

ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672

10053 SENATE HEALTH EDUCATION & SOCIAL SERVICES

SB

95

**SENATE COMMITTEE REPORT
First Committee of Referral**

DATE: 3/4/99

FURTHER: Finance

Date of 5-Day Notice: 3/11/99
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 3/29/99

Health, Education and Social Services Committee considered

SENATE BILL NO. 95

"An Act relating to the combination of grades that constitute junior high, middle, or secondary school."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical title
 - new: SCR# _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
		<i>[Signature]</i>	✓		
		<i>[Signature]</i>	✓		
		<i>[Signature]</i>	✓		
		<i>[Signature]</i>	✓		
CHAIR:		CHAIR: <i>[Signature]</i>	✓		

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

<i>Educational</i>	<i>3/22/99</i>		✓

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

<i>Est</i>	<i>3/22/99</i>		✓

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

SENATE BILL NO. 95

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY SENATOR PHILLIPS

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the combination of grades that constitute junior high, middle,
2 or secondary school."

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

4 * Section 1. AS 14.03.060(b) is amended to read:

5 (b) A secondary school consists of grades six [SEVEN] through 12 or any
6 appropriate combination of grades within this range. The establishment of one or two
7 grades beyond the 12th grade is optional with the governing body of the school
8 district.

9 * Sec. 2. AS 14.03.060(c) is amended to read:

10 (c) Grades six [SEVEN] through [EIGHT,] nine [, AND TEN] or any
11 appropriate combination of grades within this range may be organized as a junior high
12 school or a middle school.



ALASKA STATE LEGISLATURE

SENATOR RANDY PHILLIPS
SENATE DISTRICT L

Session (Jan-May)
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Sponsor Statement

SB 95

Senate Bill 95 amends the current definition of secondary school student to include the grade 6 to 8 middle school concept. Currently only junior high school students in grades 7 to 9 are considered secondary students.

Many junior high schools statewide have been converted to middle schools for instructional purposes. All Anchorage junior high schools have been converted to middle schools. This change seeks to expand Department of Education regulations in a manner that conforms with the middle school concept chosen by many local school boards.

Inclusion of sixth grade in the middle school configuration also has an impact on facilities planning. All students in the middle school program require the same facilities and space allocation. Changing this definition allows 6th grade students enrolled in a middle school program to be counted at the secondary school allowance of 150 square feet per student rather than the 106 square feet per student allowance.

The current elementary square foot allowance for sixth grade students hinders a local school board's ability to properly plan and design a middle school facility to meet the educational needs of the students it serves.



ASD Memorandum

To: Senator Rick Halford
Senator Randy Phillips.

Cc: Anchorage Caucus Co-Chairs:
Senator Dave Donley
Representative Andrew Halcro

From: *Larry Wiget*, Executive Director, Public Affairs

Subject: Proposed Changes/Additions to State Statute

Date: March 2, 1999

Attached please find per your request suggested changes to state statute to accommodate the following ASD Legislative priorities:

- (1) Definition of a Secondary Student
- (2) Flexibility in State Capital Improvement Grants and School Debt Reimbursement
- (3) Charter School Space Allocation

Please do not hesitate to contact me if you need further information.

Lawrence A. Wiget, Ed.D., Executive Director, Public Affairs
Anchorage School District
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Anchorage School District Legislative Priority

Definition of a Secondary Student

The Anchorage School Board supports changing education regulations or state statute to expand the definition of junior high to include the words "middle school" and include the option of sixth grade in the configuration of the junior high/middle school. It is also requested that the square footage allowable for 6th graders housed in a middle school be calculated at the secondary allowance of 150 square feet per student, rather than the elementary calculation of 106 square feet per student.

ASD Intent/Suggested Language

The following suggested revisions to statute are provided to assist in the development of a bill to meet the intent of the ASD legislative priority regarding the definition of a secondary student.

"An Act relating to the combination of grades that constitute junior high, middle, or high school."

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

* Section 1. AS 14.03.060(b) is amended to read:

(b) A secondary school consists of grades six [SEVEN] through 12 or any appropriate combination of grades within this range. The establishment of one or two grades beyond the 12th grade is optional with the governing body of the school district.

* Sec. 2. AS 14.03.060(c) is amended to read:

(c) Grades six [SEVEN] through 9 [EIGHT AND NINE] or any appropriate combination of grades within this range may be organized as a junior high school, a middle school. Middle schools are a

separate funding component from elementary and secondary schools for purposes of calculating square footage.

Add a new (d) to read:

(d) Grades 9 through 12, or any appropriate combination of grades within this range may be organized as a high school.

Currently, under 4 AAC 31.020, School Construction Guidelines, no mention is made of "Allowable Square Feet Per Elementary Student."

Rationale: Many junior high schools statewide have been converted to middle schools for instructional purposes. All Anchorage junior highs have been converted to middle schools.

The way that the law and current regulations are written, however, the middle school model is not addressed. Many sixth grade students across the state are in middle school programs. Sixth grade is not given approval to be included in the junior high/middle school mix. The grade configuration of middle schools varies but may include 6, 7, 8 or 9th grades in various combinations. Several districts, including Anchorage, already have configurations ranging from 6th grade to ninth grade and are therefore out of compliance with Department of Education regulations.

Inclusion of sixth grade in the middle school configuration also has an impact on facilities planning. All students in the middle school program require the same programs and space allocation. The current elementary square foot allowance for sixth graders hinders a district's ability to properly plan and design a middle school facility to meet the educational needs of the students it serves.

SB

97

Revision Date: _____ Dept. Affected: Health and Social Services
 Title: Mental Health Evaluation and Treatment and BRU: Community Mental Health Grants
confidential mental health records Component: Designated Evaluation and Treatment
 Sponsor: Senator Pete Kelly COMPONENT SERIAL NO. 1014
 Requestor: (Senate) HESS See also (SN#): _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY00	FY01	FY02	FY03	FY04	FY05
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		150.0	150.0	150.0	150.0	150.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS		1,544.7	2,641.7	2,641.7	2,641.7	2,641.7
MISCELLANEOUS						
TOTAL OPERATING	0.0	1,694.7	2,791.7	2,791.7	2,791.7	2,791.7

CAPITAL EXPENDITURES						
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CHANGES IN REVENUES ()						
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts		1,544.7				
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health		150.0	2,791.7	2,791.7	2,791.7	2,791.7
Other (please specify)						
TOTAL	0.0	1,694.7	2,791.7	2,791.7	2,791.7	2,791.7

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY99) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

Fiscal Assumptions:

SB 97 serves two functions: It clarifies the client eligibility for Designated Evaluation and Treatment (DET) Services and establishes procedures for determining that eligibility, processing applications, and paying claims; it also creates an entitlement to those services for eligible clients.

These clarifications are necessary due to a current lawsuit related to these services and due to the downsizing of the Alaska Psychiatric Institute (API). The plaintiff in the current litigation requests that the court interpret current statutes to mean that the department must determine every patient's ability to pay; and, that if it is detrimental to the patient's rehabilitation, the department has to relieve the patient of their obligation to pay. If the court agreed with this interpretation, the department would pay for a far greater number of people than are currently eligible for this program. Additionally, the downsizing of API will require that these services be provided in Anchorage beyond those currently provided in other communities throughout Alaska. This necessary expansion will require explicit eligibility and payment procedures to maintain consistent administration of the program.

3/12/99
7/15
Prepared by: Leonard Abel, Ph.D./Gina Macdonald Phone: 907-465-3370
 Division: Mental Health and DD Date: 03/12/99
 Approved by Commissioner: Karen Perdue, Commissioner Date: 3/15/99
 Agency: Department of Health & Social Services

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ANALYSIS (cont.):

As stated above, current plans to downsize API require that private hospitals in Anchorage provide some inpatient psychiatric services through the Designated Evaluation and Treatment program. This results in impending additional costs regardless of legislation. The lawsuit also has implications for undetermined costs as eligibility for the program could be determined (and possibly expanded) through the courts. This legislation will allow reasonable expansion of the program while establishing program controls through setting clear criteria and formalizing payment procedures. New costs to the program will be covered transitionally by federal grant funds in FY 2000. An increment will be required to enable this program to become an entitlement beginning FY 2001.

Existing Program

There is \$1046.3 GF/MH in the base for the DET program. These funds provide a limited amount of 72-hour psychiatric evaluations in eight hospitals in Alaska, up to 30 days of psychiatric treatment in two hospitals, physicians' services, and transportation to the hospitals. In addition, it pays for enhanced detoxification at two facilities for persons who are intoxicated and expressing suicidal ideation. Historically, client eligibility for this program has been budget driven. The definition of an eligible client was chosen so that all eligible clients could be served within the existing budget. The law suit has demanded that, among other things, the definition of eligibility be expanded to a larger population.

Eligibility Expansion

Payment for DET services will be expanded to all persons who are a danger to themselves or others or gravely disabled due to a mental illness, who are at or below 185% of the federal poverty guidelines, and who have no other source of payment.

The FY2000 Governor's Budget includes a request of \$1097.0 in federal receipt authority for a Substance Abuse and Mental Health Services Administration (SAMSHA) grant as a part of the Community Mental Health/API 2000 project. Prior experience with a larger population indicated that the expanded eligibility would result in increased cost of at least \$300.0. Part of the SAMSHA federal grant will cover these increased costs and another portion would allow limited expansion of the current program. The total cost of these changes is \$582.1. None of these costs are reflected in the fiscal note, but are critical to its understanding. Hospital costs are based on a rate of \$930 per day, and detox costs are based on a cost of \$275 per day.

Community Mental Health/API 2000 (related to downsizing API)

The Community Mental Health/API 2000 project depends upon a fully functional DET program. The current DET program operates outside of Anchorage. For the Community Mental Health/API 2000 project related to the downsizing of the Alaska Psychiatric Institute to work, the DET program must include Anchorage hospitals. The final portion of the \$1097.0 in the FY2000 Governor's Budget, \$514.9, expands DET services to Anchorage. Services in Anchorage will not begin until the last quarter of FY 2000 as they will coincide with the adjustment of the emergency service system to accommodate a smaller API. The annualized cost in Anchorage assumes the passage of SB 97 that establishes the entitlement and clarifies procedures by which the department pays for these services.

DET Payments

	<u>FY99</u>	<u>FY00</u>	<u>FY01</u>	<u>FY02</u>
GF/MH				
Base	1,046.3	1,046.3	1,046.3	1,046.3
SB97	0.0	0.0	0.0	2,641.7
Federal (SAMSHA)				
Governor's FY2000 Req	0.0	1,097.0	1,097.0	0.0
SB97	0.0	0.0	1,544.7	0.0
	<u>1,046.3</u>	<u>2,143.3</u>	<u>3,688.0</u>	<u>3,688.0</u>
DET Eligibility Determination	0.0	0.0	150.0	150.0
DET Program Total	1,046.3	2,143.3	3,838.0	3,838.0

ANALYSIS (cont.):

Costs of Expansion

For FY2001, the costs in the Grants/Claims line reflect the cost of annualized DET services in Anchorage. These costs are directly related to the passage of SB 97. The costs assume full implementation of the new definition of eligibility, and serving all eligible clients as an entitlement. In addition, there is a related cost of \$150.0 in GF/MH funds for the purchase of eligibility determination. A more complex eligibility process will be necessary, based on the procedures used by the DHSS Division of Public Assistance to process welfare applications. The cost assumes a large volume of applications. The costs in the "Contractual" line will be necessary to process the applications and pay the cost of processing the bills. For FY2001, all new costs are funded through federal receipts.

The expansion of DET services to Anchorage will purchase an additional 2,984.8 bed days per year, or an average of 8.2 DET patients per day. The eligibility expansion is projected to require an additional 843.6 bed days per year or an average additional 2.3 patients per day.

The costs in FY2002 and beyond are all GF/MH due to the SAMSHA grant expiration.

If SB 97 does not pass, the FY2000 funds in the Governor's Budget would cover the anticipated service demands of the new eligibility definition outside of Anchorage, and permit limited services to remain in Anchorage indefinitely. However, there would not be sufficient funds to meet the demand to allow the Community Mental Health/API 2000 project to work. Services would be suspended at the point funds were exhausted, probably in mid-spring of FY2001. The department could anticipate additional litigation regarding the responsibility of the department to pay for these services. Court action could include further expansion of the definition of the population eligible to receive services under this program.

Alaska State Legislature

SENATOR
PETER KELLY

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Senate District P

Senate

MEMORANDUM

TO: Senator Mike Miller, Chair
Health, Education & Social Services Committee

FROM: Senator Pete Kelly *Pete*

DATE: March 29, 1999

RE: SB 97: Mental Health; Records; Treatment

At your earliest convenience, please schedule a hearing for Senate Bill 97, "An Act relating to confidential mental health records; relating to mental health services and programs; relating to liability for payment for mental health evaluation and treatment services; and providing for an effective date."

I have introduced this legislation on behalf of the Department of Health and Social Services. Attached please find a copy of the sponsor statement and additional back-up provided by the Department.

Thank you for your consideration of this request.

attachments

I-LS0545\G
Lauterbach
4/14/99

CS FOR SENATE BILL NO. 97 **Hess**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR PETE KELLY

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to mental health services and programs; relating to liability for
2 paynient for mental health evaluation and treatment services; and providing for
3 an effective date."

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

5 * Section 1. AS 47.30.910 is repealed and reenacted to read:

6 Sec. 47.30.910. Liability for expense of placement in an evaluation or
7 treatment facility. (a) A patient, the patient's legal representative acting in a
8 representative capacity, the patient's spouse, or the patient's parents if the patient is
9 under the age of 18 shall pay or contribute to the payment of charges for the care,
10 transportation, and treatment of the patient when the patient is hospitalized under
11 AS 47.30.670 - 47.30.915 at a state-operated facility, an evaluation facility, or a
12 designated treatment facility providing services under AS 47.30.670 - 47.30.915.
13 Charges assessed when a patient is hospitalized at a facility operated by the department
14 or a facility designated by the department to provide services under AS 47.30.670 -

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47.30.915 may not exceed the actual cost of care and treatment.

(b) The department may order payment by the patient or by the person responsible for payment for the patient's care and treatment under this section if the patient is hospitalized at a state-operated facility unless the patient would meet the eligibility criteria in AS 47.31.010 but for the fact that the patient is hospitalized at a state-operated facility. The department may investigate to determine the patient's ability to pay and may require sworn statements by the patient, the patient's legal representative acting in a representative capacity, the patient's spouse, or the patient's parent regarding the income of the patient, the patient's spouse, or the patient's parent. The commissioner may impose full liability for the patient's actual cost of care and treatment on the patient, the patient's legal representative acting in a representative capacity, the patient's spouse, or the patient's parent for refusal to supply a sworn statement of income. In order to impose liability for the cost of a patient's care, an order for payment shall be issued by the department within six months after the date on which the charge was incurred. The order remains in effect unless modified by subsequent court or department order.

(c) If a person who is hospitalized under AS 47.30.670 - 47.30.915 at an evaluation facility or a designated treatment facility, a patient's spouse, or a patient's parent cannot pay or contribute to the payment of charges described in (a) of this section, the patient may apply for assistance under AS 47.31.

(d) The department may charge or accept money or property from a person for the care or treatment of a patient. Money paid by the patient or on the patient's behalf to the department under this section shall be deposited in the general fund.

(e) In this section, "actual cost of the care and treatment" means

(1) the rate provided for by a contract entered into under AS 47.30.660;

or

(2) in the absence of a contract under AS 47.30.660, a daily rate determined by the department.

