, provide the burden of proof if such a petition is filed.

Section #7 - restructures current state statutes by grouping all offenses dealing with the unlawful discharge of firearms into one separate section of law.

DD/jja

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 70

Revision Date:
Title: Unlawful discharge of a firearm
Sponsor: Senator Donley
Requester: Senate HES

Dept. Affected: Corrections
BRU: All
Component: All
COMPONENT SERIAL NO. #0694

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	311.3	388.1	465.0	541.8	618.7	656.9
TOTAL OPERATING	311.3	388.1	465.0	541.8	618.7	656.9
CAPITAL EXPENDITURES					663.0	3,757.0
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	311.3	388.1	465.0	541.8	1,281.7	4,413.9
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	311.3	388.1	465.0	541.8	1,281.7	4,413.9

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

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Please see attached explanation.

Prepared by: Bruce Richards
Division: Commissioner's Office
Phone: 465-3307
Date: 2/18/97

Approved by Commissioner: Margaret M. Pugh
Agency: Department of Corrections
Date: 2/18/97

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Assumptions

1. According to DFYS the number of juveniles who would be automatically waived under proposed AS11.61.300 is approximately two per year. These juveniles would be convicted of class A felonies which carries a presumptive sentence of 7 years. This would result in actual incarceration of 4 years and 8 months (time subtracted for mandatory parole) per individual.

2. According to the Department of Law the number of juveniles who would be automatically waived under proposed AS11.61.310 is approximately six per year. These juveniles would be convicted of a class B felony, which carries a sentence of 0 to 10 years. The average sentence for a first class B felony is 1.5 years. This would result in actual incarceration time of 1 year (time subtracted for mandatory parole) per individual.

3. Each felony case will require a pre-sentence investigation (PSI) report for the court. Preparing a PSI report for class A felonies costs approximately $630 each. Each class B felony PSI report costs approximately $455.

4. The statewide average daily cost of incarceration is $105.27. It is assumed that those convicted of AS 11.61.300 and AS 11.61.310 offenses will require incarceration in state correctional facilities, as opposed to lower-cost community residential centers.

5. The correctional system cannot safely or legally absorb additional prisoners without additional beds being added. The system has operated over emergency capacity for several years. In addition to posing safety hazards, operating over emergency capacity has resulted in contempt of court fines which will total approximately $2.4 million by the end of FY97. Without constructing new beds, the addition of violent juvenile offenders serving lengthy sentences in the adult system will worsen crisis levels of overcrowding, increasing the risks of harm to staff, prisoners, and the public.

6. The average cost of construction for a correctional bed is approximately $100,000. A maximum security bed costs approximately $160,000. The cost used in these calculations should be considered very conservative, given the nature of offenses for automatically waived juveniles. The department has projected that expansion of an existing facility by 34 beds would address the projected number of inmates in Senate Bill 70, as well as the current juvenile population already in state correctional facilities.

7. These cost estimates are not adjusted for inflation, nor do they reflect the significant upward trend in rates of violent juvenile crime. It is hoped that any deterrent effect achieved by this measure will offset those factors. If deterrence does not sufficiently offset the escalating juvenile crime rate, the operating and capital expenses will be higher.

8. The department (when possible) houses waived juveniles in single cells, at least during the initial months of incarceration, to determine their level of vulnerability to adult predators in the prison population. It is generally assumed that juvenile inmates require closer security than the average adult. The department does try to place juveniles with other juveniles when possible. However, this is more difficult to do in smaller facilities.

Operating Expenses

FY98: 2 class A felony offenses X $630 per PSI report= $1.2
6 class B felony offenses X $455 per PSI report= $2.7
8 inmates X 365 days X $105.27 per day = $307.4
TOTAL = **$311.3**

YEAR	OLD+ NEW	TOTAL	COST PER DAY	DAYS	INCARC COST PER YEAR	PSI COSTS	TOTAL
FY98	8	8	$105.25	365	$307.4	$3.9	$311.3
FY99	8 + 2	10**	$105.25	365	$384.2	$3.9	$388.1
FY00	10+ 2	12	$105.25	365	$461.1	$3.9	$465.0
FY01	12 + 2	14	$105.25	365	$537.9	$3.9	$541.8
FY02	14 + 2	16	$105.25	365	$614.8	$3.9	$618.7
FY03	16	16*	$105.25	365	$614.8	$3.9	$618.7 + $38.2 $656.9

**Beginning in FY99 the first offenders (6) under proposed AS 11.61.310 would be released. This results in a no net gain from this point forward since 6 would enter the system and 6 would be released.
*Midway through FY 03 the first offenders (2) under proposed AS 11.61.300 will be released and therefore are not reflected in the total number of inmates. Their cost is reflected separately in the final total at $38.2 for FY03.

Capital Expenses

34 inmates X $130,000 per bed = $4,420,000

Operating expenses for the expanded facility are not reflected in this fiscal note since expected completion of the facility would not occur until FY04. Fifteen percent of the of the estimated construction costs have been entered as capital costs in FY02 for architectural and engineering as well as other related costs. The balance is included in the FY03.

FISCAL NOTE

STATE OF ALASKA **BILL NO. SB 70**

1997 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Administration

Title: "An Act defining the offenses of unlawful discharge of a firearm..."

BRU: Public Defender Agency

Component: Public Defender Agency

Sponsor: Senator Donley

Requestor: (S) HESS

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.)

See attached sheet.

Prepared by: Barbara K. Brink, Director Phone: (907) 264-4414

Division: Public Defender Agency Date: _____

Approved by Commissioner: Mark Boyer

Agency: Department of Administration Date: 2/14/97

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STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 70

ANALYSIS: (continued)

This bill creates a new class B felony crime of unlawful discharge of a firearm in the second degree if a person discharges a firearm at or in the direction of a building with reckless disregard for a risk that the building is occupied. Unlawful discharge of a firearm in the third degree is created for other circumstances when a propelled vehicle is being operated. The first degree class A felony also becomes a most serious felony under the current three strikes law. Additionally a person's ability to get a concealed weapon permit is restricted if they have been convicted of such an offense within the last five years. Finally, a minor who is 16 or 17 who is arraigned on a charge of an unlawful discharge of a firearm in the first or second degree will be automatically waived to adult court. These statutory modifications will have enormous impact on the Alaska Public Defender Agency. It will result in the creation of more juveniles being charged in adult court with class A felony and class B felony charges. These types of charges are the most time intensive and labor consumptive of all the cases the Public Defender Agency handles. Without accurate predictions of the numbers of cases the fiscal impact, while definite, cannot be quantified.
@

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 70

Revision Date:
Title: " . . . defining the offenses of unlawful discharge of a firearm; and relating to commission . . . by minors."
Sponsor: Senator Donley
Requester: Senate HESS Committee

Dept. Affected: Department of Law
BRU: Criminal Division
Component: Criminal Division
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)

SB 70 defines the offense of unlawful discharge of a firearm, includes a conviction of unlawful discharge of a weapon in the fourth degree as one of the misdemeanor offenses disqualifying an individual from receiving a concealed weapons permit, and includes the charge of unlawful discharge of a weapon in the first or second degree as one requiring automatic waiver of a juvenile to adult court.

Because this bill essentially redefines conduct that is already a crime, the department does not anticipate any fiscal impact. The waiver of juveniles into adult court for certain activities does constitute new cases for the Criminal Division, however, the department does not expect the caseload increase to be significant. We would note, however, than many other bills have been introduced that create automatic waivable offenses that, alone, are not expected to create a fiscal impact. However, depending on how many pass, they may have a cumulative impact. The department will need to assess this cumulative impact when it is known.

Prepared by: Joan M. Kasson
Division: Administrative Services Division
Phone: 465-5370
Date: 2/13/97

Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law
Date: 2/13/97

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FISCAL NOTE

STATE OF ALASKA **BILL NO: SB 70**

1997 LEGISLATIVE SESSION

Revision Date: 02/17/97 Dept. Affected: Public Safety

Title: Create Unlawful Discharge of a Firearm Crimes BRU: Alaska State Troopers

Component: Detachments

Sponsor: Sen. Donley

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 ( ) 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 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

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 70

Revision Date:
Dept. Affected: Health and Social Services
Title: Discharge of a Firearm and Relating to the Commission of those Offenses by Minors
BRU: Family and Youth Services
Component: DFYS Central Office
Sponsor: Senator Donley
COMPONENT SERIAL NO. 259
Requestor: Senate (HES)
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	0.0	0.0	0.0	0.0	0.0	0.0
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)

There will be no fiscal impact on the department if this bill becomes law. While there will be no increase if this class of offenses is established, there will be no decrease in the funds required to operate DFYS if youth who commit these offenses are waived to the adult system. The department will still be faced with overcrowding in juvenile facilities and a waiting list of youth with incarceration orders even if a few more youth are waived under this bill.

2/14/97

Prepared by: L. Dianne Worley, Director
Division: Family & Youth Services
Phone: 465-3191
Date: 02/14/97

Approved by Commissioner: Karen Perdue, Commissioner
Agency: Department of Health & Social Services
Date: 2/14/97

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 70

Revision Date:
Dept. Affected: Alaska Court System
Title: Unlawful Discharge of a Firearm
BRU: Trial Courts
Component:
Sponsor: Sen. Donley
Requestor: HES
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						
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: None

Positions

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SB 70 redefines certain conduct that is already a crime, which should not result in a fiscal impact. However, the waiver of juveniles into adult court for certain offenses will increase costs because the trial rate for adult offenses is substantially higher than the trial rate for juvenile offenses. Depending on the number of automatic waivers which are made, the court system may need to return to the Legislature for funding.

Prepared by: C. S. Christensen III, Staff Counsel Phone: 264-8228
Agency: Alaska Court System Date: 02/20/97

Approved by: Arthur H. Snowden, II, Administrative Director BY Date: 02/20/97
Agency: Alaska Court System

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BULLETS: Five shots hit Muldoon home

Continued from Page B-1

try to get even with a pistol in the dark of night.

If the shooter is ever caught — something they don't expect — she said she'd first ask "Why did you do it?"

"They could have killed someone," Ronald Harper said. "It's like they didn't care."

As it happened, the main casualty besides peace of mind were two stuffed animals, a whale and a dolphin, in Theresa's room. The toys were on the bookshelf above her bed, Theresa said, a few feet away from where she was sleeping. The bullet blasted their stuffing out.

"It's scary," Theresa said. The 15-year old Bartlett High School sophomore said she thought she heard the last two shots. It sounded like someone trying to break the window.

"I woke straight up. I was petrified," she said.

She never imagined such a thing could happen she said. "There's no reason for it. I don't have any enemies, and I don't think my parents do either."

Her parents said the same thing.

Ronald Harper said he called the police, who arrived a few minutes later. The police officers said it looked like the shooter was on foot, he said. Other than that, the police didn't say much.

He said he wanted other people, especially other parents, to know what had happened. Maybe if people talk about it, some clue will emerge, he said.

No further details were available from the police department on Sunday.

Bullets puncture house

Muldoon shooting perplexes family

By STEVE RINEHART
Daily News reporter

Ronald Harper paced the walkway in front of his home in Muldoon on Sunday afternoon, pointing out the bullet holes punched through the gray aluminum siding. They were big enough to wedge a finger in; they had opened the metal siding like a can-opener.

"That's the one that went through (Theresa's) bedroom," he said. "That one went over my computer."

Another went through the living room window, missing the big-screen television but gouging a trough through the woodwork. A fourth round plowed into a corner near the front door; a fifth drilled through at the right height to lodge between the upper and lower floors of the split level house on Dickerson Street, just off Turpin Street.

"The police found five (cartridge) casings in the street," he said. "I thought I heard six shots."

The Harpers — Ronald, Evangeline and their daughter, Theresa — were sleeping about 4 a.m. Sunday when they heard, and felt, the barrage. "It was like a shockwave," Ronald Harper said.

Sunday afternoon they were trying to figure out what it meant.

Evangeline Harper said she hoped the shooting was random, that no one was angry enough with them to

Please see Page B-2, BULLETS

ANNE RAUP / Anchorage Daily News

Theresa Harper, 15, holds her stuffed Shamu, which now sports bullet holes. Shamu and Flipper were on the top bookshelf, background, when they were hit.

JUNEAU EMPIRE

'The Voice of Alaska's Capital City'

WEDNESDAY
OCT. 30, 1996

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OCT 30

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No one hurt in drive-by shooting

By SVEND HOLST
THE JUNEAU EMPIRE

Gunfire rattled through a trailer at the Switzer Creek Mobile Home Park early this morning.

Capt. Michael DeCapua, spokesman for the Juneau Police Department, said the beginning stages of the investigation unveiled no rhyme or reason for why someone fired four bullets into a trailer off one of the main drives into the park at about 4:30 a.m.

"We're early in the investigation," he said. "We have several leads at this point but we're still asking for the public's help."

