

ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672

10082 SENATE JUDICIARY

It would be better to follow the Federal Sentencing Guidelines, which make the offense more serious depending on the amount of the substances possessed. The Guidelines have a detailed table setting out quantities of substances and recommending different sentences based on quantities possessed. The Federal Sentencing Guidelines can be found at <http://www.ussc.gov/1998guid/tabcon98.htm>.



REPRESENTATIVE ERIC CROFT

MEMORANDUM

TO: Members of the House Judiciary Committee
FROM: Rep. Eric Croft
DATE: 3/1/99
RE: Committee Substitute for HB 3

The ad hoc Committee on HB3 consisted of the following persons meeting at various different times.

- Rep. Eric Croft
Rep. Tom Brice
Kevin Jardell, Majority Leader's Office
Cory Winchell, House Judiciary Committee
Bonnie Carroll, Rep. Brice's Office
Samuel Shepard, Rep. Croft's Office
Gerald Luckhaupt, Leg. Legal
Sandy Perry-Provost, Dept. Public Safety
Anne Carpeneti, Dept. of Law
Wilda Rodman, Rep. Therriault's Office

The ad hoc Committee proposes the following CS. We took it as our mission to address and hopefully solve the concerns raised at the initial Judiciary Committee meeting, including the following:

- 1) REGISTRATION. The registration provisions in the original bill were costly and cumbersome. The sponsor indicated that he had no objection to removing these provisions if adequate assurance was made that the federal authorities were cooperating with state and local authorities in Alaska. Del Smith made this assurance at the hearing.
2) CLASS A OR B FELONY. The original bill punished possession of listed chemicals with the intent to manufacture meth as a Class A Felony. Under current law, actual production of meth is a Class B Felony. Punishing the attempt lower than the completed crime raises substantial problems in prosecution and logic.
3) TO LIST OR NOT TO LIST. There was substantial discussion about the practical difficulties of keeping a controlled substance list current. Members expressed concern that any list not be exclusive.



Some discussion was had about the constitutional difficulties with allowing additions to the controlled substance list by regulation.

- 4) **EXEMPTED DRUGS.** The NPDMA wanted us to be careful to exempt drugs from criminal penalties that are federally regulated. Nobody had any objection to this concern, the only issue was how to accomplish it in our statutes.

The proposed CS meets each of these concerns.

- 1) **REGISTRATION PROVISIONS REMOVED.** The registration provisions have been removed from the CS.
- 2) **BOTH CRIMES CLASS A FELONIES.** After much discussion and analysis of various options, the CS raises both the actual manufacture and possession of listed chemicals with intent to manufacture to a Class A felony. This eliminates the logical oddity. The dangerous nature of meth labs makes this punishment warranted. In addition, making the crime a Class A felony brings it under the felony murder and the eviction power statutes. Under the CS, if a person is killed by a meth lab explosion, the operator of the lab may be guilty of felony murder and a tenant may be evicted for possession of listed chemicals with the intent to manufacture meth even if the lab has not yet produced any product.
- 3) **LIST AND ATTEMPT.** The CS continues to use a list of chemicals and, in fact, combines the List I and II to simplify the statutes. By raising the level of the felony, we have raised the attempt to manufacture meth to a Class B Felony. (In general, attempt is one level lower than the completed crime.) If a person purchases chemicals or other items with the intent to use them to produce meth, this probably a sufficient "substantial step" to convict on attempt. Therefore, the general attempt statutes serve as a catch-all for meth ingredients that are discovered after the effective date of this bill.
- 4) **EXEMPTED DRUGS.** After review, Section 4 as written meets the NPDMA concerns.

Enclosed is a copy of the CS. Call Rep. Brice's office with any questions.

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

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

February 19, 1999

Dear Representative Brice,

At a recent meeting of the APOA Board of Directors, we unanimously agreed to endorse HB 3.

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

Thank you for sponsoring this legislation.

Sincerely,

John Charbonneau
State President
Alaska Peace Officers Association

Public Safety Employees Association, Inc.
"Representing Alaska's Finest"

February 16, 1999

Honorable Representative Tom Brice
State Capitol
Juneau, AK 99801-1182

Re: House Bill 3

Dear Representative Brice:

Thank you for sponsoring House Bill 3. This legislation establishes a felony crime for those who possess certain chemicals with the intent to manufacture schedule IA, IIA, IIIA, IVA or VA drugs.

The Public Safety Employees Association fully supports this bill and advocates its quick passage so that Alaska's law enforcement officers can charge people who are using these dangerous chemicals to make methamphetamine and other illegal drugs.

This important tool will allow officers to apprehend and deter methamphetamine traffickers and ensure our neighborhoods are safer places to live.

Please call us if you need any assistance in passing this bill. We have members who are involved with drug enforcement and who, on behalf of PSEA, would gladly testify as to the importance of this legislation.

Sincerely,



Keith Perrin
Business Manager



Better Health
Through Responsible
Self-Medication

NONPRESCRIPTION DRUG MANUFACTURERS ASSOCIATION

March 5, 1999

The Honorable Pete Kott
Chair, House Judiciary Committee
Alaska House of Representatives
State Capitol, Room 118
Juneau, Alaska 99801-1182

Re: House Bill 3 - An Act Relating to Controlled Substances
And to the Possession of Certain Chemicals

Dear Representative Kott:

I received a copy this week of the Committee Substitute for Alaska House Bill 3, a bill that would impose criminal penalties for the possession of precursor chemicals if there is intent to manufacture methamphetamine. I am writing to let you know that we were very pleased to see that the Committee had decided to include our suggested changes to this important piece of legislation.

The inclusion of more severe penalties for manufacturing and possessing violations, while maintaining an OTC exemption for legitimate activities involving FDA-approved products, fully addresses our previous concerns with H.B. 3. Eliminating the registration and recordkeeping requirements also is in line with NDMA's belief that legislation such as H.B. 3 should punish the criminals, not the retailers and consumers. We now support H.B. 3 in its current form.

We appreciate yours and the Committee's commitment to working with industry on this key issue. Thank you for the opportunity to work with the Committee and for its consideration of our views on this important legislation. Should you have any questions or comments, please do not hesitate to contact me.

Sincerely,



Nancy A. Bukar
State Government Counsel

cc: Representative Tom Brice

NAB/jz

Meth Links

Long Term Effects

Slang Names

Meth Labs

Meth Facts

Living near Labs

Inhalant Abuse

Physical Damage

Get the Facts...
before meth
gets you!



MIDWEST HIDTA

Nebraska - Iowa - Kansas - South Dakota - Missouri
High intensity Drug Trafficking Area

stop

Methamphetamine Frequently Asked Questions

Q: What is Methamphetamine?

A: Methamphetamine is a powerful central nervous system stimulant. A synthetic drug, methamphetamine has a high potential for abuse and dependence. It is illegally produced and sold in pill form, capsules, powder and chunks. Methamphetamine was developed early in this century from its parent drug amphetamine and was originally used in nasal decongestants, bronchial inhalers, and in the treatment of narcolepsy and obesity. In the 1970s methamphetamine became a Schedule II drug - a drug with little medical use and a high potential for abuse.

Q: What are the street names for methamphetamine?

A: The drug is referred to by many names including "meth," "speed .. crank," "chalk," "go-fast," "zip," and "cristy." Pure methamphetamine hydrochloride, the smokeable form of the drug, is called "L.A." or - because of its clear, chunky crystals which resemble frozen water - "ice," "crystal," "64glass," or "quartz." Since the 1980s, ice has been smuggled from Taiwan and South Korea into Hawaii, where use became widespread by 1988. By 1990, distribution of ice had spread to the U.S. mainland.

Q: Where is meth manufactured and distributed?

A: Methamphetamine is both domestically produced and imported into the U.S. in already processed form. Once dominated by motorcycle gangs and other local producers in remote areas of California and the Pacific Northwest, the market now includes both local producers and Mexican sources providing finished product to stateside distributors.

Q: Is methamphetamine use in the Midwest increasing?

A: Methamphetamine has become the drug of choice in the Midwest. Within the last five years, meth use has increased in some communities by as much as 300 percent, accounting for up to 90 percent of the drug cases in many areas.

Q: Why is meth use so prevalent in the Midwest?

A: The region's methamphetamine epidemic stems from two problems:

- steadily increasing importation of methamphetamine into the region by organized trafficking groups; and
- clandestine manufacturing of methamphetamine by hundreds of users/dealers in small "mom and pop" labs.

Seizures of clandestine labs in the Midwest have increased from 44 in 1995 to more than 500 in 1997. In fact, the state of Missouri led the nation in 1997 in the number of meth labs seized.

Twenty Mexican methamphetamine trafficking organizations have been identified by DEA as being involved in the Midwest, which is connected via major interstate highways, rail and air to the West and Southwest border areas that serve as importation, manufacturing and staffing areas for the Mexican operations.

Q. How is meth made?

A. The processing required to make methamphetamine from precursor substances is easier and more accessible than ever. There are literally thousands of recipes and information about making meth on the Internet. An investment of a few hundred dollars in over-the-counter medications and chemicals can produce thousands of dollars worth of methamphetamine. The drug can be made in a makeshift "lab" that can fit into a suit case. The average meth "cook" annually teaches ten other people how to make the drug.

Q. Where are these labs found?

A. Clandestine labs known as "mom and pop" labs are found in rural, city and suburban residences; barns, garages and other outbuildings; back rooms of businesses; apartments; hotel and motel rooms; storage facilities; vacant buildings; and vehicles.

Q. What ingredients are used to make meth?

A. Over-the-counter cold and asthma medications containing ephedrine or pseudoephedrine, red phosphorous, hydrochloric acid, drain cleaner, battery acid, lye, lantern fuel, and antifreeze are among the ingredients most commonly used.

Q. What are precursor substances?

A: Precursors are substances that, in nature, might be inactive. However, when combined with another chemical the result is a new product. Methamphetamine starts with an inactive or marginally-inactive compound (ephedrine or pseudoephedrine) and other chemicals are added to produce the drug.

Q. How much does meth cost on the street?

A. The cost varies according to several factors, including purity of the drug, the region in which it is sold, the source of the drug (local product vs. imported) and availability of the drug. The approximate prices are:

\$25 per 1/4 gram
\$ 100 per gram
\$1700 per ounce

Experts estimate that one ounce of meth equals about 110 meth "hits."

The following prices were provided by a reader on June 29, 1998	The following prices in central California were provided by a reader on January 3, 1999
<p>1/32 of an ounce \$50.00 1/16 of an ounce \$80.00-\$100.00 1/8 of an ounce approx \$150.00 1/4 of an ounce approx \$250.00 1/2 of an ounce approx \$400.00-450.00 1 ounce approx \$650.00-\$800.00 depending on quality</p>	<p>1/32 of an ounce \$30.00 1/16 of an ounce \$50.00 1/8 of an ounce approx \$65-80.00 1/4 of an ounce approx \$125.00 1/2 of an ounce approx \$225-300</p>

Q. Who is using methamphetamine?

A. There are two basic profiles of users reported by law enforcement and treatment providers:

- students, both high school and college age; and
- white, blue-collar workers and unemployed persons in their 20s and 30s.

Use is widely prevalent in both urban and rural areas and equally divided among males and females. Women are more likely to use methamphetamine than cocaine. Some areas of the Midwest are seeing an increase in the number of Hispanic and Native American meth users, though whites are still the most dominant users of the drug.

Q. Are teenagers using the drug?

A. The drug is becoming more popular among persons 18 years and younger, as studies show teenagers perceive methamphetamine as safer, longer lasting and easier to buy than cocaine. The "Monitoring the Future" survey, which measures the extent of drug use among U.S. adolescents, found methamphetamine use among high school seniors more than doubled between 1990 and 1996. In addition, law enforcement officials have caught teens as young as 14- and 15-year-olds using and selling the drug.

Q. Why should I talk to my child about meth?

A. Teens whose parents talk to them about drugs are half as likely to use drugs as those whose parents do not speak to them on this topic.

Q: Why do people start using methamphetamine?

A: Athletes and students sometimes begin using meth because of the initial heightened physical and mental performance the drug produces. Blue collar and service workers may use the drug to work extra shifts, while young women often begin using meth to lose weight. Others use meth recreationally to stay energized at "rave" parties or other social activities. In addition, meth is less expensive and more accessible than cocaine and users often have the misconception that methamphetamine is not really a drug.

Q: Is meth used in combination with other drugs?

A: Methamphetamine users are likely also to be users of alcohol, marijuana and cocaine rather than users of drugs like heroin.

Q. Are there any legitimate uses for methamphetamine?

A: In some cases, doctors prescribe low doses of methamphetamine for narcolepsy and attention deficit disorder.

Q: How is methamphetamine administered?

A: It can be smoked, taken intranasally (snorted), injected intravenously or ingested orally. The practice of "eating" meth by putting it on paper or food and chewing it also has been reported.

Q: What happens immediately after a person takes methamphetamine?

A: The drug alters mood in different ways, depending on how it is taken. Immediately after smoking or intravenous injection, the user experiences an intense "rush" or "flash" that lasts only a few minutes and is described as extremely pleasurable. Smoking or injecting produces effects fastest, within five to ten seconds. Snorting or ingesting orally produces euphoria - a high but not an intense rush. Snorting produces effects within three to five minutes, and ingesting orally produces effects within 15 to 20 minutes.

Q: How does the drug effect users overall?

A: In all forms, the drug stimulates the central nervous system, with effects lasting anywhere from four to 24 hours. Methamphetamine use can not only modify behavior in an acute state, but after taking it for a long time, the drug literally changes the brain in fundamental and long-lasting ways. It kills by causing heart failure (myocardial infarction), brain damage, and stroke and it induces extreme, acute psychiatric and psychological symptoms that may lead to suicide or murder.

Q: What are the short-term effects?

A: Central Nervous System Side Effects

Even small amounts of methamphetamine can produce euphoria, increased alertness, paranoia, decreased appetite and increased physical activity. Other central nervous system effects include athetosis (writhing jerky, or flailing movements), irritability, extreme nervousness, insomnia, confusion, tremors, anxiety, aggression, incessant talking, hyperthermia, and convulsions. Hyperthermia (extreme rise in body temperature as high as 108 degrees) and convulsions sometimes can result in death.

Cardiovascular Side Effects

Use can produce chest pain and hypertension which can result in cardiovascular collapse and death. In addition, methamphetamine causes accelerated heartbeat, elevated blood pressure and can cause irreversible damage to blood vessels in the brain.

Other Physical Effects

Pupil dilation, respiratory disorders, dizziness, tooth grinding, impaired speech, dry or itchy skin, loss of appetite, acne, sores, numbness, and sweating.

Psychological Effects

Symptoms of prolonged meth abuse can resemble those of

schizophrenia and are characterized by anger, panic, paranoia, auditory and visual hallucinations, repetitive behavior patterns, and formication (delusions of parasites or insects on the skin).

Methamphetamine-induced paranoia can result in homicidal or suicidal thoughts.

Q: What other long-term effects can result?

A: Fatal kidney and lung disorders, brain damage, liver damage, blood clots, chronic depression, hallucinations, violent and aggressive behavior, malnutrition, disturbed personality development, deficient immune system, and methamphetamine psychosis, a mental disorder that may be paranoid psychosis or may mimic schizophrenia.

Q: How much of the drug can cause an overdose?

A: A toxic reaction (or overdose) can occur at relatively low levels, 50 milligrams of pure drug for a non-tolerant user. Metabolic rates vary from person to person, and the strength of the illegal form of the drug varies from batch to batch, so there is no way of stating a "safe" level of use. In overdose, high fever, convulsions and cardiovascular collapse may precede death. Because stimulants effect the body's cardiovascular and temperature-regulating systems, physical exertion increases the hazards of meth use.

Q: What effect does methamphetamine use have on pregnancy?

A: Babies can be born methamphetamine addicted and suffer birth defects, low birth weight, tremors, excessive crying, attention deficit disorder, and behavior disorders. There is also an increased risk of child abuse (including "shaken baby syndrome") and neglect of children born to parents who use methamphetamine.

Q: What are some signs that a person may be using the drug?

A: The person may exhibit anxiousness; nervousness; incessant talking; extreme moodiness and irritability; purposeless, repetitious behavior, such as picking at skin or pulling out hair; sleep disturbances; false sense of confidence and power; aggressive or violent behavior; disinterest in previously enjoyed activities; and severe depression.

Q: If methamphetamine is so dangerous, why can physicians prescribe the drug to patients?

A: The key is the dosage. Methamphetamine abusers use much higher dosages of the drug than a physician would routinely prescribe when treating a patient.

Q: Why is methamphetamine addictive?

A: All addictive drugs have two things in common: they produce an initial pleasurable effect, followed by a rebound unpleasant effect. Methamphetamine, through its stimulant effects, produces a positive feeling, but later leaves a person feeling depressed. This is because it suppresses the normal production of dopamine, creating a chemical imbalance. The user physically demands more of the drug to return to normal. This pleasure/tension cycle leads to loss of control over the drug and addiction.

Q: How does methamphetamine take over one's life?

A: Methamphetamine short-circuits a person's survival system by

artificially stimulating the reward center, or pleasure areas in the brain. This leads to increased confidence in meth and less confidence in the normal rewards of life. This happens on a physical level at first, then it affects the user psychologically. The result is decreased interest in other aspects of life while reliance and interest in meth increases. In one study, laboratory animals pressed levers to release methamphetamine into their blood stream rather than eat, mate, or satisfy other natural drives. The animals died of starvation while giving themselves methamphetamine even though food was available.

Q: Is there methamphetamine withdrawal?

A: Yes. The severity and length of symptoms vary with the amount of damage done to the normal reward system through methamphetamine use. The most common symptoms are: drug craving, extreme irritability, loss of energy, depression, fearfulness, excessive drowsiness or difficulty in sleeping, shaking, nausea, palpitations, sweating, hyperventilation, and increased appetite.

Q: Is methamphetamine addiction difficult to treat?

A: Several treatment providers describe methamphetamine abusers as "the hardest to treat" of all drug users. They are often overly excitable and "extremely resistant to any form of intervention once the acute effects of meth use have gone away." Meth addicts get over the acute effects of withdrawal fairly quickly. However, the "wall" period lasts 6-8 months. This is a period of prolonged abstinence during which the brain recovers from the changes resulting from meth use. During this period, recovering addicts feel depressed, fuzzyheaded, and think life isn't as pleasurable without the drug. Because prolonged use causes changes in the brain, willpower alone will not cure meth addicts.

Q: Is relapse common?

A: Yes. Because there are psychiatric, social, and biological components to meth dependence, there is a high likelihood of relapse. Key relapse issues are similar to that of cocaine use and include other substance abuse and being around drug-using friends.