* Sec. 2. AS 47.30.915(4) is amended to read:

(4) "designated treatment facility" means a hospital, clinic, institution, center, or other health care facility that has been designated by the department for the

1 treatment or rehabilitation of mentally ill persons under AS 47.30.670 - 47.30.915
2 [AND FOR THE RECEIPT OF THESE PERSONS BY COURT-ORDERED
3 COMMITMENT,] but does not include correctional institutions;

4 * Sec. 3. AS 47 is amended by adding a new chapter to read:

5 **Chapter 31. Mental Health Treatment Assistance Program.**

6 **Sec. 47.31.005. Applicability.** This chapter applies only to those patients who
7 have received evaluation or treatment at an evaluation facility or a designated treatment
8 facility that is not a state-operated hospital.

9 **Sec. 47.31.010. Eligibility for assistance.** (a) The department shall provide
10 financial assistance under this chapter to a patient who

11 (1) does not have the available means to pay or contribute to the
12 payment of charges assessed by a facility;

13 (2) has no other third party to pay for the evaluation or treatment
14 provided under AS 47.30; and

15 (3) meets the criteria in this chapter.

16 (b) To be eligible for assistance under this chapter, a patient must have

17 (1) been admitted for inpatient evaluation or treatment at an evaluation
18 facility or a designated treatment facility other than a state-operated hospital after
19 either

20 (A) an involuntary commitment under AS 47.30.700 -
21 47.30.915; or

22 (B) a voluntary commitment chosen by the patient after a
23 determination by the patient's treating physician that the patient meets the
24 involuntary commitment criteria in AS 47.30.700 - 47.30.915; and

25 (2) a gross monthly household income that does not exceed 185 percent
26 of the federal poverty guideline for this state for the month in which service was
27 provided.

28 **Sec. 47.31.015. Application for assistance.** (a) To receive assistance under
29 this chapter, a patient or a patient's legal representative must apply in writing on a
30 form provided by the department. A patient must apply for assistance within 180 days
31 after the date of discharge from the facility.

1 (b) A patient who applies for assistance under this chapter, a patient's legal
2 representative, a patient's spouse, or a patient's parent must agree to release to the
3 department and the facility, if appropriate, records and information necessary to verify
4 eligibility for the assistance.

5 (c) The department may accept an application submitted by an evaluation
6 facility or a designated treatment facility on a patient's behalf if the facility shows to
7 the department's satisfaction that the patient

8 (1) was incapable of applying for assistance and a legal representative
9 was not available to apply on the patient's behalf under (a) of this section; or

10 (2) refused to apply for assistance for reasons related to the patient's
11 mental illness.

12 **Sec. 47.31.020. Decision on eligibility.** (a) Within 30 days after receiving
13 a complete application, the department shall give notice in writing of an eligibility
14 determination to the patient or the patient's legal representative. If the patient is found
15 ineligible, the notice must contain the reason for the denial and an explanation of the
16 patient's right to an administrative appeal of the denial.

17 (b) The department shall provide a copy of the notice of eligibility or
18 ineligibility to the facility at which the patient was treated.

19 **Sec. 47.31.025. Eligible services; rates.** The department shall identify the
20 type and level of services for which assistance is available under this chapter. The
21 department shall establish the rates of payment for those services.

22 **Sec. 47.31.030. Payment.** If the department determines that a patient is
23 eligible for assistance under this chapter, the department shall provide for payment of
24 assistance directly to the facility. By endorsing the check received from the
25 department or authorizing the endorsement by the facility's agent, the facility certifies
26 that the claim for which the check is payment is true and accurate unless written notice
27 of an error is sent to the department by the facility within 30 days after the date the
28 check is presented by the facility for payment.

29 **Sec. 47.31.035. Appeals.** (a) A patient or the patient's legal representative
30 may appeal a denial of assistance by sending written notice of objection to the
31 department within 30 days after the date of the notice of denial. The written notice

1 of objection must include an explanation of the reasons for the objection and may
2 include documentation supporting the objection. AS 44.62 (Administrative Procedure
3 Act) does not apply to the appeal.

4 (b) The commissioner or the commissioner's designee shall review the notice
5 of objection and issue a decision within 90 days after its receipt. The commissioner
6 or the commissioner's designee may request additional information on the appeal from
7 either the patient, the facility, or department staff. A request for additional information
8 suspends the time period for the appeal until the department determines that the
9 additional information has been received.

10 (c) The decision on the appeal under (b) of this section is a final agency
11 decision and may be appealed to the superior court under the Alaska Rules of
12 Appellate Procedure.

13 **Sec. 47.31.900. Regulations.** The department may adopt regulations to
14 interpret or implement this chapter.

15 **Sec. 47.31.990. Definitions.** In this chapter, unless the context otherwise
16 requires,

17 (1) "commissioner" means the commissioner of health and social
18 services;

19 (2) "department" means the Department of Health and Social Services;

20 (3) "designated treatment facility" has the meaning given in
21 AS 47.30.915;

22 (4) "evaluation facility" means a health care facility that has been
23 designated by the department to perform the evaluations described in AS 47.30.670 -
24 47.30.915, including a facility licensed under AS 18.20.020 or operated by the federal
25 government;

26 (5) "gross monthly household income" means all earned or unearned
27 income from any source of a member of the patient's household;

28 (6) "household" means persons who reside together in one residence
29 as a family unit;

30 (7) "mental illness" has the meaning given in AS 47.30.915.

31 * **Sec. 4. APPLICABILITY.** This Act applies to expenses incurred for mental health

1 services received on or after the effective date of this Act.

2 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

ARORA Consent Form

Client #: _____

Client Name: _____

PURPOSE: The Division of Mental Health and Developmental Disabilities (DMH/DD) has asked the Fairbanks Community Mental Health Center (FCMHC) to submit certain additional data on each of FCMHC's clients. The purpose of this form is to ask you whether you authorize FCMHC to submit personal identifying information about you.

ARORA PROJECT: The DMH/DD has developed a management information system called the Alaska Recipient Outcomes Research Application (ARORA). The DMH/DD wants FCMHC and other community mental health agencies throughout the state to submit certain personal identifying data on each client.

NON-IDENTIFYING INFORMATION: The data which FCMHC will submit for the ARORA project includes non-identifying information about you, such as race, sex, marital status, income, date of birth, and diagnosis. Historically FCMHC has routinely furnished this kind of non-identifying information about FCMHC's clients to various state and federal agencies and other authorized persons for statistical analysis and other legitimate uses.

PERSONAL IDENTIFYING INFORMATION: The additional data which the DMH/DD requests for the ARORA project includes the following personal identifying information about you:

- 1: The first two letters of your last name.
- 2: The first two letters of your first name.
- 3: The last four digits of your Social Security Number.

Please Check One of the Following:

_____ **YES, I authorize FCMHC to provide personal identifying information about me to the Division of Mental Health and Developmental Disabilities.**

_____ **NO, I do not authorize FCMHC to provide personal identifying information about me to the Division of Mental Health and Developmental Disabilities.**

Client Signature

Date

Parent/Guardian Signature Relationship

Date

Witness

Date

NAVIGATION MENU

[What is ARORA?](#)

[What's the problem with ARORA?](#)

[About the ARORA lawsuit](#)

[Selected court filings](#)

[SB 97](#)

[Have an opinion? Contact](#)

[Law Office Home Page](#)

[Law Office E-Mail](#)

ARORA MENTAL HEALTH DATABASE LAWSUIT INFORMATION PAGE

This web page contains information about a lawsuit challenging the legality of the State of Alaska's ARORA mental health reporting requirements.

The site is maintained by Fairbanks attorney Gail Ballou as a service to persons who are interested in learning about the ARORA database, the state's reporting requirements, the ARORA lawsuit, and related issues.

The author represents plaintiff Fairbanks Community Mental Health Center in the ARORA lawsuit, but nothing at this web site is an official statement on behalf of Fairbanks Community Mental Health Center.

What is ARORA?:

ARORA is a computerized government data collection system which compiles information about mental health care consumers in Alaska. The term "ARORA" is an abbreviation for the name of the system, "*Alaska Recipient Outcome Research Application*."

Through the ARORA system, the state's Division of Mental Health and Developmental Disabilities seeks to collect detailed information about every consumer who obtains services from a mental health care provider who receives state funding through Alaska's community mental health services program. The information which the Division gathers includes a wealth of personal information as well as each consumer's specific diagnosis(es) from a checklist of mental health disorders known as the DSM-IV. In November of 1997, the state adopted administrative regulations which formally authorize the ARORA system and which require all mental health care providers who receive state grant funds to report information about their clients to the Division.

The Division intends to keep ARORA information indefinitely and to use the information for "program planning, program evaluation, and research," including cross-referencing information with other state databases. According to a recent newspaper article, the ARORA database already contains information on 9,000 people.

What's the problem with ARORA?

Many mental health care consumers and professionals have serious misgivings about ARORA. One concern is that the ARORA regulations and reporting requirements may violate consumers' rights and providers' duties under various provisions of state and federal law, such as Alaska statutes protecting the confidentiality of therapist-patient communications and federal law governing the use of Social Security numbers. Some providers are not complying fully with the ARORA reporting

requirements because of this concern about the legal status of ARORA. Another concern is that the ARORA reporting requirements, even if legal, interfere with mental health therapy because consumers understandably do not want to divulge intimate details of their lives to therapists who must forward those details to a government computer database.

One concerned provider, Fairbanks Community Mental Health Center, recently filed a lawsuit to resolve doubts about the legality of the ARORA system. In response to the lawsuit, Senator Pete Kelly (R-Fairbanks) has introduced legislation to address some of the legal issues raised in the ARORA lawsuit.

About the ARORA lawsuit:

Case name: *Fairbanks Community Mental Health Center, Inc. v. State of Alaska*

File no.: 4FA-98-3530 Civil

Court: Superior Court for the State of Alaska, at Fairbanks
604 Barnette Street, Room 342
Fairbanks, Alaska 99701

Selected court filings as of March 15, 1999 (click on link to view document):

- [Complaint for Declaratory and Injunctive Relief](#) filed December 31, 1998
- [State's Answer](#) (on-line copy not yet available)
- [State's Motion for Judgment on the Pleadings](#) filed March 15, 1999 (on-line copy not yet available)

Senate Bill 97

Senator Pete Kelly (R-Fairbanks) has introduced legislation which proposes to solve some of the legal problems identified in the ARORA lawsuit by partially repealing existing laws which require mental health care professionals to protect consumers' privacy. The bill, known as SB 97, is currently in the senate Health, Education and Social Services Committee, of which Senator Kelly is vice chair.

To read the full text of SB 97 or to find information about the bill, visit the [SB 97 Information Page](#).


Have an opinion about ARORA or SB 97? Use these links to contact Alaska government officials:

- [Division of Mental Health and Developmental Disabilities](#)
- [Governor Tony Knowles](#)
- [Senator Pete Kelly](#) (sponsor of SB 97 and Vice Chair, senate HES Committee)
- Other members of the senate Health, Education and Social Services Committee, which is considering SB 97:
 - [Senator Mike Miller](#) (R-North Pole) (Chair)
 - [Senator Drue Pearce](#) (R-Anchorage)

- o [Senator Gary Wilken \(R-Fairbanks\)](#)
- o [Senator Kim Elton \(D-Juneau\)](#)
- [Other Alaska state senators](#)
- [Alaska state representatives](#)

Updated: March 16, 1999

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From the **Fairbanks Daily News-Miner**

January 18, 1999, at B-1

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Lawsuit filed over mental health reporting requirement

By Al Slavia, Staff Writer

After two years of talk, concern over a state database that contains profiles of mental health patients has escalated into a legal battle.

A local organization has filed a court challenge against a state-mandated reporting requirement because it believes the system jeopardizes patient confidentiality.

"For two years we've been trying to get this thing squared away and express our concerns and here's where we are," said Doug Pomeroy, executive director of the Fairbanks Community Mental Health Center.

State officials disagree with Pomeroy's claims regarding confidentiality and think the management information system, known as ARORA, serves a valuable purpose in formulating departmental policy and strategy.

"We have an obligation to collect data so we can do effective planning," said Karl Brimmer, director of the state's Division of Mental Health and Developmental Disabilities.

The colleagues now find themselves at the opposite end of a philosophical rift. The Fairbanks Community Mental Health Center recently filed a lawsuit against the division in Fairbanks Superior Court. They have requested a court injunction that would prohibit the division from gathering or disclosing any of the data.

Pomeroy's organization had always shared case information with the state in the past. The details are used in the planning and budgetary process. The division's new management information system, called the Alaska Recipient Outcomes Research Application, reached beyond the traditional, more generic reporting requirements.

ARORA requires precise patient information to establish an algorithm, which then serves as a patient's identity. The first two letters of a patient's first and last name are designated as a label, along with the patient's date of birth and last four digits of his or her social security number.

This permits the division to determine whether services are being duplicated and gauge the effectiveness of treatment in individual cases. Pomeroy believes an individual can be identified if the labeling information is cross-referenced with other public records that are more readily available to the public.

His agency's attorney, Gail Ballou, conducted an experiment to that effect. Pomeroy gave Ballou 23 algorithms established under the ARORA guidelines. They were referenced against public records. Pomeroy said Ballou was able to identify 16 of those individuals [see sidebar].

Pomeroy is worried that patients will hold back on

Decoding ARORA algorithms

(this sidebar is not part of the original News-Miner article)

In the ARORA database, individual mental health care consumers are not identified by name. Instead, each consumer is assigned a fourteen-digit code which is called

disclosing information in light of the mandatory reporting requirements and it will undermine the trust relationship.

"This relationship is what mental health work is built on," Pomeroy said. "If it's a poor one, mental health work cannot occur. That's why our concerns about the management information system known as ARORA are so acute."

The lawsuit identifies a perceived conflict between the confidentiality laws that regulate such professions as psychologists, therapists and others involved in social work. At odds is an administrative regulation adopted by the division. It requires all mental health organizations to comply with the mandatory reporting requirements or they risk losing state funding. In the case of the Fairbanks Community Mental Health Center, that would translate into a \$3 million loss.

"I suppose that's a possible consequence somewhere in the future," Brimner said. Each year, the division doles out \$32 million in grants to 45 mental health organizations across the state. Brimner estimated that about 20,000 individuals received services. The ARORA database was created in November 1997 and that database now includes case information on 9,000 individuals.

Brimner is not alarmed by the privacy concerns raised by Pomeroy because he believes proper safeguards are in place.

"The algorithm protects the ability to solicit that information," Brimner said. "Within my division, there are only a limited amount of people that have access to that information and they know they can be subject to prosecution or penalties."

Brimner said the information enables the division to not only ascertain the effectiveness of treatment, but locate specific areas where additional services may be required.

"The division thinks those are the links that are important to us so that we can do the best planning," Brimner said. "It tells us not only how many being served but how they are being served."

The Washington State Supreme Court had a similar opinion in a decision handed down in 1986.

an algorithm. This code, or algorithm, is supposed to protect the identity and privacy of mental health care consumers, but it does not.

The fourteen-digit ARORA algorithm consists of the first two letters of the consumer's first and last names, the consumer's date of birth, and the last four digits of the consumer's Social Security number. For example, the ARORA algorithm for a person named Jane Smith who was born on November 4, 1955 and whose Social Security number is 123-45-6789 is JASM1104556789.

Such a mixture of letters and numbers may seem impenetrable at first glance, but in fact it is easy to decode an ARORA algorithm and to determine a mental health care consumer's identity.