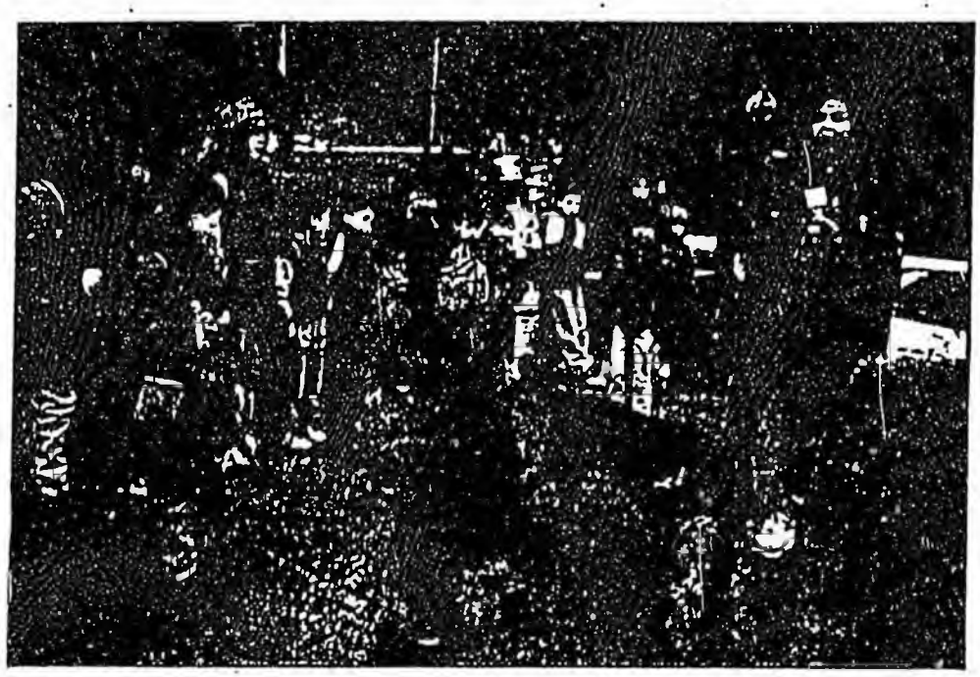
Police believe it was a drive-by shooting, DeCapua said.

None of the five occupants of the brown-and-beige trailer were injured by the flying bullets, some of which went completely through the mobile home and into another one behind it, said Sgt. Walter Bowman.

He said the shots most likely came from a street leading from the road that enters the mobile home park next to the Department of Transportation building off Glacier Highway.

Along with reports of five gun

Please see Drive-by, Page 8



MICHAEL PENN / JUNEAU EMPIRE

Icy spot: Delores Wheaton, right, counts heads this morning at a bus stop on Cordova Street at Douglas Highway, where children have been falling on steep, icy sidewalks.

Slip sliding to school

By MARK SABBATINI
THE JUNEAU EMPIRE

For 11-year-old David Jones, the ice on the steep sidewalk is something to liven up the morning trip to the school bus stop.

But for parents such as Delores Wheaton, it's a nightmare waiting to happen.

A wide sidewalk in West Juneau at the intersection of Cordova Street and Douglas Highway is the problem. Water from a hillside drains onto the sidewalk, where it is trapped by retaining walls on either side.

When it gets cold, the water freezes into a slanted slate of ice that students and other residents must cross to get to the bottom of the hill. Residents have complained to the city, but an official said responsibility lies with the homeowners beside the sidewalk.

Jones and several other students waiting at the bus stop this morning said they didn't mind the ice, stating they walked close to the edges of the sidewalk to avoid the worst of it – or intentionally slid down for fun.

"I know if I fall it was my fault because I was sliding," said Jones, a fifth-grade student at Gastineau Elementary School.

Please see Slippery, Page 8

State coffers swell

■ *High oil prices could balance the budget*

By MARK SABBATINI
THE JUNEAU EMPIRE

Continuing high oil prices are expected to earn Alaska about $400 million extra this year, which could be enough to balance the state's budget.

The average price of Alaska North Slope crude is expected to be between $20 and $20.50 a barrel for the current fiscal year, which began July 1, said Chuck Logsdon, chief petroleum economist for the state Department of Revenue.

The initial projected price was $16.67 a barrel.

"That's a significantly higher price than I think most analysts, including ourselves, thought was possible when we were assessing the situation last year," he said today from Anchorage.

Logsdon said an increase of $1 a barrel results in an additional $100 million for the state. On Tuesday, prices were nearly $23 a barrel.

Fluctuating oil prices mean the projected spending gap in the state's $2.4-billion budget is a moving target, since 80 percent of Alaska's revenue comes from oil. Officials have previously placed

Please see City, Page 8

Principal's

Memorial

Measure is really about oil

OCT 30 19

...miles southwest of Juneau, had been closed to hunting since 1984. In the time since then, the state an... U.S. Forest Service created the Stan Price ...ame Sanctuary, which has become an in... ...ngly popular brown-bear viewing area on the beach of the canal and part way up Pack Creek. About 95 square miles around the area are closed to hunting.

Dinneford said public testimony at the Sitka meeting leaned in favor of keeping the area closed.

Murray, who traveled to Sitka to speak in favor of his proposal, said he wasn't surprised by the vote, "but you always hope."

He said state wildlife officials offered no biological reason to keep the area closed, so the vote by board members was in response to anti-hunting lobbying.

Murray's proposal was opposed by Fish and Game's Wildlife Conservation Division.

Murray said he is looking at other options to try

Trail Mix and several people who testified at the meeting opposing the plan.

... trails include Perseverance, Mount Rob... ... Moller, Point Bishop, Point Bridget, Ea... ...ver and Herbert River. The Game Board voted in 1988 to prohibit trapping within one-quarter mile of those trails.

In Juneau, trappers are usually after marten, mink or river otters.

Fish and Game's Wildlife Conservation Division proposed allowing trapping, if traps were set at least 100 feet away from a trail. Under its plan, traps between 100 feet and one-quarter mile from the trail would be set at least four feet above the ground.

The provision was to ensure pets and small children wouldn't accidentally get caught.

A number of trails don't have the quarter-mile restriction, including Montana Creek, East and West Glacier trails, Salmon Creek, Treadwell Ditch, Mount Juneau and Mount Jumbo.

Slippery sidewalk...

Continued from Page 1

That's little consolation for Wheaton, a member of the Gastineau Site Council who supervises an estimated 30 elementary kids at the bus stop each morning.

"Three kids fell yesterday," Wheaton said. "I'm surprised they didn't get hurt. (The city) is going to hear about it if somebody gets hurt."

Wheaton said many seniors live at the Cedar Park apartment complex nearby and have to descend the hill to reach the city bus stop. She said several have asked for help in getting past the ice.

The problem appears to stem from the rebuilding of the house adjacent to the sidewalk about two years ago, said Kerry Finley, assistant street superintendent for the city. He said drainage from the foundation and gravel driveway runs onto the sidewalk, and the property owners need to build a catch basin to divert the water to the bottom of the hill.

A city engineer is working with the homeowners to try to resolve the problem, Finley said.

"It's one of those areas where we've fought the ice over there," he said. "We haven't realized where it's coming from until now."

Jeanne Farrell said there is nothing that can be done with the home or the driveway she and her husband, T.J., purchased a year ago to solve the problem. She said the drainage comes from the hill next to her house and the city's rebuilding of the sidewalk is at fault.

"I don't know what happened when the city put in the retaining walls, why they didn't put in a better drainage system," she said.

Residents in the neighborhood said the problems began after the sidewalk reconstruction occurred a few years ago.

Finley said the city is putting sand and chemicals on the sidewalk to make it safer. Wheaton said she has not noticed any such efforts until this morning, when temperatures were above freezing and ice was not a threat.

Drive-by shooting...

Continued from Page 1

shots, mobile home park residents said, police a speeding vehicle was seen leaving the area.

The number of bullets fired has yet to be confirmed, Bowman said.

"Bullets are hard to see sometimes," he said.

Police numbered the four bullet holes in the trailer they've found so far with orange paint. They were spaced along the length of the trailer about four feet from the ground.

Inside the house, Bowman said, some clothes and a refrigerator were hit by the bullets. It [illegible] trailer.

Rafael Flores, 30, moved into a trailer with his wife and two children near the bullet-riddled home this month. He'd been told, he said, it was a quiet neighborhood.

"It was a strong weapon," he said. "It's scary."

Walking with two children she was baby-sitting this morning, Cindy Germain was also frightened by the early morning shots. Her sister-in-law lives in the home hit by the bullets after they pass[illegible]

"[illegible] in the park," she said. "This is too close to home." After waking to the sound of gunfire, she heard of another shot fired while listening to a police scanner.

That shot was near Vanderbilt Hill, on the other side of Lemon Creek, said DeCapua. Police, however, are not sure if the two shootings are related. Police have yet to determine the caliber of the bullets recovered this morning.

Moggie is back at Ketchikan cafe

THE ASSOCIATED PRESS

KETCHIKAN – A familiar pooch is back guarding his owners' downtown coffee shop – legally. Moggie, a golden retriever, had been ousted from his longtime post after animal control authorities decided to enforce the local leash laws.

But the dog got a dispensation under a new law exempting canines that prove they can obey voice commands and aren't aggressive.

So now he's back lounging at the familiar spot in front of Moggie's Mochas, Mugs and More.

"He went out and he took his test on Thursday and he earned license number 0001," said Joyce Hazelquist, who with her husband Don owns the dog and the coffee shop. "He's just as happy as can be."

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PENN / THE JUNEAU EMPIRE
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The Paper publishes final edition

Without some major investors, editor says weekly cannot survive

By LORI THOMSON
THE JUNEAU EMPIRE

As subscribers to The Paper read today's final edition, the weekly newspaper's staff will begin shutting down its office on Third and Franklin streets.

The weekly announced earlier this month it was seeking $100,000 to keep the newspaper open. Ten different small investors committed a total of $12,000 to $15,000 to the publication since then, but no major investors came forward, said editor Larry Persily.

"I don't see anyone coming in to carry us through a second year," Persily said Thursday afternoon. "It's silly to run another month or two to spend all the money we have just to prove we can go 15½ months instead of 14."

Advertising revenue for the weekly fell short of expectations. Persily has attributing that to advertisers being cautious because The Paper was the new publication on the block.

Launched on Nov. 22, 1995, The Paper faced competition from the daily Juneau Empire and the free Capital City Weekly, as well as radio stations.

Empire Publisher John Winters said he did not think a town of 30,000 people could support two newspapers, when even big cities often cannot.

"We're sorry when any newspaper folds, but I did not think from day one this size market could support two weeklies and a daily," Winters said.

Having started with six full-time staff members, The Paper's staff was cut to two full-time and three "very part-time" employees, Persily said.

Persily and his staff will probably spend the next month

Around Juneau

Tank leaks oil into Gastineau Channel

JUNEAU – A leaking oil tank at a home above Aurora Harbor sent diesel fuel into Gastineau Channel on Thursday morning.

A large sheen was seen at Aurora Harbor at about 8 a.m., and the U.S. Coast Guard's Marine Safety Office, the city and the state Department of Environmental Conservation launched an investigation, said Ensign Vivianne Louie of the Marine Safety Office.

They traced the diesel up through a storm drain to a leaking home heating tank on Judy Lane, four blocks up-slope from Juneau-Douglas High School.

"Even a pin-hole leak will empty a whole tank," Louie said. "Not all four hundred gallons got in the water. Most of it, I would say, is in the storm drain system."

Thursday, the Coast Guard estimated less than five gallons of diesel made it into the channel, but no more specific estimate was available today.

The cost of the 400 gallons of diesel is about $430. But, Louie said, the homeowner may end up paying thousands of dollars to clean up the spill.

Second trailer was hit by shots

JUNEAU – Police investigators have determined the second trailer hit by gunfire Thursday morning at the Switzer Village Mobile Home Park was struck by shotgun shot.

A third trailer may also have been hit by a projectile fired at a neighboring mobile home, police said today.

After responding to a report of a mobile home being shot up on Blue Jay Way, another report came in from the residents of a trailer close to the center of the park. Police found five holes, believed to have come from a shotgun blast, in the window of the trailer, said police spokesman Michael DeCapua.

At about 8:30 a.m., a resident next door to the second trailer hit by gunfire said his home had been hit as well, said Lt. Ron Forneris, an investigator for the Juneau Police department.

"The resident feels the event just occurred and was contemporaneous with the other event," he said. The bullet, which did not appear to be from a shotgun shell, was of a large caliber, but didn't penetrate into the trailer very far, he said.

Forneris said police have not been able to determine whether the bullet that was lodged in the trailer was related to the other shooting, or whether it was a recently fired shot or not. It's possible, he said, that the bullet hit the trailer at some point before Thursday, but was only noticed by the home's owner then.

The trailer on Blue Jay Way sustained a dozen holes in a window that faced the road.

Landslide expert in Juneau

JUNEAU – A Colorado consultant is assessing the slide danger for homes in the White Subdivision today.

The city flew Arthur Mears, co-author of a 1992 study on Juneau landslide and avalanche hazards, here to evaluate how tree cutting above the White Subdivision might have impacted their risk, said city engineer Ben Pollard.

Mears will meet with White Subdivision residents at 5 this evening in Juneau Assembly chambers to give his report and answer questions.

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...se see Oil, Page 6

T.J. Farrell. "It is a terrible loss. We've got some real talent here."

Echo Bay Mines Ltd.'s board of directors decided this week to write off the Alaska-Juneau gold mine near downtown Juneau because feasibility studies showed it would be unprofitable to reopen.

No one has been laid off yet, and company officials say they are still evaluating what to do next – redesign the project, sell it or close it. However, Bill Goodhard, project manager for Echo Bay Alaska Inc., said because the board is writing the project off, the local office is "prepared to move toward closure."

Jill Paukert, a spokeswoman for Echo Bay corporate offices in Englewood, Colo., said there is no timeline for when a definite decision will be made.

awhile, regardless of the decision the company eventually makes, because even if the mine closes, there will be work associated with the closure for some time.

But he doesn't want to lose touch with co-workers he's grown close to, whom he fears will have to leave town to find work.

"They go someplace else and you never see them again," Farrell said.

