ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672
10075 SENATE JUDICIARY

To: Records and Identification Bureau
Department of Public Safety
5700 E. Tudor Road
Anchorage, AK 99507

From:

R&I Assigned Client Number: ____________

____ This agency is not certified/licensed by a government agency.

____ This agency qualifies, according to AS 12.62.160(b)(8-10) as an 'Interested Person' for applicant screening purposes.

An applicant for employment must meet the below listed criteria to be retained in a position with this agency. We understand that the actual data in support of this criteria may not be released to our agency: *(select all that apply)*

____ Other than information previously obtained by this agency based on a fingerprint based Alaska criminal history record search, no *Current Offender Information.*

____ Other than information previously obtained by this agency based on a fingerprint based Alaska criminal history record search, no *Past Conviction Information for which the subject is required to register as a sex offender Under AS 12.62.010.*

____ Other than information previously obtained by this agency based on a fingerprint based Alaska criminal history record search, no *Past Conviction Information if less than 10 years has elapsed from the date of unconditional discharge from the date of the request.*

____ Other than information previously obtained by this agency based on a fingerprint based Alaska criminal history record search, no *Past Conviction Information for a serious offense defined in AS 12.62.900, regardless of the date of unconditional discharge.*

____ Other than information previously obtained by this agency based on a fingerprint based Alaska criminal history record search: (be specific)

____

____

Completed by: ______________________

Title: ______________________

Signature: ______________________

Date: ______________________

confidential financial reporting requirements;

(c) Monitoring compliance by department officers and employees with applicable requirements for filing and review of financial disclosure reports;

(d) Providing for retention of reports and transmittal, where necessary, of copies of reports to the Director of the Office of Government Ethics;

(e) Establishing procedures for public access to reports filed under title II of the Ethics in Government Act of 1978;

(f) Performing such other functions as may be necessary for the effective implementation of title II of the Ethics in Government Act.

[Order No. 832–79, 44 FR 29891, May 23, 1979, as amended by Order No. 960–81, 46 FR 52347, Oct. 27, 1981]

§ 0.79 Redelegation of authority.

The Assistant Attorney General for Administration is authorized to redelegate to any Department official any of the power or authority vested in him by this subpart O. Existing redelegations by the Assistant Attorney General for Administration shall continue in force and effect until modified or revoked.

[Order No. 543–73, 38 FR 29585, Oct. 26, 1973. Redesignated by Order No. 565–74, 39 FR 15876, May 6, 1974, and further redesignated by Order No. 832–79, 44 FR 29891, May 23, 1979]

Subpart P—Federal Bureau of Investigation

CROSS REFERENCE: For regulations pertaining to the Federal Bureau of Investigation, see part 3 of this chapter.

§ 0.85 General functions.

The Director of the Federal Bureau of Investigation shall:

(a) Investigate violations of the laws, including the criminal drug laws, of the United States and collect evidence in cases in which the United States is or may be a party in interest, except in cases in which such responsibility is by statute or otherwise specifically assigned to another investigative agency. The Director's authority to investigate violations of and collect evidence in cases involving the criminal drug laws of the United States is concurrent with such authority of the Administrator of the Drug Enforcement Administration under § 0.100 of this part. In investigating violations of such laws and in collecting evidence in such cases, the Director may exercise so much of the authority vested in the Attorney General by sections 1 and 2 of Reorganization Plan No. 1 of 1968, section 1 of Reorganization Plan No. 2 of 1973 and the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended, as he determines is necessary. He may also release FBI information on the same terms and for the same purposes that the Administrator of the Drug Enforcement Administration may disclose DEA information under § 0.103 of this part. The Director and his authorized delegates may seize, forfeit and remit or mitigate the forfeiture of property in accordance with 21 U.S.C. 881, 21 CFR 1316.71 through 1316.81, and 28 CFR 9.1 through 9.7.

(b) Conduct the acquisition, collection, exchange, classification and preservation of fingerprint cards and identification records from criminal justice and other governmental agencies, including fingerprint cards voluntarily submitted by individuals for personal identification purposes; provide expert testimony in Federal, State and local courts as to fingerprint examinations; and provide fingerprint training and provide identification assistance in disasters and for other humanitarian purposes.

(c) Conduct personnel investigations requisite to the work of the Department of Justice and whenever required by statute or otherwise.

(d) Carry out the Presidential directive of September 6, 1939, as reaffirmed by Presidential directives of January 8, 1943, July 24, 1950, and December 15, 1953, designating the Federal Bureau of Investigation to take charge of investigative work in matters relating to espionage, sabotage, subversive activities, and related matters.

(e) Establish and conduct law enforcement training programs to provide training for State and local law enforcement personnel; operate the Federal Bureau of Investigation National Academy; develop new approaches, techniques, systems, equipment, and devices to improve and

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strengthen law enforcement and assist in conducting State and local training programs, pursuant to section 404 of the Omnibus Crime Control and Safe Streets Act of 1968, 82 Stat. 204.

(f) Operate a central clearinghouse for police statistics under the Uniform Crime Reporting Program, and a computerized nationwide index of law enforcement information under the National Crime Information Center.

(g) Operate the Federal Bureau of Investigation Laboratory to serve not only the Federal Bureau of Investigation, but also to provide, without cost, technical and scientific assistance, including expert testimony in Federal or local courts, for all duly constituted law enforcement agencies, other organizational units of the Department of Justice, and other Federal agencies, which may desire to avail themselves of the service. As provided for in procedures agreed upon between the Secretary of State and the Attorney General, the services of the Federal Bureau of Investigation Laboratory may also be made available to foreign law enforcement agencies and courts.

(h) Make recommendations to the Office of Personnel Management in connection with applications for retirement under 5 U.S.C. 8336(c).

(i) Investigate alleged fraudulent conduct in connection with operations of the Department of Housing and Urban Development and other alleged violations of the criminal provisions of the National Housing Act, including 18 U.S.C. 1010.

(j) Exercise the power and authority vested in the Attorney General to approve and conduct exchanges of identification records with officials of federally chartered or insured banking institutions to promote or maintain the security of those institutions and, if authorized by State statute and approved by the Attorney General, to officials of State and local governments for purposes of employment and licensing; and exercise the power and authority vested in the Attorney General by 15 U.S.C. 78q(f)(2) and 7 U.S.C. 12a, to approve and conduct exchanges of identification records with certain segments of the securities industry and the Commodity Futures Trading Commission, respectively.

(k) Payment of awards (including those over $10,000) under 28 U.S.C. 524(c)(2), and purchase of evidence (including the authority to pay more than $100,000) under 28 U.S.C. 524(c)(1)(F).

(l) Exercise Lead Agency responsibility in investigating all crimes for which it has primary or concurrent jurisdiction and which involve terrorist activities or acts in preparation of terrorist activities within the statutory jurisdiction of the United States. Within the United States, this would include the collection, coordination, analysis, management and dissemination of intelligence and criminal information as appropriate. If another Federal agency identifies an individual who is engaged in terrorist activities or in acts in preparation of terrorist activities, that agency is requested to promptly notify the FBI. Terrorism includes the unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives.

(m) Carry out the Department's responsibilities under the Hate Crime Statistics Act.

(n) Exercise the authority vested in the Attorney General under section 528(a), Public Law 101-509, to accept from federal departments and agencies the services of law enforcement personnel to assist the Department of Justice in the investigation and prosecution of fraud or other criminal or unlawful activity in or against any federally insured financial institution or the Resolution Trust Corporation, and to coordinate the activities of such law enforcement personnel in the conduct of such investigations and prosecutions.

(o) Carry out the responsibilities conferred upon the Attorney General under the Communications Assistance for Law Enforcement Act, Title I of Pub. L. 103-414 (108 Stat. 4279), subject to the general supervision and direction of the Attorney General.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §0.85, see the List of Sections Affected in the Finding Aids section of this volume.

United States v Blackfeet Tribe of Blackfeet Indian Reservation (1973, DC Mont) 364 F Supp 192, adhered to (DC Mont) 369 F Supp 562.

FBI's investigative authority under 28 USCS § 533 and regulations (28 CFR § 0.85) extends to authorized national security investigations involving foreign influences; question whether FBI's actions in investigation were ultra vires depends on connection between subject of investigation and any potential threat to national security and on reasonable suspicions of FBI gathered from existing evidence. Jabara v Kelley (1979, ED Mich) 476 F Supp 561, vacated on other grounds (CA6 Mich) 691 F2d 272, cert den 464 US 863, 78 L Ed 2d 170, 104 S Ct 193 and (disagreed with MacPherson v IRS (CA9 Ariz) 803 F2d 479, 86-2 USTC ¶ 9761, 58 AFTR 2d 86-6101).

Under 28 USCS § 533, official of Federal Bureau of Investigation has affirmative prosecutorial duty to take whatever steps are necessary to bring criminal charges against suspect criminals, including timely informing prosecutorial authorities in Department of Justice that crime has allegedly been committed, and this [illegible] especially applicable where FBI's informants have been involved in criminal activity. Bergman v United States (1983, WD Mich) 565 F Supp 1353, 37 FR Serv 2d 442, later op (WD Mich) 579 F Supp 911, later proceeding (WD Mich) 648 F Supp 351, 6 FR Serv 3d 803, later proceeding (CA6) 1988 US App LEXIS 5058.

2. Power of prosecutors

FBI is, by statute, organization of officials vested with authority necessary for detection and prosecution of crimes, while United States Attorneys are charged with duty of prosecuting crimes; and since United States Attorneys are vested with complete control over proceedings, in exercise of sound discretion, argument that United States Attorney has no control over FBI, and that he cannot compel its agents to return property illegally seized by agents of FBI for use in prosecution in another district which could not be carried through unless pending removal proceedings were successful is not well founded, such property being as important in removal hearing as it is in final prosecution. Weinberg v United States (1942, CA2 NY) [illegible] F2d [illegible].

§ 534. Acquisition, preservation, and exchange of identification records and information; appointment of officials

(a) The Attorney General shall—

(1) acquire, collect, classify, and preserve identification, criminal identification, crime, and other records;

(2) acquire, collect, classify, and preserve any information which would assist in the identification of any deceased individual who has not been identified after the discovery of such deceased individual;

(3) acquire, collect, classify, and preserve any information which would assist in the location of any missing person (including an unemancipated person as defined by the laws of the place of residence of such person) and provide confirmation as to any entry for such a person to the parent, legal guardian, or next of kin of that person (and the Attorney General may acquire, collect, classify, and preserve such information from such parent, guardian, or next of kin); [and]

(4) exchange such records and information with, and for the official use of, authorized officials of the Federal Government, the States, cities, and penal and other institutions.

(b) The exchange of records and information authorized by subsection (a)(4) of this section is subject to cancellation if dissemination is made outside the receiving departments or related agencies.

P.O. BOX 7 Juneau, Alaska 99811

(c) The Attorney General may appoint officials to perform the functions authorized by this section.

(Sept. 6, 1966, P. L. 89-554, § 4(c), 80 Stat. 616; Oct. 12, 1982, P. L. 97-292, §§ 2, 3(a), 96 Stat. 1259.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
....	5 U.S.C. 300 (as applicable to acquisition etc. of identification and other records).	Aug. 31, 1964, Pub. L. 88-527, § 201 (1st 105 words of 1st par. under "Federal Bureau of Investigation", as applicable to acquisition etc. of identification and other records), 78 Stat. 717.
....	5 U.S.C. 340.	June 11, 1930, ch. 455, 46 Stat. 554.

The sections are combined and reorganized for clarity. Former section 300 of title 5 was from the Department of Justice Appropriation Act, 1965. Similar provisions were contained in each appropriation Act for the Department of Justice running back to 1921, which Acts are identified in a note under former section 300 of title 5, U.S.C. 1964 ed.

In subsection (a), the word "shall" is substituted for "has the duty" as a more direct expression. The function of acquiring, collecting, classifying, etc., referred to in former section 340 of title 5 was transferred to the Attorney General by 1950 Reorg., Plan No. 2, § 1, eff. May 24, 1950, 64 Stat. 1261, which is codified in section 509 of this title. Accordingly, the first 29 words and last 30 words of former section 340 are omitted as unnecessary.

In subsection (c), the authority to appoint officials for the cited purposes is implied.

Explanatory notes:

The bracketed word "and" has been inserted in subsec. (a)(3) of this section as the probable intention of Congress to include such matter for continuity.

Amendments:

1982. Act Oct. 12, 1982 substituted the section catchline for one which read: "Acquisition, preservation, and exchange of identification records and information; appointment of officials"; in subsec. (a), in para. (1), deleted "and" following the concluding semicolon, redesignated former para. (2) as para. (4), added paras. (2) and (3), and in para. (4), as redesignated, substituted "exchange such records and information" for "exchange these records"; and in subsec. (b), inserted "and information", and substituted "(a)(4)" for "(a)(2)".

Other provisions:

Funds for exchange of identification records. Act Oct. 25, 1972, P. L. 92-544, Title II, § 201, 86 Stat. 1115, provided: "The funds provided

Legislative Reference Library

which involves any of the sensitive circumstances specified in the Attorney General's Guidelines on Federal Bureau of Investigation Undercover Operations, such report shall contain a detailed description of the operation and related matters, including information pertaining to—

"(I) the results,

"(II) any civil claims, and

"(III) identification of such sensitive circumstances involved, that arose at any time during the course of such undercover operation.

"(6) For purposes of paragraph (5)—

"(A) the term 'closed' refers to the earliest point in time at which—

"(i) all criminal proceedings (other than appeals) are concluded, or

"(ii) covert activities are concluded, whichever occurs later,

"(B) the term 'employees' means employees, as defined in section 2105 of title 5 of the United States Code, of the Federal Bureau of Investigation, and

"(C) the terms 'undercover investigative operations' and "undercover operation" mean any undercover investigative operation of the Federal Bureau of Investigation or the Drug Enforcement Administration (other than a foreign counterintelligence undercover investigative operation)—

"(i) in which—

"(I) the gross receipts (excluding interest earned) exceed $50,000, or

"(II) expenditures (other than expenditures for salaries of employees) exceed $150,000, and

"(ii) which is exempt from section 3302 or 9102 of title 31 of the United States Code,

except that clauses (i) and (ii) shall not apply with respect to the report required under subparagraph (B) of such paragraph.".

Provisions similar to those of this note were contained in Acts Nov. 28, 1983, P. L. 98-166, Title II, § 205(b)(4), (5), 97 Stat. 1087; Aug. 30, 1984, P. L. 98-411, Title II, § 203(b)(4), (5), 98 Stat. 1560; Dec. 13, 1985, P. L. 99-180, Title II, § 204(b)(4), (5), 99 Stat. 1148; Oct. 18, 1986, P. L. 99-500 and Oct. 30, 1986, P. L. 99-591, Title I, § 101(b), 100 Stat. 3341-52; Dec. 22, 1987, P. L. 100-202, § 101(a) [Title II, § 204(b)(4), (5)], 101 Stat. 1329-16; Nov. 21, 1989, P. L. 101-162, Title II, § 204(b)(4), (5), 103 Stat. 1004; Dec. 1, 1990, P. L. 101-650, Title III, § 325(c)(2), 104 Stat. 5121; Nov. 5, 1990, P. L. 101-515, Title II, § 202(b)(4), (5), 104 Stat. 2118; Oct. 28, 1991, P. L. 102-140, Title I, § 102(b)(4), (5), 105 Stat. 793.

Exemption authority. Act April 24, 1996, P. L. 104-132, Title VIII, Subtitle B, § 815(d), 110 Stat. 1315, provides: "Notwithstanding any other provision of law, section 102(b) of the Department of Justice and Related Agencies Appropriations Act, 1993 (Public Law 102-395) [note to this section], shall remain in effect until specifically repealed, subject to any limitation on appropriations contained in any Department of Justice Appropriation Authorization Act.".