The fastest way to decode an ARORA algorithm is to use elementary computer search-and-sort techniques to compare an algorithm to information contained in one or more government or private computer databases which contain most Alaskans' names, birth dates, and Social Security numbers. Examples of such databases include the Permanent Fund Dividend file, law enforcement's Alaska Public Safety Information Network (APSIN), and credit reporting companies' records. By using simple search-and-sort methods, it is easy to identify every person in a database whose name, birth date, and Social Security number match the information contained in an ARORA algorithm. For nearly all ARORA algorithms, there will be only one match.

Since there ordinarily will be just one match, an ARORA algorithm is a highly reliable device for identifying and tracking mental health care consumers. Indeed, an ARORA algorithm is often a better identifier than is a consumer's name alone, since an algorithm contains information (birth date and part of Social Security number) which makes it possible to distinguish among people who have the same name, to track consumers whose names change (for example, women who change their names upon marriage or divorce), and to target consumers who try to protect their privacy by giving a fictitious name, incorrect birth date, or made-up Social Security number.

Of course, most people who might want to decode an ARORA algorithm do not have access to huge government or corporate databases which make it easy to decode an algorithm quickly, but access to these databases is not necessary. An average person who wants to decode an ARORA algorithm can ordinarily do so just by comparing the algorithm to information which is readily available in public records, libraries, and now on the Internet.

In the experiment mentioned in the accompanying News-Miner article, 16 of 23 algorithms were decoded in only 24 hours by one person who researched information which is available to anyone at no cost. Decoding was

A hospital and two patients challenged the legality of reporting requirements. The court ruled in favor of the state in a split decision. The decision permitted the state to gather the data, provided it was "carefully tailored to meet valid governmental interest."

stopped after 24 hours because, by then, the experiment had already demonstrated that ARORA algorithms do not protect the identity or privacy of mental health care consumers.


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Updated: February 28, 1999

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Senate

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Senate District P

SENATE BILL 97

SPONSOR STATEMENT

"An Act relating to confidential mental health records; relating to mental health Services and programs; relating to liability for payment for mental health evaluation and treatment services; and providing for an effective date."

DHSS reimburses private community hospitals (Designated Evaluation and Treatment Facilities) throughout Alaska to provide emergency mental health inpatient evaluation and treatment services. Hospitals provide these services to individuals who are at risk of harming themselves or others, or who are so severely impaired by mental health symptoms that they are unable to care for themselves. Often these individuals are experiencing severe psychiatric symptoms, such as depressive or psychotic symptoms, and need intensive inpatient mental health services.

Senate Bill 97 seeks to clarify the state's responsibility for payment for services and the responsibility of the state to determine the ability of patients to pay for those services. The proposed legislation clarifies client eligibility for these services. Additionally, it establishes procedures for determining eligibility, processing applications, and paying claims. SB 97 creates an entitlement for eligible clients, thus allowing payment for serving those individuals whose mental illness increases their danger to themselves or others. The following are criteria for eligibility:

- Ⓐ A patient is determined to be "suffering from a mental illness, and as a result is likely to cause serious harm to themselves or others, or is gravely disabled." and;
- Ⓑ The patient's gross monthly household income falls below 185% of the federal poverty guideline.

SB 97 amends current statutes defining the state's responsibility for payment for inpatient psychiatric service for those patients needing intensive services. Historically the Department of Health and Social Services (DHSS) has reimbursed hospitals for only those patients who are committed by the courts for evaluation and treatment services. This legislation would require the department to reimburse hospitals for individuals who meet the commitment criteria, but who voluntarily admit themselves into the hospital. These individuals are therefore, not court ordered into care, but could be held under court order if they attempted to leave the hospital.

LEGAL SERVICES
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LEGISLATIVE AFFAIRS AGENCY
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Juneau, Alaska 99801-2105

MEMORANDUM

March 16, 1999

SUBJECT: Sectional Summary of SB 97 (Mental Health)

TO: Senator Pete Kelly
Attn: Lorna

FROM: Terri Lauterbach
Legislative Counsel *T. Lauterbach*

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 and the bill itself is the best statement of its contents.

You have not indicated that you have any legal questions about this bill, so this memorandum is very brief. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, let me know.

Section 1. Allows the disclosure of otherwise confidential patient mental health information from various licensed mental health professionals to the Department of Health and Social Services.

Section 2. Requires local community mental health programs to disclose otherwise confidential patient mental health information to the Department of Health and Social Services and to notify patients that such disclosures will be made.

Section 3. Directs the Department of Health and Social Services to monitor local community mental health programs and to review patient eligibility for mental health services under the programs.

Section 4. Authorizes disclosure of confidential mental health information to the Department of Health and Social Services.

Section 5. Directs the Department of Health and Social Services to collect patient information from mental health facilities.

Section 6. Authorizes disclosure of confidential mental health information and records to the Department of Health and Social Services.

Senator Pete Kelly
March 17, 1999
Page 2

Section 7. Requires a patient and certain relatives of the patient to contribute to the cost of the patient's care at certain mental health facilities.

Section 8. Establishes a mental health treatment assistance program.

Section 9. Effective date.

TML:jdr:glc
99-127.jdr

***Resolution Concerning Management Information Systems (MIS)
and Measurable Consumer Outcomes***

Whereas, NAMI Alaska represents families and direct mental health consumers throughout Alaska;

Whereas, it is necessary and essential to have a fully integrated MIS to improve care, monitor quality, and control costs on behalf of consumers;

Whereas, Alaska currently has a lack of measurable outcomes on behalf of consumers;

Whereas, the Alaska Legislature and the Alaska Mental Health Trust Authority have both made it clear that work on measurable outcomes must begin in earnest;

Whereas, a failure to make progress on MIS and measurable outcomes may result in Legislatively imposed solutions;

Whereas, full consumer participation in both the MIS and measurable outcome processes have been assured by the Department of Health and Social Services, the Alaska Mental Health Trust Authority, and the Alaska Mental Health Board;

Whereas, all transferred information for MIS and measurable outcomes will be encrypted (or scrambled) so that it can not be interpreted by anyone other than the Division of Mental Health and Developmental Disabilities;

Whereas, Alaska State law and regulation provide for punishment of not more than one year in jail and up to a \$5,000.00 fine for anyone who discloses this information without authorization;


Whereas, the protections provided by the Division of Mental Health and Developmental Disabilities exceed those protections when such information is provided to Medicaid or insurance companies for payment;

Whereas, consumer support of these processes is dependent on Department's guarantees that all consumer data remains confidential and protected from unauthorized sources;

Now therefore be it resolved by the NAMI Alaska as follows:

1. The State of Alaska and the Department of Health and Social Services should move immediately but no later than July 1, 1998, to bring on-line a fully functioning MIS.
2. The Department of Health and Social Services should immediately redouble it's efforts to implement a measurable outcome based system to measure the quality of care received by consumers.
3. As part of the MIS and measurable outcome processes, a statewide and uniform process and program for measuring outcomes and consumer satisfaction should be established in the next year.
4. Finally, consumers and family members must be involved not only in providing input and feedback but also in the design, operation, evaluation and governance of these processes. The most reasonable and rapid way to assure consumer and family members' involvement is to create incentives for all community mental health centers and other DMHDD grantee agencies to meaningfully involve consumers in all program development and change activities.
5. This resolution should be personally conveyed to the Commissioner, Department of Health and Social Services, the Alaska Mental Health Trust Authority, and the Alaska Mental Health Board.
6. All parties should know this resolution was fully supported at the statewide annual meeting of families and consumers May 9, 1998.

Dated this 18th day of May, 1998.



Jeanette Grasto,

President, NAMI Alaska



April 6, 1999

By hand delivery

Sen. Mike Miller
Chair, HESS Committee
Alaska Legislature
Capitol Room 119
Juneau, Alaska

Sen. Pete Kelly
Vice Chair, HESS Committee
Alaska Legislature
Capitol Room 510
Juneau, Alaska

Re: **SB 97: Mental Health Information and Liability for
Involuntary/Voluntary-in-Lieu admissions**

Dear Senators Miller and Kelly:

Enclosed please find my testimony regarding SB 97. In our view, the legislation is a good step, but there are certain changes that could be made to improve the bill. In particular:

Mental Health Information Gathering: the bill should:

- ◆ require Departmental tracking of involuntary commitments
- ◆ require Departmental tracking of temporary holds in jails

Liability for mental health commitment charges: the bill should:

- ◆ clarify eligibility for relief to cover "voluntary-in-lieu" admissions
- ◆ be refined to accomplish its purpose

We have worked with representatives of the Knowles Administration and mental health providers to narrow the range of dispute regarding this bill, and I am hopeful that with further work we can come closer to a consensus bill. I look forward to discussion regarding the bill at tomorrow's hearing. To the extent that this office may be of assistance in refining the language of the bill, do not hesitate to call us at 586-1627.

Very truly yours,

Robert B. Briggs
Staff attorney

JUNEAU
230 South Franklin
Suite 209
Juneau, AK 99801
(907) 586-1627
FAX (907) 586-1066

MEMBER OF THE
NATIONAL
ASSOCIATION OF
PROTECTION &
ADVOCACY
SYSTEMS

cc: (w/ encl.)

Elmer Lindstrom, DHSS
Shannon O'Fallon, Dept. of Law
Pat Clasby
Walter Majoros, AMHB
Jeff Jesse, AMHTA
Robin Henry, AKAMI
Rick Tessandore, exec. dir., DLC - Anchorage
client C.D.

Statement of Robert B. Briggs
Staff Attorney, Disability Law Center of Alaska, Inc.

Testimony before the Senate HESS Committee

Hearing on S.B. 97:
Mental Health Records; Liability for Involuntary/Voluntary-in-Lieu Treatment

Mr. Chairman Miller, Senator Kelly, and other members of the HESS Committee, thank you for this opportunity to provide input on a subject of importance to people who have mental disabilities, and their families.

MENTAL HEALTH INFORMATION GATHERING

The Disability Law Center supports the concept of information gathering by the Department of Health and Social Services (DHSS) to support decision making regarding delivery of mental health services in the state, so long as client confidentiality is protected. We therefore support the elements of S.B. 97 that expand and more affirmatively state the Department's mandate to gather information from providers who receive State funds. However, I believe there are some ways the bill could be improved regarding information gathering.

◆ **The bill should require Departmental tracking of involuntary commitments**

Currently, there is no method of tracking and counting the number of involuntary mental health commitments that occur statewide as a result of judicial orders. So far as we are aware, there are only two sources of any information the Department has regarding DET services: (1) the information gleaned from claims for relief from liability submitted to the Department under AS 47.30.910, and (2) information provided by hospitals who provide involuntary treatment.

As the state proceeds with implementation of the plan to reduce beds at the Alaska Psychiatric Institute (API) under the plan referred to as "API 2000," delivery of mental health commitment services will increasingly be provided at local hospitals. These hospitals may have a financial incentive to maximize use of any mental health unit they operate. The Legislature must be sure that the Department establishes checks and balances in the system, to monitor average lengths of stay (LOS) and overall numbers of commitments, to prevent unnecessary commitments and unsuccessful treatments. Unmonitored commitment practices – fueled by inappropriate profit motives – can reward unsuccessful treatment outcomes by continuing to pay for extended hospitalizations during trials of long lists of ineffective and potentially harmful drug combinations.

I have observed in my work cases of families and patients who firmly felt compelled to go through just such unnecessary drug trials over periods of hospitalization that extended several months.

I think a starting point for a tracking system is knowing the unduplicated numbers of persons involuntarily admitted for evaluation and treatment, their diagnoses, the numbers of persons repeatedly admitted, the number of repeat admits, and the average length of stay. These and other data can be compared with national figures to try to determine whether Alaska's mental health delivery system is in step with national standards – or grossly out of step.

While the hospitals and facilities where evaluations and treatment take place are one potential source for the Department to gather information, it is also true that the Alaska Court System, in the process of issuing commitment orders, could provide information to the Department that would enable tracking of data. Thus I urge you to consider adding language that would specifically require data tracking of involuntary evaluation and treatment.

◆ **The bill should require Departmental tracking of temporary holds in jails**

Under Alaska's mental health commitment statutes, people who are being detained because of a mental illness are not supposed to be held in jails or other correctional facilities, except when absolutely necessary while awaiting transport, or awaiting an available bed at an evaluation or treatment facility.

It has been a vocal point of criticism of the current and previous administrations that there is no system of tracking the numbers of temporary mental health detentions in jails and other correctional facilities. Data on this use would help in the appropriate allocation of resources to the places of demonstrable need.

LIABILITY FOR MENTAL HEALTH COMMITMENT CHARGES

Involuntary mental health admissions serve an important State public purpose. Persons are hospitalized who are gravely disabled, or who present a danger to themselves or others. Hospitalization provides the opportunity for stabilization, reduction in acuity, and linkage with outpatient services on discharge that will reduce further costs to society. Existing AS 47.30.910 recognizes this state purpose by stating that those who lack the ability to pay for a mental health commitment under AS 47.30.660 – 47.30.910 shall be relieved of liability for costs of evaluation and treatment.

We represent a client who has sued the Department (actually a cross-suit in response to a bill collection action initiated by Bartlett Regional Hospital) for failure to implement existing AS 47.30.910.¹ One of the objectives of that suit is to compel the Department of issue regulations that uniformly and fairly implement AS 47.30.910. We reached a settlement in September 1998 by which the Department pledged to issued the sought-after regulations on March 1, 1999.

¹ *Bartlett Reg. Hosp. v. C.D. v. State of Alaska, et al.*, No. 1JU 97-2717 CIV (Alaska Sup'r Ct., 1st Jud. Dist.).

◆ The bill should clarify eligibility for relief to cover “voluntary-in-lieu” admissions

The need for those regulations could be mooted by S.B. 97, if it passes. S.B. 97 has the potential to resolve several disputes regarding interpretation of AS 47.30.910 that are involved in our lawsuit, including arguments that the current system as implemented by the Department discriminates against those who live outside the Anchorage area, and those whose admission is “voluntary-in-lieu” of an involuntary admission.

In particular, S.B. 97 would make plain that a specified class of persons – those with family incomes under 185% of the poverty line – would be eligible to apply for relief from liability for the charges of both involuntary evaluations or treatments, and for so-called “voluntary-in-lieu” evaluation or treatment.²

Failure to provide relief to “voluntary-in-lieu” patients will lead to increased involuntary admissions to take advantage of the relief program. Providing relief only to those who are involuntarily admitted *creates an incentive* to refuse to seek mental health treatment. Under the existing statute, the determination of ability to pay is to be made for all admissions occurring under AS 47.30.660 – 47.30.910 – and this includes both “voluntary-in-lieu” and involuntary admissions.³ Indeed, for a person who agrees voluntarily to undergo mental health services, under a threat by a treating physician to seek involuntary commitment, we think it would violate the due process and equal protection clauses of the Alaska and the United States Constitutions to decline to provide the same relief for “voluntary-in-lieu” admissions as for involuntary admissions.

However, from the perspective of the mental health disability community, SB 97 presents a trade-off: the current statute, the State argues, does not permit relieving those voluntarily admitted from liability. We disagree with the State’s interpretation of current AS 47.30.910 that is in the books, pointing to the text of the statute, the context of other related statutes, and to past practices of the Department in relieving persons from liability for voluntary admissions. However, S.B. 97 would moot this legal dispute, and avoid uncertainty as to the outcome of litigation.