Q: What prompts methamphetamine users to enter treatment?

A: Methamphetamine causes a variety of mental, physical, and social problems which may prompt entry into treatment. Though not as expensive as heroin and cocaine, its cost might also produce financial problems for users and prompt them to seek help. However, the most commonly reported reason why methamphetamine users enter treatment is trouble with the law. These legal problems include aggressive or bizarre behaviors which prompt others to call police. Other reasons for entry include mental or emotional problems and problems at work or at school.

Q: How does the cost of treating meth users compare to incarceration?

A: Treatment is a highly cost-effective alternative; it is about one-tenth of the cost to treat a person rather than putting him or her in jail.

Q: What other problems does methamphetamine pose to society?

A: Automobile accidents; explosions and fires triggered by the illegal manufacture of methamphetamine; environmental contamination; increased criminal activity, including domestic violence; emergency room and other medical costs; spread of infectious disease, including

HIV, AIDS and hepatitis; and lost worker productivity. Economic costs also fall on governments, which must allocate additional resources for social services and law enforcement.

Q: How is the production of meth more dangerous than other drugs?

A: Meth trafficking and production are different than other drugs because they are dangerous from start to finish. The reckless practices of the untrained people who manufacture it in clandestine labs result in explosions and fires that injure or kill not only the people and families involved, but also law enforcement or fireman who respond. Any number of solvents, precursors and hazardous agents are found in unmarked containers at these sites. These potent chemicals can enter the central nervous system and cause neural damage, effect the liver and kidneys, and burn or irritate the skin, eyes and nose. Environmental damage is another consequence of these reckless actions, and violence is often a part of the process as well.

Q. What are the most serious environmental consequences of meth labs?

A: Each pound of meth produced leaves behind five or six pounds of toxic waste. Meth cooks often pour leftover chemicals and byproduct sludge down drains in nearby plumbing, storm drains, or directly onto the ground. Chlorinated solvents and other toxic byproducts used to make meth pose long-term hazards because they can persist in soil and groundwater for years. Clean-up costs are exorbitant because solvent contaminated soil usually must be incinerated.

Q: What is the cost of a cleaning up a clandestine meth lab site?

A: Cleanups of labs are extremely resource-intensive and beyond the financial capabilities of most jurisdictions. The average cost of a cleanup is about \$5,000 but some cost as much as \$150,000.

Q: What are the federal penalties for methamphetamine trafficking?

A: The basic, mandatory minimum sentences under federal law are:

- 10 grams (pure) = 5 years in prison
- 100 grams (pure) = 10 years in prison.

Q: What is the Comprehensive Methamphetamine Control Act of 1996?

A: This federal legislation takes significant steps toward preventing meth from becoming the next crisis in drug abuse. The bill:

- Permits the domestic seizure and forfeiture of methamphetamine precursor chemicals.
- Directs the Attorney General to coordinate international drug enforcement efforts to interdict such chemicals.
- Increases penalties for the possession of equipment used to make controlled substances, and for trafficking in certain precursor chemicals.
- Requires an interagency task force to develop and implement prevention, education and meth treatment strategies.

Q: What is Midwest HIDTA?

A: High Intensity Drug Trafficking Areas (HIDTAs) are areas identified

by the Office of National Drug Control Policy (ONDCP) as having the most critical drug trafficking problems adversely impacting the U.S. The Midwest HIDTA, which includes Iowa, Kansas, Missouri, Nebraska and South Dakota, was created specifically to fight the spread of meth in the Midwest. It promotes a comprehensive, cooperative strategy by law enforcement at the federal, state and local levels to reduce drug trafficking.

Q: What do I look for if I suspect a meth lab in my neighborhood?

A: Unusual, strong odors similar to the that of fingernail polish remover or cat urine; renters who pay cash; large amounts of products such as cold medicines, antifreeze, drain cleaner, lantern fuel, coffee filters, batteries, duct tape, clear glass beakers and containers; and residences with windows blacked out and lots of nighttime traffic.

Q: How do I report a suspected methamphetamine lab or find help for someone who is using meth?

A: Call the Crank Hotline at 1-888-664-4673. (This number is only good for residents of Nebraska, Iowa, Kansas, South Dakota and Missouri)

This Methamphetamine FAQ was written by:

MIDWEST

HIDTA

Nebraska - Iowa - Kansas - South Dakota - Missouri

High intensity Drug Trafficking Area

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Saturday, January 22, 2000

Suspected drug lab raided

By SEAN COCKERHAM
Staff Writer

Local drug investigators raided a suspected methamphetamine lab on Friday, the second discovered in North Pole this month.

Agents of the Statewide Drug Enforcement Unit served a search warrant on a house at 3135 Old Richardson Highway.

Alaska State Trooper Sgt. J.R. Roberts said it is the home of 34-year-old Mac Anthony Payne. Payne was present at the time of the raid, Roberts said, but did not admit any culpability.

The suspected lab was located near a junkyard where investigators had discovered a methamphetamine lab in 1998, only the second one that law enforcement officers had ever found in the Interior.

Roberts said the lab discovered Friday appears to be a small methamphetamine operation. No arrests have been made, and charges will not be filed until the chemicals are sent to a laboratory for positive identification.

Methamphetamine is created from a potpourri of chemicals, and the labs can consist of 20 to 150 different items. The evidence analysis is time-consuming.

Investigators raided another suspected methamphetamine lab in North Pole less than three weeks ago. In that case they were serving an arrest warrant based upon the lab results of a raid from six months earlier and reportedly discovered that the wanted man had begun cooking the drug again.

Go shopping where the reindeer play

5 cited in meth busts

December 03, 1999

By SEAN COCKERHAM
Staff Writer

A Fairbanks grand jury has handed down the first criminal charges from this summer's string of local methamphetamine lab raids.

Indictments were filed Thursday against five people linked to two alleged labs discovered a week apart in late June, one in South Fairbanks and one in North Pole.

Four of those charged remain at large, while the fifth is in custody on a probation violation.

The delay in bringing the charges is due to the wait for results to come back from the state crime lab in Anchorage. Methamphetamine is created from a potpourri of chemicals. The labs can contain 20 to 150 different items.

"With meth labs, unlike any other (drug operation), there is so much evidence to submit," said Alaska State Trooper Sgt. J.R. Roberts, head of the local multi-agency drug enforcement team. "So many items have to be identified to make a solid manufacturing case, and you have to go through each one."

The grand jury determined this week that a sufficient case has been made to indict Richard M. Dickman, 31, and Heather C. Szmyd, 33, on felony drug manufacturing charges. They were allegedly cooking the drug in a Laurene Street Apartment—the first methamphetamine lab ever discovered inside Fairbanks city limits.

Drug investigators raided the lab on the morning of June 24 and reportedly found the drug stew simmering while Dickman and Szmyd slept.

The grand jury also indicted three people in connection with a June 24 bust of an alleged methamphetamine lab in the basement of a Plato Way house in North Pole.

Vincent T. Haugen, 35, and Lara C. Johnson, 29, were charged with felony charges of drug manufacturing and possession. William R. Baxter, 48, was charged only with methamphetamine possession.

During the raid Haugen was arrested on a probation violation for a 1998 drug case and is still in custody.

Three other local methamphetamine labs also were busted this summer. Lab results from two of those raids are back, and charges are possible once the district

**Don't
get
mauled!**

**Roads
icy?**

- attorney's office completes its review of the evidence.

Roberts said it appears that the methamphetamine labs are not affiliated with one another, but "I would venture to say that the parties involved are probably familiar with one another."

Methamphetamine, also known as crystal, crank, or speed, is an addictive stimulant that is cheaper than cocaine. In the summer of 1998 drug investigators first found methamphetamine labs in the larger Fairbanks area.

Laboratories designed to cook the drug are dangerous because of the toxicity and explosiveness of chemicals used, investigators say.



Two meth lab suspects arrested, two still at large

December 11, 1999

By Staff report

Authorities have arrested two people since last week's methamphetamine lab indictments, but two others also implicated in the summertime drug raids remain free.

Richard M. Dickman, 31, and Heather C. Szmyd, 33, were arrested after an anonymous tip. They were arraigned on felony drug manufacturing charges Friday in Fairbanks Superior Court and both pleaded innocent.

They were allegedly manufacturing the drug in a Laurene Street Apartment.

Drug investigators raided the South Fairbanks apartment in late June, and the couple reportedly was found sleeping while the drug cooked.

Investigators say it was the first methamphetamine lab found within city limits. But authorities first discovered such labs in the borough the previous summer.

Dickman and Szmyd were indicted by a grand jury last week, as were people allegedly connected with a North Pole methamphetamine lab also raided in June.

Vincent T. Haugen, 35, and Lara C. Johnson, 29, were charged with felony charges of drug manufacturing and possession. William R. Baxter, 48, was charged only with methamphetamine possession.

Haugen was already in custody on a probation violation. But Johnson and Baxter, who were also scheduled to be arraigned on Friday, remain at large.

No charges have been filed yet in connection with three other alleged local methamphetamine labs raided this summer. Methamphetamine labs consist of numerous components that must be analyzed by the state crime lab before charges can be filed.



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Suspected meth lab busted

December 15, 1999

By JOLIE LEWIS
Staff Writer

Two people could face felony drug-manufacturing charges after investigators found equipment in a Badger Road area house Tuesday morning that appeared to be part of a methamphetamine lab.

Francis Peron, 36, and Nancy Weather, 40, were at home when authorities showed up at 10:30 a.m. with a search warrant. Neither has been arrested, said Alaska State Troopers Sgt. J.R. Roberts, supervisor of the local Statewide Drug Enforcement Unit.

Investigators reportedly found drug-manufacturing paraphernalia in a bathtub and small closet in the upstairs of the two-story wood house on Hartzog Loop.

Dressed in protective gear, the investigators carried out containers of sludge and crusty substances, unidentified solvents and cans that apparently held toluene, a colorless hydrocarbon, used in making explosives and as a solvent. Investigators also found residue that may have come from finished product.

"Typical. A bunch of unknowns," Roberts said. "Obviously, it all needs to be analyzed."

Peron and Weather could be charged with third-degree drug misconduct following testing of chemicals found on scene.

This is the seventh suspected methamphetamine lab to be found this year and the first to be dismantled in the sub-zero temperatures of winter, Roberts said. Investigators from troopers, Fairbanks police and the Drug Enforcement Administration set up a heated workstation under a tarp outside the residence and were still cleaning up 10 hours after they arrived.

Roberts said authorities heard about the suspected lab through an anonymous tip and investigated for two to three weeks. He believes the lab's output would have been comparable to others found this year.

Methamphetamine is an addictive stimulant that is made using toxic or explosive chemicals, investigators say.



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Another meth lab located

Suspect charged in similar case

January 08, 2000

By JOLIE LEWIS
Staff Writer

More than six months elapsed between the discovery of a suspected methamphetamine lab in a cargo van in North Pole and the indictment of the man suspected of running it.

Drug investigators say it was long enough for James Hughes to start cooking again.

While arresting Hughes on a warrant from the first lab, they found a new lab in his bedroom Friday, Alaska State Troopers Sgt. J.R. Roberts said.

Hughes is being held at Fairbanks Correctional Center on \$25,000 bail on a charge of third-degree drug misconduct. He could face another such charge after chemicals found Friday are processed and analyzed, Roberts said.

Investigators went to an Outside Boulevard home near North Pole about 9:30 a.m. to arrest Hughes on the warrant.

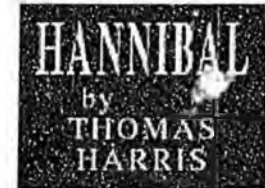
They announced themselves when they arrived but reportedly pushed into the place about 45 minutes later because no one answered. Inside, they found Hughes, who may have been preparing to synthesize methamphetamine when investigators showed up, Roberts said.

"How many people are washing out Mason jars at 9:30 in the morning in the bathtub?" asked Roberts, supervisor of the local, multi-agency Statewide Drug Enforcement Unit.

Like several other drug labs found in 1999, the cargo van lab was dismantled by investigators after they found it. Charges have been filed in some of the 1999 cases and are still pending in others.

Roberts classified both of Hughes' suspected labs as relatively small operations. He believes Hughes probably isn't alone in his quick return to manufacturing methamphetamine.

"They're not going to stop," Roberts said. "Look at Hughes. We bust him in a lab this summer, he's back doing the same thing."



feet in diameter, said Doug Bauer, the DEC's site remediation project manager.

"It has all the appearances of being a surface spill," Bauer said. "Whether it was pure (TCE) or used solvent, it is difficult to

have to ship this to a hazardous waste landfill in Washington or Oregon. That drives the cost up."

The main goal of any cleanup, Bauer said, would be to bring contamination levels to below drinking water standards.

TCE and benzene are the two major contaminants identified in the area ground water. Benzene is a known carcinogen. Many area residents, in response to the contamination, have resorted to hauling water or have installed

Meth package delivered; man arrested

By JOLIE LEWIS
Staff Writer

Like a boy anxious for Christmas, Ryan Everson kept asking about a package he was expecting.

When it finally came, Everson wasn't home and family members didn't recognize it as the one he was waiting for: It was addressed to somebody else. They turned it over to authorities.

That is how, local investigators say, Everson landed in jail Tuesday on a felony drug trafficking charge, according to a criminal complaint filed in Fairbanks District Court. The package allegedly contained nearly half a kilogram of methamphetamine.

Fairbanks police, Drug Enforcement Administration agents and Alaska State Trooper investigators from the Statewide Drug Enforcement Unit removed 400 of the 454 grams of methamphetamine, resealed the package and with the help of postal workers, again delivered it to the Baranof Avenue address.

This time, the 19-year-old was there to accept it, investigators wrote in the criminal complaint. He left the house within a few minutes in a 1988 Nissan pickup truck.

Police stopped him on Trainor Gate Road and found the package and the drugs behind the seat, according to court records.

Everson was arrested about 2:15 p.m. and charged with third-degree misconduct involving a controlled substance and driving with a revoked license.

The state has since dropped those charges to allow federal authorities to take over the case. Everson is being held without bail at Fairbanks Correctional Center, jail staff said Thursday evening.



PARK FUTURE—Sue Deyoe, right, of Denali Park, looks at a map of Denali National Park with South District Park Ranger J.D. Swed Thursday afternoon in the Noel V Park Service was holding an open house meeting to share information on future issues and options.

Assembly sets hearing on rifle

Job hunting

Meth lab suspect released

Loophole in law halts charges

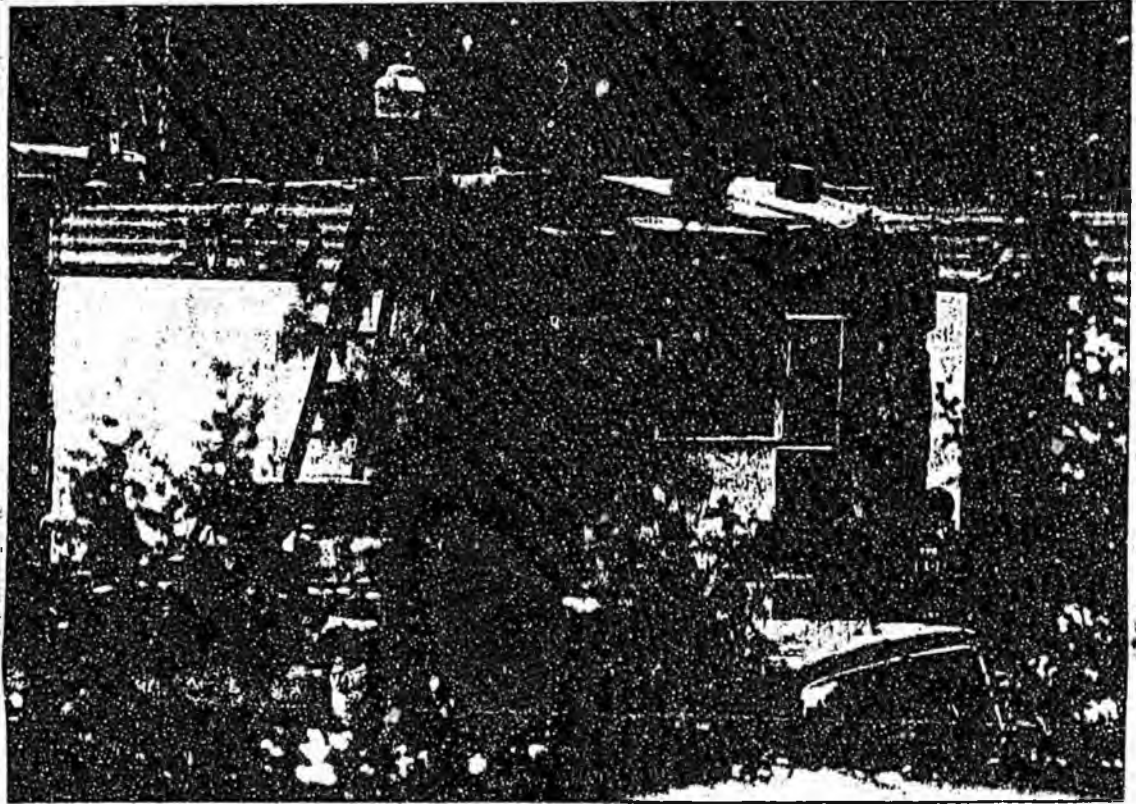
By JOLIE LEWIS
Staff Writer

Highly explosive materials stored near exposed live wires; hazardous chemicals left uncapped in a trailer where two people lived: Authorities characterized the methamphetamine lab as unusually dangerous.

To their disappointment, the 42-year-old Oklahoma transplant and the lab's alleged drug cook is now back on the streets three months after his arrest.

Oklahoma failed to produce a governor's warrant for Raymond C. Anderson's extradition before a 90-day window expired Sept. 21, and Alaska never filed drug charges.

Methamphetamine labs—described as extremely dangerous operations by Alaska State Troopers Statewide Drug Enforcement Unit investigators—are a new enough



Sam Hanel/News-Miner

METH LAB—In this summer file photo, an investigator enters an Atco building suspected to be a methamphetamine lab Wednesday in a junk yard off the Old Richardson Highway south of North Pole.

criminal trend in Alaska that prosecutors are just now discovering, a possible loophole in state statute.

The chemical process Anderson allegedly used to cook the drug may not be illegal.

"Somewhere, the system has failed," said Jeff Deutsch, the North Pole police officer who first sought a warrant for Anderson's arrest on a traffic charge. "Now it becomes a community problem again."

But Sgt. J.R. Roberts, chief of the local drug enforcement unit, said the setback should almost have been expected.

"It's something that's new to Alaska," Roberts said of meth labs. "It's new to the system. It's new to us. We're all novices when it comes to this."

