

ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672

9840 HOUSE JUDICIARY

67

MS. O'BRIEN said, "You can take care of four children, without a license, who are not related to you and you're living there. And then, you can take care of additional (four) related children."

REP. TOOHEY said there is no limit.

REP. B. DAVIS said there used to be a limit.

MS. O'BRIEN said, "If all the children are related, then there's no limit. That's what there's no limit on."

REP. TOOHEY said, "But, if you take care of four children... you can take care of four unrelated children without a license. And, then you have four grandchildren who come and visit, and you're taking care of them also. That means you have eight children in the house. I mean, you're not saying that this person has to have a license to have eight children in the house."

CHAIR BUNDE indicated that the answer is no according to Commissioner Lowe.

Number 906

MS. O'BRIEN stated that it is confusing and read from current regulation: "A facility is exempt if they're regularly providing child care only to a child or children related to the resident care giver."

CHAIR BUNDE reiterated that a person can take care of a "flock" of children, but no more than four that are not related.

TAPE 94-49, SIDE A

Number 000

CHAIR BUNDE stated that DHSS Amendment 2 had been moved and that Rep. Kott submitted his Amendment 1 as a friendly amendment.

REP. G. DAVIS asked if the motion before the committee was to adopt Rep. Kott's amendment.

REP. KOTT said it would be DHSS Amendment 2 as amended.

CHAIR BUNDE indicated that it would be DHSS Amendment 2 as amended.

REP. TOOHEY asked if DHSS Amendment 2 had to be adopted first before making a friendly amendment.

CHAIR BUNDE replied no. He said, "We have an amendment to the amendment before us."

REP. TOOHEY said, "But we haven't adopted the second amendment have we?"

CHAIR BUNDE said, "No, but we have an amendment to the amendment and then we go to the main amendment. The amendment to the amendment and the main amendment will read as Rep. Kott's Amendment 1 currently reads. It inserts unrelated caregiver, plus the additional insertion that Rep. Kott has... a facility in which the caregiver is related, is a relative of all the children. And, it inserts after grandparents, great grandparents. Do we have some clarity here?"

REP. KOTT stated that maybe he should have addressed his amendments first.

CHAIR BUNDE said, "We have an amendment to the amendment which is Rep. Kott's Amendment 1. Do you understand that?"

REP. B. DAVIS said yes.

REP. KOTT moved the amendment.

CHAIR BUNDE asked for any objections.

REP. B. DAVIS said she would like to hear from the department as to whether they supported the amendment as amended.

MS. O'BRIEN said yes.

CHAIR BUNDE said, "So, now are there objections?"

REP. B. DAVIS said no.

CHAIR BUNDE said, "Hearing no objections, we've adopted the amendment to the amendment which brings us to Amendment 2 which is the very same amendment that we... to the amendment that we've just adopted, so are there any objections to Amendment 2?"

Number 114

REP. KOTT said, "I'll move Amendment 2."

CHAIR BUNDE said, "It was previously moved and so if there are just no objections..."

REP. TOOHEY said, "Excuse me, because we have amendments before us that are both labeled, we have two labeled..."

CHAIR BUNDE said, "We have Rep. Kott's Amendment 1, which is now Department Amendment 2. Who's on first What's on second? We are now moving on to Department Amendment 3. Rep. Kott, you have something to say on this?"

REP. KOTT said no.

Number 138

CHAIR BUNDE asked for a member to move DHSS Amendment 3.

REP. KOTT said so moved.

CHAIR BUNDE asked Ms. O'Brien to speak to the amendment.

MS. O'BRIEN indicated that before the bill was brought forward to the committee, the division had two teleconferences with various organizations, including Native organizations. She stated that the Native organizations were concerned as to how difficult it is to license in very small communities and pointed out the difficulties involved when a child must be removed from a home in an emergency

situation. She said Amendment 3 would address those concerns.

Number 186

CHAIR BUNDE asked for discussion or objections. Hearing none, Chair Bunde declared that DHSS Amendment 3 was adopted. He brought DHSS Amendment 4 to the table. He then said, "And, the reason I was thinking we needed to adopt a CS becomes more apparent with each amendment." He asked for a member to move the amendment.

REP. G. DAVIS said so moved.

CHAIR BUNDE asked Ms. O'Brien to address the amendment.

MS. O'BRIEN explained that in the teleconferences that she mentioned it was pointed out that some variances are allowed for only seven days. She said there would be a lot of extra paper work if a license had to be issued each time a variance was given. She asserted that the amendment is an efficiency amendment.

REP. TOOHEY said she was troubled with the proposal because "we can no longer rely on the good will of the village or a neighbor to take care of the child. We are regulating care... the thing just smacks of regulating care of our fellow man out of existence. Does this bother anybody else?"

Number 286

CHAIR BUNDE explained that the legislation addresses situations when an official comes and removes and then places the child. He said it does not address the neighbor or relative or grandparent who wants to care for the child. He said the legislation does not preclude voluntary action.

REP. TOOHEY said, "Yes, we are."

CHAIR BUNDE stated, "I don't think so. Only when an official comes in and says that child's in jeopardy, now I'm making him a ward of the state, basically. It's not saying

that neighbors and relatives can't say. 'Well, wait a minute, you need some help. Let me give you a hand.'"

REP. G. DAVIS indicated that almost any law is on request. People can commit crimes, but if nobody asks that a person be arrested, there will be no arrest unless there is a request for the state to step in.

Number 325

CHAIR BUNDE asked for further discussion. He then asked for objections on DHSS Amendment 4. Hearing none, Chair Bunde declared that DHSS Amendment 4 was so moved. He then brought Rep. Kott's Amendment 2 to the table. He asked Rep. Kott to speak to his amendment.

(Note: Rep. Kott's testimony pertaining to Amendment 2 is inaudible. Refer directly to Rep. Kott's Amendment 2, as submitted and on file, which refers to page 19, lines 22-23. The amendment suggest deleting the words "whose parents are not" and insert "who does not have a parent.")

Number 350

CHAIR BUNDE asked Ms. O'Brien to speak to the amendment.

MS. O'BRIEN stated that prior to the meeting she was able to look over all of Rep. Kott's amendments and said she felt comfortable with all of them.

CHAIR BUNDE asked if the committee understood the amendment. He asked if there were any objections. Hearing none, Chair Bunde stated that Rep. Kott's Amendment 2 was adopted. He then brought Rep. Kott's Amendment 3 to the table.

Number 374

REP. KOTT made a motion to adopt his Amendment 3. He said the amendment addresses page 20, line 19, and would delete the words "have been arrested" and would insert "are under arrest."

CHAIR BUNDE said that the amendment would provide that a

person's past would not be held against them. He asked for objections. Hearing none, Chair Bunde stated that Rep. Kott's Amendment 3 was adopted. He indicated that it was his intent to have the committee substitute (CS) before the committee before the legislation is passed out.

Seeing no further business before the committee, CHAIR BUNDE ADJOURNED the meeting at 4:30 p.m.

22 March 1994 House HESS Committee

TAPE 94-36, SIDE A
Number 001

CHAIRMAN RIEGER called the Senate Health, Education and Social Services (HESS) Committee to order at 5:05 p.m. He brought CSHB 412(HES) am (COMMUNITY CARE FACILITIES) before the committee as the first order of business. He explained the legislation is almost identical to SB 268 which was previously heard by the committee. The committee adopted a committee substitute which had language that exempts small private foster homes where there was placement of children for up to 45 days. The House version allows private placement of children without a time limitation.

There being no questions on CSHB 412(HES) am, CHAIRMAN RIEGER asked for the pleasure of the committee.

SENATOR MILLER moved that CSHB 412(HES) am be passed out of committee with individual recommendations. Hearing no objection, it was so ordered.
Number 032

4 May 1994 Senate Finance Committee

Co-chair Pearce invited Elmer Lindstrom, Special Assistant to the Commissioner, Department of Health & Social Services, to speak to HB 412.

*[Tape 94-89]

*[Tape counter No. 403, Side A]

ELMER LINDSTROM said that HB 412 was not substantially different than CSSB 268(JUD) which was previously moved from Senate Finance. The most significant change related to page 6 of the bill, exemptions from foster home licensor. The other difference was that the House Finance Committee reduced the fiscal note submitted by the Department to \$30.0. The Department preferred the larger, previously submitted fiscal note but would proceed with the \$30.0 note if so directed by the legislature.

Senator Rieger MOVED for passage of CSHB 412(HES) am from committee with individual recommendations. No objection being heard, the bill was REPORTED out with individual recommendations, and a fiscal note for the Department of Health & Social Services for \$30.0. Co-chair Pearce, and Senator Jacko signed "do pass." Co-chair Frank, Senators Rieger and Sharp signed "no recommendation."

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Mr. Gray said definitions of different kinds of care were scattered throughout the statutes. He said the effort was to have a broader and more consistent definition throughout all parts of the statutes that dealt with the programs and protection of the elderly.

PAT O'BRIEN, Social Services Program Director, Division of Family & Youth Services, Department of Health & Social Services, said she had been following HB 3 and HB 4 for four years. She said in order for the division to put regulations in place by March 15, 1995, a fiscal note was needed. She went on to say that if the vulnerable adults bill passed, there would be a collaboration with the Division of Senior Services to develop those regulations. In response to Mr. Gray's prior statement, she said a public home care provider was not currently defined in statute.

In answer to Senator Kerttula, Ms. O'Brien said that there was more detail than listed on the fiscal note. In order to implement this bill, regulations must be implemented. She said regulations would address due process. In addition, procedures must be revised in the workers' manuals and some changes in reporting must be made. She said the residential child care regulations were more than ten years old. There was a backlog of very important sets of regulations and prioritizing this bill in front of other regulations was not something the department wanted to do. She said the department would contract out the writing of the regulations. In her experience, she had found that regulations often take a year, and sometimes longer.

Senator Kerttula understood that there was not enough money to handle the many problems the Department of Health & Social Services faced, but it was discouraging to him that it would take a year to implement regulations.

Senator Rieger asked if the person who was the recipient of home care services under the circumstances of HB 3, ever was a ward of the state. Ms. O'Brien said that children would be the only case, or children in foster homes where respite care would be provided. Adults were never wards of the state.

Again, in answer to Senator Rieger, Ms. O'Brien said this was easiest to talk about in regard to a very elderly

person. The home care provider who went into the elderly person's home might be the only individual that the person sees and the two might develop a close bond. There had been cases of abuse where the elderly person felt dependent on the individual for emotional support. In that case, the elderly person would not be strong enough to take steps to protect him/herself. She said someone could report this matter to the department and in some cases, it would be necessary for the department to ask the individual to be removed.

In answer to another question by Senator Rieger, Ms. O'Brien said in licensing outside contractors, the Department of Law had advised the statement regarding removal in order to provide for due process. Senator Rieger voiced his concern that the state was creating another way to leave itself open to lawsuits where none existed before.

FRANK JAMISON, Older Alaskans Commission, Division of Senior Services, Department of Health & Social Services, said the Commission was in support of HB 3. She added that people hired to become home care providers would be required to have a criminal record check. The incident that instigated this bill was a person that had a record in California, and because no record check was done here, no one knew. She stated it was an important bill for vulnerable adults.

In answer to Co-chair Pearce, Mr. Gray said that he did not know how the testimony had gone in Senate Judiciary. He did know that due process was key to this situation.

Senator Kerttula made a statement that elderly adults could be very vulnerable and family may not be close by. He cited another situation where a parent had Alzheimer's and its problems.

Senator Kerttula MOVED for passage of HB 3 from committee with individual recommendations. No objection being heard, it was REPORTED OUT of committee with a "do pass," zero

fiscal notes for the Department of Health & Social Services-Administration, and a fiscal note for the Department of Health & Social Services-#2059 for \$15.0. Co-chairs Pearce and Frank, Senators Rieger, Kerttula, and Jacko signed "do pass."

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HB

66

LEGAL SERVICES

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

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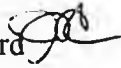
130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

February 24, 1999

SUBJECT: Proposed Amendment to the Revisor's Bill (HB 66;
Work Order No. 21-LS0339\A.1)

TO: Representative Pete Kott, Chair
House Judiciary Committee
Attn: Cory Winchell

FROM: James P. Crawford 
Assistant Revisor

Attached is a recommendation for the revisor's bill in the form of a proposed amendment.

First, the amendment addresses a problem brought to our attention this week by APOC relating to the amendment last year of AS 15.13.116(a) in sec. 8, ch. 74, SLA 1998. As a general matter, AS 15.13.116 relates to disbursements of campaign assets after elections. In ch. 74, what previously had been designated as AS 15.13.116(a)(5) -- permissible distributions of unused campaign funds to repay loans from a candidate to the candidate's own campaign -- became AS 15.13.116(a)(4). However, cross-references to this section in AS 15.13.078(b), which relates to contributions and loans from a candidate, were not altered at the time to reflect this numbering change. This amendment adds a section to the revisor's bill amending AS 15.13.078(b) to correct the cross-references now.

The amendment also corrects a typographical error in section 16 of the bill so that the statute designation of section 16 correctly reads "AS 28.40.100(a)(2)".

Finally, the amendment removes section 20, the repealer, from the bill in line with the recommendation stated in my memo dated February 10, 1999.

If you have any questions about the amendment, don't hesitate to call.

JPC:lmb:jr
99-018.lmb

Enclosure

2/24

AMENDMENT

#1

Passed.