However, S.B. 97 is a retraction from the current level of relief provided by AS 47.30.910. The existing statute requires the Department to relieve a person from liability based on the patient or liable person’s *ability to pay*. Thus persons of modest means, under the existing statute, could obtain relief from mental health commitment bills that exhaust their resources – that is, they should be able to if the statute is administered the way it is worded.

² A “voluntary-in-lieu” admission is one where the treating physician has expressed an intent to seek involuntary commitment if the patient does agree to voluntary commitment, the patient otherwise meets the involuntary commitment criteria, and the patient (or for a minor, the patient’s family) does agree to a voluntary commitment.

³ See AS 47.30.803 (regarding conversion from involuntary to voluntary status); AS 47.30.655 (1)(creating policy goal of encouraging seeking of voluntary treatment).

By endorsing the concept of SB 97, the community of mental health consumers are getting greater certainty about who would be eligible for the relief, and the amount of relief per person is likely to be greater, but the persons who will benefit is reduced.

S.B. 97 limits relief to those whose income is below 185% of the federal poverty line.⁴ Thus a significant percentage of the so-called "working poor" – those with incomes under 200% of the poverty line – will lose their ability to obtain relief even if they lack the ability to pay for an outstanding mental health commitment charge. The Center on Budget and Policy Priorities issued a study showing that in the mid-1990s, 34.5% of Alaskans with income under 200% of the federal poverty guidelines went without health insurance – altogether 12,000 out of an estimated 34,000 working poor.⁵ As Alaska continues the trend toward growth in visitor and other seasonal, temporary jobs, while losing valuable jobs in the oil and gas, timber and government sectors, these numbers of uninsured working poor will likely increase.

We believe it is penny-wise and pound-foolish not to consider providing relief to the working poor – those most likely to become successfully re-employed and to stay off of public benefits.

◆ **The bill should be refined to accomplish its purpose:**

There are other parts of the bill that will require revision if the bill is to have its intended effect. These are summarized as follows:

- 1) revision of the eligibility language, since the current language referring to ability "to contribute" could apply to most if not the entire eligibility population, and then the bill does nothing
- 2) revision of the appeal procedures; current language allows the Department to suspend an appeal indefinitely, placing an appeal in perpetual limbo, while the Department gleans information that it has asked of itself
- 3) there should be a clear statement of release from liability upon payment of the charges, similar to Medicaid law (which requires that a provider must accept the Medicaid payment as 100% payment and prohibits billing the patient for uncovered charges)

⁴ Applicable federal poverty guidelines are:

<u>Size of Family</u>	<u>Poverty Level</u>	<u>185% of Poverty Level</u>
1	\$10,320	\$18,060
2	\$13,840	\$24,220
3	\$17,360	\$30,380
4	\$20,880	\$36,540
each additional member	add \$3,520	add \$6,160

Source: 64 Fed.Reg. 13,428-430 (Mar. 18, 1999), reprinted at <http://aspe.os.dhhs.gov/poverty/99poverty.htm>.

⁵ J. Guyer and C. Mann, *Employed But Not Insured: a State-by-State Analysis of the Number of Low-Income Working Parents Who Lack Health Insurance*, CENTER FOR BUDGET AND POLICY PRIORITIES, at page 5, Table 1 (Feb. 9, 1999), reprinted at <http://www.cbpp.org/2-9-99mcaid.htm>.

- 4) to avoid any equal protection claims, language should be adopted that makes the program available to all persons seen for evaluation or treatment under AS 47.30.670 – 47.30.910, not just at those facilities “designated” by the Department. Otherwise, a person who happens to receive service at an “undesigned” facility will not be eligible for the relief program, despite being in all other ways similar to someone evaluated or treated at a “designated” facility
- 5) in determining eligibility, household income should be refined to include only family income of a person residing with the applicant. The income of a person not owing a duty of support cannot lawfully be counted in determining a person’s eligibility for a program based on financial need.

I will be happy to continue to work with Sen. Kelly’s staff and other interested parties to arrive at language that addresses the concerns raised in these comments.

John D. Coffey

From: Audit Report on DHSS - DMA and DMHDD
Program Selected Issues
by Division of Legislative Audit, 9/1/97

Recommendation No. 4

DMHDD should obtain client service data to enable effective management of the State's community mental health programs.

Currently, the lack of client service data renders DMHDD unable to determine if community mental health funding is appropriate. No reliable data currently exists which accurately reflects the total number of clients annually receiving publicly funded community mental health services. While the Medicaid payment system does collect the number of clients served through Medicaid, major deficiencies exist in DMHDD's data collection concerning clients served by state grant funds.

DMHDD has collected selective mental health client data from providers for many years using a management information system (MIS). However, the type of information collected is not adequate to measure the number of clients served by the state grant system. Inherent system inadequacies such as no mandatory provider participation requirements, no data verification process, and a varying definition between providers of who qualifies as a "client" makes the reliability of the data suspect. Some providers we interviewed expressed frustration that while they spend the time to submit data reports to DMHDD, nothing of value seems to result.

Furthermore, current data collection methods do not allow unduplication²⁷ between the number of clients served as reported by DMHDD's MIS and the number of clients served as reported by the Medicaid MIS. Without this ability, DHSS cannot identify the total population of mental health clients served nor detect if Medicaid payments are being made for clients also funded through state grants.

DMHDD is currently implementing a new MIS in an attempt to address some of the data collection problems that currently exist. All providers will be required to report data as of July 1, 1997. However, due to provider concerns about confidentiality and beliefs that client consent is necessary to report this information to the State, we believe the effectiveness of the new MIS system could be jeopardized. We did not ascertain whether these provider concerns

²⁷ Unduplication refers to the process of eliminating duplicate counts of the same client that results due to a client receiving services through both programs.

are valid. However, in order for DMHDD to implement an effective data collection system they must be addressed. If data is reported as currently envisioned by the MIS, DMHDD will only be able to compute an unduplicated count of clients if providers appropriately report the Medicaid clients. Since client names will not be reported, DMHDD will not be able to independently verify whether clients reported by community mental health centers are also Medicaid eligible.

While the number of clients served does not reflect the amount of service delivered, we believe that a significant element of grant funding decisions should be based on the historical number of clients served in an area. Currently, it appears DMHDD bases its grant funding allocations primarily on how much a provider was granted in prior years. As revealed in the table to the right, per capita grant funding has not been equal across selected population areas. DMHDD personnel note that it does not zero base budget²⁸ when awarding state grants. Instead, there is the concept of a base budget for grantees. Some of the providers we interviewed did not understand how grant allocation decisions were made nor did they perceive the process as fact-based or scientific.

**FY 97 Per Capita Community
Mental Health Grant Funds for
Selected Population Areas**

Kenai - \$16
Anchorage - \$33
Fairbanks - \$44
Matanuska-Susitna - \$44
Juneau - \$69

Based upon DMHDD listings of FY 97 grant awards and Department of Labor July 1996 population totals.

To identify mental health needs in Alaska, the Alaska Mental Health Board (AMHB) relies to some degree, on national prevalence²⁹ rates to develop funding recommendations to the Alaska Mental Health Trust Authority (AMHTA) which in turn makes funding recommendations to the legislature. In its September 1996 annual report, AMHTA indicated that various boards³⁰ use a combination of national prevalence data compared with the use of services to forecast the number of persons requiring services. AMHTA notes that:

Prevalence data is not necessarily an indicator of service need, however. Some individuals do not need publicly funded services because they have private supports. Conversely, some require assistance but do not seek out help from which they could benefit.

In its July 1997 report to the AMHTA, AMHB also notes that national prevalence estimates likely distort the actual state-level prevalence due to Alaska's increasing urbanization. The prevalence rates used are based upon national studies which do not address the unique geographic, social, and economic conditions that exist in Alaska.

²⁸ Zero base budget refers to the process of having each expenditure or item justified as to its need or cost.

²⁹ Prevalence is the total number of estimated cases in a given population at a specific time.

³⁰ The planning boards referred to are: the Advisory Board on Alcoholism and Drug Abuse, the Alaska Commission on Aging, the Governor's Council on Disabilities and Special Education, and AMHB.

The AMHTA has identified the lack of adequate client data as one of the hurdles to effective implementation of the State's comprehensive integrated mental health program. We recommend that DMHDD work with providers, AMHB, and AMHTA to develop a solution to what we consider a major deficiency in the State's mental health program by implementing a system to collect complete, accurate, and unduplicated client data. Changes in the funding and delivery of mental health services, in response to Recommendation Nos. 1 and 2, may change current data needs.

From: DHSS Response to Legislative Audit - 9/1/97

Recommendation #4: DMHDD should obtain client service data to enable effective management of the State's community mental health programs.

DMHDD agrees with the importance of collecting outcome data for the purpose of determining the effectiveness of mental health services. The division is currently implementing a new data collection system that provides more complete information about the clients who

¹ Rates for group treatment are clarified and for intensive rehabilitation services are made all inconclusive.

receive services from the community mental health providers. This system called ARORA is designed to measure the following:

- Service utilization;
- Under- and over-utilization per agency by target population(s);
- Patterns of service per demographics, region, and identified needs;
- Basic service outcomes;
- Service history per individual;
- Service/funding relationship and history per grantee;
- Comparison of utilization with outcomes; and
- Consumer involvement in service planning

As a result of these measurements, we will know *how grant and Medicaid funds are utilized*, whether consumers are included in treatment planning, the amount and type of services delivered, and whether those services are achieving desired outcomes. The new MIS has the capacity to unduplicate clients and services across both grant funding and Medicaid funding. This will allow for the integration of information about services provided through these two sources. These efforts will create a more complete picture of the services delivered to consumers. DMHDD will use this objective information to plan and develop annual budgets. As a result, these budgets will more accurately reflect service needs throughout the state.

ARORA MIS Timeline	
July 92	Include MH Data in ADA MIS
July 93	Develop MIS Design
July 94	System & Design Analysis
Dec 95	Build ARORA MIS
June 96	Enhance grantees' data processing
Sept 96	MIS Regs draft
July 97	ARORA Implementation Starts
Dec 97	Regulations Effective

Revised regulations will address agencies' concerns about confidentiality and clearly define the legal authority of the Department to collect and protect client information that is sent to the State by providers. These new regulations are in the final stage of adoption. Providers are required by existing statute and these new regulations to submit MIS information to the Department.

Recommendation #5: DMHDD should develop meaningful outcome measures and collect meaningful outcome data to determine effectiveness of services provided by public community mental health funding.

The Department agrees with the importance of collecting meaningful data for purposes of determining the effectiveness of mental health services. The Department is participating with the planning boards and the AMHTA in a planning process for the next Comprehensive Integrated Mental Health Plan (CIMHP). The next CIMHP will identify common methods to measure the impacts of our services on Alaskans who need mental health services. This approach to planning is called Results-Based Planning and starts with developing a common

ARORA Consent Form

Client #: _____

Client Name: _____

PURPOSE: The Division of Mental Health and Developmental Disabilities (DME/DD) has asked the Fairbanks Community Mental Health Center (FCMHC) to submit certain additional data on each of FCMHC's clients. The purpose of this form is to ask you whether you authorize FCMHC to submit personal identifying information about you.

ARORA PROJECT: The DMH/DD has developed a management information system called the Alaska Recipient Outcomes Research Application (ARORA). The DMH/DD wants FCMHC and other community mental health agencies throughout the state to submit certain personal identifying data on each client.

NON-IDENTIFYING INFORMATION: The data which FCMHC will submit for the ARORA project includes non-identifying information about you, such as race, sex, marital status, income, date of birth, and diagnosis. Historically FCMHC has routinely furnished this kind of non-identifying information about FCMHC's clients to various state and federal agencies and other authorized persons for statistical analysis and other legitimate uses.

PERSONAL IDENTIFYING INFORMATION: The additional data which the DME/DD requests for the ARORA project includes the following personal identifying information about you:

- 1: The first two letters of your last name.
- 2: The first two letters of your first name.
- 3: The last four digits of your Social Security Number.

Please Check One of the Following:

_____ **YES, I authorize FCMHC to provide personal identifying information about me to the Division of Mental Health and Developmental Disabilities.**

_____ **NO, I do not authorize FCMHC to provide personal identifying information about me to the Division of Mental Health and Developmental Disabilities.**

Client Signature

Date

Parent/Guardian Signature Relationship

Date

Witness

Date

NAVIGATION MENU

[What is ARORA?](#)

[What's the problem with ARORA?](#)

[About the ARORA lawsuit](#)

[Selected court filings](#)

[SB 97](#)

[Have an opinion? Contact](#)

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ARORA MENTAL HEALTH DATABASE LAWSUIT INFORMATION PAGE

This web page contains information about a lawsuit challenging the legality of the State of Alaska's ARORA mental health reporting requirements.

The site is maintained by Fairbanks attorney Gail Ballou as a service to persons who are interested in learning about the ARORA database, the state's reporting requirements, the ARORA lawsuit, and related issues.

The author represents plaintiff Fairbanks Community Mental Health Center in the ARORA lawsuit,

but nothing at this web site is an official statement on behalf of Fairbanks Community Mental Health Center.

What is ARORA?:

ARORA is a computerized government data collection system which compiles information about mental health care consumers in Alaska. The term "ARORA" is an abbreviation for the name of the system, "*Alaska Recipient Outcome Research Application*."

Through the ARORA system, the state's Division of Mental Health and Developmental Disabilities seeks to collect detailed information about every consumer who obtains services from a mental health care provider who receives state funding through Alaska's community mental health services program. The information which the Division gathers includes a wealth of personal information as well as each consumer's specific diagnosis(es) from a checklist of mental health disorders known as the DSM-IV. In November of 1997, the state adopted administrative regulations which formally authorize the ARORA system and which require all mental health care providers who receive state grant funds to report information about their clients to the Division.

The Division intends to keep ARORA information indefinitely and to use the information for "program planning, program evaluation, and research," including cross-referencing information with other state databases. According to a recent newspaper article, the ARORA database already contains information on 9,000 people.

What's the problem with ARORA?

Many mental health care consumers and professionals have serious misgivings about ARORA. One concern is that the ARORA regulations and reporting requirements may violate consumers' rights and providers' duties under various provisions of state and federal law, such as Alaska statutes protecting the confidentiality of therapist-patient communications and federal law governing the use of Social Security numbers. Some providers are not complying fully with the ARORA reporting

requirements because of this concern about the legal status of ARORA. Another concern is that the ARORA reporting requirements, even if legal, interfere with mental health therapy because consumers understandably do not want to divulge intimate details of their lives to therapists who must forward those details to a government computer database.

One concerned provider, Fairbanks Community Mental Health Center, recently filed a lawsuit to resolve doubts about the legality of the ARORA system. In response to the lawsuit, Senator Pete Kelly (R-Fairbanks) has introduced legislation to address some of the legal issues raised in the ARORA lawsuit.

About the ARORA lawsuit:

Case name: *Fairbanks Community Mental Health Center, Inc. v. State of Alaska*

File no.: 4FA-98-3530 Civil

Court: Superior Court for the State of Alaska, at Fairbanks
604 Barnette Street, Room 342
Fairbanks, Alaska 99701

Selected court filings as of March 15, 1999 (click on link to view document):

- [Complaint for Declaratory and Injunctive Relief](#) filed December 31, 1998
- [State's Answer](#) (on-line copy not yet available)
- [State's Motion for Judgment on the Pleadings](#) filed March 15, 1999 (on-line copy not yet available)

Senate Bill 97

Senator Pete Kelly (R-Fairbanks) has introduced legislation which proposes to solve some of the legal problems identified in the ARORA lawsuit by partially repealing existing laws which require mental health care professionals to protect consumers' privacy. The bill, known as SB 97, is currently in the senate Health, Education and Social Services Committee, of which Senator Kelly is vice chair.