North Pole police and drug investigators in mid-June converged on the junkyard Atco unit where Anderson apparently lived with his teen-age son. They had a warrant al-

leging Anderson had provided a false name during a traffic stop—his own license was suspended—and had fled from justice in Oklahoma.

Authorities didn't find Anderson that day, but they did discover hazardous chemicals and drug-manufacturing apparatus in a "poor man's" set-up that spooked even experienced methamphetamine lab investigators. There were no drugs, however.

Anderson was arrested a week later in a Fairbanks apartment on the warrant.

Oklahoma authorities said they would extradite. Though Anderson was wanted in two counties in southeastern Oklahoma, prosecutors from one took charge of extradition.

In this case, it was Bryan County, where Anderson was wanted for failing to show up in court in January on charges of possessing methamphetamine and marijuana after a felony conviction. Further drugs

charges are pending in other cases, said assistant district attorney Greg Jenkins.

In neighboring Choctaw County, Anderson missed court dates in cases alleging he delivered drugs and conspired to manufacture them. Assistant District Attorney Maria Blakely said Anderson has a "whole slew" of prior drugs convictions.

Oklahoma bondsman Wayne Holder, an agent for a company that posted more than \$30,000 of bonds on Anderson's behalf in Choctaw County, searched for Anderson for approximately six months. He tracked Anderson to Fairbanks and provided information to local investigators.

"It was just a long, hard deal," said Holder, who ultimately salvaged the company's bond. "We did our job. We got him incarcerated up there. ... As bondsman, we're exonerated."

See METH Page A-3



RAYMOND ANDERSON

METH: Suspected methamphetamine cook released; loophole found in law

Continued from Page A-1

To extradite, the Bryan County district attorney needed to submit a warrant request to the Oklahoma governor, who in turn would sign it and send it to Alaska Gov. Tony Knowles for approval. Local authorities could then send Anderson back to Oklahoma.

They had 90 days. Bryan County officials, however, didn't begin the process until early September, more than 70 days after Anderson's arrest in Fairbanks.

Beverly Jackson, an extradition secretary in Bryan County, said she waited because Anderson at first said he would return willingly and because she thought Alaska would file felony drugs charges.

The documents were still in the governor's office in Oklahoma when time ran out Sept. 1. Blakely said it was "absolutely" disappointing Anderson slipped through their fingers.

Anderson walked out of jail in Fairbanks on Sept. 22.

Meanwhile, the district attorney's office in Fairbanks had reached a plea agreement with Anderson. He pleaded no contest to driving with a suspended license; the state dismissed the false report charge. That case was resolved Sept. 16.

Despite provisions in Alaska statutes that say manufacturing methamphetamine constitutes third-degree drugs misconduct, a felony, charges were never filed.

"We don't have a statute which makes it illegal to possess precursor drugs," said District Attorney Harry Davis, adding that the state may yet consider pinning other charges on Anderson.

State law says it is illegal to manufacture "any amount" of a controlled substance—suggesting that some amount of finished product must be recovered for the charge to apply, Davis said. It's also a felony to be in possession of certain illegal substances with the intent of using them to make drugs—but many precursors and chemicals used to make methamphetamine apparently are not defined as illegal.

Yet some of those same chemicals are so toxic or volatile that investigators say methamphetamine cooks may be putting an entire neighborhood at risk.

State Rep. Tom Brice, D-Fairbanks, wants to make Alaska's methamphetamine law more clear by defining other precursors as illegal substances. He said he was approached by investigators this summer and plans to introduce legislation next session if re-elected.

"If (investigators) see the boxes of all the precursors going into a house, it will allow them to crack that house before it goes into production," Brice said. "There's nothing else you can do with all that stuff except blow up the block."

Brice's legislation also would require stores to notify authorities when someone buys extremely large quantities of legal, over-the-counter drugs that can be used to make methamphetamine.

Phil Moberly, chief of the Statewide Narcotics Unit based at the district attorney's office in Anchorage, said his team is researching interpretations of stat-

utes applying to methamphetamine labs. He didn't want to comment definitively until after attending a "clandestine lab" class in Anchorage this week.

"Prosecution of (labs) is an evolving thing up here. We don't have a lot of experience with it," Moberly said. "I think we're going to see more."

Moberly has been involved with three methamphetamine lab cases in Anchorage; two of which were prosecuted federally. In the third case, a defunct lab was found in someone's house; the defendant was charged with possession of methamphetamine and maintaining a dwelling con-

taining drug-producing apparatus.

In Fairbanks, two methamphetamine labs have been raided. Crist A. Bigler, the alleged cook at a lab found four days before authorities discovered one in Anderson's trailer, has been charged in federal court.

Assistant U.S. Attorney Stephen Cooper declined to comment Thursday on the possibility of prosecuting the Anderson case, but Roberts said it isn't likely.

Anderson's public defender speculated something must have gone awry in the investigation. If it were simply a loophole in state law, Jim Cannon said federal prosecutors would have just picked up the case.

"The feds have had a bleeding chemical under (illegal)," Cannon said. "I guess they found it, but they couldn't use the evidence because the Oklahoma never came up with the governor's warrant, and the guy sat in jail for 90 days."

Roberts countered that investigators had done everything by the book—and if the attorneys would have known about it.

He pledged Saturday sleuthing out meth labs.

"Regardless of what the actions are, it's not going to stop our efforts to investigate and bring them down," he said. "It's still illegal."

The Meth Monster

Combatting the homemade drug methamphetamine is proving to be a difficult and costly job for law enforcement agencies in many states.

BY ELLEN PERLMAN

Bill Hardin, drug director in the Arkansas governor's office, doesn't mince words. "We're in an epidemic condition with this," he says. "It's devastating local law enforcement budgets." Hardin isn't referring to heroin or cocaine or marijuana. The main drug of choice these days in Arkansas is methamphetamine.

The manufacture and use of "meth" or "crank," as the synthetic drug is known on the street, has skyrocketed in Arkansas during the past five years. In 1994, law enforcement officers there got about 25 reports about the existence of methamphetamine labs where people "cook" the drug. In 1997, there were 444 such reports. By mid-November of last year, more than 500. "It is our main criminal activity in

Arkansas at this time," Hardin says.

The problem is hardly confined to Arkansas. Since meth first came on the scene in California more than a decade ago, it has been spreading inexorably eastward. Prior to 1997, Illinois had no record of meth lab seizures; there weren't enough to warrant keeping track. Since then, however, the state has taken action against more than 100. Missouri state police raided 524 clandestine labs between January and October of last year. "We're second only to California," says Tom Taylor, a lieutenant with the Missouri State Highway Patrol.

While the drug is not yet commonly found in the East, the White House Office of National Drug Control Policy sees indications that it's headed that way. Realizing that they are facing a drug trade with

dangers like no other, many states are strengthening laws and lengthening punishments in order to fight back.

ALTHOUGH A PURE FORM of meth comes from Mexico, users don't have to wait on a foreign connection. Anyone with a recipe, which is not difficult to find on the Internet, can produce it. "It's like making a cake," says Walter Allen III, special agent in charge at the Bureau of Narcotic Enforcement in California's Department of Justice. "It's really simple." For less than \$100, a manufacturer can produce about \$2,000 worth of meth.

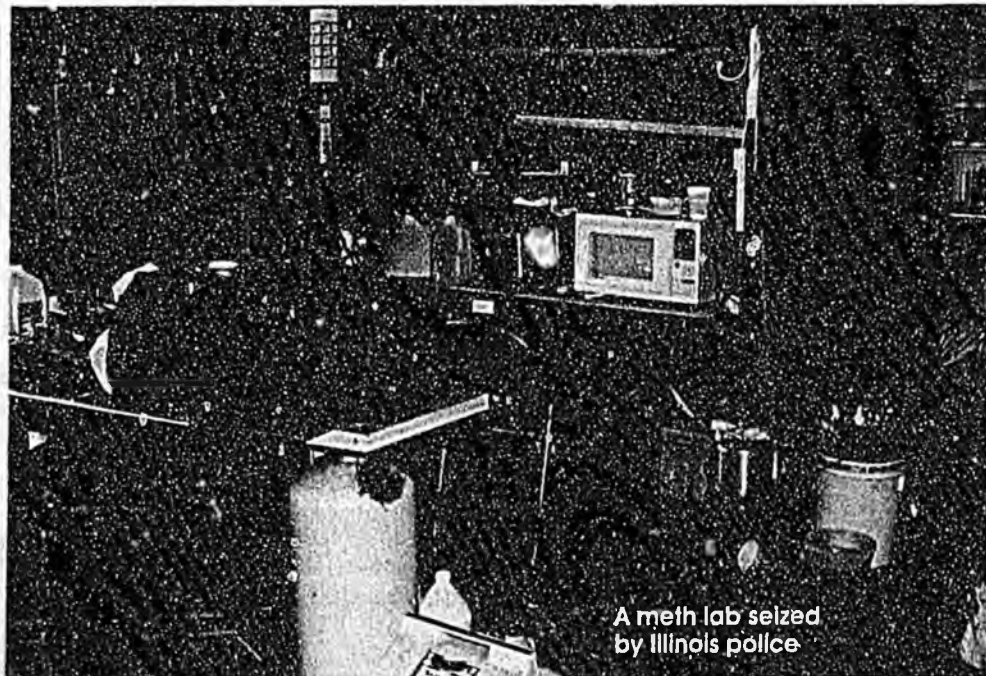
Meth is concocted from a variety of legal ingredients that are easy to obtain, including battery acid, drain cleaner, lye, lantern fuel, antifreeze, hydrochloric acid, sulfuric acid, ethyl ether or red phosphorus, which can be found in matchstick tips. The high comes from the essential ingredient, ephedrine, a substance that can be extracted from over-the-counter cold medicines.

Another key component is typically found on Midwestern farms. Meth makers have been caught sneaking up to the nozzles on large tanks that hold anhydrous ammonia, a fertilizer, to transfer the chemical into small butane bottles or emptied fire extinguishers. If done carelessly, the hazardous substance can spill or the tank can blow up, releasing deadly fumes.

Usually meth is cooked up crudely in kitchens, garages, motels, trailers or trucks, generally somewhere out in the sticks. In more densely populated places, meth makers are at much greater risk of being discovered because the cooking process has a strong and awful smell, similar to cat urine or nail polish remover.

All of these factors have facilitated meth manufacturing and use throughout rural areas that don't typically get bowled over by "urban" drugs. Crack cocaine can, of course, be found in a few pockets in Little Rock. But methamphetamine has spread to 75 counties in Arkansas.

For law enforcement, it's trouble from start to finish. Not surprisingly, meth labs are much easier for manufacturers to set up than they are for state officials to close down. In fact, cleaning up a lab is similar to responding to a hazardous chemical spill.



A meth lab seized by Illinois police

COURTESY OF ILLINOIS STATE POLICE

Each pound of meth generates five to six pounds of toxic waste. State workers need training and equipment to do a proper clean-up. And they must find a place to dispose of the hazardous materials. It usually costs from \$5,000 to \$10,000 each time, but there have been much more expensive clean-ups, too. Although that

readily stock up on certain types of cold medicine. Governor Gray Davis signed a statewide measure last fall that limits the amount of these drugs that can be purchased to two packages per buyer per day.

Law enforcement officers know it won't stop the lawbreakers but it is likely to slow them down. "We're able to ride herd on

cers to make more meth arrests, meth makers near state borders moved into Illinois, Kentucky and Tennessee.

Last year, in response, Illinois increased prison time for manufacturing, delivering or possessing meth with intent to distribute it. The state also made it a misdemeanor to tamper with anhydrous ammonia equipment, containers or storage facilities.

Although the increasing number of meth lab seizures makes it seem as though the problem has been getting worse and worse, it may be that the problem has been bad for quite awhile but states did not recognize it. If a state finds 10 labs one year and 50 labs the next, it doesn't necessarily mean the problem has gotten five times

worse, explains Missouri's Taylor. "They were probably out there before, but since we weren't focusing on them we didn't find them," he says.

In addition to dealing with the labs, states also must grapple with the consequences of thousands of people who are hooked on meth. Used predominantly by white teens and young adults, meth is known as the "poor man's cocaine" since it is more accessible and less expensive than cocaine. Sold in pill, capsule, powder or chunk form, meth can be smoked, snorted, injected or swallowed and provides a longer-lasting high than other drugs.

Because meth alleviates fatigue and produces feelings of mental alertness, some people use it to work longer hours. It's also popular among women, who take it as an appetite suppressant.

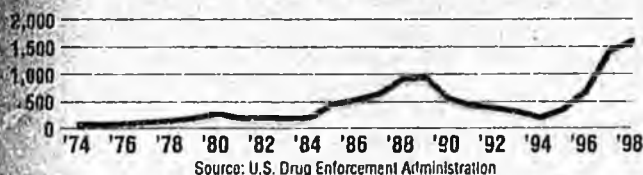
Meth is the most addictive of all drugs. Users get a rush when they take it but quickly develop a tolerance. Then they have to up the ante, taking more for it to work. The stimulation from meth leads to sleep difficulty and psychological problems for users. Nerve endings die, creating sensations like bugs crawling under the skin. Users can become violent or paranoid and commit serious crimes.

Yet in a five-city study of meth users, only 28 percent ever tried to get treatment for their addiction. Most said they didn't bother because they perceived that they had control over their drug use. "We're only beginning to see the impact of the meth monster," says Hardin. "What in the world are we going to do with all these people?" **G**



Tip of the Iceberg

The number of meth lab seizures by the federal Drug Enforcement Administration shown below tell only part of the story. They do not account for seizures made solely by state and local law enforcement agencies.



Source: U.S. Drug Enforcement Administration

money comes from the federal Drug Enforcement Administration, state crime lab personnel do the work. They're the same people who must also respond to homicides, rapes and other serious crimes.

With some 500 meth labs uncovered last year in Arkansas, "it's completely overwhelmed the state crime lab," says Hardin. Because the state is short of money and manpower to attack the problem, it has turned for help to the 20 local drug task forces made up of local law enforcement personnel. Still, it's not enough.

The Midwest is now experiencing what California has been dealing with since the late 1980s, when meth manufacture and use started to proliferate with outlaw biker gangs. "Southern California is basically known as the meth capital of the world," Allen says. "The jail-house recipe has flourished to the point where everyone and his mother makes it."

Of the more than 3,200 labs found nationwide in 1998, 55 percent were in California. Of those, 71 percent were in the four Southern California counties of Orange, Los Angeles, Riverside and San Bernardino. "In the last seven years, it has almost gotten out of hand," Allen says.

States are trying to clamp down on its spread by tightening laws and toughening penalties, educating the public about the dangers, training social workers, educators and other professionals to identify users, and expanding treatment availability.

On the surface, some laws can seem odd. In California, no matter how bad their sniffles or congestion, residents cannot

individuals who buy bulk quantities of cold medicine, so we won't have the typical Beavis and Butt-Head labs popping up in communities," says Allen. Although pleased with the passage of the cold medicine law, he would like to see the state pass much stiffer punishments for meth cooks. "I'd like to see all these people get hammered for all the devastation they create," he adds.

Arkansas has been cracking down with harsher penalties. Last year, the state not only made possessing the ingredients for meth with the intent to "manufacture" the drug a felony, it also required that a person convicted for the offense must serve at least 70 percent of his sentence. The 70-percent rule was created for crimes such as murder, rape and aggravated robbery. Meth is the only drug that falls under the requirement.

Other provisions prohibit possession of anhydrous ammonia in containers that don't comply with federal regulations and authorize Arkansas counties to form multi-jurisdictional drug enforcement groups with county agencies in neighboring states. "We can move freely across state lines, just as freely as the drug manufacturers do," says Hardin. Arkansas also is directing federal money for the next two years to train drug task force officers and provide symposiums around the state on methamphetamine use.

States without stringent laws have found that when adjoining states crack down, meth manufacturers scurry like rats across state lines. When Missouri got tough in 1998, passing laws enabling offi-

HB

9

SENATE COMMITTEE REPORT

DATE: 2/10/99

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered

HOUSE BILL NO. 9

"An Act relating to collection of settlement information in civil litigation; amending Rule 41(a)(3), Alaska Rules of Civil Procedure, and Rule 511(e), Alaska Rules of Appellate Procedure; and providing for an effective date."

and recommends:

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

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

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Rick Halford</i>	✓				
<i>Don Doney</i>	✓				
CHAIR: <i>Alvin Taylor</i>	✓	CHAIR: _____			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
<i>Administration</i>	<i>3/1</i>	✓	
<i>AK Court</i>	<i>1/27</i>	✓	

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

Bill Version: HB 9

(H) Publish Date: 2/5/99

STATE OF ALASKA
1999 LEGISLATIVE SESSION

Revision Date/Time		Dept. Affected	Administration
Title	"An act relating to the collection of settlement information in civil litigation and providing for an effective date."	BRU	Risk Management
Sponsor	Rep. Porter	Component	Risk Management
Requester	(H) JUD	Component Serial No.	71

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

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)
 There is no fiscal impact to the Division of Risk Management.
 Bill adds new reporting requirement to the Alaska Judicial Council upon the settlement or compromise of any civil case(excluding those explicitly exempt).
 Required information is retrievable from existing Risk Management claims management information system records and can be easily reported.

Prepared by	Brad Thompson, Director	Phone	465-5723
Division	Risk Management	Date/Time	
Approved By	Commissioner Robert P. Poe Jr. <i>[Signature]</i>	Date	2/1/99
Agency	Administration		

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FISCAL NOTE

No: 1

STATE OF ALASKA
1999 LEGISLATIVE SESSION

Bill Version: HB 9
(H) Publish Date: 2/5/99

Revision Date		Dept. Affected	<u>Alaska Court system</u>
Title	<u>Collection of Settlement Information in Civil Litigation</u>	BRU	<u>Alaska Court system</u>
		Component	<u>Trial Courts</u>
Sponsor	<u>Representative Porter</u>		
Requester	<u>House Judiciary</u>	Component Serial No.	<u>769</u>

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: _____

POSITIONS

Full-time						
Part-time						
Temporary						

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

No fiscal impact.

Prepared by:	<u>C. S. Christensen III, General Counsel</u>	Phone:	<u>264-8228</u>
Agency	<u>Alaska Court System</u>	Date/Time:	<u>1/27/99 12:32 PM</u>
Approved by:	<u>Stephanie J. Cole, Administrative Director</u>	Date	<u>1/27/99</u>
Agency	<u>Alaska Court System</u>		

ALASKA STATE LEGISLATURE

SPEAKER OF THE HOUSE BRIAN PORTER

MEMORANDUM

TO: Senator ~~Robin Taylor~~ ^{Rob}, Chair
Senate Judiciary Committee

FROM: Representative ~~Brian Porter~~ ^{Brian}
Speaker of the House

RE: Request for Hearing

DATE: February 10, 1999

Please consider this request to schedule House Bill 9: Persons Required to File Settlement Information before the Senate Judiciary Committee at your earliest possible convenience.