It's also difficult to watch

was among about 12 employees laid off from Echo Bay last year, said she had hoped to go back to work there, but she was not shocked at the news.

"I think the writing was on the wall months ago," she said. "The feasibility studies weren't coming back really well. I didn't know for a fact, but I wasn't holding my breath."

Gallagher and Farrell said

Please see Echo Bay, Page 6

A taste of racial injustice brings message home

By CATHY BROWN
THE JUNEAU EMPIRE

It was a small injustice – some kids got a Hershey's kiss and others didn't – but it was enough to get Chris Ruiz's attention.

"It wasn't fair," the second-grader protested. ". . . I felt like a prisoner."

The only reason he didn't get candy right away was because he had the bad luck to get a green piece of paper taped under his chair, instead of a red one.

John Cashen also got green paper. "I was sad. I felt left out," the little boy said.

Second-grade Harborview Elementary School teacher Twyla Alexander set up the exercise to show her students what discrimination feels like and to teach them why Americans celebrate the birthday of civil rights leader Martin Luther King Jr.

Several teachers in the Juneau School District have spent time this week talking to their students about King, the non-violent protests he advocated and the reasons behind the civil

Please see Lesson, Page 6

Shots fired at Switzer

■ *Police say two trailers were hit in mobile home park*

By SVEND HOLST
THE JUNEAU EMPIRE

A shotgun was apparently used to blow holes in two trailers at the Switzer Village Mobile Home Park early this morning.

Reports of the first shooting came into police at about 1:45 a.m. from a woman living in a mobile home in the Blue Jay Way area of the park, which is close to Dzantik'i Heeni Middle School, according to Capt. Michael DeCapua, spokesman for the Juneau Police Department.

She said someone had fired a gun at her trailer.

Residents of another mobile home in the same area called police later in the morning to report finding bullet holes in their trailer as well.

Details on the second incident were sketchy this morning as police, in patrol cars and on foot, combed the neighborhood. However, a shotgun seems to have been used in both shootings.

"We are working on a number of leads at this point," DeCapua said. As always, police are asking for anyone who may know anything about the shootings to call them.

He said investigators aren't sure if the shootings were drive-bys, and have not determined if the incidents were related to previous Switzer shootings or to gang activity.

Please see Shots, Page 6

Juneau Empire
Thurs. [illegible] p. 1

1997

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iversity has policy on wing on-line sex sites

U EMPIRE

: University of Alaska Southeast's library, computers with access display a warning: "Viewing sexually explicit im- nconsistent with the University's sexual harassment poli-

brary does not, however, expressly prohibit using its com- view pornographic sites.

e not going to look over your shoulder and tell you what oing is not allowed," said Rebecca Moran, the UAS' net- vices librarian.

niversity has had computers with graphic Internet access summer, according to Moran, and she's not aware of any where patrons used them to view pornographic Internet

l to think we'd probably deal with it on a case-by-case ba- said.

u's state libraries do not offer public Internet access.

brary tried 'privacy screens,' iter monitors fitted with an ment to limit the range from which onitors' contents could be viewed.

clear, according to whether viewing adult y where it can be seen s a crime, but he be- ibrary would be within o prohibit patrons from ry computers to view

near future," said City Attorney John Corso.

"How can we protect our children from information and exposure while protection people's and families' right to access?" asks Carol McCa

Shots fired...

Continued from Page 1

The trailer hit in the first shooting police responded to had a dozen holes in a window that faced the road. After slamming through the window, the shot made its way through an exhaust hood in the trailer's kitchen, through walls, over a person sleeping on a couch and into the bathroom at the other end of the home, DeCapua said.

A car parked in front of the home was also hit, he said. A white Dodge Daytona marked off as a part of the crime scene in front of the home this morning had pellet holes in its rear taillight covers.

A man who said he was scared and lives near the trailer didn't want his name revealed. He said he was in his bathroom when he heard two shots. He ran outside and saw the rear end of a car or truck, he wasn't sure which, driving away from the scene and into the night.

He said the residents of the shot-up trailer were "nice people." The family living in the home are a couple with two older boys, he said.

Robert Finch, the manager of the mobile home park, is frustrated. He took over oversight of the 300-lot park in December.

"It's got to stop," Finch said of the shootings. "I know that much."

The apparent drive-by shootings and other less dramatic incidents have lead him to believe that there's a method behind the violence that's struck Switzer. However, he's having some trouble, as are police, figuring out who the people causing the trouble are.

"It's a bunch of young gang members trying to take over territory," Finch said. "I can't put my finger on it yet, but I'm trying."

This is the third confirmed report of shots fired at Switzer since last summer.

In July, shots were fired at th opposite end of the park from thi morning's incident. Nobody was injured in that incident, which police believe may have been part of a gang initiation, DeCapua said.

Orange paint still marks where the bullets entered the trailers hit in what DeCapua characterized as a drive-by shooting in October. Then, five bullets were fired into a trailer early in the morning. Some of the bullets traveled through the targeted trailer and into another in a lot behind it.

No one was injured in any of the shootings.

New ferry...

Continued from Page 1

today. "It wasn't something we were aware of, this is a different spelling and we've never had this sort of problem with any of our ferries. I think she'll be a sound ship."

The news briefly startled Alaska Marine Highway Director Gary Hayden, who quickly phoned a port captain to see if any maritime folklore surrounded such situations.

"I don't think there's any problem there," he said. "It's just quite a coincidence."

in another shipwreck years earlier. While traveling aboard a tugboat to Victoria following a failed rescue effort of the Kennecott, the depressed captain leaped overboard to his death.

Meanwhile, one of the marine highway officials helping with design and inspection specifications of the new vessel is Capt. Doug Johnson. Hayden said the captain could well end up piloting the ship when it begins service in 1998, since he is one of the few captains licensed for both Southeast and Southwest Alaska ferry routes.

Johnson said he isn't fazed by the prospect, despite the history of the older ship and captain.

"I think if you look at your maritime records you'll find a lot of Captain Johnsons have sailed in Alaska," he said.

Kobe anniversary

Tues. 1/21/97 p.9 • SPOTLIGHT

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SWITZER ROULETTE

By SVEND HOLST
THE JUNEAU EMPIRE

Shots in the dark. Bands of unruly teenagers. Children harassed by bullies on their way to and from school.

For some, life at the Switzer Village Mobile Home Park is becoming tense. For some, the sound of a car driving by is frightening.

Since last February, gunfire has put holes – bullet holes – in six trailers at the 300-lot trailer park, according to police. Several residents of the park said the bullets and other problems, such as vandalism, harassment and drugs, stem from unsupervised teen-agers, hooligans, who liken themselves to gangsters.

The president of the mobile home park's newly formed neighborhood watch group is worried that if his name or face were in the newspaper, a bullet could find its way into his trailer, which nine people call home.

"If they shot through my trailer, they aren't going to miss," he said. "This is scary."

When he sees the glare of headlights shine though his kitchen window, he said he gets jumpy. Since the last shooting, last week, the neighborhood watch patrols have stopped, he said. People don't want to put themselves at risk.

It's just a matter of time, he said, before someone gets hit by one of the bullets flying around Switzer. It's just a matter of time, he said, before someone gets killed.

Inside the Blue Jay Way trailer, the trail of shot from a shotgun blast runs through the front window, the kitchen, the living room and the bathroom. The frame of a picture of a baby granddaughter hangs crooked on the wall. It's been shattered by shot.

The gunshot came at about 2 a.m. Thursday. A boy was asleep on a couch just below the path of the pellets. Neighbors saw a vehicle leaving the scene, but police haven't found out who the gunman was.

A woman with a large family lives there. She spent her first night back at the home Saturday, but said she couldn't sleep until the sun came up. She has no idea why anyone would target her home, or would fire on the photograph of her granddaughter.

She lived at Switzer in the 1980s, and moved back recently.

"Switzer has changed significantly," she said. "We liked living in Switzer. I always thought that the people here were, basically, good people. I'm thinking now of selling the place."

The shooting left a scar on her mind in much the same way it left holes in her ceiling and window. She said she spends a lot of her time since the shooting in the part of the trailer furthest from the road.

"Psychologically, it leaves an imprint," she said.

She wants people to call the police, and tell them what's going on. She wants the

Matt Castillo, 19, said he's talked to law enforcement officials from a plethora of agencies, such as the Juneau police and the FBI, about the drive-by shooting of his trailer in October.

He thinks the shooters are wannabes – youths who call themselves gang members, but are still trying to figure out how to do it. He gave police, who he said are probably embarrassed by the violence, the names of the kids he thought might be involved.

"They're probably just bored," he said of the shooters. "They're just doing it for fun."

He said one kid was bragging about shooting the gun. He wants people in Juneau to know what's happening in Switzer because it could start happening elsewhere.

"This town isn't that big," Castillo said. "People should know about it."

He, and three friends, were playing video games when the shots rang out.

They heard a car drive by on the road next to the trailer at about 4:30 a.m., he said. The car stopped, idled for a few seconds, then peeled out, Castillo said. Then bullets, four or five of them, slammed into the trailer. One of the slugs missed his head by about a foot, he said. Another hit his refrigerator. Others passed through the trailer and into one behind it.

A side effect of being the target of a drive-by, he said, is people start talking, start making assumptions and spread dark rumors. He's heard, much to his surprise, that he's a drug dealer.

Castillo said he's noticed more police patrolling Switzer, though not all residents interviewed had seen more blue-and-whites.

Police are working with the neighborhood watch group, and continue to investigate the shootings, which are the loudest, but not the only crimes being perpetrated at the mobile home park and the surrounding area.

"In the Gruening Park-Switzer area we have noticed an increase in vandalism," said Capt. Michael DeCapua. "We're concerned with an increase in gang activity and juvenile delinquent activity, some of which may be drug or gang related."

Where there's juvenile crime he said, parents have to be a part of the solution.

The neighborhood watch group forming at Switzer is one of three getting organized this winter. Gruening Park, neighboring Switzer, and a Douglas group are joining a dozen such neighborhood watches set up in Juneau.

The watch groups are important, DeCapua said, because police are spread thin. Usually, there are four police on patrol and one supervisor on duty. Lately, with a string of injuries and retirements sapping the Juneau Police Department of a quarter of its complement, police are being taken off investigations and out of Juneau schools to fill patrol rosters.

Hitting home: Bullet holes cir
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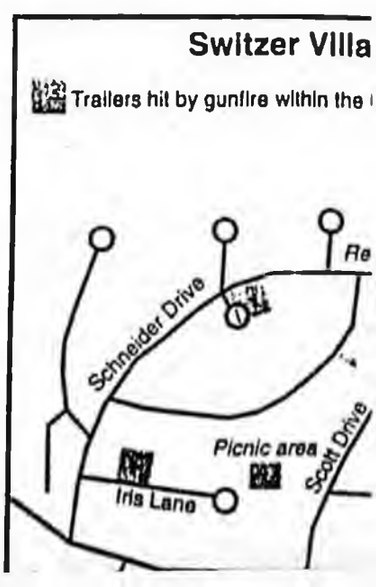
Home Park.



Switzer residents concerned

Continued from Page 9

"We're down twenty-five percent," DeCapua said. "We're using other personnel to cover patrol. We're robbing Peter to pay Paul."

Robert Fitch, the manager of the park, took over in December. He knew he had his work cut out for him, he said. Over the years, Switzer Village had started to get a bit run down, and he thinks the place's appearance may be a part of the problem.

Along with the neighborhood watch, he's fixing landscaping, covering the mailboxes and cutting down branches so police can see into wooded areas. He's also considering fencing off areas and is figuring out where the "hot spots," are, the places where problems seem to start.

One of the hot spots at Switzer is a covered picnic area between Scott and Schneider drives. There, empty vodka bottles sit next to empty beer cans, drained 40-ounce bottles of 8.2-percent-alcohol "ice" beer, fast food wrappers and square, white plastic frames torn from CDs stolen from Kmart across the road.

"I want to clean it up," Fitch said. "I want it back to the number one park in Juneau." He said he wants residents to be able to walk around at night without worrying about getting beat up or shot. It's not as if the whole trailer park is in ruin, he said, but there's definitely room for improvement.

He said there's a corps of about a dozen kids who seem to be the main problem, and he's trying to figure out who they are.

Fitch said he's encouraged by residents who are getting involved with the neighborhood watch. At the first meeting, about eight showed up. At the last one, last month, about 60 residents came. Some think the police aren't doing enough about Switzer because it's low-income housing, but Fitch said the police are doing what they can with what they've got.

"A lot of people were upset with the police force," he said. "They asked, 'How come there aren't enough police officers to go around?' They don't get into the budgets."

With cellular phones and cameras, he said, the neighborhood watch patrols, once they get in full swing, could be a big help. Fitch said he thinks residents should be encouraged.

Down the street from the picnic area is a trailer that took gunfire at about 4 a.m. last Feb. 28. Residents called police after they heard four or five shots.

"To us it sounded like someone hitting the trailer with a baseball bat," said a man living at the trailer Monday. "We don't know who did it. I don't know why they picked us out."

He and his family call Switzer "Dodge City." He found bullet holes in his living room. A sturdy entertainment center slowed one slug down. He gave police the names of youths he thought may have been involved. He heard of kids bragging about it. Police haven't talked to him or his family for months, he said.

Down the street from the trailer that took bullets nearly a year ago is Buddy Tabor's trailer. He said the place is a deal, but the crime is getting to be too much.

Rent for a lot at Switzer runs from $260 to $285 per month. That's one draw to the area, which is one of the least expensive parts of town to live in.