To read the full text of SB 97 or to find information about the bill, visit the [SB 97 Information Page](#).


Have an opinion about ARORA or SB 97? Use these links to contact Alaska government officials:

- [Division of Mental Health and Developmental Disabilities](#)
- [Governor Tony Knowles](#)
- [Senator Pete Kelly](#) (sponsor of SB 97 and Vice Chair, senate HES Committee)
- Other members of the senate Health, Education and Social Services Committee, which is considering SB 97:
 - [Senator Mike Miller](#) (R-North Pole) (Chair)
 - [Senator Drue Pearce](#) (R-Anchorage)

- [Senator Gary Wilken \(R-Fairbanks\)](#)
- [Senator Kim Elton \(D-Juneau\)](#)
- [Other Alaska state senators](#)
- [Alaska state representatives](#)

Updated: March 16, 1999

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From the **Fairbanks Daily News-Miner**

January 18, 1999, at B-1

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Lawsuit filed over mental health reporting requirement

By Al Slavin, Staff Writer

After two years of talk, concern over a state database that contains profiles of mental health patients has escalated into a legal battle.

A local organization has filed a court challenge against a state-mandated reporting requirement because it believes the system jeopardizes patient confidentiality.

"For two years we've been trying to get this thing squared away and express our concerns and here's where we are," said Doug Pomeroy, executive director of the Fairbanks Community Mental Health Center.

State officials disagree with Pomeroy's claims regarding confidentiality and think the management information system, known as ARORA, serves a valuable purpose in formulating departmental policy and strategy.

"We have an obligation to collect data so we can do effective planning," said Karl Brimmer, director of the state's Division of Mental Health and Developmental Disabilities.

The colleagues now find themselves at the opposite end of a philosophical rift. The Fairbanks Community Mental Health Center recently filed a lawsuit against the division in Fairbanks Superior Court. They have requested a court injunction that would prohibit the division from gathering or disclosing any of the data.

Pomeroy's organization had always shared case information with the state in the past. The details are used in the planning and budgetary process. The division's new management information system, called the Alaska Recipient Outcomes Research Application, reached beyond the traditional, more generic reporting requirements.

ARORA requires precise patient information to establish an algorithm, which then serves as a patient's identity. The first two letters of a patient's first and last name are designated as a label, along with the patient's date of birth and last four digits of his or her social security number.

This permits the division to determine whether services are being duplicated and gauge the effectiveness of treatment in individual cases. Pomeroy believes an individual can be identified if the labeling information is cross-referenced with other public records that are more readily available to the public.

His agency's attorney, Gail Ballou, conducted an experiment to that effect. Pomeroy gave Ballou 23 algorithms established under the ARORA guidelines. They were referenced against public records. Pomeroy said Ballou was able to identify 16 of those individuals [see sidebar].

Pomeroy is worried that patients will hold back on

Decoding ARORA algorithms

(this sidebar is not part of the original News-Miner article)

In the ARORA database, individual mental health care consumers are not identified by name. Instead, each consumer is assigned a fourteen-digit code which is called

disclosing information in light of the mandatory reporting requirements and it will undermine the trust relationship.

"This relationship is what mental health work is built on," Pomeroy said. "If it's a poor one, mental health work cannot occur. That's why our concerns about the management information system known as ARORA are so acute."

The lawsuit identifies a perceived conflict between the confidentiality laws that regulate such professions as psychologists, therapists and others involved in social work. At odds is an administrative regulation adopted by the division. It requires all mental health organizations to comply with the mandatory reporting requirements or they risk losing state funding. In the case of the Fairbanks Community Mental Health Center, that would translate into a \$3 million loss.

"I suppose that's a possible consequence somewhere in the future," Brimner said. Each year, the division doles out \$32 million in grants to 45 mental health organizations across the state. Brimner estimated that about 20,000 individuals received services. The ARORA database was created in November 1997 and that database now includes case information on 9,000 individuals.

Brimner is not alarmed by the privacy concerns raised by Pomeroy because he believes proper safeguards are in place.

"The algorithm protects the ability to solicit that information," Brimner said. "Within my division, there are only a limited amount of people that have access to that information and they know they can be subject to prosecution or penalties."

Brimner said the information enables the division to not only ascertain the effectiveness of treatment, but locate specific areas where additional services may be required.

"The division thinks those are the links that are important to us so that we can do the best planning," Brimner said. "It tells us not only how many being served but how they are being served."

The Washington State Supreme Court had a similar opinion in a decision handed down in 1986.

an algorithm. This code, or algorithm, is supposed to protect the identity and privacy of mental health care consumers, but it does not.

The fourteen-digit ARORA algorithm consists of the first two letters of the consumer's first and last names, the consumer's date of birth, and the last four digits of the consumer's Social Security number. For example, the ARORA algorithm for a person named Jane Smith who was born on November 4, 1955 and whose Social Security number is 123-45-6789 is JASM1104556789.

Such a mixture of letters and numbers may seem impenetrable at first glance, but in fact it is easy to decode an ARORA algorithm and to determine a mental health care consumer's identity.

The fastest way to decode an ARORA algorithm is to use elementary computer search-and-sort techniques to compare an algorithm to information contained in one or more government or private computer databases which contain most Alaskans' names, birth dates, and Social Security numbers. Examples of such databases include the Permanent Fund Dividend file, law enforcement's Alaska Public Safety Information Network (APSIN), and credit reporting companies' records. By using simple search-and-sort methods, it is easy to identify every person in a database whose name, birth date, and Social Security number match the information contained in an ARORA algorithm. For nearly all ARORA algorithms, there will be only one match.

Since there ordinarily will be just one match, an ARORA algorithm is a highly reliable device for identifying and tracking mental health care consumers. Indeed, an ARORA algorithm is often a better identifier than is a consumer's name alone, since an algorithm contains information (birth date and part of Social Security number) which makes it possible to distinguish among people who have the same name, to track consumers whose names change (for example, women who change their names upon marriage or divorce), and to target consumers who try to protect their privacy by giving a fictitious name, incorrect birth date, or made-up Social Security number.

Of course, most people who might want to decode an ARORA algorithm do not have access to huge government or corporate databases which make it easy to decode an algorithm quickly, but access to these databases is not necessary. An average person who wants to decode an ARORA algorithm can ordinarily do so just by comparing the algorithm to information which is readily available in public records, libraries, and now on the Internet.

In the experiment mentioned in the accompanying News-Miner article, 16 of 23 algorithms were decoded in only 24 hours by one person who researched information which is available to anyone at no cost. Decoding was

A hospital and two patients challenged the legality of reporting requirements. The court ruled in favor of the state in a split decision. The decision permitted the state to gather the data, provided it was "carefully tailored to meet valid governmental interest."

stopped after 24 hours because, by then, the experiment had already demonstrated that ARORA algorithms do not protect the identity or privacy of mental health care consumers.


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Updated: February 28, 1999

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FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 98

Revision Date/Time (Note if correction) _____ Dept. Affected Education
 Title An Act relating to teacher tenure BRU _____
 _____ Component _____
 Sponsor Senator Green _____
 Requester Senate HESS Component Serial No. _____

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						
-----------------------------	--	--	--	--	--	--

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	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill allows a teacher who has acquired tenure and loses tenure in a district because of a break in service to reacquire tenure in that school district if the break wasn't the result of dismissal.

This bill has no fiscal impact on the department. The fiscal impact on school districts cannot be determined at this time.

Prepared by Barbara Thompson Phone 465-4685
 Division Teaching and Learning Support Date/Time 3/19/99 5:01 PM
 Approved by Commissioner: Shirley J. Holloway, Ph.D. Date 3-19-99
 Agency Department of Education

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**SENATE COMMITTEE REPORT
First Committee of Referral**

DATE: 3/10/99

FURTHER:

Date of 5-Day Notice: 3/11/99
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 3/29/99

Health, Education and Social Services Committee considered SENATE BILL NO. 98

"An Act relating to teacher tenure."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
- same title
- new title
- House Bill:**
- same title
- technical title
- new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>George White</i>	✓				
<i>Clarence</i>	✓				
		<i>Robert Kelly</i>	✓		
		<i>K-S-24</i>		✓	
CHAIR:		CHAIR: <i>M. L. Miller</i>	✓		

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

<i>Educational</i>	<i>3/29/99</i>	✓	

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

<i>Ed</i>	<i>3/29/99</i>	✓	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill



**WRANGELL
PUBLIC SCHOOLS
DISTRICT OFFICE**

P.O. BOX 2319
WRANGELL, ALASKA 99929
Telephone (907) 874-2347
Fax # (907) 874-3137

GATEWAY TO THE STIKINE

March 22, 1999

Senator Lyda Green
Room 125, State Capitol
Juneau, AK 99801-1182

Dear Senator Green:

We are writing this letter of support of Senate Bill 98 which repeals the "portability" provision regarding acquisition of tenure.

Hiring districts are reluctant to take a chance on hiring teachers with only a one year evaluation window. Good teachers are losing good opportunities due to the tenure portability provision.

Thank you for supporting this bill.

Sincerely,

William T. Messmer

William T. Messmer
School Board President

by K. Gile

WM:kg

ALASKA STATE LEGISLATURE



Interim:

600 East Railroad Avenue
Wasilla, Alaska 99654
(907) 376-3370
(907) 376-3157 Fax

Session:

State Capitol
Juneau, Alaska 99801-1182
(907) 465-6600
Fax (907) 465-3805

SENATOR LYDA GREEN SENATE DISTRICT N

SPONSOR STATEMENT

Senate Bill 98 An Act Relating to Teacher Tenure

There have been unintended consequences for both teachers and school districts since the issue of "portability of tenure" was addressed in HB 465, 1996 Act Relating to Employment of Teachers and School Administrators.

The legislative intent of HB 465 pertaining to acquisition of tenure rights was to give both the newly hired teacher and the hiring district adequate time to "judge the match." Tenure is acquired in a district if, along with other requirements, the teacher is properly certified, has been employed as a teacher in the same district continuously for three full years, and has received evaluations that meet the district's performance standards.

The problem arises when a teacher voluntarily leaves one district to work in another. Changing districts constitutes a break in service and thus the issue of tenure is subject to the current wording in AS 14.20.150(d) which describes rights to reacquire tenure after a break in service, even in "...another school district..." and which provides only one year to make a determination about a new hire. Currently, some districts do not feel they have enough time to thoroughly evaluate a newly hired teacher (previously tenured) who has moved in from another district.

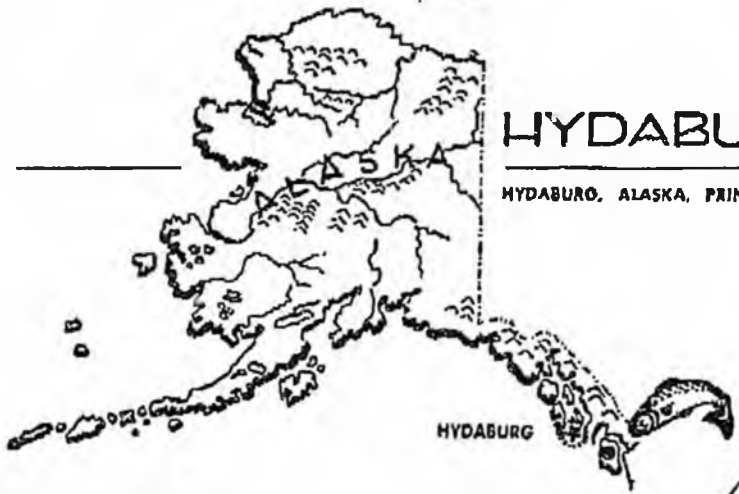
School districts are/may be forced to reject teacher applicants who have been previously tenured in another district because the hiring district is limited to only one year for evaluation, development of a meaningful improvement plan, and re-evaluation. This is a recruitment concern for those districts that routinely hire experienced teachers who have been tenured in another district.

Senator_Lyda_Green@legis.state.ak.us

Alexander Creek • Big Lake • Butte • Caswell • Chickaloon • Chulitna • Finger Lake • Goose Bay • Hatcher Pass • Houston
Knik • Kashwitna • Lake Louise • Lazy Mountain • Montana Creek • Nancy Lake • Nelchima • Palmer • Petersville • Point Mackenzie
Sheep Mountain • Skwentna • Sunshine • Sutton • Talkeetna • Trail Lakes • Trapper Creek • Wasilla • Willow

Districts may be reluctant to hire a teacher or to retain that teacher for over one year. Both school districts and teachers new to a district deserve more time to establish tenure. Until that time, districts and teachers will continue to be at a disadvantage.

Under SB 98, a previously tenured teacher who moves into a new district would be eligible to reacquire tenure after having sufficient time to meet the new district's standards. The hiring district would be able to offer, with confidence, continued employment and tenure to the "new" teacher.



HYDABURG CITY SCHOOL

HYDABURG, ALASKA, PRINCE OF WALES ISLAND 99922

mmj

TO: All Senators
 FROM: Marsha M. Johnson, Superintendent Hydaburg City School District
 RE: SB 98
 DATE: March 18, 1999

Hydaburg City School District supports SB 98 introduced by Senator Green. In the future, our district will be very reluctant to hire a tenured teacher. When you have a teacher with questionable teaching or judgment behaviors, one year is not enough time to adequately gather information. Thus, a good teacher could be let go just because the district does not want to take a chance on granting tenure to a teacher who may not fit philosophically with the district.

We hope that you will support SB 98.



MSBSD
*Developing productive
citizens for an ever changing world.*

MATANUSKA-SUSITNA BOROUGH SCHOOL DISTRICT
Office of the Superintendent

125 W. Evergreen Ave.
Palmer, Alaska 99645

ph (907) 746-9255 fax (907) 745-0667

March 19, 1999

Senator Lyda Green:

We are writing in support of SB 98 which seeks to repeal the portability of tenure. We have exercised caution before recommending the employment of a teacher with tenure portability as one year is just not adequate for evaluation purposes.

Portability of tenure assumes that success in one school district equals success in another school district which is clearly not the case. This law also affects our ability to retain and non-retain based on district-wide seniority by area of endorsement. Which means a teacher who has served the students of our district on an extended probationary period for more than two years would actually have less rights than one who is hired by our district and serves one year and one day.

The previous tenure law (prior to HB 465) provided inadequate time for administrators to thoroughly evaluate new teachers and implement a meaningful plan of improvement. The new law extended the time it takes to acquire tenure for new Alaskan teachers from two to three years. This helps to ensure these teachers are provided an opportunity to enhance their teaching skills and demonstrate their ability. This was very carefully thought out and is extremely helpful to all districts, however, the "Portability" part of this law was not as well thought out and is problematic for many Alaskan districts. We appreciate your consideration on SB 98.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Robert A. Lehman, Superintendent

Subject: SB 98

Date: Fri, 19 Mar 1999 18:26:23 EST

From: MCarter897@aol.com

To: aasb@ptialaska.net, Senator_Lyda_Green@legis.state.ak.us

Senator Lyda Green
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

Dear Senator Green

The Yukon Flats School District was in Juneau February 22,23 1999.
When we met
with you during our visit we discussed several issues, one of which
was
'Teacher Tenure Portability". I have been made aware of SB 98
Introduced by
you, the changes you are suggesting will give back the ability of
School
Districts to ensue that a Teacher we hire to work with our Children
meets the
Standards that we as the Yukon Flats School District require, and
the State.
Thank You for Listening to us and I hope your bill receives the
support it
needs and is passed.