Back up material is attached with this memorandum.

Thank you for your consideration of my request. Please do not hesitate to contact my staff, Tom Wright, or myself if you have questions or need further information.



ALASKA STATE LEGISLATURE

SPEAKER OF THE HOUSE BRIAN PORTER

SPONSOR STATEMENT - HOUSE BILL 9

One section of the Tort Reform legislation enacted into law two sessions ago requires the collection of settlement and other data in certain categories of civil litigation cases. These provisions appear in AS 09.68.130.

It has become apparent since the enactment of tort reform legislation that five minor housekeeping amendments are needed. The first makes mandatory the reporting of data by attorneys and persons representing themselves. Apparently, some individuals interpret the data collection provisions of the Tort Reform Law to be optional. This amendment clarifies the mandatory nature of these reporting requirements in order to ensure that accurate statistics will be compiled. Information must be submitted within 30 days after the settlement or final resolution of all covered cases.

Second, the Alaska Judicial Council has recommended that certain non-tort cases be added to the types of cases already excluded from the reporting requirements. The Tort Reform Law excluded divorce and other categories of cases from reporting requirements. The amendment, offered in Section 1 of House Bill 9, adds several categories of cases that should also be excluded.

Third, the bill clarifies that the reporting requirements arise only after final appeals as to cases that are fully litigated. Should any one of multiple plaintiffs, defendants or third party defendants settle out of litigation before its final disposition, the obligation to submit required data arises as of the date the case is fully resolved as it pertains to that party.

Fourth, the bill has the effect of amending two court rules since it limits civil actions found under AS 09.68.130 (a) and specifies who is required to provide settlement information.

Fifth, the effective date as to the collection of settlement and other data is changed to clarify that reporting requirements are applicable to civil litigation cases which are settled or finally adjudicated on or after the bill is signed into law. The reporting requirements are not retroactive to the effective date of the Tort Reform Law.



ALASKA STATE LEGISLATURE

SPEAKER OF THE HOUSE BRIAN PORTER

SECTIONAL ANALYSIS – HOUSE BILL 9

Section 1: Amends AS 09.68.130 (c), Collection of settlement information. The amendment adds to the list of cases that are excluded from the reporting requirements currently found under this section. The following cases to be added for exclusion are:

- forcible entry and detainer cases
- administrative appeals
- motor vehicle impound or forfeiture actions under municipal ordinance.

Section 2: Adds a new subsection (d) to AS 09.68.130, Collection of settlement information. This new subsection states that attorneys and persons representing themselves in all applicable civil cases are under a mandatory duty to furnish settlement and other data to the Alaska Judicial Council within 30 days after the case is settled or finally resolved. The required information is to be submitted on a form specified by the Alaska Judicial Council.

Section 3: The provision found under Section 1 of this bill also has the effect of amending Rule 41.(a) (3), Alaska Rules of Civil Procedure, and Rule 511 (e), Alaska Rules of Appellate Procedure, by limiting civil actions subject to AS 09.68.130 (a) and by specifying who is required to provide settlement information.

Section 4: This section establishes an effective date as to the reporting requirements for all applicable civil litigation cases which close by way of settlement or other final judicial resolution. The effective date is on or after the date this bill is signed.

Section 5: Immediate effective date.



⊞ Sec. 09.68.130. Collection of settlement information.

(a) Except as provided in (c) of this section, the Alaska Judicial Council shall collect and evaluate information relating to the compromise or other resolution of all civil litigation. The information shall be collected on a form developed by the council for that purpose and must include

- (1) the case name and file number;
- (2) a general description of the claims being settled;
- (3) if the case is resolved by way of settlement,

(A) the gross dollar amount of the settlement;

(B) to whom the settlement was paid;

(C) the dollar amount of advanced costs and attorney fees that were deducted from the gross dollar amount of the settlement before disbursement to the claimant;

(D) the net amount actually disbursed to the claimant;

(E) the total costs and attorney fees paid by or owed by all parties; and

(F) any nonmonetary terms, including whether the attorney fees incurred by the claimant were based on a contingent fee agreement or upon an hourly rate; if a contingent fee was paid, the percentage of the total settlement represented by the fee must be included; or, if an hourly rate, the hourly rate paid;

(4) if the case is resolved by dismissal, summary judgment, trial, or otherwise,

(A) the gross dollar amount of the judgment;

(B) the amount of attorney fees awarded and to which party;

(C) the amount of costs awarded and to which party;

(D) the net amount, after deduction of (B) and (C) of this paragraph, for which the prevailing party has judgment;

(E) the dollar amount of advanced costs and attorney fees that were deducted from the gross dollar amount of the judgment before distribution to the claimant;

(F) the total costs and attorney fees paid by defending parties; and

(G) any nonmonetary terms, including whether the attorney fees incurred by the claimant were based on a contingent fee agreement or upon an hourly rate; if a contingent fee was paid, the percentage of the total settlement represented by the fee must be included; or, if an hourly rate, the hourly rate paid.

(b) The information received by the council under (a) of this section is confidential. This restriction does not prevent the disclosure of summaries and statistics in a manner that does not allow the identification of particular cases or parties.

(c) The requirements of (a) of this section do not apply to the following types of cases:

- (1) divorce and dissolution;
- (2) adoption, custody, support, visitation, and emancipation of children;
- (3) children-in-need-of-aid cases under AS 47.10 or delinquent minors cases under 47.12;
- (4) domestic violence protective orders under AS 18.66.100 - 18.66.180;
- (5) estate, guardianship, and trust cases filed under AS 13;
- (6) small claims under AS 22.15.040 .



the judge who is assigned the case is not available and the application concerns a stipulation or uncontested motion; a petition for emergency domestic violence injunction; a motion for temporary restraining order or other emergency motion; findings, judgments and orders based upon decisions previously announced by the judge assigned to the case; or other matters when the application is presented to the presiding judge, or in the presiding judge's absence, to any other available judge within the state, upon good cause shown.

(e) Continuances.*

(1) All cases set for trial shall be heard on the date set unless the same are continued by order of the court for cause shown. The presiding judge of a judicial district may require that a visiting or pro tem judge obtain approval from the presiding judge before granting any continuance of trial.

(2) Unless otherwise permitted by the court, application for the continuance of the trial of the case shall be made to the court at least five days before the date set for trial. The application must be supported by the affidavit of the applicant setting forth all reasons for the continuance. If such case is not tried upon the day set, the court in its discretion may impose such terms as it sees fit, and in addition may require the payment of jury fees and other costs by the party at whose request the continuance has been made.

(3) When parties are present in court and ready for trial on the day set for trial, but their case is not reached on that day, they will retain their relative position on the calendar and on the next open trial day they will be entitled to precedence over cases set for trial on the last-mentioned day.

(Adopted by SCO 5 October 9, 1959; amended by SCO 36 effective May 8, 1961; by SCO 44 effective February 26, 1962; by SCO 193 effective November 1, 1974; by SCO 229 effective January 1, 1976; by SCO 393 effective January 2, 1980; by SCO 710 effective September 15, 1986; by SCO 717 effective September 15, 1986; by SCO 766 effective March 15, 1987; by SCO 894 effective July 15, 1988; by SCO 1153 effective July 15, 1994; by SCO 1172 effective July 15, 1995; and by SCO 1279 effective July 31, 1997)

*EDITOR'S NOTE: Subsection (e) (3) of Alaska Civil Rule 40 is hereby suspended for the Anchorage trial courts until further notice. The presiding judge shall determine appropriate alternative calendaring procedures.

Note: In 1997 the legislature enacted AS 18.16.030(c), which required the court to hold a hearing in a proceeding to bypass parental consent to an abortion within five days after the petition is filed. According to ch. 14, § 7 SLA 1997, this provision has the effect of amending Civil Rule 40

by setting a specific timetable for hearing certain cases. Instead of amending individual rules to implement AS 18.16.030, the supreme court has adopted a separate rule on judicial bypass proceedings. See Probate Rule 20.

Annotations

Cases

Refusal to grant a continuance will generally not be disturbed on appeal unless an abuse of discretion is demonstrated. *Gregoire v. National Bank of Alaska*, Op. No. 336, 413 P2d 27 (Alaska 1966).

Counsel's insistence on a full 30-day continuance in order to attempt to honor all conflicting trial commitments except the case for which this continuance was sought, was unwarranted and denial of the continuance by trial judge no abuse of discretion where the trial setting of the instant case was senior to all of counsel's other commitments and counsel might have asked for day-to-day continuances or for a definite short term continuance. *Gregoire v. National Bank of Alaska*, Op. No. 336, 413 P2d 27 (Alaska 1966).

Where appellant had been granted previous continuances and 5½ months' notice had been accorded for his eventual trial setting, counsel was not entitled to insist on a further full 30-day continuance which he had sought on the ground that he had committed himself to the trial of three criminal matters in the month of the trial in another state in which counsel was also admitted to the practice of law. *Gregoire v. National Bank of Alaska*, Op. No. 336, 413 P2d 27 (Alaska 1966).

The "with prejudice" aspect of a judgment of dismissal was set aside and trial judge directed to allow appellants their day in court upon terms and conditions appropriate under this rule, where continuance had been properly denied because of appellant's failure to make a timely attempt to obtain substitute counsel, but the supreme court entertained some doubt that the failure was such that dismissal with prejudice of appellant's counterclaim and third party complaint should stand. *Gregoire v. National Bank of Alaska*, Op. No. 336, 413 P2d 27 (Alaska 1966).

Attorney's understanding that the calendar clerk would call him on September 7 if the trial was to take place as scheduled on September 8 did not justify his failure to call the clerk before instructing his client not to appear, and the trial court's refusal to grant the attorney's request for a continuance on the ground that his client was not present was not an abuse of discretion. *W.E.W. v. D.A.M.*, Op. No. 2272, 619 P2d 1023 (Alaska 1980).

A judge may not be appointed to sign orders in place of the absent judge originally assigned to the case unless good cause specifically is shown. *Fairbanks North Star Borough v. Nolan*, Op. No. 2351, 628 P2d 36 (Alaska 1981).

Successor judge's vacation of orders and judgment was not abuse of discretion since she erred in signing them when judge who heard case on merits was still available. *Gallagher v. Gallagher*, Op. No. 4041, 866 P2d 123 (Alaska 1994).

Rule 41. Dismissal of Actions.

(a) Voluntary Dismissal — Effect Thereof.

(1) *By Plaintiff — By Stipulation.* Subject to the provisions of Rule 23(c), of Rule 66 and of any

statute of the state, an action may be dismissed by the plaintiff without an order of the court: [a] by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs; or [b] by filing a stipulation of dismissal signed by all parties who have appeared in the action. The notice or stipulation must include a certification that the settlement information required under AS 09.68.130 and (a)(3) of this rule has been submitted to the Alaska Judicial Council or that the case is exempt from this requirement because it is one of the types listed in (a)(3) or because all causes of action accrued before August 7, 1997. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of this state, or of any other state, or in any court of the United States, an action based on or including the same claim.

(2) *By Order of Court.* Except as provided in paragraph (1) of this subdivision of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(3) *[Applicable to causes of action accruing on or after August 7, 1997.] Settlement Information.* If a voluntary dismissal under this rule is the result of compromise or other settlement of the parties, the parties shall submit to the Alaska Judicial Council the information required under AS 09.68.130. The following types of cases are exempt from this requirement:

- (A) divorce and dissolution;
- (B) adoption, custody, support, visitation, and emancipation of children;
- (C) children-in-need-of-aid cases under AS 47.10 or delinquent minors cases under 47.12;
- (D) domestic violence protective orders under AS 18.66.100 — 18.66.180;
- (E) estate, guardianship, and trust cases filed under AS 13;
- (F) sn... claims under AS 22.15.040.

(b) *Involuntary Dismissal — Effect Thereof.* For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim

against the defendant. After the plaintiff, in an action tried by the court without a jury, has completed the presentation of the plaintiff's evidence, the defendant, without waiving the right to offer evidence in the event that a motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then weigh the evidence, evaluate the credibility of witnesses and render judgment against the plaintiff even if the plaintiff has made out a prima facie case. Alternately, the court may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a). Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

(c) *Dismissal of Counterclaim, Cross-Claim, or Third-Party Claim.* The provisions of this rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to paragraph (1) of subdivision (a) of this rule shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

(d) *Costs of Previously Dismissed Action.* If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

(e) *Dismissal for Want of Prosecution.*

(1) The court on its own motion or on motion of a party to the action may dismiss a case for want of prosecution if

- (A) the case has been pending for more than one year without any proceedings having been taken, or
- (B) the case has been pending for more than one year, and no trial or mandatory pretrial scheduling conference has been scheduled or held.

(2) The clerk shall review all pending cases semi-annually and in all cases that are subject to dismissal under (e)(1), the court shall hold a call of the calendar or the clerk shall send notice to the parties to show cause in writing why the action should not be dismissed.

(3) If good cause to the contrary is not shown at a call of the calendar or within sixty days after distribution of the notice, the court shall dismiss the

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I. In General

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action. The clerk may dismiss actions under this paragraph if a party has not opposed dismissal.

(4) A dismissal for want of prosecution is without prejudice unless the court states in the order that the case is dismissed with prejudice.

(5) If a case dismissed under this paragraph is filed again, the court may make such order for the payment of costs of the case previously dismissed as it may deem proper, and may stay the proceedings in the case until the party has complied with the order.

(Adopted by SCO 5 October 9, 1959; amended by SCO 239 effective March 1, 1976; by SCO 258 effective November 15, 1976; by SCO 465 effective June 1, 1981; by SCO 798 effective March 15, 1987; by SCO 834 effective August 1, 1987; by SCO 1153 effective July 15, 1994; by SCO 1266 effective July 15, 1997; and by SCO 1283 effective September 2, 1997)

Annotations

Cases

- I. In General
- II. Voluntary Dismissal
 - A. Conditions
 - B. Termination of Right to Dismiss
- III. Involuntary Dismissal
 - A. Conditions
 - B. Denial of Motion to Dismiss
- IV. Dismissal for Want of Prosecution

I. In General

An order of dismissal "with prejudice" operates as an adjudication on the merits. *Miller v. Johnson*, Op. No. 70, 370 P2d 171, 173 (Alaska 1962).

One and one-half page memorandum devoid of authorities was not statement required by Civil Rule 77(b) (2), so that motion to dismiss was frivolous and issue was not joined, precluding award of attorney's fees. *State v. Alaska International Air, Inc.*, Op. No. 1409, 562 P2d 1064 (Alaska 1977).

Party seeking relief from judgment of dismissal must show the existence of a meritorious claim. *Corso v. Commissioner of Education*, Op. No. 1412, 563 P2d 246 (Alaska 1977).

To show the existence of meritorious claim, party must show facts which if established, might reasonably be said to meet affirmative defenses of adversary. *Corso v. Commissioner of Education*, Op. No. 1412, 563 P2d 246 (Alaska 1977).

Proper test for granting motion to dismiss without prejudice involves balancing the interests of both plaintiff and defendant to obtain a result which will be fair and equitable under the circumstances of each case. *Dome Laboratories v. Farrell*, Op. No. 1917, 599 P2d 152 (Alaska 1979).

A judgment of dismissal without prejudice is considered a final judgment for purposes of appeal. *Farrell v. Dome Laboratories*, Op. No. 2556, 650 P2d 380 (Alaska 1982).

Trial court had jurisdiction under rule allowing relief from judgment to amend a voluntary dismissal entered without prejudice under this rule. *Farrell v. Dome Laboratories*, Op. No. 2556, 650 P2d 380 (Alaska 1982).

Where defendant does not object to plaintiff's notice of dismissal under this rule, the validity of the dismissal will not

be questioned on review. *Sisters of Providence v. Van Linder*, Op. No. 2678, 663 P2d 956 (Alaska 1983).

Once an action has been dismissed as of right by a plaintiff pursuant to this rule, the trial court lacks jurisdiction to enforce an interlocutory order entered prior to the dismissal. *Sisters of Providence v. Van Linder*, Op. No. 2678, 663 P2d 956 (Alaska 1983).

The "lack of jurisdiction" exception to the rule that an involuntary dismissal operates as an adjudication on the merits includes dismissals due to a corporation's statutory incapacity to sue. *Blake v. Gilbert*, Op. No. 2947, 702 P2d 631 (Alaska 1985).

A stipulation to dismiss claims with prejudice operates as an adjudication on the merits; it is just as valid as a final judgment resulting from a trial on the merits, and is res judicata as to all issues that were raised or could have been determined under the pleadings. *Tolstrup v. Miller*, Op. No. 3129, 726 P2d 1304 (Alaska 1986).

Order No. 798, adopting an amendment to Civil Rule 41(b), effective March 15, 1987, was signed by three justices. Two justices filed a dissent to the order, expressing doubt that the amendment would result in an overall saving of judicial time and their belief that it creates a distinct risk of premature and inaccurate decisions. *Supreme Court Order 798, dissenting statement of Chief Justice Rabinowitz and Justice Matthews*, dated January 14, 1987.

Where liability and damages issues are tried by the court, prejudgment motion for dismissal rather than for a directed verdict is appropriate. *Frank v. Golden Valley Elec. Ass'n, Inc.*, Op. No. 3264, 748 P2d 752 (Alaska 1988).

A court need not make explicit findings concerning alternatives to dismissal; the record need only clearly indicate a reasonable exploration of possible and meaningful alternatives. *Power Constructors v. Acres American*, Op. No. 3689, 811 P2d 1052 (Alaska 1991).

Civil Rule 16.1 provides the exclusive procedure for dismissing "fast-track" cases and supersedes this and other civil rules in conflict therewith. *Ford v. Municipality of Anchorage*, Op. No. 3703, 813 P2d 654 (Alaska 1991).

In liquidation proceeding, trial court's denial, for lack of jurisdiction, of motion to set aside and terminate irrevocable trust did not constitute dismissal upon which collateral estoppel could be based. *Matter of Pacific Marine Ins. Co.*, Op. No. 4100, 877 P2d 264 (Alaska 1994).

The sanctions of Civil Rule 16.1(g) and Civil Rule 41(d) afford courts the tools necessary to deter litigants from judge shopping through voluntary or involuntary dismissals. *Stuso v. State, Department of Transportation*, Op. No. 895 P2d 988 (Alaska 1995).