CODE OF FEDERAL REGULATIONS

Add:
28 CFR Part 77.

RESEARCH GUIDE

Am Jur:
7 Am Jur 2d, Attorney General §§ 45, 46.

INTERPRETIVE NOTES AND DECISIONS

2. Power of prosecutors

Supremacy Clause renders Virginia's laws and regulations governing private security services inapplicable to contractors in Background Investigation Contract Services (BICS) Program, where Congress clearly granted broad authority to Attorney General to appoint officials to conduct background investigations, because Virginia's law is in conflict with FBI regulations since it imposes additional requirements on individual contractors who have already been judged qualified by FBI. United States v Virginia (1997, ED Va) 972 F Supp 1008.

§ 534. Acquisition, preservation, and exchange of identification records and information; appointment of officials

(a)-(c) [Unchanged]

(d) For purposes of this section, the term "other institutions" includes—

(1) railroad police departments which perform the administration of criminal justice and have arrest powers pursuant to a State statute, which allocate a substantial part of their annual budget to the administration of criminal justice, and which meet training requirements established by law or ordinance for law enforcement officers; and

(2) police departments of private colleges or universities which perform the administration of criminal justice and have arrest powers pursuant to a State statute, which allocate a substantial part of their annual budget to the administration of criminal justice, and which meet training requirements established by law or ordinance for law enforcement officers.

(e)(1) Information from national crime information databases consisting of identification records, criminal history records, protection orders, and wanted person records may be disseminated to civil or criminal courts for use in domestic violence or stalking cases. Nothing in this subsection shall be construed to permit access to such records for any other purpose.

(2) Federal and State criminal justice agencies authorized to enter information into criminal information databases may include—

(A) arrests, convictions, and arrest warrants for stalking or domestic violence or for violations of protection orders for the protection of parties from stalking or domestic violence; and

(B) protection orders for the protection of persons from stalking or domestic violence, provided such orders are subject to periodic verification.

(3) As used in this subsection—

(A) the term "national crime information databases" means the National Crime Information Center and its incorporated criminal history databases, including the Interstate Identification Index; and

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(B) the term "protection order" includes an injunction or any other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person, including temporary and final orders issued by civil or criminal courts (other than support or child custody orders) whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

(As amended Nov. 18, 1988, P. L. 100-690, Title VII, Subtitle I, § 7333, 102 Stat. 4469; Sept. 13, 1994, P. L. 103-322, Title IV, Subtitle F, § 40601(a), 108 Stat. 1950.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1988. Act Nov. 18, 1988 added subsec. (d).

1994. Act Sept. 13, 1994 added subsec. (e).

Other provisions:

Parimutuel Licensing Simplification Act of 1988. Act Aug. 22, 1988, P. L. 100-413, 102 Stat. 1101, provides:

"Section 1. Short title.

"This Act may be cited as the 'Parimutuel Licensing Simplification Act of 1988'.

"Sec. 2. Submission by association of State regulatory officials.

"(a) In general. An association of State officials regulating parimutuel wagering, designated for the purpose of this section by the Attorney General, may submit fingerprints to the Attorney General on behalf of any applicant for State license to participate in parimutuel wagering. In response to such a submission, the Attorney General may, to the extent provided by law, exchange for licensing and employment purposes, identification and criminal history records with the State governmental bodies to which such applicant has applied.

"(b) Definition. As used in this section, the term 'State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

"Sec. 3. Effective date.

"This Act [this note] shall take effect on July 1, 1989.".

Uniform Federal Crime Reporting Act of 1988. Act Nov. 18, 1988, P. L. 100-690, Title VII, Subtitle I, § 7332, 102 Stat. 4468, effective Jan. 1, 1989 as provided by subsec. (g) of this note, provides:

"(a) Short title. This section may be cited as the 'Uniform Federal Crime Reporting Act of 1988'.

"(b) Definitions. For purposes of this section, the term 'Uniform Crime Reports' means the reports authorized under section 534 of title 28, United States Code, and administered by the Federal Bureau of Investigation which compiles nationwide criminal statistics for use in law enforcement administration, operation, and management and to assess the nature and type of crime in the United States.

"(c) Establishment of system. (1) In general. The Attorney General shall acquire, collect, classify, and preserve national data on Federal criminal offenses as part of the Uniform Crime Reports.

"(2) Reporting by Federal agencies. All departments and agencies within the Federal government (including the Department of Defense) which routinely investigate complaints of criminal activity, shall report details about crime within their respective jurisdiction to the Attorney General in a uniform manner and on a form prescribed by the Attorney General. The reporting required by this subsection shall be limited to the reporting of those crimes comprising the Uniform Crime Reports.

"(3) Distribution of data. The Attorney General shall distribute data received pursuant to paragraph (2), in the form of annual Uniform Crime Reports for the United States, to the President, Members of the Congress, State governments, and officials of localities and penal and other institutions participating in the Uniform Crime Reports program.

"(d) Role of Federal Bureau of Investigation. The Attorney General may designate the Federal Bureau of Investigation as the lead agency for purposes of performing the functions authorized by this section and may appoint or establish such advisory and oversight boards as may be necessary to assist the Bureau in ensuring uniformity, quality, and maximum use of the data collected.

"(e) Inclusion of offenses involving illegal drugs. The Director of the Federal Bureau of Investigation is authorized to classify offenses involving illegal drugs and drug trafficking as a part I crime in the Uniform Crime Reports.

"(f) Authorization of appropriations. There are authorized to be appropriated $350,000 for fiscal year 1989 and such sums as may be necessary to carry out the provisions of this section after fiscal year 1989.

"(g) Effective date. The provisions of this section shall be effective on January 1, 1989.".

Data collection and reporting. Act Nov. 18, 1988, P. L. 100-690, Title VII, Subtitle O, § 7609, 102 Stat. 4517, provides:

"(a) Family violence reporting. Under the authority of section 534 of title 28, United States Code, the Attorney General shall require, and include in uniform crime reports, data that indicate—

"(1) the age of the victim; and

"(2) the relationship of the victim to the offender, for crimes of murder, aggravated assault, simple assault, rape, sexual offenses, and offenses against children.

"(b) National crime survey. The Director of the Bureau of Justice Statistics, through the annual National Crime Survey, shall collect and publish data that more accurately measures the extent of domestic violence in America, especially the physical and sexual abuse of children and the elderly.

"(c) Authorization of appropriations. There are authorized to be appropriated in fiscal years 1989, 1990, 1991, and 1992, such sums as are necessary to carry out the purposes of this section.".

Hate Crime Statistics Act. Act April 23, 1990, P. L. 101-275, 104 Stat. 140; Sept. 13, 1994, P. L. 103-322, Title XXXII, Subtitle I, § 320926, 108 Stat. 2131; July 3, 1996, P. L. 104-155, § 7, 110 Stat. 1394, provides:

"[Sec. 1.] (a) This Act may be cited as the 'Hate Crime Statistics Act'.

"(b)(1) Under the authority of section 534 of title 28, United States Code, the Attorney General shall acquire data, for each calendar year, about crimes that manifest evidence of prejudice based on race, religion, disability, sexual orientation, or ethnicity, including where appropriate the crimes of murder, non-negligent manslaughter; forcible rape; aggravated assault, simple assault, intimidation; arson; and destruction, damage or vandalism of property.

"(2) The Attorney General shall establish guidelines for the collection of such data including the necessary evidence and criteria that must be present for a finding of manifest prejudice and procedures for carrying out the purposes of this section.

"(3) Nothing in this section creates a cause of action or a right to bring an action, including an action based on discrimination due to sexual orientation. As used in this section, the term 'sexual orientation' means consensual homosexuality or heterosexuality. This subsection does not limit any existing cause of action or right to bring an action, including any action under the Administrative Procedure Act or the All Writs Act [5 USCS §§ 551 et seq. or 28 USCS § 1651].

"(4) Data acquired under this section shall be used only for research or statistical purposes and may not contain any information that may reveal the identity of an individual victim of a crime.

"(5) The Attorney General shall publish an annual summary of the data acquired under this section.

"(c) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section through fiscal year 2002.

"Sec. 2. (a) Congress finds that—

"(1) the American family life is the foundation of American Society.

"(2) Federal policy should encourage the well-being, financial security, and health of the American family.

"(3) schools should not de-emphasize the critical value of American family life.

"(b) Nothing in this Act shall be construed, nor shall any funds appropriated to carry out the purpose of the Act be used, to promote or encourage homosexuality.".

Fees for fingerprint identification records and name checks. Act Nov. 5, 1990, P. L. 101-515, Title II, 104 Stat. 2112; Jan. 6, 1996, P. L. 104-91, Title I, § 101(a), 110 Stat. 11; Jan. 26, 1996, P. L. 104-99, Title II, § 211, 110 Stat. 37 (enacting into law § 113 of H.R. 2076 of the 104th Congress, as passed by the House of Representatives on Dec. 6, 1995); Jan. 26, 1996, P. L. 104-99, Title II, § 211, 110 Stat. 37, provides: "For fiscal year 1991 and hereafter the Director of the Federal Bureau of Investigation may establish and collect fees to process fingerprint identification records and name checks for non-criminal justice, non-law enforcement employment and licensing purposes and for certain employees of private sector contractors with classified Government contracts, and notwithstanding the provisions of 31 U.S.C. 3302, credit such fees to this appropriation to be used for salaries and other expenses incurred in providing these services, and that the Director of the Federal Bureau of Investigation may establish such fees at a level to include an additional amount to establish a fund to remain available until expended to defray expenses for the automation of fingerprint identification and criminal justice information services and associated costs".

National Crime Information Center Project 2000. Act Nov. 29, 1990, P. L. 101-647, Title VI, Subtitle B, 104 Stat. 4823, provides:

"Sec. 611. Short title.

"This section may be cited as the 'National Law Enforcement Cooperation Act of 1990'.

"Sec. 612. Findings.

"The Congress finds that—

"(1) cooperation among Federal, State and local law enforcement agencies is critical to an effective national response to the problems of violent crime and drug trafficking in the United States;

"(2) the National Crime Information Center, which links more than 16,000 Federal, State and local law enforcement agencies, is the single most important avenue of cooperation among law enforcement agencies;

"(3) major improvements to the National Crime Information Center are needed because the current system is more than twenty years old; carries much greater volumes of enforcement information; and at this time is unable to incorporate technological advances that would significantly improve its performance; and

"(4) the Federal Bureau of Investigation, working with State and local law enforcement agencies and private organizations, has developed a promising plan, 'NCIC 2000', to make the necessary upgrades to the National Crime Information Center that should meet the needs of United States law enforcement agencies into the next century.

"Sec. 613. Authorization of appropriations.

"There are authorized to be appropriated the following sums to implement the 'NCIC 2000' project:

"(1) $17,000,000 for fiscal year 1991;

"(2) $25,000,000 for fiscal year 1992;

"(3) $22,000,000 for fiscal year 1993;

"(4) $9,000,000 for fiscal year 1994; and

"(5) such sums as may be necessary for fiscal year 1995.

"Sec. 614. Report.

"By February 1 of each fiscal year for which funds for NCIC 2000 are requested, the Director of the Federal Bureau of Investigation shall submit a report to the Committees on the Judiciary of the Senate and House of Representatives that details the progress that has been made in implementing NCIC 2000 and a complete justification for the funds requested in the following fiscal year for NCIC 2000.".

Rulemaking to carry out subsec. (e). Act Sept. 13, 1994, P. L. 103-322, Title IV, Subtitle F, § 40601(b), 108 Stat. 1951, provides: "The Attorney General may make rules to carry out the subsection added to section 534 of title 28, United States Code [subsec. (e) of this section], by subsection (a), after consultation with the officials charged with managing the National Crime Information Center and the Criminal Justice Information Services Advisory Policy Board.".

Compilation of statistics relating to intimidation of government employees. Act April 24, 1996, P. L. 104-132, Title VIII, Subtitle A, § 808, 110 Stat. 1310, provides:

"(a) Findings. The Congress finds that—

"(1) threats of violence and acts of violence against Federal, State, and local government employees and their families are increasing as the result of attempts to stop public servants from performing their lawful duties;

"(2) these acts are a danger to the constitutional form of government of the United States; and

"(3) more information is needed relating to the extent and nature of the danger to these employees and their families so that actions can be taken to protect public servants at all levels of government in the performance of their duties.

"(b) Statistics. The Attorney General shall collect data, for the calendar year 1990 and each succeeding calendar year thereafter, relating to crimes and incidents of threats of violence and acts of violence against

Federal, State, and local government employees and their families in the performance of their lawful duties. Such data shall include—

"(1) in the case of crimes against such employees and their families, the nature of the crime; and

"(2) in the case of incidents of threats of violence and acts of violence, including verbal and implicit threats against such employees and their families, the deterrent effect on the performance of their jobs.

"(c) Guidelines. The Attorney General shall establish guidelines for the collection of the data under subsection (b), including a definition of the sufficiency of evidence of noncriminal incidents required to be reported.

"(d) Use of data. (1) Annual publishing. The Attorney General shall publish an annual summary of the data collected under this section.

"(2) Use of data. Except with respect to the summary published under paragraph (1), data collected under this section shall be used only for research and statistical purposes.

"(e) Exemption. The Attorney General, the Secretary of State, and the United States Secret Service is not required to participate in any statistical reporting activity under this section with respect to any direct or indirect threat made against any individual for whom that official or Service is authorized to provide protection.".

RESEARCH GUIDE

Federal Procedure L Ed:

8 Fed Proc L Ed, Criminal Procedure § 22:27.

15 Fed Proc L Ed, Freedom of Information § 38:103.

Am Jur:

7 Am Jur 2d, Attorney General §§ 45, 55.

Forms:

3 Am Jur Legal Forms 2d, Attorney General § 29:2.

Annotations:

Expunction of federal arrest records in absence of conviction. 97 ALR Fed 652.

Law Review Articles:

Pendo, Recognizing violence against women: gender and the Hate Crimes Statistics Act. 17 Harv Women's LJ 157, Spring, 1994.

INTERPRETIVE NOTES AND DECISIONS

V. ACTIONS

19. Expungement, generally

Former serviceman's criminal record is expunged under court's narrow power to override 28 USCS § 534(a) crime record-keeping requirements, where serviceman, convicted of making false credit union entries in order to arrange loans for dishonest friends, successfully completed 5 years' probation, because criminal acts he committed as credit union examiner were small aberration from otherwise clean background and should not prevent him from now returning to service of his country in accordance with his expressed desire to be reinstated to state bar and to rejoin Army Reserve as infantryman in Saudi Arabia. United States v Smith (1990, CD Cal) 745 F Supp 1553.

21. —Scope of court's inquiry

District Court did not abuse its discretion in denying request for expungement of petitioner's criminal records without holding evidentiary hearing where petitioner did not provide court with even suggestion of existence of any facts that would show unusual or extraordinary nature of case. Geary v United States (1990, CA8 Mo) 901 F2d 679.

22. —Federal-state comity

Ex-felon seeking expungement of his federal conviction can get no relief in District Court, where state expungement statute cannot be construed as affecting federal records either maintained or in custody of federal officers, because state statute having such effect would conflict with express statutory duty of federal officials, under 28 USCS § 534(a)(1), "to acquire, collect, classify and preserve" criminal records. Schwab v Gallas (1989, ND Ohio) 724 F Supp 509.

§ 535. Investigation of crimes involving Government officers and employees; limitations

CODE OF FEDERAL REGULATIONS

Add:

34 CFR Part 73.

RESEARCH GUIDE

Am Jur:

7 Am Jur 2d, Attorney General § 55.

§ 538. Investigation of aircraft piracy and related violations

The Federal Bureau of Investigation shall investigate any violation of section 46314 or chapter 465 of title 49 [49 USCS § 46314 or §§ 46501 et seq.].

(Added July 5, 1994, P. L. 103-272, § 4(c)(1), 108 Stat. 1361.)