OFFERED IN THE HOUSE

TO: HB 66

1 Page 10, following line 31:

2 Insert a new bill section to read:

3 **** Sec. 8.** AS 15.13.078(b) is amended to read:

4 (b) The provisions of this chapter do not prohibit the individual who is a
5 candidate from lending any amount to the campaign of the candidate. Loans made by
6 the candidate shall be reported as contributions in accordance with AS 15.13.040 and
7 15.13.110. However, the candidate may not

8 (1) recover, under this section and AS 15.13.116(a)(4)
9 [AS 15.13.116(a)(5)], the amount of a loan made by the candidate to the candidate's
10 own campaign that exceeds

11 (A) \$25,000, if the candidate ran for governor or lieutenant
12 governor;

13 (B) \$10,000, if the candidate ran for

14 (i) the legislature; or

15 (ii) delegate to a constitutional convention;

16 (C) \$10,000, if the candidate was a judge seeking retention;

17 (D) \$5,000, if the candidate ran in a municipal election; or

18 (2) repay a loan that the candidate has made to the candidate's own
19 campaign unless, within five days of making the loan, the candidate notifies the
20 commission, on a form provided by the commission, of the candidate's intention to
21 repay the loan under AS 15.13.116(a)(4) [AS 15.13.116(a)(5)]."

22 Renumber the following bill sections accordingly.

23 Page 14, line 18:

1 Delete "AS 28.40.100(2)"

2 Insert "AS 28.40.100(a)(2)"

3 Page 17, lines 5 - 6:

4 Delete all material.

5 Renumber the following bill sections accordingly.

6 Page 17, line 7:

7 Delete "Section 19"

8 Insert "Section 20"

LEGAL SERVICES

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MEMORANDUM

February 10, 1999

SUBJECT: Sectional Summary of the 1999 Revisor's Bill, HB 66 (Work Order No. 21-LS0339\A)

TO: Representative Pete Kott, Chair 
House Judiciary Committee

FROM: James P. Crawford
Assistant Revisor

The following is a sectional analysis of HB 66, the 1999 revisor's bill. The bill is prepared under AS 01.05.036, which provides, in part, that the revisor of statutes

shall prepare for submission to the legislature legislation for the correction or removal of the deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of...the statute law of this state.

To assist the reader in understanding the bill, I have summarized the contents by listing sections that have similar purposes or effects.

Sections that correct, delete, or repeal, obsolete provisions: Sections 2, 3, 10, 11, 14, 15, 16, and 20 delete, update, or repeal provisions that have become obsolete either through other legislative action or the passage of time.

Sections that correct deficiencies (errors, oversights, etc.): Sections 1, 5, 6, 7, 12, and 19 correct errors or oversights that cannot be corrected editorially.

Sections that improve the form or substance of the statute law: Sections 4, 8, 9, 13, 17, and 18 propose amendments to improve the form or substance of the statute law of Alaska.

SECTIONAL ANALYSIS

Section 1. AS 08.54.605(a) contains a deficiency that is the product of an apparent error. The phrase "a violation of" was not inserted at the beginning of sub-paragraph (a)(1)(A) when the section was added by sec. 3, ch. 33, SLA 1996, while other sections added by sec. 3 containing similar concepts did include the phrase. See, e.g., AS 08.54.710(a)(1), 08.54.720(a)(1), and 08.54.740(a) and (b). Section 1 adds the phrase.

Sections 2 and 3. AS 09.55.040 and 09.55.069 contain language that subsequent legislative action has made obsolete. Specifically, these sections contain a reference to "the 'Relief Fund' created by the laws dealing with lost persons." This is an apparent reference to AS 18.60.110, "Fund for the rescue and relief of lost persons," which at one time stated:

There is created a fund out of money in the state treasury, not otherwise appropriated, for the rescue and relief of any person who becomes lost. The fund shall be known as the Relief Fund.

However, this fund was repealed over thirty years ago by sec. 1, ch. 15, SLA 1968, and no replacement fund was created or designated in the repealing legislation. Consequently, sections 2 and 3 remove the references to this repealed fund.

Section 4. AS 10.50.995 is in need of improvement as to form. The chapter that it references was entitled "Chapter 50. Limited Liability Company Act" when enacted in ch. 99, SLA 1994 (Emphasis added). The sections in Chapter 50 relate to limited liability companies. Section 4 changes the reference in AS 10.50.995 to clarify that the concept of limited liability in Chapter 50 is related to companies.

Section 5. AS 11.61.123(e) contains a deficiency that is the product of an apparent oversight. Paragraph (e)(2) refers to AS 47.10.990 for the meaning of the phrase "juvenile detention facility." However, sections 45 and 46, ch. 59, SLA 1996 moved the definition of "juvenile detention facility" from AS 47.10.990 to AS 47.12.990 in 1996. Section 5 corrects the reference.

Section 6. AS 13.05.060 suffers from a deficiency that is the product of an apparent oversight. This section, which is part of Alaska's version of the Uniform Probate Code ("UPC"), was redrafted in 1996 in ch. 75, SLA 1996. However, the UPC definition of "person" was not added to the redraft. According to Arthur H. Peterson, Uniform Law Commissioner for the State of Alaska who was involved in the redrafting effort, it was thought at the time that the general definition of "person" in AS 01.10.060 was considered adequate. The UPC definition was consequently omitted.

Subsequent discussions between Mr. Peterson and Legislative Counsel Terry Bannister have pointed out the fact that the UPC definition of "person" includes an "organization," which itself is defined to include "government or governmental subdivision or agency." These entities are not specifically listed in AS 01.10.060's definition of "person". Section 6 changes the definition so that AS 13.05.060 matches the UPC in this respect.

Section 7. AS 13.26.344(a)(9) contains a deficiency that is the product of an apparent error. In various paragraphs in the section, the phrase "other instrument that the agent considers useful" appears. (Emphasis added). These paragraphs include (b)(7), (c)(9), (e)(7), (f)(9), (g)(7), and (j)(11). However, in paragraph (a)(9), the language is ungrammatically

phrased as "other instrument the agent useful." The word "considers" appears to have been omitted unintentionally. Section 7 adds it.

Section 8. AS 15.45.250 is in need of improvement as to form; specifically, section 13 adds "an" before "appropriation".

Section 9. AS 18.26.030(b) is in need of improvement as to form. By letter dated November 26, 1997, Ms. Karen Boorman, Executive Director of the Alaska Public Offices Commission, requested that the title to AS 39.50 be changed from "Conflict of Interest" to "Public Official Financial Disclosure" for the following reason:

The Commission believes that the existing title of the statute is a misnomer and creates the impression that the law enables APOC to determine when a conflict of interest exists. The law does not specify what constitutes a conflict, or how a conflict may be resolved or sanctioned. Instead, the law requires the disclosure of income sources, business interests, real property interests and loans or debts so that the public may know of the financial and business interests of persons seeking or holding office.

Although changes to titles of chapters can usually be accomplished in letter instructions to the publisher, in this case, the old title reference is found mentioned in the text of AS 18.26.030(b). The reference also appears in AS 24.60.130(m), amended by sec. 13, and AS 44.85.030, amended by sec. 17. Sections 9, 13, and 17 make the necessary changes. The revisor will instruct the publisher to make necessary title changes if these sections remain in the revisor's bill and if the bill becomes law.

Section 10. AS 19.10.300(f) contains an obsolete reference. Specifically, subparagraph (f)(1)(C)(iii) contains a spanned reference, 49 U.S.C. 1801-1813 (Hazardous Materials Transportation Act), which no longer exists. The obsolete reference is also found in AS 19.10.399(1), amended by sec. 11; AS 28.33.140(d), amended by sec. 14; AS 28.33.190(8), amended by sec. 15; and AS 28.40.100(2), amended by sec. 16. The Table of Dispositions for the United States Code Service volume for Title 49 of the federal statutes indicates that the provisions encompassed by the obsolete spanned reference were recodified without substantive change and are now found in 49 U.S.C. 5101-5127. The Department of Transportation and Public Facilities has suggested this spanned reference as the appropriate correction. Sections 10, 11, 14, 15, and 16 make this change.

Section 11. See the explanation for sec. 10.

Section 12. AS 24.60.050(d) contains a deficiency that is the product of an apparent oversight. Last year, sec. 36, ch. 74, SLA 1998 added a new section to AS 24.60 -- AS 24.60.105 -- which relates to deadlines for filing certain disclosures. A default deadline in the section is March 15. In light of this new date, AS 24.60.050(c) was given a conforming amendment in sec. 24 of the same 1998 bill. As amended, subsection (c) reads "the date required under AS 24.60.105" instead of the former date reference, "February 15".

However, at the time subsection (c) was changed, subsection (d), which had heretofore contained the same date reference as subsection (c), was not similarly changed. Section 12 corrects this.

Section 13. See the explanation for sec. 9.

Section 14. See the explanation for sec. 10.

Section 15. See the explanation for sec. 10.

Section 16. See the explanation for sec. 10.

Section 17. See the explanation for sec. 9.

Sections 18. AS 47.10.080(c)(3) is in need of improvement as to form. It now reads, in pertinent part, "the court shall ... by order ... the termination." It logically should read "the court shall ... order ... the termination." Section 19 makes this change, which has the additional effect conforming its sentence structure to that of paragraphs (c)(1) and (c)(2) of this section.

Section 19. Section 54, ch. 123, SLA 1996 (HCS 2d CSSB 136(FIN) am H(brf sup maj fld H)(efd fld S)("SB 136")) contains a deficiency that is the product of an apparat error. The section contains a reference to sec. 102, but review of ch. 123 reveals that sec. 102 does not exist. The last section in ch. 123 is sec. 101.

In light of the bill's history, the reference is corrected to read "sec. 100". SB 136 passed the House of Representatives on reconsideration. 1996 House Jour. 4579 (May 7, 1996). This version -- version "D" -- did have a sec. 102 (103 sections total), and sec. 54's reference to sec. 102 was correct at the time. It also had two alternate effective date sections, which were secs. 100 and 101. However, when SB 136 version "D" came before the Senate to determine whether the Senate would concur in House amendments, the Senate failed to adopt the effective date clauses. 1996 Senate Jour. 4178 (May 7, 1996). When the new version -- version "H" -- was reprinted as HCS 2d CSSB 136(FIN) am H (brf sup maj fld H)(efd fld S), the effective date clause sections that failed were removed, and the provisions previously designated as sec. 102 became sec. 100, as can be seen by comparing the two versions. Unfortunately, sec. 54's reference to sec. 102 remained unchanged. Section 24 makes the change now.

Section 20. Repeals sections 2, 3, and 7, ch. 143, SLA 1990.

Section 21. Section 21 makes the correction to sec. 54, ch. 123, SLA 1996 retroactive to July 1, 1996, the effective date of sec. 54, ch. 123, SLA 1996 in order to protect any reliance interest of those expending money under sec. 54, ch. 123, SLA 1996.

Section 22. Effective date.

TEXT OF LAWS REPEALED

Section 2, ch. 143, SLA 1990 reads as follows:

- * Sec. 2. AS 16.20.033(a)(5) is amended to read:
 - (5) Township 21 South, Range 11 East, Copper River Meridian
[EXCLUDING THAT PORTION OF] Tract A-148 lying north and
west of Seal River [:]
 - Sections 1 - 2
 - Sections 3 - 4: North and east of the Seal River and its associated
lake system
 - Section 10: East of Seal River and one mile north of mean high tide
line on the Gulf of Alaska
 - Sections 11 - 12
 - Sections 13 - 14: Above mean high tide line on the Gulf of Alaska

Section 3, ch. 143, SLA 1990 reads as follows:

- * Sec. 3. AS 16.20.033(a) is amended by adding new paragraphs to read:
 - (12) Township 21 South, Range 9 East, Copper River Meridian Tract A-148
 - (13) Township 21 South, Range 10 East, Copper River Meridian Tract
A-148.

Section 7, ch. 143, SLA 1990 reads as follows:

- * Sec. 7. Sections 2 - 3 of this Act take effect on the effective date of an appropriation Act appropriating to the University of Alaska those amounts necessary to compensate the university for the agreed value reached under sec. 5(b) of this Act for the interest of the university in Tract A-148 at Cape Suckling after crediting to the university those amounts received by the university under sec. 5(c) and (d) of this Act.

JPC:jdr
99-063.idr

DEPARTMENT OF NATURAL RESOURCES

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February 17, 1998

Pam Finley
Revisor of Statutes
Legislative Legal and Research Services
130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

Dear Ms. Finley:

One of my staff recently noticed that the Editor's Notes for Alaska Statutes 16.20.033. the Yakataga State Game Refuge, need to be updated.

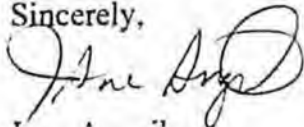
Specifically, the Editor's notes under AS 16.20.033 (copy attached), the Yakataga State Game Refuge, need to reflect that the legislature did not purchase the University's timber rights and that the Yakataga Area Plan has been completed.

The notes need to point out that the legislature did not purchase the University's timber rights, therefore Sections 2, 3, and 7 of Chapter 143, SLA 1990, that are mentioned in the notes, never went into effect. The state and University could not agree on the value of the timber (see section 5(b), Ch 143, SLA 1990). Instead, the University, the state, and various litigants agreed to transfer the University's timber harvest rights to other land.

The Yakataga Area Plan was signed by Commissioner of Natural Resources on April 3, 1995. The area plan recommended that a portion of the Special Management Area, referred to in Section 9 of chapter 143, SLA 1990, be added to the refuge. A copy of the area plan is enclosed for your information.

If you need more information on the Yakataga Area Plan, contact Dick Mylius of my staff at 269-8532 (e-mail: dickm@dnr.state.ak.us).

Sincerely,



Jane Angvik
Director

cc: Janet Kowalski, Director, Division of Habitat and Restoration Division, Department of Fish and Game

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO

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PHONE (907) 451-2811
FAX (907) 451-2843

P.O. BOX 110300-DIMOND COURT - JUNE
JUNEAU, ALASKA 99811-0300
PHONE (907) 465-3600
FAX (907) 465-6735

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 11, 1999

Hon. Pete Kott
Chair
House Judiciary
State Capital
Juneau, AK 99801

Re: HB 66

Dear Representative Kott:

The Department of Law has had the opportunity to review HB 66, the 1999 comprehensive revisor's bill.