"It's inexpensive," Tabor said. "I have my trailer paid for. It's a fantastic deal to live here." But he's been threatened, by adults, by teen-agers near his home. One of his boys was threatened by what he considers gang members. He thinks the schools could do more to keep tabs on kids causing problems.

"A lot of this could be stopped," Tabor said. "You could mark me down as scared."

He's scared by big bands of kids hanging out. He won't heal from a beating as fast as a teen-ager might. He drives around the park now rather than walking.

The drive-bys don't scare him as much as the bands of youths, he said.

Bob Germain said the people causing the problems are new to town, kids who don't have their head on right. He said cars driving by late at night and backfires get his attention now in a way they never did before.

Above the entryway of his home, Germain tacked up some leftover crime scene tape. Two of the bullets that went through Castillo's mobile home made it into Germain's where he, his girlfriend, three boys, ages 4, 6 and 10, and a persnickety Yorkshire terrier called April live.

"It's probably drug and alcohol related," Germain said. "Nobody in their right mind is going to go around shooting up trailers."

He said he'd like to see the street lights turned on, and can't wait for the new police station to be built in Lemon Creek. Maybe, he said, close-by cops would stop the drive-bys.

Not far from Germain's trailer police found another home, on Forget-Me-Not Drive, which took shotgun fire Thursday, DeCapua said. Police believe there may be a connection to the Blue Jay Way incident. The investigation continues.

Drena Austin called police when she found a bullet hole in her trailer, down the street from Germain's home. She's thinking about solutions.

Along with cameras at the entryways into the park, to record the coming and going of cars, Austin said, street lights, speed bumps, fences and other measures should be taken at Switzer to supplement the neighborhood watch.

"I think they could afford to make it safer," she said.

While the manager and the neighborhood watch begin their efforts, the watch's president said another home or a Switzer resident could take a bullet.

"It's going to be a little kid or a bystander who is going to die if this keeps up," he said. "I'm thinking about putting everybody in the bathtub at night. They're looking for another target. It's like a big game they're playing."

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SB

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FISCAL NOTE

No. 4

STATE OF ALASKA
1997 LEGISLATIVE SESSION

Bill Version: SB71
(S) Publish Date: 1/30/97

Revision Date:
Title: "An Act relating to the issuance, suspension, limitation, revocation, and reinstatement of drivers' licenses...:

Sponsor: Rules Committee
Requestor: Governor

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.)

Creating a mechanism to monitor compliance of education and treatment requirements for minors may result in additional probation revocation proceedings. Too speculative to quantify.

Prepared by: Barbara K. Brink, Acting Director
Division: Public Defender Agency
Phone: (907) 264-4414
Date:

Approved by Commissioner: Mark Boyer Mark Boyer
Agency: Department of Administration
Date: 1/8/97

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Rev: 11/96
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FISCAL NOTE

No. 3

STATE OF ALASKA
1997 LEGISLATIVE SESSION

. Version: SB71

(S) Publish Date: 1/30/97

Revision Date:

Dept. Affected: Health and Social Services

Title: Relating to issuance, suspension, limitation revocation, and reinstatement of driver's license...

BRU: Alcohol and Drug Abuse Services

Component: CAASA

Sponsor: Rules by Request

COMPONENT SERIAL NO. 1413

Requestor: Governor

See also (SN#):

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS	500.0	500.0	500.0	500.0	500.0	500.0
MISCELLANEOUS						
TOTAL OPERATING	500.0	500.0	500.0	500.0	500.0	500.0
CAPITAL EXPENDITURES						
CHANGES IN REVENUES						
FUND SOURCE						
1002 Federal Receipts						
1003 GF Match						
1004 GF	500.0	500.0	500.0	500.0	500.0	500.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
TOTAL	500.0	500.0	500.0	500.0	500.0	500.0
POSITIONS:						
FULL-TIME						
PART-TIME						
TEMPORARY						

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

ANALYSIS: (Attach a separate page if necessary)

See Next Page

Prepared by: Loren A. Jones
Phone: 465-2071
Division: Alcoholism and Drug Abuse
Date: 01/08/97

Approved by: Commissioner: Karen Perdue, Commissioner
Date: 1-9-97
Agency: Department of Health & Social Services

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ANALYSIS (cont.):

This bill would transfer to the Division of Alcoholism and Drug Abuse the responsibility for the approval of alcohol information courses (Alcohol Information Schools (AIS)) for all persons needing such a course as a result of alcohol related crimes, primarily minor consuming, minor in possession and driving while intoxicated. Currently all such AIS classes also contain a driver improvement section and are targeted primarily at adults.

The current curriculum being used has not been reviewed and updated in many years. There are no outcomes or expectations for the AIS (other than to not have repeated the criminal behavior) or for the impact on the individual. It is time that this was updated and specific outcomes and expectations be established.

With the passage of the "Use It and Lose It" law there has been a dramatic increase in the number of minors loosing their drivers license and being required to complete an AIS or treatment in order to have their license re-instated. This new law has shown a significant gap in our ability to respond appropriately and to assure that the education received is of value and will result in positive outcomes for the youth.

A number of these youth, like adults, may need more than an AIS to address their needs. In reviewing the number of minors losing their driver's license the number of second or more offenders is about equal to the first time loss. This would indicate that the law, in and of itself is not stopping repeat offenses. An age appropriate AIS will impact this but for some additional services may be needed.

The Division also feels that to provide appropriate AIS a different curriculum and teaching method is need for minors. The Division will locate and/or develop an appropriate model for adult and youth Alcohol/Drug Information School (AIS). These courses would be age appropriate and meet the needs of DMV for driving related issues. There will be a different response for the 18-20 year olds than for those under age 18. One major difference will be information on inhalants for the under 18 age group.

The Division of Alcoholism and Drug Abuse would establish a set of policy guidelines and outcomes for communities to use in developing a local approach to establishing the appropriate entry program for these minors. This would include policies on defining appropriate assessment, referral, defining compliance and completion of appropriate services, and evaluation standards for the program. Thus those who need only AIS would be sent in the correct direction and those who need additional services would also get those.

These policies would include the role of partnership with schools for alternative to suspension programs, for working with courts, working with youth probation, and with local treatment agencies. We would need to address differences for rural villages. We would need to address development of a community based prevention and intervention services.

The Division would require two new positions consisting of 1 probation officer and 1 clerical staff for program & policy development, quality assurance of the AIS classes and staff support. This staff would write the P&P, Regulations and monitor compliance of the AIS providers and the local agencies providing the services.

The Division would propose that an additional $500,000 be allocated for both assessment projects and to increase the capacity of the youth outpatient services. It is anticipated that each community would need about $100,000 to fully implement a new service that would include assessment, education, outpatient services, and aftercare. These funds would be issued under AS 47.37.045, the Community Action Against Substance Abuse program.

All Requests for Proposals for substance abuse services should require proposers to specifically discuss prevention strategies either available in the program or in the community. These strategies need to reflect a community-based, risk reduction model and incorporate "best practice" models as supported by the research. There needs to be a targeted prevention effort in rural areas of Alaska dealing with inhalant abuse. This would help also get a prevention message out about alcohol and drugs as inhalants tend to be used by youth at an age prior to first use of alcohol or drugs.

The revenue generated from the increase in the fee charged to reinstate revoked drivers licenses would provide the increase in funds to pay for this new service. The Department of Public Safety has a fiscal note showing revenues of $1,086,300 with the passage of this legislation.

FISCAL NOTE

No. 2

STATE OF ALASKA
1997 LEGISLATIVE SESSION

Version: SB 71

(S) Publish Date: 1/20/97

Revision Date:

Dept. Affected: Health and Social Services

Title: Relating to issuance, suspension, limitation revocation, and reinstatement of driver's license...

BRU: Alcohol and Drug Abuse Services

Component: ADA Admin

Sponsor: Rules by Request

COMPONENT SERIAL NO. 302

Requestor: Governor

See also (SN#):

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES	92.0	95.0	98.0	101.0	104.0	107.0
TRAVEL	4.0	4.0	4.0	4.0	4.0	4.0
CONTRACTUAL	2.0	2.0	2.0	2.0	2.0	2.0
SUPPLIES	2.0	2.0	2.0	2.0	2.0	2.0
EQUIPMENT	5.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS						
TOTAL OPERATING	105.0	103.0	106.0	109.0	112.0	115.0
CAPITAL EXPENDITURES						
CHANGES IN REVENUES						

FUND SOURCE

1002 Federal Receipts						
1003 GF Match						
1004 GF	105.0	103.0	106.0	109.0	112.0	115.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
TOTAL	105.0	103.0	106.0	109.0	112.0	115.0

POSITIONS:

FULL-TIME	2	2	2	2	2	2
PART-TIME						
TEMPORARY						

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

ANALYSIS: (Attach a separate page if necessary)

See Next Page

Prepared by: Loren A. Jones
Phone: 465-2071
Division: Alcoholism and Drug Abuse
Date: 01/08/97

Approved by Commissioner: Karen Perdue, Commissioner
Date: 1/8/97
Agency: Department of Health & Social Services

1/8/97

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FISCAL NOTE

No. 1 SB

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO: Bill Version: 71

(S) Publish Date: 1/20/97

Revision Date:

Title: An Act relating to the issuance.....driver's license, and youth assessment for minors.

Sponsor: Rules

Requestor: Governor

Dept. Affected: Public Safety

BRU: Motor Vehicles

Component: Administration

COMPONENT SERIAL NO.

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	5.0					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	5.0					
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( ) Revenue Code	1086.3	1086.3	1086.3	1086.3	1086.3	1086.3

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	5.0					
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	5.0					

Estimate of current year (FY 97) impact: $

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)
The revenue projected is derived from the increase of reinstatement fees for first time offenders. It is estimated there are approximately 7,242 individuals who had their driver's license revoked or suspended for the first time during calendar 1996. This bill will increase the reinstatement fee for those individual's from $100.00 to $250.00. The increase of the additional $150.00 per reinstatement of a driver's license will generate approximately $1,086,300.00 in new revenues. Cost are associated with software maintenance and reprogramming the computer system to reflect the change and increase of reinstatement fee.

Prepared By: Juanita M. Hensley
Phone: 465-2650
Division: Motor Vehicles
Date: 1/6/97

Approved by Commissioner: Ron Smith
Date: 1/9/97
Agency: Ronald L. Otte, Dept. of Public Safety

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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

71

January 30, 1997

The Honorable Mike Miller
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear President Miller:

Alcohol abuse among minors is one of the most serious and disturbing problems facing this state. It is crucial that we discourage young Alaskans from making the wrong choices about alcohol. This bill helps achieve that goal by enhancing our current laws regarding treatment for underage drinkers . It is part of my package of legislation based on recommendations of the Governor's Conference on Youth and Justice.

This bill ensures that minors whose driver's licenses have been revoked for alcohol-related offenses are properly screened and monitored for compliance with education and treatment programs before their licenses are reinstated. It does so by extending toward minors a treatment program which has proved successful for adult offenders -- the alcohol safety action program, or ASAP.

The state oversees the ASAP which screens offenders, determines what education or treatment is appropriate for them and then monitors their compliance with the recommendations. If the offender fails to comply, further court proceedings are initiated.

My proposal for zero tolerance for underage drinking and driving was passed last year and is now in effect in addition to our "use it, lose it" law. Under the zero tolerance law, a minor's driver's license is revoked if the minor drives a vehicle after consuming any quantity of alcohol. The "use it, lose it" law revokes a minor's driver's license if the minor possesses or consumes unlawful drugs or alcohol, regardless of whether the minor was driving a vehicle at the time. Both laws require the minor complete an education or treatment program before the license may be reinstated. However, there is currently no program for minors similar to the ASAP.

To fill this gap, this legislation proposes a program for minors that would be housed in the Department of Health and Social Services. The program would be funded with the fees charged for reinstating any driver's license that has been revoked. This bill increases that fee for first-time offenders from $100 to $250 -- creating another deterrent to underage drinking and drinking and driving for anyone, at any age. The increased fee is expected to generate more than $1 million which will easily cover the $605,000 cost of the youth treatment program.

This bill to address the problem of underage drinking is an integral component of my package on the youth justice system and an attempt to take an aggressive approach toward ending a growing crisis in our state.

Sincerely,

Tony Knowles
Governor

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF ALCOHOLISM AND DRUG ABUSE

P.O. BOX 110607
JUNEAU, ALASKA 99811-0607
PHONE: (907) 465-2071
FAX: (907) 465-2185

February 25, 1997

Senator Gary Wilken
Senate HESS Committee
Alaska State Senate
State Capitol
Juneau, Alaska 99801

Dear Senator Wilken:

I want to thank you and your committee for hearing SB 71 on Monday February 24, 1997. At that hearing you requested that the Division of Alcoholism and Drug Abuse clarify one section of our Fiscal Note Analysis. In particular you wanted us to enhance the section dealing with how the Division would allocate the funds.

The Division would propose using the $500,000 to fund local programs via a competitive process under AS 47.30.470 - AS 47.30.500, which is our grant-in-aid process. In the competitive process we would seek to reach three main objectives: award funds to communities that have a collaborative plan to address the specific needs in their community; assure that the agency receiving the grant will be able to achieve the stated goals; and assure that the funds went to communities with the greatest need.

In an earlier analysis of data from the Division of Motor Vehicles (CY 1995 and six months of CY 96) the large majority of minors losing their driver's license occurred in Anchorage, Fairbanks, Juneau, Soldotna, Ketchikan, Sitka and Palmer. These would be areas in which we would target for funding if the other two goals are met.