§ 540. Investigation of felonious killings of State or local law enforcement officers

The Attorney General and the Federal Bureau of Investigation may investigate felonious killings of officials and employees of a State or political subdivision thereof while engaged in or on account of the performance of official duties relating to the prevention, detection, investigation, or prosecution of an offense against the criminal laws of a State or political subdivision, when such investigation is requested by the head of the agency employing the official or employee killed, and under such guidelines as the Attorney General or his designee may establish.

(Added Nov. 18, 1988, P. L. 100-690, Title VII, Subtitle I, § 7331(a), 102 Stat. 4468.)

RESEARCH GUIDE

Am Jur:

SB

99

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 3/11/99 FURTHER:

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

DATE TURNED
IN TO OFFICE: ____________

Judiciary Committee considered SENATE BILL NO. 99

"An Act to clarify the meaning of 'decennial census of the United States' in Article VI, Constitution of the State of Alaska, and to prevent discrimination in the redistricting of the house of representatives and the senate."

and recommends:

[ ] be replaced with ______ CS ______________________ (________)
[✓] adopt previous ______ CS SB 99 (Jud)
[ ] attached amendment(s)
[ ] adopt Letter of Intent by ________________ Committee
[ ] further referral to the ____________________ Committee

Senate Bill:
[X] same title
[ ] new title

House Bill:
[ ] same title
[ ] technical title
[ ] new: SCR# ______

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
John Torgerson	✓	Johnny Ellis	X		
Dave Donley	✓				
CHAIR: Robin L. Taylor	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
Law	3/12	✓	

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

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

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

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 99

Revision Date/Time (Note if correction)

Title: "...to clarify the meaning of 'decennial census of the United States' in Article VI, Constitution of the State of Alaska ..."

Sponsor: Senate Rules Committee

Requester: Senate Judiciary Committee

Dept. Affected: Law

BRU: Civil Division

Component: Governmental Affairs

Component Serial No. 2207

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	100.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	100.0	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	100.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	100.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost:

POSITIONS

POSITIONS	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

SB 99 prohibits the use of census numbers in Alaska's legislative redistricting plan that are estimates or have been adjusted based on sampling. This bill also intends to clarify that a redistricting plan adopted under the 1998 constitutional amendment relating to reapportionment (HJR 44) may not exclude or discriminate among persons based on military or civilian status, or length of residency.

Alaska's redistricting plans are reviewed by the U.S. Department of Justice under the Voting Rights Act. The USDOJ will most likely require the state to perform a military survey to prove that including the military population in the census for the purposes of redistricting will not discriminate against minority voters. If this requirement is imposed by USDOJ, the state would have no choice but to complete the survey before the census enumeration begins in April 2000, in order to achieve preclearance of the state's plan. The Department of Law would need to hire an expert to perform the survey, which based on previous experience, is anticipated to cost in excess of $100,000.

Prepared by: Joan M. Kasson | Phone: 465-5370

Division: Attorney General's Office | Date/Time: 3/12/99, 12:06 PM

Approved by Commissioner: Bruce M. Botelho, Attorney General | Date: 3/12/99

Agency: Department of Law

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ALASKA STATE SENATE

SENATOR TIM KELLY

STATE CAPITOL
JUNEAU, ALASKA 99801-1182
(907) 465-3822
FAX (907) 465-3756
1-800-770-3822
(JANUARY - MAY)
INTERNET: //http.//www.state.ak.us/

716 WEST 4TH, SUITE 400
ANCHORAGE, ALASKA 99501
(907) 269-0144
FAX (907) 269-0148\

SPONSOR STATEMENT

SB 99

ANTI DISCRIMINATION LAW

"An Act to clarify the meaning of 'decennial census of the United States' in Article VI, Constitution of the State of Alaska, and to prevent discrimination in the redistricting of the house of representatives and the senate."

This legislation is to make clear that discrimination in any form will not be tolerated or condoned in redistricting the legislature.

In past redistricting, reapportionment boards have used surveys, estimates, and samplings of population for the sole purpose of discrimination by discounting or even ignoring our Alaskan military personnel and their dependents. These discriminatory efforts were due to a provision of the 1959 Alaska Constitution, removed in 1998, which directed that only "civilian" population be considered. Twice in the 1960s the military were treated as total non-persons, once in 1970 as 11% of a human being and lastly in 1980 as 35% of an individual. That's even worse than before the Civil War and Emancipation, when slaves were only counted as 60% for purposes of Congressional apportionment. Unfortunately, outdated Alaska Supreme Court precedents might be relied upon, without this legislation, to continue discrimination against the military. This bill makes it clear that the official US decennial census, unadulterated by questionable estimates or possibly erroneous calculations, is the sole basis used in developing any legislative redistricting plan. Alaskans have a right to expect that their representation be based on an actual head count census as used in America for the past 210 years.

Legislative Research Report 99.076
March 2, 1999

Military Population and Reapportionment in Alaska Following the U.S. Censuses of 1970, 1980, and 1990

Legislative Research Services
Division of Legal and Research Services
Legislative Affairs Agency
Alaska State Legislature

Prepared for Senator Tim Kelly
Prepared by Patricia Young

Legislative Research Services
130 Seward Street, Room 218
Juneau, AK 99801
907-465-3991
907-463-3351 (fax)
www.legis.state.ak.us/research/home.htm

SUMMARY 1

REAPPORTIONMENT FOLLOWING THE 1970 CENSUS 1

REAPPORTIONMENT FOLLOWING THE 1980 CENSUS 2

REAPPORTIONMENT FOLLOWING THE 1990 CENSUS 4

SUMMARY

You wished to know how military personnel and their dependents in Alaska were treated for the purposes of reapportionment following the U.S. censuses in 1970, 1980, and 1990. As you may know, Alaska is among the few states that have in the past excluded certain nonresidents from population statistics used to reapportion and redistrict their state legislatures.[1]

Based on state constitutional provisions, Governor Egan and his advisory board excluded the military population from the reapportionment considerations following the 1970 census. The Alaska Supreme Court held that excluding the military as a class was unconstitutional and, thereby, nullified the provision in the state constitution that required reapportionment to be based on the civilian population of the state. Following the 1980 census, Governor Hammond and his advisory board devised a statistical method for determining the nonresident military/dependent population and subsequently excluded that population for the purposes of reapportionment. In the ensuing case, the state Supreme Court held both the method and the outcome to be constitutional. Governor Hickel and his advisory board did not attempt to exclude nonresident military personnel and dependents who were included in the state population data generated by the 1990 census.

REAPPORTIONMENT FOLLOWING THE 1970 CENSUS

Governor William Egan's 1971 reapportionment plan excluded all military personnel. This exclusion was a result of the state's constitutional requirement that reapportionment be based upon the state's *civilian* population as reported by the census. The Alaska Supreme Court held that the exclusion of the military as a class was a denial of equal protection guaranteed by the 14th amendment to the U.S. Constitution and the plan was, therefore, unconstitutional. The court also declared the plan unconstitutional in that the populations of some districts deviated excessively from the norm. The court's decision in *Egan v. Hammond* nullified the requirement in Article VI, Section 3 of the Constitution that reapportionment be based on civilian population.[2]

Late in 1973, Governor Egan adopted a subsequent plan, which excluded the *nonresident* military population. As they had done with the original, Republicans challenged the plan. Although the

---

[1] According to the Council of State Governments, *State Profiles: Reapportionment Information Service*, 1981, Alaska, Hawaii, Kansas, Massachusetts, New Hampshire, and Washington excluded nonresident students and/or military personnel and their dependents from reapportionment calculations after the 1980 census.

[2] *Egan v. Hammond*, 502 P.2d 856 (Alaska 1972).

court again struck down the plan for excessive variations in population among districts, the justices upheld the exclusion of nonresident military personnel. In *Groh v. Egan*, the court held as follows:

> It is not offensive to notions of equal protection to exclude from the population base even military personnel who have lived in Alaska for substantial periods of time, so long as those people have exercised their option to remain residents and domiciliaries of other states. . . . There is every reason to believe that military personnel who desire to be Alaska residents and domiciliaries will register to vote because voter registration is a prime index of intention to become a resident or domiciliary. For like reason, we think that those who do not want to become Alaskans demonstrate that intention by refusing to register to vote.[3]

Although the court noted that the plan made no attempt to similarly exclude nonresident civilians, it considered the selective treatment of the military as justified. In this regard, the court reasoned that significant numbers of civilian transients had not been present in the state during the census; that those who had been present probably were not counted as residents; and that the voluntary nature of their presence made them distinguishable from nonresident military personnel, who were in the state because of duty assignments.

Although the plan excluded only military personnel, the court made the following statement about counting military dependents:

> Dependents of military persons may be assumed, for the most part to have the same residential characteristics as the uniformed personnel upon whom they are dependent.[4]

Following the court's decision in *Groh*, the governor's advisory board revised the plan again. The court upheld that version of the reapportionment plan against further objection.

Reapportionment Following the 1980 Census

In its 1974 decision on the count of the military population in *Groh*, the Alaska Supreme Court referred to comments in *Egan v. Hammond*. The court noted as follows:

> We indicated in *Egan v. Hammond*, that in the absence of a constitutional amendment reestablishing specific guidelines, the governor has the power to select alternative bases for reapportionment purposes. We referred to the permissibility of a registered voter, state citizenship or state residency base.[5]

In light of the court's opinion, Governor Jay Hammond and his advisory board relied on a survey of several military bases to estimate the number of resident military personnel and dependents to be counted for the next decennial reapportionment. The Alaska Supreme Court held this method

---

[3] *Groh v. Egan*, 526 P.2d 863, 873 (Alaska 1974).

[4] *Groh*, at 874.

[5] *Groh*, at 868, citing *Egan v. Hammond*, at 870-871.

to be reasonable and constitutional in *Carpenter v. Hammond*.[6] That decision includes the following historical perspective on treatment of military personnel:

> In preparing its report, the Board initially had to determine an accurate population base for the reapportionment. It was thought that the United States Census count of 1980 would include a significant number of people who were not in fact residents of Alaska. The Board hired an expert in Alaskan demography and survey research to advise the Board in its assessment and treatment of groups thought to contain large numbers of non-residents. The Board's expert studied various groups, including military personnel and dependents, oil camp workers, lumber camp and fish processing employees, college students, felons, and aliens, to determine the numbers of non-residents likely to be included in the federal census count and their potential impact on state reapportionment. The expert's report concluded that the only group of potential non-residents present in significant numbers, for reapportionment purposes, consisted of military personnel and their dependents.[7]

The reapportionment board then conducted a mailed sample survey of military personnel. According to the facts noted in the decision, the board determined the military and dependent population as follows:

> All dependents who were listed as either considering Alaska their home and intending to make Alaska their home in the future *or* as having registered to vote in Alaska were counted as residents for apportionment. . . . Based on the responses to the questionnaires, "non-resident population coefficients" were determined for each installation and surrounding off-base area. These coefficients were used to calculate the estimated "resident" and "non-resident" military dependent populations at each location. The "non-resident" population figures for each area were totaled . . . and deducted from the federal census count for Alaska . . . producing an adjusted state population base . . .[8]

While the court found Governor Hammond's reapportionment plan unconstitutional in other regards, it nevertheless upheld the decision in *Groh* regarding treatment of nonresident military personnel and their dependents.[9] The state Supreme Court held as follows in *Carpenter*:

> Based on our decision in *Groh v. Egan*, we hold that the exclusion of non-resident military members and dependents from the apportionment population base did not violate equal protection, and that the Board's alleged failure to identify and exclude other groups of non-residents including fish processors and lumber workers did not result in an inaccurate population base and substantial variations from the actual populations among the election districts. . . . the state, in attempting to exclude non-resident military from the apportionment base, demonstrated a compelling state interest, namely, the prevention of the dilution of its residents' voting strength. We therefore hold that the state (Board) had a

---

[6] *Carpenter v. Hammond*, 667 P.2d 1204 (Alaska 1983).

[7] *Carpenter*, at 1206.

[8] *Carpenter*, at 1207.

[9] According to the *Carpenter* decision, the inclusion of Cordova in House District 2—with communities in Southeast Alaska—violated the mandate of Article VI, Section 6 of the Alaska Constitution which requires that legislative districts contain "as nearly as practicable a relatively integrated socio-economic area."

legitimate interest in limiting its apportionment base to bona fide residents, and further, that the means employed by the Board to cull out the non-residents was constitutionally permissible.[10]

The case was remanded to the Superior Court, which ordered the governor and his advisory board to develop an amended plan to address the unconstitutional portion. As Bill Sheffield had by then succeeded Jay Hammond as governor, that job fell to him and an advisory board that he subsequently appointed.[11]

Reapportionment Following the 1990 Census

Following the 1990 U.S. census, Governor Walter Hickel's reapportionment advisory board determined that they could not devise a suitable method for identifying the nonresident military and dependent population. Furthermore, they cited an Alaska Department of Labor report estimating that nonresident military personnel and their dependents might constitute as little as 1.1 percent of the state's reported population.[12] The board concluded as follows:

> Absent (1) a valid alternative to determine the population of Alaska; or (2) a feasible method to exclude nonresident members of the military and their dependents from the population base; and (3) given the apparent nominal effect inclusion of nonresident military and dependents has on the population base, the Board adhered to its guideline and used the total population reported by the Bureau of the Census as the population base for redistricting.[13]

Thus, following the 1990 census, the board made no attempt to exclude nonresident military personnel and their dependents.[14]

I hope you find this information useful. Please do not hesitate to contact us if you have questions or need additional information.

---

[10] *Carpenter*, at 1212-13.

[11] The next plan, adopted in 1984, was held to be unconstitutional; however, the problem (under-representation) was so slight that the court declined to require a redrawing of district boundaries. *Kenai Peninsula Borough v. State*, 743 P.2d 1352 (Alaska 1987).

[12] Kathryn Lizik, "Enumeration and Residence Rules of the 1990 Census: A Report to the Reapportionment Board." (Juneau: Department of Labor, February 28, 1991); cited in *Report and Proposed Plan of the Governor's Advisory Reapportionment Board*, July 15, 1991, p. 29.

[13] "Population Base for Redistricting," *Report and Proposed Plan of the Governor's Advisory Reapportionment Board*, July 15, 1991, p. 34. The entire chapter is attached.

[14] Reapportionment following the 1990 census was replete with court action, although not in regard to treatment of the military/dependent population. The final plan was proclaimed in March of 1994.

SB

100

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 100

Revision Date/Time (Note if correction):
Title: "An Act relating to the payment by indigent persons for legal services and related costs."
Sponsor: Senate Judiciary Committee by Request
Requester: Senate Judiciary Committee

Dept. Affected: Law
BRU: Civil Division
Component: Collections & Support
Component Serial No.: 2210

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	15.2	15.2	15.2	15.2	15.2	15.2
Travel	0.2	0.2	0.2	0.2	0.2	0.2
Contractual	3.3	3.3	3.3	3.3	3.3	3.3
Supplies	1.0	1.0	1.0	1.0	1.0	1.0
Equipment	6.5					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	26.2	19.7	19.7	19.7	19.7	19.7
CAPITAL EXPENDITURES						
CHANGE IN REVENUES (1004 GF)	100.0	100.0	100.0	100.0	100.0	100.0

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	26.2	19.7	19.7	19.7	19.7	19.7
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	26.2	19.7	19.7	19.7	19.7	19.7

Estimate of any current year (FY99) cost:

POSITIONS

POSITIONS	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Full-time						
Part-time	1	1	1	1	1	1
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

SB 100 amends AS 18.85.120(c) to require all criminal defendants receiving state-funded legal representation reimburse the state for a portion of that representation. Under current law, and Criminal Rule 39, Alaska Rules of Court (CR39), only those defendants who are convicted must repay the state.