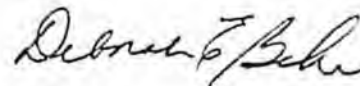
We believe that the bill overall makes important technical improvements to Alaska law. We have spoken with the assistant revisor of statutes about the deletion of section 20, as the section more appropriately belongs in a substantive law bill. We understand that the assistant revisor of regulations has no objection to that recommendation.

If you need more information, please let me know.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:



Deborah E. Behr
Assistant Attorney General

DEB:jf

cc: James Crawford
Assistant Revisor of Statutes

LEGAL SERVICES

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


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

130 Seward Street, Suite 403
Juneau, Alaska 99801-2103

MEMORANDUM

February 10, 1999

SUBJECT: Update to the 1999 Revisor's Bill, HB 66 (Work Order No. 21-LS0339\A)

TO: Representative Pete Kott, Chair 
House Judiciary Committee

FROM: James P. Crawford
Assistant Revisor

In sec. 20, the revisor's bill currently repeals secs. 2, 3, and 7, ch. 143, SLA 1990. However, since the revisor's bill was introduced, we have received new information about these sections. As a result, we no longer recommend that they be repealed in the revisor's bill.

Sections 2 and 3, ch. 143, SLA 1990 relate to adding a certain tract of land to the Yakataga State Game Refuge. The specific tract in question is Tract A-148 ("Cape Suckling"). Sections 2 and 3 have a conditional effective date set out in sec. 7, and if the condition were to take place, the land in question would become part of the Refuge.

The condition in sec. 7 is based on the commissioner of natural resources reaching agreement with the University of Alaska on the fair market value of the University's timber rights in Cape Suckling. See secs. 5(b) and 7, ch. 143, SLA 1990.

The reason why these sections were repealed in the first place was based on the fact that Ms. Jane Angvik, Director of the Division of Land (DNR), informed our office that "[t]he state and University could not agree on the value of the timber." Letter of Ms. Angvik dated February 17, 1998, attached.

Instead, various participants in litigation relating to Cape Suckling "agreed to transfer the University's timber rights to other land." That being the case, no more University timber rights in Cape Suckling meant, logically, that there could be no agreement on what the fair market value of those rights were.

It followed that, because there could be no "agreed value," sec. 7's condition could never be triggered; secs. 2 and 3 could never go into effect; and Cape Suckling could never be added to the Refuge -- at least not under ch. 143, SLA 1990.

Hence the repealer in the revisor's bill: the transfer of University rights to other land made the sections in question obsolete.

Representative Pete Kott
February 10, 1999
Page 2

Or so we thought.

Our initial information has since been updated by Mr. John Baker, an attorney in the Natural Resources section of the Department of Law. Mr. Baker was directly involved in the litigation relating to Cape Suckling and is familiar with the details of the settlement agreement mentioned by Ms. Angvik. It turns out that the transfer of University rights to other land was not a total transfer. The sections are therefore not obsolete.

According to Mr. Baker, it is possible that the University may reacquire rights in Cape Suckling. This results from the fact that the settlement agreement provides for a twenty year period during which it is possible (though improbable) that an escape clause will be triggered so that the University gets rights in Cape Suckling again.

This means that, contrary to our original understanding, the conditional effective date set out in sec. 7, ch. 143, SLA 1990 might be activated at some point in the future, with the result that Cape Suckling could be included in the Yakataga Game Refuge.

In sum, the significance of this is that the repeal of secs. 2, 3, and 7, ch. 143, SLA 1990, is more than simply a matter of form. These sections still have some life, which makes their repeal substantive, and based on our updated information, we can no longer recommend that the repeal be included in the revisor's bill.

Please let me know if you would like an amendment to or a committee substitute for the revisor's bill that reflects the removal of the repealer, sec. 20.

JPC:jdr
99-061.jdr

Attachment

HB

67

4/15

CS FOR HOUSE BILL NO. 67()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES ROKEBERG, Dyson

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to release of certain persons alleged to have committed certain
2 sexual offenses."

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

4 * Section 1. AS 12.30 is amended by adding a new section to read:

5 Sec. 12.30.029. Release in sexual abuse and sexual assault cases. (a)
6 Before ordering release before or after trial, or pending appeal, of a person charged
7 with or convicted of a crime under AS 11.41.410 - 11.41.438 or 11.41.450 - 11.41.458,
8 the court shall consider the safety of the alleged victim. To protect the alleged victim
9 and the public and to reasonably assure the person's appearance, the court may impose
10 bail and any of the conditions authorized under AS 12.30.020 and any other condition
11 necessary to protect the alleged victim and to assure the appearance of the person in
12 court.

13 (b) The court may impose any of the following conditions on a person charged
14 or convicted of an offense under AS 11.41.410 - 11.41.438 or 11.41.450 - 11.41.458

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(1) that the person have no contact with the alleged victim except as specifically allowed by the court;

(2) that the person reside in a place where the person is not likely to come into contact with the alleged victim of the offense; and

(3) if the person is on medication, that the person take the medication as prescribed.

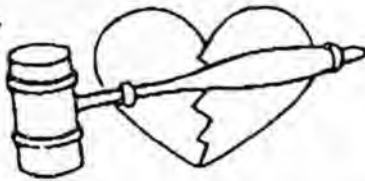
(c) Before a judicial officer releases a person charged or convicted of an offense under AS 11.41.410 - 11.41.438 or 11.41.450 - 11.41.458, the court shall

(1) assure that the alleged victim, or the alleged victim's parent or guardian if the alleged victim is under 18 years of age, has been notified by a law enforcement agency or the prosecuting attorney of the hearing where the release is being considered, or a reasonable effort at notification has been made;

(2) solicit comments from the victim or the victim's parent or guardian who is present and wishes to comment and consider those comments before making a decision to release the person.

* Sec. 2. APPLICABILITY. This Act applies to criminal proceedings occurring on or after the effective date of this Act regardless of whether the criminal offense occurred before, on, or after the effective date of this Act.

VICTIMS



for Justice 619 East Fifth Avenue • Anchorage, AK 99501
(907) 278-0977 • Fax: (907) 258-0740

January 25, 1999

Representative Norman Rokeberg
State Capitol
Juneau, AK 99801-1182

Dear Representative Rokeberg

I am sending this letter to support your proposal to tighten the conditions under which individuals charged with sexual offenses may be released from custody, and to legislate the solicitation of victim comments by the judicial officer before making a decision to release an alleged offender.

Too often the person charged with a sexual offense is released back to the neighborhood where the alleged offense occurred, often without bond or on personal recognizance only. Imagine the feelings of fear and vulnerability the victim experiences when she or he sees the person who committed such an offense again walking the streets of the neighborhood, with few restrictions, and often with little or no supervision.

This re-victimizes the victim and adds to the trauma the victim has already experienced. The perception of the victim may be that there is no protection, no place of safety from the person who committed the offense.

This proposed legislation will permit the victim or her/his representative to express their concerns and fears to the judge, and to tell the judge what it will take to help them feel safe if the alleged offender is released. Further, it will allow them to tell the judge what they feel are appropriate conditions of release, if any, to guarantee the safety of the victim and the neighborhood.

We all know that most sex offenders repeat their crimes again and again. This proposed legislation will strengthen the laws protecting victims of sex offenses, and enable the courts to place additional restrictions on the movements of alleged offenders until they can be brought to trial.

Respectfully,

Charlotte Phelps
Victim Advocate

Subject: Unsupervised Sex Offenders

Date: Mon, 14 Dec 1998 06:55:09 -0900

From: "Angela Camos" <acamos@ibm.net>

To: <Representative_Norman_Rokeberg@legis.state.ak.us>

First I would like to take this opportunity to thank you and your staff for your help and courtesy in this matter.

I am writing this letter in regards to changing how sex offenders are supervised on third party when released on bail, waiting trial or sentencing.

I am a concerned parent whose ten-year-old daughter was molested. The man who did this, Eric Kostiner (Case # 3AN-S98-9699CR), was released on an unsupervised third party after pleading no contest. His third party works swing shifts, which include nights and graveyard shifts, while the offender works days. This concerns me greatly as this provides the opportunity for this sex offender to repeat this crime with yet another child or my daughter. As a result, this has left my daughter feeling unsafe.

The statistics that I have read show that 1 in 4 children are molested. These aren't very good odds. How many children or grandchildren do you have? Now apply these odds to your own family. How many of these people repeat this offense? I have read that quite a number of sex offenders do repeat this crime. As a victim of this crime myself, to me there is no greater crime. I say this because this crime is something the victim lives with for the rest of their lives. It is not something that is ever forgotten. The original pain eventually subsides, but the memory exists forever.

I get the impression that some people in our judicial system see these offenders as not being dangerous if they have no prior history; they haven't snatched a child off the street; they aren't dealing or using, drugs; they aren't having drug parties; or they have no prior record. With all due respect this is generally not the case. These sex offenders are usually upstanding folks who find their way into the lives of people, and then take advantage of their children. I know this first hand both as a result of my childhood and this case with my daughter.

On December 4, 1998 Channel 2 News, Laura Tannis, aired a story regarding this offender being out on third party unsupervised. As a result of this story it was found that an offender is required to register with the Alaska Department of Public Safety as soon as they plead guilty or no contest to these charges. Unlike another law on the books which doesn't require them to register until 7 days after they are sentenced. As of December 13, 1998 I still have not found this offender registered. A new law is going to be passed on January 1, 1999 which will also require offenders to register immediately instead of 7 days after they are sentenced.

Some questions come to mind regarding unsupervised offenders. Shouldn't all of these sex offenders be placed on supervised third party bail? Should any of these offenders, whether they plead guilty or not, have the opportunity to hurt any other children? Should any child have to feel unsafe during this judicial process? Isn't the whole experience scary enough? I am aware that there are those who have been falsely accused and this too appalls me because there are enough true cases to go around. For those who plead not guilty, yet are found guilty, let's not allow any other child to be hurt or unsafe.


I am asking that the law be written more clearly so that no sex offender can be released on bail to a third party without sight and sound supervision. I think that once these offenders have pleaded no contest or guilty to this crime they remain incarcerated to fulfill their sentence. Unfortunately I do not know how to make this fair to all parties concerned - landlords, mortgage holders etceteras.

Thank you for taking the time to read this letter and I sincerely hope that you will consider some changes to help our children be and feel safe. I have attached a copy of the letter written to Judge Andrews concerning this matter. Feel free to contact me if you have any questions.

Thank you for your prompt action.

Sincerely,

Angela S. Camos
3401 W. 64th Ave #5
Anchorage, AK 99502
(907) 248-2512

 <u>Judge Andrews.doc</u>	Name: Judge Andrews.doc Type: Winword File (application.msword) Encoding: base64
--	---

Subject: Re: HB 67

Date: Wed, 10 Feb 1999 15:36:15 -0900

From: "Anne Gwen" <acamos@ibm.net>

To: "Janet Seitz" <Janet_Seitz@legis.state.ak.us>

Janet,

Here is the copy of the letter to Judge Andrews that you requested. Please accept and pass on my gratitude for all that you are doing.

Angela

Angela Camos
3401 W. 64th Ave #5
Anchorage, AK 99502
(907) 248-2512

Judge Andrews
825 W. 4th Ave
Anchorage, AK 99501

December 7, 1998

Judge Andrews:

I am writing this letter in regards to your actions in Eric Kostiner's bail hearing (Case # 3AN-S98-9699CR). I would also like to take the opportunity to express my thoughts and feelings in this matter.

At the bail hearing it was decided that this sex offender would be released without constant supervision until his sentencing. I feel that you are making a mistake by letting any child sex offender out on a third party which is not sight and sound. As a result of your letting Eric Kostiner out in such a manner, I now have a ten-year-old daughter who does not feel safe. She is worried that he will come and pick her up at school, or try to come to the house and get her.

At Eric Kostiner's bail hearing I thought that I would have the opportunity to speak, but I didn't. After the hearing when I spoke to the DA and I was told it doesn't work like that. So I would like to take this time to tell you what I had to say. It may not change anything in this case, but I am hoping that it will change your views in the future.

As I listened to your ruling I got the impression that you see these offenders as not being dangerous if they have no prior history; they haven't snatched a child off the street; they aren't dealing or using, drugs; they aren't having drug parties; or they have no prior record. With all due respect this is generally not the case. These sex offenders are usually upstanding folks who find their way into the lives of people, and then take advantage of their children. I know this first hand both as a result of my childhood and this case with my daughter.

In the hearing it came up that the offender had a letter from a psychiatrist. I did not have the opportunity to tell anyone that I have additional information about this. The offender told me he has a degree in psychology and he feels those in this profession are his equals. This could easily allow him to mislead someone else in this

profession.

As I mentioned I am familiar with being the victim of a sex offender. This offender was a tax investigator for the City of Chicago; very well respected in the community, he worked elections, and had many reputable friends. At home this man was molesting me. It began at the age of 6 and it didn't end until I was 14. The first time I told my mother what happened she didn't know what to do, so we went to the church. But the abuse continued. Next I told the police about the abuse that was occurring. They knew my stepfather very well and decided for themselves that this could not be true, so they brought me home. The next time I told what happened I was brought down to the Department of Child and Family Services. I was placed out of my home for a short time, but my aunt and uncle could not keep me there. So I ended up back at home and the abuse continued. When my mother tried to go to court DCFS had mysteriously lost his file. There suddenly seemed to be no record of the report made on my stepfather, a fine member of the community. The court appointed psychiatrist had moved and couldn't be located. Eventually my mother divorced this man.