Consolidated Rule 16.1 cases retain their "fast-track" status and can be dismissed only by following Rule 16.1 dismissal procedures, not Rule 41 dismissal procedures. *Prazak v. Alaska Local No. 1*, Op. No. 4277, 904 P2d 428 (Alaska 1995).

If meaningful alternative sanctions are available, trial court must ordinarily impose those sanctions rather than dismissal with prejudice. *Arbelovsky v. Ebasco Services, Inc.*, Op. No. 4382, 922 P2d 225 (Alaska 1996).

II. Voluntary Dismissal

A. Conditions

Voluntary dismissal of plaintiff's causes of action was with prejudice pursuant to terms stated in the stipulation. *Albritton v. Estate of Larson*, Op. No. 413, 428 P2d 379 (Alaska 1967).

This rule does not authorize court to regard the condemnor's dismissals of its appeals from a master's awards as matters to be determined within the condemnor's discretion and to be granted on such terms as it might think proper. *Inglima v. Alaska State Housing Authority*, Op. No. 594, 462 P2d 1002 (Alaska 1970).

Under AS 09.55.320, which provides that an interested party may appeal a master's award in which case there shall be a trial by jury on the question of the amount of damages and the value of property, unless the jury is waived by the consent of all parties, a condemnor against whom an appeal is taken is entitled to a jury trial as a matter of right. A condemnor cannot, after the jury has rendered verdicts higher than the master's awards, obtain a dismissal of its appeal without the consent of the condemnees. *Inglima v. Alaska State Housing Authority*, Op. No. 594, 462 P2d 1002 (Alaska 1970).

The primary purpose of this rule is to allow the plaintiff to dismiss as a matter of right before an issue has been joined. *Miller v. Wilkes*, Op. No. 788, 496 P2d 176 (Alaska 1972).

Where defendant is dismissed under Civil Rule 41(a)(1)[a] before service of any pleading or motion by defendant that would have required trial court to consider merits of controversy, there is no joinder of issue, or prevailing party, and an award of attorney's fees is precluded. *State v. Alaska International Air, Inc.*, Op. No. 1409, 562 P2d 1064 (Alaska 1977).

No findings of fact should be made in conjunction with a voluntary dismissal when the court has no evidentiary basis for such findings. *Sherry v. Sherry*, Op. No. 2271, 622 P2d 960 (Alaska 1981).

Where plaintiff moved for a voluntary dismissal without prejudice of her motion to modify a child custody agreement, it was abuse of discretion for the court to condition the grant of dismissal on plaintiff not attempting to modify the decree for two years and on a prohibition on psychological or psychiatric examination without the consent of both parents. *Sherry v. Sherry*, Op. No. 2271, 622 P2d 960 (Alaska 1981).

Superior court abused its discretion in amending a prior judgment of voluntary dismissal without prejudice in order to require the plaintiff to refile his suit against defendant by a certain date. *Farrell v. Dome Laboratories*, Op. No. 2556, 650 P2d 380 (Alaska 1982).

Since responses filed by defendants to plaintiff's petition seeking to perpetuate testimony before filling of action required trial court to consider merits of petition, voluntary dismissal without order of court was no longer possible, and condition imposed by court on dismissal, that plaintiff bring no further action on matter until he paid defendants' fees and costs, was not abuse of discretion. *Stahlman v. State*, Op. No. 3987, 856 P2d 1162 (Alaska 1993).

It was abuse of discretion for trial court to condition voluntary dismissal on payment of attorney fees by public interest litigant. *Eyak Elders Council v. Sherstone, Inc.*, Op. No. 4273, 904 P2d 420 (Alaska 1995).

B. Termination of Right to Dismiss

Where an affidavit which is filed by the defendant denies several factual allegations of the plaintiff and a memorandum

filed by the defendant raises four defenses, such documents are tantamount to an answer and the plaintiff's right to dismiss the suit is terminated. Thus, although the plaintiff files a voluntary dismissal of the suit the trial court has the authority to award to defendant attorney fees. *Miller v. Wilkes*, Op. No. 788, 496 P2d 176 (Alaska 1972).

If an issue has been joined by means other than those specified in this rule, the plaintiff's right to dismiss by notice is nonetheless terminated. *Miller v. Wilkes*, Op. No. 788, 496 P2d 176 (Alaska 1972).

Not every action by the defendant cuts off the right of the plaintiff to dismiss under this rule, but only those actions which would require the court to consider on the merits of the controversy or which involve considerable expense and effort on the part of the defendant. *Miller v. Wilkes*, Op. No. 788, 496 P2d 176 (Alaska 1972).

Since responses filed by defendants to plaintiff's petition seeking to perpetuate testimony before filling of action required trial court to consider merits of petition, voluntary dismissal without order of court was no longer possible, and condition imposed by court on dismissal, that plaintiff bring no further action on matter until he paid defendants' fees and costs, was not abuse of discretion. *Stahlman v. State*, Op. No. 3987, 856 P2d 1162 (Alaska 1993).

III. Involuntary Dismissal

A. Conditions

The "lack of jurisdiction" exception to the rule that an involuntary dismissal operates as an adjudication on the merits includes dismissals due to a corporation's statutory incapacity to sue. *Blake v. Gilbert*, Op. No. 2947, 702 P2d 631 (Alaska 1985).

Where plaintiff's evidence does not establish a prima facie case, a motion to dismiss made at the close of plaintiff's case should be granted. *Pope v. Anderson*, Op. No. 72, 370 P2d 185, 187 (Alaska 1962); *Correa v. Stephens*, Op. No. 418, 429 P2d 254 (Alaska 1967).

The trial court's dismissal of a previous complaint brought by another on the behalf of all electors contesting a bond election, on the grounds that plaintiff had not delivered on the borough as sensible a written notice of contest of the election as required by a borough ordinance, operates as an adjudication on the merits in the absence of a specification by the trial court to the contrary and is res judicata to a suit brought by the plaintiff challenging the same bond election. *Jefferson v. Greater Anchorage Area Borough*, Op. No. 536, 451 P2d 730 (Alaska 1969).

Even though a complaint alleges basis for a claimed illegality of a bond election not mentioned in a previous complaint brought by another on behalf of all electors, the doctrine of res judicata is applicable and dismissal of the complaint is not error. *Jefferson v. Greater Anchorage Area Borough*, Op. No. 536, 451 P2d 730 (Alaska 1969).

Where the general doctrine of res judicata is inapplicable and supports the dismissal of a complaint, the contention that the trial court should have permitted ten of the plaintiffs to belatedly sign the complaint is as rendered moot. *Jefferson v. Greater Anchorage Area Borough*, Op. No. 536, 451 P2d 730 (Alaska 1969).

Where plaintiff had received ample notice from opinion on earlier appeal that it was incumbent upon him to promptly take steps to prosecute claim upon his release from prison, and

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during seven-month period had taken no such steps, denial of motion to reconsider dismissal for lack of prosecution was not abuse of discretion. *Brown v. State*, Op. No. 1418, 563 P2d 275 (Alaska 1977).

On appeal from grant of a Civil Rule 41(a)(2) motion, appellant must show that trial court failed to exercise or abused its discretion, or exercised an unpermitted discretion. *Dome Laboratories v. Farrell*, Op. No. 1917, 599 P2d 152 (Alaska 1979).

Where defendants had not incurred extensive expenses in preparation for trial or pecuniary judgment hearing was not abuse of discretion for trial judge to deny award of attorney fees to defendant. *Dome Laboratories v. Farrell*, Op. No. 1917, 599 P2d 152 (Alaska 1979).

Where plaintiff established a prima facie case of breach of contract, superior court was precluded from granting an involuntary dismissal under this rule. *Glover v. Sager*, Op. No. 2703, 667 P2d 1198 (Alaska 1983).

When the trial court dismisses a complaint on the ground that the plaintiff has shown no right to relief, it must enter findings of fact and conclusions of law. *Winn v. Mannhalter*, Op. No. 2988, 708 P2d 444 (Alaska App. 1985).

In order to withstand a motion for involuntary dismissal under this rule, plaintiff must have presented evidence that the defendant breached a duty, thereby causing injury to the plaintiff. *Winn v. Mannhalter*, Op. No. 2988, 708 P2d 444 (Alaska 1985).

B. Denial of Motion to Dismiss

The function of the trial court is to deny a motion to dismiss at the close of plaintiff's evidence, if the evidence would be, in a jury case, sufficient to take the case to the jury although the court as trier of the facts would find against the plaintiff on the evidence. Thus where plaintiff has presented a prima facie case based upon unimpeached evidence the trial judge should not grant the motion even though he is the trier of the facts and may not himself feel at that point of the trial that the plaintiff has sustained his burden of proof. *Rogge v. Weaver*, Op. No. 63, 368 P2d 810, 812-13 (Alaska 1962).

Where plaintiff at the close of his evidence presents a prima facie case based on unimpeached evidence, the trial judge should not grant a motion for involuntary dismissal, but should follow the alternative provided by Civil Rule 41(b) and decline to render any judgment until the close of all the evidence. *Trusty v. Jones*, Op. No. 71, 369 P2d 420 (Alaska 1962).

Where an action by a prisoner against the state for injuries allegedly sustained while being transported in a truck after a hip operation is dismissed on the merits without any findings of fact being made, the case will be remanded for purposes of making adequate findings of fact and conclusions of law, including findings as to the court's judgment of credibility of the plaintiff and his witnesses. *Bohm v. State*, Op. No. 543, 453 P2d 410 (Alaska 1969).

Motions under this rule should not invariably be resolved by weighing the evidence. Where the plaintiff has presented a prima facie case based on unimpeached evidence, the trial judge should not grant the motion even though he is the trier of facts and may not himself feel at that point that the plaintiff has sustained the burden of proof. *King v. Alaska State Housing Authority*, Op. No. 917, 512 P2d 887 (Alaska 1973).

The failure of the plaintiff's son, the only witness to the occurrence giving rise to a suit, to appear for deposition is not an appropriate basis for motion to dismiss the suit. *Schandelmeler v. Winchester Western*, Op. No. 1013, 520 P2d 70 (Alaska 1974).

When noncompliance with a discovery order is in issue, this rule, rather than Rule 37, is the source of the court's authority to impose sanctions. *Schandelmeler v. Winchester Western*, Op. No. 1013, 520 P2d 70 (Alaska 1974).

Where plaintiff has been in prison for most of the period since filing his action, is unavailable for deposition and unable to obtain another attorney when his original counsel withdraws, and otherwise attempts to prosecute his complaint, the dismissal for failure to prosecute is an abuse of discretion. *Brown v. State*, Op. No. 1089, 526 P2d 1365 (Alaska 1974).

This rule calls for the exercise of sound discretion by the trial court, and should not be permitted to work an injustice where there are special circumstances impeding the plaintiff's efforts to prosecute his complaint. *Brown v. State*, Op. No. 1089, 526 P2d 1365 (Alaska 1974).

IV. Dismissal for Want of Prosecution

This rule applies only where a motion to dismiss is filed before the period of lapse is terminated by some affirmative action. Where the last act in the record occurred more than one year prior to a motion to dismiss and where the plaintiff's motion terminates the lapse, and a motion for summary judgment and a motion to set for trial are filed subsequent to the lapse and prior to the defendant's motion to dismiss, the lapse is insufficient to allow dismissal. *First National Bank of Fairbanks v. Taylor*, Op. No. 723, 488 P2d 1026 (Alaska 1971).

Unless there is another indication by judge dismissal sua sponte for want of prosecution for one year is without prejudice. *Champlon Oil Co. v. Herbert*, Op. No. 1293, 552 P2d 670 (Alaska 1976).

Case that had been reinstated and set for trial should not have been dismissed for want of prosecution. *Atlas Enterprises, Inc. v. Consolidated Construction Co.*, Op. No. 1526, 572 P2d 68 (Alaska 1977).

Where letter from plaintiffs requesting trial date was sent prior to filing of defendant's motion to dismiss, dismissal under Civil Rule 41(c) was improper. *Zeller v. Poor*, Op. No. 1610, 577 P2d 695 (Alaska 1978).

Although a case may be dismissed with prejudice under Civil Rule 41(e), this sanction should be reserved only for gross violations of the rule; alternative remedies which do not bar a litigant from his day in court are favored. *Zeller v. Poor*, Op. No. 1610, 577 P2d 695 (Alaska 1978).

A "proceeding" as the term is used in this rule is a step, act or measure of record, by the plaintiff, which reflects the serious determination by the plaintiff to bring the suit to a resolution; or a step, act or measure of record, by either party, which reflects that the suit is not stagnant. *Shiffman v. "K", Inc.*, Op. No. 2603, 657 P2d 401 (Alaska 1983).

The filing of an answer by the defendant was a "proceeding" within the meaning of this rule which indicated that the suit was not stagnant. *Shiffman v. "K", Inc.*, Op. No. 2603, 657 P2d 401 (Alaska 1983).

A case stands stagnant and may be dismissed when to the court it appears that for lack of activity of record neither party has taken the steps, acts or measures to be reasonably expected

in pursuit or defense of the particular cause of action. *Shiffman v. "K", Inc.*, Op. No. 2603, 657 P2d 401 (Alaska 1983).

Plaintiffs' note asking the court not to dismiss their action for want of prosecution because they had not been able to find an attorney was not a "proceeding" within the meaning of this rule. *Cleary Diving Service v. Thomas, Head and Greisen*, Op. No. 2873, 688 P2d 940 (Alaska 1984).

Appellate court could not dismiss complaint for failure of timely prosecution where the trial court did not hold a call of calendar or send a show cause notice to the parties. *Reed v. Municipality of Anchorage*, Op. No. 3218, 741 P2d 1181 (Alaska 1987).

A pretrial memorandum filed after the court issues a notice of dismissal does not constitute a "proceeding" under this rule. *Power Constructors v. Acres American*, Op. No. 3689, 811 P2d 1052 (Alaska 1991).

Substitution of counsel and the consequent need for more time to review the case did not, standing alone, constitute good cause for plaintiff's 16-month delay prosecuting the case. *Power Constructors v. Acres American*, Op. No. 3689, 811 P2d 1052 (Alaska 1991).

Plaintiff's unexcused failure to proceed with its case for three years justified dismissal with prejudice. *Power Constructors v. Acres American*, Op. No. 3689, 811 P2d 1052 (Alaska 1991).

Where order gave plaintiff 180 days to take action to prepare malpractice case for trial, here filing of amended complaint and request for appearance of nonresident attorney satisfied the order, thus trial court erred in dismissing case for want of prosecution even though original complaint was not filed until two days before expiration of limitations period and defendant was not served with complaint until 20 months later. *Johnson v. Siegfried*, Op. No. 3890, 838 P2d 1252 (Alaska 1992).

Trial court is not under duty to explore meaningful alternatives before entering dismissal without prejudice for want of prosecution. *Willis v. Wetco, Inc.*, Op. No. 3963, 853 P2d 533 (Alaska 1993).

Pretrial memorandum filed after court issued notice of dismissal did not constitute "proceeding" under rule authorizing dismissal for want of prosecution. *Willis v. Wetco, Inc.*, Op. No. 3963, 853 P2d 533 (Alaska 1993).

Counterclaimant's statement that his injuries at hand of plaintiff were continuing to accumulate did not constitute good cause for failure to prosecute counterclaim. *Willis v. Wetco, Inc.*, Op. No. 3963, 853 P2d 533 (Alaska 1993).

A "proceeding" occurs for purposes of this rule when step is taken by either party which reflects that suit is not stagnant. *Novak v. Orca Oil Co., Inc.*, Op. No. 4091, 875 P2d 756 (Alaska 1994).

Plaintiff's motion to disqualify defendant's attorney was proceeding within meaning of this rule that prevented dismissal of defendant's counterclaim, notwithstanding trial judge's ruling that proceeding did not relate to counterclaim. *Novak v. Orca Oil Co., Inc.*, Op. No. 4091, 875 P2d 756 (Alaska 1994).

Rule 42. Consolidation—Separate Trials—Change of Judge.

(a) **Consolidation.** When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

A motion requesting consolidation shall be filed in the court where the case is sought to be consolidated. The motion shall contain the name of every case sought to be consolidated. A notice of filing together with a copy of the motion shall be filed in all courts and served on all parties who would be affected by consolidation.

(b) **Separate Trials.** The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury as declared by the Alaska Constitution and Statutes of Alaska.

(c) **Change of Judge as a Matter of Right.** In all courts of the state, a judge or master may be peremptorily challenged as follows:

(1) **Nature of Proceedings.** In an action pending in the Superior or District Courts, each side is entitled as a matter of right to a change of one judge and of one master. Two or more parties aligned on the same side of an action, whether or not consolidated, shall be treated as one side for purposes of the right to a change of judge, but the presiding judge may allow an additional change of judge to a party whose interests in the action are hostile or adverse to the interests of another party on the same side. A party wishing to exercise the right to change of judge shall file a pleading entitled "Notice of Change of Judge." The notice may be signed by an attorney, it shall state the name of the judge to be changed, and it shall neither specify grounds nor be accompanied by an affidavit.

(2) **Filing and Service.** The notice of change of judge shall be filed and copies served on the parties in accordance with Rule 5, Alaska Rules of Civil Procedure.

(3) **Timeliness.** Failure to file a timely notice precludes change of judge as a matter of right. Notice of change of judge is timely if filed before the commencement of trial and within five days after notice that the case has been assigned to a specific judge. Where a party has been served or enters an action after the case has been assigned to a specific judge, a notice of change of judge shall also be

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to determine a reasonable award of attorney's fees. *Carr-Gottstein Properties*, Op. No. 4230, 899 P2d 136 (Alaska 1995).

A superior court acting as an intermediate court of appeal from a decision of an administrative agency has broad discretion to award attorney's fees under this rule. *Brodigan v. Alaska Department of Revenue*, Op. No. 4234, 900 P2d 728 (Alaska 1995).

Superior court did not abuse its discretion in awarding \$700 of attorney's fees to the State, approximately 20% of the fees it actually incurred, despite appellants' claims that it was not clear that the State was the prevailing party and that they were public interest litigants. *Brodigan v. Alaska Department of Revenue*, Op. No. 4234, 900 P2d 728 (Alaska 1995).

This rule governs awarding attorney's fees in superior court or an appeal from an administrative decision. The award of these fees is committed to the discretion of the superior court and will not be overturned absent an abuse of discretion. The superior court need not explain its basis for awarding fees; it must only explain denials. *North Slope Borough v. Barraza*, Op. No. 4285, 906 P2d 1377 (Alaska 1995).

Superior court's use of the factor of "measure of success" in awarding attorney's fees in an administrative appeal did not on its face constitute an abuse of discretion. *North Slope Borough v. Barraza*, Op. No. 4285, 906 P2d 1377 (Alaska 1995).