The Collections Unit in the Department of Law currently handles the collection of CR39 judgments for the Alaska Court System, among its other duties. With the infrastructure already in place, it is anticipated the department will handle the increased caseload proposed by this bill.

During FY97, approximately 7,200 new cost of appointed counsel judgments against convicted

Prepared by: Joan M. Kasson
Division: Attorney General's Office
Phone: 465-5370
Date/Time: 3/15/99, 9:16 AM

Approved by Commissioner: ~~Bruce M. Botelho, Attorney~~ General
Agency: Department of Law
Date: 3/15/99

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ANALYSIS CONTINUATION

defendants were transferred to the Department of Law for collection. This bill would add an estimated 2,300 to 2,400 new cases each year, assuming the current ratio of number of judgments for repayment to number of convictions remains the same (59 percent).

In the past few years, the Collections Unit caseload has grown from 3,300 criminal and civil collection cases to over 100,000 active criminal, civil, and other cases. The unit could not handle the increase proposed by this bill without additional staff. A part-time Administrative Clerk II would be necessary for the organization, data entry, tracking, and filing of these additional cases, at an annual cost of $19,700. One-time new equipment costs of $6,500 are included in FY00 only. The position costs would be paid for with general fund program receipts from revenues generated by this bill.

Under current law, CR39 collections are approximately $680,000 per year. Using a straight line approach, revenues from an additional 2,300 cases could be as much as $224,400 annually (2,300 new cases are 33 percent of 7,200; 33 percent of $680,000 is $224,400). However, a more conservative estimate is likely, due to the nature of these particular cases. This bill would impact individuals whose cases were dismissed, or who were found not guilty. It is likely that a higher ratio of these cases would be waived from having to make payment, and more of these individuals would challenge their judgment and refuse to pay. The department believes annual revenues are more likely to be in the range of $100,000 per year.

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 100

Revision Date		Dept. Affected	Alaska Court System
Title	Repayment of Public Defender Expenses	BRU	Alaska Court System
		Component	Trial Courts
Sponsor	Senate Judiciary by Request		
Requester	Senate Judiciary	Component Serial No.	769

Expenditures/Revenues *(Thousands of Dollars)*

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
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	0.0	0.0	0.0	0.0	0.0	0.0
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: *None*

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

No fiscal impact anticipated.

Prepared by:	Doug Wooliver, Administrative Attorney	Phone:	264-8265
Agency	Alaska Court System	Date/Time:	3/12/99 1:52 PM
Approved by:	Stephanie J. Cole, Administrative Director	Date	3/12/99
Agency	Alaska Court System		

(Rev 1/99)

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 3/11/99

FURTHER:

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

DATE TURNED IN TO OFFICE: ____________

Judiciary Committee considered SENATE BILL NO. 100

"An Act relating to the payment by indigent persons for legal services and related costs."

and recommends:

[X] be replaced with ______ CS SB 100 (H) (JUD)
[ ] adopt previous ______ CS ____________(______)
[ ] attached amendment(s)
[ ] adopt Letter of Intent by ____________ Committee
[ ] further referral to the ____________ Committee

Senate Bill:
[X] same title
[ ] new title

House Bill:
[ ] same title
[ ] technical title
[ ] new: SCR* ______

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
John Torgerson	✓				
Dave Donley	✓				
CHAIR: Robin L. Taylor	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
AK Court System	3/12	X	
LAW	3/15		X

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

[ ] APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

Alaska Civil Liberties Union

An Affiliate of the American Civil Liberties Union
P. O. Box 201844, Anchorage, AK 99520-1844
Phone: (907) 258-0044 Fax: (907) 258-0288 Email: akclu@alaska.net

POSITION PAPER

To: All Members of the Alaska Senate
From: Jennifer Rudinger, Executive Director
Date: Monday, April 5, 1999

Re: CSSB 100 (An Act relating to the payment by indigent persons for legal services and related costs.)

The Alaska Civil Liberties Union is a non-profit, non-partisan organization dedicated to preserving and defending the principles of individual liberty guaranteed in the U.S. Bill of Rights and in the Alaska Constitution. On behalf of almost 900 card-carrying members of the ACLU in Alaska, we urge you not to pass SB 100 out of the Senate, because it infringes the right to counsel guaranteed by the Sixth Amendment and Article 1, Section 11 of the Alaska Constitution.

Senate Bill 100 actually requires the court to order a person for whom counsel is appointed to repay court costs and legal service fees regardless of whether the person is convicted of a crime! Only after this judgment has been entered does any opportunity to demonstrate financial hardship arise, but SB 100 does not guarantee such a hearing. SB 100 does not explicitly provide the defendant with notice and opportunity to be heard on the issue of financial hardship, nor does it provide any standards for the court to apply in making that determination. Perhaps the most offensive element of SB 100 is its application to people who are wrongly haled into court in the first place, are found not guilty, or for whom the charges are ultimately dropped by the State. SB 100 will have the effect of coercing indigent people into plea bargaining or waiving their right to counsel, even if they are innocent, for fear of going bankrupt and putting their families out on the street if they try to defend themselves.

The landmark Supreme Court ruling which established the fundamental right of indigent people accused of crimes to have court-appointed counsel provided for their defense is *Gideon v. Wainwright*, 372 US 335 (1963). The Court based its ruling on the Sixth Amendment's guarantee of counsel and observed that reason, logic and fundamental fairness require that any person haled into court by the government must be afforded the opportunity to be represented by counsel. Senate Bill 100 flies in the face of the spirit of *Gideon v. Wainwright* by treating court-appointed counsel as a luxury which must be bought rather than as a necessity or a fundamental right.

It is true that eleven years later, the Supreme Court upheld a recoupment formula which conditioned probation on repayment to the state of the costs of a free legal defense, where the defendant had in fact gained a subsequent ability to pay. *Fuller v. Oregon*, 417 US 40 (1974). However, it was critical in that case that the defendant had at least been convicted of a crime! In *Fuller*, the defendant tried to make the reverse argument of what we are making to you today. Mr. Fuller argued that it was an Equal Protection violation

to require him to repay his legal fees as a condition of probation when defendants who were acquitted were not required to reimburse the state for the costs of their defense. Not only did the Supreme Court reject Mr. Fuller's argument that this constituted invidious discrimination, but the Court actually lauded the decision of the Oregon legislature to exempt innocent people from the repayment obligation as an "effort to achieve elemental fairness" in the judicial system. *Fuller*, 417 US at 50.

In defense of the Oregon legislature's limitation of the repayment obligation to only those people who have ultimately been found guilty of a crime, the Court wrote, "A defendant whose trial ends without conviction or whose conviction is overturned on appeal has been seriously imposed upon by society without any conclusive demonstration that he is criminally culpable. His life has been interrupted and subjected to great stress, and he may have incurred financial hardship through loss of job or potential working hours. His reputation may have been greatly damaged." *Fuller*, 417 US at 50. Thus, while the state may demand repayment from convicted people who can later afford to pay (under a theory of retribution), the state has no justification for demanding payment from people who are wrongfully haled into court in the first place or who ultimately are found not guilty of the crime with which they are charged. SB 100, however, would add insult to injury by forcing the court to enter a judgment against people whose only "crime" is not being able to afford an attorney.

The defendant in *Fuller* was in fact convicted of a crime, as we have pointed out. The Supreme Court has not been faced with a case in which an indigent person who was acquitted challenged such a recoupment statute. Likewise, to our knowledge, no Court of Appeals has been faced with such a case. However, the dicta in *Fuller* cited above clearly indicate that the state's interest is much weaker and the liberty interest of the individual is much stronger where the defendant is acquitted of all charges.

In fact, a group of acquitted indigent defendants successfully challenged the statute passed by the Oregon legislature after *Fuller*, and the statute was struck down on the grounds that the statute impermissibly chilled indigent defendants' exercise of their Sixth Amendment right to counsel and that it violated the due process clause. *Fitch v. Belshaw*, 581 F.Supp. 273 (1984). Although District Judge Panner did not issue a broad ruling in *Fitch* that a recoupment statute is per se unconstitutional when applied to acquitted defendants, the particular defects in the Oregon statute which were found to violate the Sixth Amendment are also present in the scheme proposed by SB 100. In striking down the statute, Judge Panner pointed out that "[d]espite the constitutional success of Oregon's recoupment formula for convicted defendants, the Oregon Legislature enacted [the statute in question] in 1979 with none of the safeguards approved in *Fuller*...." *Fitch*, 581 F.Supp. at 276. The missing *Fuller* safeguards Judge Panner was referring to which are also lacking in SB 100 are: (1.) restriction of repayment requirements to only convicted defendants, (2.) specific standards for courts to apply in determining whether a defendant is able to pay, and (3.) assurance that a defendant unable to make payments may demonstrate that the default was <u>not</u> attributable to an intentional refusal to obey the order of the court or due to bad faith on his part. *Id.* This last point is supported by Section 5-6.2 of the A.B.A. Standards for Criminal Justice,

which recommends that payment be sought only where defendants have made fraudulent representations concerning indigency in order to obtain free counsel. The commentary to the Standard states that reimbursement requirements "may serve to discourage defendants from exercising their right to counsel." American Criminal Procedure: Cases and Commentary (4th Ed.), Ed. By Stephen A. Saltzburg and Daniel J. Capra, (St. Paul, West Publishing Co., 1992), P. 636.

The Alaska Constitution generally has been interpreted to provide greater protections for civil liberties than the U.S. Constitution. The Alaska Supreme Court has held that the due process clause of the Alaska Constitution guarantees the right to counsel not only in criminal cases but in some civil cases as well, such as. child custody cases [*Flores v. Flores*, 598 P.2d 893 (Alaska 1979)]; civil contempt proceedings [*Flores*, 598 P.2d at 895, citing *Otton v. Zaborac*, 525 P.2d 587 (Alaska 1974)]; and paternity suits [*Flores*, 598 P.2d at 895, citing *Reynolds v. Kimmons*, 569 P.2d 799 (Alaska 1977)]. It is true that the Alaska Supreme Court has upheld Rule 39 recoupment in the case of convicted indigent defendants. *State v. Albert*, 899 P.2d 103 (Alaska 1995). However, there appears to be no case exactly on point in Alaska with respect to recoupment from acquitted defendants, and SB 100 does not provide the safeguards approved in *Fuller* which the *Fitch* court deemed to be essential. The AkCLU believes that in the case of acquitted defendants, Article 1, Section 11 would be interpreted to provide at least the same level of protection for the right to counsel as the Sixth Amendment under which the Oregon recoupment statute was struck down in *Fitch*. The Alaska Supreme Court has stated, "[W]e are under a duty to develop additional constitutional rights and privileges under our Alaska Constitution if we find such fundamental rights and privileges to be within the intention and spirit of our local constitutional language and to be necessary for the kind of civilized life and ordered liberty which is at the core of our constitutional heritage." *Baker v. City of Fairbanks*, 471 P.2d 386, 401-402 (Alaska 1970) (extending the constitutional right to a jury trial).

We therefore urge the Senate to kill SB 100. Please feel free to call me at (907) 258-0044 if you wish to discuss this matter further. Thank you for your careful consideration.

1-LS0560\H
Luckhaupt
3/16/99

CS FOR SENATE BILL NO. 100(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE JUDICIARY COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the payment by indigent persons for legal services and
2 related costs."
3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
4 * Section 1. AS 18.85.100(a) is amended to read:
5 (a) An indigent person who is under formal charge of having committed a
6 serious crime and the crime has been the subject of an initial appearance or subsequent
7 proceeding, or is being detained under a conviction of a serious crime, or is on
8 probation or parole, or is entitled to representation under the Supreme Court
9 Delinquency or Child in Need of Aid Rules, or is detained under an order issued under
10 AS 18.15.120 - 18.15.149, or against whom commitment proceedings for mental illness
11 have been initiated, is entitled (1) to be represented, in connection with the crime or
12 proceeding, **at the level and to the extent required under the United States**
13 **Constitution and the Constitution of the State of Alaska** [BY AN ATTORNEY TO
14 THE SAME EXTENT AS A PERSON RETAINING AN ATTORNEY IS

1 ENTITLED;] and (2) to be provided with the necessary services and facilities of this
2 representation, including investigation and other preparation**, at the level and to the**
3 **extent required under the United States Constitution and the Constitution of the**
4 **State of Alaska**.
5 *** Sec. 2.** AS 18.85.120(c) is amended to read:
6 (c) **The** [UPON THE PERSON'S CONVICTION, THE] court **shall** [MAY]
7 enter a judgment that a person for whom counsel is appointed pay for services of
8 representation and court costs. [ENFORCEMENT OF A JUDGMENT UNDER THIS
9 SUBSECTION MAY BE STAYED BY THE TRIAL COURT OR THE APPELLATE
10 COURT DURING THE PENDENCY OF AN APPEAL OF THE PERSON'S
11 CONVICTION.] Upon a showing of financial hardship, the court (1) **may** [SHALL]
12 allow a person subject to a judgment entered under this subsection to make payments
13 under a payment schedule; **and** (2) **may** [SHALL] allow a person subject to a
14 judgment entered under this subsection to petition the court at any time for remission,
15 reduction, or deferral of **only** the unpaid portion of the judgment [; AND (3) MAY
16 REMIT OR REDUCE THE BALANCE OWING ON THE JUDGMENT OR
17 CHANGE THE METHOD OF PAYMENT IF THE PAYMENT WOULD IMPOSE
18 MANIFEST HARDSHIP ON THE PERSON OR THE PERSON'S IMMEDIATE
19 FAMILY]. Payments made under this subsection shall be paid into the state general
20 fund.

New Text Underlined [DELETED TEXT BRACKETED]

ALASKA COURT SYSTEM
State of Alaska
Office of the Administrative Director

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

Doug Wooliver
Administrative Attorney

March 16, 1999

The Honorable Robin Taylor
Chairman, Senate Judiciary Committee
State Capitol
Juneau, Alaska 99811

Dear Senator Taylor:

This letter is in response to questions that arose during the March 15, 1999 Senate Judiciary Committee hearing on SB 100.

1) Question: Are the Criminal Rule 39 fees for the repayment of public defender representation in addition to other costs such as travel?

   Answer: No. If a court enters a civil judgment against a person to pay for defense costs, that judgment is the full extent of his or her liability for that representation. No additional fees are added for travel or other expenses.

2) Question: When were the Criminal Rule 39 fees last amended?

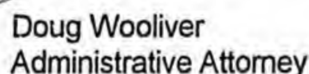
   Answer: The fees were adopted in 1992 and have not been amended.

3) Question: What is the difference between the Criminal Rule 39 fees and the cost of private counsel?

   Answer: I have attached a copy of Criminal Rule 39 and Appellate Rule 209, which contain the scheduled fees. I have also sent you a copy of the recently adopted Criminal Rule 39.1, which includes estimates of the cost of private representation for a variety of offenses.

Please let me know if you have any other questions.

Sincerely,



Doug Wooliver
Administrative Attorney

Citation/Title
RCRP Rule 39, RULE 39. APPOINTMENT OF COUNSEL

Rules of Criminal Procedure, Rule 39

WEST'S ALASKA COURT RULES
RULES OF CRIMINAL PROCEDURE
PART IX. GENERAL PROVISIONS

Current with amendments received through 7-1-98.

RULE 39. APPOINTMENT OF COUNSEL

(a) Informing Defendant of Right to Counsel. The court shall advise a defendant who appears without counsel for arraignment, change of plea, or trial of the right to be represented by counsel, and ask if defendant desires the aid of counsel. The court shall not allow a defendant to proceed without an attorney unless defendant understands the benefits of counsel and knowingly waives the right to counsel.

(b) Appointment of Counsel for Persons Financially Unable to Employ Counsel.