We must, as noted in the analysis, deal with rural areas where the numbers may not be high, but services are required. The numbers may not be high due to enforcement issues (lack of police and more serious crimes) but youth services are scarce. We would look at this problem and try to set aside some funds for enhancing rural efforts to address the issue of minor consuming.

As you pointed out in your discussion the reason that this program is vital is the number of repeat offenders is increasing even though this is the start of the third year of the "Use It and Lose It " law. One of the major objectives then will be to decrease the number of

repeat offenders as well as the number who commit their first offense. We have not yet done the analysis to see if these same communities have the highest repeat offenders but we would assume this to be true.

We have not been specific about the cost of new services in each community as each has different resources, may wish to configure their services differently, and may have more local funds. We will be requiring a local match. We will look at current resources and be adding to those not replacing them.

If I can answer any other questions please let me know.

Sincerely,

Loren A. Jones
Director

cc: Karen Perdue, Commissioner
Russ Webb, Deputy Commissioner

MEMORANDUM

ALASKA PUBLIC DEFENDER AGENCY

900 West Fifth Avenue, Suite 200
Anchorage, Alaska 99501

Tel: (907) 264-4400
Desk: (907) 264-4433
Fax: (907) 269-5476

TO: Senator Gary Wilken, Chairman
Senate Health, Education, and Social Services Committee

FROM: Blair McCune, Deputy Director
Alaska Public Defender Agency

RE: SB 71

DATE: February 27, 1997

I understand that the committee had some questions about our fiscal note on SB71. I listened to the hearing on this bill on February 24, 1997. It was very interesting and informative. Unfortunately, as I was about to speak, the Juneau/Anchorage telephone link went out. I thought I would write and comment on our fiscal note. I also had some other information that occurred to me at the hearing that I thought might be of help.

Our fiscal note stated that creating a mechanism to monitor treatment programs for minors might result in more probation revocations. We said we might have more cases because of this change, although we recognized that any conclusion about fiscal impact would be speculative.

After listening to the hearing and thinking about this some more, I believe that we might be impacted with additional cases, but not for probation revocations for minors. As I understand the bill, the approvals for alcohol education and rehabilitation programs only apply to reinstatement of drivers licenses by the Division of Motor Vehicles (DMV). I do not believe now that it will have an effect on probation revocations.

The possible fiscal impact that I see comes from Section 3 of the bill which would raise the reinstatement fee for licenses from $100.00 to $250.00. Driving with a canceled, suspended, or revoked license (DWLC,S,R) is a serious misdemeanor offense in Alaska. AS 28.15.291 In our experience, people sometimes have difficulty coming up with the $100 reinstatement fees and, taking a chance they obviously should not, continue to drive. They are often

caught, especially in small communities, because the police recognize them. They are also caught while committing other crimes, like driving while intoxicated, and charged with DWLC,S,R, too. I would think that increasing the fee to $250 dollars would result in more of these cases. $250 is a lot of cash for people to come up with.

It is difficult to quantify how many additional cases would be brought. I know we get a lot of DWLC,S,R cases in our Palmer office, so I checked with them. They said they estimate that they had over 200 cases currently open where there had been a DWLC,S,R charge. (This would include probation revocations cases and more serious cases that also include a DWLC,S,R.)

There are also several sections of the bill which require that alcohol education and treatment programs be approved by the Department of Health and Social Services. I understand that there is an approval process now, but I am a bit concerned about the effect requiring state approval by law might have. Currently, that are many community organizations that have substance abuse programs. These programs include Alcoholics Anonymous (AA) and programs like the Salvation Army Clitheroe Center outpatient treatment program in Anchorage. In our experience, if people attend and make progress in these programs, they can get their licenses reinstated.

If official state approval were required, some of these community and religious organizations might not qualify. I'm enclosing a copy of a federal case from New York, Warner v. Orange County Dept. of Probation, in which the court decided that AA was religiously-based organization and a state could not require a probationer to attend AA meetings without violating the First Amendment to the United States Constitution. If people can't satisfy reinstatement requirements by attending these inexpensive (and effective) community and religious programs, there might be additional people who would have difficulty getting their licenses reinstated.

I hope these comments clarify our fiscal note.

There were several other comments that I thought the committee might want to consider. I was really interested in Ms. Valerie Therrien's testimony and the testimony of the young people attending the hearing. It is clear from this testimony, and our experience, that Alaska has serious problems caused by substance abuse. We estimate 85-90% of our cases relate to alcohol and drug abuse in some way.

However, I think it is important that the committee recognize that, for the most part, the young people of this state are high-achieving, successful kids. It would really be interesting to see the statistics on how we rank in terms of academic achievement, in

athletics, etc., as compared with other states. The recent Governor's Conference on Youth and Justice report shows that Alaska is among the lowest states in the nation in terms of our rate of violent juvenile crimes. (Alaska ranks 37th out of 50 states.)

Also, I think it is important to note another statistic. Although we're 37th in terms of the juvenile crime rate, the Governor's report shows that we rank 2nd in the nation in terms of the number of children incarcerated in secure juvenile institutions.

There was some testimony to the effect that some people believe that Alaska is generally lenient toward juvenile offenders. This is certainly not true in terms of the rate of locking kids up. It might be true, however, in terms of not having the option of close probation supervision and treatment programs specifically aimed at young people. These are expensive programs, but where they can be used as a substitute for the much more expensive option of incarceration, they save money. Also, if they are more effective, as we believe they are, in rehabilitation of offenders while they are young, they prevent the immense costs to society of future criminal behavior.

The last comment I want to make involves the "use it, lose it" law. First, the committee should be aware that an Anchorage court in Jada Quinn v. State, No. 3AN-95-8805 CV (Super. Ct. 3d Dist. Feb. 13, 1997), has found some significant problems with the part of the law that allows an administrative DMV license revocation for minor consuming alcohol when there is no indication that the person was or had been driving a motor vehicle. The court said that, under the circumstances, the revocation could not be considered merely a "civil" sanction. The court found the rights of a defendant in a criminal case apply. These include the right to a jury trial and to court-appointed counsel for indigents. I have enclosed a copy of the opinion. Also, for court (as opposed to DMV) revocations, the court of appeals in State v. District Court, ___ P.2d ___ Op. No. 1504 (Alaska App. December 6, 1996), decided that court revocations are "criminal," and the right to a jury trial and court-appointed counsel would attach to these cases as well.

Although these cases are no doubt going to be the subject of further appeals, the status of the "use it, lose it" laws and the status of minor consuming alcohol as a "civil" offense are certainly in doubt.

I hope these comments clarify our fiscal note and are helpful to the committee in considering this bill.

BMC/attachments

ALASKA

Part of teen alcohol law declared unconstitutional

State revocation of minors' drivers licenses takes hit

THE ASSOCIATED PRESS

ANCHORAGE – A Superior Court judge has declared unconstitutional a portion of the state's "use it, lose it" law, which says minors can lose their driver's license if they drink alcohol – even if they are nowhere near a car.

The law, in effect since 1994, says the state can revoke licenses of drivers younger than 21 if a police officer had probable cause to believe the minor possessed or consumed any amount of alcohol. The law imposes a mandatory 90-day revocation for a first incident, a one-year revocation for a minor caught twice and a three-year revocation for a third-time offender.

Two young women, Jada Quinn and Nina Storm, challenged the law. They lost their licenses after police found the women, three friends and a 12-pack of beer at a campfire at an Anchorage near in 1995. Quinn and Storm, both 20 at the time, thought the law was unfair, said their lawyer, Tim Petumenos.

Judge Rene Gonzalez, in a decision he issued last week, sided with them.

Gonzalez said the license revocation "is not cruel and unusual punishment." But since Quinn and Storm were not driving when they were drinking, the judge ruled that part of the law unfair.

"They were, in fact, not even in close proximity to a motorized vehicle," Gonzalez wrote.

Quinn and Storm admitted drinking a small amount of beer. A portable breath test showed they had blood-alcohol levels of 0.003 and 0.006 percent – well below the 0.10 legal limit for driving.

Police gave the women notices that their licenses would be revoked. The women protested the revocations at a hearing at the Department of Motor Vehicles, to no avail.

Quinn and Storm appealed the revocation in Superior Court.

Their case, Judge Gonzalez said, turned on whether the license revocation was meant to punish the young women or to protect other motorists from irresponsible drivers.

"We think the purpose of this is to protect people rather than punish the offender," assistant attorney general Eric Johnson said.

Gonzalez disagreed, noting the reason for the license revocation – a belief the women had alcohol at a small social gathering – had nothing to do with driving.

Johnson said the state will appeal to the Alaska Supreme Court. In the meantime, the Department of Motor Vehicles will continue to revoke licenses, because other state judges have come to the opposite conclusion as Gonzalez, Johnson said.

In 1995 and 1996, more than 6,600 drivers' licenses were revoked under the "use it, lose it" law, said Kerry Hennings, a manager with the Division of Motor Vehicles.

MEMORANDUM

ALASKA PUBLIC DEFENDER AGENCY

900 West Fifth Avenue, Suite 200
Anchorage, Alaska 99501

Tel: (907) 264-4400
Desk: (907) 264-4433
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Also, I think it is important to note another statistic. Although we're 37th in terms of the juvenile crime rate, the Governor's report shows that we rank 2nd in the nation in terms of the number of children incarcerated in secure juvenile institutions.

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The last comment I want to make involves the "use it, lose it" law. First, the committee should be aware that an Anchorage court in Jada Quinn v. State, No. 3AN-95-8805 CV (Super. Ct. 3d Dist. Feb. 13, 1997), has found some significant problems with the part of the law that allows an administrative DMV license revocation for minor consuming alcohol when there is no indication that the person was or had been driving a motor vehicle. The court said that, under the circumstances, the revocation could not be considered merely a "civil" sanction. The court found the rights of a defendant in a criminal case apply. These include the right to a jury trial and to court-appointed counsel for indigents. I have enclosed a copy of the opinion. Also, for court (as opposed to DMV) revocations, the court of appeals in State v. District Court, ___ P.2d ___ Op. No. 1504 (Alaska App. December 6, 1996), decided that court revocations are "criminal," and the right to a jury trial and court-appointed counsel would attach to these cases as well.

Although these cases are no doubt going to be the subject of further appeals, the status of the "use it, lose it" laws and the status of minor consuming alcohol as a "civil" offense are certainly in doubt.

I hope these comments clarify our fiscal note and are helpful to the committee in considering this bill.

BMC/attachments

Robert WARNER, Plaintiff-Appellee,
v.
ORANGE COUNTY DEPARTMENT OF PROBATION, Defendant-Appellant.

No. 1760, Docket 95-7055.

United States Court of Appeals,
Second Circuit.

Argued July 20, 1995.

Decided Sept. 9, 1996.

Probationer brought § 1983 action against county department of probation, alleging that establishment clause was violated by department's recommendation to sentencing judge that probationer attend meetings of religiously based alcohol rehabilitation organization. The United States District Court for the Southern District of New York, Gerard L. Goettel, J., 870 F.Supp. 69, entered judgment in favor of probationer, and department appealed. The Court of Appeals, Leval, Circuit Judge, held that: (1) department's recommendation was a proximate cause of probationer's injury; (2) department was not entitled to quasi-judicial immunity from suit; and (3) requirement that probationer attend meetings violated establishment clause.

Affirmed.

Winter, Circuit Judge, dissented and filed opinion.

[1] CIVIL RIGHTS ⇐ 206(3)
78k206(3)
To establish county department of probation's liability for probationer's allegedly unconstitutional sentence under § 1983, probationer was required to demonstrate that his injury resulted from custom or policy of county, as opposed to isolated instance of conduct. 42 U.S.C.A. § 1983.

[2] CIVIL RIGHTS ⇐ 110.1
78k110.1
In cases brought under § 1983, a superseding cause, as traditionally understood in common-law tort doctrine, will relieve defendant of liability. 42 U.S.C.A. § 1983.

[3] CIVIL RIGHTS ⇐ 110.1
78k110.1
Tort defendants, including those sued under § 1983, are responsible for natural consequences of their actions. 42 U.S.C.A. § 1983.

[3] TORTS ⇐ 15
379k15
Tort defendants, including those sued under § 1983, are responsible for natural consequences of their actions. 42 U.S.C.A. § 1983.

[4] TORTS ⇐ 15
379k15
An actor may be held liable for those consequences attributable to reasonably foreseeable intervening forces, including acts of third parties.

[5] CONSTITUTIONAL LAW ⇐ 75
92k75
Under New York law, determination of probation terms is a judicial task, which may not be delegated to probation officers.

[6] CIVIL RIGHTS ⇐ 135
78k135
In § 1983 action, fact that sentencing judge ultimately determined probation term did not preclude finding that county probation department proximately caused probationer's alleged injury by recommending to judge that probationer be required to attend meetings of religiously based alcohol rehabilitation organization as a condition of probation. 42 U.S.C.A. § 1983.

[7] FEDERAL COURTS ⇐ 858
170Bk858
In § 1983 action, whether it was reasonably foreseeable that sentencing judge would adopt county probation department's recommendation that probationer attend meetings of religiously based alcohol rehabilitation organization was a question of fact, which was subject to review for clear error. Fed.Rules Civ.Proc.Rule 52(a), 28 U.S.C.A.

[8] CIVIL RIGHTS ⇐ 135
78k135
In § 1983 action, probationer's failure to object to probation condition that he attend meetings of religiously based alcohol rehabilitation organization did not constitute consent. 42 U.S.C.A. § 1983.

[9] CIVIL RIGHTS ⇐ 135
78k135
Actions of religiously based alcohol rehabilitation organization did not break chain of causation, and thus county probation department could be held liable under § 1983 for recommending probationer's attendance at such meetings as a condition of probation; department was well aware of religious nature of program. 42 U.S.C.A. § 1983.