Action of judge of trial court was unnecessary to obtain writ of execution from clerk of trial clerk on supreme court's award of appellate costs and fees. *Barber v. Barber*, Op. No. 4345, 915 P2d 1204 (Alaska 1996).

Fact that prevailing government entity litigated through in-house counsel did not preclude award of attorney's fees. *Agen v. State, CSED*, Op. No. 4874, 945 P2d 1215 (Alaska 1997).

It was error for superior court acting as intermediate appellate court to award fees under Civil Rule 82 rather than under this rule, thus remand was required for recalculation in accordance with this rule. *Agen v. State*, Op. No. 4874, 945 P2d 1215 (Alaska 1997).

In federal diversity cases, Federal Rule of Appellate Procedure 38 preempts this rule. *Hinde v. Provident Life and Acc. Ins. Co.*, 112 F3d 412 (9th Cir. 1997).

Rule 509. Interest.

If a judgment for money in a civil case is affirmed, interest at the rate prescribed by law shall be payable from the effective date of the judgment of the trial court. If in a civil case a judgment is modified or reversed with directions that a judgment for money be issued by the trial court, interest on the new judgment at the rate prescribed by law shall be payable from the effective date of the prior judgment which was modified or reversed.

(SCO 439 effective November 15, 1980; amended by SCO 509 effective July 1, 1982)

Rule 510. Monetary Sanctions.

(a) **When Appeal Brought for Delay.** Where an appeal or petition for review shall delay the proceed-

ings in the trial court or the enforcement of the judgment or order of the trial court, and shall appear to have been filed merely for delay, monetary sanctions may be awarded in addition to interest, costs and attorney's fees.

(b) **Infraction of Rules.** For any infraction of these rules, the appellate court may withhold or assess costs or attorney's fees as the circumstances of the case and discouragement of like conduct in the future may require; and such costs and attorney's fees may be imposed upon offending attorneys or parties.

(c) **Fines.** In addition to its authority under (a) and (b) of this rule and its power to punish for contempt, the appellate court may, after reasonable notice and an opportunity to show cause to the contrary, and after hearing by the court, if requested, impose a fine not to exceed \$500 against any attorney who practices before it for failure to comply with these rules or any other rules promulgated by the Supreme Court.

(SCO 439 effective November 15, 1980; amended by SCO 476 effective August 17, 1981)

Annotations

Cases

For specific misconduct on the part of either party, actual costs and fees may be awarded under this rule. *Kenai Peninsula Bor. v. Cook Inlet Reg.*, Op. No. 3671, 807 P2d 487 (Alaska 1991).

There would have been an impermissible double recovery of attorney's fees if both the award of sanctions and the award of attorney's fees had been allowed to stand. *Kenai Peninsula Bor. v. Cook Inlet Reg.*, Op. No. 3671, 807 P2d 487 (Alaska 1991).

Order denying appellant's fifth request for extension of time to file opening brief and dismissing her appeal was vacated, but appellant's attorney was ordered to pay \$500 fine for dedication and to pay appellee's reasonable fees and costs in opposing motion for extension. *Brown v. Brown*, Order No. 28, 854 P2d 732 (Alaska 1993).

Instead of merely referring to a party's "dilatatory conduct" in reducing an award of attorney's fees, the superior court should have specified the particular conduct which might have supported a finding that an infraction of the rules had occurred. *North Slope Borough v. Barraza*, Op. No. 4285, 906 P2d 1377 (Alaska 1995).

Rule 511. Dismissal of Causes.

(a) **Dismissal by Agreement.** Whenever the parties, by their attorneys of record, shall file with the clerk of the appellate court an agreement in writing that an appeal or petition be dismissed, specifying the terms with respect to costs, and shall pay to the clerk any fees that may be due the clerk, the clerk shall enter an order of dismissal without further reference to the court.

(b) Dismissal by Appellant or Petitioner.

(1) Whenever an appellant or petitioner in the appellate court, by the appellant's or petitioner's attorney of record, shall file with the clerk of that court a motion to dismiss a proceeding to which such appellant or petitioner is a party, with proof of service as prescribed by these rules, and shall tender to the clerk any fees and costs that may be due, the adverse party, within seven days after service thereof, may file an objection, after which time the matter shall be determined by the court.

(2) If no objection is filed, the clerk shall enter an order of dismissal without further reference to the court.

(c) **Certification.** An agreement or motion for dismissal filed under (a) or (b) of this rule must include a certification that the settlement information required under AS 09.68.130 and (e) of this rule has been submitted to the Alaska Judicial Council or that the case is exempt from this requirement because it is one of the types listed in (e) or because all causes of action accrued before August 7, 1997.

(d) **Voluntary Dismissal by Criminal Defendant.** A motion or stipulation for the voluntary dismissal of an appeal by a criminal defendant under paragraph (a) or (b) shall not be granted unless the motion or stipulation includes either:

(1) A signed statement by the defendant stating that the defendant understands the consequences of the dismissal and consents to it, or

(2) Explicit certification by counsel for the defendant that counsel has explained the consequences of dismissal to the client and is satisfied that the client understands the consequences of dismissal and consents to it.

(e) [Applicable to causes of action accruing on or after August 7, 1997.] **Settlement Information.** If a dismissal under (a) or (b) of this rule is the result of a compromise or other settlement between the parties, the parties shall submit to the Alaska Judicial Council the information required under AS 09.68.130. The following types of cases are exempt from this requirement:

(1) divorce and dissolution;

(2) adoption, custody, support, visitation, and emancipation of children;

(3) children-in-need-of-aid cases under AS 47.10 or delinquent minors cases under 47.12;

(4) domestic violence protective orders under AS 18.66.100 — 18.66.180;

(5) estate, guardianship, and trust cases filed under AS 13;

(6) small claims under AS 22.15.040.

(f) **Mandate Not Required.** No mandate shall issue on a dismissal under this rule or Rule 511.5 without an order of the court. However, the clerk shall notify the court whose judgment was appealed.

(SCO 439 effective November 15, 1980; amended by SCO 510 effective August 30, 1982; by SCO 728 effective December 15, 1986; by SCO 1153 effective July 15, 1994; by SCO 1283 effective September 2, 1997; and by SCO 1301 effective January 15, 1998)

Annotations**Cases**

Where appellee fails to move to dismiss an appeal from a ruling which is not appealable under these rules and the points raised are briefed as they would have been had a petition for review been sought, the supreme court is entitled to pass on the merits of the controversy. *Stokes v. Van Seventer*, Op. No. 18, 355 P2d 594 (Alaska 1960).

An order of dismissal by the supreme court is not in itself a mandate. *Singletary v. State*, Op. No. 1711, 583 P2d 847 (Alaska 1978).

Rule 511.5. Dismissal for Failure to Prosecute.

(a) If an appellant or an appellant's counsel fails to comply with these rules, the clerk shall notify the appellant and the appellant's counsel in writing that the appeal will be dismissed for want of prosecution unless the appellant remedies the default within 14 days after the date of notification, time to be computed in accordance with Rule 502 (c). If the appellant fails to comply within the 14-day period, the clerk shall issue an order dismissing the appeal for want of prosecution. In no case, except by order of the court on a motion to reinstate the appeal, shall the appellant be entitled to remedy the default after the appeal has been dismissed under this rule.

(b) The dismissal of an appeal under subsection (a) shall not limit the authority of the court to impose monetary sanctions under Rule 510.

(c) The court may, upon motion of a party or its own motion, dismiss an appeal for failure to comply with these rules, whether or not prior notice of default has been given.

(SCO 510 effective August 30, 1982; amended by SCO 1153 effective July 15, 1994)

Annotations**Cases**

Appellant was not entitled to a fourteen-day grace period in which to file her opening brief after failing to file a brief for eighteen months. *Cowitz v. Alaska Workers' Compensation Board*, Op. No. 3078, 721 P2d 635 (Alaska 1986).

Trial court did not abuse its discretion in dismissing appeal for want of prosecution where court notified appellant that appeal would be dismissed if she did not transmit record and she did not do so. *Geczy v. State, Dept. of Natural Resources*, Op. No. 4409, 924 P2d 103 (Alaska 1996).



alaska judicial council

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Warren W. Matthews
Chief Justice
Supreme Court

September 26, 1997

Representative Brian Porter
716 W. 4th Ave.
Anchorage, AK 99501-2133

RE: Collection of Civil Case Data Effective Date

Dear Brian:

I am writing to keep you informed about the Council's collection of civil case data under the tort reform legislation. (The letter to attorneys and the form are attached.) I would recommend a legislative change which would exclude administrative appeals to superior court and forcible entry and detainer cases (FED). More importantly, I believe the Act's effective date may cause some problems.

The act's effective date is August 7, 1997. However section 55 of the act indicates that the changes only apply to causes of action that accrue on or after that date:

Sec. 55. APPLICABILITY. This Act applies to causes of action accruing on or after the effective date of this Act.

Section 1, which describes the legislative intent of the act, also states that the act only applies to causes of action that accrue on or after the effective date:

Sec. 1. LEGISLATIVE INTENT. In enacting this bill, it is the intent of this legislature as a matter of public policy to

Brian Porter
Page 2
September 12, 1997

(11) ensure that this Act does not apply to or in any way have an effect on existing litigation or a civil cause of action that accrues before the effective date of this Act; it is the specific intent of the legislature that this Act not apply to or in any way have an effect on *In Re Exxon Valdez*, A89-0095 Civ. (D. Alaska) or any other federal admiralty action now or in the future.

These provisions do not distinguish between rule changes made by the act and changes to substantive law. Given this legislative language, the Supreme Court added the language referring to causes of actions accruing after the effective date to the court rules changes made in the legislation.

Unfortunately, from a data gathering perspective we would like attorneys to begin sending us the civil case data for all cases that close after the effective date of the act. Otherwise, it will be years before we get useful data. For this reason, we loosely interpreted the reporting requirement in our letter to attorneys (and implicitly in the form itself) to apply to all cases closed August 8, 1997 or later. I believe the legislature wished us to gather data immediately even if the exact legislative language seems to lead to a different conclusion.

We hope to get a significant number of forms immediately (some have already come in), but I anticipate non-compliance with the reporting requirement will be higher because of the effective date problem. We have had quite a few inquiries on this point, including complaints about our interpretation. I would like to ask you to consider adding a specific effective date for the reporting requirement to the added language I previously suggested. The effective date for the reporting requirement could be set retroactively to August 7, 1997 (or perhaps better to whenever the amendment goes into effect).

Thank you for your assistance.

Very truly yours,



William T. Cotton
Executive Director

WTC:sl

Attachment

Bill History/Action Display



BILL: HB 9 SHORT TITLE: PERSONS REQUIRED TO FILE SETTLEMENT INFO
BILL VERSION:

SPONSOR(S): REPRESENTATIVES(S) PORTER, Kerttula, Croft, Berkowitz, Cowdery,
Smalley, Green, Bunde, Therriault, Murkowski

CURRENT STATUS: (S) JUD

STATUS DATE: 2/10/99

TITLE: "An Act relating to collection of settlement information in civil litigation; amending Rule 41(a)(3), Alaska Rules of Civil Procedure, and Rule 511(e), Alaska Rules of Appellate Procedure; and providing for an effective date."

Bill/Resolution has Zero Fiscal Note(s).

*HB 9 IS SAME AS HB 293.
HB 293 DIED IN (S) JUD.
BOTH BILL MINUTES ARE ATTACHED.*

Jrn-Date	Jrn-Page	Action
1/19/99	<u>20</u>	(H) PREFILE RELEASED 1/8/99
1/19/99	<u>20</u>	(H) READ THE FIRST TIME - REFERRAL(S)
1/19/99	<u>20</u>	(H) JUDICIARY
2/03/99	<u>135</u>	(H) COSPONSOR(S): KERTTULA, CROFT
2/05/99	<u>141</u>	(H) JUD RPT - 6DP
2/05/99	<u>141</u>	(H) DP: CROFT, MURKOWSKI, GREEN, KOTT,
2/05/99	<u>141</u>	(H) ROKEBERG, KERTTULA
2/05/99	<u>141</u>	(H) 2 ZERO FISCAL NOTES (ADM, COURT)
2/08/99	<u>167</u>	(H) RULES TO CALENDAR 2/08/99
2/08/99	<u>167</u>	(H) READ THE SECOND TIME
2/08/99	<u>168</u>	(H) ADVANCED TO THIRD READING UNAN CONSENT
2/08/99	<u>168</u>	(H) READ THE THIRD TIME HB 9
2/08/99	<u>168</u>	(H) PASSED Y40
2/08/99	<u>168</u>	(H) EFFECTIVE DATE(S) SAME AS PASSAGE
2/08/99	<u>168</u>	(H) COURT RULE(S) SAME AS PASSAGE
2/08/99	<u>173</u>	(H) COSPONSOR(S): BERKOWITZ, COWDERY,
2/08/99	<u>173</u>	(H) SMALLEY, GREEN, BUNDE, THERRIAULT,
2/08/99	<u>173</u>	(H) MURKOWSKI
2/08/99	<u>174</u>	(H) TRANSMITTED TO (S)
2/10/99	<u>198</u>	(S) READ THE FIRST TIME - REFERRAL(S)
2/10/99	<u>198</u>	(S) JUD

Similar Subject Match or Exact Subject Match

ATTORNEYS

CIVIL PROCEDURE

COURT RULES

COURTS

Bill Root:

Return to BASIS Main Menu(21th Legislature)

BASIS Last Updated 2/25/99 11:00 AM

House JUDICIARY Minutes



HOUSE JUDICIARY STANDING COMMITTEE

February 3, 1999

1:07 p.m.

HB 9 - PERSONS REQUIRED TO FILE SETTLEMENT INFO

CHAIRMAN KOTT announced the only order of business is HB 9, "An Act relating to collection of settlement information in civil litigation; amending Rule 41(a)(3), Alaska Rules of Civil Procedure, and Rule 511(e), Alaska Rules of Appellate Procedure; and providing for an effective date."

CHAIRMAN KOTT explained that HB 9 is familiar to some because it passed the House last year. It got hung up in the Senate in the never ending battle towards the end of session. Chairman Kott called on Tom Wright from Representative Porter's office, sponsor of the bill, to present the sponsor statement.

Number 0067

TOM WRIGHT, Staff to Representative Brian Porter, Alaska State Legislature, stated the bill is simplistic. It is the same bill that passed the House last year - HB 293. It is a housekeeping measure that involves the collection of settlements and other data in certain categories of civil litigation cases. He explained the following changes that the bill provides:

1) It makes mandatory the reporting of date by attorneys and persons representing themselves. Apparently, some individuals interpret the data collection provisions of the tort reform law to be optional. This amendment clarifies the mandatory nature of these reporting requirements in order to ensure that accurate statistics will be compiled. Information must be submitted within 30 days after the settlement or final resolution of all covered cases.

→ 2) The Alaska Judicial Council has recommended that certain non-tort cases be added to the types of cases already excluded from the reporting requirements. The tort reform law excluded divorce and other categories of cases from reporting requirements. The amendment, offered in Section 1, adds several categories of cases that should also be excluded.

3) The bill clarifies that the reporting requirements arise only after final appeals as to cases, that are fully litigated. Should any one of multiple plaintiffs, defendants or third party defendants settle out of litigation before its final disposition, the obligation to submit required data arises as of the date the case is fully resolved as it pertains to that party.

4) The bill has the effect of amending two court rules since it limits civil actions found under AS 09.68.130 (a) and specifies who is required to provide settlement

*Call
Judicial
Council*

attached

information.

5) The effective date as to the collection of settlement and other data is changed to clarify that reporting requirements are applicable to civil litigation cases which are settled or finally adjudicated on or after the bill is signed into law. The reporting requirements are not retroactive to the effective date of the tort reform law.

Number 0259

REPRESENTATIVE CROFT asked Mr. Wright where HB 293 got stuck in the Senate last year.

MR. WRIGHT replied it got stuck in the Senate Judiciary Committee.

Number 0278

REPRESENTATIVE MURKOWSKI asked Mr. Wright whether HB 9 is the identical bill that was passed by the House last year.

MR. WRIGHT replied correct.

REPRESENTATIVE MURKOWSKI noted that the committee members exchanged glances and chuckles when mentioning that the bill got stuck in the Senate last year and asked Mr. Wright whether there was a problem with the bill itself or the contents of the bill.

MR. WRIGHT replied he doesn't know. He was not staff to Representative Porter last year. He has an idea about what happened, but does not think it would be fair to represent it at this time.

REPRESENTATIVE MURKOWSKI noted that she would discuss the issue further with fellow members of the committee after the meeting.

Number 0338

CHAIRMAN KOTT stated that there was not any difficulties with the contents of the bill last year; it got stuck for other reasons. He would classify the bill as a housekeeping measure.

Number 0353

REPRESENTATIVE KERTTULA asked Mr. Wright whether the bill would clarify paperwork and information gathering that the clerks are already doing and exempt some categories.

MR. WRIGHT replied correct.

Number 0401

REPRESENTATIVE CROFT made a motion to move HB 9 out of committee with individual recommendations and the attached zero fiscal note(s). There being no objection, HB 9 was so moved from the House Judiciary Standing Committee.

01/19/99 House Journal Page 20

HB 9

(Prefile released January 8, 1999)

HOUSE BILL NO. 9 by Representative Porter, entitled:

"An Act relating to collection of settlement information in civil litigation; amending Rule 41(a)(3), Alaska Rules of Civil Procedure, and Rule 511(e), Alaska Rules of Appellate Procedure; and providing for an effective date."

was read the first time and referred to the Judiciary Committee.

02/03/99 House Journal Page 135

HB 9

Representatives Kerttula and Croft added their names as cosponsors to:

HOUSE BILL NO. 9

"An Act relating to collection of settlement information in civil litigation; amending Rule 41(a)(3), Alaska Rules of Civil Procedure, and Rule 511(e), Alaska Rules of Appellate Procedure; and providing for an effective date."

02/05/99 House Journal Page 141

HB 9

The Judiciary Committee has considered:

HOUSE BILL NO. 9

"An Act relating to collection of settlement information in civil litigation; amending Rule 41(a)(3), Alaska Rules of Civil Procedure, and Rule 511(e), Alaska Rules of Appellate Procedure; and providing for an effective date."

The report was signed by Representative Kott, Chair, with the following individual recommendations:

Do pass (6): Croft, Murkowski, Green, Kott, Rokeberg, Kerttula

The following fiscal notes apply:

Zero fiscal note, Dept. of Administration, 2/5/99

Zero fiscal note, Alaska Court System, 2/5/99

HB 9 was referred to the Rules Committee for placement on the calendar.