(1) If defendant desires the aid of counsel but claims a financial inability to employ counsel, the court or its designee shall determine whether defendant is an "indigent person," as defined by statute, by placing defendant under oath and asking about defendant's financial status, or by requiring defendant to complete a signed sworn financial statement. The court shall order defendant to execute a general waiver authorizing release of income information to the court. The court may require defendant to attempt to arrange private representation before the court makes a final determination on indigency.

(2) Before the court appoints counsel for an indigent defendant at public expense, the court shall advise defendant that defendant will be ordered to repay the prosecuting authority for the cost of appointed counsel, in accordance with paragraph (d) of this rule, if the defendant is convicted of an offense. The court may enter such orders as appear reasonably necessary to prevent defendant from dissipating assets to avoid payment of this cost.

(3) If the court or its designee determines that defendant is an "indigent person," the court shall appoint counsel pursuant to Administrative Rule 12 and notify counsel of the appointment.

(4) In the absence of a request by a defendant otherwise entitled to appointment of counsel, the court shall appoint counsel unless the court finds that defendant understands the benefits of counsel and knowingly waives the right to counsel.

(5) If the trial court denies defendant's request for appointed counsel, defendant may request review of this decision by the presiding judge of the judicial district by filing a motion with the trial court within three days after the date of notice, as defined in Criminal Rule 32.3(c), of the denial. The trial court shall forward the motion, relevant materials from the court file, and a cassette tape of any relevant proceedings to the presiding judge. The presiding judge or his or her designee shall issue a decision within three days of receipt of these materials.

*417 (c) Costs of Appointed Counsel.

(1) Entry of Judgment.

(A) Upon conviction of an offense, revocation of probation, denial of a motion to withdraw plea, and denial of a motion brought under Criminal Rule 35.1, the court shall prepare a notice of intent to enter judgment for the cost of appointed counsel in

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accordance with paragraph (d) of this rule, provide a copy of the notice to defendant, and order defendant to apply for permanent fund dividends every year in which the defendant qualifies for a dividend until the judgment is paid in full.

(B) Defendant may oppose entry of judgment by filing a written opposition within 10 days after the date of notice, as defined in Criminal Rule 32.3(c), of the court's intent to enter judgment. The opposition shall specifically set out the grounds for opposing entry of judgment. The prosecuting authority may oppose the amount of the judgment by filing a written opposition within the same deadline.

(C) If no opposition is filed within the time specified in section 39(c)(1)(B), the clerk shall enter judgment against defendant for the amount shown in the notice. If a timely opposition is filed, the court may set the matter for a hearing and shall have authority to enter the judgment.

(D) The judgment must be in writing. A copy of the judgment shall be mailed to defendant's address of record. The judgment shall bear interest at the rate specified in AS 09.30.070(a) from the date judgment is entered.

(2) Collection.

(A) The judgment has the same force and effect as a judgment in a civil action in favor of the prosecuting authority and is subject to execution.

(B) All proceedings to enforce the judgment shall be in accordance with the statutes and court rules applicable to civil judgments. The judgment is not enforceable by contempt. Payment of the judgment may not be made a condition of a defendant's probation. Default or failure to pay the judgment may not affect or reduce the rendering of services on appeal or any other phase of defendant's case in any way. A defendant does not have a right to be represented by appointed counsel in connection with proceedings under subparagraph 39(c) or any proceedings to collect the judgment.

(C) Upon a showing of financial hardship, the court shall allow a defendant subject to a judgment under this rule to make payments under a repayment schedule. A defendant may petition the court at any time for remission, reduction or deferral of the unpaid portion of the judgment. The court may remit or reduce the balance owing on the judgment or change the method of payment if payment would impose manifest hardship on defendant or defendant's immediate family.

*418 (D) Notwithstanding section 39(c)(2)(B), a defendant may be held in contempt for failing to comply with an order under this rule to apply for a permanent fund dividend.

(3) Appeal.

(A) If defendant appeals the conviction, enforcement of the judgment may be stayed by the trial court or the appellate court upon such terms as the court deems proper.

(B) If defendant's conviction is reversed, the clerk shall vacate the judgment and order the prosecuting authority to repay all sums paid in satisfaction of the judgment, plus interest at the rate specified in AS 09.30.070(a).

(d) Schedule of Costs. The following schedules govern the assessment of costs of appointed counsel under paragraph 39(c). If a defendant is convicted of more than one offense in a single dispositive court proceeding, costs shall be based on the most serious offense of which the defendant is convicted. If a defendant is otherwise convicted of more than one offense, costs shall be separately assessed for each conviction. For good cause shown, the court may waive the schedule of costs and assess fees up to the actual cost of appointed counsel, including actual expenses.

Misdemeanors

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Trial	$ 500.00
Change of plea	200.00
Post-conviction relief or contested probation revocation proceedings in the trial court	250.00

Felonies

	Class B & C	Class A and Unclassified (Except Murder)	Murder in the 1st and 2nd Degrees
Trial	$1,500.00	$2,500.00	$5,000.00
Change of plea after substantive motion work and hearing and before trial commences	1,000.00	1,500.00	2,500.00
Change of plea post-indictment but *419 prior to substantive motion work and hearing	500.00	1,000.00	2,000.00
Change of plea prior to indictment	250.00	500.00	750.00
Post-conviction relief or probation revocation proceeding in trial court	250.00	500.00	750.00

(e) Review of Defendant's Financial Condition.

(1) The court may review defendant's financial status at any time after appointment of counsel to determine (A) whether defendant continues to be an "indigent person," as defined by statute; or (B) whether defendant was an indigent person at the time counsel was appointed.

(2) If the court determines that defendant is no longer an indigent person, the court may

(A) terminate the appointment; or

(B) continue the appointment and, at the conclusion of the criminal proceedings against defendant in the trial court, enter judgment against defendant for the actual cost of appointed counsel, including actual expenses, from the date of the change in defendant's financial status through the conclusion of the trial court proceedings.

(3) If the court determines that defendant was not an indigent person at the time counsel was appointed, the court may

(A) terminate the appointment and enter judgment against defendant for the actual costs of appointed counsel, including actual expenses, from the date of appointment through the date of termination; or

(B) continue the appointment and, at the conclusion of the criminal proceedings against defendant in the trial court, enter judgment against defendant for the actual cost of appointed counsel from the date of the appointment through the conclusion of the trial court proceedings.

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(4) A defendant may request review of the court's decision to terminate the appointment according to the procedure set out in subparagraph 39(b)(5).

(5) Judgment may be entered against a defendant under this paragraph regardless of whether the defendant is convicted of an offense.

[Rescinded and repromulgated effective July 1, 1992; amended effective July 1, 1993; October 1, 1993.]

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Citation/Title
RAP Rule 209, RULE 209. APPEALS AT PUBLIC EXPENSE

Rules of Appellate Procedure, Rule 209

WEST'S ALASKA COURT RULES
RULES OF APPELLATE PROCEDURE
PART II. PROCEDURE ON APPEALS AS OF RIGHT

Current with amendments received through 7-1-98.

RULE 209. APPEALS AT PUBLIC EXPENSE

(a) Civil Matters. [Pub. Note: See provisions following this version for text of Rule 209(a) adopted by Laws 1995, c. 79, § 19, effective July 1, 1995.]

(1) A party to a civil action may file in the supreme court a motion to appeal or to petition for review at public expense. The motion shall be accompanied by a sworn financial statement on a form provided by the clerk of the appellate courts.

(2) In considering the motion to appeal or petition for review at public expense, the court shall determine the indigence or nonindigence of the party.

(3) If the motion is granted:

[a] The court shall specify in the order granting the motion which of the following costs or partial costs are to be covered at public expense:

[1] Filing fees,

[2] Transcript fees,

[3] Costs of printing briefs,

[4] Other costs;

[b] Any costs and attorney fees awarded to the appellant or petitioner as a prevailing party in the supreme court shall accrue to the state to reimburse it for costs relating to the appeal or petition for review.

(4) Leave to file at public expense may be conditioned on repayment of costs to the state. The conditions may include the imposition of liens in favor of the state on costs, attorney fees and other recoveries awarded to the indigent appellant or petitioner.

(5) An appeal or petition for review at public expense will be allowed without additional motion in cases where the appellant is represented by court-appointed counsel.

(6) The provisions of this paragraph do not apply to the filing fees in a prisoner's appeal against the state or an officer, agent, employee, or former officer, agent, or employee of the state that is governed by the provisions of AS 09.19. A prisoner may request a filing fee reduction in an appeal governed by AS 09.19 by submitting an application which satisfies the requirements of AS 09.19.010 with the prisoner's notice of appeal and the items specified in Appellate Rule 204(b).

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*560 (a) Civil Matters. [Pub. Note: Laws 1995, c. 79, § 19, effective July 1, 1995, amended Rule 209(a) to read as follows. See preceding version for text as amended by the Alaska Supreme Court, effective July 15, 1996.]

(1) A party to a civil action in the superior court may file in the superior court a motion to appeal or to petition for review at public expense. The motion shall be accompanied by:

[a] An affidavit of the party detailing the party's inability to pay fees and costs or to give security for fees and costs;

[b] An affidavit of the party stating that the party believes the party is entitled to redress on appeal or on petition for review;

[c] A concise statement of the points on which the party intends to rely in the party's appeal or petition for review.

(2) The motion shall be considered ex parte. In considering the motion to appeal or petition for review at public expense, the superior court shall determine:

[a] The indigence or nonindigence of the party;

[b] Whether any of the proposed points on appeal are frivolous and, if so, the reasons.

(3) If the motion is granted:

[a] The party may proceed without further application to the supreme court;

[b] The superior court shall specify in the order granting the motion which of the following costs or partial costs are to be covered at public expense:

[1] Filing fees,

[2] Transcript fees,

[3] Costs of printing briefs,

[4] Other costs;

[c] Any costs and attorney fees awarded to the appellant or petitioner as a prevailing party in the supreme court shall accrue to the state to reimburse it for costs relating to the appeal or petition for review.

(4) If the motion is denied in whole or in part:

[a] The superior court shall state in writing the reasons for denial;

[b] The party who made the original motion has ten days from the date shown in the clerk's certificate of distribution on the order denying the motion to file with the supreme court a motion to appeal or to petition for review at public expense. The motion shall be accompanied by copies of the affidavits and statements of points filed in superior court, and by a copy of the reasons given by the superior court for its action.

(5) Leave to file at public expense granted by the superior court or the supreme court may be conditioned on repayment of costs to the state. The conditions may include the imposition of liens in favor of the state on costs, attorney fees and other recoveries awarded

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to the indigent appellant or petitioner.

*561 (6) An appeal or petition for review at public expense will be allowed without additional motion in cases where the appellant is represented by court-appointed counsel.

(7) The provisions of this subsection do not apply to the filing fees in a prisoner's appeal against the state or an officer, agent, employee, or former officer, agent, or employee of the state that is governed by the provisions of AS 09.19.

(b) Criminal Matters.

(1) In criminal matters the appellate court shall authorize appeals and petitions for review at public expense on behalf of defendants who are "indigent," as defined by statute, in accordance with the rules and decisions of the appellate courts of Alaska, and where such proceedings are required to be provided by state courts by decisions of the Supreme Court of the United States. Where an appeal or petition for review at public expense is authorized by the court, the costs which shall be borne at public expense include those of providing counsel and of preparing a transcript and briefs.

(2) If a defendant is allowed to proceed at public expense, the clerk of the appellate courts shall send the defendant a written notice and order, to the address provided under Appellate Rule 204(b), that

(A) advises the defendant that, if the defendant's conviction is not reversed, the defendant will be ordered to repay the prosecuting authority for the cost of appointed appellate counsel, in accordance with the schedule of costs set out in subparagraph 209(b)(6); and

(B) orders the defendant to apply for permanent fund dividends every year in which the defendant qualifies for a dividend until the cost is paid in full.

(3) A defendant authorized to proceed at public expense in the trial court is presumed to be entitled to appeal or petition for review at public expense.

(4) Counsel appointed to represent a defendant in the trial court pursuant to Criminal Rule 39 shall remain as appointed counsel throughout an appeal or petition for review at public expense authorized under this paragraph and shall not be permitted to withdraw except upon the grounds authorized in Administrative Rule 12. An attorney appointed by the court under Administrative Rule 12(b)(1)(B) will be permitted to withdraw upon a showing that either the public defender agency or the office of public advocacy is able to represent the defendant in the appellate proceeding. If an appeal is to be taken, trial counsel will not be permitted to withdraw until the notice of appeal and the documents required to be filed with the appeal by Rule 204 have been accepted for filing by the clerk of the appellate courts.

*562 (5) At the conclusion of the appellate proceeding, the clerk of the appellate courts shall enter judgment against the defendant for the cost of appointed appellate counsel unless the defendant's conviction was reversed by the appellate court. The amount of the judgment shall be determined by reference to the schedule in subparagraph 209(b)(6). Before entering judgment, the clerk shall mail, to the defendant's address of record, a notice that sets out the amount of the proposed judgment. The defendant may oppose entry of the judgment by filing a written opposition within 45 days after the date shown in the clerk's certificate of distribution on the notice. The opposition shall specifically set out the grounds for opposing entry of judgment. The prosecuting authority may oppose the amount of the judgment by filing a written opposition within the same deadline. Criminal Rule 39(c)(1)(D) and (c)(2) shall apply to judgments entered under this subparagraph.

(6) The following schedule governs the cost of appointed appellate counsel:

Type of Appellate Proceeding	Misdemeanor	Felony

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Sentence Appeal or Petition for Sentence Review	$ 250	$ 500
Merit Appeal or Appeal from Post-Conviction Relief Proceedings	750	1,500
Combined Merit Appeal and Sentence Appeal or Petition for Sentence Review	1,000	2,000
Other Appellate Actions (Petition for Review, Petition for Hearing, etc.)	500	1,000

(c) Costs. Costs, attorney's fees, damages, and interest may be allowed as in other cases, but the state shall not be liable for any of them.

[Amended effective January 15, 1988; July 1, 1992; October 1, 1993; July 15, 1994; July 1, 1995, by Laws 1995, c. 79, § 19; July 15, 1995; January 22, 1996; July 15, 1996.]

Note

Ch. 79 § 1 SLA 1995 amends AS 09 by adding a new chapter related to prisoner litigation against the state. AS 09.19.010 prohibits the court from accepting any filing in an action governed by AS 09.19 until the filing fee required by AS 09.19.010 has been paid.

Section 19 of chapter 79 amends Appellate Rule 209(a) to add subparagraph (a)(6) which states that the provisions of paragraph (a) do not apply in a prisoner's appeal that is governed by AS 09.19. Section 5 of [SCO 1238] is adopted for the sole reason that the legislature has mandated the amendment.

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9-LS1072\A
Luckhaupt
4/14/95

#6 amend

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY SENATOR DONLEY

Introduced:
Referred:

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the legal representation of indigents."**

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

3 * **Section 1.** AS 18.85.100(a) is amended to read:

4 (a) An indigent person who is being detained by a law enforcement officer in
5 connection with a serious crime, or is under formal charge of having committed, or is
6 being detained under a conviction of a serious crime, or is on probation or parole, or
7 is entitled to representation under the Supreme Court Delinquency or Child in Need
8 of Aid Rules, or against whom commitment proceedings for mental illness have been
9 initiated, is entitled (1) to be represented by an attorney [TO THE SAME EXTENT
10 AS A PERSON RETAINING AN ATTORNEY IS ENTITLED;] and (2) to be
11 provided with the necessary services and facilities of this representation, including
12 investigation and other preparation**, at the level and to the extent required under the**
13 **United States Constitution and the Constitution of the State of Alaska**.