[10] CIVIL RIGHTS ⇐ 214(7)
78k214(7)
County department of probation was not entitled to quasi-judicial immunity in § 1983 action for department's action of recommending probationer's terms of probation to sentencing judge. 42 U.S.C.A. § 1983.

[11] CONSTITUTIONAL LAW ⇐ 84.5(1)
92k84.5(1)
Establishment clause was violated by probation condition that probationer attend religiously based meetings of alcohol rehabilitation organization; meetings were intensely religious events, and probationer would have been subject to imprisonment for violation of probation had he failed to attend meetings of that particular organization. U.S.C.A. Const.Amend. 1.

[11] CRIMINAL LAW ⇐ 982.5(2)
110k982.5(2)
Establishment clause was violated by probation condition that probationer attend religiously based meetings of alcohol rehabilitation organization; meetings were intensely religious events, and probationer would have been subject to imprisonment for violation of probation had he failed to attend meetings of that particular organization. U.S.C.A. Const.Amend. 1.

[12] CONSTITUTIONAL LAW ⇐ 84.1
92k84.1
At a minimum, Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise, or otherwise act in way which establishes state religion or religious faith, or tends to do so. U.S.C.A. Const.Amend. 1.

[13] CONSTITUTIONAL LAW ⇐ 84.1
92k84.1
Under establishment clause, government should not prefer one religion to another, or religion to irreligion. U.S.C.A. Const.Amend. 1.

*203 Robert N. Isseks, Goshen, NY (Alex Smith, Middletown, NY, of counsel), for Plaintiff-Appellee.

Richard B. Golden, Orange County Attorney, Goshen, NY (M. Kevin Coffey, Antoinette Gluszak, Laurie T. McDermott, of counsel), for Defendant-Appellant.

Before: WINTER, LEVAL, and CALABRESI, Circuit Judges.

LEVAL, Circuit Judge:

Orange County Department of Probation ("OCDP"), the defendant, appeals from a decision of the district court awarding declaratory *204 judgment, nominal damages of one dollar, and attorney's fees to plaintiff Robert Warner in his civil action under 42 U.S.C. § 1983. Warner claimed that a probation condition imposed on him as part of a criminal sentence, which required him to attend meetings of Alcoholics Anonymous ("A.A."), forced him to participate in religious activity in violation of the First Amendment's Establishment Clause, and that OCDP was responsible, in part because it recommended the A.A. therapy to the sentencing court as a condition of probation. OCDP argues on several grounds that it cannot be liable for Warner's exposure to A.A. pursuant to a sentence imposed by the court. We reject OCDP's arguments, and affirm the judgment.

Background

On November 13, 1990, Warner pleaded guilty to driving drunk and without a license in violation of New York law. N.Y.Veh. & Traf.Law §§ 511(2), 1192(1) (McKinney 1986 & Supp.1996). This was his third alcohol-related driving offense in a period of little more than a year. Judge David L. Levinson, of the Town of Woodbury's Justice Court in Orange County, New York, accepted the plea and ordered the Orange County Department of Probation to prepare a presentence report.

The OCDP's report recommended a term of probation with six special conditions, which the department routinely recommends in cases of

defendants with alcohol problems. These included that the probationer "totally abstain from the use of intoxicating beverages," avoid "establishment[s] where the primary business is the sale or consumption of alcohol," and, as the fifth recommended condition, that he "attend Alcoholics Anonymous at the direction of [his] probation officer."

These recommended special conditions were set forth on a standard form rider which OCDP routinely provided to sentencing judges in such cases. Judge Levinson sentenced Warner to three years of probation, imposing the special conditions recommended by the OCDP. In imposing these special conditions, Judge Levinson endorsed the Probation Department's standard form.

Warner attended A.A. meetings at the direction of his probation officer, Neal Terwilliger, from November 1990 through September 1992. However, in January of 1991, Warner complained to Terwilliger that, as an atheist, he found the religious nature of the A.A. meetings objectionable. The probation officer instructed Warner to continue his attendance. Some months later, Terwilliger determined that Warner lacked sufficient commitment to the program; he directed Warner to attend "Step meetings" and to seek another more advanced A.A. member as a "sponsor" to give him guidance and encourage his adherence to the program. The Step meetings were devoted to discussion of A.A.'s "Twelve Steps," which represented the heart of the therapy program.

The district court found that the program Warner was required to attend involved a substantial religious component. For example, the "Twelve Steps" included instruction that participants should "believe that a Power greater than ourselves could restore us"; "[make] a decision to turn our will and our lives over to the care of God as we [understand] Him "; "[a]dmit[ ] to God ... the exact nature of our wrongs"; be "entirely ready to have God remove all these defects ... [and] ask Him to remove our shortcomings"; and "[seek] through prayer and meditation to improve our conscious contact with God, as we [understand] Him." (Emphasis in original.)

Group prayer was a common occurrence at the meetings Warner attended. They frequently began with a religious invocation, and always ended with a Christian prayer. The district court found that the program "placed a heavy emphasis on spirituality and prayer, in both conception and in practice."

In July of 1992, Warner filed a motion in the Town of Woodbury Justice Court challenging the constitutionality of his consignment to A.A. The OCDP--after meeting with representatives from the local district attorney's office--responded by offering Warner therapy in another program. The municipal court judge then dismissed Warner's motion as moot. Warner subsequently brought this action in federal district court, seeking damages, as well as a declaratory *205 judgment that OCDP had violated his First Amendment rights. After a bench trial, the district court found that compelling Warner to attend the program violated the Establishment Clause, and further determined that the OCDP was liable for the constitutional injury, notwithstanding that it was the sentencing judge--not the Probation Department--who had imposed the condition of A.A. participation. The court, however, found that Warner's claims of financially compensable injury were not convincing, and thus awarded nominal damages in the amount of one dollar, plus attorney's fees.

Discussion

OCDP asserts that the trial court committed a variety of errors. First, it claims that it cannot be liable because, under New York law, the determination of probation conditions is solely the responsibility of the sentencing judge. Second, the OCDP argues that if it is responsible for Warner's probation terms, it is protected from any damages judgment by a quasi-judicial absolute immunity. Finally, it contests the district court's conclusion that requiring Warner to attend A.A. violated the Establishment Clause. We disagree with these contentions.

I. OCDP's Responsibility for the Sentence

[1] To establish OCDP's liability for his sentence under 42 U.S.C. § 1983, Warner must first demonstrate that his injury resulted from a custom or policy of Orange County, as opposed to an isolated instance of conduct. Monell v. Department of Social Servs., 436 U.S. 658, 690-91, 98 S.Ct. 2018, 2035-36, 56 L.Ed.2d 611 (1978); see also

Adickes v. S.H. Kress & Co., 398 U.S. 144, 162-67, 90 S.Ct. 1598, 1611-13, 26 L.Ed.2d 142 (1970) (describing congressional intent in creating liability for custom or practice). The OCDP's recommendation that Warner be required to participate in A.A. therapy was unquestionably made pursuant to a general policy. This was one of six standard special conditions, set forth on a form captioned "Additional Conditions of Probation Pertaining to Alcohol," which OCDP routinely submitted to sentencing judges in alcohol cases.

[2] OCDP argues that it is nonetheless not legally responsible because it was the judge's sentencing decision, not the Probation Department's recommendation, that caused the harm. The County is certainly correct that in cases brought under § 1983 a superseding cause, as traditionally understood in common law tort doctrine, will relieve a defendant of liability. Jeffries v. Harleston, 52 F.3d 9, 14 (2d Cir.), cert. denied, --- U.S. ----, 116 S.Ct. 173, 133 L.Ed.2d 114 (1995); Gutierrez-Rodriguez v. Cartagena, 882 F.2d 553, 561 (1st Cir.1989); Wagenmann v. Adams, 829 F.2d 196, 212 (1st Cir.1987). "[T]he Supreme Court has made it crystal clear that principles of causation borrowed from tort law are relevant to civil rights actions brought under section 1983." Buenrostro v. Collazo, 973 F.2d 39, 45 (1st Cir.1992); see Malley v. Briggs, 475 U.S. 335, 344 n. 7, 106 S.Ct. 1092, 1098 n. 7, 89 L.Ed.2d 271 (1986); Monroe v. Pape, 365 U.S. 167, 187, 81 S.Ct. 473, 484, 5 L.Ed.2d 492 (1961).

[3][4] However, tort defendants, including those sued under § 1983, are " 'responsible for the natural consequences of [their] actions.' " Malley, 475 U.S. at 344 n. 7, 106 S.Ct. at 1098 n. 7 (quoting Monroe, 365 U.S. at 187, 81 S.Ct. at 484). As the First Circuit has explained, an actor may be held liable for "those consequences attributable to reasonably foreseeable intervening forces, including the acts of third parties." Gutierrez-Rodriguez, 882 F.2d at 561 (citations omitted). [FN1]

FN1. The First Circuit went on to state: A negligent defendant will not be relieved of liability by an intervening cause that was reasonably foreseeable, even if the intervening force may have "directly" caused the harm. An "unforeseen and abnormal" intervention, on the other hand, "breaks the chain of causality," thus shielding the defendant from liability. See also Stagl v. Delta Airlines, Inc., 52 F.3d 463, 473-74 (2d Cir.1995)(under New York law liability turns upon whether the intervening act is "a normal and foreseeable consequence of the situation created by the defendant's negligence")(quoting Derdiarian v. Felix Contracting Corp., 51 N.Y.2d 308, 315, 434 N.Y.S.2d 166, 414 N.E.2d 666 (1980)); Bonsignore v. City of New York, 683 F.2d 635, 638 (2d Cir.1982)(same); White v. Roper, 901 F.2d 1501, 1506 (9th Cir.1990); Marsh v. Barry, 824 F.2d 1139, 1143 (D.C.Cir.1987)(question in § 1983 case where intervening cause is alleged is "whether the resulting harm was reasonably foreseeable"); Springer v. Seaman, 821 F.2d 871, 876-77 (1st Cir.1987); Restatement (Second) Torts §§ 442A, 442B, 443, 447 (1965).

*206 A complex chain of events led to Warner's participation in religious exercises at the A.A. meetings. Two candidates present themselves as possible superseding causes of his injury that might relieve OCDP of liability: First, as the County argues, the judge's sentencing determination; second, the actions of the A.A. chapter that Warner attended.

A. Act of the Sentencing Judge

[5][6] As the OCDP correctly points out, under New York law the determination of probation terms is a judicial task, which may not be delegated to probation officers. People ex. rel. Perry v. Cassidy, 23 A.D.2d 706, 257 N.Y.S.2d 228, 229 (1965); see also People v. Fuller, 57 N.Y.2d 152, 455 N.Y.S.2d 253, 256, 441 N.E.2d 563, 566 (1982) (sentencing court must independently decide how much of probation department report to adopt). The probation department therefore argues that its role was purely advisory, and cannot have been the proximate cause of Warner's injury.

The Supreme Court, however, in Malley v. Briggs, 475 U.S. 335, 106 S.Ct. 1092, 89 L.Ed.2d 271 (1986), rejected a similar argument. Malley was a civil rights action under § 1983 against a state trooper who had procured a warrant for the plaintiff's arrest by submitting an affidavit. Plaintiff claimed the affidavit was legally insufficient. The district court had dismissed the case, believing the police officer to be absolutely immune when swearing out a warrant. The Court of Appeals

reversed, resuscitating the action. The officer argued in the Supreme Court not only that he was immune, but also that he was shielded from responsibility by his entitlement to rely on the judgment of the judicial officer in finding probable cause and issuing the warrant. The Supreme Court ruled that such reliance was not justified if "a reasonably well-trained officer in [the same] position would have known that his affidavit failed to establish probable cause and that he should not have applied for the warrant." Id. at 345, 106 S.Ct. at 1098. If such was the case, the officer's application for a warrant was not objectively reasonable, because it risked an unnecessary danger of unlawful arrest. "It is true," the Court observed,

> that in an ideal system an unreasonable request for a warrant would be harmless, because no judge would approve it. But ours is not an ideal system, and it is possible that a magistrate, working under docket pressures, will fail to perform as a magistrate should. We find it reasonable to require the officer applying for the warrant to minimize this damage by exercising reasonable professional judgment.

Id. Commenting on the claim that the judge's decision to issue the warrant broke the "causal chain" between the application and the wrongful arrest, the Court noted that such an argument was "inconsistent with our interpretation of § 1983," which makes defendants " 'responsible for the natural consequences of [their] actions.' " Id. at 344 n. 7, 106 S.Ct. at 1098 n. 7 (quoting Monroe, 365 U.S. at 187, 81 S.Ct. at 484); see also Gutierrez-Rodriguez, 882 F.2d at 561 (defendants in § 1983 cases liable for consequences caused by "reasonably foreseeable intervening forces").

The circumstances in Malley were more favorable than those here to the argument of exoneration by reason of the intervening decision of the judge. That is because a police officer applying for an arrest warrant appears in a partisan role. The magistrate to whom the application is addressed is automatically on notice that the application comes from an interested party and therefore knows that scrutiny is warranted. The probation officer, on the other hand, is not a partisan advocate aligned with either the prosecution or the defendant. He is a neutral adviser to the court. [FN2] Schiff v. Dorsey, *207 877 F.Supp. 73, 77 & n. 1 (D.Conn.1994) (describing analogous role of federal probation officer; "the sentencing judge's need for complete and accurate information about an offender requires that he enjoy a relationship of the utmost trust and confidentiality with the federal probation officer"); see also Sharon Bunzel, Note, The Probation Officer and the Federal Sentencing Guidelines: Strange Philosophical Bedfellows, 105 Yale L.J. 933, 945 (1995) (describing historical role of probation officer as "neutral information gatherer with loyalties to no one but the court"). The district court noted a high likelihood of court adoption of such recommendations by the probation department.