Now, 22 years later I am still faced with a system that doesn't protect the child victim and allow them to feel safe. I am asking that laws be written more clearly so that no sex offender can be released on bail to a third party without sight and sound supervision. I think that once these offenders have pleaded no contest or guilty to this crime they should remain in prison. Unfortunately, I do not know how to make this fair to all parties concerned, landlords, mortgage holders, etceteras. The child victim needs to be kept and made to feel safe. Letting out an offender on a third party who is not supervised under an order of sight and sound does not do this. The statistics I have read show that 1 in 4 children are molested. Can you honestly tell by meeting an offender for a few moments at a bail hearing you know whether or not they will do this while they are out awaiting sentencing if they are unsupervised?

On December 4, 1998 Channel 2 News, Laura Tannis, aired a story regarding this offender being out on third party unsupervised. As a result of this story it was found that an offender is required to register with the Alaska Department of Public Safety as soon as they plead guilty or no contest to these charges. Unlike another law on the books which doesn't require them to register until 7 days after they are sentenced. As of December 13, 1998 I still have not found this offender registered. A new law is going to be passed on January 1, 1999 which will also require offenders to register immediately instead of 7 days after they are sentenced.

Some questions come to mind regarding unsupervised offenders. Shouldn't all of these sex offenders be placed on supervised third party bail? Should any of these offenders, whether they plead guilty or not, have the opportunity to hurt any other children? Should any child have to feel unsafe during this judicial process? Isn't the whole experience scary enough? I am aware that there are those who have been falsely accused and this too appalls me because there are enough true cases to go around. For those who plead not guilty, yet are found guilty, let's not allow any other child to be hurt or unsafe.

I am asking you to reconsider these types of situations, help get some laws passed so that this doesn't have to happen to any more children. Things have come a long way since I was a child. Please don't let it end here. Take it to the next level.

Please, don't let this happen anymore. Thank you for taking the time to read this letter and think over what I have set before you.

Sincerely,

Angela S. Camos

Cc: Governor
City Assembly Members
District Attorney's Office
House and Senate Committee Representatives
House and Senate Judiciary Representatives
Congressional House and Senate Representatives
President of the United States

TUNJORA WOMEN'S COALITION
WORKING TOGETHER TOWARD A BRIGHTER FUTURE



FEB 03 1999

February 2, 1999

Representative Norman Rokeberg
Alaska State Legislature
House of Representatives
State Capital, Room 24
Juneau, AK 99801-1182

Dear Representative Rokeberg,

Thank you most sincerely for introducing House Bill 67 to your colleagues. I believe that this legislation will significantly strengthen protection for children who have been sexually abused. It is imperative that those of us who are aware of the devastating impact of sexual abuse work together to lessen the likelihood that an alleged offender against children has an opportunity to reoffend.

I strongly support efforts to ensure that a suspected offender against children has 24 hour supervision if released to a third party following a bail review; I believe that asking for comments from the victims or those who can speak, in the case of very young children, on the victim's behalf will do a great deal to educate judges on the impact of sexual abuse, also.

I again offer my appreciation for your introduction of this much needed legislation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Nancy J. O'Mara". The signature is written in dark ink and is positioned above the printed name.

Nancy J. O'Mara

SITKANS AGAINST FAMILY VIOLENCE

P.O. Box 6136 • Sitka, Alaska 99835
(907) 747-3370 • Fax 747-3450 • Crisis Line 1-800-478-6511

February 8, 1999


Senator Rokeberg
Alaska Senate
Capital Building
Juneau, Alaska 99801

Dear Senator Rokeberg:

Sitkans Against Family Violence would like to express our support of House Bill 67 "An Act relating to releases of certain persons alleged to have committed certain sexual offenses." We appreciate the provisions in the bill that would strengthen protections for sexually abused minors, some of our most vulnerable citizens. Thank you for sponsoring this important legislation.

Yours very truly,

SITKANS AGAINST FAMILY VIOLENCE



Christine M. Pate
Executive director

FEB 10 1999



Member of the Alaska Network on Domestic Violence and Sexual Assault
United Way Member Agency

TOTAL P. 01



Unalaskans Against Sexual Assault & Family Violence

Box 36, Unalaska, AK 99885 • Office: 581-1500 • Crisis Line Call: 711

FEB 09 1999

Alaska State Legislature
House of Representatives
State Capitol - Room 24
Juneau, AK 99801-1182

Attn: Representative Norman Rokeberg

Dear Representative Rokeberg,

I am writing this letter in support of House Bill 67, which you introduced in January.

HB 67 will provide additional protections for sexually abused minors. It provides (1) that the judge or magistrate must solicit comments from the victim, and consider those comments at any bail hearing; and (2) if the alleged perpetrator is charged with second- or third-degree sexual assault or incest and the victim is under the age of 18, any release to a third-party custodian must be a 24 hour sight and sound supervision by a court approved third-party custodian.

I want to thank you for sponsoring this bill, and express our support for it. Child victims of sexual abuse need every possible protection that the law can provide, and their comments must be taken into consideration when a perpetrator may be released on bail. Please do not let children be victimized twice by a court system that fails to protect them. Please continue to support this bill.

Sincerely,

M. Lynn Craze
Director
USAFV

LEGAL SERVICES

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

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

130 Seward Street, Suite 405
Juneau, Alaska 99801-2155

MEMORANDUM

February 1, 1999

SUBJECT: Sectional Summary of HB 67

TO: Representative Norman Rokeberg
Attn: Janet Seitz

FROM: Gerald P. Luckhaupt *JPL*
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1. Amends AS 12.30.020(a) to provide that a person charged with a sexual assault of a child, incest with a child, sexual abuse of a child, unlawful exploitation of a minor, or indecent exposure in the first degree may not be released pending trial on their own recognizance or upon the execution of an unsecured appearance bond.

Section 2. Amends AS 12.30.020(b) to provide that a person charged with a sexual assault of a child, sexual abuse of a child, incest with a child, unlawful exploitation of a child, or indecent exposure in the first degree may not be placed with a third party custodian unless that custodian will maintain 24 hour supervision of the person.

Section 3. Amends AS 12.30.020 to provide that a judicial officer shall solicit and consider comments from the victim before making a release decision under AS 12.30.020 if the defendant is accused of sexual assault of a child, incest of a child, sexual abuse of a child, unlawful exploitation of a child, or indecent exposure in the first degree.

Section 4. Provides a applicability section.

GPL:lmb:gle
99-008.lmb

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB 67

Revision Date/Time (Note if correction) _____ Dept. Affected Department of Corrections
 Title An Act relating to release of certain persons BRU Administration and Operations
alleged to have committed certain sexual offenses. Component All
 Sponsor Representative Rokeberg
 Requester House Judiciary Committee Component Serial No. #0694

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
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 (Specify Type)						
TOTAL	***	***	***	***	***	***

Estimate of any current year (FY99) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation will impact the pre-trial inmate population within the department of corrections, to what extent is unknown. It is anticipated that fewer people will be able to make bail or be released to a third party custodian under House Bill 67. It is difficult to predict the fiscal costs resulting from this legislation. Therefore the DOC is submitting an indeterminate fiscal note.

Prepared by Bruce Richards Phone 465-3307
 Division Commissioner's Office Date/Time 2/23/99 4:24 PM
 Approved by Margaret M. Pugh Date 2/22/99
 Agency Department of Corrections

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Judiciary Committee, Member
Legislative Council, Member

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Utility Restructuring, Member
Economic Development, Member

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State Capitol
Juneau, AK 99801-1182
PHONE: (907) 465-4968
FAX: (907) 465-2040

REPRESENTATIVE NORMAN ROKEBERG

e-mail: Representative_Norman_Rokeberg@legis.state.ak.us

MEMORANDUM

TO: Representative Pete Kott, Chairman
House Judiciary Committee

FROM: Representative Norman Rokeberg *Norman Rokeberg*

DATE: February 11, 1999

RE: Scheduling request

I would request that House Bill 67 (An Act relating to release of certain persons alleged to have committed certain sexual offenses) be heard before the Judiciary Committee.

I am submitting the following:

1. Sponsor Statement
2. Sectional Analysis (prepared by Legislative Counsel)
3. E-mail message from Angela Camos entitled "Unsupervised Sex Offenders"
4. Letters of Support:
 - a. Victims for Justice
 - b. Tundra Women's Coalition
 - c. Sitkans Against Family Violence
 - d. Unalaskans Against Sexual Assault & Family Violence

Ms. Camos would like to testify on this legislation. Therefore, I would request a teleconference be scheduled for this bill. At a minimum, I would request that the Anchorage Legislative Information Office be on line for any hearing.

If you have any questions, please contact me or Janet Seitz of my office.



Official Business

Alaska State Legislature

HOUSE OF REPRESENTATIVES

REPRESENTATIVE NORMAN ROKEBERG

State Capitol, Room 24, Juneau, AK 99801-1182

Telephone: (907) 465-4968

Fax: (907) 465-2040

State Capitol
Juneau, AK 99801-1182

SPONSOR STATEMENT

House Bill 67

An Act relating to release of certain persons alleged to have committed certain sexual offenses

House Bill 67 is being proposed to strengthen protection for sexually abused minors. It provides that the judge has to solicit comments from the victim and consider those comments at the bail hearing. It further provides that if the alleged criminal is charged with a crime involving a child under 18 that any release to a third-party custodian has to be 24 hours a day (except for any periods personally approved by the judicial officer).

This legislation stems from a situation faced by one of my constituents this past year. This person's young child was sexually abused. The parent was not notified of the bail hearing and the predator, who changed his plea at the last minute, was released back into the community with minimal supervision despite the District Attorney's request for 24-hour supervision. As might be expected, the victim's parent was outraged that the criminal who abused a young child was again in the community without any supervision. I agreed with the parent's concerns and drafted this legislation.

Sexual assault in the second degree, third degree, and incest would be covered by this legislation when the victim was under 18 years of age. All of these are horrible crimes and are made even more so when the victim is a young person. Alaska needs to protect its children from sexual predators from the time of arrest through sentencing or acquittal. House Bill 67 will help accomplish this goal.

Currently a victim is usually notified of a bail hearing but such notification is not statutorily required as under this legislation. Additionally, it is currently left to the discretion of the judicial officer as to the supervision status of any released alleged offender, who may be awaiting trial or sentencing. House Bill 67 indicates that "the judicial officer may not place the person in the custody of a designated person or organization under this paragraph unless the designated person or organization will maintain supervision of the person for 24 hours a day except for any periods personally approved by the officer."

I would urge your support of this legislation.

ED1:1/25/99



ALASKA COURT SYSTEM
State of Alaska
Office of the Administrative Director

Doug Wooliver
Administrative Attorney

920 West 4th Avenue
Anchorage, Alaska 99501-2005
(907) 264-8265
FAX (907) 264-8291

February 19, 1999

The Honorable Norm Rokeberg
Chairman, House Labor and Commerce
State Capitol
Juneau, Alaska 99811

Dear Representative Rokeberg:


The purpose of this letter is to explain an amendment (attached) that the court system would like to offer to HB 67. Although the court takes no position on the public policy reflected in the bill, I would like to offer some clarifying language that should not change the substance of the bill but might provide judges with more guidance.

Section 3 of the bill states that before a judge can release on bail a person charged with certain offenses, he or she must solicit comments from the victim. The problem that judges have expressed to me is that frequently victims do not attend bail hearings so there is no one to solicit comments from. Under the victim rights provisions of our constitution (article I, section 24) and our statutes (AS 12.61.010), the victim has the right to be notified of the bail hearing, and the right to attend and to speak if they wish. However, they are not compelled to attend.

The proposed amendment simply clarifies that inquiries need not be made of victims who are not present and it emphasizes that the decision is up to the victim. It leaves in place the judge's affirmative duty to inquire whether a victim who is present wants to testify.

Thank you for considering the amendment. If you have any questions please do not hesitate to contact me in Juneau at 463-4750 or by e-mail at dwooliver@courts.state.ak.us.

Sincerely,



Doug Wooliver
Administrative Attorney

Amendment offered by the Alaska Court System

Section 3, page 3, line 2: following "from" delete "the victim" and replace with "any victim who is present wishes to testify."

With this change, section 3 would read:

- (i) Notwithstanding another provision of this section, a judicial officer shall solicit comments from any victim who is present and wishes to testify and shall consider those comments before making a decision to release a person who is charged with a violation of AS 11.41.410 – 11.41.425 or 11.41.450 in which the victim is alleged to be a child under 18 years of age or of AS 11.41.434 – 11.41.440, 11.41.455, or 11.41.458.

HB

75

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB 75

Revision Date/Time (Note if correction) _____ Dept. Affected Department of Corrections
 Title An Act relating to murder; authorizing capital BRU Administration and Operations
punishment, classifying murder in the first degree as a capital Component All
 Sponsor Representative Masek
 Requester House Judiciary Committee Component Serial No. #0694

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services		168.5	337.0	337.0	337.0	337.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	168.5	337.0	337.0	337.0	337.0

CAPITAL EXPENDITURES	2,185.0					
-----------------------------	----------------	--	--	--	--	--

CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		168.5	337.0	337.0	337.0	337.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	168.5	337.0	337.0	337.0	337.0

Estimate of any current year (FY99) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by Bruce Richards Phone _____
 Division Commissioner's Office Date/Time 4/12/99 3:56 PM
 Approved by Comm. Margaret M. Pugh *Margaret M. Pugh* Date 4/12/99
 Agency Department of Corrections

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FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION
DEPARTMENT OF CORRECTIONS

BILL NO. HB 75
PAGE 2 of 2
DATE 4/12/99

Enactment of HB 75 would amend existing Alaska statutes to permit capital punishment for certain aggravated murder in the first degree convictions. The Dept. of Law estimates one capital felony conviction/death penalty sentence per year. The average length of time between sentencing and execution of the offender is approximately ten years. Because of the lengthy appeal process for cases involving the death penalty, it is anticipated that a ten-bed death row facility would need to be constructed for public safety reasons and separate confinement for inmates who are sentenced to death.