02/08/99 House Journal Page 167

HB 9

The following was read the second time:

HOUSE BILL NO. 9

"An Act relating to collection of settlement information in civil litigation; amending Rule 41(a)(3), Alaska Rules of Civil Procedure, and Rule 511(e), Alaska Rules of Appellate Procedure; and providing for an effective date."

02/08/99

House Journal

Page 168

HB 9

with the:

Journal Page

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141

2 ZERO FISCAL NOTES (ADM, COURT)

141

Representative Green moved and asked unanimous consent that HB 9 be considered engrossed, advanced to third reading and placed on final passage. There being no objection, it was so ordered.

HB 9 was read the third time.

The question being: "Shall HB 9 pass the House?" The roll was taken with the following result:

HB 9

Third Reading

Final Passage

YEAS: 40 NAYS: 0 EXCUSED: 0 ABSENT: 0

Yeas: Austerman, Barnes, Berkowitz, Brice, Bunde, Cissna, Coghill, Cowdery, Croft, Davies, Davis, Dyson, Foster, Green, Grussendorf, Halcro, Harris, Hudson, James, Joule, Kapsner, Kemplen, Kerttula, Kohring, Kookesh, Kott, Masek, Morgan, Moses, Mulder, Murkowski, Ogan, Phillips, Porter, Rokeberg, Sanders, Smalley, Therriault, Whitaker, Williams

And so, HB 9 passed the House.

Representative Green moved and asked unanimous consent that the roll call on the passage of the bill be considered the roll call on the effective date clause. There being no objection, it was so ordered.

Representative Green moved and asked unanimous consent that the roll call on the passage of the bill be considered the roll call on the court rule changes. There being no objection, it was so ordered.

HB 9 was referred to the Chief Clerk for engrossment.

02/08/99

House Journal

Page 173

HB 9

Representatives Berkowitz, Cowdery, Smalley, Green, Bunde, Therriault and Murkowski added their names as cosponsors to:

HOUSE BILL NO. 9

"An Act relating to collection of settlement information in civil litigation; amending Rule 41(a)(3), Alaska Rules of Civil Procedure, and Rule 511(e), Alaska Rules of Appellate Procedure; and providing for an effective date."

02/08/99

House Journal

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HB 9

HB 9 was engrossed, signed by the Speaker and Chief Clerk and transmitted to the Senate for consideration.

House JUDICIARY Minutes



HOUSE JUDICIARY STANDING COMMITTEE

February 16, 1998

1:08 p.m.

SSHB 293 - PERSONS REQUIRED TO FILE SETTLEMENT INFO

Number 1721

CHAIRMAN GREEN announced the next item of business would be Sponsor Substitute for HB 293, "An Act relating to collection of settlement information in civil litigation; and providing for an effective date."

Number 1730

REPRESENTATIVE PORTER, sponsor, described SSHB 293 as a straightforward cleanup bill. He reminded members that the previous year, they had passed a lengthy tort reform bill in which they had asked that settlement information be reported so that they could get a good track record on just what is involved in the settlement of civil cases involving torts.

REPRESENTATIVE PORTER explained that the Alaska Judicial Council, which has the task of collecting that information, had made two suggestions, which were reviewed by the Department of Law; amendments were then made to the original legislation that conform with the position of Gail Voigtlander, who handles liability for the state.

Number 1812

REPRESENTATIVE PORTER stated, "And now with Bill Cotton [Executive Director, Alaska Judicial Council] and Gail Voigtlander both on vacation today, I have been asked to submit their bill. Basically, what it does in Section 1 is lay out several areas of the law that we would not want reporting done on, as they do not fall within the tort area, and it would be unnecessary for attorneys or parties - or the court - to report. And in Section 2, it goes to establish that not only the court but a party or their attorney should furnish this information also when a case is settled."

REPRESENTATIVE PORTER advised members there was originally an inclusion of retroactivity to cases filed before the tort reform bill passed. He stated, "What we're saying now is that we're not interested in getting the information unless the settlement itself, or decision, comes after the effect of this bill. So, it could be a case that's in existence now, but we're not going to go back and try to get judgments, settlements or decisions that occurred prior to the passage of this bill, which was of some concern to the bar association."

Number 1897

REPRESENTATIVE JAMES made a motion to adopt the proposed committee substitute, Version H [0-LS1144\H, Ford, 2/3/98], as a work draft. There being no objection, it was so ordered.

Number 1926

REPRESENTATIVE BERKOWITZ asked whether the sponsor would mind his joining in as a cosponsor.

REPRESENTATIVE PORTER replied, "Not in the least."

Number 1958

REPRESENTATIVE JAMES made a motion to move Version H out of committee with individual recommendations and the attached fiscal note.

CHAIRMAN GREEN asked whether there was any objection. There being none, CSSSHB 293 (JUD) moved from the House Judiciary Standing Committee.

Bill Root:

[Return to BASIS Main Menu\(20th Legislature\)](#)
BASIS Last Updated 12/31/98

Sponsor Statement for HB 9

RIGHT OF CRIME VICTIMS AND VICTIMS OF JUVENILE OFFENSES TO BE PRESENT AT COURT PROCEEDINGS

The Constitution of the State of Alaska was amended in 1994 by adding to Article 1, a new Section 24, which specifically extended to crime victims "the right to obtain information about and be allowed to be present at all criminal or juvenile proceedings where the accused has the right to be present..."

Currently at least two Superior Court judges are interpreting the Alaska Statutes, and Rule 615, Alaska Rules of Evidence, to exclude victims of crimes and juvenile offenses from being present in the courtroom during a trial of the accused until after the victim has testified.

This bill is then offered to implement the mandate of the 1994 Amendment to the Constitution and to make absolutely clear to the judiciary a crime victim's right to be present at the trial and other proceedings of the accused, including juvenile proceedings, whenever the accused has the right to be present.



NFIB Alaska

NFIB/Alaska 1999 Ballot Results

The Alaska Chapter of the National Federation of Independent Business is comprised of 3000 small and independent business owners. The typical NFIB/Alaska member employs five workers and rings up gross sales of about \$181,000 per year. In total, the organization's members employ more than 43,000 workers.

The legislative agenda of NFIB is determined by ballot. A majority vote of the members in response to the poll sets the policy and position on legislative issues. Ballots for the last 5 years are used to establish the full legislative agenda. Following are the ballot results for 1999.

Tort Reform Frivolous Lawsuits

Should the Alaska Legislature enact legislation to allow attorneys as well as their clients to be assessed damages for knowingly or recklessly filing false claims?

96% YES 2% NO 2% Undecided

Tort Reform Collection of Settlement Information

Do you support the mandatory reporting of out of court settlement information such as attorneys fees and dollar amounts paid to claimants?

72% YES 22% NO 6% Undecided

Biennial State Budget

Do you favor a State Constitutional amendment to create a two-year budget cycle?

52% YES 36% NO 12% Undecided

National Federation of Independent Business

217 Second Street, Suite 206 • Juneau, AK 99801 • 907-463-5118 • Fax 907-463-5128



...and NFIB works for small business.

Department of Environmental Conservation Fees

The Alaska Department of Environmental Conservation (ADEC) currently has the authority to assess fees for permits, inspections, certifications and training for a broad range of regulatory programs. Should these fees be limited to "actual direct costs," which do not include travel, overhead and administrative support costs?

81% YES 13% NO 6% Undecided

Should DEC establish reasonable fixed fees for certain department services to cover actual direct costs?

83% YES 9% NO 8% Undecided

If requested by the applicant, should DEC have the ability to negotiate a fee based on a maximum number of hours that may include associated travel costs?

69% YES 21% NO 10% Undecided

Unemployment Insurance

Students under 18 are not eligible to collect unemployment benefits. Should full time students under the age of 18 and their employers be exempt from paying unemployment tax?

93% YES 6% NO 1% Undecided

HB

34

FISCAL NOTE

Bill Version: CSHB 34 (JUD)

(H) Publish Date: 4/21/99

**STATE OF ALASKA
1999 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction)	Dept. Affected	Law
Title	BRU	Criminal Division; Civil Division
of a crime against a child.	Component	1st-4th Judicial Districts; Criminal Appeals/Special Lit; Human Services
Sponsor	Requester	Component Serial No.
Representative Dyson	House Judiciary Committee	2198/99/2261/79/01/03/08

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY99) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 34 would make witnessing the commission of a listed offense against a minor, and not reporting it to law enforcement immediately, itself a crime.

The Department of Law has no way to estimate how many cases this new offense might generate. Anytime a new crime is created, there is a cost for prosecution. How much that is, however, depends on the volume of new cases. Until some experience is gained, the department cannot estimate the fiscal impact of this bill.

Prepared by Joan M. Kasson *Joan M. Kasson*
 Division Attorney General's Office
 Approved by Commissioner Bruce M. Botelho, Attorney General
 Agency Department of Law

Phone 465-5370
 Date/Time 4/2/99, 9:53 AM
 Date 4/2/99

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FISCAL NOTE

Bill Version: CSHB 34 (FIN)
 (H) Publish Date: 5/3/99

STATE OF ALASKA

1999 LEGISLATIVE SESSION

Revision Date: _____
 Title: "An Act relating to the crime of misprision of a crime against a child"
 Sponsor: Representative Dyson
 Requestor: (H)FIN

Department Affected: Administration
 BRU: Legal and Advocacy Services
 Component: Public Defender Agency
 COMPONENT SERIAL NO. 1631

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	**	**	**	**	**	**

CAPITAL EXPENDITURES	**	**	**	**	**	**
----------------------	----	----	----	----	----	----

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

FUND SOURCE: (Thousands of Dollars)

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

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached.

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

Phone: (907) 264-4414
 Date: _____

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

Date: 4/26/99

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FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. CSHB 34(JUD)

ANALYSIS: (continued)

This bill makes it a crime if a person witnesses a serious crime against a child, but fails to report it. The crime is a class A misdemeanor.

Under current law, it is illegal to "render assistance" to someone who has committed a crime. (Hindering Prosecution, AS 11.56.770-.780) Rendering assistance is broadly defined and includes providing or aiding in transportation or providing other means of avoiding discovery or apprehension. Under this bill, for the first time in Alaska, a witness could be found guilty for failing to report a crime.

It is impossible to predict the number of cases that may arise under this bill. However, there are certain to be complicated and difficult legal challenges that the Public Defender Agency would be obligated to raise.

For example, if there is a "reasonable possibility" that a person may face criminal charges, the privilege against self-incrimination would apply. The applicability of privileges to this statute would have to be litigated. Also, there may equal protection problems. A person who is criminally responsible would be able to ignore this law, but an innocent person could end up facing charges.

Therefore, although there may be few cases brought, the cases would present difficult and time-consuming legal challenges for Public Defender attorneys.

SENATE COMMITTEE REPORT

DATE: 5/10/99

FURTHER: Finance

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered CS FOR HOUSE BILL NO. 34(FIN)

"An Act relating to the crime of failure to report the commission or attempted commission of certain crimes against children."

and recommends:

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

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

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Richard Halford</i>	✓	<i>J. S. Ellis</i>	X		
CHAIR: <i>Christ Taylor</i>	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
<i>DOA</i>	<i>4/26</i>		✓
<i>DOLA</i>	<i>4/2</i>		✓

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill



Alaska State Legislature

- Interim (May-Dec) -
10928 Eagle River Rd., Suite 140
Eagle River, Alaska 99577
☎ (907) 694-6683
FAX (907) 694-1015

- Session (Jan-May) -
Alaska State Capitol
Juneau, Alaska 99801-1182
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FAX (907) 465-4587

Toll free (800) 342-2199

REPRESENTATIVE FRED DYSON

CSHB 34 Sponsor Statement

"An Act relating to the crime of failure to report the commission or attempted commission of certain crimes against children."

Recently, in a Las Vegas casino, a 7-year-old child was assaulted and then murdered in a public restroom. The perpetrator's friend left the restroom as the assault was taking place yet did nothing to assist the victim. In New Jersey, a 31-year-old woman was beaten with a baseball bat while the perpetrators' three friends watched from a nearby car.

Six states have "Good Samaritan" laws, South Dakota, West Virginia, Vermont, Minnesota, Rhode Island and Massachusetts. Nevada and New Jersey do not; the witnesses to the above crimes could not be charged.

HB 34 makes it a Class A misdemeanor to not report a completed or attempted murder, kidnapping, or sexual penetration of a child. This also includes assaults that cause serious physical injury. Of course, we all hope that all citizens would immediately go to the aid of that child. However, some citizens are intimidated by violence and might be afraid of retribution. HB 34 would set the minimum standard of reporting the crime-in-progress to public safety officials who would then be able to come to that child's aid.

The law does many things in our culture, not the least of which is the function of stating and defining our cultural values and standards. I do not expect this proposed law to be used often, but it will send the message that it is not acceptable to stand by and do nothing when a child is being beaten, raped, or killed. A few well-publicized prosecutions of flagrant violators who refuse to help a child will have a salutary affect in our culture.

- E-mail -
Representative_Fred_Dyson
@Legis.state.ak.us

- Internet -
<http://www.akrepublicans.org>

105TH CONGRESS
2D SESSION

S. 2452

To amend the Child Abuse Prevention and Treatment Act to require States receiving funds under section 106 of such Act to have in effect a State law providing for a criminal penalty on an individual who fails to report witnessing another individual engaging in sexual abuse of a child.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 9, 1998

Mrs. BOXER introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

A BILL

To amend the Child Abuse Prevention and Treatment Act to require States receiving funds under section 106 of such Act to have in effect a State law providing for a criminal penalty on an individual who fails to report witnessing another individual engaging in sexual abuse of a child.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Sherrice Iverson Act".

1 SEC. 2. REQUIREMENT ON STATES RECEIVING GRANTS FOR
2 CHILD ABUSE AND NEGLECT PREVENTION
3 AND TREATMENT PROGRAMS.

4 (a) IN GENERAL.—Section 106(b)(2) of the Child
5 Abuse Prevention and Treatment Act (42 U.S.C.
6 5106a(b)(2)) is amended—

7 (1) in subparagraph (C), by striking “and” at
8 the end;

9 (2) in subparagraph (D), by striking the period
10 at the end and inserting “; and”; and

11 (3) by adding at the end the following:

12 “(E) an assurance in the form of a certifi-
13 cation by the chief executive officer of the State
14 that the State has in effect and is enforcing a
15 State law providing for a criminal penalty on an
16 individual 18 years of age or older who fails to
17 report to a State or local law enforcement offi-
18 cial that the individual has witnessed another
19 individual in the State engaging in sexual abuse
20 of a child.”.

21 (b) EFFECTIVE DATE.—The amendment made by
22 subsection (a) shall take effect on December 31, 2004.

○

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

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



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Craig
Pres. Prince of Wales Chapter

John Lucking, Jr., Member
Unalaska
Pres. Aleutian Islands Chapter

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

February 19, 1999

FEB 23 1999

Dear Representative Dyson,

At a recent meeting of the APOA Board of Directors, we unanimously agreed to endorse HB 34.

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

Thank you for sponsoring this legislation.

Sincerely,

John Charbonneau
State President
Alaska Peace Officers Association

APR 26 1999

COPY

Dear Mr. Fred Bryson,

My name is Andrew DeLoose and I am writing this letter for Awanas which is an organization that is run by my church. This letter will help me get my patriotism badge.

I see you are supporting HB 34, the Good Samaritan Law. I see you must like children because you have many foster kids.

I hope you will support HB 70 that says parents must approve questionnaires taken by school by children.

Thank you for serving our community.

Your Friend

Andy

Andy DeLoose
10120 Chickaloon
Eagle River, Alaska

99577

Help Your Neighbor—It's the Law

After a particular heinous crime during which a young man stood by while a child was murdered, lawmakers in many states are considering "duty to assist" laws.

By Donna Lyons

Good Samaritans who come to the aid of a crime victim have long enjoyed immunity from civil liability under state laws. A new twist on altruism is being considered in at least five states this year with bills introduced that would punish the person who sees a crime being committed and fails to report it or assist or summon help for the victim. Most of the proposals specify serious crimes that put a victim in peril of serious bodily injury; some specify child victims.

A little girl who was murdered last summer in a casino near the Nevada-California border has become something of a poster child for these measures. Seven-year-old Sherrice Iverson was molested and strangled in a restroom stall at the Primadonna Casino in Primm, Nev. Jeremy Strohmeyer, a 19-year-old student from California, pled guilty to the crime and is now serving a life sentence without possibility of parole.

Disgust at this heinous crime against a child became outrage when it was reported that a friend of Strohmeyer's, David Cash Jr., was with him at the casino that night and apparently knew the crime was taking place but did nothing to avert the tragedy. California and Nevada are among states now considering legislation that would give the state a chargeable offense in such a case.

Legislation being sponsored by Nevada Assemblyman Richard Perkins is patterned after the state's law requiring that certain professionals report suspected child abuse. The new law would extend that duty to report to everyone who observes crimes against children. The assemblyman said that supporters would review the criminal code definition for "principal to a crime" to consider how a David Cash could be charged with the same crime as the perpetrator under that law.

A measure introduced in the California Assembly would make it a felony to observe and fail to report crimes of murder, manslaughter, rape, sexual assault or any assault that appears reasonably likely to

cause serious bodily harm. And a Senate bill in California specifies minor victims as those for whom a duty to assist would exist under state law. Other states that early this year had similar measures introduced include Florida, New Jersey, New York and Texas.

Traditionally, the American legal system has not required people to assist victims. Good Samaritan laws found in every state provide civil immunity for those individuals who do jump in to help at the

scene of a crime or emergency. The duty to render aid under state law generally has been limited to special relationships between the injured and observing parties—driver of a vehicle and passenger, owner of property and a visitor; school official and student.

And state laws have, of course, broadly established a duty to report by professionals and others who work with, supervise and care for children, in cases of suspected child abuse or neglect. A few states have included misdemeanor offenses under duty to render aid in certain other circumstances. Wisconsin law, for example, provides a penalty for failing to render aid to a peace officer; and Minnesota has incorporated in its "good Samaritan" tort law wording that makes it a petty misdemeanor to fail to provide reasonable

assistance at the scene of an emergency.

The proposed laws have sparked debate over whether creating a duty to assist in criminal law can prompt desirable behavior. Duty-to-assist legislation and the situations to which such measures might apply are likely to be too ambiguous to be a practical response, suggests Washington, D.C., attorney Elisabeth Semel, a member of the board of directors of the National Association of Criminal Defense Lawyers.

"As a society, we have increasingly and wrongly come to believe the only response to morally offensive behavior is to criminalize it," she said.

But to proponents, such a law to protect children from danger does not go too far. "As human beings we have a fundamental duty to protect those who cannot protect themselves," said Nevada Assemblyman Perkins. "Children are certainly high on that list."