> FN2. New York law prohibits a court from sentencing a defendant to a term of probation not agreed upon by the parties without first considering the probation department's pre-sentence report ("PSR"). N.Y.Crim. Proc. § 390.20 (McKinney 1994). PSR's include not only material the department thinks appropriate, but also any other information the court may direct the investigation to include. Id. at § 390.30(3)(a). Once written, PSR's become confidential court documents. Id. at § 390.50(1). Although not formally located within the judicial branch, Bowne v. County of Nassau, 37 N.Y.2d 75, 371 N.Y.S.2d 449, 452, 332 N.E.2d 323, 325 (1975), New York statutes intimately tie the probation department to the sentencing process.

Given the neutral advisory role of the probation officer toward the court, it is an entirely "natural consequence[ ]," Malley, 475 U.S. at 344 n. 7, 106 S.Ct. at 1098 n. 7, for a judge to adopt the OCDP's recommendations as to a therapy provider without careful scrutiny. Such action by a judge is neither "abnormal" nor "unforeseen." Gutierrez-Rodriguez, 882 F.2d at 561.

Court adoption of the probation officer's recommendation is particularly likely when the recommendation deals with a provider of therapy. Judges are unlikely to possess particularized information about the relative characteristics and merits of different providers of therapy. For this type of information, courts generally rely heavily on probation department recommendations. [FN3]

> FN3. The dissent suggests that we malign New York's judiciary by finding that the sentencing judge merely "rubber stamped" the probation office recommendation. We neither find nor imply any such thing. First, to say, as we do, that it was reasonably foreseeable that the sentencing judge

> would accept probation's recommendation on this point does not imply that the judge did not make his own determination. Second, our discussion relates only to the selection of a therapy provider and not at all to the court's determination of appropriateness of probation and of alcohol therapy. The selection of a provider of therapy is not an issue of law, and courts are ill equipped to perform this task without relying heavily on recommendations. For sentences involving alcohol abuse therapy, furthermore, the probation department's role is particularly significant. New York law allows a judge to sentence a defendant to a term of probation conditioned on "participat[ion] in an alcohol ... abuse program ... approved by the court after consultation with the local probation department having jurisdiction, or such other public or private agency as the court determines to be appropriate." N.Y. Penal § 65.10(2)(e)(emphasis added). The statutory requirement that the judge seek advice in approving a particular alcohol abuse program suggests judicial reliance on the department's expertise in selecting a program.

[7] Whether it was reasonably foreseeable that the sentencing judge would adopt the OCDP's recommendation that Warner attend A.A. is a question of fact. See Springer, 821 F.2d at 876; Restatement (Second) of Torts § 453 cmt. b (1965). The district judge found a high likelihood that a judge would follow such a recommendation of the probation department. We review this determination for clear error, and find none. Fed.R.Civ.P. 52(a); Anderson v. City of Bessemer City, 470 U.S. 564, 572, 105 S.Ct. 1504, 1510-11, 84 L.Ed.2d 518 (1985).

Finally, the dissent argues that, because Warner--following the advice of his attorney--sampled A.A. sessions prior to sentence and made no objection to their religious content at the time of sentence, the probation department's recommendation was not a proximate cause of the injury. The dissent argues also that Warner's conduct constituted consent. We are not persuaded by either argument.

The issue of proximate cause is not resolved by the mere fact that Warner's failure to object was an intervening event, subsequent to the probation recommendation and prior to the sentence. The issue, as noted above, is whether, when probation made its recommendation, it was reasonably foreseeable that the recommendation would result in the harm. Warner's failure to object was entirely foreseeable. Assuming his early visits made him aware of the full extent of the religious content of the A.A. therapy, it was *208 not clear that Warner was aware at the time that the religious content gave him any legal basis to object, or that he had even told his lawyer about the religious content.

Furthermore, even if aware of his rights, he might well have been afraid to annoy the sentencing judge by objecting to the standard recommendation of the probation department. In short, for several reasons, it was entirely foreseeable at the time probation made its recommendation that Warner might not object.

[8] For the same reasons and others, Warner's conduct did not constitute consent. Had Warner either suggested A.A. as a condition of probation, or somehow communicated his agreement to such a condition, we might well agree with Judge Winter. But the mere fact of his presentence attendance, designed to demonstrate his commitment to rehabilitation, did not amount to a consent to the aspect of the sentence that essentially required him to attend religious exercises. A defendant facing sentence may well undertake daily attendance at mass in the hope of convincing the sentencing judge of his penitence. We do not see how such conduct, without more, could be construed as consent to a sentence of probation conditioned on daily attendance at mass. The defendant's voluntary attendance may suggest that the illegal sentence caused him no great harm and may explain, in part, the setting of damages at $1, but it does not show consent.

B. Acts of Alcoholics Anonymous

The immediate cause of Warner's injury was not the sentencing judge's decision to send him to an alcohol rehabilitation program, but rather the actions of those who conducted the A.A. meetings Warner attended. Whether the religion-infused meetings should be regarded as a break in the causal chain between OCDP's action and plaintiff's injury, thus shielding the probation department from liability, depends, again, upon whether those actions were reasonably foreseeable to OCDP at the time it made the recommendation. Gutierrez-Rodriguez, 882 F.2d at 561; see also Malley, 475 U.S. at 344 n. 7,

106 S.Ct. at 1098 n. 7.

[9] On this point, the district court made no findings. The probation department was, of course, obligated to use reasonable care to inform itself of the suitability of therapy programs it recommended to the court, especially where such recommendations were repeatedly made as a matter of policy. Furthermore, the parties stipulated prior to trial that OCDP, when it formulated its policy of recommending A.A., was aware of the program's Twelve Steps and of their deeply religious character. Accordingly, there can be no question as to the reasonable foreseeability of the religious nature of the program OCDP was recommending for Warner; OCDP was well aware of it. The actions of A.A. cannot be considered to have broken the chain of causation. OCDP is responsible for any resulting injury to Warner's First Amendment rights.

II. Orange County's Other Defenses

A. Immunities

OCDP contends that even if its recommendation to the judge was a proximate cause of Warner's sentence, it is immune from liability. It claims that probation department sentence recommendations are so integral a part of the judicial process as to benefit from an absolute quasi-judicial immunity similar to that enjoyed by prosecutors. Cf. Cleavinger v. Saxner, 474 U.S. 193, 200, 106 S.Ct. 496, 500, 88 L.Ed.2d 507 (1985)(noting "exten[sion of] absolute [judicial] immunity to certain others who perform functions closely associated with the judicial process"); Imbler v. Pachtman, 424 U.S. 409, 420, 431, 96 S.Ct. 984, 990, 995-96, 47 L.Ed.2d 128 (1976) (prosecutor's actions taken pursuant to prosecutorial function benefit from absolute quasi-judicial immunity).

Were this suit brought against the probation officer, Terwilliger, the claim for absolute immunity would likely have merit. We have held that actions of federal probation officers in preparing and furnishing presentence reports to courts are protected by an absolute immunity from suit for damages. Dorman v. Higgins, 821 F.2d 133, 137 (2d Cir.1987). In so holding, we noted that this determination was consonant "with the similar conclusions of other circuits with respect *209 to state probation officers operating within similar frameworks." Id. at 138 (citing Demoran v. Witt, 781 F.2d 155, 157-58 (9th Cir.1985); Hughes v. Chesser, 731 F.2d 1489, 1490 (11th Cir.1984)). A district court of this circuit, recognizing the close similarities between the roles of New York state and federal probation officers in preparing presentence reports, has held that New York state probation officers benefit from a similar absolute immunity. Shelton v. McCarthy, 699 F.Supp. 412, 414-15 (W.D.N.Y.1988).

[10] This case, however, does not require us to determine whether New York state probation officers benefit from immunity covering their submission of presentence reports, for Warner did not name any probation officers as defendants. The suit is brought only against the Orange County Department of Probation. The question is thus whether the claimed immunity extends to the governmental entity. We find that it does not.

Although the Supreme Court has not yet ruled on the applicability of absolute quasi-judicial immunities to municipal government entities, it has repeatedly suggested that such protections are not available. In Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit, 507 U.S. 163, 113 S.Ct. 1160, 122 L.Ed.2d 517 (1993), Justice Rehnquist explained on behalf of a unanimous Court that past "decisions make it quite clear that, unlike various government officials, municipalities do not enjoy immunity from suit--either absolute or qualified--under § 1983." Id. at 166, 113 S.Ct. at 1162. [FN4] Similarly, in Kentucky v. Graham, 473 U.S. 159, 166-67, 105 S.Ct. 3099, 3105-06, 87 L.Ed.2d 114 (1985), the Court indicated that the absolute prosecutorial immunity doctrine set forth in Imbler v. Pachtman, 424 U.S. 409, 96 S.Ct. 984, 47 L.Ed.2d 128 (1976), did not extend to claims brought against government entities under § 1983. "The only immunities that can be claimed in an official-capacity action are forms of sovereign immunity that the entity, qua entity, may possess, such as the Eleventh Amendment." Id. at 167, 105 S.Ct. at 3106. These rulings follow directly from the Supreme Court's decision in Owen v. City of Independence, 445 U.S. 622, 100 S.Ct. 1398, 63 L.Ed.2d 673 (1980), which held that municipalities do not benefit from the qualified immunity of their officers.

CORRECTION

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

106 S.Ct. at 1098 n. 7.

[9] On this point, the district court made no findings. The probation department was, of course, obligated to use reasonable care to inform itself of the suitability of therapy programs it recommended to the court, especially where such recommendations were repeatedly made as a matter of policy. Furthermore, the parties stipulated prior to trial that OCDP, when it formulated its policy of recommending A.A., was aware of the program's Twelve Steps and of their deeply religious character. Accordingly, there can be no question as to the reasonable foreseeability of the religious nature of the program OCDP was recommending for Warner; OCDP was well aware of it. The actions of A.A. cannot be considered to have broken the chain of causation. OCDP is responsible for any resulting injury to Warner's First Amendment rights

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OCDP contends that even if its recommendation to the judge was a proximate cause of Warner's sentence, it is immune from liability. It claims that probation department sentence recommendations are so integral a part of the judicial process as to benefit from an absolute quasi-judicial immunity similar to that enjoyed by prosecutors. Cf. Cleavinger v. Saxner, 474 U.S. 193, 200, 106 S.Ct. 496, 500, 88 L.Ed.2d 507 (1985)(noting "exten[sion of] absolute [judicial] immunity to certain others who perform functions closely associated with the judicial process"); Imbler v. Pachtman, 424 U.S. 409, 420, 431, 96 S.Ct. 984, 990, 995-96, 47 L.Ed.2d 128 (1976) (prosecutor's actions taken pursuant to prosecutorial function benefit from absolute quasi-judicial immunity).

Were this suit brought against the probation officer, Terwilliger, the claim for absolute immunity would likely have merit. We have held that actions of federal probation officers in preparing and furnishing presentence reports to courts are protected by an absolute immunity from suit for damages. Dorman v. Higgins, 821 F.2d 133, 137 (2d Cir.1987). In so holding, we noted that this determination was consonant "with the similar conclusions of other circuits with respect *209 to state probation officers operating within similar frameworks." Id. at 138 (citing Demoran v. Witt, 781 F.2d 155, 157-58 (9th Cir.1985); Hughes v. Chesser, 731 F.2d 1489, 1490 (11th Cir.1984)). A district court of this circuit, recognizing the close similarities between the roles of New York state and federal probation officers in preparing presentence reports, has held that New York state probation officers benefit from a similar absolute immunity. Shelton v. McCarthy, 699 F.Supp. 412, 414-15 (W.D.N.Y.1988).

[10] This case, however, does not require us to determine whether New York state probation officers benefit from immunity covering their submission of presentence reports, for Warner did not name any probation officers as defendants. The suit is brought only against the Orange County Department of Probation. The question is thus whether the claimed immunity extends to the governmental entity. We find that it does not.

Although the Supreme Court has not yet ruled on the applicability of absolute quasi-judicial immunities to municipal government entities, it has repeatedly suggested that such protections are not available. In Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit, 507 U.S. 163, 113 S.Ct. 1160, 122 L.Ed.2d 517 (1993), Justice Rehnquist explained on behalf of a unanimous Court that past "decisions make it quite clear that, unlike various government officials, municipalities do not enjoy immunity from suit--either absolute or qualified--under § 1983." Id. at 166, 113 S.Ct. at 1162. [FN4] Similarly, in Kentucky v. Graham, 473 U.S. 159, 166-67, 105 S.Ct. 3099, 3105-06, 87 L.Ed.2d 114 (1985), the Court indicated that the absolute prosecutorial immunity doctrine set forth in Imbler v. Pachtman, 424 U.S. 409, 96 S.Ct. 984, 47 L.Ed.2d 128 (1976), did not extend to claims brought against government entities under § 1983. "The only immunities that can be claimed in an official-capacity action are forms of sovereign immunity that the entity, qua entity, may possess, such as the Eleventh Amendment." Id. at 167, 105 S.Ct. at 3106. These rulings follow directly from the Supreme Court's decision in Owen v. City of Independence, 445 U.S. 622, 100 S.Ct. 1398, 63 L.Ed.2d 673 (1980), which held that municipalities do not benefit from the qualified immunity of their officers.