1. The estimated cost for a ten-bed death row facility to be constructed on the grounds of Spring Creek Correctional Center is approximately \$160,000 per bed plus an additional \$300,000 for the execution chamber. Engineering and Design costs are estimated to be approximately \$285,000 for a total building cost of \$2,185,000.

2. To staff the new facility it would require one post (5 correctional officers) at a cost of approximately \$337.0 per year. Assuming the new facility would be brought on line July 1, 2000, the staff costs would be \$168.5 plus an additional \$22.6 for utilities, food and clothing. By FY 05 the operating costs would reach \$379.2.

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB 75

Revision Date/Time (Note if correction) _____ Dept. Affected Law
 Title "... relating to murder; authorizing capital punishment, ... BRU Criminal Division
when certain of those murders are committed against children..." Component Criminal Appeals/Special Litigation
 Sponsor Representative Masek
 Requester House Judiciary Committee Component Serial No. 2203

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services	112.3	300.1	300.1	412.4	524.7	524.7
Travel	32.9	45.0	57.5	65.4	69.3	69.3
Contractual	99.5	212.1	282.1	281.6	331.1	361.1
Supplies	1.7	4.6	4.6	6.3	8.0	8.0
Equipment	6.5	19.5	0.0	6.5	6.5	0.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	252.9	581.3	644.3	772.2	939.6	963.1

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	252.9	581.3	644.3	772.2	939.6	963.1
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	252.9	581.3	644.3	772.2	939.6	963.1

Estimate of any current year (FY99) cost: _____

POSITIONS

Full-time	1	4	4	5	6	6
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 75 would classify as a capital felony certain instances of murder in the first degree when the victim is a minor child under 18 years of age, and establishes sentencing procedures for the capital felony. A death sentence would not be imposed unless at least one of several specified aggravating factors was found to exist and the aggravating factor, or factors, was not outweighed by mitigating factors. Passage of this bill will have significant costs for the Department of Law.

Overview

Capital felony trials would be bifurcated, that is, held in two parts. The first part would determine innocence or guilt; the second part would determine whether aggravating factors exist sufficient to justify the death penalty, whether

Prepared by Joan M. Kasson *Joan M. Kasson* Phone 465-5370
 Division Attorney General's Office Date/Time 4/14/99, 8:29 AM
 Approved by Commissioner Bruce M. Botelho *Bruce M. Botelho* Date 4/14/99
 Agency Department of Law

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FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB 75

ANALYSIS CONTINUATION

mitigating factors exist that outweigh the aggravating factors, and whether the defendant should be sentenced to a term of imprisonment or to death. The department assumes two murders per year would be referred for prosecution with death penalty aggravators and it would probably seek the death penalty in three cases every two years. Each case accepted for prosecution as a capital felony would require trials. In the remaining case, prosecutors would elect to try it as noncapital first degree murder for discretionary reasons, primarily due to the difficulty of obtaining a conviction if the death penalty was included. The department expects that one capital offense conviction will occur each year.

Thus, the department must be prepared to prosecute capital felonies on one and a half occasions each year, and it must also be prepared to handle a multi-year appellate review process that will grow at an accumulating rate of one case per year. The experience in other states is that capital trials require far more in the way of prosecution and investigative resources than first degree murder cases that do not include the death penalty.

In its several reviews of capital penalty laws, the United States Supreme Court has taken the position that "death is different." Consequently, the Supreme Court has required that states accord capital defendants procedural and substantive protections that go far beyond those required for noncapital defendants. The Court has, in effect, mandated that capital defendants be accorded "super" due process. The federal courts have consistently held that capital cases demand special consideration, both at trial and on appellate review, because of the exceptional and irrevocable nature of the penalty involved.

In order to meet this heightened level of due process, it will be necessary for the state to employ greater prosecution resources. Many of the thirty-eight states having a death penalty, for instance, provide two defense attorneys to capital defendants to insure that the due process safeguards required by the courts are met. Likewise, the state's prosecution case must also be properly represented. During and prior to the trial phase, crime scene evidence will have to be examined and presented by highly qualified forensic experts. Psychiatric experts will also be required during the trial phase and during sentencing proceedings, to rebut and overcome competency and psychiatric defenses to both the substantive charge and the capital sentence. Recent cost studies of capital trials in other states indicate that expert witness expenses for both the trial and sentencing proceedings cost about \$60,000 on the average.

A sentencing proceeding, or the penalty phase of a capital trial, is categorically different in character, procedure, and magnitude from any counterpart in a noncapital trial, and it accounts for a large part of the increase in costs. The heightened due process requirements, and the right to effective assistance of counsel, apply equally to the sentencing phase as they do to the trial phase. At this stage of the proceeding, the defense may be expected to use many of the socio-psychiatric witnesses employed during the trial phase. Additionally, the defense may also use the defendant's family, friends, neighbors, co-workers, school personnel, and social workers as witnesses. The defense's sentencing phase investigations will involve a complete retrospective analysis of every positive aspect of the defendant's life from the day of birth to the date of sentence. The prosecution, on the other hand, must interview each of the defendant's witnesses to rebut mitigation evidence, and present its own witnesses to prove its aggravating factors. For example, in a California case, 240 persons were investigated and interviewed as potential witnesses and 120 were eventually called as witnesses in a single sentencing proceeding. In addition, a five-fold increase in pretrial motion practice, often involving a state's supreme court, has occurred in other states between capital and noncapital first degree murder cases. In view of the foregoing, it appears likely that the same level of state resources, needed for the state's most expensive criminal trials, will also be needed for capital murder trials.

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB 75

ANALYSIS CONTINUATION

Last, post-conviction appellate reviews of death sentences will also require a substantial expenditure of state resources. Initially, challenges to the law itself can be expected to be taken to the Alaska Supreme Court on the basis of both state and federal constitutional due process, equal protection, and cruel and unusual punishment doctrines. Such challenges should be expected during the first two or three years after the provisions of the bill go into effect. Otherwise, the bill provides for a straightforward appeals process to the Alaska Supreme Court, but death sentences will nonetheless result in lengthy and complicated appellate litigation. This is because of the substantial appellate avenues available to capital defendants in the federal court system, primarily on claims of due process, competency, and newly discovered evidence. Typically, these cases move up and down throughout the state and federal court systems, and involve the state superior and supreme courts, the U.S. Supreme Court, the U.S. Circuit Court of Appeals, and the U.S. District Court. As a result, as has been the experience in every other capital punishment state, it should be expected that many years will pass before a death sentence can be carried out. Current information indicates that nationally an average of 9.6 years elapses from the time a death penalty sentence is imposed to the time the sentence is carried out.

Implementation

The Department of Law anticipates that the time from when an offense is committed until a capital felony trial takes place will be between one and two years after the bill takes effect, although the first phase of a bifurcated trial may begin during the first year. Likewise, the post-conviction appellate review process will not commence until sometime during the second year. For these reasons, the department has developed a multi-year implementation plan for this fiscal note.

During the first year, it will be necessary to add one attorney to handle capital felony prosecutions. Although perhaps only one bifurcated trial may actually get underway during the first year, substantial time will be required preparing for trial. This includes advising police investigators, examining evidence, interviewing witnesses, consulting with psychiatric and forensic experts, and initiating, responding to, and arguing pretrial motions. Also, preparation work on another potential capital felony expected to occur during the first year must begin as soon as possible after an offense is committed.

The "super" due process required by the courts in death penalty cases and the requirement for a separate sentencing proceeding, will more than triple the work of the department's staff who handle these cases, compared with noncapital first degree murder cases. Extraordinary amounts of attorney and paraprofessional time will be needed to satisfy these minimum, mandatory requirements. As a consequence, capital felony prosecutions could not readily be undertaken in any of the department's offices, except for Anchorage and Fairbanks, without providing special prosecution staff on a case-by-case basis. And, even for Anchorage and Fairbanks, the existing staff would have to be substantially augmented each time a capital felony is handled. All of the positions to be added to handle capital trials and post-conviction death sentence appeals would be located in the department's Office of Special Prosecutions and Appeals, in Anchorage.

During the second year, at least one more capital felony is expected to go to trial, and two new potential capital felony offenses will occur. At this point, it will be necessary to add one paraprofessional and one legal secretary to handle the increasing capital felony trial caseload. It will also be necessary to establish a capital felony appeals unit during the second year when appeals from the first trial are expected to begin the appellate review process. Initially, one attorney will be needed to handle capital felony appeals.

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB 75

ANALYSIS CONTINUATION

During the third and fourth years, the number of bifurcated capital murder trials (1.5) should equal the number of new capital offenses charged, although some compression and overlapping of the caseload will likely occur. Consequently, it will be necessary to increase the trial staff during the fourth year, in order to handle the total annual workload, and to insure against speedy trial problems. The trial staff would be increased by one attorney. Post-conviction capital felony appeals will increase at the rate of one new case each year. It will, therefore, be necessary to increase the appeals staff in the fifth year by adding one additional attorney.

It is not possible to accurately predict the eventual annual costs of a capital felony law beyond its first three or four years. There are simply too many unknowns. However, the costs that have been predicted are conservative. The following factors have been considered in arriving at these costs.

- (1) Capital felony due process and bifurcated trial requirements will more than triple the cost and time spent in prosecuting first degree murder offenses, at a minimum.
- (2) The time required for a bifurcated trial will probably vary between two months and six months, although time lines are completely uncertain, and extremes will most likely be the rule. Serious overlapping and scheduling conflicts between investigations, trials, and available staff time will undoubtedly occur.
- (3) Pretrial motion practice will increase dramatically, resulting in additional scheduling problems.
- (4) Logistics problems will occur at most locations, except Anchorage and Fairbanks, and these problems will become more severe the smaller and more remote the location.
- (5) Witness travel and per diem will be expensive because of the large number of witnesses that will be required for both the trial and the sentencing phases of capital felony prosecutions, and in many cases this includes out-of-state travel.
- (6) Staff travel and per diem will likewise be expensive for trials held outside of Anchorage. Extensive staff travel expense will also be necessary, for trials held at all locations, to interview both prosecution and defense witnesses who will appear at sentencing proceedings.
- (7) One of the most complex murder prosecutions ever held in Alaska was the John Kenneth Peel trial. Because this case involved extraordinary evidence problems, it probably represents costs that are outside the norm. Due to this and other complications, the total Peel case costs included two grand jury proceedings and two trials. But there can be no question that the state will have to provide a nearly comparable effort if it is to prevail in death penalty cases. By comparison, capital felony trials will be held in two parts, necessitate considerable expert testimony and depositions, involve two separate sets of witnesses, and require extensive staff travel. For this reason, the average prosecution costs (both personal and non-personal services) of a bifurcated capital felony case has been projected to be nearly \$240,000 or considerably less than one-half of the \$597,000 cost for the first Peel trial.
- (8) The cost for appeals is shown only through the fifth year; however, this cost will ultimately grow enormously. The average length of time between a death sentence conviction and an execution in the United States is nearly ten years. Consequently, the state will have to provide enough resources to respond to the appeals of ten or more capital felony defendants annually, within ten years. The eventual costs for this extended timeframe are not within the scope of this fiscal note analysis.

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB 75

ANALYSIS CONTINUATION

(9) Therefore, the following per trial expense estimates have been used to calculate the costs of this fiscal note.

Capital Felony Trials

- Witness travel and subsistence, \$25,000 per case.
- Staff travel and per diem, \$7,500 per attorney, \$5,000 per paraprofessional, \$3,000 per secretary, per annum.
- Expert witness fees and standard witness fees, \$60,000 per case.
- Deposition/court reporter charges, \$20,000 per case.

Death Sentence Appellate Review

- Staff travel, \$3,500 per attorney per annum.
- Fees for outside counsel for years two and three only, \$50,000, each year.
- Transcription/court reporter costs, \$30,000 per case.

Department of Law staff costs are based on the Civil Division's FY00 standard cost schedule, which includes clerical support, communications, space, supplies, data processing, and other normal overhead expenses (FTE attorney, \$133,926; FTE paraprofessional, \$90,038). Case specific costs (staff travel, witness fees and travel, and document costs as outlined above), as well as one-time equipment costs of \$6,500 per position, are not included in the rate, and are added separately. While annual clerical support costs are included in the cost schedule as overhead, a position authorization is necessary, and 1 PFT Legal Secretary position is included with its associated one-time equipment costs.