New Text Underlined [DELETED TEXT BRACKETED]

SENATE BILL NO. 100

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE BY REQUEST

Introduced: 3/11/99
Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the payment by indigent persons for legal services and**
2 **related costs."**

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

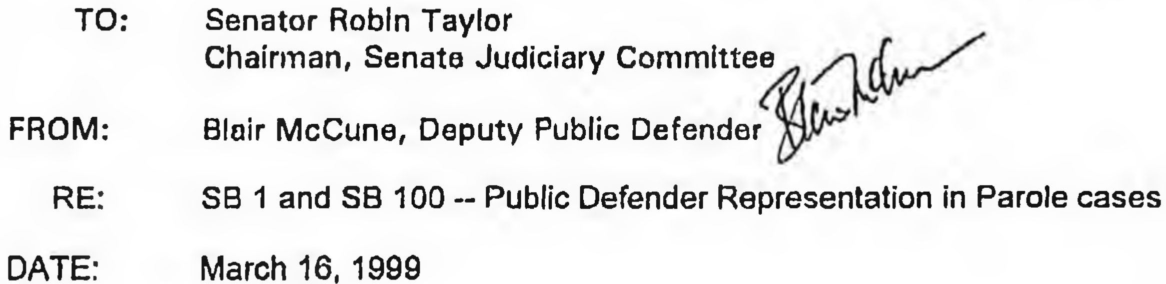
4 * **Section 1.** AS 18.85.120(c) is amended to read:
5 (c) <u>The</u> [UPON THE PERSON'S CONVICTION, THE] court may enter a
6 judgment that a person for whom counsel is appointed pay for services of
7 representation and court costs. Enforcement of a judgment under this subsection may
8 be stayed by the trial court or the appellate court during the pendency of an appeal of
9 the person's conviction. Upon a showing of financial hardship, the court (1) shall
10 allow a person subject to a judgment entered under this subsection to make payments
11 under a payment schedule; (2) shall allow a person subject to a judgment entered under
12 this subsection to petition the court at any time for remission, reduction, or deferral of
13 the unpaid portion of the judgment; and (3) may remit or reduce the balance owing on
14 the judgment or change the method of payment if the payment would impose manifest

New Text Underlined [DELETED TEXT BRACKETED]

MEMORANDUM

ALASKA PUBLIC DEFENDER AGENCY
900 West Fifth Avenue, Suite 200
Anchorage, Alaska 99501

Tel: (907) 264-4400
Direct line: 264-4412
Fax: (907) 269-5476
e-mail: Blair_Mccune@admin.state.ak.us



TO: Senator Robin Taylor
Chairman, Senate Judiciary Committee

FROM: Blair McCune, Deputy Public Defender

RE: SB 1 and SB 100 -- Public Defender Representation in Parole cases

DATE: March 16, 1999

==

I said at the Senate Judiciary Committee hearing the day before yesterday that I would send some information on what the State and Federal constitutions require with regard to court-appointed attorneys in parole hearings. I'm sorry not to get this to you earlier, but I did some additional research I hope will be helpful.

The Federal Constitution does not have a blanket requirement for court-appointed counsel. But United States Supreme Court guidelines say that counsel should be appointed in contested revocation hearings and, when needed, in complex disposition hearings.

The Alaska courts have not addressed what is required by the Alaska Constitution. Most likely, this is because Alaska probation and parole statutes have always required counsel to be appointed. Because the statutes provide for appointment of counsel, the courts have not needed to decide what the Alaska Constitution requires.

In researching this matter, I found an Alaska Supreme Court case that probably explains why the legislature included the provision in the Public Defender statute (AS 18.85.100(a)(1)) that an indigent person is entitled "to be represented ... to the same extent as a person retaining an attorney is entitled ...". In Hoffman v. State, the court held that the Equal Protection clause guarantees the "same right to be represented" as a person able to hire an attorney would have.

I don't read Hoffman as saying that any particular level of defense is required. Effective assistance of counsel is, of course, required. I believe that when Hoffman holds that the Equal Protection clause guarantees the "same right" "to be represented" as a person hiring an attorney, it does not require anything more than representation.

CORRECTION

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

Central Microfilm Services
Departement of Education & Early Development
State of Alaska

Rev. 6/98

SENATE BILL NO. 100

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE BY REQUEST

Introduced: 3/11/99
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A BILL

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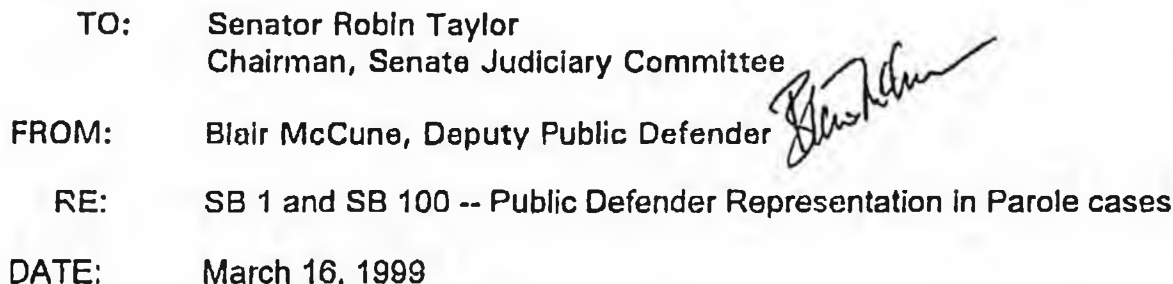
11 under a payment schedule; (2) shall allow a person subject to a judgment entered under
12 this subsection to petition the court at any time for remission, reduction, or deferral of
13 the unpaid portion of the judgment; and (3) may remit or reduce the balance owing on
14 the judgment or change the method of payment if the payment would impose manifest

1 hardship on the person or the person's immediate family. Payments made under this
2 subsection shall be paid into the state general fund.

MEMORANDUM

ALASKA PUBLIC DEFENDER AGENCY
900 West Fifth Avenue, Suite 200
Anchorage, Alaska 99501

Tel: (907) 264-4400
Direct line: 264-4412
Fax: (907) 269-5476
e-mail: Blair_Mccune@admin.state.ak.us



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Chairman, Senate Judiciary Committee

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DATE: March 16, 1999

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In researching this matter, I found an Alaska Supreme Court case that probably explains why the legislature included the provision in the Public Defender statute (AS 18.85.100(a)(1)) that an indigent person is entitled "to be represented ... to the same extent as a person retaining an attorney is entitled ...". In Hoffman v. State, the court held that the Equal Protection clause guarantees the "same right to be represented" as a person able to hire an attorney would have.

I don't read Hoffman as saying that any particular level of defense is required. Effective assistance of counsel is, of course, required. I believe that when Hoffman holds that the Equal Protection clause guarantees the "same right" "to be represented" as a person hiring an attorney, it does not require anything more than representation,

i.e., that effective, competent counsel be made available.

Federal Constitutional Requirements

The main federal cases are Gagnon v. Scarpelli, 411 U.S. 778 (1973) and Morrissey v. Brewer, 408 U.S. 471, 489 (1972). (These cases address the right to counsel at both probation and parole revocation hearings.) As I said at the hearing, there is no blanket federal constitutional requirement for appointed counsel. The Supreme Court said that the Due Process clause of the Federal Constitution would allow state authorities to decide on a case-by-case basis whether counsel would be required. However, the Court did give the following guidelines as to when a parolee should be provided an attorney:

> [C]ounsel should be provided in cases where, after being informed of his right to request counsel, the probationer or parolee makes such a request, based on a timely and colorable claim (1) that he has not committed the alleged violation of the conditions upon which he is at liberty; or (2) that, even if the violation is a matter of public record or is uncontested, there are substantial reasons which justified or mitigated the violation and make revocation inappropriate and that the reasons are complex or otherwise difficult to develop or present.

So, it appears that when the parolee asks for a revocation hearing to contest whether there was actually a violation of a condition of parole, a lawyer should be appointed. Also, even when a parolee admits a violation, if a lawyer is needed because there are mitigating factors that need to be brought to the attention of the board and the parolee needs a lawyer to develop or present them, a lawyer should be appointed under the Federal Constitution.

State Constitutional Requirements

At the hearing, I said I thought that an Alaska case, McCracken v. Corey, 612 P.2d 990 (Alaska 1980) held that the right to court-appointed counsel was a requirement under the Alaska Constitution. I was mistaken about McCracken. McCracken does set out additional requirements beyond what the Federal Constitution requires, but it does not go into the right to counsel.

However, I did some additional research and found an Alaska Supreme Court case, Hoffman v. State, 404 P.2d 644 (Alaska 1965). This case explains why court-appointed counsel is required in probation revocation hearings. The case also shows why the Public Defender statute includes the language I referred to above about a person being entitled "to be represented ... to the same extent as" a person hiring their own lawyer.

In Hoffman, the court held as follows:

> We hold that petitioner has, by virtue of the provisions of AS 12.55.110, the same right to be represented by counsel at a probation revocation proceeding as does the probationer who has funds with which to hire counsel.
>
> In short, we cannot ascribe to our legislature an intent to draw a distinction, along economic lines, as to which probationers were to be accorded this statutory right to counsel. To construe AS 12.55.110 as embodying an intended dichotomy between probationers unable to afford counsel and others would, in our opinion, render the statute repugnant to the Equal Protection Clauses of both the Federal and Alaska Constitutions. It is our duty to reasonably construe statutes to 'avoid a danger of unconstitutionality.' [...]
>
> [...]
>
> What we do today is to refuse to sanction any discriminatory application between indigent probationers and others in the administration of the right to counsel granted by AS 12.55.110.

Hoffman at 646 (citations and footnotes omitted).

The Hoffman case does not address whether counsel is required by the Alaska Constitution. This issue did not come up in Hoffman and has apparently never come up because the Alaska statutes have always required counsel. Since counsel is required by statute, there has been no need for the courts to interpret the constitution.

Hoffman holds that the constitution requires that an accused who is indigent has the same "right to be represented" as a person able to hire his or her own lawyer. However, it does not specify any particular level of service. I would read Hoffman as simply saying that, when a statute provides that a person has a right to be "represented" by a lawyer, if the person is unable to hire his or her own lawyer, an effective, competent lawyer must be appointed.

I hope this research is helpful to the committee.

ALASKA STATE LEGISLATURE

Sen. Robin Taylor, Chair
Sen. Rick Halford Vice - Chair
Sen. Dave Donley
Sen. John Torgerson
Sen. Johnny Ellis

State Capitol
Juneau, AK 99801-1182
(907) 465-3717
Fax: (907) 465-3922

Senate Judiciary Committee

SPONSOR STATEMENT

SB 100
"An Act relating to the payment by indigent persons for legal services and related costs."

Senate Bill 100 was introduced by request of the Alaska Court System. The bill amends AS 18.85.120(c) by requiring all criminal defendants who receive state-funded representation to repay the state for the cost of that representation. Under current law, only those who are convicted are subject to the repayment provisions.

Under both the United States and Alaska Constitutions, a criminal defendant has the right to an attorney. If he or she cannot afford an attorney, the state must appoint one. In Alaska, defense services for indigents are generally provided by the Public Defender Agency or the Office of Public Advocacy.

Until 1990, AS 18.85.120(c) authorized a court to order a defendant to pay for defense services, to the extent that the defendant could pay. For a variety of reasons, this statute was ineffective in obtaining repayment of defense costs. These reasons included the difficulty and expense of enforcing this type of repayment order, and the fact that the statute related to a defendant's current ability to pay, ignoring his or her future ability. This was very restrictive when compared to the system used in some states, which allows a court to order repayment from a defendant's future earnings.

In 1990, at the request of the Supreme Court, the Legislature amended AS 18.85.120(c) to allow civil judgments to be entered against defendants who are represented by the Public Defender Agency or Office of Public Advocacy without considering the defendant's current ability to pay. If a defendant became solvent at a future date, the judgment could be enforced; if not, the judgment could not be enforced. This change ensured that indigent defendants would continue to receive counsel but they would repay some of the costs of that representation if they were no longer indigent at some later date.

In 1993, again at the request of the Supreme Court, the Legislature amended AS 18.85.120(c) to eliminate the three-year moratorium on repayment that followed release from incarceration. That moratorium imposed a significant burden on the Department of Law and needlessly delayed repayment from those with adequate financial resources. The 1993 changes also codified language contained in Criminal Rule 39 of the Alaska Rules of Court. That language was intended to ensure that the repayment requirement was imposed in a fair manner. Because of that change, the statute now includes a provision that allows the court to stay enforcement of a repayment judgment during the pendency of a defendant's appeal; a provision that allows a person subject to a repayment judgment to petition the court at any time to remit, reduce, or defer the unpaid portion of the judgment upon a showing of financial hardship; and a provision that allows the court to remit or reduce the balance owing on the judgment or change the method of repayment if the payment would impose manifest hardship on the person or the person's immediate family.

After this repayment provision was adopted by the legislature in 1993, it was upheld by the Alaska Supreme Court in State v. Albert 899 P.2d 103 (Alaska 1995).

What the Supreme Court is requesting with the current proposal is to expand the existing repayment provisions so that a person appointed counsel at state expense would be required to contribute to the cost of that representation whether or not he or she was convicted. This is, of course, similar to what non-indigent persons must do (even those who are just barely above the indigency cut-off); that is, pay for the cost of defense counsel whether convicted or not. The difference between indigent and non-indigent defendants is that indigent defendants only repay a portion of the cost of defense (pursuant to the cost schedule found in Criminal Rule 39) and, if it would impose a hardship, the court can remit, reduce, defer, or schedule the repayment.

Like all judgment debtors, a person subject to a repayment order has a certain amount of property and income automatically protected from seizure by the Alaska Exemptions Act (AS 09.38). This act ensures that low-income debtors are protected from the unreasonable demands of creditors. A defendant's income, including the Permanent Fund Dividend, can also be protected under the "manifest hardship" procedure discussed above.

SB

106

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 3/16/99 FURTHER: Finance

Date of 5-Day Notice: 3-18-99
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 3-23-99

Judiciary Committee considered SENATE BILL NO. 106

"An Act relating to decisions by the commissioner of health and social services to remand certain health facility payment decisions back to the hearing officers; and amending Rule 602, Alaska Rules of Appellate Procedure."

and recommends:

[X] be **replaced** with ______ CS SB106 (Jud)
[ ] adopt **previous** ______ CS ______ (______)
[ ] attached amendment(s)
[ ] adopt Letter of Intent by ______ Committee
[ ] further referral to the ______ Committee

Senate Bill:
[ ] same title
[X] new title

House Bill:
[ ] same title
[ ] technical title
[ ] new: SCR* ______

SIGNING DO PASS	*DP*	*OTHER RECOMMENDATIONS*	*NR*	*DNP*	*AM*
[signature]	✓				
[signature]	✓				
CHAIR: [signature]	✓	*CHAIR:*			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

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

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

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. CSSB 106(JUD)

Revision Date/Time (Note if correction):
Title: Actions of the Department of Health and Social Services regarding certain facility payments
Sponsor: Taylor
Requestor: Senate Judiciary

Dept. Affected: Health and Social Services
BRU: Medical Assistance Admin
Component: Hearings and Appeals
COMPONENT SERIAL NO. 1434
See also (SN#):

Expenditures/Revenues: (Thousands of Dollars)

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

OPERATING	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
PERSONAL SERVICES	226.4	226.4	226.4	226.4	226.4	226.4
TRAVEL						
CONTRACTUAL	140.4	140.4	140.4	140.4	140.4	140.4
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	366.8	366.8	366.8	366.8	366.8	366.8
CAPITAL EXPENDITURES						
CHANGES IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
1002 Federal Receipts	183.4	183.4	183.4	183.4	183.4	183.4
1003 GF Match	183.4	183.4	183.4	183.4	183.4	183.4
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
TOTAL	366.8	366.8	366.8	366.8	366.8	366.8

Estimate of any current year (FY1999) cost: $0.0

POSITIONS:

POSITIONS	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
FULL-TIME	3	3	3	3	3	3
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The department assumes that the "recommendation" on page 2, line 16 of Section 2 of the committee substitute, for which the commissioner must render a final decision within 30 days, is a proposed decision under AS 44.62.500. In order to accelerate the hearing process, meet the 30 day review requirements for a final administrative decision, and make any necessary changes for the final administrative decision, the department requests three new positions. The positions consist of two new hearing officers in the Office of Hearings and Appeals and one new position in the Commissioner Office to review the proposed appeals. Facility rate appeals are extremely specialized and complex, and cannot be successfully reviewed within the 30 day window without additional staff resources.