Yukon Flats School District
Board Of Education
Fort Yukon Alaska

mcarter897@aol.com

SUBJECT AREA: PERSONNEL

4.1 PORTABILITY OF TENURE

AASB requests the State of Alaska Legislature repeal the section of Chapter 31 which provides for portability of teacher tenure.

Rationale. Chapter 31 includes a tenure portability feature which assures the attainment of tenure after only one year in a new district. All districts need ample time to judge whether a newly hired teacher in the district will be a proper match and meet the standards of the new district.

There is an absence of clear and universal teacher evaluation standards across the state making valid evaluation of past performance extremely difficult. *Amended 1997*

4.2 NATIONAL CERTIFICATION OF TEACHERS

AASB supports efforts to establish a financial incentive mechanism for state support of teachers and districts wishing to participate in the National Board for Professional Teaching Standards (NBPTS) process. State support for this resolution should be outside the foundation formula.

Rationale. NBPTS is an organization of teachers, administrators, board members, and other education stakeholders working to advance the teaching profession and to improve student learning. The mission of the NBPTS is to establish high and rigorous standards for what accomplished teachers should know and be able to do. Linked to these standards will be a new generation of fair and trustworthy assessment processes that honor the complexities and demands of teaching. The NBPTS certification process is offered on a voluntary basis for teachers wishing to demonstrate exemplary performance around the five core propositions:

1. Teachers are committed to students and their learning.
2. Teachers know the subjects they teach, and how to teach those subjects to students.
3. Teachers are responsible for managing and monitoring students learning.
4. Teachers think systematically about their practice and learn from experience.
5. Teachers are members of learning communities.

These standards are well-aligned with the Alaska State Board of Education adopted teaching standards. *Amended 1998*

4.3 TEACHER PREPARATION AND CERTIFICATION IN RURAL COMMUNITIES

AASB urges improved teacher preparation and certification for those intending to teach in small rural communities, and that opportunities are provided for potential candidates currently living in small rural communities to become certified teachers.

Rationale. Teacher preparation is a key to successful instructional experiences for teachers and students. A high level of intellectual rigor and connection to the reality of the classroom interactions is required. Teacher preparation needs to include a variety of experiences with several teachers and several sites.

4.4 MANDATED STAFF TRAINING

AASB urges the Department of Education to continue to provide professional quality videotape programs for all school districts to use in providing consistent mandated training to employees. AASB also urges the Department of Education or another state educational agency to be a clearinghouse for training tapes that have been developed by other school districts and agencies to be used by districts throughout the state.

Rationale. Mandated training affects all school districts in Alaska. State laws and regulations increasingly require school districts to provide training in specific areas such as sex/race equity, child abuse and fetal alcohol syndrome and suicide prevention. This training must be provided to all new employees and on a cyclical basis to continuing employees. Employees required to receive this training may be employed at many different locations, making it difficult to provide required training at a central location. Yet the state does not provide school districts with additional funding to implement the training.

4.5 DEVELOPMENT OF POST SECONDARY SPECIAL EDUCATION PROGRAMS IN ALASKA AND EDUCATIONAL OPPORTUNITIES FOR ALASKANS TO COMPLETE SPECIAL EDUCATION CERTIFICATION TRAINING OUTSIDE ALASKA

The Association of Alaska School Boards promotes the establishment and expansion of post-secondary educational programs to train additional individuals as certified special education teachers and the initiation of programs to train related services providers (i.e. school psychologists, physical therapists, and speech therapists) within our State University system.

The Association of Alaska School Boards also supports Alaskan residents completing certification as a special education related service provider while attending an academic program outside the State of Alaska and who, upon certification, are committed to provide services to Alaska public school systems.

Rationale. According to the 1995 Youth Risk Behavior survey, in 1993 the birth rate for 15-17 year olds in Alaska is similar to that for the nation as a whole (37.3 per 1,000 girls in Alaska, 37.7 per 1,000 girls nationally) while the state birth rate for 18-19 year olds is higher than that for the nation (113.7 in Alaska versus 94.5 nationally). The survey also reports that middle school boys are more likely to have had intercourse than are girls. The percentage of Alaska students who report ever having sexual intercourse increases from 34.5% among those aged 15 or less to 68.4% among those aged 18 and older. The survey reports: "Early sexual activity can be associated with unwanted pregnancy and sexually transmitted diseases, including HIV infection. Sexually transmitted diseases can lead to infertility, pelvic inflammatory disease and other complications."

Research presented by the SEARCH Institute and their "Building Assets in Youth" model has determined that a teen's belief "in the importance of abstaining from sexual activity AND his/her willingness to postpone sexual activity" is significant to their personal and academic development. *Amended 1998*

3.15 SUPPORT FOR STATE OF ALASKA CHILDREN'S CABINET

AASB supports efforts to pursue the four initiatives of the Children's Cabinet: activate Alaska's Children's Trust to channel money into community programs that help prevent child abuse and neglect; challenge child and family services to focus on prevention; raise awareness of children's well being; and juvenile crime prevention.

Rationale. The mission of the Children's Cabinet is to work-in partnership with families-to ensure children have opportunities for happy, healthy and productive lives. The Cabinet's charge is to advance a statewide children's agenda that cuts through red tape and works across departments.

3.16 IN SUPPORT OF THE ALASKA CHILDREN'S TRUST

AASB fully supports to the work of the Alaska Children's Trust, and urges all member school boards to work with the Trust to address the tragic consequences of abuse, neglect, violence, and crime experienced by too many of Alaska's children. AASB urges the Legislature to add to the Children's Trust Endowment on a yearly basis.

Rationale. The Alaska Children's Trust was established by the Legislature in 1988 with the mandate to promote initiatives that strengthen families and serve dependent children. Stress within families and communities has resulted in more children at risk for poor health, child abuse and neglect, violence in the community, and juvenile crime. The goal of the Children's Trust is to promote and provide opportunities so that Alaska's children can grow to responsible and productive adulthood, free of threats to their dignity, physical safety, and emotional well-being. To carry out its mandate, the Children's Trust will fund local programs that meet the needs and challenges of Alaska's families and children with innovative, efficient and effective services.

Until 1995, the Children's Trust had received no funding. Its \$6 million endowment offers the opportunity to create a true "permanent fund for prevention" since only the income of the Trust may be spent on programs and administration. *Amended 1997*

3.17 INCREASE IN ALCOHOL TAX

AASB supports legislation which would increase the alcohol tax to the equivalent of \$0.10 per drink, to be indexed yearly to inflation, and that the direction of funds raised under this tax to go towards prevention efforts of our school-aged youth.

Rationale. The Department of Health and Social Services reports that nearly half of all child abuse and juvenile crime in Alaska is committed while under the influence of alcohol. Parent involvement in the education of their children and student achievement are directly effected by alcohol abuse. The current tax on alcohol is the equivalent of \$0.03 - \$0.04 per drink. (.35 tax per gallon of beer, .85 tax per gallon on wine, and 5.65 tax per gallon of distilled spirits.) The State of Alaska spends considerably more for alcohol abuse related services and health care than it collects in alcohol taxes. Increasing the real cost of alcohol through taxation has shown a decrease in consumption. Because underage drinkers are more price sensitive than adults, higher costs reduce their consumption to an even greater degree. *Amended 1998*

3.18 PROHIBITING PERSONS CONVICTED OF CHILD SEXUAL ABUSE FROM SERVING ON SCHOOL BOARDS

AASB believes that persons convicted of child sexual abuse should be legally prohibited from serving on a school board while required to maintain registration as a sex offender under AS 12.63.010.020.

Rationale. School board members should serve as role models for students and staff. *Amended 1998*

SB

103

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. Senate Bill 103

Revision Date/Time (Note if correction)	Dept. Affected	Education
Title <u>An Act relating to a curriculum for</u>	BRU	Teaching and Learning Support
Native language education	Component	
Sponsor <u>Senators Lincoln, Ellis</u>		
Requester <u>Senate HESS</u>	Component Serial No.	

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						
-----------------------------	--	--	--	--	--	--

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

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
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: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

* While there is no fiscal impact for the department, related to Senate Bill 103, there may be some fiscal impact on school districts required to establish a local Native language curriculum advisory board.

Prepared by	<u>Barbara Thompson</u>	Phone	<u>465-8727</u>
Division	<u>Teaching and Learning Support</u>	Date/Time	<u>4/26/99 3:00 PM</u>
Approved by Commissioner:	<u>Richard S. Cross</u>	Date	<u>4/23/99</u>
Agency	<u>Department of Education</u>		

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SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 3/13/99

FURTHER: Finance

Date of 5-Day Notice: 4/22/99
 (in accordance with Uniform Rule 23)

DATE TURNED
 IN TO OFFICE: 4/26/99

Health, Education and Social Services Committee considered

SENATE BILL NO. 103

"An Act relating to a curriculum for Native language education; and providing for an effective date."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical title
 - new: SCR# _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>	✓	<i>[Signature]</i>	✓		
<i>[Signature]</i>	✓	<i>[Signature]</i>	✓		
CHAIR: <i>[Signature]</i>	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

<i>Education</i>		✓	

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

04/26/99
13:35:49

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM
PARTICIPANT LIST (TESTIFIERS ONLY)
TCN:90667 SCHEDULED FOR:04/26/99 13:30 TO 15:00
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SB 103

MR.

JAMES M.

NAGEAK

NSLOPE BSD

TESTIFY

OFFNET

KOYUKUK

SB103

MS. ELIZA.

JONES

Richard and Nora Dauenhauer
3740 North Douglas Highway
Juneau, Alaska 99801
Telephone: (907) 586-4708
e-mail: jfrld@uas.alaska.edu

April 26, 1999

Testimony in Support of SB 103

We're sorry we cannot be present to testify in person, but we have previously scheduled commitments. We submit these written comments for the record.

My name is Richard Dauenhauer. Languages have been a central part of my life since junior high school. My academic training is in Germanic and Slavic languages, and in comparative literature. Since coming to Alaska in 1969 I have worked with applied linguistics and applied folklore, helping with materials development and teacher training for Alaska Native languages, and working for recognition of Alaska Native languages as deserving of a place in the classroom and curriculum. I have personally worked with about half of the Native languages in Alaska, but my major focus has been in partnership with my wife, Nora Marks Dauenhauer, working on Tlingit, which is her first language.

SB 103 gives explicit, positive moral support to the effort for the survival of Alaska Native languages by recognizing these languages as a legitimate, "canonical" part of the school curriculum where desired by the local community and the local school board. SB 103 recognizes Alaska Native languages along with those more traditionally taught, such as French, Spanish, German, Russian, and Japanese. SB 103 notes the academic and social benefits associated with the presence of Alaska Native languages in the schools in legitimately recognized, non-tokenized ways.

There is nothing in SB 103 that should present a threat to persons opposed to Alaska Native languages. There are no demands forcing Native language instruction on persons or communities who not desire it.

SB 103 is a positive step to counter more than a century of policies designed to weaken or eliminate the Alaska Native languages that are the unique heritage of our State. This modest bill provides an opportunity for the Alaska State legislature to offer some small measure of positive, largely symbolic, support for the survival of Alaska Native languages by recognizing the legitimacy of their inclusion in the school curriculum. SB 103 also includes suggestions for standards of content and methods of instruction, especially for state of the art distance delivery.

We agree with the background information articulated in the Sponsor Statement and in the section on Findings. We urge the committee and the legislature as a whole to support SB 103.

ALASKA STATE LEGISLATURE

Senator Georgianna Lincoln

State Capitol
Juneau, Alaska 99801-1182
(907) 465-3732
Fax (907) 465-2652



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Resources
Transportation
Budget Subcommittees:
Natural Resources
Corrections
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Woonsocket

SPONSOR STATEMENT SB 103 NATIVE LANGUAGE EDUCATION ACT

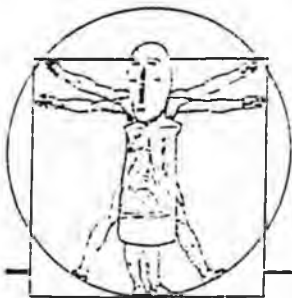
SB 103 provides that schools where a majority of the students are Alaska Natives may teach the language that is traditional within the community. A local Native language curriculum advisory board shall be established to review and make recommendations about the teaching of the Native language. If the advisory board recommends the establishment of a Native language education curriculum, it then may be incorporated into the school curriculum and taught by certified or trained instructors. The bill allows for the delivery of language instruction by existing satellite instruction or other distance delivery technology, including computer programs and audio distance delivery. The effective date of this legislation is July 1, 1999.

Many of Alaska's Native languages are on the brink of extinction. Dr. Michael Krauss, professor of linguistics at the University of Alaska Fairbanks, predicts that "short of a miracle or radical social change" we will lose 15, and possibly 18, of our 20 Native languages by the year 2055.

Sadly, the loss of Alaska Native languages is rooted in anti-Native language educational policies promoted by American missionaries and educators around the turn of the century. Schools played a critical role in efforts to assimilate Alaska Natives into the Western/Anglo religion, language and culture; in fact, children were punished for speaking their Native language.

Schools cannot, nor should they, carry the burden of Native language preservation alone. Parents, extended family members, and communities have important roles as well. In many villages, however, many of those tools are lost. We must have our schools involved and committed to teaching and preserving our Native languages. Presently, many of our village schools are teaching German, Spanish, Russian and Japanese to our children. Many who have the capability to extend their programs to include Native languages have not.

Native Language Education has received strong support from the Alaska Federation of Natives, the White House Conference on Indian Education, the Denakkanaaga Elders Conference, the Tanana Chiefs Conference, Bristol Bay Area Health Corporation, the Association of Village Council Presidents, the Interior Education Council, the Village Participation Conference, the Rural Alaska Community Action Program, and by numerous villages.



FRAME *of* REFERENCE

A PUBLICATION OF THE ALASKA HUMANITIES FORUM • VOL. VI, NO. 1 • DECEMBER 1995

LANGUAGE LOSS IN AMERICA

Languages represent the web and wealth of human life. So why are we losing so many of them?

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EXECUTIVE DIRECTOR'S MESSAGE

Congress "conserves" the endowments—but with a big cut in funding.

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Howard Weaver bids farewell with a speech in Juneau to the Alaska Historical Society.

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Friends of the Humanities continues to grow. Please join us—or give a gift membership!

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LANGUAGE LOSS IN ALASKA, THE UNITED STATES, AND THE WORLD

— by Michael J. Krauss

WE KNOW BY EXPERIENCE THAT LANGUAGES are passed from generation to generation by being spoken to children. From time immemorial this has been the way, a supremely human miracle, a process that works so naturally—and so irreplaceably. Elders simply speak the language to children and the children simply learn, with fluent control over the complex grammar and vast vocabulary that every language has. This is how a language lives on to perpetuate a people's unique culture and identity.

Why, then, don't we understand that if a language is not spoken to the children, it will die within a lifetime—and that with the language extinct, the people will suffer immeasurable loss to their culture and identity?