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB 75

ANALYSIS CONTINUATION

Cost Summary (Capital Trials)

FY00 - ASSUMPTION: 1 trial, preparation on 1 potential capital felony

	<u>100</u>	<u>200</u>	<u>300</u>	<u>400</u>	<u>500</u>	<u>Total</u>
1 Attorney	112.3	0.4	19.5	1.7	6.5	140.4
Staff Case Travel		7.5				7.5
Trial Unit Costs	112.3	7.9	19.5	1.7	6.5	147.9
Witness Travel & Per Diem		25.0				25.0
Witness Fees			60.0			60.0
Deposition/Court Reporter Charges			20.0			20.0
Total FY00	112.3	32.9	99.5	1.7	6.5	252.9

FY01 - ASSUMPTION: 1 trial, preparation on 2 potential capital felonies

	<u>100</u>	<u>200</u>	<u>300</u>	<u>400</u>	<u>500</u>	<u>Total</u>
1 Paraprofessional	75.5	0.2	13.1	1.2	6.5	96.5
1 Legal Secretary					6.5	6.5
Staff Case Travel		8.0				8.0
Subtotal New Costs	75.5	8.2	13.1	1.2	13.0	111.0
Cumulative Trial Unit Costs	187.8	16.1	32.6	2.9	13.0	252.4
Witness Travel & Per Diem		25.0				25.0
Witness Fees			60.0			60.0
Deposition/Court Reporter Charges			20.0			20.0
Total FY01	187.8	41.1	112.6	2.9	13.0	357.4

FY02 - ASSUMPTION: 1.5 trials, preparation on 2 potential capital felonies

	<u>100</u>	<u>200</u>	<u>300</u>	<u>400</u>	<u>500</u>	<u>Total</u>
Cumulative Trial Unit Costs	187.8	16.1	32.6	2.9		239.4
Witness Travel & Per Diem		37.5				37.5
Witness Fees			90.0			90.0
Deposition/Court Reporter Charges			30.0			30.0
Total FY02	187.8	53.6	152.6	2.9	0.0	396.9

FY03-05 - ASSUMPTION: 1.5 trials, preparation on 2 potential capital felonies

	<u>100</u>	<u>200</u>	<u>300</u>	<u>400</u>	<u>500</u>	<u>Total</u>
1 Attorney	112.3	0.4	19.5	1.7	6.5	140.4
Staff Case Travel		7.5				7.5
Subtotal New Costs	112.3	7.9	19.5	1.7	6.5	147.9
Cumulative Trial Unit Costs	300.1	24.0	52.1	4.6	6.5	387.3
Witness Travel & Per Diem		37.5				37.5
Witness Fees			90.0			90.0
Deposition/Court Reporter Charges			30.0			30.0
Total FY03-05	300.1	61.5	172.1	4.6	6.5	544.8

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB 75

ANALYSIS CONTINUATION

Cost Summary (Appellate Review Process)

FY01 - ASSUMPTION: 1 trial begins appellate review process

	<u>100</u>	<u>200</u>	<u>300</u>	<u>400</u>	<u>500</u>	<u>Total</u>
1 Attorney	112.3	0.4	19.5	1.7	6.5	140.4
Staff Case Travel		3.5				3.5
Trial Unit Costs	112.3	3.9	19.5	1.7	6.5	143.9
Outside Counsel to Uphold Death						0.0
Penalty Law			50.0			50.0
Deposition/Court Reporter Charges			30.0			30.0
Total FY01	112.3	3.9	99.5	1.7	6.5	223.9

FY02 - ASSUMPTION: 2 trials on appeal, with 1 new case each following year

	<u>100</u>	<u>200</u>	<u>300</u>	<u>400</u>	<u>500</u>	<u>Total</u>
Cumulative Trial Unit Costs	112.3	3.9	19.5	1.7		137.4
Outside Counsel to Uphold Death						0.0
Penalty Law			50.0			50.0
Deposition/Court Reporter Charges			60.0			60.0
Total FY02	112.3	3.9	129.5	1.7	0.0	247.4

FY03 - ASSUMPTION: 3 trials on appeal

	<u>100</u>	<u>200</u>	<u>300</u>	<u>400</u>	<u>500</u>	<u>Total</u>
Cumulative Trial Unit Costs	112.3	3.9	19.5	1.7	0.0	137.4
Deposition/Court Reporter Charges			90.0			90.0
Total FY03	112.3	3.9	109.5	1.7	0.0	227.4

FY04 - ASSUMPTION: 4 trials on appeal

	<u>100</u>	<u>200</u>	<u>300</u>	<u>400</u>	<u>500</u>	<u>Total</u>
1 Attorney	112.3	0.4	19.5	1.7	6.5	140.4
Staff Case Travel		3.5				3.5
Subtotal New Costs	112.3	3.9	19.5	1.7	6.5	143.9
Cumulative Trial Unit Costs	224.6	7.8	39.0	3.4	6.5	281.3
Deposition/Court Reporter Charges			120.0			120.0
Total FY04	224.6	7.8	159.0	3.4	6.5	401.3

FY05 - ASSUMPTION: 5 trials on appeal

	<u>100</u>	<u>200</u>	<u>300</u>	<u>400</u>	<u>500</u>	<u>Total</u>
Cumulative Trial Unit Costs	224.6	7.8	39.0	3.4		274.8
Deposition/Court Reporter Charges			150.0			150.0
Total FY05	224.6	7.8	189.0	3.4	0.0	424.8

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB 75

ANALYSIS CONTINUATION

Cumulative Implementation Cost by Year

	<u>100</u>	<u>200</u>	<u>300</u>	<u>400</u>	<u>500</u>	<u>Total</u>
FY00						
Capital Trials	112.3	32.9	99.5	1.7	6.5	252.9
FY01						
Capital Trials	187.8	41.1	112.6	2.9	13.0	357.4
Appellate Review Process	112.3	3.9	99.5	1.7	6.5	223.9
Total	300.1	45.0	212.1	4.6	19.5	581.3
FY02						
Capital Trials	187.8	53.6	152.6	2.9	0.0	396.9
Appellate Review Process	112.3	3.9	129.5	1.7	0.0	247.4
Total	300.1	57.5	282.1	4.6	0.0	644.3
FY03						
Capital Trials	300.1	61.5	172.1	4.6	6.5	544.8
Appellate Review Process	112.3	3.9	109.5	1.7	0.0	227.4
Total	412.4	65.4	281.6	6.3	6.5	772.2
FY04						
Capital Trials	300.1	61.5	172.1	4.6	0.0	538.3
Appellate Review Process	224.6	7.8	159.0	3.4	6.5	401.3
Total	524.7	69.3	331.1	8.0	6.5	939.6
FY05						
Capital Trials	300.1	61.5	172.1	4.6	0.0	538.3
Appellate Review Process	224.6	7.8	189.0	3.4	0.0	424.8
Total	524.7	69.3	361.1	8.0	0.0	963.1

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB 75

Revision Date: _____
 Title: "An act relating to murder..."

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

Sponsor: Representative Masek
 Requestor: (H) JUD

COMPONENT SERIAL NO: 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2 002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES	373.8	1044.7	1332.4	1571.2	1571.2	1571.2
TRAVEL	85.5	230.5	240.0	413.0	413.0	413.0
CONTRACTUAL	214.3	580.3	729.5	780.6	780.6	780.6
SUPPLIES	24.8	61.4	67.2	77.2	71.2	71.2
EQUIPMENT	39.0	72.8	46.8	52.0	38.0	38.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	737.4	1989.7	2415.9	2894.0	2874.0	2874.0

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

CHANGE IN REVENUES ()						
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FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	737.4	1989.7	2415.9	2894.0	2874.0	2874.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	737.4	1989.7	2415.9	2894.0	2874.0	2874.0

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

POSITIONS:

FULL-TIME	6.0	16.0	20.0	24.0	24.0	24.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached.

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

Phone: (907) 264-4414
 Date: _____

Approved by Commissioner: Robert Poe Jr.
 Agency: Department of Administration

Date: 4/14/99

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FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB 75

ANALYSIS: (continued)

Summary of the Bill

This bill would make first degree murder a capital offense. (Sec. 6) A sentence of death could be imposed if a jury found certain aggravating factors after a guilty verdict. The jury would also have to find that one of the four listed mitigating factors did not outweigh the aggravating factors and that the defendant should be sentenced to death. (Sec. 17)

This is a true death penalty bill. It does not call for an advisory vote. If the bill is enacted, death penalty prosecutions could begin immediately after it becomes effective.

The bill sets up death penalty procedures that can be applied in any case as long as aggravating factors are found. Although the death penalty in the current bill appears to be limited to cases where the defendant caused the death of a child (any person under 18 years old), other aggravating factors can easily be added in coming years. With the death penalty mechanism in place, a simple one-page bill can add other aggravating factors and increase the scope of death penalty cases.

Thus the bill does not set up a separate crime which makes killing a child a capital offense. Instead, it makes all first degree murders capital offenses and sets up an easily-expanded list of aggravating factors, which, in the current legislation, are limited to situations in which the defendant causes the death of someone under 18 years of age.

The bill also apparently takes away the normal criminal jurisdiction of the Alaska Court of Appeals. Instead, it sets up a "Sentence Review" procedure in the Alaska Supreme Court. (Sec. 18) The bill does not say whether the Alaska Court of Appeals or the Supreme Court would review "merit appeals." The Sentence Review in the Alaska Supreme Court would have to be done on an expedited basis.

Fiscal Impact

1. Assumptions

In gauging the fiscal impact of this bill, the Public Defender Agency assumes that death penalty cases under this bill would be restricted to first-degree murders where the victim is under 18.

It must be noted that the Public Defender Agency is concerned about this assumption because, as set out in the Summary above, the bill makes all first degree murders capital offenses. Unlike capital murder laws in other states, this bill does not require notice at the beginning of the case that the prosecution intends to seek the death penalty. Oddly, the Sentencing Procedure statute provides that a death penalty sentencing proceeding must be started in every first degree murder case – not only in cases involving children. Finally, the Aggravating Factors section (Sec. 17, page 10) is not very clear. It says that the "following aggravating factors may be considered (emphasis added)." Hopefully, this provision would not allow consideration of other aggravating factors not listed.

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1999 LEGISLATIVE SESSION

BILL NO. HB 75

However, setting aside these concerns, the Public Defender Agency estimates that, given the limitation to deaths of children under 18, the Agency would have to handle two to three capital cases per year. The Public Defender Agency will base its projections on these figures.

2. Death Penalty Cases Are Invariably Complex and Expensive

Passage of this death penalty legislation will have an undeniably significant impact on the entire criminal justice system. The Public Defender Agency, like other criminal justice agencies, would need significant additional fiscal resources.

Death penalty cases require much greater due process safeguards than do non-capital cases. This is obviously a consequence of the severity and finality of a death sentence as well as the potential for killing an innocent person by mistake. It must be understood that the criminal justice system is an imperfect process based on the combination of law and human judgment. Some percentage of error is a consequence of the American jury system. In non-death cases the system stands ready to correct those mistakes when and where they become known. An execution following a death penalty case can never be corrected. It is for these reasons so much care must be taken to defend individuals accused in capital cases. Providing "super due process" translates into adequate attorney resources, support resources, expert and consultation monies, funds for appealing death penalty convictions and other attendant expenses. For example, a commonly accepted estimate for expert witness fees alone in a death penalty case is \$60,000.

Capital felony trials are bifurcated. That is, two separate trials are actually held. The first determines guilt or innocence; the second determines whether aggravating factors exist to justify execution; whether mitigating factors exist that outweigh the aggravating factors, and whether to impose a period of imprisonment or death. The experience of other states is that these trials require far more defense resources than first-degree murder cases that do not involve the potential for execution.

Many states that have a death penalty provide a minimum of two defense attorneys to each capital defendant to insure that the required heightened procedural safeguards are met. The American Bar Association Standards for Criminal Justice: Providing Defense Services (3d. Ed.) note the following:

Workload in capital cases creates extraordinary difficulties in every jurisdiction in which the death penalty can be imposed. Time requirements in such cases vastly exceed those of non-capital felony cases. In some states where death row populations are high, the situation has reached crisis proportions. After conducting a national survey, for example, attorneys in Florida arrived at an annual caseload standard of five cases per attorney when the defendant was not under a warrant of death, and three cases per attorney when a warrant for execution had been issued. In California, where the Office of the State Public Defender handled capital appeals in the California Supreme Court, one study concluded that the attorneys handling such cases should be responsible for only two to three briefs per year in such cases.

(at p. 73; footnotes omitted.)

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During the investigation and preparation phase of the case, crime scene evidence will have to be examined and the forensic examinations performed by the state will have to be scrutinized. Psychiatric experts are essential to deal with competency, insanity or diminished capacity issues. Motion practice in death penalty cases has been estimated to be five times more labor and cost-intensive than in non-capital homicide trials. Trial itself in capital cases is an extremely time consuming process, lasting in excess of six months in some cases. Serious scheduling conflicts will arise in staff resources to provide simultaneous representation in a number of cases.

A sentencing, or penalty phase trial is categorically different in breadth and procedure from any comparable proceeding in a non-capital trial. Heightened due process requirements continue. In addition to the expert witnesses employed during the trial phase, such expertise will be necessary when mental health issues do not rise to the level of perfect defenses but are important in establishing mitigators. Additionally, extensive investigation and presentation of the defendant's family friends, co-workers, neighbors, and school and social workers is minimally required. The analysis of defendants' entire life and the gathering of historical detail are absolutely mandated. In a recent California case 240 such witnesses were located and interviewed, and 120 of those were called as actual witnesses in a single penalty phase.

If a defendant is convicted of first-degree murder and sentenced to death, a lengthy, complex, and difficult appeals process ensues. Again, as noted above, there is some ambiguity in the "Sentence Review" statute in the bill. Although it is clear that the Alaska Supreme Court would review the death sentence itself, this would only be part of the appellate case. "Merit appeal" issues, such as whether there was an illegal search or seizure or whether the trial court erred in evidentiary and procedural rulings have to be decided as well. In the first few cases at least, there would be protracted litigation on whether the Alaska Court of Appeals or the Supreme Court would hear the "merit" issues. In addition to the direct merit and sentence appeals, there could be motions to modify or reconsider the death sentence and motions for a new trial before the trial judge. If the appeals were unsuccessful, post-conviction relief proceedings could be filed in state court. Unsuccessful post-conviction relief proceedings could be appealed to the Alaska Court of Appeals. If the post-conviction relief appeal was unsuccessful in the Alaska Court of Appeals, a petition for hearing could be filed in the Alaska Supreme Court. This does not include the extensive litigation that takes place in federal court in death penalty cases. Finally, there are often remands from the state or federal appellate courts for additional hearings in these cases. The Public Defender Agency would be responsible for conducting these hearings, too. It is not unusual for a death penalty case to remain in the court system, litigated by the parties, for a period of up to ten years. This is a result of the extensive appellate work that is routinely done in most death penalty cases following conviction.