FN4. Justice Rehnquist referred in particular to the Court's decision in Monell v. New York City Dept. of Social Servs., 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978), overruling Monroe v. Pape, 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961), and holding that local governments were no longer absolutely immune from suit under § 1983. Monell expressly reserved the question of whether municipalities might be entitled to some more limited form of immunity. 436 U.S. at 701, 98 S.Ct. at 2041. In Owen v. City of Independence, 445 U.S. 622, 638, 100 S.Ct. 1398, 1409, 63 L.Ed.2d 673 (1980), the Supreme Court rejected the notion that the qualified immunity of municipal officials extends to municipalities themselves.

Following the direction of these cases, we refused in Pinaud v. County of Suffolk, 52 F.3d 1139 (2d Cir.1995), to extend the absolute prosecutorial immunity of the Suffolk County district attorney to the County itself. Id. at 1153 (citing Leatherman). [FN5] The Pinaud ruling guides our decision here, for in origin the quasi-judicial immunities of probation officers and prosecutors are closely linked. Indeed, our holding in Dorman v. Higgins that federal probation officers are protected by an absolute immunity in the preparation of presentence reports was grounded in significant part on the similarities between the prosecutorial function and the task of the probation officer, as well as probation officers' close relationship to the judicial process. [FN6] Dorman, 821 F.2d at 136- *210 37. As we have found in Pinaud that the absolute quasi-judicial immunity of prosecutors does not extend to the municipalities that employ them, the answer to the closely parallel question whether any immunity possessed by municipal probation officers would similarly benefit the municipality follows directly. We conclude on the basis of the authorities cited above that no such protection inures in Orange County by virtue of any immunity that may be possessed by its probation officers.

FN5. See also Baez v. Hennessy, 853 F.2d 73, 75-76 (2d Cir.1988)(noting Supreme Court's agreement in dictum with view that absolute prosecutorial immunity does not extend to County government)(citing Kentucky v. Graham), cert. denied, 488 U.S. 1014, 109 S.Ct. 805, 102 L.Ed.2d 796 (1989). A few district courts had taken a different course, but these opinions were overruled by Pinaud. See Whelehan v. County of Monroe, 558 F.Supp. 1093, 1108 (W.D.N.Y.1983); Armstead v. Town of Harrison, 579 F.Supp. 777, 782-83 (S.D.N.Y.1984).

FN6. We noted, paraphrasing the Supreme Court's language in Imbler setting forth the limits of prosecutorial immunity, that "a federal probation officer acts as an arm of the court and that ... task is an integral part of one of the most critical phases of the judicial process." Dorman, 821 F.2d at 137. And we made clear that federal probation officers deserve absolute immunity because they fall into a class of persons, such as prosecuting attorneys and witnesses testifying in judicial proceedings, whose activities require them to "perform functions [so] closely associated with the judicial process" that they "have also been accorded [absolute judicial] immunity." Id. (citation omitted).

We are fortified in this view by our own opinions and those of other circuits, which have in a variety of contexts refused to extend immunities--either absolute or qualified--to municipalities. As Judge Posner has explained:

> [T]he municipality's liability for [its officials'] acts extends to acts for which the policy-making officials themselves might enjoy absolute immunity because the acts were legislative or judicial in character. Owen ... so held with regard to the qualified immunity of municipal officers for their executive acts, and we cannot see why there should be a different result here just because these officers' immunity is absolute rather than qualified.

Reed v. Village of Shorewood, 704 F.2d 943, 953 (7th Cir.1983). Also, in Goldberg v. Town of Rocky Hill, 973 F.2d 70 (2d Cir.1992), we held that a municipality is liable for the unconstitutional acts of its legislature even though the legislators themselves are protected by absolute immunity. Id. at 74. We stated in that case that "there is no immunity defense, either qualified or absolute, available to a municipality sought to be held liable under 42 U.S.C. § 1983." Id.; see also Ferran v. Town of Nassau, 11 F.3d 21, 23 (2d Cir.1993) ("[T]he town and county have no § 1983 immunity."), cert. denied, --- U.S. ----, 115 S.Ct. 572, 130 L.Ed.2d 489 (1994); Reed, 704 F.2d at 953 (municipality has no absolute legislative or judicial immunity). Indeed, the circuit courts that have addressed the question are unanimous that the absolute immunity of local legislators does not

extend to the municipalities they serve. See Berkley v. Common Council of Charleston, 63 F.3d 295, 296 (4th Cir.1995)(en banc), cert. denied, --- U.S. ----, 116 S.Ct. 775, 133 L.Ed.2d 727 (1996).

We are similarly not alone in the view that quasi-judicial absolute prosecutorial immunity does not extend to municipalities. The Ninth Circuit made a similar ruling in Ybarra v. Reno Thunderbird Mobile Home Village, 723 F.2d 675, 681 (9th Cir.1984) ("[Local governments] enjoy no immunity under § 1983 for damages."). At least one circuit has even gone so far as to hold that the absolute judicial immunity of courts themselves does not extend to local governments where a municipal official acts in a judicial capacity. Reed, 704 F.2d at 953; Soderbeck v. Burnett County, 752 F.2d 285, 293 (7th Cir.), cert. denied, 471 U.S. 1117, 105 S.Ct. 2360, 86 L.Ed.2d 261 (1985); see also Haynesworth v. Miller, 820 F.2d 1245, 1272 n. 227 (D.C.Cir.1987)(noting that "municipality may ... face § 1983 liability for the conduct of officials who enjoy absolute personal immunity" including liability for "conduct of a judge"). [FN7] In any event, we hold that even *211 if OCDP's probation officers are absolutely immune from liability, that protection does not extend to the County itself.

FN7. We do not imply that we would rule similarly where the asserted liability of the municipality derives from the conduct of a judge. A number of questions arise that may distinguish such a case. It is difficult to say that a municipal judge has "final authority to establish municipal policy" under state law at all, Walker v. City of New York, 974 F.2d 293, 296 (2d Cir.1992), cert. denied, 507 U.S. 961, 113 S.Ct. 1387, 122 L.Ed.2d 762 (1993); City of St. Louis v. Praprotnik, 485 U.S. 112, 123, 108 S.Ct. 915, 924, 99 L.Ed.2d 107 (1988) (plurality opinion), as such rulings are almost always--as here--appealable to higher courts within the state system. See Eggar v. City of Livingston, 40 F.3d 312, 314-15 & n. 3 (9th Cir.1994), cert. denied, --- U.S. ----, 115 S.Ct. 2566, 132 L.Ed.2d 818 (1995); N.Y. Uniform Justice Court Act §§ 1701, 1702 (McKinney 1989). "Local" judicial decisions are therefore neither final, nor exclusively local. Eggar, 40 F.3d at 314-15 & n. 3. Moreover, when a municipal judge enforces state law he does not act as a municipal official or lawmaker, but rather serves only to effectuate state policies. See Eggar, 40 F.3d at 314-15; Johnson v. Moore, 958 F.2d 92, 94 (5th Cir.1992); Bigford v. Taylor, 834 F.2d 1213, 1222 (5th Cir.)(judge's " 'deliberate or mistaken departure from the controlling [state] law' cannot be said to represent county policy")(quoting Pembaur v. City of Cincinnati, 475 U.S. 469, 486, 106 S.Ct. 1292, 1302, 89 L.Ed.2d 452 (1986)), cert. denied, 488 U.S. 851, 109 S.Ct. 135, 102 L.Ed.2d 108 (1988); Carbalan v. Vaughn, 760 F.2d 662, 665 (5th Cir.), cert. denied, 474 U.S. 1007, 106 S.Ct. 529, 88 L.Ed.2d 461 (1985); Familias Unidas v. Briscoe, 619 F.2d 391, 404 (5th Cir.1980). Courts have also denied municipal liability where--as is frequently the case--state law makes judges who are casually referred to as "county" officials in fact officers of state government, and a part of the state judicial system. See Eggar, 40 F.3d at 314 & n. 3 (power of city judges under Montana law derives from state statutes, and the judges are in the hierarchy of the state judicial system); Woods v. Michigan City, 940 F.2d 275, 279 (7th Cir.1991)(under Indiana law county courts are a branch of the "state's constitutional system"); Thompson v. County of Rock, 648 F.Supp. 861, 866-67 (W.D.Wis.1986)(denying municipal liability for acts of Wisconsin county court commissioners on grounds that they are in fact state officials). Since New York municipal courts are "part of the unified court system for the state," N.Y. Uniform Justice Court Act § 102 (McKinney 1989), this logic might well apply in New York as well. Finally, we note that even in the event that the law were to allow a municipality to be liable for judicial actions, judges themselves may be protected against providing testimony as to their thought processes in issuing an opinion. A number of courts have so held in the context of federal habeas corpus review of state court decisions. See Weidner v. Thieret, 866 F.2d 958, 963 (7th Cir.1989)(recommending that state trial judges offer testimony in federal habeas cases, if at all, by voluntary affidavit since "it would be unseemly for a federal district judge to summon the state trial judge as a witness ... to give testimony and be cross-examined"); Washington v. Strickland, 693 F.2d 1243, 1263 (5th Cir. Unit B 1982)(prohibiting testimony of state trial judges in federal habeas cases on rationale underlying their initial decision, inter alia, for reasons of federalism and comity), rev'd on other grounds, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). A similar logic would apply in collateral review of municipal court decisionmaking under § 1983.

B. Establishment Clause

[11][12] The County also argues that forcing Warner to attend Alcoholics Anonymous did not violate the First Amendment's Establishment Clause. We disagree. The Supreme Court has repeatedly made clear that "at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise, or otherwise act in a way which 'establishes a [state] religion or religious faith, or tends to do so.' " Lee v. Weisman, 505 U.S. 577, 587, 112 S.Ct. 2649, 2655, 120 L.Ed.2d 467 (1992) (quoting Lynch v. Donnelly, 465 U.S. 668, 678, 104 S.Ct. 1355, 1362, 79 L.Ed.2d 604 (1984)); see County of Allegheny v. American Civil Liberties Union, 492 U.S. 573, 591, 109 S.Ct. 3086, 3100, 106 L.Ed.2d 472 (1989); Everson v. Board of Educ., 330 U.S. 1, 15-16, 67 S.Ct. 504, 511-12, 91 L.Ed. 711 (1947); see also Katcoff v. Marsh, 755 F.2d 223, 231-32 (2d Cir.1985) (observing that army chaplaincy program "meets the requirement of voluntariness by leaving the practice of religion solely to the individual soldier, who is free to worship or not as he chooses without fear of any discipline or stigma").

The A.A. program to which Warner was exposed had a substantial religious component. Participants were told to pray to God for help in overcoming their affliction. Meetings opened and closed with group prayer. The trial judge reasonably found that it "placed a heavy emphasis on spirituality and prayer, in both conception and in practice." We have no doubt that the meetings Warner attended were intensely religious events. [FN8]

FN8. As noted above, the district court made no finding on OCDP's awareness of the religious nature of the A.A. program. We nonetheless found OCDP's responsibility by reason of the stipulation of the parties that OCDP knew the religious nature of A.A.'s Twelve Steps. The district judge's finding of a violation of the Establishment Clause was based in part on several factors, recited above, that were not included in the Stipulation covering OCDP's knowledge--particularly the prayers. Although there was no finding that OCDP knew (or should have known) of the prayers, the finding of Establishment Clause violation and of OCDP's responsibility are adequately supported by the stipulated facts.

There can be no doubt, furthermore, that Warner was coerced into participating in these religious exercises by virtue of his probation sentence. Neither the probation recommendation, nor the court's sentence, offered Warner any choice among therapy *212 programs. The probation department's policy, its recommendation, and its printed form all directly recommended A.A. therapy to the sentencing judge, without suggesting that the probationer might have any option to select another therapy program, free of religious content. Once sentenced, Warner had little choice but to attend the A.A. sessions. If Warner had failed to attend A.A., he would have been subject to imprisonment for violation of probation. See N.Y.Penal Law §§ 60.01(4), 65.00(2) (McKinney 1987); N.Y.Veh. & Traf.Law §§ 511(2), 1192(1) (McKinney 1986 & Supp.1996).

Had Warner been offered a reasonable choice of therapy providers, so that he was not compelled by the state's judicial power to enter a religious program, the considerations would be altogether different. Our ruling depends, as in Lee, on the "fundamental limitation[ ] imposed by the Establishment Clause" that bars government from "coerc[ing] anyone to support or participate in religion or its exercise." 505 U.S. at 587, 112 S.Ct. at 2655. In circumstances similar to our case, the New York Court of Appeals recently reached the same conclusion. Griffin v. Coughlin, No. 73, 1996 WL 317180, --- N.Y.2d ----, --- N.Y.S.2d ----, --- N.E.2d ---- (June 11, 1996). In Griffin, the New York court held that a prisoner's family visiting privileges may not be conditioned on participation in a treatment program that adopts the "religious-oriented practices and precepts of Alcoholics Anonymous." Id. at *1, --- N.Y.S.2d at ----, --- N.E.2d at ----. The court emphasized that it was not proscribing A.A. programs offered to prisoners on a voluntary basis. Id. at *11, --- N.Y.S.2d at ----, --- N.E.2d at ----. It was the coercive circumstances, conditioning a desirable privilege on the prisoner's participation in a religious program, without alternative, that drove the New York court to find a violation of the Establishment Clause. [FN9]

FN9. See also O'Connor v. California, 855 F.Supp. 303 (C.D.Cal.1994)(no Establishment Clause violation where probationers were offered a choice between A.A. and a secular program).