Contractual funding is requested to support a new attorney position in the Department of Law to handle the increased activity related to rate appeals by the new hearing officer positions. The department will RSA funding to the Department of Law who will establish this position in Anchorage.

Prepared by: Bob Labbe
Division: Medical Assistance
Phone: 465-3355
Date/Time: 3/25/99 9:58 AM

Approved by Commissioner: Karen Perdue, Commissioner
Agency: Department of Health & Social Services
Date: 3/25/99

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FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. CSSB 106 (JUD)

Revision Date/Time (Note if correction)

Title "... relating to actions of the Department of Health and Social Services regarding certain health facility payments."

Sponsor Senator Taylor

Requester Senate Judiciary Committee

Dept. Affected Law

BRU Civil Division

Component Governmental Affairs

Component Serial No. 2207

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services	112.3	112.3	112.3	112.3	112.3	112.3
Travel	0.4	0.4	0.4	0.4	0.4	0.4
Contractual	19.5	19.5	19.5	19.5	19.5	19.5
Supplies	1.7	1.7	1.7	1.7	1.7	1.7
Equipment	6.5					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	**140.4**	**133.9**	**133.9**	**133.9**	**133.9**	**133.9**
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						
1007 Interagency Rcpts	140.4	133.9	133.9	133.9	133.9	133.9
TOTAL	**140.4**	**133.9**	**133.9**	**133.9**	**133.9**	**133.9**

Estimate of any current year (FY99) cost: ________

POSITIONS

Positions	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Full-time	1	1	1	1	1	1
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

In order the meet the accelerated hearing process called for in CSSB 106 (JUD), the Department of Health and Social Services is proposing to add two new hearing officer positions. The Department of Law anticipates needing one additional attorney position in its Anchorage Governmental Affairs section to handle the increased rate appeal activity generated by the new hearing officers.

Cost estimates are based on the department's FY00 standard attorney cost schedule of $133,926 and include clerical support, communications, space, supplies, data processing, and other normal overhead expenses. The cost schedule does not include one-time new equipment purchases, and $6,500 is added in FY00 only for this purpose.

Prepared by Joan M. Kasson

Division Attorney General's Office

Phone 465-5370

Date/Time 3/25/99, 1:43 PM

Approved by Commissioner Bruce M. Botelho, Attorney General

Agency Department of Law

Date 3/25/99

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Alaska State Legislature

Chairman,
Judiciary Committee
Administrative Regulations
Revenue Committee

Vice Chairman,
Resources Committee

Senator Robin L. Taylor

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

50 Front Street
Suite 203
Ketchikan, Alaska 99901
(907) 225-8088
Fax: (907) 225-0713

SPONSOR STATEMENT

SB 106

"An Act relating to decisions regarding certain health facility payments"

SB 106, "An Act relating to decisions regarding certain health facility payments", is meant to correct a problem with the Medicaid Rate Setting and Appeals process. Medicaid providers have experienced problems with the Medicaid appeal process because very few decisions ever become final.

The Medicaid rate setting and appeal process is as follows: The Medicaid provider payment rates are set annually at an informal hearing before the Medicaid Rate Advisory Commission, which is simply advisory to the Department. If the provider disagrees with the payment rate, the provider may appeal the rate by requesting a formal evidentiary hearing before a Hearing Examiner. The Hearing Examiner conducts a formal hearing on the appeal and issues a proposed decision to the Commissioner of Health and Social Services. The hearings are often in excess of ten days and are expensive for the facility. The Hearing Examiner's decision must then be approved by the Commissioner of the Department before the decision becomes final.

Rather than issuing final decisions, the Commissioner consistently remands proposed decisions back to the Hearing Examiner for further proceedings with instructions that usually do not follow the remand order until several months later. The results are that the administrative appeals process takes several years to complete, preventing providers from obtaining a final rate and, subsequently precluded from obtaining relief. While a decision has been remanded, the facility is also precluded from appealing to the Superior Court.

A provider's inability to get a fair rate set, coupled with appeals that are log jammed for years, result in facilities not being adequately reimbursed for providing services to Medicaid patients. Without some kind of due process, many healthcare providers will eventually be forced out of business.

SUMMARY OF APPEALS ACTIVITIY

Each year the Department sets reimbursement rates for 25 facilities.

- 15 facilities currently have no appeals.

  Fairbanks Memorial
  Providence
  Petersburg General Hospital
  Providence Extended Care
  Wrangell General Hospital
  Providence Seward
  Cordova Community Hospital
  Alaska Psychiatric Institute
  Denali Center
  Kodiak Island
  Norton Sound
  Mary Conrad
  Valdez Community
  Central Peninsula
  South Peninsula Hospital

  Total: 15

- 10 facilities have appeals pending.

  Alaska Regional (10)
  North Star (6)
  Bartlette Memorial (3)
  Valley (2)
  Heritage Place (1)
  Wesleyan (8)
  St. Ann's Nursing Home (4)
  Charter North (3)
  Ketchikan General (2)
  Sitka Community (1)

  Total: 10 Facilities, 40 Appeals

  - 40 appeals are currently outstanding.
  - 21 of these appeals are stayed at the request of the facility.

- Currently there are no proposed decisions pending in the Commissioner's Office.

- 6 proposed decisions have been remanded to the Hearing Officer in the past 4 years.

  - No proposed decision has been remanded more than once.

- No Valley Hospital proposed decisions have come to the Commissioner's Office since 1990.

  - 5 Valley rates have been appealed during this time.
  - 2 were settled, 1 is currently stayed at request of facility, 2 (1998 and 1999 rates) are being scheduled.

RECEIVED
'AR 4 [illegible] 1999
Ans'd............

February 24, 1999

Senator Robin Taylor
Alaska State Legislature
50 Front Street
Suite 203
Ketchikan, AK 99901

Dear Senator Taylor:

Thank you for your letter of January 24, 1999 and your commitment to review the activities of the Department of Health and Social Services. I cannot express to you the frustration and financial cost this process has endured. Thus far, Valley Hospital has incurred $82,250 in expenses defending our position to the Department, not to mention the countless hours Valley Hospital staff has spent compiling information for our legal council.

Please feel free to call on me to either testify or discuss further. Thank you again for your assistance.

Sincerely,

Dave Pfeifer
Chief Executive Officer

DP/vlr

515 E. DAHLIA ST., P.O. BOX 1687, PALMER, AK 99645 (907) 746-8600

ATTN: T. Barrister W/D LS0424D 3/19/99

1

2 ~~PROPOSED~~ AMENDMENTS TO AS 47.07.075 (SB NO. 106)
adopted

3

4 Section 1. AS 47.07.075 is amended to read:

5 (a) Actions of the department regarding health facility

6 payment rates under this chapter and AS 47.25.120-47.25.300 are

7 subject to provisions of AS 44.62 (Administrative Procedure Act) except

8 as provided in (b), (c) and (d) of this section.

9 (b) The commissioner shall [,] by regulation [,] establish

10 time limits applicable to the various phases of an administrative appeal

11 process involving an appeal of the amount of a payment rate set by the

12 department for a facility. The time limits set under the regulations

13 supersede conflicting time limits in AS 44.62.330-44.62.630. The

14 regulations must provide that [(1)] a hearing for an appeal described in

15 this subsection must be scheduled under AS 44.62.410 to occur no more

16 than 120 days after written notice of rate appeal has been received by

17 the department from a facility unless the facility requests a delay or

18 good cause for the delay is demonstrated to the satisfaction of the

19 hearing officer [;].

20 [(2)] (c) [t]The commissioner must, within 30 days after

21 receiving the recommendation of the hearing office, [EITHER] render a

22

New Text Underlined [DELETED TEXT BRACKETED]

1 final administrative decision in the case. If, after 30 days, the
2 commissioner does not render a final administrative decision, the
3 hearing officer's recommendation becomes the final administrative
4 decision. A final administrative decision under this paragraph is
5 subject to judicial review as a final administrative order under
6 AS 44.62.560 and 44.62.570 [OR REFER THE CASE BACK TO A
7 HEARING OFFICER FOR ADDITIONAL FINDINGS;].
8 [(3)] (d) [i]If the [EITHER] time limit set under [(1) OR (2)]
9 (b) of this [SUBSECTION] section is not met, the department shall
10 report the noncompliance to the legislature and the governor by the
11 following January 20 with an explanation of the length of delay, reasons
12 for the delay, and proposed corrective action by the department to
13 ameliorate the causes of delay.
14
15
16
17
18
19
20
21

New Text Underlined [DELETED TEXT BRACKETED]

LAW OFFICES
KEESAL, YOUNG & LOGAN
A CORPORATION
SIXTH FLOOR
1029 WEST THIRD AVENUE
ANCHORAGE, ALASKA 99501-1954
(907) 279-9696
TELECOPIER:
(907) 279-4239

SAMUEL A. KEESAL, JR.
STEPHEN YOUNG
ROBERT H. LOGAN
MICHAEL M. GLESS
PETER R. BOUTIN
SCOTT T. PRATT
TERRY ROSS
JOHN D. GIFFIN
WILLIAM H. COLLIER, JR.
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CARA L. FINAN
JENNIFER K. MONTS
STEPHANIE M. VILICICH

OF COUNSEL
MICHAEL H. WOODELL*
REESE H. TAYLOR, JR.
ELIZABETH A. KENDRICK
RICHARD A. APPELBAUM±
REAR ADMIRAL U.S.C.G. (RET.)

* ADMITTED IN ALASKA
+ ADMITTED IN WASHINGTON
♦ ADMITTED IN WASHINGTON & CALIFORNIA
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FAX Transmission Sheet

Date: March 22, 1999

To: Sue Mussgrove
(907) 465-3922

From: Susan Wright Mason

Subject: Proposed Amendments to AS 47.07.075 (SB NO. 106)
Our File No. 4566-1

Message: Please see the attached Proposed Amendments to AS 47.07.075.

You should receive __4__ page(s) **including this cover sheet.** If there is a problem receiving this transmission, please call (907) 279-9696. Our fax number is (907) 279-4239.

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400 OCEANGATE
P.O. BOX 1730
LONG BEACH, CA 90801-1730
(562) 436-2000
TELECOPIER: (562) 436-7416

SAN FRANCISCO OFFICE
SUITE 1500
FOUR EMBARCADERO CENTER
SAN FRANCISCO, CA 94111
(415) 398-6000
TELECOPIER:
(415) 981-0136 • (415) 981-7729

SEATTLE OFFICE
SUITE 1515
1301 FIFTH AVENUE
SEATTLE, WASHINGTON 98101
(206) 622-3790
TELECOPIER: (206) 343-9529

HONG KONG OFFICE
1603 THE CENTRE MARK
287 QUEEN'S ROAD CENTRAL
HONG KONG
(852) 2854-1718
TELEX: 65117 NAIAD
CABLE: NAIADSHK HONG KONG
TELECOPIER: (852) 2541-6189

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A CORPORATION
SIXTH FLOOR
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ANCHORAGE, ALASKA 99501-1954
(907) 279-9696
TELECOPIER:
(907) 279-4239

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March 22, 1998

PROPOSED AMENDMENTS TO AS 47.07.075 (SB NO. 106)

Susan Wright Mason

LONG BEACH OFFICE
400 OCEANGATE
P.O. BOX 1730
LONG BEACH, CA 90801-1730
(562) 436-2000
TELECOPIER: (562) 436-7416

SAN FRANCISCO OFFICE
SUITE 1500
FOUR EMBARCADERO CENTER
SAN FRANCISCO, CA 94111
(415) 398-6000
TELECOPIER:
(415) 981-0136 • (415) 981-7729

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SUITE 1515
1301 FIFTH AVENUE
SEATTLE, WASHINGTON 98101
(206) 622-3790
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HONG KONG OFFICE
1603 THE CENTRE MARK
287 QUEEN'S ROAD CENTRAL
HONG KONG
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TELEX: 65117 NAIAD
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TELECOPIER: (852) 2541-6189

1-LS0424\D
Bannister
3/19/99

adopted 3/22/99

CS FOR SENATE BILL NO. 106( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR TAYLOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to decisions regarding certain health facility payments."

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

3 * **Section 1.** AS 47.07.075(b) is amended to read:

4 (b) The commissioner shall [,] by regulation [,] establish time limits applicable
5 to the various phases of an administrative appeal process involving an appeal of the
6 amount of a payment rate set by the department for a facility. The time limits set
7 under the regulations supersede conflicting time limits in AS 44.62.330 - 44.62.630.
8 The regulations must provide that

9 (1) a hearing for an appeal described in this subsection must be
10 scheduled under AS 44.62.410 to occur no more than 120 days after written notice of
11 rate appeal has been received by the department from a facility unless the facility
12 requests a delay or good cause for the delay is demonstrated to the satisfaction of the
13 hearing officer;

14 (c)(2) the commissioner must, within 30 days after receiving the
15 recommendation of the hearing officer, [EITHER] render a **final administrative**

1 decision in the case**: if, after 30 days, the commissioner does not render a final**
2 **administrative decision, the hearing officer's recommendation becomes the final**
3 **administrative decision; a final administrative decision under this paragraph is**
4 **subject to judicial review as a final administrative order under AS 44.62.560 and**
5 **44.62.570** [OR REFER THE CASE BACK TO A HEARING OFFICER FOR
6 ADDITIONAL FINDINGS];
7 (d) (3) if **the** [EITHER] time limit set under (1) [OR (2)] of this subsection
8 is not met, the department shall report the noncompliance to the legislature and the
9 governor by the following January 20 with an explanation of the length of delay,
10 reasons for the delay, and proposed corrective action by the department to ameliorate
11 the causes of delay.

SENATE BILL NO. 106

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY SENATOR TAYLOR

Introduced: 3/16/99
Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to decisions by the commissioner of health and social services**
2 **to remand certain health facility payment decisions back to the hearing officers;**
3 **and amending Rule 602, Alaska Rules of Appellate Procedure."**

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

5 *** Section 1.** AS 47.07.075(b) is amended to read:
6 (b) The commissioner shall [,] by regulation [,] establish time limits applicable
7 to the various phases of an administrative appeal process involving an appeal of the
8 amount of a payment rate set by the department for a facility. The time limits set
9 under the regulations supersede conflicting time limits in AS 44.62.330 - 44.62.630.
10 The regulations must provide that
11 (1) a hearing for an appeal described in this subsection must be
12 scheduled under AS 44.62.410 to occur no more than 120 days after written notice of
13 rate appeal has been received by the department from a facility unless the facility
14 requests a delay or good cause for the delay is demonstrated to the satisfaction of the

COMMITTEE COPY

1 hearing officer;

(2) the commissioner must render a final administrative decision in the case within 30 days after receiving the recommendation of the hearing officer. If after 30 days no decision is rendered, the hearing officer's recommendation becomes the final administrative decision. A final administrative decision under this section is subject to judicial review as a final administrative order under AS 44.62.560 and 44.62.570.

6 ~~of the referral;~~

7 (3) if a [EITHER] time limit set under (1) ~~or (2)~~ of this subsection is

8 not met, the department shall report the noncompliance to the legislature and the

9 governor by the following January 20 with an explanation of the length of delay,

10 reasons for the delay, and proposed corrective action by the department to ameliorate

11 the causes of delay.

12 * Sec. 2. AS 47.07.075 is amended by adding a new subsection to read:

13 (c) In addition to the review of final administrative orders under AS 44.62.560

14 and 44.62.570, a health facility may appeal to the superior court a decision by the

15 commissioner under (b)(2) of this section to refer a case back to a hearing officer.