Donna Lyons is the criminal justice expert at NCSL. Kelly Fox contributed to this article.



National Conference of State Legislatures
1560 Broadway #700 Denver CO 80202-5140 303/830-2200

December 1998
State Laws with regard to "Duty to Assist" in Crime Situation

State	Cite	Provisions/Criminal penalties
California	Pending legislation	December 1998: Assemblyman Torlakson introduced the Sherrice Iverson Good Samaritan Law, making it a crime to fail to notify police of a violent crime. In most states, it is not against the law in California or Nevada to see a crime and not report it. Nevada lawmakers were expected to introduce a similar measure next month.
Florida	Fla. Stat. § 794.027	Law is specific to a person who observes the commission of the crime of <u>sexual battery</u> and who has ability but fails to seek assistance even though he/or she could do without threat of physical harm. Violation is a first degree misdemeanor, punishable in that state by up to one year imprisonment and \$1,000 fine.
Massachusetts	Mass. Chapter 268 §40	Requires that a person who knows that another person is a victim of aggravated rape, rape, murder, manslaughter or armed robbery and is at the scene of said crime must, to the extent that said person can do so without danger or peril to herself/himself or others, report the crime to an appropriate law enforcement official as soon as reasonably practicable. Violation subject to a fine of not less than \$500 nor more than \$2500.
Minnesota	Minn. Statutes § 604A.01	Incorporated in the "good Samaritan" tort liability law. Adds that a person is guilty of a petty misdemeanor if at the scene of an emergency (not specific to crime scene) another person is exposed to or suffering grave physical harm and one can assist but fails to do so. Reasonable assistance may include obtaining or attempting to obtain aid from law enforcement or medical personnel. A petty offense in Minnesota does not constitute a crime, but can carry a fine up to \$100.
Ohio	Ohio Rev. Code 2921.22	No person, knowing that a felony has been or is being committed, shall knowingly fail to report such information to law enforcement authorities. A person who violates this law is guilty of failure to report a crime, a fourth degree misdemeanor.
Rhode Island	R.I. Gen. Laws § 11-56-1	Refers to giving assistance at scene of an emergency (not specific to crime scene). Requires a person who knows that another person is exposed to or suffered grave physical harm to assist if he/she can do so without danger to him/herself or others. Violation is a petty misdemeanor subject to imprisonment up to six months and/or fine of \$500.
Rhode Island	R.I. Gen Laws § 11-37-3.1	Refers to duty to report sexual assault. Requires that a person who knows or has reason to know that a sexual assault is taking place must immediately notify police. Failure to report is a misdemeanor with possible imprisonment up to one year and/or a fine of \$500.
Vermont	Vt. Stat. Ann. § 519	Incorporated in section on civil liability, adds that if a person knows another is exposed to grave physical harm and can do so without danger or peril to self or others, should give reasonable assistance. Violation carries fine up to \$100.

§61-5-18. Officer not liable for act done under statute or executive order afterward declared unconstitutional.

No officer in the lawful exercise or discharge of his official duty under any act of the Legislature, or any order or proclamation of the governor of this state, shall be held personally responsible therefor in any action, suit, prosecution or proceeding, civil or criminal, by reason of such act, order or proclamation being afterwards adjudged by any court of this state to be unconstitutional. Nor shall his official bond be liable in any civil proceeding therefor.

§61-5-19. Compounding offenses and misprison; penalties.

West Virginia

If any person, knowing of the commission of an offense, take any money, or reward, or an engagement

APR-08-99 THU 09:56 AM LEG RESEARCH SERVICES

FAX NO. 9074633351

P. 04/04

state_code\finisheddata\chap61.asp - First Document

http://129.71.161.254/scripts/as_web.exe?state_code\finisheddata\chap61.asp+F

therefor, upon an agreement or undertaking, expressed or implied, to compound or conceal such offense, or not to prosecute therefor, or not to give evidence thereof, he shall, if such offense be a felony, be guilty of a misdemeanor, and, upon conviction, be confined in jail not more than one year and fined not exceeding five hundred dollars; and if such offense be not a felony, unless it be punishable merely by a forfeiture to him, he may be confined in jail not more than six months, and shall be fined not exceeding one hundred dollars.

APR-08-99 THU 09:55 AM LEG RESEARCH SERVICES

FAX NO. 9074633351

P. 02/04

22.11.12

South Dakota

http://www.stnc.sd.us/state/legis/lrc/statutes/22/11/001200M.htm

22-11-12. Misprison of felony. Any person who, having knowledge, which is not privileged, of the commission of a felony, conceals the same, or does not immediately disclose such felony, with the name of the perpetrator thereof, and all the facts in relation thereto, to the proper authorities, shall be guilty of misprison of a felony. Misprison of a felony is a Class 1 misdemeanor. There is no misprison of misdemeanors or petty offenses.

• Comments:

Several states have laws about misprison, but most seem to be "misprison of treason" laws. South Dakota and West Virginia are the only states we found which have "misprison of a felony" laws. (California, Florida, Illinois, Louisiana, Michigan, Minnesota, Nevada, Rhode Island, Vermont, Virginia, and Washington all have "misprison of treason" laws.)

Attached are a copies of the statutes South Dakota and West Virginia.

Teen gets life for murdering girl, 7, in casino

By TIM DAHLBERG

The Associated Press

LAS VEGAS — A former honor student avoided the death penalty by pleading guilty Tuesday to molesting and strangling a 7-year-old girl in a casino toilet stall.

Under a plea bargain, Jeremy Strohmeyer, 19, will go to prison for the rest of his life for the 1997 slaying of Sherrice Iverson.

The Long Beach, Calif., teen-ager agreed to the plea bargain hours before he was to go on trial, admitting that he sexually assaulted the girl with his fingers and choked her over the Memorial Day weekend at the Primadonna Casino on the California-Nevada state line.

Not only did prosecutors have his confession, but video surveillance cameras had captured Strohmeyer going into the bathroom with the little girl in a game of hide-and-seek.

District Attorney Stewart Bell said that "death verdicts are always hard to get" and that the plea assures Strohmeyer will be off the street. Strohmeyer will be sentenced next month to life in prison without parole.

Defense attorney Leslie Abramson called Strohmeyer a good boy until seven months before the killing, when "evil influences" took over his life. She listed drugs, Internet

pornography and friends like David Cash Jr., whom she suggested "is not a witness but a co-perpetrator in this case."

Cash, 19, told authorities he entered the restroom a few minutes after his friend peered over the wall of an adjoining stall and saw Strohmeyer with his hand over Sherrice's mouth, muffling her screams. Cash said he told Strohmeyer to let her go and then left the restroom.

Cash was not charged because Nevada has no "Good Samaritan" law requiring someone who witnesses a crime to try to stop it or to seek help from law enforcement.

Sherrice's mother, angered by Cash's inaction, led a petition drive that gathered more than 30,000 signatures in support of a Good Samaritan law scheduled to be introduced in Congress on Wednesday.

The case also drew attention to the safety of children in casinos. The Los Angeles girl had been left in the casino arcade with her older brother while their father, LeRoy Iverson, gambled in the early-morning hours.

Security guards said that three times, they found the girl alone and told her father to come get her.



JIM LAURIE / Las Vegas Review Journal

Former honor student Jeremy Strohmeyer, with attorney Leslie Abramson at his side, pleaded guilty Tuesday hours before his trial was to begin.

HB

37

FISCAL NOTE Bill Version: CSHB 37(HES)
(H) Publish Date: 3/19/99

**STATE OF ALASKA
1999 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) _____ Dept. Affected DHSS
 Title _____ BRU Health Services
 Relating to smoking education and cessation Component Community Health and EMS
 Sponsor Rep Rokeberg
 Requester House (HES) Component Serial No. 2078

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)

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)						
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	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)

See attached documentation for the allocation of the tobacco settlement dollars included in the Governor's budget for these activities.

Prepared by Peter M Nakamura MD, MPH Phone 465-3090
 Division Public Health Date/Time #####
 Approved by Commissioner Date 3/9/99
 Agency Department Of Health and social Services

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FISCAL NOTE

Bill Version: CSHB 37 (FIN)

(H) Publish Date: 4/19/99

STATE OF ALASKA
1999 LEGISLATIVE SESSION

Revision Date: _____
Title: Relating to Smoking Education and Cessation

Dept. Affected DHSS
BRU State Health Services
Component Tobacco Prevention and Control

Sponsor: Rokeberg
Requester: _____

Component Serial No. 2375

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
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						
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CHANGE IN REVENUES []						
------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1091 Designated Program Receipts						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: _____

POSITIONS

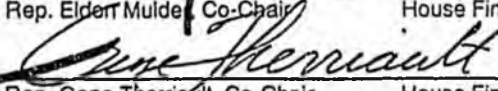
Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by


Rep. Eldert Mulde, Co-Chair House Finance Committee

Phone 465-2647


Rep. Gene Theriault, Co-Chair House Finance Committee

Phone 465-4797

Date 4/16/99

TU version

1-LS0247Y
Ford
4/5/00

SENATE CS FOR CS FOR HOUSE BILL NO. 37()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES ROKEBERG, Croft, Kemplen, Smalley

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to restricting sale of cigarettes, to enforcement of certain laws
2 relating to sales of cigarettes, and to smoking education and cessation programs
3 administered by the Department of Health and Social Services."

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

5 * Section 1. AS 43.50 is amended by adding new sections to read:

6 Article 4. Compliance with Federal Laws Relating to Cigarettes.

7 Sec. 43.50.400. Sale or distribution of cigarettes; prohibitions. A person
8 may not

9 (1) sell or distribute to consumers in this state, acquire, hold, own,
10 possess, or transport for sale or distribution in this state, or import or cause to be
11 imported into this state for sale or distribution in this state cigarettes

12 (A) the package of which

13 (i) bears a statement, label, stamp, sticker, or notice
14 indicating that the manufacturer did not intend the cigarettes to be sold,

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distributed, or used in the United States, including labels stating, "for export only," "U.S. tax-exempt," "for use outside U.S.," or similar wording; or

(ii) does not comply with all requirements of federal law regarding health warnings and other information on packages of cigarettes manufactured, packaged, or imported for sale, distribution, or use in the United States, including the warning labels required by 15 U.S.C. 1333 (Federal Cigarette Labeling and Advertising Act), and all federal trademark and copyright laws;

(B) imported into the United States on or after January 1, 2000, in violation of 26 U.S.C. 5754; or

(C) for which a list of the ingredients added to tobacco in the manufacture of those cigarettes has not been submitted to the Secretary of the United States Department of Health and Human Services as required under 15 U.S.C. 1335a (Federal Cigarette Labeling and Advertising Act);

(2) alter a package of cigarettes before sale or distribution to the consumer so as to remove, conceal, or obscure

(A) a statement, label, stamp, sticker, or notice described in (1)(A)(i) of this section; or

(B) any health warning, including a health warning that is specified in 15 U.S.C. 1333 (Federal Cigarette Labeling and Advertising Act).

Sec. 43.50.410. Imported cigarettes: requirements. A person that imports into this state for sale or distribution in this state cigarettes manufactured outside of the United States shall file with the department, on or before the last day of each calendar quarter, for the cigarettes that the person imported into this state in the preceding calendar quarter, a statement signed by the person under penalty of perjury that the commissioner shall treat as confidential and that shall not be considered a public record under AS 09.25.110, identifying the brand and brand styles of the cigarettes, the quantity of each brand style of cigarettes, and the person or persons to whom the cigarettes have been shipped. In this section, "calendar quarter" means each of the three-month periods ending March 31, June 30, September 30, and

1 December 31.

2 **Sec. 43.50.420. Enforcement.** For the purpose of enforcing AS 43.50.400 -
3 43.50.450, the commissioner may share information with any local, state, or federal
4 government agency.

5 **Sec. 43.50.430. Applicability.** AS 43.50.400 - 43.50.450 do not apply to
6 cigarettes

7 (1) imported into the United States for personal use free of federal tax
8 or duty, or voluntarily abandoned to the United States Secretary of the Treasury at the
9 time of entry; or

10 (2) sold or intended to be sold as duty-free merchandise by a duty-free
11 sales enterprise in accordance with the provisions of 19 U.S.C. 1555(b); however,
12 AS 43.50.400 - 43.50.450 apply to duty-free cigarettes that are brought back into the
13 customs territory for resale within the customs territory.

14 **Sec. 43.50.450. Definitions.** In AS 43.50.400 - 43.50.450, unless the context
15 otherwise requires,

16 (1) "cigarette" has the meaning given in AS 43.50.170;

17 (2) "manufacturer" has the meaning given in AS 43.50.170.

18 * **Sec. 2.** AS 43.70.075 is amended by adding new subsections to read:

19 (g) A person who is required to hold a business license endorsement under this
20 section, or who is required to be licensed or agrees to be licensed under AS 43.50.010,
21 or an agent or employee of the person, may not

22 (1) sell cigarettes to another person unless the cigarettes are sold in
23 groups of at least 20 and the cigarettes are in the manufacturer's original cigarette pack
24 or contained in a cigarette carton or box; or

25 (2) sell or possess cigarettes if the cigarette package

26 (A) differs in any respect from the requirements of 15 U.S.C.
27 1331 - 1341 (Cigarette Labeling and Advertising Act) for the placement of
28 warnings or of any other information upon a package of cigarettes that is sold
29 within the United States;

30 (B) is labeled "For Export Only," "U.S. Tax Exempt," "For Use
31 Outside U.S.," or with similar wording indicating that the manufacturer did not

1 intend that the product be sold in the United States; this subparagraph does not
2 apply to cigarettes sold or intended to be sold as duty-free merchandise by a
3 duty-free sales enterprise under 19 U.S.C. 1555(b); however, this subparagraph
4 does apply to duty-free cigarettes that are brought back into the state for resale
5 in the state;

6 (C) has been altered by adding, masking, or deleting wording
7 described in (B) of this paragraph.

8 (h) A violation of (g) of this section is an unfair or deceptive act or practice
9 under AS 45.50.471.

10 (i) The commissioner or the commissioner of revenue may seize cigarettes that
11 do not comply with this section. After notice and an opportunity for a hearing, the
12 commissioner or the commissioner of revenue shall destroy cigarettes seized under this
13 subsection.

14 * Sec. 3. AS 44.29.020(a) is amended to read:

15 (a) The Department of Health and Social Services shall administer the state
16 programs of public health and social services, including

- 17 (1) maternal and child health services;
18 (2) preventive medical services;
19 (3) public health nursing services;
20 (4) nutrition services;
21 (5) health education;
22 (6) laboratories;
23 (7) mental health treatment and diagnosis;
24 (8) management of state institutions, except for adult penal institutions;
25 (9) medical facilities;
26 (10) adult public assistance;
27 (11) Alaska temporary assistance program;
28 (12) child welfare services;
29 (13) general relief; [AND]
30 (14) licensing and supervision of child care facilities; and
31 (15) a comprehensive smoking education, tobacco use prevention,

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and tobacco control program; to the maximum extent possible, the department shall administer the program required under this paragraph by grant or contract with more than one organization in the state; the department's program must include

(A) a community-based tobacco use prevention and cessation component addressing the needs of youth and adults that includes use of cessation aids such as a nicotine patch or a ^{nicotine} gum (tobacco) substitute;

(B) youth-based efforts that involve youth in the design and implementation of tobacco control efforts;

(C) anti-tobacco counter-marketing targeting both youth and adult populations designed to communicate messages to help prevent youth initiation of tobacco use, promote cessation among current ^{tobacco users} (smokers,) and educate the public about the lethal effects of exposure to secondhand smoke;

(D) tobacco use surveys of youth and adult populations concerning knowledge, awareness, attitude, and use of tobacco products;
and

(E) an enforcement component.

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

LABOR & COMMERCE COMMITTEE, CHAIRMAN
JUDICIARY COMMITTEE, MEMBER
LEGISLATIVE COUNCIL, MEMBER
SPECIAL COMMITTEE ON UTILITY RESTRUCTURING, MEMBER
SPECIAL COMMITTEE ON ECONOMIC DEVELOPMENT &
TOURISM, MEMBER

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



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FAX: (907) 269-0119

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JUNEAU, AK 99801-1182
PHONE: (907) 465-4968
FAX: (907) 465-2040

Representative Norman Rokeberg

TO: Senator Robin Taylor, Chairman
Senate Judiciary Committee

FROM: Representative Norman Rokeberg

DATE: January 31, 2000

RE: Scheduling Request SCS CSHB 37 (HES)

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

I respectfully request that SCS CSHB 37 (HES), An Act to restrict the sale of cigarettes, to enforcement of certain laws relating to sales of cigarettes, and to smoking education and cessation programs administered by the Department of Health and Social Services, be scheduled for a hearing before the Senate Judiciary Committee.

Attached please find the following:

1. Current version of the bill.
2. Sponsor statement
3. Sectional analysis
4. Fiscal notes
5. List of supporters
6. Letter from Citizens to Protect Kids from Tobacco, March 8, 1999.
7. "The Impact of Tobacco in Alaska," Christie McIntyre, Chair, Alaska Tobacco Control Alliance, pp1-4.
8. "Why Alaska should use its Tobacco Settlement Money To Support A New Comprehensive Statewide Tobacco Control Strategy," CDC estimates, pp1-3, December 31, 1998.
9. "Tobacco Fund Should Help Anti-smoking Effort," Anchorage Daily News Compass article, May 1, 1999.
10. "Supplant the Cigarettes," Fairbanks Daily News-Miner editorial, April 6, 1999,
11. "Quitting Time for Smokers," Money Magazine, pp 139-141, January 1999.

If you have any questions, please contact me or Tom Manninen in my office.

SENATE CS FOR CS FOR HOUSE BILL NO. 37(HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered: 1/28/00

Referred: Judiciary

Sponsor(s): REPRESENTATIVES ROKEBERG, Croft, Kemplen, Smalley

A BILL

FOR AN ACT ENTITLED

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1 (12) child welfare services;
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 4 (15) a comprehensive smoking education, tobacco use prevention,
 5 and tobacco control program; to the maximum extent possible, the department
 6 shall conduct the program required under this paragraph by grant or contract
 7 with more than one organization in the state; the department's program must
 8 include

- 9 (A) a community-based smoking cessation component using
 10 cessation aids such as a nicotine patch or a gum tobacco substitute;
 11 (B) school-based efforts;
 12 (C) anti-tobacco marketing;
 13 (D) tobacco use surveillance and evaluation; and
 14 (E) enforcement components

*HJR 01/28/00
 Mike Ford
 is DRAFTING
 an amendment
 to delete
 "surveillance"
 Tom*