As every adult Alaska Native must know, the American educational system beginning in the 1880s forbade all use of Alaska Native languages in school. This was not done to make Alaska Natives bilingual in English in addition to their own languages — a per-

fectly possible goal, as the Russians' had been with Russian — but rather to wipe out Alaska Native languages and replace them with English. That system, brutally imposed on children with mental and physical punishment, has now nearly reached its goal. At first it produced a generation of people who were bilingual in Native and English, but who were trained to speak English and not their Native language to their children, with the false understanding that children can easily and naturally learn only one language, and that the language should be English, English only, as the Native language was inferior, an obstacle to their progress and assimilation from an "inferior" culture and identity to a "superior" one.

By the 1930s in many parts of Alaska, parents who were now bilingual began to raise the first generations of children who could not speak the language of their grandparents. The result now is that of the 20 Alaska Native languages alive today, *(continued on page 3)*

LANGUAGE LOSS

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only two—Siberian Yup'ik and Central Yup'ik—are still being learned in the traditional way, of parents speaking to children.

One language, Eyak, has left only one speaker, and she is in her 70s. Two languages, Tsimshian and Haida, have no speakers in Alaska younger than 60. Eleven languages have no speakers younger than 40; they are Aleut, Alutiiq, Tlingit, and seven of the 11 Athabaskan languages: Ahtna, Tanaina, Ingalik, Holikachuk, Koyukon, Tanana, and Han. Three Athabaskan languages, Upper Kuskokwim, Upper Tanana and Tanacross Athabaskan, may still be spoken by younger adults in their 20s or 30s. Younger adults or teenagers in a few isolated communities speak Aleut at Atka, Alutiiq at English Bay, Inupiaq on the Upper Kobuk, Tanaina at Lime Village, and Kutchin at Arctic Village and Venetie.

With just two languages being passed on in the traditional way, 90 percent of the Native languages of Alaska are no longer spoken by children. Without radical change, these languages will be extinct or have no native speakers left some time during the first half of the century nearly upon us.

Let us now broaden our consideration to put Alaska in perspective, to compare the Alaska situation with that of Native North America and the rest of the world.

Something over 300 Native languages were once spoken in what are now the United States and Canada. Of those 300 or so languages, about 210 are still spoken or remembered. Considering the disastrous history, it is surprising that perhaps two-thirds of these languages survive. But for how much longer?

Thirty-five of the 210 North American languages are spoken exclusively in Canada, leaving about 175 still being spoken in the United States (including the 20 in Alaska). I have divided these languages into five classes for degree of viability, or amount of time they may endure as living, spoken languages.

In Class A are languages that are still spoken by many, most, or all of the children. These languages are still viable, and may go on forever. As we shall see, however, they are by no means unendangered or "safe." In this very small and elite class are at best 20 of the 175, about 11 percent. (These include the two

Alaska languages noted above).

Class B consists of languages no longer spoken by children, but by adults of all ages, including the immediate parental generation. This class, larger than A but still the second smallest, has about 30 languages, or about 17 percent.

The largest is Class C, those languages now spoken only by middle-aged or older adults, the grandparental generation and up. About 70 Native U.S. languages are in this class, or 40 percent. (This class, as noted, includes most Alaska Native languages.)



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during the first half of
the century nearly
upon us.*



Then there is Class D, those languages spoken, or rather remembered, by a small handful — say one to a half-dozen — of the very oldest individuals. To this class of very nearly extinct languages belong the remainder, about 55 of the 175, a deeply alarming proportion of U.S. languages, about 31 percent.

Thus, at the rate things are going, most of these languages will become extinct unless radical changes are made and people take determined measures to preserve their own languages. Otherwise, by the year 2000 or soon thereafter, of the present 175 U.S. languages, 55 will be gone; by 2025, 70 more will be gone; and by 2050, 30 more will have joined class E — extinct Native American languages.

Will the remaining 20 languages, those fortunate few in Class A, also be on the road to extinction?

Not even the Class A languages are safe. One would think Navajo—by far the largest North American Native group, with some 200,000 people—would enjoy safety in numbers. But apparently not: In 1969-70, 90 percent of the children in first grade, age 6, came to school able to speak, dominant in, or monolingual in Navajo. Now, according to informal reports, it is quite the reverse: Eighty to 90 percent of Navajo children coming into the schools at age 6 are able to speak English but unable to speak Navajo.

During the past 25 years, then, a major American tragedy has taken place — silently, with no press coverage that I know of. Navajo had more children speaking their Native language than the other 174 languages put together. If Navajo is not safe, then none of these uniquely American languages is. All Native American languages are threatened — or beyond that.

How does Alaska compare? Despite its relative remoteness and late contact with Europeans, only two of 20 languages still are spoken by children, compared with 18 of 155 in the other States. Alaska is at best typical, or perhaps a bit worse off, than the rest of the United States.

Let us now look at the whole globe. There are currently some 6,000 languages (give or take 10 percent, depending on the distinction between languages and dialects, which is often difficult to draw consistently). Given that mankind's population is approaching 6 billion, the "average size" language would be spoken by about a *(continued on page 4)*

LANGUAGE LOSS

from page 3

million people. But the 15 largest languages account for more than half the world's population, leaving still, say, 5,985 languages spoken by the other half. There are actually only about 250 languages with a million or more speakers, and the median language—that is, the three-thousandth largest or smallest language—has only 5,000 to 10,000 speakers.

Much more difficult to count is the number of languages still being learned by children. Statistics for this are very hard to come by.

The best single published source is the Summer Institute of Linguistics (Wycliffe Bible Translators') *Ethnologue*, edited by Barbara Grimes, most recently in 1992. *Ethnologue* lists the world's languages and their numbers of speakers. For about 60 percent of the 6,000 it also gives an assessment of viability in terms of need for Bible translation. Grimes (in a personal communication) estimates that a maximum of 20 percent are not viable enough to warrant Bible translation.

But I believe 20 percent is a minimum figure for the languages no longer being learned by young children. From private estimates by linguists who have worked widely in various parts of the world, I estimate that as many as 50 percent of the world's languages either are already no longer transmitted to children or by the end of this century no longer will be. Thus I believe it most likely that between 20 percent and 50 percent of the world's 6,000 languages will become extinct during the coming century.

The only way to estimate the number of languages that are merely "endangered" is by setting aside those at the other end of the scale that we may term "safe." How may we define these?

One obvious criterion is sheer size in number of speakers. Navajo, in 1970 the largest North American language with perhaps 175,000 speakers (20 times the world median), is a sad lesson that 175,000 speakers may not be enough. Breton, the Celtic language of Brittany in France, had a million speakers in living memory, but now probably has fewer child speakers than Navajo. Under certain circumstances even a million speakers is not a safe number.

Another important factor is official state use and support, which Breton did not have. With state support, even much smaller languages,

such as Icelandic (250,000 speakers), or Greenlandic Eskimo (45,000), seem quite safe.

With increasing local autonomy and a growing number of independent states in the world, the number of state-supported languages may soon increase to about the same number—250—as are spoken by a million people or more. The majority of these states, however, support mainly English (45), French (30), Spanish (20), Arabic (20), Portuguese (6), and only about 70 others, most of which (including, e.g., emerging Estonian or Slovenian) have more than a million speakers anyway.

Still, it does not seem unrealistic to guess on these bases that 300 languages may be deemed "safe"—that children will still be learning them at the end of the coming century. Let us be generous and optimistic, even, and double the number to 600, or 10 percent.

Of the world's 6,000 languages, then, 5 to 10 percent are "safe." Another 20 percent to 50 percent are headed for extinction during the next century insofar as they are not being learned by children. This leaves between 40 percent and 75 percent, 2,400 to 4,500, that are merely "endangered." The fate of these languages—that is, whether or not they will be spoken by children at the end of the next century—hangs in the balance.

We might well ask: What "balance?"

Consider what has happened already in the United States (language mortality approaching 90 percent of 175 aboriginal languages) and Australia (mortality beyond 90 percent of 250). Nine countries have more than 200 languages: Zaire and Brazil (210 each), Mexico (240), Australia (250), Cameroon (270), India (380), Nigeria (410), Indonesia (670), and at the top Papua New Guinea (with 850!). These nine countries alone account for nearly 3,300 of the world's 6,000 languages. Another dozen countries, including, for instance, Ethiopia, Chad, and Burma, have more than 100 languages each. Consider the social conditions in many of these countries as they "develop" (in the direction of the United States and Australia?). What is likely to be the fate of their linguistic minorities?

Considering again the fact that the median-sized language has 5,000 to 10,000 speakers, one can grasp the enormity of the loss we face. It is a very realistic possibility that 90 percent of mankind's languages will become extinct or doomed to extinction during the coming century.



Languages are more than just practical systems of communication. Each is also a creation of beauty, through the collective and creative spirit of countless generations of our ancestors, with spiritual and emotional values unique to the identity of each society.



Why are we so unaware of or indifferent to the fate of our planet's linguistic diversity? Compare especially our growing concern for and willingness to act, even to sacrifice, for our planet's biological diversity — for whooping cranes and snail darters and perhaps even spotted owls.

The statistics of animal species endangerment are interesting to compare with the ones just given for languages. There is an "official" list (Red Book) of "endangered" or "threatened" species. Here let us take the two categories most visible and "charismatic" to us, mammals and birds. There are about 4,400 species of mammals, of which about 330, or 7.5 percent, are officially listed as "endangered" or "threatened." There are about 9,000 species of birds, of which 240, or 2.7 percent, are so listed. Because of politics, economics, and inaccessibility, however, it is certain that these figures are gross undercounts. Many conservation biologists estimate that the number of endangered species may be as high as 50 percent. Even the lower counts for endangered species have caused us great alarm, with good reason.

Yet the best estimate for the future of language diversity is worse than the worst for

biological diversity. Should we not be at least as concerned for languages? Is not human life as we know it utterly dependent on language?

I think the reason we do not care about the loss of language diversity is that we believe one or a few languages — the one or ones we know — would do for all mankind, even that mankind would be better off with only one language. It is a question considered at least since Babel. This is certainly a typical American English-speaker's belief: that with one language — presumably English — there would be greater mutual understanding and therefore peace on earth. That is an understandable argument, one with which I am often challenged.

The conflicts in Somalia and the former Yugoslavia are strong counterevidence to that hypothesis. Linguistically, Somalia is one of the least diverse countries of Africa, with 90 percent of its population speaking Somali or languages very close to Somali. Serbian and Croatian are the same single language; the difference does not even correspond to the dialectal differences within the language, but is strictly religious and political, expressed in different alphabets (Roman for Croatian, modified Cyrillic for Serbian) and in conflict that has nothing to do with language.

So much for the argument that one language would bring world peace and understanding.

On the contrary. The loss of any one language diminishes us all. Every language is as infinitely complex as a living organism, and the most marvelous manifestation of the human mind. A hundred linguists working a hundred years could not fully fathom the mystery of a single language, let alone the world of human languages.

Frighteningly late, we have barely begun to see the world of our languages as an interdependent system. In this we are still far behind our emerging understanding of the biological world as an interdependent system. Just as all life utterly depends on the natural world to sustain it, surely human life as such depends on the linguistic world to sustain it.

At the very least, just as our biological survival depends on an ecosystem, a web of life, can we be at all certain that our 6,000 languages are not at least as essential a part of an intellectual and social system upon which our humanity depends? How many languages are expendable, and which?

I can see at least four types of reasons why we must value and do our best to maintain mankind's linguistic diversity.

First, let us take the aesthetic or spiritual reasons. Languages are more than just practical systems of communication. Each is also a creation of beauty, through the collective and creative spirit of countless generations of our ancestors, with spiritual and emotional values unique to the identity of each society. The very diversity of languages itself constitutes its own beauty, of which we are still less aware or mainly take for granted by comparison with the beauty of the natural world.

If we were forced to choose only a few flowers to look at or smell — say, only roses and tulips, nice as those are — would not the world become a less satisfying place to live, dangerously less so? Might not the same be true about languages? Can man live by bread alone? Granted, this is only an aesthetic or spiritual argument, probably the weakest one, yet even this alone could be crucial for the survival of humanity.

Second, I cite the political, social, or ethical argument of human rights. Language, as noted, is also the expression of our culture, nationhood, and identity. Many people do not like to give up their language and take on another instead. So, from an ethical or even strictly pragmatic point of view, who is to choose which language gets to be the one everybody has to speak? People surely tend to prefer their own. A pure pragmatist, believing that might makes right, may not have to worry about Aleut preferences, which might not give much trouble. But what of Estonian, or French, or certainly Chinese? Well, alright, let's allow for several languages. But how many? Where do we draw the line between 2 and 6,000 — and who gets to draw it?

Do we just permit survival of the fittest, as we seem to be doing today? (Actually, these are not necessarily the "fittest" languages — there are no primitive or unfit languages. Fittest here means the most powerful and aggressive societies.) Are we not obligated, because of our very humanity and for the sake of humanity, to use instead our ability to make reasonable and responsible decisions?

Third, to an argument of perhaps still greater enormity. Our languages are our knowledge and understanding of the universe, our intellectual wealth, mankind's accumulated experience, store of ideas and insights. As

anyone who has learned more than one language surely has found out, different languages are not simply different or mechanically convertible ways of saying the same thing. Every language is priceless in that it expresses a unique knowledge and understanding of the world, an infinitely complex system of human thought, with information and concepts unique to it. Concepts can be transferred or borrowed, as English has done more than any other language. Some simple examples are the words omelette, kangaroo, kayak, and quinine. But even English has barely begun to incorporate the knowledge that is present in other languages of, say, history, technology, or medicinal plants.

Further, with the loss of any language, with its different grammar and way of interpreting reality, we lose our ability to think in different ways — even our freedom to think in different ways.

What could be worse than that? The fourth and final argument is that we simply do not know the answer to that question, or the ones before it. In our extermination of languages we simply do not know what we are doing. We do not know what further negative effects on human existence would result from the loss of all languages but one, or even all but 600 (which, as I point out, is a very real threat). Without fully understanding the consequences of what we are doing, do we have the right to make such irrevocable decisions?

Might not the lesson of Babel be that we were meant, for our own good, to live in intellectual and cultural diversity with our many languages? Or does our behavior show that we have now finally reached such a pinnacle of wisdom and reason that we no longer need our diversity?

I would add, finally, that for mutual understanding and peace on earth it is not necessary or even desirable to eliminate a single language. It is perfectly possible, in fact quite normal—though not so much currently in the tradition of American English speakers—to learn more than one language, to form a worldwide network of people who can understand each other and get along, and at the same time to maintain the web and wealth of human life that is our languages. ■

MICHAEL KRAUSS is director of the Alaska Native Language Center at the University of Alaska Fairbanks.

Alaska language among 'endangered'

The Associated Press

NEW HAVEN, Conn.—Tucked away deep in Alaska's interior, there are three households where Upper Kuskokwim is still spoken. In Oregon, two people in their 70s keep Klamath alive. And in northern Australia, about 10 native speakers of Jingulu are left.

Kuskokwim, Klamath and Jingulu are among the world's most endangered languages, having fallen victim to social and economic pressures that demand people learn more common tongues like English.

As the world becomes smaller, so does the number of viable languages: Linguists predict half of the approximately 6,000 languages spoken today will be extinct within the next century.

At Yale University, a modest effort is being made to counter the trend through a fund that allows researchers to travel to far-off regions to study and help resurrect dying languages, often by compiling dictionaries and other written records.

Set up four years ago by linguist Douglas H. Whalen, the Endangered Language Fund is this year financing its first projects. Ten projects, including efforts to preserve Kuskokwim, Klamath and Jingulu, will each get \$1,000.

"A lot of communities have been forced in various ways to start abandoning their language. I think people often don't realize that there's cultural value in their language until it's too late," said Whalen in a recent inter-

view at his office at Haskins Laboratories, a New Haven research institute that studies speech processes and disorders.