Breakdown of Fiscal Impact

1. Personal Services

Given the complexity and intensity of effort involved in each death penalty trial and penalty hearing, a minimum of two defense attorneys will need to take up representation of the accused in death penalty matters. This level of staffing is set out in the American Bar Association Standards referred to above. The Public Defender will follow this prudent course, whether established by statute or internal policy.

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BILL NO. HB 75

It is anticipated that the Public Defender Agency will take in two to three new capital cases per year if this bill becomes law. A death penalty unit will be established in Anchorage during the first year following enactment of the death penalty. The Public Defender Agency also anticipates that, during the second year three or more additional capital cases are expected to go to trial, and three new capital felony offenses will occur. The Public Defender Agency expects to be involved in two of the three cases which go to trial during the second year, and will additionally absorb two or three of the new capital cases which are filed by the state. Therefore, a second death penalty team will be created during the second year to absorb this additional workload.

During the second year an Anchorage appellate team will also be created so that it can begin interacting with the death penalty trial teams to establish defense strategies, to assist in the developments of petitions for review to the Supreme Court on an interlocutory basis, and to receive training prior to the filing of the first appeal following a death penalty conviction. It is anticipated that the Public Defender Agency staff will continue to grow from year to year as capital cases accumulate. This assumption is consistent with the experiences of other states that have the death penalty.

Consistent with its projected resource needs, the Alaska Public Defender Agency will take on additional cases and increase its staff accordingly during the third year that the death penalty is in effect. This accumulation of cases and placement of resources for the years relevant to this fiscal note follow below. The rising costs from year to year are a consequence of the need to carry over existing staff and add lawyers and support staff to absorb the cumulative death penalty caseload.

2. Travel and Contractual

Travel expenses will be necessarily high given the broad geographic area served by these teams. These teams will have to travel to locations where the crime occurred and where trial is being held. Travel expenses are higher in Alaska because of the geography of the state, the lack of surface roads and the high cost of air travel and lodging. Costs will be even higher for the considerable out-of-state travel associated with these cases. Once an individual is convicted of a capital offense, preparation begins for the penalty phase (sentencing hearing). Defense investigators will travel to locations where the defendant lived, went to school, etc., to interview people and develop facts for the purpose of vitiating a sentence of execution. If favorable witnesses are located, they will then have to be subpoenaed for travel to Alaska for the hearing.

Contractual expenditures for expert witnesses will be significant. As the Department of Law pointed out in its fiscal note, recent cost studies of capital trials in other states indicate that expert witnesses for both the trial and sentencing proceedings cost about \$60,000 on the average. This estimate is consistent with the research by the Public Defender Agency on this issue. In addition there will be expert witness costs for the appellate work done following trial, conviction and sentence to death. These costs can be as high as the expert witness fees incurred during trial.

3. Supplies and Equipment

These expenses naturally accrue when additional staff is required. The estimates that follow are very conservative projections without consideration of inflationary factors.

FISCAL NOTE

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1999 LEGISLATIVE SESSION

BILL NO. HB 75

4. Training

Attorneys will most likely need to be recruited from outside as there are few or no "death-qualified" attorneys available locally, and none currently employed by the Public Defender Agency. Training in Alaska law will be required. Additionally, training for lawyers engaged in death penalty work is a critical component for any death penalty defense unit. Both the prosecution and the defense will avail themselves of national training programs related to these kinds of cases that are conducted on a yearly basis.

Conclusion

Due to the accrual of cases from year to year, once implementation of death penalty legislation like this occurs, expenses could greatly exceed that anticipated in this fiscal analysis. This agency has no control over the trend of homicide crimes nor the discretion that will be exercised by the prosecution in seeking the death penalty. Continued additional staff will have to be added to this agency beyond the fourth year of implementation of the capital crime law. Despite our best predictive efforts, this cost estimate might very well understate staff/contractual needs. Only several years of experience with the death penalty will permit adjustment of projections and fiscal analysis.

		Cumulative Cost Summary - Years 1-5				
		Year 1	Year 2	Year 3	Year 4	Year 5
100 - Salaries and Benefits						
		373.8	1044.7	1332.4	1571.2	1571.2
200 - Travel						
	Staff Travel	35.5	80.5	90.0	113.0	113.0
	Witness Travel	50.0	150.0	150.0	300.0	300.0
	Total	85.5	230.5	240.0	413.0	413.0
300 - Contractual						
	Agency Contractual	81.8	252.8	342.0	393.1	393.1
	Outside Services	132.5	327.5	387.5	387.5	387.5
	Total	214.3	580.3	729.5	780.6	780.6
400 - Supplies						
		24.8	61.4	67.2	77.2	71.2
500 - Equipment						
		39.0	72.8	46.8	52.0	38.0
	Grand Totals	737.4	1989.7	2415.9	2894.0	2874.0
Permanent Full Time Positions		6.0	16.0	20.0	24.0	24.0

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB 75

Revision Date _____ Dept. Affected Alaska Court System
 Title Capital punishment for murder of a child BRU Alaska Court System
 Component Trial Courts
 Sponsor Rep. Masek
 Requester House Judiciary Component Serial No. 769

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services	75.2	75.2	75.2	75.2	75.2	75.2
Travel	19.9	19.9	19.9	19.9	19.9	19.9
Contractual	76.0	76.0	76.0	76.0	76.0	76.0
Supplies						
Equipment	13.5					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	184.6	171.1	171.1	171.1	171.1	171.1

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	184.6	171.1	171.1	171.1	171.1	171.1
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	184.6	171.1	171.1	171.1	171.1	171.1

Estimate of any current year (FY99) cost: None

POSITIONS

Full-time						
Part-time	4	4	4	4	4	4
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 See attached analysis.

Prepared by: Doug Wooliver, Administrative Attorney Phone: 264-8265
 Agency: Alaska Court System Date/Time: 4/14/99 11:29 AM
 Approved by: Stephanie J. Cole, Administrative Director Date: 4/14/99
 Agency: Alaska Court System

Alaska Court System
Fiscal Analysis
HB 75

Personal Services

	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Pro Tern Judge, Anchorage, PPT, 6 months	\$19,500	\$8,830	\$28,330
Law Clerk I, Anchorage Trial Courts, 13D, PPT, 6 months	17,094	6,412	23,506
Law Clerk III, Appellate Courts, 15D, PPT, 6 months	19,704	6,954	26,658
Bailiff, Anchorage, 6A, NPP, 6 months	6,836	678	7,514
Subtotal			<u>86,008</u>

Offset cost of existing caseload

Currently, non-capital punishment, first degree murder cases experience a 50% trial rate and last approximately one month. The Department of Law anticipates 3 cases with a 100% trial rate every 2 years. Using this estimate, the court could expect approximately 1-1/2 trials a year of 4 months duration each. The proposed legislation will result in approximately 6 months of trial activity. Therefore, the cost offset is computed at one-eighth (3/4 month / 6 months) of the estimated personal services costs.

Net Personal Services	<u>(10,800)</u>
	<u>75,208</u>

The Department of Law expects to prosecute 3 capital offenses related to children every 2 years. Capital offense trials will be split into 2 separate trials with each lasting 4 months. The court anticipates extraordinary jury costs from calling additional jurors, extended jury selection and questioning, the need for alternate jurors, and lengthy trials. The court anticipates high transcription costs resulting from preparation of the voluminous record required for capital offenses. Additional law clerks are required for extensive legal research of motions and other legal questions.

Travel

Jury sequestration costs - transportation, meals and lodging		
1-1/2 innocence/guilt trials with 18 jurors, 7 days in deliberation each at \$120 day		22,700
<i>Offset cost of existing caseload (see note in Personal Services)</i>		(2,800)
Net Travel		<u>19,900</u>

Contractual

Jury fees - 1-1/2 trials at 66 days (3 months) with 18 jurors at \$25 a day and 1 sentencing trial at 22 days (1 month) with 18 jurors at \$25 a day		54,500
Contractual security guard to staff metal detector		1,000
Transcription fees - 2-1/2 transcripts of 5000 pages at \$2.50 a page		31,300
Freight for high security equipment kit	Subtotal	<u>100</u>
		86,900
<i>Offset cost of existing caseload (see note in Personal Services)</i>		(10,900)
Net contractual		<u>76,000</u>

Equipment (one-time cost)

Standard office equipment, computer and reference materials for law clerks		6,000
Portable high security kit, consisting of walk-through metal detector and other security items.		7,500
		<u>13,500</u>

Total Estimated Cost	<u>\$184,608</u>
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Committees:

Transportation
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Resources
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World Trade and
State & Federal Relations

Alaska State Legislature



Representative Beverly Masek

During Interim: (June-Dec.)
Mat-Su LIO
600 E. Railroad Avenue
Wasilla, AK 99654
(907) 376-2679
Fax: 373-4745

During Session: (Jan.-May)
State Capitol
Juneau, AK 99801-1182
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1-800-505-2678

Sponsor Statement for HB 75

CAPTIAL PUNISHMENT FOR CERTAIN CRIMES AGAINST CHILDREN

I have introduced HB 75 in an effort to afford more protection to the lives of Alaska's children. Under our present system of justice, when a sexual predator strikes they have no incentive to preserve the lives of their young victims.

HB 75 will serve notice to any predator who would consider murdering their victim for any reason that they may be forfeiting their own life.

I wish to keep this bill narrow because I specifically want it aimed at responding to situations involving children.

My intent with this legislation is to serve notice to any sexual predator who would consider murdering their young victim that their own life would be forfeit also. Although it may not always deter a murder, if it did only in a few instances, it would be well worth it. By giving the death penalty as an option to Alaskan juries instead of just a longer prison term, we will perhaps save some children which otherwise would have been lost.

Please support this effort now so that we can be pro-active instead of re-active in our protection of children.

LEGAL SERVICES

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

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

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

MEMORANDUM

March 31, 1999

SUBJECT: HB 75 - Capital Punishment (Work Order No. 21-LS0310\A)

TO: Representative Beverly Masek
Attn: Eddie Grasser

FROM: Gerald P. Luckhaupt *GLP*
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1 of the bill amends AS 05.15.140(b) to make a conforming change necessitated by the creation of capital felonies in this bill.

Section 2 of the bill amends AS 11.31.100(d) to make a conforming change necessitated by the creation of capital felonies in this bill.

Section 3 of the bill amends AS 11.31.110(c) to make a conforming change necessitated by the creation of capital felonies in this bill.

Section 4 of the bill amends AS 11.31.120(h) by making a conforming change necessitated by the creation of capital felonies in this bill.

Section 5 of the bill amends AS 11.31.120(i) by making a conforming change necessitated by the creation of capital felonies in this bill.

Section 6 of the bill amends AS 11.41.100(b) to provide that murder in the first degree is a capital offense.

Section 7 of the bill amends AS 12.30.020(a) to provide that a person charged with a capital offense is not eligible for release before trial.

Section 8 of the bill amends AS 12.30.040(b) to provide that a person convicted of a capital felony may not be released on bail either before sentencing or pending appeal.

Section 9 of the bill amends AS 12.47.110(b) to provide that a person that has been found to be incompetent to stand trial and has remained incompetent for five years may still be retried if the original charge is a capital felony.

Section 10 of the bill amends AS 12.55.025(i) to exclude capital sentencing proceedings from application of the preponderance of the evidence standard of proof. To impose the death penalty the trier of fact must find the existence of the aggravating factor beyond a reasonable doubt.

Section 11 of the bill amends AS 12.25.125(a) to add the death sentence as a permitted sentence upon conviction of murder in the first degree.

Section 12 of the bill amends AS 12.55.125(f) to provide that a sentence of death may not be suspended under the suspension of execution of sentence statute, AS 12.55.080.

Section 13 of the bill amends AS 12.55.125(l) by making a conforming change.

Section 14 of the bill amends AS 12.55.145(a) to provide that a previous conviction for a capital felony may be considered and used by a court, regardless of when the conviction occurred, as a previous conviction when imposing sentence for those offenses for which the legislature has prescribed presumptive terms.

Section 15 of the bill amends AS 12.55.155(f) to clarify that that subsection only applies to the establishment of aggravating and mitigating factors at sentencing for offenses for which the legislature has prescribed presumptive terms.

Section 16 of the bill amends AS 12.55.185(8) by making a conforming change.

Section 17 of the bill is the statutory "meat" of the bill. This section adds a new chapter to AS 12 with the following sections:

AS 12.58.010 provides that (a) when a defendant is convicted of a capital felony the court shall commence a separate sentencing proceeding before the same jury that convicted the defendant or, if the jury trial was waived or the defendant pled guilty, the court will impanel a jury for the sentencing; (b) during the sentencing proceeding evidence may be presented as to any aggravating or mitigating factor the court determines to have probative value; (c) after hearing the evidence the jury shall deliberate and issue a recommended sentence with written findings of whether the jury unanimously finds the existence of at least one aggravating factor listed in AS 12.58.030, unanimously determines by a preponderance of the evidence that the aggravating factor or factors outweigh any mitigating factors that the one or more members of the jury may have found to exist by a preponderance of the evidence, and unanimously find that the defendant should be sentenced to death.

AS 12.58.020 provides procedures for the imposition of sentence by the court. If the jury finds as provided in AS 12.58.010(c) then the court must impose the death penalty but if the jury does not find an aggravating factor, or finds the aggravating factor or factors outweighed by the mitigating factors, or does not recommend that the defendant be sentenced to death, then the court may not impose the death sentence but must impose a term of imprisonment as provided in AS 12.25.125(a). When a sentence of death is imposed under this section it is subject to automatic review by the Alaska Supreme Court under AS 12.58.200.