16 The health facility must file the appeal within 30 days after the health facility receives

17 notice from the commissioner of the decision.

18 * Sec. 3. COURT RULE CHANGES. Section 2 of this Act changes Rule 602, Alaska

19 Rules of Appellate Procedure, by

20 (1) authorizing a right of appeal to the superior court for a decision that is an

21 interlocutory order and not a final decision of an administrative agency;

22 (2) authorizing an appeal even though the administrative agency has not issued

23 a decision that states that it is a final decision and that the claimant has 30 days to appeal;

24 (3) changing the time within which an appeal, as applied to an interlocutory

25 order, may be filed.

26 * Sec. 4. AS 47.07.075(c), enacted by sec. 2 of this Act, takes effect only if sec. 3 of this

27 Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,

28 Constitution of the State of Alaska.

Subject: **RE: Amendments to SB 106**
Date: Fri, 19 Mar 1999 11:31:22 -0900
From: Doug Wooliver <dwooliver@courts.state.ak.us>
To: "'Sue Mossgrove'" <Sue_Mossgrove@legis.state.ak.us>

Here it is.

Page 2, lines 2 through 6; delete all material and replace with:

Page 2, line 7 following (1); delete "or (2)"

Page 2, lines 12 through 28; delete all material.

Doug

-----Original Message-----
From: Sue Mossgrove [SMTP:Sue_Mossgrove@legis.state.ak.us]
Sent: Friday, March 19, 1999 11:22 AM
To: Doug Wooliver
Subject: Re: Amendments to SB 106

Doug,

I am having trouble opening you attachment, could you please copy it into an email message.

Thanks

Sue

Reimbursement Rate/Appeals Process

1 Facility reimbursement rates

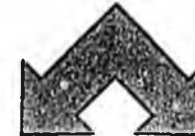
- $140 million annual Medicaid expenditure
- Each facility has own rate
- Reimbursement rate pays cost of Medicaid services

2 Facility specific cost report

- Cost report audited by state
- Audited cost basis for reimbursement

3 Rate setting

- Proposed rate reviewed by Medicaid Rate Advisory Commission
- MRAC recommends rate
- Rate set by Department

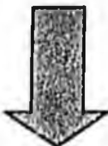


Facility appeals rate to Commissioner

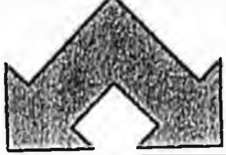
Facility accepts rate

4

1. **Rate appeal assigned to Hearing Officer**
2. **Hearing scheduled by Hearing Officer, Facility & State**
3. **Appeal process:** **Depositions**
Briefing
Evidentiary Hearing
Post Hearing briefing
4. **Hearing Officer writes decision**



Commissioner



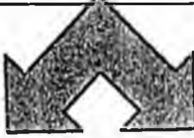
Hearing Officer issues new decision to Commissioner

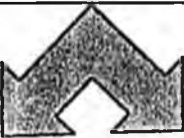
Accept

Remand

Appeal Complete

Appeal Complete





Facility accepts rate

Appeal to Court

Facility accepts rate

SB
110

FISCAL NOTE No. 1

STATE OF ALASKA
1999 LEGISLATIVE SESSION

Bill Version: SB 110
(S) Publish Date: 4-29-99

Revision Date/Time (Note if correction)
Title: Property Acquired by Govt. Entity
Sponsor: Senator Wilken
Requester: (S) JUD

Dept. Affected: DOT&PF
BRU: Commissioners Office
Component:
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	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: 0.0

POSITIONS

POSITIONS	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: *(Attach a separate page if necessary)*

Prepared by: Dennis Poshard, Legislative Liaison
Phone: 465-3904
Division: Office of the Commissioner
Date/Time: 4/12/99 12:27 PM
Approved by Commissioner: Joseph L. Perkins
Date:
Agency: Department of Transportation and Public Facilities

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FISCAL NOTE

No. 2

STATE OF ALASKA
1999 LEGISLATIVE SESSION

Bill Version: SB 110
(S) Publish Date: 4-29-99

Revision Date/Time (Note if correction)		Dept. Affected	Environmental Conservation
Title	An Act relating to liability involving certain property aquired by a governmental entity.	BRU	Spill Prevention and Response
		Component	Contaminated Sites Remediation Program
Sponsor	Senator Wilken		
Requester	Judiciary Committee	Component Serial No.	1431

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (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)*

SB 110 is a clarification of existing statutes and does not have a fiscal impact on the state.

Prepared by	Larry Dietrick	Phone	465-5250
Division	Spill Prevention and Response	Date/Time	4/8/99 8:37 AM
Approved by	Commissioner Michele Brown	Date	4/8/99
Agency	Department of Environmental Conservation		

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SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 3/18/99

FURTHER:

Date of 5-Day Notice: 4-8-99
(in accordance with Uniform Rule 23)

DATE TURNED IN TO OFFICE: ______

Judiciary Committee considered SENATE BILL NO. 110

"An Act relating to liability involving certain property acquired by a governmental entity; and providing for an effective date."

and recommends:

[✓] be replaced with ______ CS CSSB 110 (N) (Jud)
[ ] adopt previous ______ CS ______ (______)
[ ] attached amendment(s)
[ ] adopt Letter of Intent by ______ Committee
[ ] further referral to the ______ Committee

Senate Bill:
[ ] same title
[X] new title

House Bill:
[ ] same title
[ ] technical title
[ ] new: SCR# ______

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
		[signature]	✓		
		[signature] Donley	✓		
		[signature] Ellis		X	
CHAIR: [signature] Taylor		CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
DEC	4/8	✓	
DOT	4/12	✓	

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

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

*include fiscal notes accompanying Governor's bill

1-LS0360\S.1
Cook
5/7/99

20-0

AMENDMENT

OFFERED IN THE SENATE BY SENATOR LEMAN
TO: CSSB 110(RLS)

1 Page 1, lines 1 - 2:
2 Delete all material and insert:
3 ""An Act relating to liability for the release of hazardous substances involving certain
4 property acquired by a governmental entity; relating to making a determination as to
5 when a hazardous substance release has occurred; relating to liability of a party other
6 than the party responsible for the initial release of a hazardous substance; and providing
7 for an effective date.""

8 Page 1, following line 3:
9 Insert a new bill section to read:
10 "* Section. 1. AS 46.03.822(d) is amended to read:
11 (d) To establish that a person had no reason to know that the hazardous
12 substance was disposed of on, in, or at the facility, as provided in (c)(1) and (m) of
13 this section, the person must have undertaken, at the time of [Voluntary] acquisition, all reasonable
14 inquiries into the previous ownership and uses of the property consistent with good
15 commercial or customary practice in an effort to minimize liability. For purposes of
16 this subsection a court shall take into account all relevant facts, including
17 (1) any specialized knowledge or experience the person has;
18 (2) the relationship of the purchase price to the value of the property
19 if it were uncontaminated;
20 (3) commonly known or reasonably ascertainable information about
21 the property;
22 (4) the obviousness of the presence or likely presence of contamination
23 at the property; and
24 (5) the ability to detect contamination by appropriate inspection."

1 Page 1, line 4:
2 Delete "* **Section 1.**"
3 Insert "* **Sec. 2.**"
4 Delete "a new subsection"
5 Insert "new subsections"

6 Renumber the following bill sections accordingly.

7 Page 2, following line 14:
8 Insert a new subsection to read:
9 "(m) For purposes of determining liability in an action to recover damages or
10 costs under this section, a release shall be considered to have occurred when a
11 hazardous substance is first introduced into the environment. A party, other than the
12 party responsible for the initial release, who had no reason to know that a hazardous
13 substance was disposed of on, in, or at the facility and who has acted responsibly
14 upon discovering contamination in accordance with (b)(2) of this section may not be
15 held liable for the spread or migration of the hazardous substance except by an act of
16 intentional misconduct or gross negligence."

17 Page 2, line 15:
18 Delete "sec. 1"
19 Insert "sec. 2"

· Virgil amends [handwritten]

AMENDMENT

OFFERED IN THE SENATE BY SENATOR TAYLOR

TO: SB 110

1 Page 1, lines 1 and 2:
2 Delete all material and insert:
3 ""**An Act relating to liability for the release of hazardous substances; and providing for**
4 **an effective date.**""

5 Page 2, following line 13:
6 Insert new bill sections to read:
7 "* **Sec. 2.** AS 46.03.822 is amend by adding a new subsection to read:
8 "(l) For purposes of determining liability in an action to recover damages or
9 costs under this section, a release shall be considered to have occurred when a
10 hazardous substance is first introduced into the environment. A party, other than the
11 party responsible for the initial release, who has acted responsibly upon discovering
12 contamination in accordance with (b)(2) of this section may not be held liable for the
13 spread or migration of the hazardous substance except by an act of intentional
14 misconduct or gross negligence.
15 * **Sec. 3.** AS 46.03.826(9) is amended to read:
16 (9) "release" means any spilling, leaking, pumping, pouring, emitting,
17 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the
18 environment, including the abandonment or discarding of barrels, containers, and other
19 closed receptacles containing any hazardous substance, but excluding
20 (A) any release that results in exposure to persons solely within
21 a workplace, with respect to a claim that those persons may assert against the
22 persons' employer; [AND]
23 (B) emissions from the engine exhaust of a motor vehicle,
24 rolling stock, aircraft, or vessel; **and**

1 **<u>(C) an act of nature occurring after the release of a</u>**
2 **<u>hazardous substance into the environment;</u>**"

3 Renumber the following bill sections accordingly.

all amends.
Wilken
Virgil

1-LS0360\G.2
Cook✓
5/7/99

A M E N D M E N T

OFFERED IN THE SENATE BY SENATOR TAYLOR

TO: SB 110

1 Page 1, lines 1 - 2:
2 Delete all material and insert:
3 ""**An Act relating to liability for the release of hazardous substances; and providing for**
4 **an effective date.**""

5 Page 2, following line 13:
6 Insert new bill sections to read:
7 "* **Sec. 2.** AS 46.03.822 is amended by adding new subsections to read:
8 (l) A unit of state or local government that acquired ownership or control of
9 a vessel or facility through bankruptcy, foreclosure, deed in lieu of foreclosure, tax
10 delinquency proceeding, abandonment, escheat, the exercise of eminent domain
11 authority by purchase or condemnation, or circumstances in which the governmental
12 unit involuntarily acquired title by virtue of its function as a sovereign is not liable
13 as an owner or operator under this section unless the governmental unit has caused
14 or contributed to the release or threatened release of a hazardous substance at or from
15 the facility or vessel, in which case, the governmental unit is subject to liability under
16 this section in the same manner and to the same extent, both procedurally and
17 substantively, as any nongovernmental entity. For purposes of this subsection,
18 "caused or contributed to the release or threatened release of a hazardous substance"
19 (1) does not include the failure to prevent the passive leaching at or
20 from a facility or vessel of a hazardous substance in the air, land, or water that had
21 first been released to the environment by a person other than the governmental unit
22 that acquired the facility or vessel;
23 (2) does not include the exercise or failure to exercise regulatory or
24 enforcement authority;

1 (3) after the ownership or control of the facility or vessel has been
2 acquired by the governmental unit, includes
3 (A) the spilling, leaking, pumping, pouring, emptying, injecting,
4 escaping, or dumping of a hazardous substance from barrels, tanks, containers,
5 or other closed receptacles; or
6 (B) the abandonment or discarding of barrels, tanks, containers,
7 or other closed receptacles containing a hazardous substance.
8 (m) For purposes of determining liability in an action to recover damages or
9 costs under this section, a release shall be considered to have occurred when a
10 hazardous substance is first introduced into the environment. A party, other than the
11 party responsible for the initial release, who has acted responsibly upon discovering
12 contamination in accordance with (b)(2) of this section may not be held liable for the
13 spread or migration of the hazardous substance except by an act of intentional
14 misconduct or gross negligence.
15 * **Sec. 3.** AS 46.03.826(9) is amended to read:
16 (9) "release" means any spilling, leaking, pumping, pouring, emitting,
17 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the
18 environment, including the abandonment or discarding of barrels, containers, and other
19 closed receptacles containing any hazardous substance, but excluding
20 (A) any release that results in exposure to persons solely within
21 a workplace, with respect to a claim that those persons may assert against the
22 persons' employer; [AND]
23 (B) emissions from the engine exhaust of a motor vehicle,
24 rolling stock, aircraft, or vessel; **and**
25 **(C) an act of nature occurring after the release of a**
26 **hazardous substance into the environment;**"

27 Renumber the following bill sections accordingly.

Virgil amend.
Sec. 2
Release

1-LS0360\G.1
Cook
5/7/99

AMENDMENT

OFFERED IN THE SENATE — BY SENATOR TAYLOR

TO: SB 110

1 Page 1, lines 1 and 2:
2 Delete all material and insert ""**An Act relating to liability for the release of**
3 **hazardous substances; and providing for an effective date.**""

4 Page 2, following line 13:
5 Insert a new bill section to read:
6 "* **Sec. 2.** AS 46.03.826(9) is amended to read:
7 (9) "release" means any spilling, leaking, pumping, pouring, emitting,
8 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the
9 environment, including the abandonment or discarding of barrels, containers, and other
10 closed receptacles containing any hazardous substance, but excluding
11 (A) any release that results in exposure to persons solely within
12 a workplace, with respect to a claim that those persons may assert against the
13 persons' employer; [AND]
14 (B) emissions from the engine exhaust of a motor vehicle,
15 rolling stock, aircraft, or vessel; **and**
16 **(C) an act of nature occurring after the release of a**
17 **hazardous substance into the environment;**"

18 Renumber the following bill sections accordingly.

Wilken amend. only

1-LS0360\G.3
Cook
5/7/99

A M E N D M E N T

OFFERED IN THE SENATE BY SENATOR TAYLOR

TO: SB 110

1 Page 1, line 4, through page 2, line 17:

2 Delete all material and insert:

3 "* **Section 1.** AS 46.03.822 is amended by adding a new subsection to read:

4 (l) A unit of state or local government that acquired ownership or control of
5 a vessel or facility through bankruptcy, foreclosure, deed in lieu of foreclosure, tax
6 delinquency proceeding, abandonment, escheat, the exercise of eminent domain
7 authority by purchase or condemnation, or circumstances in which the governmental
8 unit involuntarily acquired title by virtue of its function as a sovereign is not liable
9 as an owner or operator under this section unless the governmental unit has caused
10 or contributed to the release or threatened release of a hazardous substance at or from
11 the facility or vessel, in which case, the governmental unit is subject to liability under
12 this section in the same manner and to the same extent, both procedurally and
13 substantively, as any nongovernmental entity. For purposes of this subsection,
14 "caused or contributed to the release or threatened release of a hazardous substance"

15 (1) does not include the failure to prevent the passive leaching at or
16 from a facility or vessel of a hazardous substance in the air, land, or water that had
17 first been released to the environment by a person other than the governmental unit
18 that acquired the facility or vessel;

19 (2) does not include the exercise or failure to exercise regulatory or
20 enforcement authority;

21 (3) after the ownership or control of the facility or vessel has been
22 acquired by the governmental unit, includes

23 (A) the spilling, leaking, pumping, pouring, emptying, injecting,
24 escaping, or dumping of a hazardous substance from barrels, tanks, containers,
25 or other closed receptacles; or

1 (B) the abandonment or discarding of barrels, tanks, containers,
2 or other closed receptacles containing a hazardous substance.
3 * **Sec. 2.** APPLICABILITY. AS 46.03.822(l), as added in sec. 1 of this Act, applies to
4 a vessel or facility acquired by a governmental entity on or after the effective date of this
5 Act. For purposes of this section, when foreclosure by a municipality is involved, the
6 property is acquired on the date it is deeded to the municipality under AS 29.45.450."