A distinct language, he said, often defines a unique community and binds it together but can become threatened by other encroaching languages and even, in some cases, by governmental force, Whalen said. Endangered languages exist on all continents, including North America.

"There's been direct government suppression of languages all over the world. In the United States, for example, the native American languages are the ones that were here first and for centuries there were deliberate attempts to get those languages to stop being used," he said.

Other victims of government suppression include Kurdish, which is currently banned in Turkey, and the language of Tasmania, which died out when the native speakers were killed.

More often, languages die because of the prevalence of more common languages like Chinese, English or Swahili. Modern technology and easy transportation have quite shrunk the planet in linguistic terms.

Although experts say there are at least 100 languages that are down to one native speaker, numbers don't always tell the full story.

For example, a language can have relatively few speakers, but if it is spoken by a community that remains fairly isolated and the language is used as the main instrument

of communication by all generations, the language may continue to thrive.

Conversely, a language can have thousands of speakers and still be considered endangered if all of the speakers are more than 50 years old and the younger generation doesn't use it.

That is what has happened to the Tohono O'odham language, which is an Indian tongue spoken by roughly 12,000 people in parts of Arizona and Mexico.

While the eldest generation speaks Tohono O'odham, many of their children refused to teach it to the next generation, deferring instead to English. That's because they themselves faced discrimination when they spoke it as children in U.S. schools, said native Ofelia Zepeda, a grant recipient.

"Across the country, you have a generation of native speakers who were not allowed to speak their languages or who were punished for speaking them," said Zepeda, an associate professor of linguistics at the University of Arizona.

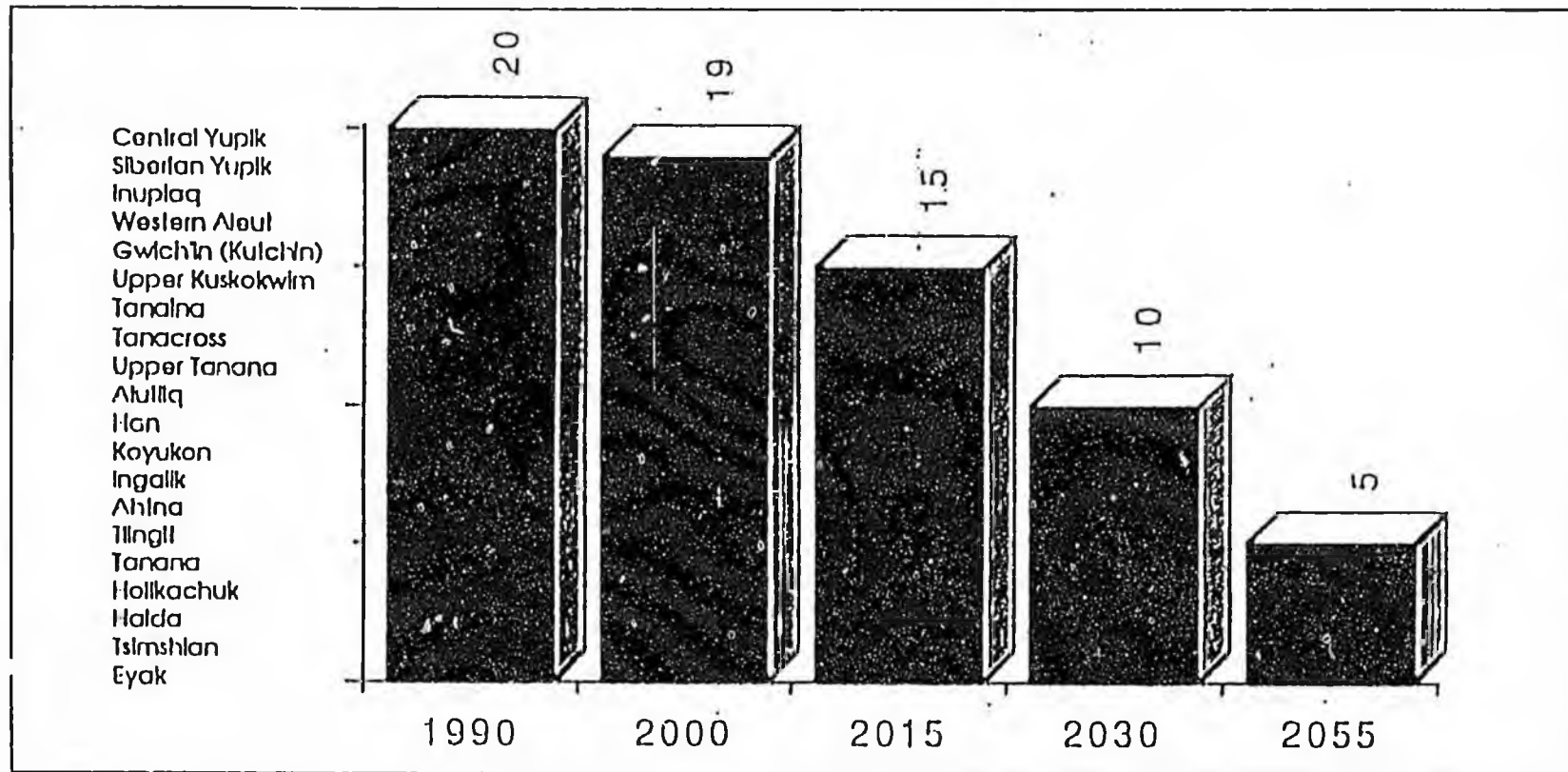
"Now they are parents and many have no interest in teaching the language. It took a long time to convince parents that their children wouldn't be punished for it," she said.

Zepeda will use the grant money to help finance a three-year project to produce a comprehensive dictionary that could be used as a teaching tool to recover Tohono O'odham.

"It will help the young children who are now learning the language. It's difficult because English is so pervasive," Zepeda said.

Foks Daily News
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Languages in Peril



Not allowing for miracles, Eyak will probably not survive this century; Alaska Tsimshian, Alaska Haida, Holikachuk, and Tanana will probably be extinct by 2015; and Tlingit, Ahlana, Ingallik, Koyukon and Han will probably be extinct by 2030. Furthermore, Atulliq, Upper Tanana, Tanacross, Tanaina and Upper Kuskokwim have an extremely doubtful future . . . not allowing for miracles or other radical changes, they will probably be extinct within a lifetime, by about 2055. By that year, then, probably only five of the twenty Alaska languages will still be spoken . . . Western Aleut . . . Kutchin . . . Inupiaq . . . Central Alaska Yupik and Siberian Yupik . . .

Dr. Michael Krauss
 Alaska Native Languages: Past, Present and Future
 Alaska Native Language Center Research Papers - 1980
 University of Alaska Fairbanks

A matter of voice

ADIU 1-11-98

Native speakers would be lost without their language

By FERN GREENBANK
Special to the Daily News

"I don't know what you mean," the students said over and over.

It seemed like a mantra and an excuse to avoid working. When you're a visiting teacher, you never know what teenagers will try.

After a few weeks in the village of Nunapitchuk, I started to wonder, "Maybe they really don't know what I mean." So, I asked them.

"What do you mean, you don't know what I mean?"

What a dumb question, their faces answered.

"We just don't know what your words mean," one student would say.

"Just keep talking," another would add. "We'll get it."

OPINION

Eventually, I'm the one who got it. Students discussed questions and issues in Yup'ik and answered me in English. I knew how it felt to be the minority.

FIRST THINGS FIRST: YUP'IK

The majority of high school students in the Southwest Alaska village of Nunapitchuk are considered Yup'ik speakers. I only heard them speak English when they were talking to English-only speakers.

My visit to Nunapitchuk was my first experience with Native speakers. All other school media projects had taken me to villages where

Please see Page F-5, LANGUAGE

LANGUAGE: Native students say

Continued from Page F1

English is the first language for students, with bits and pieces of Inupiaq or Athabaskan spoken by elders.

In the end, I realized the problem was not so much English as it was my choice of words, rate of speed, new concepts, isolated environment and the hodgepodge of educational programs the students had experienced over the years. It wasn't that they couldn't get it or didn't want to get it, they just didn't get it yet.

And, if the Legislature had anything to do with it, they might not have the chance to get it.

DEPENDS HOW YOU LOOK AT IT

People are placed in positions all the time where they have to make decisions that affect others' lives without having any firsthand knowledge or understanding of those lives. Government policies reflect this. Media coverage reflects this. Classroom materials reflect this. It's easy to make mistakes from a distance. Alaska has a lot of distance.

In Anchorage, I investigated all points of view, but being in the village was different, surrounded by children just living their lives. The issue of money or resurrection and preservation of language seemed moot. Whenever I questioned students about why it was important to have Yup'ik language instruction, they just looked at each other with bewildered expressions as if I were asking why they were Yup'ik.

"We're just like you," said Nunapitchuk junior Nick Williams. "We don't want to lose our language anymore than you'd want to lose yours."

"If I didn't speak my language, I would just look Yup'ik but I wouldn't be Yup'ik," said senior Joni Larson.

"If a young person doesn't understand what their Elder is saying to him, he would be very ashamed to call himself a Native person," said Gabe Serradell.

One student chose to stand back and look at herself. "Christina wants to start all over again using her own language."

But what about the cost, I asked. There's a big fuss going on, you know?

WHAT FUSS?

Ask any student in Nunapitchuk what all the funding fuss is about, and they'll tell you they didn't know there was a fuss. They know English is the first language for other villages, but not for them. It's difficult to tell them it isn't that simple.

If you ask students the same questions you ask school officials or legislators, you're likely to solicit more telling, more truthful answers, if the truth is what you're after. Students say they are not immigrants, they are Native Americans and they have the right to speak their Native language first. They look incredulous when you discuss the state's right to take it away.

My job was to help the students under-

bilingual education important

LETTER: Language helps to maintain culture

Continued from Page F-1

the bond between Native land and Native people, especially elders.

English is necessary because it helps us deal with a changing world. Native people who were bilingual made our Native land and lifestyle more accessible for use by passing ANCSA.

Without bilingual education, we would be speaking only one language, which would cause great confusion among people and would keep us from working and living together successfully.

To me, bilingual education is like having the key to the door of opportunity — self-esteem, confidence and a will to dedicate ourselves to future generations.

If the legislators said we should not have Yup'ik culture taught in the schools or if the state wanted to stop bilingual education, it would be helping to destroy our bond of respect toward Native ways. They would be helping to destroy and abandon our elder's great wisdom and understanding. How would we, in return, show our appreciation and gratitude if we don't speak our Native language? Without our Native language, we are nothing with a name called "nobody."

I feel fortunate because I am able to understand what the elders and white people are saying. But, when I'm speaking in Yup'ik and can't say what I have in my

mind, I use English to carry on to another subject till I can say my ideas in Yup'ik. I'm still having some trouble translating ideas in Yup'ik because there isn't always a Yup'ik word for a Western idea.

In our village, Nunapitchuk, which means "small piece of land," I usually hear people speaking in Yup'ik. The only time I hear them speak in English is when they are talking to a white person. Children usually speak in Yup'ik except for those whose parents speak in English to their relatives.

Bilingual people get a sense of pride because of the confidence they gain from having learned their language. Alexie, Isaac and Lillian Michelle, Yup'ik broadcasters at KYUK radio, said that if we value our language, we value our culture and the people around us. Lillian said that when a child asks what a Yup'ik word means, it is a sign that we are losing our language.

They said that people with bilingual skills are needed by businesses in the Delta because they are able to translate orally and in writing. They allow Natives and non-Natives to communicate.

The school district should be allowed to continue spending money on bilingual education. The reward is greater than money; it is the ability to learn and deal with a changing world.

— Alice Toocluk

stand an issue that affects them and then write about it persuasively. I repeated all the opposing arguments: Some want to make English the official language because it is easier and cheaper. Some are concerned that students will develop trouble functioning outside the village if they are enrolled in Yup'ik-only programs. We talked about villages that do not speak the Native language. We discussed the state's responsibility vs. the family and the cost, always the cost.

"What does money have to do with it?" students asked.

Every year for the past few years the Alaska Legislature has debated the merits of bilingual education, the level to which it should be funded and the formula by which money is distributed for language instruction. The issue is a political live wire across the nation. Those legislators opposing a change in the funding formula, and a resultant drastic cut in bilingual education dollars, are often criticized for not supporting Alaska Natives. Those favoring continuation and even expansion of bilingual education are often called on the carpet for not being realistic in light of available funds and test scores.

If I came to no other conclusion after

spending three weeks in Nunapitchuk with Yup'ik speaking students, it was this: The state of bilingual education, and funding, is one of the most difficult ethical dilemmas facing Alaska because it calls into question our understanding of ethnicity, identity and assimilation. It redefines the role of our educational system.

YOU HAD TO BE THERE

Nunapitchuk was unlike any village I had ever visited. The community is actively involved with making, and enforcing, school policies. People are interested in what you do, not why you're there or how soon you're leaving. Children downright funny, curious, friendly and kind.

It looks much like any other village externally: empty horizons, fierce blowing snow, messy dog yards, roaring snowmachines and fantastic sunsets. The village is built on soggy tundra that requires an elaborate system of boardwalks to keep from sinking knee-deep in muck.

The airstrip is across the river, which is fine when it's frozen and fine when it's not, but when it's in between, travel to meet planes takes some creativity and a bit of bravery. On a good day, you can showma-

mine to Bethel in 25 minutes. There are several villages within eye shot, giving Nunapitchuk a less-isolated feel. The village itself is spread out more than most; it's hard to find stable ground to build on. Every year, foundations have to be adjusted to keep up with the heaves.

The students also were unlike any group of students I'd worked with before. Sure, some had trouble expressing themselves in writing. Their English skills appeared below average. They struggled with skills such as making phone calls or setting up interviews, following through with tasks or thinking for themselves. A few had attitudes. But, they know who they are. Their sense of self and identity is remarkable and refreshing. They understand there are problems adjusting to life outside the village and that speaking English is a necessity to succeed out there. They will talk openly and honestly about race, intolerance and stereotypes.

HEARING IS BELIEVING

I knew the student's experience was more revealing and more accurate than any piece of documentation we could dig up. But, I had to explain that "Westerners historically do not accept heart, spirit or instinct as evidence. You can't turn in a paper with the only argument, "I know it's true because I feel it."

"Why not?" they asked.

Sometimes being a teacher sucks.

From experience, I knew the students' "distinctive" voices would not be published. I also knew there was a chance their "Western" voices would sound dry and monotone. It's just the harsh reality and one I don't like dealing with. Village English is interpreted by most readers as poor English and illiteracy. Heavy handed "clean up" of village English makes the essays take on my voice. While the original essays had more heart, my job is to teach journalistic writing skills based on facts.

The trick is to blend the heartfelt experiences of a culture with the Western standards of publishing. Three weeks just wasn't long enough.

When the students adhered to the tenets of editorial writing, they lost some of their "voice." The final essays don't sing like the original gut-felt essays. But, I know they have "distinctive" voices, both Yup'ik and English, because they let me get to know them.

The students' solution to the entire issue was simple; relocate the state capital to Nunapitchuk so legislators would get to know them and hear their bilingual voices. As the likelihood of this happening is slim, here are their Westernized voices. It helps to read between the lines.

□ Fern Greenback is director of The Village News Network, an independent media studies program for rural students. She also is former director of special projects for the University of Alaska Anchorage Journalism and Public Communications Department.