AS 12.58.030 provides a list of aggravating factors which may be considered by a jury and, if at least one of these factors is found to exist, upon which a death sentence may be based.

AS 12.58.040 provides a list of mitigating factors which must be considered by the jury along with any other mitigating factors that may exist and which must be outweighed by the aggravating factor or factors in order to support a sentence of death.

AS 12.58.100 provides procedures for an automatic, priority review by the Alaska Supreme Court of the judgment of conviction of any capital felony in which the death sentence is imposed.

AS 12.58.110 provides that after review of the conviction and sentence the Alaska Supreme Court shall issue a death warrant and set a date of execution if the court upholds the conviction and sentence.

AS 12.58.200 requires the commissioner of corrections to establish a procedure for the execution of a sentence of death.

AS 12.58.210 requires the commissioner of corrections to specify the time and date of execution after receiving a death warrant from the Alaska Supreme Court.

AS 12.58.220 specifies that the death sentence shall be inflicted by lethal injection within a state correctional facility.

AS 12.58.230 requires the commissioner of corrections to make a return upon the death warrant showing the time and place in which the defendant was executed.

AS 12.58.300 requires the commissioner of corrections to give notice if the commissioner believes the defendant has become incompetent or is pregnant and provides a stay of execution.

AS 12.58.310 provides procedures for determining and reviewing the competency of the defendant.

Representative Beverly Masek
March 31, 1999
Page 4

AS 12.58.320 provides that if the defendant is pregnant the sentence of death shall be stayed during the pregnancy and when the defendant is no longer pregnant that the sentencing court shall notify the Alaska Supreme Court and the commissioner of corrections and the supreme court will issue a new death warrant.

AS 12.58.900 provides definitions.

Section 18 of the bill amends AS 22.07.020(a) and provides that the court of appeals does not have appellate jurisdiction in a case involving criminal prosecution when the death sentence has been imposed.

Section 19 of the bill amends AS 22.07.020(b) to provide that the court of appeals does not have appellate jurisdiction to review appeals of death sentences.

Section 20 of the bill amends AS 47.10.010(e) makes a conforming change to the juvenile waiver provisions necessitated by the creation of capital felonies in this bill.

Section 21 of the bill amends AS 47.10.060(f) makes a conforming change necessitated by the creation of capital felonies in this bill.

Sections 22 and 23 of the bill provide notice provisions for court rules changes necessitated by the bill.

GPL:jdr
99-175.jdr

FEB 24 1999

ALASKA PEACE OFFICERS ASSOCIATION

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Unalaska
Pres. Aleutian Islands Chapter

Representative Masek
Alaska State Legislature
State Capital
Juneau, Alaska 99801-1182

February 19, 1999

Dear Representative Masek,

At a recent meeting of the APOA Board of Directors, we unanimously agreed to endorse HB 75.

Please contact us if there is anything we can do to assist you with this bill as it proceeds through the legislative process. You may contact us at the APOA office in Anchorage at 277-0515.

Thank you for sponsoring this legislation.

Sincerely,

John Charbonneau
State President
Alaska Peace Officers Association

HB

79

ALASKA STATE LEGISLATURE

HOUSE LABOR AND COMMERCE COMMITTEE

Representative Norman Rokeberg, Chairman
Representative Andrew Halcro, Vice-Chairman
Representative John Harris
Representative Lisa Murkowski
Representative Jerry Sanders
Representative Tom Brice
Representative Sharon Cissna



State Capitol
Juneau, AK 99801-1182
Telephone: (907) 465-4954
Fax: (907) 465-2040

MEMORANDUM

TO: Rep. Pete Kott, Chairman
House Judiciary Committee

FROM: Rep. Norman Rokeberg, Chairman
House Labor & Commerce Committee

DATE: March 4, 1999

RE: House Bill 79

A handwritten signature in black ink, appearing to read "Norman Rokeberg".

I would request that House Bill 79 (UCC: Letters of Credit) be scheduled for a hearing before the House Judiciary Committee.

Attached are:

1. HB 79
2. Sponsor Statement
3. Zero fiscal note from Department of Commerce & Economic Development
4. "A Few Facts About UCC Article 5 - Letters of Credit"
5. "Why States should Adopt UCC Article 5 - Letters of Credit"
6. Sectional Analysis prepared by Theresa Bannister, Legislative Counsel
7. Two letters from Arthur H. Peterson, Uniform Law Commissioner for Alaska
8. Support letter from Department of Law

Mr. Art Peterson, 586-4000, testified before the House Labor & Commerce Committee on this issue. It would be helpful if Mr. Peterson could testify before the House Judiciary Committee when it considers this legislation. I am also attaching one copy of "Revised Article 5. Letters of Credit" which may be helpful to you and your committee aide regarding this bill.

Thank you for your consideration.

**SPONSOR STATEMENT FOR
BILL REVISING UNIFORM COMMERCIAL CODE, ARTICLE 5
(LETTERS OF CREDIT)**

House Labor and Commerce Committee

The basic purpose of the revision of Article 5 of the Uniform Commercial Code is to update the law governing the \$200 billion U.S. letter-of-credit industry. All 50 states and Puerto Rico, Guam, and the District of Columbia have adopted the UCC, including Article 5. It is now necessary for Article 5 to be revised, to recognize changes in technology and in commercial practices, so as to avoid litigation over the increasing number of issues that are no longer adequately dealt with in the decades-old current law. One of the main features of this revision is the simplification of Article 5. Another is its recognition of the Uniform Customs and Practices for Documentary Credits, a body of material that is used in conjunction with most international letters of credit.

Letters of credit are used to obtain payment as a backup to other kinds of credit extension; they are very important in international trade. Prior ambiguities in the law dealing with the concept of fraud in the transaction are clarified. Article 5 becomes much simpler and less detailed because of the explicit reliance upon standards of practice. It continues to provide rules that can be waived or modified by agreement between the parties.

This revision of Article 5, promulgated by the National Conference of Commissioners on Uniform State Laws in 1995, has already been enacted in 39 jurisdictions and, as of January 15 of this year, is pending in the legislature of an additional jurisdiction. It is necessary for Alaska to enact this bill in order to keep up with developments in the commercial law area, and avoid becoming a commercial backwater.

Thank you.

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB 79

Revision Date/Time (Note if correction) _____ Dept. Affected Commerce & Econ. Dev.
 Title Uniform Commercial Code: Letters of Credit BRU Banking, Securities and Corporations
 Component Banking, Securities and Corporations
 Sponsor House Labor and Commerce by request
 Requester _____ Component Serial No. 1233

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY99) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by Franklin T. Elder, Director Phone 465-2521
 Division Banking, Securities and Corporations Date/Time 2/26/99 11:49 AM
 Approved by Commissioner Deborah B. Sedwick Date 2/26/99
 Agency Commerce and Economic Development

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A Few Facts About
UCC ARTICLE 5 - LETTERS OF CREDIT

PURPOSE: Letters of Credit are used to obtain payment as a backup to other kinds of credit extension; they are very important in international trade. In the revisions there is explicit recognition of standards of practice, so that standards such as the Uniform Customs and Practices for Documentary Credits can govern many of the particulars of letters of credit. Prior ambiguities with the concept of fraud in the transaction are clarified. Damages for a dishonored or repudiated letter of credit are limited to amount of the document plus incidental damages. Consequential damages are not permitted. Article 5 becomes much simpler and less detailed because of the explicit reliance upon standards of practice. Article 5 continues to provide rules that can be waived or modified by agreement between the parties.

ORIGIN: Completed by the Uniform Law Commissioners, in conjunction with the American Law Institute, in 1995.

ENDORSED BY: American Bar Association

STATE ADOPTIONS:	Alabama	Mississippi
	Arizona	Missouri
	Arkansas	Montana
	California	Nebraska
	Colorado	Nevada
	Connecticut	New Hampshire
	Delaware	New Jersey
	District of Columbia	New Mexico
	Hawaii	North Dakota
	Idaho	Ohio
	Illinois	Oklahoma
	Indiana	Oregon
	Iowa	South Dakota
	Kansas	Tennessee
	Maine	Utah
	Maryland	Vermont
	Massachusetts	Virginia
	Michigan	Washington
	Minnesota	West Virginia
		Wyoming

1999
INTRODUCTIONS: Texas

For any further information about UCC Article 5, Letters of Credit, please contact John McCabe or Katie Robinson at 312-915-0195.

(1/15/99)

(Please note: This information can also be found on our Web Site at www.nccusl.org)

UCC ARTICLE 5 – LETTERS OF CREDIT

– NCCUSL

- WHAT:** Modernizes and clarifies our country's principal law dealing with letters of credit.
- WHY:** Our present law was drafted almost 40 years ago. It is outmoded and no longer reflects commercial practice.
- New legal issues have developed which are resolved by the new law.
- Revised Article 5 also conforms our law with international law and practice, which facilitates international trade.
- Finally, the use of letters of credit has expanded enormously in the past decade or two. They are now used in many large domestic commercial transactions.
- WHEN:** Now.
- Revised Article 5 has been approved by the American Law Institute and the National Conference of Commissioners on Uniform State Laws.
- American Bar Association approval is anticipated in due course.
- The final text of revised Article 5 is available now.
- HOW:** Introduction is anticipated this year or next year in about 20 states, including major money center states such as New York, California and Illinois.
- States which do not adopt revised Article 5 will find themselves behind the rest of the country and the rest of the world.
- WHO:** Drafted ^{by the NCCUSL} with the active participation of advisors from national and international businesses, banks, bar associations and government agencies.
- Professor James J. White, co-author of the White & Summers treatise on the Uniform Commercial Code, was the reporter.

WHY STATES SHOULD ADOPT UCC ARTICLE 5 – LETTERS OF CREDIT

— UCCUSL

The revision to Article 5 of the Uniform Commercial Code – Letters of Credit – updates the law governing the \$200 billion U.S. letter of credit industry. Banks, and occasionally other persons, issue letters of credit to better assure payment to a third party by a customer up to a stated amount, for a stated period of time. Half of all exports outside the U.S. are financed by letters of credit.

Since the 1950s when this article was originally promulgated, the practices and technologies employed with letters of credit have changed substantially, including the use of electronic and computer technology. Litigation has increased as the volume of credits and the uncertainties of the law have stimulated controversies. Thus revision to UCC5 is both appropriate and timely.

There are a number of reasons why every state should adopt revised UCC Article 5:

- ▶ **LETTERS OF CREDIT ARE IMPORTANT** – Letters of credit are very important in international trade. It has become a common method of guaranteeing and obtaining payment. The use of letters of credit has increased in recent years as foreign trade has expanded and increased. The law which regulates letters of credit – UCC Article 5 – is obviously an important component to expansion of foreign trade.
- ▶ **UCC5 RECOGNIZES THE UCP 500** – UCC5 recognizes the Uniform Customs and Practices for Documentary Credits (UCP 500), which is used in most international letters of credit. The UCP 500 was promulgated by the International Chamber of Commerce and provides operational rules and standards that have international acceptance.
- ▶ **STANDARDS OF PRACTICE ARE RECOGNIZED** – Revised UCC5 specifically includes the most commonly used standards of practice. The revision coordinates with current standards of practice by including: deferred payment obligations, reasonable time to examine documents, preclusion, and the return of documents.

- ▶ **UCCS IS MODERNIZED** – Original UCCS in many ways is out of touch with current practice and major gaps cause unnecessary litigation. The revised UCCS authorizes the use of electronic technology; expressly permits deferred payment letters of credit and two-party letters of credit; provides rules for unstated expiration dates and "perpetual" letters of credit; and conforms to existing practice for assignment of proceeds.
- ▶ **UNIFORMITY** – It is important that U.S. law regarding letters of credit be in accord with international rules and practices, but since letters of credit are a major instrument in domestic transactions as well, both international and domestic trade requires uniformity of law. These rules should be consistent within the United States.
- ▶ **CONCLUSION** – The revised UCC Article 5 is a significant improvement over current provisions, and will lessen litigation, clarify matters which had been disputed, and encourage sound practices, promoting international trade. For all of these reasons, UCCS should be adopted by all states as soon as possible.

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
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MEMORANDUM

February 17, 1999

SUBJECT: Sectional summary of HB 79 relating to letters of credit (Work Order No. 21-LS0375\D)

TO: Representative Norman Rokeberg, Chair
House Labor and Commerce Committee
Attn: Janet Seltz

FROM: 
Theresa Dannister
Legislative Counsel

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

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill. The introductory remarks and the other descriptions of the sections necessarily contain some generalizations and simplifications. As a result, please keep in mind that the bill itself is the best statement of its contents.

Basic description: definitions used in summary. In general, a letter of credit is an agreement by a bank or other person made at the request of a customer that the bank or other person will honor demands for payment (or a demand for delivery of an item of value) when the conditions in the letter of credit are met. As an example, a letter of credit may be used when a bank customer wants to buy some merchandise, but the manufacturer won't ship without assurance of payment. The bank issues a letter of credit and is the "issuer." The customer requesting the letter of credit is the "applicant." The manufacturer (or other person who will be paid) is the "beneficiary."

To obtain the payment or delivery, the beneficiary must present the required documents. This is referred to as a "presentation" of the documents or "presenting" the documents. When the bank pays or delivers the item to the manufacturer, the bank "honors" the letter of credit. If the bank doesn't pay or deliver upon presentation of the documents, the bank "dishonors" the letter of credit.

If the bank authorizes another person to make the payment or deliver under a letter of credit, that person is a "nominated person." If the nominated person also undertakes to honor a letter of credit, that person is a "confirmer."

An "adviser" is a person who notifies the beneficiary (or another "adviser" who will notify the beneficiary) that a letter of credit has been issued, confirmed, or amended.